



STATE BOARD OF EQUALIZATION

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December 18, 1989

Mr. James E. Dodd
Appraiser Analyst III
Ventura County Assessor's Office
Government Center, 800 South Victoria Avenue
Ventura, CA 93009

Re: Interpretation of Rule 462.5; Change in Ownership
Exclusion for Replacement Property

Dear Mr. Dodd:

This is in response to your letter dated October 30, 1989 to Assistant Chief Counsel Richard H. Ochsner. You ask whether a property owner can sell his property to a governmental agency, then reacquire a portion of that property and qualify the reacquired property for a change in ownership exclusion afforded by California Constitution Article XIII A, section 2, Revenue and Taxation Code section 68 and Board Rule 462.5. As discussed below, we conclude that he can.

Facts

You tell us that the City of Port Hueneme Redevelopment Agency has proposed a plan for taking a 2-acre industrial zoned parcel from a county landowner. The property taken is presently being used for an automobile salvage (junk) yard. It has a small office building, some asphalt paving and metal perimeter fencing. You told me by phone on November 30 that the owner told the city that he absolutely would not voluntarily sell the property unless he received a comparable property in exchange and would receive a section 68 change in ownership exclusion. The city considered various plans for the purchase of the property and finally settled on the following proposal.

1. The city would purchase the entire 2-acre property, displace the owner, demolish the improvements and subdivide the property into two 1-acre parcels.

2. A developer who is working with the city would construct a self storage facility on one of the parcels. Upon completion, the parcel with the new self storage improvement would, according to contract, be sold back to the original owner.

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3. The city would retain the remaining 1-acre parcel for development to another use.

You tell me you have concluded that there is no issue of comparability because the property re-purchased would remain industrial zoned. You say the only issue is whether the owner can sell his property to a governmental agency and then reacquire a portion to be assessed under the change in ownership benefits of Rule 462.5. We turn now to that issue.

Law and Analysis

The Board of Equalization, pursuant to its authority vested by section 15606 of the government code, and to implement, interpret, or make specific section 68 of the Revenue and Taxation Code and section 2(d) of Article XIII A of the California Constitution proposed and adopted Board Rule 462.5. The rule was adopted September 13, 1984, effective February 16, 1985, amended November 18, 1987, effective February 14, 1988, to provide uniform procedures to govern county assessors in administering the new change in ownership provision and to address various definitional and assessment issues not otherwise made clear by the California Constitution or the Revenue and Taxation Code. (See Assessor's Letters 83/19 and 87/51.)

Board Rule 462.5 provides in pertinent part:

"(a) GENERAL. The term change in ownership shall not include the acquisition of comparable real property as replacement property or 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."

You tell us that the property owner in this instance will be "displaced" from his property by acquisition of his property by the city. Those two elements of 1) being displaced from this property, and 2) being displaced as a result of acquisition of such property by a public entity, qualifies a comparable replacement property acquired by the property owner for a change in ownership exclusion under the provisions of Rule 462.5, subdivision (a) set forth above.

We now examine the qualifying elements for a "replacement property". Rule 462.5 (b)(3) provides:

"(3) 'Replacement Property' means real property acquired to replace property taken."

The difficult problem here is that the property acquired was also part of the property taken. The specific issue is whether that particular property acquired qualifies for a change in ownership exclusion.

Based upon the facts you give, we presume that the city will purchase (for a price to be determined) the property owner's two-acre parcel in fee. We presume the conveyance of title will be made in accord with California Law for the conveyance of real property. We presume this conveyance will be unconditional and that the city's agreement to file a parcel map, divide the property in half, construct improvements desired by the former owner on one-half of the property, and then sell the improved portion of the property back to the prior owner is an enforceable contract separate and apart from the conveyance in fee of the two acres to the city. In that event the former owner has exercised his statutory (Civil Code §1044) and Constitutional (California Constitution Article 1, §1) right to convey or transfer property. (Tennant v. John Tennant Memorial Home 167 C 570.) He has, after such conveyance, absolutely no ownership rights in the two-acre parcel. He is free to purchase property anywhere in this state and receive a change in ownership exclusion on the replacement property so long as the replacement property is timely purchased and qualifies as comparable in all respects under the provisions set forth in Board Rule 462.5. There are no other restrictions or limitations that we can discover. The singular act of repurchasing one's previously owned property is not an enumerated restriction under Rule 462.5. Therefore, we conclude the former owner can purchase any qualified replacement property he wishes including all or a portion of the property he formerly owned. The former owner need only satisfy the procedural steps set forth in Rule 462.5 which can be paraphrased as:

1. Qualify as an owner of the replaced property under the provisions set forth in Rule 462.5(e), and
2. Be displaced from property he owns by defined governmental action, and,
3. Acquire replacement property which is comparable within the meaning of Rule 462.5(c), and

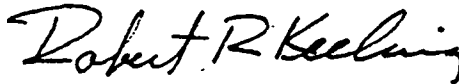
4. Meet the time limits set forth in Rule 462.5(g) for qualifying the replacement property.

Conclusion

We find nothing in the California Constitution, the Revenue and Taxation Code, or Board Rule 462.5 which would, in principle, prevent a displaced property owner from repurchasing property he formerly owned as replacement for property sold to or taken by government. So long as there is an actual displacement through a conveyance of the legal and beneficial ownership of the property taken, evidenced by a deed or other documentation conveying such property to government, then the displaced owner is entitled to purchase any qualifying property whatsoever including the property he previously owned.

Our intention is to provide timely courteous and helpful response to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



ROBERT R. KEELING
Tax Counsel

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cc: Mr. Verne Walton
Mr. Gene Palmer