STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-2579

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May 4, 1994

Mr. A. "Chico" Porras
Assistant Assessor
172 West Third Street
San Bernardino, CA 92415-0310

Re: Revenue and Taxation Code Section 68 Exclusion

Dear Mr. Porras:

This is in response to your letter of February 15, 1994, to Mr. Les Sorensen wherein you requested the Legal Staff's opinion regarding the issue of whether Revenue and Taxation Code Section 68 applies to the following situation:

FACTS

Based on the documents which you provided to us, the facts of this matter are as follows:

The Bureau of Land Management ("BLM") is currently acquiring certain parcels in the desert area of San Bernardino County. BLM begins the process of parcel acquisition by first contacting private fee owners of the properties they wish to acquire. BLM then offers to trade land owned by the government for the properties owned in fee. The exchange does not have to be equal in size; however, it must be equal in value as established by BLM appraisers. If the fee owners do not wish to trade, the government does not exercise its eminent domain powers.

In the present matter, the Bank as Trustee in Trust for Enterprises, Inc., Final Beneficiary under the Trust, offered to exchange 2,560 acres of non-Federal lands in Mount Diablo Meridian, California, San Bernardino County, for 857.72 acres of public lands located in

San Bernardino County. In the exchange, the values of the public lands and non-Federal lands were appraised at $1,568,500 and $1,600,000, respectively. The equalization payment required of the United States in the amount of $31,500 was waived by the proponent.

The fee owners have filed for an exclusion per the provisions of Revenue and Taxation Code Section 68 and you have inquired whether transactions of this nature qualify for the Section 68 exclusion.

LEGAL ANALYSIS

Article XIII A, Section 2(d) of the California Constitution provides in pertinent part as follows:

"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 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(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 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.

"(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.

* * *

"(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..."

* * *

Proposition 3, included in the June 8, 1982 California Ballot, a copy of which I have enclosed for your convenience, added Section 2(d) to Article XIII A. According to the analysis by the Legislative Analyst, Proposition 3/Article XIII, Section 2(d), was intended to provide property tax relief for property owners displaced by governmental action, defined as displaced by eminent domain proceedings, by acquisition by a public entity, or governmental action resulting in a judgment of inverse condemnation.

Current law provides that governmental agencies can acquire property through either purchase or condemnation (eminent domain). It is required by law that the property owner be compensated if the owner's property is acquired through condemnation. The property owner can also sue the government (in inverse condemnation) for compensation if the owner believes that his or her property has been "taken" or damaged by governmental action.

The amount of compensation provided property owners

displaced by governmental action is limited to the fair market value of the property plus certain other amounts, including relocation expenses. The amount of compensation, however, does not include any amount for increased property taxes that the owner must pay on a replacement property.

Thus, under Proposition 3/Article XIII A, Section 2(d), the acquisition of replacement property under these circumstances, displacement by governmental action, as defined, is not considered a change in ownership for property tax reappraisal purposes if the replacement property is comparable to the property from which the person was displaced. "Comparable property" is defined as property which is similar in size, utility, and function to the property from which the person was displaced, or which conforms to state regulations, defined by the Legislature, concerning the relocation of persons displaced by governmental actions.

Based on the constitutional provision and analysis, Revenue and Taxation Code Section 68, and Property Tax Rule 462.5, it is our view that "displacement by acquisition by a public entity" under the section and the rule includes any property owners displaced by acquisition by a public entity, whether by purchase, exchange, or otherwise. Although in the present matter BLM does not choose to displace the private fee owners by eminent domain proceedings or by governmental action which results in judgments of inverse condemnation, it is a public entity and the result of its exchanges of property is displacement of property owners by acquisition by a public entity, thus qualifying the exchanges for the Section 68 exclusion.

An additional consideration is the comparability of properties. As indicated, the constitutional provision, Section 68, and Rule 462.5 specify that in order to be exempt from property taxation the real property acquired as replacement property must be "comparable" to the replaced property. The property acquired is deemed comparable to the property replaced if it is similar in size, utility and function.

The facts of this case indicate that the fee owner has exchanged 2,560 acres of land for 857.72 acres of public land. As you can see, there is a substantial difference in size between the replacement property and the property replaced. However, Rule 462.5 does not require size equivalence if the fair market value of the new property does not exceed 120% of the amount paid for the replaced property. Assuming that such requirement is satisfied, $1,568,500 to $1,600,000, size equivalence will, therefore, not be an issue.

Furthermore, "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." Although it seems that both the replaced and the replacement properties are vacant land, it is not clear whether the replacement property is, or is intended to be, used in the same manner as the property taken. If the replacement property is, or is intended to be, used in the same manner as the property taken, the replacement property will be similar in size and utility for purposes of the section and the rule.

Finally in this regard, it is not clear whether the replacement property is subject to governmental restrictions similar to those the property taken was subject to and, thus, whether the replacement property is similar in function. Assuming that it is, the replacement property will be similar in function for purposes of the section and the rule.

The views expressed in this letter are, of course, only advisory in nature. They are not binding upon the assessor of any county. Please do not hesitate to contact our office should you have further questions.

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,

/s/ Luma G. Serrano

Luma G. Serrano
Staff Counsel

LGS:jd
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Enclosure

cc: Mr. John Hagerty, MIC:63
Mr. Verne Walton, MIC:64
Ms. Jennifer Willis, MIC:70