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Executive Director

December 12, 1994

Re: Transfer of Adjusted Base Year Value/Acquisition of Replacement Property

Dear Mr. :

This is in response to your September 14, 1994, letter to Mr. Verne Walton, former Chief of the Assessment Standards Division, wherein you inquired concerning the transfer of an adjusted base year value due to displacement by eminent domain. As set forth in your letter, we understand the facts of this matter to be as follows:

FACTS

On February 14, 1994, Willow Trailer Park, a General Partnership, ("Willow") sold its mobilehome park, comprised of 165 residential mobile home units and located at

to the City of  
Redevelopment Agency for the amount of \$  
The closing/recordation date was March 23, 1994. Willow sold the mobilehome park solely because of governmental action and due to the threat of condemnation. The base year value of the replaced property was \$

On May 9, 1994, Willow acquired as replacement property a 120 unit multi-residential property, APN's located at for the amount of \$ (83.33% of the sales price of the replaced property). The recordation date was June 23, 1994. The replacement property's full cash value does not exceed the purchase price paid for the replaced property.

Willow contends that both properties are similar in size and utility because they both serve as multi-unit residential properties. Thus, transfer of adjusted base year value is proper. In the event that there is any question in this regard, Willow notes that it did not choose to sell its mobilehome park and search for a new one. When confronted with the threat of condemnation, Willow diligently attempted to acquire another mobilehome park. However, it did not find any other properties of exactly the same character, i.e., 165 unit residential mobilehome park, in the State of California. Properties of the same character as the replaced property were available in other states. Willow's position is that it should not be forced to relocate outside of California just to acquire another mobilehome park. Furthermore, if Willow had purchased another mobilehome park outside of California, it would have taken \$ out of the State - a poor result for California's sagging economy. Thus, Willow believes that it should be given wide latitude given the fact that it finds itself in a situation of the government's making.

#### LAW AND ANALYSIS

As you know, Article XIII A, Section 2, subdivision (d), of the California Constitution provides, in pertinent part:

"For purposes of this section, the term 'change in ownership' shall not include the acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from the property replaced by eminent domain proceedings, by acquisition by a public entity, or by governmental action which has resulted in a judgment of inverse condemnation. The real property acquired shall be deemed comparable to the property replaced if it is similar in size, utility and function, or if it conforms to state regulations defined by the Legislature governing the relocation of persons displaced by governmental actions..."

Revenue and Taxation Code Section 68 implements Article XIII A, Section 2, subdivision (d), and provides, in pertinent part:

"For purposes of Section 2 of Article XIII A of the Constitution, the term 'change in ownership' shall not include the acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from property in this state by eminent domain proceedings, by acquisition by a public entity, or by governmental

action which has resulted in a judgment of inverse condemnation.

\* \* \*

"The provisions of this section shall apply to eminent domain proceedings, acquisitions, or judgments of inverse condemnation after March 1, 1975, and shall affect only those assessments of that property which occur after June 8, 1982.

\* \* \*"

Property Tax Rule No. 462.5 similarly provides in this regard that:

"(a) **GENERAL.** The term 'change in ownership' shall not include the acquisition of comparable real property as replacement for property taken if the person acquiring the replacement real property has been displaced from property in this state by:

(1) Eminent domain proceedings instituted by an entity authorized by statute to exercise the power of eminent domain, or

(2) Acquisition by a public entity, or

(3) Governmental action which has resulted in a judgment of inverse condemnation.

"(b) **DEFINITIONS.** The following definitions govern the construction of the words or phrases used in this section.

(1) 'Property taken' means both property taken and property acquired as provided in (a)...

\* \* \*

"(c) **COMPARABILITY.** Replacement property, acquired by a person displaced under circumstances enumerated in (a), shall be deemed comparable to the replaced property if it is similar in size, utility, and function.

(1) Property is similar in function if the replacement property is subject to similar governmental restrictions, such as zoning.

(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.

(A) A replacement property or any portion thereof used or intended to be used for a purpose substantially different than the use made of the replaced property shall to the extent of the dissimilar use be considered not similar in utility.

(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.

