State of California **Board of Equalization**
Legal Division-MIC: 82

M e m o r a n d u m

To: Mr. Daivd J. Gau, Chief
Policy, Planning and Standards Division

Date: June 28, 2000

From: Lou Ambrose
Tax Counsel

Subject: ***Revenue and Taxation Code section 69.5 – Partial Interest Sales of Original Property and Change in Ownership of Entire Original Property***

This is in reply to your memo of June 14, 2000 addressed to Larry Augusta in which you request our opinion as to whether section 69.5 allows a claimant to transfer a base year value of an original property sold in increments. As an example, you pose a scenario in which a mother initially sells a 50% interest in the original property to her daughter, and a year later sells the daughter the remaining 50% interest. The daughter did not claim the parent-child exclusion for either transfer. Assuming all other qualifying requirements are met, you ask whether the sale of the original property would qualify for transfer of the base year value. If such a sale qualifies, you ask whether for value comparison purposes the fair market value of the replacement dwelling as of the date of purchase would be compared to the sum of the fair market value of each interest sold on the sale date.

As set forth below, the sale of the entire original property in increments would qualify for the base year value transfer relief provided under section 69.5 if the sales take place within two years of the acquisition of the replacement property. For the purpose of value comparison, the full cash value of the original property would be determined by adding the fair market value of each interest sold as of its date of sale.

Law and Analysis

Revenue and Taxation Code section 69.5 provides generally that any person over the age of 55 years, or any severely and permanently disabled person, who resides in property that is eligible for the homeowner's exemption may transfer the base year value of that property to any replacement dwelling of equal or lesser value if the replacement dwelling is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

Section 69.5 requires a claimant to sell the entire original property but does not specify that the sale must occur in a single sales transaction. Subdivision (a)(1) provides, in relevant part, for the transfer of the base year value of the original property to any replacement dwelling within two years of the "sale of the original property". Subdivision (g)(4) defines "original property" as

> a building, structure, or other shelter constituting a place of abode, whether real property or personal property, that 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.

Subdivision (g)(8) defines "sale", as used in the section, as "any change in ownership of the original property for consideration."

Upon the sale of the original property, subdivision (e) requires the assessor to determine a new base year value for the property. It provides further that section 69.5 shall not apply unless the transfer of the original property is a change in ownership that subjects the property to reappraisal at its current fair market value in accordance with Section 110.1. While section 69.5 imposes specific requirements for the sale and reappraisal of the entire original property, there is no limitation on the manner in which the original property is sold. Therefore, in our view, multiple sales of fractional interests comprising all the interests in the property would qualify as a sale of the original property within the meaning of section 69.5 provided that the sales occur within two years of the purchase of the replacement dwelling.

In your example then, the sale of a 50% interest in the original property followed by the sale of the other 50% interest in the original property, for considerations, which sales are changes in ownership of the interests requiring reappraisal, would qualify as a sale of the original property for purposes of section 69.5. Of course, all other requirements of the section would have to be met for the section to apply, including the requirement that the purchase of the replacement dwelling be made within two years of the sales of both 50% interests in the original property.

Finally, in this regard, in your June 14, 2000 memo, you note that Annotation No. 200.0066 states, in part, that there is no provision for the sale of a partial interest in an original property. We remain of that opinion but, as indicated above, your example pertains to the sale of an entire original property in increments, not merely the sale of a partial interest.

Value Comparison

Section 69.5 does not specifically prescribe a method of valuation of an original property for value comparison purposes when that property is sold incrementally. Nonetheless, other provisions of the section compel the conclusion that the appropriate full cash value of the original property is the total of the fair market value of each fractional interest sold as of the sale date. In order to qualify for a base year value transfer, the claimant's replacement dwelling must be of equal or lesser value than the original property. Subdivision (g)(5) provides, in relevant part, that the "equal or lesser value" determination compares the full cash value of a replacement dwelling with the full cash value of the original property. Subdivision (g)(7) further specifies that "full cash value of the original property" means the new base year value plus adjustments for the period from the date of its sale by the claimant. Thus, for multiple sales of fractional interests, the full cash value of an original property sold incrementally would, for each sale, be the new base year value plus adjustments, if applicable, for that interest as of or from the date of its sale.

This conclusion is supported by the provision governing determination of the full cash value of a replacement dwelling in the analogous situation where a part of a replacement dwelling is purchased and the other part is newly constructed. In such a situation, subdivision (h)(4)(B) of section 69.5 provides, in relevant part, that, for value comparison purposes, the full cash value of the entire replacement dwelling is calculated by adding "the fair market value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on the date of acquisition . . ." Thus, the full cash value of a replacement property consisting of an acquired portion and a later newly constructed portion is the total of the fair market value of the acquired portion as of the date of the acquisition and the fair market value of the newly constructed portion as of or from the date of the completion of new construction. Similarly, under the facts presented, the full cash value of the original property would be the new base year value plus adjustments, if applicable, for the first 50% interest as of the date of its sale and the new base year value plus adjustments, if applicable, for the second 50% interest as of or from the date of its sale.

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cc: Mr. Dick Johnson, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Hadley Alger, MIC:64
Mr. Mark Nisson, MIC:64
Ms. Glenna Schultz, MIC:64