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STATE OF CALIFORNIA

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Executive Director

July 15, 1997

In Re: **Transfer of Base Year Value to Replacement Dwelling Purchased from Spouse.**

Dear Mr.

This is in response to your letter of February 12, 1997, to the Assessment Standards Division, (now the Policy, Panning and Standards Division) requesting an opinion as to whether your client, Mr. ("Mr. B"), may qualify for the benefits of Proposition 60, California Constitution Article XIIIA, Section 2 and Revenue & Taxation Code Section 69.5. The issue is whether Mr. B may transfer the base year value from his original property to a replacement dwelling, where the replacement dwelling was purchased from his wife, Ms ("Ms. J") and excluded from change in ownership and reappraisal under the interspousal exclusion in Section 63. Your letter was subsequently forwarded to the Legal Division for consideration. We regret that our work on prescheduled Board matters has delayed this response.

You have described the following set of facts for purposes of our analysis:

1. Mr. B married Ms. J in May 1995, following the execution of a prenuptial agreement designed to keep their assets separate and to control their individual estates under separate plans. Thereafter, Mr. B purchased a 50% ownership interest in Ms. J's residence. In August 1995, Mr. B sold his original property, and sometime later purchased the remaining 50% interest in Ms. J's residence. Both purchases by Mr. B were for consideration alleged to be fair market value.

2. Mr. B then applied to the San Mateo County Assessor to transfer the base year value of his original property to this replacement dwelling. Both the original property and the replacement dwelling are located in the same county.

3. The Assessor denied Mr. B's claim for property tax relief on the ground that the purchase of the replacement dwelling was excluded (under the interspousal exclusion) as a transfer which subjected the property to reappraisal at its current fair market value as required by Section 69.5.

You believe that the following Proposition 60 / Article XIII A, Section 2(g), and Section 69.5 requirements have been met by Mr. B:

1.) The person was over 55 years of age.
2.) The person has never used his Proposition 60 transfer nor has his spouse.
3.) Both the old (original) residence and the new (replacement) residence are located in the same county.
4.) The sale and the acquisition occurred within the 2 year time frame.
5.) The sale price of the original residence and the value of the replacement dwelling are within the value requirements of Proposition 60.
6.) Because the seller is the only person on title and occupies the replacement property, he is eligible for the homeowners' exemption.

The county assessor, however, has apparently indicated that the transfer of base year value benefit should be denied, because Mr. B's acquisition of the replacement dwelling was not subject to reappraisal. Your question is whether the reappraisal of the replacement dwelling is a prerequisite under Proposition 60 in order for the benefit to be available. As hereinafter explained, Article XIII A, Section 2(g), expressly states that the "purchase" of a replacement dwelling shall not include the purchase or transfer of real property between spouses. Therefore, we must agree with the assessor, that it is Mr. B's acquisition of the replacement dwelling from his spouse that excludes it from change in ownership and reappraisal, and precludes the transfer of the base year value of Mr. B's original property to the replacement dwelling.

LAW AND ANALYSIS

As you are aware, Section 69.5 permits a person over the age of 55 years to transfer the base year value of an original property which is "sold," to a replacement dwelling "of equal or lesser value" which is "purchased" by that person (as a principal residence) within two years of the sale by that person of the original property. The term "purchase" as a requirement associated with the replacement dwelling, is used in Section 69.5(a)(1) and (g)(5), (6), and (7). Subdivision (a)(1), for example, provides for the transfer of "... the base year value of that [original] property to any replacement dwelling of equal or lesser value that 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...".

Subdivision (g)(6), in describing the value of any replacement dwelling at the time of acquisition, expressly states that it requires a "purchase," i.e., "'Full cash value of the replacement dwelling' means 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." Further, for all property tax purposes, the word "purchase" is defined in Section 67 as "a change in ownership for consideration." Thus, although the provisions of Section 69.5 do not directly state that the replacement dwelling must be subject to reappraisal, the word "purchase," together with its statutory meaning (as a change in ownership), establishes that the replacement dwelling must be acquired in a manner that causes it to be reappraised and enrolled at a new base year value, e.g., a change in ownership.

As the final authority on this issue, Article XIII A, Section 2(g) states specifically what must be excluded from the term "purchase" in regard to a replacement dwelling. The express language in Article XIII A, Section 2(g) states as follows:

(g) For purposes of subdivision (a), the terms "purchased" and "change in ownership" shall not include the purchase or transfer of real property between spouses since March 1, 1975, ...".

This provision is similar to and consistent with the interspousal exclusion from change in ownership in Revenue and Taxation Code Section 63, which excludes from reappraisal any "purchase" or transfer between spouses. [1]

Accordingly, since the replacement dwelling acquired by Mr. B was not "purchased" and subject to change in ownership and reappraisal within the meaning of the foregoing constitutional and statutory provisions, it does not qualify for the benefit under Section 69.5. The assessor has properly declined to transfer the base year value of Mr. B's original property to the dwelling he acquired from Ms. J. The fact that the replacement dwelling was initially Ms. J's separate property, and that Mr. B acquired it from her as his separate property, does not alter our conclusion that this was a transfer between spouses which is expressly precluded from being considered a "purchase" or "change in ownership" under Article XIII A, Section 2(g).

