

Memorandum

To: Honorable Antonio Vazquez, Chair
Honorable Mike Schaefer, Vice Chair
Honorable Ted Gaines, First District
Honorable Malia M. Cohen, Second District
Honorable Betty T. Yee, State Controller

Date: January 8, 2021

From: Henry D. Nanjo
Chief Counsel

Subject: *Proposition 19 – Initial Interpretational Questions and Answers*¹

This is in response to your request for a legal opinion on a number of questions raised regarding the interpretation of Assembly Constitutional Amendment Number 11 (ACA 11) – presented to and approved by voters at the November 3, 2020 general election as Proposition 19 (Proposition 19 or Prop 19). Prop 19 is entitled, “The Home Protection for Seniors, Severely Disabled, Families, and Victims of Wildfire or Natural Disasters Act,” and added, as relevant here, section 2.1 to article XIII A of the California Constitution (hereafter Section 2.1).²

Unfortunately, the text of Prop 19 leaves a number of significant questions unanswered that are critical to Prop 19’s proper implementation and administration. The Board of Equalization (Board) is charged with the statutory responsibility and authority to “[p]rescribe rules and regulations to govern local boards of equalization when equalizing, and assessors when assessing” (Gov. Code, § 15606, subd. (b).) The Board must also, “Prepare and issue instructions to assessors designed to promote uniformity throughout the state and its local taxing jurisdictions in the assessment of property for the purposes of taxation.” (Gov. Code, § 15606, subd. (e).) Therefore, the Board is required to analyze and interpret Prop 19 and issue guidance to assessors so that its provisions can be uniformly administered.³

In interpreting Prop 19, we are required, first and foremost, to ascertain the intent of the Legislature in proposing and the people in adopting Prop 19 to effectuate the purpose of the law. (*Select Base Materials v. Board of Equalization* (1959) 51 Cal.2d 640, 645.) The text itself is the first and best indicator of intent. (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 321.) Therefore, we are guided by Prop 19’s explicit, stated intent:

¹ This memorandum, including questions and answers, represent the initial thoughts of the legal department and may be subject to change.

² ACA 11 also added section 2.2 and 2.3 to Article XIII A of the California Constitution. Section 2.2 instructs how funds derived from section 2.1 are to be used and section 2.3 directs the California Department of Tax and Fee Administration to track the effects of section 2.1. The full text of ACA 11 is at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200ACA11 [as of December 2, 2020].

³ We recognize that many of Prop 19’s unclear provisions are susceptible to more than one reasonable interpretation. This memorandum represents the view of the Legal Division in the absence of clarifying legislation. If, and when, any clarifying legislation is enacted, our opinion, of course, may change.

(1) Limit property tax increases on primary residences by removing unfair location restrictions on homeowners who are severely disabled, victims of wildfires or other natural disasters, or seniors over 55 years of age that need to move closer to family or medical care, downsize, find a home that better fits their needs, or replace a damaged home and limit damage from wildfires on homes through dedicated funding for fire protection and emergency response.

(2) Limit property tax increases on family homes used as a primary residence by protecting the right of parents and grandparents to pass on their family home to their children and grandchildren for continued use as a primary residence, while eliminating unfair tax loopholes used by East Coast investors, celebrities, wealthy non-California residents, and trust fund heirs to avoid paying a fair share of property taxes on vacation homes, income properties, and beachfront rentals they own in California.

(Cal. Const., art. XIII A, § 2.1, subd. (a).)

Proposition 19 - Summary

In addition to the legislative intent as expressed in subdivision (a) of section 2.1 of article XIII A, cited above, four additional subdivisions, as follows, make up the remainder of Section 2.1:

Subdivision (b) – Base year value transfers

Subdivision (c) – New parent-child exclusion

Subdivision (d) – Parent-child exclusion contained in Article XIII A, section 2, subdivision (h) made inoperative

Subdivision (e) – Definitions

Subdivision (b) creates a base year value transfer provision for certain classes of people that operates differently from existing base year value transfer provisions authorized under Article XIII A, section 2 of the California Constitution (hereafter Section 2). Section 2 was amended by Propositions 60, 90, and 110⁴ and Propositions 50 and 171⁵ (together, the previous base year value transfer provisions), and implemented by Revenue and Taxation Code (RTC) sections 69, 69.3, and 69.5.

