California State
**Board *of* Equalization**

# Legislative Bill Analysis

Legislative, Research & Statistics Division

Senate Bill 1037 (Archuleta)
Senate Constitutional Amendment 8 (Archuleta)
Date: February 14, 2020 (Introduced
Program: Property Taxes
Sponsor: California Assessors' Association
Revenue and Taxation Code Section 69.5
Effective: Effective upon voter approval, operative Lien Date January 1, 2023

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**Summary:** Subject to voter approval, allows a base year value transfer from one home to another when a person buys or builds a new home to accommodate a disabled child's needs.

**Fiscal Impact Summary:** If approved, this constitutional amendment would reduce property tax revenues at the basic 1 percent tax rate by $1,430 per claim granted.

**Existing Law:** The law requires assessors to reassess real property from its Proposition 13 protected value (called the "base year value") to its current market value whenever a change in ownership occurs.[1] Subject to many conditions, the law allows disabled homeowners to sell their home, buy or build a new one, and "transfer" their base year value to the new home.[2] To qualify, the move must be necessary to meet disability requirements. In addition, the new home must be of equal or lesser value and located in either the same county or a county that accepts intercounty transfers.[3] The base year value transfer allows property taxes to remain essentially the same after the move.[4]

Generally, this base year value transfer is allowed only one time.[5] The only exception for this one-time-only provision is a situation where a claimant who used the exclusion once for age can use it a second time for disability if, after the initial transfer for age, the claimant or the claimant's spouse becomes severely and permanently disabled and has to move because of the disability.

Existing law does not allow a homeowner to qualify for a base year value transfer when the homeowner moves to a new home to accommodate a child's disability-related requirements.[6] A homeowner qualifies for this tax benefit only if the child is put on title to the property.

**Proposed Law:** If voter-approved, this constitutional amendment authorizes the Legislature to extend base year value transfers to homeowners who are the parents or legal guardians of a severely disabled child and reside with that child.

SB 1037 provides the necessary implementing provisions. The changes made by SB 1037 become operative on the January 1, 2023 lien date if voters approve SCA 8.

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[1] California Constitution article XIII A, section 2.
[2] California Constitution article XIII A, section 2(a) and Revenue and Taxation Code (RTC) section 69.5.
[3] Counties with enabling ordinances include Alameda, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Mateo, Santa Clara, Tuolumne, and Ventura. Each county has the discretion to accept intercounty transfers.
[4] The property tax payment will not be exactly the same because the precise tax rate and direct levies (special assessments, parcel taxes, etc.) typically vary by location.
[5] RTC section 69.5(b)(7) allows an exception to the one-time-only requirement.
[6] While adding the child to the title of both homes is a possible workaround, it may be infeasible and cost prohibitive.

**Property Tax System.** In 1978, voters approved Proposition 13. Under this system, property is reassessed to its current market value only after a change in ownership or new construction. Generally, the property's sales price sets the property's assessed value, and annual increases thereafter are limited to the rate of inflation up to 2 percent.

**Base Year Values.** At the time of the ownership change, the value for property tax purposes is redetermined based on current market value. This established value is described as the "base year value." Thereafter, the base year value is subject to annual increases for inflation limited to 2 percent per year. This value is described as the "factored base year value."[7] The Proposition 13 system can result in substantial property tax savings for long-term property owners.

**Base Year Value Transfers.** Voters have approved three constitutional amendments permitting persons to transfer their Proposition 13 base year value from one home to another that is of equal or lesser value. The base year value transfer avoids reassessment of the newly purchased home to its fair market value.

- **Intracounty.** In 1986, Proposition 60[8] amended the constitution to allow persons over the age of 55 to sell a principal residence and transfer its base year value to a replacement principal residence within the same county.
- **Intercounty.** In 1988, Proposition 90[9] amended the constitution to extend these provisions to a replacement residence located in another county on a county-optional basis. Currently, eleven counties accept transfers from homes located in another county.
- **Disabled Persons**. In 1990, Proposition 110[10] amended the constitution to extend these provisions to any severely and permanently disabled person regardless of age.

