

STATE BOARD OF EQUALIZATION

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February 7, 1992

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Executive Director

Dear Mr. _____ :

This is in response to your letter of December 26, 1991, regarding your client _____ . Your letter requests the views of this office on whether _____ is entitled under the provisions of Revenue and Taxation Code Section 69.5 to transfer the base-year value of her original property to a replacement dwelling in which she owns a one-third interest.

The information provided in your letter indicates that _____ was the sole owner of her previous principal residence which was sold in August of 1991 for \$198,000. In July of 1990, she purchased a one-third interest in her current residence located at _____ California for \$130,331. Based on this information, I assume that the latter qualifies as a replacement dwelling which has a market value of approximately \$390,000.

Your letter states that you believe _____ qualifies for the benefits of Revenue and Taxation Code Section 69.5, since her one-third interest in the new residence is of "equal or lesser value ... (and) is located within the same county and is purchased or newly constructed ... (as _____) principal residence within two years of the sale ... of the original property". You ask whether this office concurs in your opinion. Unfortunately, for the reasons set forth below, we do not concur in that conclusion.

Section 69.5 of the Revenue and Taxation Code implements the second paragraph of Section 2, Article XIII-A of the Constitution, as added by Proposition 60 in November of 1986. In general, this constitutional provision authorizes the Legislature

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to provide that any person over the age of 55 years who resides in property eligible for the homeowners exemption may transfer the base year value of that property to a replacement dwelling of equal or lesser value located within the same county and purchased within two years of the sale of the original property. It further provides that the Legislature has full authority to prescribe the terms and conditions on which the benefit will be extended. Those terms and conditions are set forth in Section 69.5.

One of the key features of the constitutional provision is the requirement that the replacement dwelling be of equal or lesser value. This feature was emphasized in the ballot arguments which indicated that the amendment would not result in a revenue loss to the counties. The objective of revenue neutrality could only be achieved if property owners were limited to replacement dwellings with a value which did not materially exceed the value of the original property. Obviously, if there were no limit on the value of the replacement dwelling, then property owners could transfer their low Proposition 13 base year values to larger more valuable properties and this would result in a net tax base loss to the counties.

Subdivision (a)(1) of Section 69.5 provides for the transfer of base year value to "any replacement dwelling of equal or lesser value". The term "equal or lesser value" is defined in subdivision (g)(5). Where the replacement dwelling is purchased prior to the date of sale of the original property, as in this case, subdivision (g)(5) provides that the term "equal or lesser value" means that the amount of the full cash value of the replacement dwelling does not exceed 100% of the amount of the full cash value of the original property. For purposes of this definition the terms "replacement dwelling" and "original property" are defined in subdivisions (g)(3) and (4). Subdivision (g)(3) defines "replacement dwelling" as a "building, structure, or other shelter constituting a place of abode, whether real property or personal property, which 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". This language makes it clear that the term refers to the entire property and not merely a fractional interest in it. This has been our consistent interpretation of that term since its enactment. In addition to the express language found in Section 69.1, it is obvious from a policy stand point that if the term "replacement dwelling" were interpreted in such a way as to include a fractional interest in the property, then the purpose of the equal or lesser value test would be easily frustrated.

The terms "full cash value of the replacement dwelling"

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and "full cash value of the original property" are found in subdivisions (g)(6) and (7). Applying those definitions to the information you provided, it appears that the full cash value of the original property would be approximately \$198,000 while the full cash value of the replacement dwelling would be approximately \$390,000. It is apparent from a comparison of these figures that the full cash value of the replacement dwelling substantially exceeds the equal or lesser requirements of sub-division (g)(5). For that reason, could not qualify for the Section 69.5 benefit.

Since sold her original property in August of 1991, she still has until August of 1993 in which to find a qualified replacement dwelling. Thus, she is not necessarily foreclosed from enjoying the benefits of Section 69.5.

The views expressed in this letter are, of course, advisory only and are not binding upon the Orange County Assessor who has the ultimate authority to determine whether or not your client qualifies under Section 69.5.

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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cc:

Mr. John W. Hagerty
Mr. Verne Walton