

*San Luis Obispo County*  
**FARM BUREAU**

WEDNESDAY, NOVEMBER 17, 2021 | 10:00AM

# DEATH TAX ON AGRICULTURE INHERITANCE: WHAT DOES PROP 19 AND SENATE BILL 539 MEAN FOR CALIFORNIA FARMERS AND RANCHERS?

HOSTED BY SLO COUNTY FARM BUREAU

SPEAKERS  
TOM BORDONARO, SLO COUNTY ASSESSOR  
VICTOR HERRERA, ATTORNEY

# **Join Farm Bureau!**

**Visit [slofarmbureau.org](http://slofarmbureau.org)  
(or your local county farm bureau)  
to learn more.**

# Agenda

## **Welcome and Overview**

- Brent Burchett, SLO County Farm Bureau Executive Director

## **Overview of Prop 19 and SB 539**

- Tom Bordonaro, SLO County Assessor

## **Legal Issues and Details of Prop 19 and SB 529**

- Victor Herrera, Attorney at Carmel & Naccasha LLP

## **Questions from Audience**

- *Submit questions through Q&A button*
- *Recording of today's webinar will be emailed to all participants*



Tom J. Bordonaro, Jr.

County Assessor

San Luis Obispo County

*Saving the Family Farm*

San Luis Obispo County Farm Bureau





# Proposition 19

# Proposition 19

*The Home Protection for Seniors, Severely Disabled, Families, and Victims of Wildfire or Natural Disasters Act*

## Three Parts

**BASE YEAR  
TRANSFER-  
PERSONS:**

- 55+
- DISABLED
- DISASTER VICTIMS

**PARENT-CHILD  
AND  
GRANDPARENT-  
GRANDCHILD  
EXCLUSION**

**CREATION OF  
FIRE AND  
LOCAL  
GOVERNMENT  
FUNDS**

# Base Year Value Transfer Age 55 + / Disabled

## Prior Law

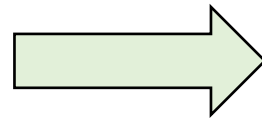
Principal residence purchase or new construction within 2 years of sale

Located in same county or to a county with ordinance (10 counties)

One time

Equal or lesser value

- 100% replacement prior to sale
- 105% replacement in 1<sup>st</sup> year after sale
- 110% replacement in 2<sup>nd</sup> year after sale



## Proposition 19

Principal residence purchase or new construction within 2 years of sale

Located anywhere in California

Three times

Any value--Amount above 100% added to transferred value

100% equal or lesser value

- 100% replacement prior to sale
- 105% replacement in 1<sup>st</sup> year after sale
- 110% replacement in 2<sup>nd</sup> year after sale



## BASE YEAR VALUE TRANSFER

April 1, 2021 is the effective date of change

Eligible homeowners may transfer base year value assessment anywhere in California

55+ and Disabled - Transfers may be made up to three times

Transfer may be made to a residence of any value

Value of the replacement residence above 100% of original property value – difference is added to the base year value of original property

Wildfire and natural disaster victims: Must be governor-proclaimed emergency; original property must be sold in damaged state; sale must be within two years of replacement property purchase or new construction; allows transfers anywhere within the state; value difference (replacement over original) added to original property base year value





## Here's How It Works

Base year value of original property: \$ 300,000

Market value of original property: \$1,300,000

Market value of replacement property: \$1,500,000

Replacement property value minus original property value:  
 $\$1,500,000 - \$1,300,000 = \$200,000$

New base year value of replacement property:  
 $\$300,000 + \$200,000 = \$500,000$

# Parent-Child and Grandparent-Grandchild Exclusion

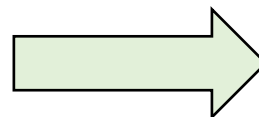
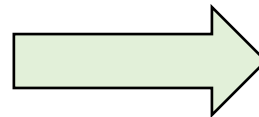
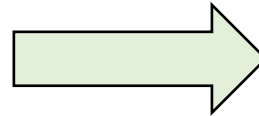
## Prior Law

Principal residence and other real property of transferor

No value limit for principal residence

\$1 million taxable base per transferor of other property (second home, business, etc.)