Subdivision (c) modifies the existing parent-child exclusion while subdivision (d) explicitly provides that the parent-child exclusion authorized under Article XIII A, section 2, subdivision (h) of the California Constitution (the previous parent-child exclusion) becomes inoperative as of February 16, 2021. Therefore, section 2, subdivision (h) and Revenue and Taxation Code section 63.1, which implements that provision are of no effect on dates on and after February 16, 2021.

⁴ Proposition 60 amended Section 2 to authorize the Legislature to allow the transfer of a base year value from a principal residence to a replacement dwelling within the same county by homeowners age 55 or over. Proposition 90 authorized county boards of supervisors to adopt ordinances allowing base year value transfers authorized under Proposition 60 between different counties. Proposition 110 extended these provisions to apply to severely disabled persons of any age.

⁵ Proposition 50 amended Section 2 to authorize the Legislature to provide that the base year value of property substantially damaged or destroyed in a Governor-declared disaster may be transferred to a replacement property located within the same county. Proposition 171 extended these provisions to transfers to another county that has adopted an ordinance that allows such transfers.

(See *Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1037-1039 [Voter initiative allowing state to contract with private architects and engineers impliedly repealed prior law restricting the state's authority to enter such private contracts].)

Proposition 19's Effect on Existing Parent-Child Exclusion and the Previous Base Year Value Transfer Provisions Authorized in Article XIII A, section 2 of the California Constitution

Section 2.1 explicitly makes inoperative the previous parent-child exclusion. (See art. XIII A, § 2.1, subd. (h).) However, Section 2.1 does not explicitly render inoperative the previous base year value transfer provisions. The initial question, therefore, that must be answered is whether Section 2.1, subdivision (b) impliedly repealed some or all of the previous base year value transfer provisions.

Although there is no explicit language making any aspect of the previous base year value transfer provisions inoperative, Section 2.1, subdivision (b) is made operative on and after April 1, 2021 “[n]otwithstanding any other provision of this Constitution or any other law,” ensuring that no previous constitutional provision or law nullifies any part of Section 2.1, subdivision (b). The previous base year value transfer provisions contain numerous differences with Section 2.1, subdivision (b), some of which are in direct contravention to it.⁶ Therefore, in our view, Section 2.1 did not intend the simultaneous operation of the previous base year value transfers related to primary residences. However, because Prop 19 is clear that its base year value transfer provisions apply only to primary residences, Prop 19's effect on RTC sections 69 and 69.3 are not entirely clear.

The questions below have been identified by County-Assessed Properties Division and the California Assessors' Association as questions necessary to answer for the proper implementation and administration of Proposition 19.⁷ In answering these questions, we employ well-settled canons of statutory construction (*Persky v. Bushey* (2018) 21 Cal.App.5th 810, 818–819 [rules of statutory construction also apply to interpretation of constitutional provisions]), which fundamentally seeks to ascertain the intent of the Legislature so as to effectuate the purpose of the law.' (*Select Base Materials v. Board of Equal.* (1959) 51 Cal.2d 640, 645.) The first and best indicator of intent is the text itself. (*Persky v. Bushey, supra*, 21 Cal.App.5th at pp. 818–819; *People v. Knowles* (1950) 35 Cal.2d 175, 182, cert. den. 340 U.S. 879.) If the language is ambiguous, extrinsic evidence of the enacting body's intent may be consulted, which may include the analysis by the Legislative Analyst and the ballot arguments for and against the initiative. (*Silicon Valley Taxpayers Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 444-445.) Because Prop 19's text does not explicitly answer many questions or is ambiguous, a number of the answers here are based on the perceived intent of the Legislature and voters. Therefore, the Legislature should make clear the answer to these and other questions in follow-up legislation as contemplated by subdivision (b)(1) of Section 2.1 which states that the Legislature will enact legislation detailing “procedures and definitions”.

