

## Memorandum

To: Honorable Betty T. Yee, Chairwoman  
Honorable Bill Leonard  
Honorable Michelle Steel  
Mr. Steve Shea, Acting Board Member  
Honorable John Chiang

Date: August 20, 2009

From: Kristine Cazadd  
Chief Counsel

Subject: Other Chief Counsel Matters – August 31, 2009  
**Item Number M1 -**  
**Request for Authorization to File *Amicus Curiae* Brief**

*Grotenhuis; Grotenhuis Investments, Inc. v. County of Santa Barbara*  
Santa Barbara County Superior Court Case No. 01224393  
Second District Court of Appeal No. B212264

This memorandum is to request approval to file an *amicus curiae* brief in the above matter. This case has the potential for statewide impact on an important issue involving the legislature's intent in enacting Revenue and Taxation Code<sup>1</sup> section 69.5, and on the Board's interpretation and application of current law.

Section 69.5 statutorily implements Proposition 60, which added article XIII A, section 2, subdivision (a), paragraph 2 to the California Constitution. That section allows persons over the age of 55, and the disabled, to transfer the base year value of an original property to a replacement property if certain conditions are met. It states that:

any person over the age of 55 years, or any severely and permanently disabled person, who resides in property that is eligible for the homeowners' exemption . . . may transfer, subject to the conditions and limitations provided in this section, the base year value of that property to any replacement dwelling of equal or lesser value that is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property . . . .<sup>2</sup>

It further provides that, "Person' means any individual, ***but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind.***"<sup>3</sup> (Emphasis added.)

<sup>1</sup> All further statutory references are to the Revenue and Taxation Code unless otherwise specified.

<sup>2</sup> Rev. & Tax. Code, §69.5, subd. (a).

<sup>3</sup> Rev. & Tax. Code, §69.5, subd. (g)(11).

In this case, Grotenhuis Investments, Inc. owned property in the County of Santa Barbara. In June 2004, it sold that property to a third party and, in October 2004, purchased a replacement property. In April of 2005, David and Anna Grotenhuis, as individuals, filed a claim for a base year value transfer for the original property owned and sold by Grotenhuis Investments, Inc. to a replacement property purchased and owned by Grotenhuis Investments, Inc. This claim was denied by the Santa Barbara Assessor in August 2005, and an Application for Changed Assessment denied by the Assessment Appeals Board in October 2006.

The Santa Barbara County Superior Court found that David Grotenhuis was the “alter ego” of his corporation, Grotenhuis Investments, Inc., and held that he was entitled to transfer the base year value of the original property owned by the corporation under section 69.5 if title to the replacement property, owned by the corporation, is first transferred to himself.

If allowed to stand, this case would serve as precedent for individuals desiring to circumvent both the plain language and clearly expressed legislative intent of section 69.5 to utilize their corporations or other legal entities to receive the benefit of base year value transfers under section 69.5 that were intended only to benefit individuals. Furthermore, such an “alter ego” theory set forth by the Superior Court could potentially affect exemptions such as the homeowners exemption (Rev. & Tax. Code, § 218), and allow corporate status to be disregarded in order to facilitate tax avoidance. Finally, in the opinion of the Legal Department, the trial court decision constitutes a serious misapplication of the “alter ego” doctrine. The general rule is that courts should not disregard separate legal entities merely to grant relief from taxation.

For the above reasons, the Legal Department requests that the Board approve filing an *amicus brief* in this case. If you need more information or have any questions, please contact Assistant Chief Counsel Robert Lambert at (916) 322-0437 or Tax Counsel IV Richard Moon at (949) 440-3486.

