

I recognize that many of the requirements found in section 69.5 are patterned after the requirements found in the homeowners' exemption and we have, on previous occasion, reviewed our interpretations under the homeowners' exemption for purposes of interpreting the application of section 69.5. This is one case, however, where our homeowners' exemption interpretation seems to be based upon a theory which is in conflict with basic change in ownership principles. For that reason, it should not be followed. Ken McManigal informs me that the analysis applied for homeowners' exemption purposes to partnerships was based on an aggregate theory analysis which is sometimes applied to partnerships. Under the aggregate theory, the partnership is not viewed as an entity separate and apart from the partners. The aggregate theory looks through the partnership to the individual partners and recognizes their interests in partnership property. This type of analysis is often used in questions involving the

competing rights of partners to partnership assets. Unfortunately, the Legislature has clearly rejected the aggregate theory for purposes of change in ownership. Revenue and Taxation Code section 64 treats partnerships, as well as corporations, as separate entities. If it used the aggregate theory, transfers of partnership interests would be treated like transfers of tenant in common interests. Thus, applying the aggregate theory for purposes of the change in ownership exclusion found in section 69.5 is not consistent with the separate entity theory the Legislature has adopted for change in ownership purposes.

In addition to being inconsistent with basic change in ownership principles, the homeowners' exemption interpretation seems to be inconsistent with some of the express language of section 69.5. That section refers to a person over the age of 55 years who resides in property eligible for the homeowners' exemption and to a replacement dwelling which is purchased or newly constructed by that person as his or her principle residence. There is no implication in these references that they are intended to apply to a partnership. Subdivision (d) provides that the section shall be available to a claimant who is the co-owner of original property as a joint tenant, a tenant in common, or a community property owner. The subdivision goes on refer to replacement dwellings purchased or newly constructed by co-owners. In this context, it appears that co-ownership is viewed as being limited to the forms described, that is, joint tenancy, tenancy in common, or community property. There is no indication that co-ownership in the form of a partnership was ever intended by the Legislature. Thus, the express language of section 69.5 does not support the conclusion that the benefit extends to partnership-owned property.

I recognize that contrary arguments can be constructed and, therefore, this advice may not be free of doubt. On balance, however, the better argument seems to support the conclusion that Prop. 60 benefits cannot be extended to a replacement dwelling owned by a partnership.

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