California State
Board *of* Equalization

LEGISLATIVE BULLETIN

PROPERTY TAX LEGISLATION 2021

Legislative, Research & Statistics Division

BOARD MEMBERS

TED GAINES
First District
Sacramento

MALIA M. COHEN
Second District
San Francisco

ANTONIO VAZQUEZ
Third District
Santa Monica

MIKE SCHAEFER
Fourth District
San Diego

BETTY T. YEE
State Controller

BRENDA FLEMING
Executive Director

FOREWORD

The State Board of Equalization's (BOE) Legislative, Research & Statistics Division (LRSD) is responsible for all aspects of the BOE's legislation, research, and statistics for the tax programs that the BOE administers. The LRSD reviews all introduced and amended bills, and the review is used to identify legislation that could impact or be of interest to the BOE.

The *Property Tax Legislative Bulletin* is an annual publication that compiles legislative bill analyses issued by the BOE for bills enacted in 2021 and impacts property tax programs administered by the BOE. All legislative bill analyses are also available on the BOE's website at *www.boe.ca.gov/legislative-research-and-stats/legislation.htm*.

2021 PROPERTY TAX LEGISLATION

TABLE OF CONTENTS

CHAPTERED LEGISLATION ANALYSES	PAGE

Senate Bill 267 (Hertzberg), Chapter 424

Active Solar Energy Systems

Effective September 30, 2021.
Adds section 64.1 to the Revenue and Taxation Code.

Summary. For a legal entity that owns an active solar energy system pursuant to a partnership flip transaction, this bill provides that neither an initial transfer of a capital and profits interest in the legal entity, nor any subsequent change in the allocation of the capital and profits of the legal entity among the members, is a change in control of, or a transfer of the majority interest in, the legal entity.

Existing Law. Under the California Constitution, all property is taxable unless specifically exempted.[1] The Constitution limits the assessed value of property upon which the property tax is imposed. For property tax purposes, real property is reassessed to its current market value when real property undergoes a change in ownership or is newly constructed.[2] Generally, the law establishes a property's assessed value at its market value[3] on the date purchased (base year value) and requires additional assessments to reflect certain construction activities that qualify as "new construction."

Change in Ownership. Different change in ownership laws apply to a person or legal entity who purchases or leases California real property than to a person or legal entity who obtains ownership interests in a legal entity (e.g., voting stock in a corporation, capital and profits in a limited liability company or partnership) that holds an interest in California real property.[4] As a general rule, transfers of ownership interests in legal entities do *not* constitute a change in ownership (and, therefore, no reassessment) of the legal entity's real property.[5] However, there are two exceptions wherein the transfer of ownership interests in a legal entity would trigger a change in ownership of the real property owned by the legal entity.

- **Change in Legal Entity Control.** Revenue and Taxation Code (R&TC) section 64(c)(1) requires reassessment when any person or entity obtains control through direct or indirect ownership or control of more than 50 percent of corporation voting stock, or obtains a majority interest (more than a 50 percent ownership interest) in any other type of legal entity. The reassessment applies to all real property owned by the acquired legal entity (and any entity under its control).

- **Cumulative Transfers by "Original Co-owners."** R&TC section 64(d) requires reassessment when voting stock or other ownership interests representing cumulatively more than 50 percent of the total interests in a legal entity are transferred by any of the "original co-owners" in one or more transactions.[6] The reassessment applies to only the real property previously excluded from change in ownership under R&TC section 62(a)(2).

---

[1] Article XIII, section 1 of the California Constitution.
[2] California Constitution, Article XIII A, section 2; R&TC section 110.1.
[3] The assessed value is based on 1975 market value for property that has not changed ownership since that date.
[4] California Constitution, Article XIII A, section 2; R&TC sections 60 – 69.5.
[5] R&TC section 64(a).
[6] **Proportional Ownership Interests Exclusion Creates "Original Co-owner" Designation.** Under R&TC section 62(a)(2), a transfer of real property to a legal entity does not result in a reassessment if the transfer is merely a change in the method of holding title and the proportional ownership interests of the transferors and transferees in the real property transferred are exactly the same before and after the transfer. However, after a transfer of real property qualifies for this exclusion from reassessment, the person(s) or entity(ies) holding ownership interests in the legal entity immediately after the transfer are considered **"original co-owners"** for purposes of tracking subsequent transfers by original co-owners of those interests. When such transfers cumulatively exceed 50 percent, the real property previously excluded from reassessment under R&TC section 62(a)(2), is subject to reassessment under R&TC section 64(d), absent an applicable exclusion.

New Construction. When substantial additions or alterations occur, the law requires the County Assessor to increase the assessment to reflect the value of "newly constructed" property.[7] The County Assessor assigns the assessable new construction with its own distinct base year value. The remainder of the property's assessment is unaffected and retains its base year value.[8] The Constitution allows the Legislature to provide that the term "newly constructed" does not include certain construction activities. These are commonly called "new construction exclusions." Any value added by these additions or alterations is not subject to the property tax, until the real property undergoes a change in ownership.