Filing period within 3 years of transfer



## Proposition 19

Principal residence of transferor and transferee

Difference between market value and base year value + \$1,000,000 added to base year value

Family farms do not need to be residence

File for Homeowners' or Disabled Veterans' Exemption within 1 year, file claim within 3 years

# PARENT-CHILD AND GRANDPARENT-GRANDCHILD EXCLUSION



February 16, 2021 is the effective date of the change

Base year value may be transferred to principal residence only

*(Exclusion will be removed if an eligible transferee later moves off the property or no longer qualifies for the homeowners' or disabled veterans' exemption)*

Other real property does not qualify for exclusion (second home, commercial property, rental properties, etc.)

Value limit of base year value plus \$1 million (\$1 million limit bi-annually adjusted)

Eligible transferee must apply for Homeowners' or Disabled Veterans' exemption within 1 year of transfer date



## The Family Farm

February 16, 2021 is the effective date of the change

Residence, Home site and Farmland included

Eligible for Parent-Child and Grandparent-Grandchild Exclusion

Not required to be the principal residence of the transferor and/or transferee

Value limit – If market value is greater than base year value plus \$1 million, difference is added to base year value



## Here's How It Works

Current base year value of home: \$300,000

Market value of home: \$1,500,000

Difference between base year value plus \$1 million and market value:

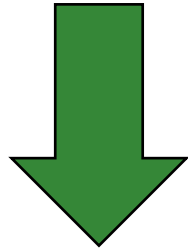
$$\$300,000 + \$1,000,000 = \$1,300,000$$

