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December 18, 2006

***Subject: Change in Ownership – Transfer of Base Year Value
Time Limits for Qualification***

Dear Mr. and Mrs. :

This is in response to your request for advice concerning the two-year time limit for base year value transfers upon the sale of a principal residence and the purchase of a replacement property, article XIII A, section 2, subdivision (a) of the California Constitution and Revenue and Taxation Code, section 69.5.¹

As hereinafter indicated, in our opinion, the two-year time limit for a base year value transfer upon the sale of an original property is mandatory, and neither article XIII A, section 2, subdivision (a) of the California Constitution nor section 69.5 provides for an extension of the two-year period.

Facts

Your January 10, 2006 letter indicates the following:

- A. In May of 2001, you were given erroneous information concerning Proposition 60/article XIII A, section 2, subdivision (a) of the California Constitution² by a County Assessor’s Office employee by telephone.
- B. Thereafter, you remodeled the home and filed for transfer of base year value to the jointly-owned replacement dwelling at Street, .
- C. The claim was denied, the denial appealed, and the appeal denied by the County Assessment Appeals Board (AAB).³
- D. More than two years passed from the date of sale of the original property at Street, , to the date of the AAB’s decision.

¹ Unless otherwise stated, all section references are to the Revenue and Taxation Code.

² Proposition 60/article XIII A, section 2, subdivision (a) was implemented by section 69.5.

³ These matters were addressed in a March 24, 2005 letter to you from the legal staff of the Board.

- E. Because of the erroneous information, and the time it took to go through the various appeals formats, you seek an extension of the two-year period of article XIII A, section 2, subdivision (a), and section 69.5 for purchase or construction of a replacement dwelling after the sale of an original property. You ask:
1. *What authority does a county assessor have to extend the two-year limit on a Proposition 60 request?*
 2. *What would the legal ramifications or repercussions be if the county assessor did rule in our favor?*
 3. *What would be a reasonable time extension, keeping in mind that we first would have to sell our Street property?*

Analysis and Conclusions

1. What authority does a county assessor have to extend the two-year time limit for a base year value transfer upon the sale of an original property?

Answer: None. In our opinion, the constitutional two-year time limit for a base year value transfer of article XIII A, section 2, subdivision (a) and section 69.5 are mandatory; neither provides for an extension of the two-year period.

The passage of Proposition 60 on the November 4, 1986 ballot added the provision of article XIII A, section 2 of the California Constitution authorizing the transfer of the base year value of an original property to a replacement dwelling under described circumstances whereby:

[T]he Legislature may provide that under appropriate circumstances and pursuant to definitions and procedures established by the Legislature, any person over the age of 55 years who resides in property which is eligible for the homeowner's exemption . . . may transfer the base year value of the property entitled to exemption . . . to any replacement dwelling of equal or lesser value located in the same county and purchased or newly-constructed by that person as his or her principal residence within two years after the sale of the original property.

The Attorney General's Summary of Proposition 60, which so amended article XIII A, section 2, confirmed that the sale of the original property and the purchase or construction of the replacement property must occur within two years:

This measure amends article XIII A to permit the Legislature to allow persons over age 55, who sell their residence and buy or build another of equal or lesser value within two years in the same county, to transfer the old residence's assessed value to the new residence.

Neither article XIII A, section 2, nor the Attorney General's Summary provided for, or indicated in any way, any exception to the two-year period.

Thereafter, the Legislature exercised its authority under article XIII A, section 2, by adopting section 69.5 to provide that any person over the age of 55 years who resides in property eligible for the homeowners' exemption 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 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" The conditions and limitations contained in section 69.5 are controlling for purposes of the benefit granted by the section.

Neither did the Legislature provide for, or indicated in any way, any exception to the constitutionally-mandated two-year period.⁴

Thus, it has been our position, from the inception, that the two-year period of article XIII A, section 2, subdivision (a) and section 69.5 are mandatory:

1. September 11, 1987 Letter To County Assessors No. 87/71, Proposition 60: Key Elements:

Section 69.5 allows qualified homeowners to transfer the base-year value of their present principal residence to a replacement dwelling provided that:

* * *

The replacement dwelling is purchased or newly-constructed on or after November 6, 1986, and within two years of the sale of the original property.

2. February 11, 1988 Letter To County Assessors No. 88/10, Questions and Answers – Propositions 58 and 60 (LTA No. 88/10):

Question: What is Proposition 60?

Answer: Proposition 60 is a constitutional amendment approved by the voters of California on November 4, 1986 which allows the transfer of base year value from a former residence to a replacement residence, under certain conditions, for qualified persons over the age of 55.

