



STATE BOARD OF EQUALIZATION

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March 24, 2011

Mr.

**Re: *Base Year Value Transfer – Eminent Domain
 Assignment No.: 10-296***

Dear Mr. _____ :

This is in response to your letter dated November 29, 2010, to Mr. Dean Kinnee, Chief of the Board's County Assessed Properties Division, requesting a legal opinion as to whether it is permissible to combine awards received in two separate eminent domain proceedings to acquire one replacement property such that that the value of the replacement property will not exceed 120 percent of the combined values of the properties taken. As explained below, it is our opinion that the awards may be combined and the base year values of the properties taken may be transferred to the replacement property under the facts presented.

Facts

On March 13, 2007, the California Department of Transportation (Caltrans) acquired a certain parcel of California real property you own by eminent domain, as part of the property needed to build the so-called 905 Freeway (2007 Property). Two years later, on May 13, 2009, Caltrans acquired portions of two other parcels you own for the same purpose (2009 Property). Although Caltrans elected to take 2007 Property and 2009 Property (Properties) two years apart, you were informed in 2007 that all or portions of Properties would be taken by Caltrans to complete the freeway project. You are currently in the process of purchasing a replacement property (Replacement Property), the full cash value of which exceeds 120 percent of the purchase price or award (award) for 2007 Property. The full cash value of Replacement Property also exceeds 120 percent of the award for 2009 Property. However, the full cash value of Replacement Property is *less* than 120 percent of the *combined* awards for the Properties taken. You have applied for a base year value transfer under Revenue and Taxation Code¹ section 68, asserting that the base year values of the Properties taken may be combined and transferred to a single Replacement Property.

Law

Section 60 defines a change in ownership 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. The first paragraph of section 68 provides that a change in ownership does not include:

¹ All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

[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.

The second paragraph of section 68 further provides that the adjusted base year value of the replacement property shall be the lower of:

- (a) The fair market value of the property acquired; or
- (b) The sum of the adjusted base year value of the property from which the person was displaced and the amount, if any, by which the full cash value of the property acquired exceeds 120 percent of the amount received by the person for the property from which the person was displaced.

The second sentence in paragraph four of section 68 states:

Persons acquiring replacement property on and after January 1, 1983, shall request assessment within four years of the date the property was acquired by eminent domain or purchase or the date the judgment of inverse condemnation becomes final.

Property Tax Rule² (Rule) 462.500, subdivision (c), interprets section 68's comparable property requirement and provides that replacement property "shall be deemed comparable to the property taken if it is similar in size, utility, and function." Under subdivision (c)(3) of Rule 462.500, 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.

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." (Emphasis added.) 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." (Emphasis added.) 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.

Analysis

We assume the 2007 Property, 2009 Property, and Replacement Property all fall within Category B and are therefore comparable in function and utility. The question centers on whether Replacement Property can be considered comparable in size to Properties taken when the full cash value of Replacement Property exceeds 120 percent of the award for 2007 Property

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

and also exceeds 120 percent of the award for 2009 Property, but does not exceed 120 percent of the combined awards for *both* 2007 Property and 2009 Property.

As stated above, section 68 generally provides that real property will not undergo a change in ownership if the replacement property acquired is comparable to the property taken by, *inter alia*, eminent domain proceedings. In defining "comparability," Rule 462.500, subdivision (c) provides that a property is comparable if it is similar in size, and a property is similar in size if its full cash value does not exceed 120 percent of the award for the property taken.

While Board legal staff has not directly addressed the permissibility of combining awards to apply to a single replacement property, it has addressed the reverse situation. In Property Tax Annotation (Annotation)³ 200.0366, a taxpayer constructed five buildings on multiple sites where the combined full cash value of the multiple properties was less than 120 percent of the purchase price of the property taken. Legal staff was asked whether the taxpayer should be allowed to transfer portions of the base year value of the property taken to multiple replacement properties. We answered affirmatively, stating that the provisions of Rule 462.500, subdivision (c) "define comparability in terms of size...but do not limit the number of appraisal units that may constitute comparable property." (Annotation 200.0366, p. 6 (4/18/2003).)

Our advice was consistent with that of the Board's County Assessed Properties Division (CAPD). A taxpayer asked whether three condemned properties could be combined for purposes of transferring their base year values to a single replacement property under Rule 462.500. (See attached letter (8/17/1989).) CAPD advised that neither the replacement property nor the property taken must be confined to one assessor's parcel. "Thus, property taken may consist of several parcels, contiguous or not, which may be combined for purposes of transferring their total base-year values on a pro rata basis to *one or more parcels comprising a replacement property*, provided all other requirements under Rule 462.5[00] are met." (Emphasis added.)

We also interpret section 68 and Rule 462.500 as not limiting the number of appraisal units that constitute *property taken*. This means that relief under section 68 is available to the extent that the full cash value of the replacement property does not exceed 120 percent of the combined awards of the properties taken. Any portion of the full cash value of the replacement property that exceeds 120 percent of the combined awards would constitute a change in ownership and be reassessed at fair market value. Administratively, applying the base year value transfer to a single replacement property is unlikely to be more difficult than transferring a base year value to several replacement properties. We note that county assessors are required to track base year values of fractional interests in properties such as tenancies in common and joint tenancies. Tracking of base year value transfers when there are two or more taken properties and one replacement property should not be significantly more cumbersome than tracking base year values of fractional property ownership for other purposes.

Our analysis does not change because the combined awards were two years apart. *When* awards are received should not significantly impact the administration of the tax because persons acquiring replacement property must request assessment within four years of the date the taken property was acquired by eminent domain. (Rev. and Tax Code, section 68; Rule 462.500, subd. (g)(2)(A).) Finally, we note that in this case it appears that Caltrans alone had the power to

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. (View the Property Tax tab on our website and see Cal. Code Regs., tit. 18, § 5700 for more information regarding annotations.)

take Properties as part of a single eminent domain proceeding or to take Properties in several proceedings. We believe that a taxpayer should not be denied the benefit of acquiring a single replacement property in cases where Caltrans chooses to proceed with property acquisitions in increments rather than in a single proceeding.

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

Sincerely,

/s/ Susan Galbraith

Susan Galbraith
Tax Counsel

SG:mcb

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Attachment

cc:

Mr. David Gau	MIC:63
Mr. Dean Kinnee	MIC:64
Mr. Todd Gilman	MIC:70