$$\$1,500,000 - \$1,300,000 = \$200,000$$

New taxable value of home:  $\$300,000 + \$200,000 = \$500,000$

# CALIFORNIA ASSESSORS' ASSOCIATION

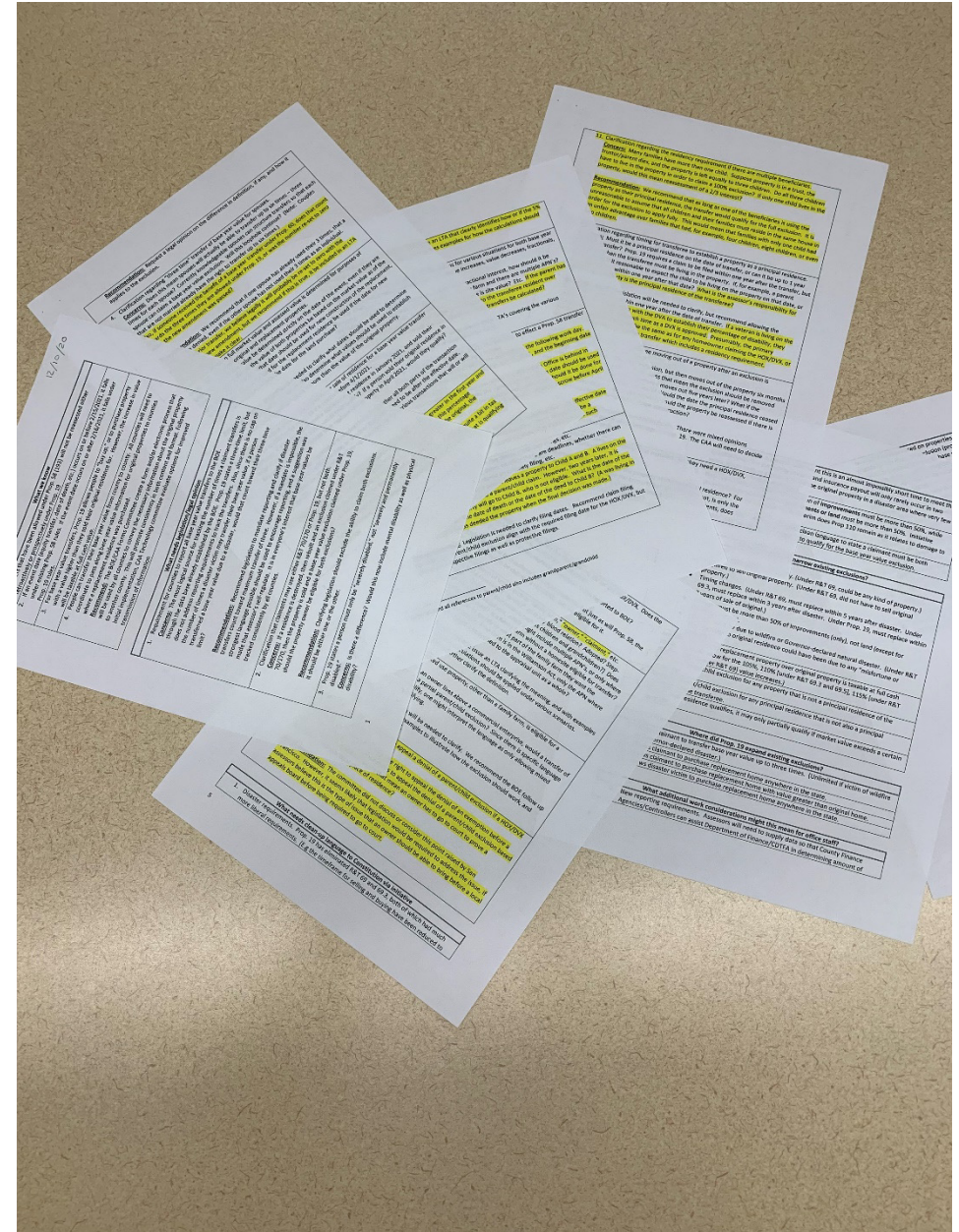
## Ad Hoc Committee



**SB 539**

R&T 63.2

R&T 69.6



And Now for the  
Details



What we know
1. Transfers that have been allowed under Prop. 58 (193) will not be reassessed either retroactively or prospectively under Prop. 19
2. If an event date (equity transfer, date of death, etc.) occurs on or before 2/15/2021, it falls under existing Prop. 58 rules. If the event date occurs on or after 2/16/2021, it falls under Prop. 19 rules.
3. For base year value transfers, Prop. 19 allows people to "buy up," or to purchase property with a value higher than they sold their original residence for. However, the increase in value will be taxable at full cash value.
4. People can transfer their base year value from county to county. All counties will need to coordinate to pass along base year value information for original properties to counties where a replacement residence was purchased. <b>Recommend:</b> The BOE/CAA Forms Committee create a form and/or electronic process that will be used by all counties to convey the necessary information about the original property to another county. This will promote consistency in both content and format. Following initial implementation, CAA Technology committee evaluate options for improved transmission of information

What needs legislation/legal opinion
1. Requirement for counties to report all base year value transfers to the BOE. <b>Concerns:</b> The most logical source for tracking the number of times a claimant transfers is through the data base already established by the BOE. Prop. 19 states a three-time limit, but does not address reporting requirements to track the transfers. Also, since there is no cap on the number of times a disaster victim may transfer their base year value, if a person transferred a base year value due to a disaster, would that count toward their three-time limit?  <b>Recommendation:</b> Recommend legislation to mandate reporting and clarify if disaster transfers count toward maximum transfer of three. However, if a mandate is impossible, the strongest language possible should be used to encourage reporting, and a suggestion was made that assessor's self-regulate. It is in everyone's interest that base year values be tracked consistently by all counties.
2. Clarification that claimants may use either R&T 70/170 or Prop. 19, but not both. <b>Concerns:</b> If a residence is destroyed, then rebuilt and an exclusion claimed under R&T 70/170, then the property is sold and a base year value exclusion claimed under Prop. 19, should the property owner be eligible for both exclusions?  <b>Recommendation:</b> Clarifying legislation should exclude the ability to claim both exclusions. It should be either one or the other.
3. Prop. 19 states a person must only be "severely disabled," not "severely and permanently disabled." <b>Concerns:</b> Is there a difference? Would this now include mental disability as well as physical disability?

6. Clarif  
woul  
**Con**  
orig  
Jan

**Re**  
m  
Re  
n

7. U

2

the  
allowing  
usage of fam

**Recommendations:** Legislation will be need  
including different examples to illustrate  
should be used.

arms as qual  
ms

appeal a demer



**Recommendation:** Request a legal opinion on the difference in definition, if any, and how it applies to the exclusion.

