

## Memorandum

**To:** Ms. Glenna Schultz  
Policy, Planning and Standards Division

**Date:** November 21, 2000

**From:** Ken McManigal  
Tax Counsel IV

**Subject:** *Revenue and Taxation Code section 69.5(g)(4), "Replacement Dwelling"*

In your e-mail of November 9, 2000 you ask the following question:

Mr. L wants to purchase an 80-acre parcel, subdivide it into four 20-acre lots, sell 3 of the lots, build a home on the 4<sup>th</sup> and transfer the base year value of his original property to the one lot and house. The value of the 80-acre parcel plus the new construction will exceed the value of his original property. Would he be able to do this? If this would not work, could he sign two purchase contracts, one to buy 20 acres and the other to buy 60 acres?

Our answer to the basic inquiry is that the replacement dwelling would include the new construction plus the 80-acre parcel. As the value of the replacement property would exceed the value of the original property, the "equal or lesser value" requirement of section 69.5(g)(5) would not be met. However, as will be discussed, he may accomplish his goal by careful selection of the date reported to the assessor.

As will be further discussed, he can accomplish his goal by purchasing different portions under different contracts, if it is possible to accurately describe the 20 acres and if the value of the replacement dwelling and the 20 acres meet the "equal or lesser value" test. The answer would be more clear that he could do this if the parcel were first subdivided into appropriate lots.

Prior to 1996, subdivision (g)(3) of section 69.5 defined "replacement dwelling" to mean, in part, the dwelling and:

"... any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size that is used as a site for a residence, ..."

As you note, Stats. 1996, Ch. 897 added the fourth and fifth sentences to subdivision (g)(3) of section 69.5 to define "area of reasonable size":

"For purposes of this paragraph, 'area of reasonable size that is used as a site for a residence' includes all land if no portion of the property is used for commercial purposes. 'Commercial purposes' does not include activities that are incidental to the use of the property as a residential site."

Such was the subject of the January 14, 1997, Letter to Assessors No. 97/02, Legislative Changes to Revenue and Taxation Code Section 69.5, which provided in this regard:

“... The purpose of this amendment is to provide homeowners with more certainty in determining whether a particular replacement property would qualify for a base-year value transfer under the equal or lesser than value test when there is no commercial use of the property.

“Land area now includes *all* of the land that has been either sold (in the case of the original property) or acquired (in the case of the replacement dwelling), so long as no portion of the property is used for commercial purposes. For example, a claimant sold a home located on a 7500 square foot lot and replaced it with a home located on a 20-acre parcel. As long as the 20-acre parcel was not used for commercial purposes, the base year value of the land from the 7500 square foot lot original property could be transferred to the 20-acre parcel providing all the other qualifications are met (e.g., equal or lesser value, time limitation). . . .”

Thus, we have construed these amendments to mean that all land acquired in the case of a replacement dwelling, absent commercial purpose, is within the provision of subdivision (g)(3), assuming that all other qualifications are met.

Stats. 1997, Ch. 941 further amended subdivision (g)(3) of section 69.5 by substituting “any nonresidential uses of property are only” for “no portion of the property is used for commercial purposes. Commercial purposes does not include activities that are” in the fourth and former fifth sentences. This does not change the interpretation in Letter to Assessors No. 97/02 in this particular instance, however, so that the statement in the letter would, under the circumstances, read:

Land area now includes all of the land that has been . . . acquired (in the case of the replacement dwelling), so long as any nonresidential uses of the property are only incidental to the use of the property as a residential site.

Accordingly, if the replacement dwelling were to be constructed on the 80-acre parcel and a claim for transfer of the base year value filed, as the value of the replacement dwelling plus the value of the 80-acre parcel would exceed the value of the original property, the “equal or lesser value” requirement of section 69.5(g)(5) would not be met.

The contemplated new construction and the time for filing a claim for transfer of base year value, discussed in the April 29, 1991, Letter to Assessors No. 91/31, “Section 69.5 Base Year Value Transfer, etc.,” and in Kristine Cazadd’s February 2, 1999, memorandum to you, copies also attached, present an alternative “equal or lesser value” possibility. As stated in the February 2, 1999, letter:

1. To qualify for section 69.5 property tax relief, subdivision (f) requires that the claimant must first file a claim with the assessor providing certain information necessary for the assessor to make the value comparison test. Under paragraph 4 of subdivision (f) the claimant must state:

“The date of the claimant’s sale of the original property and the date of the claimant’s purchase or new construction of a replacement dwelling.” (Emphasis added.)

By stating one particular date, that is, either the date of purchase or the date new construction was completed for a replacement dwelling, the claimant is asking the assessor to determine the full cash value of the replacement dwelling, pursuant to section 69.5 (g)(6), as of that date. Full cash value of the replacement dwelling as defined in subdivision (g)(6) means its full cash value ... as of the date on which it was purchased or new construction was completed, and after the purchase or completion of new construction.

2. Once the claimant specifies the date for the purchase or the completion of construction of the replacement dwelling on the claim form (and signs under penalty of perjury and files with the assessor), the assessor is authorized by the language in section 69.5 (g)(6) to rely on that date for purposes of making the value comparison test. . . .

Thus, if at the time of completion of construction and filing a claim for transfer of base year value Mr. L had subdivided the 80-acre parcel into four 20-acre lots and sold 3 of the lots within the two year period required by section 69.5, the equal or lesser value requirement of section 69.5(g)(5) would be met, if the value of the replacement dwelling plus the value of the 20-acre parcel did not exceed the value of the original property.

You also ask, if the replacement dwelling would include the 80-acre parcel, could Mr. L sign two purchase contracts, one to buy 20 acres and the other to buy 60 acres.

If Mr. L purchased 20 acres, and if the value of the replacement dwelling and the 20 acres did not exceed the value of the original property, the “equal or lesser value” requirement of section 69.5(g)(5) would be met.

JKM:tr  
prop/prec/transbyv/00/09jkm

Attachments (LTA 97/02, LTA 91/31, Cazadd memo 2/2/99)

cc: Mr. Larry Augusta, MIC:82  
Mr. Dick Johnson, MIC:63  
Mr. David Gau, MIC:64  
Ms. Jennifer Willis, MIC:70