State of California

Board of Equalization
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Memorandum

To : Honorable Betty T. Yee, Chairwoman
Honorable Judy Chu, Ph.D., Vice Chair
Honorable Bill Leonard
Honorable Michelle Steel
Honorable John Chiang

Date: October 1, 2007

From : Kristine Cazadd
Chief Counsel

Subject: **October 24, 2007 Board Hearing**
Item M1 - **Other Chief Counsel Matters**
Request for Filing Amicus Curiae Brief
Wunderlich* v. *County of Santa Cruz
Santa Cruz County Superior Court, Case No. CV154719

Santa Cruz County Superior Court in the case of *Wunderlich v. County of Santa Cruz*, has issued a decision[1] (a copy of the June 5, 2007, transcript regarding plaintiff's motion for summary judgment is attached) in a property tax case involving the transfer of base year value (as provided for in Revenue and Taxation Code section 69.5)[2] from one residential property to another. In this matter, the trial court determined that, for purposes of the statute's "equal or lesser value test," the value of the replacement dwelling's land should be based upon its adjusted base year value and not the value of the land at the time the construction of the replacement dwelling's structure was completed. The County of Santa Cruz will be filing an appeal with the Court of Appeal to challenge the trial court decision.

The conclusion reached by the trial court in this matter is contrary to guidance given by the Board to county assessors in Letters To Assessors 2002/019 and 2006/010 (both of which are attached).[3] In light of the trial court's decision, the Board-authorized guidance (i.e., the Letters To Assessors), and for the reasons described in more detail below, we recommend that the Board contacts the Office of the Attorney General for the filing of an amicus brief in support of the County's position.[4]

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[1] Plaintiff's motion for summary judgment was heard by the trial court on June 5, 2007 and the order granting plaintiff's motion was filed with the court on August 20, 2007. The parties are awaiting notice of entry of judgment.
[2] Unless otherwise indicated, all statutory references are to the Revenue and Taxation Code.
[3] Government Code section 15606, subdivision (e), provides that the Board shall issue instructions to assessors to promote uniformity in the assessment of property.
[4] Santa Cruz County Assessor Gary Hazelton has expressly given his support for the Board's filing of an amicus brief in this matter.

Background

Revenue and Taxation Code section 69.5 provides that any person over the age of 55 years or any severely and permanently disabled person, who resides in property which is eligible for the homeowner's exemption, may transfer the base year value of that property to any replacement dwelling *of equal or lesser value*. Such a replacement dwelling must be 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, provided that the base year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

Subdivision (b)(5) of section 69.5 requires that any person who seeks relief under the statute will only be eligible if:

> The original property of the claimant is sold by him or her *within two years* of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and that, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.[5]

As a result of settling litigation with the County of San Diego, beginning in 2002 (see the discussion of Letter To Assessors 2002/019 below),[6] the Board advised assessors that "claimant who purchases the replacement land more than two years before the sale of the original property, but completes construction of the residence within two years of the sale of the original property, is *eligible* for the benefit, provided that the other statutory requirements are met." In other words, only the construction of improvements for a replacement dwelling[7] must be completed within two years of the sale of the original property—a claimant can purchase the land associated with the replacement property several years earlier and still qualify for relief under the statute.

Staff Analysis

Subdivision (g)(5) of section 69.5, which provides for the "*equal or lesser value test*," requires an assessor to make a value comparison between the sale of the original property and the purchase of the replacement dwelling, based upon the full cash value of each, within the two-year period provided for in subdivisions (a)(1) and (b)(5) of the statute. In other words, the full cash value of the replacement dwelling must be equal to or less than the full cash value of the original property for a claimant to

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[5] Subdivision (g)(3) of section 69.5 likewise, in part, defines a "replacement dwelling" as "a building, structure, or other structure constituting a place of abode, whether real property or personal property, that is owned and occupied by a claimant as his or her principal residence, and any land owned by the claimant on which the building, structure, or other shelter is situated."

[6] See the December 13, 2001, memorandum to Board Members from Chief Counsel Boyer (attached), the December 18, 2001, letter to Deputy County Counsel Andrew J. Freeman (attached), and Letter To Assessors 2002/019 (attached).

[7] See the definition of "replacement dwelling" in footnote 5 above.

qualify for relief under section 69.5.[8] The issue now raised in *Wunderlich* is whether, for purposes of calculating the "equal or lesser value test," the land on which the claimant built his or her replacement dwelling (which was purchased many years earlier) should be valued based upon its original purchase price or at its current value when the construction of the replacement structure was completed.

In Letter To Assessors 2002/019, the Board advised assessors that in "calculating the *full cash value* of a newly constructed replacement property, *both the land and the improvements must be reappraised at the time of completion* (subdivision (g)(6))." Subdivision (g)(6) defines "*full cash value of the replacement dwelling*" as "its full cash value, determined in accordance with Section 110.1, *as of the date on which its was purchased or new construction was completed . . . .*"[9] Moreover, subdivision (g)(5) of the statute provides, in part, that "if the replacement dwelling is, in part, purchased and, in part, newly constructed, *the date the 'replacement dwelling is purchased or newly constructed' is the date of purchase or the date of completion of construction, whichever is later.*"

Based upon these statutory provisions, Letter To Assessors 2002/019 also stated that

> The taxpayer who purchased the replacement land in 1987, for example, does not gain a "windfall," and the county does not suffer large revenue losses, since the land value is adjusted at current market (full cash) value in 1997 when construction of the replacement dwelling is completed.
>
> * * *
>
> Section 69.5 does not expressly and unambiguously require the replacement land to be purchased within two years of the sale of the original property. Rather, the requirement is that the full cash value of the replacement land must be determined (in accordance with section 110) as of the date on which new construction was completed, assuming completion of the replacement dwelling occurs within two years of the sale of the original property.

The Board staff has relied upon the "*whichever is later*" language in subdivision (g)(5) of section 69.5 for the conclusion that the market value of the replacement dwelling land should be based upon the land's date of completion-of-construction market value as opposed to the land's factored base year value. In Letter To Assessors 2006/010, the Board provided further guidance to assessors on the subject of base year value transfers in a question-and-answer format. Below are some examples of the relevant questions and answers published in that document.

D. NEW CONSTRUCTION

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[8] Subdivision (g)(5) of section 69.5 provides for the specific value comparisons between the full cash value of the original property and the replacement dwelling. The full cash value of the original property is adjusted (i.e., increased) for comparison purposes as the replacement property is purchased later in time from the sale of the original property (i.e., within one year or two years after the sale of the original property).

[9] Revenue and Taxation Code section 110.1 defines the "full cash value" of real property as "the fair market value as determined pursuant to Section 110" as of the 1975 lien date, as of the date of purchase, as of the date of a change in ownership, or as of the date in which new construction is completed. The value of real property determined under subdivision (a) of the statute is known as the property's base year value.

D1: If a replacement home is newly constructed, in whole or in part, what is the date of completion?

Answer. For the claimant to receive relief under section 69.5, the construction of the new residence must be completed within two years of the sale of the original property; the full cash value of the land and the new structure must be determined as of the date of completion (subdivisions (g)(5) and (6)). . . .

* * *

L. VALUE COMPARISON

L1: When making the "equal or lesser value" comparison, is a simple comparison of the sales price of the original property and the purchase price of the replacement dwelling all that is needed?

Answer. No. Section 69.5(g)(5), (6), and (7) require that the *full cash value* of the original property as of the date of sale be compared with the *full cash value* of the replacement dwelling as of its date of purchase or completion of new construction. Section 110.1 provides that full cash value means the fair market value as defined in section 110. Section 110(b) presumes that the purchase price paid in a transaction is the full cash value *unless* evidence shows that the real property would not have transferred for that price in an open market transaction.

. . .

* * *

LOT ACQUIRED MORE THAN TWO YEARS PRIOR TO SALE OF ORIGINAL PROPERTY

L7: If a lot is purchased and a home constructed, does the assessor have to establish a separate value for the land as of the date of purchase and the improvements as of the date of completion in making the section 69.5 full cash value comparison?

Answer. No. Section 69.5(g)(5) provides that for purposes of the value comparison test, if the replacement dwelling is, in part, purchased and, in part, newly constructed, the later date is the date the value is established. If a lot was purchased in 1987 and a home constructed in 1998, the assessor will use the market value of the improved lot *as of the date of completion of new construction* in making the value comparison test.

For example, a lot is purchased on September 15, 1987, for $25,000. The original property is sold on March 10, 1998, for $275,000. Construction of the replacement dwelling is completed on May 4, 1998 (full cash value of $150,000). For comparison purposes, the replacement property meets the equal or lesser value standard because the fair market value of the improved lot as of May 4, 1998, is

$250,000 ($100,000 land and $150,000 improvements) while the full cash value for the original property is $288,750 ($275,000 x 105%).

Ultimately, the issue before the court is what definition and application of the full cash value concept should be applied to the land associated with the replacement dwelling upon completion of new construction. Since 2002, the Board has consistently advised and maintained the position that, although section 69.5 references Revenue and Taxation Code section 110.1, it does so in the context of a value determined as of the date of completion of construction of the replacement dwelling. Based upon a fair reading of the statute, since the replacement dwelling consists of two components (i.e., the land and the improvements constructed), both components are valued as a unit when the construction of the replacement dwelling is completed.

Conclusion

Based upon the statutory language cited above and the guidance given to county assessors on this subject, we recommend that the Board files an amicus curiae brief. If the Board approves this recommendation, the Legal Department will contact and request that the Attorney General's Office files an amicus brief in support of the County's position and consistent with the position described in this memorandum.

If you have any questions regarding this matter, please contact Tax Counsel III (Specialist) Anthony Epolite at (916) 324-2642.

Approved: _____
Ramon J. Hirsig
Executive Director

KC:bb
Attachments

cc: Mr. Ramon J. Hirsig (MIC:73)
Mr. David Gau (MIC:63)
Ms. Mickie Stuckey (MIC:48)
Mr. Dean Kinnee (MIC:64)
Ms. Anita Gore (MIC:86)
Mr. Robert Lambert (MIC:82)
Ms. Jean Ogrod (MIC:82)
Ms. Janice Thurston (MIC:82)
Mr. Jefferson D. Vest (MIC:85)
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Mr. Paul Gifford, Senior Assistant Attorney General
Business and Tax Section
Office of the Attorney General

Reporter's Transcript
of Proceedings

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CRUZ

BEFORE THE HONORABLE ROBERT B. ATACK, JUDGE

KENNETH WUNDERLICH,

Plaintiff,

vs.

COUNTY OF SANTA CRUZ ASSESSOR,

Defendant.

No. CV154719

COPY

REPORTER'S TRANSCRIPT OF PROCEEDINGS

June 5, 2007

APPEARANCES:

For the Plaintiff: DAVID BECK,
Attorney at Law

For the Defendant: JULIA HILL,
County Counsel

Official Court Reporter: DEANNA PFAFF
CSR No. C-11352

Santa Cruz, California June 5, 2007

P R O C E E D I N G S

-oOo-

THE COURT: On the Kenneth Wunderlich versus County of Santa Cruz Assessor.

MR. BECK: Good morning, Your Honor. David Beck for plaintiffs.

MS. HILL: Good morning. Julia Hill for County of Santa Cruz.

THE COURT: All right. This matter was continued for the Court to review further from our last setting date even though the Court had ruled on a demurrer overruling the county's demurrer based on the review of the Revenue and Taxation Code Sections 69.5 and 110.1 principally.

Anything further argument in this regard?

MR. BECK: Your Honor, not further argument but a thought. It seems to be a very poorly written statute, but what occurred to me is that what's really going on here is if the legislature wanted it to be fair market value it would have said -- in 69.5(g)(6) it would have said fair market value right there. Instead what it is saying is go use the system that's used for property tax, go use that system, the one that uses 110.1 and 110 and has full cash value and all of that. All it's saying is go use that system. So that -- the result should be and

is that the -- what it's enrolled at for property tax purposes becomes the numbers for Prop 60 purposes as well. And when you think of it in that light it's not as poorly drafted as at least my thought was initially. That's all.

MS. HILL: Your Honor, 110.1 does provide a legal foundation for the full cash value at the time that the construction is completed which is exactly what this county plus all 57 other counties rely upon for the 69.5 analysis of equal or lesser value tax. So I think there is, obviously, a foundation in the statute for 110.1 to do it in the manner that we do it and that everyone else does it and the SBE has mandated --

THE COURT: It sounds like the argument my kids give me, all of the other kids get to do it.

MS. HILL: Well, this is a matter of making sure that the property tax valuation is consistent and the same throughout every county.

THE COURT: I know. Does that make it right?

MS. HILL: Well, it does make it right because the 110.1 permits that valuation at that time and 69.5(g) also permits. We are -- basically (g)(5) under 69.5 is the benchmark for as high as that valuation can go.

THE COURT: But how do you read that with (g)(6)?

MS. HILL: (G)(6) is what the valuation actually is.

THE COURT: The Court in reading all of these together thinks that the logic would be to follow that the Revenue and Taxation Code Section 110.1, which is the value, the full cash value of the replacement dwelling is to be determined in accordance with that section and that section defines it as the fair market value on the date in which the purchase occurs or the new construction is completed and I'm going to grant the summary judgment in favor of the plaintiff in this case which of course will give us further review no doubt --

MS. HILL: Yes.

THE COURT: -- but, one, it's consistent with the Court's previous ruling and, two, I think it's the more logical approach to this -- the reading of this complete statute in conjunction with the referenced sections as noted. I'm going to ask that plaintiff's counsel prepare the order in that regard granting the summary judgment motion and I appreciate your time and patience while the Court reviewed this.

Anything further.

MR. BECK: No, Your Honor. Thank you.

THE COURT: All right.

-oOo-

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CRUZ)

I, DEANNA PFAFF, a Certified Shorthand Reporter, License No. C-11352, do hereby certify:

That said transcript of proceedings was reported by me in machine shorthand at the time and place therein named and was thereafter transcribed by means of computer-aided transcription, and that it is a true, correct and complete transcript of said proceedings, to the best of my ability.

