



STATE OF CALIFORNIA

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July 25, 2003

TIMOTHY W. BOYER
 Interim Executive Director

No. 2003/050

TO COUNTY ASSESSORS:

REVENUE AND TAXATION CODE SECTION 69.5 (PROPOSITIONS 60, 90, AND 110);
BASE YEAR VALUE TRANSFER FROM PROPERTY DAMAGED
BY MISFORTUNE OR CALAMITY

Effective January 1, 2002, Revenue and Taxation Code¹ section 69.5 was amended to provide specific circumstances under which any person over age 55 or disabled may qualify for a Proposition 60/90/110 base year value transfer if their home was substantially damaged or destroyed by a misfortune or calamity and sold in its damaged state². (Previously, these properties might not qualify because of the equal-or-lesser value test that must be met under section 69.5.) In addition, subdivision (m) provided that these changes applied to replacement properties that were purchased or newly constructed on or after March 24, 1999.

Effective January 1, 2003, Chapter 775 of the Statutes of 2002 (SB 2092) amends section 69.5 to eliminate the March 24, 1999, date and instead provides that a replacement property must be purchased or newly constructed on or after the effective date of the particular proposition under which relief is being claimed. In addition, subdivision (m), as amended, provides that claims for relief will be considered timely if they are filed within four years after January 1, 2003 (i.e., until January 1, 2007). Consequently, persons who did not file or whose claims were denied because their replacement properties were purchased or newly constructed prior to March 24, 1999, could refile and transfer their base year values.

Thus, for an original property that was substantially damaged or destroyed by misfortune or calamity and sold in its damaged state, the following requirements apply to a base year value transfer under section 69.5.

SUBSTANTIALLY DAMAGED OR DESTROYED

An original property is “substantially damaged or destroyed by misfortune or calamity” if it sustains physical damage amounting to more than 50 percent of its full cash value immediately prior to the misfortune or calamity. 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

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

² Chapter 613, Statutes of 2001, effective, January 1, 2002; see Letter To Assessors No. 2002/016, dated March 8, 2002.

misfortune or calamity and is permanent in nature. Case law defines a misfortune or calamity as some event out of the ordinary that is unforeseeable, sudden, or unusual, in contrast to a gradual deterioration or worsening condition over time.³

As an example of substantial damage, assume the full cash value of an original property prior to a misfortune or calamity was \$200,000. The land is worth \$110,000, and the improvements \$90,000. If the improvements are destroyed without causing a decline in the land value, then the owner cannot transfer the base year value because the property did not sustain damages amounting to more than 50 percent of its full cash value prior to the misfortune or calamity. However, if the total appraisal unit, both land and improvements, were to suffer damages amounting to more than \$100,000, then the owner could transfer the adjusted base year value of the damaged property to a comparable replacement property.⁴ (As the example illustrates, in some cases, the destruction of the improvements could also cause a decline in the land value.)

RESIDENCY REQUIREMENT

Original Property

The claimant must own and occupy the original property either:

- at the time of its sale;
- within two years of the purchase or new construction of the replacement property; or
- at the time when the original property was substantially damaged or destroyed by misfortune or calamity.

The property must be eligible for the homeowners' exemption as a result of the claimant's ownership and occupation of the property under any of these scenarios. The property does not have to actually receive the homeowners' exemption; it simply must be *eligible* for the exemption as a result of the owner occupying it as a principal residence. If the original property did not have a homeowners' exemption, the claimant may submit other documents that prove the claimant occupied the property as a principal residence (e.g., vehicle registration, voter registration, or income tax returns).

Replacement Property

The claimant must own and occupy the replacement property as a principal residence when the claim is filed. As a result of the claimant's owning and occupying the property, it must be eligible for the homeowners' exemption or would be eligible for the exemption except that the property is already receiving the exemption.

TIMING

The purchase of the replacement property must occur within two years of the sale of the original property in its damaged state. For example, if a principal residence were destroyed in 1995 and sold in its damaged state in 2000, the property owner would have two years from the 2000 sale date to purchase a qualifying replacement property.

³ *T. L. Enterprises, Inc. v. Los Angeles County*, 215 Cal.App.3d 876.

⁴ Letter To Assessors No. 87/23, dated March 10, 1987, page 2.

VALUE COMPARISON

Under section 69.5, the full cash value of the replacement property must be equal to or less than the full cash value of the original property. The *full cash value* of an original property that has been substantially damaged or destroyed by misfortune or calamity and sold in its damaged state is that determined in accordance with section 110 “immediately prior” to the damage or destruction, plus any inflation factoring applicable between the date of sale of the original property and the replacement property’s date of purchase or completion of new construction.

