Expanding California's Intercounty Base-Year Value Transfers

by W. Martin Behn

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In this article, Behn describes the base-year value transfer rules available to some California homeowners, as well as the advantanges, disadvantages, and feasibility of proposed changes to those rules.

This paper reflects the individual views of the author and not those of the State Bar of California or its taxation section.

California homeowners who are selling their primary residence and are either at least 55 years old or severely and permanently disabled can apply for a base-year value transfer for their replacement residence within the same county.[1] Enacted through Proposition 60, the base-year value transfer is characterized as tax relief rather than as an exemption and will be referred to as such.[2] Property tax relief for a base-year value transfer between counties stems from Proposition 90. Proposition 90 relief is available intercounty only if the transferee's county board of supervisors has enacted an enabling ordinance.[3] As of this writing, only nine of California's 58 counties have enacted that type of ordinance.[4]

This article focuses on the incongruence of allowing base-year value transfer relief while hampering its efficacy by preventing homeowners from using that relief in all California counties.

I. Eligibility for Transferring Base-Year Value

A. Eligibility and Framework

California Revenue and Taxation Code section 69.5 codifies the eligibility for the propositions.[5] The requirements are deceptively straightforward. First, the person claiming the tax relief must be either at least 55 years old or severely and permanently disabled.[6] Second, both the original and the replacement dwellings must be eligible for the homeowners' exemption.[7] Third, the replacement dwelling must be purchased or newly constructed within two years before or after the sale of the original dwelling.[8] Last, the replacement dwelling must be of equal or lesser value.[9]

Additional subsections to section 69.5 provide various expansions and contractions on the propositions' tax relief. The claimant must be the owner and resident of the original property at the time of sale.[10] If either the claimant or their spouse is 55 years or older, the tax relief may be claimed.[11] Both transactions, including the purchase of the original dwelling and sale of the replacement dwelling, must occur within two years, but it doesn't matter which occurs first.[12] The base-year value transfer tax relief can be granted only once after a claimant turns 55, unless she becomes permanently disabled, in which case she can use the tax relief a second time.[13]

The framework for the law has been reduced to a State Board of Equalization form, which must be submitted to the county assessor as a claim for the tax relief.[14] The claimant must provide the assessor specific property information for the original and replacement residences, including addresses, parcel numbers, and purchase dates and

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[1] *See* Cal. Rev. & Tax. Code section 69.5, implementing propositions 60, 90, and 110.

[2] The State Board of Equalization characterizes exemptions as those arising from ad valorem taxes. Ad valorem taxes are those arising under the assessed value of the property. *See* "Exemptions" on the BOE website. *See also* Publication 29, from the California BOE, at 8, which acknowledges tax relief provided for under propositions 60, 90, and 110 as "Other Property Tax Relief Measures."

[3] Cal. Rev. & Tax. Code section 69.5(a)(2).

[4] *See* BOE letter to the assessors, No. 2013/043, "Revenue and Taxation Code section 69.5 Ordinances" (Sept. 5, 2013). The nine participating counties are Alameda, El Dorado, Los Angeles, Orange, Riverside, San Diego, San Mateo, Santa Clara, and Ventura.

[5] Cal. Rev. & Tax. Code section 69.5(a)(1).

[6] *Id.*

[7] The homeowner's exemption refers to Cal. Rev. & Tax. Code section 218, which allows a credit against property taxes for owner-occupied dwellings.

[8] Cal. Rev. & Tax. Code section 69.5(a)(1). *See also* BOE letter to the assessors, No. 2011/025, at 56, line 12.

[9] Cal. Rev. & Tax. Code section 69.5(a).

[10] Cal. Rev. & Tax. Code section 69.5(b)(1).

[11] Cal. Rev. & Tax. Code section 69.5(b)(3).

[12] Cal. Rev. & Tax. Code section 69.5(b)(5).

[13] Cal. Rev. & Tax. Code section 69.5(b)(7).

