State of California

200.0020

Board of Equalization

Memorandum

To : Mr. Verne Walton

Date August 26, 1987

From : Richard H. Ochsner

Subject : Chapter 186 of the Statutes of 1987 (AB 60)

This is in response to your request for advice on several interpretive problems involving Chapter 186. In addition to the two problems discussed in your memo of August 13, I have added three other questions presented by your staff or by assessor's staff in telephone conversations. Set forth below are the questions with my comments:

1) QUESTION: How should value comparisons be made when either the original property or the replacement dwelling, or both, are multiple use structures? For example, either the original property or the replacement dwelling may be a duplex, or triplex, a 50-unit apartment, motel or hotel in which the owner maintains his principle residence. The same question arises where the property includes both the residence and commercial property such as offices or store. An example would be the owner of a duplex (market value $150,000) residing in one unit (market value $75,000) who sells it and moves to a condo (market value $100,000).

COMMENT: There seems to be two possible answers to this question. The first is to compare total structure to total structure. If a person is residing in a quadplex, you compare the total value of that structure to the value of the replacement property. The second approach is to limit the comparison to the property actually occupied by the claimant as a principle residence. In the above example, the value comparison would be between the value of the unit in which the owner resided to the value of the replacement property. Although I originally favored the first view, I have now concluded that the second view is the correct interpretation. This will, of course, mean that in some situations the assessor must divide the total base year value of a structure in order to determine the base year value on that portion utilized by the claimant as his principal residence.

Revenue and Taxation Code section 69.5, as added by chapter 186, provides in subdivision (a) that a person over age 55 who resides in property eligible for the homeowner's exemption may transfer the base year value of "that property" to any replacement dwelling of equal or lesser value. The terms "replacement dwelling" and "original property" are both defined as a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned an occupied by a claimant as his or her principal place of residence and any land owned by the claimant on which the building is situated. This definition parallels but is not identical to the definition of "dwelling" found in Revenue and Taxation Code section 218 relating to the homeowner's exemption. The latter definition has been interpreted by the Board as being applicable only to the portion of the structure actually occupied as the principal residence. The chapter 186 definitions of "replacement dwelling" and "original property" seems to capture this same concept by including the requirement that the property be owned and occupied by the claimant as a principal residence. (See also language in section 2 of article XIII A authorizing this legislation which states that a two-unit dwelling will be treated as 2 single-family dwellings.)

This conclusion is also supported by the requirements found in subdivisions (a), and (b)(2) and (4) of section 69.5 which require that both the original property and the replacement dwelling be eligible for the homeowner's exemption. In the case of a duplex with the owner residing in one unit, only the owner occupied portion is eligible for the homeowner's exemption, according to our previous interpretations. Thus, in addition to the occupancy requirement found in the definitions of "replacement dwelling" and "original property," there is an additional homeowner's exemption requirement which also limits the applicability of the provision and supports the conclusion that the property referred to in the definitions is limited to the portion of property actually occupied as a principal residence.

It should be recognized that this conclusion raises some potential problems in cases where the claimant is a coowner of the property. Subdivision (d) of section 69.5 sets forth rules for coowner situations. It provides that a coowner may receive section 69.5 relief subject to certain limitations. Where a single replacement dwelling is purchased and all of the coowners receive the same proportional interests relief can be granted. Where 2 or more replacement dwellings are separately purchased by two or more coowners and more than one

coowner would be eligible, only one coowner may receive the benefits. If two or more replacement dwellings are purchased by two coowners who held the original property as community property, only one claimant is eligible. These rules become quite complicated when we are talking about coowners in a multiple unit dwelling, however. For example, two couples are joint tenants owning and residing in both sides of a duplex. They sell and each buy separate homes, taking title solely in the name of the one couple. Subdivision (d)(2) could be interpreted to limit relief to only one couple. The language of the subdivision seems to require that result. While we can limit the meaning of the term "original property" or "replacement dwelling" to the owner-occupied unit in a multiunit dwelling, we must recognize that the joint tenants or tenants in common of a multiunit dwelling have an undivided interest in the entire property. Thus, in the above example, both couples have an undivided interest in both sides of the duplex. And, thus, both couples are coowners in each unit within the duplex or other multiunit dwelling. There is no legal basis for limiting the term "coowners" to the coowners who actually occupy one-half of the unit. Unfortunately, this interpretation will discriminate against coowners in multiunit dwellings and will limit their benefits to one claim. In order to make our interpretation of "replacement dwelling" and "original property" workable, I think we have to also interpret the term "coowners" in subdivision (d) in such a way as to limit the concept to the coowners actually occupying the unit which satisfies the property definition. Unfortunately, I haven't found anything other than logic which seems to support this interpretation. This is one area which definitely seems to need legislative clarification.

