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TO COUNTY ASSESSORS:

No. 2007/047

### PROPERTY TAX RELIEF—CONTAMINATED PROPERTY

On November 3, 1998, the voters of California approved Proposition 1, which amended section 2 of article XIII A of the California Constitution by adding subdivision (i). This amendment allows property tax relief in one of two forms for qualified contaminated property. Specifically, property owners are able to either:

1. Sell or otherwise transfer a qualified contaminated property and transfer its base year value to a replacement property of equal or lesser value; or
2. Repair or replace without reassessment structures located on a qualified contaminated property that were substantially damaged or destroyed in the course of the remediation of the environmental problems.

#### History

- Chapter 941 of the Statutes of 1999 (Senate Bill 1231) added section 69.4 to the Revenue and Taxation Code.<sup>1</sup> The addition of section 69.4 implemented both the base year value transfer provisions and the new construction exclusion authorized by Proposition 1.
- Chapter 471 of the Statutes of 2003 (Senate Bill 1062) deleted the new construction exclusion provisions from section 69.4, and placed these provisions in section 74.7.
- Effective August 30, 2004, Chapter 354 of the Statutes of 2004 (Assembly Bill 3073) amended section 69.4 to provide for definitions and provisions to administer the base year value transfer provisions.

### **ELIGIBILITY FOR RELIEF**

To be eligible for either type of relief, the contaminated property and its owner must meet all of the following criteria.

#### State or Federal Designation

The property must be located on a site that a state or federal government agency has designated as a toxic or environmental hazard or as an environmental clean-up site. A determination of contamination by a city or county is not sufficient to deem a property qualified for this property tax relief.

<sup>1</sup> All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

***Federal Government:*** The U.S. Environmental Protection Agency (EPA) is the primary federal agency that can assess whether private property poses a threat to human health or the environment. In 1980, the U.S. Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), more commonly known as "Superfund." With Superfund, the President authorized the EPA to identify hazardous wastes that threaten public health and the environment, and to locate and properly dispose of those wastes. Superfund does not cover petroleum or natural gas, engine exhaust emissions, normal use of fertilizer or pesticides, certain releases within a workplace, or some releases of nuclear materials.

The first step of the identification process is called the Preliminary Assessment (PA). Any person or organization can petition the EPA to conduct a PA using the agency's *Preliminary Assessment Petition*. In a PA, the EPA attempts to verify the existence of a released hazardous waste at a site that may fall under Superfund. The purpose of a PA is to determine if a threat exists and what further action should be taken. Often, a more detailed review of the site is required. This site inspection enables the EPA to gather data to score the site according to the Hazard Ranking System, which in turn determines whether the site should be added to the National Priorities List. Only sites on this list can be cleaned up using the Superfund Trust Fund. More information about Superfund is available from the EPA's website at [www.epa.gov](http://www.epa.gov).

***State Government:*** California's environmental laws are enforced by a matrix of state and local agencies, each charged with enforcing the laws governing a specific media such as air, water, hazardous waste, solid waste, and pesticides. The California Environmental Protection Agency (Cal/EPA) and its various departments oversee site clean-ups, prevent release of hazardous materials, enforce actions against responsible parties, and evaluate soil, water, and air samples. The Cal/EPA's Office of Environmental Health Hazard Assessment (OEHHA) has the primary responsibility for developing procedures and practices for performing risk assessments at the state level.<sup>2</sup> Other agencies within Cal/EPA, such as the Department of Pesticide Regulation and the Department of Toxic Substances Control, have extensive risk assessment programs of their own, but they work closely with OEHHA. More information about Cal/EPA and its agencies is available from the Cal/EPA website at [www.calepa.ca.gov](http://www.calepa.ca.gov).

***Local Government:*** A property that has been condemned by a local building department because of contamination will not be eligible for relief unless the property has also been designated as contaminated by a federal or state agency. For example, a house that has mold contamination and has been deemed uninhabitable by the county health department is not eligible for this property tax relief.

### **Condition of Property**

Residential property has to be *uninhabitable*, and nonresidential property has to be *unusable* as the result of either:

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<sup>2</sup> *A Guide to Health Risk Assessment*, California Environmental Protection Agency, Office of Environmental Health Hazard Assessment.

