

200.0117 **Replacement Property—Rescission.** If the purchase of a replacement property is rescinded, the purchase of a second replacement property can qualify for the transfer of the base year value of the dwelling being replaced as provided in Revenue and Taxation Code section 69.5. The procedure for rescinding the original claim for transfer of base year value in section 69.5(i) must be followed, and the second purchase must be timely, i.e., within two years of the sale of the original property. C 9/20/94; C 11/6/97. (M99-1)



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AL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 323-7713

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September 20, 1994

In Re: Transfer of Base Year Value to Replacement Dwelling.

Dear Mr and Mrs. :

This is in response to your letter of July 26, 1994, to Mr. Richard Ochsner requesting our opinion as to whether the provisions of Cal. Const. Art. XIII A, Section 2, and Revenue & Taxation Code Section 69.5 allow for reapplication of the transfer of the base year value from an original residence to a second replacement dwelling, where the purchase of the first replacement dwelling is the object of a rescission.

You have described the following set of facts for purposes of our analysis:

1. You sold you original home (hereinafter "Original Property", "OP") in Los Angeles County in September, 1991, and purchased a new townhouse (hereinafter "Replacement Dwelling", "RP") in Orange County in March, 1992. You were found eligible and your transfer qualified for property tax relief under Section 69.5, with the result that Orange County transferred the base year value of your OP in Los Angeles County to your new RP.

2. After relocating in your RP, you discovered major structural problems which have rendered the dwelling partially uninhabitable since August, 1993. To date,

the builder has not been able to correct the problems. As an alternative, the builder may offer you another dwelling unit or a court may order a rescission of the sale of the RP to you. In either case, you wish to transfer the same base year value from your OP to a second new RP should the problems with your present RP remain unsolvable.

The question, therefore, is whether you are eligible to transfer the base year value from the Los Angeles County OP to the second Orange County RP given the date and circumstances described, assuming that in all other respects the second new RP meets the statutory criteria.

LAW AND ANALYSIS

The Constitutional Amendments, Proposition 60, extending base year value transfer benefits to persons over the age of 55 was approved by voters in November 1986, and Proposition 90, extending base year value transfer benefits to claimants whose original property and replacement property are not in the same county was approved by voters in November, 1988. The Legislature made these provisions applicable to numerous types of dwelling units for eligible claimants through Revenue & Taxation Code Section 69.5, a copy of which is enclosed herewith. Based on the facts provided, you complied with these provisions and received the benefit of transferring your base year value from your OP in Los Angeles County to your existing RP in Orange County.

Once the property tax relief under Section 69.5 is received, the Claimant may not claim it a second time, unless the initial claim is properly rescinded. Specifically included in Section 69.5 is a provision allowing for the rescission of a claim for the property tax relief where certain requirements are met.

The procedures set forth under rescission are found in Section 69.5 subdivision (i), which states in pertinent part:

(i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), if a written notice of rescission is delivered to the office of the assessor in which the original claim was filed and all of the following have occurred:

- (1) The notice is signed by the original filing claimant or claimants.
- (2) The notice is delivered to the office of the assessor before the date that the county first issues, as a result of relief granted under this section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any portion thereof, imposed upon the replacement dwelling, consistent with relief granted under this section, are delinquent.
- (3) The notice is accompanied by the payment of a fee as the assessor may require, provided that the fee shall not exceed an amount reasonably related to the estimated cost of processing a rescission claim, including both direct costs and developmental and indirect costs, such as costs for overhead, personnel, supplies, materials, office space, and computers.

Based on the foregoing, any claimant may rescind a claim for transfer of base year value, and once the rescission is processed and granted, the claimant under Section 69.5 "shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b)."

The language in subdivision (b), paragraph (7) relates to the eligibility of a claimant and specifically requires that in order to qualify as a claimant, "The claimant has not previously been granted, as a claimant, the property tax relief provided by this section." Thus, while this paragraph prohibits any claimant from twice receiving this property tax relief, paragraph (i) quoted above constitutes the exception if the first claim was properly rescinded.

If your present residence which has received Section 69.5 property tax relief is transferred back to the builder in return for another residence, your most effective remedy would be to obtain a rescission of that claim. Since the statute provides that a rescinded claim is not considered to have been previously

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granted to you as a claimant, you may file a claim for transfer of base year value from your Los Angeles property to your second Orange County residence (received in exchange or settlement from your builder) as your replacement property.

The primary hurdle you may confront, however, in seeking a rescission and filing a new claim is timing. The Legislature has expressly provided in the Section 69.5, subdivision (b)(1) and (5) that in addition to meeting other requirements, the person claiming property tax relief shall be eligible only if, among other things,

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement property.

* * *

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling.

Thus, the date of purchase of the replacement dwelling must be considered as a controlling factor when determining compliance with the two-year time requirements. Since you sold your Los Angeles County home in September 1991, your "deadline" for purchasing suitable replacement property within two years was September 1993. If you obtain a rescission of your present claim and a exchange your present RP for a new RP, the purchase date of the new RP will obviously be well beyond the two years. Since the purchase of the new RP would not occur within two years of the sale of the OP, the two-year requirement of Section 69.5, subdivision (b)(1) and (5) would not be met. Our position has been that the language in Section 69.5 mandates that claims for base year value transfer benefits are to be granted by assessors only if all the requirements are met. (See Letter to Assessors, No. 91/33, copy enclosed.)

