

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 462.500, *Change in Ownership of Real Property Acquired to Replace Property Taken by Governmental Action or Eminent Domain Proceedings*

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606, proposes to adopt amendments to California Code of Regulations, title 18, section (Rule or Property Tax Rule) 462.500, *Change in Ownership of Real Property Acquired to Replace Property Taken by Governmental Action or Eminent Domain Proceedings*. This rule implements, interprets, and makes specific the change in ownership provisions, under article XIII A of the California Constitution and Revenue and Taxation Code (RTC) section 68, applicable to changes in ownership of real property acquired to replace property taken by governmental action which has resulted in a judgment of inverse condemnation, acquisition by a public entity, or eminent domain proceedings. The proposed amendments to Property Tax Rule 462.500 make the rule consistent with current law, which provides that if a taxpayer files a request for exclusion from reassessment after four years following the date the property was acquired by governmental action or eminent domain proceedings, the base year value transfer shall apply to the lien dates for the last four fiscal years with appropriate roll corrections, refunds, or cancellations. Additionally, the assessor is to adjust the base year value of the replacement property for annual inflation and any new construction.

The proposed amendments also clarify in new examples that only the person whose property was taken may receive the exclusion under this rule up to 120 percent of his or her ownership interest in the replacement property, and that property tax relief is available when a taxpayer has a parcel taken, and subsequently two additional parcels taken, and then the taxpayer may purchase one parcel to replace the three properties taken. The proposed amendments also clarify in existing examples that when property is replaced with two separate properties, pro-rata relief is applicable to both replacement properties. The proposed amendments clarify that floating homes are included in the definition of “real property” in subdivision (b)(5) of Rule 462.500, and that the terms and conditions for qualifying for property tax relief described in each subdivision of the rule are applicable to Rule 462.500 rather than any particular section, by replacing the word “section” with the word “rule.” The proposed amendments clarify that the reference to “Board” means the State Board of Equalization. The proposed amendments make formatting and grammatical changes for clarification.

PUBLIC HEARING

The Board will conduct a meeting on September 22, 2020. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard at the Board's September 22, 2020 hearing. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the Proposed Amendments to California Code of Regulations, title 18, section 462.500.

AUTHORITY

Government Code section 15606, subdivision (c)

REFERENCE

Article XIII A, section 2(d), California Constitution; and section 68, Revenue and Taxation Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

Proposition 13 was adopted by the voters at the June 1978 primary election and added article XIII A to the California Constitution. Article XIII A generally limits the amount of ad valorem tax to a maximum of 1 percent of the full cash value of real property. For purposes of this limitation, section 2 of article XIII A defines *full cash value* to mean a county assessor's valuation of real property as shown on the 1975-76 tax bill, or thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. The California Legislature codified the definition of "change in ownership" in Revenue and Taxation Code (RTC) section 60 and codified other provisions regarding whether a transfer of property results in a change in ownership or is excluded from the definition of "change in ownership" in RTC sections 61 through 69.5.

Under Government Code section 15606, subdivision (c), the State Board of Equalization (Board) is authorized to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing. The Board adopted California Code of Regulations, title 18, section (Property Tax Rule) 462.500, *Change in Ownership of Real Property Acquired to Replace Property Taken by Governmental Action or Eminent Domain Proceedings*, pursuant to Government Code section 15606, to implement, interpret, and make specific the change in ownership provisions, under article XIII A of the California Constitution and the RTC,

applicable to changes in ownership of real property acquired to replace property taken by governmental action which has resulted in a judgment of inverse condemnation, acquisition by a public entity, or eminent domain proceedings.

In particular, Property Tax Rule 462.500 implements, interprets, and makes specific RTC section 68, subdivisions (a) through (c), which provide that:

(a) For purposes of Section 2 of Article XIII A of the Constitution, 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 property in this state by eminent domain proceedings, by acquisition by a public entity, or by governmental action which has resulted in a judgment of inverse condemnation. 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:

(1) The adjusted base year value of the property from which the person was displaced.

(2) 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.

The provisions of this section shall apply to eminent domain proceedings, acquisitions, or judgments of inverse condemnation after March 1, 1975, and shall affect only those assessments of that property which occur after June 8, 1982.

(b) (1) A person acquiring replacement property shall request assessment under this section. A request made after four years following the date the property was acquired by eminent domain or purchase, or the date the judgment of inverse condemnation becomes final, shall be subject to subdivision (c).

(2) A 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.

(c) A request for assessment under this section that is made after four years following the date the property was acquired by eminent domain or purchase, or the date the judgment of inverse condemnation becomes final, shall apply to the lien dates for the last four fiscal years with appropriate roll corrections, refunds, or cancellations. Under an assessment granted pursuant to that request, the assessor shall adjust the base year value of the replacement property acquired in accordance with this section and make adjustments for both of the following:

(1) Inflation, as annually determined in accordance with paragraph (1) of subdivision (a) of Section 51.

