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No. 89/53

June 28, 1989

TO COUNTY ASSESSORS:

CHAPTER 1271 OF THE STATUTES OF 1988 (ASSEMBLY BILL 2878)
AMENDS REVENUE AND TAXATION CODE SECTION 69.5 TO ENACT
PROPOSITION 90 AND TO IMPLEMENT BOARD RECOMMENDED CLEANUP LEGISLATION

Chapter 1271 of the Statutes of 1988 (Assembly Bill 2878) is an urgency statute which became effective on September 26, 1988. Section 2.5 of this statute is operative until January 1, 1999, at which time it is repealed. Section 2 of this statute becomes operative on January 1, 1999.

This legislation primarily provides the clean-up legislation for Proposition 60 (Revenue and Taxation Code Section 69.5), the base-year value transfer provision applicable to senior citizens who sell their home and acquire a replacement home, and includes the intercounty provisions created by Proposition 90. In addition it amends Revenue and Taxation Code Sections 65, 75.21, 254 and 255, and adds Section 259.11, all of which are discussed in Letter to Assessors 89/52. It also amends Revenue and Taxation Code Section 251 which is discussed in Letter to Assessors 89/51.

Sections 2 and 2.5 are alternative amendments and both contain the same clarifying provisions for the original Section 69.5. However, only Section 2.5 contains the provision to allow the transfer of the base-year value of an original property located outside the county to a replacement dwelling that is located within the county.

Section 2 of this statute (not operative until January 1, 1999) amends Section 69.5 of the Revenue and Taxation Code related to the base-year value transfer provision applicable to senior citizens who sell their home and acquire a replacement home, exclusive of Assembly Constitutional Amendment 1 (Proposition 90). It had become apparent that certain provisions of Section 69.5 needed further clarification:

- a. When first drafted, Section 69.5 required the replacement property to be acquired within two years after the sale of the original property. It was subsequently amended to allow acquisition of the replacement property within two years of the sale, thus allowing the replacement property to be acquired prior to the sale of the original property. When this change was made, subdivision (b) was not amended so that it would be consistent with the change.

This amendment makes subdivision (b) consistent with subdivision (a).

b. There was also an inconsistency in subdivision (d) that was in need of clarification. In dealing with co-ownership interests, subdivision (d)(1) required proportional ownership interests to be the same in the replacement property as it was in the original property for the owners to qualify for property tax relief. Subdivisions (d)(2) and (d)(3) provide that where more than one replacement property is involved, relief can only be granted on one of the properties, to be determined by mutual consent of the co-owners. This implies that proportionate ownership need not be maintained. This conflict presented a problem for those trying to administer the provisions of Section 69.5.

This amendment clarifies the situation by removing the reference to proportionate interests in subdivision (d)(1).

c. Another area in need of clarification was found in subdivision (d), which limits tax relief for co-owners, without making provision for co-owners of multi-unit dwellings where each unit is eligible for the homeowners' exemption. A co-owner of a duplex has an undivided interest in the entire property rather than an interest in just the unit used as his/her residence. Under subdivision (d)(2), one of two co-owners, each residing in separate sides of a duplex, would be excluded from tax relief when they acquire two separate replacement properties and each files a claim.

This amendment adds a definition of co-owner, in subdivision (d), to exclude those co-owners who own and occupy the same dwelling unit within a multi-unit dwelling such as duplexes, triplexes, quadplexes, etc., where the individual units are eligible for the homeowners' exemption. This section also amends subdivision (g) to provide that each unit of a multi-unit dwelling shall be treated as a separate dwelling. This treatment is consistent with the constitutional provision.

d. Subdivision (e), in the second paragraph, precluded tax relief in any case where the transfer of the original property was not a change in ownership subjecting that property to reappraisal at its fair market value per Section 110.1 or 5803. This was done to prevent double benefit under Section 63.1 and Section 69.5. The language of subdivision (e), while accomplishing the foregoing, could also be interpreted to preclude one person's benefit under Section 69.5 simply because the property acquired as a replacement had already received benefit under Section 69.5 in a previous transaction.

This amendment clarifies the situation by specifying that the transactions that are precluded under subdivision (e) are all those transfers excluded from change in ownership by sections other than Section 69.5.

e. Subdivision (g)(5) defined "equal or lesser value" in subsections (A), (B), and (C). These sections specified that the value of the replacement dwelling may not exceed: (A), 100 percent of the value of the original property if the replacement property is purchased or newly constructed prior to the date of sale of the original property; or (B), 105 percent of the value of the original property if the replacement property is purchased or newly constructed within the first year following the date of sale of the original property; or (C), 110 percent of the value of the original property if the replacement property is purchased or newly constructed within the second year following the date of sale of the original property.

The law, however, was silent with respect to what replacement date should be used if the replacement dwelling constitutes the acquisition of vacant land and the new construction of a dwelling on the land.

Should the acquisition date for the land or the date of completion of construction of the dwelling be used? Should the land and improvements be handled separately?

This amendment clarifies this situation by specifying that if acquisition of replacement land and the completion of construction of the replacement dwelling occur on different dates, then the later date would be the date to use for purposes of comparison.

f. Subdivision (b)(7) of Section 69.5 required the county assessors to supply specified information to the Board of Equalization, to be provided upon the written request of the Board. The purpose of supplying the information is to prevent duplication of claims from county to county under this section. There is no mention of whether such information should be requested annually, semi-annually, quarterly, monthly, etc.

To clarify this provision and make it consistent with similar provisions of the law, this amendment requires reporting of this information on a quarterly basis.

This amended version of Section 69.5, most of which is duplicated in Section 2.5, does not become operative until January 1, 1999, whereas the amendments to this section as the result of Section 2.5 of this statute became operative upon adoption of Proposition 90.

Section 2.5 of this statute also amends Section 69.5 of the Revenue and Taxation Code and implements Assembly Constitutional Amendment 1 (Proposition 90; see also Letter to Assessors' 88/83). It primarily authorizes the counties to adopt an ordinance permitting the transfer of the base-year value of an original property located outside the county to a replacement dwelling that is located within the county. It also adds technical changes recommended by the State Board of Equalization. This section is an alternative to

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Section 2 of the statute in that the clarifying provisions found in Section 2 are also included in this section, with the exception of the intercounty base-year value transfer provisions and the modification of subdivision (g)(5)(c)(ii) of Section 69.5 which is discussed in the following paragraph.

Subdivision (g)(5)(c)(ii) implements a significant change to Section 69.5. In describing "equal or lesser value," this subdivision states that the full cash value of a replacement dwelling must not exceed 110 percent of the amount of the full cash value of the original property if: "The replacement dwelling is purchased or newly constructed on or after November 5, 1986 and on or before January 1, 1988, and within two years of the sale of the original property." This means that all replacement properties purchased between these two dates are subject to the 110 percent value test even if the original property sold within one year of the date of purchase of the replacement dwelling. Since this amendment is retroactive, assessors must reconsider any claims which failed the 105 percent value test but which might pass the 110 percent value test and then grant the benefit of Proposition 60 to those which now pass the test.

Since Proposition 90 was enacted by the voters in November 1988, the amendments made by Section 2.5 of this bill are controlling and become operative immediately until January 1, 1999 at which time they are repealed. When that occurs, Section 2 of this bill becomes operative (beginning January 1, 1999).

For your use we are including a copy of Assembly Bill 2878, Chapter 1271. If you have any questions relative to this bill, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,



Verne Walton, Chief
Assessment Standards Division

VW:wpc
Enclosure
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