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February 1, 1999

Honorable Gus S. Kramer
Contra Costa County Assessor
834 Court Street
Martinez, California 94553
Attn.: Stephen Dawkins
Assistant Assessor

Dear Mr. Dawkins:

This is in response to your letter to Assistant Chief Counsel Larry Augusta, dated December 28, 1998, concerning the proper application of the transfer of base year value from property acquired by a public entity, to replacement property (Proposition 3), when the acquired property has an assessed value below its adjusted base year value due to a decline in its market value (Proposition 8). You ask our opinion as to which value should be transferred, the Proposition 8 value or the property's Proposition 13 adjusted base year value. You further seek our opinion as to when any transfer of base year value to the replacement property would occur. As will be discussed below, the statutory formula set forth in Revenue and Taxation Code section 68 prescribes the new base year value for the property acquired as the replacement for the condemned property. Section 68 also governs the timing of the change in the base year value of the replacement property.

Proposition 3 of 1982 added subdivision (d) to Section 2 of Article XIII A of the California Constitution: "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 Legislature has implemented this constitutional exclusion from change in ownership by enacting Section 68. That section provides in part:

> 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.

In this regard, the Legislature has stated that it "finds and declares that it is the intent of the people in enacting subdivision (d) of Section 2 of Article XIII A of the California Constitution to permit taxpayers to use the base year value of the property from which the taxpayer was displaced as the base year value of the property acquired, in cases where the full cash value of the property is no more than 20 percent greater than the value received by the taxpayer for the property from which the taxpayer was displaced." Stats. 1983, Ch. 662, §1. Property Tax Rule 462.500(d) (18 Cal. Code Reg. § 462.500(d)) similarly sets forth the procedure to be used by the assessor in determining the appropriate adjusted base year value of the comparable replacement property.

Thus, when determining the new base year value of the replacement property, the assessor must compare the fair market value of that property with the sum of the formula described in Section 68, as quoted above, and apply the lower of the two values. Therefore, in direct answer to your first question, the displaced property's Proposition 8 value would never be transferred to the replacement property, and the Proposition 13 adjusted base year value could be transferred to the replacement property but only as part of the formula amount provided for by the alternate formula described in Section 68. That alternate formula will represent the new base year value of the replacement property only if the adjusted base year value of the property from which the person was displaced plus the amount 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 is lower than the fair market value of the replacement property.

Factually, in a Proposition 8 situation such as you describe, where the fair market value of the property from which the taxpayer is displaced, and presumably also the amount received by the taxpayer for that property from the public entity, is lower than the Proposition 13 adjusted base year value, in most instances, the fair market value of the replacement property will be the lower value. A rule of thumb appears to be that the alternative formula described in Section 68 (the "benefit" of this constitutional provision, if you will) will apply only if the amount received for the Proposition 8 displaced property, times 120 percent, exceeds the adjusted base year value of that property, and the full cash value of the replacement property also exceeds that adjusted base year value. Because of the provisions of the formula, in Proposition 8 situations, these conditions would have to exist to produce a value lower than the fair market value of the replacement property. Otherwise, the fair market value of the replacement property will be the lower value, and thus, the new base year value for the replacement property.

With respect to the timing of the application of the new adjusted base year value to the replacement property, Section 68 is clear as to that as well:

> Any change in the adjusted base year value of the replacement property acquired, resulting from the application of the provisions of this section, shall be deemed to be effective on the first day of the month

> following the month in which the property is acquired. The change in value shall be treated as a change in ownership for the purpose of placing supplemental assessments on the supplemental roll pursuant to Chapter 3.5 (commencing with Section 75). The assessor shall, however, appraise the replacement property acquired in accordance with the provisions of this section rather than the provisions of Section 75.10. The provisions of Chapter 3.5 shall be liberally construed in order to provide the benefits of this section and Section 2 of Article XIII A of the California Constitution to affected property owners at the earliest possible date.

Thus, in the situation you pose, where the condemnation happens in April 1998, and a comparable replacement property is purchased in May 1998, the new adjusted base year value, computed as described above, will be deemed effective on June 1, 1998, if an appropriate claim is filed within the time parameters of Property Tax Rule 462.500(g). Accordingly, appropriate supplemental and regular reassessments would follow.

The views expressed in this letter are advisory only; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

Daniel G. Nauman
Tax Counsel

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cc: Mr. Dick Johnson MIC:63
Mr. David Gau MIC:66
Ms. Jennifer Willis MIC:70