

**PROPOSAL TO AMEND
PROPERTY TAX RULE 462.500**

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

INTERESTED PARTIES' MEETING

JULY 21, 2003

AGENDA

1. Introduction of Topic
2. Introduction of Board staff and interested parties
3. Interested Parties' and Rulemaking Process
4. Mr. Terry Polley's proposed amendments to the regulation
(www.boe.ca.gov/proptaxes/ptr462500.htm)
5. Alternative language to Mr. Terry Polley's language drafted by Board staff (Attachment 1)
6. Discussion of other areas that may need to be amended
 - Board staff draft
 - Displacement (Attachment 2)
 - Time to request (Attachment 3)
 - Miscellaneous
 - Interested parties' suggestions
7. Summary and Adjournment

ATTACHMENT 1
BOE ALTERNATIVE TO TERRY POLLEY'S LANGUAGE

PROPOSED AMENDMENT

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

(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 is 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 if 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 a replacement property, or portion thereof, that 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.~~

~~(2) Property is similar in function and utility if the replacement property is of a "like kind" or is intended to be used in the same manner as the property taken. Property is of a "like kind" if:~~

~~(A) both the replaced property and the replacement property are held for use in a trade or business or investment (trade or business property can be replaced by investment property and vice versa); or~~

~~(B) the replaced property and the replacement property are held for personal use. Property held for personal use does not qualify as property held for use in a trade, a business, or for investment.~~

(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.

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

42 comparability and the amount of relief. The right to relief on the commercial portion of
43 the property taken is waived unless comparable replacement commercial property is
44 acquired after the date of displacement and a timely request is made for assessment
45 relief.

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

50 EXAMPLE: A principal personal residence is replaced with a principal residence and a
51 personal vacation home. Relief is applicable to all of the properties that are acquired for
52 personal use.

53 EXAMPLE: A single-family principal personal residence is replaced with a single-family
54 residence that is to be used as a rental property. The replacement property does not
55 qualify for relief because a property held for personal use is replaced by a property held
56 for productive use in a trade or business or held for investment.

**ATTACHMENT 2
BOE CLEANUP PROPOSAL**

PROPOSED AMENDMENT

State of California
BOARD OF EQUALIZATION
PROPERTY TAX RULES

Chapter 1. State Board of Equalization — Property Tax
Subchapter 4. Equalization by State Board
Article 3. Taxable Property of a County, City or Municipal Corporation

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

Authority: Section 15606, Government Code

References: Section 68, Revenue and Taxation Code.
Article XIII A, Section 2(d), California Constitution.

(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).
- (2) “Replaced property” means real property taken.
- (3) “Replacement property” means real property acquired to replace property taken and is not limited to a single parcel.
- (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.
- (5) “Displaced” means a person is removed, expelled, or forced from property as a result of a governmental action.

(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

44 residential and duplex, multi-family residential other than duplexes, commercial,
45 industrial, agricultural, vacant, etc.) and its full cash value does not exceed 120 percent
46 of the award or purchase price paid for the replaced property.

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

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

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

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

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

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

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

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

75 (2) If the full cash value of the comparable replacement property does not exceed
76 120 percent of the award or purchase price of the property taken, then the adjusted
77 base year value of the property taken shall become the replacement property's base
78 year value, regardless of the allocation between land and improvements.

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

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

87 (5) If there is no award or purchase price paid by the acquiring entity (i.e., an
88 exchange) for the property taken, then the full cash value of the acquired property and
89 the full cash value of the replacement property shall be determined by the assessor of
90 the county in which each property is located for the purpose of applying the other
91 provisions of this subdivision. The procedure set forth in subdivision (d)(1) through
92 (d)(4) shall then be applied to determine the replacement property's base year value.

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

94 EXAMPLE: A commercial property, consisting of land and improvements, is taken and
95 replaced with a commercial structure that was built on land that the taxpayer already
96 owned. Despite the ineligibility of the land, the base year value of the taken land and
97 improvements may be transferred to the newly constructed improvements to the extent
98 it meets the value and timing requirements.

