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June 5, 2001

Honorable Lawrence E. Stone
Santa Clara County Assessor
County Govt. Center, East Wing
70 West Hedding Street
San Jose, CA 95110-1771

Attention: Mr. David Turner
Chief of Assessment Standards and Services

Dear Mr. Stone:

This is in response to your April 27, 2001, letter to the Board wherein you requested our opinion as to whether two February 1998 transfers of real property were reassessable changes in ownership which meet the requirement of Revenue and Taxation Code section 69.5, subdivision (e) to qualify for the Proposition 60/Article XIII A, section 2, subdivision (a) exclusion. For the reasons hereinafter set forth, it is our opinion that the transfers were "purchases" and reassessable changes in ownership, not a holding agreement and a release of a holding agreement, and that the exclusion should be available. Of course, all the other requirements of section 69.5 would have to be met in order for the exclusion to apply in this instance.

Facts

According to your letter, Mr. and Mrs. J owned a large parcel of land with an existing residence on it.

Mr. and Mrs. J's attorney provided the following factual background:

"On March 26, 1997, Mr. and Mrs. J agreed to sell their large parcel and house to Z Construction contingent upon Z Construction obtaining approval of a final map from the City of of the small subdivision. (Mr. and Mrs. J have no ownership interest in Z Construction.) On June 24, 1997, the City of approved Z Construction 's application to subdivide two existing parcels totaling .83 acres (one-half of which was owned by Mr. and Mrs. J and one-half of which was owned by the Estate of E) into five (5) residential lots ranging from 6,610 to 7,745, square feet. Mr. and Mrs. J contracted to purchase

one of these smaller lots and to have Z Construction construct a house on one of the newly subdivided lots. They originally contracted to purchase Lot #1 in the subdivision, which lot was previously owned the by Estate of E, but upon learning that the sewer line would run under Lot #1, amended their contract with Z Construction to acquire Lot #5 which would not be burdened with a sewer easement. Lot #5 (APN) was previously a portion of the parcel owned by Mr. and Mrs. J before the transfer to Z Construction. On February 18, 1998 escrow closed on the original parcels of Mr. and Mrs. J and Estate of E, and immediately thereafter on the same day, escrow closed on the sale of Lot #5 to Mr. and Mrs. J (Docs. and). Transfer taxes were paid at the time of the sales.

"Z Construction then arranged for the existing house of Mr. and Mrs. J to be removed from the property (it was donated to a non-profit and moved off the site). Mr. and Mrs. J rented a house in a neighboring town until Z Construction completed their new house on the new Lot #5."

You note the following additional facts:

Mr. and Mrs. J joined in the creation of the five (5) lot tract. Tract XXX (enclosed) was recorded February 4, 1998, where it shows not only the principals of Z Construction, but also Mr. and Mrs. J, as the owners of the land to be subdivided.

On February 18, 1998, (Doc. , enclosed) Mr. and Mrs. J sold their interest in Lots 1 through 5 to Z Construction for $625,000. On the same day (Doc. , enclosed) Z Construction sold Lot #5 to Mr. and Mrs. J for $233,000. Copies of the settlement statements are enclosed, as well as copies of the purchase contracts to transfer the properties and (by separate contract) to subsequently construct a new dwelling for Mr. and Mrs. J. Not only was Z Construction required to provide a suitable rental residence for Mr. and Mrs. J during construction, but also, they could rescind the transactions and obtain refund of all monies paid and consequential damages, including capital gains tax liabilities, for failure to timely provide a satisfactory new residence.

Issue

The issue is whether the above-mentioned transfers constituted "purchases" and reassessable changes in ownership from Mr. and Mrs. J to Z Construction and from Z Construction to Mr. and Mrs. J, such that the section 69.5 exclusion is available to Mr. and Mrs. J under the circumstances, or whether they constitute a holding agreement and a release from a holding agreement, which would preclude the exclusion under the circumstances.

Taxpayers' Analysis

Taxpayers believe that the dates at which each event occurred are important, and the fact that the lot which was purchased was changed from Lot #1 to Lot #5 because of the sewer easement is also important. They believe these facts show the intent of the parties when they entered into the contracts. Further, they believe the answer to the question can be found in section 60, which defines "transfer of ownership" for purposes of determining reassessment, and the cases which interpret it, notably Cal-American Income Property Fund II v. Los Angeles County (1991) 208 Cal. App. 3d 109. (This case found that there was a transfer of ownership when the sales agreement and escrow instructions "had all the indicia of a traditional sale" and the buyer was granted a fee simple interest.)