Active Solar Energy System New Construction Exclusion. The California Constitution[9] grants the Legislature the authority to exclude the construction or addition of any active solar energy system from the definition of assessable new construction. R&TC section 73 implements the new construction exclusion, which is available through the 2023-24 fiscal year. R&TC section 73 is scheduled to sunset on January 1, 2025. Any active solar energy system that was excluded prior to this date will continue to be excluded until a change in ownership occurs.

In 2011, the Legislature added findings and declarations,[10] which provide that in cases where a newly constructed active solar energy system is sold or transferred in sale-leaseback arrangements, partnership flip structures, or other transactions to take advantage of federal tax benefits, the active solar energy system new construction exclusion applies, as long as (1) the system is newly constructed or added, and (2) no other taxpayer has received the exclusion for that same system. The new construction exclusion remains in effect only until there is a subsequent change in ownership.

New Law. This bill provides that, where a legal entity owns an active solar energy system pursuant to a partnership flip transaction, neither an initial transfer of a capital and profits interest in the legal entity nor any subsequent change in the allocation of the capital and profits of the legal entity among the members constitutes a change in control or a majority interest in the legal entity. This bill also provides that these provisions do not apply to any real property owned by the legal entity, other than the active solar energy system. This bill states that this exclusion does not apply to a change in control resulting from a transaction or series of transactions that is separate and apart from the partnership flip transaction.

Findings and Declarations. In order to finance the construction of new active solar energy systems, solar developers may enter into financing arrangements, including sale-leaseback arrange, partnership flip structures, or similar transactions, with investors (purchasers) that may also be eligible for federal tax benefits. In 2011, the Legislature stated its intent that R&TC section 73 was amended to clarify that the purchaser of the active solar energy system in a sale-leaseback arrangement, partnership flip structure transaction, or similar transaction receive an exclusion until there is a subsequent change in ownership. This bill states that the intent of this bill, for purposes of the R&TC section 73 new construction exclusion, a subsequent change in ownership does not include a change in control among the partners in a partnership flip transaction, resulting solely from a change in the allocation of the partnership's capital and profits among the partners, if the mechanics of the change were in place at the time the active solar energy system is acquired by the partnership.

---

[7] Article XIII A, section 2 of the California Constitution (Proposition 13) and R&TC section 70. Additionally, "supplement assessment" laws make the new construction taxable as of the completion date.
[8] Unless the new construction replaces certain types of existing improvements, in which case the value attributable to those preexisting improvements is deducted from the property's existing base year value.
[9] Article XIII A, section 2(c)(1).
[10] ABx1 15 (Stats. 2011, ch. 3).

In General: Property Tax System. Article XIII, section 1 of the California Constitution provides that all property is taxable at the same percentage of "fair market value," unless specifically exempted, or authorized for exemption. Article XIII A, section 2 defines "fair market value" as the County Assessor's opinion of value for the 1975-76 tax bill, or, thereafter, the appraised value of property when purchased, newly constructed, or a change in ownership has occurred. This value is generally referred to as the "base year value." Annual adjustments to the base year value are limited to 2 percent or the rate of inflation, whichever is less. Article XIII A, section 2 also provides for certain exclusions from consideration as a "change in ownership" and "newly constructed" as approved by voters via constitutional amendments.

New Construction. The California Constitution does not define the terms "new construction" or "newly constructed." R&TC section 70 defines these terms, in part, to mean:

- Any addition to real property, whether land or improvements (including fixtures), since the last lien date.
- Any alteration of land or any improvements (including fixtures) since the last lien date that constitutes a "major rehabilitation" or that converts the property to a different use.

A major rehabilitation is any rehabilitation, renovation, or modernization that converts an improvement or fixture to the substantial equivalent of a new improvement or fixture.

With respect to any new construction, the law requires the County Assessor to determine the added value upon completion. The value is established as the base year value for those specific improvements qualifying as "new construction" and is added to the property's existing base year value. When new construction replaces certain types of existing improvements, the value attributable to those pre existing improvements is deducted from the property's existing base year value.[11]

New Construction Exclusions. Certain types of construction activity are excluded from assessment as "new construction" via constitutional amendment. Consequently, while these improvements may increase the value of the property, the additional value is not assessable. Relevant to this bill, Proposition 7, approved by California voters in November 1980, created an exclusion for active solar energy systems.

Overview of Solar Energy New Construction Exclusion. An "active solar energy system" is defined in R&TC section 73 as a system that uses solar devices, which are thermally isolated from living space or any other area where the energy is used, to provide for the collection, storage, or distribution of solar energy. An active solar energy system may be used for any of the following:

- Domestic, recreational, therapeutic, or service water heating
- Space conditioning
- Production of electricity
- Heat processing
- Solar mechanical energy

[11] R&TC section 71.