⁶ For a detailed summary of the substantive differences between the previous base year value transfer provisions property tax changes made by Proposition 19, see <<https://www.boe.ca.gov/prop19/>>.

⁷ This memorandum does not answer all of the questions raised. It attempts to address those that are most pressing. Staff expects to issue guidance in the future addressing additional questions.

Base Year Value Transfer Provisions Related Questions

Q1: Must both the sale of the primary residence and the purchase of a replacement primary residence be completed on or after April 1, 2021?

A1: No, the operative requirement is that *the transfer* of the base year value must be on or after April 1, 2021, and not the purchase or sale of either the original or replacement property.

Subdivision (b) of Section 2.1 provides the following:

Property Tax Fairness for Seniors, the Severely Disabled, and Victims of Wildfire and Natural Disasters. Notwithstanding any other provision of this Constitution or any other law, *beginning on and after April 1, 2021*, the following shall apply:

(1) Subject to applicable procedures and definitions as provided by statute, an owner of a primary residence who is over 55 years of age, severely disabled, or a victim of a wildfire or natural disaster *may transfer the taxable value of their primary residence to a replacement primary residence* located anywhere in this state, regardless of the location or value of the replacement primary residence, *that is purchased or newly constructed as that person's principal residence within two years of the sale of the original primary residence.*

(Emphasis added.)

Subdivision (b) of Section 2.1 makes clear that if the *transfer* of the base year value from a primary residence to a replacement primary residence occurs on or after April 1, 2021, its provisions will apply. Thus, the event that must occur on or after April 1, 2021 is the transfer of the base year value. It is not the date of sale of the primary residence or the date of purchase of the replacement primary residence that must occur on or after April 1, 2021, although related. Subdivision (b) also requires the replacement primary residence be purchased or newly constructed within two years of the sale of the original primary residence without specifying that either transaction – the sale or the purchase or new construction – must come first. Therefore, if the replacement primary residence is purchased or newly constructed on or after April 1, 2021, the primary residence may be sold either two years prior to or after the purchase or new construction of the replacement primary residence and qualify. Alternatively, if the primary residence is sold on or after April 1, 2021, the replacement primary residence may be purchased or newly constructed either two years prior to or after the sale of the primary residence.

We note that what constitutes the date of the actual “transfer” is not specified in Prop 19. However, we believe the transfer should be processed as of the later of the date of the sale of the primary residence or the date of the purchase or new construction of the replacement primary residence, whichever applies, regardless of when the application for transfer was actually submitted.⁸

⁸ This assumes, of course, that the submitted application met whatever filing deadline the legislature may set.

Q2: Must a claimant be “severely disabled” or “severely *and permanently* disabled” under Prop 19?

A2: Prop 19 requires that a claimant be “severely disabled,” not “severely and permanently disabled”.

Section 2, subdivision (a) of Article XIII A provides, in relevant part, that, “The Legislature may extend the provisions of this subdivision relating to the transfer of base year values from original properties to replacement dwellings of homeowners over the age of 55 years to *severely disabled* homeowners...” (Emphasis added.) However, Revenue and Taxation Code (RTC) section 69.5, subdivision (a)(1) requires that a person be “severely and permanently disabled”. “Severely and permanently disabled” is defined at RTC section 69.5, subdivision (g)(12) to mean any person described in RTC section 74.3, subdivision (b). RTC section 74.3, subdivision (b) defines “a severely and permanently disabled person” as any person who has a *physical* disability or impairment.