Your Analysis

You believe that these documents are similar to the situation where a homeowner wants to sell excess land to a developer. Because of Subdivision Map Act provisions, the homeowner is forced to deed the whole property to the developer who will obtain the subdivision approvals. The sale is preconditioned upon the developer's contractual obligation to transfer the homeowner's residence back to him. You have treated those situations as non-reassessable changes in the method of holding title to the residences merely to facilitate the sales of the remainders of the excess lands. Accordingly, in this case, you have assessed this new parcel of land as a proportional value of the old factored base year value and the improvements as new construction.

You thus denied Mr. and Mrs. J relief under Proposition 60 in the belief that the transfer of a portion of their old original parcel back to Mr. and Mrs. J did not amount to a "purchase" for purposes of section 69.5, subdivision (a)(1), that was reassessable as required by section 69.5, subdivision (e); and that it was merely a release from a holding agreement as represented by the two purchase contracts. If a "purchase" under section 69.5, subdivision (a)(1), that was reassessable as required by section 69.5. subdivision (e), however, all the other requirements of section 69.5 would have to be met in order for the exclusion to apply.

Analysis

Changes in Ownership

Section 60 defines a change in ownership as "a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest." Under section 61, subdivision (j), a change in ownership includes:

> The transfer of any interest in real property between a corporation, partnership, or other legal entity and a shareholder, partner, or any other person.

This provision applies to all legal entities, including corporations, and requires the assessor's determination of change in ownership when real property is transferred from individuals to a corporation and when real property is transferred from a corporation to individuals, unless an exclusion or exception applies.

Accordingly, the transfer of real property from Mr. and Mrs. J to Z Construction was a section 60 transfer and a change in ownership, unless an exclusion or exception applies, and the transfer of real property from Z Construction to Mr. and Mrs. J was another section 60 transfer and another change in ownership, unless an exclusion or exception applies. As indicated, Mr. and Mrs. J had no ownership interest in Z Construction, so there could be no application of the section 62, subdivision (a)(2) exclusion.

Changes in Ownership - Deed Presumption

In instances in which property changes ownership by means of deeds, Property Tax Rule 462.200, Change in Ownership - Miscellaneous Arrangements, subdivision (b) Deed Presumption, states that when more than one person's name appears on a deed, there is a rebuttable presumption that all persons listed on the deed have ownership interests in property, unless an exclusion from change in ownership applies. The purpose of Rule 462.200(b) is, among other things, to enable assessors to easily identify the "*owner(s)*" of a property and the "*date*" that the property changed ownership.

The rule continues on to provide that in overcoming this presumption, consideration may be give to, but not limited to, the following factors:

> (1) The existence of a written document executed prior to or at the time of the conveyance in which all parties agree that one or more of the parties do not have equitable ownership interests.
>
> (2) The monetary contribution of each party. The best evidence of the existence of any factor shall be an adjudication of the existence of the factor reflected in a final judicial finding, order, or judgement. Proof may also be made by declarations under penalty of perjury (or affidavits) accompanied by such written evidence as may reasonably be available, such as written agreements, canceled checks, insurance policies, and tax returns.

These provisions are consistent with Evidence Code section 662, which states that the owner of the legal title to property is presumed to be the owner of the full beneficial title and that the presumption may be rebutted only by clear and convincing proof. Proof that is "clear and convincing" constitutes evidence that is explicit and unequivocal that beneficial title transferred to a person or entity other than those named in the deed, or that title is transferred at a point in time distinct from the date of delivery of the deed. (1 Witkin, California Evidence, 3rd Ed. 1986, Sec. 160.)

In this instance, Mr. and Mrs. J deeded real property to Z Construction on February 18, 1998, and Z Construction later deeded a portion of its real property to Mr. and Mrs. J on that same date, February 18, 1998. Thus, in addition to sections 60 and 61, subdivision (j), Property Tax Rule 462.200 and Evidence Code section 662 presume that Z Construction was the owner of the full beneficial title to the real property it acquired from Mr. and Mrs. J and that Mr. and Mrs. J were the owners of the full beneficial title to the real property they acquired from Z Construction.

