STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

(916) 323-7713

March 30, 1989

Mr.

Re: Revenue and Taxation Code Section 68

Dear Mr. :

This is in response to your letter dated May 11, 1988. You ask whether your client will receive the change in ownership exclusion benefits under Revenue and Taxation Code section 68 based upon the following facts.

You say your client presently owns some agricultural land which has improvements on it consisting of nursery hothouses. The local municipal government has negotiated with your client to purchase the properties for use as park space. Your client owns other land in the same county which was acquired several years ago with the intent to leave it as agricultural land. Your client now, because of the negotiations and prospective acquisition of its nursery land by the municipal government, is considering relocating its nursery business on this previously owned land.

The Board of Equalization has promulgated Rule 462.5 to interpret and make specific section 68 (see 18 California Code of Regulations section 462.5) The rule provides that 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 as 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.

However, in order to enjoy the benefits of tax relief under section 68, the replacement land must also be comparable to the property replaced, your client must have owned the land taken, and the acquisition of the replacement land must meet time limits for qualification.

Rule 462.5(c) defines comparable property as replacement property acquired by a person displaced under circumstances enumerated above if it is similar in size, utility, and function. It also sets forth the parameters for the determination of similarity in size, utility and function. Since the land taken is agricultural in nature and the replacement land is agricultural in nature, it is likely that the comparability requirement can be satisfied.

Rule 462.5(e) sets forth the requirement that only the owner or owners of property taken may receive the tax relief. Factually, it appears that your client was the owner of the land taken; therefore, the ownership requirement appears to be satisfied.

Rule 462.5(g) sets forth time limits under which the replacement property must be acquired. Rule 462.5(g)(3) provides that replacement property shall be eligible for property tax relief it if is acquired after March 1, 1975, and not prior to any 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.

Since the replacement land was purchased prior to any of the time limits set forth in rule 462.5(g)(3), the land is not eligible for tax relief under section 68.

Even though your client's land cannot qualify for tax relief under section 68, we believe that any improvements built on the replacement land to replace improvements taken could receive tax relief if the improvements meet the tests of comparability, ownership and time for qualification above discussed. A further consideration is Rule 462.5(f), <u>New Construction</u>:

> "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 such new construction is completed after March 1, 1975, and not prior to any of the dates listed in subdivision (g)(3) and provided a timely request is made for assessment relief.

The question turns on the meaning of "replacement property" as used in section 68 and Rule 462.5(g)(3). The term is defined in Rule 462.5(b)(3) as real property acquired to replace real property taken. While "real property" is not defined in section 68 or in Rule 462.5, Revenue and Taxation Code section 104 defines the term as including both land and improvements. Thus, it seems clear that "replacement property" refers to both land and improvements acquired to replace land and improvements taken.

A related question, however, is whether replacement property must be considered as an appraisal unit or whether it can be divided, treating land separately from improvements. Nothing in section 68 or in Rule 462.5 expressly says that replacement property can be divided. The examples in Rule 462.5(c), however, demonstrate an intent to permit division of a replacement property unit on the basis of the utility of the property. That is, a combination dwelling and commercial property can be divided in order to allow property tax relief. And the dwelling portion of a property can be considered separately for purposes of determining comparability and the amount of relief. While not free from doubt, it is reasonable to conclude that the rule indicates an intent to permit division of a replacement property between land and improvements. Thus, for purposes of determining comparability, the test set forth in Rule 462.5(c) would be applied in comparing improvements to improvements. And, the award or purchase price of the improvements alone would be considered for purposes of determining whether the full cash value of the replacement improvements exceeded 120% of the award or purchase price. Similarly, the provisions of rule 462.5(d), Base Year Value of Replacement Property, would be used for purposes of determining the base year value of the replacement improvements, with the base year value of the improvements utilized for purposes of determining the base year value of the replacement improvements.

In conclusion, the question comes to mind as to how to properly identify the base-year value to be utilized to give separate tax relief to replacement improvements.

Revenue and Taxation Code section 605 provides that land and improvements thereon shall be separately assessed. It is our

understanding that each assessor keeps a historical record of the base-year value of land and base-year value of improvements separately. Therefore, for the implementation of Rule 462.5 to the granting of tax relief for newly constructed replacement improvements, the assessor would use his separate historical base-year value of the improvements taken.

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 confirm that the described property will be assessed in a manner consistent with the conclusion stated above.

Very truly yours,

Robert R. Keeling
Tax Counsel

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cc: Mr. John Hagerty
Mr. Verne Walton