[14] Cal. Rev. & Tax. Code section 69.5(f)(1).

prices.[15] The form must also include the claimant's name and Social Security number, as well as those of her spouse, if applicable.[16] If claiming Proposition 60 tax relief, the claimant must provide proof of age and of permanent disability.[17] Someone claiming permanent disability must provide a certification signed by her attending physician or surgeon that specifies why she must move and the requirements of the disability, with the claimant providing sufficient substantiation of the same.[18]

B. Illustrative Example

Wendy Homeowner is a recently widowed 70-year-old resident of Santa Clara County, California. Her three-bedroom home in Palo Alto is worth $1.5 million. She and her husband purchased that home in the 1970s, and its current assessed value for property tax purposes is $307,000. Applying the homeowner's exemption, Wendy's property tax base is $300,000, and her yearly tax burden would be around $3,000.[19] If Wendy were to sell her home in year 1 for $1.5 million and use the proceeds to purchase a replacement home for $1 million within Santa Clara County in year 2, she would be eligible to apply for the base-year value relief under Proposition 90. With the relief, Wendy's property tax base would stay at $300,000, and her tax burden at $3,000.

II. Legislative History

A. Background for Enactment of Proposition 90

In 1986 voters approved Proposition 60, which allowed for tax relief if homeowners who were 55 years or older or permanently disabled sold their residence and purchased a new residence within the same county.[20] Proposition 90 was then enacted by referendum on November 8, 1988.[21] Proposition 90 expanded Proposition 60, allowing tax relief for residents from different counties to transfer their base-year value to the new county if the county board of supervisors enacted an ordinance enabling that.[22]

Proposition 90 supporters argued that it would help eliminate perceived unfairness in tax laws.[23] The measure was presented as giving seniors the freedom to choose where they lived.[24] The rationale seemed to be that seniors were living in large homes that could be made available to younger couples desiring more space for expanding families.[25]

Opponents appeared to base their resistance on the general opposition to Proposition 13,[26] arguing that Proposition 90 would simply perpetrate a continued change of Proposition 13, which instead needed a complete overhaul.[27] Critics further argued that Proposition 90 would do nothing to alleviate the high prices of homes and taxes on first-time home buyers.[28] That argument was based on the assumption that there would be a massive property tax burden shift from commercial and industrial property owners to owners and renters of residential property.[29]

B. Updates and Current Law

On September 19, 2013, Riverside County became the latest county to allow intercounty base-year value transfers[30] with the enactment of Ordinance 920, which was heralded as potentially generating "an additional $127 million in annual economic benefits and [leading] to the creation of 676 new jobs annually."[31]

On March 21, 2013, State Assembly member Raul Bocanegra (D) introduced legislation (AB 1172) to amend section 69.5[32] by allowing persons 65 or older to make an intercounty base-year value transfer.[33] On January 6, 2014, the bill was amended, with the changes to section 69.5 removed and provisions inserted to investigate Florida's "Save Our Homes" portability law, which — similar to AB 1172 — provides for a base-year value transfer on the assessed value of the home.[34] The fiscal impact study proposed would be an important development in the expansion of Proposition 90.

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[15]Cal. Rev. & Tax. Code section 69.5(f)(1)(C)-(F).

[16]Cal. Rev. & Tax. Code section 69.5(f)(1)(A).

[17]Cal. Rev. & Tax. Code section 69.5(f)(1)(B).

[18]Cal. Rev. & Tax. Code section 69.5(f)(1)(C)(i)-(ii).

[19]The homeowner's exemption is available to owner-occupied dwellings and exempts the first $7,000 in assessed value for property taxation purposes. *See* Cal. Rev. & Tax. Code section 218.

[20]State BOE letter to the assessors, No. 88/50.

[21]Davod M. Kinchen, "12 Counties Allow 'Over 55' Tax Transfers: Proposition 90: Some of State's Most Popular Retirement Areas Have Voted Not to Accept Inter-County Transfers of Property Tax Values for Homeowners 55 or Older," *Los Angeles Times*, July 15, 1990.

[22]Cal. Rev. & Tax. Code section 69.5(a)(2).

[23]"The Easy 8 — Legislative Proposal," Golden State report, at 18 (1988).

[24]*Id.*

[25]"Property Taxation: Reappraisal Exception," *The California Journal* (1988). Assembly member David Elder, Sen. Cecil Green, and AARP representative Josephine Barbano claimed the "measure will provide important tax relief and housing assistance for senior citizens, enabling them to move into smaller replacement homes when they retire and freeing up larger homes needed by younger families."

[26]Proposition 13 passed June 6, 1978, and is officially known as the People's Initiative to Limit Property Taxation. Proposition 13 amended the California Constitution with a 1 percent maximum amount on real property to be collected by California counties. *See* California Constitution, Article 13A, section 1.

[27]*The California Journal*, *supra* note 25.

