



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Executive Director

September 6, 2001

**Re: *Transfer of Base Year Value – Qualifying Original Property
Request No. 01-431***

Dear Mr. _____,

Your letter to Mark Nissan of June 8, 2001, together with your May 20, 2001 letter to Yvonne Decker of the Sonoma County Assessor's Office and her response, was referred to the Legal Division of the State Board of Equalization for reply.

Facts

The facts as we understand them are as follows:

You own a home in Marin County. You recently married a woman who owns a home in Sonoma County that has been her principal residence for 29 years. Since approximately May of 2000, she has occupied your home in Marin as her principal residence and has rented out her house in Sonoma County. She intends to sell her house and purchase a replacement home with you in Sonoma County as your permanent residence. You and your wife desire to transfer the base year value of her home in Sonoma County to the replacement residence and want to know how to qualify your wife's home as the original residence for purposes of Revenue and Taxation Code section 69.5 and the Proposition 60 benefit.

Specifically, you want to know how you and your wife can qualify the original residence for the Proposition 60 base year transfer if you are unable to find a replacement dwelling within two years of the date your wife ceased to occupy the original property as her principal residence. For the reasons explained below, you and your wife may continue to qualify her Sonoma home as the original property, if you retain ownership and intend to actually occupy it as your principal residence before two years have passed from May 2000.

For purposes of this analysis, we assume that your wife, who would be the claimant, will be at least 55 years at the time her house is sold and that neither of you have previously received Proposition 60 benefits. We also assume that the replacement property will be of equal or lesser value than the value of your wife's original property in Sonoma.

Law and Analysis

Proposition 60 was approved by the voters on November 4, 1986, authorizing the Legislature to permit a homeowner over the age of 55 to transfer to a replacement property of equal or lesser value within the same county the base year value on his/her residence if it is eligible for the homeowner's exemption. (California Constitution Article XIII A, Section 2.) The homeowner's exemption is available on a dwelling only when occupied by an owner as his principal residence on the lien date. (California Constitution Article XIII, Section 3, subdivision (k); Rev. & Tax. Code § 218.)

Section 69.5 was added to the Revenue and Taxation Code in 1987 to implement Proposition 60 and has since been amended and modified to account for other later voter-approved initiatives.¹

Subdivision (a) of section 69.5 generally tracks the language of the constitution, providing that any person over the age of 55 or any severely and permanently disabled person "*who resides in property which is eligible for the homeowner's exemption*" to transfer the base year value of that property "*within two years of the sale...of the original property.*"

Subdivision (b) of Section 69.5 sets forth some more specific conditions in interpreting the two year requirement. To be eligible for the base year transfer, the claimant and original property must meet BOTH of the following conditions:

- (1) The claimant is an owner and a resident of the original property either at the time of its sale or *within two years of the purchase or new construction of the replacement dwelling*;
- (2) The original property is eligible for the homeowners exemption, as the result of the claimant's ownership and occupation of the *property as his or her principal residence*, either at the time of its sale or *within two years of the purchase or new construction of the replacement dwelling*.

(Emphasis added.)

Subdivision (g)(4) defines "original property" as "...owned and occupied by a claimant as his or her principal place of residence."

It is clear from subdivision (b) that it is not necessary for a claimant to have resided at the original property at the time of its sale or the purchase of the replacement property, nor for the original property to have been eligible for the homeowner's exemption at the time of its sale or replacement purchase. However, under subdivision (b)(1), the claimant will not be eligible for the base year transfer if she discontinued her residency or occupancy more than two years before its sale or the purchase of the replacement dwelling. And under subdivision (b)(2), in order for

¹ One of these initiatives, Proposition 90, authorized county board of supervisors to adopt ordinances allowing base year value transfers between different counties. Neither the Marin County nor the Sonoma County boards of supervisors have adopted county Proposition 90 ordinances; therefore you will need to purchase a replacement dwelling in Sonoma County.

the original property to qualify, two years or more cannot have passed since the claimant occupied it "as his or her principal place of residence."

If it appears that you will be unable to purchase a qualifying replacement property before the lapse of two years from the date your wife ceased to occupy her Sonoma home as her principal residence, she would have to reestablish her "principal residency" in her old house in order to be eligible to transfer its base year value to a replacement property.

The question of whether a dwelling located in California is a person's principal place of residence is a question of fact, to be determined by the county assessor. However, the analysis used is analogous to that used in determining domicile for income tax purposes. To qualify for the homeowner's exemption, a dwelling must be the claimant's true, fixed and permanent home and principal establishment to which he/she, whenever absent, intends to return. (See Annotation No. 505.0078 (11/20/84), attached.)²

When your wife moved out in May of 2000, and rented the house to tenants, the property in Sonoma became ineligible for the homeowner's exemption since she no longer occupied it or intended to occupy it as her principal residence. (See LTA 82/50, pages 14-15, attached.) If you and your wife reoccupy her Sonoma home, it is possible that an assessor would find a short stay arranged for tax purposes may not serve to re-establish the Sonoma property as the claimant's principal place of residence qualifying as the "original property" for Proposition 60 purposes, unless there is an "intent to occupy" it as your principal residence together with some evidence of eligibility for the exemption. (See Question No. G26 in attached LTA No. 82/50.)³

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.

Sincerely,

Susan Scott
Tax Counsel

Enclosures

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² As to the types of facts necessary to establish eligibility for the exemption, Question No. G20 in LTA No. 82/50, attached, identifies several, such as: voter's registration, car registration, employment and/or other indicators of permanent residence at that particular address.

³ With regard to timing, if the applicant for the homeowner's exemption is the owner of the property and intends to occupy the property as his/her principal residence on the lien date, he/she shall file the affidavit for the exemption anytime after becoming eligible, but no later than February 15, per Section 255, Revenue and Taxation Code.