California State

Board *of* Equalization

Legislative Bill Analysis

Legislative and Research Division

Assembly Constitutional Amendment 6 (Brown)
Date: 04/20/15
Program: Property Taxes
Sponsor: California Assessors' Association
California Constitution Article XIII A, Section 2
Effective: If approved by voters.

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Summary: Subject to voter approval, allows base year value transfers for parents who must sell their home and buy or build a new one to accommodate a disabled child's needs.

Purpose: To assist parents caring for disabled children avoid the costly legal process of adding a minor child to title to qualify for a base year value transfer.

Fiscal Impact Summary: Unknown, but likely only a small number of additional base year value transfer claims, with each transfer resulting in annual revenue loss of $1,400 per home.

Existing Law: For property tax purposes, real property is reassessed from its Proposition 13 protected value (called a "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 the base year value.[2] To qualify, the move must be necessary to meet disability requirements, and the new home must be of equal or lesser value and located in the same county.[3] The base year value transfer allows property taxes to remain essentially the same after the move.[4]

Proposed Law: If voter-approved, this constitutional amendment would authorize the Legislature to extend base year value transfers to homeowners with a severely disabled child.

In General: **Property Tax System.** In 1978, voters changed California's property tax system with the approval of Proposition 13. Under this system, property is reassessed to its current market value only after a change in ownership or new construction. Generally, the sales price of a property is used to set the property's assessed value, and annual increases to that value are limited to the rate of inflation, not to exceed 2%.

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% per year. This value is described as the "factored base year value." This system, established by Proposition 13, 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.

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[1] California Constitution Article XIII A, Sec. 2.
[2] California Constitution Article XIII A, Sec. 2 (a), Revenue and Taxation Code (RTC) Section 69.5.
[3] In addition, ten counties offer this property tax benefit to new county residents. Each county has the discretion to accept intercounty transfers. Counties with active enabling ordinances include: Alameda, El Dorado, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Mateo, Santa Clara, and Ventura.
[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.

- **Intracounty.** In 1986, Proposition 60[5] 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[6] amended the constitution to extend these provisions to a replacement residence located in another county on a county-optional basis. Currently, ten counties accept transfers from homes located in another county.
- **Disabled Persons**. In 1990, Proposition 110[7] 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.**

RTC Section 69.5 implements all three propositions.

Background: Related to a child that is a minor, 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 Letter to Assessor's 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.[8] 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

[5] Proposition 60, approved November 4, 1986.
[6] Proposition 90, approved November 8, 1988.
[7] Proposition 110, approved June 5, 1990.
[8] Family Code Section 6701.

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).

An adult child could be added to the title of both homes to qualify for the transfer.[9] However, there may be non-property tax related implications for adding a disabled adult child to the home's title.

Commentary:

1. **Currently, base year value transfers are only possible by adding a minor child to a home's legal title.** A parent may add a minor child to both homes' titles through a guardianship or irrevocable trust. Once the minor child is a record owner, the child becomes a qualified claimant, and the parent may file a claim on the child's behalf as the trustee or guardian. However, the CAA notes that this is a lengthy, complicated, and costly legal process.
2. **This constitutional amendment would eliminate the need for parents to undertake these steps.** County assessors state that the law should be modified to allow a parent to claim the base year value transfer without any need to add the child to title. County assessors state that allowing these transfers under these limited circumstances is easily administrable.
3. **The constitutional amendment doesn't expressly require that the disabled child reside in the home.** The amendment's language only requires that the homeowner reside in the home and has a disabled child. Depending on how the Legislature implements this constitutional authorization, if residency by the child is not a requirement, then this would allow a homeowner to move closer to a child who lives independently or in a care facility, or allow a homeowner to buy or build a home that accommodates the disabled child's needs when they visit.
4. **The constitutional amendment doesn't expressly require that the disabled child be the homeowner's child.** The amendment's language refers to "homeowners with a severely and permanently disabled child." Depending on how the Legislature implements this constitutional authorization, in the case of a minor child, the language would create the possibility that persons other than parents of a disabled child could also qualify. For example, any person that cares for the minor child, such as a relative or friend, may qualify for the base year value transfer.
5. **Related Legislation.** AB 571 (Brown), as introduced, proposes statutory amendments to Section 69.5 to implement this provision.

Administrative Costs:

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

Revenue Impact:

Background, Methodology, and Assumptions. Predicting 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 December 2014 was $453,780. The Fiscal Year 2013-14 average assessed value of a property receiving the homeowners' exemption was $314,464. Therefore, for each additional claim granted, the estimated assessed value difference is about $140,000, or $1,400 per transfer at the basic 1 percent property tax rate.

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[9] 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.

Revenue Summary. If approved, this constitutional amendment would reduce property tax revenues at the basic 1 percent tax rate by $1,400 per claim granted. This amount per claim could grow over time if assessed value differences also grow in relation to real estate market values.

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.

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.