



STATE BOARD OF EQUALIZATION
PROPERTY AND SPECIAL TAXES DEPARTMENT
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064
916 445-4982 • FAX 916 323-8765
www.boe.ca.gov

CAROLE MIGDEN
First District, San Francisco

BILL LEONARD
Second District, Ontario

CLAUDE PARRISH
Third District, Long Beach

JOHN CHIANG
Fourth District, Los Angeles

STEVE WESTLY
State Controller, Sacramento

TIMOTHY W. BOYER
Interim Executive Director

November 26, 2003

TO INTERESTED PARTIES:

DRAFT OF CHANGES TO PROPERTY TAX RULE 462.500

An interested parties meeting was held on July 21, 2003, to discuss changes to Property Tax Rule 462.500, *Change in Ownership of Real Property Acquired to Replace Property Taken by Governmental Action or Eminent Domain Proceedings*. At that meeting, while county representatives opposed the petition by Mr. Terry L. Polley, it was acknowledged that the petition identified several issues with respect to the current rule that should be addressed and clarified. It was generally agreed that the language in the Constitution and statute is vague and that existing guidance is limited.

More specifically, the meaning of the terms "size, function, and utility" as the requirements for comparability of the replacement property were discussed and the participants indicated an interest in finding a middle ground to resolve the issues. Staff committed to perform a thorough review of all legal opinions issued by the Board that involved the comparability issue and summarize the results in a matrix. This was mailed to interested parties on October 24, 2003.

Staff further agreed to draft changes to Rule 462.500 with the assistance and feedback of the participants. Enclosed is a draft of changes to the rule. An interested parties meeting will be held on **Monday, January 12, 2004**, 9:30 a.m., at the Board's headquarters in Sacramento, 450 N Street, Room 122, to discuss the draft rule. All documents concerning this project will be posted to the Board's Web site at www.boe.ca.gov/proptaxes/ptr462500.htm. The final wording will be brought to the Property Tax Committee for consideration. We will notify you of the date.

Please submit any comments on the draft rule to Ms. Glenna Schultz at glenna.schultz@boe.ca.gov by Monday, December 19, 2003. If you have any questions, please contact either Ms. Schultz at (916) 324-5836 or Mr. Paul Steinberg at (916) 322-1057.

Sincerely,

/s/ Dean R. Kinnee

Dean R. Kinnee, Chief
Assessment Policy and Standards Division

DRK:grs
Enclosure

1
2
3
4
5
6

RULE 462.500
CHANGE IN OWNERSHIP OF REAL PROPERTY ACQUIRED TO REPLACE
PROPERTY TAKEN BY GOVERNMENTAL ACTION
OR EMINENT DOMAIN PROCEEDINGS

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

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

12 (2) Acquisition by a public entity, or

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

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

16 (1) "Property taken" means both real property taken and real property acquired as provided in (a).

17 ~~(2) "Replaced property" means real property taken.~~

18 ~~(3) "Replacement property" means real property acquired to replace property taken.~~

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

21 ~~(4) "Displaced" means:~~

22 ~~(A) A property owner is removed, expelled, or forced from property as a result of governmental~~
23 ~~action, or~~

24 ~~(B) Government action has sufficiently progressed such that it appears imminent that the property~~
25 ~~owner will be removed, expelled, or forced from property as a result of governmental action. Government~~
26 ~~action has sufficiently progressed when the California Environmental Quality Act (CEQA) has been fully~~
27 ~~complied with and the governing body has approved a public project.~~

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

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

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

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

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

44 ~~(2) Property is similar in function and utility if the replacement property is or is intended to be used in~~
45 ~~the same manner as the property taken. Property is similar in function and utility if the property taken and~~
46 ~~the replacement property both fall into the same category:~~

47 (A) Owner-occupied single family residence or duplex.

48 (B) Business, investment, income, or vacant property. Income property includes single family
49 residences and duplexes that are not owner occupied.

50 (C) Agricultural.

51 Agricultural property that is in transition may be considered similar to property described in (B) if
52 property in its vicinity has been changing from historically agricultural use to another use. Factors that

53 may be considered to determine whether agricultural property is in transition include, but are not limited
54 to:

55 • Restrictions that would prohibit the property taken from converting to property described in (B)
56 such as the general plan, community plan, or special plan. Current zoning restrictions are not
57 such a restriction if the general plan, community plan, or special plan contemplate a zoning
58 change.

59 • The highest and best use of the property taken;

60 • The type of comparable property that was used by the acquiring government body to value the
61 property taken.

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

64 EXAMPLE: An owner-occupied single family residence home is replaced by a combination dwelling and
65 commercial property. Relief is applicable to only the dwelling portion of the replacement property; the
66 commercial portion shall be considered as having changed ownership.

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

72 EXAMPLE: A combination dwelling and commercial property is replaced with a home-owner-occupied
73 single family residence, and later the displaced person also acquires a separate comparable replacement
74 commercial property. Pro-rata relief shall be granted on both the replacement home-single-family
75 residence and commercial property to the extent provided in subdivision (b) (1).

76 EXAMPLE: An owner-occupied single family residence is replaced with an owner-occupied single family
77 residence and a vacation home. Relief is applicable to both properties if both are owner-occupied and
78 not leased or rented.