4. Clarification regarding “three time” transfer of base year value for spouses.

**Concerns:** Does this mean spouses will actually be able to transfer up to six times – three times for each spouse? Currently knowledgeable spouses can structure transfers so that each spouse can claim a base year value exclusion. Will this loophole continue? (Note: Couples that are not married already have the right to transfer up to six times.)

Also, if someone received the benefit of a base year transfer under Prop. 60, does that count towards the three times they are allowed under Prop. 19, or was the number re-set to zero when the new amendment was passed?

**Recommendation:** We recommend that if one spouse has already used their 3 times, that a claim can be denied, even if the other spouse has not used their 3 times as an individual.

Regarding a prior transfer, we believe legally it will probably be re-set to zero with the passage of the new amendment, but we recommend if this is true, it be included in an LTA from the BOE to make it clear.

5. Clarification of when full market value and assessed value is determined for purposes of comparison between original and replacement properties.

**Concerns:** Should the value be determined strictly on the date of the event, even if they are two years apart? Should the value of both properties be based on the market value as of the date of the latest event? What date should be used for new construction of the replacement, and what date should the land for the replacement residence be used if the date for new construction is different than the date for the land purchase?

**Recommendation:** Legislation is needed to clarify what dates should be used to determine value for the properties in order to also determine what values should be used to establish whether the replacement property is more than the value of the original property.

6. Clarification about what, if any, purchase or sale of residence for a base year value transfer would be qualifying for Prop. 19 if it occurs before 4/1/2021.

**Concerns:** If a person purchased a replacement residence in January 2021, and sold their original property in April 2021, would they qualify? If a person sold their original residence in January 2021, and purchased their replacement property in April 2021, would they qualify?

**Recommendation:** Legislation is needed to clarify whether all both parts of the transaction must be after the effective date, or whether only parts need to be after the effective date. Recommend the BOE write a follow-up LTA covering the various transactions that will or will not qualify.

7. Under Prop. 60, the value of the replacement can be up to 105% greater in the first year and up to 110% greater in the second year. Prop. 19 does not mention this percentage difference, only that if the value of the replacement is greater than the original, the difference is to be added to the base year being transferred.

**Concern:** The difference between have the “free” 5% or 10% can mean quite a bit in tax dollars for the claimant, so there would be differences in opinion about what is qualifying under Prop. 19.

- 1. Tran  
retr
- 2. If ar  
und  
Pro
- 3. For  
wit  
will
- 4. Pec  
coc  
wh  
Re  
wi  
to  
ini  
tr

- 1. R  
C  
t  
c  
t  
t  
l
- 2.
- 3.

**Recommendation:** Recommend the BOE write an LTA that clearly identifies how or if the 5% / 10% difference applies under Prop. 19, and uses examples for how the calculations should be done.

8. Clarification about correct application of calculations for various situations for both base year value transfers and parent/child<sup>1</sup> transfers. (I.e. Value increases, value decreases, fractionals, multiple APN's, etc.)

**Concerns:** If a parent/child exclusion is allowed for a fractional interest, how should it be calculated? What if the fractional interest is for a family farm and there are multiple APN's? What if the property is under the Williamson Act, so there is site value? Etc. If the parent has a high value property, and so transfers small percentages to the transferee resident over time, is this allowed, and how will the calculations for such transfers be calculated?

**Recommendation:** Recommend the BOE write one or more LTA's covering the various transactions, and the proper method of calculation for each.

9. The effective date for Prop. 19 is February 16, 2021. The last date to effect a Prop. 58 transfer is February 15, 2021. In 2021, February 15 is a legal holiday.

**Concern:** Normally filing dates ending on a holiday are extended to the following work day. Does this mean the actual final date for Prop. 58 is February 16, 2021, and the beginning date for Prop. 19 is February 17, 2021?

Also, what are the recommendations for counties where the Recorder's Office is behind in their recordings? Is there a time frame where the signature/notarization date should be used as the effective date? If this is done for the parent/child exclusion, then should it be done for the base year value transfers as well? (For example, if a deed is signed in escrow before April 1, 2021, but is not recorded until after April 1, 2021?)

**Recommendation:** We recommend the BOE issue an LTA regarding the legal effective date for the beginning date of Prop. 19 for parent/child transfers. There should also be a discussion about signature vs. recording dates, and how counties should process such anomalies.