Subdivision (b) of Section 2.1 makes its provisions applicable to “an owner of a primary residence who is over 55 years of age, *severely disabled*, or a victim of a wildfire or natural disaster”. However, “severely disabled” is not defined. For that reason, unless the Legislature includes a definition in a statute describing procedures and definitions as required by Section 2.1, subdivision (b)(1), the common meaning of “severely” and “disabled” should apply. (See *Mercer v. Department of Motor Vehicles* (1991) 53 Cal.3d 753, 763 [plain meaning of words in a statute interpreted through the use of dictionary definition].) Merriam Webster’s dictionary defines “disabled” as “impaired or limited by a physical, mental, cognitive, or developmental condition,” and defines “severe” as “of a great degree”. Therefore, in our view, “severely disabled” is more broad than “severely and permanently disabled” as defined in RTC section 74.3, subdivision (b) and as required by RTC section 69.5, and is not limited to a physical disability.

Q3: On what date is the value of the original and replacement primary residences determined for purposes of calculating the transferrable taxable value?

A3: The value of the original and replacement primary residences are determined for purposes of calculating the transferrable taxable value as of the date of sale or the date of purchase or completion of new construction, respectively.

Section 2.1, subdivision (b)(1) states, in relevant part:

(1) Subject to applicable procedures and definitions as provided by statute, an owner of a primary residence [meeting certain conditions] may transfer the *taxable value* of their primary residence to a replacement primary residence ... regardless of the location or *value* of the replacement primary residence....

(Emphasis added.)

While “taxable value” is defined in subdivision (e)(10) of Section 2.1, “value” is undefined. However, Section 2.1 subdivision (b)(2)(B) provides that the taxable value transferred to a replacement primary residence of greater value than the original primary residence, is calculated by adding the difference of the full cash value of the original primary residence and the full cash value of the replacement primary residence to the taxable value of the original primary residence.

For purposes of Proposition 13, “full cash value” is defined at RTC section 110.1, subdivision (a)(2) as the fair market value of property as of the date on which a purchase or change in ownership occurs or the date on which new construction is completed. Therefore, the determination of the fair market value of the original primary residence for purposes of calculating the transferable taxable value, must be as of the date of the sale of the original property because the date of sale is the date of change in ownership as required by RTC section 110.1. (See also Property Tax Rule⁹ 462.260.) Similarly, the date on which the full cash value of the replacement primary residence must be determined is the date of purchase or date of the completion of new construction of the replacement primary residence.

Q4: How many times may spouses transfer an original primary residence pursuant to Prop 19?

A4: Each spouse may transfer a base year value up to three times.

Subdivision (a) of Section 2 provides that, “For purposes of this section, ‘any person over the age of 55 years’ includes a married couple one member of which is over the age of 55 years.” This provision has been interpreted to treat spouses as a single claimant if the spouse is also a record owner of the replacement dwelling. (See Letters to Assessors No. (LTA) 2006/010 (dated February 6, 2006), Questions and Answers A2 & B1.)

Section 2.1, however, has no specific requirement or limitation as regards base year value transfer claims from spouses. For this reason, and because constitutional provisions that restrain the legislative power (here, the power to tax) are to be construed liberally, we believe each spouse can transfer base year values pursuant to Section 2.1, subdivision (b) a maximum of three times each as explicitly stated in subdivision (b)(1). Further, we are of the opinion that a transfer completed pursuant to the previous base year value transfer provisions do not count toward the Section 2.1 three transfer maximum.

Parent-Child Exclusion¹⁰ Related Questions

Q1: Prop 19 makes the previous parent-child exclusion operative for purchases or transfers that occur on or before February 15, 2021. Since February 15, 2021 is a state holiday, are purchases or transfers that occur on February 16, 2021 eligible for the previous parent-child exclusion?

A1: Yes, except for transfers of property by inheritance.

Subdivision (d) of Section 2.1 provides,

Subdivision (h) of Section 2 shall apply to any purchase or transfer that occurs on or before February 15, 2021, but shall not apply to any purchase or transfer

⁹ All references to Property Tax Rule or Rules are to sections of title 18 of the California Code of Regulations.

