State of California

Board of Equalization

Memorandum

200.0011

To : Mr. Verne Walton

Date December 22, 1987

From : Richard H. Ochsner

Subject : Section 69.5 (Prop. 60)

This is in response to your request of December 4, 1987, for advice regarding the application of section 69.5 to a situation where the taxpayer sells his original property, a house and lot, and acquires as his replacement dwelling a house situated on a lot which will be rented, rather than owned, by the taxpayer. While this scenario may be unusual when the replacement dwelling is a stick-built house, it is a very normal arrangement when the replacement dwelling is a mobilehome.

These situations raise two questions. First, how should the value comparisons be made in order to determine whether the replacement dwelling is of equal or lesser value than the original property. The second issue deals with the transfer of the base year value of the original house and lot and whether the entire amount should be applied to the replacement dwelling.

Your memo states that you are concerned with the possible abuse of the section 69.5 benefit arising from the practice of renting rather than buying the lot on which the replacement dwelling is situated. This would allow the value comparison to be made between the total value of the original house and lot, and the replacement improvement only. If the taxpayer were able to acquire the lot after a few years, then it is possible that the benefit would apply where the replacement dwelling actually had a value far in excess of the original property.

Section 69.5 of the Revenue and Taxation Code permits the transfer of the base year value of the original property to a replacement dwelling of equal or lesser value. The definitions for "replacement dwelling" and "original property" found in subdivisions (g)(3) and (4) refer to a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which 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." It is clear from these definitions that both terms only include land which is owned by the claimant. Thus, land on which the improvement is situated which is rented by the claimant is not included for purposes of either transferring the base year value or making value comparisons.

This interpretation is consistent with the advice we provided in Assessors Letter 87/71, Question 15(b), dealing with a situation involving an original property consisting of a mobilehome, without a lot, where the replacement dwelling is a conventional house and lot. Our advice in Question 15(b) was based upon the same considerations described above.

I am sure that in the typical situation where mom and dad sell the family homestead and move to a mobilehome situated in a mobilehome park, it was intended that the value comparison would be between the original house and lot and the mobilehome, without the land, where the latter is situated on a rental space. Thus, if the original property was worth a $100,000, they can acquire a mobilehome worth the same amount, without considering the value of the rental space on which the mobilehome is situated. As I understand it, this is a very typical situation and that was the result contemplated at the time that the legislation was enacted.

When we are talking about conventional housing located on a rented lot, the statute requires that we reach the same result. I am not sure that this approach will result in an abuse of the statute. If the lot on which the house is located is owned by a third party who can deal with it as he sees fit, that is, set market rents or sell the property to other persons who will set market rents, etc., then that separate ownership should be given recognition. If the taxpayer eventually acquires the land, then that value would be added to the base year value of the property. Further, if the term of the rental agreement, with options, is 35 years or more, then this should be treated as a change in ownership and the taxpayer would be treated as owner of the property (although this is not expressly recognized in the statute). If the house is permanently fixed to the lot, then it seems very likely that the purchaser of the structure will insist upon protection of his interest through a long term lease or other provisions which will protect his investment in the improvement. In these situations, it may very well be that the rental agreement is, in reality, a land purchase contract. Furthermore, where the rental agreement is nothing more than a sham, the assessor can treat it as such.

In reviewing section 69.5, the only clarification that might be appropriate would be to further define the term "land owned by the claimant" as used in the definitions for "replacement dwelling" and "original property" to clarify that the term includes land leased for a period, with options, of 35 years or more or subject to terms which are equivalent to a land purchase agreement.

I would appreciate receiving any thoughts you might wish to contribute to the subject.

RHO:cb
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cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Mark Nisson
Mr. Eric F. Eisenlauer
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