



STATE BOARD OF EQUALIZATION
PROPERTY TAXES DEPARTMENT
450 N STREET, MIC: 64, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064
TELEPHONE (916) 445-4982
FAX (916) 323-8765
www.boe.ca.gov

JOHAN KLEHS
First District, Hayward

DEAN ANDAL
Second District, Stockton

CLAUDE PARRISH
Third District, Torrance

JOHN CHIANG
Fourth District, Los Angeles

KATHLEEN CONNELL
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JAMES E. SPEED
Executive Director

March 19, 2002

No. 2002/019

TO COUNTY ASSESSORS:

REVENUE AND TAXATION CODE SECTION 69.5: TWO-YEAR REQUIREMENT
ON PURCHASE OF LAND FOR REPLACEMENT DWELLING

In response to a complaint filed against the Board in superior court, staff reconsidered the issue of whether, for purposes of base year value transfers under Revenue and Taxation Code¹ section 69.5, the land or lot on which the replacement dwelling is or will be constructed must be purchased within two years of the sale of the original property. To settle the complaint, the Board authorized staff to revise its opinion on this issue.

For the reasons explained below, a claimant who purchases the replacement land more than two years before the sale of the original property, but completes construction of the residence within two years of the sale of the original property, is *eligible* for the benefit, provided that the other statutory requirements are met.

Section 69.5 provides that any person over the age of 55 years or any severely and permanently disabled person who resides in property which is eligible for the homeowner's exemption may transfer the base year value of that property to any replacement dwelling of equal or lesser value, which is 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, provided that the base year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

The two-year time limitation is set forth in subdivisions (a)(1) and (b)(5), and requires in subdivision (b)(5) that any person claiming the property tax relief provided by section 69.5 shall be eligible only if:

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. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and that, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

¹ All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

Although Board staff has, since 1987, interpreted the two-year requirement—particularly as it is set forth in subdivision (b)(5) above—to apply to the purchase of the land, as well as to the new construction of the replacement dwelling,² the statutory language does not expressly state that the “replacement land” must be purchased within two years. Staff’s interpretation was based upon a strict view of the exclusion with regard to the two-year requirement and assumptions concerning legislative intent. On further review, however, it appears that the Legislature’s purpose in adopting the two-year requirement was primarily for use in the value comparison formula in subdivision (g)(5), designed to limit local revenue losses. A two-year limit would compensate for the fact that the cost of the replacement land and dwelling could rise between the time the original property is sold and the replacement property is acquired or completed.

Thus, the Legislature structured the “*equal or lesser value test*” in subdivision (g)(5) to require the assessor to make the value comparison between the sale of the original property and purchase of the replacement dwelling within the two years—based on the full cash value of each.³ In calculating the *full cash value* of a newly constructed replacement property, both the land and the improvements must be reappraised at the time of completion (subdivision (g)(6)). The taxpayer who purchased the replacement *land* in 1987, for example, does not gain a “windfall,” and the county does not suffer large revenue losses, since the land value is adjusted at current market (full cash) value in 1997 when construction of the replacement dwelling is completed.

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.*”⁴ (Emphasis added.)

Subdivision (g)(3) defines, in pertinent part, “replacement dwelling” to mean

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.

In addition to the revenue aspect of the two-year requirement, at least one court has interpreted subdivision (a)(1) as a “permissive provision”—allowing the taxpayer to either purchase the replacement property, or to purchase the replacement *land* (at any time) and to construct the replacement dwelling—as long as the purchase or completion of new construction of the

² “Replacement dwelling” is defined in section 2 of article XIII A of the California Constitution and section 69.5(g)(3) as a building, structure, or other shelter constituting a place of abode *and* any land on which it may be situated.

³ Subdivision (g)(5) provides that the “*equal or lesser value*” as intended by subdivision (a) means that the *full cash value* of the replacement property which is purchased or newly constructed does not exceed one hundred percent (or incremental increases of five and ten percent for later dates of purchase or completion of new construction) of the full cash value of the original property.

⁴ To qualify for section 69.5 property tax relief, subdivision (f) requires that the claimant must first file a claim with the assessor providing certain information necessary for the assessor to make the value comparison test. Under paragraph 4 of subdivision (f) the claimant must state:

“The date of the claimant’s sale of the original property and the *date of the claimant’s purchase or new construction of a replacement dwelling.*” (Emphasis added.)

dwelling is within two years of the sale of the original property. In *Jack E. Khoury v. County of Madera* (1993) (Superior Court, County of Madera, No. 49560), the court reasoned that the Legislature's use of the word "or" in subdivision (a)(1) required only one of the two prerequisites to be met in order for a taxpayer to qualify for relief. Subdivision (a)(1) states,

"... any person ...may transfer ... the base year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is 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" (Emphasis added.)

The court reasoned that since the Legislature placed the two-year requirement in the disjunctive as an "either or" condition, the taxpayer satisfies the requirement when he does one *or* the other. Thus, the taxpayer meets the requirement by either purchasing the replacement dwelling within the two years or by completing construction of the replacement dwelling within two years, regardless of when the replacement *land* was purchased.