An active solar energy system includes storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items. "Parts" includes spare parts that are owned by the owner of, or maintenance contractor for, an active solar energy system for which the parts were specifically purchased, designed, or fabricated for installation in that system. Such a system includes only equipment used up to, but not including, the stage of conveyance or use of the electricity.

An active solar energy system also includes pipes and ducts that are used exclusively to carry energy derived from solar energy. Pipes and ducts that are used to carry both energy derived from the sun and energy derived from other sources may be considered active solar energy system property only to the extent of 75 percent of their full cash value.

This exclusion is scheduled to sunset on January 1, 2025. Any active solar energy system that was completed and excluded from assessment prior to this date will continue to be excluded until a change in ownership occurs.

An active solar energy system does not include auxiliary equipment, such as furnaces and hot water heaters, that use a source of power other than solar energy to provide usable energy. Dual use equipment, such as ducts and hot water tanks, that is used by both auxiliary equipment and solar energy equipment is considered active solar energy system property only to the extent of 75 percent of its full cash value.

R&TC section 73 explicitly provides that the exclusion does not apply to solar swimming pool heaters or hot tub heaters. By definition, the exclusion does not apply to "passive" solar systems. Lastly, the exclusion does not apply to wind energy systems.

Exclusion Extended to Initial Purchaser. R&TC section 73 was amended in 2008[12] to extend the new construction exclusion after a change in ownership if a new building is initially constructed with an active solar energy system incorporated and subsequently sold by the developer. Specifically, in the case where an active solar energy system is incorporated by an owner-builder in the initial construction of a new building that the owner-builder does not intend to occupy or use (i.e., a building offered for sale, such as a new home in a subdivision or a new warehouse), the exclusion for the system applies to the building's first buyer if (1) the owner-builder did not receive the exclusion for the same system, (2) if the initial buyer purchased the new building prior to that building becoming subject to reassessment to the owner builder,[13] and (3) a claim[14] is filed with the County Assessor.

If the exclusion is eligible to be extended to the initial purchaser, then in determining the base year value to be established as a result of the change in ownership, the base year value is reduced by the portion of the purchase price that is attributable to the active solar energy system. Thereafter, any subsequent change in ownership of the property ends the exclusion of the value of the active solar energy system from property tax.

Common Transactions That May Be Eligible for Federal Tax Benefits. Under the 2011 legislative intent language, newly constructed active solar energy systems continue to receive the property tax exclusion if they are transferred using certain transactions that require the active solar energy system to be sold or transferred to a third party that may qualify for federal tax benefit.

[12] AB 1451 (Stats. 2008, ch. 538).
[13] R&TC section 73(e)(1).
[14] R&TC section 73(e)(1)(A); BOE-64-SES, *Initial Purchaser Claim for Solar Energy System New Construction Exclusion*.

Transactions that may be eligible for federal tax benefits include, but are not limited to, the following:

- *Sale-leaseback transactions* involve the sale of a property in which the seller immediately begins to lease the property from the buyer. Thus, the seller no longer has ownership of the property, but operates it for the duration of the lease agreement.

- *A partnership flip transaction* is a financing arrangement between a renewable energy developer and a single or multiple tax investors whereby the parties form a partnership or limited liability company to develop and/or own an active solar energy system. This structure involves the tax investor making an investment in the partnership or limited liability company in exchange for the majority of the tax attributes (i.e., federal tax credits, depreciation, and net income) until the investor achieves its pre-established yield. The investor's share of these items is then reduced. The reduction is known as the "flip."

In the case of a partnership flip transaction, if the investment made by the tax investor causes it to obtain more than 50 percent of the capital and profits interests of the partnership or limited liability company (either upon the making of the initial investment or pursuant to subsequent changes in the capital and profits percentages owned by the investor required by the partnership or operating agreement), the change in control is excluded by the new construction exclusion and no reassessment of the active solar energy system will occur. However, if the developer or a third party subsequently obtains more than 50 percent of the capital and profits interests of the partnership or limited liability company, a change in control and reassessment of the active solar energy system will occur.[15]

Legal Entity Change in Control or Ownership. County Assessors discover most real property changes in ownership via grant deeds or other documents recorded with the County Recorder. However, real property owned by a legal entity may undergo a "change in control or ownership" with no grant deed or other document recorded that could alert the County Assessor to a reassessment. These types of changes in control or ownership are reported directly to the BOE Legal Entity Ownership Program (LEOP) by the person or entity involved.

Existing law[16] requires legal entities to file a change in ownership statement (LEOP COS) with the BOE within 90 days of a change in control or ownership under R&TC section 64(c) or (d). In the case of a change in control under R&TC section 64(c), the person or legal entity that acquired control of the legal entity is responsible for filing the LEOP COS.

In addition to the self-reporting requirement to file a LEOP COS, the BOE may send a LEOP COS to an entity to complete and file with the BOE. Annually, the BOE canvasses legal entities with a query on the California Franchise Tax Board income tax return. County Assessors and other interested parties may send referrals reporting possible changes.