[28]*Id.*

[29]*Id. See* "Argument Against" wherein Gary Wesley, an attorney in San Jose, opposed Proposition 90 because the commercial and industrial property is reassessed at a slower rate than residential property because it is leased but rarely sold.

[30]BOE letter to the assessors, No. 2013/043 (Sept. 5, 2013).

[31]Maggie Avants, "Supervisors Approve Property Tax Incentive for Senior Citizens," Murrieta Patch, Aug. 20, 2013.

[32]AB 1172, 2013-2014 Reg. Sess. (Cal. 2013).

[33]*Id.*

[34]*Id.*

According to a BOE analysis on AB 1172, provisions identical to Bocanegra's were introduced by Sen. Mimi Walters (R) in 2010 and by then-Assembly member Nao Takasugi in 1997, with both bills ultimately held in the Appropriations Committee.[35]

Legislative changes have tailored and clarified Proposition 90. Effective January 1, 2012, homeowners have additional time to request that a new construction qualify for the base-year value transfer.[36] The timing change does not affect the two-year requirement, but rather increases the notification time to the assessor from 30 days to six months.

Effective January 1, 2011, the base-year value transfer statute was amended to provide relief for property held in trust, allowing homeowners with property held in trust to also take advantage of that tax relief.[37]

III. Proposed Change

A. Legislative Change

The California Constitution would have to be amended to implement the proposed change. That would require a ballot initiative[38] or a referendum from the State Legislature that would have to be approved by voters.[39] That is a high bar for any amendment, but changes to the constitution are possible.

The complexities of a constitutional amendment aside, the basic framework to enable the tax relief to apply in any county is already present. That proposition can be implemented by eliminating the language that restricts the transfers to only those between homes in the same county.[40] In large part, that would require eliminating Revenue and Taxation Code section 69.5(a)(2). Below is a sample of the change to the first section of section 69.5(a)(1):

> Notwithstanding any other provision of law, under subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years, or any severely and permanently disabled person, who resides in property that is eligible for the homeowners' exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base year value of that property to any replacement dwelling of equal or lesser value that is located within ~~the same~~any county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, if the base year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

The change to the code is not complex. The complexity of expanding the propositions lies in the merits of the change. If we look to the advantages and disadvantages of the proposal, we can gain a better perspective.

B. Illustrative Example

Continuing with Wendy Homeowner, suppose she wants to move out of Santa Clara County to be closer to her grandchildren. Wendy decides to sell her Santa Clara County home in year 1 for $1.5 million and use those proceeds to purchase a replacement home in Monterey County in year two, for $1 million. Monterey County has not adopted an ordinance enabling Proposition 90 relief. Without the base-year value tax relief of Proposition 90, she would not be eligible to transfer her lower assessed property tax value to her new Monterey County home. Her new property tax base would be around $1 million, and her new property tax burden would be about $10,000. However, if the proposed legislative changes were implemented, Wendy's property tax base would continue to stay at $300,000, and her yearly tax burden would remain around $3,000.

IV. Merits of the Proposal

A. Advantages

1. Encourages Moving Within California

Allowing Californians to choose which county they wish to exercise the base-year value transfer tax relief may spur them to move. California home prices were up almost 51 points in fiscal 2013.[41] Without the tax relief, that rise in home prices may make it harder for homeowners with large home value increases to move to lower-cost-of-living areas of the state. If the value of homes in those areas has also increased, then homeowners selling in one county and moving to another may be increasing their property tax base if they are not afforded tax relief.

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[35] Rose Marie Kinee, BOE Staff Legislative Bill Analysis (DRAFT) (Mar. 21, 2013); *see also* SB 1415, 2009-2010 Reg. Sess. (Cal. 2010), and SB 1960, 1997-1998 Reg. Sess. (Cal. 1997).

[36] Cal. Rev. & Tax. Code section 69.5(h)(4), effective January 1, 2012. SB 947 (Stats. 2011, ch. 351).

[37] Cal. Rev. & Tax. Code section 69.5(g)(11) was amended to state "'Person' includes an individual who is the present beneficiary of a trust." SB 1494 (Stats. 2010, Ch. 654). *See also* BOE letter to the assessors, No. 2011/002 (Jan. 13, 2011), which clarifies that properties held in trust, other than Massachusetts or business trusts, wherein the present beneficial owner is deemed the claimant, can qualify for Proposition 60 relief if all the requirements of Cal. Rev. & Tax. Code section 69.5 are met.

