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March 8, 2002

No. 2002/016

TO COUNTY ASSESSORS:

REVENUE AND TAXATION CODE SECTION 69.5 (PROPOSITIONS 60, 90, 110):
BASE YEAR VALUE TRANSFER FROM PROPERTY DAMAGED
BY MISFORTUNE OR CALAMITY

Senate Bill 1184 (Chapter 613, Statutes of 2001) was recently enacted, which, in part, amends section 69.5 of the Revenue and Taxation Code¹ relating to transfers of base year value for persons over age 55 and disabled persons (Proposition 60/90/110). Specifically, Chapter 613 amends subdivisions (b) and (g) and adds new subdivision (m) to allow persons over the age of 55 or disabled persons to qualify for a Proposition 60/90/110 base year value transfer if their home was substantially damaged or destroyed by a misfortune or calamity and sold in its damaged state. While these changes became effective on January 1, 2002, they apply to any replacement property that was acquired or newly constructed on or after March 24, 1999.

HISTORY

Sections 69 and 69.3 authorize relief for taxpayers whose property has been damaged or destroyed by a major misfortune or calamity that caused the Governor to declare the area in which the property is located to be in a state of disaster. In general, these sections allow taxpayers to transfer the existing base year values of the damaged properties to qualifying replacement properties. Prior to the enactment of Chapter 613, however, no statute provided relief by way of a base year value transfer for property damaged or destroyed by a misfortune or calamity that was not part of an area subsequently proclaimed by the Governor to be in a state of disaster.

Propositions 60, 90, and 110 amended section 2 of Article XIII A of the California Constitution to allow a person over the age of 55 or disabled to sell their principal place of residence (original property) and transfer its base year value to a qualifying replacement residence (replacement dwelling). Revenue and Taxation Code section 69.5 is the statutory implementation for Propositions 60, 90, and 110.

While section 69.5 did not expressly prohibit base year value transfers from property that was damaged or destroyed, some of its provisions effectively precluded such transfers. For example, section 69.5 requires a comparison of property values, whereby the fair market value of the

¹ All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

replacement dwelling on the date of purchase or completion of new construction must be equal to or less than the fair market value of the original property as of the date of sale. If the original property had been damaged and not repaired or reconstructed as of the date of sale, it is the fair market value of the property in its damaged state that is used in the value comparison. Generally, under this scenario, the fair market value of the replacement dwelling would exceed the fair market value of the original property in its damaged state; thus, the benefit was denied because the value requirement of section 69.5 was not met.

Another requirement of section 69.5 is that the claimant own and reside in the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling. If the original structure was destroyed and, as a result, could not be occupied, it would not qualify as an original property.

CHANGES IN EFFECT JANUARY 1, 2002

Chapter 613 amends subdivisions (b) and (g) and adds subdivision (m) to allow a taxpayer to qualify for a Proposition 60/90/110 base year value transfer if their home was damaged or destroyed by a misfortune or calamity and sold in its damaged state.

Residency Requirement

Previously, section 69.5(b) required that the claimant own and occupy the original property under one of the following conditions:

- At the time of its sale, or
- Within two years of the purchase or new construction of the replacement dwelling.

As of January 1, 2002, Chapter 613 adds another alternative under which the original property may be owned and occupied by the homeowner:

- At the time when the original property was substantially damaged or destroyed by misfortune or calamity.

As a result of the claimant's ownership and occupation on the date of the misfortune or calamity, the property is eligible for the homeowners' exemption. The property does not have to actually receive the homeowners' exemption; it simply must be *eligible* for the exemption as a result of the owner occupying it as a principal residence.

Please note that the date of misfortune or calamity does not have to meet the "within two years" requirement that otherwise applies under section 69.5, but the sale of the original property in its damaged state does. For example, if a principal residence was destroyed in 1995 and sold in its damaged state in 2000, the property owner would have two years from the 2000 sale date to purchase a qualifying replacement property.

Full Cash Value of the Original Property

In order to solve the problem of the reduced market value of the damaged property at the time it is sold to a third party, Chapter 613 provides an additional method of determining the fair market

value of the original property. Effective January 1, 2002, the full cash value of property that has been substantially damaged or destroyed by misfortune or calamity and sold in its damaged state is determined in accordance with section 110 “immediately prior” to the damage or destruction, plus any inflation factoring applicable between the date of sale of the original property and the replacement property’s date of purchase or completion of new construction. [Section 69.5(g)(7)(B).]

Substantially Damaged or Destroyed

For purposes of section 69.5, an original property is “substantially damaged or destroyed by misfortune or calamity” if it sustains physical damage amounting to more than 50 percent of its full cash value immediately prior to the misfortune or calamity. Damage includes a diminution in the value of property as a result of restricted access to the property where the restricted access was caused by the misfortune or calamity and is permanent in nature. [Section 69.5(g)(13).] Case law² defines “disaster, misfortune, or calamity” as some event out of the ordinary, an unforeseeable, sudden, or unusual occurrence, in contrast to gradual deterioration or worsening condition over time. Damage to a building or land that occurs gradually due to ordinary natural forces is not caused by disaster, misfortune, or calamity.

As an example of substantial damage, assume the full cash value of an original property prior to a misfortune or calamity was \$200,000. The land is worth \$110,000, and the improvements \$90,000. If the improvements are destroyed without causing a decline in the land value, then the owner cannot transfer the base year value because the damaged property did not sustain damages amounting to more than 50 percent of its full cash value prior to the misfortune or calamity. However, if the total appraisal unit, both land and improvements, suffered damages of \$128,000, which is more than 50 percent of the full cash value of the property prior to the damage, then the owner can transfer the adjusted base-year value of the damaged property to a comparable replacement property.³ (As the example illustrates, in some cases, the destruction of the improvements could also cause a decline in the land value.)