(2) Any subsequent new construction occurring with respect to the subject real property.

Effect, Objective, and Benefits of the Proposed Amendments

Senate Bill 803 (Stats. 2015, ch. 454) amended Revenue and Taxation Code section 68 to specify that if a taxpayer files a request for exclusion from reassessment after four years following the date the property was acquired by eminent domain or purchase, or the date the judgment of inverse condemnation becomes final, then rather than becoming ineligible for exclusion, the base year value transfer will be applied to the lien dates for the last four fiscal years with appropriate roll corrections, refunds, or cancellations. Additionally, the assessor is to adjust the base year value of the replacement property for annual inflation and any new construction.

As a result, Board staff reviewed the current provisions of Property Tax Rule 462.500, which implement, interpret, and make specific the provisions in RTC section 68, and staff determined that the requirement by Rule 462.500 to make a timely request for the exclusion to apply to replacement property within four years or otherwise forfeit the exclusion, was not consistent with the amendments of RTC section 68 required by Senate Bill 803. Board staff therefore developed a draft of proposed amendments to the rule to add a subdivision that reflects the newly added subdivision (c) of RTC section 68. The new subdivision of Rule 462.500, which is (g)(3), states that if a request is made after four years of the applicable date listed in subdivision (g)(2) of this rule, relief shall apply to the lien dates for the last four fiscal years with appropriate roll corrections, refunds, or cancellations. As of the fourth lien date prior to the date of the request and any subsequent lien dates, the base year value of the replacement property shall be adjusted for both of the following: (A) Inflation, as annually determined in accordance with paragraph (1) of subdivision (a) of Revenue and Taxation Code section 51; (B) Any subsequent new construction occurring with respect to the subject real property.

Related to these changes, staff determined that the subheading of subdivision (g) of Rule 462.500, “Time Limits for Qualification,” was no longer consistent with RTC section 68 as amended by Senate Bill 803. Staff determined that organizing the existing language, including the newly inserted subdivision regarding the administration of claims for relief filed after four years, into two separate subheadings according to their respective topics, would be easier to understand. Therefore, to better organize subdivision (g), staff’s draft amendments retained paragraphs (1) and (2) in subdivision (g), moving the last sentence of paragraph (1) to paragraph (2) so that paragraph (1) would address the fact that the provisions of Rule 462.500 apply to property acquired as a replacement property taken by eminent domain proceedings, public acquisitions, or judgments of inverse condemnation, provided that a request for such assessment is made with the assessor, and that the replacement property must be acquired before a request is made. Paragraph (2) states that reassessments and refunds shall be made retroactively to the date of acquisition of replacement property for property taken, provided a request is made within four years after one of the following dates, whichever is applicable:

- (A) The date final order of condemnation is recorded or the date the taxpayer vacates the property taken, whichever is later, for property acquired by eminent domain;
- (B) The date of conveyance or the date the taxpayer vacates the property taken, whichever is later, for property acquired by a public entity by purchase or exchange; or
- (C) The date the judgment of inverse condemnation becomes final or the date the taxpayer vacates the property taken, whichever is later, for property taken by inverse condemnation.

Finally, paragraph (3) of subdivision (g) of Rule 462.500 is the newly added paragraph that reflects the newly added subdivision (c) of RTC section 68, added by Senate Bill 803, as set forth above. Staff determined that the rule would be easier to understand if these three subdivisions were organized under the subheading, “Request for Assessment.”

The remaining provisions of subdivision (g), which were formerly numbered subdivisions (g)(3) and (g)(4), state that:

- (3) Replacement property shall be eligible for property tax relief under this section rule if it is acquired on or after the earliest of the following dates:
 - (A) The date the initial written offer is made for the property taken by the acquiring entity;
 - (B) The date the acquiring entity takes final action to approve a project which results in an offer for or the acquisition of the property taken;

(C) The date the "Notice of Determination," "Notice of Exemption," or similar notice, as required by the California Environmental Quality Act (CEQA), is recorded by the public entity acquiring the taxpayer's property and the public project has been approved; or

(D) The date, as declared by the court, that the replaced property was taken.

(4) No property tax relief shall be granted to replacement property, however, prior to the date of displacement. The date of displacement shall be the earliest of the following dates:

(A) The date the conveyance of the property taken to the acquiring entity or the final order of condemnation is recorded;

(B) The date of actual possession by the acquiring entity of the property taken; or

(C) The date upon or after which the acquiring entity may take possession of the property taken as authorized by an order for possession.

