



California State Board of Equalization

Legislative Bill Analysis

[Senate Bill 668](#) (Bates)
April 27, 2021 (Amended)
Program: Property Taxes
Revenue and Taxation Code 63.3
Effective: February 16, 2021

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This analysis is limited to the property tax provisions.

Summary: For a two-year period beginning February 16, 2021, this bill would exclude from the definition of "change in ownership" for certain transfers between parents and children and from grandparents to grandchildren of the transferor's principal residence and the first \$1 million of full cash value of all other real property, in a manner similar to exclusions in place prior to February 16, 2021. This bill becomes inoperative on February 16, 2023 and is repealed on January 1, 2024.

Background: Section 2 of article XIII A of the California Constitution requires County 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.¹ Exceptions to this reassessment requirement that are relevant to this bill have been enacted.

In 1986, the voters approved Proposition 58, which, in part, added subdivision (h) to section 2 of article XIII A of the California Constitution. Subdivision (h) provides that the terms *purchased* and *change in ownership* exclude the purchase or transfer of:

- A principal residence between parents and their children. There is no limit as to the value of the residence or how many principal residences may be transferred.
- The first \$1 million of the base year value² of all real property other than a principal residence between parents and children (called "other property"). Each person may transfer real property to any combination of parents and/or children up to \$1 million cumulatively over a lifetime.

In 1996, the voters approved Proposition 193, which amended subdivision (h) to extend the parent-child exclusion to transfers from grandparents to grandchildren if certain members of the intervening parent generation are deceased. Revenue and Taxation Code (RTC) section 63.1 implements Article XIII A, section 2, subdivision (h) of the California Constitution. The parent-child exclusion applied to changes in ownership that occur on or after November 5, 1986. The grandparent-to-grandchild exclusion applied to changes in ownership that occur on or after March 27, 1996.

¹ Article XIII A, section 2.

² Article XIII, section 2(h) uses the term "full cash value." RTC section 63.1 provides that "full cash value" means full cash value as defined in RTC section 110.1, which describes a property's base year value, not its current market value.

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Proposition 19, approved by the voters on November 3, 2020, added section 2.1 to article XIII A of the California Constitution, which did the following:

- Operative February 16, 2021, section 2.1(c) created a new intergenerational principal residence exclusion, if the property continues as the family home or family farm of the transferee.
- As of February 16, 2021, section 2.1(d) provides that section 2(h) (the parent-child and grandparent-to-grandchild exclusions) is inoperable as of February 16, 2021.

Fiscal Impact Summary: Average revenue loss at the basic 1 percent property tax rate is estimated at \$2,340 per family home (\$234,000 x 1%), or roughly \$2.34 million for every 1,000 claims granted. The revenue impact of the exclusion for “other property” provided by this bill is indeterminable.

Existing Law:

Operative February 16, 2021, Proposition 19 replaced the existing parent-child and grandparent-to-grandchild exclusion with a new intergenerational exclusion that applies only to transfers of family homes or family farms, if the property continues as the family home or family farm of the transferee. *Section 2.1(c) and (d)*. Proposition 19 does not exclude the transfer of any other property.

Family Home. Family home has the same meaning as "principal residence," as used in subdivision (k) of section 3 of article XIII. Proposition 19 provides that "family home" includes a “family farm,” which means any real property that is under cultivation or being used for pasture or grazing or to produce any agricultural commodity, defined as any and all plant and animal products produced in California for commercial purposes.³ *Section 2.1(c)(3)*.

Principal Place of Residence. To qualify for this benefit, Proposition 19 requires that (1) the family home must be the principal residence of the transferor and continue as the principal residence of the transferee and (2) the transferee must file for the homeowners' or disabled veterans' exemption within one year of the date of transfer. *Section 2.1(c)(1) and (5)*.

Principal Residence Value Cap. Proposition 19 provides that the existing adjusted base year value of the principal residence will remain if the market value is less than the sum of (1) the adjusted base year value of the principal residence of the transferor, plus (2) \$1 million. If the market value exceeds the sum of the adjusted base year value of the principal residence of the transferor plus \$1 million, then the difference between (1) the sum of the adjusted base year value plus \$1 million, and (2) the market value, is to be added to the property's existing adjusted base year value. *Section 2.1(c)(1)*.

³ Government Code section [51201](#) provides that "agricultural commodity" means any and all plant and animal products produced in California for commercial purposes, including, but not limited to, plant products used for producing biofuels, and industrial hemp cultivated in accordance with Food and Agricultural Code [division 24](#) (commencing with section 81000).

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Adjustment of \$1 Million. Beginning February 16, 2023, the \$1 million amount will be biennially adjusted by an inflation factor that is the percentage change in the House Price Index (HPI) for California for the prior calendar year, as determined by the Federal Housing Finance Agency. This bill requires the State Board of Equalization (BOE) to calculate and publish the adjustments required. *Section 2.1(c)(4)*.

Grandparent-Grandchild Middle Generation Limitation. Proposition 19 provides that the exclusion applies to a transfer between grandparents and grandchildren if 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. *Section 2.1(c)(2)*.

Proposed Law: This bill would exclude from the definition of "change in ownership" certain transfers between parents and children and, under certain circumstances, from grandparents to grandchildren, of (1) the transferor's principal residence, and (2) the first \$1 million of full cash value of all other real property.

Revenue and Taxation Code (RTC). This bill would add section 63.3 to the RTC code in an effort to delay the implementation of sections of Proposition 19 until February 16, 2023; two years after the initial implementation date.

