



STATE BOARD OF EQUALIZATION
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DOUGLAS D. BELL
Executive Secretary

July 17, 1987

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

No. 87/51

NOTICE OF PROPOSED REGULATORY ACTION
BY THE
STATE BOARD OF EQUALIZATION

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

PUBLIC HEARING: September 2, 1987

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 2(d) of Article XIII A of the California Constitution and section 68 of the Revenue and Taxation Code, proposes to amend Rule 462.5 of 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 September 2, 1987. Any person interested may present statements or arguments orally or in writing at that time and place.

INFORMATIVE DIGEST: In June 1982, the electorate added subdivision (d) to section 2 of Article XIII A for the purpose of excluding from the definition of a change in ownership 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 resulting in a judgment of inverse condemnation. The constitutional provision required that 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.

Section 68 was added to the Revenue and Taxation Code by Chapter 1465 of the Statutes of 1982, in effect January 1, 1983 and amended by Chapter 662 of the Statutes of 1983, in effect September 7, 1983. This section provided a method of computing the base year value of the replacement property and set forth the statute of limitations. Chapter 186 of the Statutes of 1986 harmonized section 68 with the supplemental assessment law and expressed the intention of the Legislature that the provisions of this section be liberally construed.

Both the Constitution and the statutory law are silent as to how county assessors are to administer the property tax relief provided by the Constitution. Property Tax Rule 462.5 was promulgated to provide uniform procedures to county assessors by providing the method of the computation of base year values of replacement property, definitions, examples of comparability, the requirements of ownership, the application of new construction, the time limits for qualifications for relief, and the administration of the relief. These amendments provide technical changes and clarifying language to enable county assessors and others to properly interpret and apply the constitutional and statutory provisions.

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. Further, the Board has determined that the change will result in no direct or indirect cost or savings to any state agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, or other nondiscretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

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

WRITTEN COMMENTS: Written statements or arguments will be considered by the Board if received by September 2, 1987; they are requested by August 17, 1987. Please send comments to Janice Masterton, Regulation Coordinator, at 1020 N Street, Sacramento, California 95814.

STATEMENT OF REASONS; EXPRESS TERMS; RULEMAKING FILE: The Board has prepared a statement of reasons and an underscore version (express terms) of the proposed amendment. Both of these documents and all information on which the proposal is based are available to the public upon request. The rulemaking

file is available for public inspection at Room 450, 1020 N Street, Sacramento, California.

STAFF MEMORANDA AFTER PUBLIC HEARING OR REVISIONS TO PUBLISHED VERSION OF THE REGULATION: In the event there are any staff memoranda included in the rulemaking 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.

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

In the event there are any revisions sufficiently related to the published version of the rule, these revisions will be available to the public upon request from Mrs. Masterton for a period of 15 days before adoption.

INQUIRIES

CONTENT

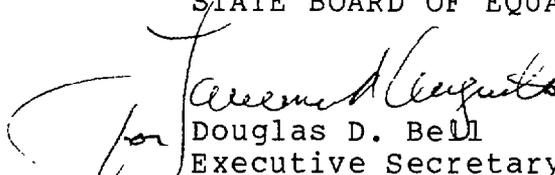
Questions regarding the content of the regulation should be directed to Gordon P. Adelman, Assistant Executive Secretary, Property Taxes, (916) 445-1516, at 1719 24th Street, Sacramento, CA 95816

HEARING

Written comments for the Board's consideration or requests to present testimony and bring witnesses to the public hearing should be directed to Janice Masterton Assistant to Executive Secretary, (916) 445-6479, at 1020 N Street, Sacramento, CA 95814

STATE BOARD OF EQUALIZATION

Dated: July 3, 1987


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. 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.

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(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.

(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 residential and duplex, multi-family residential other than duplexes, commercial, industrial, agricultural, vacant, etc.) and 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 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.

(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 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

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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 subdivision (b)(1).

(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:

(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 ~~be transferred to the comparable replacement property~~ become the replacement property's base year value.

(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.

(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 replaced property obtaining 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: A & 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 home which is comparable to the replaced property. 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: 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 comparable commercial property. The partnership is entitled to relief under this section.

EXAMPLE: 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, ~~provided~~ ~~that~~ if such new construction is completed after March 1, 1975, and ~~not/only/so/any~~ if it is completed on or after

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the earliest of the dates listed in subdivision (g)(3), and ~~provided~~ if a timely request is made for assessment relief.

(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,

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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 if it is acquired after March 1, 1975, and ~~not prior to~~ if it is acquired on or after the earliest of the following dates:

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

(C) The date, as declared by the court, that the replaced 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 replaced property to the acquiring entity or the final order of condemnation is recorded.

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

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

(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 certified recorded copy of the order for possession showing the

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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.

(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).

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

Authority: Government Code section 15606.