



STATE OF CALIFORNIA

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January 13, 2005

***Re: Historical Property Subject to Mills Act Contract – Applicability of
Revenue and Taxation Code section 69.5***

Dear Ms. _____ :

This is in reply to your letter of November 8, 2004 in which you request a legal opinion concerning the application of the Revenue and Taxation Code section 69.5, which allows a transfer of a base year value from an original property to a replacement dwelling, when the original property is a historical property under a Mills Act contract. The assessor has determined that your client's historical property under contract does not qualify as an original property under section 69.5 because section 439.2 establishes a restricted valuation standard for assessment of such property. As set forth below, an historical property under a Mills Act contract qualifies as an original property for purposes of section 69.5, unless a party to the contract expressly prohibits valuation under sections 110 and 110.1.

Law and Analysis

Section 69.5 generally provides that any person over the age of 55 years, or any severely and permanently disabled person, who resides in property that is eligible for the property tax homeowner's exemption, may transfer the base year value of that property to any replacement dwelling of equal or lesser value that 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. Among the specific conditions that must be met, subdivision (e) provides that section 69.5 does not apply unless the transfer of the original property is a change in ownership that either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base year value determined in accordance with this section, Section 69, or Section 69.3 because the property qualifies under this section, Section 69, or Section 69.3 as a replacement dwelling or property.

Section 110.1, subdivision (a) defines the constitutional valuation standard for local assessed real property by providing, in relevant part, that

For purposes of subdivision (a) of Section 2 of Article XIII A of the California Constitution, “full cash value” of real property, including possessory interests in real property, means the fair market value as determined pursuant to Section 110 for either of the following:

- (1) The 1975 lien date.
- (2) For property which is purchased, is newly constructed, or changes ownership after the 1975 lien date, . . .

(A) The date on which a purchase or change in ownership occurs. Article XIII, section 8 authorizes the Legislature to define property of historical significance, to provide for a manner of enforceably restricting such property to retain its historical significance and to provide for a method of valuation for property tax purposes that is consistent with its restrictions and uses. Section 439 et seq. implements the valuation provision of article XIII, section 8 and section 439.2 prescribes the manner for valuing the property by the capitalization of income method.

Subdivision (d) of that section further requires that

(d) Unless a party to an instrument that creates an enforceable restriction expressly prohibits the valuation, the valuation resulting from the capitalization of income method described in this section shall not exceed the lesser of either the valuation that would have resulted by calculation under Section 110, or the valuation that would have resulted by calculation under Section 110.1, as though the property was not subject to an enforceable restriction in the base year.

In order to comply with subdivision (d), an assessor is thus required to reappraise an enforceably restricted historical property at its current fair market value in accordance with section 110 and at its full cash value in accordance with section 110.1, unless expressly prohibited by a party to the contract.

In that event, the property would be “subject to reappraisal at fair market value in accordance with section 110.1” within the meaning of subdivision (e) of section 69.5. We find support for this interpretation in *Heavenly Valley v. El Dorado County Bd. of Equalization* (2000) 84 Cal.App.4th 1323, in which the court of appeal construed the phrase “property subject to escape assessment” for purposes of triggering the appeal provisions of section 469. In that context the court held that “subject to” means property that is “exposed to” escape assessment because it was underassessed or not assessed at all and hence exposed to further taxation, regardless of whether or not an escape assessment is actually levied. *Supra.* at p.1335. Similarly, it is our view that, for purposes of subdivision (e) of section 69.5, an historical property is “subject to reappraisal at its current fair market value in accordance with Section 110.1” if the assessor reappraises the property in compliance with subdivision (d) of section 439.2, regardless of whether that value is actually enrolled. In that circumstance, therefore, an historical property would qualify as an “original property” under section 69.5.

The opinions expressed in this letter are only advisory and represent the analysis of the legal staff of the Board based on current law and the facts set forth herein. These opinions are not binding on any person or public entity.

Very truly yours,

/s/ Lou Ambrose

Lou Ambrose
Acting Assistant Chief Counsel

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cc: Honorable
County Assessor

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Mr. Dean Kinnee, MIC:64
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