



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-6594

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Controller, Sacramento

DOUGLAS D. BELL
Executive Secretary

March 18, 1988

Dear Mr. :

This is in response to your letter to Mr. Ochsner of March 1, 1988 in which you request our opinion concerning the applicability of AB 60 to the following facts contained in your letter.

You and your wife are both 61 years old. You inherited a one-half interest in a house and lot in September 1985. You later purchased the other one-half interest in April 1986. You then tore down the existing house and built a new one in its place which was completed in November 1987. In October 1987, you sold your residence of thirty-two years and moved into the newly constructed house. Both homes are located in Los Angeles. The value of the inherited and purchased real property plus the cost of construction of the new house is \$5,000 less than the sale price of the old residence. Based on the foregoing facts, you ask whether the assessed value of the old residence can be transferred to the new residence.

The property tax relief about which you inquire was made possible by Proposition 60 which was adopted by California voters on November 4, 1986. Chapter 186 of the Statutes of 1987 (AB 60) implements Proposition 60 by adding section 69.5 to the Revenue and Taxation Code.*

Section 69.5(a) provides essentially that any person over the age of 55 years who resides in property which is eligible for the homeowners' exemption may transfer subject to specified conditions and limitations, the base year value of that property to any replacement dwelling of equal or lesser value

*All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

March 18, 1988

which is located in the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property.

In addition to meeting the requirements of section 69.5(a), section 69.5(b) provides that "any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

* * *

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g) constitutes a part of the replacement dwelling."

Paragraph (3) of subdivision (g) defines "replacement dwelling" to mean "a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence."

Although the question is not completely free of doubt, we have taken the position under the foregoing provisions that if the original property was not sold by the claimant within two years of the purchase of the land upon which the replacement dwelling is built, the claimant is not entitled to any relief under section 69.5.

Unfortunately, that appears to be the case here. Your letter states that in September 1985 you inherited a half-interest in the land upon which the replacement dwelling was built. Since you sold your original property in October 1987, the two-year requirement of section 69.5(b)(5) has not been met. Moreover, section 69.5(b)(5) requires a "purchase" of the land upon which the replacement dwelling is built. "Purchase" for purposes of

March 18, 1988

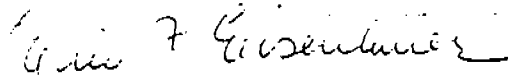
section 69.5 is defined by section 67 to mean "a change in ownership for consideration." That is not the case with inherited property. Accordingly, we are of the opinion that based on the facts provided in your letter, you are not entitled to property tax relief under section 69.5.

We are enclosing for your information a letter from the Board to county assessors dated September 11, 1987 (No. 87/71) as well as Proposition 60 - Questions and Answers which may be helpful in understanding how, in our opinion, section 69.5 is to be applied. Your attention is directed to Question No. 1 of the latter enclosure as it describes a situation closely resembling yours.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult the appropriate assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusion stated above.

If you have further questions regarding this matter, please let us know.

Very truly yours,



Eric F. Eisenlauer
Tax Counsel

EFE:cb
0952D

cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton

200,0087



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1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-4588

WILLIAM M. BENNETT
First District, Kentfield

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CINDY RAMBO
Executive Director

October 20, 1989

Dear Mr. :

This is in response to your letter of September 25, 1989, requesting advice on the application of Proposition 60.

Your letter states:

Our son gave us a parcel of land under a grant deed in March 1988. We plan to build and pay for a house, pay for a road, water, utilities, etc. Even though the land was a gift, we will be paying for everything except the land, which will be a great deal of 'consideration.' Assuming that we sell our current house prior to March 1990, the new house is appraised at the same or less than the market value of our old house, would there be anything to prevent us from receiving the benefits of Proposition No. 60?

Proposition 60 is implemented by Revenue and Taxation Code section 69.5 which provides, in part, that any person over the age of 55 who resides in property which is eligible for the homeowners exemption may transfer the base year value of that property to any replacement dwelling of equal or lesser value which "is purchased or newly constructed by that person" as his or her principal residence within two years of the sale by that person of the original property. (Section 69.5(a)(1).)

Subdivision (b) of section 69.5 lists various conditions which must be satisfied in order to qualify for section 69.5 relief. Paragraph (1) of the subdivision requires that the claimant be an owner and a resident of the original property at the time of its sale or within two years of "the purchase or new construction of the replacement dwelling." Paragraph (2) also requires that the original property be eligible for the homeowners exemption as a result of the claimant's occupancy either at the time of its sale or within two years of "the purchase or new construction of the replacement dwelling." Paragraph (5) requires that the original property of the claimant be sold within two years of the "purchase or new construction of the replacement dwelling." It further provides

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October 20, 1989

that the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling. Paragraph (3) of subdivision (g) defines "replacement dwelling" as a building, etc., constituting a place of abode which is owned and occupied by a claimant as his or her principal residence and "any land owned by the claimant on which the building" is situated.

Finally, Revenue and Taxation Code section 67 defines the term "purchase" as meaning a change in ownership for consideration.