Once the BOE determines that a legal entity has undergone a change in control or ownership, the BOE notifies County Assessors of those legal entities' changes in control or ownership.

Commentary:

1. **Change in Control.** 64.1(c) states, "... in such a manner that a change in ownership *of the partnership or limited liability company* occurs under paragraph (1) of subdivision (c) of section 64 ...." However, partnerships and limited liability companies do not undergo a change in ownership under section 64(c)(1). That section describes how such entities undergo a change in *control*.

---

[15] Letter to Assessors 2012/053, *Guidelines for Active Solar Energy Systems New Construction Exclusion*.
[16] R&TC sections 480.1 and 480.2.

2. **Section 73 is not a real property tax "exemption" for solar energy facilities, but a new construction "exclusion."** The new construction exclusion was created in 1980 via Proposition 7 to provide that the construction or addition of an active solar energy system to an existing property, by itself, would not lead to a revaluation of the property for property tax purposes. A new construction exclusion terminates if there is a transfer of the property resulting in a property's change in ownership (a reappraisal event). In the case of any locally assessed large scale solar project, only the active solar energy system improvements are eligible for the new construction exclusion, while the land remains subject to property tax.[17]

3. **Termination of New Construction Exclusion.** A new construction exclusion terminates if a change in ownership (a reappraisal event) occurs. For an excluded active solar energy system that is owned by a legal entity, if a person or entity subsequently obtains more than 50 percent of a corporation's voting stock or the capital and profits interests of a partnership or limited liability company that owns the active solar energy system, the change in control of the legal entity will result in a reassessment of any real property owned by the legal entity, including any excluded active solar energy systems.

4. **Legal Entity Change in Control.** Where a legal entity owns an active solar energy system pursuant to a partnership flip transaction, this bill provides that neither of the following is considered a change in control pursuant to R&TC section 64(c)(1):

    - An initial transfer of a capital and profits interest in the legal entity,
    - Any subsequent change in the allocation of the capital and profits of the legal entity among the members.

    These provisions will apply only to a legal entity that owns an active solar energy system, either on its own property or leased to someone else where the remaining lease term is less than 35 years.[18] This bill specifies that these provisions apply only to an active solar energy system and do not apply to any other real property owned by the legal entity.

5. **Legal Entity Change in Ownership.** When real property is transferred to a legal entity or between legal entities that qualifies for exclusion under R&TC section 62(a)(2) (i.e., the ownership interests in the real property are the same before and after the transfer), the owners are deemed "original co-owners" for purposes of future transactions. R&TC section 64(d) requires reassessment when cumulatively more than 50 percent of the interests in the legal entity are transferred by any of the "original co-owners" in one or more transactions. The reassessment applies to only the real property previously excluded from change in ownership under R&TC section 62(a)(2), including any active solar energy system owned by the legal entity. The exclusion from change in control proposed by this bill would not apply to a change in ownership under section R&TC section 64(d).

[17] If the land is government-owned, the land could become subject to a possessory interest. Generally, a taxable possessory interest exists when a taxpayer possesses an interest in government real property that is durable, independent, exclusive of the rights held by others in the real property and the interest provides a private benefit to the possessor.

[18] Under R&TC section 61(c) and Property Tax Rule 462.100, a lessee is considered the owner of leased property if the lease term is 35 or more years. When a lease term drops below 35 years, the primary ownership is shifted back to the lessor.

6. **Solar Energy Systems Owned by Legal Entities.** The BOE notifies County Assessors of legal entities that have undergone a change in control or ownership. Information regarding active solar energy systems is not provided to the BOE on the LEOP COS. Since the BOE is not provided information on active solar energy systems, and the County Assessors receive legal entity owned property information from the BOE, how will the County Assessors know what legal entities own active solar energy systems that may qualify for exclusion under this bill?

7. **Different Property Tax Treatment for Sale-Leaseback Financing Arrangements.** This bill grants favorable property tax treatment to partnership flip transactions that may not be available for sale leaseback transactions. This bill excludes an active solar energy system from reassessment upon an initial partnership flip investment through the entire life of the investment, including when control of the legal entity reverts back to the developer. In a sale-leaseback transaction, the initial sale and leaseback of an active solar energy system are excluded from reassessment. However, at the end of the lease, a buyback of the active solar energy system by the developer/lessee may not be excluded from change in ownership.

8. **State-assessed properties are not eligible for the new construction exclusion because it is only applicable to locally assessed property.** In *ITT World Communications, Inc. v. City and County of San Francisco* (1985) 37 Cal.3d 859, the California Supreme Court ruled that Proposition 13's (Article XIII A) assessment rollback, its 2 percent limit on annual assessment growth, and its limit on current market value assessment only upon a change in ownership or new construction did not apply to state-assessed property, only to locally assessed property. As a result, taxable property in California is now generally split into two major categories: locally assessed property subject to Article XIII A assessment limitations and state-assessed property not subject to those assessment limitations. Thus, active solar energy systems owned by public utilities and subject to BOE assessment do not benefit from the section 73 new construction exclusion; value of these properties would continue to be captured under the unitary approach to value.