Dated this 26th day of July, 2007

Deanna Pfaff
CSR No. C-11352

STATE OF CALIFORNIA

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JAMES E. SPEED
Executive Director

March 19, 2002

No. 2002/019

TO COUNTY ASSESSORS:

REVENUE AND TAXATION CODE SECTION 69.5: TWO-YEAR REQUIREMENT ON PURCHASE OF LAND FOR REPLACEMENT DWELLING

In response to a complaint filed against the Board in superior court, staff reconsidered the issue of whether, for purposes of base year value transfers under Revenue and Taxation Code[1] section 69.5, the land or lot on which the replacement dwelling is or will be constructed must be purchased within two years of the sale of the original property. To settle the complaint, the Board authorized staff to revise its opinion on this issue.

For the reasons explained below, a claimant who purchases the replacement land more than two years before the sale of the original property, but completes construction of the residence within two years of the sale of the original property, is *eligible* for the benefit, provided that the other statutory requirements are met.

Section 69.5 provides that any person over the age of 55 years or any severely and permanently disabled person who resides in property which is eligible for the homeowner's exemption may transfer the base year value of that property to any replacement dwelling of equal or lesser value, which 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, provided that the base year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

The two-year time limitation is set forth in subdivisions (a)(1) and (b)(5), and requires in subdivision (b)(5) that any person claiming the property tax relief provided by section 69.5 shall be eligible only if:

> The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and that, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

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

Although Board staff has, since 1987, interpreted the two-year requirement—particularly as it is set forth in subdivision (b)(5) above—to apply to the purchase of the land, as well as to the new construction of the replacement dwelling,[2] the statutory language does not expressly state that the "replacement land" must be purchased within two years. Staff's interpretation was based upon a strict view of the exclusion with regard to the two-year requirement and assumptions concerning legislative intent. On further review, however, it appears that the Legislature's purpose in adopting the two-year requirement was primarily for use in the value comparison formula in subdivision (g)(5), designed to limit local revenue losses. A two-year limit would compensate for the fact that the cost of the replacement land and dwelling could rise between the time the original property is sold and the replacement property is acquired or completed.

Thus, the Legislature structured the "*equal or lesser value test*" in subdivision (g)(5) to require the assessor to make the value comparison between the sale of the original property and purchase of the replacement dwelling within the two years—based on the full cash value of each.[3] In calculating the *full cash value* of a newly constructed replacement property, both the land and the improvements must be reappraised at the time of completion (subdivision (g)(6)). The taxpayer who purchased the replacement *land* in 1987, for example, does not gain a "windfall," and the county does not suffer large revenue losses, since the land value is adjusted at current market (full cash) value in 1997 when construction of the replacement dwelling is completed.

Subdivision (g)(6) defines "*full cash value of the replacement dwelling*" as "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.*"[4] (Emphasis added.)

Subdivision (g)(3) defines, in pertinent part, "replacement dwelling" to mean

> a building, structure, or other shelter constituting a place of abode, whether real property or personal property, that 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.

In addition to the revenue aspect of the two-year requirement, at least one court has interpreted subdivision (a)(1) as a "permissive provision"—allowing the taxpayer to either purchase the replacement property, or to purchase the replacement *land* (at any time) and to construct the replacement dwelling—as long as the purchase or completion of new construction of the

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[2] "Replacement dwelling" is defined in section 2 of article XIII A of the California Constitution and section 69.5(g)(3) as a building, structure, or other shelter constituting a place of abode *and* any land on which it may be situated.

[3] Subdivision (g)(5) provides that the "*equal or lesser value*" as intended by subdivision (a) means that the *full cash value* of the replacement property which is purchased or newly constructed does not exceed one hundred percent (or incremental increases of five and ten percent for later dates of purchase or completion of new construction) of the full cash value of the original property.

[4] To qualify for section 69.5 property tax relief, subdivision (f) requires that the claimant must first file a claim with the assessor providing certain information necessary for the assessor to make the value comparison test. Under paragraph 4 of subdivision (f) the claimant must state:

> "The date of the claimant's sale of the original property and the *date of the claimant's purchase or new construction of a replacement dwelling.*" (Emphasis added.)

dwelling is within two years of the sale of the original property. In *Jack E. Khoury* v. *County of Madera* (1993) (Superior Court, County of Madera, No. 49560), the court reasoned that the Legislature's use of the word "or" in subdivision (a)(1) required only one of the two prerequisites to be met in order for a taxpayer to qualify for relief. Subdivision (a)(1) states,

> "... any person ...may transfer ... the base year value of that property to any replacement dwelling of equal or lesser value which 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 ...." (Emphasis added.)

The court reasoned that since the Legislature placed the two-year requirement in the disjunctive as an "either or" condition, the taxpayer satisfies the requirement when he does one *or* the other. Thus, the taxpayer meets the requirement by either purchasing the replacement dwelling within the two years or by completing construction of the replacement dwelling within two years, regardless of when the replacement *land* was purchased.

Section 69.5 does not expressly and unambiguously require the replacement land to be purchased within two years of the sale of the original property. Rather, the requirement is that the full cash value of the replacement land must be determined (in accordance with section 110) as of the date on which new construction was completed, assuming completion of the replacement dwelling occurs within two years of the sale of the original property. Subdivision (a)(1) allows the taxpayer two alternatives for meeting the two-year requirement.

In summary, if a claimant purchases land more than two years prior to the sale of the original property but completes construction of the replacement residence within two years of the sale of the original property, the base year value of the original property may be transferred to the land and the newly constructed residence, provided that the other statutory requirements are met.

The advice contained in this letter supersedes previously written opinions on this issue contained in Letters To Assessors No. 87/71 (dated September 11, 1987) and No. 88/10 (dated February 11, 1988) and Annotations 200.0085 (C 8/27/90; C 4/9/92), 200.0110 (C 7/13/88; C 4/23/99), and 200.0114 (C 3/8/89).

Enclosed is a series of questions and answers on this issue. If you have any questions about the property tax relief provided by section 69.5, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

/ s / David J. Gau

David J. Gau
Deputy Director
Property Taxes Department

DJG:grs
Enclosure

REVENUE AND TAXATION CODE SECTION 69.5

PURCHASE OF REPLACEMENT DWELLING LAND
Questions and Answers

Given the following facts, is a taxpayer eligible for relief under section 69.5?

- *A lot is purchased on September 15, 1987, for $25,000*
- *The original property is sold on March 10, 1998, for $175,000*
- *Construction of the replacement dwelling is completed on May 4, 1998, (full cash value of $100,000)*
- *The full cash value for the replacement property lot as of May 4, 1998, was $50,000*

Yes, assuming the claimant is otherwise qualified under section 69.5. The "equal or lesser value" test has been met in that the sum of the full cash values of the lot and the dwelling at the time of its completion is less than the full cash value of the original property. For comparison purposes, the total value of the replacement dwelling as of May 4, 1998, is $150,000 ($50,000 land and $100,000 improvements) while the full cash value for the original property is $183,750 ($175,000 x 105%).

On the other hand, if the full cash value of the replacement property lot as of May 4, 1998, was $100,000, then the replacement property would **not** qualify because its total full cash value of $200,000 on May 4, 1998, exceeds 105% of the full cash value of the original property ($183,750).

If a lot is purchased and a home constructed, does the assessor have to establish a separate value for the land and the improvements in making the section 69.5 full cash value comparison?

No. In estimating value, Property Tax Rule 3 instructs the assessor is to consider any of the approaches to value that may be appropriate for the property being appraised. However, Rule 4 provides that when reliable market data are available with respect to a given property, the comparative sales approach to value is the preferred method to use. For example, if comparable lots are selling for $50,000 as of the date new construction is completed and the value of the new construction using the cost approach is $100,000, but comparable improved parcels are selling for $160,000 to $170,000, then the full cash value would be established in the $160,000 to $170,000 range.

If a lot is purchased and a home constructed, must the new construction be completed within two years of the purchase of the lot?

No. Section 69.5 (b)(5) requires that the original property be sold within two years of the purchase or completion of new construction of the replacement dwelling. The purchase of the lot and the completion of construction do not have to occur within two years of each other. The replacement lot may be purchased any time *before* the sale of the original property; however, the new construction of the residence must be completed within two years of the sale of the original property.

If a lot is purchased within two years of the sale of the original property, does the new construction also have to occur within two years of the sale in order to receive relief under section 69.5?

Yes. The new construction must be completed within two years of the sale of the original property regardless of when the purchase of the lot occurs. Section 69.5(a)(1) provides that the replacement dwelling be purchased or newly constructed within two years of the sale of the original property. Subdivision (g)(5) provides for a two-year window after the sale of the original property within which the value comparison is to be made. The code does not contemplate a comparison of values after the two-year period. Thus, all transactions must be completed before two years elapses after the sale of the original property.

If a lot is purchased on July 7, 1999 and new construction of the residence was completed in November, 1999, but the original property did not sell until January, 2002, can the base year value be transferred to the replacement property?

No. Section 69.5(b)(5) requires that the original property be sold within two years of the purchase or new construction of the replacement dwelling. Since neither the purchase of the lot nor the completion of construction occurred within two years of the sale of the original property, the base year value cannot be transferred. However, the taxpayer would still have two years after the sale of the original property to find a qualifying replacement property.

If a lot is purchased on July 7, 1999; new construction of the residence was completed in November, 1999; an addition was completed on the residence in July, 2000, but the original property did not sell until January, 2002; can the base year value be transferred to the replacement property?

No. Section 69.5(g)(3) defines "replacement dwelling" as a building, structure, or other shelter constituting a place of abode that 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. Since the completion of construction of the place of abode (i.e., the residence) did not occur within two years of the sale of the original property as required by subdivision (b)(5), the property is ineligible for relief under section 69.5.

STATE OF CALIFORNIA

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Fourth District, Los Angeles

STEVE WESTLY
State Controller, Sacramento

RAMON J. HIRSIG
Executive Director

February 6, 2006

No. 2006/010
CORRECTION

TO COUNTY ASSESSORS:

REVENUE AND TAXATION CODE SECTION 69.5: PROPOSITIONS 60, 90, AND 110

Section 69.5 was added to the Revenue and Taxation Code[1] in 1987 to implement Proposition 60, which amended section 2 of article XIII A of the California Constitution to authorize the Legislature to provide for the transfer of a base year value from a principal residence[2] to a replacement dwelling within the same county by a homeowner age 55 and over. Subsequently, section 69.5 was amended to implement Proposition 90, which authorized county boards of supervisors to adopt ordinances allowing base year value transfers between different counties, and Proposition 110, which extended these provisions to severely and permanently disabled persons of any age.

After summarizing the key elements of section 69.5, this letter provides answers to frequently asked questions about its application. This letter supersedes Letters To Assessors No. 87/71 (dated September 11, 1987) and No. 88/10 (dated February 11, 1988).

SUMMARY OF SECTION 69.5

Section 69.5 allows a homeowner to transfer the existing base year value to a replacement dwelling provided that:

- If the replacement property is located in a *different* county than the original property, then the county in which the replacement dwelling is located must have a current ordinance allowing base year value transfers from other counties.
- As of the date of transfer of the original property, the claimant or the claimant's spouse is at least 55 years of age **or** severely and permanently disabled. There is no age requirement for persons who are severely and permanently disabled.
- The claimant and/or the claimant's spouse has not previously been granted the property tax relief provided by section 69.5. The sole exception to this requirement is if relief was first granted for age, relief can be granted a second time if the claimant or claimant's spouse

[1] All statutory references are to the Revenue and Taxation Code unless otherwise indicated.
[2] A principal residence is a person's true, fixed, and permanent home and principal establishment to which the owner, whenever absent, intends to return.

subsequently becomes severely and permanently disabled, and has to move because of the disability.

- The *original property* was eligible for the homeowner's exemption or the disabled veterans' exemption either at the time it was sold or within two years of the purchase or new construction of the replacement dwelling.
- As a result of its transfer, the original property must *(1)* be subject to reappraisal at its current full cash value in accordance with sections 110.1 or 5803; *or (2)* receive a base year value determined in accordance with section 69 (intracounty disaster relief), section 69.3 (intercounty disaster relief), or section 69.5 because the original property qualified as a replacement property under one of those sections.
- The *replacement dwelling* is purchased or newly constructed within two years of (before or after) the sale of the original property.
- The *replacement dwelling* must be eligible for the homeowner's exemption at the time the claim is filed.
- The replacement dwelling must be of *equal or lesser value* as compared to the original property. This means that the full cash value of the replacement dwelling on the date of purchase or completion of new construction must not exceed:

  1) **100 percent** of the full cash value of the original property as of the date of sale, if the replacement dwelling is purchased or newly constructed *prior to* the date of sale of the original property,

  2) **105 percent** of the full cash value of the original property as of the date of sale, if the replacement dwelling is purchased or newly constructed *within the first year* following the date of the sale of the original property, or

  3) **110 percent** of the full cash value of the original property as of the date of sale, if the replacement dwelling is purchased or newly constructed *within the second year* following the date of the sale of the original property.

  The "full cash value of the original property" includes any inflationary factoring that occurs between the sale of the original property and the purchase of the replacement dwelling. The "full cash value of the replacement dwelling" *does not* include any inflationary factoring.
- If the original property was *substantially damaged or destroyed* by misfortune or calamity and sold in its damaged state, the full cash value is determined immediately prior to the misfortune or calamity.
- The claimant must file a claim for property tax relief under this section within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

QUESTIONS AND ANSWERS

Attached is a series of questions and answers that represent the most frequently received inquiries regarding the implementation of section 69.5. All the publications, Letters To

Assessors, and Property Tax Rules that are referenced may be viewed from the Board's website at www.boe.ca.gov/proptaxes/proptax.htm.

These questions are separated into the following twelve categories:

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The questions and answers are preceded by an index of the topics discussed.

