

Memorandum



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To: Mr. Rudy G. Bischof -

DEPUTY DIRECTOR
PROPERTY TAXES

Date: June 24, 1998

From: Daniel G. Nauman *DGN*

Subject: New Construction Following Transfer of Base Year Value Pursuant to Section 69

This is in response to your Memorandum of May 11, 1998 to Larry Augusta requesting an answer to the following question: As long as the new construction meets the time and value limits of Revenue and Taxation Code Section 69, will the transferred base year value for replacement property, transferred pursuant to that section from property which is substantially damaged or destroyed by a disaster, as declared by the Governor, include new construction following the transfer? The answer is plainly yes.

Section 69 is the legislative implementation of subdivision (e)(1) of Section 2 of Article XIII A of the California Constitution. That subdivision provides:

“Notwithstanding any other provision of this section, the Legislature *shall* provide that the base year value of property which is substantially damaged or destroyed by a disaster, as declared by the Governor, may be transferred to comparable property within the same county that is acquired *or newly constructed* as a replacement for the substantially damaged or destroyed property.” (Emphasis added.)

As noted above, the Legislature implemented the mandatory (“legislature *shall* provide”) provision by enacting Section 69. That section, as you noted, commences as follows:

“(a) Notwithstanding any other provision of law, pursuant to Section 2 of Article XIII A of the Constitution, the base year value of property which is substantially damaged or destroyed by a disaster, as declared by the Governor, may be transferred to comparable property within the same county which is acquired *or newly constructed* within three years after the disaster, or five years in the case of the Northridge earthquake, as a replacement for the substantially damaged or destroyed property.” (Emphasis added.)

Furthermore, the phrase "newly constructed" is used on three other occasions in the section, including the following sentence: "This section shall apply to any comparable replacement property that is acquired or newly constructed on or after July 1, 1985." Subd. (d)(1), subd. (d)(2), & subd.(c)(2)(c).

Conversely, there is no provision or limitation in Section 69 which indicates that any new construction must occur prior to the transfer of the adjusted base year value of the damaged or destroyed property. Thus, the interpretation of Section 69 as to newly constructed property in the March 10, 1987 Letter to Assessors No. 87/23, Replacement Property for Disaster-Damaged Property, was:

"This chapter provides that the base-year value of damaged real property may be transferred to a comparable replacement property under the following conditions:

* * *

- "The replacement property must be acquired or newly constructed within two years after the disaster.

* * *

"The relief granted by Section 69 shall apply to any comparable replacement property acquired or newly constructed on or after July 1, 1985. . . . Therefore, only if the replacement property was acquired or newly constructed on or after July 1, 1985 can the adjusted base-year value be transferred from the damaged property to the replacement property.

"As mentioned above, the purchase or new construction of a replacement property under this section is subject to supplemental assessment since there has been a change in ownership or new construction. However, in this situation, the new base-year value for the replacement property is the replacement base-year value as determined in accordance with the guidelines provided in this section."

Thus, our interpretation has been that the value of new construction may be included within the transferred adjusted base year value under Section 69 if the time and value limits are met.

We agree that it might have been more clear if Section 69 contained explicit instruction on how the new construction is to be treated, and specifically setting forth the requirements that (a) the new construction must be completed within the time limits of the section, and

that (b) the value comparison is to the fair market value of the new construction on the date of completion, plus the full cash value of the replacement property on the date of acquisition, as the Legislature provided in Section 69.5, subd. (h)(4), relating to transfers by persons over age 55 or who are disabled. Nevertheless, it is our opinion that such requirements are so obvious that they are necessarily impliedly contained in Section 69. Therefore, while Section 69 does permit new construction to be included within the transferred adjusted base year value, the time and value limitations set forth therein must also be met with respect to that new construction.

DGN:jd

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cc: Mr. Dick Johnson - 1
Mr. David Gau - 1
Ms. Jennifer Willis -