Base Year Value of the Original Property

Section 69.5(g)(2) provides that, in general, the “base year value of the original property” is its base year value determined as of the date immediately prior to the date that the property is sold by the claimant plus any inflation factoring applicable between the sale of the original property and the purchase of the replacement. Chapter 613 amends subdivision (g)(2) to provide that, for an original property that has been substantially damaged or destroyed by misfortune or calamity and sold in its damaged state, the base year value to be transferred is to be determined as of the date immediately prior to the misfortune or calamity, plus applicable inflation factoring and any new construction completed during the period from the date of sale to the date of purchase.

Appeals

Staff has previously opined that the base year value of a replacement dwelling may be challenged on the ground that all of the requirements of section 69.5 have been met and,

² *T. L. Enterprises, Inc. v. Los Angeles County*, 215 Cal.App.3d 876.

³ Letter To Assessors No. 87/23, dated March 10, 1987, page 2.

therefore, the base year value of the original property should be transferred to the replacement dwelling.⁴ Accordingly, if a claim is denied because (1) the original property did not sustain damages amounting to more than 50 percent of its full cash value prior to the sale, or (2) the full cash value of the replacement property exceeded the full cash value of the original property immediately prior to the damage or destruction, the claimant may appeal the new base year value of the replacement property.

Effective Date

These changes apply to replacement dwellings that were purchased or newly constructed on or after March 24, 1999. [Section 69.5(m).] Property tax relief filed under subdivision (m) will apply prospectively, commencing with the lien date of the assessment year in which the claim is filed. There will be no refund or cancellation of taxes prior to the date the claim is filed.

Since subdivision (m) was added as of January 1, 2002, claims for relief under subdivision (m) may be filed after January 1, 2002. For claims filed in 2002, relief will apply as of January 1, 2002, for the 2002-03 fiscal year.

Claim Forms

Section 69.5(f)(5) requires that the State Board of Equalization prescribe the form for claiming eligibility. The existing claim forms (BOE-60-AH and BOE-62) are being updated through the regular forms-update process to provide for extension of this benefit to calamity-damaged property.

EXAMPLE

A residence was destroyed by fire on November 16, 1999. The property's factored base year value immediately prior to the fire was \$75,505. The homeowners, who are both over age 55, purchased a new residence in January 2000 for \$245,000. They sold the land of the destroyed residence in September 2000 for \$150,000. The estimated full cash value of the destroyed residence on November 15, 1999 (immediately prior to the fire) was \$350,000. The homeowners filed a claim in February 2000. Under the previous law, the claim was denied because the full cash value of the replacement residence exceeded the full cash value of the land of the destroyed residence.

- Under the new law, the base year value can be transferred from the destroyed residence to the replacement residence because the full cash value of the replacement residence on the date of purchase (\$245,000) is equal to or less than the full cash value of the destroyed residence immediately prior to the calamity (\$350,000).
- If the homeowners file an application for relief under section 69.5(m) in January 2002, relief would apply as of January 1, 2002, for the 2002-03 fiscal year. The transferred factored base year value to be enrolled for the replacement on the 2002-03 roll is \$80,126 (75,505 x 1.02 [2000-01] x 1.02 [2001-02] x 1.02 [2002-03]).

⁴ Annotation 200.0006 (C 7/2/96).

CONCLUSION

A copy of the amended portions of section 69.5 in ~~strikeout~~/underline format is enclosed. If you have any questions regarding the section 69.5 property tax relief, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property Taxes Department

DJG:grs
Enclosure

CHAPTER 613, STATUTES OF 2001

Section 69.5 of the Revenue and Taxation Code is amended to read:

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale, or at the time when the original property was substantially damaged or destroyed by misfortune or calamity, or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale, or at the time when the original property was substantially damaged or destroyed by misfortune or calamity, or within two years of the purchase or new construction of the replacement dwelling.

(g) For purposes of this section:

...(2) "Base year value of the original property" means its base year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant, or in the case where the original property has been substantially damaged or destroyed by misfortune or calamity and the owner does not rebuild on the original property, determined as of the date immediately prior to the misfortune or calamity.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base year value of the original property" shall be deemed to be the base year or years of any property to which that base year value is transferred pursuant to this section.

...(7) "Full cash value of the original property" means, either:

(A) Its new base year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(B) In the case where the original property has been substantially damaged or destroyed by misfortune or calamity and the owner does not rebuild on the original property, its full cash value, as determined in accordance with Section 110, immediately prior to its substantial damage or destruction by misfortune or calamity, as determined by the county assessor of the county in which the property is located, without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1, for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

...(13) For the purposes of this section property is "substantially damaged or destroyed by misfortune or calamity" if it sustains physical damage amounting to more than 50 percent of its full cash value immediately prior to the misfortune or calamity. Damage includes a diminution in

the value of property as a result of restricted access to the property where the restricted access was caused by the misfortune or calamity and is permanent in nature.

(m) The amendments made to subdivisions (b) and (g) of this section by the act adding this subdivision apply only to replacement dwellings that are acquired or newly constructed on or after March 24, 1999, and shall apply commencing with the 1998–99 fiscal year. The property tax relief provided by this section, but filed under this subdivision, shall apply prospectively only, commencing with the lien date of the assessment year in which the claim is filed. There shall be no refund or cancellation of taxes prior to the date that the claim is filed.