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Copy to Nisson

November 6, 1997

Honorable Joan C. Thayer
Marin County Assessor-Recorder
Civic Center
P.O. Box C
San Rafael, CA 94913

Attn: Mr. Larry Gilbert
Deputy Assessor

Dear Ms. Thayer:

This is in response to your June 23, 1997, letter to Ms. Rita Odom concerning the following facts:

> On 10/18/96, Mr. K (U/M) purchased a 100% interest in the subject property for $300,000. Mr. K is from another state and is not eligible for Revenue and Taxation Code section 69.5 tax relief at the time of his purchase. On 6/13/97, Ms. M (U/W) purchased a 50% interest in Mr. K's property from Mr. K for $150,000. Ms. M had sold her original property on 5/15/97 and appears to meet all other section 69.5 requirements. Ms. M applied for tax relief with only her purchase data. Mr. K was not listed on the claim form.

For the reasons hereinafter set forth, it is our opinion that Ms. M's purchase of a partial interest in Mr. K's property is not eligible for property tax relief under section 69.5.

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

> "...the 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..."

The Attorney General's Summary of Proposition 60 of the November 4, 1986, Ballot, which so amended Article XIIIA, section 2, indicated that the purchase or construction of an entire replacement residence was contemplated:

> "...This measure amends Article XIII A to permit the Legislature to allow persons over age 55, who sell their residence and buy or build another of equal or lesser value within two years in the same county, to transfer the old residence's assessed value to the new residence...."

Consistent therewith, the Legislative Analyst's Analysis stated:

> "This constitutional amendment would authorize the Legislature to provide a special method of establishing assessed value for replacement residential property acquired by a homeowner over the age of 55. Specifically, this method would allow homeowners over the age of 55 to transfer the assessed value of their present home to a replacement home located in the same county. To qualify for this special treatment, the replacement home must be:
>
> - Purchased or newly constructed as a replacement for the person's principal residence;
> - Of equal or lesser value than the original property;
> - Located within the same county; and
> - Purchased or newly constructed within two years of the sale of the present property.
>
> The measure could apply to replacement property purchased or newly constructed on or after November 5, 1986."

And the Argument in Favor stated:

> "California can create new housing opportunities for senior citizens by easing a property tax burden that now prevents many of them from finding affordable housing. At the same time, we can help many young families find their first homes. This proposition will do both by protecting older homeowners from huge property tax increases when they choose to sell their large family homes and move into new smaller residences....

* * *

> "The solution is to let seniors who want to sell their homes take their current property tax assessment to their new place of residence.
>
> If approved by the voters, Proposition 60 would do just that by amending the State Constitution to authorize the Legislature to provide that the base year value of owner-occupied residential property can be transferred for seniors to newly purchased or constructed owner-occupied residential property of equal or lesser value."

Thus, the intent of and the public policy behind the Proposition was, as to senior citizens, to allow senior citizens to sell their current residences and to purchase or construct and move into new residences without incurring increased property taxes.

The Legislature exercised its authority under Article XIIIA, section 2 by adopting Revenue and Taxation Code section 69.5 to provide 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, etc. 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.

Subdivision (g) contains a number of terms which are defined for purposes of section 69.5. Subdivisions (g)(3) and (g)(4) define the terms "replacement dwelling" and "original property" in substantially the same terms. "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. Similarly, "original property" 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. These definitions evidence a legislative intent to apply the section to the entire interests in the original property and in the replacement dwelling, entire appraisal units, and not to just fractional interests therein.

Additionally, subdivision (g)(5) defines "equal or lesser value" to mean that the amount of full cash value of a replacement dwelling does not exceed 100%, 105%, or 110% of the amount of the full cash value of the original property, depending upon certain conditions set forth therein. Again, this comparison demonstrates a whole property to whole property approach. And subdivision (g)(6) defines "full cash value of the replacement dwelling" as its full cash value, determined in accordance with section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction. "Purchased" or "purchase" is defined in Revenue and Taxation Code section 67 as "a change in ownership for consideration." Since the statutory definition of "purchase" is a "change in ownership for consideration," a replacement dwelling must be acquired in a manner that causes the replacement dwelling, the entire appraisal unit, to be reappraisable at its full cash value determined in accordance with section 110.1 and to be used in the "equal or lesser value" comparison of subdivision (g)(5).

Accordingly, our September 11, 1987, Letter to Assessors No. 87/71, Proposition 60 - Chapter 186, Statutes of 1987, was based on a whole property to whole property approach. See Questions and

Answers 1-4, 6, and 8-18. While Question and Answer 9 indicate that the replacement dwelling may be purchased by a qualified claimant together with others who are not qualified claimants, it is still the purchase of an entire replacement dwelling that is contemplated. Questions and Answers 2, 3, 5-8, and 10-16 in the subsequent February 11, 1988, Letter to Assessors No. 88/10, Questions and Answers -- Propositions 58 and 60, are to the same effect regarding purchases of entire replacement dwellings. As to the "equal or lesser value" comparison, application of the 100%, 105% and 110% limitations, and "full cash value" of the replacement dwelling, see LTA 87/71, Questions and Answers 1, 11, 12, and 15, and LTA 88/10, Questions and Answers 2, 5, 6, 8, and 11.

In this instance, Mr. K, who is not eligible for Section 69.5 tax relief, has purchased a 100% interest in the subject property on October 18, 1996, and then sold a 50% interest in the property to Ms. M, who is eligible for section 69.5 tax relief and who is the potential claimant, on June 13, 1997. Based upon the Ballot summary and analysis, Article XIIIA, section 2 of the Constitution, section 69.5, and our long-standing construction of Article XIIIA, section 2 and section 69.5, discussed above, it is our opinion that section 69.5 does not apply in instances in which a qualified claimant purchases only a portion of a property from another or others, as contrasted with instances in which a qualified claimant purchases together with another or others an interest in an entire replacement dwelling (LTA No. 87/71, Q and A9, and LTA No. 88/10, Prop. 60 Q and A's 3 and 11).

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,

James K. McManigal, Jr.
Supervising Tax Counsel

JKM:ba
cc: Mr. Dick Johnson
Policy, Procedures, and Standards Division
Ms. Jennifer Willis
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