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

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

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

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

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

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

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

132 (1) The provisions of this section shall apply to property acquired after March
133 1,1975, as replacement property for property taken after March 1, 1975, by eminent
134 domain proceedings, public acquisitions, or judgments of inverse condemnation, and
135 shall affect only those assessments of the replacement property on the 1983-84
136 assessment roll and thereafter, provided the person acquiring replacement property
137 makes a timely request for such assessment with the assessor. No reassessments and
138 no refunds shall be made for any years prior to the 1983-84 fiscal year because of
139 decreases made to assessments for the 1983-84 fiscal year or fiscal years thereafter as
140 a result of the provisions of this section. Reassessments and refunds shall be made
141 retroactively to the date of acquisition of replacement property for property taken in
142 fiscal years commencing with 1983-84, provided a timely request is made therefor.

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

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

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

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

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

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

161 **(B)** ~~The A written threat or notice of government action that subsequently results in~~
162 ~~date~~ the acquiring entity ~~takes final action to approve~~ approving a project which results
163 in ~~an offer for or~~ the acquisition of the replaced property; or

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

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

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

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

171 (C) The date upon or after which the acquiring entity may take possession of the
172 replaced property 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
175 actual displacement of a taxpayer when a request has been made for the assessment
176 relief provisions under this section:

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

181 (B) Proof of the notice or threat of governmental action and a A-copy of a-the
182 recorded deed showing acquisition by a-the public entity; or, A notice of public hearing
183 is not a notice of government action. Proof includes, but is not limited to, a copy of the
184 written threat or notice or a copy of the minutes of the official meeting in which the
185 project was approved.

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

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

193 Authority: ~~Section 15606, Government Code~~

194
195 References: ~~Section 68, Revenue And Taxation Code,~~
196 ~~Article XIII A, Section 2(d), California Constitution.~~

197
198 History: Adopted September 13, 1984, effective February 16, 1985.
199 Amended November 18, 1987, effective February 14, 1988.
200

ATTACHMENT 3
TIMING ISSUES

PROPOSED AMENDMENT

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

EXISTING LANGUAGE

(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. No reassessments and no refunds shall be made for any years prior to the 1983-84 fiscal year because of decreases made to assessments 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 property taken in 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 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 ...

OPTION 1 – ACQUISITION BEFORE REQUEST

(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. The replacement

37 property must be acquired before a request is made. No reassessments and no
 38 refunds shall be made for any years prior to the 1983-84 fiscal year because of
 39 decreases made to assessments for the 1983-84 fiscal year or fiscal years thereafter as
 40 a result of the provisions of this section. Reassessments and refunds shall be made
 41 retroactively to the date of acquisition of replacement property for property taken in
 42 fiscal years commencing with 1983-84, provided a timely request is made therefor.

43

44

OPTION 2 – ADDITIONAL TIME TO FILE

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

46 (1) The provisions of this section shall apply to property acquired after March
 47 1, 1975, as replacement property for property taken after March 1, 1975, by eminent
 48 domain proceedings, public acquisitions, or judgments of inverse condemnation, and
 49 shall affect only those assessments of the replacement property on the 1983-84
 50 assessment roll and thereafter, provided the person acquiring replacement property
 51 makes a timely request for such assessment with the assessor. No reassessments and
 52 no refunds shall be made for any years prior to the 1983-84 fiscal year because of
 53 decreases made to assessments for the 1983-84 fiscal year or fiscal years thereafter as
 54 a result of the provisions of this section. Reassessments and refunds shall be made
 55 retroactively to the date of acquisition of replacement property for property taken in
 56 fiscal years commencing with 1983-84, provided a timely request is made therefor.

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

62 (A) The date final order of condemnation is recorded or the date the taxpayer
 63 vacates the replaced property, whichever is later, for property acquired by eminent
 64 domain; or

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

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

70 **ALTERNATIVE 1**

71 (D) If a request cannot be timely made because property is not acquired within four
 72 years of the above dates, the assessor may grant an exception under limited
 73 circumstances that are beyond the taxpayer's control.

74 **ALTERNATIVE 2**

75 (D) If a request cannot be timely made because property is not acquired within four
 76 years of the above dates because of circumstances beyond the taxpayer's control, the

77 taxpayer may file a protective claim to preserve the right to transfer the base year value
78 when the acquisition of the replacement property is complete.

79 **ALTERNATIVE 3**

80 (D) If an offer has been made and accepted on a replacement property but the
81 acquisition has not been completed within four years of the above dates, a request may
82 be filed that identifies the property for which the offer has been made. If the other
83 requirements are met, the base year value may be transferred upon completion of
84 acquisition of the replacement property for which the request was filed.