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September 18, 1992

Joseph K. Furukawa, Esq.  
County of Los Angeles  
Office of the Assessor  
500 W. Temple Street  
Los Angeles, CA 90012-2770

Re: Reacquisition of Original Residence  
Revenue and Taxation Code Section 69.5

Dear Mr. Furukawa:

This is in response to your letter of September 1, 1992, to Mr. Richard Ochsner, Assistant Chief Counsel, in which you request our opinion as to whether a property can be classified as both the original property and the replacement dwelling for purposes of Revenue and Taxation Code Section 69.5 exclusion. The facts given below are taken from your letter.

A sold his home to B and the property was reappraised at full market value. A reacquired the home through foreclosure action 18 months later. A has filed a Revenue and Taxation Code Section 69.5 exclusion application to restore to his reacquired property, his old base year trended value that he had, prior to the sale to B. A qualifies in all other manner for a section 69.5 exclusion.

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. Section 69.5 provides in relevant part:

(a)(1) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years, or any severely and permanently disabled person, . . . who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and

Section 218 may transfer, subject to the conditions and limitations provided in this section, the base-year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is purchased . . . by that person as his or her principal residence within two years of the sale by that person of the original property . . . .

. . . .

(e) Upon the sale of original property, the assessor shall determine a new base-year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased . . . by the former owner or owners of the original property.

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.

. . . .

(g) For purposes of this Section:

. . . .

(3) "Replacement dwelling" means 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. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means 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. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property . . . .

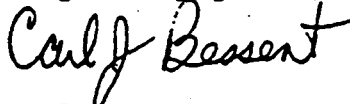
(9) "Claimant" means any person claiming the property tax relief provided by this section . . . .

From the facts you provided, it appears that at the time A sold his home, he owned and occupied it as his principal residence. Thus, the home would constitute his original property as defined by subdivision (g)(4).

Subdivision (a)(1) provides that subject to specified conditions and limitations, the base-year value of the original property may be transferred to "any replacement dwelling", as defined in subdivision (g)(3). There is no language in Section 69.5 which would prohibit treating the original property as the replacement dwelling. Therefore, we are of the opinion that A's original property can be treated as his replacement dwelling for purposes of Section 69.5. Assuming that the other conditions and limitations of Section 69.5 are met, A would be able to transfer and, in effect, reinstate the base-year value of his original property to the same property as his replacement dwelling.

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,



Carl J. Bessent  
Tax Counsel

CJB:jd/furuk

cc: Mr. John W. Hagerty  
Mr. Verne Walton