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TO COUNTY ASSESSORS:

DISASTER RELIEF – BASE YEAR VALUE TRANSFER

The Governor recently signed AB 1890 (Stats. 2006, ch. 317), which amends Revenue and Taxation Code section 69 to expand from three to five years the time period in which a property owner has to acquire or construct a property to replace one damaged or destroyed in a Governor-proclaimed disaster and remain eligible to receive a base year value transfer. While this change is effective as of September 18, 2006, it applies to property acquired as a replacement for property that was damaged or destroyed by a disaster occurring on or after July 1, 2003.

Section 69 provides that owners of real property that has been substantially damaged or destroyed in a disaster may transfer the base year value of the damaged property to a comparable property acquired or constructed as a replacement. Base year value transfers are available for all real property types. Specific requirements of section 69 include:

- The property was damaged or destroyed in a disaster for which the Governor proclaimed a state of emergency.
- The damaged or destroyed property must have sustained physical damage amounting to more than 50 percent of its current market value immediately prior to the damage.
- The replacement property must be located in the *same* county as the original property.
- For disasters occurring after July 1, 2003, the replacement property must be acquired or newly constructed within *five* years after the disaster.
- The replacement property is considered comparable if it is similar in size, utility, and function to the destroyed property.
 - Property is similar in *size and utility* if the market value of the acquired property does not exceed 120 percent of the fair market value of the replaced property in its pre-damaged condition.
 - Property is similar in *function* if the replacement property is subject to similar governmental restrictions, such as zoning. Thus, the replacement property must be of the same property type as the damaged property: residential, commercial, agricultural, or industrial.

- Any portion of the replacement property that is not similar in function, size, and utility, is considered to have undergone a change in ownership when the replacement property is acquired or newly constructed.

A taxpayer cannot receive relief under section 69 and under section 70 for the same damaged or destroyed property. Thus, if the owner of damaged or destroyed property receives tax relief under section 69 by transferring the base year value to a replacement property, then the damaged property will no longer be eligible for property tax relief under subdivision (c) of section 70 in the event the owner later reconstructs the damaged property.

A list of disasters for which the Governor has proclaimed a state of emergency is posted to the bottom of the Property and Special Taxes Department's homepage of the Board's website at www.boe.ca.gov/proptaxes/pdf/disasterlist.pdf. This list is updated as we become aware of any new proclamations.

Enclosed is a copy of section 69 with the changes in strike-out and underline format. If you have any questions regarding this 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 and Special Taxes Department

DJG:grs
Enclosure

Section 69 of the Revenue and Taxation Code is amended to read:

69. (a) Notwithstanding any other provision of law, pursuant to Section 2 of Article XIII A of the Constitution, the base year value of property which is substantially damaged or destroyed by a disaster, as declared by the Governor, may be transferred to comparable property within the same county which is acquired or newly constructed within ~~three~~ five years after the disaster, or five years in the case of the Northridge earthquake, as a replacement for the substantially damaged or destroyed property. At the time the base year value of the substantially damaged or destroyed property is transferred to the replacement property, the substantially damaged or destroyed property shall be reassessed at its full cash value; however, the substantially damaged or destroyed property shall retain its base year value notwithstanding the transfer authorized by this section. If the owner or owners of substantially damaged or destroyed property receive property tax relief under this section, that property shall not be eligible for property tax relief under subdivision (c) of Section 70 in the event of its reconstruction.

(b) The replacement base year value of the replacement property acquired shall be determined in accordance with this section.

~~The following procedure shall be used by the assessor in~~ assessor shall use the following procedure in determining the appropriate replacement base year value of comparable replacement property:

(1) If the full cash value of the comparable replacement property does not exceed 120 percent of the full cash value of the property substantially damaged or destroyed, then the adjusted base year value of the property substantially damaged or destroyed shall be transferred to the comparable replacement property as its replacement base year value.

(2) If the full cash value of the replacement property exceeds 120 percent of the full cash value of the property substantially damaged or destroyed, then the amount of the full cash value over 120 percent of the full cash value of the property substantially damaged or destroyed shall be added to the adjusted base year value of the property substantially damaged or destroyed. The sum of these amounts shall become the replacement property's replacement base year value.

(3) If the full cash value of the comparable replacement property is less than the adjusted base year value of the property substantially damaged or destroyed, then that lower value shall become the replacement property's base year value.

(4) The full cash value of the property substantially damaged or destroyed shall be the amount of its full cash value immediately prior to its substantial damage or destruction, as determined by the county assessor of the county in which the property is located.

(c) For purposes of this section:

(1) Property is substantially damaged or destroyed if it sustains physical damage amounting to more than 50 percent of its full cash value immediately prior to the disaster. 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 disaster and is permanent in nature.

(2) Replacement property is comparable to the property substantially damaged or destroyed if it is similar in size, utility, and function to the property which it replaces.

(A) Property is similar in function if the replacement property is subject to similar governmental restrictions, such as zoning.

(B) Both the size and utility of property are interrelated and associated with value. Property is similar in size and utility only to the extent that the replacement property is, or is intended to

be, used in the same manner as the property substantially damaged or destroyed and its full cash value does not exceed 120 percent of the full cash value of the property substantially damaged or destroyed.

(i) A replacement property or any portion thereof used or intended to be used for a purpose substantially different than the use made of the property substantially damaged or destroyed shall to the extent of the dissimilar use be considered not similar in utility.

(ii) A replacement property or portion thereof ~~which~~ that satisfies the use requirement but has a full cash value ~~which~~ that exceeds 120 percent of the full cash value of the property substantially damaged or destroyed shall be considered, to the extent of the excess, not similar in utility and size.

(C) To the extent that replacement property, or any portion thereof, is not similar in function, size, and utility, the property, or portion thereof, shall be considered to have undergone a change in ownership when the replacement property is acquired or newly constructed.

(3) "Disaster" means a major misfortune or calamity in an area subsequently proclaimed by the Governor to be in a state of disaster as a result of the misfortune or calamity.

(d) (1) This section ~~shall apply~~ applies to any comparable replacement property acquired or newly constructed on or after July 1, 1985.

(2) The amendments made by ~~the act adding this paragraph shall~~ Chapter 1053 of the Statutes of 1993 apply to any comparable replacement property that is acquired or newly constructed as a replacement for property substantially damaged or destroyed by a disaster occurring on or after October 20, 1991, and to the determination of base year values for the 1991–92 fiscal year and fiscal years thereafter.

(3) The amendments made by the act adding this paragraph apply to any comparable replacement property that is acquired or newly constructed as a replacement for property substantially damaged or destroyed by a disaster occurring on or after July 1, 2003, and to the determination of base year values for the 2003-04 fiscal year and fiscal years thereafter.

(e) Only the owner or owners of the property substantially damaged or destroyed, whether one or more individuals, partnerships, corporations, other legal entities, or a combination thereof, shall receive property tax relief under this section. Relief under this section shall be granted to an owner or owners of substantially damaged or destroyed property obtaining title to replacement property. The acquisition of an ownership interest in a legal entity which, directly or indirectly, owns real property is not an acquisition of comparable property.