¹⁰ These questions and answers also apply to the grandparent-grandchild exclusion where applicable even if not explicitly stated.

occurring after that date. Subdivision (h) of Section 2 shall be inoperative as of February 16, 2021.

Government Code (GC) section 6700, subdivision (a)(5) identifies the third Monday in February as a state holiday. In 2021, that date is February 15. GC sections 6706 and 6707 provide that an act that is to be performed on a holiday may be performed with the same effect on the next business day, and that when the last day for filing any instrument with a state agency falls on a holiday, such act may be performed on the next business day with the same effect.

Because subdivision (c) of Section 2.1 describes an exclusion from change in ownership, we believe the date of “purchase or transfer” is the date of a change in ownership. Property Tax Rule (Rule) 462.260 sets forth the dates of change in ownership of real property. For transfers evidenced by the recordation of a deed, the date of recordation is rebuttably presumed to be the change in ownership date. (Rule 462.260, subd. (a)(1).) For transfers accomplished by an unrecorded deed, the date of the transfer document is rebuttably presumed to be the change in ownership date. (Rule 462.260, subd. (a)(1).) For transfers by inheritance, the date of death is the change in ownership date. (Rule 462.260, subd. (c).)

Because the Government Code grants a one day extension for acts that are to be performed on a holiday and February 15, 2021 is a holiday, transfers evidenced by recorded deed and transfers accomplished by an unrecorded deed may be accomplished on February 16, 2021 and still be excluded under subdivision (h) of Section 2. Since the change in ownership of inherited property does not involve an act that is required to be performed or the filing of any instrument, property must be inherited by February 15, 2021 for subdivision (h) of Section 2.1 to apply.

Q2: Prop 19 requires that a family home continue as the family home of the transferee. Must the family home continue as the family home of *all* transferees?

A2: No, only one transferee needs to maintain the family home as his or her principal residence.

Subdivision (c)(1) of Section 2.1 provides, in relevant part,

For purposes of subdivision (a) of Section 2, the terms “purchased” and “change in ownership” do not include the purchase or transfer of a family home of the transferor in the case of a transfer between parents and their children, as defined by the Legislature, *if the property continues as the family home of the transferee.*

(Emphasis added.)

The qualifying phrase, “if the property continues as the family home of the transferee” is unclear. Taken literally, a family home could only be transferred to one child and qualify for this exclusion. However, the exclusion also explicitly applies to transfers of a family home between “parents and their *children*,” strongly implying that more than one child can receive a family home and the home still qualify for the exclusion.

Although subdivision (c)(1) is ambiguous, the legislative intent, as expressed in subdivision (a)(2) of Section 2.1, is to limit property tax increases for family homes that continue to be used

as a primary residence by their children while eliminating tax loopholes that allow what was a family home to be used as rental property. Therefore, based on this intent, we believe that more than one child may be the recipient of the family home, and as long as one child maintains the family home as his or her principal residence, the family home may qualify for this exclusion. However, all transferees must be eligible transferees.

Q3: Prop 19 requires that a family home continue as the family home of the transferee. By what date must a transferee establish the family home as her family home?

A3: The transferee must establish the family home as her family home within one year of the purchase or transfer of the family home.

Subdivision (c)(5)(A) of Section 2.1 provides,

Subject to subparagraph (B), in order to receive the property tax benefit provided by this section for the purchase or transfer of a family home, the transferee shall claim the homeowner's exemption or disabled veteran's exemption at the time of the purchase or transfer of the family home.

Subdivision (c)(5)(B), in turn, provides,

A transferee who fails to claim the homeowner's exemption or disabled veteran's exemption at the time of the purchase or transfer of the family home may receive the property tax benefit provided by this section by claiming the homeowner's exemption or disabled veteran's exemption within one year of the purchase or transfer of the family home and shall be entitled to a refund of taxes previously owed or paid between the date of the transfer and the date the transferee claims the homeowner's exemption or disabled veteran's exemption.