We hope this information is helpful. If you have any questions regarding the implementation of section 69.5, please contact our Real Property Technical Services Unit at 916-445-4982.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG/grs
Enclosure

REVENUE AND TAXATION CODE SECTION 69.5

INDEX TO PROPOSITIONS 60, 90, AND 110 QUESTIONS AND ANSWERS

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QUESTIONS AND ANSWERS REGARDING PROPOSITIONS 60, 90, AND 110

A. AGE/DISABILITY

A1: At the time of sale of the original property, taxpayer and spouse are 54 years of age. Taxpayer turns 55 and thereafter purchases a replacement property. Will taxpayer qualify for the section 69.5 benefit?

Answer. No; claimant was not age 55 when original property was sold. Section 69.5(f)(2) requires that either (1) the claimant or (2) the claimant's spouse who resides with the claimant be at least 55 at the time the *original property* is sold. Conversely, a claimant will qualify if he purchases a replacement property at age 54, but waits until age 55 to sell the original property.

A2: Husband and Wife are living in a home which Wife inherited from her mother. The home is Wife's sole and separate property. Husband and Wife wish to sell the property and transfer its base year value to a new property. Husband is 60 and Wife is 53. In order to transfer the base year value, does Husband have to be a claimant?

Answer. No. Section 69.5(b)(3) requires that at the time of the sale of the original property, either the claimant *or the claimant's spouse who resides with the claimant* be at least 55. In defining "claimant," subdivision (g)(9) provides that if a spouse of a person claiming the property tax relief is a record owner of the replacement dwelling, then that spouse is also considered a claimant. However, there is no provision requiring a spouse to be an owner of record of either property. Furthermore, there is no requirement that the *original property* be "purchased" by the claimant and no disqualification if the transfer by which the claimant acquired the *original property* was excluded from change in ownership as a transfer between a parent and child pursuant to section 63.1.

A3: Husband is 59 and Wife is 52. Husband dies. Several months later, Wife wants to sell the home and transfer the base year value to another home. Can Husband's age, although he is deceased, be used to meet the age condition?

Answer. No. Section 69.5(b)(3) states that at the time of the sale of the original property, the claimant or the claimant's spouse *who resides with the claimant* must be at least 55. In this situation, since Husband is deceased at the time of the sale of the original property, this requirement would not be met.

A4: Who qualifies as an eligible disabled claimant?

Answer. Either the owner or the owner's spouse must be severely and permanently disabled. Subdivision (g)(12) provides that "severely and permanently disabled" means any person described in subdivision (b) of section 74.3. *Severely and permanently disabled* is defined in section 74.3(b) as:

> "... any person who has a physical disability or impairment, whether from birth or by reason of accident or disease, that results in a functional limitation as to employment or substantially limits one or more major life activities of that person, and that has been diagnosed as permanently affecting the person's ability

to function, including, but not limited to, any disability or impairment that affects sight, speech, hearing, or the use of any limbs."

Proof of a severe and permanent disability is required under section 69.5(f). The proof must be in the form of a certification signed by a licensed physician or surgeon of appropriate specialty, attesting that the claimant is severely and permanently disabled. In addition to the disability certification, *either* of the following must be provided:

- A certification by a licensed physician or surgeon giving the specific reasons why a new residence is needed. The certification must also identify the disability-related requirements of a new residence, including any locational requirements, such as climate. The claimant must then substantiate that the replacement dwelling meets those identified requirements and that the primary reason for purchasing the residence was to satisfy disability-related requirements.
- A statement by the claimant that the primary purpose for purchasing the replacement residence was to alleviate financial burdens caused by the disability.

A5: Can a person with a mental disability qualify for relief under section 69.5?

Answer. A person with a mental disability can qualify on the basis of age, but not disability. Mental disabilities do not meet the definition of "severely and permanently disabled" in section 74.3(b), which specifies physical disability or impairment.

A6: A couple's minor child recently became permanently disabled. As a consequence, the couple must sell their current two-story residence and purchase a single-story residence. Because of the child's disability, can the couple purchase a property and file a claim to transfer the base year value from their original property to the purchased property?

Answer: Section 69.5(a) provides that any severely or permanently disabled person may transfer the base year value to any replacement dwelling. Subdivision (b)(3) provides that at the time of the sale of the original property, the claimant (or the claimant's spouse who resides with the claimant) must be severely and permanently disabled. Thus, the disabled child must be the claimant and must be on title in order to transfer the base year value.

A minor may own real property or an interest therein, because the law presumes his acceptance of a beneficial grant (*Estate of Yano* (1922) 188 Cal. 645, 649), but may not convey or make contracts relating to real property, as any such contracts are void.[3] Through proceedings in the Superior Court, a guardian may be appointed for the person, estate, or person and estate of a minor, and real property owned by a minor can be dealt with through guardianship proceedings. Therefore, a minor may obtain the benefit of section 69.5 indirectly through a guardianship or trust. In order to do so, the minor, through his/her trust or estate, must be a beneficial owner (on record title) of both the original property and the replacement property. The act of adding the minor child on title to the original property can be excluded from change in ownership under the parent-child exclusion (assuming a timely claim is filed and the requirements of that exclusion are met).

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[3] Family Code section 6701.

Ownership of the property may be held by the minor child who is the beneficiary of an irrevocable trust. The present beneficiary of an irrevocable trust is considered the owner of the property held in trust for purposes of section 69.5. This is so because, although section 69.5 does not include a definition of the term "owner," since it is a specific type of exclusion from change in ownership and its sole purpose is to avoid what would otherwise be the effects of a change in ownership, the term "owner" should be construed in a manner consistent with other provisions of the law applicable to change in ownership. Current law applicable to change in ownership treats the present beneficiary of an irrevocable trust who has a vested beneficial interest in the property as the owner (i.e., the trustee who merely holds legal title is not the owner). Thus, if a disabled minor is the eligible claimant by virtue of his or her permanent disability, the minor's guardian or the trustee of the minor's trust may file a claim on behalf of the minor.

B. CLAIMANT

B1: Are spouses or other owners of record considered claimants?

Answer: A claimant is any person claiming the property tax relief provided by section 69.5. Under subdivision (d), a claimant must be an owner or coowner of the original property as a joint tenant, a tenant in common, or a community property owner. A spouse of the claimant is also considered a claimant (and thus must provide his/her social security number on the claim) if the spouse is a record owner of the replacement dwelling (subdivision (g)(9)). An owner of record of the replacement property who is not the claimant's spouse is *not* considered a claimant, and a claim filed for the property will not constitute use of the one-time-only exclusion by the coowner even though that person may benefit from the property tax relief.

TRUST

B2: A taxpayer's principal residence is held in a trust in which he is the sole present beneficiary. The taxpayer wants to sell the residence and transfer the base year value to a replacement dwelling which will be purchased and held in trust. Does the taxpayer qualify as a claimant for the base year value if the sale and purchase transactions are made by him as trustee of the trust?

Answer: The taxpayer may file as a claimant if he files as the present beneficial owner of the trust, not as trustee of the trust. For property tax purposes, the property owner is the person who has the present beneficial interest of a trust (with the exception of a Massachusetts or business trust, which is regarded as a legal entity); the trustee holds legal title to the trust property, but does not have a present beneficial ownership interest unless the trustee is also a named beneficiary of the trust. Therefore, an individual who has the present beneficial interest of a trust is considered the claimant for purposes of section 69.5 and should receive the base year value transfer benefit if all of the requirements of the section are met.

LEGAL ENTITY

B3: Can either an original property or a replacement dwelling be owned by a company or legal entity and qualify for relief under section 69.5? If a home is owned 1/6 by a trust and 5/6 by a corporation, will this property qualify as an original property for purposes of transferring the base year value to a replacement dwelling under section 69.5?

Answer. Section 69.5 provides that any *person* that is over age 55 or severely and permanently disabled may transfer a base year value. Subdivision (g)(11) provides that a "person" means any individual, but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind. Thus, an original property or a replacement dwelling must be owned, at least in part, by an individual. As long as a portion of the property is owned by an individual, then that individual may qualify as a claimant for purposes of section 69.5. If the home is owned in part by a trust, then the individual must have present beneficial interest of the trust in order to qualify.

Exceptions to the requirement that an individual own at least a portion of the original or replacement property occur where an individual owns a lot or unit within a cooperative housing corporation or a manufactured home park and a pro rata interest in a tenant-owned entity that owns the park in which the manufactured home is located. In these circumstances, the base year value of land may be transferred to and from the tenant-owned entities.

CO-OWNERS—SALE OF SINGLE-FAMILY RESIDENCE

B4: Can two qualified coowners sell a single-family residence and each qualify for relief under section 69.5 when each acquires a replacement dwelling?

Answer. No. Only one owner, including owners who were spouses, can receive the benefit of section 69.5 for this transaction. Subdivision (d) provides that if two or more replacement dwellings are acquired by two or more eligible claimants, only one is eligible for relief. If they both acquire qualified dwellings, they must decide between themselves who will get the property tax relief.[4] Only in the case of a multiple-unit original property where several coowners qualify for separate homeowners' exemptions (i.e., they reside in different units) may portions of the factored base year value of that property be transferred to several qualified replacement dwellings.

CO-OWNERS—SALE OF DUPLEX

B5: Can two otherwise qualified, unrelated coowners sell a duplex of which each person occupies one side, each acquire a single-family replacement dwelling, and still qualify?

Answer. Yes, but the value comparison must be made between their respective portions of the original property (each side of the duplex) and their respective replacement dwellings. Pursuant to section 69.5(g)(3) and (4), each unit of a multi-unit dwelling is to be treated separately.

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[4] This does not place the assessor in the position of mediating disputes. Neither is this a reason for the assessor to disqualify a claim for the base year value transfer if a person files a claim even though that person agreed that the other should receive the relief.

CO-OWNERS—COMBINATION OF BASE YEAR VALUES

B6: Can Mother and Daughter, both otherwise qualified owners, sell their separately owned and occupied properties and transfer the combined base year values to a single replacement dwelling?

Answer. No. There is no provision in the statute for combining base year values when acquiring one replacement dwelling. The base year value of only one original property can be transferred to a replacement dwelling. Either Mother or Daughter can be a claimant for the replacement dwelling, but they cannot combine the full cash values of the original properties for value comparison purposes. They would have to choose which original property they want to be considered for value comparison and subsequent base year value transfer.

An exception would be if the replacement property had two separate living units (e.g., a duplex or lot with two residences). In this case, the value comparison would be made between each original property and the respective living units of Mother and Daughter. If each qualifies, then each could transfer the base year value of her original property to her replacement property living unit.

OWNER OF RECORD

B7: Ralph and Joyce, husband and wife, claim and are granted relief under section 69.5. Subsequently Ralph and Joyce divorce. Ralph marries Betty, who has neither applied for nor received the benefit of section 69.5. Thereafter, Betty sells her original property, and Ralph and Betty together buy a replacement dwelling. Betty applies to transfer the base year value from her original property. Can she qualify for a section 69.5 benefit?

Answer. Subdivision (b)(7) provides that any person claiming the exclusion is eligible for relief if the claimant has not previously been granted, as a claimant, the property tax relief provided by section 69.5. If Ralph is an owner of record on the replacement dwelling at the time of acquisition, then they will not qualify because Ralph is considered to be a claimant under subdivision (g)(9) and has already used his "one time only" exclusion. However, if Ralph is *not* an owner of record on either the original property or the replacement dwelling and Betty applies for the benefit, then she may qualify because, as the sole claimant, Betty has not previously received a section 69.5 benefit (assuming all other qualifications of section 69.5 are met). Further, once Betty has been granted the benefit, she can subsequently add Ralph as an owner of record under the interspousal exclusion without affecting her claim.

B8: Husband was previously approved for a section 69.5 claim. Wife was not an owner of record on the original property or the replacement property for Husband's prior claim. Husband has now sold that home and purchased another. Wife is not an owner of record on the newly purchased property. However, as a spouse of a record owner, Wife would like to file a claim to receive the benefit of section 69.5 on the newly purchased property. Can Wife qualify as a claimant?

Answer. No. Wife was not an owner of record of the original property as required by subdivision (d) of section 69.5.

C. CLAIMS

C1: Is the property tax relief provided by section 69.5 automatic?

Answer. No. A claim form must be timely filed with the county assessor of the county in which the replacement dwelling is located. Subdivision (f) requires that a claim be filed within three years of the purchase or completion of new construction of the replacement dwelling. The assessor will then determine if the transaction qualifies and should notify the claimant in writing. Claim forms are available at the county assessor's office.

"Replacement dwelling" is defined in subdivision (g)(3) as a building, structure, or other shelter constituting a place of abode. If a detached garage or swimming pool is constructed after the purchase or completion of construction of the house, the claim must be filed within three years of the purchase or completion of construction of the house (i.e., the place of abode), not the completion of the detached garage or swimming pool. If qualifying construction is completed after the base year value is transferred, the assessor must be notified in writing within 30 days of completion of construction.

C2: Are there any exceptions to the three-year filing period?

Answer. Below are three exceptions to the filing period. Under any of these exceptions, property tax relief will apply prospectively, commencing with the lien date of the assessment year in which the claim is filed. For example, for claims filed in 2003, relief will apply as of January 1, 2003, for the 2003-04 fiscal year. There will be no refund or cancellation of taxes for years prior to the year in which the claim is filed. However, if a claim is filed after the assessment roll has closed (July 1 to December 31), then that roll will need to be corrected, and taxes refunded or cancelled.