The constitution provides, in pertinent part:

> [T]he Legislature may provide that **under appropriate circumstances and pursuant to definitions and procedures established by the Legislature, any person** over the age of 55 years **who resides in property that is eligible for the homeowner's exemption** under subdivision (k) of Section 3 of Article XIII and any implementing legislation may transfer the base year value of the property entitled to exemption, with the adjustments authorized by subdivision (b), to any replacement dwelling of equal or lesser value located within the same county and **purchased or newly constructed by that person as his or her principal residence** within two years of the sale of the original property.
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> The Legislature may extend the provisions of this subdivision relating to the transfer of base year values from original properties to replacement dwellings of homeowners over the age of 55 years **to severely disabled homeowners.** [Emphasis added.]

RTC section 69.5 implements all three propositions.

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[7] RTC section 110.1.
[8] Proposition 60, approved November 4, 1986.
[9] Proposition 90, approved November 8, 1988.
[10] Proposition 110, approved June 5, 1990.

The Board of Equalization's (BOE) Assessors' Handbook Section 401, *Change in Ownership*, Chapter 14 at page 106, provides more details, and the BOE's website includes frequently asked questions for both Propositions 60/90 and Proposition 110.

**Severely and permanently disabled.** For purposes of the Proposition 110 base year value transfer, a *severely and permanently disabled person* is any person who has a physical disability or impairment, whether from birth or by reason of accident or disease, that results in a functional limitation as to employment or substantially limits one or more major life activities of that person, and that has been diagnosed as permanently affecting the person's ability to function, including, but not limited to, any disability or impairment that affects sight, speech, hearing, or the use of any limbs.[11] This limits the base year value transfer to persons with physical disabilities. These provisions do not apply to persons with mental disabilities.

**Minor Child.** The BOE has previously opined in Property Tax Annotation 200.0076 that a minor may obtain the benefit of a base year value transfer indirectly if a guardianship or trust is created for the minor and the minor is placed on title to both homes. The annotation is reflected in Letters To Assessors No. 2006/010, Question A6:

> **A6**: A couple's minor child recently became permanently disabled. As a consequence, the couple must sell their current two-story residence and purchase a single-story residence. Because of the child's disability, can the couple purchase a property and file a claim to transfer the base year value from their original property to the purchased property?
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> Answer: Section 69.5(a) provides that any severely or permanently disabled person may transfer the base year value to any replacement dwelling. Subdivision (b)(3) provides that at the time of the sale of the original property, the claimant (or the claimant's spouse who resides with the claimant) must be severely and permanently disabled. Thus, the disabled child must be the claimant and must be on title in order to transfer the base year value.
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> A minor may own real property or an interest therein, because the law presumes his acceptance of a beneficial grant (*Estate of Yano* (1922) 188 Cal. 645, 649), but may not convey or make contracts relating to real property, as any such contracts are void.[12] Through proceedings in the Superior Court, a guardian may be appointed for the person, estate, or person and estate of a minor, and real property owned by a minor can be dealt with through guardianship proceedings. Therefore, a minor may obtain the benefit of section 69.5 indirectly through a guardianship or trust. In order to do so, the minor, through his/her trust or estate, must be a beneficial owner (on record title) of both the original property and the replacement property. The act of adding the minor child on title to the original property can be excluded from change in ownership under the parent-child exclusion (assuming a timely claim is filed and the requirements of that exclusion are met).

**Adult Child.** In the case of an adult child, the child could be added to the title of both homes to qualify for the transfer.[13] However, issues unrelated to property tax may make adding a disabled adult child to the home's title unfeasible.

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[11] RTC sections 69.5(g)(12) and 74.3(b).

[12] Family Code section 6701.

[13] If the child is added on as joint tenant, no reassessment would occur. Additionally, if the child is added as a joint tenant, the parent-child change in ownership exclusion claim could be filed to avoid reassessment.

**Transfers Granted.** Currently, 5.1 million property owners claim the homeowners' property tax exemption (HOX) for owner-occupied homes. HOX eligibility is a requirement to qualify for a base year value transfer.

As of March 2020, the number of homeowners[14] who have received the benefit of base year value transfers are broken down by transfer type as follows:

- Proposition 60 (Intracounty): 176,570
- Proposition 90 (Intercounty): 74,581
  - Age-Based Transfers: 251,151
- Proposition 110:
  - Disability-Based Transfers 2,216

**Background:** In 2017-18, ACA 12 proposed a similar base year value transfer. ACA 12 was held in the Senate Appropriations Committee. In 2015-16, ACA 6 (Brown and Salas) proposed a similar base year value transfer change, but included additional provisions. ACA 6 was held in the Assembly Appropriations Committee.