Based upon the above provisions, we have interpreted section 69.5 as limiting its benefits to replacement dwellings which are purchased or newly constructed. Since the term "purchase" is defined by section 67 as requiring consideration, a gift cannot qualify as a purchase. Further, since the definition of "replacement dwelling" includes both the structure and the land on which it is situated, it is clear that the "purchase or new construction" requirement applies both to structure and the land. This conclusion is expressly supported by paragraph (5) of subdivision (b) which states that the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the building is located. Thus, we conclude that your replacement dwelling will not qualify for section 69.5 benefits if the land on which the structure is located was not purchased.

It should be recognized that the term "consideration" as used in section 67 is not limited to the payment of cash. Consideration could include the exchange of other property, the assumption of a debt, the cancellation of an outstanding debt, or the creation of a debt. Thus, the consideration which would satisfy the requirements of section 67 can take many different forms.

Further, nothing in section 67 states that the consideration be must equal in value to the value of the property transferred. While the transfer of property for nominal value should be rejected on the theory that the alleged "purchase" is a sham, it would appear that the term "purchase" could include a transfer for some substantial consideration even though the amount was less than the full market value of the property received.

The views expressed herein are advisory only and are not binding upon the assessor of any county. Revenue and Taxation

October 20, 1989

Code section 69.5 contains a number of conditions and it is suggested that you discuss your qualifications for benefits under this section with the assessor in the county in which your intended replacement dwelling is located. The assessor, or his staff, will be able to advise you on whether you can qualify for a Proposition 60 benefit.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



Richard H. Ochsner
Assistant Chief Counsel

RHO:cb
2212D

cc: Mr. John W. Hagerty
Mr. Verne Walton



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STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
TELEPHONE (916) 327-2455
FAX (916) 323-3387

JOHAN KLEHS
First District, Hayward
DEAN F. ANDAL
Second District, Stockton
CLAUDE PARRISH
Third District, Torrance
JOHN CHIANG
Fourth District, Los Angeles
KATHLEEN CONNELL
Controller, Sacramento
E. L. SORENSEN, JR.
Executive Director

November 24, 1999

RECEIVED
NOV 29 1999
DIRECTOR OF
PROPERTY TAXES

James J. Rees
Deputy Santa Clara County Counsel
70 West Hedding Street
9th Floor, East Wing
San Jose, CA 95110-1770



Re: Revenue & Taxation Code section 69.5

Dear Mr. Rees:

This is in response to your letter dated October 6, 1999, addressed to Assistant Chief Counsel Larry Augusta, in which you requested an opinion regarding the requirements under Proposition 60/Cal. Const. Art. XIII A, Section 2, subdivision (a), and Revenue and Taxation Code Section 69.5 for transferring the base year value from an original residence currently receiving a homeowners' exemption to a partially inherited, partially purchased replacement dwelling.

To summarize our conclusions, (1) prior acquisition by inheritance of a 50% interest in a purported replacement dwelling precludes transfer of the base year value of an original property after purchase of the remaining 50% interest, and (2) the base year value transfer cannot be applied piecemeal to the portion of the property that had been purchased, rather than inherited.

Although it is true that the previously issued advisory letters from this office that you referenced did not directly address both issues, others have. It has been and still is our position that the legislative history and language of section 69.5 indicate an intent that only whole replacement property purchases are eligible for transfers of base year values, precluding application of section 69.5 to either the whole or a portion of the purported replacement dwelling under the facts you posited. (See Annotations 200.0087, C 3/17/88; 200.0088, C 7/15/97; and 200.0092, C 9/6/94, copies enclosed.)

Facts

1. In 1982, W and a third party each inherited a 50% interest in certain residential real property (replacement dwelling).
2. In 1989, W transferred one-half of her 50% interest in replacement dwelling (25%) to H.
3. In August 1997, H and W sold their home ("original property").
4. In September 1997, H and W each purchased an additional 25% interest in "replacement property" – giving them a combined 100% ownership interest.
5. At the time of the sale of the original property, the full cash value of the "replacement dwelling" was less than or equal to the full cash value of the "original property."

Issues

1. Does the wife's 1982 acquisition, by inheritance, of a 50% interest in the purported "replacement dwelling" preclude H and W from qualifying for the transfer of the base year value of their original property pursuant to section 69.5?
2. If the applicants do not qualify for the transfer of the entire base year value, could they qualify for a 50% transfer of the base year value as to the 50% ownership interest H and W acquired in the purported "replacement dwelling" in 1997, within two years of the sale of the original property?

Law and Analysis

Article XIII A, section 2, subdivision (a), of the California Constitution provides for the transfer of the base year value of an original property to a replacement dwelling under described circumstances:

"...the Legislature may provide that under appropriate circumstances and pursuant to definitions and procedures established by the Legislature, any person over the age of 55 years who resides in property that is eligible for the homeowner's exemption...may transfer the base year value of the property entitled to exemption...to any replacement dwelling of equal or lesser value...**within two years of the sale of the original property.**"(Emphasis added.)