(3) To the extent that replacement property, or any portion thereof, is not similar in function, size, and utility, the property, or portion thereof, shall be considered to have undergone a change in ownership.

\* \* \*

"(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.

\* \* \*

"(g) TIME LIMITS FOR QUALIFICATION.

(1) The provisions of this section shall apply to property acquired after March 1, 1975, as replacement property for property taken after March 1, 1975, by eminent domain proceedings, public acquisitions, or judgments of inverse condemnation, and shall affect only those assessments of the replacement property on the 1983-84 assessment roll and thereafter, provided the person acquiring replacement property makes a timely request for such assessment with the assessor...

(2)...For replacement property acquired on or after January 1, 1983, a request shall be deemed timely if made within four years after one of the following dates, whichever is applicable:

(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; or

(B) The date of conveyance or the date the taxpayer vacates the replaced property, whichever is later, for property acquired by a public entity by purchase or exchange; or

(C) The date the judgment of inverse condemnation becomes final or the date the taxpayer vacates the replaced property, whichever is later, for property taken by inverse condemnation.

(3) Replacement property shall be eligible for property tax relief under this section if it is acquired after March 1, 1975, and if it is acquired on or after the earliest of the following dates:

(A) The date the initial written offer is made for the replaced property by the acquiring entity;

(B) The date the acquiring entity takes final action to approve a project which results in an offer for or the acquisition of the replaced property; or

(C) The date, as declared by the court, that the replaced property was taken.

(4) No property tax relief shall be granted to replacement property, however, prior to the date of displacement. The date of displacement shall be the earliest of the following:

(A) The date the conveyance of the replaced property to the acquiring entity or the final order of condemnation is recorded.

(B) The date of actual possession by the acquiring entity of the replaced property.

(C) The date upon or after which the acquiring entity may take possession of the replaced property as authorized by an order for possession.

"(h) ADMINISTRATION.

(1) The assessor shall only consider the following documents as proof of actual displacement of a taxpayer when a request has been made for the assessment relief provisions under this section:

(A) A certified recorded copy of the final order of condemnation, or, if the final order has not been issued, a certified recorded copy of the order for possession showing the effective date upon or after which the acquiring entity is authorized to take possession of the replaced property;

(B) A copy of a recorded deed showing acquisition by a public entity; or

(C) A certified copy of a final judgment of inverse condemnation.

(2) Upon receipt of a taxpayer request and proof of actual displacement, the assessor shall forward to the Board such information regarding the identification of a displaced property as the Board may require. The Board shall review such information to determine whether more than one request for assessment relief has been made as a result of a single taking or governmental

December 12, 1994

acquisition and if so shall advise the appropriate assessor(s)."

Initially, Article XIII A, Section 2, subdivision (a), Section 68, and Property Tax Rule 462.5, subdivision (a), provide that "change in ownership" shall not include the acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from its property by eminent domain proceedings or by acquisition by a public entity. In this instance, Willow has had its mobilehome park acquired by the City of Long Beach Redevelopment Agency under threat of condemnation and, hence, has been displaced from its property within the meaning of the Constitution, section, and rule. Of concern then is Willow's acquisition of the 120 unit multi-residential property as a replacement for its mobilehome park in light of the section and the rule.

As indicated, Rule 462.5, subdivision (c), provides that replacement property is deemed comparable to the replaced property if it is similar in size, utility and function, as defined. Rule 462.5, subdivision (c)(2), requires as to size and utility only that the replacement property is, or is intended to be, used in the same manner as the property taken. The facts of this matter show that the replaced property was comprised of 165 residential mobilehome units and that the replacement property is a 120 unit multi-residential property. Although the issue of whether the replaced property should be considered multi-family residential rather than commercial and, thus, be "deemed comparable" to the 120 unit multi-family residential property is a close call, we are of the opinion that the replacement property and the replaced property are similar in size and utility because both properties will be used in the same manner and for the same purpose, i.e., for multi-family residential use. In addition, it appears that the full cash value of the replacement property does not exceed 120 percent of the award or purchase price of the replaced property. Thus, both elements of size and utility are satisfied in this case.