1. If a county changes the effective date of its ordinance allowing base year value transfers from other counties, a claim may be filed within three years after the change is adopted (subdivision (k)(1)).
2. If the replacement property consists of a manufactured home and a pro rata interest in a resident-owned mobilehome park, and the assessor corrects the base year value to reflect a pro rata change in ownership of the resident-owned mobilehome park that occurred between January 1, 1989, and January 1, 2002, a claimant who purchased a manufactured home more than three years prior to the correction can file a claim within three years after the date of notice of the correction of the base year value to reflect the pro rata change in ownership (subdivision (k)(2)).
3. If an original property was substantially damaged or destroyed by misfortune or calamity and sold in its damaged state, and a replacement property was purchased or newly constructed between the effective date of the proposition being used and January 1, 2002, then claimants will have until January 1, 2007, to file for relief (subdivision (m)(2)).[5] The effective dates of the three propositions are:
   - Proposition 60 – November 6, 1986
   - Proposition 90 – November 9, 1988
   - Proposition 110 – June 6, 1990

[5] Subdivision (m)(2) was added to the code on January 1, 2003; four years from January 1, 2003 is January 1, 2007.

REFILING A CLAIM

C3: In September 1995, Taxpayer sold his original property and moved to another state. In July 1997 Taxpayer, though continuing to reside out of state, purchased a replacement home in California. In August 1998, Taxpayer filed a claim for the section 69.5 benefit in anticipation of moving into the replacement home at the end of the year. County denied the claim because the purchased property was not the taxpayer's principal place of residence at the time the claim was filed. Can the taxpayer refile the claim after the principal place of residence is established?

Answer. Yes; however, eligibility for the homeowner's exemption must be established and the claim filed within three years of the purchase of the replacement dwelling. Section 69.5(b)(4) requires that a claimant own and occupy the replacement property as a principal residence when the claim is filed. Subdivision (f) requires that the claim be filed within three years after the date of purchase or completion of new construction of the replacement dwelling. Ownership and occupation of the replacement property as a principal residence is a prerequisite to filing the claim; it is not a qualifying date for the transfer of base year value. Moreover, nothing in section 69.5 precludes the taxpayer from refiling once all the qualifications are met.

MULTIPLE CLAIMS

C4: In July 1997, Taxpayer purchased a home that had a full cash value of $250,000. Taxpayer expected that his original property would sell for at least the same amount, and then he would claim relief under section 69.5. However, due to a slow real estate market, his original property finally sold in June 1999 for only $230,000. Taxpayer's claim to transfer the base year value was denied by the county assessor because the full cash value of the replacement home exceeded the full cash value of the original property. Is the taxpayer precluded from acquiring a second home that will qualify?

Answer. No. Since the first property that was purchased did not meet the requirements of section 69.5, the taxpayer did not use his one-time-only benefit and is not precluded from finding a qualifying replacement property. Taxpayer has two years from the sale of the original property in June 1999 to acquire a qualifying property.

FILING OF CLAIM BY EXECUTOR OF ESTATE

C5: Taxpayer sells his original property and purchases a replacement property. However, Taxpayer dies before filing a claim. Could the executor of the estate file the claim on behalf of the decedent?

Answer. Subdivision (b)(4) requires that the claimant own and occupy the replacement property as a principal residence when the claim is filed. While the executor of the estate, as legal representative of the deceased claimant, is legally authorized to file a claim for section 69.5 benefits, the claim would not be allowed because the deceased claimant could not have occupied the replacement dwelling as his principal place of residence on the date the executor filed the claim, and, as a result, the property would not have qualified for the homeowners' exemption.

APPEALING DENIAL OF CLAIM

C6: If a claim is denied by the assessor, can the denial be appealed?

Answer. The new base year value of the replacement dwelling may be appealed under section 80 on the basis that all of the requirements of section 69.5 have been met and that, therefore, the base year value of the original property should be transferred to the replacement dwelling. Appeals can be filed with the county assessment appeals board either within 60 days of the date of mailing of the assessment notice (section 1605) or during the regular equalization period (section 1603). 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 the claim was denied because the replacement dwelling did not meet the value comparison test, and the applicant disputes the determination of the full cash value of the original property, then the appeals board would have to determine for purposes of qualification the full cash value of the original property. An appeals board has jurisdiction to hear such an appeal *if* (1) the original property is located in the same county as the replacement dwelling[6] and (2) the new base year value (i.e., the full cash value) of the original property can still be challenged pursuant to section 80.[7]

D. NEW CONSTRUCTION

D1: If a replacement home is newly constructed, in whole or in part, what is the date of completion?

Answer. For the claimant to receive relief under section 69.5, the construction of the new residence must be completed within two years of the sale of the original property; the full cash value of the land and the new structure must be determined as of the date of completion (subdivisions (g)(5) and (6)). The date of completion of new construction is the date upon which the property has been inspected and approved for occupancy by the local building department.[8]

D2: If new construction is completed on an existing replacement dwelling (such as a room addition, garage, or pool) *after* the filing and granting of a claim for base year value transfer, will the new construction be excluded from reappraisal under section 69.5?

Answer. The benefits of section 69.5 may be extended to new construction completed *after* the filing and granting of a claim for a base year value transfer, as long as all of the following conditions in subdivision (h)(4) are met:

- The new construction is completed within two years of the date of sale of the original property;

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[6] The 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 69.5.

[7] See the Board's *Assessment Appeals Manual* and Publication 30, *Residential Property Assessment Appeals*, for further information on assessment appeals.

[8] Property Tax Rule 463.500(c)(4).

- The owner notifies the assessor *in writing* within 30 days after completion of the new construction; and
- The full cash value of the new construction on the date of completion plus the full cash value of the replacement dwelling on the date of acquisition is not more than the *adjusted new base year value* of the original property (i.e., the base year value at the time of sale factored forward to the date the new construction is completed) determined when the claim was granted. Under these circumstances, the "equal or lesser value" time adjustments in section 69.5(g)(5) are *not* applied.[9]

This does not apply to a situation where a replacement dwelling is purchased and the base year value transferred, then subsequently the home is demolished and a new home built in its place. This would result in transferring the base year value a second time—to the new home. Thus, the new home should be reassessed under section 70 as new construction.

SEVERED AND RELOCATED IMPROVEMENTS

D3: If an original property consisting of a house and lot is sold and, as part of the sales agreement, the claimant severs the house and moves it to a newly purchased lot, will the new lot with the reattached structure qualify as a replacement dwelling under section 69.5?

Answer. Yes. Once a structure is severed from the land it becomes personal property. When the structure is subsequently reaffixed to land, it is considered new construction as an addition to land under section 70(a)(1).[10]

LIEN DATE ASSESSMENT OF CONSTRUCTION IN PROGRESS

D4: If an original property is sold, construction of a residence is begun in September and completed the following April, and the Taxpayer is granted section 69.5 relief as of the date of completion of new construction, does the claim affect the assessment of the partially completed residence on January 1?

Answer. No. Section 71 provides that new construction in progress on the lien date is appraised at its full cash value. If all the qualifications of section 69.5 are met, subdivision (h)(1) provides that a base year value is transferred as of the *latest* qualifying date—(A) the date the original property is sold, (B) the date the replacement dwelling is purchased, or (C) the date the new construction of the replacement dwelling is completed. Since the base year value cannot be transferred until the residence is completed and all the qualifications are met, the assessment of the partially completed residence on the lien date would not be affected.

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[9] For examples, see Letter To Assessors No. 91/31, dated April 29, 1991.

[10] See Letter To Assessors No. 94/14, Assessment of Relocated Improvements, dated February 24, 1994.

E. ONE TIME ONLY

E1: Can a taxpayer apply for and receive the benefit of Proposition 60 numerous times in his or her lifetime?

Answer: Generally, no. Subdivision (b)(7) provides a person is eligible for relief as long that person has not previously been granted property tax relief under section 69.5. The sole exception is where a person first received relief for age and subsequently became severely and permanently disabled and had to move because of the disability.

E2: In 1987, a married couple sold their original property and purchased a replacement dwelling in the same county. The couple transferred their base year value under Proposition 60. Now, one of them has become severely arthritic and cannot climb the stairs to the bedrooms on the second floor. They want to sell the replacement dwelling and purchase a property in another county that has an ordinance accepting base year value transfers. Can they transfer their base year value a second time?

Answer: Yes. The only exception to the one-time-only limitation is for a claimant who becomes severely and permanently disabled *after* having previously received a base year value transfer as a claimant over age 55. Such relief became available effective September 25, 1996. If the disability pre-dates the original claim for base year value transfer (i.e., the claimant qualified on the basis of being over age 55), the claimant cannot transfer the base year value a second time on the basis of the disability.

This exception is *not* available for the reverse situation. That is, if a person received a base year value transfer because of a disability and subsequently applies to transfer the base year value a second time after attaining the age of 55, the second claim would not qualify for relief.

F. ORIGINAL PROPERTY

MANUFACTURED HOME

F1: Can the base year value be transferred from a manufactured home to a replacement property?

Answer. Yes, but *only* if the manufactured home is assessed on the local roll. "Original property" means a place of abode and the land on which it sits. If the manufactured home is not assessed on the local roll, then the original property is not eligible because a licensed manufactured home has no base year value to be transferred. In addition, an original property must be subject to reassessment under either section 110.1 or 5803, unless a base year value is being transferred to it under section 69, 69.3, or 69.5. A licensed manufactured home is not subject to reappraisal upon a change in ownership.

QUALIFYING LAND

F2: What is meant by "area of reasonable size" as it applies to either the original property or the replacement dwelling?

Answer. An "area of reasonable size" that is used as a site for a residence includes *all* land within the parcel provided that any nonresidential uses of the property are merely

incidental to the use of the property as a residential site. For example, a claimant sold a home located on a 7500 square foot lot and replaced it with a home located on a 20-acre parcel. As long as the 20-acre parcel was used only for purposes incidental to the use as a residential site, the base year value of the original property could be transferred assuming all the other qualifications are met. The converse would also be true. If a claimant sold a home on a 20-acre parcel and purchased a home located on a 7500 square foot lot, the base year value of the 20-acre original property would be transferred to the replacement dwelling assuming any nonresidential uses of the 20-acre parcel were merely incidental to the use as a residential site, and the replacement dwelling meets the other section 69.5 requirements.

Under section 69.5 (g)(3), some uses that are "incidental to the use of the property as a residential site" are: the boarding of horses, selling eggs or fruit, or having a home-based business operating out of a room in the home. Because of the potential for a variety of uses of land for non-residential purposes, assessors will need to exercise judgment in determining the types of uses that are merely incidental and the extent to which the homeowner's exemption may apply to a portion of the property.[11]

WILLIAMSON ACT AND TIMBERLAND

F3: Taxpayer sold a property that was restricted by a Williamson Act contract. The sold property included a home. Can taxpayer transfer the base year value from the property under contract?

Answer. Open space land that is enforceably restricted by a Williamson Act contract is assessed under article XIII, section 8, of the California Constitution, and sections 421 et seq. These special valuation provisions do not apply, however, to a residence or land of reasonable size that is used as a site for the residence. Instead, a residence and its underlying land are assessed as other residential property under article XIII A (Proposition 13) and is, thus, eligible for the base year value transfer under section 69.5.

Similarly, property restricted to timberland use is excluded from the provisions of article XIII A and instead is valued under the Timber Yield Tax Law. However, property not subject to valuation under the Timber Yield Tax Law within a timberland production zone (TPZ), such as a residence, land of reasonable size that is used as a site for the residence, and other compatible uses, is to be valued according to the provisions of Proposition 13. Thus, if TPZ property is sold that includes a residence, the residence and its underlying land is eligible for the base year value transfer under section 69.5.

DAMAGED ORIGINAL PROPERTY

F4: A home was destroyed by fire in April 1994. Immediately prior to the destruction, the full cash value of the home was $650,000. In February 1999, the property sold for $250,000 still in its damaged condition. The homeowner received $300,000 in insurance proceeds for the loss of the residence. The homeowner purchased a replacement home for $700,000 in January 2001. Will the new home qualify for property tax relief under section 69.5?

[11] Letter To Assessors No. 82/50 (March 23, 1982) provides questions and answers on the Homeowners' Exemption.

Answer. Yes, assuming that all the requirements are met. The new home will qualify if

- The homeowner was at least age 55 when the original property sold;
- The original property was the owner's principal residence when it was damaged;
- The original property sustained physical damage amounting to more than 50 percent of its full cash value immediately prior to the misfortune or calamity; and
- The value of the replacement property is equal to or less than 110 percent of the fair market value of the original property immediately prior to the destruction plus inflationary factoring for the period between the destruction and the purchase of the replacement property.

The base year value to be transferred is the original property's factored base year value just prior to the destruction plus inflationary factoring for the period between the destruction and the purchase of the replacement property.[12]

F5: A home was destroyed by fire. Taxpayer rebuilt a new home on the land, but never lived in it. Taxpayer sold the new home and land and purchased another home as a replacement. Can the taxpayer transfer the base year value of the demolished property to the replacement property?

Answer. No. The disaster relief provisions of section 69.5 apply not to property that was rebuilt following damage or destruction, but rather to an original property that was sold in its damaged state.[13] Since the taxpayer rebuilt the home, the taxpayer is not eligible to transfer the base year value from the damaged home. In addition, the newly constructed home does not qualify as an original property as the taxpayer never occupied it as a principal residence.

G. PRINCIPAL PLACE OF RESIDENCE

G1: Must the taxpayer be receiving benefit of a homeowner's exemption on the original property when it is sold?

Answer. No. Under section 69.5(b)(2), the original property must be *eligible* for the homeowner's exemption as the result of the claimant's ownership and occupation of the property as his or her principal residence, *either* at the time of its sale *or* within two years of the purchase or new construction of the replacement dwelling.

G2: Last year a homeowner sold the property in which she had lived for many years; subsequently, she purchased a condominium. She had never applied for the homeowner's exemption. Can the property owner still transfer the base year value under section 69.5?

Answer. As long as the property owner can prove that the sold property was owned and occupied as a principal place of residence, its base year value may be transferred (assuming all other requirements of section 69.5 are met). A principal residence is a

[12] The damage or destruction does not have to be caused by a disaster that resulted in a Governor-proclaimed state of emergency.

[13] Section 69.5(g)(7)(B).

person's true, fixed, and permanent home and principal establishment to which the owner, whenever absent, intends to return. Proof of residency may include vehicle registration, voter registration, bank accounts, or income tax records.

