

DEC 19 1995

Memorandum

Division of Assessment Standard
SACRAMENTO

To : Mr. Richard Johnson

Date: December 18, 1995

MIC:64

From: Kristine Cazadd :

*K. Cazadd*Subject: Transfer of Base Year Value - Construction of Replacement Dwelling and Sale of Original Property After Sunset of County's Proposition 90 Ordinance.

This is in response to your November 6, 1995 memorandum, wherein you requested our opinion as to whether a replacement dwelling qualifies for benefit under subdivision (a) of Section 2 of Article XIII A of the California Constitution and the implementing statute, Revenue and Taxation Code Section 69.5, when the sale of the original property and the construction of the replacement dwelling do not occur until after the sunset of a county's Proposition 90 Ordinance.

In the situation you describe, a vacant lot was purchased as replacement property in Riverside County before the sunset date of its Ordinance (Ordinance No. 670, implementing the provisions of Proposition 90), and the replacement dwelling on the lot was constructed after the sunset date. The original property, located in San Francisco County, was also not sold until after the sunset date. However, the county's Ordinance contained a specific provision which permitted the assessor to grant the benefits under Proposition 90 even where the sale of the original property occurred after the sunset date and repeal of the Ordinance, as long as any qualified replacement dwelling was "purchased or newly constructed in the County of Riverside on and after November 9, 1988, but not after June 30, 1995," and the sale also otherwise met the two year time period for the purchase or completion of construction of the replacement dwelling. (County of Riverside Ordinance No. 670.2, Section 5.) While in every other respect, the purchase of the replacement land, together with the construction of the replacement dwelling and the sale of the original property in this case have met the requirements, the question is whether under the unique provisions of the Riverside County Ordinance, as well as the controlling provisions of Section 69.5, the construction of the replacement

dwelling and hence, the replacement property would qualify for the benefit.

As you are aware, in dealing with similar questions in the past, we have taken the position that Section 2 subdivision (a) of Article XIII A in the Constitution merely empowers the Legislature to authorize each county to adopt an Ordinance making the provisions of this subdivision for transfer of base year value applicable to replacement dwellings in that county, when the original property is located in another county. It is clear from the language of the Constitution that the Legislature was given full authority to prescribe the terms and conditions on which transfers of base year values will be permitted, and the Legislature exercised that authority by adopting Section 69.5. Accordingly, we have repeatedly stated that the provisions in Section 69.5 should be viewed as controlling. However, with regard to specific questions about a particular taxpayer's eligibility for the benefit in a particular county, where a county has seen fit to exercise its delegated authority to adopt a local Ordinance implementing Section 69.5, such Ordinance should generally be controlling in determining whether a taxpayer in that county qualifies for the benefit.

Thus, where a local Ordinance contains specific language or a specific provision which is not in conflict with the statute or the Constitution, but which permits the assessor to grant the benefit in a specific instance not otherwise addressed in the statute or Constitution, it is a matter within the purview of the county to determine and the assessor should be guided by the Ordinance.

Section 69.5, subdivision (a)(1) which generally parallels section 2 of Article XIII A, states that the benefit is extended to any person over the age of 55 who resides in property eligible for the homeowner's exemption "subject to the conditions and limitations provided in this section ...". In 1990, , the Legislature added subdivision (a)(2) to Section 69.5, implementing Proposition 90, and expressly provided that the limitation as to the location of the original property and the replacement property in the same county "shall not apply in any county in which the county board of supervisors, after consultation with local affected agencies within the boundaries of the county, adopts 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." (emphasis added) With regard to the effective/operative date of such a local Ordinance and its applicability at a given time, any claim for base year value transfer under Section 69.5 is subject to the

statutory provisions and any amendments in effect on the date the claim is filed; (Letter to Assessors No. 91/31.) and certain mandatory dates for local Proposition 90 Ordinances are prescribed by the statute. Section 69.5, subdivision (a)(2)(E) requires that such Ordinances shall specify

"...the date on and after which its provisions shall be applicable. However, the date specified shall not be earlier than November 9, 1988. The specified date may be a date earlier than the date the county adopts the Ordinance."

Section 69.5, subdivision (a)(2)(D) requires that an Ordinance must state that its provisions "shall remain operative for a period of not less than five years."

The copy of the Riverside County (Proposition 90) Ordinance (No. 670.2) submitted in the instant case states in Section 4 that it "...shall remain operative for a period of five years following the effective date of its adoption, i.e., until April 6, 1994, and it shall then continue to remain operative as of April 7, 1994, and shall remain operative only through June 30, 1995, and on July 1, 1995, it is repealed." Thus, while its designated sunset date on June 30, 1995, was more than six years following its effective date of adoption, there is no prohibition in Section 69.5 against extending the provisions of such an Ordinance beyond five years. As noted above, Section 69.5, subdivision (a)(2)(D) merely requires that an Ordinance must state that its provisions shall remain operative for at least five years.