Other than your concern that the transfers were parts of and were made pursuant to a holding agreement, hereinafter discussed, there do not appear to be any factors which would overcome the presumption of ownership as the result of the deeds:

1. No claimed existence of a written document in which all parties agree that one or more of them did not have equitable ownership interests in the real properties transferred to them.

2. No claimed lack of monetary contribution of any person or party.

3. No claimed existence of any other document or information which would indicate that one or more of the parties did not have equitable ownership interests in the real properties transferred to them.

4. No evidence that beneficial title did not transfer to a person or entity named in the deeds.

Such a conclusion is consistent with several of the change in ownership cases decided by the courts over the years:

In *Cal-American Income Property Fund II* v. *Los Angeles County* (1989) 208 Cal. App. 3d 109, a property owner sold a 137 unit building to the buyer on terms that the owner would carry the financing for five years or until the buyer could convert and sell 80 percent of the units as cooperative housing units. The assessor reassessed the property as a change in ownership. Noting that the sales agreement had all the indicia of a typical sales transaction and that the sales documents were absolute on their face, containing no conditions, exceptions, or reservations regarding transfer of full title, the court held that a change in ownership had taken place and that reassessment was proper.

> ...On its face, title passes to Convair in 1980 so that Convair's subsequent failure to meet the terms of the note merely gave Cal-American the right to pursue the remedies permitted when the purchaser/borrower defaults. Sellers commonly finance a substantial portion of the sales price, secured by the property sold. The fact the buyer later defaults and the seller enforces its security interest can not mean such transactions were not true changes of ownership.
>
> While Cal-American and Convair could have fashioned an agreement which only created an option to purchase or solely transferred bare legal title or made Convair's acquisition of title contingent upon payment of the principal, that is not what occurred at bench. The documents were absolute on their face,

> containing no conditions, exceptions or reservations regarding transfer of full title. Convair was granted title in fee simple. The sales agreement and escrow instructions had all of the indicia of a traditional sale. Convair's sales to investors and one of those individual's subsequent conveyance to a third party were consistent with a change in ownership in 1980 because those transactions were grounded on the assumption Convair had the ability to convey a very particular incident of beneficial use, to wit, the right to share in the increase in the value of the property which would occur upon successful conversion to a cooperative. The parties' handling of the tax ramifications of those transactions further corroborated this interpretation. (pg. 115)

In Industrial Indemnity Company v. City and County of San Francisco (1990) 218 Cal. App. 3d 999, a property owner entered into an arrangement with another party for the sale and leaseback of its real property for a period of fifty years. The assessor reassessed the property as a change in ownership. Applying the section 60 "change in ownership" test, the court concluded that the test was satisfied with respect to the sale portion of the transaction as well as the leaseback portion because in each case there was a transfer of a present interest in real property including the beneficial use of the property the value of which was substantially equal to the value of the fee interest.

> The basic definition of section 60 is intended as a guidepost in cases not covered by the specific inclusions or exclusions of other taxation statutes or article XIII A itself. (*Allen* v. *Sutter County Bd. of Equalization* (1983) 139 Cal App. 3d 887, 891-892 [189 Cal. Rptr. 101]; see §§ 61, subd. (c)(1), 62, subd. (e).) As we have seen, the subject sale and leaseback does not come within any other statute or regulation. Therefore, we apply the basic definition of section 60, and find that this transaction constitutes two changes in ownership within the meaning of that section.... (pg. 1010)

An in Crow Winthrop Operating Partnership v. Orange County (1992) 10 Cal. App. 4th 1848, a corporation owned real property which it agreed to sell to another entity. Prior to closing, the selling corporation leased the property for a term of 50 years to its wholly-owned subsidiary. The property was then transferred by grant deed, subject to the leases, to the buyer's subsidiary. The long term leases were transferred to the buyer on the same day. The assessor reassessed the property as a change in ownership. Again applying the section 60 "change in ownership" test, the court, relying in large part upon the recently decided case of Pacific Southwest Realty Co. v. Los Angeles County (1991) 1 Cal. 4th 155, held that a change in ownership occurs when a vendor sells a fee simple interest to a purchaser and simultaneously acquires a leasehold interest in the property:

> ...the Supreme Court held that "when a vendor sells a fee simple interest to a purchaser and simultaneously acquires from the latter a leasehold interest in the property, a change in ownership has occurred." (*Id.* at p. 159) The *Pacific Southwest* purchase agreement contained a condition similar to that in the original agreement to purchase in the present case: "One *condition precedent* to the sale was the execution of the lease, which conveyed an estate for years . . . " (*Ibid.*., italics added.) . . .

