

200.0300(b) BASE YEAR VALUE TRANSFER – GOVERNMENT ACQUISITION

200.0305 Award Price. For purposes of determining the value comparison, only the amount directly paid for the taxpayer's fee simple interest in the real property should be considered as the award or purchase price paid for property taken. Any other amount received for other types of interests in the property, such as a utility or temporary construction easement, should be excluded. C 4/29/2009.

200.0310 Calculation. If a four-unit residential-income property (owner resided in one unit) with an adjusted base year value of \$160,000 is sold to a governmental entity for \$200,000 and the seller purchases a replacement dwelling for \$195,000, the adjusted base year value of the acquired property would be \$40,000 plus the amount by which the full cash value of the acquired property exceeds 120 percent of the full cash value of the property from which the person was displaced, i.e., 120 percent of \$50,000 or \$60,000. The \$135,000 difference between \$60,000 and the new dwelling purchase price of \$195,000 would be added to the \$40,000 to provide a replacement property adjusted base year value of \$175,000.

Should the displaced owner purchase an income producing multi-family residential property of at least three units, the same analysis would apply, but three-fourths of the replacement purchase price and three-fourths of the adjusted base year value of the fourplex would be used in the calculation. C 5/3/1988.

200.0315 Claim. The filing requirements of Revenue and Taxation Code section 68 are mandatory. A failure to timely file a request for a transfer of the assessed value of a property taken by governmental action to a replacement property is jurisdictional and prevents the value transfer. C 12/22/1988.

200.0316 Claim. A failure to file a timely claim for transfer of value from a property taken by governmental action to a replacement property prevents transfer of the assessed value of the replaced property and the refund of any difference in taxes paid on the replacement property. The time limitation of Revenue and Taxation Code section 68 is not a statute of limitation within which a right must be enforced and cannot be waived. The limitation is one that if not met prevents the right of transfer from arising. Without a right, no tax overpayment occurs and no refund is possible. C 12/22/1988.

200.0317 Claim. The time period for requesting a transfer of assessed value from a property taken by eminent domain to a replacement property is the later of four years from the date the owner vacates the taken property or the date the final date of condemnation is recorded. More than one property may qualify as a replacement if the property taken was put to multiple uses e.g., commercial and residential.

If more than one replacement property is purchased, the value of both will be considered in determining whether their value exceeds 120 percent of the amount paid for the taken property. When the amount paid by the taking governmental agency is augmented by a court award, the total amount received by the former owner is used when applying the 120 percent test. If replacement property is purchased prior to the determination of the total award and is assessed as exceeding the 120 percent limitation, it should be revalued and a refund made, if appropriate. C 9/30/1987.

200.0320 Disaster. In a situation in which a home is destroyed by a landslide and is declared by a local government to be unfit and unsafe for human habitation, assessment reduction is not available under Revenue and Taxation Code section 68, which conditions relief thereunder upon displacement by eminent domain proceedings, acquisition by a public entity, or governmental action which has resulted in a judgment of inverse condemnation.

Assessment reduction may be appropriate under Revenue and Taxation Code sections 70 or 170 and, after July 1, 1985, under Revenue and Taxation Code section 69. C 3/18/1986.

200.0325 **Displacement.** C 2/14/1984. (Deleted 2005)

[200.0326](#) **Easement.** Property Tax Rule 462.500 requires ownership of both the property taken and the replacement property for a taxpayer to qualify for the exclusion from change in ownership provided in Revenue and Taxation Code section 68. An easement is an interest in the land of another, which entitles the holder of the easement to limited use or enjoyment of the other's land; it is not an estate of land, and there is generally no change in ownership upon a transfer or acquisition of an easement under Revenue and Taxation Code section 60. Even if the creation or acquisition of an easement constitutes a change in ownership, for purposes of determining whether property is "taken" under section 68, if the interest taken does not represent "ownership" of the property, it would not be eligible for relief under section 68 (either as property taken, or as replacement property). Since the taxpayer retains the ownership interest in the real property subject to the easements, the easements do not qualify as "property taken" under section 68. C 4/29/2009.