Approved:



Ramon J. Hirsig  
Executive Director

KC:kec:gm

Attachments

J:/Chief Counsel/Finals/CCMattersGrotenhuis.doc

J:/LegalAffairs/Litigation/BoardMemos/Sales/StatusClosedOpenSessionOther/CCMattersGrotenhuis.doc

cc: Mr. Ramon J. Hirsig MIC: 73  
Mr. David Gau MIC: 63  
Mr. Robert Lambert MIC: 82  
Mr. Randy Ferris MIC: 82  
Mr. Dean Kinnee MIC: 64  
Mr. Todd Gilman MIC: 70  
Mr. Richard Moon MIC: 82

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA  
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GARY M. BLAIR, EXEC. OFFICER  
By Liana Campos  
LIANA CAMPOS Deputy Clerk

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA BARBARA**

DAVID GROTENHUIS, et. al.,  
  
Plaintiff,  
  
vs  
  
THE COUNTY OF SANTA BARBARA  
  
Defendant

Case No: 1244393  
  
**STATEMENT OF DECISION AFTER  
COURT TRIAL**

This is a suit for a taxpayer's refund under California Revenue and Taxation Code Section 69.5. The matter came on for court trial May 29, 2008 and was deemed submitted June 20, 2008 with the filing of post trial briefs. Attorney John Derrick appeared and represented the plaintiff. County Counsel Marie LaSala appeared and represented the defendant. The parties stipulated to the administrative record.

David Grotenhuis, attorney J. Robert Andrews, and Chris Lyon, operations division manager for the county assessor's office, all testified at trial. The court now issues its decision in favor of plaintiff as explained below.

**FACTS**

California Revenue and Taxation Code section 69.5 provides in part: (a)(1):  
Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article

1 XIII A of the California Constitution, **any person over the age of 55 years...who resides in**  
2 **property that is eligible for the homeowners' exemption** under subdivision (k) of Section 3 of  
3 Article XIII of the California Constitution and Section 218 **may transfer**, subject to the  
4 conditions and limitations provided in this section, **the base year value of that property to any**  
5 **replacement dwelling of equal or lesser value that is located within the same county and is**  
6 **purchased...by that person as his or her principal residence within two years of the sale by**  
7 **that person of the original property, provided that the base year value of the original**  
8 **property shall not be transferred to the replacement dwelling until the original property is**  
9 **sold.**

10 In 1994 David Grotenhuis and his wife Anna purchased a lot on Padaro Lane, Carpinteria,  
11 County of Santa Barbara, California, and replaced the existing shack on the land with a home  
12 that took two and a half years to build. They lived exclusively on the Padaro property until its  
13 sale. Sometime in 1999 Mr. Grotenhuis transferred title to Padaro Lane from himself and Anna  
14 to their solely held corporation, which holds all of his family investments.

15 On October 22, 2002, Title to the Padaro Lane house was re-conveyed back to Mr. and Mrs.  
16 Grotenhuis in order to refinance the mortgage. Mr. Grotenhuis wrote to the county to explain the  
17 transaction, in order to avoid being reassessed for taxes.

18 Mr. Grotenhuis turned 55 on November 5, 1996.

19 The County Assessor's Office permitted a homeowner's exemption on the Padaro Lane  
20 house for the tax years 1998 and 2000-2004 inclusive.

21 In June 2004 Mr. and Mrs. Grotenhuis sold the Padaro property for \$5,050,000 and bought  
22 2125 Ten Acre Road, Montecito, also in the County of Santa Barbara, for \$3,350,000, which to  
23 this day functions as their sole residence. Title to Ten Acre is held in the name of Grotenhuis  
24 Investments, Incorporated. Mr. and Mrs. Grotenhuis have a written lease with the corporation  
25 and they pay rent to it. The corporation in turn pays the mortgage, which is held in the name of  
26 the family trust. The corporate office is located in the den of the house. Mr. and Mrs. Grotenhuis  
27 are the corporation's sole officers and Mr. Grotenhuis is its sole owner: the company exists as a  
28 means of protecting their personal assets, including their real property.

1 On April 22, 2005, Mr. Grotenhuis requested a base year value transfer from the county  
2 assessor to have the tax base of the Padaro house transferred to the Ten Acre house. The request  
3 was denied, and after hearing before the Santa Barbara County Assessment Appeals Board, the  
4 board issued a written decision also denying the claim.

