

**STATE BOARD OF EQUALIZATION**

450 N Street, MIC: 64, Sacramento, California
(P. O. Box 942879, Sacramento, CA 94279-0064)

Telephone: (916) 445-4982
FAX: (916) 323-8765

JOHAN KLEHS
First District, Hayward

DEAN ANDAL
Second District, Stockton

ERNEST J. DRONENBURG, JR.
Third District, San Diego

BRAD SHERMAN
Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

BURTON W OLIVER
Executive Director

No. 95/16

March 2, 1995

TO COUNTY ASSESSORS:

PROPOSITION 171: DISASTER RELIEF
INTERCOUNTY TRANSFERS OF BASE YEAR VALUES

On November 2, 1993, the voters of California approved Proposition 171 which amended subdivision (e) of Section 2 of Article XIII A of the California Constitution. This constitutional amendment authorizes the Legislature to provide that the base year value of property substantially damaged or destroyed in a Governor-declared disaster may be transferred to a replacement property located in another county, provided that the replacement property is located in a county that has adopted an ordinance that allows such base-year value transfers.

Chapter 72 of the Statutes of 1994 (Assembly Bill 382, Lee) added Section 69.3 to the Revenue and Taxation Code (all statutory references are to the Revenue and Taxation Code unless otherwise indicated) to implement Proposition 171. This was an urgency statute, and it became effective on May 20, 1994.

In addition, Chapter 1222 of the Statutes of 1994 (Senate Bill 1431, Committee on Revenue and Taxation) added technical and clarifying changes to Section 69.3. This chapter is effective January 1, 1995. Section 69.3 is an extension of the disaster relief afforded under Section 69 with intercounty transfer provisions similar to Section 69.5 (transfer of base year values for disabled persons or persons over the age of 55).

This letter will summarize the key provisions of Section 69.3, as added and amended by Chapters 72 and 1222 of the Statutes of 1994, and provide guidance on the application of this statutory provision.

KEY ELEMENTS

Section 69.3 provides that the base-year value of damaged real property may be transferred to a comparable replacement property in another county under the following conditions:

- The county in which the replacement property is located (adopting county) must have passed an ordinance allowing transfers of base year values from another county subject to the conditions and limitations of Section 69.3. [Subdivision (a)(1).]
- This section applies to the determination of base year values of replacement properties for the 1991-92 fiscal year and each fiscal year thereafter. [Subdivision (g).]
- The original property must have been “substantially damaged or destroyed” by a major misfortune or calamity in an area subsequently proclaimed by the Governor to be in a state of disaster as a result of the misfortune or calamity. [Subdivisions (a)(1) and (b)(5).] “Substantially damaged or destroyed” is defined as physical damage amounting to more than 50 percent of a property’s full cash value immediately prior to the disaster. Damage includes a diminution in the value of property as a result of restricted access to the property where the restricted access was caused by the disaster and is permanent in nature. [Subdivision (b)(12).]
- The Governor-declared disaster must have occurred on or after October 20, 1991. [Subdivision (g).]
- Both the original property and the replacement property must be or have been owned and occupied by the claimant as his or her **principal place of residence**. [Subdivisions (b)(9) and (11).]
- For both the original and replacement properties, “owned” includes land where the claimant holds a leasehold interest as described in subdivision (c) of Section 61 or a land purchase contract. [Subdivisions (b)(9) and (11).]
- For both the original and replacement properties, the land portion includes only an area of reasonable size that is used for a residence. [Subdivisions (b)(9) and (11).]
- The replacement property must have been acquired or newly constructed on or after October 20, 1991 and within three years after the damage or destruction of the original property. Property, including land, acquired by the claimant prior to the damage of the original property does not qualify as replacement property. (Also, acquisition of an ownership interest in a legal entity that owns the property is not a

qualifying acquisition for purposes of this section.) [Subdivisions (a)(1), (b)(10), (b)(11), and (g).]

