200.0055 **Notice to Claimant.** Revenue and Taxation Code section 69.5 does not require that an assessor send a separate notice informing a claimant that his or her claim for transfer of a base year value has been granted. Upon the transfer of the base year value from the original property and adjustment of the base year value of the replacement dwelling, the assessor is required only to provide notice of supplemental assessment pursuant to Revenue and Taxation Code section 75.31. C 11/6/97. (M99-1)

STATE OF CALIFORNIA

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Executive Director

November 6, 1997

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PROP. TAX ADMIN.
State Board of Equalization

Re: Proposition 60 Assessment Dispute

Dear Mr.

This is in response to your letter of August 28, 1997 addressed to Chief Counsel Timothy Boyer in which you request a legal opinion addressing the manner in which the claim for transfer of base year value of your client, J , has been processed by the San Francisco Assessor's Office. You question whether the assessor's office follows procedures that adequately provide a taxpayer with actual notice of the base year value transfer. You also ask whether the assessor has discretion to rescind the transfer when there has been a processing error, whether a transfer based on an unsigned claim form is void and whether the notice given by the assessor's office was void because it was sent after the date on which Mr. was required to exercise his right to rescind. I have reviewed the numerous documents accompanying your letter and have spoken by telephone with Mr. I and with I of the San Francisco Assessor's Office. Based on that information, my understanding of the relevant facts is as follows:

Mr sold a residence at 1040 Green Street ("Green Street") in May 1994 and purchased another residence at 1150 Sacramento Street ("Sacramento Street") in June 1994. In July 1994 Mr. submitted a claim for transfer of the base year value from Green Street to Sacramento Street. The assessor's office processed the claim even though the form was unsigned and incorrectly stated that the date of purchase of the replacement property, Sacramento Street, was May 14, 1994, rather than June 14, 1994. The assessor's office sent Mr. a Notice of Supplemental Assessment on November 19, 1994 which showed a change in ownership date of June 14, 1994, a new base year value of $765,000, a current roll value of $1,462,000 and a supplemental assessment of a negative $697,000. Mr. was later mailed a 1994-95 tax bill for Sacramento Street showing an assessed land value of $986,923, improvements value of $475,977 and total tax due of $17,059.52. On February 4, 1995 a warrant payment attachment in the amount of $8,861.92 was sent to Mr. showing a negative

assessment of $761,988, an event date of June 10, 1994, a notice date of November 19, 1994 and an enrolled date of January 16, 1995. On September 19, 1995, Mr. L. submitted another claim form, this time signed, to transfer the base year value from Green Street to Sacramento Street. The second claim form was stamped as received by the assessor's office on September 20, 1995.

Mr. La[illegible] states that on or about November 6, 1995 he called the assessor's office and told Ron Peters that he did not want the second claim processed. Mr. Lampley recalls that Mr. P[illegible] told him that the claim had not been received and that he would place a note in the file not to process the claim if received. As a result of that conversation, Mr. [illegible] states that he believed that neither claim had been processed and that he did not become aware of the base year value transfer from Green Street to Sacramento Street until he filed a claim for base year value transfer to his current residence in Tiburon. Upon filing that claim, he was told by the Marin County Assessor's Office that the San Francisco Assessor's Office reported that a prior claim had been processed.

For the reasons set forth below, it is our view that the San Francisco Assessor's Office provided the notice of supplemental assessment as required by law, and section 69.5 does not require a separate notice of the base year value transfer. The rescission provisions of section 69.5 do not require notice of base year value transfer as a prerequisite to application of those provisions. Furthermore, those rescission provisions prescribe specific time periods and procedures for rescinding a claim for property tax relief and the assessor has no discretion in that regard.

It is also our view that the assessor's office should not have processed the first claim form because it lacked a signature. However, the assessor's office staff reasonably determined that Mr. L[illegible] intended to claim the benefit of the base year value transfer as was later confirmed by the filing of a second signed claim form. Because Mr. [illegible] filed the second claim form, was granted the benefit of the base year value transfer and failed to file a timely written notice of rescission, in our opinion, Mr. L[illegible] is now barred from rescinding his claim.

LAW AND ANALYSIS

Adequacy of Notice

Section 69.5 provides for transfer of a base year value from an "original property" to a "replacement dwelling" by any person over 55 years of age, or any severely and permanently disabled person who resides in property that is eligible for the homeowners' exemption. Upon the timely filing of a claim and compliance with conditions for eligibility, subdivision (h) requires an assessor to adjust the new base year value of the replacement dwelling in accordance with the provisions of the section as of the latest of

the date that the original property is sold, the date that the replacement dwelling is purchased or the date that the new construction of the replacement dwelling is completed.

However, there is no requirement that the assessor notify a claimant of a base year value adjustment resulting from the transfer and, in the absence of an express notice requirement, the supplemental assessment notice provisions of section 75.31 must govern. Based on the documents provided, it appears that the assessor's office complied with those provisions.

Rescission Provision

Subdivision (i) of section 69.5 allows a claimant to rescind a claim for transfer of base year value provided a written notice of rescission signed by the original claimant and accompanied by the required fee is delivered to the assessor's office within the prescribed time period. Notice to the applicant is not a precondition to the applicability of the rescission provision and, in most cases, such notice would not be necessary because a claimant would be aware that he or she had filed a claim. In view of the express limitations set forth in subdivision (i), the assessor has authority to grant a rescission only in compliance with those requirements which, as you are aware, preclude a rescission in this instance.

Validity of Claim Form

Subdivision (f) of section 69.5 sets forth the specific information that a claimant must submit to an assessor's office in a claim for base year value transfer. While a signature is not expressly required by subdivision (f), the form adopted to implement such transfers includes an attestation under penalty of perjury and a signature line. Generally, and here, a signature is necessary to give effect to a document and to attest to its validity, and the absence of a signature is sufficient reason for rejecting a claim form. Therefore, it is our opinion that the assessor's office erred by processing the first unsigned claim form.

Although the assessor's office processed the unsigned form, Mr. Lampley may not rely on that error to avoid the rescission provisions of section 69.5. Based on the contents of the first unsigned claim form, which provided substantially all of the information required by subdivision (f), the assessor's office reasonably determined that Mr. Lampley intended to claim the benefit of the base year value transfer for his Sacramento Street residence. His intention was later confirmed by the submission of the second signed claim form which would have been processed but for the first form previously processed. Therefore, it is our view that the second form validated the base year value transfer previously granted and, furthermore, that claim for property tax relief may not now be rescinded because proper rescission procedures were not followed.

While Mr. [illegible] may have called the assessor's office to request that the second form not be processed, a rescission may be granted only if the requirements of subdivision (i) are met. That subdivision provides in pertinent part

> (i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), if a written notice of rescission is delivered to the office of the assessor in which the original claim was filed and all of the following have occurred:
>
> (1) The notice is signed by the original filing claimant or claimants.
> (2) The notice is delivered to the office of the assessor before the date that the county first issues, as a result of relief granted under this section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any portion thereof, imposed upon the replacement dwelling, consistent with relief granted under this section, are delinquent.

Based on the facts presented, after filing the second claim form, Mr. [illegible] did not submit a signed written notice of rescission to the assessor's office either prior to the time that property taxes were paid or prior to the date that property taxes became delinquent, December 10. Even if Mr. [illegible] had been incorrectly informed that the assessor's office had not received the second form, such an error would not excuse him from complying with subdivision (i), which was and is the only available means for rescinding a claim for property tax relief.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very Truly Yours,

Louis Ambrose
Tax Counsel

LA:sao