



STATE BOARD OF EQUALIZATION

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October 14, 1983

DOUGLAS D. BELL
Executive Secretary

No. 83/109

TO COUNTY ASSESSORS, COUNTY COUNSELS,
ASSESSMENT APPEALS BOARDS,
AND OTHER INTERESTED PARTIES:

IN REPLY REFER TO

Property Tax Rule 462.5, Change in Ownership of Real Property
Acquired to Replace Property Taken by Governmental Action
or Eminent Domain Proceedings
Public Hearing November 30, 1983

The State Board of Equalization will hold a public hearing on proposed new Property Taxes rule 462.5, Change in Ownership of Real Property Acquired to Replace Property Taken by Governmental Action or Eminent Domain Proceedings, on Wednesday, November 30, 1983, at 2:00 p.m. in Room 102, 1020 N Street, Sacramento.

Proposition 3, which was approved by the voters on June 8, 1982, amends Section 2(d) of Article XIII A of the California Constitution to exclude from the definition of "change in ownership" the acquisition of real property as a replacement for comparable real 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 resulting in a judgment of inverse condemnation. Section 68 of the Revenue and Taxation Code was added by Assembly Bill 3382 (Chapter 1465, Statutes of 1982) to implement this new constitutional issue and was later amended by AB 1098 (Chapter 662, Statutes of 1983). However, Section 68 specifically addresses only the issues of base-year value and statute of limitations. Both the Constitution and the statutory law are silent as to how county assessors are to administer this new constitutional provision. This proposed regulation would provide for uniform procedures to govern county assessors in administering the new change in ownership provision and would address various definitional and assessment issues not otherwise provided for by law.

Written comments for the Board's consideration or requests to present testimony at the public hearing should be directed to me at the above address. Questions regarding the rule should be directed to Margaret Shedd, Staff Counsel, (916) 323-7712.

Sincerely,

Janice Masterton
Assistant to Executive Secretary

JM:bjb
Enclosures
ADM-06-2092A/W-2

NOTICE OF PROPOSED REGULATORY ACTION

BY THE

STATE BOARD OF EQUALIZATION

NOTICE IS HEREBY GIVEN that the State Board of Equalization, pursuant to the authority vested by Section 15606 of the Government Code, and to implement, interpret, or make specific Section 68 of the Revenue and Taxation Code and Section 2(d) of Article XIII A of the California Constitution, proposes to adopt Regulation 462.5, Change in Ownership of Real Property Acquired to Replace Property Taken by Governmental Action or Eminent Domain Proceedings, in Title 18 of the California Administrative Code, relating to property tax.

PUBLIC NOTICE: Notice is further given that a public hearing relevant to this action will be held in Room 102, Consumer Affairs Building, 1020 N Street, Sacramento, California, at 2:00 p.m., on November 30, 1983. Any person interested may present statements or arguments orally at that time and place.

INFORMATIVE DIGEST: Proposition 3, which was approved by the voters on June 8, 1982, amends Section 2(d) of Article XIII A of the California Constitution to

exclude from the definition of "change in ownership" the acquisition of real property as a replacement for comparable real 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 resulting in a judgment of inverse condemnation. Section 68 of the Revenue and Taxation Code was added by Assembly Bill 3382 (Chapter 1465, Statutes of 1982) to implement this new constitutional issue and was later amended by AB 1098 (Chapter 662, Statutes of 1983). However, Section 68 specifically addresses only the issues of base year value and statute of limitations. Both the Constitution and the statutory law are silent as to how county assessors are to administer this new constitutional provision. This proposed regulation would provide for uniform procedures to govern county assessors in administering the new change in ownership provision and would address various definitional and assessment issues not otherwise provided for by law.

ESTIMATE OF COST OR SAVINGS: The State Board of Equalization has determined that the proposed change does not impose a mandate on local agencies or school districts and will result in no direct or indirect cost or savings to any State, local, or Federal agency, school district, nor in Federal funding to the State.

