



STATE OF CALIFORNIA

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March 1, 1994

BURTON W. OLIVER  
Executive Director

Attention:

Dear

This is in response to your January 14, 1994, letter wherein you inquired concerning the proper application of Property Tax Rule No. 462.5 in the case of a replacement property sold directly to a private party under threat of condemnation by the Glendora Community Redevelopment Agency.

According to documents attached to your letter, title to real property located at 602 W. Alostia Avenue, Glendora, was transferred by \_\_\_\_\_ to Glendora Grand, Inc. on February 18, 1992, at the insistence of the Glendora Redevelopment Agency and under its threat of eminent domain proceeding (Application For Special Assessment - Property Taken By Government Action); the \$1,200,000 sale was under threat of eminent domain taking by the Agency, whose Executive Director had indicated that the Agency wanted Smith Foods to obtain ownership of the property and that the Agency would have obtained the property and sold it to Smith Foods had the \_\_\_\_\_ not agreed to sell the property (January 10, 1994, letter from \_\_\_\_\_ attorney); and the \_\_\_\_\_ sold the property to Glendora Grand, Inc., which purchased it on behalf of Smith Foods (January 10, 1994, letter). An October 3, 1991, letter from the Agency's Executive Director to \_\_\_\_\_ stated as follows:

"Please be advised that the Glendora Community Redevelopment Agency (the 'Agency') is proceeding with the implementation of property redevelopment within Project Area No. 3, and in connection with such activities, desires to obtain the Subject Property. The development activity contemplated would enhance commerce

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within the Project Area and yield substantial sales tax revenues to the City of Glendora.

"The Agency will be presenting to you an offer to purchase your interest in the Subject Property.

"You are notified by this letter that, in the event agreement is not reached concerning the sale of the Subject Property to the Agency, staff will recommend to the governing board of the Agency that the Agency take formal action to commence proceedings for the acquisition of the Subject Property pursuant to the power of eminent domain."

As you know, Article XIII A, Section 2(d) provides, in pertinent part:

"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)....

\* \* \*

"(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

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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...."

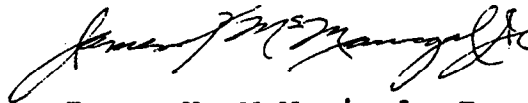
In view of the specific references in the constitutional provision, the section, and the rule to displacement by eminent domain proceedings, to acquisition by a public entity, and to governmental action which has resulted in a judgment of inverse condemnation, we have been of the opinion that a sale under threat of condemnation is not displacement from property by eminent domain proceedings, by acquisition by a public entity, or by governmental action which resulted in a judgment of inverse condemnation for purposes of the section and the rule. See the January 25, 1987, letter from Tax Counsel Robert Keeling to Mr. Richard Blasco in this regard, copy enclosed. Additional support for our opinion is found in Rule No. 462.5, which dictates that an assessor shall only consider a certified recorded copy of a final order of condemnation, a copy of a recorded deed showing acquisition by a public entity, or a certified copy of a final judgment of inverse condemnation as proof of actual displacement of a taxpayer under the section and the rule. Obviously, no such document will exist in the case of a sale under threat of condemnation.

Finally, as an aside, we note that the October 3, 1991, letter from the Agency's Executive Director to states only that if agreement is not reached concerning the sale of the property to the Agency, staff will recommend to the Board of the Agency that the Agency take formal action to commence acquisition proceedings pursuant to the power of eminent domain. Such is much less forceful than a statement that the Agency will commence acquisition proceedings, and our experience generally has been that staff recommendations are not always accepted by boards or agencies.

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As you know, the views expressed herein are advisory only. Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help up to accomplish this goal are appreciated.

Very truly yours,



James K. McManigal, Jr.  
Staff Counsel III

JKM:jd  
precednt/emdomain/94002.jkm

cc: