Considerations for base year values: Proposed Rule 462.54 April 14, 2021

Example 1 – If two co-owners hold title to the residence as tenants in common, each owns 100% of their 50% share. It is legal for either tenant in common to sell their separate 50% share to a third party. How does the BOE handle this situation?

Is the property fully reassessed and then that full assessment divided in half, so the selling party has a value for transfer? The same thing occurs if one tenant in common dies – their estate has to have a value to consider for estate tax purposes. Why then, isn't the sister eligible to transfer her 50% portion of the residence to her new residence (which she may own fully)? Please also consider the very high property values (e.g., $2 million dollars and up that apply to most residences in the major cities of California – she should be able to transfer her base value to her new residence. Where did the bill require full sale of the residence regardless of whether it had one or two owners?) -------

(4) and Example 2 – Please consider how the following is actually tracked under the proposed text:

Owner A – sells his residence in Orange County for $2 million on March 1, 2021, which was purchased in 1985; he wants to downsize. Files a claim with the Assessor, but has two years to purchase a new residence. Assessed value is $500,000.

Owner B – sells her residence in San Mateo County for $1.5 million on April 1, 2022 which was purchased in 1990, also wanting to downsize. Files a claim with the Assessor, and also has two years to purchase a replacement residence. Assessed value is $300,000.

Owner C – Sells his residence in Napa for $3 million on September 1, 2022, purchased in 2005, files a claim with the Assessor and has two years to purchase a replacement residence. Assessed value is $750,000.

The three Owners, all over 55, widows/widowers, subsequently decide to live together in a new residence costing $$1.75 million in Santa Rosa and purchase it by February 1, 2023. Since all three already filed a claim with their respective County Assessors, each having a different two-year period in which to transfer their assessed value, and this is the first (of three possible) transfers, Example 2 does not take this situation into account. Rather than penalize two of the seniors by forcing them to lose their claim due to deciding to live together why not find a viable solution such as averaging the assessed value of the three seniors? In the future, one or more of them might die, might become disabled, or decide to move into a separate residence and then need to transfer their assessed value to this second transfer. Please do not penalize seniors because they want or need to live together (be it for companionship or cost.)

It seems the above would result in suit. The bill provided seniors over 55 could sell their principal residence and buy (or build) a replacement residence up to three times anywhere in the state.

Also, if the claimants are not permitted to file a claim until they locate a replacement residence, then does this prevent the over 55 individual from buying an interest in another residence with a co-owner during the interim period (two years) while looking for a suitable replacement residence to transfer his original primary residence?

(B) and Examples 4 and 5 – Please review – (B) says the assessed value of the original primary residence cannot be transferred until the original residence is sold. However, Example 5 shows the replacement being purchased first (2020) and the original being sold later (2021). Seems (B) needs to be reworded or a new (C) added to cover Example 5. Also, Example 4 has the original residence sold in 2021 and the new one bought in 2023 (within two years of selling the original). How does the Assessor keep track of the sale of the original residence? Owner sold it in 2021 and is living in an apartment or with a relative perhaps for the interim while looking for a suitable replacement (or perhaps building one). If Owner sells the original in Orange County and later finds a replacement in Santa Rosa (different County), how is this transfer actually tracked?

Item (7) says this does not apply to wildfire or natural disaster victims - then what is the criteria for these individuals who are over 55? (Thinking of Paradise, for example, which has taken longer than two years to resolve.)

Definitions (7) – Suggest replacing the word "present" beneficiary with "current" beneficiary to be consistent with Trust language.

(d)(B(i)(ii) Claim Filing –Suggest adding a statement under the disability clauses that this applies to anyone who is disabled who is "UNDER age 55." (Because anyone over age 55 and disabled should not have to meet any of these requirements, since being over 55 is sufficient to qualify, correct?)

Under (B) 'at least 55 years of age, add: or if under age 55 and/or severely…'

(d)(1)(D) – Date of claimant's sale and date of purchase of new – if claimant has two years either after date of sale of primary residence OR two years prior to sale of primary residence (as allowed in Example 5), they would not know both the date of sale as well as the date of purchase of the replacement, since the rule gives claimant two years from which to identify the replacement residence. Suggest rewording this for consistency with other provisions of the rule.

(d)(1)(E) – clarify there is no minimum time limit for the claimant to occupy the existing residence prior to transferring to the replacement residence. Also, this seems inconsistent with other examples and provisions – e.g., the claimant has a principal residence and sells it. Now has two more years in which to transfer the assessed value to a replacement residence. During this interval, the owner might rent an apartment or live with a family member while looking for a replacement residence OR building a new replacement residence. So, does the owner need to file their claim when they sell their existing residence OR file it when they buy (transfer) to a new residence two years later?

(d)(1)(F) – not clear. Owner has to file and find replacement within two years of selling existing residence. Why and under what circumstances would a filing be allowed three years after purchasing the replacement residence (e.g., a total of 5 years since sale of original residence?)

Claim filing (3) top of page 7 – Considering identify theft and privacy laws, no part of the individual's name and social security number should be distributed quarterly – rather, an internal identifying number should be assigned to the individuals selling and purchasing residences qualifying under this rule – perhaps a combination of the parcel numbers involved, or other numbering system. Also, consider that women in particular often change their name when marrying.