> Addressing first the section 60 three-prong test for determining whether a transfer is a change in ownership, the court stated there *was* a transfer of a present interest, regardless of the presence of a long-term lease. The lease was a present possessory interest, but *not* a fee interest . . .
>
> As to the "beneficial use" of the property, the court declined to find the long-term lessee held that interest as opposed to the buyer. It cited with approval *Industrial Indemnity Co.* v. *City and County of San Francisco* (1990) 218 Cal. App. 3d 999, 1005 [267 Cal. Rptr. 445]: "'The fact that [the buyer] may not occupy the property during the lease period does not deprive it of its right to enjoy the *value* of the property represented by the rent. [Citations.] The sale and leaseback constituted a transfer of the beneficial use of the property within the meaning of section 60.'" So, too, with consideration of the value transferred as substantially equal to the value of the fee interest. CWOP "acquired the entire fee [and] not only did the value of the interest transferred 'substantially equal . . . the value of the fee interest,' it was of identical value because it was a transfer of the fee itself. [Citation.]" . . .. (pg. 1854)

Change in Ownership - Purchases

As you have noted, section 69.5, subdivision (a)(1) requires that in order for the exclusion to apply, the replacement dwelling must be purchased or newly constructed by the claimant as his or her principal residence within two years of the sale by that person of the original property. Section 69.5, subdivision (g)(8) defines "sale" to mean "any change in ownership of the original property for consideration. Section 67 defines "purchase" to mean "a change in ownership for consideration. Since "purchase" is defined for purposes of change in ownership in section 67, there was no need to include the definition of "purchase" in the later enacted section 69.5. See the September 11, 1987, Letter to Assessors No. 87/71, Proposition 60-Chapter 186, Statutes of 1987 (Assembly Bill 60) page 5, Question and Answer 6, copy enclosed.

In this instance then, Mr. and Mrs. J's sale of Lots 1 through 5, which included their original property, to Z Construction for $625,000 was a sale of the original property by them and a "purchase" of their original property by Z Construction; and Z Construction's sale of Lot 5 to Mr. and Mrs. J for $233,000 was a sale of Lot 5 and a "purchase" by Mr. and Mrs. J of a replacement lot/property, in the event that they desired to consider their purchase of the lot as their replacement lot/property.

Accordingly, absent any holding agreement, the transfer of real property from Mr. and Mrs. J to Z Construction was a section 60 transfer and "purchase" and a change in ownership, and the transfer of real property from Z Construction to Mr. and Mrs. J was another section 60 transfer and "purchase" and another change in ownership.

Holding Agreements

Rule 462.200(c) implements the above definition of change in ownership in Section 60 by describing the exception for transfers under holding agreements. The rule makes it clear that a transfer of property from the owner to an entity holding title pursuant to a holding agreement, or from the entity holding title back to the owner is not a change in ownership – where the terms of the holding agreement establish a principal-agency or a nominee relationship between the owner and the entity. Subdivision (c) states:

> Holding agreements. A holding agreement is an agreement between an owner of the property, hereinafter called a principal, and another entity, usually a title company, that the principal will convey property to the other entity merely for the purposes of holding title. The entity receiving title can have no discretionary duties but must act only on explicit instructions of the principal. The transfer of property to the holder of title pursuant to a holding agreement is not a change in ownership. There shall be no change in ownership when the entity holding title pursuant to a holding agreement conveys the property back to the principal.
>
> (1) There shall be a change in ownership for property subject to a holding agreement when there is a change of principals.
>
> (2) There shall be a change in ownership of property subject to a holding agreement if the property is conveyed by the holder of title to a person or entity other than the principal.

