Initial Statement of Reasons for the Proposed Adoption of

California Code of Regulations, Title 18, Division 5, Chapter 5, County Revenue Protection Fund Regulations, and Section 35401, Registration, Reporting, and Reimbursement

SPECIFIC PURPOSE, PROBLEMS INTENDED TO BE ADDRESSED, NECESSITY, AND ANTICIPATED BENEFITS

Current Law

Base Year Value

As relevant here, section 1 of article XIII A of the California Constitution generally limits the maximum amount of ad valorem taxes on real property to one percent of the full cash value of that property and requires the one percent tax to be collected by the counties and apportioned according to law to the districts within the counties. (All further section references are to sections in article XIII A of the Cal. Const., unless otherwise specified.) Section 2 generally defines full cash value as the appraised value of the real property when purchased, newly constructed, or a change in ownership has occurred. It authorizes the full cash value base to be adjusted by an annual inflationary rate not to exceed two percent. It also authorizes the full cash value to be reduced to reflect substantial damage, destruction, or other factors causing a decline in value.

For purposes of section 2, subdivisions (a) and (b) of Revenue and Taxation Code (RTC) section 110.1 generally provide that the base year value for real property is the “full cash value” or fair market value of the property as determined pursuant to RTC section 110 on the 1975 lien date or the date of the most recent change in ownership of the property or the date of completion of new construction. Subdivision (f) of RTC section 110.1 requires the base year value of real property to be adjusted by an inflation factor for each lien date after the lien date in which the base year value is determined, and that adjusted value is known as the adjusted base year value. RTC section 51 prohibits the inflation factor from exceeding two percent of the prior year’s value. RTC section 51 further provides, for purposes of section 2, that for each lien date after the lien date in which the base year value is determined, the taxable value of real property is generally the lesser of: (1) the adjusted base year value; or (2) its full cash value, as defined in RTC section 110, as of the lien date, taking into account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property, or other factors causing a decline in value. The lien date is the first day of January preceding the fiscal year for which the taxes are levied, unless otherwise provided. (RTC, § 2192.)

Base Year Value Transfers

Subdivision (a) of section 2 authorizes the Legislature to enact legislation that allows a person over 55 years of age or any severely and permanently disabled person residing in property eligible for the homeowner’s exemption to transfer the property’s adjusted base year value to a replacement dwelling of equal or lesser value located in the same county or another county that has adopted an ordinance allowing in-bound base year value transfers from other counties that is purchased or newly constructed by that person as his or her principal residence within two years
of the sale of the original property. The Legislature enacted RTC section 69.5 to allow those base year value transfers when certain conditions are met. As of November 7, 2018, the following 10 counties had ordinances enabling these types of intercounty base year value transfers: Alameda, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Mateo, Santa Clara, Tuolumne, and Ventura. (See www.boe.ca.gov/proptaxes/prop60-90_55over.htm.)

Subdivision (e) of section 2 requires the Legislature to enact legislation that allows the base year value of property that is substantially damaged or destroyed by a disaster, as declared by the Governor, to be transferred to comparable property within the same county that is acquired or newly constructed as a replacement for the substantially damaged or destroyed property. Subdivision (e) of section 2 also authorizes the Legislature to enact legislation authorizing counties to adopt ordinances allowing similar in-bound base year value transfers if the replacement property is of equal or lesser value and acquired or newly constructed within three years of the substantial damage or destruction to the original property. The Legislature enacted RTC sections 69 and 69.3 to allow these intra-county and intercounty base year value transfers, respectively. As of May 6, 2021, the following 14 counties had adopted ordinances enabling these types of intercounty base year value transfers: Contra Costa, Glenn, Los Angeles, Modoc, Orange, San Diego, San Francisco, Santa Clara, Solano, Sonoma, Sutter, Ventura, Yolo, and Yuba. (See www.boe.ca.gov/proptaxes/disaster-relief.htm#FAQs.)

Parent-Child and Grandparent-Grandchild Transfer Exclusions

Subdivision (h) of section 2 provides that the purchase or transfer of the principal residence and the first one million dollars of the full cash value of other real property of a transferor, in the case of a transfer between parents and their children or between grandparents and their grandchildren if all the parents of those grandchildren are deceased, is not a “purchase” or “change in ownership” for purposes of determining the “full cash value” of property under section 2. The Legislature enacted RTC section 63.1 to implement the parent-child and grandparent-grandchild transfer exclusions from reassessment and it generally provides that the full cash value of other real property is its adjusted base year value immediately prior to the date of its purchase or transfer. (RTC, § 63.1, subd. (c).)