If, however, a court ordered the rescission of your current purchase agreement with the builder and ordered the execution of another agreement binding you and the builder to a purchase/sale of a new RP, the assessor may determine that the first agreement was void or voidable and that the purchase agreement for your new RP reverts back to the September, 1991 acquisition date. Applied to your circumstances, there is a difference as to whether the contract was voidable or void.

Our past experience in this area has been that most such contracts, agreements, etc. are voidable and binding, not void, unless rescinded by a court. (California Civil Code Sections 38 et seq.) In the case of a rescission of a voidable contract, our position is that a change in ownership occurs initially, resulting in the eligibility of the RP for a transfer of base year value under Section 69.5; and that so long as the contract remains in effect, the transferred base year value (factored annually for inflation) remains in effect. Upon rescission of the voidable contract, there would be no change in ownership and the property would revert back to its previous base year value and should be enrolled at such value as of the date of rescission.

In your case, this would mean that if the contract or deed of trust on your present RP was voidable and a court ordered rescission, the change in ownership that occurred upon its execution in September 1991 would remain in effect and the RP would revert back to the builder and be enrolled at its previous base year value, giving you the opportunity to claim a transfer of base year value on another RP from the builder in another contract.

Alternatively, if the contract or deed of trust was determined by a court to be void, then rescission of the contract or deed of trust would not be necessary, since it is deemed to have been void from its inception. In such case, no change in ownership would have occurred. This would mean that the first RP would revert back to the builder as though you never purchased it. There would be no way to "revert" the purchase of your new RP back to the September 1991 date, unless the court order directed otherwise or rescinded the sale of your OP permitting you to move it to a later date.

As previously indicated, it is more likely that a court would find the contract or deed of trust voidable rather than void. In either case, the judgment (stipulated or otherwise) of the court against the builder stating that the contract or deed of trust was voidable or void, or any other evidence offered, would have to be acceptable to the Orange County Assessor in determining whether all the requirements under Section 69.5, including timing, were met.

Our intention is to provide courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this objective are appreciated. Due to the factual determinations which must be made in reaching a decision

Mr. and Mrs. ~~Smith~~ -6-

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concerning your hypothetical, we advise you to consult with the Orange County Assessor in this matter.

Sincerely,



Kristine Cazadd
Tax Counsel

KEC

cc: Honorable Gregory J. Smith
San Diego County Assessor

Mr. John W. Hagerty - MIC:63
Chief, Assessment Standards Division - MIC:64

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

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Executive Director

November 6, 1997

Re: Proposition 60 Assessment Dispute

Dear Mr. Boyer:

This is in response to your letter of August 28, 1997 addressed to Chief Counsel Timothy Boyer in which you request a legal opinion addressing the manner in which the claim for transfer of base year value of your client, J. L. [redacted], has been processed by the San Francisco Assessor's Office. You question whether the assessor's office follows procedures that adequately provide a taxpayer with actual notice of the base year value transfer. You also ask whether the assessor has discretion to rescind the transfer when there has been a processing error, whether a transfer based on an unsigned claim form is void and whether the notice given by the assessor's office was void because it was sent after the date on which Mr. [redacted] was required to exercise his right to rescind. I have reviewed the numerous documents accompanying your letter and have spoken by telephone with Mr. [redacted] and with [redacted] of the San Francisco Assessor's Office. Based on that information, my understanding of the relevant facts is as follows:

Mr. [redacted] sold a residence at 1040 Green Street ("Green Street") in May 1994 and purchased another residence at 1150 Sacramento Street ("Sacramento Street") in June 1994. In July 1994 [redacted] submitted a claim for transfer of the base year value from Green Street to Sacramento Street. The assessor's office processed the claim even though the form was unsigned and incorrectly stated that the date of purchase of the replacement property, Sacramento Street, was May 14, 1994, rather than June 14, 1994. The assessor's office sent Mr. [redacted] a Notice of Supplemental Assessment on November 19, 1994 which showed a change in ownership date of June 14, 1994, a new base year value of \$765,000, a current roll value of \$1,462,000 and a supplemental assessment of a negative \$697,000. Mr. [redacted] was later mailed a 1994-95 tax bill for Sacramento Street showing an assessed land value of \$986,923, improvements value of \$475,977 and total tax due of \$17,059.52. On February 4, 1995 a warrant payment attachment in the amount of \$8,861.92 was sent to Mr. [redacted] showing a negative

assessment of \$761,988, an event date of June 10, 1994, a notice date of November 19, 1994 and an enrolled date of January 16, 1995. On September 19, 1995, [redacted] submitted another claim form, this time signed, to transfer the base year value from Green Street to Sacramento Street. The second claim form was stamped as received by the assessor's office on September 20, 1995.