Senate Bill 303 (Borgeas), Chapter 540

Disaster Transfer of Base Year Value

Effective October 5, 2021.
Amends section 69 of the Revenue and Taxation Code.

Summary. This bill increases 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 if the last day to transfer the base year value was on or after March 4, 2020, but before the end of the COVID-19 emergency termination date or March 4, 2022, whichever occurs first. The bill applies retroactively to base year values determined in fiscal years 2015-16 and fiscal years thereafter.

Existing Law. For property tax purposes, the law requires County 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.[19] 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, R&TC 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.

Amended Law. This bill amends R&TC 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 applies to disasters occurring on or after March 4, 2020, through the COVID-19 emergency termination date or March 4, 2022, whichever is sooner. This bill also extends 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 or March 4, 2022, whichever is sooner.

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).

---

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

Qualified Property. "Qualified property" means property that is substantially damaged or destroyed, as described in paragraph (1) of subdivision (c) of R&TC section 69, by a disaster that is proclaimed by the Governor. Paragraph (1) of subdivision (c) states that "property is substantially damaged or destroyed if either the land or the improvements sustain physical damage amounting to more than 50 percent of either the land's or the improvement's full cash value immediately prior to the disaster. Damage includes a diminution in the value of property as a result of restricted access to the property where the restricted access was caused by the disaster and is permanent in nature."

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, R&TC 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[20]. Consequently, a property that is rebuilt after a fire, for example, will continue to be assessed at the same amount even though the property has been entirely newly constructed.

Specifically related to this bill, R&TC 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[21]. "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.

---

[20] This new construction exclusion was provided by Proposition 8 in 1978.
[21] Proposition 50 of 1986 authorized this base year value transfer provision.

Governor State of Emergency Proclamations. The Government Code[22] 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 R&TC 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 R&TC 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 or March 4, 2022, whichever is sooner. 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.** R&TC section 69 uses the term "property substantially damaged or destroyed" and defines this term in R&TC 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 R&TC section 69, rather than introducing 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.

---

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

Senate Bill 539 (Hertzberg), Chapter 427

Intergenerational Transfer of Real Estate

Effective September 30, 2021.
Adds sections 63.2 and 69.6 to the Revenue and Taxation Code.

Summary. This bill is the Proposition 19 implementation bill that adds sections 63.2 and 69.6 to the Revenue and Taxation Code, which clarifies portions of section 2.1 of Article XIII A of the California Constitution regarding the intergenerational transfer exclusion and the base year value transfer for certain individuals and provides an exception from the maximum of three base year value transfers for victims of wildfires or natural disasters.

Background. Proposition 19, approved by the voters on November 3, 2020, as relevant here, added section 2.1 to Article XIII A of the California Constitution to provide the following two types of property tax relief:

- Operative February 16, 2021, sections 2.1(c) and (d) replaced the former parent-child and grandparent-grandchild exclusions with a new intergenerational transfer exclusion, if the property continues as the family home or family farm of the transferee, and requires the family home or family farm to meet a specified value test.
- Operative April 1, 2021, section 2.1(b) allows a base year value transfer for homeowners who are over age 55, severely disabled, or victims of a wildfire or natural disaster to a replacement home in California, regardless of location or value.

Intergenerational Transfer Exclusion, Revenue and Taxation Code section 63.2

Existing Law. Current 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 or new construction occurs.[23] Exceptions to this reassessment requirement have been enacted, including exclusions from reassessment for transfers between parents and children. Under certain circumstances, the parent-child exclusion is extended to transfers of real property from grandparents to grandchildren.

Operative February 16, 2021, Proposition 19 replaced the former parent-child and grandparent-grandchild exclusion with a new intergenerational exclusion that applies only to a transfer of a family home or family farm, if the property continues as the family home or family farm of the transferee. *Section 2.1(c) and (d).*

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.[24] *Section 2.1(c)(3).*

---

[23] Article XIII A, section 2.

[24] 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).

Principal Place of Residence. To qualify for this benefit, Proposition 19 requires that (1) the 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 purchase or transfer. *Section 2.1(c)(1) and (5).*

Principal Residence Value Test. Proposition 19 provides that the existing adjusted base year value of the principal residence will remain if the reassessed value is less than the sum of the adjusted base year value of the principal residence of the transferor plus $1 million. If the reassessed 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 reassessed value, is to be added to the property's existing adjusted base year value. *Section 2.1(c)(1).*

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 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 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).*

Homeowners' and Disabled Veterans' Exemption. The California Constitution[25] exempts from property tax the first $7,000 of assessed value for owner-occupied principal places of residence. This exemption is commonly known as the "homeowners' exemption." The California Constitution[26] also authorizes the Legislature to exempt partially or fully from property tax, the principal place of residence owned by a veteran or the veteran's spouse, including a veteran's unmarried surviving spouse, if the veteran has incurred certain injuries, including blindness in both eyes, lost use of 2 or more limbs, or is totally disabled. The exemption is also available to the veteran's unmarried surviving spouse if a veteran's death is from a service connected injury or disease or occurs while on active duty in military service. This exemption is commonly referred to as the "disabled veterans' exemption."