The Attorney General's Summary of Proposition 60 of the November 4, 1986, Ballot, which amended Article XIII A, section 2, indicated that the purchase or construction of an entire replacement residence was contemplated:

"...This measure amends Article XIII A to permit the Legislature to allow persons over age 55, who sell their residence and buy or build another of equal or lesser value within two years in the same county, to transfer the old residence's assessed value to the new residence...."

Consistent therewith, the Legislative Analyst's Analysis stated:

"This constitutional amendment would authorize the Legislature to provide a special method of establishing assessed value for replacement residential property acquired by a homeowner over the age of 55. Specifically, this method would allow homeowners over the age of 55 to transfer the assessed value of their present home to a replacement home located in the same county. To qualify for this special treatment, the replacement home must be:

Purchased or newly constructed as a replacement for the person's principal residence;

Of equal or lesser value than the original property;

Located within the same county; and

Purchased or newly constructed within two years of the sale of the present property.

The measure could apply to replacement property purchased or newly constructed on or after November 5, 1986."

And the Argument in Favor stated:

"California can create new housing opportunities for senior citizens by easing a property tax burden that now prevents many of them from finding affordable housing. At the same time, we can help many young families find their first homes. This proposition will do both by protecting older homeowners from huge property tax increases when they choose to sell their large family homes and move into new smaller residences...."

* * *

"The solution is to let seniors who want to sell their homes take their current property tax assessment to their new place of residence.

"If approved by the voters, Proposition 60 would do just that by amending the State Constitution to authorize the Legislature to provide that the base year value of owner-occupied residential property can be transferred for seniors to newly purchased or constructed owner-occupied residential property of equal or lesser value.

* * *

Thus, the intent of and the public policy behind the Proposition was, as to senior citizens, to allow senior citizens to sell their current residences and to purchase or construct and move into new residences without incurring increased property taxes.

The Legislature exercised its authority under Article XIII A, section 2, subdivision (a), by adopting Revenue and Taxation Code section 69.5 to provide that any person over the age of 55 years who resides in property eligible for the homeowners' exemption may transfer "subject to the conditions and limitations provided in this section" the base year value of that property to any replacement dwelling of equal or lesser value purchased or newly constructed within two years of the sale by that person of the original property. This language makes it clear that the conditions and limitations contained in Proposition 60/Article XIII A, section 2, subdivision (a), are controlling for purposes of the benefit granted by section 69.5. The Board staff has historically interpreted Proposition 60/Article XIII A, section 2, subdivision (a), and section 69.5 as based on a whole property to whole property approach. (See Letter to Assessors No. 87/71 Proposition 60 - Chapter 186, Statutes of 1987; Letter to Assessors No. 88/10, Questions and Answers -- Propositions 58 and 60, and Annotations 200.0087 and 200.0088.)

The definition of the term "purchase" in section 69.5 is set forth in Revenue and Taxation Code section 67 as "a change in ownership for consideration." Therefore, a replacement dwelling must be acquired in a manner that causes the entire dwelling (appraisal unit) to be reappraisable at its full cash value, determined in accordance with Revenue and Taxation Code section 110.1 for use in the "equal or lesser value" comparison of section 69.5, subdivision (g)(5). (Annotations 200.0087 and 200.0088.)

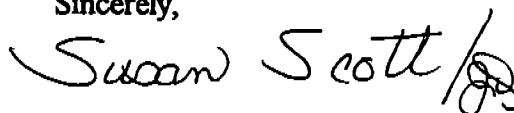
The transfers by inheritance and inter-spousal gift of 1982 and 1989 do not qualify for section 69.5 treatment because (1) they are not "purchases" for consideration (see Annotations 200.0087 and 200.0088), and (2) they were accomplished more than two years before the sale of the original property (see Annotation 200.0092.). The purchases of September 1997 are partial purchases which would only result in a partial change in ownership and partial reappraisal. (See Rev. & Tax. Code sections 60, 61; Rule 462.020.) Although purchasing a partial interest in a replacement dwelling as co-owner with another is permissible for application of section 69.5 transfers, completing the acquisition of a dwelling already partially owned by the purchaser is not. Applying section 69.5 to such partial purchases would run contrary to the intent of both the

Legislature and the voters by allowing claimants to essentially bypass the two year limitation period by purchasing all but a minimal share in a future "replacement" dwelling, renting it out until two years before or after their 55th birthday and the sale of their original property, and completing the purchase within the limitations period.

The views expressed in this letter are advisory only; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein and are not binding on any person or public entity.

Feel free to call me at 069 327-2455 if you have any further questions about this issue.

Sincerely,

A handwritten signature in cursive script that reads "Susan Scott" followed by a stylized flourish or initials.

Susan Scott
Tax Counsel

SAS:jd

<h:/property/precednt/transbyv/1999/04sas>

Enclosures

cc: Mr. Richard Johnson – MIC:63
Mr. David Gau – MIC:64
Mr. Charles Knudsen – MIC:64
Ms. Jennifer Willis – MIC:70
Mr. Lawrence A. Augusta