Proposition 19

Assembly Constitutional Amendment No. 11 (Stats. 2020, ch. 31), the Home Protection for Seniors, Severely Disabled, Families, and Victims of Wildfire or Natural Disasters Act, was placed on the ballot as Proposition 19, approved by the voters at the November 3, 2020, statewide general election, and added sections 2.1, 2.2, and 2.3 effective December 16, 2020. As relevant here, subdivision (b) of section 2.1 expanded base year value transfers by authorizing an owner of a primary residence who is over fifty-five years of age, severely disabled, or a victim of a wildfire or natural disaster to transfer the taxable value of their primary residence to a replacement primary residence located anywhere in the state, beginning April 1, 2021, 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. Also, for any transfer of taxable value to a replacement primary residence of greater value than the original primary residence, subdivision (b) of section 2.1 requires the taxable value of the replacement primary residence to be calculated by adding the difference
between 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.

Subdivision (c) of section 2.1 provides new parent-child and grandparent-grandchild transfer exclusions that apply to purchases and transfers on and after February 16, 2021, and subdivision (d) of section 2.1 makes the parent-child and grandparent-grandchild transfer exclusions discussed above inoperative as to any purchase or transfer occurring on or after February 16, 2021. The exclusions provided by subdivision (c) only apply to purchases or transfers of a family home or family farm and require the property to continue as the family home or family farm of the transferee. Also, subdivision (c) provides that the new taxable value of the family home or family farm is the sum of the taxable value of that property, subject to adjustment as authorized by section 2, determined as of the date immediately prior to the date of the purchase by, or transfer to, the transferee (“prior taxable value”), plus the amount by which the value of the family home or family farm exceeds the sum of the prior taxable value and one million dollars. Due to the provisions of subdivisions (c) and (d), partial parent-child and grandparent-grandchild transfer exclusions may only be allowed on the purchase or transfer of family homes or family farms with an assessed value of over one million dollars. (See www.boe.ca.gov/prop19/#FAQs for an example of a partial exclusion due to the taxable value calculation.) Also, there is no longer a parent-child or grandparent-grandchild transfer exclusion that applies to the sale or transfer of real property that is not a family home or family farm.

Section 2.2 created the California Fire Response (CFR) Fund and the County Revenue Protection (CRP) Fund in the State Treasury. Section 2.2 requires the Director of Finance to calculate the additional revenues and savings that accrued to the state from the implementation of section 2.1 during the prior fiscal year ending June 30 on or before September 1, 2022, and each subsequent September 1 thereafter. Section 2.2 requires the Controller to transfer 75 percent and 15 percent of the amount calculated by the Director of Finance from the General Fund to the CFR Fund and CRP Fund, respectively, by September 15, 2022, and each subsequent September 15 thereafter. Section 2.2 also continuously appropriates moneys in the CRP Fund for the purposes of reimbursing counties and local agencies that incur a negative gain and paying the California Department of Tax and Fee Administration’s (Department’s) administrative costs, in accordance with section 2.3 (discussed below).

Subdivision (a) of section 2.3 requires each county to annually determine the gain for the county and for each local agency in the county resulting from the implementation of section 2.1 by adding the following amounts:

1. The revenue increase resulting from the sale and reassessment of original primary residences for outbound intercounty transfers pursuant to subdivision (b) of section 2.1;
2. The revenue decrease, which shall be expressed as a negative number, resulting from the transfer of taxable values of original primary residences located in other counties to replacement primary residences located within the county for inbound intercounty transfers pursuant to subdivision (b) of section 2.1; and
3. The revenue increase resulting from subdivision (c) of section 2.1.
So, the gains the counties determine under subdivision (a) may be positive or negative. Also, subdivision (a) requires the Department to adopt a regulation pursuant to section 2.3 that specifies the date by which the counties’ annual determinations shall be made.

Subdivision (b) of section 2.3 makes a county or local agency in the county that has a positive gain for a determination period, as determined pursuant to subdivision (a), ineligible to receive reimbursement from the CRP Fund for that period. Subdivision (b) also deems a county or any local agency that has a negative gain for a determination period, as determined pursuant to subdivision (a), eligible to receive reimbursement from the CRP Fund for that period.

