

200.0099 **Replacement Dwelling's New Base Year Value.** As used in Revenue and Taxation Code section 69.5(g)(6), “. . . and after the purchase or the completion of new construction” means that the full cash value of the replacement dwelling is the full cash value determined immediately after the purchase of the replacement dwelling. C 3/15/94.



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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March 15, 1994

BURTON W. OLIVER
Executive Director

San Luis Obispo County, California

Re: Section 69.5 base year value transfer - Assessor's Parcel
#001-023-037, Assessment Appeal #92-052

Dear Mr. [REDACTED]:

This is in response to your letter of February 4, 1994 to Mr. Verne Walton, Chief, Assessment Standards Division regarding your appeal of the denial by the San Luis Obispo County Assessor's Office of your client's claim under Rev. & Tax. Code Section 69.5, to transfer the base year value of her original residence to a replacement residence. You have provided the following facts for purposes of our analysis:

1. Your client purchased a replacement dwelling for \$250,000.00 in November 1989 and subsequently sold her original residence in May 1990, for \$242,000.00.
2. The value of the original residence declined, due to falling real estate prices, during the six-month period between the purchase of the replacement dwelling and the sale of the original residence.
3. The value of the replacement dwelling declined, due to falling real estate prices, during the same six-month period.
4. An appeal was heard on May 7, 1993, which was continued to give you time to present your views in writing to the Board of Equalization.

Your letter raises the following issues which staff will address:

- I. Whether the replacement dwelling can be valued for purposes of Section 69.5 on a date other than the sale date, such as 6 months later when the original property is sold.

- II. Whether the purchase price paid by your client is rebuttably, rather than conclusively, presumed to be the property's value, which would allow you to present evidence at the hearing for the purpose of showing that the full cash value of the replacement dwelling was less than the actual price paid.
- III. Whether a letter from the State Board of Equalization staff can be entered into evidence at an assessment appeal hearing.

I. Whether replacement property can be valued for purposes of Section 69.5 on a date other than the sale date.

You contend that although your client purchased the replacement dwelling first and six months later sold the original residence, she should be able to value the replacement dwelling at the time that the original property sold. You base your argument on Subdivision (g), paragraph (6) of Section 69.5 which provides:

"Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, **as of the date on which it was purchased** or new construction was completed, and after the purchase or the completion of new construction."
(Emphasis added)

You interpret, "and after the purchase or completion of new construction" to mean that the replacement dwelling's value could be determined "subsequent to its purchase and reasonably at the time that the original property was sold." However, the phrase, "and after the purchase or completion of new construction," means that the full cash value of the replacement dwelling is the full cash value determined immediately after the purchase of the replacement dwelling. The phrase was intended to clarify that the assessor was to use the replacement dwelling's new base year value based on its full market value as of its date of purchase, not the dwelling's (prior) existing base year value, in making the value comparison called for. Subdivision (g), paragraph (6), is clear and specific about the date on which the replacement dwelling is to be valued, "**as of the date on which it was purchased.**" Please see our (enclosed) February 11, 1988 Letter To Assessors, No. 88/10, Questions And Answers - Propositions 58 And 60. Conversely, we are not aware of any authority interpreting "and after the purchase or completion of construction" in Subdivision (g) Paragraph (6) in the manner you suggest. Nor would we expect to see such an interpretation, given the specific language therein that the replacement dwelling is to be valued "as of the date on which it was purchased."

While Section 69.5 provides for appreciation in value where the replacement dwelling is acquired after the sale of the original property, it does not provide for a decline in value, such as has occurred in your client's situation. Therefore, the replacement dwelling must satisfy the "equal or lesser value" test of Subdivision (g)(5)(A) of Section 69.5 in order for your client to qualify for this property tax relief. As you are aware, this provision states that the amount of the full cash value of a replacement value cannot exceed 100 percent of the full cash value of the original property if the replacement dwelling is purchased prior to the date of the sale of the original property.

II. Presumptions Regarding Price of Property

You contend that the purchase price paid by your client is rebuttably, rather than conclusively, presumed to be the property's value, and therefore, evidence can be admitted for the purpose of showing that the full cash value of the replacement dwelling was less than the actual price paid. Property Tax Rule 2² (enclosed) provides that when property is valued as the result of a change in ownership for consideration, it shall be rebuttably presumed that the consideration valued in money, whether paid in money or otherwise, is the full cash value of the property. Rule 2 further states, in pertinent part:

"The presumption shall shift the burden of proving value by a preponderance of the evidence to the party seeking to overcome the presumption. The presumption may be rebutted by evidence that the full cash value of the property is significantly more or less than the total cash equivalent of the consideration paid for the property. A significant deviation means a deviation of more than 5% of the total consideration."

As indicated, the rule contemplates that the presumption shall shift the burden of proving value to whichever party is seeking to overcome it. Therefore, if your client contends that the amount she paid for the replacement dwelling was not its full cash value, you may present evidence on her behalf to rebut the presumption; however, it must be evidence of the value of the property as of the date the replacement dwelling was purchased in November 1989.

¹ February 11, 1988 Letter to Assessors No. 88/10, Questions And Answers - Propositions 58 And 60, p. 3.

² 18 California Code of Regulations

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III. Admissibility of Correspondence at Assessment Appeal Hearing.

Per your letter, you objected to the admissibility of a letter by Mr. Walton into evidence at the assessment appeal hearing. Mr. Walton had responded to a letter from San Luis Obispo County Assessor Dick Frank regarding the denial of your client's claim for replacement dwelling base year value transfer. Rev. & Tax. Code Section 1609 (enclosed), which pertains to assessment appeals hearings, provides that hearings need not be conducted according to technical rules of evidence, and that hearsay evidence is admissible if relevant and "if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions." In view of the specific language of the section, it is our opinion that a State Board of Equalization staff letter discussing the applicability of a code section to a taxpayer's property, is relevant, and therefore, admissible at an assessment appeal hearing. The appeals board may give the letter whatever weight it deems appropriate.

The views expressed in this letter are advisory only and are not binding upon the assessor of any county or upon an assessment appeals board.

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

Very truly yours,



Mary Ann Alonzo
Staff Counsel

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Enclosure

cc: Mr. A. Edwin Oplin, Office of the San Luis Obispo County Counsel
Honorable Dick Frank, San Luis Obispo County Assessor
Mr. John Hagerty, MIC:62
Mr. Verne Walton, MIC:64
Mr. Arnold Fong, MIC:64
Ms. Jennifer Willis, MIC:70