



STATE BOARD OF EQUALIZATION

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Executive Director

December 18, 2006

Subject: Transfer of Base Year Value - Life Estate in Original Property

Dear Mr. _____ :

This is in response to your August 1, 2006 request for advice concerning the availability of a base year value transfer upon the sale of a principal residence and the purchase of a replacement property, pursuant to article XIII A, section 2, subdivision (a) of the California Constitution and Revenue and Taxation Code, section 69.5,¹ where the transferor/owner's interest in the original property is a life estate rather than a fee simple interest.

In our opinion, as hereinafter indicated, the base year value transfer authorized by article XIII A, section 2, subdivision (a) and section 69.5 is available where the transferor/owner's interest in the original property is a life estate. Of course, all the requirements of article XIII A, section 2, subdivision (a), and of section 69.5 would have to be met before the assessor will allow the base year value transfer.

Facts

Your August 1, 2006 letter indicates the following:

About ten years ago my aunt passed away. She left me 'and/or' my wife a 'life-estate' in her condominium. She left the remainder interest in the condominium to both my nephew and my daughter, each with a 50% share as tenants-in-common. A grant deed was recorded indicating these forms of ownership.

Since that time, my wife and I have been residing in the condominium as our primary home. Recently, my wife, daughter, nephew and I have decided to sell the property and to purchase another property of equal or lesser value. The new property will be held in the identical form of ownership (my wife and I will hold a life-estate and my nephew and daughter will hold a remainder-interest). The new property will be the primary residence for my wife and me.

¹ Unless otherwise stated, all section references are to the Revenue and Taxation Code.

My wife and I, as life-estate holders, are required to pay all of the property taxes on the original property (as we will be on the replacement property). I am over 55 years of age. Will we be allowed to transfer the base year from our current home to the replacement home as provided for in Propositions 60 and 90 (California Constitution, article XIII A, section 2, subdivision (a)), and in section 69.5?

Analysis and Conclusion

The passage of Proposition 60 on the November 4, 1986 ballot added the provision of article XIII A, section 2 of the California Constitution authorizing the transfer of the base year value of an original property to a replacement dwelling under described circumstances whereby:

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

Thereafter, the Legislature exercised its authority under article XIII A, section 2, by adopting section 69.5, subdivision (a), now subdivision (a)(1), 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 which is located within the same county² and 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" The conditions and limitations contained in section 69.5 are controlling for purposes of the benefit granted by the section.

Section 69.5, subdivision (b) provides that:

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 either at the time of its sale, . . . , or within two years of the purchase or new construction of the replacement dwelling.
- (2) The original property is eligible for the homeowners' exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale, . . . , or within two years of the purchase or new construction of the replacement dwelling.

² Subdivision (a)(2) of the section pertains to transfers where replacement dwellings are located in different counties.

- (3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age, or is severely and permanently disabled.
- (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.
- (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. . . .
- (6) The replacement dwelling, . . . , is located entirely within the same county as the claimant's original property.
- (7) The claimant has not previously been granted, as a claimant, the property tax relief provided by this section . . .

These requirements, including the requirement that the original property be eligible for the homeowners' exemption, were discussed in subsequent letters to county assessors. (See September 11, 1987 Letter to Assessors No. 87/71, p. 1, and February 11, 1988 Letter to Assessors No. 88/10, p. 1, copies enclosed.)

As to the availability of the homeowners' exemption for persons owning life estates in properties and occupying the properties as their respective principal residences, we have been of the opinion that the exemption is available. (See March 23, 1982 Letter to Assessors No. 82/50, p. 5, copy also enclosed.)

Accordingly, the base year value transfer authorized by article XIII A, section 2, subdivision (a), and section 69.5 is available where the transferor/owner's interest in the original property is a life estate.

As to the availability of a base year value transfer upon the sale of a principal residence and the purchase of a replacement property where the transferor/owner's interest in the replacement property is a life estate, you indicated that you are aware of our August 27, 2002 letter indicating that it is. That conclusion was based upon the following:

1. Article XIII A, section 2, of the California Constitution.
2. Subdivision (b) of section 69.5, particularly subsections (l) and (4) thereof, noting that subdivision (b) does not define the term "owner."
3. Subdivision (g) of section 69.5, which defines a number of terms used in section 69.5, but noting that subdivision (g) does not define the term "owner."
4. Based upon the above:

Since section 69.5 is a specific type of change in ownership exclusion that avoids what would otherwise have the effect of a change in ownership, the

term “owner” should, in the absence of any other specific definition, be construed in a manner consistent with the other provisions of law applicable to changes in ownership. In view of those provisions, we interpret “owner” to include the owner of a life estate in the replacement property.

5. Property Tax Rule 462.060 provides, consistent with section 60 and Rule 462.001, that the creation of a life estate in real property is a change in ownership at the time of transfer:

Rule 462.060 CHANGE IN OWNERSHIP – LIFE ESTATES AND ESTATES FOR YEARS.

(a) **Life estates.** The creation of a life estate in real property is a change in ownership at the time of transfer unless the instrument creating the life estate reserves such estate in the transferor or the transferor’s spouse. However, the subsequent transfer of such a life estate by the transferor or the transferor’s spouse to a third party is a change in ownership. Upon termination of such a reserved life estate, the vesting of a right to possession or enjoyment of a remainderman (other than the transferor’s spouse) is a change in ownership.

6. In *Leckie v. Orange County* (1998) 65 Cal.App.4th 334, the court cited Rule 462.060, subdivision (a) as a valid construction of section 60 and held that the transfer of a life estate was a change in ownership because the life tenant held the dominant or primary interest substantially equal to the value of the fee interest.
7. Conclusion:

Thus, an owner of a long term leasehold estate or a life estate can be an “owner” for purposes of both the homeowners’ exemption in section 218 and the benefit under section 69.5. (*Smith v. State Board of Equalization* (1997) 53 Cal.App.4th 331.) Upon meeting the other requirements of section 69.5, the owner of a life estate may qualify for a base year value transfer.

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. You may wish to contact the San Francisco City and County Assessor-Recorder’s Office, or the assessor’s office in the county in which the

replacement property will be purchased if not San Francisco, to ascertain whether it is in agreement with the analysis and conclusion set forth herein.

Very truly yours,

/s/ J. K. McManigal, Jr.

J. K. McManigal, Jr.
Senior Tax Counsel

JKM:pb
Prec/LifeEstates/06/434.jkm

Enclosures

cc: Honorable
County Assessor-Recorder

Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Mickie Stuckey, MIC:62
Mr. Todd Gilman, MIC:70