

[Assembly Bill 1596](#) (Gloria) @ 4/18/18  
[Assembly Constitutional Amendment 12](#) (Gloria) @ 4/18/18  
Program: Property Taxes  
Sponsor: California Assessors' Association (CAA)  
California Constitution Article XIII A, Section 2 and Revenue and Taxation Code Section 69.5  
Effective: Upon voter approval

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

**Summary of Amendments:** Since the previous analysis, ACA 12 was amended to provide that its provisions apply to replacement dwellings that are purchased or newly constructed on or after January 1, 2019. Assembly Bill 1596 was amended to remove a duplicate word.

**Purpose:** To allow parents caring for a disabled child of any age to qualify for a base year value transfer.

**Fiscal Impact Summary:** Revenue loss of \$1,180 per transfer. Total revenue loss unknown.

**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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> The base year value transfer allows property taxes to remain essentially the same after the move.<sup>4</sup>

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.<sup>5</sup> 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. These provisions apply to replacement dwellings that are purchased or newly constructed on or after January 1, 2019.

AB 1596 provides the necessary implementing provisions. The changes made by AB 1596 become operative on the 2019-20 lien date if voters approve ACA 12. (*Sec. 69.5(p)*)

**In General: 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.

<sup>1</sup> California Constitution article XIII A, [section 2](#).

<sup>2</sup> California Constitution article XIII A, section 2(a); Revenue and Taxation Code (RTC) [section 69.5](#).

<sup>3</sup> In addition, until November 7, 2018, [eleven](#) 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 (expires November 7, 2018), Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Mateo, Santa Clara, Tuolumne and Ventura.

<sup>4</sup> 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.

<sup>5</sup> While adding the child to the title of both homes is a possible workaround, it may be infeasible and cost prohibitive.

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**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."<sup>6</sup> 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](#)<sup>7</sup> 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](#)<sup>8</sup> 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](#)<sup>9</sup> 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.

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.

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](#).

**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

<sup>6</sup> RTC section [110.1](#).

<sup>7</sup> [Proposition 60](#), approved November 4, 1986.

<sup>8</sup> [Proposition 90](#), approved November 8, 1988.

<sup>9</sup> [Proposition 110](#), approved June 5, 1990.

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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?

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.

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.<sup>10</sup> 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.<sup>11</sup> However, issues unrelated to property tax may make adding a disabled adult child to the home's title unfeasible.

**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 January 2018, the number of homeowners<sup>12</sup> who have received the benefit of base year value transfers are broken down by transfer type as follows:

- Proposition 60 (Intracounty): 165,167
- Proposition 90 (Intercounty): 68,285
  - Age-Based Transfers: 233,452
- Proposition 110:
  - Disability-Based Transfers 2,066

**Background:** 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.

## Commentary:

1. **Effect of the bill.** This constitutional amendment 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 an adult or a minor. This bill arises from a situation in San Diego County where parents of a disabled veteran returning home from military service

<sup>10</sup> Family Code [section 6701](#).

<sup>11</sup> 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.

<sup>12</sup> 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.

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unsuccessfully sought a base year value transfer upon moving to a home that would accommodate their child's needs. 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.

2. **Summary of amendments.** The **April 18, 2018 amendment to ACA 12** provides that the base year value transfers provisions of this bill apply to replacement dwellings that are purchased or newly constructed on or after January 1, 2019. The **January 3, 2018 amendments to AB 1596** were provisions previously contained in AB 1165 and add an operative date. The **April 18, 2018 amendment to AB 1596** removed a duplicate word. The **June 29, 2017 amendments to ACA 12** and the **May 16, 2017 amendments to AB 1165** clarify that the homeowner must be the parent or legal guardian of the disabled child and that the disabled child must reside in the home. These amendments address implementation issues noted in prior BOE analyses and discussed in Comment 4 and 5 below. The **May 16, 2017 amendments to AB 1165** corrected the ACA cross reference to ACA 12. The **April 4, 2017 amendments to ACA 12** were provisions previously contained in ACA 5.
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 adult or minor child's disability. County assessors state that allowing transfers under these limited circumstances would not be complicated to administer.
4. **These measures require that the parent or legal guardian and the disabled child reside in the home.** As introduced, these measures applied to "homeowners with a severely disabled child" and the child's residency in the home was not a requirement to claim a base year value transfer. This could have allowed base year value transfers in situations beyond the measure's intent of assisting those persons who must move to better meet the needs of a disabled child that resides with the parent or legal guardian in the home.
5. **These measures require that the homeowner be the parent or legal guardian of the disabled child.** As introduced, these measures referred to "homeowners with a severely disabled child." In the case of a *minor* child, that language could have been interpreted to mean that persons other than a disabled child's parents could also qualify. For example, any person who cares for the minor child, such as a relative or friend, may qualify for the base year value transfer. As amended, these measures are limited to homeowners that are the parent or legal guardian of the child that is disabled.
6. **Operative Date.** ACA 12 specifies that these base year value transfer provisions apply to replacement dwellings that are purchased or newly constructed on or after January 1, 2019. However, in AB 1596, section 69.5, subdivision (p), provides that if ACA 12 is approved by the voters, the changes to section 69.5 made by AB 1596 will apply as of the lien date for the 2019-20 fiscal year.

Thus, for consistency with ACA 12, the author may want to consider changing the reference from the "lien date for the 2019-20 fiscal year" in section 69.5(p) to January 1, 2019:

(p) The amendments made to this section by the act adding this subdivision shall apply commencing ~~with the lien date for the 2019-20 fiscal year~~ *January 1, 2019*.

**7. Related Legislation.** ACA 20 and AB 1748 (Steinorth) have been introduced to allow a base year value transfer for homeowners, regardless of age, disability, or value. SCA 19 has been introduced to allow a base year value transfer for veterans.

**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 November 2017 was \$546,820. The Fiscal Year 2016-17 average assessed value of a property receiving the homeowners' exemption was \$372,000. Therefore, for each additional claim granted, the estimated assessed value difference is about \$174,820 (\$546,820 - \$372,000), or \$1,748.20 per transfer at the basic 1 percent property tax rate.

**Revenue Summary.** If approved, this constitutional amendment would reduce property tax revenues at the basic 1 percent tax rate by \$1,748.20 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.

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