



STATE OF CALIFORNIA

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March 4, 2004

Ms. Jennifer Christensen, Esq.  
Santa Barbara Deputy County Counsel  
105 E. Anapamu Street  
Santa Barbara, CA 93101

**Re: Revenue & Taxation Code Section 69.5 –  
Eligibility of Combined Parcel as One Replacement Property**

Dear Ms. Christensen:

This letter is in response to your fax dated January 27, 2004, to Mary Ann Alonzo, Senior Tax Counsel, and Kristine Cazadd, Assistant Chief Counsel. You asked whether there is any limitations period for the application of Prop. 60 (“section 69.5”) to two parcels that are combined. As discussed in detail below, based on the facts presented we believe that the combination of the parcels must be completed within two years of the sale of the original property. In general, the time period for making a claim for refund is four years after the payment sought to be refunded is made.

### **Facts**

The taxpayer purchased two separate legal adjoining parcels on October 1, 2002. The base year value of the taxpayer’s original property has been transferred to the qualifying replacement dwelling and land parcel. The taxpayer would like to combine the two legal parcels into one legal parcel in order to have the benefits of section 69.5 apply to both parcels. The assessor may enroll the combined parcels as a single parcel assessment only after the combination relieved Planning and Development and local government approval.

### **Legal Analysis**

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

[T]he 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 which 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...

Thus, this provision allows a qualified individual or individuals to sell a current residence and to purchase or construct a new residence while returning the same adjusted base year value. The Legislature implemented article XIII A, section 2, by adopting section 69.5 to provide, in part, that any person over the age of 55 years who resides in property eligible for the homeowner's 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. This language makes it clear that the conditions and limitations contained in section 69.5 are controlling for purposes of the benefit granted by this section.

Section 69.5, subdivision (a)(1), requires that the base year value of the original property may be transferred to the replacement property if the replacement dwelling "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."

Subdivision (b) of section 69.5 imposes several qualifications for this benefit including, in pertinent part:

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

(1) The claimant is an owner and a resident of the original property \* \* \* within two years of the purchase or new construction of the replacement dwelling.

(4) ... At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(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 that, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

Section 69.5, subsection (g)(3) defines the "replacement dwelling as:

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, that 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.

When read together it is clear that section 69.5 requires that the purchase or completion of new construction of the replacement dwelling must occur within two years of the sale of the original property. "Replacement Dwelling" includes only the land parcel on which the place of abode is situated. For the adjoining parcel to be considered as part of the replacement dwelling, the combination of the two parcels must be completed in order for both to be considered the land on which the place of abode is situated. If the combination is not completed at that time only the one parcel on which the residence is situated will qualify as land for replacement dwelling. Accordingly, the combination of the two parcels must be completed within the two-year period. Additionally, at the time of the claim for base year value transfer, the replacement dwelling property must be eligible for or already receiving the homeowner's exemption.

In summary, we believe that the acquisition and combination of parcels for which the taxpayer proposes to transfer the base year value must be completed within two years of the sale of the original property for both parcels to qualify as the land on which the residence is situated within the meaning of section 69.5, subdivision (g)(3).

The views expressed in this letter are only advisory in nature; 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.

Sincerely,

*/s/ Paul A. Steinberg*

Paul A. Steinberg  
Senior Tax Counsel

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cc: Mr. David Gau, MIC:63  
Mr. Dean Kinnee, MIC:64  
Ms. Mary Ann Alonzo, MIC:82  
Mr. Todd Gilman, MIC:70