This rule was applied in Parkmerced Co. v. City and County of San Francisco (1983) 149 Cal.App.3d 1091, involving a nominee under a partnership agreement. The plaintiff was a partnership, Parkmerced Company, whose general partners were two corporations. The partnership was formed for the purpose of acquiring and operating specified real property, Parkmerced. The partnership agreement provided that title to the property would be held by one of the partners, Parkmerced Company, as nominee[1] for the partnership. As described in the agreement, the partnership, through its nominee Parkmerced Company, purchased the Parkmerced improvements and leased land, and Parkmerced Company took title to such property on behalf of the partnership. The nominee was subsequently merged into another corporation, both of which were wholly owned by the same person. The latter corporation, as successor nominee to the real property, later conveyed the property back to the partnership. The court held that no change in ownership occurred "upon the transfer of bare legal title without a corresponding transfer of the beneficial use thereof," and that since the nominee corporation and its successor held no more than "bare legal title" to the property, the transfer from the nominee's successor to the partnership was not a change in ownership. The court stated at page 1095:

[1] A nominee, according to Black's Law Dictionary, Fifth Edition, page 947, is an "arrangement for holding title to real property under which one or more persons or corporations, pursuant to a written declaration or trust, declare that they will hold any property that they acquire as trustees for the benefit of one or more undisclosed beneficiaries.

> ...Today it is not all uncommon for individuals, or corporations such as title companies, to hold "bare legal title" to property for the owner of its beneficial interest. Such a transaction is of the nature of a resulting trust "which arises from a transfer of property under circumstances showing that the transferee was not intended to take the beneficial interest," and the transferee has no duty other than to deliver the property to the person entitled thereto, upon demand. ... And such a transfer, when made, will be of the property's "bare legal title" to the person already entitled to its "beneficial use".

We have had occasion to consider former property Tax Rule 462(k) (3)/Property Tax Rule 462.200(c) in the past as to what constitutes a holding agreement for purposes of the exception for transfers under holding agreements. See Property Tax Annotations Nos. 220.0250, Holdings Agreements, and 220.2051, Holding Agreements, and the letters upon which they are based,[2] copies enclosed. As indicated in the May 14, 1993, letter, a holding agreement is an agreement between an owner of property and another entity whereby the owner conveys the property to the entity merely for the purpose of holding title. The rule contemplates a written agreement[3] between the owner and entity, indicating that at all times the entity is subject to the terms of the agreement and is permitted to hold record title only, and that all beneficial use and control remains in the owners.

While you have forwarded copies of the deed from Mr. and Mrs. J to Z Construction and the deed from Z Construction to Mr. and Mrs. J, two parcel maps, two settlement statements, and two contracts pertaining to these transfers, you have not forwarded a copy of any holding agreement. Nor do we believe that the documents you forwarded can be considered, together or separately, to be a holding agreement:

1. The deeds, maps, statements, and contracts pertain to different properties, not to the same property as is the case with respect to properties subject to holding agreements.

2. Mr. and Mrs. J conveyed one property to Z Construction, and Z Construction conveyed another property to Mr. and Mrs. J, not the same property.

3. Nothing in the deeds or in any of the other documents states or indicates that the grantors of the properties granted less than the fee ownership of the properties transferred or that the grantees of the properties purchased and received less than the fee ownership of the properties transferred.

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[2] C 8/17/89 and C 5/14/93, respectively.

[3] Lacking a written agreement, an owner may claim the existence of a constructive or resulting trust (Code of Civil Procedure section 1972) in which the entity received title as the nominee of the owner, in which case he or she must establish the existence and validity of such a trust. Oral trusts are generally prohibited by the Statute of Frauds in Code of Civil Procedure section 1971. However, Code of Civil Procedure section 1972 states certain exceptions based on the legal premise that the Statute of Frauds has no applicability to actions for constructive or resulting trusts. See pages 6 and 7 of C 5/14/93.

In this instance, no one is claiming the existence of any trust.

4. Similarly, there is nothing to indicate that at all times, Z Construction held record title only to Mr. and Mrs. J's property and that Mr. and Mrs. J retained all beneficial use and control of the property; and, as indicated above, the factual situation involving different properties is to the contrary.

Rather, in our view, the transfers from Mr. and Mrs. J to Z Construction and from Z Construction to Mr. and Mrs. J were made pursuant to a contract or agreement between them whereby Mr. and Mrs. J agreed to transfer their property to Z Construction and to do other things and Z Construction agreed to transfer one of its properties to Mr. and Mrs. J and to do other things, with the transfers of the properties occurring through escrow and in close proximity in time to each other. As indicated in Pacific Southwest Realty Co. v. Los Angeles County, supra, and in Crow Winthrop Operating Partnership v. Orange County, supra, where the section 60 change in ownership test is satisfied, a change in ownership occurs, notwithstanding any condition upon which the sale or a first sale is subjected and notwithstanding the closeness in time of the sale and lease back or sale and subsequent sale.

