

Memorandum

To: Mr. David Gau

Date: June 11, 1999

From: Dan Nauman
Tax Counsel

Subject: *New Construction Following Transfer of Base Year Value
Pursuant to Section 68*

You have requested our opinion as to whether new construction following a transfer of base year value under Revenue and Taxation Code Section 68 can also qualify for property tax relief under that section. For the reasons set forth below, we conclude that such new construction could qualify for Section 68 property tax treatment, if the time and value limitations of the section are met.

The facts of the situation you present are as follows:

- The taxpayer's residence was taken by eminent domain. The property taken included a barn.
- The taxpayer purchased a replacement property and applied to transfer the base year value pursuant to Section 68. The replacement property did not have a barn.
- The taxpayer plans on constructing a barn on the replacement property after the base year value is transferred. The question is, would the barn also qualify for relief under Section 68?

As you know, Section 68 implements Section 2(d) of Article XIII A of the California Constitution, which provides, in pertinent part:

"For purposes of this section, 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 the property replaced by eminent domain proceedings, by acquisition by a public entity, or governmental action which has resulted in a judgment of inverse condemnation. The real property acquired shall be deemed comparable to the property replaced if it is similar in size, utility and function, or if it conforms to state regulations defined by the Legislature governing the relocation of persons displaced by governmental actions...."

In doing so, Section 68 does not speak in terms of "new construction", but only in terms of the "acquisition of real property" and the "property acquired":

"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.

* * *

However, Property Tax Rule 462.500 (18 Calif. Code of Regs. § 462.500), which implements and interprets Section 68 and its Constitutional authority, makes clear, at subdivision (f), that:

"(f) **NEW CONSTRUCTION.** Any new construction required to make replacement property comparable to the property taken shall, to that extent, be eligible for property tax relief, if such new construction is completed after March 1, 1975, and if it is completed on or after the earliest of the dates listed in subdivision (g)(3), and if a timely request is made for assessment relief."

Subdivision (g)(3) of that Rule, in turn, provides that:

"(g) TIME LIMITS FOR QUALIFICATION.

* * *

(3) Replacement property shall be eligible for property tax relief under this section if it is acquired after March 1, 1975, and if it is acquired on or after the earliest 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."

Further, we note in this regard that Rule 462.5, subdivision (c)(2) requires as to size and utility that the replacement property is, *or is intended to be*, used in the same manner as the property taken. Rule 462.5, therefore, clearly contemplates that new construction may be necessary to make

replacement property comparable to the property taken, and we have previously so concluded in opinions reflected in Annotations 200.0354 (C 12/18/89) and 200.0375 (C 3/30/89).

Thus, it is clear that any new construction required to make the replacement property comparable to the property taken, if completed in accordance with the time constraints set forth above, could qualify for the exclusion, if the value limitations of Section 68 are met and a timely request for assessment relief is made.¹ In the case you present, the addition of the barn to make the replacement property comparable to the property taken could qualify for the exclusion if the proper circumstances exist.

You further ask whether the new construction would have to be completed within the same four year time period, or whether a permit taken out within the four years would meet the time limit qualifications. Subdivision (f) of Rule 462.500 provides that construction which is “completed” is eligible for the property tax relief. While the Rule does not explicitly provide that such construction must be completed at the time the request for assessment required by Section 68 is made, this appears to us to be a necessary requirement in order for the value comparisons set forth in subdivision (b) of that Section to be accurately computed. Thus, it is our opinion that any construction necessary to make the replacement property comparable to the property replaced, in order to qualify for the property tax relief provided by Section 68 and Section 2(d) of Article XIII A, must be completed within the four year period within which the request for assessment must be applied for as set forth in Section 68.

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Cc: Dick Johnson
William Jackson
Jennifer Willis

ANNOTATION

¹ Section 68 requires that the request for assessment must be made “within four years of the date the [replaced] property was acquired by eminent domain or purchase or the date the judgment of inverse condemnation becomes final.

200.0000 BASE YEAR VALUE TRANSFER

200.0300(b) GOVERNMENT ACQUISITION

200.0376 Timing. Replacement improvements placed on land after the date of displacement may qualify for the exclusion if they satisfy all the requirements of the section. Any construction necessary to make the replacement property comparable to the property replaced must be completed within the four year period within which the request for assessment must be made, as set forth in Revenue and Taxation Code Section 68. **C 6/11/99**

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