New Law:

Family Home – Principal Place of Residence. This bill requires the family home to be the principal residence of the transferor and for the transferee to occupy the family home as a principal residence within one year of the transfer.

Family Farm. This bill allows the exclusion to apply to each legal parcel of a family farm and allows each parcel to be treated separately; except for the parcel including the family home which may be eligible for a base year value transfer under different provisions.

Principal Place of Residence. To qualify for this benefit, the home must be the principal residence of the transferee within one year and requires the transferee to file for the homeowners' or disabled veterans' exemption. This bill provides that if the transferee fails to file for either exemption at the time of transfer, the transferee is eligible for relief if the claim for the homeowners' or disabled veterans' exemption is filed within one year of the transfer. The bill also states that it can be occupied by an any eligible transferee and maintain the benefit of the exclusion, even if it is vacated by the original transferee.

---

[25] Article XIII, section 3(k).
[26] Article XIII, section 4(a).

Grandparent-Grandchild Middle Generation Limitation. This bill provides that the exclusion applies to a transfer between grandparents and 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.

Foster Children. This bill expands the benefit to apply to foster children who due to legal barriers have not been adopted by their state-licensed foster parent or parents prior to aging out of the foster system, in addition to natural children, adopted children, stepchildren and in-law children.

Filing Requirements. In addition to filing for the homeowners' or disabled veterans' exemption, this bill requires the transferee to file a claim for the change in ownership exclusion and provides that the exclusion be removed on the date an eligible transferee is no longer eligible for the homeowners' or disabled veterans' exemption. This form is not considered public information.

Forms. The BOE shall prescribe with consultation of the California Assessors' Association (CAA) a form to claim eligibility.

BOE Responsibilities. This bill authorizes the BOE to adopt emergency regulations and requires the BOE to produce claim forms and instructions necessary to implement section 2.1.

Background:

Prior parent-child and grandparent-grandchild exclusion. 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 value[27] 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.

R&TC section 63.1 implements the parent-child exclusion. The parent-child exclusion applies to changes in ownership that occur on or after November 5, 1986.

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. Section 63.1 was subsequently amended to reflect these new provisions. The grandparent-grandchild exclusion applies to changes in ownership that occur on or after March 27, 1996.

Section 2.1(d) (added by Proposition 19 on November 3, 2020) specifically provides that subdivision (h) of section 2 becomes inoperative on February 16, 2021.

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

Commentary:

1. **Failure to File.** If the eligible transferee fails to file for the homeowners' or disabled veterans' exemption or files late, but files timely for the transfer exclusion, how will this be treated?

2. **Family Farm - Legal Parcel (R&TC section 63.2(a)(2)).** (1) Applying a change in ownership exclusion by legal parcel is counter to well-settled appraisal practice and theory; and (2) how each legal parcel should be valued is unclear and likely to lead to a lack uniformity.

3. **Implementation.** This bill picks up many of the definitions and processes used for the former parent-child and grandparent-grandparent exclusion implemented under R&TC section 63.1.

4. **Forms.** The BOE has already created new forms to implement the provisions of Proposition 19, which were transmitted to County Assessors via Letter to Assessors No. 2021/007.

Over 55, Disabled Person Base Year Value Transfer and Victims of Wildfire or Natural Disaster, Revenue and Taxation Code section 69.6

Existing Law: For property tax purposes, 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.[28] Exceptions to this reassessment requirement have been enacted, including 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. In addition, subject to many conditions, the law[29] allows homeowners at least age 55 years, or who are severely and permanently disabled, or victims of a wildfire or natural disaster, to sell their existing home (called the "original property"), buy or build a new one, and transfer their base year value to the new home (replacement home).

Over 55/Disabled/Victims of Wildfire or Natural Disaster Base Year Value Transfer. Operative April 1, 2021, Proposition 19 allows homeowners at least age 55 years, qualified disabled persons, or victims of a wildfire or natural disaster to sell their existing home (called the "original property"), buy or build a new one, and transfer their base year value to the new home (replacement home). This benefit gives homeowners property tax relief by allowing property taxes to remain essentially the same[30] after the move, provided they purchase or newly construct a home of equal or lesser value. The replacement home must be purchased or newly constructed within 2 years, before or after, the original property's date of sale.

