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TO COUNTY ASSESSORS:

CHANGES TO BASE YEAR VALUE TRANSFER
DISASTER RELIEF PROVISIONS

Effective January 1, 2010, Senate Bill 824 (Stats. 2009, Ch. 67), in part, amends sections 69 and 69.3 of the Revenue and Taxation Code¹ which allow base year value transfers for properties substantially damaged or destroyed by disasters for which the Governor proclaims a state of emergency.² These amendments, as explained below, apply to disasters that occur on or after January 1, 2010.

Prior to January 1, 2010, the phrase "substantially damaged or destroyed" meant that the damaged or destroyed property must have sustained physical damage amounting to more than 50 percent of its current market value immediately prior to the damage. "Property" was viewed as an appraisal unit,³ which means that assessors considered land and improvements together as a single appraisal unit in calculating whether more than 50 percent of the property had been damaged or destroyed. This has created problems in recent years in that situations have occurred where even though the home was completely destroyed, the land value was so high that the difference in the market value of the property before and after the disaster did not meet the 50 percent test.

Specifically, Senate Bill 824 amends section 69(c)(1) to read, in part:

Property is substantially damaged or destroyed if ~~it sustains the land or the improvements~~ sustain physical damage amounting to more than 50 percent of its full cash value immediately prior to the disaster.

Likewise, Senate Bill 824 amends section 69.3(b)(12) to read, in part:

"Substantially damaged or destroyed" means property ~~that sustains where either the land~~ or the improvements sustain physical damage amounting to more than 50 percent of its full cash value immediately prior to the disaster.

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

² 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. This list is updated as we become aware of any new proclamations.

³ Revenue and Taxation Code section 51(d) defines appraisal unit as that which persons in the marketplace commonly buy and sell as a unit, or that is normally valued separately.

These amendments effectively 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. Thus, this letter supersedes the advice contained in Letter To Assessors 87/23.

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, 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."

Sections 69 and 69.3 have different prerequisites that must be met before relief is available under either of these disaster relief provisions. In addition, section 69.5 also offers a base year value transfer for homes damaged or destroyed by any disaster under specific circumstances. As explained below, these amendments apply only to sections 69 and 69.3 and do not apply to section 69.5.

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

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	Entire property	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.⁴

⁴ See Letter To Assessors 92/45

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.⁵
- 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 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 taxation⁶ can be replaced with another manufactured home or with conventional housing and qualify for relief under 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.

⁵ For disasters that occurred prior to July 1, 2003, a replacement property had to be acquired or constructed within three years of the disaster.

⁶ A licensed manufactured home is not eligible for a base year value transfer because it has no base year value.

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, 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.⁷

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 69.3.⁸
- 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:
 - **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

⁷ See Letter To Assessors 95/16.

⁸ As of December 2009, the following 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 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.⁹ 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 foundation¹⁰ 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.¹¹ 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.¹²

"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.

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.

⁹ 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*.

¹⁰ Pursuant to Health and Safety Code sections 18551 or 18555.

¹¹ Annotations 200.0040 and 200.0041.

¹² Letter To Assessors 95/16.

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 the principal place of residence (original property) and transfer its base year value to a replacement residence of equal or lesser value.¹³ This relief is available under certain conditions if the original property is substantially damaged or destroyed by a disaster and sold in its damaged state.¹⁴ 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).¹⁵

The specific requirements of the section 69.5 include:

- The damage may result from any disaster; it need not be the result of a Governor-proclaimed state of emergency.
- The damaged or destroyed property (land and improvements) must have sustained physical damage amounting to more than 50 percent of the current market value of both the land and improvements immediately prior to the damage.¹⁶
- The damaged or destroyed property must have been the principal place of residence of the claimant when the disaster occurred.
- The original property must be sold in its damaged state.
- The replacement dwelling must be purchased or newly constructed within two years of the sale of the original property.
- The replacement property must be the principal place of residence of the claimant either (1) upon the sale of the original property, (2) when the original property was substantially damaged or destroyed by misfortune or calamity, or (3) within two years of the purchase or new construction of the replacement dwelling.

¹³ See Letter To Assessors 2006/010 for further information on the base year value transfer.

¹⁴ See Letter To Assessors 2002/016 for specific information for disaster-damaged property.

¹⁵ As of February 15, 2010, 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.

¹⁶ SB 824 did not change the definition of substantially damaged or destroyed in section 69.5.

- 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.¹⁷
- A claim for relief must be filed with the county assessor of the county in which the replacement property is located.¹⁸ 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.¹⁹
- 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.

Similar to section 69.3, relief is only available 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 *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 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

¹⁷ Section 69.5(g)(12) provides that "severely and permanently disabled" means any person described in subdivision (b) of section 74.3.

¹⁸ 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*.

¹⁹ See Letter To Assessors 2006/056.

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.

If you have any questions regarding any of these disaster relief provisions, please contact our Assessment Services Unit at 916-445-4982.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

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