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January 14, 1997
TO COUNTY ASSESSORS:

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 Executive Director

No. 97/02

LEGISLATIVE CHANGES TO REVENUE & TAXATION CODE SECTION 69.5
(PROPOSITIONS 60/90/110)

Senate Bill 1692 (Chapter 897 of the Statutes of 1996) is urgency legislation effective on September 25, 1996. A major portion of this bill amends Revenue and Taxation Code Section 69.5, which implements Propositions 60, 90, and 110.¹ These provisions allow either persons who are over the age of 55 years or persons of any age who are severely and permanently disabled to transfer the base year value of their principal residence to a qualified replacement dwelling in the same county and/or until January 1, 1999, in another county.

Current qualifications under Section 69.5 require under subdivision (b) that the claimant applying for relief has not previously been granted such relief, as a claimant, and under subdivision (g) that the relief applied to the land portion of the original property or replacement dwelling extends only to that land of reasonable size which is used as a site for that residence. Senate Bill 1692 has amended these two qualifications of Section 69.5 to (1) permit persons who have already received a base year value transfer pursuant to the over the age of 55 years provision to receive a second base year value transfer if they subsequently become severely and permanently disabled, and (2) provide a definition for the phrase "land of reasonable size" when there is no commercial use of the land.

SECOND BASE YEAR VALUE TRANSFERS FOR DISABLED PERSONS

Senate Bill 1692 amended the first sentence of Section 69.5(b)(7) to read:

The claimant has not previously been granted, as a claimant, the property tax relief provided by this section, except that this paragraph shall not apply to any person who becomes severely and permanently disabled subsequent to being granted, as a claimant, the property tax relief provided by this section for any person over the age of 55 years.

¹ All statutory references are to the California Revenue and Taxation Code unless otherwise indicated.

This amendment creates an exception from the one base year value transfer limitation for any claimant who becomes severely and permanently disabled *after* having previously received a base year value transfer as a claimant over the age of 55 years. Thus, if a person over the age of 55 years transferred the base year value from an original property to a replacement dwelling and then becomes disabled, then that person may now transfer his or her base year value a second time². However, a person would not be eligible for a second base year value transfer in the reverse situation. That is, if a person received a base year value transfer because of a disability and subsequently applies to transfer the base year value a second time after attaining the age of 55, then the second transfer would not qualify for relief. Please note that this exception is not retroactive. Consequently, it is effective for transfers that occur on or after September 25, 1996.

SEVERELY AND PERMANENTLY DISABLED DEFINED. "Severely and permanently disabled" is defined in Section 74.3 as:

"... any person who has a physical disability or impairment, whether from birth or by reason of accident or disease, which results in a functional limitation as to employment or substantially limits one or more major life activity of that person, and which has been diagnosed as permanently affecting the person's ability to function, including but not limited to, any disability or impairment which affects sight, speech, hearing, or the use of any limbs."

Proof of a severe and permanent disability is required. The proof must be in the form of a certification signed by a licensed physician or surgeon of appropriate specialty attesting that the claimant is severely and permanently disabled.

CLAIM REPORTING PROCESS. Because we anticipate that few persons will require a second base year value transfer, we will not, at this time, modify the Proposition 60/90/110 data base program. Process these claims for this exception as you would any other Section 69.5 (Proposition 110) claim. In your reports to the Board, use the proposition indicator "C" since these will be Proposition 110 (disabled persons) claims. (The proposition indicator changed from "Y" or "N" to "A", "B", or "C" when Proposition 110 passed in 1990. Please see County Assessors Only Letter No. 93/04 for more information.) Any Proposition 110 claim that appears on the Board's quarterly "Duplicate Social Security Number Report," will be checked for this new exception before the reports are mailed to the counties. If the Proposition 110 transfer date is later than the Proposition 60 or 90 transfer date and is after the effective date of this bill, we will manually delete the Proposition 110 claim from the data base. These deleted claims

² A base year value could also be transferred from some other eligible principle place of residence, rather than transferring the same base year value twice. For example, if the claimant had moved multiple times since their first base year value transfer

will be kept in a separate file. The "Duplicate Social Security Number Report" will be reprinted so that this deleted claim will not appear on the report.