- Environmental problems, including but not limited to, the presence of toxic or hazardous materials.
- The remediation of those environmental problems.

*Uninhabitable* means that residential real property is unfit for human habitation as a result of health hazards caused by or associated with the environmental problems. *Unusable* means that nonresidential property is unhealthy and unsuitable for occupancy as a result of health hazards caused by or associated with the environmental problems.

### **Ownership**

The owner of the property must not have caused the property to be uninhabitable or unusable. Additionally, the property owner cannot be related to the individual or entity that caused the property to be contaminated. *Related to* means the owner cannot be:

- A spouse, parent, child, grandparent, grandchild, or sibling of that individual.
- A corporate parent, subsidiary, or affiliate of that entity.
- An individual or entity that is an owner of, or has control of, that entity.
- Owned or controlled by that entity.

The owner must provide satisfactory evidence to the county assessor that he or she did not participate in any act or omission that resulted in the contamination or is related to an individual or entity that caused the property to be contaminated. The county assessor is not bound by the findings of the lead governmental agency in making this determination.

### **Knowledge of Contamination**

In order to be eligible for either form of property tax relief, the owner must not have known at the time the property was acquired or constructed that the property was contaminated.

## **BASE YEAR VALUE TRANSFER**

In addition to the above eligibility requirements, the replacement property and its owner must meet the following criteria in order to be eligible for the base year value transfer.

### **Timing**

A replacement property must be acquired or new construction completed within five years *after* the sale or transfer of a qualified contaminated property. Property acquired prior to the sale or transfer of a qualified contaminated property is not eligible for relief under section 69.4. However, improvements constructed on ineligible land will qualify even though the land does not qualify.

### Location

Both the qualified contaminated property and the replacement property must be located in the *same* county. If not, the county in which the replacement property is located must have a resolution authorizing intercounty transfers under section 69.4.

To date, none of the 58 counties has passed such a resolution. We will issue a separate Letter To Assessors if we become aware of any resolutions that are adopted to implement these intercounty transfer provisions. Cooperation from the counties in notifying our Technical Services Unit when a resolution is adopted will be greatly appreciated.

### Comparable

*Comparable* means a replacement property is similar in utility and function to the property that it replaces. Property is similar in function and utility if it is, or is intended to be, used in the same manner as a qualified contaminated property. For example, an income-producing property should be replaced with another income-producing property.

### Value Comparison

The replacement property must be of equal or lesser value as compared to the original property. *Equal or lesser value* means the fair market value of the replacement property on the date of purchase or completion of new construction cannot exceed:<sup>3</sup>

- **105 percent** of the fair market value of the original property as if uncontaminated if a replacement property is purchased or newly constructed within the **first year** following the date of sale or transfer of the original property.
- **110 percent** of the fair market value of the original property as if uncontaminated if a replacement property is purchased or newly constructed within the **second year** following the date of sale or transfer of the original property.
- **115 percent** of the fair market value of the original property immediately as if uncontaminated if a replacement property is purchased or newly constructed within the **third year** following the date of sale or transfer of the original property.
- **120 percent** of the fair market value of the original property immediately as if uncontaminated if a replacement property is purchased or newly constructed within the **fourth year** following the date of sale or transfer of the original property.
- **125 percent** of the fair market value of the original property immediately as if uncontaminated if a replacement property is purchased or newly constructed within the **fifth year** following the date of sale or transfer of the original property.

If a lot is purchased and comparable structures constructed, the market value of the lot and improvements as of the date of completion is compared to the market value of the qualified contaminated property as if uncontaminated on the date of sale or transfer.

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<sup>3</sup> Section 69.4.

If the market value of the replacement property exceeds the applicable limit, none of the base year value can be transferred.

### **Ownership**

Only the owner of a qualified contaminated property is eligible for relief under section 69.4. If a legal entity sold a qualified contaminated property, that legal entity may acquire a replacement property. The individual owners of the legal entity would not be eligible. For example, if Partnership X, owned by A, B, and C, sold a qualified contaminated property, and A, B, and C acquired a comparable property as joint tenants, the property would not be eligible for relief.