(Emphasis added.)

The author's intent as stated in the ACA 11 Fact Sheet,

ACA 11 also protects the constitutional rights of parents and grandparents to pass the family home to their children, ensuring that their heirs can afford to move into that home as their primary residence.

(ACA 11, Fact Sheet, emphasis added.)

Based on subdivision (c)(5)(B) of Section 2.1 and the author's intent, we believe that a family home need not be the family home of the transferee immediately at the time of purchase or transfer. Instead, it must become a transferee's primary residence within one year of the purchase or transfer of the family home.

Q4: Prop 19 requires that a family home continue as the family home of the transferee. How long must a transferee maintain the property as her family home for continued exclusion?

A4: The exclusion applies only as long as the transferee or another transferee maintains the property as his or her family home.

As cited above, subdivision (c)(1) of Section 2.1 requires that a family home “continues as the family home of the transferee” in order to qualify for exclusion. This language is ambiguous, susceptible to mean the family home must continue to be the family home of the transferee at the time of the transfer, or to mean the family home must be the family home of the transferee at the time of transfer and must continue to be the family home of the transferee.

The legislative intent is to limit property tax increases for family homes that continue to be used as a primary residence by their children while eliminating tax loopholes that allow family homes to be used as rental property. (Cal. Const. art. XIII A, § 2.1, subd. (a)(2).) The author’s fact sheet also stated:

ACA 11 will protect the family transfers when a family member is going to treat the new property as a primary residence. It would close the loophole for vacation homes and other uses that do not include a primary residence.

(ACA 11, Fact Sheet.)

Therefore, based on this intent, we believe that the family home must be maintained as a family home by a transferee, whether by the transferee that initially used the family home as a primary residence or another eligible transferee that received the property from an eligible transferor.

In the event the family home is no longer used as the primary residence of a transferee, the property should receive the factored base year that applies had the family home not qualified for exclusion at the time of purchase or transfer. This is because at the time the family home is no longer the primary residence of a transferee, there is no transfer of the property and therefore, there can be no change in ownership on that date. Rather, at the time the family home is no longer the primary residence of a transferee, the change in ownership exclusion that applied at the initial transfer of the family home is lost. Therefore, the property is not reassessed, and instead should be taxed at the factored base year value that the property would have had the parent-child exclusion not been applied.

Q5: Prop 19 makes the parent-child exclusion applicable to family farms. What familial relationship will establish a farm as a “family farm”?

A5: The “family farm” is the farm that is transferred between parents and children (or when applicable, between grandparents and grandchildren).

Subdivision (c)(3) of Section 2.1 provides,

[The parent-child and grandparent-grandchild exclusions] shall also apply to the purchase or transfer of a family farm. For purposes of this paragraph, any

reference to a “family home” in [the parent-child and grandparent-grandchild exclusions] shall be deemed to instead refer to a “family farm.”

Subdivision (e)(2) defines “family farm” to mean,

any real property which is under cultivation or which is being used for pasture or grazing, or that is used to produce any agricultural commodity, as that term is defined in Section 51201 of the Government Code as that section read on January 1, 2020.

There is, however, no definition of “family” or any indication of the type of relationship that would make a farm a “family farm”. Rather, the operative provision, subdivision (c)(1) of Section 2.1 makes clear that a family farm qualifies for exclusion if the family farm is transferred between parents and children. Therefore, the issue is not whether the farm is a “family” farm, but rather is the farm (as defined in subdivision (e)(2)) transferred between parents and children. If so (and it meets all other qualifications), the farm is a family farm.

Q6: Prop 19 makes the parent-child exclusion applicable to family farms. Must a family farm also be the principal residence of the transferee?

A6: No, the family farm does not need to be the principal residence of the transferee to qualify for the parent-child exclusion.

