200.0317 **Claim.** The time period for requesting a transfer of assessed value from a property taken by eminent domain to a replacement property is the later of four years from the date the owner vacates the taken property or the date the final date of condemnation is recorded. More than one property may qualify as a replacement if the property taken was put to multiple uses e.g., commercial and residential.

If more than one replacement property is purchased, the value of both will be considered in determining whether their value exceeds 120 percent of the amount paid for the taken property. When the amount paid by the taking governmental agency is augmented by a court award, the total amount received by the former owner is used when applying the 120 percent test. If replacement property is purchased prior to the determination of the total award and is assessed as exceeding the 120 percent limitation, it should be revalued and a refund made, if appropriate. C ~~5/5/83~~9/30/87. (Am. 2000-2).

STATE OF CALIFORNIA

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September 30, 1987

Dear Mr.

This is in response to your letter of September 2, 1987, to Mr. Richard Ochsner. Attached to your letter was a copy of a letter from a taxpayer in which ~~he outlines~~ five questions regarding the application of Rule 462.5. The factual summary and the five questions stated ~~below~~ are taken from the taxpayer's letter.

In 1985, the State of California, Department of Transportation (Cal Trans) took possession of an office building owned by three partners near the Los Angeles International Airport. Payment of $706,000 for the taking was made six months later. The taxpayer apparently began proceedings under the Eminent Domain Law, Code of Civil Procedure, Sections 1230.010 to 1273.050, to litigate the issue of just compensation. No final decision is expected until next year, but the taxpayers expect to receive at least $325,000 as additional compensation.

Question 1: Does the four-year replacement period start from the date Cal Trans took possession of the property, the date on which the initial disbursement of funds occurred, the date of judgment and value determination by the court, or the subsequent date, if any, when initial funds are received?

Answer: Subdivision (g) of property tax Rule 462.5 sets forth the time limits for qualification for property tax relief for replacement property. Subsection (2) of subdivision (g) states that a request shall be deemed timely if made within four years of one of three specified dates. One of those dates deals in particular with eminent domain proceedings and states:

> (a) The date final order of condemnation is recorded or the date the taxpayer vacates the replaced property, whichever is later, for property acquired by eminent domain.

Under the Eminent Domain Law, at the conclusion of the judicial proceedings, the court will issue a judgment determining the right to take the property by eminent domain and fixing the amount of compensation to be paid by the governmental entity (Code of Civ. Proc., § 1235.130). A final order of condemnation can be issued by the court, upon the application of any party to an eminent domain proceedings, if the full amount of compensation has been paid (Code of Civ. Proc., § 1268.030). Title to the property vests in the governmental entity only when the order is recorded (Code of Civ. Proc., § 1268.030) even if the incidents of ownership have been previously taken by the condemner under an order of immediate possession (29 Cal. Jur. III, Eminent Domain, § 248, pp. 387-388).

The taxpayer expects judgment in the eminent domain proceeding to be issued next year. Following judgment and the payment of any additional compensation, the final order of condemnation can be issued. The four-year limitation period will start to run after the final order of condemnation is issued.

Question 2: On what cost basis should the 120% maximum value of replacement property be computed? Is it the original Cal Trans value of $706,000, the property value determined at the forthcoming trial, or the trial-determined value less attorney's fees? In calculating the final award, rent losses, Klopping damages, tenant-claimed good will, appraisal and research fees, and incidental damages may also be recognized by the court. How are these handled in determining the base value of the property taken to which the 120% factor is applied?

Answer: Subdivision (b) of property tax Rule 462.5 states:

The following definitions govern the construction of the words or phrases used in this section.

* * *

(2) "replaced property" means the real property taken.

* * *

(4) "Award or purchase price" means the amount paid for "replaced property" but shall not include amounts paid for relocation assistance or any thing other than the replaced real property.

Under this rule, only the amount paid for the property taken, and not any of the other amounts paid, such as attorney's fees, appraisal and research fees, and incidental damages, can be

considered in calculating the 120 percent. Of course, if the court awards an additional amount in excess of the $706,000 already paid, that amount if designated specifically as payment for the property taken, and not for any of the other expenses listed by the taxpayer, would be added to the $706,000 to determine the award or purchase price.