[200.0328](#) **Exchange.** Following a court judgment finding inverse condemnation, the city exchanged other land for the condemned property as part of a comprehensive agreement involving various properties. In order to determine the base year value of the replacement property in such a property exchange situation, the assessor is correct in making an independent estimate of market value in order to compare both the replaced and replacement properties to determine if the full cash value of the replacement property is no more than 120 percent of the full cash value of the replaced property. C 6/15/2001.

[200.0330](#) **Government Purpose.** Acquisition of property by a public retirement system for investment purposes results in comparable replacement property being excluded from change in ownership under section 2(d) of article XIII A of the California Constitution and Revenue and Taxation Code section 68 where all other conditions for exclusion are met. Whether property is acquired for governmental purposes or for proprietary purposes is not determinative. C 2/6/1984.

200.0340 **Licensed Mobilehome.** C 4/17/1989. (Deleted 2002)

[200.0343](#) **New Construction.** Replacement improvements placed on land after the transfer of base year value may qualify for the exclusion if they satisfy all the requirements of Revenue and Taxation Code section 68 and Property Tax Rule 462.500. 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. C 6/11/1999.

200.0345 **Original Property.** C 1/25/1995. (Deleted 2005)

[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 1/25/1987.

200.0351 **Replacement Property.** C 8/2/1989; C 12/12/1994. (Deleted January 2007)

[200.0352](#) **Replacement Property.** A property used for residential and commercial purposes which is taken by governmental action may be replaced by separate properties, one used for residential purposes and the other for commercial purposes. The person purchasing a replacement property need not be the sole owner thereof to obtain tax relief pursuant to

Revenue and Taxation Code section 68. If all other requirements are satisfied, the owner of an undivided interest may obtain the benefit of the section. C 5/22/1987.

[200.0354](#) **Replacement Property.** If a governmental agency purchases a two acre parcel of land, removes the existing improvements, subdivides the two acres into two one acre parcels, builds an improvement requested by the original owner and then sells the one acre and the new improvement to the former owner, the resold portion would qualify as a replacement property referred to in Property Tax Rule 462.5. C 12/18/1989.

200.0355 **Replacement Property.** C 5/17/1994; C 5/13/1994. (Deleted January 2006)

[200.0356](#) **Replacement Property.** Replacement land acquired to replace land taken by governmental action or eminent domain is excluded from change in ownership under Revenue and Taxation Code section 68 and Property Tax rule 462.5 if it is comparable to the land taken, even though the land taken had a building thereon. The exclusion is available only to the owner or owners of the property taken, however. Thus, if the land taken were owned by a partnership, the replacement land would have to be acquired by the partnership, not by the individual partners as tenants in common; but the exclusion would be available to the partnership to the extent of its interest in the replacement land, whether 100 percent or less than 100 percent. C 4/27/1988.

[200.0357](#) **Replacement Property.** Property Tax rule 462.5 requires ownership both of "replaced property" and of "replacement property" in order for the full exclusion from change in ownership provided by section 2(d) of article XIII A of the California Constitution, Revenue and Taxation Code section 68, and the rule to be available. Thus, only improvements on replacement property consisting of a fee interest in improvements and a ground lease in excess of 35 years qualify for the transfer of the taxable value from the replaced property. While a lease of taxable real property for a term of 35 years or more is a change in ownership for purposes of reassessment, such a lease does not convey ownership of the property under real property law. C 1/7/1994.

[200.0358](#) **Replacement Property.** Holding agreements involving the transfer of real property to a strawman under Internal Revenue Code section 1033 generally do not constitute changes in ownership, there being no transfer of any equitable or beneficial interest in the property. Thus, the acquisition of a replacement property by any person displaced from property through eminent domain proceedings, when title of the replacement property is acquired indirectly through a holding company does not disqualify that person from the benefits of the Revenue and Taxation Code section 68 exclusion. C 10/26/1993.

[200.0359](#) **Replacement Property.** The pro-rata base year value of a fourplex used as the primary residence of its owner may be transferred to a single family residence purchased as a replacement property. If two couples own the fourplex, and each couple resides in a unit and has received a homeowners' exemption for its unit, each couple may transfer its pro-rata base year value of the fourplex to separate, single family residences acquired as replacement properties for such single family residential use. C 2/29/2000.