- The replacement property must be of equal or lesser value than the original property. Equal or lesser means that the amount of the full cash value of a replacement property does not exceed one of the following:
 1. One hundred five percent (105%) of the amount of the full cash value of the original property if the replacement property is purchased or newly constructed within the first year following the date of the damage or destruction of the original property.
 2. One hundred ten percent (110%) of the amount of the full cash value of the original property if the replacement property is purchased or newly constructed within the second year following the date of the damage or destruction of the original property.
 3. One hundred fifteen percent (115%) of the amount of the full cash value of the original property if the replacement property is purchased or newly constructed within the third year following the date of the damage or destruction of the original property. [Subdivisions (a)(1) and (b)(6).]
- The full cash value of the original property is determined by the assessor of the county where the original property is located. This determination is final. The statutes do not provide for any appeal of that assessor's valuation. [Subdivision (b)(7).]
- Only the owner or owners of the property that has been substantially damaged or destroyed may receive property tax relief under an ordinance adopted pursuant to Section 69.3. [Subdivision (d).]
- A timely claim must be filed. A claim must be filed no later than January 1, 1996, or within three years after the replacement property is acquired or newly constructed, whichever is later. [Subdivision (e).]

Please note that Section 69.3 applies to any qualified replacement property that is acquired or newly constructed as a replacement for property that has been substantially damaged or destroyed by a disaster occurring on or after October 20, 1991, regardless of the date on which the ordinance is adopted. Thus, when a qualified claim is filed in a county that has adopted the required ordinance, the base year value of the replacement property should be corrected and appropriate refunds should be processed. [Subdivisions (f) and (g).]

Only the owner or owners of the property that has been substantially damaged or destroyed may receive property tax relief. For example, if a sole owner of a destroyed original property purchased a property as a replacement together with a second party who was not an owner of the original property, the base year value of the original property cannot be transferred to this replacement property under Section 69.3. The reason is that someone other than the owner of the original property will receive the property tax relief pursuant to Section 69.3. [Subdivision (d).]

“Owner or owners” is defined as an individual or individuals. Partnerships, corporations, or other legal entities which own real property do not qualify for relief under Section 69.3. Moreover, acquisition of an ownership interest in a legal entity that owns real property is not considered an acquisition of a replacement property. Even though this section does not make any reference to trusts, it is our opinion that property nominally “owned” by a trust can be eligible for this property tax relief if the present beneficial interest in the property is held by a qualified individual as the beneficiary of the trust. [Subdivision (b)(10).]

Both the original property and the replacement property must be owned and occupied by the claimant as his or her principal place of residence. Section 69.3 limits property tax relief to principal places of residence. This is more restrictive than Section 69 which provides that the base year value of any property damaged in a Governor-declared disaster may be transferred to a qualifying replacement property within the same county. In addition, Section 69.3 does not specify when the original and replacement properties must be the principal places of residence. It is our opinion that the original property should be the principal place of residence at the time of the disaster and that the replacement property should be the principal place of residence at the time the claim is filed requesting relief under Section 69.3. [Subdivisions (b)(9) and (11).]

At the time the base-year value is transferred to the replacement property, the damaged property shall be reassessed at its current full cash value. However, the damaged property will retain its original base-year value. In other words, the base year value is replicated and transferred to the replacement property. What remains of the original property, in its damaged state, retains its base year value. [Subdivision (c).] The damaged property will retain its base year value until it is either (1) sold in its damaged condition (new base year value upon change in ownership), (2) removed (nonexisting improvements lose their base year value), or (3) reconstructed (new construction).

In the event the damaged property is reconstructed, any reconstruction is not eligible for the exclusion from new construction under subdivision (c) of Section 70; that is to say, any reconstruction of the damaged property is considered new construction and should be assessed at current market value at each lien date or upon completion. [Subdivision (c).]

Subdivision (a) provides for the transfer of the base year value of real property to comparable replacement property that is located in another county. Manufactured homes, are not classified as real property [Section 5801, subdivisions (b)(1) and (2)]. While the definitions of "original property" and "replacement property" include personal property, unlike subdivision (c)(2) of Section 69.5, which expressly discusses manufactured homes, Section 69.3 does not contain similar provisions that expressly extend the benefit to manufactured homes. In absence of specific direction, we cannot get around the limitation on original properties imposed by subdivision (a) that only the base year value of real property can be transferred. Thus, only manufactured homes that are subject to property taxation and located on claimant-owned land (including land for which the claimant holds either a lease interest described in subdivision (c) of Section 61 or a land purchase contract) may be considered original properties. In this case, only the base year value of the real property, i.e., the land, could be transferred to the replacement property land. The section does not apply to property tax manufactured homes on rented land (no real property), licensed manufactured homes on rented land, or licensed manufactured homes located on claimant-owned land (no base year value).