5 Mr. Grotenhuis testified that he would have arranged for title in the Ten Acre Road  
6 property to be held individually had he realized that it was critical to the County's decision  
7 regarding the continued granting of the homeowner's exemption. His lawyer, J. Robert Andrews  
8 testified that he told Mr. Grotenhuis that the homeowner's exemption roll-over was available to  
9 him in spite of the fact that the corporation held the title. Mr. Andrews has provided investment  
10 advice to the plaintiff since the 1970s.

11 Mr. Chris Lyons testified that the county *properly* granted the homeowner's exemption in  
12 this case. However, he claimed that the county also properly denied its extension in 2005 when it  
13 was discovered that the new property was no longer eligible, due to the fact that a corporation  
14 held title. He also stated that a property owner has an affirmative duty to inform the county of  
15 changes in title and ownership (this information is contained on the back side of every property  
16 tax bill issued by the county). He conceded on cross-examination by Mr. Derrick that the law  
17 permits the home owner exemption for some oddities such as owners who take property subject  
18 to a land lease, or owners of condominiums.

### 19 FINDINGS

20 There can be no question that Mr. Grotenhuis has established conclusively that he and his  
21 new home are eligible for the relief contained in RTC 69.5. He meets the age criteria, the house  
22 is located in the same county as the previous one, and its replacement cost was less than the  
23 original home.

24 As Mr. Derrick ably pointed out in his papers and argument, the California Revenue and  
25 Taxation Code does not explicitly set forth a requirement that an owner of property hold its title  
26 in order to qualify for the homeowner's exemption (an oversight by the legislature?). But as a  
27 matter of common sense, and for clarity's sake it is wise for an owner to do so. The law of real  
28 property relies upon written, recorded evidence of title in many contexts. Chain of title is proven

1 by the record kept by the county assessor's office. Thus, it was not unreasonable for the county  
2 to take a position denying tax relief in this matter, for corporations are not eligible under the  
3 relevant code section. To say otherwise would create an undue burden on the government to  
4 conduct investigations in every case in order to discern the true beneficial title to an otherwise  
5 eligible property.

6 The fact of the matter is that Mr. Grotenhuis is both the actual and beneficial owner of the  
7 subject property. He is Grotenhuis Investments, Incorporated. The court pierces the corporate  
8 veil here to discover that Mr. Grotenhuis is indeed the alter ego of his investment company.  
9 The court rejects the county's argument that the corporation failed to exhaust its administrative  
10 remedies by failing to appear in the administrative proceedings. Mr. Grotenhuis, its president and  
11 sole owner, was very much present for the proceedings and represented himself and the company  
12 individually and collectively.

13 This case turns on its own unique facts. Equity, ever flexible, demands that Mr. Grotenhuis  
14 receive the intended benefit of RTC 69.5. However, in order to receive a refund of all the excess  
15 tax paid to date, he must forthwith transfer title from himself (corporately) to himself  
16 (individually) and title shall remain in his given name for as long as he wishes to enjoy the  
17 protection of the homeowner's exemption.

18 SO ORDERED.

19  
20 September 9, 2008

*Denise de Bellefeuille*

JUDGE OF THE SUPERIOR COURT

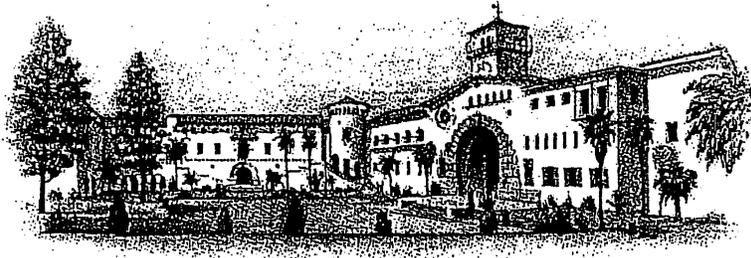
**DENISE G. BELLEFEUILLE**

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COUNTY OF SANTA BARBARA  
CLERK OF THE  
SUPERIOR COURT



SANTA BARBARA COUNTY  
ASSESSMENT APPEALS BOARD # 1

In Re:

David W. Grotenhuis, Trustee

Applicant

Application for Changed Assessment

# 05-0132

*Statement of Decision, Findings and  
Conclusions*

(Rev. & Tax. Code § 1611.5)

Santa Barbara County Assessment Appeals Board # 1 (Board) hereby adopts this  
*Statement of Decision, Findings and Conclusions* for Application for Changed Assessment  
# 05-0132 (Application.)

