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May 22, 1987

Mr. Robert Shellenberger
 San Joaquin County Assessor
 24 S. Hunter Street
 Stockton, CA 95202

Attn: David Leonard, Chief
 Assessment Standards Division

Dear Mr. Leonard:

This is in response to your letter of May 5, 1987, in which you ask whether the purchase of an undivided one-half interest in commercial property as a replacement for property taken by the State of California effects eligibility for tax relief under Section 68 of the Revenue and Taxation Code.

The facts provided in your letter can be summarized as follows: A taxpayer in your county has been displaced from his property due to acquisition for construction of a freeway. The property taken consisted of his personal residence and a commercial area for his business. The \$147,500 price paid for the property taken was allocated by the California Department of Transportation as follows:

Residential	\$60,500
Commercial	\$87,000

The taxpayer purchased comparable residential replacement property and was granted property tax relief for the residential property under Section 68 and property tax Rule 462.5.

The taxpayer also replaced his commercial property by purchasing, in the same name as the replaced property, an undivided one-half interest in a comparable commercial property for which he paid the market value price of \$125,000.

You ask if the fact that the taxpayer has purchased an undivided one-half interest in the replacement property affects the amount of relief that should be granted.

Section 68 of the Revenue and Taxation Code (all section references contained herein are to the Revenue and Taxation Code) states, in pertinent part:

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:

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

These statutory provisions have been interpreted by property tax Rule 462.5 which provides, in pertinent part:

(a) GENERAL. 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 has 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.

* * *

(c) COMPARABILITY. Replacement property, acquired by a person displaced under circumstances enumerated in (a), shall be deemed comparable to the replaced property if it is similar in size, utility, and function.

* * *

(e) OWNERSHIP REQUIREMENTS. Only the owner or owners of the property taken, whether one or more individuals, partnerships, corporations, other legal entities, or a combination thereof, shall receive property tax relief under this section. Relief under this section shall be granted to an owner(s) of replaced property obtaining title to replacement property: The acquisition of an ownership interest in a legal entity which, directly or indirectly, owns real property is not an acquisition of comparable property.

EXAMPLE: A & B each own an undivided 50 percent interest as joint tenants in a home which is taken through eminent domain proceedings by the state. A purchases replacement home which is comparable to the replaced property. B contributes his share of the award or purchase price to a limited partnership which owns a home which is comparable replacement property. A's relief under this section is limited to 120 percent of one-half of the award or purchase price of the property taken. B is entitled to no relief.

EXAMPLE: A partnership composed of two corporations owns commercial property which is taken through eminent domain proceedings. The partnership uses the award or purchase price to acquire comparable commercial property. The partnership is entitled to relief under this section.

EXAMPLE: A partnership composed of two corporations owns commercial property which is taken through eminent domain proceedings. The partnership distributes the award or purchase price to the partner corporations in the same percentage as their ownership interests and the corporations separately or jointly acquire comparable replacement property retaining the same percentage of ownership interest in the partnership. No tax relief may be granted under this section.

Neither the statute nor the regulation deals with the issue of whether the purchase of an undivided one-half interest as replacement property effects eligibility for tax relief. Moreover, the legislative history of both the constitutional amendment and the implementing statutes does not give any indication that this question was considered.

However, although the regulation does not specifically answer the question you have raised, subdivision (e) of Rule 462.5 does provide some information which can help in analyzing this issue. First, Example A illustrates a situation where A and B

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each own undivided one-half interests; A buys a replacement home which meets the criteria for property tax relief; B does not. Unlike the situation you describe, the replaced property rather than the replacement property is the undivided one-half interest. Nevertheless, this example illustrates that the drafters of the regulation were aware that replaced property can be held as an undivided one-half interest, that each half can be treated separately, and that such form of ownership does not affect the granting of relief. Second, subdivision (c) sets forth both in the text and the examples certain ownership situations where the acquisition of replacement property did not qualify for tax relief. Thus, the acquisition of an ownership interest in a legal entity which owns real property is not the acquisition of comparable property.

The fact that the drafters were cognizant of ownership of undivided interests coupled with the specific prohibition against the granting of relief for the acquisition of ownership interests in entities suggests that the regulation did not intend to exclude from property tax relief the acquisition of an undivided one-half interest. Therefore, since the regulation does not specifically prohibit the granting of property tax relief for the acquisition of an undivided one-half interest, there appears to be no valid reason for denying the benefits to the taxpayer in the situation you describe.

Very truly yours,

Barbara G. Elbrecht

Barbara G. Elbrecht
Tax Counsel

BGE/rz

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