



STATE BOARD OF EQUALIZATION

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Executive Director

November 4, 2002

Honorable Dick Frank
San Luis Obispo County Assessor
County Government Center, Room 100
San Luis Obispo, CA 93408-2070

Attn.:

Re: Base Year Value Transfer

Dear _____ :

This is in response to your letter of July 24, 2002 to Senior Tax Counsel Lou Ambrose, requesting our opinion regarding a possible transfer of a base year value, and whether or not the assessee would qualify for such a transfer based on the facts of the situation.

For the reasons set forth below, we conclude that the facts do not appear to support the conclusion that the taxpayer acquired the property for consideration as required by section 69.5. As such, the property does not appear to qualify for a transfer of base year value. With respect to his right to appeal, we have previously concluded that assessment appeals boards generally have authority to hear and decide denials of Revenue and Taxation Code section 69.5 claims.

Facts Presented

Richard ("Richard") inherited the replacement property effective April, 2000 from his sister-in-law, moved into it in November, 2000, and the property was reassessed as a result of this change in ownership, effective April 2000, at a new base year value of \$150,000. Richard and his wife sold their original property in September, 2001 for \$290,000, and timely filed a claim for transfer of base year value from the original property to the replacement property in October 2001 and in April 2002. Your office denied the claim, based on the fact that there was no sale and no consideration paid for the replacement property.

Richard contests your decision. He maintains that, although he "inherited" the property, in fact, the reason it had been given to him was because of the work he had done on the property for many years. If he had not maintained the property and cared for his sister-in-law, he believes he would not have received the property.

Your investigation indicates that, following his brother's death, Richard and his wife cared for his sister-in-law for 18 years by maintaining her property, taking her to medical appointments, and helping with all the many things that needed to be done for an ill, elderly lady living on her own. Richard admits that when they would pay for items from their own account, he was reimbursed for the funds advanced. Nevertheless, he contends that 18 years of caring for a widow and her property is sufficient consideration, and in fact represents a "purchase this home with a lot [of] blood, sweat and tears."

You ask whether these facts would establish sufficient "consideration" for the inheritance of the replacement property so that Richard would qualify for a transfer of base year value. Secondly, you ask, if Richard does not qualify, can the local appeals board hear evidence on whether or not a claim can be allowed for reasons other than value, such as "consideration", timeliness of filing, etc.

Law and Analysis

Eligibility of Replacement Property

As you are aware, Section 2 of Article XIII A of the California Constitution requires real property to be reappraised for property tax assessment purposes when "purchased, newly constructed, or a change in ownership has occurred. . ." It goes on to authorize an exception to this requirement, as follows:

However, the Legislature may provide that under appropriate circumstances and pursuant to definitions and procedures established by the Legislature, any person over the age of 55 years who resides in property that is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII and any implementing legislation may transfer the base year value of the property entitled to exemption, with the adjustments authorized by subdivision (b), to any replacement dwelling of equal or lesser value located within the same county *and purchased* or newly constructed by that person as his or her principal residence within two years of the sale of the original property. . . (Emphasis added.)

This constitutional provision is implemented by the Legislature in Revenue and Taxation Code section 69.5, which similarly provides that a base year value of an original property may be transferred to a qualifying replacement dwelling that is "*purchased* or newly constructed by that person as his or her principal residence . . ." Section 69.5 (a)(1). See also (b)(5). Thus, in order to qualify as a replacement property to which a base year value may be transferred, the property must be "purchased" or newly constructed. Revenue and Taxation Code section 67 defines "purchased" as "a change in ownership for consideration."

Therefore, we have consistently interpreted these provisions to mean that property which is inherited, is not "purchased", and is not eligible to be a replacement property to which a base

year value may be transferred. See Annotations No. 200.0086 (Ochsner 3/30/90 Letter), and 200.0087 (Eisenlauer 3/18/88 Letter and Ochsner 10/20/89 Letter), copies of which are enclosed.

The taxpayer, however, contends that he supplied consideration for the subject property in the form of services and assistance to the testator, his sister-in-law, over a lengthy period of time (following his brother's death), and that the property was left to him by his sister-in-law in exchange for these services and assistance.