Subdivision (f) of section 2.3 provides that an “eligible local agency” is a county, a city, a city and county, a special district, or a school district as determined pursuant to subdivision (o) of Section 42238.02 of the Education Code as it read on January 8, 2020, that has a negative gain as determined pursuant to section 2.3. Subdivision (c) of section 2.3 requires the Department to determine each eligible local agency’s aggregate gain every three years, based on the amounts determined by the counties under subdivision (a), and provide each county and local agency with an aggregate negative gain reimbursement equal to that amount from the CRP Fund. If there is insufficient money in the CRP Fund to cover the total amount of reimbursements, subdivision (c) requires the Department to allocate a pro rata share of the money in the fund to each county and local agency based on the amount it is eligible to be reimbursed relative to the total amount all the counties and local agencies are eligible to be reimbursed for the aggregation period.

Subdivision (d) of section 2.3 requires the Controller to transfer any remaining balance in the CRP Fund to the General Fund after the Department has reimbursed each county and local agency that has experienced a negative gain during an aggregation period to be available for appropriation for any purpose. Subdivision (e) of section 2.3 requires the Department to adopt regulations to implement section 2.3 pursuant to the rulemaking provisions in the Administrative Procedure Act (APA) (Gov. Code (GC), § 11340 et seq.). The Legislature has not enacted Legislation to further implement section 2.3.

Proposed Chapter and Regulation

The Department determined that section 2.3 created an issue (or problem within the meaning of GC, § 11346.2) because it requires the Department to adopt a regulation specifying the date by which each county must annually determine the gain for the county and for each local agency in the county resulting from the implementation of section 2.1. The Department determined that section 2.3 created issues (or problems) because section 2.3 does not specify the period for which each annual determination shall be made and the provisions of subdivisions (c) and (d) of section 2.1 became operative in the middle of February 2021, rather than the beginning of a month, or a calendar year, or the state’s fiscal year, which is the same as the fiscal year for property tax purposes. The Department determined that section 2.3 also created issues (or problems) because it requires the Department to determine each eligible county’s and local agency’s aggregate gain every three years, based on the gains determined by the counties, and provide reimbursement to each county and local agency with an aggregate negative gain from the CRP Fund. However, it does not provide procedures for the Department to obtain the information it needs to make the aggregate gain computations and send reimbursement to the counties and local agencies with an aggregate negative gain every three years. Also, it does not
specify when the Department will make the aggregate gain computations, determine if there is sufficient money in the CRP Fund to fully reimburse the counties and local agencies with an aggregate negative gain, and then provide full or pro rata reimbursement from the CRP Fund. As a result, the Department drafted new chapter 5, County Revenue Protection Fund Regulations, to be added to division 5 of title 18 of the California Code of Regulations (CCR), and section (Regulation) 35401, Registration, Reporting, and Reimbursement, to be included in new chapter 5 for the specific purpose of addressing these issues (or problems). As further explained below, proposed Regulation 35401:

- Requires each county to register with the Department to report the gains it is required to annually determine for the county and each local agency in the county under subdivision (a) of section 2.3;
- Clarifies the determination periods for which the gains shall annually be determined under subdivision (a) of section 2.3;
- Specifies the dates by which the gains shall annually be determined as required by subdivision (a) of section 2.3;
- Requires each county to report the gains it annually determines under subdivision (a) of section 2.3 to the Department by specified reporting due dates every three years; and
- Clarifies how the Department will use the gains reported by the counties to determine each county’s and local agency’s aggregate gain every three years and provide reimbursement to each county and local agency with an aggregate negative gain from the money in the CRP Fund under subdivision (c) of section 2.3.

In addition, the Department recognizes that section 2.3 created additional issues for the counties because it requires each county to determine specified property tax revenue increases and decreases to annually determine the gain for the county and each local agency in the county. However, it does not impose that requirement on any specific part or parts of each county’s government (e.g., Assessor, Auditor-Controller, Board of Supervisors) and it does not clarify how each county is supposed to calculate the specified property tax revenue increases and decreases for the county and each local agency in the county. The Department is not aware of any other law that addresses those issues, and it appears that each county will annually require detailed information from their Assessor’s office about section 2.1’s impacts on adjusted base year values and detailed information from the office of their Auditor-Controller, Auditor and Controller, Controller, or Director of Finance1 about how those impacts on adjusted base year values affect the property tax revenues for the county and each local agency in the county to determine gains under section 2.3.