For example, if a principal residence was destroyed on July 16, 1999, and sold in its damaged state in December 2000, and the replacement property was purchased in September 2002, the fair market value of the original property would be determined as of July 15, 1999 (immediately prior to the date of damage or destruction). Inflation factoring would be added to this value for lien dates 2001 and 2002 (the period between the original property’s date of sale and the replacement property’s date of purchase). Since the replacement property was purchased in the second year after the sale of the damaged property, the fair market value of the replacement property as of the date of purchase would be compared with 110 percent of this value.

VALUE TO BE TRANSFERRED

For an original property that has been substantially damaged or destroyed by misfortune or calamity and sold in its damaged state, the value to be transferred is the factored base year value as of the date immediately prior to the date of misfortune or calamity, plus applicable inflation factoring for the period from the date of sale to the date of purchase. The value to be transferred would also include any non-qualifying new construction completed on the replacement property from the date of purchase to the date the claim is filed.⁵

APPEALS

The Board has taken the position that a claimant may appeal a denial of a claim on the ground that all of the requirements of section 69.5 have been met and, therefore, the base year value of the original property should be transferred to the replacement property.⁶ If such an appeal involves a determination of the fair market value of the original property, however, then the application can be valid *only* if (1) the appeals board has jurisdiction over the original property (i.e., both the original and the replacement properties are in the same county)⁷, (2) the base year value of the original property (i.e., its fair market value) has not already been the subject of an application decided by an appeals board, and (3) the base year value of the original property can still be challenged pursuant to section 80.⁸

⁵ If new construction completed after the purchase would disqualify the property because of value reasons, the claimant may choose to use the date of change in ownership for the value comparison test and the new construction will be reassessed at current market value. Other types of non-qualifying new construction would include a rental unit or a detached building used for a business.

⁶ See the *Assessment Appeals Manual*, May 2003, Chapter 5; and Annotation 200.0006 (C 7/2/96).

⁷ An appeals board has no jurisdiction to consider the fair market value of a property located in another county, even for purposes of the value comparison test for section 69.5.

⁸ Under section 80(a)(3), a base year value may be appealed during the regular equalization period for the year in which it is placed on the assessment roll or in any of the three succeeding years.

The board's determination of the full cash value of the original property necessarily constitutes a determination of the new base year of the original property because the two are the same for purposes of the value comparison requirement. If an appeals board finds in favor of a claimant and increases the base year value established by the assessor, the current owner of the original property would incur an increased tax liability. Consequently, the current owner of the original property is a person affected in the assessment of the property; i.e., a person who has a direct economic interest in the payment of the property taxes on the original property. In the context of an assessment appeal, such a person must be afforded due process; i.e., notice and an opportunity to be heard by the appeals board. As a person affected, the current owner has the right to participate at the hearing as a party to the matter in the same manner as the applicant. Therefore, the appeals board must notify the current owner of its intention to hear and decide an application appealing the denial of a section 69.5 claim for transfer of base year value when such a hearing involves a determination of value of the original property.

EFFECTIVE DATE

Effective January 1, 2003, Chapter 775 removes the limitation that the replacement property be purchased or newly constructed on or after March 24, 1999, and, instead, provides that the replacement property be purchased or newly constructed on or after the effective date of the proposition under which the relief is being claimed. Under the new law, claimants will have until *January 1, 2007*, to file for relief under subdivision (m).

- For **persons age 55 and over** whose original property and replacement property are located in the **same** county (Proposition 60), the replacement property must have been purchased or newly constructed on or after *November 6, 1986*.
- For **persons age 55 and over** whose original property and replacement property are located in **different** counties (Proposition 90), the replacement property must have been purchased or newly constructed on or after the date specified in the county ordinance, but not before *November 9, 1988*.
- For **severely and permanently disabled persons** (Proposition 110), the replacement property must have been purchased or newly constructed on or after *June 6, 1990*. If the replacement property is located in a different county than the original property, the county in which the replacement property is located must have an ordinance allowing intercounty transfers.

Property tax relief filed under subdivision (m) will apply prospectively, commencing with the lien date of the assessment year in which the claim is filed. For claims filed in 2003, relief will apply as of January 1, 2003, for the 2003-04 fiscal year. There will be no refund or cancellation of taxes for years prior to the year in which the claim is filed. However, if a claim is filed after the assessment roll has closed (July 1 to December 31), then that roll will need to be corrected and taxes refunded or cancelled.