G3: A man and a woman marry. Each owns a home and is over age 55. The wife rents out her house and moves into her husband's home. They intend to purchase another home and use the wife's house as a qualifying original property for base year value transfer purposes. Can the wife transfer the base year value under section 69.5?

Answer. The wife can transfer her base year value as long as they are able to purchase a qualifying replacement property before two years have lapsed from the date the wife ceased to occupy her home. If not, the wife must re-occupy her home as her principal residence to again establish it as a qualifying original property. She would have to present sufficient evidence to qualify the home for the homeowner's exemption for a period ending within two years of the purchase of the replacement dwelling. The fact that the wife rented out her home does not disqualify it as an original property.

H. REPLACEMENT PROPERTY

INTERCOUNTY ORDINANCES

H1. What counties have ordinances that will accept transfers of base year value from other counties?

Answer. As of the date of this letter, the following seven counties have intercounty ordinances: Alameda, Los Angeles, Orange, San Diego, San Mateo, Santa Clara, and Ventura.[14] For any changes, please call the Real Property Technical Services Unit of the Board's Assessment Policy and Standards Division at 916-445-4982 or go to the Property Tax FAQ's on the Board's website at www.boe.ca.gov/faqs/faqsindexcont.htm.

MANUFACTURED HOME

H2: Can the base year value of a single-family residence be transferred to a licensed manufactured home and lot?

Answer. Yes. However, only the land on which the licensed manufactured home is located, along with any miscellaneous improvements taxed as real property, may benefit by the transfer. Allocation of the original property base year value land and improvements should not exceed the combined market value of replacement property land and any miscellaneous improvements. If the licensed manufactured home is converted to local property tax status, under subdivision (c)(2) it will be eligible for section 69.5 benefits along with the land and miscellaneous improvements. At that time, any unallocated portion of the base year value of the original property should be applied and enrolled.

LEASED LAND

H3: Taxpayer purchases a home and leases the land. Will she be able to transfer the base year value from the original property to the replacement property?

[14] See Letter to Assessors No. 2004/065.

Answer. Yes, assuming that all the requirements are met. Under section 69.5(g)(3), the term "replacement dwelling" includes any land owned by the claimant on which the structure is situated. Land owned by the claimant includes land for which the claimant holds a leasehold interest as described in section 61(c). This subdivision presumes that all homes eligible for the homeowners' exemption, except manufactured homes subject to local taxation, that are on leased land have a renewal option of at least 35 years on the lease of that land, regardless of whether the renewal option actually exists.

CONTIGUOUS PARCELS

H4: A replacement property consists of two contiguous parcels. Can a claimant transfer the base year value of her original property to both parcels?

Answer. Yes, but only if both parcels comprise an appraisal unit[15] and cannot be separated (for example, two 2½-acre parcels in a 5-acre zone), or if the residence straddles the parcel line, then the base year value may be transferred to both parcels. Or, if the house is on one parcel and the garage on the adjoining parcel, then both parcels should be considered one appraisal unit because a garage is normally a part of the residential site.

MULTIPLE UNITS

H5: Taxpayer purchased three units in a six-unit building and is using all three units as his principal residence. Can he transfer the base year value to all three units?

Answer. Section 69.5 requires the transfer of a base year value to a single residential unit rather than multiple units. Subdivision (c)(1) speaks in terms of a property designated as a single unit. Moreover, the definition of a "replacement dwelling" in subdivision (g)(3) indicates that a single residential unit was intended as it refers to "a building, structure, or other shelter constituting a place of abode,..." This definition evidences a legislative intent to allow the transfer benefit to only one place of abode. However, if physical construction is undertaken to convert multiple units into a single merged unit, the relief may be granted. The construction must be completed within two years of the sale of the original property and a claim filed after the completion of construction.

SUBDIVISION OF LOT

H6: If a taxpayer sold an original property for $300,000, purchased an 80-acre parcel for $400,000, subdivided it into four 20-acre parcels, sold three of the lots, and constructed a residence on the fourth lot for $150,000, could the taxpayer transfer the base year value to the one 20-acre parcel and residence?

Answer. The base year value may be transferred to the one 20-acre parcel and residence as long as (1) the subdivision was completed before completion of construction; (2) the new construction occurred within two years of the sale of the original property; (3) the full cash value of the 20-acre parcel and residence at the time of completion of construction is

[15] Section 51(d) defines an appraisal unit as that which persons in the marketplace commonly buy and sell as a unit, or that is normally valued separately.

equal or less than the full cash value of the original property as of the date of sale; and (4) all other requirements under section 69.5 are met.[16]

I. RESCISSION

I1: A couple sold their original property, purchased a replacement dwelling, and filed a claim to transfer their base year value. After living in the replacement home for one year, they now wish to move to a cooler climate. Can they rescind their claim and requalify for section 69.5 benefits if they acquire a second replacement property?

Answer. Effective September 30, 1990, a section 69.5 claim may be rescinded pursuant to subdivision (i)(2)(A) if *all* of the following conditions have been met:

- A written notice of rescission, signed by the original claimant(s), is given to the assessor's office where the claim was filed, and
- If a refund was to result from the original claim, the notice is delivered to the assessor's office *before* the date the county first issues a refund check. If a refund is not applicable, and taxes have not been paid, the notice must be delivered *before* any property taxes are paid on the new transferred base year value. If taxes have not been paid, the notice must be delivered *before* any property taxes on the new transferred base year value become delinquent.

If either of these conditions is not met, then the claim cannot be rescinded, and the base year value will remain with the first replacement property. In addition to the above, effective January 1, 2001, a claim may be rescinded pursuant to subdivision (i)(2)(B) if *all* of the following conditions have occurred:

- The claimant vacated the replacement property as the claimant's principal place of residence within 90 days after the original claim was filed, and
- A notice of rescission, signed by the original claimant(s), is delivered to the office of the assessor within six years after relief was granted.

If a claim is successfully rescinded, the taxpayers may purchase another property and file a claim to transfer the base year value to that property. However, the second property must also meet all the requirements of section 69.5 (e.g., it must be purchased within two years of the sale of the original property, and it must meet the equal-or-lesser-value test). *There are no exceptions or time extensions for extenuating circumstances.*

I2: Taxpayer sold an original property and transferred the base year value to a qualified replacement dwelling. After moving in, major structural problems were discovered which rendered the replacement dwelling partially uninhabitable. The builder has not been able to correct the problems. As an alternative, the builder may offer another dwelling or a court may order a rescission of the purchase. Either way, can the base year value be transferred to a new replacement property?

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[16] Annotation 200.0120.

Answer. In this situation, timing is critical. As explained above, either (1) a notice of rescission must be given to the assessor before the date the county first issues a refund check or before property taxes based on the new transferred base year value are paid or, if unpaid, before the taxes become delinquent; or (2) the claimant must vacate the replacement dwelling within 90 days of filing the claim. In addition, regardless of whether the builder substitutes another dwelling or a court rescinds the purchase, any new replacement property must be purchased within two years of the sale of the original property and meet the value requirements in order to qualify for relief.

J. SALE/PURCHASE

CONSIDERATION

J1: Will the transfer of an original property or acquisition of a replacement dwelling by gift or devise qualify for property tax relief under section 69.5? What about the exchange of another property?

Answer. Section 69.5 requires that the original property be sold and a replacement dwelling purchased or newly constructed. "Sale" is defined in section 69.5(g)(8) as "any change in ownership of the original property for consideration." "Purchase" is defined in section 67 as "a change in ownership for consideration."

Change in ownership means that the transaction is not excluded from reassessment under sections 62 through 68.

Consideration is something of value that is exchanged for the property. Consideration is not limited to the payment of cash; it could include the exchange of other property, the assumption of a debt, the cancellation of an outstanding debt, or the creation of a debt. Further, neither statute requires that the consideration be equivalent to the market value of the property transferred. While the transfer of property for nominal value should be rejected on the theory that the alleged "purchase" is a sham, it would appear that the term "purchase" could include a transfer for some substantial consideration even though the amount was less than the full cash value of the property received.

Thus, something of value must be exchanged and a change in ownership must result in order for property to qualify for relief under section 69.5. A property that is transferred or acquired by gift or devise will not qualify because nothing of value was exchanged. However, a property which is taken through foreclosure proceedings and sold to a third party in a trustee's sale would qualify as an original property since the consideration in this circumstance would be the cancellation of an outstanding debt.

The transfer of the original property to a "straw man" in a transaction paralleling an Internal Revenue Code section 1031 exchange, followed by the transfer of the beneficial interest in the property to the buyer, constitutes a sale and change in ownership upon buyer's acquisition. Acquisition by the "straw man" (which may be a title company, a bank, or a broker functioning as an accommodator) holding mere legal title to the property does not result in a change in ownership. However, when the "straw man" subsequently transfers title to a buyer who receives the present beneficial ownership of the property, a change in ownership occurs. Thus, such a transaction would qualify as a sale or purchase for section 69.5 purposes.

CHANGE IN OWNERSHIP EXCLUSION

J2: Can the benefits of section 69.5 apply where the sale of the original property is excluded from change in ownership because it is, for example, a transfer to the taxpayer's wholly-owned corporation?

Answer. No; section 69.5(e) provides that, as a result of its sale, the original property must (1) be subject to reappraisal at its current fair full cash value in accordance with sections 110.1 or 5803, *or* (2) result in a base year value determined in accordance with section 69 (intracounty disaster relief), section 69.3 (intercounty disaster relief),[17] or section 69.5. Thus, the only time an original property may be excluded from change in ownership and still have the benefits of section 69.5 apply is where the original property is being purchased as a replacement property and the buyers are transferring the base year value from another property under sections 69, 69.3, or 69.5. In addition, section 69.5(g)(8) defines "sale" as a "change in ownership of the original property for consideration." Thus, a transfer that is excluded from the statutory meaning of "change in ownership" does not qualify.

INTERSPOUSAL EXCLUSION

J3: John and Susan each own a residence. After they marry, Susan sells her solely-owned property and purchases a 50 percent interest in John's property. Susan files a section 69.5 claim for property tax relief. Is Susan eligible for relief?

Answer. No. The transfer is not a change in ownership because it is a transfer between spouses, which is excluded from reappraisal under section 63. Since a transfer between spouses is automatically excluded from change in ownership as a matter of law, a claimant cannot "choose" between sections 63 and 69.5. Accordingly, since the replacement property was not subject to change in ownership and reappraisal within the meaning of section 69.5, it does not qualify for property tax relief.

PARENT-CHILD EXCLUSION

J4: Can a taxpayer sell an original property to the taxpayer's child, allow the child to claim the benefit of the parent/child exclusion and still qualify for the section 69.5 benefit when taxpayer purchases a replacement property?

Answer. No. Section 69.5 provides that an original property must be subject to reappraisal at full cash value at the time of sale unless it qualifies for one of the exclusions expressly provided in sections 69, 69.3, or 69.5. The parent/child exclusion is implemented by section 63.1. Under this exclusion, the property is not reassessed to current market value. If the assessor grants a parent/child exclusion claim for the transfer of the original property, then the base year value may not be transferred to a replacement dwelling.

CO-OWNERS—PARTIAL INTEREST SALE OF ORIGINAL PROPERTY

J5: A brother and sister are equal co-owners of a single-family residence. The sister sells her 50 percent interest to her brother and purchases a separate residence. If the sister is

[17] "Intracounty" means within the same county; "intercounty" means between counties.

otherwise qualified, can she transfer her portion of the base year value to her new residence under section 69.5?

Answer. No. Section 69.5 does not contemplate transfers of partial interests. The definitions of "original property" and "replacement dwelling" evidence a legislative intent to apply section 69.5 to the entire interests in the original property and in the replacement dwelling (i.e., entire appraisal units) and not to fractional interests therein. In addition, the "equal or lesser value" comparison demonstrates a whole-property to whole-property approach. Section 69.5 requires that an original property be subject to reappraisal at full cash value at the time of sale unless it qualifies for one of the exclusions expressly provided for (section 69, 69.3, or 69.5). For the sister to qualify, the brother and sister would need to sell the entire property.

CO-OWNERS—PARTIAL INTEREST PURCHASE

J6: A taxpayer was the sole owner of the original property, which was sold for $315,000. The taxpayer and two other persons together purchase a replacement dwelling for $300,000. If taxpayer is otherwise qualified, can the base year value be transferred under section 69.5? Is it transferred to taxpayer's one-third interest or to the entire property?

Answer. Yes. The base year value of the original property can be transferred to the replacement dwelling if all the requirements are met. In this situation, the *total* full cash value of the original property is compared with the *total* full cash value of the replacement dwelling regardless of the fact that the qualified claimant owns only a one-third interest in the replacement dwelling. As long as the claimant is otherwise qualified, the replacement dwelling may receive the benefits of section 69.5 regardless of the number of co-owners of record there are on the replacement dwelling. However, only the claimant and the claimant's spouse are considered "claimants" and use their one-time benefit. Even though the other non-spouse co-owners will benefit from the claimant's use of section 69.5, they are not considered claimants and will still be able to utilize the benefit for future transactions.

J7: Tim is the sole owner of a property which has a market value of $300,000. Anne (no relation to Tim) purchases a 50 percent interest in Tim's property for $150,000. Anne sold her original property for $160,000 and appears to meet all other section 69.5 requirements. Anne files a claim to transfer the base year value of her original property to her 50 percent interest in Tim's property. Is Anne's partial interest purchase in Tim's property eligible for property tax relief under section 69.5?

Answer. No. The purchase of a partial interest in a replacement dwelling under circumstances that result in only a partial change in ownership is not eligible for property tax relief under section 69.5. The definitions of original property and replacement dwelling evidence a legislative intent to apply section 69.5 to the entire interests in the original property and in the replacement dwelling (i.e., entire appraisal units) and not to just fractional interests therein.