The provision in Section 5 of the Riverside County Ordinance further extended the time with respect to otherwise eligible taxpayers who purchased or newly constructed a qualified replacement dwelling in the County of Riverside on and after November 9, 1988, but not after June 30, 1995; but who did not sell their original properties [located other counties] before June 30, 1995. Specifically, Section 5 of the Ordinance states:

"The provisions of this Ordinance are applicable to any otherwise qualified replacement dwelling which is purchased or newly constructed in the County of Riverside on and after November 9, 1988, but not after June 30, 1995. In the event that land is purchased and a replacement dwelling is constructed thereon, both the purchase of the land and the completion of the newly constructed replacement dwelling shall each occur within two years of the sale of the original property. The sale of the original property may occur after the repeal of this Ordinance so long as the sale

otherwise occurs within the two year period for the purchase or completion of new construction of the replacement dwelling." (emphasis added)

In effect, Section 5 extended the Proposition 90 benefits to those who started but did not complete transfers prior to the repeal of the Ordinance. We have historically taken the position that both the purchase or new construction of the replacement dwelling and the sale of the original property must be completed before the assessor can determine whether the transfer qualifies for the benefits under Section 69.5. The requirement in subdivision (e) of Section 69.5 authorizes the assessor to determine a new base-year value for a replacement dwelling only upon the sale of the original property. Subdivision (e) states that "This section shall not apply unless the transfer of the original property is a change in ownership...". For purposes of determining a claimant's eligibility for the benefit, the assessor must compare the full cash value of both the replacement dwelling and the original property shown on the claim form in order to assure that the replacement dwelling does not exceed 105% of the full cash value of the original property. (Section 69.5; subdivision (g).) It seems clear, therefore, that a claimant cannot qualify for the benefit until both the replacement dwelling is acquired or newly constructed and the original property is sold.

Notwithstanding the above, the particular language in question in Section 5 of the Riverside County Ordinance is not necessarily inconsistent with the any of the provisions in Section 69.5. Section 5 by its terms seems to deal exclusively with the operative date of the Ordinance, not with eligibility or the two year time requirements under the statute. The first sentence in Section 5 makes it clear that the Proposition 90 benefit authorized under the Ordinance will not extend to any "otherwise qualified replacement dwelling" purchased or newly constructed in the county after June 30, 1995. The second sentence basically restates the statutory two year time requirement for eligibility. The final sentence provides an indefinite time extension of the Ordinance for those who purchased or constructed qualified replacement properties in the county before the sunset date to sell their original properties located other counties. However, such sale in another county must occur within the two year period for the purchase or completion of new construction of the replacement dwelling. Nothing in Section 5 or in any other provision of the Ordinance indicates that this language is an attempt to circumvent the requirements of Section 69.5. In fact, Section 5.1 of the Ordinance states that "...the last two sentences of Section 5 of this Ordinance clarify and are declaratory of existing law, and

are not to be construed or given any weight in any court of law as manifestations of any legislative intent to make any substantive change to existing law."

Assuming that the Ordinance is consistent with existing statutory and constitutional provisions and merely extends the operative period for the application of Proposition 90 benefits beyond its repeal date to qualified taxpayers who completed the first step of purchasing or newly constructing their replacement property in Riverside County, the question is whether the situation you described would qualify for this property tax relief. Although it seems that the County Board of Supervisors is best authority to answer this question, based on our reading of the Ordinance we believe the answer is no. The purchase of the vacant lot as the replacement property in Riverside County was clearly permitted by the provisions of the Ordinance, since it occurred prior to the sunset date, June 30, 1995. The sale of the original property in San Francisco County also complied with the Ordinance, even though it occurred after the sunset date, since the last sentence in Section 5 specifically permitted the sale of the original property to occur after the repeal of the Ordinance, so long as the sale otherwise occurred within the two year period for the purchase or completion of new construction of the replacement dwelling.

The replacement dwelling, however, was not constructed before June 30, 1995. As we read the first sentence of Section 5, it makes the Ordinance inapplicable to any "otherwise qualified replacement dwelling which is purchased or newly constructed" in Riverside County after June 30, 1995. Section 69.5, subdivision (g)(3) defines "replacement dwelling" as "a building, structure, or other shelter constituting a place of abode, whether real property or personal property, that is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated." Therefore, we would conclude that the transfer would not qualify for the benefit since the County's condition precedent for the purchase or new construction of the replacement dwelling was not met before the sunset date.

Certainly, there is no prohibition in the statute or the Constitution which would prohibit the county from extending its Proposition 90 Ordinance to the situation presented here where the replacement land was purchased before the sunset date and the construction of the replacement dwelling on that land was completed after the sunset date. Outside of the specific requirements in Section 69.5, the time within which a county's Proposition 90 ordinance is operative is a matter which the

county may determine based on its particular needs and concerns.

We have previously stated that it is possible for a county to amend its Proposition 90 ordinance in order to clarify issues such as these and deal with transfers only partially completed on the Ordinance's sunset date. (Cazadd letter February 17, 1994.)

Our views are, of course, advisory. Since the critical issue relates to provisions of the county ordinance, the county's interpretation of those provisions should ordinarily be considered to be controlling.

KEC:ba

cc: Mr. John W. Hagerty -- MIC:63

- Ms. Jennifer Willis -- MIC:70

Mr. Larry Augusta

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