[38] *See* California Constitution Art. II, section 8(b).

[39] *See* California Constitution Art. XVIII, section 4.

[40] SB 1960, 1997-1998 Reg. Sess. (Cal. 1997). Takasugi proposed amendments to section 69.5 that would eliminate subsection 69.5(a)(2), which allowed transfers only through a vote by the local board of supervisors.

[41] Federal Reserve Bank of St. Louis, "All-Transactions House Price Index for California." The data and corresponding graph measure the average price of homes based on sales, and show an increase from 2012: Q4 403.41 to 2013: Q3 450.64.

In the short time that Riverside County had the tax relief available in the 1990s, more than 13,000 homeowners used the benefit in that county.[42] That evidence suggests that there are California seniors and persons with disabilities who are willing to use the tax relief, and that there are more individuals who could benefit from its expansion.

Moreover, with state income tax rate increases, many Californians may be moving — or contemplating a move — out of the state. The California income tax is the highest in the nation.[43] With the American Taxpayer Relief Act of 2012, the highest rate of income taxes in California is 37.1 percent, which is rivaled only by New York City's 36.5 percent rate.[44] It may be only a matter of time before a watershed event causes Californians to flock to states with lower income tax rates.

Also, California is already a volatile state for ingress and egress of residents. Atlas Van Lines has published statistics of movement within the United States for over a decade. In 2013 more Californians moved out of state than in 2012, even though the data suggest that the overall net flow of residents is equal.[45] The data do not distinguish what kind of residents — renters or owners — are leaving, but they do show that California is experiencing migration volatility.

The high income tax rates and the high turnover in and out of California support the argument for expanding tax relief. Even though the tax relief provided by Proposition 90 is not a panacea for a flight risk, it could inspire Californians to stay and move into smaller dwellings or to lower-cost areas. Advertising that kind of intrastate mobility may encourage people to move to California to work and eventually retire.

2. Administrative Ease

Any county wanting to implement the tax relief regime has numerous obstacles. The board of supervisors must pass an ordinance enacting the provisions of section 69.5.[46] Before enactment, the supervisors must first take the proposal to all other affected agencies within the county, assuming at least the county assessor and recorder.[47] Presumably, the various county agencies must also be versed on the proper forms, and perhaps they might tailor forms to their county to implement the tax relief. All those changes take time, planning, and training. Providing the tax relief in all California counties would eliminate the need for boards of supervisors to coordinate with various agencies. It would bring all county governments up to speed on that tax relief and a standardized process for handling requests. Further, it would create ease for the general population where that tax relief can be applied.

3. Disparities Between Counties

Counties can leverage enactment of the tax relief against another county. Riverside County groups used that argument to bolster the passage of the ordinance enacting the tax relief.[48] A supporter of the Riverside County ordinance said he hoped other counties would not enact a similar ordinance.[49] The Legislature should assess whether counties shifting their positions on that tax relief to lure residents is a desirable outcome. Perhaps it might be better to see whether the state as a whole is better served by allowing tax relief provided by the propositions in every part of the state, rather than allowing counties to piecemeal when it can be claimed.

4. Desirability of Residents

The Legislature should assist the mobility of the elderly and those who are permanently disabled. Moving closer to healthcare services or family are reasons why those eligible for the tax relief would move. If those services are in a different county, beyond reach of the tax relief, seniors or persons with disabilities may see an unexpected and unwelcome rise in their property taxes.

Since the push for enactment of Proposition 90, arguments have been put forth that seniors are a desirable class of people to have in a county.[50] Seniors rarely have dependents going to school, and therefore do not contribute to school overcrowding.[51] Further, many seniors are likely to be on fixed income and healthcare benefits, and might bring in a more sustained and predictable revenue and tax base outside of property taxes.

That argument is still pertinent in the expansion of the Proposition 60 tax relief. From a purely financial standpoint, it would be best to have people paying into property taxes but using less than their share of the services that property taxes pay for.

B. Disadvantages

One disadvantage of that proposal is the usurping of individual boards of supervisors to make the opt-in or opt-out decision of allowing intercounty transfers. The requirements in section 69.5(a)(2) show the careful deliberation that must occur for counties to opt into intercounty tax

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[42]July 24, 2013, letter from Wendy Formica, California Desert Association of Realtors; Wil Herring, Inland Valleys Association of Realtors; Lisa Neugebauer, Southwest Riverside County Association of Realtors; and Kathy Walker, the Inland Gateway Association of Realtors.

