



STATE BOARD OF EQUALIZATION

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Controller, SacramentoCINDY RAMBO
Executive Director

September 21, 1989

Dear Ms.

Pursuant to our recent discussion, this is my response to your letter of August 18, 1989, requesting that your father be permitted to transfer the base year value of his original home to his replacement dwelling.

Based on your letter and our discussion, I understand that your father, lost his home to fire, due to a faulty furnace, on October 10, 1987. The fire was not in an area subsequently proclaimed by the Governor to be in a state of disaster, however. The house was not insured. Your father, who had just retired as Postmaster of San Mateo and who is also retired from the U.S. Navy and a 100% disabled blind Veteran, was unable to rebuild his home for various reasons. Primarily, the City of Woodside prohibited reconstruction on the same location and your father was lacking the necessary financial resources to rebuild. He sold the land and purchased a much smaller home in Woodside. You state that but for the fire he never would have moved from his former residence. You request that we allow your father to transfer the base year value of his original property to the replacement dwelling.

As we discussed, the staff of the State Board of Equalization acts in an advisory capacity only in matters affecting change in ownership and the transfer of base year value. Any final decision in a matter of this type would have to be made by the County Assessor, the County Assessment Appeals Board, or, ultimately, the courts.

Revenue and Taxation Code section 69 is a provision expressly designed to provide disaster relief by permitting the transfer of the base year value of the original property which is substantially damaged or destroyed by disaster to comparable property within the same county which is acquired as a replacement for the damaged property. Unfortunately, one of the key requirements of this provision is that the damage be the result of a disaster proclaimed by the Governor. See, in particular, subdivision (a) which refers to property "which is

September 21, 1989

substantially damaged or destroyed by a disaster, as declared by the Governor." See also subdivision (c)(3) which defines "disaster" as a major misfortune or calamity in an area subsequently proclaimed by the Governor to be in a state of disaster as a result of the misfortune or calamity." Thus, unless the Governor proclaims a disaster in connection with your father's fire, it appears that he could not qualify for the benefits of section 69.

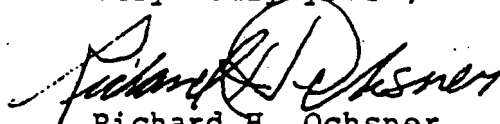
Revenue and Taxation Code section 69.5 is a general provision permitting any person over age 55 to transfer the base year value of their original property to a replacement dwelling of equal or lesser value which is located in the same county. I understand that the value of your father's replacement dwelling far exceeded the value of the original property, which consisted solely of land at the time of its sale. Thus, it appears that for this and, perhaps, other reasons, he cannot qualify for the benefits of section 69.5.

As I told you, it is possible that your father might qualify for the Disabled Veterans Exemption found in Revenue and Taxation Code section 205.5. Legislation increasing the maximum amount of the exemption from \$100,000 to \$150,000 has recently been sent to the Governor for signature (SB 320, Royce). It is possible that your father may qualify for the Disabled Veterans Exemption.

As also discussed, your father may appeal his assessment to the local assessment appeals board if he believes that he has been improperly denied the benefits of sections 69 or 69.5. Revenue and Taxation Code sections 1601 and following contain the provisions relating to local equalization procedures. Following exhaustion of his administrative remedies, your father could file an action for refund of taxes. The provisions for such refund actions are found commencing at section 5140 of the Revenue and Taxation Code.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



Richard H. Ochsner
Assistant Chief Counsel

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