Subdivision (a) does not contain a similar limitation requiring that the base year value be transferred only to replacement property classified as real property; however, in situations where the replacement property is a manufactured home, subject to property tax, our opinion is that manufactured homes do not qualify as replacement property because a value comparison cannot be made between the full cash value of the original property and the full cash value of the manufactured home. Subdivision (b)(8) defines full cash value of the replacement property as its full cash value "as determined in accordance with Section 110.1." Section 110.1 provides for the full cash value of real property. The full cash value of a manufactured home is determined according to Section 5803, not Section 110.1. While we believe the Legislature did not intend to exclude manufactured homes as either original property or replacement property, until Section 69.3 is amended, manufactured homes currently do not meet the requirements for this property tax relief.

It is important to note that the definition of "replacement property" does not include any property, whether land or improvements, if the claimant owned any portion of that property prior to the date of the disaster. [Subdivision (b)(11).] In addition, subdivision (a) requires that a replacement property be acquired or newly constructed within three years after the damage or destruction of the original property. This implementation is more narrow than the constitutional amendment which requires the replacement property be purchased within three years of the damage or destruction of the original property. For example, a property or a vacant lot acquired less than three years prior to and owned by the claimant at the time of the destruction of the original property would not qualify as a replacement property under Section 69.3.

PROCESSING CLAIMS

In order to be considered timely, claims must be filed no later than January 1, 1996, or within three years after the replacement property is acquired or newly constructed, whichever is later. [Subdivision (e).]

For example, a home owned by "B" was destroyed in the Oakland Hills fire on October 20, 1991. "B" purchased a qualifying replacement home in an adopting county in December 1991. "B" has until January 1, 1996, to file a claim (January 1, 1996, is later than December 1994, three years after the replacement property was acquired). On the other hand, "C" lost a home in a disaster on August 1, 1994, and purchased a qualifying replacement home on October 1, 1994. "C" has until October 1, 1997, to file a claim (three years from the date the replacement property is purchased is later than January 1, 1996).

In the process of granting relief under Section 69.3, two items are required from the assessor of the county in which the original property is located:

1. The full cash value determination of the original property immediately prior to its substantial damage or destruction. "Full cash value of the original property" is defined as its full cash value as determined in accordance with Section 110. [Subdivision (b)(7).]
2. The base year value determination of the original property according to Section 110.1 as of the date immediately prior to its substantial damage or destruction. The assessor also needs to provide the base year or years for which this base year value was determined. [Subdivision (a)(2).]

Once a claim is filed and the adopting county receives the required information, the assessor of the adopting county must determine whether the replacement property is of equal or lesser value than the original property. If the replacement property qualifies, then the base year value of the original property can be transferred to the replacement property.

This base year value must be adjusted for the allowable annual inflation from the date of the disaster to the date the replacement property was purchased and/or constructed. Subdivision (a)(2) requires the base year value of the original property to continue to be adjusted for inflation until it is transferred to the replacement property, regardless of whether the claimant continued to own the original property during this period. Once the base year value of the original property is transferred to the replacement property, appropriate cancellations and refunds of tax should be processed under subdivision (f). However, the statute of limitations for refunds is applicable.

Please note that Section 69.3 applies to the determination of base year values for the 1991-92 fiscal year and each fiscal year thereafter. For example, "B" lost a home on October 20, 1991, and purchased a qualifying replacement residence in December 1991 in a neighboring county which adopted an ordinance under Section 69.3 in November 1995. If "B" filed a claim in December 1995, the county assessor should transfer the base year value from the original property to the replacement property as of the date of the purchase of the replacement property and process any applicable cancellations and/or refunds of tax.

Both Sections 69 and 69.3 require the assessor of the county in which the original property is located to make a determination of full cash value of the original property as of the date immediately prior to the disaster, but timely determinations of full cash value is more critical under Section 69.3 than 69. Section 69 affords proportional relief if the full cash value of the replacement property exceeds the full cash value of the original property. However, Section 69.3 completely denies the property tax relief if the full cash value of the replacement property exceeds the full cash value of the original property by more than the limits specified in subdivision (b)(6).

