

Notice of Proposed Regulatory Action
The State Board of Equalization Proposes to Amend
California Code of Regulations, Title 18,
Section 462.520, *Exclusion from Change in Ownership – Intergenerational Transfers*

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606, proposes to amend California Code of Regulations, title 18, section (Rule or Property Tax Rule) 462.520, *Exclusion from Change in Ownership – Intergenerational Transfers*. This Rule implements, interprets, and makes specific certain change in ownership exclusion provisions provided in section 2.1 of article XIII A of the California Constitution (Section 2.1) and section 63.2 of the Revenue and Taxation Code.¹

PUBLIC HEARING

The Board will conduct a meeting on November 17-18, 2022, in-person and via teleconference. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board’s website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. on November 17, 2022, or as soon thereafter as the matter may be heard at the Board’s November 17-18, 2022 meeting. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of amendments to Property Tax Rule 462.520 (the Proposed Amendments).

AUTHORITY

Government Code section 15606, subdivision (c).

REFERENCE

Article XIII A, section 2.1, California Constitution; and Revenue and Taxation Code sections 60 and 63.2

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

Proposition 13 was adopted by the voters at the June 1978 primary election and added article XIII A to the California Constitution. Article XIII A generally limits the amount of ad valorem tax to a maximum of one percent of the full cash value of real property. For purposes of this limitation, section 2 of article XIII A defines full cash value to mean a county assessor’s valuation of real property as shown on the 1975-76 tax bill, or thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. In

¹ All further statutory references are to the Revenue and Taxation Code unless otherwise indicated.

general, properties are reassessed to current market value only upon a change in ownership or the completion of new construction, establishing a new “base year value” for property tax purposes. The California Legislature codified the definition of “change in ownership” in section 60 and codified additional Revenue and Taxation Code sections regarding whether a transfer of property results in a change in ownership or is excluded from the definition of “change in ownership” or allows for the transfer of a property's base year value to a replacement property. (Rev & Tax. Code §§61 through 69.6.)

Relevant to this Rule, voters amended Article XIII A of the constitution to add two exclusions from change in ownership. Specifically, Proposition 58, effective November 6, 1986, excluded from change in ownership certain transfers of real property between parents and children and Proposition 193, effective March 27, 1996, excluded from change in ownership certain transfers of real property from grandparents to grandchildren, provided that all of the parents of the grandchildren who qualify as children of the grandparents are deceased as of the date of transfer. These two constitutional amendments are reflected in section 2, subdivision (h) of article XIII A of the California Constitution, codified at section 63.1 of the RTC, and are referred to as the Parent-Child and Grandparent-Grandchild Exclusions, respectively.

In the November 3, 2020 general election, the voters amended the constitution by approving Proposition 19 (Prop 19), which, amongst other things, created a new intergenerational transfer exclusion (by adding Section 2.1, subdivision (c) to article XIII A of the California Constitution) and adopted a sunset date of February 15, 2021 (pursuant to Section 2.1, subdivision (d)) for the Parent-Child and Grandparent-Grandchild Exclusions.

Beginning on and after February 16, 2021, section 2.1, subdivision (c) of article XIII A of the California Constitution provides that the terms “purchased” and “change in ownership” do not include the purchase or transfer of a family home or family farm of the transferor in the case of a transfer between parents and their children or grandparents and their grandchildren, only if the property continues as the family home or family farm of the transferee. This exclusion is available only up to a calculated amount. If the fair market value of the property is greater than that amount, partial relief is available. These provisions also apply to a purchase or transfer of a family home or family farm between grandparents and their grandchildren, as long as all of the parents of those grandchildren, who qualify as children of the grandparents, are deceased as of the date of the purchase or transfer. No provision is made for the exclusion from change in ownership of the transfer of any other type of property between parents and children or grandparents and grandchildren.

On September 30, 2021, the Governor approved Senate Bill (SB) 539,² which, among other things, added section 63.2 to the Revenue and Taxation Code. SB 539 went into immediate effect. Section 63.2 codifies the intergenerational transfer exclusion provisions of Proposition 19.

Effects, Objectives, and Benefits of the Amendments to the Property Tax Rule

Under the authority of Government Code section 15606, subdivision (c), which authorizes the Board to prescribe rules and regulations to govern local boards of equalization and assessment

² Statutes 2021, chapter 427, section 3.

appeals boards when equalizing and county assessors when assessing, the Board promulgated Property Tax Rule 462.520, *Exclusion from Change in Ownership – Intergenerational Transfers* to implement, interpret, and make specific the intergenerational transfer exclusion provisions instituted by Proposition 19 through the regular rulemaking process. Rule 462.520 became effective on January 1, 2022.

