

M e m o r a n d u m

To: Mr. David Gau
Policy, Planning and Standards Division

Date: October 2, 2000

From: Dan Nauman
Senior Tax Counsel

Subject: *Revenue and Taxation Code § 68 and Property Tax Rule 462.500*

This is in response to your July 18, 2000, Memorandum to Larry Augusta, requesting our opinion as to the time limitations on the purchase of replacement property following the acquisition of real property by a public entity. Specifically, you relate the following scenario from _____ County, and ask if the replacement property would qualify for property tax relief under Revenue and Taxation Code section 68 and Property Tax Rule 462.500? We conclude that it would qualify.

Taxpayers A and B owned a veterinary clinic which was purchased by the Redding Redevelopment Agency for the purpose of realigning the road. The date of the offer to buy the property was July 29, 1996. The date of the Purchase and Sale and Settlement Agreement was December 15, 1997. We are not advised, but we assume that the deed recorded shortly thereafter. Taxpayers A and B immediately leased back the property. They vacated the property on January 15, 1998. A replacement property was purchased on January 22, 1999. The application to transfer base year value was signed on May 24, 2000.

You have no information on the comparability requirement, and assume that this is not an issue. You inquire whether the lease would affect the qualification of the replacement property for transfer of base year value?

As hereinafter indicated, remaining in possession of the property under the lease would have the effect of delaying the onset of the four-year period within which the request for assessment of the replacement property must be made. However, under the facts you present, it would not make any difference.

As adopted by the voters, Subdivision (d) of Section 2 of Article XIII A of the California Constitution, which created the exclusion for the acquisition of replacement property to replace property acquired by a public entity, does not specify a time limitation for the purchase of the replacement property or the filing of a claim for assessment treatment thereunder. Revenue and Taxation Code Section 68, enacted by the Legislature to

implement Section 2(d), does provide: "Persons acquiring replacement property on and after January 1, 1983, shall request assessment within four years of the date the property was acquired by eminent domain or purchase or the date the judgment of inverse condemnation becomes final." However, that section does not address numerous detailed possible situations, such as what if, as here, the person is not actually displaced as a result of the taking or governmental acquisition?

Therefore, the Board exercised its rulemaking authority in 1984 to, among other things, specifically provide and clarify that the statute of limitations does not begin to run until the person is actually displaced and vacates the property. Property Tax Rule 462.500(g)(2) provides:

"(2) For purposes of this section For replacement property acquired on or after January 1, 1983, a request shall be deemed timely if made within four years after one of the following dates, whichever is applicable:

* * *

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

* * * (Emphasis added.)

Under the facts of this case, Taxpayers A and B did not vacate the property acquired by the Redevelopment Agency at the time of the conveyance, but only later, on January 15, 1998. Thus the statute of limitation would commence on that date. They made the application for transfer of their base year value to a specified replacement property on May 24, 2000, well within the four years provided by Rule. In fact, although, as noted above, we have not been advised of the date of deed recordation, it appears that the application is within four years of the conveyance as well (section 68). Thus, for the reasons set forth, the purchase of the replacement property and the application for transfer of base year value were timely.

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