INCREMENTAL SALE

J8: If an original property is sold in increments rather than a single transaction (50 percent of property is sold at one point in time, then the other 50 percent is sold later), can the base year value be transferred to a replacement dwelling under section 69.5?

Answer. Yes. Section 69.5 requires a claimant to sell the entire original property, but does not specify that the sale must occur in a single sales transaction. Therefore, multiple sales of fractional interests comprising all the interests in the property would qualify as a sale of the original property provided that all the transactions occur within two years of the purchase of the replacement dwelling and each fractional interest is subject to reappraisal. For the purpose of value comparison, the full cash value of the original property would be determined by adding the fair market value of each interest sold as of its date of sale plus inflationary adjustments, if applicable, for that interest from the date of its sale.

INCREMENTAL PURCHASE

J9: If a replacement property is purchased in increments rather than a single transaction (50 percent of property is purchased at one point in time, then the other 50 percent is purchased later), will this property qualify for exclusion? Which date would be used to compare the full cash value with the original property's full cash value?

Answer. The property would qualify for exclusion if all purchases meet the time limitations of section 69.5 (i.e., all the purchases must occur within two years of the sale of the original property). A replacement dwelling must be purchased in its entirety, whether it is done in multiple transactions or in a single transaction. The "equal or lesser" value comparison should be based on the full cash value of the replacement dwelling as of the date that 100 percent of the property was finally purchased by the claimant. This treatment is consistent with that prescribed in the situation where the replacement dwelling is in part purchased and in part newly constructed. Under that circumstance, subdivision (5) of subdivision (g) provides that the date the replacement dwelling is purchased or newly constructed is the date of purchase or the date of completion of construction, *whichever is later*.

K. TIMING

K1: A taxpayer purchased a replacement dwelling on March 10, 1997. The assessor reappraised the replacement dwelling and issued two supplemental assessments as of April 1, 1997: one for the remainder of the 1996-97 fiscal, the other for the entire 1997-98 fiscal year. Taxpayer's original property sold on November 20, 1997, and the taxpayer filed a claim to transfer the base year value. Can the base year value be transferred to the replacement dwelling as of the date of purchase? What about the supplemental assessments?

Answer. If all the qualifications of section 69.5 are met, subdivision (h)(1) provides that a base year value shall be transferred as of the *latest* qualifying date:

- the date the original property is sold
- the date the replacement dwelling is purchased
- the date the new construction of the replacement dwelling is completed.

Under the above scenario (assuming all other qualifications are met), the base year value should be transferred as of the date of sale of the original property (i.e., November 20) because it is the latest qualifying date. The taxpayer is responsible for the increased taxes from the time the replacement dwelling was purchased until the original property was sold. The difference between the new base year value and the transferred base year value from November 20 to the end of the fiscal year should be cancelled or refunded.

Subdivision (h)(1) requires the assessor to adjust the new base year value of the replacement dwelling in order to reflect the transferred base year value as of the latest qualifying date, and subdivision (h)(2) requires that any taxes that were levied on the replacement dwelling prior to the filing of the claim be *cancelled or refunded* to the extent that the taxes exceed the amount that would be due when determined on the basis of the new adjusted base year value. Subdivision (h)(3) authorizes the assessor to use the supplemental assessment procedures to adjust the replacement property's base year value without a change in ownership or completion of new construction as required by section 75.10.

K2: A taxpayer purchased a lot ten years ago with the intention of building a retirement home. If construction of the home is completed within two years of the sale of the original property, will the replacement dwelling qualify for property tax relief? Can an extension be granted if construction is delayed due to unforeseen circumstances beyond the taxpayer's control and cannot be completed within the 2-year period?

Answer: The base year value may be transferred to the replacement dwelling if the construction is completed within two years of the sale of the original property and all other requirements are met.[18] The full cash value of the lot and improvements as of the date of completion of new construction must be equal to or less than the full cash value of the original property as of the date of sale. If construction is not completed within two years, regardless of the reason, the property will not qualify for relief under section 69.5. There is no provision for exceptions due to hardship or other factors which may have prevented compliance with the two-year time period from the date of sale of the original property.

K3: If a lot is purchased and a home constructed, must the new construction be completed within two years of the purchase of the lot?

Answer. No. Section 69.5 (b)(5) requires that *either* the purchase *or* completion of new construction must occur within two years of the sale of the original property. The replacement lot may be purchased any time *before* the sale of the original property, but completion of new construction of the residence must occur prior to two years *after* the sale of the original property.

On the other hand, if a lot is purchased within two years of the sale of the original property, but the residence is not completed until four years after the sale, the replacement will not qualify for relief under section 69.5 because the new construction was not completed within two years of the sale of the original property.

[18] See Letter to Assessors No. 2002/019.

K4: Taxpayer moves out of his original property in June 1999 and rents out the property. Taxpayer moves into a home he purchased in 1998 but decides it is not suitable as a permanent residence. If he sells the original property in June 2000, does he have until June 2002 to purchase a replacement property?

Answer: No. Section 69.5(b)(2) requires that the original property be eligible for the homeowner's exemption either at the time of its sale *or within two years of the purchase or new construction of the replacement dwelling*. Since the taxpayer moved out and rented the property, it ceased to be eligible for the homeowner's exemption; this started the two-year period in which to purchase a replacement dwelling. In this case, the replacement property must be purchased or newly constructed by June 2001 in order for the base year value to be transferred from the qualifying original property. Alternatively, if the claimant moved back into the original property and re-established eligibility for the homeowner's exemption, the two-year period in which to purchase a replacement dwelling would start on the date of its subsequent sale.

K5: If a lot is purchased on July 7, 1999; new construction of the residence was completed in November, 1999; an addition was completed on the residence in July, 2000; but the original property did not sell until January, 2002; can the base year value be transferred to the replacement property?

Answer: No. Section 69.5(g)(3) defines "replacement dwelling" as a building, structure, or other shelter constituting a place of abode that 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. Since the completion of construction of the place of abode (i.e., the residence) did not occur within two years of the sale of the original property as required by subdivision (b)(5), the property is ineligible for relief under section 69.5.

L. VALUE COMPARISON

L1: When making the "equal or lesser value" comparison, is a simple comparison of the sales price of the original property and the purchase price of the replacement dwelling all that is needed?

Answer. No. Section 69.5(g)(5), (6), and (7) require that the *full cash value* of the original property as of the date of sale be compared with the *full cash value* of the replacement dwelling as of its date of purchase or completion of new construction. Section 110.1 provides that full cash value means the fair market value as defined in section 110. Section 110(b) presumes that the purchase price paid in a transaction is the full cash value *unless* evidence shows that the real property would not have transferred for that price in an open market transaction.

In addition, subdivision (g)(7) defines the "full cash value of the original property" as its new base year value *adjusted by the inflation factor* for the period from its date of sale to the date on which the replacement property was purchased or new construction was completed. Thus, for purposes of making the "equal or lesser value" comparison, the full cash value of the original property must be adjusted by the inflation factor(s) (maximum

2 percent per year) during the period between the sale of the original property and the purchase or completion of new construction of the replacement property.

L2: If a lot is purchased and a home constructed, how is the new construction valued?

Answer. The assessor must determine the full cash value of the improved property as of the date of completion. A simple summation of the purchase price of the lot plus the cost of construction might not accurately reflect the full cash value of the replacement property upon completion of construction.

L3: What effect does the sales commission or payment of closing costs have on the determination of fair market value?

Answer. Section 110 defines fair market value in terms of "cash or its equivalent." In using sales prices of the subject or comparable properties for the purpose of valuation, Property Tax Rule 4 provides that the appraiser shall adjust purchase prices to reflect amounts equivalent to cash. Such an adjustment may be required for sales involving (1) assumed loans or new loans (i.e., promissory notes) that reflect non-market, or atypical, financing terms; (2) seller-paid loan points paid to a third party (e.g., an institutional lender) as part of the buyer's financing; and (3) any other tangible or intangible property other than cash that the seller accepted as full or partial consideration for the property.

There are other expenses that might be incurred by the seller as part of a real estate transaction. In addition to the example of seller's points discussed above, other expenses may include real estate commissions, escrow fees, and recording fees. However, in terms of cash equivalence, these expenses are not valid adjustments from the total amount the seller receives in exchange for his or her property. They are payments for services rendered, not for the real property transferred. The fact that the seller pays for these services does not make the payments deductible expenses from the sale price of the property.

L4: If the full cash value of the replacement dwelling does not satisfy the "equal or lesser value" test, can a claimant receive partial benefit?

Answer. No. Unless the entire replacement dwelling satisfies the "equal or lesser value" test, no benefit is available—not even a partial benefit.

L5: If an original property is sold in January 1998 for $100,000, and a replacement dwelling is purchased in February 1998 for $106,000, does the replacement dwelling qualify for relief under section 69.5?

Answer. No. Assuming $100,000 was the full cash value of the original property and that $106,000 was the full cash value of the replacement dwelling at the time of purchase, the replacement dwelling is totally disqualified for property tax relief since, in this case, the replacement dwelling's full cash value exceeded 105 percent of the original property's full cash value.

In the example above, since the replacement dwelling was purchased prior to the next lien date following the sale of the original property, no inflation adjustment is applied to the value of the original property for purposes of the "equal or lesser value" comparison. However, other situations may require such adjustment.

Subdivision (g)(7) defines the "full cash value of the original property" as its new base year value adjusted by the inflation factor for the period from its date of sale to the date on which the replacement property was purchased or new construction was completed. Therefore, for purposes of the "equal or lesser value" comparison, the sale price of the original property must be adjusted by the inflation factor(s) (maximum 2 percent per year) if a lien date(s) occurs during this period.[19]

The following example illustrates various situations involving the "equal or lesser value" requirements.

	Date of Sale	Full cash value as of date of sale or purchase	Inflation Factor	Equal or Lesser Value Factor		Allowable Replacement Dwelling Value
Situation 1 (Replacement Acquired Prior to Sale)						
Original Property	1-17-98	$100,000	N/A	x 1.0		$100,000
Replacement Property	12-15-97	$106,000			→	NOT QUALIFIED
Situation 2 (Replacement Acquired Prior to Sale)						
Original Property	4-17-98	$100,000	N/A	x 1.0		$100,000
Replacement Property	12-5-97	$98,500			→	QUALIFIED
Situation 3 (Replacement Acquired Within First Year After Sale)						
Original Property	1-17-98	$100,000	N/A	x 1.05		$105,000
Replacement Property	6-10-98	$106,000			→	NOT QUALIFIED
Situation 4 (Replacement Acquired Within First Year After Sale)						
Original Property	1-17-97	$100,000	x 1.02 (1998)	x 1.05		$107,100
Replacement Property	1-15-98	$106,000			→	QUALIFIED
Situation 5 (Replacement Acquired Within Second Year After Sale)						
Original Property	1-17-97	$100,000	x 1.02 (1998)	x 1.10		$112,200
Replacement Property	5-21-98	$106,000			→	QUALIFIED
Situation 6 (Replacement Acquired Within Second Year After Sale)						
Original Property	1-17-97	$100,000	x 1.02 (1998) x 1.01853 (1999)	x 1.10		$114,279
Replacement Property	1-15-99	$106,000			→	QUALIFIED

SALE AND PURCHASE ON SAME DAY

L6: If the sale of the original property and the purchase of the replacement dwelling both record on the same day, what is the threshold that the full cash value of the replacement dwelling must meet?

Answer. The full cash value of replacement property must meet the 100 percent or less standard. The 105 percent provision of subdivision (g)(5)(B) requires that the replacement property be purchased "within the first year *following* the date of the sale of the original property."

[19] Revenue and Taxation Code section 75.18 requires that if a change in ownership occurs or new construction is completed between January 1 and June 30, the new base year value is adjusted by the inflation factor on the January 1 following the change in ownership or completion of construction.

(Emphasis added.) This language seems to indicate that the replacement property must be purchased at least one day after the sale of the original property to qualify under subdivision (g)(5)(B).[20]

LOT ACQUIRED MORE THAN TWO YEARS PRIOR TO SALE OF ORIGINAL PROPERTY

L7: If a lot is purchased and a home constructed, does the assessor have to establish a separate value for the land as of the date of purchase and the improvements as of the date of completion in making the section 69.5 full cash value comparison?

Answer. No. Section 69.5(g)(5) provides that for purposes of the value comparison test, if the replacement dwelling is, in part, purchased and, in part, newly constructed, the later date is the date the value is established. If a lot was purchased in 1987 and a home constructed in 1998, the assessor will use the market value of the improved lot *as of the date of completion of new construction* in making the value comparison test.

For example, a lot is purchased on September 15, 1987, for $25,000. The original property is sold on March 10, 1998, for $275,000. Construction of the replacement dwelling is completed on May 4, 1998 (full cash value of $150,000). For comparison purposes, the replacement property meets the equal or lesser value standard because the fair market value of the improved lot as of May 4, 1998, is $250,000 ($100,000 land and $150,000 improvements) while the full cash value for the original property is $288,750 ($275,000 x 105%).

OTHER IMPROVEMENTS

L8: If the original property differs from the replacement dwelling by having, for example, a swimming pool, while the replacement property does not, what values are compared to determine qualification? Should a deduction be made from the existing factored base year value of an original property being transferred to a replacement dwelling? What about a rental unit?

Answer. The full cash value of the replacement dwelling is compared to the full cash value of the original property that is occupied as the claimant's principal residence and qualifies for the homeowners' exemption. Under this criterion, the original property may include associated residential improvements, such as a swimming pool.

If an original property includes a *separate living unit* that is used as a rental, the full cash value would be allocated between the main residence and the rental. A unit would be considered separate from the main residence if it has its own kitchen, bathroom facilities and entrance and is used for purposes incompatible with the homeowners' exemption. For example, an apartment that was not rented, but was instead used for guests and family members may be considered part of the principal residence. Where there is a separate living unit that is not considered part of the principal residence, only the full cash value of the main residence would be compared to the full cash value of the replacement dwelling. In addition, the factored base year value being transferred to a

[20] Annotation 200.0118 (C 9/1/87; C 8/19/87).

replacement property would be adjusted for both the separate unit *and* that portion of land used to support the second unit.