Following the promulgation of Rule 462.520, additional amendments were deemed necessary to further implement, interpret, and make specific section 63.2. Pursuant to authority granted under section 63.2, amendments to the Rule were made through the emergency rulemaking process. The emergency amendments became effective on July 18, 2022 and will expire on January 18, 2023. To make the emergency amendments to Rule 462.520 permanent and to make additional amendments to the Rule, the Board initiated the certificate of compliance and regular rulemaking process.

The emergency amendments to Rule 462.520 made the following changes:

- Improve clarity. These amendments reorganize subdivision (f) into two paragraphs, one dealing with the filing of the Homeowners’ or Disabled Veterans’ Exemption claim forms and one dealing with the filing of the Exclusion claim form. Since both forms are required to be filed, creating a paragraph for each form makes the Rule more readable and understandable. Further, Examples 9 and 10 were added to the end of subdivision (c). These examples demonstrate the operation and calculation of subdivisions (a)(1)(B) and (C), (a)(5), (b), and (c) of the Rule.
- Definitions. Definitions of “foster child”, “third-party transfer”, and “legal parcel” were added at subdivision (e)(1)(E) and subdivision (e)(10) of the Rule respectively. “Foster child” was defined by section 63.2, subdivision (e)(1)(E) and its inclusion in the Rule increases the usability of the Rule. “Third-party transfer” is defined as in prior Board guidance (Assessors’ Handbook section 401, p. 99). Its inclusion increases the convenience and usability of the Rule. The phrase “legal parcel” is used in section 63.2, subdivision (a)(2) to identify portions of property to which the exclusion may be applied is not defined. Because the Legislature’s intent was to allow the exclusion for portions of property that can be recognized as a separate parcel for legal purposes, it is necessary to create or reference an existing standard to determine when a parcel is recognized as separate. Instead of creating a standard, reference is made to the Subdivision Maps Act which determines when a portion of property may be sold separate from other land of which it may be a part.
- Subdivision (e)(11)(A) clarifies that a principal residence does not cease to become the principal residence of a transferor on the death of the transferor. This is consistent with administrative practice under Proposition 58 and 193, and with the administration of the homeowners’ exemption.

- Accessory Dwelling Units. Subdivision (e)(11)(B) includes “accessory dwelling unit” (ADU) and “junior accessory dwelling unit” (JADU) as part of the principal residence. This is consistent with recent legislation governing ADUs and JADUs and simplifies administration of the exclusion.
- Subdivision (f)(1) and (5) clarifies that transferees are entitled to a refund of any amounts paid erroneously if the homeowners’ exemption claim form is filed timely and to prospective relief if the homeowners’ exclusion claim form is filed late. Eligibility for the exclusion is dependent on the condition that the property is the principal residence of the eligible transferee. The filing of the homeowners’ exemption claim form merely evidences this fact. Whether the exclusion available or lost forever is not conditioned upon the filing of the form. Rather, a more reasonable interpretation of Section 2.1 is that although the homeowners’ exemption claim form must be filed at the time of the purchase or transfer of the property, if the form is filed within one year the transferee is eligible for the exclusion and entitled to a refund of amounts previously owed or paid between the date of the purchase or transfer and the date the transferee claims the homeowners’ exemption claim form. If the homeowners’ exemption claim form is not filed within one year the transferee is eligible for the exclusion, the transferee is not entitled to refunds, but may qualify for the exclusion prospectively. This is also consistent with prospective-only relief for late filing of the exclusion claim form.

Additional amendments to Rule 462.520 make the following changes:

- A description of calculations was corrected in Example 6 and a calculation was corrected in Example 8, Part B.
- Example 11-1 was amended to clarify the date by which an exclusion claim must be filed.
- The last sentence of subdivision (f)(1)(B) was removed as it was inadvertently added. That sentence originally directed the assessment of the \$1 million exclusion for “other property”. Proposition 19 removed the \$1 million exclusion for “other property”. Thus, that sentence is improperly included.