In addition to the deeds, etc., pertaining to different properties, Mr. and Mrs. J originally contracted to purchase Lot #1, which was previously owned by the Estate of E, but they later amended their contract to purchase Lot #5, which was owned/previously owned by them; but they sold their property to Z Construction for $625,000, and they purchased Lot #5 from Z Construction for $233,000. Their sale to Z Construction was a "purchase" by Z Construction for change in ownership purposes, and their purchase from Z Construction was also a "purchase" by them for change in ownership purposes.

Finally, consistent with the above "change in ownership" conclusions, transfer taxes were apparently paid by Z Construction and by Mr. and Mrs. J at the times of the sales/purchases.

Additional Matters

1. As to your additional facts, Tract XXX, recorded February 4, 1998, would have to show Mr. and Mrs. J as well as Z Construction as the owners of the property to be subdivided, because as of that date, Mr. and Mrs. J were still the owners of some of their property (December 19, 1989, Trust Transfer Deed to them, March 26, 1997, contingent agreement to sell, February 5, 1998, deed from them to Z Construction, and February 18, 1998, close of escrow)[4]. As indicated, Mr. and Mrs. J's sale of their property was contingent upon Z Construction obtaining approval of a final map from the City, and Mr. and Mrs. J had no ownership interest in Z Construction.

2. There is a gap in title between the 1989 Trust Transfer Deed of Mr. and Mrs. J's property to them and the 1998 Grant Deed of Lots 1 through 5 from Mr. and Mrs. J to Z Construction, however. For example, if Mr. and Mrs. J's property became part of Lot 3, Lot 4 and Lot 5, Mr. and Mrs. J could only have conveyed part of Lot 3, Lot 4, and Lot 5 to Z Construction, not Lots 1 through 5. Presumably then, at some time after Z Construction acquired the other parcel from E's Estate and before the 1998 Grant Deed of Lots 1 through 5 from Mr. and Mrs. J to Z Construction and close of escrow, Mr. and Mrs. J conveyed an interest in their property to Z

[4] See 2, Infra.

Construction and Z Construction conveyed an interest in its parcel to Mr. and Mrs. J. Such conveyances might or might not have been recorded.

Assuming that the deed progression can be ascertained, such would not change the above analysis. Prior to Mr. and Mrs. J's acquisition of Lot 5 from Z Construction, Z Construction owned Lots 1 through 5, and Mr. and Mrs. J's sale of Lots 1 through 5 to Z Construction for $625,000 was a sale of that property by them and a "purchase" of their original property by Z Construction. And Z Construction's sale of Lot 5 to Mr. and Mrs. J was a sale of Lot 5 and a "purchase" by Mr. and Mrs. J of a replacement lot/property, in the event that they desired to consider their purchase of the lot as their replacement lot/property.

3. As to the facts that Z Construction was required to construct a new residence for Mr. and Mrs. J and to provide rental housing for Mr. and Mrs. J during construction, such were matters of contract between the parties and could possibly be considered part of the sale price. And the fact that Mr. and Mrs. J could rescind the transactions and obtain refund of all monies paid and consequential damages, including capital gains tax liabilities, for failure to timely provide a satisfactory new residence was both a liquidated damages provision in the contract and further indicia of the arms-length transactions between them and Z Construction.

4. Finally, of course, all the other requirements of section 69.5 would have to be met in order for the exclusion to apply in this instance. This would include the "equal or lesser value" requirement of section 69.5, subdivision (g)(5) that the amount of the full cash value of the replacement dwelling does not exceed the appropriate amount of the full cash value of the original property. This would also include the "two year" requirement of section 69.5, subdivision (a) that the replacement dwelling is purchased and constructed by Mr. and Mrs. J within two years of the sale by them of their original property.

The views in this letter are advisory in nature. They represent the analysis of the Board's Property Taxes Legal Section based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,

/s/ James K. McManigal, Jr.

James K. McManigal, Jr.
Tax Counsel IV

Enclosures [LTA 87/71 (pp. 1, 5), Annotations 220.0250 (C 8/17/89) and 220.0251 (C 5/14/93)]

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Cc: Mr. Richard Johnson, MIC:63
Mr. David Gau, MIC:64
Mr. Charles Knudsen, MIC:62
Ms. Jennifer Willis, MIC:70