2) QUESTION: A question has arisen as to the one claim per lifetime limitation when persons who received one benefit divorce and subsequently remarry to a person who has not received the benefit. The question is whether this second person will be disqualified from the benefit because their spouse has already received one benefit.

COMMENT: Section 69.5, subdivision (b)(7) provides that the claimant may not have previously been granted property tax relief under this section. Subdivision (g)(9) defines "claimant" as any person claiming relief under this section. It also provides that if a spouse of the claimant is a record owner of either the original property or the replacement property, whether or not the spouse joined in the claim, the spouse shall also be deemed a claimant for purposes of determining in any future claim filed by the spouse whether the condition of eligibility specified in subdivision (b)(7)

(g)(2), (f) (2),

(ALL RIGHTS)

has been met. This language seems clear. If A and B are married and record owners of property which received the benefits of section 69.5, A and B will have used up their eligibility. If A and B divorce and remarry C and D who have not received section 69.5 benefits, C and D will not be able to claim these benefits if A or B are record owners on the property with them since that will make A or B a claimant for purposes of the second claim. While this seems unfair to C and D, this result seems to be required by the express language of the statute.

3) QUESTION: Section 69.5 benefits are provided when replacement property of equal or lesser value is either purchased or newly constructed within two years of the sale of the original property. This raises the question of how the equal or lesser value limitation is to be applied to new construction. Must it apply to all construction within that two-year period?

COMMENT: At the outset, it should be recognized that the requirement that the replacement dwelling be purchased or constructed within two years of the sale of the original property can, in certain circumstances, span up to four years. It covers both two years before and two years after the sale of the original property. Thus, a claimant could acquire a lot two years prior to the sale of the original property and then complete construction on the replacement dwelling within two years after and qualify for the section 69.5 benefit.

Section 69.5 permits the transfer of base year value to a replacement dwelling that is purchased or newly constructed within two years of the sale of the original property. This covers a number of possible scenarios. The simplest ones are either the purchase of a completed property or the complete construction of the replacement dwelling. The construction of a replacement dwelling, however, could be done in stages over a period of several months or years. Further, the claimant could acquire an existing property and have it renovated prior to moving in or have it renovated after moving in. There are also possibilities of making additions to the property by adding swimming pools, saunas, tennis courts, etc. In some cases, the claimant may not have used up his total value limit at the time the claim is filed and the question would be whether additional construction after the claim and before the two years expires would fall within the transferred base year value or would have to be counted as additional base year value. Where the claimant has fully utilized the value limit at the time the claim is filed, there is another question

whether the claimant would be disqualified later from the benefit by additional construction occurring within the two-year limit.

Again, there seems to be at least two different approaches to this question. The first would be to count all construction occurring in the two years either before or after the sale of the original property for purposes of applying the value test, regardless of when the claim for the benefit is actually filed. This approach would reduce in part the opportunity for claimants to manipulate this benefit by timing their new construction. It should be recognized, however, that manipulation is still possible since they would simply have to delay beyond the two-year limit. Further, this approach would require assessors to continue to monitor claimants after they receive their benefit in order to assure that additional new construction within the two-year period did not put then over the value limit.

The second approach is to determine the claimant's qualifications for benefit at the time that the claim is filed, based upon the facts existing as of that date. Any new construction occurring after the filing of the claim would not be considered for purposes of granting the benefit and would be added to the base year value as new construction. The downside of this approach is that some claimants, through ignorance, may not receive as much benefit as they otherwise could by delaying the filing of their claim. Further, this approach allows claimants greater freedom to manipulate the benefit through timing of construction. This could actually lead to an upscaling of the claimant's property. This would occur when a small original property in good condition is exchanged for larger property of equal value in a rundown condition. After the claimant transfers base year value he can then renovate the older property to a condition equivalent to his original property. This could also be done under the first approach but it would require a two-year delay in the completion of construction.

Section 69.5 seems to require that the second approach be used. Subdivision (f) requires that the claimant file a claim with the assessor providing specified information including the date of new construction of the replacement dwelling and a statement that the claimant will occupy the replacement dwelling as his principal place of residence within one year of the date of filing the claim. The claim must be filed within three years of the date the new construction of the replacement dwelling is completed. Presumably, this date is determined under Rule 463(e) which states that the date of

completion is the date the property or portion thereof is available for use. Subdivision (h) of section 69.5 requires the assessor, upon the filing of a timely claim, to adjust the new-base year value of the replacement dwelling in accordance with this section and to make the adjustment as of the date the new construction of the replacement dwelling is completed. Since the claimant is required to specify the date new construction is completed and the assessor is required to provide the benefit as of that date, the assessor is mandated to make his determination as to qualification for benefits as of that time. It does not appear that he would be permitted to consider construction occurring after that date in determining qualifications of benefits. Of course, since the claimant has already specified the date of completion of construction, any construction after that date would have to be considered new added construction which would be added to the base year value. While the language of the section is not very explicit in this regard, the quoted provision seems to intend the second approach.