- **Principal Place of Residence.** To qualify for this benefit, both the original property and the replacement home must be eligible for either the homeowners' or the disabled veterans' exemption, based on the claimant's ownership and occupation of the home as a principal place of residence.[31]

[28] Article XIII A, section 2.
[29] Article XIII A, section 2(a), R&TC section 69.5.
[30] The property tax bill for the new home may not be identical to the property tax bill of the original home because the precise tax rate and direct levies (special assessments, parcel taxes, etc.) differ for each home's location.
[31] R&TC sections 69.5(b)(2), 69.5(b)(4), and 69.5(g)(10).

Proposition 19 added section 2.1(b) to Article XIII A of the California Constitution to allow homeowners who are over age 55, severely disabled, or victims of wildfire or natural disasters to transfer a base year value to a replacement home anywhere in California, regardless of the location or value. Specifically:

- **Original Property.** The original property must be sold.
- **Replacement Property.** The replacement property must be purchased or newly constructed within two years of the sale of the original property.
- **Location.** The replacement property can be located anywhere in California.
- **Value.** The base year value may be transferred to a home of equal or lesser value. However, if the value of the replacement home is *greater* than the value of the original property, the difference in market values must be added to the transferred base year value.
- **Limitation on the Number of Base Year Value Transfers.** Homeowners over age 55 or severely disabled may use this base year value transfer up to three times.

New Law:

Date clarifications. Either the sale of the original property or the purchase or new construction of the replacement dwelling, but not both, may occur before April 1, 2021. This bill states that the base year value of the original property cannot be transferred until the original property is sold.

Age 55/Disabled. This bill provides that the claimant must be at least age 55 or severely and permanently disabled as of the date that the original property is sold.

Limitation on Number of Base Year Value Transfers. This bill allows persons using the relief under proposed section 69.6 for age or disability to transfer their base year value three times. There is no limit on transfers for those who are victims of wildfires or natural disasters.

Property Value. Allows a victim of a wildfire or natural disaster who chooses not to rebuild on their substantially damaged property to use the value of their property prior to it being in a damaged condition for a base year value transfer.

Substantially Damaged. Defines the term "substantially damaged" as damage to at least 50 percent of the property or improvements.

Definitions. Section 69.6 defines many terms allowing for clarity in the implementation of Proposition 19.

Multiunit dwellings. For the purposes of multiunit dwellings, each unit of a multiunit building is considered a separate replacement dwelling. A dwelling is not considered a multiunit dwelling for purposes of this section if it consists of a dwelling and an accessory dwelling unit (ADU) or junior ADU, and the claimant occupies one of the structures as a primary residence.

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 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.

Over 55/Disabled Base Year Value Transfers - Prior to November 3, 2020. Voters approved three constitutional amendments permitting persons over age 55 or disabled to transfer their Proposition 13 base year value from one home to another that is of equal or lesser value[32]. The base year value transfer avoids reassessment of the newly purchased home to its fair market value.

- **Intracounty.** In 1986, Proposition 60[33] amended the constitution to allow persons who are 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[34] amended the constitution to extend these provisions to a replacement residence located in another county on a county-optional basis. Relevant to this bill, the law gives each county board of supervisors the option to accept intercounty base year value transfers from homeowners moving from a different county. The boards of supervisors are required to consult with local affected agencies, cities, special districts, school districts, and community college districts, before making the decision to enact a necessary local ordinance.
- **Disabled Persons.** In 1990, Proposition 110[35] amended the constitution to extend these provisions to any severely disabled person regardless of age.

R&TC section 69.5 implements these three propositions.

The BOE's Assessors' Handbook Section 401, *Change in Ownership*,[36] (September 2010) chapter 14, provides more details, and the BOE's website includes FAQ's for Propositions 60/90 and Proposition 110.

[32] Article XIII A, section 2(a).
[33] Proposition 60, approved November 4, 1986.
[34] Proposition 90, approved November 8, 1988.
[35] Proposition 110, approved June 5, 1990.
[36] This document is in the process of being converted to be ADA compliant and is available upon request.

Commentary:

1. **April 1, 2021, Operative Date.** This bill clarifies that either the sale of the original primary residence or the purchase or new construction of the replacement primary residence, but not both, may occur on or before April 1, 2021, in order for a homeowner to be eligible under Proposition 19.

2. **Existing Over 55/Disabled Base Year Value Transfer.** The current base year value transfer for persons who are over 55/disabled (Proposition 60/90/110) is implemented by R&TC section 69.5. This bill does not add a sunset date to R&TC section 69.5. However, legislative intent language makes clear that section 69.5 is superseded by 69.6. The disaster base year value transfer under R&TC sections 69 and 69.3, however, remain in effect.

3. **Accessory Dwelling Units.** ADUs are treated differently than other multiunit dwellings under this bill. If the ADU and primary dwelling are both occupied by separate parties, only one party will be able to transfer their base year value.

4. **"Equal or lesser value".** R&TC section 69.6(d)(13) "imports" the definition of "equal or lesser value" from R&TC section 69.5. Is this the author's intent even though R&TC 69.5 prohibited the base year value transfer in its entirety if the "equal or lesser value" test was not met while Proposition 19 disallows only that portion of the replacement home value that exceeds the value of the sold home.