Mr. [redacted] states that on or about November 6, 1995 he called the assessor's office and told [redacted] that he did not want the second claim processed. Mr. [redacted] recalls that Mr. [redacted] told him that the claim had not been received and that he would place a note in the file not to process the claim if received. As a result of that conversation, Mr. [redacted] states that he believed that neither claim had been processed and that he did not become aware of the base year value transfer from Green Street to Sacramento Street until he filed a claim for base year value transfer to his current residence in Tiburon. Upon filing that claim, he was told by the Marin County Assessor's Office that the San Francisco Assessor's Office reported that a prior claim had been processed.

For the reasons set forth below, it is our view that the San Francisco Assessor's Office provided the notice of supplemental assessment as required by law, and section 69.5 does not require a separate notice of the base year value transfer. The rescission provisions of section 69.5 do not require notice of base year value transfer as a prerequisite to application of those provisions. Furthermore, those rescission provisions prescribe specific time periods and procedures for rescinding a claim for property tax relief and the assessor has no discretion in that regard.

It is also our view that the assessor's office should not have processed the first claim form because it lacked a signature. However, the assessor's office staff reasonably determined that Mr. Lampley intended to claim the benefit of the base year value transfer as was later confirmed by the filing of a second signed claim form. Because Mr. [redacted] filed the second claim form, was granted the benefit of the base year value transfer and failed to file a timely written notice of rescission, in our opinion, Mr. [redacted] is now barred from rescinding his claim.

LAW AND ANALYSIS

Adequacy of Notice

Section 69.5 provides for transfer of a base year value from an "original property" to a "replacement dwelling" by any person over 55 years of age, or any severely and permanently disabled person who resides in property that is eligible for the homeowners' exemption. Upon the timely filing of a claim and compliance with conditions for eligibility, subdivision (h) requires an assessor to adjust the new base year value of the replacement dwelling in accordance with the provisions of the section as of the latest of

the date that the original property is sold, the date that the replacement dwelling is purchased or the date that the new construction of the replacement dwelling is completed.

However, there is no requirement that the assessor notify a claimant of a base year value adjustment resulting from the transfer and, in the absence of an express notice requirement, the supplemental assessment notice provisions of section 75.31 must govern. Based on the documents provided, it appears that the assessor's office complied with those provisions.

Rescission Provision

Subdivision (i) of section 69.5 allows a claimant to rescind a claim for transfer of base year value provided a written notice of rescission signed by the original claimant and accompanied by the required fee is delivered to the assessor's office within the prescribed time period. Notice to the applicant is not a precondition to the applicability of the rescission provision and, in most cases, such notice would not be necessary because a claimant would be aware that he or she had filed a claim. In view of the express limitations set forth in subdivision (i), the assessor has authority to grant a rescission only in compliance with those requirements which, as you are aware, preclude a rescission in this instance.

Validity of Claim Form

Subdivision (f) of section 69.5 sets forth the specific information that a claimant must submit to an assessor's office in a claim for base year value transfer. While a signature is not expressly required by subdivision (f), the form adopted to implement such transfers includes an attestation under penalty of perjury and a signature line. Generally, and here, a signature is necessary to give effect to a document and to attest to its validity, and the absence of a signature is sufficient reason for rejecting a claim form. Therefore, it is our opinion that the assessor's office erred by processing the first unsigned claim form.

Although the assessor's office processed the unsigned form, Mr. Lampley may not rely on that error to avoid the rescission provisions of section 69.5. Based on the contents of the first unsigned claim form, which provided substantially all of the information required by subdivision (f), the assessor's office reasonably determined that Mr. Lampley intended to claim the benefit of the base year value transfer for his Sacramento Street residence. His intention was later confirmed by the submission of the second signed claim form which would have been processed but for the first form previously processed. Therefore, it is our view that the second form validated the base year value transfer previously granted and, furthermore, that claim for property tax relief may not now be rescinded because proper rescission procedures were not followed.

November 6, 1997

While Mr. Lampley may have called the assessor's office to request that the second form not be processed, a rescission may be granted only if the requirements of subdivision (i) are met. That subdivision provides in pertinent part

(i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), if a written notice of rescission is delivered to the office of the assessor in which the original claim was filed and all of the following have occurred:

- (1) The notice is signed by the original filing claimant or claimants.
- (2) The notice is delivered to the office of the assessor before the date that the county first issues, as a result of relief granted under this section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any portion thereof, imposed upon the replacement dwelling, consistent with relief granted under this section, are delinquent.

Based on the facts presented, after filing the second claim form, Mr. Lampley did not submit a signed written notice of rescission to the assessor's office either prior to the time that property taxes were paid or prior to the date that property taxes became delinquent, December 10. Even if Mr. Lampley had been incorrectly informed that the assessor's office had not received the second form, such an error would not excuse him from complying with subdivision (i), which was and is the only available means for rescinding a claim for property tax relief.

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:sao

cc: Hon. Doris Ward, San Francisco County Assessor
Hon. Joan Thayer, Marin County Assessor
Mr. Timothy Boyer, MIC: 82
Mr. Dick Johnson, MIC:63
Policy, Planning, and Standards Division, MIC:64
Ms. Jennifer Willis, MIC:70

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