**BASE YEAR VALUE TRANSFER**
**PRINCIPAL RESIDENCE**

200.0130 **Timing.** The property tax relief granted by Revenue and Taxation Code Section 69.5 is available in differing degrees depending on when the replacement property is purchased. If the replacement property is purchased prior to the sale date of the original property, the former must be of equal or lesser value to qualify for relief. The sale date of each property is rebuttably presumed (Property Tax Rule 462(n)) to be the date each deed was recorded. The presumption may be overcome by a factual showing that on some earlier date all escrow conditions had been fulfilled so that either party could obtain judicial enforcement of the agreement. C 8/29/90.

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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CINDY RAMBO
Executive Director

August 29, 1990

Dear Mr.

This is in response to your letter of May 29, 1990, to the attention of Mr. Verne Walton, Chief of the Assessment Standards Division of the State Board of Equalization in which you request our opinion as to the applicability of Revenue and Taxation Code Section 69.5 under the facts submitted with your letter and provided at my request which are set forth below. Mr. Walton has requested that we respond directly to you.

Facts

Your client sold her home in San Diego County (the "original property") last year and bought a replacement home in Riverside County (the "replacement dwelling"). The purchase price of the replacement dwelling was higher than the sale price of the original property but less than 105% of the sale price of the original property. The deed to the replacement dwelling was recorded August 11, 1989.

The deed to the original property was executed June 27, 1989, acknowledged July 6, 1989 and delivered to the escrow agent on July 10, 1989. The original escrow instructions required a closing by August 7, 1989.

The buyer was required to obtain an alternate source of financing shortly before closing. Both buyer and seller executed a modification of the escrow instructions August 10, 1989, which extended the date of closing from August 7, 1989 to August 16, 1989. This extension instruction was the last action taken by the seller prior to completion of the contract. The escrow instructions as modified provided in relevant part:

> "Prior to August 16, 1989, buyer will hand *** [Dawson Escrow, Inc.] $39,900.00 of which the sum of $5,000.00 had been deposited herewith. Buyer will cause *** [Dawson Escrow, Inc.] to be handed the net proceeds of

> a new first conventional loan in the principal sum of $98,200.00 to complete a TOTAL CONSIDERATION of $138,100.00.
>
> * * *
>
> "The consummation of this escrow is contingent upon the buyer and property obtaining and qualifying for a new conventional loan with interest rate not to exceed 10.38%. Buyer's execution of the loan documentation shall be deemed buyer's approval of the terms and conditions contained therein and a release of this contingency."

The buyer apparently satisfied this contingency and deposited the full purchase price sometime after August 10, 1989. The escrow subsequently closed and the deed was recorded on August 21, 1989.

It is your position that the escrow instructions of the parties were met on August 10, 1989, that from and after August 10, 1989, the contract of sale was specifically enforceable and that the sale of the original property therefore occurred on August 10, 1989, for purposes of Revenue and Taxation Code Section 69.5. All subsequent statutory references are to the Revenue and Taxation Code unless otherwise indicated.

Law and Analysis

Section 69.5 implements Section 2(a) of Article XIII A of the California Constitution and provides that subject to specified conditions and limitations, a person may transfer the base year value from property he or she resides in to a replacement dwelling of equal or lesser value which is purchased or newly constructed within two years of the sale by that person of the original property.

Section 69.5(g) provides in relevant part:

* * *

> (5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:
>
> (A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased *** prior to the date of the date of the sale of the original property.

> (B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased *** within the first year following the date of the sale of the original property.

* * *

Although section 69.5 does not specify how to determine the date of the sale of the original property or when the replacement dwelling is purchased, it does define "sale" as "any change in ownership of the original property for consideration." (§69.5(g)(8).) Similarly, section 67 defines "purchased" or "purchase" as "a change in ownership for consideration."

With respect to the date of change in ownership, Property Tax Rule 462(n) provides in relevant part:

> For purposes of reappraising real property as of the date of change in ownership of real property, the following dates shall be used:
>
> (1) Sales.
>
> (A) Where the transfer is evidenced by recordation of a deed or other document, the date of recordation shall be rebuttably presumed to be the date of ownership change. This presumption may be rebutted by evidence proving a different date to be the date all parties' instructions have been met in escrow or the date the agreement of the parties became specifically enforceable.

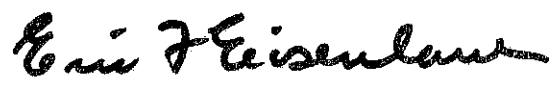
* * *

Although you contend that the escrow instructions of the parties were met and the contract became specifically enforceable on August 10, 1989, no evidence has been provided to us to show that the escrow instructions quoted above were met at any time prior to August 21, 1989. Similarly, we have been provided with no evidence that the buyer performed, i.e., deposited the purchase price in escrow or tendered performance at any time prior to August 21, 1989. Therefore, under well settled law, we find no legal basis to conclude that the contract was specifically enforceable prior to that time. (Civil Code §§ 1439, 3392; 1 Miller & Starr, Calif. Real Estate (2d ed. 1989) §§1:134, 135, pp. 482 - 492.) Accordingly, it is rebuttably presumed under Rule 462 that no change in ownership

and hence no sale of the original property occurred prior to August 21, 1989. Thus the replacement dwelling was purchased prior to the sale of the original property and the "equal or lesser value" test of section 69.5(g)(5)(A) was not satisfied. Section 69.5 is, therefore, not applicable to the replacement dwelling purchased August 11, 1989. Your client may still qualify for the benefits of section 69.5, however, if she purchases a replacement dwelling which meets the "equal or lesser value test" within two years of the sale of the original property.

The views expressed in this letter are advisory only and are not binding on the assessor of any county. Ultimately, it is for the assessor to determine whether the presumption of Rule 462(n)(1)(A) has been rebutted based on the evidence presented to him. 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,



Eric F. Eisenlauer
Tax Counsel

EFE:sp
2608D

cc: Honorable Gregory Smith
County Assessor
1600 Pacific Highway, Room 103
San Diego, CA 92101-2480

cc: Riverside County Assessor
Attn: Leslie G. Builteman
4080 Lemon Street
Riverside, CA 92501-3659

Mr. John W. Hagerty
Mr. Verne Walton