



## STATE BOARD OF EQUALIZATION

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October 28, 2015

Ms. \_\_\_\_\_, Clerk  
 County of Sonoma Assessment Appeals Board  
 County Administration Center  
 575 Administration Dr., Room 100A  
 Santa Rosa, CA 95403

**Re: *Assessment Appeal – Propositions 60/90 Claim  
 Assignment No.: 15-041***

Dear Ms. \_\_\_\_\_:

This is in response to your request for our opinion on whether the County of Sonoma Assessment Appeals Board (AAB) has jurisdiction to hear an appeal of the Sonoma County Assessor's (County Assessor's) classification of a portion of property as non-residential that resulted in denial of a base year value transfer claim under Revenue and Taxation Code<sup>1</sup> section 69.5 (Propositions 60/90 claim) by the San Diego County Assessor's Office. Specifically, the appeal challenges the County Assessor's determination that the property owners' (Taxpayers') use of 3-acres as a vineyard is not incidental to their use of the property as a residential site, and, thus, the 3-acre vineyard is not includable in the value of the original property when doing a value comparison for purposes of the base year value transfer claim. You also ask what the filing period is if we conclude that the AAB has jurisdiction to hear the appeal at issue. As explained below, we believe the AAB has jurisdiction to hear such an appeal, and the filing period is the same as that for an appeal of the Proposition 60/90 claim, but absent any specific legal authority in that regard, the AAB has the right and ultimate responsibility to rule on the question of its own jurisdiction.

### **Facts**

You state that Taxpayers owned a property in Sonoma County (the Sonoma Property) from 1996 until it was sold in November 2012 for \$1,200,000. The Sonoma Property consists of five acres of land. Taxpayers planted three acres of grape vines on it. It is our understanding that Taxpayers received one property tax bill for the Sonoma Property each year, and the tax bill itemized the property's value into four categories: (1) land, (2) structural improvements, (3) growing improvements, and (4) fixed improvements. For categories 3 and 4, Taxpayers' 2012 lien date assessment indicates a 9.9 percent (\$60,269) allocation of value to the 3 acres of growing and fixed improvements. Taxpayers did not contest the 2012 lien date assessment, the classification of the Sonoma Property into those four categories, or the allocation of value among those four categories.

Upon Taxpayers' sale of the Sonoma Property in November 2012, the property was reassessed at the purchase price of \$1,200,000. Also, the total allocation to growing and fixed improvements was reduced to 4.14 percent (\$49,650). Neither Taxpayers nor the new owner

<sup>1</sup> All further statutory references are to the California Revenue and Taxation Code unless otherwise indicated.

contested the value set by the County Assessor, the classification of the property into four categories, or the allocation of value among the four categories.

In July 2014, Taxpayers purchased another property in San Diego County (the San Diego Property) for \$1,310,000. Believing that this purchase price was within the allowable value range for the purpose of the Propositions 60/90 base year value transfer, Taxpayers applied to the San Diego County Assessor's Office for a transfer of the base year value from the Sonoma Property to the San Diego Property.

On October 29, 2014, the San Diego County Assessor's Office sent the County Assessor a Propositions 90/110 Claim Certification form asking for information regarding the Sonoma Property. In response, the County Assessor certified on November 10, 2014, that "3 acres of vines and fixture RP [real property]" at the value of \$49,650 (4.14 percent of total value of the property) were not incidental to the use of the Sonoma Property as a residential site.<sup>2</sup> Therefore, the San Diego Assessor only allowed 95.86 percent of the \$1,200,000 sale price of the Sonoma Property to count towards the value of the original property under Propositions 60/90. This determination brought the value of Taxpayers' San Diego Property out of the allowable value range under Propositions 60/90. Based on this, the San Diego County Assessor denied Taxpayers' Propositions 60/90 base year value transfer claim and sent the Taxpayers a notice of denial on December 15, 2014.

