



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

ASSESSMENT STANDARDS DIVISION
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September 6, 1994

BURTON W. OLIVER
Executive Director

Placer County Counsel
175 Fulweiler Avenue, Room 301
County Administrative Center
Auburn, CA 95603-4581

Attention: Joan R. Dowis

Dear Ms. Dowis:

This is in response to your letter of August 20, 1993, to Mr. Glenn Rimbey, regarding the two-year time limits of Proposition 60. I apologize for the delay in responding; other matters requiring our attention have resulted in an unfortunate backlog of correspondence.

According to the information provided, A and B purchased 50 percent of a lot on December 30, 1987. A and B purchased the other 50 percent on October 13, 1989. A residence was constructed and completed on February 15, 1991. The original property sold on January 26, 1990. A and B contend that their two-year time limit under Proposition 60 began on October 13, 1989 when they acquired 100 percent ownership of the property. The assessor contends that the two year limit began on December 30, 1987, when A and B purchased the first 50 percent interest in the lot. You asked our opinion on which event triggered the two-year period.

Since the voters passed Proposition 60, we have received several letters asking similar questions. Initially, we discussed this situation with our legal staff and they concurred in the opinion that the transfer does not qualify for Section 69.5 treatment.

Subdivision (a) of Section 69.5 of the Revenue and Taxation Code (all statutory references are to the Revenue and Taxation Code unless otherwise indicated) provides for the transfer of the base-year value of an original property to a "replacement dwelling" that is purchased within two years of the sale of the original property. Subdivision (g)(3) of that section defines replacement dwelling as including both the land and any structure. We take this to mean that the replacement dwelling must be purchased in its entirety, within two years of the sale of the original property.

September 6, 1994

In your situation, since A and B owned a one-half interest in the property since 1987, the transfer would not qualify for treatment under Section 69.5.

The views expressed in this letter are, of course, advisory only. They are not binding upon the assessor of any county. If you have any further questions, please contact our Real Property Technical Services Section at (916) 445-4982.

Sincerely,

Charles G. Knudsen
Principal Property Appraiser
Assessment Standards Division

CGK:kmc

cc: Honorable Bruce M. Dear
Placer County Assessor



STATE BOARD OF EQUALIZATION

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Executive Director

November 24, 1999

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NOV 29 1999

PROPERTY TAXES



James J. Rees
Deputy Santa Clara County Counsel
70 West Hedding Street
9th Floor, East Wing
San Jose, CA 95110-1770

Re: Revenue & Taxation Code section 69.5

Dear Mr. Rees:

This is in response to your letter dated October 6, 1999, addressed to Assistant Chief Counsel Larry Augusta, in which you requested an opinion regarding the requirements under Proposition 60/Cal. Const. Art. XIII A, Section 2, subdivision (a), and Revenue and Taxation Code Section 69.5 for transferring the base year value from an original residence currently receiving a homeowners' exemption to a partially inherited, partially purchased replacement dwelling.

To summarize our conclusions, (1) prior acquisition by inheritance of a 50% interest in a purported replacement dwelling precludes transfer of the base year value of an original property after purchase of the remaining 50% interest, and (2) the base year value transfer cannot be applied piecemeal to the portion of the property that had been purchased, rather than inherited.

Although it is true that the previously issued advisory letters from this office that you referenced did not directly address both issues, others have. It has been and still is our position that the legislative history and language of section 69.5 indicate an intent that only whole replacement property purchases are eligible for transfers of base year values, precluding application of section 69.5 to either the whole or a portion of the purported replacement dwelling under the facts you posited. (See Annotations 200.0087, C 3/17/88; 200.0088, C 7/15/97; and 200.0092, C 9/6/94, copies enclosed.)

Facts

1. In 1982, W and a third party each inherited a 50% interest in certain residential real property (replacement dwelling).
2. In 1989, W transferred one-half of her 50% interest in replacement dwelling (25%) to H.
3. In August 1997, H and W sold their home ("original property").
4. In September 1997, H and W each purchased an additional 25% interest in "replacement property" – giving them a combined 100% ownership interest.
5. At the time of the sale of the original property, the full cash value of the "replacement dwelling" was less than or equal to the full cash value of the "original property."

Issues

1. Does the wife's 1982 acquisition, by inheritance, of a 50% interest in the purported "replacement dwelling" preclude H and W from qualifying for the transfer of the base year value of their original property pursuant to section 69.5?
2. If the applicants do not qualify for the transfer of the entire base year value, could they qualify for a 50% transfer of the base year value as to the 50% ownership interest H and W acquired in the purported "replacement dwelling" in 1997, within two years of the sale of the original property?

Law and Analysis

Article XIII A, section 2, subdivision (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:

"...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 that 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...within two years of the sale of the original property." (Emphasis added.)

