

# Memorandum

To: Mr. Dean Kinnee      MIC:64  
Chief of County-Assessed Properties Division

Date: September 10, 2007

From: John Dickerson  
Tax Counsel

Subject: ***Base Year Value Transfer Between Registered Domestic Partners***

On March 6, 2006, \_\_\_\_\_ of the County-Assessed Properties Division requested guidance regarding the application of Revenue and Taxation Code section<sup>1</sup> 69.5 regarding transfers of base year values. Specifically, she asked whether a person can purchase property from his or her registered domestic partner for the purpose of purchasing a suitable replacement dwelling within the meaning of the statute. As explained more fully below, a person may not purchase a replacement dwelling from his or her registered domestic partner because such transfers are excluded from being a change in ownership.

Section 69.5, subdivision (a)(1) provides that:

any person over the age of 55 years, or any severely and permanently disabled person, who resides in property that is eligible for the homeowners' exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 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 that is located within 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, provided that the base year value of the original property shall not be transferred to the replacement dwelling until the original property is sold. (Underscore added.)

Under section 67, the term "purchase" is defined as "a change in ownership for consideration." Accordingly, an assessor must apply a two-part test to determine whether the acquisition of a replacement dwelling is a qualifying purchase. First, the assessor must determine whether the transaction resulted in a change in ownership. Second, the assessor must determine whether the replacement dwelling was acquired for consideration. (See Letter To Assessors No. 2006/10, p. 17.)

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<sup>1</sup> All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

Commencing with the lien date for the 2006-07 fiscal year, transfers between registered domestic partners cannot satisfy the first part of the two-part test because transfers between registered domestic partners are excluded from being changes in ownership. Section 62, subdivision (p) states in part that a change in ownership shall not include “any transfer between registered domestic partners . . . .” Therefore, transfers between registered domestic partners, whether structured as sales or otherwise, are automatically excluded from being changes in ownership as a matter of law. Thus, property acquired from a registered domestic partner is not “purchased” within the meaning of section 69.5.

The opinion expressed in this memorandum is consistent with the Legal Department’s opinion with respect to transfers between spouses. In this regard, Property Tax Annotation<sup>2</sup> 200.0088 (C 4/8/88; C 7/15/97) states that:

Since Revenue and Taxation Code section 63 provides that change in ownership does not include transfers between spouses, the transfer of a base year value from one property to another is not available to a person who obtains the ‘replacement property’ or an interest in such a property from a spouse. Revenue and Taxation Code section 69.5 limits the transfer of value to replacement dwellings that are purchased, which pursuant to section 63 does not include transfers between spouses.

JD:pb

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cc:	Mr. Robert Lambert	MIC:82
	Mr. Bradley Heller	MIC:82
	Ms. Glenna Schultz	MIC:64
	Mr. David Gau	MIC:63
	Mr. Todd Gilman	MIC:70

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<sup>2</sup> Property Tax Annotations are summaries of the conclusions reached in selected legal opinions issued by the Board of Equalization’s Legal Department. See California Code of Regulations, title 18, section 5200, for more information regarding annotations.