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No. 2012/012

February 13, 2012

TO COUNTY ASSESSORS:

DISASTER RELIEF: "SUBSTANTIALLY DAMAGED OR DESTROYED"

Effective January 1, 2012, Senate Bill 947 (Stats. 2011, Ch. 351), in part, amends sections 69, 69.3, and 69.5 of the Revenue and Taxation Code<sup>1</sup> to clarify the definition of "substantially damaged or destroyed." Sections 69 and 69.3 allow base year value transfers for properties substantially damaged or destroyed by disasters for which the Governor proclaims a state of emergency.<sup>2</sup> Section 69.5 allows base year value transfers for homeowners age 55 and older or disabled under specific circumstances, including situations where the original property was substantially damaged or destroyed by any misfortune or calamity and sold in its damaged state. These three sections will be separately discussed as each has different qualifications for property tax relief.

This letter supersedes Letters To Assessors 2002/016, 2003/050, and 2010/010. It also supersedes the discussion of "substantially damaged or destroyed" in Chapters 14 and 16 of Assessors' Handbook section 401, *Change in Ownership* (September 2010).

Effective January 1, 2010, Senate Bill 824 amended sections 69(c)(1) and 69.3(b)(12) to provide that either land or improvements must sustain physical damage amounting to more than 50 percent of its full cash value immediately prior to the disaster. These amendments allow land and improvements to be treated as separate appraisal units in meeting the "substantially damaged or destroyed" threshold of more than 50 percent for purposes of qualifying for disaster relief via a base year value transfer. However, that bill did not amend section 69.5, which contains a similar definition of "substantially damaged or destroyed."

Effective January 1, 2012, Senate Bill 947 amends section 69.5(g)(13) to be consistent with sections 69 and 69.3 and reads, in part:

For the purposes of this section property is "substantially damaged or destroyed by misfortune or calamity" if ~~it sustains either the land or the improvements~~ sustain physical damage amounting to more than 50 percent of ~~its either the land's or the improvement's~~ full cash value immediately prior to the misfortune or calamity. Damage includes a diminution in the value of property as a result of restricted access to the property where the restricted access was caused by the misfortune or calamity and is permanent in nature.

<sup>1</sup> All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

<sup>2</sup> A list of these disasters is posted to the bottom of the Property Taxes homepage of the Board's website at [www.boe.ca.gov/proptaxes/pdf/Disasterlist.pdf](http://www.boe.ca.gov/proptaxes/pdf/Disasterlist.pdf). This list is updated as we become aware of any new proclamations.

In addition, Senate Bill 947 amends section 69(c)(1) to read, in part:

Property is substantially damaged or destroyed if either the land or the improvements sustain physical damage amounting to more than 50 percent of ~~its~~ either the land's or the improvement's full cash value immediately prior to the disaster. Damage includes a diminution in the value of property as a result of restricted access to the property where the restricted access was caused by the disaster and is permanent in nature.

Likewise, Senate Bill 947 amends section 69.3(b)(12) to read, in part:

"Substantially damaged or destroyed" means property where either the land or the improvements sustain physical damage amounting to more than 50 percent of ~~its~~ either the land's or the improvement's full cash value immediately prior to the disaster. Damage includes a diminution in the value of property as a result of restricted access to the property where the restricted access was caused by the disaster and is permanent in nature.

For example, assume a home that has a total current market value of \$800,000 is completely destroyed in a wildfire. If the empty lot is worth \$450,000, i.e., more than 50 percent of the total value, under the prior law, the homeowner would not be eligible for a base year value transfer even though the home itself (the improvement) was 100 percent destroyed. Formerly, the only disaster relief available would be the new construction exclusion under section 70(c) or section 170 if the homeowner chooses to rebuild. However, with the amendments made by SB 824 and SB 947, if this wildfire occurs on or after January 1, 2010, the homeowner would be eligible for a base year value transfer because 100 percent of the improvement (i.e., the home) was destroyed. This meets the new definition of "substantially damaged or destroyed."

The following table provides a quick reference to the disaster relief base year value transfer provisions:

Revenue and Taxation Code	Property Type	Type of Relief Available	Substantially Damaged or Destroyed Test	Type of Disaster
Section 69	All property types	Base year value transfer	Either land or improvements	Governor-proclaimed
Section 69.3	Principal place of residence	Base year value transfer	Either land or improvements	Governor-proclaimed
Section 69.5	Principal place of residence — 55 or older or disabled	Base year value transfer	Either land or improvements	Any disaster or calamity

The specific requirements for each type of base year value transfer are described below.