### **Filing Period**

A claim for relief must be filed within three years after a replacement property is acquired or new construction is completed. The law does not provide for prospective relief if the filing deadline is missed. Section 69.4(f)(3) requires that the State Board of Equalization prescribe the form for claiming the exclusion.<sup>4</sup> In addition to filing the claim, the owner must provide the following information:

- Proof that a qualified contaminated property has been designated as a toxic or environmental hazard or as an environmental clean-up site by an agency of the State of California or the federal government.
- Proof that the owner did not participate in, or acquiesce to, any act or omission that rendered the real property uninhabitable or unusable, as applicable, or is not related to any individual or entity that committed that act or omission.

## **NEW CONSTRUCTION EXCLUSION**

In addition to the eligibility requirements enumerated above, a qualified contaminated property and its owner must meet all of the following criteria in order to be eligible for the new construction exclusion.

Section 74.7 provides that *new construction* does not include the repair or replacement of a substantially damaged or destroyed structure on qualified contaminated real property where the remediation of the environmental problems required the destruction of, or resulted in substantial damage to, a structure located on that property. The repaired or replacement structure must be similar in size, utility, and function to the original structure. This exclusion applies to new construction completed on or after January 1, 1995.

### **Substantially Damaged or Destroyed**

For purposes of this exclusion, *substantially damaged or destroyed* means the structure must sustain physical damage amounting to more than 50 percent of its full cash value immediately

<sup>4</sup> Form BOE-65-CP, *Claim for Transfer of Base Year Value from Qualified Contaminated To Replacement Property*.

prior to the damage. As an example of substantial damage, assume the full cash value of a structure prior to the remediation was \$200,000. If the structure suffered damage during the clean-up activities and its full cash value in its damaged state is \$75,000, then the new construction could be excluded from reassessment if it meets all other requirements.

### **Similar in Size and Utility**

*Similar in size and utility* means the size and utility of the structure are interrelated and associated with its value. A structure is similar in size and utility only to the extent that (1) the replacement structure is, or is intended to be, used in the same manner as the substantially damaged or destroyed structure; and (2) its full cash value does not exceed 120 percent of the full cash value of the replaced structure if that structure was not contaminated.

A replacement structure, or any portion thereof, that is used or intended to be used for a purpose substantially different than the use made of the replaced structure, to the extent of the dissimilar use, is not similar in utility. For example, if the structure that is damaged or destroyed was an income-producing property, it should be replaced with another income-producing property.

A replacement structure, or portion thereof, that satisfies the use requirement but has a full cash value that exceeds 120 percent of the full cash value of the structure if that property were not contaminated, will be considered, to the extent of the excess, not similar in utility and size. To the extent that a replacement property, or any portion thereof, is not similar in function, size, and utility, the property, or portion thereof, will be reassessed to current market value pursuant to section 110.1, and a new base year value will be established.

### **Ownership**

Only the owner of a qualified contaminated property is eligible for relief under section 74.7. If a structure was damaged or destroyed in the remediation of the contamination and the owner sold the property prior to the repair or reconstruction of the structure, the new owner would not be eligible for the new construction exclusion.

### **Filing Period**

For new construction completed after January 1, 2004, the property owner must notify the county assessor in writing that the owner intends to claim the exclusion prior to, or within 30 days of, completion of any project covered by this section. All documents necessary to support the exclusion must be filed with the county assessor within six months after the completion of the new construction. In addition, the owner must provide the following information:

- Proof that a qualified contaminated property has been designated as a toxic or environmental hazard or as an environmental clean-up site by an agency of the State of California or the federal government.
- Proof that the owner did not participate in, or acquiesce to, any act or omission that rendered the real property uninhabitable or unusable, as applicable, or is not related to any individual or entity that committed that act or omission.

- The address and the assessor's parcel number of the qualified contaminated property.
- The date of completion of the new construction.

If you have any questions regarding either type of property tax relief for qualified contaminated property, please contact our Technical Services Unit at 916-445-4982.

Sincerely,

/s/David J. Gau

David J. Gau  
Deputy Director  
Property and Special Taxes Department

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