

Office of the Assessor

County of Santa Clara

County Government Center, East Wing
70 West Hedding Street, 5th Floor
San Jose, CA 95110-1771
(408) 299-5500 www.sccassessor.org
Assessor@asr.sccgov.org

Lawrence E. Stone, Assessor



November 16, 2022

Ms. Honey Her, Regulations Coordinator
California State Board of Equalization
Property Tax Department
P.O. Box 942879
Sacramento, CA 94279-006

Sent via email to honey.her@boe.ca.gov

Re: Comments on Emergency Property Tax Rule 462.520

Dear Honey,

I write to both commend the Board of Equalization's staff for their continued diligence in clarifying Proposition 19 Property Tax Rules 462.520 and 462.540, and to provide some recommended changes. Comments below include new comments and follow-up to our previous recommendations dated March 26, 2021. (see attached)

Rule 462.520 Exclusion from Change in Ownership – Intergenerational Transfers **Add Subdivision (h) Appeal Rights**

Suggested language:

- “Owners of property excluded from a change in ownership pursuant to Rule 462.520 are Eligible Persons under Rule 305 and may file a base year appeal under Rule 305 subdivision (d) and Section 80 of the Revenue and Taxation Code regardless of enrollment of a changed assessment or lack thereof due to the establishment of that base year value”.
- The suggested language is supported by Rule 305 Subdivision (d)(1)(b), which states, “Additionally, an application appealing a base year value for the most recent lien date, where that value is not the value currently on the assessment roll, shall be filed with the clerk during the regular filing period beginning July 2 but no later than September 15 or November 30, as applicable”.

Clarify examples in Subdivision (f) Filing

Current Text for Example 15:

- “Exemption Form Not Filed Within One Year of Transfer. Parent transfers their principal residence to Child on March 1, 2021. The property is also the principal residence of Child. Child files an intergenerational transfer exclusion form at the time of transfer but does not file a claim for the homeowners' exemption until a notice of supplemental assessment is received on April 1, 2023. Because Child did not file the homeowners' exemption within one year of the transfer, he is only

eligible for prospective relief. The New Taxable Value as calculated in accordance with subdivision (c) of this rule will be enrolled as of January 1, 2023”.

Santa Clara County Comment/Question

Provide clearer examples regarding prospective relief on HOX. For example, why in example #16 the taxpayer is denied, but on example #15 taxpayer is granted as prospective relief?

Current Text for Example 16:

- “Property Does Not Become Principal Residence of Transferee Within One Year of Transfer. Parent transfers their principal residence to Child on March 1, 2021. Intending to move into the property, Child files an intergenerational transfer exclusion form at the time of transfer. However, Child does not move into the property until June 1, 2022, and files the homeowners’ exemption form at that time. Because Child did not move into the property within one year of the transfer, she is not eligible for the exclusion”.

Santa Clara County Comments/Questions

- The taxpayer bears the burden to prove intent to occupy the property within the statutory deadline. The Rule and this example should explicitly state that the taxpayer bears this burden, and that the taxpayer must prove this intent by clear and convincing evidence. This Rule and example should provide examples of factors and documents to overcome this presumption (similar to Rule 462.200).
- Revenue and Taxation Code Section 63.2 does not currently provide prospective relief for late filed homeowners’ exemption (HOX). If the purpose of the amendments to Rule 462.520 is to clarify the administration of Revenue and Taxation Code Section 63.2, we suggest adding prospective relief for a late filed HOX to Revenue and Taxation Code Section 63.2 to mirror Property Tax Rule 462.520.

Follow up from March 26, 2021 Comments

Santa Clara County comment on Non-Pro Rata Share Distribution:

Currently, when two siblings inherit a home and other assets equal to the value of the home, they can allocate 100% of the home to one sibling and 100% of the other assets to the other sibling without triggering a sibling reassessment.

Under Proposition 19, at least one eligible beneficiary of a parent-to-child trust must use the home as their principal residence within one year of transfer. Thereafter, the exclusion is maintained as long as an eligible beneficiary claims the home as their principal residence.

However, in a non-pro rata distribution where one sibling becomes the sole beneficiary/owner of the home, the second sibling is no longer an eligible beneficiary, and is unable to claim the home as their principal residence for the purposes of the Proposition 19 exclusion.

As we anticipate confusion concerning non-pro rata share distributions and Proposition 19, we request an example that makes clear only a beneficiary of the principal residence is an "eligible transferee" for exclusion purposes, either at the time of transfer or in later years.

Item #33 on the BOE Response Matrix

- While we agree that this clarification is desirable, the proposed rule sets out the basic exclusion requirements. Therefore, non-pro rata and joint tenancy, are better addressed in a future Letters to Assessors (LTA), and will also likely be the subject of future legal opinions/memos.

Santa Clara County Question/Comment

- Please provide any insight as to whether LTA or legal opinions are on the horizon for either of these requested clarifications.

Santa Clara County comment on Application of Joint Tenancy and Prop. 19 Intergenerational Exclusions:

Parent-to-child transfers received near the Proposition 19 intergenerational effective date of February 16, 2021 may qualify for exclusion under Revenue and Taxation Code Section 65 Subdivision (b). However, due to the timing and non-reassessment of these properties, our office is concerned that owners may believe they qualify for exclusion under Propositions 58/193, not Proposition 19. In anticipation of the confusion, we request examples, that illustrate the basis for an exclusion. This will help prepare owners for likely future reassessment under Proposition 19.

Item #34 on the BOE Response Matrix

- While we agree that this clarification is desirable, the proposed rule sets out the basic exclusion requirements. Therefore, non-pro rata and joint tenancy, are better addressed in a future LTA, and will also likely be the subject of future legal opinions/memos.

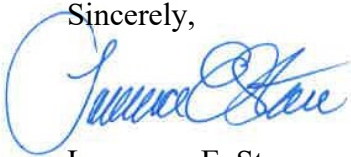
Santa Clara County Question/Comment

- Please provide any insight as to whether LTA or legal opinions are on the horizon for either of these requested clarifications.

Conclusion

I would like to thank the Board of Equalization's staff for their proactive collaborative partnership with California Assessors. The resulting draft rules, guidance, and public information have been very helpful to my office and taxpayers.

Sincerely,



Lawrence E. Stone
Assessor

LES:lcl

cc: David Yeung, Deputy Director, Property Tax Department
Mr. Henry Nanjo, Chief Counsel, Board of Equalization
California Assessors' Association
Board of Equalization Members