Since these subdivisions are with regard to limits based on acquisition and displacement dates, Board staff determined that the rule would be easier to understand if these two subdivisions were organized under the subheading, "Limits Based on Acquisition and Displacement Dates." Therefore, staff's draft amendments include this as the new subheading for subdivision (h), and renumbers the subsequent subdivision paragraphs.

While preparing the draft amendments and through the interested parties process, staff also determined that the following amendments were reasonably necessary for the specific purposes of:

- Clarifying in new Example 9 the property tax relief available when a taxpayer has a parcel taken, and subsequently two additional parcels taken, that the taxpayer may then purchase one parcel to replace the three properties taken.
- Clarifying that when property is replaced with two separate properties, pro-rata relief is applicable to both replacement properties in Example 4 and Example 6.
- Clarifying that floating homes are included in the definition of "real property" in subdivision (b)(5) of Rule 462.500.
- Clarifying that the terms and conditions for qualifying for property tax relief described in each subdivision of the rule are applicable to Rule 462.500 rather than any particular section, by replacing the word "section" with the word "rule".

- Clarifying that only the person whose property was taken may receive the exclusion under this rule up to 120 percent of his or her ownership interest in the replacement property, in new Example 14.
- Clarifying that the reference to “Board” means the State Board of Equalization.
- Making formatting and grammatical changes for clarification.

The above clarifications are reasonably necessary for the efficient and fair administration of the change in ownership provisions, under article XIII A of the California Constitution and the Revenue and Taxation Code (RTC), applicable to changes in ownership of real property acquired to replace property taken by governmental action which has resulted in a judgment of inverse condemnation, acquisition by a public entity, or eminent domain proceedings.

The Board anticipates that the Proposed Amendments will increase openness and transparency in government and benefit the public, local boards of equalization and assessment appeals boards, county assessors, and the owners of property potentially subject to assessment appeals hearings.

The Board has performed an evaluation of whether the Proposed Amendments are inconsistent or incompatible with existing state regulations. The Board has determined that the Proposed Amendments are not inconsistent or incompatible with existing state regulations because there are no other Property Tax Rules that prescribe the provisions that would be adopted by the Proposed Amendments. In addition, there are no comparable federal regulations or statutes to the Proposed Amendments.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption the Proposed Amendments will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

ONE-TIME COST TO THE BOARD, BUT NO OTHER COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Board has determined that the adoption of the Proposed Amendments will result in an absorbable \$525 one-time cost for the Board to update its website after the amendments are completed. The Board has determined that the adoption of the Proposed Amendments will result in no other direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the Proposed Amendments will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the Proposed Amendments may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board assessed the economic impact of the Proposed Amendments on California businesses and individuals and determined that the Proposed Amendments are not major regulations, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment (EIA) required by Government Code section 11346.3, subdivision (b)(1), for the Proposed Amendments and included it in the initial statement of reasons. In the EIA, the Board has determined that the adoption of the Proposed Amendments will neither create nor eliminate jobs in the State of California nor create new businesses or eliminate existing businesses within the state nor expand businesses currently doing business in the State of California. Furthermore, as stated above under the INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW, Effect, Objective, and Benefits of the Proposed Amendments, the Board has determined that the adoption of the Proposed Amendments will benefit the health and welfare of California residents, worker safety, or the state's environment by safeguarding efficient and fair operation of local assessment appeals hearings.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the Proposed Amendments will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to

affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the Proposed Amendments should be directed to Henry Nanjo, Chief Counsel, by telephone at (916) 323-1094, by e-mail at henry.nanjo@boe.ca.gov, or by mail at State Board of Equalization, Attn: Henry Nanjo, MIC:121, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Lawrence Lin, Regulations Coordinator, by telephone at (916) 323-1094, by fax at (916) 324-2586, by e-mail at Lawrence.Lin@boe.ca.gov, or by mail at State Board of Equalization, Attn: Lawrence Lin, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080. Mr. Lin is the designated backup contact person to Mr. Nanjo.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on September 22, 2020, or as soon thereafter as the Board holds the public hearing regarding the Proposed Amendments during the September 22, 2020, Board meeting. Written comments received by Mr. Lawrence Lin at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the Proposed Amendments. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underline and strikeout version of the Proposed Amendments illustrating the express terms of the Proposed Amendments and an initial statement of reasons for the adoption of the Proposed Amendments, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the Proposed Amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the Proposed Amendments and the initial statement of reasons are also available on the Board's website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the Proposed Amendments with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the resulting regulation, with the change clearly indicated, available to the public for at least 15 days prior to adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Lin. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the Proposed Amendments, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's website at www.boe.ca.gov.