The provision of subdivision (m) allowing prospective relief applies *only* to situations where all of the following are true:

- the original property was substantially damaged or destroyed by misfortune or calamity and sold in its damaged state;

- the replacement property was purchased or newly constructed between the effective date of the proposition and January 1, 2002 (when subdivision (m) was first added); and
- the replacement property is otherwise qualified under section 69.5, *except for* the three-year filing period.

The provision of subdivision (m) allowing prospective relief does not alter the three-year claim filing period under subdivision (f); it is not intended to apply to properties that are damaged or destroyed by calamity or disaster after January 1, 2002. For example, if a residence were destroyed by fire in November 2002; the homeowners purchased a new residence in January 2003; the homeowners sold the land of the destroyed residence in November 2003; and an application for relief under section 69.5, subdivision (m) was filed in January 2007; no relief would be available because the three-year filing requirement under subdivision (f) would not have been met.

Since these changes are effective as of January 1, 2003, claims for relief to which these changes apply may be filed after January 1, 2003. Claimants have until *January 1, 2007*, to file for relief under subdivision (m).

MANUFACTURED HOMES

Chapter 775 also made changes to section 69.5 involving manufactured homes in resident-owned mobilehome parks. Letter To Assessors No. 2003/025 (dated March 24, 2003) discusses these changes.

Enclosed is a copy of the applicable amended subdivisions of section 69.5 in ~~strikeout~~ and underline format. If you have any questions, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG:grs
Enclosure

Revenue and Taxation Code Section 69.5 as amended by Chapter 775, Statutes 2002:

...(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form that the assessor shall make available upon request, the following information:

(1) The name and social security number of each claimant and of any spouse of the claimant who was a record owner of the original property at the time of its sale or is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age, or severely and permanently disabled. Proof of severe and permanent disability shall be considered a certification, signed by a licensed physician and surgeon of appropriate specialty, attesting to the claimant's severely and permanently disabled condition. In the absence of available proof that a person is over 55 years of age, the claimant shall certify under penalty of perjury that the age requirement is met. In the case of a severely and permanently disabled claimant either of the following shall be submitted:

(A) A certification, signed by a licensed physician or surgeon of appropriate specialty that identifies specific reasons why the disability necessitates a move to the replacement dwelling and the disability-related requirements, including any locational requirements, of a replacement dwelling. The claimant shall substantiate that the replacement dwelling meets disability-related requirements so identified and that the primary reason for the move to the replacement dwelling is to satisfy those requirements. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move to the replacement dwelling is to satisfy identified disability-related requirements.

(B) The claimant's substantiation that the primary purpose of the move to the replacement dwelling is to alleviate financial burdens caused by the disability. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move is to alleviate the financial burdens caused by the disability.

(3) The address and, if known, the assessor's parcel number of the original property.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed subject to subdivision (k) or (m).

~~(m) The amendments made to subdivisions (b) and (g) of this section by the act adding this subdivision apply only to replacement dwellings that are acquired or newly constructed on or after March 24, 1999, and shall apply commencing with the 1998-99 fiscal year. The property tax relief provided by this section, but filed under this subdivision, shall apply prospectively only, commencing with the lien date of the assessment year in which the claim is filed. There shall be no refund or cancellation of taxes prior to the date that the claim is filed.~~

Section 69.5 of the Revenue and Taxation Code as amended by Chapter 775, Statutes 2002

(m) (1) The amendments made to subdivisions (b) and (g) of this section by Chapter 613 of the Statutes of 2001 shall apply:

(A) With respect to the transfer of base year value of original properties to replacement dwellings located in the same county, to any replacement dwelling that is purchased or newly constructed on or after November 6, 1986.

(B) With respect to the transfer of base year value of original properties to replacement dwellings located in different counties, to any replacement dwelling that is purchased or newly constructed on or after the date specified in accordance with subparagraph (E) of paragraph (2) of subdivision (a) in the ordinance of the county in which the replacement dwelling is located, but not to any replacement dwelling that was purchased or newly constructed before November 9, 1988.

(C) With respect to the transfer of base year value by a severely and permanently disabled person, to replacement dwellings that are purchased or newly constructed on or after June 6, 1990.

(2) The property tax relief provided by this section in accordance with this subdivision shall apply prospectively only commencing with the lien date of the assessment year in which the claim is filed. There shall be no refund or cancellation of taxes prior to the date that the claim is filed. Notwithstanding subdivision (f), a claim shall be deemed to be timely filed if it is filed within four years after the operative date of the act adding this paragraph.