



STATE OF CALIFORNIA

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JAMES E. SPEED
Executive Director

November 2, 2000

Subject: *Request for Legal Opinion - Time Filing Requirement for Claim for Transfer of Base Year Value pursuant to Revenue and Taxation Code section 69*

Dear Mr. _____,

This in reply to your letter of September 11, 2000 addressed to Assistant Chief Counsel Larry Augusta in which you request our opinion concerning the timeliness of filing of a claim for the transfer of a base year value pursuant to Revenue and Taxation Code section 69. Your client's claim was denied by the Los Angeles County Assessor's office because it was not filed within five years of the date that his original property was damaged by the Northridge earthquake. For the reasons stated below, it is our view that the claim should not have been denied as untimely because section 69 does not prescribe a claim filing period.

As you state in your letter, your client owned a home in Los Angeles County which was severely damaged by the Northridge earthquake on January 17, 1994. On or about September 25, 1998 your client purchased a replacement property and on or about September 12, 1999 he filed an application for special assessment for replacement property with the Los Angeles County Assessor's office to transfer the base year value from the original property to the replacement property. In June 2000 the assessor's office denied the application because it was not filed before January 17, 1999, within five years of the date that the original property was damaged.

Section 69 does not provide a time limitations period within which a claim for transfer of a base year value must be filed. The only time limitation period prescribed by section 69 is a qualifying requirement for the acquisition or new construction of replacement property. In this regard, the subdivision (a) of section 69 provides in relevant part

Notwithstanding any other provision of law, pursuant to Section 2 of Article XIII A of the Constitution, the base year value of property which is substantially damaged or destroyed by a disaster, as declared by the Governor, may be transferred to comparable property within the same county which is acquired or newly constructed within three years after the disaster, or five years in the case of the Northridge earthquake, as a replacement for the substantially damaged or destroyed property.

Clearly, the foregoing provision is not a claim filing limitations period but establishes the deadline for acquiring (or completing construction on) the replacement property. As explained in the attached Letter to Assessors, No. 97/58, Disaster Relief – Northridge Earthquake, October 9, 1997, Chapter 353 of the Statutes of 1997 (SB 594) amended section 69 in 1997

to extend the property tax relief provided by Section 69 beyond the three-year limitation to homeowners who still have insurance claims unresolved due to the magnitude of the Northridge earthquake. Owners of property that was substantially damaged or destroyed in the Northridge earthquake now have until January 17, 1999, to acquire or construct a comparable replacement property within the same county and be eligible to transfer the base year value from the damaged property to the replacement property.

Thus, the five-year acquisition time period, to January 17, 1999, does not apply to the filing of the claim, and denial of the claim for this reason would not be justified.

Even though section 69 does not prescribe a claim filing deadline, we note that in a similar situation Board staff have issued guidance to assessors with respect to the timely filing of a claim for exclusion from change in ownership when the statute prescribed no filing limitations period. The statute, section 63.1 of the Revenue and Taxation Code, was adopted to implement the provisions of Proposition 58 which amended Article XIII A, section 2 to provide that the terms “purchase” and “change in ownership” did not include certain transfers of real property between parents and children. When it was initially adopted in 1987, section 63.1 did not prescribe a time limitations period for filing a claim for exclusion. An advisory Letter to Assessors was issued in 1987 to clarify the statute and the question of when a claim must be timely filed was answered as follows:

There is no deadline for filing the claim. It is hoped that the transferee will take the initiative in filing for the exclusion. If a late filing occurs, the assessor must make the appropriate adjustments to the base-year value of the property transferred in the year of transfer and the years thereafter. The claimant would then be entitled to claim refunds for those years still open under the applicable statute of limitations.

Letter to Assessors, No. 87/72, Proposition 58, Chapter 48, Statutes of 1987 (Assembly Bill 47), September 11, 1987

Consistent with the foregoing advice, it is our view that there is no deadline for filing a claim for transfer of base year value pursuant to section 69. However, any relief for taxes paid is available only for those years not barred by the applicable statute of limitations for refund claims.

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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/ Louis Ambrose

Louis Ambrose
Tax Counsel

LA:tr

prop/prec/transbyv/00/08lou

cc: Honorable Rick Auerbach
Los Angeles County Assessor

Mr. Dick Johnson, MIC:63

Mr. David Gau, MIC:64