### **Section 69**

Section 69 allows an owner of real property, whose property had been substantially damaged or destroyed in a disaster, to transfer the base year value of the damaged property to a replacement property acquired or newly constructed in the same county. Base year value transfers are

available for all types of real property with the limitation that the damaged property and the replacement property must be of the same property type: residential, commercial, agricultural, or industrial.<sup>3</sup>

In addition to the change mentioned above, specific requirements of section 69 include:

- The disaster must result in a Governor-proclaimed state of emergency.
- The replacement property must be located in the same county as the original property.
- The replacement property must be acquired or newly constructed within five years after the disaster.<sup>4</sup>
- The replacement property must be comparable to the destroyed property.
- Only the owner(s) of substantially damaged or destroyed property is eligible for relief.
- If the base year value is transferred under section 69, the new construction exclusion under section 70 or 170 is not available.

The replacement property is considered comparable if it is similar in size, utility, and function to the damaged or destroyed property. Property is similar in *size and utility* if the market value of the acquired property does not exceed 120 percent of the fair market value of the damaged or destroyed property in its pre-damaged condition. If the market value of the replacement property exceeds 120 percent, the excess above 120 percent is subject to reassessment to current market value, either at time of acquisition or upon completion of construction, as applicable.

Property is similar in *function* if the replacement property is subject to similar governmental restrictions, such as zoning. The replacement property must be used in the same manner as the damaged or destroyed property. Properties are similar in use if they fall within the same broad property type (e.g., residential, commercial, agricultural, industrial). Any portion of the replacement property that is not similar in function is subject to reassessment to current market value, either at the time of acquisition or upon completion of construction, as applicable.

**Example:** Single-family residences, duplexes, triplexes, and apartments—all residential properties—would be considered similar in use. Properties would be considered dissimilar only if their uses crossed over into different property types. If a home is destroyed and a combination convenience store and residence is purchased as a replacement, only the residence would be considered comparable to the destroyed property. Consequently, the base year value can be transferred to only the residential portion of the replacement property. The commercial portion (convenience store) would be subject to reassessment at current market value.

A damaged or destroyed manufactured home that is subject to property taxation<sup>5</sup> can be replaced with another manufactured home or with conventional housing and qualify for relief under

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<sup>3</sup> See Letter To Assessors 92/45

<sup>4</sup> For disasters that occurred prior to July 1, 2003, a replacement property had to be acquired or constructed within three years of the disaster.

<sup>5</sup> A licensed manufactured home is not eligible for a base year value transfer because it has no base year value.

section 69, and vice versa, provided that the replacement property meets the comparability test of size, utility, and function, and to the extent that it does not exceed the 120 percent value limitation.

The following describes the appropriate base year value to be applied to the replacement property:

- If the full cash value of the replacement property does not exceed 120 percent of the full cash value of the property prior to damage, then the entire adjusted base year value of the pre-damaged property will be transferred to the replacement property as its base year value.
- If the full cash value of the replacement property exceeds 120 percent of the full cash value of the property prior to damage, then the entire adjusted base year value of the pre-damaged property will be transferred to the replacement property, but the full cash value of the amount exceeding 120 percent will be added to the adjusted base year value of the pre-damaged property. The sum of these amounts will be the new base year value of the replacement property.
- If the full cash value of the replacement property is less than the adjusted base year value of the property prior to damage, then that lower value will be the base year value of the replacement property.

At the time the adjusted base year value of the damaged property is transferred to the replacement property, the substantially damaged or destroyed property is reassessed at its full cash value; however, it also retains the adjusted base year value. There has been no event (change in ownership or completion of new construction) that would trigger the establishment of a new base year value. Since the damaged property will retain its original adjusted base year value, the new taxable value for the damaged property will be the lower of its current full cash value or the adjusted base year value. In other words, an assessor should evaluate the damaged property for a decline in value at the time its base year value is transferred to the replacement property. If the damaged property is later reconstructed, the land will retain its adjusted base year value but the new construction will be assessed at current market value and a new base year value for the improvements will be established upon the date of completion.