Furthermore, the State Board of Equalization assesses state-assessed property for property taxes purposes (Cal. Const., art. XIII, § 19), prescribes rules and regulations to govern county assessors when assessing property taxes (GC, § 15606), and conducts surveys of the county assessors’ assessment practices (GC, § 15640 et seq.). The Controller’s office meets with the

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1 In 54 of the 58 counties, the Auditor-Controller is an independent elected office established to provide various accounting and property tax administration services to the county government, special districts, schools and cities. The four counties with appointed officers are: 1) San Francisco, Controller appointed for eight years; 2) Santa Clara, appointed Director of Finance; 3) Los Angeles, appointed Auditor-Controller; and 4) San Diego, appointed Auditor and Controller. (See https://www.counties.org.)
county auditors at the Annual State Controller’s Conference with County Auditors
(https://www.sco.ca.gov/ard_state_controllers_conference_with_county_auditors.html) “for the
purpose of discussion of problems dealing with county budget procedure, reporting of financial
transactions of the counties, allocation of property tax revenues, including the Special District
Augmentation Fund, and to promote uniformity of procedure in all matters pertaining to the
duties of county auditors, throughout the state.” (GC, § 12422.) However, the Department does
not have a role in the administration of property taxes.

As a result, the Department held an interested parties meeting on May 21, 2021, to discuss
general issues related to section 2.3 with the counties. The Department conducted surveys with
the counties in May 2021 and January 2022 so the Department could answer questions related to
proposed Regulation 35401 and the counties’ initial questions about how to calculate gains under
section 2.3 based on the general consensus drawn from the counties’ survey responses. The
Department also posted a Proposition 19 guide on its website (www.cdtfa.ca.gov/taxes-and-
fees/Prop-19-Home-Protection-Act.htm#Overview) that provides background information about
Proposition 19, the counties’ duties to annually determine gains under section 2.3, answers to
frequently asked questions about calculating and reporting gains that are based on the responses
from the surveys, and the results of both surveys. However, the Department is not planning to
send additional surveys to the counties and cannot provide further guidance about how the
counties should calculate gains under section 2.3 at this time. The Department also recommends
that the counties contact the California Assessors Association and/or California State Association
of County Auditors if they have new questions about how to calculate gains that are not
addressed in the guide, and work with those associations to establish uniform answers to those
questions.

Proposed Regulation 35401

Subdivision (a) of proposed Regulation 35401 defines important terms used in the regulation,
including “contact information,” “county,” “County Revenue Protection Fund Account,”
“Department,” “fiscal year,” “gain,” “identifying information,” “local agency,” “negative gain,”
“representative information,” and “state holiday.” Subdivision (a) clarifies that the term
“county,” as used in the proposed regulation, is limited to a county in this state because only
counties in this state are required to calculate gains under subdivision (a) of section 2.3, and that
the term “county” includes a “city and county,” as provided in GC section 19, to avoid
confusion. Subdivision (a) clarifies that the term “fiscal year,” as used in the proposed
regulation, means a one-year period beginning on July 1 and ending on June 30 because fiscal
years can begin and end on different dates for different purposes and that is the fiscal year for
property tax purposes. (RTC, § 75.6.) Subdivision (a) clarifies that the term “gain,” as used in the
proposed regulation, means the amount determined by adding the revenue increases and
decreases specified in subdivision (a) of section 2.3, rounded to the nearest whole dollar, and that
the term “negative gain,” as used in the proposed regulation, means a gain that is less than zero.
Subdivision (a) clarifies that the term “local agency” means a city, a special district, or a school
district as determined pursuant to subdivision (o) of section 42238.02 of the Education Code as
that subdivision read on January 8, 2020, based on the definition of eligible local agency in
subdivision (f) of section 2.3. Subdivision (a) also clarifies that the term “state holiday,” as used
in the proposed regulation, means a state holiday listed in GC section 6700, including every
Sunday.
Subdivision (b) of proposed Regulation 35401 incorporates the requirement that each county annually determine the gain for the county and each local agency in the county from subdivision (a) of section 2.3. It also clarifies that a negative gain shall be expressed as a negative number.

Subdivision (c) of proposed Regulation 35401 requires each county to electronically register for a County Revenue Protection Fund Account through the Department’s online services portal, and provide its “contact information,” as defined in subdivision (a), which includes the information the Department needs to identify and communicate with the county’s authorized representatives, and the counties “identifying information,” as defined in subdivision (a), which includes the information the Department needs to specifically identify and reimburse the county and each local agency in the county. Subdivision (c) also requires each county to update their registration information in a reasonable and timely manner. The Department determined that it is necessary for each county to register with the Department for a County Revenue Protection Fund Account so that each county can report the gains it determines under subdivision (a) of section 2.3 to the Department and the Department can use the gains to determine each county’s and local agency’s aggregate gain every three years, as required by subdivision (c) of section 2.3. The Department determined that, as part of the registration process, it is necessary for each county to provide the information the Department needs to specifically identify the county and each local agency in the county, identify and communicate with each county’s authorized representatives, and send reimbursement to the counties and local agencies with aggregate negative gains. The Department also determined it would be more effective and efficient for the counties to register through the Department’s online services portal, rather than complete and submit hard copy forms.

