

200.0350 Proceedings. The threat of an eminent domain taking by a non-governmental agency is not a sufficient basis for transferring the base year value of the subject property to a replacement property under Revenue and Taxation Code Section 68. The taking must occur as a result of eminent domain proceedings that are concluded by a stipulated or court formulated judgment. C 1/25/87.



STATE BOARD OF EQUALIZATION

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Subject: Application of Revenue and Taxation Code Section 68,
Regarding a Threat of Eminent Domain

Dear M

This is in response to your letter dated September 28, 1987, in which you ask if a threat of condemnation is sufficient to bring into force the provisions of Revenue and Taxation Code section 68 wherein property owners displaced from their property are entitled to certain exclusions from the change of ownership provisions of article XIII A of the California Constitution.

You tell us a hospital with the power to use the eminent domain process to acquire your client's property has threatened to exercise that power. I presume the hospital is not a property owned by government and, therefore, not a public entity. You ask if that threat alone would serve to invoke the provisions of Revenue and Taxation Code section 68 in the event your client and the entity mutually agree to a sale of the property.

The answer to your question is no. A mere threat of condemnation does not bring into play the change of ownership exclusions provided in Revenue and Taxation Code section 68. The Board of Equalization has promulgated Rule 462.5 to interpret and make specific the provisions of California Constitution article XIII A, section (2)(d) and Revenue and Taxation Code section 68 dealing with an exclusion from the change of ownership provisions of article XIII A for persons displaced from their property by proceedings in eminent domain. Board Rule 462.5(a)(1) 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

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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....

Application of this rule indicates that the provisions for a change of ownership exclusion are not to be afforded a person displaced from his property by its sale under the circumstances you cite except as a result of eminent domain proceedings instituted by that entity. To be taken by such proceeding, the property must be sold as a result of a legal judgment or a stipulated judgment had upon completion of the proceeding. In our view there is no provision for affording the change of ownership exclusion unless the taking is a direct result of the conclusion of the eminent domain proceeding.

Very truly yours,



Robert R. Keeling
Tax Counsel

RRK/rz

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