To avoid misunderstanding and frustration on the part of the taxpayer, we recommend that assessors provide the full cash value of the original property as timely as possible upon request by the taxpayer. Thus, if taxpayers wish to take advantage of Section 69.3, they will know the maximum amount they can afford for a replacement property.

The following is a suggested form to use in providing this information to the taxpayer. As mentioned earlier, since this value is not an assessment, there are no appeal provisions for the taxpayer. Therefore, assessors should take great care in determining this value. In addition, you should note this value in your records in case a question is raised in the future.

(County Letterhead)

CERTIFICATION OF FULL CASH VALUE OF ORIGINAL PROPERTY

(Pursuant to Section 69.3 of the Revenue and Taxation Code)

Owner or owners: _____

Situs address of original property: _____

Parcel number of original property: _____

Date of disaster: _____

Nature of disaster that caused damage: _____

Was this a Governor-declared disaster? Yes No

Full cash value immediately prior to date of disaster: _____

Base year value immediately prior to date of disaster:

Base Year _____ Value _____

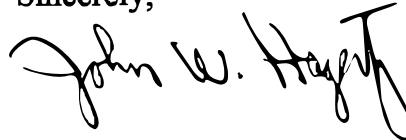
Certified by: (signed) _____

(print name, phone number) _____

Letter to Assessors 95/06 (dated January 17, 1995) contains a list of the counties that have passed ordinances pursuant to Section 69.3. As we become aware of more counties adopting ordinances that implement Proposition 171, we will update the list. Continued cooperation from the counties in notifying us when an ordinance is adopted will be greatly appreciated.

Subdivision (e) requires the Board to prescribe the claim form. This form will be mailed under a separate letter to assessors when it is available. If you have questions concerning Section 69.3 and its application, please call our Real Property Technical Services Section at (916) 445-4982.

Sincerely,



John W. Hagerty
Deputy Director
Property Taxes Department

JWH/grs
Enclosures

EXAMPLES

For purposes of these examples, each potential replacement property is located in a different county from that of the original property. The counties in which the potential replacement properties are located have adopted ordinances pursuant to Section 69.3, approving transfers of base year values. All original properties are located in areas declared by the Governor to be in a state of disaster.

1. Facts: A disaster, i.e., a fire, destroyed the original property on October 20, 1991. The assessor of the county in which the original property is located determined that the original property had a full cash value of \$400,000 immediately prior to the disaster. The Section 69.3 ordinance was adopted June 1, 1994, in a neighboring county. A property was purchased in the adopting county on July 7, 1994, for \$300,000 (market value) to replace the destroyed home. A claim was timely filed.

Action: The acquired property qualifies as the replacement property under Section 69.3. Transfer the base year value of the original property computed in accordance with subdivision (a)(2) to the replacement property as of July 7, 1994.

2. Facts: A disaster, i.e., a fire, destroyed the original property on October 20, 1991. The assessor of the county in which the original property is located determined that the original property had a full cash value of \$400,000 immediately prior to the disaster. The owner of the original property purchased a residence in another county on August 17, 1992, for \$300,000 (market value) to replace the destroyed home. An ordinance pursuant to Section 69.3 was adopted June 1, 1994, by the second county. A timely claim was filed.

Action: The acquired property qualifies as a replacement property under Section 69.3. Transfer the base year value of the original property to the replacement property as of August 17, 1992. Process the appropriate roll corrections, cancellations, and/or refunds.

3. Facts: An earthquake destroyed the original property on January 17, 1994. A vacant lot is purchased in an adjacent adopting county in March 1995 and a residence is constructed on the lot and completed in September 1995. A claim is filed timely after completion of the residence.

Action: Assuming the value test is met, the replacement property qualifies under Section 69.3. The base year value of the original property land is transferred to the replacement property land as of March 1995. Any excess taxes for taxable value above the transferred base year value should be cancelled or refunded. Next, the base year value of the original property improvement is transferred to the replacement

property improvement as of the date of completion. This will result in a supplemental assessment for the improvements since there would be zero value reflected on the current roll.

