California State Board *of* Equalization

Legislative Bill Analysis

Senate Bill 303 (Borgeas)
Date: February 3, 2021 (Introduced)
Program: Property Taxes
Revenue and Taxation Code Section 69
Effective: Immediately

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Analysis Date: March 22, 2021

Summary: This bill would increase from five years to seven years the timeframe in which a property owner has to acquire or construct a comparable property within the same county to replace one substantially damaged or destroyed in a Governor-proclaimed disaster and remain eligible to receive a base year value transfer.

Fiscal Impact Summary: Minimal statewide revenue impact.

Existing Law: For property tax purposes, the law requires assessors to reassess real property from its Proposition 13 protected value ("base year value") to its current market value whenever a change in ownership occurs.[1] Exceptions to this reassessment requirement have been enacted, including two base year value transfers for property owners whose property has been damaged or destroyed in a disaster for which the Governor proclaimed a state of emergency.

Related to this bill, Revenue and Taxation Code (RTC) section 69 provides tax relief to persons who own property substantially damaged or destroyed in a Governor-proclaimed disaster. Among the various requirements and conditions, the base year value of the damaged property may be transferred to a comparable property that is located within the same county and purchased or newly constructed within five years of the date the disaster occurred.

Proposed Law: This bill amends RTC section 69 by allowing an extension of time to replace or construct a comparable home following the destruction of a qualified property from five to seven years, in order to transfer a base year value. This would apply to disasters occurring on or after March 4, 2020 through the COVID-19 emergency termination date. This bill would also extend the number of years to acquire a replacement property from five to seven years if the last day to transfer the base year value of the qualified property was on or after March 4, 2020, but on or before the COVID-19 emergency termination date.

Retroactive. This bill is retroactive to base year values determined in fiscal year 2015-16 and fiscal years thereafter.

COVID-19 Termination Date. "COVID-19 termination date" shall be the date the Governor proclaims the termination of the emergency related to the COVID-19 pandemic that was declared on March 4, 2020, pursuant to the California Emergency Services Act (Chapter 7 (commencing with section 8550) of division 1 of title 2 of the Government Code).

Qualified Property. "Qualified property" means property that is substantially damaged or destroyed by a disaster, as declared by the Governor.

[1] Article XIII A, section 2 of the California Constitution.

This staff analysis is provided to address various administrative, cost, revenue, and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

Location. This bill only pertains to intracounty transfers, where both the substantially damaged or destroyed property and replacement property are located within the same county.

In General: California's system of property taxation under article XIII A of the California Constitution (Proposition 13) values property at its 1975 fair market value, with annual increases thereafter limited to the amount of inflation or 2 percent, whichever is less, until the property changes ownership or new construction occurs. Once a reassessable event occurs (i.e., a change in ownership or new construction), the value of the property for tax purposes is redetermined based on its current market value. The value initially established, or redetermined where appropriate, is referred to as the "base year value."

Because real estate values generally appreciate at a rate greater than 2 percent per year, when an event occurs triggering a reassessment of property to its current market value, the reassessed value (i.e., its new base year value) will likely be substantially higher.

California property tax law provides for various situations where the base year value of a property is either: (1) retained, notwithstanding that new construction has taken place or that the property has changed ownership, or (2) transferred to another property, notwithstanding that the property has changed ownership. These special situations are provided pursuant to various constitutional amendments modifying the original Proposition 13 framework and serve to avoid the otherwise required reassessment of a property to its current market value.

For instance, related to the subject matter of this bill, RTC section 70(c) provides that where property has been damaged or destroyed by a misfortune or calamity, the property will retain its previous assessed value after its reconstruction[2]. Consequently, a property that is rebuilt after a fire will continue to be assessed at the same amount even though the property has been entirely newly constructed.

Specifically related to this bill, RTC section 69 provides that persons who own property substantially damaged or destroyed in a Governor-proclaimed disaster may transfer the base year value of that property to a property acquired or newly constructed as a replacement if it is acquired within five years after the disaster[3]. “Substantially damaged” means physical damage amounting to more than 50 percent of its current market value immediately prior to the damage. Base year value transfers are available for all property types; with the limitation that the original property and the replacement property must be of the same property *type*: residential, commercial, agricultural, or industrial. The replacement property is “comparable” if it is similar in size, utility, and function to the destroyed property, and if the market value of the acquired property does not exceed 120 percent of the fair market value of the replaced property in its pre-damaged condition. Property owners may, nevertheless, still receive the disaster relief in cases where the value of the replacement property exceeds the 120 percent limitation. In such cases, the amount over this threshold is assessed at full market value and added to the transferred base year value.

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[2] This new construction exclusion was provided by Proposition 8 in 1978.

[3] Proposition 50 of 1986 authorized this base year value transfer provision.

Governor State of Emergency Proclamations. The Government Code[4] authorizes the Governor to proclaim a state of emergency under specified circumstances, including:

- "State of war emergency" means the condition which exists immediately, with or without a proclamation thereof by the Governor, whenever this state or nation is attacked by an enemy of the United States, or upon receipt by the state of a warning from the federal government indicating that such an enemy attack is probable or imminent.
- "State of emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state.
- "Local emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city.

Background: In 1993, Assembly Bill (AB) 1824 (Stats. 1993, Ch. 1053) extended the timeframe for RTC section 69 base year value transfers from two years to three years for all disasters occurring on or after October 20, 1991, the date of the Oakland Hills fire. In 1997, Senate Bill (SB) 594 (Stats. 1997, Ch. 941) provided a special five-year timeframe for any victim of the 1994 Northridge earthquake. In 2006, AB 1890 (Stats. 2006, Ch. 317) extended the timeframe for RTC section 69 base year value transfers from three years to five years for all disasters occurring after July 1, 2013, when several devastating fires swept through Southern California.

Commentary:

1. **Retroactive Provisions.** This bill extends the existing five-year period to seven years for disasters that occur on or after March 4, 2020 or for those disasters whose five-year period ends on or after March 4, 2020 and before the COVID-19 emergency termination date. Yet the bill also provides that it applies to the determination of base year values for the 2015-16 fiscal years and fiscal years thereafter. The author may want to consider making these provisions retroactive to March 4, 2020, as the provisions of this bill would not apply to prior years.

2. **Qualified Property.** RTC section 69 uses the term "property substantially damaged or destroyed" and defines this term in RTC section 69(c)(1). The proposed changes by this bill introduce a new term, "qualified property" and defines this term as property that is "substantially damaged or destroyed" (i.e., which is defined in subdivision (c)(1)). The author may want to consider using the term that is already in use in RTC section 69, rather than introduce a new term.

3. **Property Type.** This bill applies to all types of real property, not specifically residences.

4. **Governor's Actions.** The Government Code authorizes the Governor to proclaim a state of emergency because of a disaster. The Governor does not "declare" a disaster. The author may want to consider exchanging the phrase "Governor declared" or "declared by the Governor" for "Governor-proclaimed" or "proclaimed by the Governor," to be consistent with the actions authorized by the Government Code.

[4] Government Code (GC) sections 8558 and 8625.

Costs: The BOE will incur absorbable costs to update its documents, website materials, and provide guidance to assessors.

Revenue Impact: It is difficult to estimate the number of claimants requiring an additional two years to transfer their base year values under SB 303. Based on available data, staff estimates that, generally, very few requests for base year value transfers are denied due to time in the wake of disasters for which the Governor proclaimed a state of emergency. Considering that SB 303 also applies this extension to property substantially damaged or destroyed on or after March 4, 2020, but on or before the COVID-19 emergency termination date, staff estimates that this bill will result in minimal statewide revenue impact.