The above amendments are reasonably necessary for the efficient and fair administration of the change in ownership provisions under section 63.2 and section 2.1 of article XIII A of the California Constitution applicable to base year value transfers. The Board anticipates that the Proposed Amendments will increase openness and transparency in government and benefit the public, local boards of equalization and assessment appeals boards, county assessors, and owners of property potentially eligible for an intergenerational transfer exclusion provided by section 63.2. Portions of the Proposed Amendments may duplicate or overlap language found in Revenue and Taxation Code section 63.2 or in Section 2.1 of Article XIII A; however, the “nonduplication” standard found at Government Code section 11349.1, subdivision (a)(6) is met because, pursuant to 1 Code of California Regulations section 12, subdivision (b)(1), the

duplication or overlap is necessary to satisfy the “clarity” standard of Government Code section 11349.1, subdivision (a)(3). Without the duplication or overlap, the rule would be incomplete or unclear.

The Board has performed an evaluation of whether the amendments to proposed Property Tax Rule 462.520 are inconsistent or incompatible with existing state regulations. The Board has determined that the Proposed Amendments are not inconsistent or incompatible with existing state regulations because there are no other Property Tax Rules that prescribe the provisions that would be adopted by the amendments to the Rule. In addition, there is no comparable federal regulation or statute to Property Tax Rule 462.520.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

Section 5 of SB 539 states that “[n]o reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the duties imposed on a local agency or school district by this act are necessary to implement, or were expressly included in, a ballot measure approved by the voters in a statewide or local election, within the meaning of Section 17556 of the Government Code.” Thus, the Proposed Amendments do not impose a mandate on a local agency that is reimbursable. The Board has also determined that the adoption of the Proposed Amendments will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

FISCAL IMPACT

Board staff estimated that the amendments to this rule will result in an absorbable one-time cost of \$923 for the Board to communicate with interested parties and update its website after the rule amendment is completed assuming that the average hourly compensation costs are \$57.66 per hour³ and that it will take approximately 16 hours. There will be no savings. The Board has determined that the adoption of the Proposed Amendments will result in no other direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the Proposed Amendments will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

³ Source: Hourly compensation costs are from the U.S. Bureau of Labor Statistics. Hourly compensation costs are for State and Local Government Workers. *Employer Costs for Employee Compensation – December 2021: Table 3. Employer Costs for Employee Compensation for state and local government workers by occupational and industry group*, <https://www.bls.gov/news.release/ecec.htm>.

SMALL BUSINESS

The adoption of the Proposed Amendments is not expected to affect small business since they are only applicable to individuals.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board assessed the economic impact of Proposed Amendments to Property Tax Rule 462.520 on California businesses and individuals and determined that the amendments do not constitute a major regulation as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment (EIA) required by Government Code section 11346.3, subdivision (b)(1), for the Proposed Amendments and included it in the initial statement of reasons. In the EIA, the Board has determined that the adoption of the Proposed Amendments will neither create nor eliminate jobs in the State of California, nor create new businesses or eliminate existing businesses within the state, nor expand businesses currently doing business in the State of California. Furthermore, the Board has determined that the adoption of the Proposed Amendments will not affect the benefits of the rule to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the Proposed Amendments to Property Tax Rule 462.520 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons that the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the Proposed Amendments should be directed to Mr. Henry Nanjo, Chief Counsel, by telephone at (916) 274-3520, by e-mail at henry.nanjo@boe.ca.gov, or by mail at State Board of Equalization, Attn: Henry Nanjo, MIC: 121, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0121.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Ms. Honey Her, Regulations Coordinator, by telephone at (916) 274-3523, by e-mail at honey.her@boe.ca.gov, or by mail at State Board of Equalization, Attn: Honey Her, MIC: 121, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0121. Ms. Her is the designated backup contact person to Mr. Nanjo.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on November 17, 2022, or as soon thereafter as the Board holds the public hearing regarding the Proposed Amendments during the November 17-18, 2022, Board meeting. Written comments received by Ms. Honey Her at the postal address or email address provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the Proposed Amendments. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared a version of the Proposed Amendments to Property Tax Rule 462.520 illustrating the express terms of the Proposed Amendments and an initial statement of reasons for the adoption of the Proposed Amendments, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the Proposed Amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 160 Promenade Circle, Suite 200, Sacramento, CA 95834. The express terms of the Proposed Amendments and the Initial Statement of Reasons are also available on the Board's website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the Proposed Amendments with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the resulting regulation, with the change clearly indicated, available to the public for at least 15 days prior to adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the Proposed Amendments orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Ms. Her. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the Proposed Amendments, the Board will prepare a final statement of reasons, which will be made available for inspection at 160 Promenade Circle, Suite 200, Sacramento, CA 95834 and available on the Board's website at www.boe.ca.gov.