Question 3: Can the tax basis be transferred to more than one property? The taxpayer states this would enable him to acquire one property with the $706,000 already received, and then to acquire a second property if he gets an additional award.

Answer: In order to be eligible for property tax relief, the replacement property must be comparable to the replaced property. Subdivision (c) of Rule 462.5 deals with comparability and states that replacement property shall be deemed comparable to the replaced property if it is similar in size, utility and function. Subsection (2) of subdivision (c) states that:

> (2) Both the size and utility of property are interrelated and associated with value. Property is similar in size and utility only to the extent that the replacement property is, or is intended to be, used in the same manner as the property taken (i.e., single-family residential and duplex, multi-family residential other than duplexes, commercial, industrial, agricultural, vacant, etc.) and its full cash value does not exceed 120 percent of the award or purchase price paid for the replaced property.

The third example given in subdivision (c) states that:

> A combination dwelling and commercial property is replaced with a home, and later the displaced person also acquires a separate comparable replacement commercial property. Pro-rata relief shall be granted on both the replacement home and commercial property to the extent provided in subdivision (b)(1).

This example illustrates the fact that replacement property may be purchased at different times without jeopardizing eligibility for tax relief. Therefore, we see no reason for requiring the taxpayer to wait until the final award is adjudicated before he can use the proceeds already received to purchase replacement property. Of course, when the final award is determined in the pending judicial proceedings, that figure will be used to determine whether the replacement properties, if there are more than one, fall within the 120 percent limitation. If the value of the total replacement property exceeds 120 percent of the final award, the amount of the

excess will be considered not comparable and will be taxed at its full cash value.

Question 4: If the taxpayer acquires only one property, should the assessor calculate the 120 percent basis on the $706,000 initial value determined by Cal Trans, and revise the base year following the final award next year?

Answer: Subsection (B) of subdivision (c)(2) of Rule 462.5 states that:

> (B) A replacement property or portion thereof which satisfies the use requirement but has a full cash value which exceeds 120 percent of the award or purchase price shall, be considered, to the extent of the excess, not similar in utility and size.

If the taxpayer acquires a property based on the amount already awarded by Cal Trans and before the adjudication of the final award, the base year value of the replacement property would be computed in accordance with subdivision (c)(2)(B), quoted above. If the full cash value of the replacement property exceeds the value of the replaced property by more than 120 percent, to the extent of the amount over 120 percent, the property will have undergone a change in ownership. If an additional award should be made, the computation will, of course, be redone, using the total amount of the award. The taxpayer could file a claim for refund for any tax which resulted from a change in ownership determination based on the earlier, incomplete award.

Question 5: The three partners who owned the Los Angeles office building are all members of the same family. May title to the replacement building be taken as a family trust composed of the same three partners, or does title have to be taken exactly as title to the office building was vested?

Answer: Subdivision (e) of Rule 462.5 deals with ownership requirements and states, in pertinent part:

> (e) OWNERSHIP REQUIREMENTS. Only the owner or owners of the property taken, whether one or more individuals, partnerships, corporations, other legal entities, or a combination thereof, shall receive property tax relief under this section. Relief under this section shall be granted to an owner(s) of replaced property obtaining title to replacement property: The acquisition of an ownership interest in a legal entity which, directly or indirectly, owns real property is not an acquisition of comparable property.

EXAMPLE: A partnership composed of two corporations owns commercial property which is taken through eminent domain proceedings. The partnership distributes the award or purchase price to the partner corporations in the same percentage as their ownership interests and the corporations separately or jointly acquire comparable replacement property retaining the same percentage of ownership interest in the partnership. No tax relief may be granted under this section.

The regulation states that only the owner or owners of property taken are entitled to property tax relief. The example makes clear that relief is available to a legal entity only when that same entity acquires the replacement property. Even though the corporation listed in the example is made up of two member partnerships, the partnerships are not entitled to property tax relief even if all other requirements are met. Thus, property acquired by a family trust made up of the same members as the partnership which owned the replaced property would not be eligible for property tax relief because the owner of the replaced property, the partnership, would not be the owner of the replacement property.

We trust that the information provided above is of help to you. Please do not hesitate to contact us if we can be of any further assistance to you.

Very truly yours,

Barbara G. Elbrecht

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Tax Counsel

BGE/rz

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