STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

(916) 445-4588

June 26, 1991

Mr. T. Kenneth Hayashi
Chief of Assessment Standards
c/o SONOMA COUNTY ASSESSOR'S OFFICE
585 Fiscal Drive, Room 104F
Santa Rosa, CA 95403-2872

Re: Revenue and Taxation Code Section 69.5

Dear Mr. Hayashi:

This is in response to your letter of June 13, 1991, requesting advice regarding the availability of the benefits of Revenue and Taxation Code section 69.5 to a situation where the claimant requested transfer of the base year value of his original property, which consisted of a mobilehome subject to license fees situated on land owned by the claimant to a replacement dwelling, consisting of a subdivision home. You state that the application for the benefit has been denied.

For the reasons set forth in the attached memorandum, dated March 23, 1989, and addressed to Mr. Verne Walton, we are in agreement with your conclusion that the claimant does not qualify for the section 69.5 benefit when the original property consists of a mobilehome subject to license fees located on land owned by the claimant. The attached memorandum sets forth in detail the reasoning which we believe fully supports that conclusion.

As you can see, the conclusions stated in that memorandum are based on provisions of law which are not discussed in either of the attachments to your letter. Obviously, the conclusion set forth in my March 23, 1989 memo is consistent with the conclusion stated in Assessor's Letter No. 87/71. Further, I see no inconsistency between the position stated and our letter of May 17, 1988 to the Santa Cruz County Assessor. As discussed in that letter, it involved the acquisition of mobilehomes as replacement dwellings. There is no indication that the original properties were mobilehomes. For that reason, the conclusions stated in our May 23, 1989 memo to Verne Walton would not be applicable.

The views expressed in this letter and the attached material are, of course, advisory only and are not binding upon you or the Assessment Appeals Board.

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

RHO:ta
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Attachment
cc: Mr. John W. Hagerty
Mr. Verne Walton
Mr. J. K. McManigal, Jr.
All with attachments.

State of California · Board of Equalization

Memorandum

To : Mr. Verne Walton

Date : March 23, 1989

From : Richard H. Ochsner, RHO

Subject : Proposition 60 and Licensed Mobilehomes

This is in response to your request that I review the position we have previously taken regarding the meaning of the term "personal property" as used in the definitions in "original property" and "replacement dwelling" in subdivisions (g)(3) and (4) of Revenue and Taxation Code section 69.5. You ask that the term "personal property" be limited to personal property which constitutes a place of abode which has a base year value that can be administered under section 69.5. More specifically, you feel the term as applied to mobilehomes must be limited to those mobilehomes which have a base year value (i.e., they are not subject to the Vehicle License Fee). You feel that this would be "a reasonable interpretation since section 69.5 deals with the transfer of base-year values of properties." Your memo includes an example involving a taxpayer whose original property consisted of a licensed mobilehome and a lot on which the mobilehome is located. The lot has a base year value of $100,000. If the current market value of the mobilehome and lot is $200,000, it is suggested that the owner could transfer the $100,000 base year value of the lot to a stick-built house and lot with equal value. You feel this is not reasonable since only the base year value of the lot is being transferred to a replacement lot and dwelling. You feel that this is tantamount to transferring the base year value of a vacant lot to an improved one and allowing the improvement to "escape" assessment. You request that I modify my position or, in the alternative, recommend that the Board sponsor legislation to remove the reference to real or personal property from the subject definitions.

After carefully reviewing the provisions of section 2 of article XIII A of the California Constitution and Revenue and Taxation Code section 69.5, I conclude that while I cannot agree to your suggested interpretation of the term "personal property" I believe that other provisions of section 69.5 lead us to a similar result.

Proposition 60 added the second paragraph to section 2 of article XIII A to provide, in part, that certain persons who reside in property eligible for the homeowners' exemption may "transfer the

base year value of the property entitled to exemption" to any replacement dwelling of equal or lesser value, etc. It is important to note that the Constitution specifically authorizes the transfer of base year value of property entitled to the homeowners' exemption. In keeping with this constitutional direction, the Legislature has defined the terms "original property" and "replacement dwelling" as a building, structure, or other shelter constituting a place of abode, whether real or personal property, which is owned and occupied by the claimant as his or her principal place of residence, etc. This is the same language found in the definition of "dwelling" for purposes of the homeowners' exemption, as provided in section 218. Thus, it seems clear that the meaning given to the term "personal property" as used in the definition of "dwelling" for purposes of the homeowners' exemption must also be recognized as the correct meaning of that term as used in the definitions of "original property" and "replacement dwelling" in section 69.5.

The first thing to note is that the reference to "personal property" in the section 218 definition of "dwelling" is unqualified. That is, there are no restrictions on the term and if the personal property is in fact a shelter constituting a place of abode, it can qualify for the homeowners' exemption. I understand, for example, that a boat can qualify for the exemption even though it is an item of personal property. Further, an abode consisting of a mobilehome subject to the Vehicle License Fee together with mobilehome accessories and the lot on which the mobilehome is located can qualify for the homeowners' exemption to the extent that the lot and the accessory improvements are subject to property taxes. Thus, even though the mobilehome, itself, cannot receive the exemption because it is not subject to property tax, the total property which makes up the abode is not disqualified from the exemption.