Subdivision (d)(1) of proposed Regulation 35401 clarifies that the initial determination period is the period beginning on February 16, 2021, and ending on June 30, 2022, as suggested in a response to the Department’s May 2021 survey, and each subsequent determination period is a fiscal year beginning July 1 and ending on June 30, commencing with the fiscal year beginning on July 1, 2022, and ending on June 30, 2023. (The responses to the May 2021 survey are available at www.cdtfa.ca.gov/forms/pubs/cdtfa814.pdf.) There are no provisions in section 2.3 that specify which periods’ revenue should be included in the counties’ annual determinations. However, subdivision (a) of section 2.3 requires each county to include the revenue increases from section 2.1’s limitations on the parent-child and grandparent-grandchild transfer exclusions, which became operative February 16, 2021, in its annual determinations. Therefore, the Department determined that it is necessary for the counties’ initial determination period to begin on February 16, 2021. Also, the Department understands that property tax is assessed on a fiscal-year basis, counties determine their property tax revenue using a fiscal year that begins on July 1 and ends on June 30, and a substantial majority of the counties that responded to the Department’s survey would prefer that their annual determinations be made using the same fiscal year periods. The Department recognizes that the intent of sections 2.2 and 2.3, when read together, was for the Department to issue its first reimbursements to the eligible counties and local agencies after the Director of Finance has calculated the additional revenues and savings that accrued to the state from the implementation of section 2.1 for three consecutive fiscal years, beginning with the fiscal year ending on June 30, 2022, and the Controller has transferred 15 percent of that money into the CRP fund. The Department also recognizes that the intent of sections 2.2 and 2.3 was for the first reimbursements to compensate the counties and local agencies with aggregate negative gains for their revenue losses from the implementation of section 2.1 for the same fiscal years. Therefore, the Department determined that it is necessary
for the end of the counties’ initial determination period to coincide with the end of the fiscal year ending on June 30, 2022, and for each subsequent determination period to be a fiscal year that begins on July 1 and ends on June 30.

Subdivisions (d)(2) of proposed Regulation 35401 specifies the date by which the counties’ annual determinations shall be made in accordance with subdivision (a) of section 2.3. It provides that on or before January 31, 2023, each county shall determine the gain for the county and each local agency in the county for the initial determination period ending on June 30, 2022. It also provides that on or before January 31, 2024, and each subsequent January 31 each county shall determine the gain for the county and each local agency in the county for the determination period ending on the preceding June 30. Also, subdivision (d)(3) of Regulation 35401 clarifies that if any January 31 specified in subdivision (d)(2) falls on a Saturday or state holiday, then each county shall determine the gain for the county and each local agency in the county on or before the next business day following that January 31. The Department’s May 2021 survey asked the counties when the due date should be for them to determine the gain for the county and each local agency in the county for the prior fiscal year ending on June 30 so the Department could identify a reasonable due date that would be the least burdensome for all the counties. The counties’ responses indicated that it would be feasible for them to make their determinations for the prior fiscal year ending on June 30 by the following January 31, if not sooner. Therefore, the Department determined that an annual determination date of January 31 is reasonable and will provide the counties sufficient time to obtain the necessary data to make their determinations for the determination period ending on the preceding June 30. Also, when the last day to perform an act falls on a Saturday or state holiday, California law generally permits that act to be performed on the next business day (see, e.g., GC, § 6707). Therefore, the Department determined that it is reasonable to allow the counties to make their determinations on the next business day when the last day to make their determinations falls on a Saturday or state holiday, including a Sunday.