**Example:** A home is destroyed in a wildfire. Its adjusted base year value at the time of the disaster is \$553,456 (land \$102,734, improvements \$450,722). The full cash value of the destroyed home just prior to the disaster was \$800,000. The full cash value of the land after the disaster is \$250,000. Another home was purchased six months after the disaster for \$820,000. A claim was filed, and the adjusted base year value of \$553,456 was transferred to the replacement property. Even though the base year value of the destroyed property was transferred to the replacement property, the assessed value of the destroyed property (land) will reflect the adjusted base year value of \$102,734 (the lower of the retained adjusted base year value or current market value).

Property that is acquired prior to the date of the disaster is not eligible as a replacement property. However, if an owner of property that has been substantially damaged or destroyed constructs a new home on vacant land that was already owned, the newly constructed home may qualify if

the completion date is within five years of the date of the disaster and the market value of the improvements on the date of completion meets the value comparison test.

Only the owner of substantially damaged or destroyed property is eligible for relief. Owners may be individuals, or they may be partnerships, corporations, or other legal entities. The acquisition of an ownership interest in a legal entity that owns real property, however, is not an acquisition of comparable property. For example, if two persons owned property as joint tenants and that property was substantially damaged or destroyed, relief under section 69 is not available where a legal entity owned by the joint tenants acquires property as a replacement for the damaged or destroyed property. Such acquisition would qualify, however, if the legal entity had originally owned the damaged property.

A taxpayer may not receive relief under both sections 69 and 70 (new construction exclusion) for the same damaged or destroyed property. Thus, for example, if the owner of damaged or destroyed property receives relief under section 69 by transferring the base year value of the damaged property to a replacement property, then the damaged property will no longer be eligible for the new construction exclusion under subdivision (c) of section 70 in the event the owner later reconstructs the damaged property.

### **Section 69.3**

Section 69.3 allows a homeowner whose principal place of residence is damaged or destroyed in a disaster to transfer the base year value of the pre-damaged residence to a replacement home acquired or constructed in another county.<sup>6</sup>

Specific requirements of section 69.3 include:

- The disaster must result in a Governor-proclaimed state of emergency.
- The county where the replacement property is located must have enacted an ordinance implementing section 69.3.<sup>7</sup>
- Both the damaged or destroyed property and the replacement property must be the principal place of residence of the person claiming the relief.
- Either the land or improvements must have sustained physical damage amounting to more than 50 percent of its current market value immediately prior to the damage.
- The replacement property must be acquired or newly constructed within three years after the damage to the original property.
- In general, the current market value of the replacement property must be *equal to or less than* the market value of the damaged property immediately prior to the damage. A replacement property is considered comparable if its full cash value does not exceed one of the following:

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<sup>6</sup> See Letter To Assessors 95/16.

<sup>7</sup> As the date of this letter, the following nine counties have adopted ordinances pursuant to section 69.3: Contra Costa, Los Angeles, Modoc, Orange, San Francisco, Santa Clara, Solano, Sutter, and Ventura.

- **One hundred five percent** of the full cash value of the original property immediately prior to the disaster (including any inflation factor adjustments) if the replacement property is purchased or newly constructed within the first year following the date of the damage or destruction of the original property
- **One hundred ten percent** of the full cash value of the original property immediately prior to the disaster (including any inflation factor adjustments) if the replacement property is purchased or newly constructed within the second year following the date of the damage or destruction of the original property.
- **One hundred fifteen percent** of the full cash value of the original property immediately prior to the disaster (including any inflation factor adjustments) if the replacement property is purchased or newly constructed within the third year following the date of the damage or destruction of the original property.
- A claim for relief must be filed with the county assessor of the county in which the replacement property is located.<sup>8</sup> The claim must be filed within three years after the replacement property is acquired or newly constructed.

A principal residence is a person's true, fixed, and permanent home and principal establishment to which the owner, whenever absent, intends to return. If a homeowners' exemption has not been granted on the property, the assessor may ask for proof of residency. Proof of residency may include vehicle registration, voter registration, bank accounts, or income tax records.

"Original property" and "replacement property" are defined as land and a structure or other place of abode which may be either real or personal property. For manufactured homes, only a manufactured home on a permanent foundation<sup>9</sup> can qualify as the original property, but all manufactured homes can qualify as a replacement property if the manufactured home is subject to property taxation and meets all the provisions of comparability specified by the statute.<sup>10</sup> A damaged or destroyed manufactured home can be replaced with conventional housing and qualify for relief under section 69.3, and vice versa.