In 2017, SB 246 would have allowed an additional exception to the one-time-only limitation for a person who used the base year value transfer first for disability and then subsequently turned 55 years of age. This bill was vetoed.

## Commentary:

1. **Author's Statement.** SCA 8 and SB 1037 provide property tax relief for families with disabled children. It would allow for these families to be extended the same opportunities that disabled individuals would be afforded. SCA 8 would allow for this measure to be placed on the ballots for voters to decide. If SCA 8 were to pass, its companion bill, SB 1037 would authorize a one-time base year value transfer for the parents and legal guardians of disabled children.

2. **Effect of the bills.** These measures will allow parents caring for their disabled children to qualify for a base year value transfer if they need to move to a home that better accommodates their child's needs. The child could be either a minor or an adult, including a situation where a parent may have to care for a disabled veteran after returning home from military service. Under current law, these parents cannot qualify for a base year value transfer unless they take the requisite steps to add the child to title.

3. **A direct approach that is administrable.** This bill would eliminate the need for parents to include a disabled child on both homes' titles to qualify for a base year value transfer. The CAA notes that adding the disabled child to the homes' titles is a lengthy, complicated, and costly legal process, of which parents are often unaware, and which may not be feasible. County Assessors assert that the law should be modified to allow parents or legal guardians of severely and permanently disabled children to qualify for the base year value transfer due to the child's disability. County Assessors state that allowing transfers under these limited circumstances would not be complicated to administer.

[14] This number represents those persons listed in a BOE database of persons that received the property tax benefit because of the laws general one-time limitation and can include the name of both spouses for a single property.

4. **These measures require that the homeowner be the parent or legal guardian of the disabled child.** These measures are limited to a homeowner who is the parent or legal guardian of a child who is severely and permanently physically disabled.

5. **These measures require that the parent or legal guardian and the disabled child reside in the home.** These measures will provide relief to those persons who must move to better meet the needs of a disabled child who resides with the parent or legal guardian in the home.

6. **One-time-only limitation.** A parent who transfers their base year value to meet a disabled child's needs will be using their one-time-only tax relief benefit. The parent cannot use the base year value transfer a second time for age.

7. **Operative Date.** ACA 8, if approved by the voters, will become effective five days after the California Secretary of State certifies the election. However, SB 1037 provides (new subdivision (p)) that, if ACA 8 is approved by the voters, the changes to section 69.5 will apply to *lien dates* occurring on and after January 1, 2023. An act that applies as of the lien date means that the action applies to the upcoming fiscal year (July 1 – June 30). This means that these provisions will apply to transfers that occur on or after July 1, 2023. To avoid confusion in the delay of the operative date, we suggest changing the operative date from a lien date to calendar date January 1, 2023 in section 69.5(p), as follows:

   The amendments made to this section by the act adding this subdivision shall apply ~~to lien dates occurring on and after~~ commencing January 1, 2023.

**Costs:** If approved, the BOE would have absorbable costs to update its publications and website.

**Revenue Impact:** **Background, Methodology, and Assumptions.** Estimating the number of additional transfers resulting from this constitutional amendment is difficult. Based on information from county assessors, BOE staff estimates the number of transfers would be small. Consequently, staff estimated the impact of a single transfer based on available data. According to the California Association of Realtors, the median California home price in January 2020 was $575,000. The Fiscal Year 2019-20 average assessed value of a property receiving the homeowners' exemption was $432,000. Therefore, for each additional claim granted, the estimated assessed value difference is $143,000 ($575,000 - $432,000), or $1,430 per claim granted, at the basic 1 percent property tax rate.

**Revenue Summary.** If approved, this constitutional amendment would reduce property tax revenues by $1,430 per claim granted.

**Qualifying remarks.** Generally, eligibility for the described property tax relief requires a sale of the original property; i.e., a change in ownership subjecting the original property to reappraisal at its current fair market value. This revenue estimate does not account for the change in the assessed value to the original property.