

200.0066 **Original Property.** Revenue and Taxation Code section 69.5(e) requires the assessor, upon the sale of original property, to determine a new base year value for the property, and it provides that the section shall not apply unless the transfer of the original property is a change in ownership that subjects the property to reappraisal at its current fair market value in accordance with Revenue and Taxation Code section 110.1. Conversely, there is no provision for the sale of a partial interest in an original property. C10/7/97. (M99-1)



STATE BOARD OF EQUALIZATION
 450 N STREET, SACRAMENTO, CALIFORNIA
 (PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
 TELEPHONE (916) 445-5580
 FAX (916) 323-3387

JOHAN KLEHS
 First District, Hayward

DEAN F. ANDAL
 Second District, Stockton

ERNEST J. DRONENBURG, JR.
 Third District, San Diego

KATHLEEN CONNELL
 Controller, Sacramento

JOHN CHIANG
 Acting Member
 Fourth District, Los Angeles

E. L. SORENSEN, JR.
 Executive Director

October 7, 1997

Re: Claim for Transfer of Base Year Value

Dear Ms.

This is in response to your letter of August 5, 1997 addressed to Mr. Jim Speed, Deputy Director, Property Taxes in which you request assistance in resolving a problem concerning your claim for a base year value transfer. To restate briefly the facts in your letter: your husband, Hugh, and his former wife, Joan, owned a residence in Los Angeles County, each holding a one-half interest in the property. Approximately three years after the divorce, they entered into a contract of sale whereby Joan acquired Hugh's one-half interest such that she now holds title to the entire property. The Los Angeles County Assessor's office staff informed you that they viewed the sale as an interspousal transfer excluded from change in ownership and, for that reason, did not reassess the property. You do not agree that the sale was an interspousal transfer pursuant to a property settlement or decree of dissolution. You and your husband subsequently purchased a home in Ventura County and wish to transfer the base year value from the property in Los Angeles County to your new home pursuant to Revenue and Taxation Code¹ section 69.5.

For the reasons set forth below, it is our view that your new home is not eligible for a transfer of the base year value under section 69.5 which requires a sale of the original property that results in a change in ownership and, in this case, there has been no change in ownership of the original property. Even assuming that the Los Angeles County Assessor's office staff incorrectly excluded the sale as an interspousal transfer, your husband sold only a one-half interest in the original property, and section 69.5 requires a sale and change in ownership of the entire original property.

Law and Analysis

The second paragraph of Section 2 of Article XIII A of the California Constitution provides for the transfer of the base year value of an original property to a replacement dwelling under described circumstances:

¹ All section references are to the Revenue and Taxation Code unless stated otherwise.

"...the Legislature may provide that under appropriate circumstances and pursuant to definitions and procedures established by the Legislature, any person over the age of 55 years who resides in property which is eligible for the homeowner's exemption...may transfer the base year value of the property entitled to exemption...to any replacement dwelling of equal or lesser value..."

The Legislature exercised that authority by adopting Section 69.5 to provide that any person over the age of 55 years, or any severely and permanently disabled person, who resides in property eligible for the homeowner's exemption may transfer "subject to the conditions and limitations provided in this section" the base year value of that property to any replacement dwelling of equal or lesser value, etc. This language makes it clear that the conditions and limitations contained in Section 69.5 are controlling for purposes of the benefit granted by this section.

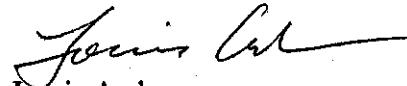
One condition of Section 69.5, as provided by subdivision (a), is that the transfer must occur "within two years of the sale by [an eligible] person of the original property, provided that the base year value of the original property shall not be transferred to the replacement dwelling until the original property is sold." Subdivision (g)(8) further defines a "sale" as "any change in ownership of the original property for consideration". Thus, the original property must be sold and the sale must result in a change in ownership in order to transfer the base year value of the original property. In this case, no change in ownership occurred at the time that Hugh sold his one-half interest in the property to Joan because of interspousal transfer provisions, which we discussed, and which, as you have stated, are the reason that the Los Angeles County Assessor's office staff did not reassess the property and will not authorize the base year value transfer.

Sale of Partial Interest

Even assuming that the sale from Hugh to Joan did result in a change in ownership, the interest in the property that was sold would not qualify because section 69.5 requires the sale of the entire original property. Subdivisions (g)(3) and (g)(4) define, in relevant part, both "original property" and "replacement dwelling" as a "building, structure, or other shelter constituting a place of abode, whether real property or personal property, that is owned and occupied by the 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." Subdivision (e) requires the assessor, upon the sale of original property, to determine a new base year value for the property. It provides further that Section 69.5 shall not apply unless the transfer of the original property is a change in ownership that subjects the property to reappraisal at its current fair market value in accordance with Section 110.1. Conversely, there is no provision or allowance for the sale of a partial interest in an original property such as occurred when Hugh transferred his one-half interest in the property to Joan, or for reappraisal of a portion of an original property at its current fair market value.

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:ba

cc: Hon. Kenneth Hahn, Los Angeles County Assessor
Hon. Glenn Gray, Ventura County Assessor
Mr. Dick Johnson, MIC:63
Policy, Planning, & Standards Division, MIC:64
Ms. Jennifer Willis, MIC:70

precednt\transby\199797002.lou