Property, including land, that is acquired prior to the date of the disaster is not eligible as a replacement property.<sup>11</sup>

"Owner or owners" is defined as an individual or individuals. Partnerships, corporations, or other legal entities that own real property do not qualify for relief under Section 69.3. Moreover, the acquisition of an ownership interest in a legal entity that owns real property is not considered an acquisition of a replacement property. Even though this section does not make any reference to trusts, property "owned" by a trust is eligible for this property tax relief if the property is held by a qualified individual as the present beneficiary of the trust.

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<sup>8</sup> Claims must be filed using form BOE-65-PT, *Claim for Intercounty Transfer of Base Year Value from Principal Residence Damaged or Destroyed in a Governor-Declared Disaster to Replacement Property*.

<sup>9</sup> Pursuant to Health and Safety Code sections 18551 or 18555.

<sup>10</sup> Annotations 200.0040 and 200.0041.

<sup>11</sup> Letter To Assessors 95/16.

Only the owner or owners of the property that has been substantially damaged or destroyed may receive property tax relief. For example, if a sole owner of a destroyed original property purchased a property as a replacement together with a second party who was not an owner of the original property, the base year value of the original property could not be transferred to that replacement property under section 69.3. The reason is that someone other than the owner of the original property would receive the property tax relief pursuant to section 69.3.

At the time the adjusted base year value of the damaged property is transferred to the replacement property, the substantially damaged or destroyed property is reassessed at its full cash value; however, it also retains the adjusted base year value. There has been no event (change in ownership or completion of new construction) that would trigger the establishment of a new base year value. Since the damaged property will retain its original adjusted base year value, the new taxable value for the damaged property will be the lower of its current full cash value or the adjusted base year value. In other words, an assessor should evaluate the damaged property for a decline in value at the time its base year value is transferred to the replacement property. If the damaged property is later reconstructed, the land will retain its adjusted base year value but the new construction will be assessed at current market value and a new base year value for the improvements will be established upon the date of completion.

### **Section 69.5**

Section 69.5 allows a homeowner who is over age 55 or severely and permanently disabled to sell their principal place of residence (original property) and transfer its base year value to a replacement residence of equal or lesser value. The replacement property may be located in the same county as the damaged property, or it may be located in another county where the board of supervisors has enacted an ordinance implementing the intercounty base year transfer provisions of section 69.5(a)(2).<sup>12</sup>

This relief is available under certain conditions if the original property is substantially damaged or destroyed by misfortune or calamity and sold in its damaged state. Damage includes a diminution in the value of property as a result of restricted access to the property where the restricted access was caused by the misfortune or calamity and is permanent in nature. Case law defines a misfortune or calamity as some event out of the ordinary that is unforeseeable, sudden, or unusual, in contrast to a gradual deterioration or worsening condition over time.<sup>13</sup>

The specific requirements of the section 69.5 include:

- The damage may result from any misfortune or calamity; it need not be the result of a Governor-proclaimed state of emergency.
- Either land and improvements must have sustained physical damage amounting to more than 50 percent of its current market value immediately prior to the damage.
- The original property must be sold in its damaged state.

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<sup>12</sup> As of the date of this letter, the following counties have adopted ordinances pursuant to section 69.5: Alameda, El Dorado, Los Angeles, Orange, San Diego, San Mateo, Santa Clara, and Ventura.

<sup>13</sup> *T. L. Enterprises, Inc. v. Los Angeles County*, 215 Cal.App.3d 876.