Based on Rule 462.5, subdivision (c)(1), if in this case the replacement property is similarly zoned as the replaced property, then the requirement of function will also have been satisfied. As you have not provided information in this regard, we assume, for purposes of this discussion, that the provisions of this subdivision will be satisfied.

Rule 462.5, subdivision (e), pertains to ownership of the property taken and of the replacement property. Since Willow was the owner of the replaced property (Exhibit B) and is the owner

December 12, 1994

of the replacement property (Exhibit E), this ownership requirement is met.

Rule 462.5, subdivision (g), provides the time limits for qualification. Under subsection (2)(B) thereof, a request for assessment must be made timely, within four years after the date of conveyance or the date the taxpayer vacates the replaced property, whichever is later. In this case it appears that Willow has already vacated the replaced property and that it has already made a request for assessment. Thus, the requirements of this subdivision seem to have been satisfied.

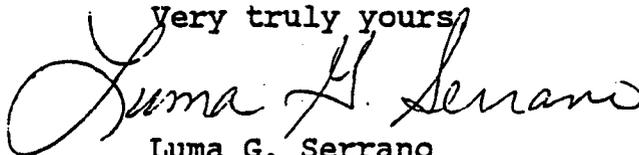
Finally, Rule 462.5, subdivision (h), provides that the assessor shall only consider a copy of a recorded deed showing acquisition by a public entity. Exhibit B is such a copy.

Based on the foregoing, including the assumption that the provisions of Rule 462.5, subdivision (c)(1) are satisfied, we conclude that both the replaced property and the replacement property are similar in size, utility, and function, within the meaning of Rule 462.5, subdivision (c), including the full cash value - 120 percent of the award or purchase price comparison and, thus, the adjusted base year value of the replaced property may be transferred to the replacement property.

The views expressed in this letter are, of course, only advisory in nature. They are not binding upon the assessor of any county. You may wish to consult the County Assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusions stated above.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



Luma G. Serrano  
Staff Counsel

LGS:jd  
precednt/emdomain/94006.lgs

cc:

County Assessor

Mr. John W. Hagerty, MIC:63  
Chief, Assessment Standards Division, MIC:64  
Ms. Jennifer Willis, MIC:70

Eminent Domain



STATE OF CALIFORNIA

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Controller, Sacramento

BURTON W. OLIVER  
Executive Director

December 30, 1994

Re: Transfer of Adjusted Base Year Value/Acquisition of Replacement Property

Dear Mr. :

This is in furtherance of our December 12, 1994, letter to you concerning Willow Trailer Park, a General Partnership, its sale of its mobilehome park to the City of Redevelopment Agency, and its purchase of a California, multi-residential replacement property. Based on the analysis therein, including the assumption that the provisions of Property Tax Rule 462.5, subdivision (c)(1) were satisfied, we concluded that both the replaced property and the replacement property were similar in size, utility, and function, within the meaning of Rule 462.5, subdivision (c), including the full cash value - 120 percent of the award or purchase price comparison and, thus, the adjusted base year value of the replaced property could be transferred to the replacement property.

Property Tax Rule 462.5, subdivision (c)(1) provides that:

"(c) COMPARABILITY. Replacement property, acquired by a person displaced under circumstances enumerated in (a), shall be deemed comparable to the replaced property if it is similar in size, utility, and function.

(1) Property is similar in function if the replacement property is subject to similar governmental restrictions, such as zoning."

December 30, 1994

In your December 15, 1994, letter in response, you advised that the mobilehome park had been zoned RM-Residential Mobilehome and that the multi-residential replacement property is zoned RM-Residential Multifamily. Based upon the information provided, it appears that the replacement property is subject to similar governmental restrictions and the provisions of Rule 462.5, subdivision (c)(1) are satisfied. As such is a matter which ultimately falls within the province of the County Assessor's Office, however, we are forwarding a copy of your letter to that Office for its review and determination. We suggest that you consult the County Assessor's Office in order to ascertain whether it too considers the provisions of Rule 462.5, subdivision (c)(1) satisfied in this instance, or if it does not consider them satisfied, why it does not.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,

*Luma G. Serrano*

Luma G. Serrano  
Staff Counsel

LGS:jd  
precednt/emdomain/94007.lgs

cc: (w/attach.)