⁴ Nor could it. In this regard, see Section 1.2 of Assembly Bill 3076/Stats.2006, CH. 364, in effect January 1, 2007, which amended section 69.5, copy enclosed. Subsection (2) was added to subdivision (f) to allow the assessor to grant, on a prospective basis, a base year value transfer with respect to property to which a transfer of base year value was available, but for which a timely claim (subsection (1), (F) of subdivision (f)) was not filed. This amendment was possible because the three year period in subdivision (f), subsection (1), (F) is a statutory requirement and no such requirement exists in article XIII A, section 2, subdivision (a). Conversely, the two-year time limit for base year value transfer in section 69.5, subdivision (a) is a constitutional requirement of article XIII A, section 2, subdivision (a), one which can only be changed by constitutional amendment.

Question: Please describe the “certain conditions” mentioned in Answer No. 1.

Answer: The following conditions must be met for tax relief to be granted under Proposition 60:

* * *

The replacement dwelling must be purchased or newly-constructed within two years of (before or after) the sale of the original property.

* * *

Question: Is it true that a replacement dwelling may be acquired any time within two years (before or after) of the date of sale of original property?

Answer: Yes, provided that the replacement dwelling is acquired on or after November 6, 1986 and not before. An exception occurs when a replacement dwelling lot is acquired before November 6, 1986. If this occurs, then as long as the lot was purchased within two years of the sale of original property and the replacement dwelling structure was newly constructed ‘after’ November 6, 1986, then only the structure portion of the replacement dwelling would be eligible for the benefit. If the purchase of the lot occurred more than two years before the sale of the original property, however, then no benefit may be granted to any portion of the replacement dwelling property.

And the advice contained in LTA No. 88/10 has remained our position, for example:

- Property Tax Annotation No. 200.0117:

Replacement Property-Rescission. If the purchase of a replacement property is rescinded, the purchase of a second replacement property can qualify for the transfer of the base year value of the dwelling being replaced as provided in Revenue and Taxation Code section 69.5. The procedure for rescinding the original claim for transfer of base year value in section 69.5(i) must be followed and the second purchase must be timely, i.e., within two years of the sale of the original property.

- Property Tax Annotation No. 200.0119:

Replacement Property. A taxpayer has purchased a condominium to replace his principal residence and plans to purchase an adjacent condominium and then commence construction to merge the two units into one. In order for the merged unit to qualify as a replacement dwelling under Revenue and Taxation Code section 69.5, the purchase of both units must occur within two years of the sale of the original property, and the new construction converting the units to a single, merged unit which is eligible for the homeowners’ exemption must be completed within two years after the sale of the original property.

- Property Tax Annotation No. 200.0121:

Replacement Property. Taxpayer purchased two separate adjoining parcels, one of which included a residence. The base year value of the taxpayer's original property was transferred to the qualifying residence and parcel. Taxpayer would like to combine the two parcels into one parcel in order to have the benefits of Revenue and Taxation Code section 69.5 apply to both parcels. The combination of the two parcels must be completed within two years of the sale of the original property in order for the second parcel to be considered part of the replacement property.

In view of article XIII A, section 2, subdivision (a) and section 69.5 then, in our opinion, a county assessor has no authority to extend the constitutional two-year time limit for base year value transfer upon the sale of an original property.

2. **What would the legal ramifications or repercussions be if a county assessor extended the two-year time limits for base year value transfer upon the sale of an original property?**

Answer: In this case, the assessor properly denied the base year value transfer. However, if, hypothetically, an improper extension was granted, then the following could occur:

- Negative review/recommendation in the Board's periodic county assessment surveys to determine the adequacy of the assessor's performance of his or her duties. (Gov. Code, §§ 15640, et seq.)
- Escape assessments. (Rev. & Tax. Code, §§ 531, et seq.)
- Possible sanctions against the assessor.

3. **What would be a reasonable time extension?**

Answer: As indicated in our Answer to Question No.1, above, neither article XIII A, section 2, subdivision (a), nor section 69.5 provides for an extension of the two-year period.

As you have not previously received article XIII A, section 2, subdivision (a) and section 69.5 relief, however, you would be eligible for that relief in the event you were to use the Street property as the original property or you were to purchase another original property. The purchase of the replacement property would have to be within two years of the sale of the original property, and all of the requirements of article XIII A, section 2, subdivision (a) and section 69.5 would have to be met.

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.

Very truly yours,

/s/ J. K. McManigal, Jr.

J. K. McManigal, Jr.
Senior Tax Counsel

JKM:pb
Prec/Transbyv/06/120.jkm

Enclosures

cc: Honorable
County Assessor

Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Mickie Stuckey, MIC:62
Mr. Todd Gilman, MIC:70