79 EXAMPLE: An owner-occupied single-family residence that has a homeowners' exemption is replaced
80 with a single-family residence that is to be used as a rental property. The replacement property does not
81 qualify for relief because an owner-occupied single family residence is replaced by a property held for
82 investment or income.

83 EXAMPLE: A duplex in which the property owner lived in one unit and rented the other unit is replaced
84 with two single family residences, one of which will be owner occupied. Relief is applicable to both
85 properties.

86 **(d) BASE YEAR VALUE OF REPLACEMENT PROPERTY.** The following procedure shall be used by the
87 assessor in determining the appropriate adjusted base year value of comparable replacement property:

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

90 (2) If the full cash value of the comparable replacement property does not exceed 120 percent of the
91 award or purchase price of the property taken, then the adjusted base year value of the property taken
92 shall become the replacement property's base year value, regardless of the allocation between land and
93 improvements.

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

98 (4) If the full cash value of the comparable replacement property is less than the adjusted base year
99 value of the property taken, then that lower value shall become the replacement property's base year
100 value.

101 (5) If there is no award or purchase price paid by the acquiring entity (i.e., an exchange) for the
102 property taken, then the full cash value of the acquired property and the full cash value of the
103 replacement property shall be determined by the assessor of the county in which each property is located

104 for the purpose of applying the other provisions of this subdivision. The procedure set forth in subdivision
105 (d)(1) through (d)(4) shall then be applied to determine the replacement property's base year value.

106 (6) A base year value may be reallocated upon the transfer to the replacement property.

107 EXAMPLE: A commercial property, consisting of land and improvements, is taken and replaced with a
108 commercial structure that was built on land that the taxpayer already owned. Despite the ineligibility of
109 the land, the base year value of the property taken (land and improvements) may be transferred to the
110 newly constructed improvements to the extent it meets the value and timing requirements.

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

117 EXAMPLE: A ~~&-and~~ B each own an undivided 50 percent interest as joint tenants in a home which is
118 taken through eminent domain proceedings by the state. A purchases a replacement ~~home-property~~
119 which is comparable to the ~~replaced~~ property taken. B contributes his share of the award or purchase
120 price to a limited partnership which owns a home which is comparable replacement property. A's relief
121 under this section is limited to 120 percent of one-half of the award or purchase price of the property
122 taken. B is entitled to no relief.

123 EXAMPLE: A partnership composed of two corporations owns commercial property which is taken
124 through eminent domain proceedings. The partnership uses the award or purchase price to acquire
125 comparable commercial property. The partnership is entitled to relief under this section.

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

131 For purposes of this section, owner means the fee owner or life estate owner of the real property taken
132 and excludes the lessee thereof unless the lessee owns improvements located on land owned by
133 another, in which case, the lessee shall be entitled to property tax relief for comparable replacement
134 improvements.

135 **(f) NEW CONSTRUCTION.** Any new construction required to make replacement property comparable to
136 the property taken shall, to that extent, be eligible for property tax relief, if such new construction is
137 completed after March 1, 1975, and if it is completed on or after the earliest of the dates listed in
138 subdivision (g) (3), and if a timely request is made for assessment relief.

139 **(g) TIME LIMITS FOR QUALIFICATION.**

140 (1) The provisions of this section shall apply to property acquired after March 1, 1975, as replacement
141 property for property taken after March 1, 1975, by eminent domain proceedings, public acquisitions, or
142 judgments of inverse condemnation, and shall affect only those assessments of the replacement property
143 on the 1983-84 assessment roll and thereafter, provided the person acquiring replacement property
144 makes a timely request for such assessment with the assessor. The replacement property must be
145 acquired before a request is made. No reassessments and no refunds shall be made for any years prior
146 to the 1983-84 fiscal year because of decreases made to assessments for the 1983-84 fiscal year or
147 fiscal years thereafter as a result of the provisions of this section. Reassessments and refunds shall be
148 made retroactively to the date of acquisition of replacement property for property taken in fiscal years
149 commencing with 1983-84, provided a timely request is made therefor.

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

154 **(A)** The date final order of condemnation is recorded or the date the taxpayer vacates the replaced
155 property taken, whichever is later, for property acquired by eminent domain; or

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

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

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

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

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

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

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

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

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

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

173 **(h) ADMINISTRATION.**

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

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

179 (B) A copy of the document from the governing body in which the public project was approved and a
180 copy of an Environmental Impact Report (EIR), Environmental Impact Statement (EIS), Negative
181 Declaration (ND), Environmental Assessment (EA), or similar proof of compliance with the California
182 Environmental Quality Act (CEQA).

183 ~~A copy of a recorded deed showing acquisition by a public entity; or~~

184 **(C)** A certified copy of a final judgment of inverse condemnation.(2) Upon receipt of a taxpayer
185 request and proof of actual displacement, the assessor shall forward to the Board such information
186 regarding the identification of a displaced property as the Board may require. The Board shall review such
187 information to determine whether more than one request for assessment relief has been made as a result
188 of a single taking or governmental acquisition and if so shall advise the appropriate assessor(s).

189

190 *The language set forth in this draft is provided to address various issues raised by inquiries during the*
191 *interested parties process. It does not reflect or represent the position of the Board or of any Board*
192 *member.*

193

DRAFT