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August 11, 2003

Re: **Qualification of Property for a Base Year Value Transfer under Section 69.5.**

Dear Mr. :

This is in response to your February 19, 2003 letter to Assistant Chief Counsel Kristine Cazadd regarding the qualification of property for a base year value transfer under Revenue and Taxation Code section 69.5. Please excuse the delay in responding, as previously-scheduled Board matters have occupied our time. As described in more detail below, the property owner in question would qualify for property tax relief under section 69.5 and be allowed to transfer the base year value of his original home to his replacement dwelling.

Factual Background

Based upon the information provided in your letter, the following facts apply:

1. X, over age 55, is the owner and resident of a home, which is eligible for the homeowners' exemption. X has not previously been granted relief under section 69.5.
2. At the beginning of Year 1, X vacates his home and leases it as income-producing property.
3. In Year 3, and within two years of vacating his home, X exchanges his home, as part of an exchange pursuant to Internal Revenue Code section 1031, for a replacement dwelling located in the same county. X leases the replacement dwelling as income-producing property.
4. In Year 4, and within two years of the purchase of the replacement dwelling, X moves into the replacement dwelling and occupies it as his principal residence, making the property eligible for the homeowners' exemption.

Based upon these facts, you have inquired as to whether X would qualify for property tax relief under section 69.5 and be allowed to transfer the base year value of this original home to his replacement dwelling.

Law and Analysis

Revenue and Taxation Code section 69.5, subdivision (a) 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 homeowners' exemption may transfer the base year value of that property to a 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) of section 69.5 specifically provides that:

In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

- (1) The claimant is an owner and a resident of the original property either at the time of its sale, . . . , or within two years of the purchase or new construction of the replacement dwelling.
- (2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale, . . . , or within two years of the purchase or new construction of the replacement dwelling.
- (3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age, or is severely and permanently disabled.
- (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 . . .
- (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. . . .
- (6) The replacement dwelling, . . . , is located entirely within the same county as the claimant's original property.
- (7) The claimant has not previously been granted, as a claimant, the property tax relief provided by this section . . .

Under the facts that you have presented to us, X was the owner and resident of an original property within two years of the purchase of a replacement dwelling (meeting the requirement of subdivision (b)(1)), as X purchased a replacement dwelling in Year 3 within two

years of vacating the original property. Consequently, X was likewise eligible for the homeowners' exemption on the original property, because of his ownership and occupancy, within two years of the purchase of the replacement dwelling (meeting the requirement of subdivision (b)(2)).

X, in Year 4, is occupying the replacement dwelling as his principal residence and is eligible for the homeowners' exemption (meeting the requirement of subdivision (b)(4)) and the replacement dwelling is located in the same county as X's original property (meeting the requirement of subdivision (b)(6)). Additionally, X is over the age of 55 (meeting the requirement of subdivision (b)(3)) and X has not previously been granted relief under section 69.5 (meeting the requirement of subdivision (b)(7)). Finally, X sold the original property within two years of the purchase of the replacement dwelling, as the properties were transferred for each other as part of a Section 1031 exchange (meeting the requirement of subdivision (b)(5)).

Subdivision (f)(5) of section 69.5 additionally provides that a claimant shall not be eligible for relief unless the claimant provides to the assessor

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 the filing of his or her claim. . . . Any 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) or (m).

X meets these requirements for eligibility, as well, as X will be occupying the replacement dwelling, in Year 4, as his principal place of residence as of that time and X will be filing the claim for relief within three years of purchasing the replacement dwelling (Year 3 to Year 4).

Finally, with respect to X's effective date of relief under section 69.5, subdivision (h)(1) of the statute provides that

Upon a 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 these dates, the effective date of the claim and adjustment of the new base year value is the date of X's purchase of the replacement dwelling, as the replacement dwelling was purchased as part of a Section 1031 exchange and no new construction is relevant to this situation. As a result, the claim for relief, despite the fact that X's occupancy of the home did not occur until Year 4, would be retroactive to the date of purchase of the replacement dwelling.

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The views expressed in this letter are advisory in nature only; they represent the analysis of the legal staff of the Board of Equalization based on present law and the facts set forth herein. You may wish to contact the Santa Barbara County Assessor's Office to ascertain whether it is in agreement with the analysis and conclusions set forth herein.

Very truly yours,

/s/ Anthony S. Epolite

Anthony S. Epolite
Senior Tax Counsel

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