



STATE OF CALIFORNIA

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Executive Director

March 23, 2001

Subject: *Request for Legal Opinion – Application of Proposition 60 to Two Condominium Units combined into One*

Dear Mr. _____,

This is in reply to your letter of February 2, 2001 in which you request our opinion concerning the transfer of a base year value from an original residence to a replacement dwelling consisting of two condominium units that will be converted to a single unit. The full cash value of the replacement dwelling will not exceed the full cash value of the original property. Your clients have already purchased one of the condominium units and intend to purchase another adjacent unit. They also intend to rent out the unit that they already own until commencement of construction. You ask whether the transaction will qualify under Proposition 60 so that your clients may transfer the property tax base year value of their original residence to the combined condominium units. As explained below, the combined condominium unit will qualify for the base year value transfer, provided that the time limitation and other requirements are met.

Law and Analysis

Proposition 60 was passed by California voters on November 4, 1986 and was implemented by chapter 186 of the statutes of 1987 (AB 60) which added section 69.5 to the Revenue and Taxation Code. Subdivision (a) of section 69.5 provides, in relevant part, 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 homeowners' exemption may transfer, subject to specified conditions and limitations, the base year value of that property to any replacement dwelling of equal or lesser value which is located in 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.

Subdivision (c)(1) specifies that the original property or replacement dwelling may be a unit or lot within a condominium project. Subdivision (b)(4) requires that at the time of claiming relief, the claimant must occupy the replacement dwelling as his/her principal place of residence,

and as a result thereof, the property is currently eligible for the homeowner's exemption. As you state in your letter, once the two units are combined they will constitute a single condominium unit. Thus, in order to meet the requirements of subdivision (c)(1) and subdivision (b)(4), the two units must be merged into one with the "lot line" dividing them removed (by approval of the appropriate local agency, per Government Code section 66451.10), so that the merged unit would qualify as a replacement dwelling (provided that all other requirements are met). The fact that one of the units is currently rented out by the claimant is not a disqualifying use of the property. However, it may be advisable to notify the county assessor's office of your intention to seek a merger combining the two units, in order to ensure that the unit is treated as a single dwelling eligible for the homeowners' exemption when the new construction is completed; since the claim cannot be filed until after such completion of new construction and merger.

With respect to the two-year requirement, the entire replacement dwelling property, i.e., both the land and structure must be purchased within two years of the sale of the original property. Among the eligibility provisions, subdivision (b)(5) provides that relief may be granted only if

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. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and that, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

Subdivision (g)(3) defines "replacement dwelling" to include any land owned by the claimant on which the replacement dwelling is situated. Thus, where land is purchased prior to the sale of the original property with the intention of constructing a replacement dwelling thereon, such land must be purchased within two years prior to the sale of the original property.

Board staff have taken the position that, pursuant to subdivision (b)(5), where land has been purchased within two years prior to the sale of the original property, if the new construction of the replacement dwelling is completed within two years after the sale of the original property then the claimant has met the two-year requirement, in effect, allowing the claimant a total of four years when new construction is involved. Under the facts presented, the condominium units are being purchased prior to the sale of the original property for the purpose of converting them to a single unit replacement dwelling. Thus, consistent with our view regarding new construction on bare land, in order to qualify for the base year value transfer relief, your client's sale of their original property must occur within 2 years of their purchase of both units, and the new construction converting those units to a single merged unit which is eligible for the homeowner's exemption, must be completed within two years after the sale of the original property.

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.

March 23, 2001

Page 3

Very truly yours,

/s/ Louis Ambrose

Louis Ambrose
Tax Counsel

LA:tr

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