10. Rules for timely filing of claims, prospective filings, protective filings, etc.

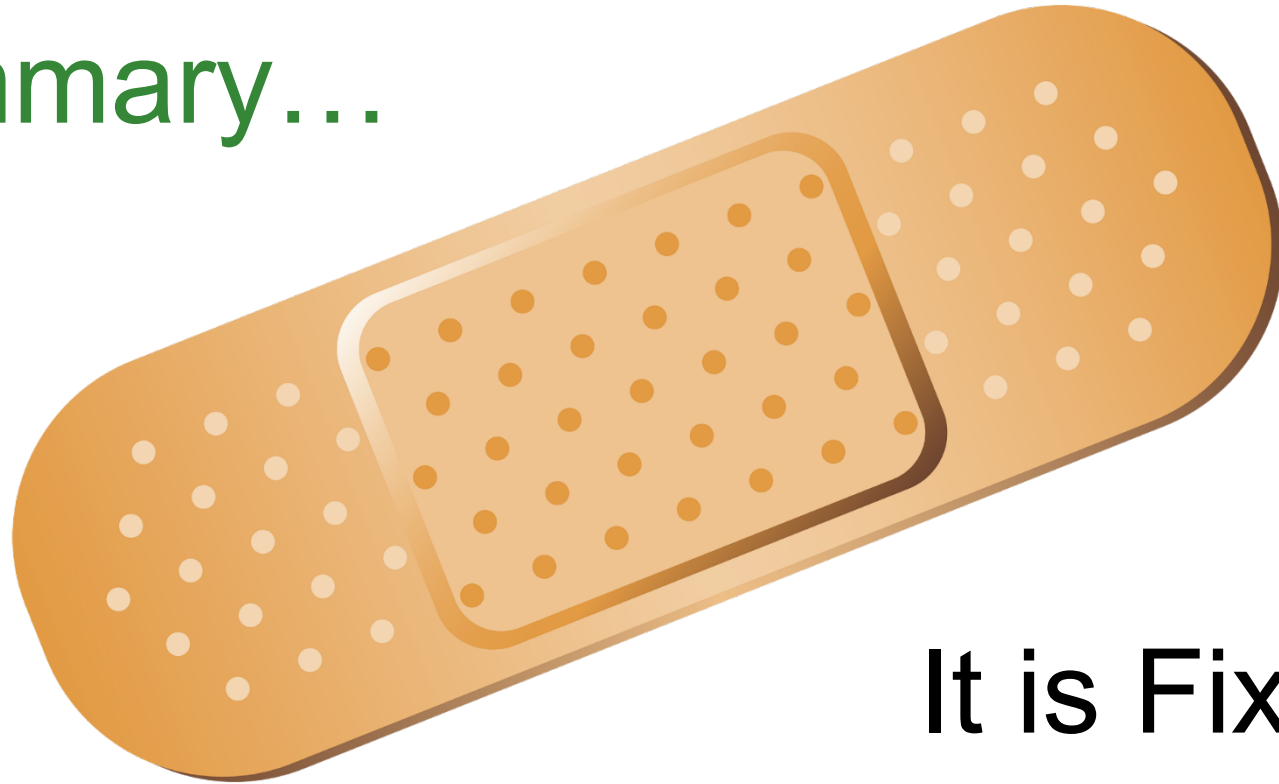
**Concerns:** Prop. 19 is silent on filing dates, whether there are deadlines, whether there can be prospective filings, what is considered an untimely filing, etc.

For example, suppose on a death a parent leaves a property to Child A and B. A lives on the property, and files a HOX claim and a parent/child claim. However, two years later, it is determined that the property will go to Child B, who is not eligible. What is the date of the change in ownership? The date of death or the date of the deed to Child B? (A was living in the property until B was deeded the property when the final decision was made.)

**Recommendation:** Legislation is needed to clarify filing dates. Recommend claim filing dates for the parent/child exclusion align with the required filing date for the HOX/DVX, but allows for prospective filings as well as protective filings.

<sup>1</sup> Going forward all references to parent/child also includes grandparent/grandchild

Summary...



