200.0090

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-4588

WILLIAM M. BENNETT
First District, Kentfield

CONWAY H. CO
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

PAUL CARPENTER
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

DOUGLAS D. BELL
Executive Secretary

December 22, 1987

Mr.

Dear Mr. :

Thank you for your letter of December 1987 requesting advice on the application of AB 60, which is now Chapter 186 of the Statutes of 1987.

As you know, Chapter 186 implements Proposition 60 which was adopted by the voters in November of 1986. Proposition 60 authorized the Legislature to provide for the transfer of base year value to a replacement dwelling of equal or lesser value located in the same county which is acquired by a qualified taxpayer "within two years after the sale of the original property." Chapter 186 adds section 69.5 to the Revenue and Taxation Code. Section 69.5 also provides for the transfer of base year value to a replacement dwelling of equal or lesser value which is acquired by a qualified taxpayer "within two years of the sale by that person of the original property." (Subd. (a)). The term "original property" is defined as "a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by the 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." (Subd. (g)(4)). The term "sale" is defined as "any change in ownership of the original property for consideration." (Subd. (g)(8)).

Your letter states that you wish to apply the section 69.5 benefit to a replacement dwelling which you intend to construct on the same lot on which your existing home is located. As I understand it, your 40-year old house is situated on the back portion of the lot, is weather beaten, has developed a crack through the middle of it and has plumbing problems which are difficult to repair because the pipes are buried in the concrete slab. Since the property is a beautiful ocean front site, you do not wish to leave it. You would like to transfer the base year value of your original home to the new replacement dwelling after the new structure is completed and the old house is removed. You state that you would meet all of

the eligibility requirements set forth in section 69.5, with the exception of the fact that the original property will not be sold. You ask us to advise you whether you can qualify for the section 69.5 benefit under these circumstances.

As you can see from the above description, section 69.5 expressly requires the sale of the "original property," a term which is defined to include both the structure and the land on which it is situated. The statute leaves no question as to the meaning of the term "sale" as it is expressly defined as a change in ownership of the original property for consideration.

Sale of the original property is also an express requirement of the constitutional amendment (Proposition 60) which authorized the enactment of 69.5. An examination of the ballot arguments submitted to the voters in favor of Proposition 60 makes it clear that sale of the original property was an essential element of the provision. The argument in favor of the Proposition, which is signed by three members of the State Legislature, states that the purpose of the provision is to "let seniors who want to sell their homes take their current property tax assessment to their new place of residence." The argument goes on to list the specific requirements for qualification for the benefit including "(4) Purchased within two years of the sale of the original property." The argument also explains that the provision will not result in local revenue losses because "when seniors sell their larger homes for current market prices it will create new property tax revenue." In light of these express provisions, we must conclude that senior citizens may not avail themselves of the section 69.5 benefit unless they sell their original property.

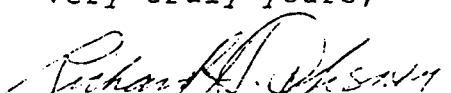
It should also be pointed out that another critical element of the requirements for this benefit is that the value of the replacement dwelling cannot exceed the value of the original property. No benefit may be granted where the value of the replacement property exceeds the value limit set forth in section 69.5. Since your existing home is a small structure in a rundown condition, it is difficult to understand how the value of that structure would equal or exceed the value of a brand new structure. I mention this because it seems apparent that you may have at least one other problem in qualifying for this benefit.

You should be aware of the fact that the described deficiencies of your existing home can be corrected without adding to the assessed value of the property. Although the value of "new construction" must be added to the existing value of property

when it occurs, Property Tax Rule 463 excludes from this term construction or reconstruction performed for the purpose of normal maintenance and repair. Thus, painting the structure to correct its weather-beaten appearance, repair of a crack in the structure or the replacement of damaged plumbing would not be considered new construction or add to the assessed value of your property.

I hope that the foregoing information is helpful to you. The views expressed herein are, of course, advisory only and are not binding upon any assessor. You may wish to discuss your plans with the Los Angeles County Assessor in order to determine how he will apply the law in the situation you describe.

Very truly yours,



Richard H. Ochsner
Assistant Chief Counsel

RHO:cp
0839D

cc: The Honorable Dave Elder
Assemblyman, 57th District
The Honorable John J. Lynch
Los Angeles County Assessor
Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Mr. Eric F. Eisenlauer
Mrs. Margaret S. Boatwright