- The damaged or destroyed property must have been the principal place of residence of the claimant as of one of the following: (1) the date that the original property was substantially damaged or destroyed by misfortune or calamity, (2) the date of sale of the original property, or (3) within two years of the purchase or new construction of the replacement dwelling.
- The replacement dwelling must be purchased or newly constructed within two years of the sale of the original property in its damaged state.
- The replacement property must be the principal place of residence of the claimant as of the date the claim for relief is filed.
- The current market value of the replacement property on the date of purchase or completion of new construction must be *equal to or less than* the market value of the damaged property immediately prior to the damage. A replacement property is considered comparable if the full cash value does not exceed one of the following:
  - **One hundred percent** of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.
  - **One hundred five percent** of the full cash value of the original property if the replacement property is purchased or newly constructed within the first year following the date of the sale of the original property.
  - **One hundred ten percent** of the full cash value of the original property if the replacement property is purchased or newly constructed within the second year following the date of the sale of the original property.
- As of the date of sale of the original property, the claimant or the claimant's spouse must be at least 55 years of age **or** severely and permanently disabled. There is no age requirement for persons who are severely and permanently disabled.<sup>14</sup>
- A claim for relief must be filed with the county assessor of the county in which the replacement property is located.<sup>15</sup> The claim must be filed within three years of the purchase or new construction of the replacement property to receive relief as of the latest qualifying transaction. If this period is missed, prospective relief is available for the lien date of the assessment year in which the claim is filed.<sup>16</sup>
- Generally, this relief is available one time only. However, if relief was first granted for age, relief can be granted a second time if the claimant or the claimant's spouse subsequently becomes severely and permanently disabled and has to move because of the disability.

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<sup>14</sup> Section 69.5(g)(12) provides that "severely and permanently disabled" means any person described in section 74.3(b).

<sup>15</sup> Claims must be filed using either form BOE-60-AH, *Claim of Person(s) at Least 55 Years of Age for Transfer of Base Year Value to Replacement Dwelling*; or form BOE-62, *Disabled Persons Claim for Transfer of Base Year Value to Replacement Dwelling*.

<sup>16</sup> See Letter To Assessors 2006/056.

Similar to section 69.3, relief is available only to a person. A firm, partnership, association, corporation, company, or other legal entity or organization that owns real property is not eligible to receive relief under section 69.5.

The purchase of the replacement property must occur within two years of the sale of the original property in its damaged state. The date of the misfortune or calamity does not have to occur within two years of the date of sale or the date of purchase. For example, if a principal residence were destroyed in 2003 and sold in its damaged state in 2010, the property owner would have two years from the 2010 sale date to purchase a qualifying replacement property.

The *full cash value* of the property that has been damaged or destroyed by disaster and has been sold in its damaged state is determined in accordance with section 110 immediately prior to the damage or destruction, plus any inflation factoring applicable between the date of sale of the original property and the date of purchase or completion of new construction of the replacement property. For example, if a principal residence was destroyed on July 16, 2005, and sold in its damaged state in November 2009, and the replacement property was purchased in September 2011, the fair market value of the original property would be determined as of July 16, 2005 (immediately prior to the date of damage or destruction). Inflation factoring would be added to this value for lien dates 2010 and 2011 (the period between the original property's date of sale and the replacement property's date of purchase). Since the replacement property was purchased in the second year after the sale of the damaged property, the fair market value of the replacement property as of the date of purchase would be compared with 110 percent of this value.

For property that has been damaged or destroyed, the *base year value* that is transferred is the adjusted base year value immediately prior to the date of damage or destruction of the original property plus any inflation factoring for the period between the destruction and the purchase of the replacement property. The date the base year value is transferred is the date of the latest qualifying transaction—the sale of the original property, the purchase of the replacement property, or the completion of construction of a new replacement dwelling.

### **Appeals**

The Board has taken the position that a claimant may appeal a denial of a claim on the grounds that all of the requirements of that particular section have been met and, therefore, the base year value of the original property should be transferred to the replacement property.<sup>17</sup> If such an appeal involves a determination of the fair market value of the original property, however, then the application can be valid only if (1) the appeals board has jurisdiction over the original property (i.e., both the original and the replacement properties are in the same county)<sup>18</sup>, and (2) the base year value of the original property (i.e., its fair market value) has not already been the subject of an application decided by an appeals board, and (3) the base year value of the original property can still be challenged pursuant to section 80.<sup>19</sup>

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<sup>17</sup> See the *Assessment Appeals Manual*, May 2003, Chapter 5; and Annotation 200.0006 (C 7/2/96).

<sup>18</sup> An appeals board has no jurisdiction to consider the fair market value of a property located in another county, even for purposes of the value comparison test for section 69.3 or 69.5.

<sup>19</sup> Under section 80(a)(3), a base year value may be appealed during the regular equalization period for the year in which it is placed on the assessment roll or in any of the three succeeding years.

If you have any questions regarding any of these disaster relief provisions, please contact our Assessment Services Unit at 916-274-3350.

Sincerely,

/s/ John K. Thompson for

David J. Gau  
Deputy Director  
Property and Special Taxes Department

DJG:grs