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

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April 3, 2001

Mr. Ron Thomsen, MAI, Assessor
County Administration Building
1221 Oak Street
Oakland, CA 94612-4288

Attn: Mr. Henri Phelan,

**Subject: *Proposition 90 Inquiry on Lease of Replacement Property
Request for Legal Opinion***

Dear Mr. Phelan,

This is in reply to your letter of February 26, 2001 addressed to Senior Tax Counsel Kristine Cazadd in which you inquire about proper application of Revenue and Taxation Code section 69.5. In the situation that you describe, a taxpayer over the age of 55 purchased a replacement dwelling within two years of the sale of an original property. He had rented out two bedrooms of the original property. In order to qualify the transaction as a tax-free exchange, he will rent out the entire the replacement dwelling for two years after which time he intends to occupy it as his principal residence and file a claim for base year value transfer pursuant to section 69.5.

You ask whether the taxpayer would be eligible to file a claim for an intercounty transfer of base year value pursuant to section 69.5 and, if so, the date on which the claim would be effective. For the reasons set forth below, the taxpayer would be eligible to file a claim if done within three years of the purchase of the replacement dwelling. If timely filed, the claim would be effective from the date of the purchase of the replacement dwelling.

Law and Analysis

Section 69.5, subdivision (a) of the Revenue and Taxation Code generally provides that any person over the age of 55 years or any severely and permanently disabled person who resides in property which 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 which 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, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

Subdivision (b) provides that, in addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by section 69.5 shall be eligible for that relief only if, among other specified conditions

- (4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.
- (5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling.

Subdivision (f) provides that “[a]ny claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed subject to subdivision (k).” Paragraph (5) under subdivision (f) requires that the form filed by the claimant shall include “A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of filing his or her claim.” (Emphasis added.)

Under the facts presented, the replacement dwelling was purchased within two years of the date of sale of the original property and, thus, the transaction meets the purchase and sale time limitations period of subdivisions (a) and (b)(5). Secondly, the claim will be filed within three years of the date of purchase of the replacement dwelling as required by subdivision (f). Finally, at the time that the claim is filed, the replacement dwelling will be occupied by the taxpayer as his principal residence and presumably will be eligible for the homeowner’s exemption, thus satisfying the eligibility requirement of subdivision (b)(4) and (f)(5). Therefore, in response to your first question, the taxpayer would be eligible to file a claim for a transfer of base year value pursuant to section 69.5.

With respect to the effective date of the relief provided by section 69.5, subdivision (h)(1) provides that

Upon the timely filing of a claim, the assessor shall adjust the new base year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

- (A) The date the original property is sold.
- (B) The date the replacement dwelling is purchased.
- (C) The date the new construction of the replacement dwelling is completed.

In view of the specific dates provided by subdivision (h), the effective date of the claim and adjustment of the new base year value is the date of the purchase of the replacement dwelling. The purchase of the replacement dwelling was the latest of the three event dates specified in subdivision (h)(1); that event occurred after the sale of the original property and the replacement property was not newly constructed. Thus, as you conclude in your letter, the claim would be retroactive to the date of purchase of the replacement property.

Mr. John N. Scott, MAI, Assessor

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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,

Louis Ambrose
Tax Counsel

LA:tr

prop/prec/transbyv/01/05lou

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