STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
TELEPHONE (916) 445-5580
FAX (916) 323-3387
www.boe.ca.gov

June 7, 2000

Subject: ***Revenue and Taxation Code Section 69.5 – Validity of Proposed Ordinance Retroactively Granting Relief Solely to Severely and Permanently Disabled Claimants***

Dear Mr.

This is in reply to your inquiry of May 24, 2000 in which you request a legal opinion concerning a proposed Revenue and Taxation Code section 69.5 ordinance which would apply retroactively to claims made by severely and permanently disabled persons but not to persons over 55. As you have stated, the County Board of Supervisors adopted an ordinance permitting intercounty transfers of base year values to persons over age 55 and to severely and permanently disabled persons. The ordinance expired in but the assessor continued to grant claims that were filed subsequently. As a result, the assessor has requested your advice as to whether the Board may enact another ordinance that would apply retroactively but only to severely and permanently disabled persons.

For the reasons set forth below, an ordinance permitting intercounty base year value transfers may not restrict the relief provided by section 69.5 only to severely and permanently disabled persons. However, an ordinance may have retroactive effect if the language of the ordinance expressly so provides.

Law and Analysis

Pursuant to the authority of subdivision (a) of Section 2 of Article XIIIA of the California Constitution, section 69.5, subdivision (a)(1) generally provides that, subject to the conditions and limitations of that section, any person over the age of 55 years, or any severely and permanently disabled person, who resides in property that is eligible for the homeowner's exemption may transfer the base year value of that property to any replacement dwelling of equal or lesser value

that is located within the same county. Subdivision (a)(2) further provides that, regardless of the limitation in paragraph (1) requiring that the original property and the replacement dwelling be located in the same county, a county board of supervisors may adopt an ordinance "making the provisions of paragraph (1) also applicable to situations in which replacement dwellings are located in that county and the original properties are located in another county within this state." However, a board of supervisors is authorized to adopt an intercounty base year value transfer ordinance only if the ordinance complies with the requirements set forth in paragraph (2).

Among those requirements, subparagraph (B) of paragraph (2) provides, in effect, that an intercounty base year value transfer ordinance must include persons over age 55 and severely and disabled persons eligible for the relief afforded by section 69.5. That subparagraph provides that the ordinance must require that "all claims for transfers of base year value from original property located in another county be granted if the claims meet the applicable requirements of both subdivision (a) of Section 2 of Article XIIIA of the California Constitution and this section." Article XIIIA, section 2, subdivision (a) provides, in relevant part, that a base year value may be transferred by any person over the age of 55 years, and that the Legislature may extend those base year value transfer provisions to transfer by severely disabled persons. As stated above, section 69.5, subdivision (a) applies the relief to any person over the age of 55 and to any severely and permanently disabled person. Thus, the specific language of the foregoing constitutional and statutory provisions, which provisions subparagraph (B) incorporates by reference, extends eligibility to both groups, persons over the age of 55 and severely and permanently disabled persons, without exception.

In addition to the plain language of the statute, the ballot pamphlet analysis for the initiative that provided for the extension of Article XIIIA, section 2, subdivision (a) to severely disabled persons indicates that the base year value transfer relief for severely disabled persons was intended as an addition, and not an alternative, to the relief afforded persons over the age of 55. The analysis for Proposition 110, the ballot initiative approved by the voters in 1990, states that it would authorize the Legislature to "[a]llow severely disabled homeowners, regardless of their age, to transfer the assessed value of their existing home to a replacement home in the same way now provided for homeowners over the age of 55 . . ." The Legislature implemented Proposition 110 by amending section 69.5 to add severely and permanently disabled persons as eligible for the relief afforded by that section. A county board of supervisors has no authority to adopt an ordinance contrary to the voters' intent and legislative implementation.

With respect to the second issue, retroactivity, another of the ordinance requirements, subparagraph (E) of paragraph (2), permits an intercounty transfer ordinance to have retroactive effect. That subparagraph requires that the ordinance state "the date on and after which its provisions shall be applicable" and specifically provides that "[t]he specified applicable date may be a date earlier than the date the county adopts the ordinance."

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.

Very truly yours,

/s/ Louis Ambrose

Louis Ambrose
Tax Counsel

LA:tr
prop/prec/transbyv/00/03lou

cc: Mr. Dick Johnson, MIC:63
Mr. David Gau, MIC:64
Mr. Charles Knudsen, MIC:61
Ms. Jennifer Willis, MIC:70