Mr. John W. Hagerty, MIC:63  
Chief, Assessment Standards Division, MIC:64  
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(916) 323-7713

August 2, 1989

Re: Interpretation of Rule 462.5  
and Revenue and Taxation Code Section 68

Dear Mr.

You asked for our opinion on whether your client is entitled to receive the change in ownership exclusion benefits under Revenue and Taxation Code section 68 based upon the following facts:

Facts

Your client has had certain property condemned, which was located in the City of Long Beach, County of Los Angeles, and which contained 13 acres. He is now searching various counties in the State of California in order to reinvest the proceeds in order to avoid a gain. He is able to buy large acreages of property with the same utility as the 13 acres in the City of Long Beach, that being for horse breeding, pasturing, and stabling for the same or lesser value than the condemnation proceeds from the Long Beach property.

Law and Analysis

Revenue and Taxation Code section 68 provides that the change in ownership provisions of California Constitution, article XIII A, section 2, shall not apply to the acquisition of real property as a replacement of comparable property if the person acquiring the real property has been displaced from property in this state by eminent domain proceedings, by acquisition by a public entity, or by government action which has resulted in a judgment of inverse condemnation. The adjusted base year value of the property acquired shall be the lower of the fair market value of the property acquired or the value which is the sum of the following:

- (a) The adjusted base year value of the property from which the person was displaced.

August 2, 1989

b. The amount, if any, by which the full cash value of the property acquired exceeds 120 percent of the amount received by the person for the property from which the person was displaced.

The Board of Equalization has promulgated Rule 462.5 to interpret and make specific section 68 (see 18 California Code of Regulations, section 462.5). The rule provides that the term "change in ownership" shall not include the acquisition of comparable real property as replacement for property taken if the person acquiring the replacement property has been displaced from property in this state by (1) eminent domain proceedings instituted by any entity authorized by statute to exercise the power of eminent domain, or (2) acquisition by a public entity, or (3) governmental action which has resulted in a judgment of inverse condemnation. In order to enjoy the benefits of tax relief under section 68, the rule provides that the replacement property must also be comparable to the property replaced. Rule 462.5(c) defines comparable property as replacement property acquired by a person displaced under circumstances enumerated above if it is similar in size, utility and function. The rule also sets forth the parameters for the determination of similarity in size, utility and function. For example:

1. The property is similar in function if the replacement property is subject to similar governmental restrictions, such as zoning.

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 replacement property.

Applying the section and rule to these facts, we conclude that your client is entitled to the benefits of tax relief if he or she replaces the 13-acre agricultural property for property similar in size, utility and function. Size and utility shall be considered to be a function of value and not of the physical measurements of the taken or acquired and replacement properties. Replacement property shall be considered comparable in size and utility if it is used in the same manner as the property taken and its full cash value does not exceed 120% of the award or purchase price paid by the acquiring

August 2, 1989

entity for the property from which the person was displaced. To the extent that the full cash value of the replacement property exceeds 120% of the award or purchase price paid for the taken or acquired property, then the replacement property shall to that extent be considered not comparable and to have undergone a change in ownership. Replacement property shall be considered comparable in function if it is subject to similar government restrictions, such as zoning. The change in ownership provisions of the Revenue and Taxation Code (chapter 3.5) shall be liberally construed in order to provide the benefits of section 68 of the Revenue and Taxation Code and section 2 of article XIII A of the California Constitution to affected property owners at the earliest possible date.

The views expressed in this letter are, of course, only advisory in nature. They are not binding upon the assessor of any county. You may wish to consult the appropriate county assessor in order to confirm that the described transactions will be treated in a manner consistent with the conclusions stated above.

Our intention is to provide timely, courteous, and helpful responses to inquiries such as yours. Suggestions that help us accomplish this goal are appreciated.

Very truly yours,



Robert R. Keeling  
Tax Counsel

RRK:wak  
2577H

cc: Mr. John Hagerty  
Mr. Verne Walton  
Hon. John J. Lynch  
Los Angeles County Assessor