

State of California
BOARD OF EQUALIZATION
PROPERTY TAX RULES

Division 1. State Board of Equalization-Property Tax
Chapter 4. Equalization by State Board
Article 4. Change in Ownership and New Construction

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.

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

(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 real property taken or acquired as provided in (a).
- (2) "Replacement property" means real property acquired to replace property taken.
- (3) "Award or purchase price" means the amount paid for "property taken" but shall not include amounts paid for relocation assistance or anything other than the replaced real property. The award or purchase price may not reflect full cash value.
- (4) "Displaced" means a property owner is removed, expelled, or forced from property as a result of eminent domain proceedings, acquisition by a public entity in lieu of instituting eminent domain proceedings, or governmental action resulting in a judgment of inverse condemnation.
- (5) "Real property" includes land, land improvements, living improvements, manufactured homes, and fixed machinery and equipment. Personal property is not entitled to relief under this section.
- (6) "Adjusted base year value" means the base year value, as determined in accordance with Revenue and Taxation Code section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Revenue and Taxation Code section 110.1.

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

- (1) The size of property is associated with value, not physical characteristics. Property is similar in size if its full cash value does not exceed 120 percent of the award or purchase price paid for the property taken.

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 size.

- (2) Property is similar in function and utility if the replacement property is not intended to be used in the same manner as the property taken. Property is similar in function and utility if the property taken and the replacement property both fall into the same category:

Category A: Single family residence or duplex. Small miscellaneous buildings may be included when used with residence.

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Category B: Commercial, investment, income, or vacant property. Single family residences and duplexes that are used as investment property may be considered income property if sufficient proof is provided to the assessor. Proof may include, but is not limited to, rental or lease agreements, cancelled checks, income tax returns, or other investment records.

If property does not fall within Category A or Category C, it falls within Category B.

Category C: Agricultural property. "Agriculture" includes farming in all its branches, and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed incidental to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market.

Agricultural property that is in transition may be considered similar to property described in Category B if property in its vicinity has been changing from historically agricultural use to another use. Factors that may be considered to determine whether agricultural property is in transition include, but are not limited to:

- Restrictions that would prohibit the property taken from converting to property described in Category B such as the general plan, community plan, or special plan. Current zoning restrictions are not such a restriction if the general plan, community plan, or special plan contemplate a zoning change.
- The highest and best use of the property taken;
- The type of comparable property that was used by the acquiring government body to value the property taken.

(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 1: An owner-occupied single family residence 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 2: A combination dwelling and commercial property is replaced with an owner-occupied single family residence. 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 replacement Category B property is acquired after the date of displacement and a timely request is made for assessment relief.

EXAMPLE 3: A combination dwelling and commercial property is replaced with a Category A single family residence, and later the displaced person also acquires a separate replacement Category B property. Pro-rata relief shall be granted on both the replacement Category A single family residence and Category B property.

EXAMPLE 4: An owner-occupied single family residence is replaced with an owner-occupied single family residence and a vacation home. Relief is applicable to both properties.

EXAMPLE 5: An owner-occupied single family residence that has a homeowners' exemption is replaced with a single family residence that is to be used as a rental property. The replacement property qualifies for relief because a Category A property is replaced by another Category A property.

EXAMPLE 6: A duplex in which the property owner lived in one unit and rented the other unit is replaced with two single family residences, one of which will be owner occupied. Relief is applicable to both properties.

EXAMPLE 7: Three single family residences that were owned by a taxpayer and used as rental properties were replaced by a small apartment complex. Relief is available under Category B if the taxpayer provides proof to the assessor that the single family residences were held as income property.

EXAMPLE 8: A taxpayer owns a 40-acre vineyard which includes an owner-occupied single family residence. The owner-occupied single family residence is taken along with 5 acres of grapevines. To qualify for relief, the owner-occupied single family residence must be replaced with Category A property; the vineyard must be replaced with other Category C property or, if the property is in transition to another use, it may be replaced with a Category B property.

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

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(1) 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.

(2) 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, then the adjusted base year value of the property taken shall become the replacement property's base year value, regardless of the allocation between land and improvements.

(3) If the full cash value of the replacement property exceeds 120 percent of the award or purchase price of the property taken, 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. The sum of these amounts shall become the replacement property's base year value.

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

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

(6) A base year value may be reallocated upon the transfer to the replacement property. The appraisal unit that is normally bought and sold in the market place may be used to determine the amount of base year value that is allocated to the property taken.

EXAMPLE 9: A commercial property, consisting of land and improvements, is taken and replaced with a Category B structure that was built on land that the taxpayer already owned. The land is ineligible for relief because it was previously owned. Despite the ineligibility of the land, the base year value of the property taken (land and improvements) may be transferred to the newly constructed improvements to the extent it meets the value and timing requirements.

(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 property taken who obtains 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.

EXAMPLE 10: A and B each own an undivided 50 percent interest as joint tenants in a home which is taken through eminent domain proceedings by the state. A purchases a replacement property which is comparable to the property taken. B contributes his share of the award or purchase price to a limited partnership which owns a home which is comparable replacement property. A's relief under this section is limited to 120 percent of one-half of the award or purchase price of the property taken. B is entitled to no relief.

EXAMPLE 11: A partnership composed of two corporations owns commercial property which is taken through eminent domain proceedings. The partnership uses the award or purchase price to acquire Category B property. The partnership is entitled to relief under this section.

EXAMPLE 12: A partnership composed of two corporations owns commercial property which is taken through eminent domain proceedings. The partnership distributes the award or purchase price to the partner corporations in the same percentage as their ownership interests and the corporations separately or jointly acquire comparable replacement property retaining the same percentage of ownership interest in the partnership. No tax relief may be granted under this section.

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

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

(g) TIME LIMITS FOR QUALIFICATION.

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(1) The provisions of this section shall apply to property acquired as replacement property for property taken by eminent domain proceedings, public acquisitions, or judgments of inverse condemnation, provided the person acquiring replacement property makes a timely request for such assessment with the assessor. The replacement property must be acquired before a request is made. Reassessments and refunds shall be made retroactively to the date of acquisition of replacement property for property taken, provided a timely request is made therefor.

(2) For purposes of this section, 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 property taken, whichever is later, for property acquired by eminent domain;

(B) The date of conveyance or the date the taxpayer vacates the property taken, 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 property taken, 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 on or after the earliest of the following dates:

(A) The date the initial written offer is made for the property taken 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 property taken;

(C) The date the 'Notice of Determination,' 'Notice of Exemption,' or similar notice, as required by the California Environmental Quality Act (CEQA), is recorded by the public entity acquiring the taxpayer's property and the public project has been approved; or

(D) The date, as declared by the court, that the 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 dates:

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

(B) The date of actual possession by the acquiring entity of the property taken; or

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

(h) 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) 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 property taken;

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

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