

**Initial Statement of Reasons for
Proposed Amendments to
California Code of Regulations, Title 18,
Section 462.500, *Change in Ownership of Real Property Acquired to
Replace Property Taken by Governmental Action or Eminent Domain
Proceedings***

**SPECIFIC PURPOSE, PROBLEM INTENDED TO BE ADDRESSED,
NECESSITY, AND ANTICIPATED BENEFITS**

Current Law

Proposition 13 was adopted by the voters at the June 1978 primary election and added article XIII A to the California Constitution. Article XIII A generally limits the amount of ad valorem tax to a maximum of 1 percent of the full cash value of real property. For purposes of this limitation, section 2 of article XIII A defines *full cash value* to mean a county assessor's valuation of real property as shown on the 1975-76 tax bill, or thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. The California Legislature codified the definition of "change in ownership" in Revenue and Taxation Code (RTC) section 60 and codified other provisions regarding whether a transfer of property results in a change in ownership or is excluded from the definition of "change in ownership" in RTC sections 61 through 69.5.

Under Government Code section 15606, subdivision (c), the State Board of Equalization (Board) is authorized to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing. The Board adopted California Code of Regulations, title 18, section (Property Tax Rule) 462.500, *Change in Ownership of Real Property Acquired to Replace Property Taken by Governmental Action or Eminent Domain Proceedings*, pursuant to Government Code section 15606, to implement, interpret, and make specific the change in ownership provisions, under article XIII A of the California Constitution and the RTC, applicable to changes in ownership of real property acquired to replace property taken by governmental action which has resulted in a judgment of inverse condemnation, acquisition by a public entity, or eminent domain proceedings.

In particular, Property Tax Rule 462.500 implements, interprets, and makes specific RTC section 68, subdivisions (a) through (c), which provide that:

- (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.

(b) (1) A person acquiring replacement property shall request assessment 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.

Senate Bill No. 803 (Stats. 2015, ch. 454), which was approved by the Governor and filed with the Secretary of State on October 2, 2015, explained that at the time, the California Constitution and existing property tax law excluded from a “change in ownership” the acquisition of real property as a replacement for property from which the person has been displaced by eminent domain proceedings, acquisition by a public entity, or judgment of inverse condemnation; existing property tax law required the person acquiring replacement property on and after January 1, 1983, to request assessment within 4 years of the date that the property was acquired by these means.

Accordingly, Property Tax Rule 462.500, which implements, interprets, and makes specific RTC section 68, subdivisions (a) through (c), currently specifies that property acquired as replacement property for property taken by eminent domain proceedings, public acquisitions, or judgments of inverse condemnation are eligible for the exclusion from change in ownership as stated in RTC section 68, provided that the person acquiring replacement property makes a timely request for such assessment with the assessor. For purposes of this rule, a request was deemed timely if made within four years after one of the following dates, whichever is applicable:

(A) The date final order of condemnation is recorded or the date the taxpayer vacates the property taken, whichever is later, for property acquired by eminent domain;

(B) The date of conveyance or the date the taxpayer vacates the property taken, whichever is later, for property acquired by a public entity by purchase or exchange; or

(C) The date the judgment of inverse condemnation becomes final or the date the taxpayer vacates the property taken, whichever is later, for property taken by inverse condemnation.

(Property Tax Rule 462.500, subd. (g)(2).)

Rule 462.500 requires that a taxpayer make a timely request for the exclusion to apply to replacement property; otherwise, the taxpayer’s property would not be eligible for the exclusion. As such, Rule 462.500 currently has no provision for the event of a request being filed after the four-year time limit.

Proposed Amendments

Senate Bill 803 (Stats. 2015, ch. 454) amended Revenue and Taxation Code section 68 to specify that if a taxpayer files a request for exclusion from reassessment under this section, the base year value transfer will be deemed to be effective on the first day of the month following the month in which the property is acquired, and 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. Additionally, the assessor is to adjust the base year value of the replacement property for annual inflation and any new construction.

As a result, Board staff reviewed the current provisions of Property Tax Rule 462.500, which implement, interpret, and make specific the provisions in RTC section 68, and staff determined that the requirement by Rule 462.500 to make a timely request for the exclusion to apply to replacement property within four years or otherwise forfeit the exclusion, was not consistent with the amendments of RTC section 68 required by Senate Bill 803. Board staff therefore developed a draft of proposed amendments to the rule to add a subdivision that reflects the newly added subdivision (c) of RTC section 68. The new subdivision of Rule 462.500, which is (g)(3), states that if a request is made after four years of the applicable date listed in subdivision (g)(2) of this rule, relief shall apply to the lien dates for the last four fiscal years with appropriate roll corrections, refunds, or cancellations. As of the fourth lien date prior to the date of the request and any subsequent lien dates, the base year value of the replacement property shall be adjusted for both of the following: (A) Inflation, as annually determined in accordance with paragraph (1) of subdivision (a) of Revenue and Taxation Code section 51; (B) Any subsequent new construction occurring with respect to the subject real property.