Section 69.5 does not expressly and unambiguously require the replacement land to be purchased within two years of the sale of the original property. Rather, the requirement is that the full cash value of the replacement land must be determined (in accordance with section 110) as of the date on which new construction was completed, assuming completion of the replacement dwelling occurs within two years of the sale of the original property. Subdivision (a)(1) allows the taxpayer two alternatives for meeting the two-year requirement.

In summary, if a claimant purchases land more than two years prior to the sale of the original property but completes construction of the replacement residence within two years of the sale of the original property, the base year value of the original property may be transferred to the land and the newly constructed residence, provided that the other statutory requirements are met.

The advice contained in this letter supersedes previously written opinions on this issue contained in Letters To Assessors No. 87/71 (dated September 11, 1987) and No. 88/10 (dated February 11, 1988) and Annotations 200.0085 (C 8/27/90; C 4/9/92), 200.0110 (C 7/13/88; C 4/23/99), and 200.0114 (C 3/8/89).

Enclosed is a series of questions and answers on this issue. If you have any questions about the property tax relief provided by section 69.5, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

/ s / David J. Gau

David J. Gau
Deputy Director
Property Taxes Department

DJG:grs
Enclosure

REVENUE AND TAXATION CODE SECTION 69.5

PURCHASE OF REPLACEMENT DWELLING LAND

Questions and Answers

Given the following facts, is a taxpayer eligible for relief under section 69.5?

- *A lot is purchased on September 15, 1987, for \$25,000*
- *The original property is sold on March 10, 1998, for \$175,000*
- *Construction of the replacement dwelling is completed on May 4, 1998, (full cash value of \$100,000)*
- *The full cash value for the replacement property lot as of May 4, 1998, was \$50,000*

Yes, assuming the claimant is otherwise qualified under section 69.5. The “equal or lesser value” test has been met in that the sum of the full cash values of the lot and the dwelling at the time of its completion is less than the full cash value of the original property. For comparison purposes, the total value of the replacement dwelling as of May 4, 1998, is \$150,000 (\$50,000 land and \$100,000 improvements) while the full cash value for the original property is \$183,750 (\$175,000 x 105%).

On the other hand, if the full cash value of the replacement property lot as of May 4, 1998, was \$100,000, then the replacement property would **not** qualify because its total full cash value of \$200,000 on May 4, 1998, exceeds 105% of the full cash value of the original property (\$183,750).

If a lot is purchased and a home constructed, does the assessor have to establish a separate value for the land and the improvements in making the section 69.5 full cash value comparison?

No. In estimating value, Property Tax Rule 3 instructs the assessor is to consider any of the approaches to value that may be appropriate for the property being appraised. However, Rule 4 provides that when reliable market data are available with respect to a given property, the comparative sales approach to value is the preferred method to use. For example, if comparable lots are selling for \$50,000 as of the date new construction is completed and the value of the new construction using the cost approach is \$100,000, but comparable improved parcels are selling for \$160,000 to \$170,000, then the full cash value would be established in the \$160,000 to \$170,000 range.

If a lot is purchased and a home constructed, must the new construction be completed within two years of the purchase of the lot?

No. Section 69.5 (b)(5) requires that the original property be sold within two years of the purchase or completion of new construction of the replacement dwelling. The purchase of the lot and the completion of construction do not have to occur within two years of each other. The replacement lot may be purchased any time *before* the sale of the original property; however, the new construction of the residence must be completed within two years of the sale of the original property.

If a lot is purchased within two years of the sale of the original property, does the new construction also have to occur within two years of the sale in order to receive relief under section 69.5?

Yes. The new construction must be completed within two years of the sale of the original property regardless of when the purchase of the lot occurs. Section 69.5(a)(1) provides that the replacement dwelling be purchased or newly constructed within two years of the sale of the original property. Subdivision (g)(5) provides for a two-year window after the sale of the original property within which the value comparison is to be made. The code does not contemplate a comparison of values after the two-year period. Thus, all transactions must be completed before two years elapses after the sale of the original property.

If a lot is purchased on July 7, 1999 and new construction of the residence was completed in November, 1999, but the original property did not sell until January, 2002, can the base year value be transferred to the replacement property?

No. Section 69.5(b)(5) requires that the original property be sold within two years of the purchase or new construction of the replacement dwelling. Since neither the purchase of the lot nor the completion of construction occurred within two years of the sale of the original property, the base year value cannot be transferred. However, the taxpayer would still have two years after the sale of the original property to find a qualifying replacement property.

If a lot is purchased on July 7, 1999; new construction of the residence was completed in November, 1999; an addition was completed on the residence in July, 2000, but the original property did not sell until January, 2002; can the base year value be transferred to the replacement property?

No. Section 69.5(g)(3) defines “replacement dwelling” as a building, structure, or other shelter constituting a place of abode 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. Since the completion of construction of the place of abode (i.e., the residence) did not occur within two years of the sale of the original property as required by subdivision (b)(5), the property is ineligible for relief under section 69.5.