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October 20, 2004

Assessment Appeals Advocate
San Diego County Assessor's Office
1600 Pacific Highway, Room 103
San Diego, CA 92101-2480

Re: Revenue and Taxation Code § 69 –
Right to Appeal Assessor's Eligibility Determination

Dear Mr. :

This is in response to your letter dated June 28, 2004, addressed to Mr. Lou Ambrose, Supervising Tax Counsel, in which you request our opinion regarding the rights of a property owner to appeal the denial of a claim for the transfer of a base-year value for real property damaged or destroyed by disaster under Revenue and Taxation Code[1] section 69. For the reasons set forth below, it is our view that the assessment appeals board has jurisdiction to hear and decide an application filed by a property owner appealing the assessor's denial of such a claim.

Factual Background

In the fall of 2003, San Diego County suffered devastating fires that destroyed and severely damaged a large amount of real property. As a result, many of the real property owners in San Diego County are seeking property tax relief due to the fact that they need to purchase replacement properties.

As you state in your letter, section 69 is available to provide property tax relief for real property substantially damaged or destroyed by a disaster if certain conditions are satisfied. You further state that your office does not have a question as to the interpretation or application of section 69, which provides that the base-year value of property which is substantially damaged or destroyed by a disaster, as declared by the Governor, may be transferred to comparable replacement property within the same county which is acquired or newly constructed within three years after the disaster. Instead, the only question that you would like us to address is: what are the property owner's rights to appeal a denial by the Assessor's office of a base-year value transfer claim under section 69?

[1] Unless otherwise specified, all section references are to the Revenue and Taxation Code.

Law and Analysis

Revenue and Taxation Code section 69 provides generally that the base-year value of property which is substantially damaged or destroyed by a governor-declared disaster may be transferred to comparable property within the same county which is acquired or newly constructed within three years after the disaster. Without the section 69 benefit, the acquisition of property acquired to replace the property substantially damaged or destroyed would result in a change in ownership and establishment of a new base-year value for the replacement property. In effect, section 69 excludes the acquisition of the replacement property from a change in ownership by requiring the assessor to enroll that property at the base-year value of the original property.

Section 69 sets forth specific qualifying requirements and conditions for the transfer of a base-year value. The assessor has the responsibility of applying the law and for making a determination of eligibility. If the assessor denies a claim, then the replacement property is subject to a change in ownership and establishment of a new base-year value. You request our opinion as to the property owner's recourse to appeal such a denial.

Article XIII, section 16 of the California Constitution provides, in relevant part, that "[e]xcept as provided in subdivision (g) of Section 11, the county board of equalization, under such rules of notice as the county board may prescribe, shall equalize the values of all property on the local assessment roll by adjusting individual assessments." The court of appeal has interpreted Article XIII, section 16 to grant assessment appeals boards the broad authority "to equalize the valuation of taxable property within their jurisdiction. (*Firestone Tire & Rubber Co. v. County of Monterey* (1990) 223 Cal.App.3d 382, 387; *County of Sacramento v. Assessment Appeals Bd. No. 2* (1973) 32 Cal.App.3d 654, 662.)

Revenue and Taxation Code sections 1601 *et seq.* provide statutory requirements and procedures for the assessment appeals boards and the appeal process. Section 1605.5 provides in subdivision (a)(1) that an appeals board "shall hear applications for a reduction in an assessment in cases in which the issue is whether or not property has been subject to a change in ownership, as defined in Chapter 2 (commencing with Section 60) of Part 0.5, or has been newly constructed, as defined in Chapter 3 (commencing with Section 70) of Part 0.5."

The State Board of Equalization has adopted regulations, Title 18, California Code of Regulations, sections 302 through 326 (referred to as "Property Tax Rules"), that implement the constitutional and statutory provisions that define the jurisdiction of and grant authority to assessment appeals boards. Property Tax Rule 302, subdivision (a) provides, in relevant part, that the functions of an appeals board include:

> (1) To lower, sustain, or increase upon application, or to increase after giving notice when no application has been filed, individual assessments in order to equalize assessments on the local tax assessment roll,
>
> (2) To determine the full value and, where appealed, the base year value of the property that is the subject of the hearing,
>
> . . .
>
> (6) To exercise the powers specified in sections 1605.5 and 1613 of the Revenue and Taxation Code.

As stated above, a denial of claim for base-year value transfer results in a change in ownership of the property acquired by the taxpayer to replace the property substantially damaged or destroyed. Pursuant to section 1605.5 and Rule 302, subsection (a)(6), an appeals board has authority to hear and decide change in ownership issues. Thus, we conclude that a property owner may appeal to the appeals board the assessor's denial of its claim for base-year value transfer pursuant to section 69.

Statute of Limitations Applicable to Appeals of Section 69 Eligibility Determinations

It is our opinion that the time period for filing an application to appeal an assessor's eligibility determination under section 69 is subject to the statute of limitations for filing an application to appeal a base-year value determination. Section 80 prescribes the time period in which a base-year value application may be filed. That section provides in part:

> (a) An application for reduction in the base-year value of an assessment on the current local roll may be filed during the regular filing period for that year as set forth in Section 1603 or Section 1840, subject to the following limitations:
>
> . . .
>
> (3) The base-year value determined pursuant to paragraph (2) of subdivision (a) of Section 110.1 shall be conclusively presumed to be the base-year value, unless an application for equalization is filed during the regular equalization period for the year in which the assessment is placed on the assessment roll or in any of the three succeeding years. Once an application is filed, the base-year value determined pursuant to that application shall be conclusively presumed to be the base-year value for that assessment.

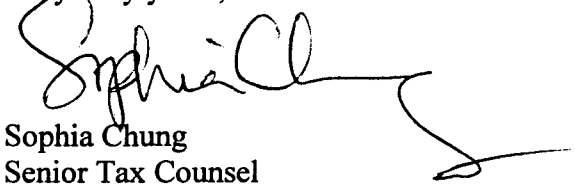
Subdivision (a)(2) of section 110.1 provides that:

> (a) For purposes of subdivision (a) of Section 2 of Article XIII A of the California Constitution, "full cash value" of real property, including possessory interests in real property, means the fair market value as determined pursuant to Section 110 for either of the following:
>
> . . .
>
> (2) For property which is purchased, is newly constructed, or changes ownership after the 1975 lien date, either of the following:
>
> (A) The date on which a purchase or change in ownership occurs.
>
> (B) The date on which new construction is completed, and if uncompleted, on the lien date.

Thus, we conclude that a property owner may appeal the assessor's determination of eligibility under section 69 by filing an application during the regular period from July 2 to September 15 or, if applicable, November 30 for year in which the base year value is established for the replacement property or in any of the three succeeding years.

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.

Very truly yours,



Sophia Chung
Senior Tax Counsel

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cc: Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
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