Subdivision (e) of proposed Regulation 35401 permits a county to change any gain timely determined under subdivision (d)(2) for any reason before the gain is required to be reported to the Department. The Department understands that subdivision (a) of section 2.3 requires the counties to make their annual determinations based upon the data available on or before each determination date. The Department also understands that there may be situations where a county wants to correct errors in or otherwise update the gain determined for a county or local agency before it is reported to the Department and used to calculate the county’s or local agency’s aggregate gain. Therefore, the Department determined that it is reasonable to allow the counties to make changes to timely determined gains before they are required to be reported. Also, the Department’s original draft of Regulation 35401 only permitted a county to correct errors in or update a gain timely determined under subdivision (d)(2) based on more accurate or current information. The Department discussed that draft with the counties during an interested parties meeting on September 8, 2021, and some counties indicated that they thought the reference to correcting errors was intended to refer to making assessment roll corrections for property tax purposes. Therefore, the Department reconsidered the proposed language and determined that it is necessary to allow the counties to change their timely determined gains for any reason to avoid confusion and ensure that any issues with a timely determined gain may be addressed before that gain is required to be reported to the Department.
Subdivision (f)(1) of proposed Regulation 35401 generally requires each county to report the gains for the county and each local agency in the county for each of the three preceding determination periods, through the Department’s online services portal, on or before January 31, 2025, and every third January 31 thereafter, beginning with January 31, 2028. Subdivision (f)(1) includes an example to illustrate the reporting due dates. Also, subdivision (f)(2) of the proposed regulation clarifies that the Department will not accept any gain, unless it is reported through the Department’s online services portal before the expiration of any extensions of the reporting due granted by the Department. The Department’s May 2021 survey also asked the counties when the due date should be for them to report the gains for the county and each local agency in the county for the prior fiscal year ending June 30 so the Department could identify a reasonable reporting due date that would be the least burdensome for all the counties. The counties’ responses indicated that it would also be feasible for them to report the gains for the prior fiscal year ending on June 30 by the following January 31, if not sooner. However, the Department only needs the counties to report their gains after the end of each aggregation period so that the Department can use them to calculate each county’s and local agency’s aggregate gain. Therefore, the Department determined that it would be less burdensome for the counties to report their gains for the same aggregation period at one time, rather than three separate times, and that allowing them to do so gives the counties additional time to change their timely determined gains for the first two determination periods in each aggregation period before they are required to be reported to the Department.

Subdivision (g)(1) of proposed Regulation 35401 automatically grants each county a one-month extension of the reporting due date specified in subdivision (f)(1). There are provisions that allow the Department to grant extensions for good cause in many of the tax and fee laws administered by the Department, including RTC section 6459 in the Sales and Use Law. Also, section 535.050 of the Department’s Compliance Policy and Procedures Manual specifies, in part, that “a general one-month extension, pursuant to RTC section 6459, is granted to all municipalities, school districts and other political subdivisions of this state.” Therefore, the Department determined that it is reasonable to provide a similar automatic one-month extension of the deadline for the counties to report their gains to the Department to be consistent with Department’s existing policies.

Subdivisions (g)(2) of proposed Regulation 35401 provides for the Department to grant any county an extension of the reporting due date specified in subdivision (f)(1) to the following April 30 if a state of emergency due to a disaster, as proclaimed by the Governor pursuant to GC section 8625, is in effect in the county at any time during the two-month period from the January 1 immediately preceding the reporting due date specified in subdivision (f)(1) to the extended reporting due date specified in subdivision (g)(1). It also provides that such an extension shall be granted if a request therefor is electronically filed with the Department on or before the April 30 following the reporting due date specified in subdivision (f)(1). The Department recognizes that there may be states of emergency due to disasters that could potentially prevent affected counties from reporting their gains for an aggregation period by the January 31 reporting deadline, as automatically extended for one month by subdivision (g)(1). Therefore, subdivision (f)(2) of the proposed regulation provides an additional extension of the reporting due date specified in subdivision (f)(1) to help ensure that counties have enough time to report their gains, and no counties or local agencies are unnecessarily denied reimbursement.
Subdivision (g)(3) of proposed Regulation 35401 also clarifies that if the date by which a county is required to report gains, including any extensions of that due date under subdivisions (g)(1) and (2), falls on a Saturday or state holiday, then the Department shall automatically grant the county an extension to the next business day to report the gains. The Department determined that it is reasonable to allow the counties to report their gains on the next business day when the last day to report their gains falls on a Saturday or state holiday, including a Sunday, for the same reason the Department determined that it is reasonable to allow the counties to make their determinations on the next business day when the last day to make their determinations falls on a Saturday or state holiday, including a Sunday.

