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STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	**01/04/10**	Bill No:	**AB 230**
Tax:	**Property**	Author:	**Calderon**
Related Bills:		Position:	**Support**

BILL SUMMARY

This bill would (1) expressly add trustees to those persons who may sign claims for the parent-child change in ownership exclusion and (2) expressly provide that residences held in trust are eligible for base year value transfers.

ANALYSIS

CURRENT LAW

Under existing law, real property is generally reassessed to its current fair market value whenever there is a “change in ownership.” However, under certain circumstances, property owners may avoid reassessment of a particular property by way of either a change in ownership exclusion or a base year value transfer. (California Constitution Article XIII A, Sec. 2; Revenue and Taxation Code Sections 60 - 69.5)

Parent-Child Exclusion. A change in ownership exclusion is available for transfers of property between parents and children under certain conditions. Revenue and Taxation Code Section 63.1 details the terms and conditions to receive the parent-child change in ownership exclusion.

With respect to transfers of real property between parents and children through the medium of a trust, Section 63.1(c)(9) expressly provides that such transfers are eligible for the exclusion. Specifically, it provides that the term "transfer" includes any transfer of the present beneficial ownership of property from an eligible transferor to an eligible transferee through the medium of an inter vivos or testamentary trust. For change in ownership purposes, one looks through the trust to determine who has present beneficial ownership of the real property held in the trust. If the requirements of Section 63.1 are otherwise satisfied, then transfers to and from a trust are eligible for the exclusion.

Relevant to this bill, one requirement is that a claim must be filed providing specified information. Section 63.1(d) lists the persons who may file and sign the claim but it does not include trustees.

Base Year Value Transfers. Revenue and Taxation Code Section 69.5 provides that any person over the age of 55 years and any severely and permanently disabled person may, subject to many conditions and limitations, transfer the base year value of that person’s primary residence to a newly acquired or constructed replacement residence. Section 69.5(g)(11) defines a person to mean an individual and expressly excludes any type of legal entity. The definition of person is silent as to an individual who is the present beneficiary of a trust that owns the residence. Consequently, this has caused some confusion as to whether base year value transfers are possible if either the original property or replacement residence is held in trust.

PROPOSED LAW

Parent-Child Exclusion. This bill would amend Section 63.1(d)(1) to add the trustee of a trust to the list of persons who can file claims for the parent-child and grandparent-grandchild exclusion on behalf of eligible transferors and transferees. It would also amend Section 63.1(i) to provide that trustees may have access to otherwise confidential claims that may have been previously filed.

Base Year Value Transfer. This bill would amend Section 69.5(g)(11) to expressly provide that "person" includes an individual who is the present beneficiary of a trust. It would also make a corresponding amendment to Section 69.5(d) to address any coowner situation that may include a trust.

IN GENERAL

Under Proposition 13, generally property is reassessed to its current market value only after a change in ownership occurs. Typically, 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 of the property for property tax purposes is redetermined based on current market value. The value initially established is referred to as the "base year value." Thereafter, the base year value is subject to annual increases for inflation, but at no more than 2% per year. This value is referred to as the "factored base year value." This system, established by Proposition 13, results in substantial property tax savings for long term property owners.

Parent Child Exclusion. Proposition 58, which was approved by the voters of California in 1986, added subdivision (h) to Section 2 of Article XIII A of the California Constitution, and provides, in part, that the term "change in ownership" shall not include the purchase or transfer between parents and their children of:

- a principal residence,
- or the first $1 million of the full cash value of all other real property.

This "change in ownership exclusion" avoids reassessment of the property to its current market value. Consequently, children who acquire real property from a parent (or vice versa) can preserve the parent's Proposition 13 protected base year value since the exclusion allows the property taxes on the property to remain the same after the transfer. There is no value limitation on property that qualifies as a principal residence and the value of the principal place of residence does not count towards the $1 million cap on transfers of all other real property transferred between parents and their children. However, any other real property transferred after the $1 million assessed value ceiling is reached is subject to reassessment at current market value.

Proposition 193, approved by voters in 1996, amended Section 2 of the Constitution to apply the exclusion to transfers of real property from grandparents to grandchildren when all the parents of the grandchildren who qualify as children of the grandparents are deceased as of the date of transfer. Revenue and Taxation Code Section 63.1 provides the statutory implementation for both Propositions 58 and 193.

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.** Proposition 60, approved by the voters on November 4, 1986, amended Section 2 of Article XIII A of the California Constitution to allow persons over the age of 55 to sell a principal place of residence and transfer its base year value to a replacement principal place of residence within the same county.
- **Intercounty.** Proposition 90, approved by the voters on November 8, 1988, extended these provisions to a replacement residence located in another county on a county optional basis. Currently seven counties accept transfers from outside their county.
- **Disabled Persons**. Proposition 110, approved by the voters on June 5, 1990, extended these provisions to severely and permanently disabled persons of any age.

Section 69.5 of the Revenue and Taxation Code provides the statutory implementation for all three of these propositions.

COMMENTS

1. **Sponsor and Purpose.** The Board of Equalization is sponsoring the provisions included in this bill to codify existing administrative procedures related to trusts for enhanced clarity. As trusts have become more popular as estate planning tools, the Board is increasingly addressing these ongoing questions because the statutes are silent as to trusts.
2. **Parent-Child Exclusion and Trusts.** This bill codifies current administrative practice. Letter To Assessors 2008/018, Question 50, provides that a trustee can sign a claim form requesting a parent-child exclusion as the trustee has the fiduciary responsibility to carry out the terms of the trust and can sign legal documents on behalf of the trust. However, because Section 63.1(d) does not expressly list trustees as persons who can file and sign a claim, there is some uncertainty and confusion for property owners and tax practitioners who address this issue infrequently and are unaware of this administrative guidance.
3. **Base Year Value Transfers and Trusts.** This bill codifies current administrative practice. Letter To Assessors 2006/010, Question B2, provides that a taxpayer may file as a claimant if he or she files as the present beneficial owner of the trust (not as trustee of the trust). For property tax purposes, the property owner is the person who has the present beneficial interest of a trust (with the exception of a Massachusetts or business trust, which is regarded as a legal entity); the trustee holds legal title to the trust property, but does not have a present beneficial ownership interest unless the trustee is also a named beneficiary of the trust. Therefore, an individual who has the present beneficial interest of a trust (i.e., a named beneficiary of the trust) is considered the claimant for purposes of Section 69.5 and should receive the base year value transfer benefit if all of the requirements of the section are met. However, despite the LTA guidance, because Section 69.5 does not expressly address trusts, this causes uncertainly and confusion for property owners and tax practitioners who address this issue infrequently.

COST ESTIMATE

The Board would incur some minor absorbable costs in informing local county assessors, the public, and staff of the law changes and making appropriate changes to the claim forms.

REVENUE ESTIMATE

None.

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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 Board's formal position.