We recognize that, in the proper circumstances, "consideration" used in Section 67 is not limited to cash, but could include the exchange of other property. See Annotated letter No. 200.0087 (Ochner), enclosed. However, we observe that in most situations involving inheritance, donors and testators know the beneficiaries of their gifts and bequests, and presumably have a personal or intimate relationship with them such that each party willingly performs services and provides assistance to and on behalf of each other without expectation of payment or requiring reimbursement. To say that such services in personal or intimate relationships constitute "consideration" in exchange for an ultimate bequest or gift means that the services were "for hire," and therefore tax returns filed by Richard would report the assets of the estate as income received rather than property inherited. In our view, in order to qualify as "consideration", the rendering of services or assistance must be of sufficient magnitude and proof such as to support the right to legally enforce a promise or contract to make the gift or inheritance.¹ In this regard, we note that Probate Code section 21700 provides that a contract to make a will or devise or other instrument, or not to revoke a will or devise or other instrument, or to die intestate, can be established only by a written agreement set forth in the instrument or in a separate writing, or by "clear and convincing evidence of an agreement . . . or a promise . . . that is enforceable in equity." In the absence of a written agreement, the courts have held that an enforceable agreement or promise can be oral, if the required elements for equitable estoppel, either unjust enrichment or detrimental reliance coupled with unconscionable injury are present. *Juran v. Epstein* (1994) 23 Cal.App.4th 882; *Estate of Housley* (1997) 56 Cal.App.4th 342. See 12 Witkin, *Summary of California Law*, 9th ed., *Wills & Trusts*, sec. 52, supp.

Under the facts you have supplied, there is nothing approaching "clear and convincing evidence" that there was a legally enforceable agreement or promise by Richard's sister-in-law to transfer the subject property to him in exchange for his services and assistance. No such agreement or promise is set forth or mentioned in the copy of the Last Will and Testament, by which Richard apparently inherited the property, that you enclose with your letter. Neither is such a written agreement accompanied with your letter, or mentioned in his handwritten statement. There appear to be no income tax returns showing he received the property in exchange for services, nor any other facts to support the occurrence of unjust enrichment or detrimental reliance coupled with an unconscionable injury. In fact, he admits receiving reimbursement, and the information and documentation supplied evidences a rather ordinary situation of an elderly relative willing her property to her sister and brother-in-law who maintained close personal contact with her. In our view, although the services and property are linked in Richard's mind, such a personal relationship does not rise to the level of

¹ "Consideration" is an elemental requirement of an enforceable contract, along with an offer and an acceptance.

“consideration” as required by the Constitution and the Revenue and Taxation Code to qualify the property as being “purchased” for replacement property under the transfer of base year value benefit.

Appeals Board’s Jurisdiction

With respect to your question about whether the local appeals board has jurisdiction to hear and decide an application under Section 69.5 on whether a claim can be allowed for reasons other than value, it is clear that the main function and purpose of the local appeals board is to review and equalize assessments and to set value. Article XIII, section 16 of the California Constitution mandates the appeals function, and provides that “the county board of equalization, under such rules of notice as the county board may prescribe, shall equalize the values of all property on the local assessment roll by adjusting individual assessments.” Such responsibility is amplified in Revenue and Taxation Code section 1601 *et seq.*

Revenue and Taxation Code section 1601 *et seq.* provide statutory requirements and procedures for the assessment appeals boards and the appeal process. The State Board of Equalization has adopted regulations, Title 18, California Code of Regulations, Sections 302 through 326 (referred to as Property Tax Rules) that implement the constitutional and statutory provisions that define the jurisdiction of and grant authority to assessment appeals boards. Property Tax Rule 302 provides, in relevant part, that the functions of an appeals board include

- (a) To lower, sustain, or increase upon application, or to increase after giving notice when no application has been filed, individual assessments in order to equalize assessments on the local tax assessment roll,
- (b) To determine the full value and, where appealed, the base year value of the property that is the subject of the hearing.

Property Tax Rule 301, defines a party affected or a person affected as “any person or entity having a direct economic interest in the payment of property taxes on the property for the valuation date that is the subject of the proceedings . . .”

Specifically extending the authority of local boards beyond the mere review and establishment of value, Revenue and Taxation Code section 1605.5, subdivision (a)(1) provides that they “shall hear applications for a reduction in an assessment in cases in which the issue is whether or not property has been subject to a change in ownership . . . or has been newly constructed . . .”

The issue that Richard would submit to the board is whether his acquisition of the replacement property by means of inheritance constitutes a purchase as required by Section 69.5(b)(5). That issue directly affects the base year value and the assessed value of Richard’s property, in that the transfer of base year value benefit is a constitutionally authorized exception

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to the change in ownership concept that results in a reduced value (transferred from his original home).

His application would appeal the assessor's denial of his claim for base year value transfer pursuant to section 69.5, which denial resulted in a higher assessed value for the replacement property, which he contends qualifies for a transfer of the base year value of his original property. The subject of the application and the proceedings would be the replacement property on which he as the owner has a direct economic interest in the payment of the property taxes for the valuation date, i.e., the date of the change in ownership. Thus, he is a party affected within the meaning of rule 301 and entitled to full hearing on the merits of the application.

The views expressed in this letter are advisory only; 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.

Sincerely,

/s/ Daniel G. Nauman

Daniel G. Nauman
Senior Tax Counsel

Enclosures

DGN:eb

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cc: Mr. David Gau, MIC:63
Chief of PPSD, MIC:64
Mr. Charles Knudsen, MIC:62
Ms. Jennifer Willis – MIC:70
Ms. Glenna Schultz, MIC:61