It is Fixed  
For Now  
As Well As It Can  
Be Fixed

# Fixing Prop 19

## SB 539

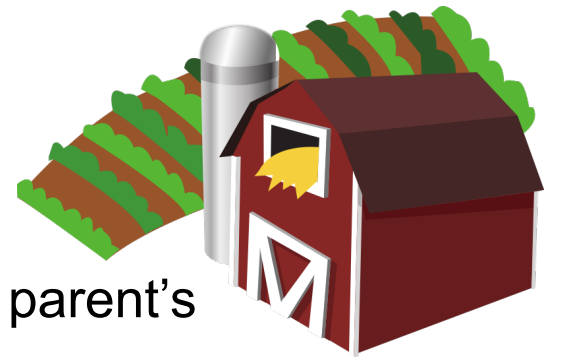
Statutory implementation of Prop. 19 – creates Revenue and Taxation Code Sections 63.2 and 69.6

### Key Points....

- ✓ For Base Year Value transfers:
  - “Equal” allows for 105% (first year) and 110% (second year)
  - Includes ADU’s and JADU’s as part of residence
  - R&T 69 and 69.3 (disaster provisions) remain in place
- ✓ For Primary Residence transfers:
  - If eligible transferee moves out, allows another eligible transferee to move in within one year to continue exclusion
- ✓ For Family Farm transfers:
  - Defines “farm” as per legal parcel



# Saving the Family Farm



## *Problems:*



**Primary Residence:** Live on the property that was also your parent's primary residence. (Pick between favorite children?)



**Limit the transfer** of the old tax base to the first \$1 million of market value over the old tax base for an entire farm or ranch.



**Tax increase** for the difference between the old tax base and the market value above \$1 million plus the old tax base on the entire ranch or farm property.

## *Solutions:*



**Each legal parcel**, rather than the farm or ranch as a whole, will be assessed as a “family farm”.



**Clarify that a “family home” and a “family farm”** legal parcel upon which the family home is located are eligible for individual exclusions from property tax reassessment.



Howard Jarvis  
Taxpayers Association  
*established in 1978*

Restore Constitutional Protections to help families climb the economic ladder by building generational wealth

Reinstate Propositions 58 and 193

\$2.5 million base  
Indexed for inflation

1.5 million signatures by April 30, 2022

SB 539 Retained until/unless Repealed

Help us repeal the Prop. 19 death tax

Jon Coupal

Aug 31, 2021

Tweet

Like 23

Share

Whether you're looking at historic election results or recent polling, it's clear beyond any doubt that Californians hate death taxes. Back in 1982, voters overwhelmingly approved two ballot measures to abolish state inheritance and gift taxes—not only abolish them, but ban them permanently.

A few years later, rising property values had created a new kind of death tax. Property that was transferred within families was being reassessed to market value at the time of transfer, and because real estate prices had gone up so sharply, property that was transferred at the time of death brought with it a new annual property tax bill that was often unaffordable. Grieving families that were unable to pay the new tax bills were forced to sell family properties.

The political heat became so intense that the Legislature passed, by a unanimous vote in both houses, a measure that said homes and a limited amount of other property would be excluded from reassessment when transferred between parents and children. This measure was Proposition 58 on the 1986 ballot. It was approved by more than 75% of voters. Ten years later, voters approved Proposition 193 to extend the same tax rules to transfers of property between grandparents and grandchildren when the children's parents were deceased.

Sadly, all these protections for California families were swept away by

## Family Farm under SB 539

Parent to child transfer

4 cultivated parcels

Each parcel: Assessed value: \$600,000

Market value: \$1.7 million

SB 539: (AV + \$1 million exclusion cap) = \$1.6 million

Result: Market value of each parcel exceeds SB539 by \$100,000

Tax increase of \$1,000 (1% of \$100,000) = \$4,000 per year

**Without SB 539: Tax Increase over \$30,000 per year**

## Family Farm under Repeal the Death Tax

Parent to child transfer

Transfer up to \$2.4 million assessed value (in addition to a home of any value)

Each parcel: Assessed Value: \$600,000 x 4 parcels = \$2.4 million

Result: No tax increase

# Family Farm under SB 539 and Repeal the Death Tax

Parent to Child Transfer

4 Cultivated parcels

Each parcel: Assessed Value \$700,000

Market Value: \$1.7 million

SB 539: No reassessment (Market value does not exceed Assessed Value of \$1 million)