The foregoing analysis convinces me that there is no basis for placing any limitation on the term "personal property" as used in the definitions in section 69.5. The language is clear and unambiguous. Further, we already have a history of interpretation of that language as used in the homeowners' exemption. Any attempt to add the suggested limitations to the statute would, in my opinion, be rejected by the courts.

There are other provisions of section 2 of article XIII A and section 69.5, however, which lead to almost the same result that you seek. The second paragraph of section 2 of article XIII A starts by saying that "the Legislature may provide that under appropriate circumstances and pursuant to definitions and procedures established by the Legislature" certain persons can qualify for the benefit. This quoted language is clear authority for the Legislature to place any terms or conditions it deems

appropriate on the allowance of the benefit even though the claimant might otherwise fall within the broad provisions included in the Constitution. The Legislature has exercised its authority to define the conditions and circumstances under which the benefit will be granted by the adoption of Revenue and Taxation Code section 69.5. It clear from a reading of section 69.5 that the Legislature has imposed a number of requirements and procedures as a condition for receiving the benefit granted under the Constitution. For example, a claimant may qualify for the benefit in every way and yet be denied the benefit if he or she fails to file a timely claim as specified in section 69.5(f).

The requirement most pertinent to our discussion is the second paragraph of subdivision (e). That paragraph states:

> "This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base year value determined in accordance with this section because the property qualifies as a replacement dwelling."

Revenue and Taxation Code 5803 defines "full cash value" for purposes of the Mobilehome Property Tax Law, commencing at section 5800. For purposes of this law, section 5801 defines "mobilehome" as a mobilehome sold new on or after July 1, 1980, which, at the request of the owner, was made subject to property taxation. That is, it was removed from the Vehicle License Fee. The definition expressly excludes from the term "mobilehome" a mobilehome which has become real property by affixation to land on a permanent foundation, etc. Thus, the definition makes clear that we are talking about a mobilehome which is personal property but which, pursuant to section 5800, and following, is taxed like real property and receives the benefits of Proposition 13.

The above quoted language requires that the transfer of the original property constitute a change in ownership which reaches one of two possible results. The first possibility is that the property is reappraised at its current fair market value in accordance with section 110.1 or 5803. In most cases, the original property will constitute real property which will be subject to reappraisal pursuant to section 110.1. By referencing section 5803, the Legislature has given recognition to the Mobilehome Property Tax Law. We believe that the most reasonable interpretation of this reference is that where the original property includes personal property in the form of a mobilehome, the Legislature intended that the benefits of section 69.5 apply only if that mobilehome is reappraised pursuant to section 5803. Obviously, a mobilehome subject to the Vehicle License Fee could

not qualify for the section 69.5 benefit since the transfer of such property would not constitute a change in ownership subjecting it to reappraisal pursuant to section 5803.

In case where the licensed mobilehome is situated on a lot owned by the mobilehome owner or there are other mobilehome accessories included in the transfer which constitute real property, the question remains whether the requirements of the quoted language have been satisfied. If some real property either in the form of the lot or associated improvements transfer with the licensed mobilehome, then there will be a transfer of some real property which will constitute a change in ownership subjecting the real property to reappraisal at current fair market value in accordance with section 110.1. The question is whether this fact alone would qualify the transaction for section 69.5 benefits.

Section 69.5(g)(4) defines "original property" 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." While the definition of "original property" includes land on which the place of abode is located, the principal emphasis is upon the place of abode itself. Although the question is not free of doubt, we believe that the correct reading of the term "original property" as used in the second paragraph of subdivision (e) requires that it include the place of abode. That is, that the transfer of the place of abode must constitute either (1) a change in ownership which subjects it to reappraisal either in accordance with section 110.1 or 5803 or (2) results in a base year value determined in accord with section 69.5. A contrary reading would lead to potentially absurd results such as those described in your memorandum. For that reason, we have rejected the alternative construction. For example, you might have a transfer of a licensed mobilehome on a rented lot which included the transfer of a minimum value accessory, such as a concrete patio with a $1,000 base year value. If the licensed mobilehome and accessories had a market value of $200,000, the owner could purchase a $200,000 replacement dwelling and would be entitled to a $1,000 base year value on such property if the rejected interpretation were applied.

In conclusion, we read the second paragraph of subdivision (e) of section 69.5 as imposing an overriding requirement that the benefits of that section will not apply unless the transfer of the original property results in a change in ownership which subjects that property, including the place of abode, to reappraisal at its current fair market value in accordance with either section 110.1 or, in the case of mobilehomes, in accordance with section 5803. Or, in the alternative, results in a base year value for the

original property, including the place of abode, determined in accordance with section 69.5 because the original property qualifies (obviously, a mobilehome on the Vehicle License Fee cannot qualify under this interpretation) as a replacement dwelling for the person purchasing such original property. It should be recognized that the limitation of this second paragraph may not necessarily reach the same result as applying the limitation you have suggested for the term "personal property." Thus, any analysis of these issues must be based upon the subdivision (e) language.

RHO:cb
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cc: Mr. John W. Hagerty
Mr. Darold Facchini
Mr. Eric F. Eisenlauer
Mr.J. Kenneth McManigal