Subdivision (h)(1)(A) of proposed Regulation 35401 provides that on May 5, 2025, and on each May 5 every three years thereafter, the Department shall determine each county’s and each local agency’s aggregate gain, by combining the gains determined by the counties and timely reported to the Department for each of the three preceding determination periods. It also clarifies that each county and local agency with an aggregate negative gain shall be eligible to be reimbursed an amount equal to its aggregate negative gain expressed as a positive number for that three-year aggregation period. For example, if a local agency’s aggregate gain was negative one hundred dollars (-$100) for an aggregation period, then the local agency would be eligible to be reimbursed one hundred dollars ($100) for that period. The Department recognizes that the general intent of sections 2.2 and 2.3 was for the Controller to make three annual transfers from the general fund to the CRP fund before the Department uses the money in the CRP fund to reimburse the counties and local agencies with an aggregate negative gain for an aggregation period; for the Controller to return any money in the CRP fund to the general fund after the Department has reimbursed the counties and local agencies with an aggregate negative gain for the first aggregation period; and for the whole process to start over with new annual transfers into the fund for purposes of reimbursing the counties and local agencies with an aggregate negative gain for the next aggregation period. The Department also recognizes that on September 15, 2024, and each September 15 every three years thereafter, all the money available for the Department to provide reimbursement or proportional reimbursement to the counties and local agencies with an aggregate negative gain for the preceding aggregation period should be in the CRP Fund. Therefore, the Department should determine each county’s and local agency’s aggregate gain for each aggregation period as soon as practical after all the counties are required to report their gains for that period taking into account the potential for some counties to be granted a three month extension of the reporting due date and taking into account that April 30 may fall on a Saturday or state holiday, including Sunday, and some counties may have until the next business day to report their gains in some years. Therefore, the Department determined that May 5, 2025, and each May 5 every three years thereafter should be the aggregation dates to ensure that the aggregation dates never precede a county’s extended reporting due date and that the aggregation dates are always as soon as practical after all the counties are required to report their gains.

Subdivision (h)(1)(B) of proposed Regulation 35401 provides that on May 5, 2025, and on each May 5 every three years thereafter, the Department shall also determine if there is money in the CRP Fund and whether it is sufficient to provide each county and local agency the full amount it is eligible to be reimbursed. The Department determined that it is necessary to include this provision in subdivision (h)(1) because the reimbursement process under subdivision (c) of section 2.3 is dependent upon whether there is money in the CRP Fund at the time the
Department determines the counties’ and local agencies’ aggregate gains for an aggregation period, and whether the money is sufficient to cover the full amount each county and local agency is eligible to be reimbursed.

Subdivision (h)(2) of proposed Regulation 35401 clarifies that if there is sufficient money in the CRP, the Department shall begin the process to provide each county and local agency with the full amount it is eligible to be reimbursed for the current aggregation period in accordance with subdivision (c) of section 2.3. Subdivision (h)(3) of proposed Regulation 35401 further clarifies that if there is money in the CRP Fund, but not sufficient money to provide each county and local agency the full amount it is eligible to be reimbursed for the current aggregation period, the Department shall begin the process to provide a pro rata share of the money in the fund to each county and local agency based on the amount the county or local agency is eligible to be reimbursed relative to the total amount all the counties and local agencies are eligible to be reimbursed for the current aggregation period in accordance with subdivision (c) of section 2.3. Subdivision (h)(3) also includes an example illustrating that if a county is eligible to be reimbursed one percent (1%) of the total amount all the counties and local agencies are eligible to be reimbursed for the current aggregation period, then the Department would provide one percent (1%) of the money in the fund to that county for that period.

Subdivision (h)(4) of proposed Regulation 35401 provides that if any May 5 specified in subdivision (h)(1) falls on a Saturday or state holiday, then the Department shall perform the acts required by subdivision (h)(1) on the next business day following that May 5. The Department determined that it is necessary to include subdivision (h)(4) in the proposed regulation because the Department’s offices are generally closed on Saturdays and state holidays, including Sundays, and when the last day to perform an act falls on a Saturday or state holiday, California law generally permits that act to be performed on the next business day (see, e.g., GC, § 6707). The Department also determined that the due dates and procedures in subdivision (h) will allow the Department to reimburse eligible counties and local agencies with aggregate negative gains from the money in the CRP Fund in a timely manner.

Finally, subdivision (i) of proposed Regulation 35401 provides that if a county fails to report a gain for the county or a local agency in the county for any determination period within an aggregation period before the expiration of the extensions of the reporting due date granted under subdivision (g), the Department will conclusively presume that the county or local agency does not have an aggregate negative gain for the aggregation period and thus is not eligible to be reimbursed from the CRP Fund for that period. The Department cannot accurately determine a county’s or local agency’s aggregate gain for any aggregation period unless all of its gains for that period were reported to the Department. Also, the Department cannot reimburse a county or local agency for any aggregation period, unless it can determine that it has an aggregate negative gain for that period. Therefore, the Department determined that it is reasonable for the Department to establish such a presumption under such circumstances. Also, the Department determined that it is necessary for the presumption to be conclusive at some point because the appropriation in section 2.2 is limited to the money in the CRP Fund and the Department will have no money left in the fund to make additional reimbursements for an aggregation period after it completes the reimbursement process for that period and the Controller transfers any money left in the CRP Fund to the General Fund.
Determinations