The Board held a hearing on the Application on June 22, 2006.

J. Robert Andrews, Attorney-at-Law, Mullen & Henzell L.L.P., appeared for Applicant.

Marie A. LaSala, Santa Barbara County Deputy County Counsel, appeared for the Santa  
Barbara County Assessor (Assessor.)

The Board examined the witnesses under oath; received documentary evidence presented to the Board by the parties; heard the arguments of the respective parties; and took the matter under submission.

Applicant requested findings and conclusions pursuant to Rev. & Tax. Code § 1611.5<sup>1</sup>, and this written decision is adopted in response to said request for written findings.

I  
Property

The real property that is the subject matter of the hearing on the Application is Assessor's Parcel No. 007-430-0111, located at 2125 Ten Acre Road, Santa Barbara, California 93108, hereafter designated as the "Replacement Property."

The other real property that is relevant to these proceedings is located at 3555 ½ Padaro Lane, Carpinteria, California, and is designated herein as the "Original Property."

II  
Application

The applicant named in the Application is *David W. Grotenhuis, Trustee of the Grotenhuis Family 1998 Living Trust established in July 1, 1998, lessee of the property pursuant to a thirty-five year lease*, (hereafter referred to as the "Family Trust.")

The Application claims that the base year value for the Replacement Property as set forth in the Assessor's *Notice of Enrollment of Escape Assessment* dated September 10, 2005, is incorrect.

The relief request by the Family Trust in these proceedings is the transfer of the base year value pursuant to § 69.5 of the Original Dwelling to the Replacement Property.

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<sup>1</sup> Citations to §§ are to the Revenue and Taxation Code unless otherwise indicated.

III  
Issues

A. Proposition 60: Transfer of Base Year Value

Proposition 13, enacted by Initiative Measure in 1978, established an acquisition system for real property tax assessment purposes. Real property taxes were calculated after 1978 on the basis of the fair market value of real property on the date of the change of ownership of the real property. Through time, several Initiative Measures exempted certain conveyances or changes of ownership of real property from reassessment under Proposition 13.

Proposition 60, enacted by Initiative Measure in 1986, amends § 2 of Article XIII A of the California Constitution to authorize the Legislature to allow for tax relief for senior citizens by permitting the transfer of base year values from original dwellings to replacement dwellings of equal or lesser value. Generally, Proposition 60 allows, subject to certain conditions and limitations, for the transfers of base year values for persons 55 years or older who reside in real property that is eligible for a homeowner's exemption

The issue is whether or not Applicant is entitled for the transfer of base year value from the Original Dwelling to the Replacement Dwelling.

IV  
Issue and burden of proof

This case involves the appeal from an escape assessment. Since at the beginning of the hearing it appeared that the properties at issue may have been owner-occupied single-family residences, the Board ruled, as a preliminary matter, that the Assessor had the burden of proof on the escape assessment pursuant to § 167(a) to show that the Applicant had not met the eligibility

requirements for the transfer of the base year value for the Original Property to the Replacement Property.

V

Estoppel: Assessor's Erroneous Grant of Homeowner's Exemption

Applicant contended at the hearing that the Assessor or the Board were estopped from finding or deciding that the Applicant was not eligible for the transfer of the base year value for the Original Dwelling to the Replacement Dwelling because the Assessor had erroneously granted a homeowner's exemption for the Original Property to a corporation, i.e. Grotenhuis Investments, a California Corporation, from September 9, 1999, the date the corporation acquired the Original Property, to June 18, 2004, the date the corporation sold the Original Property. Applicant has the burden of proof on the estoppel to show that the Assessor or the Board are estopped from denying the appeals on the ground that corporations are not eligible for the transfer of base year value from original dwellings to replacement dwellings.