Repeal the Death Tax: No tax increase

First \$2.4 million transfers without reassessment



## Strong vs. Board of Education

Legislature has the power to create exemptions from property tax increases unless prohibited by the State Constitution

U.S. Constitution

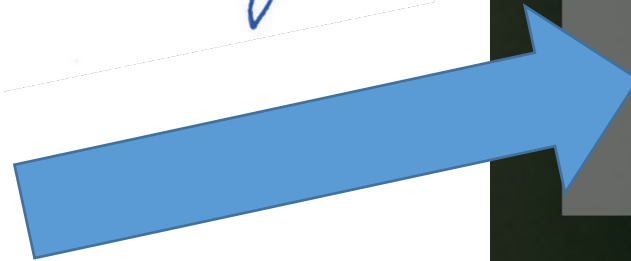
*Grants Powers*

California Constitution

*Limits Powers*

I Endorse  
The Initiative  
To Repeal  
the Death Tax

*Joseph Budlonavsky*



## Breaking News: Repeal the Death Tax Act

An initiative to protect Prop. 13 for our children – HJTA  
has filed an initiative with the Attorney General

GET THE FACT SHEET

GET THE PETITION!

*Thank you!*

**San Luis Obispo County Assessor's Office**

Main Office: (805) 781-5643

North County: (805) 461-6143

Email: [tbordonaro@co.slo.ca.us](mailto:tbordonaro@co.slo.ca.us)

Website: [www.slocounty.ca.gov/assessor](http://www.slocounty.ca.gov/assessor)

# How did Prop 19, Senate Bill 539 Change Property Taxes for Agriculture Inheritance

Victor J. Herrera  
vherrera@carnaclaw.com

(805) 546-8785

694 Santa Rosa Street, San Luis Obispo, CA 93401

1908 Spring Street, Paso Robles, CA 93446

March 23, 2021

**THE INFORMATION PROVIDED HEREIN  
DOES NOT, AND IS NOT INTENDED TO,  
CONSTITUTE LEGAL ADVICE; INSTEAD  
ALL INFORMATION, CONTENT, AND  
MATERIALS ARE FOR GENERAL  
INFORMATIONAL PURPOSES ONLY.**

**CONTACT YOUR ATTORNEY TO OBTAIN  
SPECIFIC ADVICE TAILORED TO YOUR  
SITUATION.**

# Founding Partners



Timothy J. Carmel



Ziyad I. Naccasha

Carmel & Naccasha LLC provides legal services ranging from corporate and business transactions, including employment and labor, to will, trust, and estate planning since 2004. We pride ourselves on having an open and consistently interactive relationships with clients.

# Victor J. Herrera

Recent transplant from the Inland Empire to San Luis Obispo.

Work focuses on probate related issues, including but not limited to wills, trusts, conservatorship, guardianship, and related litigation.



# Pro Bono, Marketing, and Memberships



**CAL POLY**  
Center for Innovation  
& Entrepreneurship



**San Luis Obispo County Bar Association**



**Big Brothers  
Big Sisters®**

SAN LUIS OBISPO COUNTY



# Prior Tax Scheme

- A variety of propositions were passed over the past four decades leading up to Proposition 19
  - Key Propositions include Prop 13, Prop 58, Prop 193, Prop 13 passed in 1978
  - In most cases, the other propositions clarified or refined Prop 13
- Limited when property taxes could change on a specific parcel of land

# Applicability of Prop 13

- Prop 13 was designed to lock in tax rates for homeowners and was further modified to protect the tax base of the property when transferred to a child or grandchild
- Applied to primary residence and investment properties
- Tax reassessment if property sold, but not transferred to certain family members

# Post-Prop 19 Tax Scheme

- Only applies to the principal residence of the transferor
- Transferee must reside in the residence within one year to benefit
- No change to tax basis if after transfer, value of residence is equal to or less than current taxable value plus \$1,000,000.00
  - If value of residence is more than current taxable value plus \$1,000,000.00, the difference may be taxed

# Ambiguity with Prop 19

- If multiple children, do all need to reside in residence?
- How long in residence to qualify for lower tax base? What constitutes leaving the property?
- What if transferee cannot occupy the residence (condemned, in jail, legal dispute, out of country)