Senate Bill 667 (Roth), Chapter 430

Disabled Veterans' Exemption

Effective January 1, 2022.
Amends section 277 of the Revenue and Taxation Code.

Summary. This bill allows the executor, administrator or personal legal representative of a disabled veterans' estate or the trustee of a deceased claimant's trust assets to file a claim for exemption with the County Assessor on behalf of the estate.

Existing Law. The California Constitution[37] authorizes the Legislature to exempt partially or fully from property tax, the home of a veteran or spouse, including an unmarried surviving spouse, that has incurred certain injuries during military service, including blindness in both eyes, lost use of 2 or more limbs, or totally disabled. The exemption also applies if a person has, because of a service-connected injury or disease, died while on active duty in military service. This exemption is commonly referred to as the "disabled veterans' exemption." R&TC section 277[38] requires that anyone claiming the disabled veterans' exemption must file a claim with the County Assessor.

Amended Law:

Expands Who Can File Exemption Claims. The law allows the executor, administrator, or personal legal representative of a deceased veteran's estate or the trustee of the deceased veteran's trust assets to file the information required by R&TC section 277 with the County Assessor on behalf of the estate.

Technical Changes. The amended law makes technical changes in R&TC section 277, changing "his or her" to "the claimant's."

In General: California law provides a qualified disabled veteran, their spouse, or their unmarried surviving spouse with a property tax exemption that applies to their home's assessed value. Exemption eligibility provisions require that the claimant obtain a United States Department of Veterans Affairs (USDVA) disability rating that either (1) rates the veteran's disability at 100 percent or (2) rates the veteran's disability compensation at 100 percent because the veteran is unable to secure and maintain gainful employment.

The law also allows surviving spouses to receive the exemption, if the spouse's death was service connected. To be eligible for the exemption, surviving spouses must receive a USDVA determination that the spouse's death was service connected. A USDVA determination is necessary for (1) active-duty personnel deaths (i.e., the service person was not a "veteran"), and (2) veterans without a 100 percent rating when alive, but whose cause of death is deemed service connected. Surviving spouses of veterans with a 100 percent disability rating during their lifetime continue to receive the exemption after the veteran's death so long as they do not remarry.

---

[37] Section 4(a) of Article XIII of the California Constitution and R&TC section 205.5.
[38] R&TC section 277

The exemption amount depends upon the claimant's income. For the 2021-22 fiscal year, the basic exemption adjusted for inflation will be $147,535. However, if the claimant's income is less than $66,251, the exemption amount will be $221,304. For the 2020 assessment year, 59,063 disabled veterans or their unmarried surviving spouses were granted the exemption.

Commentary:

1. **Trustee Confusion.** The bill authorizes a trustee of a deceased claimant's trust assets to file for the exemption. A trustee is an individual who is given control or powers of administration of property in a trust with a legal obligation to administer it as defined by the terms of the trust and not the trust's assets. This possible limitation may exclude trustees from filing for the exemption. The author may wish to consider clarifying the definition of trustee.

2. **Statute of Limitations.** Would this allow for executors and administrators to apply retroactively, and if so, would it apply to properties that have since been sold?

3. **Heirs.** This bill allows the executor, administrator or personal legal representative of the claimant's estate and a trustee of the deceased claimant's trust to file a claim with the County Assessor; however, it is unclear whether a claim may be filed for past periods when the disabled veteran was alive and qualified for the exemption but did not file a claim, or whether a claim may be filed for periods of time the estate owns the property after the disabled veteran's death, or both. The statute should be amended to make this clear.

4. **Number of Disabled Veterans' Exemptions by location.** For 2020-2021, counties with the most disabled veterans' exemptions in descending order include: (1) San Diego: 10,238; (2) Riverside: 7,175; (3) Los Angeles: 4,586; (4) San Bernardino: 3,995; (5) Sacramento: 3,140; (6) Solano: 2,595; (7) Orange: 2,383; (8) Kern: 1,615; (9) Contra Costa: 1,556; and (10) Ventura: 1,504.

SECTIONS	ACTION	BILL NUMBER	CHAPTER NUMBER	SUBJECT
Revenue and Taxation Code				
§63.2	Add	SB 539	427	Intergenerational property transfers
§64.1	Add	SB 267	424	Change in ownership exclusion for active solar energy system transferred via a partnership flip transaction
§69	Amend	SB 303	540	Base year value transfers for substantially damaged or destroyed properties
§69.6	Add	SB 539	427	Base year value transfers for persons over 55 years of age, severely and permanently disabled persons, or a victim of wildfire or natural disasters.
§277	Amend	SB 667	430	Disabled veterans' exemption claim filing

LEGISLATIVE BULLETIN
PROPERTY TAX LEGISLATION 2021

PUBLICATION 140 (12-21)