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March 29, 2016

Assistant Assessor
Sacramento County Office of the Assessor
3701 Power Inn Road, Suite 3000
Sacramento, CA 95826-4329

***Re: Change in Ownership – Eminent Domain***
***Assignment No.: 16-014***

Dear :

This is in response to your request for our opinion regarding whether replacement property acquired following government acquisition of a public roadway easement qualifies for exclusion from change in ownership under Revenue and Taxation Code[1] section 68. As explained below, based on the information provided, it is our opinion that acquisition of replacement property following government acquisition of an easement substantially equivalent to the value of the taxpayer's fee interest, which displaces the taxpayer from the underlying property, may qualify for exclusion under section 68 if all other requirements are met.

## Facts

The Sacramento County Department of Transportation is widening Hazel Avenue, and the County is acquiring roadway easements over the existing affected parcels rather than fee title. One of the affected parcels is a self-storage business (Business) with limited public parking on Hazel Avenue. Acquisition of the roadway easement and construction of the project will eliminate three of Business's four existing parking spaces. Business's remaining property does not have adequate area to replace the lost parking spaces and will no longer meet Sacramento County Zoning Code parking standards or established customer needs. As part of the agreed-upon compensation, the County has deeded a portion of the adjacent County-owned parcel in fee to Business for use as a replacement parking area.

## Law & Analysis

Article XIII A, section 2 of the California Constitution requires the reassessment of real property upon a "change in ownership," unless an exclusion applies. A change in ownership is defined in section 60 as "a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest." Section 68 provides, in relevant part, that a change in ownership does not include:

> [T]he 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.

[1] All further statutory references are to the Revenue and Taxation Code, unless otherwise specified.

Property Tax Rule[2] (Rule) 462.500, the regulation that interprets and implements section 68, states in subdivision (a) that a change in ownership does not include "the acquisition of real property as replacement property for property taken if the person acquiring the replacement property has been displaced from property in this state" by the types of government acquisition listed in section 68. According to Rule 462.500, "property taken" means "real property taken or acquired" as provided for in subdivision (a), which includes land, land improvements, living improvements, manufactured homes, and fixed machinery or equipment. (Rule 462.500, subd. (b)(1) and (5).) "Displaced" means "a property owner is removed, expelled, or forced from property" due to governmental acquisition. (Rule 462.500, subd. (b)(4).)

"Replacement property" is "real property acquired to replace property taken." (Rule 462.500, subd. (b)(2).) Rule 462.500 provides that replacement property "shall be deemed comparable to the property taken if it is similar in size, utility, and function," and to the extent that a replacement property or any portion thereof, is not similar in size, function, and utility, the property undergoes a change in ownership. (Rule 462.500, subds. (a) and (c).)

Under subdivision (c)(1) of Rule 462.500, "[t]he size of property is associated with value, not physical characteristics." Specifically, "[p]roperty 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." (*Id.*) Under subdivision (c)(2) of Rule 462.500, "[p]roperty is similar in function and utility if the replacement property is or is 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." The three categories are:

- Category A: Single-family residence or duplex.
- Category B: Commercial, investment, income, or vacant property.
- Category C: Agricultural property.

If property does not fall within Category A or C, it falls within Category B. (*Ibid.*)

In this case, we must first address whether government acquisition of an easement constitutes "property taken" for purposes of section 68 and Rule 462.500. An easement is an interest in the land of another, which entitles the holder of the easement to limited use or enjoyment of the other's land, and thus it is not an estate of land. (See 12 Witkin Sum. Cal. Law (10th ed. 2010) Real Property, § 382.) While most easements are not separately recognized, when the easement effectively transfers an interest "substantially equi[valent] to the value of the fee" it can give rise to a change in ownership under section 60 and the easement is then appraised and assessed to the grantee. (See Assessors' Handbook Section 401, *Change in Ownership* (Sept. 2010), p. 74; Property Tax Annotation (Annot.) [3] 220.0160 (Jan. 7, 1982 and Aug. 6, 2003); backup letter to Annot. 220.0166 (Oct. 22, 2010), p. 3.) Whether an easement is "substantially equal to the value of the fee interest" must be analyzed on a case-by-case basis. (Backup letter to Annot. 220.0166, *supra*, at p. 3.)