Related to these changes, staff determined that the subheading of subdivision (g) of Rule 462.500, "Time Limits for Qualification," was no longer consistent with RTC section 68 as amended by Senate Bill 803. Staff determined that organizing the existing language, including the newly inserted subdivision regarding the administration of claims for relief filed after four years, into two separate subheadings according to their respective topics, would be easier to understand. Therefore, to better organize subdivision (g), staff's draft amendments retained paragraphs (1) and (2) in subdivision (g), moving the last sentence of paragraph (1) to paragraph (2) so that paragraph (1) would address the fact that the provisions of Rule 462.500 apply to property acquired as a replacement property taken by eminent domain proceedings, public acquisitions, or judgments of inverse condemnation, provided that a request for such assessment is made with the assessor, and that the replacement property must be acquired before a request is made. Paragraph (2) states that reassessments and refunds shall be made retroactively to the date of acquisition of replacement property for property taken, provided a request is made within four years after one of the following dates, whichever is applicable:

(A) The date final order of condemnation is recorded or the date the taxpayer vacates the property taken, whichever is later, for property acquired by eminent domain;

(B) The date of conveyance or the date the taxpayer vacates the property taken, whichever is later, for property acquired by a public entity by purchase or exchange; or

(C) The date the judgment of inverse condemnation becomes final or the date the taxpayer vacates the property taken, whichever is later, for property taken by inverse condemnation.

Finally, paragraph (3) of subdivision (g) of Rule 462.500 is the newly added paragraph that reflects the newly added subdivision (c) of RTC section 68, added by Senate Bill 803, as set forth above. Staff determined that the rule would be easier to understand if these three subdivisions were organized under the subheading, "Request for Assessment."

The remaining provisions of subdivision (g), which were formerly numbered subdivisions (g)(3) and (g)(4), state that:

(3) Replacement property shall be eligible for property tax relief under this section rule if it is acquired on or after the earliest of the following dates:

(A) The date the initial written offer is made for the property taken 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 property taken;

(C) The date the "Notice of Determination," "Notice of Exemption," or similar notice, as required by the California Environmental Quality Act (CEQA), is recorded by the public entity acquiring the taxpayer's property and the public project has been approved; or

(D) The date, as declared by the court, that the replaced property was taken.

(4) No property tax relief shall be granted to replacement property, however, prior to the date of displacement. The date of displacement shall be the earliest of the following dates:

(A) The date the conveyance of the property taken to the acquiring entity or the final order of condemnation is recorded;

(B) The date of actual possession by the acquiring entity of the property taken; or

(C) The date upon or after which the acquiring entity may take possession of the property taken as authorized by an order for possession.

Since these subdivisions are with regard to limits based on acquisition and displacement dates, Board staff determined that the rule would be easier to understand if these two subdivisions were organized under the subheading, “Limits Based on Acquisition and Displacement Dates.” Therefore, staff’s draft amendments include this as the new subheading for subdivision (h), and renumbers the subsequent subdivision paragraphs.

While preparing the draft amendments, staff determined that although Rule 462.500 contains examples of taxpayers whose property or properties were taken by governmental entities at one time and replaced with corresponding replacement properties, the rule did not contain an example of a taxpayer having several properties taken at different times, but replaced with only one property. Therefore, staff’s draft amendments include a new Example 9 which clarifies that if a taxpayer had a parcel taken to accommodate the widening of a freeway, for example, and two years later, the taxpayer had two additional parcels taken, then the taxpayer may purchase one parcel to replace the three properties taken. The example further states that if “the replacement property meets the comparability test for all three properties taken, then the combined base year values of the three properties taken may be transferred to the replacement property or portion thereof.” Staff’s draft amendments also renumber the subsequent examples in the rule.

Additionally, Example 4 and Example 6 contain examples of property being replaced with two separate properties, and the examples state that “relief is applicable to both [replacement] properties.” However, staff desired to clarify the language of the rule by stating that pro-rata relief is applicable to both replacement properties. Therefore, the word “relief” was replaced with “pro-rata relief” in both Example 4 and Example 6.