The cost impact on private persons or businesses is expected to be insignificant. This proposal will not have a significant adverse economic impact on small businesses.

INQUIRIES: Inquiries concerning this matter may be directed to Janice Masterton, at (916) 445-6479.

WRITTEN COMMENTS: Written statements or arguments will be considered by the Board if received by November 30, 1983; written statements or arguments are requested by November 10, 1983.

STATEMENT OF REASONS; EXPRESS TERMS: The Board has prepared a statement of the purpose of the proposed action and the information relied upon in writing this regulation, and the express terms of the proposed regulation, both of which are available to the public upon request.

STAFF MEMORANDA AFTER PUBLIC HEARING OR REVISIONS TO PUBLISHED VERSION OF THE REGULATION: In the event there are any staff memoranda included in the rule making file after the close of the public hearing these memoranda will be available to the public upon request from Mrs. Masterton for a period of 15 days after the public hearing.

In the event there are any revisions to the published version of the regulation, these revisions will be available to the public from Mrs. Masterton for a period of 15 days after the public hearing.

Following the hearing, the State Board of Equalization, upon its own motion, or at the instance of any interested person, may in accordance with law adopt the changes proposed without further notice.

Dated: October 4, 1983

STATE BOARD OF EQUALIZATION

Douglas D. Bell

Douglas D. Bell
Executive Secretary

RULE 462.5 CHANGE IN OWNERSHIP OF REAL PROPERTY ACQUIRED
TO REPLACE PROPERTY TAKEN BY GOVERNMENTAL
ACTION OR EMINENT DOMAIN PROCEEDINGS.

(a) GENERAL. Section 2(d) of Article XIII A of the California Constitution and Section 68 of the Revenue and Taxation Code generally provide that property tax relief shall be granted to any real property owner who acquires comparable replacement property after having been displaced by governmental acquisition or eminent domain proceedings.

For purposes of implementing this property tax relief, the term "change in ownership" shall not include the acquisition of real property as replacement for comparable property if the person acquiring the real property has been displaced from property in this state by eminent domain proceedings instituted by any entity authorized by statute to exercise the power of eminent domain, by acquisition by a public entity, or by governmental action which has resulted in a judgment of inverse condemnation.

(b) BASE YEAR VALUE OF REPLACEMENT PROPERTY.

(1) The adjusted base year value of replacement property acquired by the displaced person shall be the lower of (A) the fair market value of the comparable replacement property or (B) the sum of the adjusted base year value of the property from which the person was displaced plus the amount, if any, by which the full cash value of the comparable replacement property exceeds 120 percent of the amount received by the person for the property that was taken or acquired by the acquiring entity.

(2) For purposes of this section, the award or purchase price paid by the acquiring entity shall be exclusive of amounts paid for relocation assistance and other non-real property items unrelated to the full cash value of the property taken or acquired.

(3) The following procedure shall be used in determining the appropriate adjusted base year value of comparable replacement property:

(A) Compare the award or purchase price paid by the acquiring entity for the property taken or acquired with the full cash value of the comparable replacement property.

(B) If the full cash value of the comparable replacement property does not exceed 120 percent of the award or purchase price of the property taken or acquired, then the adjusted base year value of the property taken or acquired shall be transferred to the comparable replacement property.

(C) If the full cash value of the replacement property exceeds 120 percent of the award or purchase price of the property taken or acquired, then the amount of the full cash value over 120 percent of the award or purchase price paid shall be added to the adjusted base year value of the property taken or acquired. The sum of these amounts shall become the replacement property's base year value.

(D) If the full cash value of the comparable replacement property is less than the adjusted base year value of the property taken or acquired, then that lower value shall become the replacement property's base year value.

(4) In instances where there is no award or purchase price paid by the acquiring entity (i.e., a gift or exchange) for the property acquired, then the full cash value of the property acquired, as determined by the assessor of the county in which the property is located, shall be used in the determination of the appropriate adjusted base year value of comparable replacement property.