4. Facts: A tornado destroyed an original property in August 1994. A new residence is constructed and completed in March 1995 on a vacant lot in an adopting county that was purchased in 1965. A claim was timely filed.

Action: The property does not qualify under Section 69.3 as a replacement property because the lot was not purchased within three years after the date of the disaster. Deny the claim.

5. Facts: A fire destroyed an original property on October 20, 1991. Due to settlement problems with the insurance company, the owners of the original property were not compensated until January 1995. A new residence was acquired in an adopting county in March 1995. A claim was timely filed.

Action: The acquired property does not qualify under Section 69.3 because the property was not purchased within three years after the date of the disaster. Deny the claim.

6. Facts: The original property was destroyed by a fire. The owner of the original property purchased a property in an adopting county to replace the destroyed home. A timely claim for relief under Section 69.3 was filed and granted for the replacement property. Subsequently, this replacement property was destroyed in an earthquake. A property was acquired in another adopting county. A timely claim was filed for the second replacement property.

Action: Assuming the requirements of Section 69.3 are met, the second replacement property qualifies for the base year value transfer under Section 69.3. Unlike Section 69.5 which provides a one-time benefit, a property owner can receive the benefit more than once under Section 69.3. The base year value of the first replacement property should be transferred to the second replacement property.

7. Facts: The original property was a licensed manufactured home in a park which was destroyed in a disaster. It was replaced by a stick-built house on a lot in an adjacent adopting county. A claim was filed timely.

Action: The original property was not real property as required by subdivision (a) and also did not have a base-year value to transfer. Deny the claim.

8. Facts: The original property, a licensed manufactured home in a park, was destroyed by fire. The taxpayer purchased a manufactured home subject to local property tax in a park in an adjacent adopting county as a replacement for the destroyed home. A claim was timely filed.

Action: The original property was not real property as required by subdivision (a) and also did not have a base year value which could be transferred. Deny the claim. However, the destroyed manufactured home may be eligible for disaster relief under Section 172.1 if it meets the conditions and limitations of that section (see letters to assessors 82/139, dated December 17, 1982, and 88/72, dated October 20, 1988).

9. Facts: An earthquake destroyed the original property, a stick-built house. A manufactured home (subject to local property tax) in a park in an adjacent adopting county was purchased to replace the stick-built house. A timely claim was filed.

Action: Since the full cash value of the manufactured home is determined according to Section 5803, not Section 110.1, the value test cannot be completed. The manufactured home does not qualify as a replacement property. Deny the claim.

10. Facts: An original property (stick-built house) was destroyed by a flood. A licensed manufactured home on a privately-owned lot in an adjacent adopting county was purchased to replace the original property. A claim was filed timely.

Action: While the licensed manufactured home itself cannot receive the benefit of the base year value transfer since it is not subject to property tax, the land and accessories (if the accessories are real property) are eligible. Assuming the value test is met (the original property v. the land and real property accessories), transfer the whole base year value of the original property to the replacement property land and manufactured home accessories (if real property) only.

11. Facts: A mud slide destroyed half the properties in a small town. The governor declared the town a disaster area due to the mud slide. Subsequently, a fire, unrelated to the mud slide, destroyed one house in this area. The owner of the fire-damaged house purchased a property in an adjacent adopting county to replace the fire-damaged house. A timely claim was filed.

Action: The fire-damaged house does not qualify as an original property under Section 69.3 since it was not destroyed by the disaster as declared by the Governor. Deny the claim.

12. Facts: A firestorm destroyed a home. The owners gave the property to their son. He filed a claim for the Section 63.1 benefit, Proposition 58. The original owners

acquired a residence in an adjacent adopting county to replace the destroyed home and timely filed a claim under Section 69.3.

Action: Assuming the value test is met, the newly-purchased residence qualifies as replacement property under Section 69.3 even though the destroyed property retains its base year value. However, repairs, renovation, or rehabilitation performed by the son on the original property is subject to assessment as new construction under subdivision (c).

13. Facts: A storm destroyed the original property. A qualifying replacement property was purchased in an adjacent adopting county. A claim was filed timely, and the base year value of the original property was transferred to the replacement property. A pool was added to the replacement property after the transfer of the base year value.