LAND OF REASONABLE SIZE

Senate Bill 1692 has defined "area of reasonable size," by adding the following sentences to the end of subparagraphs (3) and (4) of subdivision (g):

"For purposes of this paragraph, 'area of reasonable size that is used as a site for a residence' includes all land if no portion of the property is used for commercial purposes. 'Commercial purposes' does not include activities that are incidental to the use of the property as a residential site."

Previously, the definitions of replacement dwelling and original property under Section 69.5(g)(3) and (4) provided that land includes only that area of a reasonable size which is used as a site for a residence. The phrase "area of reasonable size that is used as a site for a residence" was not statutorily defined and such a determination was a matter of appraiser judgment.³ The purpose of this amendment is to provide homeowners with more certainty in determining whether a particular replacement property would qualify for a base-year value transfer under the equal or lesser than value test when there is no commercial use of the property.

Land area now includes *all* of the land that has been either sold (in the case of the original property) or acquired (in the case of the replacement dwelling), so long as no portion of the property is used for commercial purposes. For example, a claimant sold a home located on a 7500 square foot lot and replaced it with a home located on a 20 acre parcel. As long as the 20 acre parcel was not used for commercial purposes, the base year value of the land from the 7500 square foot lot original property could be transferred to the 20 acre parcel providing all the other qualifications are met (e. g., equal or lesser value, time limitation). The opposite would also be true. If a claimant sold a home on a 20 acre parcel and purchased a replacement dwelling located on a 7500 square foot lot, the base year value of the land from the 20 acre original property would be transferred to the 7500 square foot lot replacement dwelling assuming there were no commercial purposes of the 20 acre parcel and that the replacement dwelling meets the other qualifications under Section 69.5.

"INCIDENTAL" GUIDELINES. Commercial purposes that are "incidental to the use of the property as a residential site" must be minor in nature. For example, boarding a horse, selling eggs or fruit, or having a home-based business operating out of a bedroom in the home would be considered incidental to the use of the property as a residence. A

³ Previous instructions recommended the use of Assessor's Handbook Section 521A, The Valuation of Open Space Property (page 65) in estimating the area of rural residential sites located on lands under Williamson Act contract.

farm or ranch operation is not minor in nature because the farm or ranch is the primary use of the property and the home is incidental. Of course, because of the potential for a variety of uses of property for non-residential purposes, assessors will need to exercise judgment in determining the types and extent of uses they determine to be "incidental".

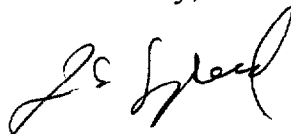
CLAIM FORMS. Claim forms are being amended to comply with these changes. Copies will be forwarded to Assessors Offices as soon as possible. If you have any questions pertaining to the forms, please contact Bill Minor at (916) 445-4982.

SUNSET OF INTERCOUNTY TRANSFER PROVISIONS

The Section 69.5 which is currently operative contains a sunset date, and a replacement Section 69.5 takes effect on January 1, 1999. The difference between these two versions of Section 69.5 is that the intercounty transfer provisions (Proposition 90) are not included in the Section 69.5 that becomes operative on January 1, 1999. As a result, absent future legislative changes, counties that have adopted ordinances⁴ implementing Proposition 90 will, after January 1, 1999, be without statutory authority to enforce local provisions which administer this particular tax benefit. You may wish, therefore, to warn homeowners seeking information on Proposition 90 of the risk that intercounty transfers of base year values may not be available after January 1, 1999.

If you have questions regarding the content of this letter, please contact our Real Property Technical Services Section at (916) 445-4982.

Sincerely,



J. E. Speed
Deputy Director
Property Taxes Department

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⁴ Those counties are Alameda, Kern, Los Angeles, Marin, Modoc, Monterey, Orange, San Diego, San Mateo, Santa Clara, and Ventura.