4) QUESTION: How should the requirements in subdivisions (b)(1) and (2) be applied when the replacement dwelling is acquired first.

COMMENT: As already discussed, the replacement dwelling may be acquired within two years before or after the date of sale of the original property. In order to qualify for the benefits of the section, however, the claimant must meet the various requirements found in subdivision (b). Paragraph (1) requires that at the time of the sale of the original property the claimant must be an owner and resident of that property. Paragraph (2) also provides that at the time of sale of the original property it must be eligible for the homeowner's exemption as a result of the claimant's ownership and occupation of it as his principal residence. These two conditions may or may not be satisfied in some situations where the claimant first acquires the replacement dwelling, moves into it, and then sells the original property within two years. It appears that these requirements are better suited to the original form of the bill which required that the original property always be sold first before acquisition of the replacement dwelling. The revision of the bill to cover the reverse situation occurred late in its legislative journey and, apparently, these inconsistencies were not caught. Presumably, they should be modified to provide that the specified conditions are satisfied either at the date of sale of the original property or the date of acquisition of the replacement dwelling, whichever occurs first.

In light of the legislative history of the bill, I would recommend that assessors be instructed to liberally construe these provisions in order to apply them in a manner consistent with the apparent legislative intent of permitting the benefits of this section to apply when the replacement dwelling is acquired first. It appears that these provisions should also be clarified through legislation.

5) QUESTION: Whether a mobilehome which is subject to the Vehicle License Fee and is not subject to property tax (either because it has become real property by affixation to land on a permanent foundation or has been subjected to property taxation pursuant to Revenue and Taxation Code section 5801 because it was first sold new on or after July 1, 1980 or was subjected to such taxation at the request of the owner) may be considered to be an "original property" for purposes of transferring the base year value to a replacement dwelling?

COMMENT: Section 69.5, subdivision (c)(2) makes it clear by its discussion of the treatment of a mobilehome that it is intended that the benefits apply to at least some mobilehomes. Further, this conclusion is supported by the definition of "original property" which in part refers to a building, structure or other shelter constituting a place of abode, "whether real property or personal property," owned and occupied as the claimant's principal residence. These provisions certainly seem to be intended to extend the benefits of section 69.5 to at least some mobilehomes.

The problem is that a mobilehome on the Vehicle License Fee does not seem to have a base year value, as that term is defined in the statutes. Thus, if the mobilehome is original property, there is no base year value to transfer to the replacement dwelling. If the mobilehome is the replacement dwelling, there is no need for its transfer of the base year value since that is not used for purposes of computing the Vehicle License Fee.

The definition of "base year year value of the original property" found in subdivision (g)(2) of section 69.5 refers to base year value as determined in accordance with Revenue and Taxation Code section 110.1. Subdivision (a) of the latter section defines "full cash value" of real property and subdivision (b) of that section states that this value shall be known as the base year value of the property. Thus, section 110.1 only applies to real property and would not apply to a mobilehome under the Vehicle License Fee. Revenue and Taxation Code section 5802, found in Part 13 of the code,

relating to the taxation of mobilehomes, also defines base year value of a mobilehome. As defined in section 5801, however, the term "mobilehome" does not include a unit subject to the Vehicle License Fee. Thus, under either of these standards, it appears that a mobilehome subject to the Vehicle License Fee would not have a base year value which could be transferred to a replacement dwelling.

Another provision also suggests that section 69.5 would not apply to a mobilehome subject to a Vehicle License Fee. Subdivision (e) provides in part that section 69.5 shall not apply in any case in which the transfer of the original property is not a change in ownership which subjects that property to reappraisal at its current fair market value in accordance with section 110.1 or 5803. Since the transfer of a mobilehome under Vehicle License Fee would not subject it to reappraisal under either of these sections, there is an express prohibition to the application of the section to this situation.

It is my understanding that a mobilehome subject to the Vehicle License Fee can, at the request of the owner, be converted to taxation under the property tax provisions (see Revenue and Taxation Code section 5801). Thus, this interpretation would not necessarily exclude such mobilehomes from benefits of section 69.5. It will be necessary, however, for the owners of the mobilehomes to switch to the property tax system and have a base year value established in order to qualify for the benefits of section 69.5.

RHO:cb
0667

cc: Mr. James J. Delaney
Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Darold Facchini
Mrs. Margaret S. Boatwright
Mr. Eric F. Eisenlauer