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April 2, 2013

**Re: *Proposition 60 BYV Transfer – Granny Unit with Ground Lease
 Assignment No. 12-315***

Dear Ms. _____ :

This is in response to your request for a legal opinion as to whether the purchase of a "granny dwelling"¹ located on a parcel of California real property leased by your client will qualify as a replacement dwelling for purposes of a base year value transfer under Revenue Taxation Code² section 69.5.³ As discussed below, it is our opinion that the purchase of the improvement and the acquisition of the leasehold interest as described in your letter will qualify for the base year value transfer exclusion assuming all other requirements of the exclusion are met.

Facts

Your client is over 55 years of age. She sold her residence and then purchased an accessory dwelling (granny dwelling) on a property owned by two other people. Your client did not purchase the land upon which the granny dwelling sits, she purchased only the specific improvement constituting the granny dwelling. Your client then executed a 35-year ground lease which affords her use of the land upon which the granny dwelling is situated. You have stated that your client will occupy the granny dwelling as her primary residence, and have asked us to assume that all other conditions necessary for the transfer of the base year value of the original property to the granny dwelling are satisfied.

Law & Analysis

Article XIII A, section 2, subdivision (a) of the California Constitution provides for a transfer of the base year value of an original property to a replacement dwelling under specific circumstances. Section 69.5 implements this constitutional provision and allows a taxpayer who is over the age of 55 to make a once-in-a-lifetime⁴ transfer of the base year value of the taxpayer's principal residence (original property) to another principal residence of equal or lesser value (replacement property).

¹ Granny dwellings are sometimes referred to as "mother-in-law" units.

² All further statutory references are to the Revenue and Taxation Code, unless otherwise specified.

³ This provision is sometimes referred to as Proposition 60, the proposition which approved an amendment to the California Constitution to allow base year value transfers.

⁴ The sole exception to the one time only limitation to a base year value transfer is where a person first receives relief for age and subsequently becomes severely and permanently disabled and requires a different residence due to the disability. (Rev. & Tax. Code, § 69.5, subd. (b)(7); Letters to Assessors (LTA) 2006/010 (2/6/2006), p. 11.)

Section 69.5 provides, in relevant part, that:

(a)(1) [A]ny person over the age of 55 years, or any severely and permanently disabled person, who resides in property that is eligible for the homeowners' exemption . . . may transfer . . . the base year value of that property to any replacement dwelling of equal or lesser value . . . [if the replacement dwelling] is purchased by that person as his or her principal residence within two years of the sale . . . of the original property.

(b)(5) The original property of the claimant [must be] sold by him or her within two years of the purchase . . . of the replacement dwelling. For purposes of this paragraph, *the purchase of the replacement dwelling includes the purchase of that portion of land on which the replacement building . . . will be situated.*

(g)(3) *A replacement dwelling is 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 . . . is situated.* For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size that is used as a site for a residence, and *"land owned by the claimant" includes land for which the claimant . . . holds a leasehold interest described in subdivision (c) of Section 61* or a land purchase contract. (Emphasis added.)

Section 61, subdivision (c) states that a change in ownership, as defined in section 60, includes the creation of a leasehold interest in taxable real property for a term of 35 years or more (including renewal options).

Ground Lease

According to your letter, your client entered into a 35-year ground lease with the two owners of the real property upon which the granny dwelling is situated. As stated above, the express language of section 69.5, subdivisions (b)(5) and (g)(3) requires that a person applying for a base year value transfer must own the land on which the building is situated. The statutory language further provides that "land owned by the claimant" includes land for which the claimant holds a leasehold interest as described in section 61, subdivision (c), that is, a leasehold interest with a term of 35 years or more. Thus, the 35-year ground lease satisfies the requirement that a claimant purchase and own the land upon which the replacement dwelling sits. (Rev. & Tax. Code, § 69.5, subs. (b)(5), (g)(3); § 61, subd. (c).)

Notably, we have opined that although *the purchase of a fractional interest in land owned by others* upon which the granny dwelling is situated does *not* qualify as the purchase of a replacement property, *a lease for 35 years or more* or an outright purchase *of the portion of land on which the improvement is to be placed* would qualify for the base year value transfer exclusion for purposes of section 69.5. (Property Tax Annotation⁵ (Annotation) 200.0093 (4/19/1993); LTA 2006/010 (2/6/2006), p. 22.) Therefore, your client's lease of the property upon which the granny dwelling is situated qualifies under section 69.5.

⁵ Property Tax Annotations are summaries of the conclusions reached in selected legal rulings of Board legal counsel published in the Board's Property Tax Law Guide and on the Board's website. See Cal. Code Regs., tit. 18, § 5700 for more information regarding annotations.

Granny Dwelling

Section 69.5, subdivision (g)(3) defines a replacement property 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." (Emphasis added.) Further, section 69.5, subdivision (b)(4) requires that the replacement property be eligible for the homeowners' exemption.

In this case, your client purchased a granny dwelling, or accessory dwelling. As we understand this term, it refers to a separate structure situated on the same parcel as a main house. Since it is a structure that will constitute your client's place of abode as her principal place of residence, the granny dwelling qualifies as a replacement property. (Rev. & Tax. Code, § 69.5, subd. (g)(3).) Further, granny dwellings may receive the homeowners' exemption. (LTA 82/50 (3/23/1982), Question V5.)

Consistent with this view, we have previously opined that a claimant who builds a granny dwelling eligible for the homeowners' exemption on land leased for 35 years or longer (including renewal options) may transfer the base year value from her original dwelling and land to the granny dwelling and the leased land on which the granny dwelling is situated. It should be noted that, when making the "equal or lesser value" comparison of the original property and the replacement property, the total market value of the original property will be compared to the total market value of the granny dwelling and that portion of the land upon which the granny dwelling sits even though the claimant has only a leasehold interest in the underlying land. (Backup letter to Annotation 200.0093, *supra*, pp. 2-3; Rev. & Tax. Code, § 69.5, subd. (g)(5)-(7).)

Finally, your client's purchase of the granny dwelling and the subsequent execution of a ground lease for the land upon which the granny dwelling is situated is not problematic. We have previously advised that the purchase of a replacement property in increments rather than in a single transaction will not defeat the application of the exclusion if all purchases meet the time limitations as set forth in section 69.5. (LTA 2006/010 (2/6/2006), p. 20.)

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.

Sincerely,

/s/ Susan Galbraith

Susan Galbraith
Tax Counsel

SG:yg

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cc: Honorable

County Assessor

Mr. David Gau	MIC:63
Mr. Dean Kinnee	MIC:64
Mr. Todd Gilman	MIC:70