While preparing the draft amendments, staff also determined that since RTC section 229, subdivision (a) states that “[a] floating home shall be assessed in the same manner as real property,” floating homes should be added to the definition of “real property” in Rule 462.500, subdivision (b)(5), to ensure that floating homes may also obtain relief from change in ownership reassessment if they are acquired to replace property taken by governmental action or eminent domain proceedings. Therefore, “floating homes” was added to the definition of property that is included in the definition of “real property” in subdivision (b)(5) of Rule 462.500.

Additionally, there are numerous instances in the Rule where the language states that property tax relief is or is not available “under this section.” However, since the word “section” can be ambiguous as to which section the phrase is referring to, staff determined that more accurate and unambiguous language would be to state that property tax relief is or is not available “under this rule.” This would clarify that the terms and conditions for qualifying for property tax relief described in each subdivision of the rule are applicable to Rule 462.500. Therefore, the word “section” was replaced with “rule” in

subdivision (b), subdivision (b)(5), subdivision (e), and the following subdivisions as renumbered: Example 12, Example 13, subdivision (g)(1), (g)(2), (h)(1), and (i)(1).

Staff also determined that various formatting changes were necessary to conform to the California Style Manual, and that various grammatical or punctuation changes were necessary for further clarification, and therefore made those changes throughout the rule. Board staff subsequently provided its draft of the proposed amendments to the county assessors and other interested parties for comment via Letter To Assessors (LTA) 2019/016, dated June 13, 2019, which requested that written comments be submitted by July 26, 2019. The interested parties recommended and Board staff agreed that another example was needed to clarify how to apply the change in ownership exclusion to a situation where one taxpayer's property was taken through eminent domain proceedings, but that taxpayer purchased a replacement property along with a co-owner of that property. Therefore, staff developed a second draft of the proposed amendments to the rule and distributed it to interested parties for comment via LTA 2019/031, dated September 13, 2019, which included a new Example 14. That example clarifies that if a taxpayer is the sole owner of a primary residence that is taken through eminent domain proceedings by a school district, and the taxpayer purchases a replacement property with another unrelated taxpayer as joint tenants, then the first taxpayer, whose property was taken, may receive the exclusion under this rule up to 120 percent of his or her ownership interest in the replacement property, but the other taxpayer's interest in the property is reassessed at current fair market value. Staff's draft amendments also renumbered the subsequent examples in the rule. LTA 2019/031 requested that written comments be submitted by October 23, 2019.

The interested parties recommended and Board staff agreed that a grammatical change was necessary in the second sentence of newly numbered Example 11, changing the word "which" to "that." The interested parties also recommended and Board staff agreed that a clarification was necessary in newly numbered subdivision (i)(2), to state that the reference to "Board" means the State Board of Equalization. These changes were accepted and incorporated into the proposed amendments to the rule. Therefore, staff did not hold an additional interested parties meeting.

Staff subsequently prepared a revised draft of the proposed amendments to Property Tax Rule 462.500, which incorporated the changes as discussed above. Staff also prepared a Chief Counsel memo dated June 12, 2020, and submitted it to the Board with the revised draft of the proposed amendments for consideration during its June 23, 2020 Board meeting. In the Chief Counsel memo, Board staff recommended that the Board authorize commencement of the official rulemaking process by authorizing the publication of a notice of proposed regulatory action regarding amendments to Rule 462.500 in the California Notice Register, because all of the proposed changes to Rule 462.500 conform to existing law, have undergone the Interested Parties process and there are no outstanding issues. The recommendations in the Chief Counsel memo were the result of a consensus between staff and the interested parties who participated in the interested parties meetings.

At the conclusion of the June 23, 2020 Board meeting, the Board agreed with staff's recommendations and unanimously voted to propose the adoption of staff's recommended amendments to Property Tax Rule 462.500. The Board determined that the amendments were reasonably necessary for the specific purpose of implementing, interpreting, and making specific the amendments to RTC section 68 as amended by Senate Bill 803 (Stats. 2015, ch. 454) to specify that if a taxpayer files a request for exclusion from reassessment under this section, the base year value transfer will be deemed to be effective on the first day of the month following the month in which the property is acquired, and 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. Additionally, the assessor is to adjust the base year value of the replacement property for annual inflation and any new construction. The Board also determined that the amendments were reasonably necessary for the specific purposes of:

- Clarifying in new Example 9 of the property tax relief available when a taxpayer has a parcel taken, and subsequently two additional parcels taken, and then the taxpayer may purchase one parcel to replace the three properties taken.
- Clarifying that when property is replaced with two separate properties, pro-rata relief is applicable to both replacement properties in Example 4 and Example 6.
- Clarifying that floating homes are included in the definition of "real property" in subdivision (b)(5) of Rule 462.500.
- Clarifying that the terms and conditions for qualifying for property tax relief described in each subdivision of the rule are applicable to Rule 462.500 rather than any particular section, by replacing the word "section" with the word "rule".
- Clarifying that only the person whose property was taken may receive the exclusion under this rule up to 120 percent of his or her ownership interest in the replacement property, in new Example 14.
- Clarifying that the reference to "Board" means the State Board of Equalization.
- Make formatting and grammatical changes for clarification.

