STATE OF CALIFORNIA

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March 30, 1990

Dear

This is in response to your letter requesting advice on whether your client, , can qualify for the benefits of Proposition 60 by transferring the base year value of his original property to a replacement dwelling in which 8 percent of the ownership was acquired by by virtue of his uncle's revocable living trust. is purchasing the remaining 92 percent interest in the property from 14 other trust beneficiaries. You ask whether this transaction constitutes a "purchase" within the meaning of Revenue and Taxation Code section 69.5 (implementing Proposition 60) and qualifies him for the benefits of this provision.

Your letter states that ; uncle, , a widower without children, passed away on January 3, 1989. Under a revocable living trust executed in May of 1988, the residue of the estate was left in varying percentages to some 15 nieces and nephews, including . The residue includes a residence which would like to acquire as a replacement dwelling. Under the trust, he received an 8 percent interest in the property and would, in effect, purchase the remaining 92 percent interest from the other 14 beneficiaries through a distribution in kind arrangement. That is, his interest in other portions of the residue would be used as consideration for the transfer of the interests of the other beneficiaries in the subject property to :

Section 69.5 permits a person over age 55 years to transfer the base year value of an original property to a replacement dwelling which is "purchased" by that person as his or her principal residence within two years of the sale by that person of the original property. The term "purchased" is defined in Revenue and Taxation Code section 67 as a change in ownership for consideration. For that reason, we have taken the position that property acquired by gift or device, without the benefit of consideration, cannot qualify as a replacement dwelling for purposes of section 69.5. Thus, had Mr. acquired a 100

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percent interest in the subject property by virtue of his uncle's trust, we would conclude that the property cannot qualify as a "purchased" replacement dwelling. On the other hand, had Mr. Rehburg acquired a zero percent interest in the property via his uncle's trust and then purchased a 100 percent interest in the property by exchanging his interest in other residue property, we would conclude that he had purchased the property and that it can qualify as a replacement dwelling.

The difficult question that you present is whether Mr. 's 8 percent interest disqualifies the property from being considered to be "purchased" for purposes of section 69.5. In reviewing this question, it is apparent at the outset that there are no provisions in section 69.5 which expressly deal with this issue. Thus, the conclusion we reach must be based upon inferences derived from relevant portions of the statute. As a result, it is fair to state that our conclusions are not necessarily free of doubt.

Section 69.5 authorizes the transfer of the base year value of an original property which is eligible for the homeowner's exemption to a replacement dwelling which is occupied as the claimant's principal place of residence and is eligible for the homeowner's exemption. The section deals with the original property and the replacement dwelling as single integrated units. The definitions of these terms found in subdivisions (g)(3) and (4) refer to "a building, structure, or other shelter constituting a place of abode, whether real or personal property, which is owned and occupied by a claimant as his or her place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated." These definitions support our conclusion that the terms "original property" and "replacement dwelling" are intended to refer to the entire property as single integrated units and not to fractional interests in such property. For that reason, we have generally followed this interpretation for purposes of applying the various requirements of section 69.5. For example, where a 50 percent interest in a replacement dwelling was acquired by inheritance, and the remaining 50 percent interest was purchased from other heirs, we have concluded that the replacement property could not be considered to be "purchased" for purposes of section 69.5. Logically, this analytical approach suggests that, since we treat the original property and replacement dwelling on a single-unit basis, anything less than a 100 percent purchase of the replacement dwelling will not qualify for the benefit.

We recognize, of course, that it may be reasonable to conclude that at some point an ownership interest is so small that it should be considered de minimis and ignored for purposes of

applying section 69.5. Unfortunately, we have not been able to find anything in section 69.5 which seems to support this conclusion or to provide guidance as to when such an interest should be considered to be de minimis.

The Legislature has enacted a general change in ownership de minimus rule in subdivision (a) of Revenue and Taxation Code section 65.1. That provision excludes from reappraisal the purchase of an interest in real property if the interest has a market value of less than 5 percent of the value of the total property and the market value of the interest is less than $10,000. In the absence of any other guidance from the Legislature, we conclude that if a de minimis standard is to be applied to section 69.5, that such a standard should be consistent with the limits set forth in section 65.1. For that reason, we must conclude that s 8 percent interest in his uncle's property would prevent that property from being considered to be a "purchased" replacement dwelling for purposes of section 69.5.

The views expressed herein are advisory only and are not binding upon local assessors. You may wish to consult with the assessor in the county in which the subject property is located in order to determine whether the property will be treated in a manner consistent with the views expressed above.

Our intention is to provide timely, courteous and helpful responses to inquires such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,

Richard H. Ochsner
Assistant Chief Counsel

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cc: Mr. John W. Hagerty
Mr. Verne Walton
Mr. Dennis Miller