



STATE BOARD OF EQUALIZATION
PROPERTY TAX DEPARTMENT
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064
1-916 274-3350 • FAX 1-916 285-0134
www.boe.ca.gov

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No. 2016/008

January 27, 2016

TO COUNTY ASSESSORS:

**GOVERNMENT ACQUISITION BASE YEAR VALUE TRANSFER:
CHANGE IN FILING REQUIREMENTS**

Section 2(d) of article XIII A of the California Constitution provides that change in ownership does not include the acquisition of real property as a replacement for comparable property if the person acquiring the property has been displaced from the property replaced by eminent domain proceedings, by acquisition by a public entity, or governmental action that has resulted in a judgment of inverse condemnation. This is implemented by Revenue and Taxation Code¹ section 68 and Property Tax Rule 462.500.

Prior to January 1, 2016, section 68 and Rule 462.500(g) provided that persons acquiring replacement property must request to transfer the base year value within four years of the following dates, whichever was applicable:

- For property acquired by eminent domain—the date the final order of condemnation is recorded or the date the taxpayer vacates the property taken, whichever is later.
- For property acquired by a public entity by purchase or exchange—the date of conveyance or the date the taxpayer vacates the property taken, whichever is later.
- For property taken by inverse condemnation—the date the judgment of inverse condemnation becomes final or the date the taxpayer vacates the property taken, whichever is later.

In 2014, the Fourth District Court of Appeal, in *Olive Lane Industrial Park, LLC v. County of San Diego* (2014)² ruled that a property owner should not be permanently barred from a base year value transfer because he or she makes a claim after the filing deadline. The court held that section 68 does not expressly preclude prospective relief in the event a claim is filed after the four-year timeline, and section 68 could be interpreted to permit prospective relief when a taxpayer acquires replacement property within the four-year period but misses the four-year filing deadline.

While the court decision cited the precedent set by sections 63.1 and 69.5 for prospective relief for late-filed claims in its decision, the Legislature chose to go further by making the late-filing

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

² 227 Cal.App.4th 1480.

relief for section 68 retroactive. Thus, effective January 1, 2016, Senate Bill 803 (Stats. 2015, ch. 454) amends section 68 to allow four years of retroactive relief for late-filed claims. The bill also deletes obsolete date references and adds subdivision lettering for clarity.

Specifically related to late filing, subdivision (c) was added to section 68 and provides that for claims filed after the four-year deadline, a base year value transfer will be available with respect to the lien dates for the last four fiscal years. The county is to make any necessary roll corrections, tax refunds, or tax cancellations to provide retroactive property tax relief for the four years open to adjustment. Thus, for comparable replacement properties that otherwise qualified for the government acquisition base year value transfer, but were denied solely because claims were not timely filed, property owners may now refile and receive four years of retroactive relief.

When a late-filed claim is approved, the taken property's factored base year value is to be adjusted by the appropriate factoring for the years between the date the property was taken and the year in which the claim is filed. Any new construction completed on the replacement property between the date of purchase or acquisition and the date the claim is filed must be added to the factored base year value that is transferred. Once the new adjusted base year value is determined, the values for the last four assessment rolls are to be corrected pursuant to section 4831 and appropriate refunds given.

For example, a property was taken by eminent domain in 2005, and a comparable replacement property was timely purchased in 2008. The property owner filed a claim in 2010, but was denied because the claim was not filed within four years of the date the property was taken in 2005. If that property owner files a new claim in February 2016, the assessor can apply the adjusted factored base year value to the lien dates of the last four fiscal years – the 2015, 2014, 2013, and 2012 lien dates. Thus, the assessor should adjust the roll being prepared (2016-17) and correct the years still open under section 4831. Consequently, the county auditor should refund the difference in property tax assessments resulting from the retroactive application of the base year value transfer.

Enclosed is a copy of the amended section 68. Assessors may want to consider methods of notifying taxpayers of their right to file claims under these new filing provisions. If you have any questions regarding the transfer of base year value for government acquisition, please contact our County-Assessed Properties Division at 1-916-274-3350.

Sincerely,

/s/ Dean R. Kinnee

Dean R. Kinnee
Deputy Director
Property Tax Department

DRK:grs
Enclosure

Section 68 of the Revenue and Taxation Code as amended by Ch. 454, Stats. 2015 (SB 803):

68. (a) For purposes of Section 2 of Article XIII A of the Constitution, the term "change in ownership" shall not include the 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 adjusted base year value of the property acquired shall be the lower of the fair market value of the property acquired or the value which is the sum of the following:

(1) The adjusted base year value of the property from which the person was displaced.

(2) 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 provisions of this section shall apply to eminent domain proceedings, acquisitions, or judgments of inverse condemnation after March 1, 1975, and shall affect only those assessments of that property which occur after June 8, 1982.

~~Persons acquiring replacement property between March 1, 1975, and January 1, 1983, shall request assessment under this section with the assessor on or before January 1, 1987.~~

~~(b) (1) A person 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 under this section. A request made after four years following the date the property was acquired by eminent domain or purchase, or the date the judgment of inverse condemnation becomes final, shall be subject to subdivision (c).~~

(2) A change in the adjusted base year value of the replacement property acquired, resulting from the application of the provisions of this section, shall be deemed to be effective on the first day of the month following the month in which the property is acquired. The change in value shall be treated as a change in ownership for the purpose of placing supplemental assessments on the supplemental roll pursuant to Chapter 3.5 (commencing with Section 75). The assessor shall, however, appraise the replacement property acquired in accordance with the provisions of this section rather than the provisions of Section 75.10. The provisions of Chapter 3.5 shall be liberally construed in order to provide the benefits of this section and Section 2 of Article XIII A of the California Constitution to affected property owners at the earliest possible date.

~~(c) A request for assessment under this section that is made after four years following the date the property was acquired by eminent domain or purchase, or the date the judgment of inverse condemnation becomes final, shall apply to the lien dates for the last four fiscal years with appropriate roll corrections, refunds, or cancellations. Under an assessment granted pursuant to that request, the assessor shall adjust the base year value of the replacement property acquired in accordance with this section and make adjustments for both of the following:~~

~~(1) Inflation, as annually determined in accordance with paragraph (1) of subdivision (a) of Section 51.~~

~~(2) Any subsequent new construction occurring with respect to the subject real property.~~