VI

Enabling Legislative Authority for Proposition 60

Section 69.5 of the Revenue and Taxation Code implements Proposition 60. The Legislature enacted § 69.5 that prescribes the conditions and limitations for eligibility for senior citizen tax relief under Proposition 60.

Except for the condition that only a natural person is eligible to transfer the base year value from an original dwelling to a replacement dwelling, the Applicant satisfies the conditions and limitations for tax relief under § 69.5. Thus the legal issue in these proceedings is whether or not the Applicant satisfies the conditions and limitations under Proposition 60, as implemented by § 69.5, that only natural persons, i.e. senior citizens, are eligible to transfer base year values from original dwellings to replacement dwellings.

For purpose of eligibility for senior citizen tax relief, § 69.5, subdivision (g)(11), defines a person as:

“ ‘Person’ means any individual , but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind.”

VII  
Board’s Findings and Decision

After considering the evidence and argument presented by the parties, the Board makes the following determination based on the evidence herein.

1. The Original Property is located at 3555 ½ Padaro Lane, Carpinteria, California.
2. The Replacement Property is located 2125 Ten Acre Road, Santa Barbara, California.
3. David W. Grotenhuis, Trustee of the Grotenhuis Family Living Trust dated February 5, 1988, as amended, purchased the Original Property by deed recorded December 30, 1994. (See Exhibit A.) The seller in that transaction was Santa Barbara Capital, a California Limited Partnership. The general partners of Santa Barbara Capital were:
  - Grotenhuis Investments, Inc., a California corporation
    - Grotenhuis Investments, Inc., is authorized to issue 1000 shares of common stock, and David W. Grotenhuis, Trustee of the Grotenhuis Family Living Trust dated February 5, 1998, was the holder of only 10 of the common stock shares at all relevant times herein, (Exhibit C); and
  - W.G.S. Investments, Inc., a California corporation.
4. By deed recorded September 9, 1999, (Exhibit B), David W. Grotenhuis, Trustee of the Grotenhuis Family 1998 Living Trust established July 1, 1998, (a revocable trust [see

Exhibit I]), conveyed the Original Property to Grotenhuis Investments, Inc., a California corporation.

- Note: The Grotenhuis Family 1998 Living Trust established July 1, 1998, restates the Grotenhuis Family Living Trust dated 2/5/88. The term Trustee hereinafter refers to David W. Grotenhuis in his capacity as trustee for both trusts.

5. The Trustee of the Grotenhuis Family Living Trust dated February 5, 1988, did not acquire a homeowners exemption on the Original Property in 1990 from its purchase in 1994 up to its sale in 1999. However, the Assessor erroneously granted the Grotenhuis Investments, Inc., a California corporation, a homeowners exemption on the Original Property from the purchase of the Original Property until its sale to a third party on June 18, 2004. Corporations are not eligible for the homeowners exemption and the Assessor corrected that error in 2004 on discovery of the error on the sale of the Original Property to a third party in 2004.
6. By deed recorded June 18, 2004, (Exhibit E), Grotenhuis Investments, a California Corporation, sold the Original Property to S. Berkhoff, Trustee of the Profile Property Trust for \$5,050,000.00 .
7. By deed recorded October 8, 2004, (corrected and recorded on October 21, 2004, [Exhibit F]), Grotenhuis Investments, Inc., a California Corporation, purchased the Replacement Property. The purchase price was reported to be \$2,316,134.
8. March 1, 2005, new construction was completed on the replacement property on in the amount of \$1,966,134. (See Exhibit I).