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[2] References to "Property Tax Rules" or "Rules" are section references to title 18 of the California Code of Regulations.

[3] Property tax annotations are summaries of the conclusions reached in selected legal rulings of State Board of Equalization counsel published in the State Board of Equalization's Property Tax Law Guide. (See Cal. Code Regs., tit. 18, § 5700 for more information regarding annotations.)

In Annotation 220.0166, *supra*, we analyzed whether the grant of a parking easement in which 76 parking spaces were reserved for tenants of an adjacent property was a change in ownership and should be assessed to the adjacent property owner. The easement ran with the land, was binding on future owners, encumbrancers, successors, heirs and assigns, and was to continue until released by the city. We determined that because the easement was perpetual in nature, was for a minimum of a fixed number of spaces, and was exclusive, the easement's value was substantially equal to the value of the fee interest and therefore represented "ownership" in the property such that the parking spaces should be assessed to the adjacent property owner.

In Annotation 200.0326 (Apr. 29, 2009), we analyzed whether a permanent public utility easement and a temporary construction easement acquired by a city via eminent domain were considered "property taken" for purposes of Rule 462.500. We concluded that because the easements were not equivalent to the taxpayer's fee interest and the taxpayer retained ownership interest in the real property, the taxpayer was ineligible for relief under section 68. Although Annotation 200.0326, *supra*, states that in general, relief is only available under section 68 when a property owner's fee simple or life estate interest in real property has been taken by eminent domain, it must be read consistent with Rule 462.500. While the taxpayer seeking relief must own the property taken in fee title (see Rule 462.500, subd. (e)), neither section 68 nor Rule 462.500 require that fee title must be what is taken from the property owner – only that the property owner be "displaced" from the property taken, as defined by Rule 462.500, subdivision (b)(4). Thus, while this generally excludes government acquisition of interests less than a fee interest such as easements, wherein the property owner retains some utility in the property, there are circumstances in which an easement effectively represents ownership of the property to the exclusion of the property owner. In these circumstances, where the property owner has been "removed, expelled, or forced from the property" as a result of the government acquisition, relief may still be available. (See Rule 462.500, subds. (a) and (b)(4).)

In this case, the County has acquired a public roadway easement. This type of roadway easement is distinguishable from a public utility or temporary easement as discussed in Annotation 200.0326, *supra*, which gives the public entity limited use while the underlying property owner retains some utility in the area (such as landscaping or a driveway). Here, it appears the County has an easement similar instead to one described in Annotation 220.0166, *supra*, wherein the easement's value is substantially equal to the value of the fee interest. According to the facts given, the easement appears to be perpetual in nature and over a specific area of land, as the underlying property is becoming a public roadway and permanently eliminating three of Business' existing parking spaces. The easement also appears to be exclusive, as Business has been removed from and does not retain any practical utility in the portion of the property subject to easement. Therefore, Business has been "displaced" from the property as contemplated in Rule 462.500, subdivision (b)(4). Thus, in our opinion, the public roadway easement may be considered "property taken" for purposes of Rule 462.500.

We now turn to the question of whether the taxpayer's acquisition of replacement land qualifies as "replacement property" for the purposes of section 68. The County has deeded a fee interest[4] in a portion of its own property adjacent to Business for use as a replacement parking area for the lost parking spaces subsumed by the easement. In that regard, it is similar in

[4] Rule 462.500, subdivision (e) requires that property owner must obtain title to the replacement property, and defines owner as "fee owner or life estate owner." Because Business has acquired fee title to the replacement property, this requirement has been met.

function and utility, as both properties are Category B properties, and the replacement property is intended to be used in the same manner as the property taken (i.e., for parking). (See Rule 462.500, subd. (c)(2).) Thus, as long as the replacement property's full cash value does not exceed 120 percent of the award or purchase price paid for the property taken, the property is considered similar in size and should be deemed comparable. (See Rule 462.500, subds. (a) and (c).)

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

/s/ *Amanda Jacobs*

Amanda Jacobs
Tax Counsel

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cc: Honorable Kathleen Kelleher
Sacramento County Assessor

Mr. Dean Kinnee (MIC:63)
Mr. David Yeung (MIC:61)
Mr. Todd Gilman (MIC:70)