On January 14, 2015, Taxpayers filed an Application for Changed Assessment (Application) with the AAB, copying the San Diego County Assessment Appeals Board. On the top of the Appeal Form, the Taxpayers hand-wrote "Appeal of Prop. 60/90 Claim." Under Item 6 of the Appeal Form - Facts, Taxpayers checked "Other" and then hand-wrote "Appeal of Prop. 60/90 Claim – see enclosed letters." Also, under Item 6, the box for appeal of the base year value for the change in ownership under "Change in Ownership" was left blank and the box for appeal of the assessor's classification and/or allocation of value of property under "Classification" was left blank. In the Taxpayers' letter attached to the Appeal Form, Taxpayers ask for reconsideration of their claim and contend that the value of the 3-acre vineyard should be included in determining whether the San Diego Property would qualify for a base-year value transfer under the "equal or lesser than" value test, because the vineyard was an incidental, personal use allowable under Propositions 60/90. It is for this appeal you ask whether the AAB has jurisdiction.

### **Law and Analysis**

#### **Propositions 60/90**

Propositions 60/90, implemented by section 69.5, allows a person over the age of 55 to transfer the base year value of his or her original property to any replacement dwelling within the same county (Proposition 60), or in another County where authorized (Proposition 90), that is of equal or lesser value and is purchased or newly constructed by that person as his or her principal residence within two years of the sale of the original property, if certain specified conditions are met. (Rev. & Tax. Code, § 69.5, subd. (a)(1).) As relevant to the appeal at issue here, "land

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<sup>2</sup> It appears that the County Assessor determined that only the growing and fixed improvements were not incidental to Taxpayers' use of the Sonoma Property as a residence. But if the County Assessor actually determined that the 3 acres used as vineyard is not incidental to residential use, then the value of the land should also be excluded from the value of the original property.

constituting a part of the original property includes only that area of reasonable size that is used as a site for a residence." (Rev. & Tax. Code, § 69.5, subd. (g)(4).) Further, an "'area of reasonable size that is used as a site for a residence' includes all land if any nonresidential uses of the property are only incidental to the use of the property as a residential site." (*Id.*)

### Function and Jurisdiction of an AAB

Article XIII of the California Constitution, which addresses taxation, specifies that the county board of supervisors, or one or more assessment appeals boards created by the county board of supervisors, shall constitute the county board of equalization for a county. (Cal. Const., art. XIII, § 16.) It further provides, with certain exceptions, that the county board of equalization shall equalize the values of all property on the local assessment roll by adjusting individual assessments. (*Id.*) Thus, a county board of equalization is a constitutional agency exercising quasi-judicial powers. [Rule 302, subd. (c). (*Heavenly Valley v. El Dorado County Bd. of Equalization* (2000) 84 Cal.App.4th 1323, 1344; *County of Sacramento v. Assessment Appeals Bd. No. 2* (1973) 32 Cal.App.3d 654, 663.)

Property Tax Rule<sup>3</sup> 302 provides guidance as to a county board of equalization's functions and jurisdiction. Subdivision (a) of Rule 302 provides that the county board of equalization's functions are as follows:

- (1) To lower, sustain, or increase upon application, or to increase after giving notice when no application has been filed, individual assessments in order to equalize assessments on the local tax assessment roll,
- (2) To determine the full value and, where appealed, the base year value of the property that is the subject of the hearing,
- (3) To hear and decide penalty assessments, and to review, equalize and adjust escaped assessments on that roll except escaped assessments made pursuant to Revenue and Taxation Code section 531.1,
- (4) **To determine the classification of the property that is the subject of the hearing**, including classifications within the general classifications of real property, improvements, and personal property. Such classifications may result in the property so classified being exempt from property taxation.
- (5) To determine the allocation of value to property that is the subject of the hearing, and
- (6) To exercise the powers specified in section 1605.5 of the Revenue and Taxation Code.

(Rule 302, subd. (a), emphasis added.)

### Assessment Appeal Rights and the Filing Deadline

Rule 305 provides guidance as to the filing requirements for an assessment appeal including the filing deadline for applications. As relevant here, Rule 305 states that the application should include "[t]he facts relied upon to support the claim that the board should order a change in the assessed value, base year value, or **classification of the subject property.**" (Rule 305, subd. (c)(1)(G), emphasis added.) Rule 305, subdivision (d) provides that:

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<sup>3</sup> All references to Property Tax Rules or Rules are to sections of title 18 of the California Code of Regulations.