[200.0360](#) **Replacement Property—Comparable in Function.** Replacement property is comparable to the condemned property, if it is similar in function, that is, subject to similar zoning or general plan restrictions, or if "it is intended to be used" in the same manner, even though its actual use is out of compliance with such restrictions. The standard for determining whether there is comparability in function under Rule 462.5(c)(1) is the similarity of the government restrictions, not actual use. C 1/27/1995; C 7/31/1996.

[200.0361](#) **Replacement Property—Comparable in Function.** Although the future zoning restrictions on, and the future uses of, the replacement property will change and be different

from those of the replaced property, the properties are comparable if, at the time of the sale or exchange, the replaced and replacement properties had similar zoning restrictions and the taxpayer's actual and intended uses of the properties were similar. C 6/15/2001.

200.0365 Replacement Property—Date of Acquisition. As provided in Property Tax Rule 462.500, property purchased to replace property acquired by a governmental entity is not eligible for the exclusion provided by Revenue and Taxation Code section 68 if it was acquired prior to: (1) the date of the initial written offer for the replaced property; or (2) the date the acquiring entity took final action to approve a project which resulted in an offer for or the acquisition of the replaced property; or (3) the date as declared by the court that the replaced property was taken. However, replacement improvements placed on land after these dates may qualify for the exclusion if they satisfy the requirements of comparability and ownership, even though the land on which the improvement is placed is ineligible for the exclusion. If such improvements qualify, the entire base year value of the property taken (land and improvements) may be transferred to a replacement property consisting of only improvements. Subdivision (d) of Rule 462.500 does not prohibit or restrict the reallocation of base year value when a replacement property consists of only newly constructed improvements. C 4/18/2003.

200.0366 Replacement Property—Multiple Properties. The condemned property was a leased automobile dealership on industrially zoned land. Taxpayer constructed five concrete tilt-up buildings, used commercially, on multiple sites that are zoned industrial. The combined full cash value of the multiple properties is less than 120 percent of the purchase price of the property taken. Thus, the base year value of the condemned property may be transferred to multiple replacement properties. Neither Revenue and Taxation Code section 68 nor Property Tax Rule 462.500 limits the availability of relief to a single replacement property. C 4/18/2003.

200.0367 Replacement Property – New Construction. Land that was purchased prior to the taking of real property under governmental action is not eligible for property tax relief under Revenue and Taxation Code section 68. Even though the land does not qualify for relief, any improvements built on the land to replace improvements taken could receive relief if they meet the tests of comparability, ownership and time for qualification. C 3/30/1989.

200.0368 Sale and Leaseback. Property Tax Rule 462.500(g)(2) provides that a request to transfer the base year value of a property acquired by a public entity to a replacement property shall be timely if it is made within four years of the date of conveyance or the date the taxpayer vacates the replaced property, whichever is later. The fact that the taken property was leased back to the former owners does not preclude the replacement property from qualifying. Remaining in possession of the property under the lease simply delays the onset of the four-year period within which the request to transfer the base year value to the replacement property must be made. C 10/2/2000.

200.0370 Threat of Condemnation. A sale directly to a private party under threat of condemnation by a governmental entity is not displacement from property by eminent domain proceedings, by acquisition by a public entity, or by governmental action which results in a judgment of inverse condemnation for purposes of Revenue and Taxation Code section 68 and Property Tax Rule 462.5. C 3/1/1994.

200.0371 Threat of Condemnation. Revenue and Taxation Code section 68 and Property Tax Rule 462.500 require that a person be displaced from property by eminent domain proceedings, by acquisition by a public entity, or by governmental action which results in a judgment of inverse condemnation. Acquisition by a public entity in lieu of instituting eminent domain proceedings can include acquisition by an agent of a public entity.

Evidence must be provided that proves the agent is acting on behalf of the public entity.
C 1/30/2008.

200.0380 **Value Allocation.** C 1/27/1995. (Deleted 2005)

200.0385 **Value to Transfer.** If the property acquired by the public entity has an assessed value below its adjusted base year value due to a decline in its market value (Proposition 8 value), the Proposition 8 value cannot be transferred to the replacement property pursuant to Revenue and Taxation Code section 68. The adjusted base year value of the replacement property would be the lower of its fair market value or the value derived by the application of the alternate formula set forth in section 68. C 2/1/1999.