The views expressed in this letter are, of course, advisory only and are not binding upon the County Assessor or the assessor in any county who has the ultimate authority to determine whether or not Mr. B qualifies under Section 69.5.

Our intention is to provide courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this objective are appreciated.

Sincerely,

Kristine Cazadd

Kristine Cazadd
Senior Tax Counsel

KEC:

cc: The Honorable
County Assessor

Mr. Travis Fullwood,
Mr. James Speed - M
Mr. Dick Johnson - M
Ms. Jennifer Willis - M
Mr. Larry Augusta - M

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Section 63 is quoted in pertinent part as follows:
"Notwithstanding any other provision in this chapter, a change of ownership shall not include any interspousal transfer, including but not limited to:

* * *

(d) The creation, transfer, or termination, solely between spouse, of any coowner's interest."

State of California

Board of Equalization

Memorandum

To : Mr. Verne Walton

Date April 8, 1988

From : Richard H. Ochsner RHO

Subject : Revenue and Taxation Code Section 69.5

This will correct my memo to you of April 5, 1988 dealing with a letter received from Gregory P. Miller involving certain San Diego County property.

The situation involved a claimant who sold his original property in which he was a co-owner with a former wife and purchased a one-half interest in a replacement dwelling owned by his current wife. My conclusion that the claimant is entitled to section 69.5 relief is correct only if the claimant purchased the interest in the replacement dwelling prior to marrying his current wife. If, as I believe was the case here, the claimant purchased his property interest after marriage to his current wife, then he would not be entitled to section 69.5 relief. Denial of the relief flows not from the fact that he is a co-owner but from the fact that he acquired the interest from his spouse and such transfers do not constitute a "purchase."

In part, section 69.5 permits the transfer of the base year value to a replacement dwelling which is "purchased" within two years of the sale of the original property. Moreover, the section provides that it applies to any replacement dwelling which is "purchased" on or after November 6, 1986. Thus, it is clear that the benefit, absent new construction, applies only if the replacement dwelling is "purchased." Revenue and Taxation Code section 67 defines "purchased" as a change in ownership for consideration. Section 63 provides that a change of ownership does not include any interspousal transfer. Moreover, section 2, subdivision (g) of article XIII A of the California Constitution, as amended by Proposition 58, expressly provides that the terms "purchased" and "change in ownership" shall not include the purchase or transfer of real property between spouses since March 1, 1975. In light of these express provisions, we must conclude that the claimant's acquisition of an interest in the replacement dwelling from his spouse cannot be considered to have been "purchased" for purposes of section 69.5. For that reason, the benefit would have to be denied.

My sincere thanks to Dennis Miller of your staff for spotting my oversight. Its nice to know that somebody around here knows what he's doing.

RHO:cb
0995D

cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Darold Facchini
Mr. Dennis Miller
Mr. Eric F. Eisenlauer

State of California

Board of Equalization

Memorandum

To : Mr. Verne Walton

Date April 5, 1988

From : Richard H. Ochsner RHO

Subject : Revenue and Taxation Code Section 69.5

This is in response to your request for advice, dated March 30, 1988, relating to the letter from Gregory P. Miller, Attorney.

The situation presented by Mr. Miller involves a client who lived in his original property as his principal residence and owned a one-half undivided interest in the property as a tenant in common. The other one-half interest was owned by a former wife. The property was sold December 8, 1986 and on the following December 31 he purchased an undivided one-half interest as a tenant in common in a replacement dwelling owned by his current wife and he resides there as his principal place of residence. The San Diego Assessor denied section 69.5 relief stating that the purchase of a partial interest in an otherwise ineligible property does not qualify for the benefit.

I find nothing in the section 69.5 which would prevent the application of the benefit to property in which the claimant is a co-owner. Subdivision (b)(4) merely requires that the claimant be "an owner of a replacement dwelling" and that he occupy it as a principal place of residence at the time of claiming the property tax relief. Further, subdivision (d) expressly recognizes situations in which the claimant is co-owner in the original property and co-owner in the replacement dwelling. Although subdivision (d) places certain limitations on the benefit under those described circumstances, we find nothing in the subdivision indicating that the circumstances described therein are the sole instances in which the benefit may be granted. It has been the staff's interpretation for some time that the claimant need not be the sole owner and may be a co-owner of the replacement dwelling. Thus, based on the facts presented, we would agree with Mr. Miller that the described property is entitled to section 69.5 relief. Of course, both the claimant and his current spouse will be deemed claimants and will have need to their eligibility for this one-time benefit.

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Since we disagree with the San Diego County Assessor's conclusion, perhaps we ought to contact that office to determine if there are facts unknown to us which occasion their determination. If not, we should inform them of our interpretation and the fact that we are advising Mr. Miller.

RHO:cb
0990D

cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Darold Facchini
Mr. Eric F. Eisenlauer