Family Home – Principal Place of Residence. This bill eliminates the requirement in Proposition 19 that the home be the principal place of residence of an eligible transferee.

\$1 Million Cap. This bill allows a transferor to transfer up to \$1 million of "full cash value" of all other real property. This bill specifically provides that "full cash value" means the property's factored base year value, by reference to RTC section 110.1. While this bill requires the BOE to track usage of this \$1 million limit, this bill merely recommends that County Assessors provide quarterly data to the BOE.

Grandparent-Grandchild Middle Generation Limitation. This bill provides that the exclusion applies to a transfer from grandparents to grandchildren if all the parents (other than a stepparent) of those grandchildren, who qualify as children of the grandparents, are deceased as of the date of the purchase or transfer.

Retroactive. This bill is retroactive to February 16, 2021, the effective implementation date of the new intergenerational transfer exclusion requirements of Proposition 19.

Sunset Date. This bill would make the provisions of RTC section 63.3 inoperative February 16, 2023 and would repeal those provisions effective January 1, 2024.

In General: Property Tax System. In 1978, voters approved [Proposition 13](#), which added article XIII A to the California Constitution. Under this system, property is valued 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

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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.

The BOE's Assessors' Handbook [Section 401, Change in Ownership](#),⁴ (September 2010) chapter 14, provides more details, and the BOE's website includes FAQ's for [Propositions 60/90](#) and [Proposition 110](#).

Commentary:

1. **Implementation.** This bill has language that effectively reverses some provisions added to the California Constitution by Proposition 19. This potentially creates a lack of clarity as to which provisions of the RTC code are in fact operative and applicable. The bill itself appears to recognize this. The bill's legislative intent language states both that Proposition 19 did not repeal any statutory exclusions and also that the bill intends to exclude from "change in ownership" the transfers described in section 63.1. However, if Proposition 19 did not repeal any statutory exclusions, then section 63.1 was not repealed and may still be effective and, therefore, this bill would then be unnecessary.
2. **Constitutionality.** This bill raises the question of its constitutionality by effectively temporarily reinstating section 2(h) of Article XIII A of the California Constitution, which was made inoperative by Proposition 19, a Legislatively referred Constitutional Amendment statute approved by the people. Although the Legislature has the authority to define "change in ownership", the reinstatement of the prior provisions may be an amendment to a Legislatively referred Constitutional Amendment without the approval of electors in violation of the Constitution.
3. **Retroactivity.** Because this bill is retroactive to February 16, 2021, there may be an issue with the retroactive creation of a tax exclusion.
4. **Hierarchy of Authority.** The provisions of this bill are contrary to the intergenerational exclusion provided by section 2.1(c) of article XIII A of the California Constitution. In Letter To Assessors No. 2003/039, the BOE advised County Assessors that the California Constitution is the highest authority of law within the state. This bill, if enacted, may place the BOE and County Assessors in the position of having to choose between implementing the California Constitution and implementing this proposed statute.

⁴ This document is in the process of being converted to be ADA compliant and is available upon request.

5. **Forms.** The BOE has already created new forms to implement the provisions of Proposition 19, which may need to be updated with the passage of this bill.
6. **Clearinghouse Function.** This bill requires the BOE to track the transferors' \$1 million exclusion limit. However, reporting by County Assessors is optional. Consequently, if all County Assessors do not submit quarterly reports, as encouraged by this bill, the BOE clearinghouse data will be incomplete and potentially lead to a transferor exceeding the \$1 million cap.
7. **Related Legislation.** [SB 539](#) provides clarifying language to Proposition 19 through the additions of RTC sections 63.2 and 69.6. These sections apply to the intergenerational exclusion, the over 55 exclusion, and exclusions for severely disabled persons.

[ACA 9](#) Proposes to repeal specified provisions of Proposition 19 related to the intergenerational exclusion. These proposed revisions effectively reinstate the prior provisions excluding from classification as a purchase or change in ownership the purchase or transfer of the principal residence and the first \$1 million of other real property of a transferor in the case of a transfer between parents and their children, or from grandparents to their grandchildren if all the parents of those grandchildren are deceased.

Costs: The BOE would incur absorbable costs to update forms, publications, website, and to address ongoing implementation issues.

Revenue Impact:

Estimating the revenue impact of SB 668 is difficult because all of the relevant data for the \$1 million exclusion is not known and because the revenue impact of Proposition 19 must first be known.

While the BOE maintained some information about claims granted under the previous \$1 million exclusions (Proposition 58/193 parent/child and grandparent/grandchild), that information did not include:

- the values of the properties transferred;
- how often a transferred home subsequently became the transferees' principal residence;
- consequences of the property no longer being used as the transferees' principal residence; and,
- how many of those properties were considered "other real property".

The changes Proposition 19 made to prior law are still recent and at this time there is no data available regarding revenue as it relates to these changes. While the exact revenue impact is currently indeterminable, we can use the following data to determine the potential revenue loss for family homes:

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According to the California Association of Realtors, the January 2021 median home price in California was \$700,000. For roll year 2021-22, the estimated average assessed value of a property receiving the homeowners' exemption is \$466,000. Therefore, where a claim for transfer is granted, the estimated amount of assessed value difference per home on average is \$234,000 (\$700,000 – \$466,000). Average revenue loss at the basic 1 percent property tax rate is estimated at \$2,340 per family home (\$234,000 x 1%), or roughly \$2.34 million for every 1,000 claims granted. It is unknown, however; how many claims would likely be filed under Proposition 19.

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