MULTIPLE UNIT ALLOCATION

L9: Taxpayer occupies one unit of a duplex that he owns. If the taxpayer sells the duplex and purchases a single-family residence as a replacement property, what portion of the sold property will qualify as the original property?

Answer. The original property is the unit in which the taxpayer resided plus a reasonable land area. The full cash value of the entire property should be reasonably allocated between the two units. If the units are identical, the value should be equally split. Similarly, the value of the land and any miscellaneous improvements should be equally split between the two units, unless there is physical evidence that a particular improvement should be allocated to one unit rather than the other (e.g., a fence separates the yard; a fence limits pool access to one unit; or there is a legal agreement that one unit has sole use of a barn). In that event, the value comparison will be made between the allocated full cash value of the original property and the full cash value of the replacement dwelling.

Likewise, the base year value of the original property must be allocated between the two units; only the allocated base year value of the one unit may be transferred to the replacement dwelling.

MIXED-USE REPLACEMENT PROPERTY

L10: A and B sell their jointly owned original property and purchase a convenience store with upstairs living quarters. Will the living quarters qualify for relief under section 69.5?

Answer. Yes. Under section 69.5(g)(3), the base year value may be transferred to the portion of the property that is the principal place of residence of the owner, assuming all other qualifications are met. For the value comparison test, the full cash value of the total property must be allocated between the living unit and the commercial unit. The allocated value of the living unit is compared with the value of the original property. The base year value may be transferred only to that unit that qualifies for the homeowners' exemption (i.e., the upstairs unit); the remaining portion should be reassessed at current market value.

ALLOCATION OF VALUE

L11: How is the base year value allocated when either the original property or the replacement dwelling is a manufactured home in a mobilehome park (i.e., leased land)?

Answer. Upon transferring the base year value to the replacement dwelling, the base year value may be reallocated based on the land-improvement ratio of the replacement property's full cash value.

Example 1:

A claimant sells a manufactured home (no lot) that is assessed on the local roll. Two months later, a conventional house and lot is acquired as a replacement dwelling. Both

the original property and the replacement dwelling have a full cash value of $70,000. The base year value may be transferred, assuming the claimant is otherwise qualified. The "equal or lesser value" test has been met since the full cash value of the replacement property is less than 105 percent of the full cash value of the original property. The factored base year value of the manufactured home should be transferred to the house and lot, maintaining the same ratio for land and improvements as reflected in the full cash value of the replacement property.

	Factored Base Year Value	Full cash value as of 1-10-87	Full cash value as of 3-10-87	Ratio Land and Improvements to Total Property	Allocation of FBYV to replacement property
Original Property (Manufactured Home)	$35,000	$70,000	N/A	N/A	
Replacement Dwelling (House and Lot)	N/A	N/A	$70,000		$35,000
			$20,000 L	.29 x $35,000 =	$10,150
			$50,000 I	.71 x $35,000 =	$24,850

Example 2:

Likewise, if a single-family residence is sold and a manufactured home on the local property tax roll is purchased (no lot), the entire base year value of the single-family residence, not just the improvement value, should be moved to the manufactured home to the extent that it does not exceed the fair market value of the manufactured home and any miscellaneous improvements as of the date of purchase.[21]

	Factored Base Year Value	Full cash value as of 1-10-87	Full cash value as of 3-10-87	Allocation of FBYV to replacement property
Original Property (house and lot)	$35,000	$170,000	N/A	
Replacement Dwelling (manufactured home only)	N/A	N/A	$70,000	$35,000

Example 3:

A single-family residence which has a base year value of $120,000 is sold for $450,000. A claimant pays $300,000 for a manufactured home and a pro rata interest in a resident-owned entity that owns the mobilehome park. The factored base year value of the original property should be reallocated because the factored base year value of the original property improvement exceeds the fair market value of the replacement property's manufactured home. The allocation of the factored base year value should be based on the land-improvement ratio of the replacement property's full cash value.

[21] Annotation 200.0041 (C 1/28/2000).

	Factored Base Year Value (FBYV)	Full cash value as of sale	Full cash value as of purchase	Ratio Land and Improvements to Total Property	Allocation of FBYV to replacement property
Original Property (house and lot)	$ 47,500 L $142,500 I $190,000	$450,000			
Replacement Dwelling			$300,000		$190,000
(manufactured home and pro rata interest in park entity)			$175,000 L $125,000 I	.58 x $190,000 .42 x $190,000	= $110,200 = $79,800

DATE OF VALUE COMPARISON

L12: Given the following scenario, can the base year value be transferred from the original property? Can a claimant choose the date the value test should be applied?

- May 1990: Claimant purchases replacement dwelling for $350,000
- February 1991: Claimant completes construction of pool on replacement property for $30,000
- March 1991: Claimant sells original property for $355,000
- April 1991: Claimant files claim form specifying purchase price of $350,000 for the replacement dwelling and the May 1990 date.

Answer. Section 69.5(f)(4) requires the taxpayer to file a claim form with the assessor and provide the date of sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling. By stating one particular date, the date of either purchase or new construction, the claimant is asking the assessor to determine the full cash value of the replacement dwelling as of *that* date. If the date of purchase is the date indicated by the claimant for the replacement dwelling, then the assessor must determine the full cash value of the replacement dwelling as of the date of purchase. On the other hand, if the date of completion of new construction is the date indicated for the replacement dwelling, then in order to determine the full cash value of the replacement dwelling the assessor must add (1) the full cash value of the replacement dwelling as of the date of purchase and (2) the full cash value of the new construction as of the date of completion of new construction.

In this example, the replacement dwelling would meet the value comparison test since the claimant indicated that the date of purchase is the date to compare the value of the replacement dwelling with the value of the original property ($350,000 is less than $355,000). However, had the claimant indicated the date of completion of the new construction as the date to be used for the replacement dwelling, the replacement property would not have met the value comparison test.

If the claimant files a claim form specifying a date (e.g., the date of completion of construction in the example above) that causes the replacement dwelling to fail the value comparison test, but timely files a new claim showing a different date (i.e., the date of purchase) that enables eligibility for relief, the new claim should be allowed.

I have returned to Kristine the draft of this property tax memo.

The path to find the document if further edits are necessary is:
J:LEGALAFFAIRS/CONTROVERSY AND BANKRUPTCY/DRAFTS/EPOLITE/PROPERTY TAX CASES/
WUNDERLICH AMICUS BRIEF/Wunderlich Amicus Board Memo 09-26-07

I have left in your chair the following attachments which go with this memo:
(1) Reporter's Transcript
(2) Letter To Assessors 2001/019
(3) Letter To Assessors 2006/010
(4) December 13, 2001 Chief Counsel Boyer Memo to Board Members
(5) December 13, 2001 Chief Counsel Boyer Letter to Andrew Freeman

Thank you.

Anthony S. Epolite
Acting Supervising Tax Counsel
Board of Equalization
(916) 324-2642
FAX (916) 323-3387
Anthony.Epolite@boe.ca.gov

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State of California

Board of Equalization
Legal Division - MIC:83
Telephone (916) 445-4380

Memorandum

CONFIDENTIAL - ATTORNEY/CLIENT PRIVILEGE

To: Honorable Claude Parrish
Honorable John Chiang
Honorable Johan Klehs
Honorable Dean Andal
Honorable Kathleen Connell

Date: December 13, 2001

From: Timothy W. Boyer
Chief Counsel

Subject: ***Gregory J. Smith, San Diego County Assessor v. State Board of Equalization***
Complaint for Declaratory Relief
San Diego Superior Court Case No. 775128

PROPOSED SETTLEMENT PURSUANT TO DISMISSAL AND LETTER TO THE SAN DIEGO COUNTY COUNSEL

Attached are copies of correspondence from Deputy Attorney General Leslie Branman Smith dated November 26, 2001, together with a copy of the San Diego County Assessor's Request for Dismissal of the above named Complaint against the Board. Also attached is a letter from me to the San Diego County Assessor agreeing to revise and delete from legal opinions and Letters to Assessors, the application of the two-year time limitation in Revenue and Taxation Code section 69.5, subdivisions (a)(1) and (b)(5), to the purchase of the land for a replacement – where the replacement dwelling is constructed at a later date.

The dispute in the Complaint arose out of two superior court cases in San Diego County, which held as erroneous, the Board staff's advice that replacement land purchased more than two years of the sale of the original property disqualifies a senior citizen or disabled person for the transfer-of-base year value benefit on their replacement dwelling.

In negotiations carried on last month between the Legal staff and the Assessor's legal counsel, staff agreed to revise its strict interpretation of this two-year requirement. if the Assessor's counsel would dismiss the Complaint. Thus, staff's advice would now state that claimants who purchased the land for their

replacement dwelling more than two years before the sale of their original property are eligible for the benefit – provided that the assessor reappraises the land at full cash value upon completion of the replacement dwelling construction. There is no change in the requirement that the total cash full value of the replacement dwelling and land must be equal to or lesser than the full cash value of the original property at the time the new construction is completed.

Staff has reached this agreement subject to the analysis in my attached letter based on the Board's' approval. As the agreement reflects the decisions of several superior courts and allows seniors and disabled homeowners who owned their land for more than two years to be eligible for the benefit, it is assumed that Board will view the letter of agreement favorably. If no objections are received within three days of the date of this transmittal, the letter agreement will be sent to the San Diego County Assessor as representing the Board's view.

If, before the three-day closure date (December 18, 2001), you have any questions, please call Supervising Tax Counsel Kristine Cazadd at (916) 323-1126.

TWB:tr
prop/litigatn/01/sandiego/775128/setmemo

Attachments

cc: Mr. James E. Speed, MIC:73
Mr. David Gau, MIC:63
Chief - PPSD, MIC:64
Mr. Harold Hale, MIC:61
Mr. Larry Augusta, MIC:82
Ms. Jennifer Willis, MIC:70

bc: Ms. Marcy Jo Mandel (Culver City)
Mr. Neil Shah, MIC:77
Mr. Steven Kamp, MIC:72
Mr. Jon Sperring, MIC:78
Ms. Melanie Darling, MIC:78

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE

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SAN DIEGO, CA 92101

P.O. BOX 85266
SAN DIEGO, CA 92186-5266

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Telephone: (619)645-2603
Facsimile: (619)645-2581
E-Mail: Leslie.Smith@doj.ca.gov

Received
NOV 2 9 2001
Legal Div - Property Taxes
State Board of Equalization

November 26, 2001

Received
NOV 2 9 2001
Legal Div - Property Taxes
State Board of Equalization

Ms. Kristine Cazadd
Supervising Tax Counsel
State Board of Equalization
450 "N" Street, MIC 82
P.O. Box 942879
Sacramento, California 94279-0082

RE: *Smith v. State Board of Equalization*
San Diego Superior Court Case No.: GIC 775128

Dear Ms. Cazadd:

Enclosed please find a copy of the Request for Dismissal for the *Smith v. State Board of Equalization* case filed with the San Diego Superior Court. When I last spoke to you the letter to the County of San Diego had not received its final approval by the Chief Counsel and Assistant Chief Counsel. I hope that has been accomplished so this matter can be finally resolved.

Please send me a copy of the letter that is sent to the County of San Diego. I will then close this file. Thank you for your assistance in this matter. Please call me if you have any questions.

Sincerely,

LESLIE BRANMAN SMITH
Deputy Attorney General

For BILL LOCKYER
Attorney General

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):	TELEPHONE NO.:	FOR COURT USE ONLY
JOHN J. SANSONE, County Counsel County of San Diego By ANDREW J. FREEMAN, Senior Deputy 1600 Pacific Highway, Room 355 San Diego, CA 92101	(619) 531-6295	CIVIL BUSINESS OFFICE 12 CENTRAL DIVISION 2001 NOV 16 P 4:10 STEPHEN THUNBERG CLERK-SUPERIOR COURT SAN DIEGO COUNTY, CA

ATTORNEY FOR (Name): GREGORY J. SMITH 45179

Insert name of court and name of judicial district and branch court, if any:
SUPERIOR COURT OF THE STATE OF CALIFORNIA
CENTRAL

PLAINTIFF/PETITIONER: GREGORY J. SMITH, San Diego County Assessor
DEFENDANT/RESPONDENT: STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA

CASE NUMBER: GIC 775128

REQUEST FOR DISMISSAL

- ☐ Personal Injury, Property Damage, or Wrongful Death
  - ☐ Motor Vehicle ☐ Other
- ☐ Family Law
- ☐ Eminent Domain
- ☒ Other (specify): Declaratory Relief Rev.& Tax. Code 53

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document. —

1. TO THE CLERK: Please dismiss this action as follows:

a. (1) ☐ With prejudice (2) ☒ Without prejudice

b. (1) ☒ Complaint (2) ☐ Petition
(3) ☐ Cross-complaint filed by (name): on (date):
(4) ☐ Cross-complaint filed by (name): on (date):
(5) ☒ Entire action of all parties and all causes of action
(6) ☐ Other (specify):*

Date: November 16, 2001

ANDREW J. FREEMAN, Senior Deputy
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

▶ _____
(SIGNATURE)
Attorney or party without attorney for:

☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

2. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date:

▶ _____
(SIGNATURE)
Attorney or party without attorney for:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

(To be completed by clerk)

3. ☐ Dismissal entered as requested on (date): NOV 16 2001
4. ☐ Dismissal entered on (date): as to only (name):
5. ☐ Dismissal not entered as requested for the following reasons (specify):
6. ☒ a. Attorney or party without attorney notified on (date): NOV 16 2001
   b. Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to conform ☐ means to return conformed copy

Date: NOV 16 2001

Clerk, by A. Underwood, Deputy

State of California

Board of Equalization
Office of the Chief Counsel - MIC: 83
Telephone: (916) 445-4380
CalNet: 485-4380

Memorandum

CONFIDENTIAL: ATTORNEY-CLIENT COMMUNICATION

To : Richard W. Bakke
Lead Supervising Deputy Attorney General
Civil - Business and Tax Section
Office of the Attorney General -- Los Angeles

Date: October 5, 2001

From : Timothy W. Boyer
Chief Counsel

Timothy W. Boyer

Subject: *Gregory J. Smith, San Diego County Assessor v. State Board of Equalization*
San Diego County Superior Court Case No. GIC 775128

The attached Complaint for Declaratory Relief Under Revenue and Taxation Code Section 538 and Code of Civil Procedure Section 1060 was served by mail October 1, 2001 and received by the Board's Executive Director on October 3, 2001. The Notice and Acknowledgment of Receipt is attached.