The Board anticipates that the proposed amendments will promote fairness throughout California's 58 counties and benefit the public, local boards of equalization and assessment appeals boards, and county assessors by providing additional notice regarding the provisions of RTC section 68, as amended by Senate Bill 803 (Stats. 2015, ch. 454) to specify that if a taxpayer files a request for exclusion from reassessment under this section, the base year value transfer will be deemed to be effective on the first day of the month following the month in which the property is acquired, and 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. Additionally, the assessor is to adjust the base year value of the replacement property for annual inflation and any new construction.

The Board has performed an evaluation of whether the Proposed Amendments are inconsistent or incompatible with existing state regulations. The Board has determined that the Proposed Amendments are not inconsistent or incompatible with existing state regulations because there are no other Property Tax Rules that prescribe the provisions that would be adopted by the Proposed Amendments. In addition, there are no comparable federal regulations or statutes to the Proposed Amendments.

The adoption of the Proposed Amendments is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to the Proposed Amendments.

DOCUMENTS RELIED UPON

The Board relied upon the June 12, 2020 Chief Counsel Memorandum, the attachments to the Chief Counsel Memorandum, correspondence submitted for and comments made during the Board's discussion of the issues at its June 23, 2020 meeting in deciding to propose the amendments described above.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the Proposed Amendments, to issue some form of informal guidance or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the Proposed Amendments at this time because the Board determined that the Proposed Amendments are reasonably necessary for the reasons set forth above.

The Board did not reject any reasonable alternative to the Proposed Amendments that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purpose of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5), ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b), AND DETERMINATIONS AND ESTIMATE REQUIRED BY GOVERNMENT CODE SECTION 11346.5, SUBDIVISION (a)(5), (6), AND (8)

As explained in more detail above, the Proposed Amendments implement, interpret, and makes specific RTC section 68 by specifying that if a taxpayer files a request for exclusion from reassessment under this section, the base year value transfer will be deemed to be effective on the first day of the month following the month in which the property is acquired, and 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. Additionally, the assessor is to adjust the base year value of the replacement property for annual inflation and any new construction. The proposed amendments also reorganize and renumber subdivisions (g), (h), and (i) to clarify the above amendments, provide more descriptive subheadings, and provide additional clarifying examples and terms.

The Proposed Amendments will not mandate that individuals or businesses or state or local government do anything that is not already required, and there is nothing in the Proposed Amendments that would significantly change how individuals and businesses would generally behave in the absence of the proposed regulatory action, or that would have a significant effect on the state's economy or that would impact the state's revenue. Therefore, Board staff determined that the Proposed Amendments will not impact property tax revenue. The Proposed Amendments will not impose new compliance costs on businesses and individuals and will not provide a monetary benefit to businesses and individuals. And, Board staff estimated that the Proposed Amendments will result in an absorbable \$525 one-time cost for the Board to update its website after the amendments are completed assuming that average hourly compensation costs are \$52.45 per hour¹ and that it will take approximately ten hours ($\$52.45 \times 10 = \524.50 , rounded to \$525), but will not have any other fiscal impact on local or state government.

Therefore, the Board has determined that the adoption of the Proposed Amendments will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, and the Board estimates that the adoption of the Proposed Amendments will result in an absorbable \$525 one-time cost to the Board, but no other direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

In addition, the Board has made an initial determination that the Proposed Amendments will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, and the Board has determined that the Proposed Amendments are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the Proposed Amendments will not have an economic impact on California business enterprises and

¹ Source: Hourly compensation costs are from the U.S. Bureau of Labor Statistics. Hourly compensation costs are for State and Local Workers, *Employer Costs for Employee Compensation – March 2020*, <http://www.bls.gov/>

individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

Further, based upon these facts and all of the information in the rulemaking file, the Board also determined that the adoption of the Proposed Amendments will neither create nor eliminate jobs in the State of California nor create new businesses or eliminate existing businesses within the state nor expand businesses currently doing business within the State of California.

Furthermore, the Proposed Amendments do not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the Proposed Amendments will not affect the benefits of the rules before amendment to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the Proposed Amendments will not have a significant adverse economic impact on business.

The Proposed Amendments may affect small business within the meaning of California Code of Regulations, title 1, section 4 because a small business may own property that is subject to governmental action or eminent domain proceedings.