The Attorney General's Summary of Proposition 60 of the November 4, 1986, Ballot, which amended Article XIII A, section 2, indicated that the purchase or construction of an entire replacement residence was contemplated:

"...This measure amends Article XIII A to permit the Legislature to allow persons over age 55, who sell their residence and buy or build another of equal or lesser value within two years in the same county, to transfer the old residence's assessed value to the new residence...."

Consistent therewith, the Legislative Analyst's Analysis stated:

"This constitutional amendment would authorize the Legislature to provide a special method of establishing assessed value for replacement residential property acquired by a homeowner over the age of 55. Specifically, this method would allow homeowners over the age of 55 to transfer the assessed value of their present home to a replacement home located in the same county. To qualify for this special treatment, the replacement home must be:

Purchased or newly constructed as a replacement for the person's principal residence;

Of equal or lesser value than the original property;

Located within the same county; and

Purchased or newly constructed within two years of the sale of the present property.

The measure could apply to replacement property purchased or newly constructed on or after November 5, 1986."

And the Argument in Favor stated:

"California can create new housing opportunities for senior citizens by easing a property tax burden that now prevents many of them from finding affordable housing. At the same time, we can help many young families find their first homes. This proposition will do both by protecting older homeowners from huge property tax increases when they choose to sell their large family homes and move into new smaller residences...."

* * *

"The solution is to let seniors who want to sell their homes take their current property tax assessment to their new place of residence.

"If approved by the voters, Proposition 60 would do just that by amending the State Constitution to authorize the Legislature to provide that the base year value of owner-occupied residential property can be transferred for seniors to newly purchased or constructed owner-occupied residential property of equal or lesser value.

* * *

Thus, the intent of and the public policy behind the Proposition was, as to senior citizens, to allow senior citizens to sell their current residences and to purchase or construct and move into new residences without incurring increased property taxes.

The Legislature exercised its authority under Article XIII A, section 2, subdivision (a), by adopting Revenue and Taxation Code section 69.5 to provide that any person over the age of 55 years who resides in property eligible for the homeowners' 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 purchased or newly constructed within two years of the sale by that person of the original property. This language makes it clear that the conditions and limitations contained in Proposition 60/Article XIII A, section 2, subdivision (a), are controlling for purposes of the benefit granted by section 69.5. The Board staff has historically interpreted Proposition 60/Article XIII A, section 2, subdivision (a), and section 69.5 as based on a whole property to whole property approach. (See Letter to Assessors No. 87/71 Proposition 60 - Chapter 186, Statutes of 1987; Letter to Assessors No. 88/10, Questions and Answers -- Propositions 58 and 60, and Annotations 200.0087 and 200.0088.)

The definition of the term "purchase" in section 69.5 is set forth in Revenue and Taxation Code section 67 as "a change in ownership for consideration." Therefore, a replacement dwelling must be acquired in a manner that causes the entire dwelling (appraisal unit) to be reappraisable at its full cash value, determined in accordance with Revenue and Taxation Code section 110.1 for use in the "equal or lesser value" comparison of section 69.5, subdivision (g)(5). (Annotations 200.0087 and 200.0088.)

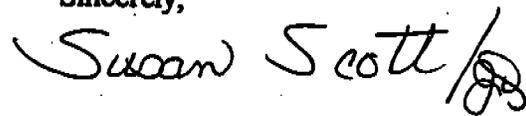
The transfers by inheritance and inter-spousal gift of 1982 and 1989 do not qualify for section 69.5 treatment because (1) they are not "purchases" for consideration (see Annotations 200.0087 and 200.0088), and (2) they were accomplished more than two years before the sale of the original property (see Annotation 200.0092.). The purchases of September 1997 are partial purchases which would only result in a partial change in ownership and partial reappraisal. (See Rev. & Tax. Code sections 60, 61; Rule 462.020.) Although purchasing a partial interest in a replacement dwelling as co-owner with another is permissible for application of section 69.5 transfers, completing the acquisition of a dwelling already partially owned by the purchaser is not. Applying section 69.5 to such partial purchases would run contrary to the intent of both the

Legislature and the voters by allowing claimants to essentially bypass the two year limitation period by purchasing all but a minimal share in a future "replacement" dwelling, renting it out until two years before or after their 55th birthday and the sale of their original property, and completing the purchase within the limitations period.

The views expressed in this letter are advisory only; 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.

Feel free to call me at 069 327-2455 if you have any further questions about this issue.

Sincerely,



Susan Scott
Tax Counsel

SAS:jd

<h:/property/precednt/transbyv/1999/04sas>

Enclosures

cc: Mr. Richard Johnson - MIC:63
Mr. David Gau - MIC:64
Mr. Charles Knudsen - MIC:64
Ms. Jennifer Willis - MIC:70
Mr. Lawrence A. Augusta