[43]Paul Lee, "The Paradigm Shift: The ATRA-Math Planning After the American Tax Relief Act of 2012", Bernstein Global Wealth Management presentation, Apr. 30, 2013. Material on file with author.

[44]*Id.*

[45]Atlas Van Lines, "2013 Migration Patterns — Traffic Flow by State/Province."

[46]Cal. Rev. & Tax. Code section 69.5(a)(2).

[47]Cal. Rev. & Tax. Code section 69.5(a)(2)(A).

[48]W. Martin Behn, in a telephone conference with Gene Wunderlich, November 18, 2013. Notes on file with author.

[49]*Id.*

[50]*The California Journal*, *supra* note 25.

[51]*Id.*

relief.[52] Taking that decision-making authority away from a county's board of supervisors will not be popular.

An influx of homeowners bringing a low base-year value might cause an across-the-board decrease in property tax revenue. That seems to be one of the largest hurdles for that type of proposal. However, focusing narrowly on that economic aspect ignores other advantages, such as the increased revenue that additional residents could bring in sales tax or the economic growth spurred by more people in general. Still, county governments should request a fiscal impact study.

C. Feasibility

1. Economically

Economically, that proposal is feasible. Counties already allow for the tax relief within their own county. Further, many counties, such as Santa Clara and San Mateo counties, have kept Proposition 90 tax relief on the books for many years. That indicates that revenue loss from Proposition 90 tax relief is not a large concern in those counties.

The economics are hard to study on a macro, statewide level and should be reviewed at the county level. The Riverside County auditor-controller conducted an analysis before the recent passage and concluded that the county could lose up to $4.7 million annually if people leave the county and take advantage of the tax relief.[53] However, the California Desert Association of Realtors countered that the sale of a new home in California can generate almost $100,000 in local economic benefits.[54] The economic loss to one county for allowing the tax relief could be an economic gain for another: Once the original property is sold, the county can reassess the residence and will likely capture much more gain than is lost in another county. It is hoped that would return an overall positive gain for cumulative property tax revenue, rather than a decline.

2. Politically

That legislative proposal may find resistance. However, there are many chaptered amendments to Revenue and Taxation Code section 69.5, suggesting that it is not a political sacred cow and may be ready for change. Since the enactment of the propositions, there have been more than 16 letters to the assessor regarding section 69.5.[55] Many of those letters clarify and expand on the understanding of how broadly that tax relief has been carved out since its original enactment in 1988. Politically, that legislative change would likely face little opposition from many constituents.

The recent ordinance enabling the tax relief in Riverside County passed by unanimous decision.[56] That suggests good arguments for providing the tax relief in all California counties. From political and public policy standpoints, it would be hard to oppose a measure that benefits the elderly and the permanently disabled. However, there could be political opposition if counties could show that their tax base would be eroded heavily by allowing the relief. One reaction may be to assume that a county is a desirable place to live and that many new residents would therefore try to take advantage of the relief. However, a converse reaction is just as possible. Many residents may try to leave a county, thereby increasing the net property tax benefit to that county.

V. Additional Statements

Bocanegra's amended bill to study the effects a similar ordinance has had in Florida also warrants attention.[57] Most of the fiscal impact statements in either bills or analyses do not provide empirical evidence as to the effect of allowing base-year value transfers. If the impact statements do provide analysis, the analysis stops at the point of lost revenue from allowing persons to take advantage of the base-year value transfer and ignores the subsequent reassessment on the property sold.[58] In fact, even the draft BOE legislative bill analysis of the revenue summary does not account for increases in reassessments of original dwellings, nor economic activity that occurs simply by a taxpayer moving.[59] ✰

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[52] Cal. Rev. & Tax. Code section 69.5(a)(2) provides, among other requirements, that the board of supervisors must consult with all other agencies affected by an ordinance before enactment.

[53] "Restore Prop 90," California Desert Association of Realtors white paper.

[54] *Id.*

[55] *See generally* BOE cumulative index to letter to the assessors.

[56] Jeff Horseman, "Riverside County: Supervisors Approve Older Homebuyer Tax Incentive," July 30, 2013.

[57] AB 1172, *supra* note 32.

[58] *See generally* SB 1960, 1997-1998 Reg. Sess. (Cal. 1997).

[59] Kinee, *supra* note 35.