(c) COMPARABILITY. Real property obtained as a replacement for property taken or acquired by governmental acquisition or eminent domain proceedings shall be deemed comparable if it is similar to the taken or acquired property in size, utility, and function.

(1) SIZE. Size 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 if its full cash value does not exceed 120 percent of the award or purchase price paid by the acquiring entity for the property from which the person was displaced. To the extent that the full cash value of the replacement property exceeds 120 percent of the award or the purchase price paid for the taken or acquired property, then that amount above the 120 percent limitation shall be considered not comparable and to have undergone a change in ownership.

(2) UTILITY AND FUNCTION. Replacement property shall be considered comparable in utility and function if it is subject to similar government restrictions, such as zoning, and if its actual or intended use is substantially the same as the property taken; i.e., single-family residential and duplex, multi-family residential other than duplexes, commercial, industrial, agricultural, open space, vacant, etc. In cases where the replacement property involves a mixed use, relief shall only be granted to the extent that the use is comparable.

EXAMPLE: A home is replaced by a combination dwelling and commercial property. Relief is applicable to only the dwelling portion of the replacement property; the commercial portion shall be considered as having changed ownership.

EXAMPLE: A combination dwelling and commercial property is replaced with a home. Only the dwelling portion of the property taken shall be considered in determining the comparability and the amount of relief. The right to relief on the commercial portion of the property taken is waived unless comparable replacement commercial property is acquired after the date of displacement and a timely request is made for assessment relief.

EXAMPLE: 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 (b)(1).

(d) OWNERSHIP REQUIREMENTS. Eligibility for the property tax relief under this section shall be available only to the owner, whether it be an individual, partnership, corporation or other legal entity, who/that was displaced by governmental acquisition or eminent domain proceedings. Unless an exclusion is otherwise applicable as is provided in Section 462, relief is

predicated upon title to the replacement property being taken in exactly the same manner and in exactly the same name as the individual(s) or legal entity that held title to the property taken.

For purposes of this section, owner means the fee owner or life estate owner of the real property taken or acquired and excludes the lessee thereof unless the lessee owns improvements located on land subject to an underlying ground lease, in which case, the lessee shall be entitled to property tax relief for comparable replacement improvements.

(e) NEW CONSTRUCTION. Any new construction required to make replacement property comparable to the property taken or acquired shall, to that extent, be eligible for property tax relief, provided that such new construction is completed after the date of displacement and a timely request is made for assessment relief.

(f) 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 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. No reassessments and no refunds shall be made for any years prior to the 1983-84 fiscal year for any decreases made for the 1983-84 fiscal year or fiscal years thereafter as a result of the provisions of this section. Reassessments and refunds shall be made retroactively to the date of acquisition of replacement property for fiscal years commencing with 1983-84, provided a timely request is made therefor.

(2) For purposes of this section, a request made by January 1, 1987, shall be deemed timely for replacement property acquired after March 1, 1975, and before January 1, 1983. For replacement property acquired on or after January 1, 1983, a request shall be deemed timely if made within four years of the following dates:

(A) The date the final order of condemnation is recorded, for property acquired by eminent domain.

(B) The date of conveyance, for property acquired by a public entity by purchase, gift or exchange.

(C) The date the judgment of inverse condemnation becomes final, for property taken by inverse condemnation.

(3) The provisions of this section shall not apply to real property owned or acquired by a taxpayer prior to the date of displacement. The date of displacement shall be no earlier than any of the following dates:

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

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

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

(g) ADMINISTRATION.

(1) The assessor shall consider any of 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) Certified recorded copy of the final order of condemnation.

(B) Recorded deed showing acquisition by a public entity.

(C) 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 copies of such documents to the Board along with a notation of whether or not relief was granted in the county for comparable replacement property. 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 acquisition and if so shall advise the appropriate assessor(s).

Authority: Section 15606, Government Code.

Reference: Section 68, Revenue and Taxation Code.