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450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
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May 31, 2007

Honorable Warren Slocum
San Mateo County Assessor
555 County Center, 3rd Floor
Redwood City, CA 94063-1655

Attn:

Re: Rescission of Proposition 90 Base-Year Value Transfer

Dear Assessor Slocum:

This is in response to a January 31, 2007 e-mail from _____, of your office, to Glenna Schultz, in the Board's Property and Special Taxes Department, which was referred to the Board's Legal Department. In Ms. _____'s e-mail, she inquired as to whether a Proposition 90¹ base-year value transfer could be rescinded after the taxpayer received a refund check from the county controller's office, but then returned the un-cashed check to the county controller before submitting a notice of rescission to your office.² Based upon the information provided, it is our opinion that the taxpayer would only qualify for rescission if the taxpayer could satisfy all of the requirements of Revenue and Taxation Code³ section 69.5, subdivision (i)(2)(B) as indicated in Letter to Assessors (LTA) 2006/010 (February 6, 2006).⁴

Law and Analysis

Proposition 60 added California Constitution article XIII, section 2, subdivision (a), paragraph 2, which contains intra-county base-year value transfer provisions. Proposition 90 was approved by the voters on November 8, 1988, and added a third paragraph to that subdivision, permitting the legislature to statutorily authorize county boards of supervisors to adopt ordinances extending the intra-county base-year value transfer provisions to inter-county base-year value transfers.

Proposition 60 and 90 are statutorily implemented through section 69.5. Section 69.5, subdivision (a) authorizes counties to adopt the necessary ordinances. However, section 69.5, subdivision (b)(7) limits eligibility for relief under any subsequently adopted ordinance to claimants who have not previously received relief under an ordinance adopted pursuant to

¹ Proposition 90 amended California Constitution article XIII A, section 2 effective November 9, 1988.
² A subsequent (April 17, 2007) e-mail from Ms. _____ indicated that your office has granted the taxpayer's rescission request, but desired our opinion for future guidance.
³ All further statutory references are to the Revenue and Taxation Code unless otherwise specified.
⁴ LTA 2006/010 is available on the Board's Web site at: www.boe.ca.gov/proptaxes/pdf/lta06010.

section 69.5, unless the claimant has become severely and permanently disabled since receiving such relief.

Section 69.5, subdivision (i)(1) permits a property owner, who has previously claimed relief under an ordinance adopted pursuant to section 69.5, to rescind such claim and be treated as though the property owner had not received relief by delivering a written notice of rescission signed by the claimant to the county assessor's office where the original claim was filed. However, a notice of rescission is only effective to restore the claimant's eligibility for relief, if it is filed within either of the two time periods contained in subdivision (i)(2). Under subdivision (i)(2)(A), effective September 30, 1990, the notice of rescission is effective if it is delivered to the assessor's office before the date the county first issues a refund check. If a refund is not applicable, then subdivision (i)(2)(A) requires that the notice be delivered before any property taxes are paid or become delinquent on the new transferred base-year value. Alternatively, under subdivision (i)(2)(B), effective January 1, 2001, the notice of rescission is effective if it is delivered to the assessor's office within six years after the base-year value transfer relief was granted, provided that the replacement property has been vacated as the claimant's principal place of residence within 90 days after the original claim was filed. As explained in LTA 2006-010, "*There are no exceptions or time extensions for extenuating circumstances.*" (See page 16, emphasis in original.)

The claimant described in Ms. _____'s e-mail could not have filed a notice of rescission within the time provided by section 69.5, subdivision (i)(2)(A) because the claimant did not deliver it to your office before the county issued a refund check. However, the claimant's notice of rescission would have been timely under section 69.5, subdivision (i)(2)(B), if it was filed within six years of the date the claimant's original claim for relief was granted, provided that the original replacement property was vacated as the claimant's principal place of residence within 90 days after the original claim was filed (and the rescission occurred after the effective date of subdivision (i)(2)(B)).

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.

Sincerely,

/s/ Steven M. Kamp

Steven M. Kamp
Senior Tax Counsel

SMK:sc
Prop/Prec/Transbyv/07/054.smk.doc
Enclosure

cc: Mr. David Gau MIC:63
Mr. Dean Kinnee MIC:64
Mr. Todd Gilman MIC:70