# SB 539 Changes

- Designed to answer some of the ambiguities of Prop 13
- Is retroactive to the date of February 16, 2021
- Implemented Section 63.2 of the Revenue and Taxation Code

# RTC Section 63.2

- 63.2(a)(2): The purchase or transfer is of a family farm of an eligible transferor in the case of a purchase or transfer between parents and their children...:
- 63.2(a)(2)(A): This exclusion shall apply separately to the transfer of each legal parcel that makes up a family farm
- 63.2(a)(2)(B): For purposes of this section, each legal parcel that makes up a family farm shall be deemed to itself be a family farm except for a legal parcel containing a family home

# RTC Section 63.2

- 63.2(a)(2)(C): A legal parcel containing a family home as described in subparagraph (B) may qualify separately for exclusion under paragraph (1)
- 63.2(d): The new taxable value of the family home or family farm shall be the sum of both of the following:
  - (1) The taxable value of the family home or farm...Section 110.1...determined as of the date immediately prior to the date the principal residence or family farm is purchased or transferred to the transferee

# RTC Section 63.2

- (2) The applicable of the following amounts:
- (A) Fair market value...of the family home or family farm upon purchase by, or transfer to, the transferee is less than the sum of the taxable value...plus \$1,000,000.00, then zero dollars
- (B) Fair market value...of the family home or family farm upon purchase by, transfer to, the transferee is equal to or more than the sum of the taxable value...plus \$1,000,000.00, an amount equal to the FMV minus the sum of taxable value plus \$1,000,000.00



# Potential Issues with SB 539

- How are the various parcels to be treated and the values determined
- Does the child have to “live” on each parcel of the larger farm? If so, what does that mean?
- What happens if the county divides the property into separate parcels?
- What happens if you initiate a process to subdivide the property into separate parcels?
- How much land around the primary residence will be considered part of the primary residence and not farm land?

# Potential Litigation

- Prop 19 and SB 539 will be litigated
- May take years to get clarification on some of the terms
- Prop 19 will likely survive any serious challenges
- SB 539 challenges
  - Unfair treatment claim
  - Suits for clarification of terms

# Examples

- Scenario #1. Mom and Dad own a single parcel of land with 400 acres, purchased in 1982 with property taxes of \$10,000 year.
- Mom and dad both pass away prior to February 16, 2021
- We follow the tax scheme of Prop 13

# Examples

- Scenario #2. Mom and Dad own a single parcel of land with 400 acres, purchased in 1982 for \$650,000.00 with property taxes of \$10,000 year.
- Dad passes away in 2010. Mom passes away March 14, 2021
- We follow the tax scheme of Prop 19 and SB 539
- Current Fair market value is \$1,500,000.00
- Taxable Value is \$650,000 year.
  - \$650,000.00 + \$1,000,000.00 is greater than FMV \$1,500,000.00

# Examples

- Scenario #3. Mom and Dad own a single parcel of land with 400 acres, purchased in 1982 for \$650,000.00 with property taxes of \$10,000 year.
- Dad passes away in 2010. Mom passes away March 14, 2021
- We follow the tax scheme of Prop 19 and SB 539
- Current Fair market value is \$2,000,000.00
- Taxable Value is \$650,000 plus tax rate on \$350,000.00.
  - \$650,000.00 + \$1,000,000.00 is less than FMV \$2,000,000.00

# Examples

- Scenario #4. Mom and Dad own a two parcels of land with 400 acres, purchased in 1982 for \$325,000.00 each (total of \$650,000.00) with property taxes of \$5,000 year/each
- Dad passes away in 2010. Mom passes away September 19, 2021
- We follow the tax scheme of Prop 19 and SB 539
- Current Fair market value of each parcel is \$1,000,000.00
- Taxable Value is \$650,000

# Example

- Scenario #5. Mom and Dad own a two parcels of land with 400 acres, purchased in 1982 for \$325,000.00 each (total of \$650,000.00) with property taxes of \$5,000 year/each
- Dad passes away in 2010. Mom passes away September 19, 2021
- We follow the tax scheme of Prop 19 and SB 539
- Current Fair market value of each parcel is \$1,500,000.00
- Taxable Value is \$325,000 + \$325,000 plus new rate on \$150,000 plus \$150,000