9. Grotenhuis Investments, Inc., a California Corporation, leased the Replacement Property to the Trustee of the Grotenhuis Family 1998 Living Trust Established July 1, 1998 for a term of 35 years. Certain material terms of the lease agreement, (Exhibit G), are that the lease:

- Contains formal standard and sophisticated lease provisions;
- Is signed on April 3, 2005;
- Is retroactively made effective to October 8, 2004, i.e. the purchase date of the Replacement Property;
- Provides for rent at the rate of \$10,000 per month: and
- Is for a 35-year term, which 35-year term might constitute a change of ownership for property tax assessment purposes under Property Tax Rule 462.100 (18 CCR 462.100.) Rule 462.100, subd. (a)(1)(A), provides that the transfer of a lessor's interest in taxable real property for a term of 35 years or more creates a change in ownership in such property on the creating of a leasehold interest in the real property for a term of 35 years or more. In this case, the lease was backdated so that the remaining term from the execution date of the lease was less than 35 years. Whether or not a lease that is backdated so as to result in a term less than 35 years from the execution date of the lease, which execution date would ordinarily be the commencement date of the 35-year term, is a change of ownership for real property tax assessment purposes was not raised as an issue, briefed nor argued in this case.

10. The Trustee of the Grotenhuis Family 1998 Living Trust Established July 1, 1998, filed a claim (Exhibit I), on April 22, 2005, with the Assessor to transfer the base year value from the Original Dwelling to the Replacement Dwelling. The claim to transfer base year value was apparently signed on April 3, 2005, by David W. Grotenhuis and Anna R. Grotenhuis in their individual capacities.

11. The lease of the Replacement Property to the Trustee of the Grotenhuis Family 1998 Living Trust Established July 1, 1998, which lease might have constituted a change of ownership under Property Tax Rule 462.100, subd. (a)(1)(A), was also signed on April 3, 2005, the very same date on which the claim to transfer base year value was signed. The significance of the simultaneous signing of the lease and the claim is that:

- None of the principals involved in these transactions acting on behalf of the Applicant, (i.e. the term principals refers to David W. Grotenhuis, in his capacity as a trustee; David W. Grotenhuis and Anna R. Grotenhuis in their individual capacities; and the attorneys or other estate planning professionals who structured this complex interconnected structure of conveyances between corporations, partnerships, trusts and individuals), contacted at any relevant time herein the Assessor about the conditions or requirements for the transfer of base year value from the Original Property to the Replacement Property;
- The Assessor did not make any representations of any nature or form to such principals who acted on behalf of the Applicant concerning the transfer of base year value from the Original Property to the Replacement Property.

- The Applicant only relied on his own principals in making decisions and taking action regarding this complex structure of conveyances as they relate to: (a) the transfer of base year value from the Original Property to the Replacement Property; and (2) the possible creation of a change of ownership in the Replacement Property on the execution of the 35-year lease;
- The fact that such principals arranged for the creation of the change of ownership from the Trust to the Trustee on the very same day, i.e. April 3, 2005, that David and Ana Grotenhuis signed the claim for the transfer of base year value is a strong indication that such principals very well knew that transfers of base year values did not apply in situations involving transfers of real property by corporations. The apparent purpose and the intent for creating the 35-year lease and backdating the effective date of lease to October 8, 2004, was to somehow “undo” or “modify” the transaction and thereby make Applicant eligible for the transfer of base year value for the Original Property to the Replacement Property.
- The fact, which fact is inferred from the evidence, that the principals were sophisticated enough to know that corporate transfers of real property did not qualify for transfers of base year value appears to indicate they may have known that corporations were not eligible for the homeowners exemption and that they did not inform the Assessor of this fact even though the corporation enjoyed the benefit of the homeowners exemption for about 6 to 7 years. Instead of supporting their claim for equitable

relief, their continued enjoyment of the homeowners exemption when they were not entitled to it and under circumstances, without any participation by the Assessor, where they alone created the complicated structure for estate planning purposes for the several transfers of the Original Property and the Replacement Property undercut their claim for equitable relief.

