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April 27, 1988

Mr. John Davies
Deputy Controller
300 Capitol Mall
18th Floor, Suite 100
Sacramento, CA 95814

RE: Interpretation of Property Tax Rules Relating to
Reinvestment of Proceeds from Condemned Property

Dear Mr. Davies:

Our legal staff has examined the questions you asked in your letter dated April 11, 1988. You tell us a partnership sold a multi-story office building to a redevelopment agency of a city, under threat of condemnation by the city. You presented three questions regarding the extent to which replacement property would be excluded from a change in ownership reassessment.

Revenue and Taxation Code section 68 and Property Tax Rule 462.5 provide generally that real property acquired to replace property taken by governmental action or eminent domain proceedings shall be excluded from "change in ownership". Property taken, as in this instance, by a redevelopment agency of a city is governmental action and, therefore, the property acquired to replace it may qualify for the change of ownership exclusion.

You first ask whether comparable bare land qualifies for the change of ownership exclusion when the land taken was improved with an office building. We see nothing in rule 462.5 which would prohibit such replacement land from enjoying the exclusion, so long as it is comparable to the land taken in size, utility and function. Rule 462.5(c)(3) gives three illustrative examples of property taken which was a combination of dwelling and commercial property. The replacement property which was comparable to either the dwelling or commercial property taken was afforded the change of ownership exclusion. We see no fundamental difference between the examples and the

situation you present. The property taken is an office building and land combination while the replacement property is land only. So long as the replacement land is comparable to the land taken, then the thrust of the cited examples should support the conclusion that such land is excluded from change in ownership.

You tell us that the land will be immediately leased to a separate entity which would own the building located on the land. You should be aware that in the event such lease is made for a term of 35 years or more (including renewal options) it would trigger a separate change in ownership reassessment of the land. (See Property Tax Rule 462(f)(1)(A)(i).)

You next ask whether a different replacement property from that designated for property tax benefits under Rule 462.5 can be utilized for income tax benefits under section 1033 of the Internal Revenue Code. The property tax exclusion provisions and the income tax benefits operate independently. It appears that the taxpayer could, therefore, utilize one replacement property for section 462.5 benefits and another for 1033 benefits. However, this conclusion is not free of doubt. Section 462.5 provisions repeatedly refer to "replacement" property. The term is defined as real property acquired to replace property taken. If a taxpayer makes conflicting declarations as to what is replacement property in order to take advantage of both section 1033 and section 462.5, respectively, on entirely separate replacement properties, it could reasonably trouble a county assessor who becomes aware of these conflicting statements.

You next ask whether the form of ownership in the replacement property can be taken as "tenants in common" while the ownership in the property taken is a partnership. Rule 462.5 clearly restricts the change in ownership exclusion to the owner or owners of the property taken. If the entity owning the property taken is a partnership, then only the partnership is entitled to the exclusion. The individual partners cannot enjoy Rule 462.5 benefits if they acquire the replacement property as tenants in common because the entity owning the property taken would not be the same entity buying the replacement property. (See 462.5(e) and the examples thereunder.) However, so long as the partnership purchases the replacement property, nothing appears to prohibit the purchase of less than a 100 percent ownership interest in the replacement property.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult the appropriate assessor in order to

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confirm that the described property will be assessed in a manner consistent with the conclusion stated above. Please contact Richard H. Ochsner, Assistant Chief Counsel, Property Taxes, if you have any questions.

Sincerely,

Allen K. Sanchez
for Cindy Rambo

Cindy Rambo
Executive Director

CR/RRK/rz

cc: Mr. Gordon P. Adelman
Mr. Robert Gustafson
Mr. Verne Walton

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