Supervising Tax Counsel Kristine Cazadd has been assigned to this case. We request that Ms. Cazadd be listed on the proof of service to receive a courtesy copy of pleadings filed in this action at the following address:

KRISTINE CAZADD
SUPERVISING TAX COUNSEL
STATE BOARD OF EQUALIZATION
450 N STREET MIC 82
PO BOX 942879
SACRAMENTO CA 94279-0082

Please take such action as you consider necessary to defend the Board in this matter. If you have any questions, please call Ms. Cazadd at CalNet 473-7713 or (916) 323-7713.

TWB/wk
Attachments
cc: Mr. Lawrence Augusta
Ms. Kristine Cazadd
Litigation File

STATE OF CALIFORNIA
STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
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JOHAN KLEHS
First District, Hayward

DEAN ANDAL
Second District, Stockton

CLAUDE PARRISH
Third District, Torrance

JOHN CHIANG
Fourth District, Los Angeles

KATHLEEN CONNELL
State Controller, Sacramento

JAMES E. SPEED
Executive Director

December 18, 2001

Mr. Andrew J. Freeman, Senior Deputy
County of San Diego
1600 Pacific Highway, Room 355
San Diego, CA 92101

RE: *Gregory J. Smith v. SBOE* Complaint for Declaratory Relief (No. GIC 775128) Agreement to Modify Staff Opinions on Section 69.5 Base Year Value Transfers – Two Year Requirement on Purchase of Land for Replacement Dwelling

Dear Mr. Freeman,

This is in response to your agreement to dismiss the *Complaint for Declaratory Relief* (No. GIC 775128) filed by Gregory J Smith, San Diego County Assessor against the State Board of Equalization, on the condition that the Board would revise any legal opinions and letters to assessors to state that two-year time limitation requirement in Revenue and Taxation Code section 69.5, subdivisions (a)(1) and (b)(5) does not apply to the purchase of the land for a replacement dwelling – where the replacement dwelling is constructed at a later date. Based on receipt of your *Request for Dismissal* filed with the San Diego Superior Court on November 16, 2001, we agree to so modify/revise our legal conclusions and correct relevant letters to assessors.

The issue of dispute in the Complaint is whether the land or lot on which the replacement dwelling is or will be constructed, must be purchased within two years of the sale of the original property. For the reasons explained below, we agree that a claimant who purchases his/her replacement land more than two years before the sale of the original dwelling is eligible for the benefit, provided other statutory requirements are met.

Section 69.5 provides that any person over the age of 55 years or any severely and permanently disabled person who resides in property which is eligible for the homeowner's exemption may transfer the base year value of that property to any replacement dwelling of equal or lesser value, which 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, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

The two-year time limitation requirement is set forth in subdivision (a)(1) and (b)(5), and requires in subdivision (b)(5) that any person claiming the property tax relief provided by section 69.5 shall be eligible only if:

> The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and that, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

Although Board staff has since 1987, interpreted the two-year requirement – particularly as it is set forth in subdivision (b)(5) above - to apply to the purchase of the land, as well as to the new construction of the replacement dwelling, the statutory language does not expressly state that the "replacement land" must be purchased within two years. Staff's interpretation was based upon a strict view of the exclusion with regard to the two-year requirement and assumptions concerning legislative intent. On further review however, it appears that the Legislature's purpose in adopting the two-year requirement was the primarily for use in the value comparison formula in subdivision (g)(5), designed to limit local revenue losses. A two-year limit would compensate for the fact that the cost of the replacement land and dwelling could rise between the time the original property is sold and the replacement property is acquired or completed.

Thus, the Legislature structured the "*equal or lesser value test*" in subdivision (g)(5) to require the assessor to make the value comparison between the sale of the original property and purchase of the replacement dwelling within the two years - based on the full cash value of each.[1] In calculating *full cash value* on a newly constructed replacement property, both land and improvements must be reappraised at the time of completion (subdivision (g)(6)). The taxpayer who purchased the replacement land in 1987 therefore, does not gain a "windfall," and the county does not suffer large revenue losses, since the land value is adjusted at current market (full cash) value in 1997 when construction of the replacement dwelling is completed.

Subdivision (g)(6) defines "*full cash value of the replacement dwelling*" as "its full cash value, determined in accordance with section 110.1, as of the date on which it was purchased or

[1] Subdivision (g)(5) provides that the "*equal or lesser value*" as intended by subdivision (a) means that the *full cash value* of the replacement property which is purchased or newly constructed does not exceed one hundred percent (or incremental increases of five and ten percent date for later dates of purchase or completion of new construction) of the full cash value of the original property.

new construction was completed, and after the purchase or the completion of new construction."[2] Subdivision (g)(3) defines, in pertinent part, "replacement dwelling" to mean

> a building, structure, or other shelter constituting a place of abode, whether real property or personal property, that 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.

In addition to the revenue aspect of the two-year requirement, at least one court has interpreted subdivision (a)(1) as a "permissive provision" – allowing the taxpayer to either purchase the replacement property, or to purchase the replacement land (at any time) and to construct the replacement dwelling – as long as the purchase or completion of new construction of the dwelling is within two years of the sale of the original property. In *Jack E. Khoury v. County of Madera* (1993) (Superior Court, County of Madera, No. 49560), the court reasoned that the Legislature's use of the word "or" in subdivision (a)(1) required only one of the two prerequisites to be met, in order for a taxpayer to qualify for relief. Subdivision (a)(1) states,

> "... any person ...may transfer ... the base year value of that property to any replacement dwelling of equal or lesser value which 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 ...." [Emphasis added.]

The court reasoned that since the Legislature placed the two-year requirement in the disjunctive as an "either or" condition, the taxpayer satisfies the requirement when he does one or the other. Thus, the taxpayer meets the requirement by either purchasing the replacement dwelling within the two years or by completing construction of the replacement dwelling within the two years, regardless of when the replacement land was purchased.

We agree therefore, with San Diego County Assessor Gregory Smith, that section 69.5 does not expressly and unambiguously require the replacement land to be purchased within two years of the sale of the original property. Rather, the requirement is that the full cash value of the replacement land must be determined (in accordance with Section 110), as of the date on which new construction was completed, assuming completion of the replacement dwelling occurs within two years of the sale of the original property. Subdivision (a)(1) allows the taxpayer the choice of two alternatives for meeting the two-year requirement. We will revise our opinions and Letters to Assessors accordingly.[3] In the meantime, your office may rely on the views stated in this letter.

---

[2] To qualify for Section 69.5 property tax relief, subdivision (f) requires that the claimant must first file a claim with the assessor providing certain information necessary for the assessor to make the value comparison test. Under paragraph 4 of subdivision (f) the claimant must state:
"The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling." (Emphasis added.)

[3] *Letters to Assessors* No. 87/71, 88/10, and 91/31 will be withdrawn or modified accordingly.

The views expressed in this letter represent the analysis of the legal staff and the Board of Equalization based on present law and the facts set forth herein.

Sincerely,

Timothy W. Boyer

Timothy Boyer
Chief Counsel

TWB:tr
prop/litigatn/01/sandiego/775128/agreeltr

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JOHAN KLEHS
First District, Hayward

DEAN ANDAL
Second District, Stockton

CLAUDE PARRISH
Third District, Torrance

JOHN CHIANG
Fourth District, Los Angeles

KATHLEEN CONNELL
State Controller, Sacramento

JAMES E. SPEED
Executive Director

December 18, 2001

Mr. Andrew J. Freeman, Senior Deputy
County of San Diego
1600 Pacific Highway, Room 355
San Diego, CA 92101

RE: *Gregory J. Smith v. SBOE* Complaint for Declaratory Relief (No. GIC 775128) Agreement to Modify Staff Opinions on Section 69.5 Base Year Value Transfers – Two Year Requirement on Purchase of Land for Replacement Dwelling

Dear Mr. Freeman,

This is in response to your agreement to dismiss the *Complaint for Declaratory Relief* (No. GIC 775128) filed by Gregory J Smith, San Diego County Assessor against the State Board of Equalization, on the condition that the Board would revise any legal opinions and letters to assessors to state that two-year time limitation requirement in Revenue and Taxation Code section 69.5, subdivisions (a)(1) and (b)(5) does not apply to the purchase of the land for a replacement dwelling – where the replacement dwelling is constructed at a later date. Based on receipt of your *Request for Dismissal* filed with the San Diego Superior Court on November 16, 2001, we agree to so modify/revise our legal conclusions and correct relevant letters to assessors.

The issue of dispute in the Complaint is whether the land or lot on which the replacement dwelling is or will be constructed, must be purchased within two years of the sale of the original property. For the reasons explained below, we agree that a claimant who purchases his/her replacement land more than two years before the sale of the original dwelling is eligible for the benefit, provided other statutory requirements are met.

Section 69.5 provides that any person over the age of 55 years or any severely and permanently disabled person who resides in property which is eligible for the homeowner's exemption may transfer the base year value of that property to any replacement dwelling of equal or lesser value, which 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, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

The two-year time limitation requirement is set forth in subdivision (a)(1) and (b)(5), and requires in subdivision (b)(5) that any person claiming the property tax relief provided by section 69.5 shall be eligible only if:

> The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and that, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

Although Board staff has since 1987, interpreted the two-year requirement – particularly as it is set forth in subdivision (b)(5) above - to apply to the purchase of the land, as well as to the new construction of the replacement dwelling, the statutory language does not expressly state that the "replacement land" must be purchased within two years. Staff's interpretation was based upon a strict view of the exclusion with regard to the two-year requirement and assumptions concerning legislative intent. On further review however, it appears that the Legislature's purpose in adopting the two-year requirement was the primarily for use in the value comparison formula in subdivision (g)(5), designed to limit local revenue losses. A two-year limit would compensate for the fact that the cost of the replacement land and dwelling could rise between the time the original property is sold and the replacement property is acquired or completed.

Thus, the Legislature structured the "*equal or lesser value test*" in subdivision (g)(5) to require the assessor to make the value comparison between the sale of the original property and purchase of the replacement dwelling within the two years - based on the full cash value of each.[1] In calculating *full cash value* on a newly constructed replacement property, both land and improvements must be reappraised at the time of completion (subdivision (g)(6)). The taxpayer who purchased the replacement land in 1987 therefore, does not gain a "windfall," and the county does not suffer large revenue losses, since the land value is adjusted at current market (full cash) value in 1997 when construction of the replacement dwelling is completed.

Subdivision (g)(6) defines "*full cash value of the replacement dwelling*" as "its full cash value, determined in accordance with section 110.1, as of the date on which it was purchased or

[1] Subdivision (g)(5) provides that the "*equal or lesser value*" as intended by subdivision (a) means that the *full cash value* of the replacement property which is purchased or newly constructed does not exceed one hundred percent (or incremental increases of five and ten percent date for later dates of purchase or completion of new construction) of the full cash value of the original property.

new construction was completed, and after the purchase or the completion of new construction."[2] Subdivision (g)(3) defines, in pertinent part, "replacement dwelling" to mean

> a building, structure, or other shelter constituting a place of abode, whether real property or personal property, that 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.

In addition to the revenue aspect of the two-year requirement, at least one court has interpreted subdivision (a)(1) as a "permissive provision" – allowing the taxpayer to either purchase the replacement property, or to purchase the replacement land (at any time) and to construct the replacement dwelling – as long as the purchase or completion of new construction of the dwelling is within two years of the sale of the original property. In *Jack E. Khoury v. County of Madera* (1993) (Superior Court, County of Madera, No. 49560), the court reasoned that the Legislature's use of the word "or" in subdivision (a)(1) required only one of the two prerequisites to be met, in order for a taxpayer to qualify for relief. Subdivision (a)(1) states,

> "... any person ...may transfer ... the base year value of that property to any replacement dwelling of equal or lesser value which 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 ...." [Emphasis added.]

The court reasoned that since the Legislature placed the two-year requirement in the disjunctive as an "either or" condition, the taxpayer satisfies the requirement when he does one or the other. Thus, the taxpayer meets the requirement by either purchasing the replacement dwelling within the two years or by completing construction of the replacement dwelling within the two years, regardless of when the replacement land was purchased.

We agree therefore, with San Diego County Assessor Gregory Smith, that section 69.5 does not expressly and unambiguously require the replacement land to be purchased within two years of the sale of the original property. Rather, the requirement is that the full cash value of the replacement land must be determined (in accordance with Section 110), as of the date on which new construction was completed, assuming completion of the replacement dwelling occurs within two years of the sale of the original property. Subdivision (a)(1) allows the taxpayer the choice of two alternatives for meeting the two-year requirement. We will revise our opinions and Letters to Assessors accordingly.[3] In the meantime, your office may rely on the views stated in this letter.

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[2] To qualify for Section 69.5 property tax relief, subdivision (f) requires that the claimant must first file a claim with the assessor providing certain information necessary for the assessor to make the value comparison test. Under paragraph 4 of subdivision (f) the claimant must state:

> "The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling." (Emphasis added.)

[3] *Letters to Assessors* No. 87/71, 88/10, and 91/31 will be withdrawn or modified accordingly.

The views expressed in this letter represent the analysis of the legal staff and the Board of Equalization based on present law and the facts set forth herein.

Sincerely,

Timothy W. Boyer

Timothy Boyer
Chief Counsel

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