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June 13, 1990

Mr. Matthew Moore
Office of the County Assessor
Real Property Division
County Government Center, East Wing
70 West Hedding Street
San Jose, CA 95110

Dear Mr. Moore:

This is in response to your letter of June 8, 1990, requesting advise on the application of Proposition 60 to an original property which was purchased in 1973 as a duplex but which is claimed to have been converted to a single-family residence in 1982.

As I understand it, the owner lived in one unit and rented out the other unit of the duplex until 1982 when her parents moved in. A door providing access between the two units of the duplex was added at that time. When the property sold in 1989, the door had been removed and the property returned to its original configuration as a duplex. In order to qualify the replacement dwelling under the equal or lesser value test, the taxpayer contends that because of the added doorway the property was converted to a single-family residence and she is entitled to a comparison based upon the full market value of the original property.

The amendment to section 2 of Article XIII A of the California Constitution added by Proposition 60 expressly provides, in part, that for purposes of that section a two-dwelling unit shall be considered as two separate single-family dwellings. Proposition 60 is implemented by Revenue and Taxation Code

section 69.5. Subdivision (g)(4) of that section, defining "original property" similarly provides that each unit of a multiunit dwelling shall be considered a separate original property. Thus, both the Constitution and the code provision expressly require that a duplex be treated as two separate single-family residence for purposes of applying the requirements of the Proposition 60 benefit.

The question of whether a particular property is one single-family residence or is a duplex consisting of two single-family residences is a question of fact which must be determined by the assessor based on all of the circumstances of the particular situation. The taxpayer, of course, has the burden of establishing to the satisfaction of the assessor that the property has in fact been converted from a duplex to a single-family residence.

Based solely on the information provided in your letter, I would conclude that the taxpayer has not established that her duplex was converted to a single-family residence. While it is undoubtedly true that it is possible to convert a duplex into a single-family residence, it does not appear that the addition of a single door which provides interior access between the two units should, in and of itself, be considered to be sufficient to convert the nature of the duplex. While the door provides more convenient access between the two units, it does not appear to change the basic character of the duplex. In all other respects it would seem that the two separate living units still continue to exist.

It is important that the property was restored to its original configuration as a duplex at the time of its sale. The equal or lesser value test provided in subdivision (g)(5) of section 69.5 requires a comparison of the value of the replacement dwelling to the "full cash value of the original property". The full cash value of the original property is determined, pursuant to subdivision (g)(7), by reference to the new base year value of the property determined as a result of its sale. Thus, the law contemplates a comparison based upon the condition of the property at the time of its sale. Since the property was, in fact, a duplex at the time of its sale it would seem that the Legislature intended that the property be treated as a duplex for purposes of the provisions which recognize that each unit of the duplex will be considered as a separate original property.

As you know, the views expressed herein are advisory only and are not binding on any assessor or any assessment appeals board.

Mr. Matthew Moore

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June 13, 1990

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

Very truly yours,

A handwritten signature in cursive script, appearing to read "Richard H. Ochsner".

Richard H. Ochsner
Assistant Chief Counsel

RHO:mw
2487D

cc: Mr. John Hagerty
Mr. Verne Walton