The Department has determined that the adoption of new chapter 5 and proposed Regulation 35401 is reasonably necessary for the specific purpose of addressing the issues (or problems) discussed above by:

- Requiring each county to register with the Department to report the gains it is required to annually determine for the county and each local agency in the county under subdivision (a) of section 2.3;
- Clarifying the determination periods for which the gains shall annually be determined under subdivision (a) of section 2.3;
- Specifying the dates by which the gains shall annually be determined as required by subdivision (a) of section 2.3;
- Requiring each county to report the gains it annually determines under subdivision (a) of section 2.3 to the Department by specified reporting due dates every three years; and
- Clarifying how the Department will use the gains reported by the counties to determine each county’s and local agency’s aggregate gain every three years and provide reimbursement to each county and local agency with an aggregate negative gain from the money in the CRP Fund under subdivision (c) of section 2.3.

The Department anticipates that the adoption of proposed Regulation 35401 will promote fairness and benefit counties, local agencies, and the Department by setting the date by which each county must annually determine the gain for the county and each local agency in the county under subdivision (a) of section 2.3; clarifying the periods for which each annual determination shall be made; providing procedures for the Department to obtain the information it needs to make the aggregate gain computations and provide the reimbursement required by subdivision (c) of section 2.3; and establishing when the Department will make the aggregate gain computations, determine if there is sufficient money in the CRP Fund to fully reimburse the counties and local agencies with an aggregate negative gain, and provide full or pro rata reimbursement from the CRP Fund. In addition, the Department has determined that the adoption of new chapter 5 and proposed Regulation 35401 is not mandated by federal law or regulations, and there are no federal regulations or statutes that are identical to Regulation 35401. The Department has also determined that it is necessary to include some provisions from section 2.3 in proposed Regulation 35401 so that readers will not need to refer back to section 2.3 and to make it easier to provide procedures implementing those provisions.

DOCUMENTS RELIED UPON

The Department relied upon Department staff’s understanding of sections 2.1, 2.2, and 2.3, Department staff’s general understanding of property taxes, and the counties’ responses to the May 2021 survey discussed above in proposing to adopt new chapter 5 and proposed Regulation 35401. The Department did not rely upon any other technical, theoretical, or empirical study, report or similar document.
ALTERNATIVES CONSIDERED

The Department considered whether to begin the regular rulemaking process to adopt new chapter 5 and proposed Regulation 35401 at this time or, alternatively, whether to take no action at this time. The Department decided to begin the regular rulemaking process to adopt new chapter 5 and proposed Regulation 35401 because the Department determined that the provisions of Regulation 35401 are reasonably necessary for the reasons set forth above.

The Department did not reject any reasonable alternative to Regulation 35401, including any reasonable alternative that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative to Regulation 35401 has been identified and brought to the Department’s attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GC SECTION 11346.2, SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GC SECTION 11346.3, SUBDIVISION (b)

The Department assessed the economic impact of adopting Regulation 35401 on California businesses and individuals. The Department determined that business and individuals will not incur any costs to comply with Regulation 35401 because the regulation only applies to the counties and the Department and does not mandate that businesses or individuals do anything. The Department also determined that businesses and individuals will not benefit from the adoption of Regulation 35401 because the regulation does not apply to businesses or individuals and does not clarify or further implement any laws that relate to businesses or individuals.

As a result, the Department determined that the proposed regulatory action is not a major regulation, as defined in GC section 11342.548 and CCR, title 1, section 2000. The Department also prepared the economic impact assessment required by GC section 11346.3, subdivision (b)(1), and the Department determined in the economic impact assessment that the adoption of Regulation 35401 will neither create nor eliminate jobs in the State of California nor result in the creation of new businesses or the elimination of existing businesses within the state and will not affect the expansion of businesses currently doing business within the State of California.

Furthermore, Regulation 35401 does not regulate the health and welfare of California residents, worker safety, or the state’s environment. Therefore, the Department determined that the adoption of Regulation 35401 will not affect the benefits of the regulation to the health and welfare of California residents, worker safety, or the state’s environment.

The forgoing information also provides the factual basis for the Department’s initial determination that the adoption of Regulation 35401 will not have a significant adverse economic impact on business.