12. Concerning Applicant's contention that the Assessor is estopped from asserting that Applicant is not eligible for the transfer of the base year value from the Original Dwelling to the Replacement Property, neither Applicant nor Assessor presented legal authority or hearing briefs on whether the doctrine of estoppel is applicable to taxing authorities in the assessment, equalization and collection of taxes. Through legal research conducted by counsel for the Board, the Board determines that the doctrine of estoppel may apply in appropriate factual situations to the assessment, equalization and collection of taxes. For the legal principles for the application of the doctrine to tax assessments, see the following legal authorities:

- *United States Fidelity and Guaranty Company v. State Board of Equalization* (1956) 47 Cal.2d 384 [303 P.2d 1034];
- *Goodwill Industries of Southern California v. County of Los Angeles* (1953) 117 Cal.App.2d 19 [254 P.2d 877]; and
- 69 Ops. Cal. Atty. Gen. 168 (1986).

The one case cited by Applicant in support of its estoppel claim is *Gregory J. Smith v. State Board of Equalization* (1997) 53 Cal.App.4<sup>th</sup> 331 [61 Cal.ptr.2d 604]. *Gregory J. Smith, supra*, is factually distinguishable from the facts of this case and involves statutory interpretation, i.e. a question of law, regarding entitlement to a tax

exemption. *Gregory J. Smith, supra*, does not discuss, decide nor apply the doctrine of estoppel to tax assessments.

Consequently, the Board finds that the legal principles on estoppel enunciated in the immediately preceding legal authorities do not apply to the facts and circumstances of this case. Thus, the Board determines that neither the Assessor nor the Board is estopped to determine and find that Applicant is ineligible for the transfer of base year value from the Original Dwelling to the Replacement Property.

#### VII Decision

13. For the above stated reasons, the Board denies Application to transfer the base year value from the Original Dwelling to the Replacement Property because:

- The seller of the Original Dwelling was a corporation and the very same corporation was the purchaser of the Replacement Dwelling. By the express terms of Rev. & Tax. Code § 69.5, subdivision (g)(11), a corporation is expressly excluded from the definition of the term person, which term as defined therein only means a natural person, i.e. an individual. Consequently, the corporation is not eligible for the transfer of the base year value from the Original Dwelling to the Replacement Property. Any attempt by Applicant to recharacterize the transactions after the fact to support their contentions that the transfers were in reality between individuals does not support the Applicant's case. Under *Penner v. County of Santa Barbara* (1995) 37 Cal.App.4<sup>th</sup> 1672 [44 Cal.Rptr.2d 606], the Board may apply the step transaction to determine what actually

occurred in the transactions involving the Original Dwelling and the Replacement Property. Applying the step transaction, the Board determines that the transfers of the Original Dwelling and the Replacement Property involved a corporation, not individuals.

- The facts and circumstances of this case do not warrant the application of the doctrine of equitable estoppel so as to bar the Assessor or the Board from determining that Applicant is not eligible for the transfer of base year value from the Original Dwelling to the Replacement Property.

VIII

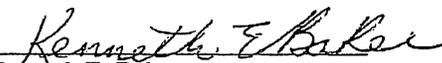
Notice for Judicial Review

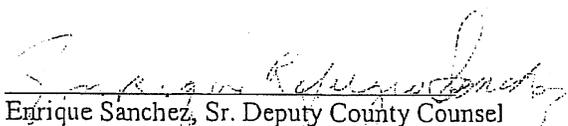
14. The time limits and procedures for judicial review of a decision of the Board by the taxpayer/Applicant are governed by § 4808 or §§ 5140 through 5149.5, depending on the nature of the review sought.
15. The time limits for judicial review of the decision of the Board by the Assessor, any governmental officer, agency or entity are governed by § 1615. Any request for a transcript of the proceedings of the Board has to be made within Sixty (60) days following the date of the final decision by the Board. (See § 1611.)

Dated:                      18, 2006

  
Marilyn Anticouni, Chair

  
Camillo Wilde

  
Kenneth E. Baker

  
Enrique Sanchez, Sr. Deputy County Counsel  
Counsel for the Board

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