Subdivision (c)(3) of Section 2.1 provides, “[p]aragraphs (1) and (2) [the operative provisions of the parent-child and grandparent-grandchild provisions] shall also apply to the purchase or transfer of a family farm.” Subdivision (c)(3) then directs how the parent-child and grandparent-grandchild exclusions are to be applied to family farms. It explains, “[f]or purposes of this paragraph, any reference to a ‘family home’ in paragraph (1) or (2) shall be deemed to instead refer to a ‘family farm.’”

Paragraph 1 of subdivision (c) of Section 2.1, with “family home” replaced by “family farm” as required by subdivision (c)(3), provides, in relevant part,

For purposes of subdivision (a) of Section 2, the terms “purchased” and “change in ownership” do not include the purchase or transfer of a *family farm* of the transferor in the case of a transfer between parents and their children, as defined by the Legislature, if the property continues as the *family farm* of the transferee.

Subdivision (e)(2) of Section 2.1 defines “family farm” to mean,

any real property which is under cultivation or which is being used for pasture or grazing, or that is used to produce any agricultural commodity, as that term is defined in Section 51201 of the Government Code as that section read on January 1, 2020.

The definition of “family farm” contains no requirement that it be the principal residence of the transferor or transferee. Therefore, the only explicit requirements for qualification are that the family farm is used in the manner described in subdivision (e)(2), that the family farm be

transferred between parents and children, and that the family farm continues to be used as a family farm by a transferee. Although subdivision (c)(5) requires that a transferee claim either the homeowner's or disabled veteran's exemption to receive the exclusion, subdivision (c)(3) does not apply to (c)(5). In other words, the requirement in subdivision (c)(5) that the property qualify for either the homeowner's or disabled veteran's exemption is limited to the purchase or transfer of a family *home*, not of a family *farm*. Unlike paragraphs (c)(1) and (c)(2), the term "family home" is not replaced by the term "family farm" in paragraph (c)(5). Therefore, there is no requirement that a family farm be the primary residence of the transferor or transferee unless there is clarifying legislation to the contrary.

Q7: Prop 19 requires a transferee of a family home to qualify for the homeowner's or disabled veteran's exemption. What is the proper forum for appeal for a transferee denied the homeowner's or disabled veteran's exemption?

A7: A transferee who has been denied the homeowner's or disabled veteran's exemption must file a claim for refund in the county in which the property is located and, if denied, must file an appeal in superior court.

Rule 302 sets forth the function and jurisdiction of assessment appeals boards and county boards of equalization (together, appeals boards). Subdivision (b) of Rule 302 provides that "[e]xcept as provided in subdivision (a)(4),¹¹ the board has no jurisdiction to grant or deny exemptions or to consider allegations that claims for exemption from property taxes have been improperly denied." Subdivision (a)(5), which is the exception to subdivision (b), provides that a county board has jurisdiction:

[t]o determine the classification of the property that is the subject of the hearing, including classifications within the general classifications of real property, improvements, and personal property. Such classifications may result in the property so classified being exempt from property taxation.

Thus, an appeals board has no jurisdiction to hear and decide an application involving any exemption matter except to determine the proper classification of property, and may do so even if the classification causes the property to be exempt. However, whether or not a homeowner qualifies for either the homeowner's exemption or the disabled veteran's exemption is not a determination of the proper classification of property. Therefore, an appeals board may not hear an appeal of a denial of the homeowner's or disabled veteran's exemption. An appeal of a denial of the homeowner's or disabled veteran's exemption must be filed in superior court after the denial of a claim for refund with the county. (See Rev. & Tax. Code, §§ 5140 and 5141.)

¹¹ A recent amendment to Rule 302 moved subdivision (a)(4) to subdivision (a)(5) without changing the reference. Rule 302, subdivision (b) should properly reference subdivision (a)(5).

cc: Ms. Brenda Fleming (MIC: 73)
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Ms. Lisa Thompson (MIC: 120)