Action: The pool must be assessed as new construction. Even if the value of the replacement property including the value of the pool meets the value test, there is no provision similar to Section 69.5 which extends the benefit for new construction subsequent to the granting of the property tax relief.

14. Facts: The original property was destroyed in a disaster. Father owned 100 percent of the original property. Together, father and son acquired a property in an adjacent adopting county to replace the destroyed home. The father filed a claim timely.

Action: Deny the claim. Subdivision (d) provides that only the owner or owners of the property that has been substantially damaged or destroyed may receive property tax relief. Section 69.3 does not provide for fractional ownership of the replacement property by the owner(s) of the original property. The definition of "replacement property" makes it clear that the term refers to the entire property and not merely a fractional interest in it. Thus, the replacement property must be acquired in its entirety solely by the owner or owners of the original property.

15. Facts: "B's" solely-owned property was destroyed in a disaster. After the disaster "B" married "C." Together "B" and "C," husband and wife, purchase a residence in an adjacent adopting county. "B" filed a claim to transfer the base year value from "B's" original property to the new residence.

Action: Deny the claim. "C" was not a spouse at the time of the disaster and had no community property interest in the original property. Since "C" was not an owner of the original property, "C" cannot receive relief under subdivision (d). To qualify as the replacement property, "B" could purchase the new residence separately and file

the claim. Then "B" may transfer the property to "B" and "C" as husband and wife the transfer being excluded under Section 63, interspousal exclusion.

16. Facts: A duplex which was damaged in a disaster was owned by two people. Each coowner used one side of the duplex as the principal place of residence. The two coowners each acquired a separate single family residence in an adjacent adopting county as a replacement for the damaged duplex. They want to split the base year value of the duplex and transfer the appropriate base year value to each new residence. Two timely claims were filed.

Action: Each half of the duplex qualifies as a separate original property as long as the duplex was the principal place of residence of each owner. The definition of "original property" under subdivision (b)(9) states that "each unit of a multiunit dwelling shall be considered a separate original property." If the full cash value of each replacement property is equal to or less than of the full cash value of the original property (the appropriate unit of the duplex), then transfer the base year value of each original property unit to the respective replacement property.

17. Facts: A duplex owned by one person was destroyed in a disaster. One half of the duplex was the owner's principal place of residence; the other half was a rental unit. The owner purchased a single family residence as a rental in the same county as the duplex and a second single family residence as the principal place of residence in an adjacent adopting county to replace the principal residence portion of the duplex. Can the base year value of the duplex be transferred to both of the residences purchased as replacements?

Action: Yes. The definition of "original property" under subdivision (b)(9) states that "each unit of a multiunit dwelling shall be considered a separate original property." The portion of the duplex that was the principal place of residence qualifies as an original property under Section 69.3. If the residence purchased in another county is the principal place of residence, then it may qualify as the replacement property under Section 69.3. However, it must meet the value test comparing the full cash value of the replacement property to the full cash value of that portion of the duplex that was the principal place of residence of the owner. The residence that is purchased in the same county to replace the rental half of the duplex may qualify for property tax relief under Section 69.

18. Facts: A disaster destroyed an original property. The full cash value of the original property immediately prior to the disaster was \$300,000. Subsequent to the disaster, the owner of the destroyed property purchased a lot in an adjacent adopting county for \$100,000. A residence was constructed on the lot as a replacement for the destroyed home. At the time of completion, the full cash value of the lot was

\$160,000 and the full cash value of the residence was \$200,000. A timely claim was filed.

Action: When the claim is filed, the value to be compared is the full cash value of the original property immediately prior to the disaster (\$300,000) and the full cash value of the replacement property lot at the time it was acquired (\$100,000) and the full cash value of the replacement property improvements at the time of completion (\$200,000). Grant the claim.

19. A residence worth \$300,000 was damaged by a mud slide (not a Governor-declared disaster). The market value dropped to \$100,000. Before the owner can repair the residence, a fire (Governor-declared disaster) destroyed the home. For purposes of Section 69.3, what is the value to which a replacement property can be compared?

Answer: For purposes of the Section 69.3 benefit, the full cash value of the original property is limited to \$100,000 which is the value just prior to the second event, the Governor-declared disaster (the fire). [Subdivisions (b)(5), (7) and (12).]