(4) page 7 – add: 'Or guardian or conservator of the person' since elderly people do come under guardianship/conservatorship as they become unable to handle their affairs. Also, 'or court order.' Also, change the word "present" beneficiary to "current" beneficiary for consistency with trust language. Does "spouse" include same-sex couples? Does "spouse" include separated (not divorced) couples? What provisions will be included to assure that "spouse" is not inadvertently applied to situations where the "spouse" no longer has rights due to separation, lawsuit, court order, etc.

(e) Timing of transfer – if an individual over 55 transfers primary residence to replacement residence and four years later wants to gift his replacement residence to his/her Child (under parent-Child rule), will the new base year value transfer according to provisions of the parent-Child rule? Please show an example using more realistic full cash values (California real estate is in the multi-millions and looking at a few hundred-thousand-dollar property is not realistic), and base year value. Or add a clause confirming provisions of this rule do not prevent the over 55 individual from making a parent-child transfer subsequently. (Considering Example 2 bottom of page 7 and clause (4)(A)(B) on page 8).

Comment – In the proposed rule covering parent/child transfers, where the parent is over 55 and wants to gift (or sell) his low property tax residence to his new primary residence per the over 55 provisions, can the over 55 parent also transfer his low property basis to his child? Suppose the existing residence IS under $1 million with an existing assessed basis of $150,000. Can the over 55 parent gift this residence to his child AND also buy or build a replacement residence elsewhere in the state and transfer the $150,000 assessed value to the new residence?

(f) Multiple owners – It seems items (2)(3) can result in a legal contest, pitting two co-owners against each other and/or against the BOE perhaps also since this rule is being decided by the BOE (beyond what the bill the public voted on provided) – example: If two sisters inherited a house many years ago from their parents, as tenants in common, and now both are over 55 and both agree to sell the house and go their separate ways. Both sisters want to transfer their share of the low property tax to their separate replacement residences, it does not seem fair (or right) that they have to decide between them who gets to transfer the existing tax basis of the entire house to only one of their new replacement residences. This rule penalizes one of the over 55 women from keeping the low property tax going forward – not only the first time, but the remaining two successive times also. As tenants in common, each has been paying ½ of the property taxes and all other expenses. They can each sell their separate share. And, their estate plans can make dispositive provisions for their share of the property. Why does one now have to forfeit their share and become ineligible for the "up to three times" anywhere in the state to transfer their principal residence?

(f)(4) – Please review again – if two co-owners of an apartment building (both over 55) live in separate units, and they sell the apartment building, can each co-owner transfer their share of the property tax to their new principal residences? If not, this also seems unfair or punitive in preventing one of the seniors from being able to afford a replacement residence on their own. The original bill voted by the public did not specify these kinds of limitations, but instead presented that any senior over 55 could transfer their tax base from the present residence to another principal residence anywhere in the state, up to three times.

It also seems pro-rating the individual share or ownership as above described would be more consistent with the next rule (g)(bottom of page 9 and into page 10) which does allow pro-rata share of common area land, and in particular, (2)(A) which does recognize a claimant having an interest in a resident-

owned mobile home park.
Other.

1. Two separately owned, next-door single-family homes, share a common driveway (which has an easement allowing either homeowner to use the driveway.) One homeowner is over 55 while the other homeowner is a young family. How will the BOE handle the over 55 resident who desires to transfer his/her existing tax basis to a replacement primary residence?

2. Same question, only now there are three separate homeowners who all have a legal right to use (and maintain) a common driveway?

3. Clarify that a principal residence consists of a property with one parcel number, regardless of whether or not the parcel has more than one house on it. There are some cities that allowed owners to build a "granny unit" for the child's parents to live next to the child who occupied the main house. These granny units are of limited size (say 650 sf) and could not have their own address and were restricted to the parents occupying the granny unit. When the State mandated that cities find ways to provide affordable housing for the growing populations, the cities involved lifted restrictions – namely, anyone could live in either house, not only a family member, both houses could have their own address, but because the lot size was originally zoned for single family and was minimum size lot, the property could not be further subdivided and was carried forward with one parcel number. Each property could, however, have it's own electric, water and sewer connection also.

   If the senior over 55 was the titled owner and lived in one of the two houses and sold the parcel with two houses on it, the senior could transfer the low assessed value to a new residence, even if the new residence happened to be another property with two such houses on it, but one parcel, and the child lived in one of the houses, this would be an acceptable transfer of the existing property assessed value, correct?

4. A rectangular property containing four houses was inherited by two sisters (each sister received half the property with two houses) and a certificate of compliance was filed allowing each sister to do whatever they wanted with their two houses on their half of the property; but with one restriction that if either sister wanted to sell her half of the property, the other sister would also have to sell her half of the property due to the common driveway easement for the back two houses to not be landlocked. Both halves of the property have their own parcel number. How would this property be handled by the BOE given that at least one of the two sisters if over 55?

5. What is the appeals process if it becomes necessary to file an appeal?

6. If a homeowner has a principal residence and an adjacent vacant lot, and applies to the County to combine the lots into one parcel so a conforming principal residence can be built, how would the BOE interpret the rules for the over 55 senior?

7. Thank you, SHL.