(1) An application appealing a regular assessment shall be filed with the clerk during the regular filing period. A regular assessment is one placed on the assessment roll for the most recent lien date, prior to the closing of that assessment roll. The regular filing period for all real and personal property located in a county is:

(A) July 2 through September 15 when the county assessor elects to mail assessment notices, as defined in section 619 of the Revenue and Taxation Code, by August 1 to all owners of real property on the secured roll; or

(B) July 2 through November 30 when the county assessor does not elect to mail assessment notices by August 1 to all owners of real property on the secured roll.¶

(2) An application appealing an escape assessment or a supplemental assessment must be filed with the clerk no later than 60 days after the date of mailing printed on the notice of assessment or the postmark date, whichever is later.

(Rule 305, subd. (d).)

As explained in Question C6 of Letter to Assessors (LTA) 2006/010, where a Proposition 60/90 claim is denied by the assessor and a taxpayer disagrees, the taxpayer can appeal such a denial.

The new base year value of the replacement dwelling may be appealed under section 80 on the basis that all of the requirements of section 69.5 have been met and that, therefore, the base year value of the original property should be transferred to the replacement dwelling. Appeals can be filed with the county assessment appeals board either within 60 days of the date of mailing of the assessment notice (section 1605) or during the regular equalization period (section 1603). Under section 80(a)(3), a base year value may be appealed during the regular equalization period for the year in which it is placed on the assessment roll or in any of the three succeeding years.

(LTA 2006/010, at p.9.)

In this case, although Taxpayers did not check any of the boxes under item 6 for a base year value appeal, or appeal of the assessor's classification and/or allocation of value of property, Taxpayers handwrote under the same item a direction - "see enclosed letters." And Taxpayers' letter attached to the Appeal Form makes it clear that Taxpayers objected to the County Assessor's determination that the 3-acre vineyard on the Sonoma Property was not for an incidental, personal use, i.e., was not a part of the residence for that portion to qualify as part of the original property. We view this as an appeal involving the classification of a portion of the Sonoma Property as residential or non-residential for Propositions 60/90 purposes.<sup>4</sup> As such, in our opinion, this appeal falls under the AAB's functions pursuant to Rule 302, subdivision (a)(4), and thus the AAB has jurisdiction to hear it.

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<sup>4</sup> Taxpayers' appeal of the denial of their Proposition 60/90 claim could also be reasonably construed as an appeal of the County Assessor's allocation of values. Thus the AAB would have jurisdiction to hear their appeal under Rule 302, subdivision (a)(5).

Because this issue as to classification arose in relation to the San Diego Property and would not have occurred but for Propositions 60/90 purposes, we believe that the deadline applicable here is the same as that for the appeal of the denial of Taxpayers' Proposition 60/90 claim, which, as explained in LTA 2006/010, is the deadline for appealing the supplemental assessment or new base year value of the replacement dwelling. As applied here, the San Diego Assessor's Office denied the Proposition 60/90 claim on December 15, 2014. Since the Taxpayers' appeal was filed less than a month after the denial on the Proposition 60/90 claim, it appears this appeal was filed prior to the issuance of the notice of supplemental assessment. Therefore, the filing period has not expired.<sup>5</sup>

In sum, it appears to us that the AAB has jurisdiction to hear this appeal, and the appeal as filed is timely. In the absence of any specific legal authority to that effect, however, the AAB, as a county board of equalization and a quasi-judicial body, has the right and ultimate responsibility to rule on the question of its own jurisdiction. (See *Heavenly Valley v. El Dorado County Bd. of Equalization* (2000) 84 Cal.App.4th 1323, 1344; *County of Sacramento v. Assessment Appeals Bd. No. 2* (1973) 32 Cal.App.3d 654, 663, See also Annotation 190.0050.)

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. If you have any additional questions, please feel free to contact me.

Sincerely,

/s/ Mengjun He

Mengjun He  
Tax Counsel III (Specialist)

MH: yg

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cc: Honorable Marc C. Tonnesen  
President, California Assessors' Association  
Solano County Assessor

Mr. Dean Kinnee      MIC:63  
Mr. David Yeung      MIC:61  
Mr. Todd Gilman      MIC:70

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<sup>5</sup> Although it could be argued that an appeal filed on a supplemental assessment is not valid since the supplemental assessment that is the subject of the appeal does not yet exist, we believe the best practice is to consider the appeal filed within the required 60-day filing period once the supplemental assessment is issued.