



STATE BOARD OF EQUALIZATION
 PROPERTY TAX DEPARTMENT
 450 N STREET, SACRAMENTO, CALIFORNIA
 PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064
 1-916 274-3350 • FAX 1-916 285-0134
 www.boe.ca.gov

SEN. GEORGE RUNNER (RET.)
 First District, Lancaster

FIONA MA, CPA
 Second District, San Francisco

JEROME E. HORTON
 Third District, Los Angeles County

DIANE L. HARKEY
 Fourth District, Orange County

BETTY T. YEE
 State Controller

DEAN R. KINNEE
 Executive Director

No. 2018/062

December 17, 2018

TO COUNTY ASSESSORS:

**NEW CONSTRUCTION EXCLUSION:
 RAIN WATER CAPTURE SYSTEM**

Generally, when something of value is physically added to real property, what is added is considered "new construction" and is assessed at current market value. This value is added to the existing base year value of the real property. Revenue and Taxation Code¹ section 70(a) defines *newly constructed* and *new construction* as either (1) any addition to real property, or (2) any alteration of land or of an improvement which constitutes a major rehabilitation thereof or converts it to a different use. With respect to any new construction, the law requires the assessor to determine the added value upon completion. The value is established as the base year value for those specific improvements qualifying as new construction and is added to the property's existing base year value. Certain types of construction activity, however, are excluded from assessment as new construction. Consequently, while these types of improvements may increase the value of the property, the additional value of these improvements is not assessable due to an exclusion.

On June 5, 2018, the voters of California approved Proposition 72, which amends section 2(c) of article XIII A to exclude from the term "newly constructed" the construction or addition of a rain water capture system. This new construction exclusion applies to a rain water capture system that is added to real property on or after January 1, 2019. To implement this exclusion, section 74.8² has been added to the Revenue and Taxation Code.³

Rain Water Capture System

Section 74.8(b) provides that a "rain water capture system" is a facility designed to capture, retain, and store rain water flowing off a building rooftop or other manmade aboveground hard surface for subsequent onsite use. A "facility" is something designed, built, or installed to serve a particular purpose.

¹ All statutory references are to the Revenue and Taxation Code, unless otherwise provided.

² See Attachment A.

³ Senate Bill 558 (Stats. 2018, ch. 1), effective January 31, 2018, operative January 1, 2019 upon voter approval of Proposition 72 (SB 558, section 5).

The rain water capture system exclusion applies to real property. "Real property" is defined⁴ as land and improvements. "Improvements" includes buildings, structures, fixtures, and fences erected on or affixed to land.⁵ Property Tax Rule⁶ 122.5, *Fixtures*, establishes three tests to determine whether an item is a fixture. The three tests are:

- Physical annexation
- Constructive annexation
- Intent

If a rain water capture system is physically attached to real property with the intent that it remain there indefinitely, then the system would be considered a fixture and, therefore, real property since it meets the tests outlined above and would add value to the real property.⁷ The exclusion is not applicable to portable rain water capture systems, since they are items of personal property.

Thus, a real property improvement that collects and stores rain water for subsequent use may be excluded from assessment. This exclusion applies to a rain water capture system that is attached to any type of real property, not just residential property. Improvements that may be excluded from assessment include items such as above- or in-ground tanks, piping, pumps, or filtration systems. A rain water capture system does not include the roof of a building.

A property owner who adds a rain water capture system to an existing structure does not have to file for the exclusion. The exclusion is automatically granted when the assessor receives a copy of the building permit. Even though a rain water capture system is not assessed, the addition of the rain water capture system should be noted on the building record, as the value of the rain water capture system would need to be considered when estimating the real property's full cash value for decline in value or change in ownership purposes.⁸

Once a rain water capture system is excluded from assessment, it will continue to be excluded until the property undergoes a change in ownership. At that time, the entire property is reassessed to current market value, including the rain water capture system, along with the other items of real property.

First Time Buyer of Newly Constructed Building

The rain water capture system exclusion applies to the initial buyer who purchased the new building from the owner-builder only if:

- The owner-builder does not intend to occupy or use the building;
- The owner-builder did not receive the rain water capture system exclusion, and

⁴ Section 104.

⁵ Section 105.

⁶ All references to Rules are Property Tax Rules from Title 18, Public Revenues, California Code of Regulations.

⁷ For more information, see Assessors' Handbook Section 504, *Assessment of Personal Property and Fixtures* (www.boe.ca.gov/proptaxes/pdf/ah504.pdf).

⁸ See Letter To Assessors [2009/024](#).

- The initial buyer purchases the new building prior to that building becoming subject to assessment to the owner-builder on the lien date following the completion of the construction, pursuant to section 75.12(d).

Section 75.12 implements the builders' exclusion, which is an exclusion from supplemental assessment for property owners who do not intend to occupy or use the property. This exclusion allows builders to avoid reassessment of their inventories. The builders' exclusion is accomplished by deferring the date of assessment of new construction when a builder has notified the assessor, prior to or within 30 days of the commencement of construction, that he or she does not intend to occupy or use the property.

However, the assessor can automatically grant the builders' exclusion without a builder's notification if the property meets all of the following criteria applicable to the development of residential subdivisions:

- The property is subdivided into five or more parcels in accordance with the Subdivision Map Act;
- The map describing the parcels has been recorded; and
- Zoning regulations applicable to the parcels or building permits for the parcels require that, except for parcels dedicated for public use, single-family residences will be constructed on the parcels.

For the builders' exclusion, new construction is considered completed on the date the new construction is available for use by the owner, unless the owner does not intend to occupy or use the property. *Occupy or use* means the occupancy or use by the owner, including the rental or lease of the property. Property is not considered occupied if the occupancy or use is in conjunction with an offer for a change in ownership, such as use of the property as a model home.

The builders' exclusion applies only to the initial supplemental assessment at completion of new construction. The builders' exclusion does not apply to the lien date assessment of construction following the date of completion of construction or to any other supplemental assessments on the property, such as a change in ownership. In other words, on the lien date, completed new construction and incomplete construction in progress should be assessed at full value.

To receive the rain water capture exclusion, the initial buyer must file a claim with the assessor and provide any documents necessary to identify the value attributable to the rain water capture system that was included in the purchase price of the new building. The claim must also identify the amount of any rebate for the rain water capture system provided to either the owner-builder or the initial purchaser.

Once the claim is received, the assessor must evaluate the claim and determine the portion of the purchase price that is attributable to the rain water capture system. The assessor will then reduce the new base year value established as a result of the change in ownership of the new building by an amount equal to the difference between the following two amounts:

1. That portion of the value of the new building attributable to the rain water capture system.
2. The total amount of all rebates, if any, that were provided to either the owner-builder or the initial purchaser.

To assist assessors in implementing the provisions of section 74.8, the Board of Equalization (BOE) has created Board-recommended form BOE-64-RWC, *Initial Purchaser Claim for Rain Water Capture System New Construction Exclusion*, for the initial purchaser to claim this exclusion (see Attachment B).

Sunset Date

Section 74.8 implements this exclusion for 10 years. This section is scheduled to sunset on January 1, 2029, unless the Legislature further extends this exclusion. After the sunset date, rain water capture systems that are completed between January 1, 2019 and December 31, 2028 will continue to be excluded from assessment until the property undergoes a change in ownership.

A copy of section 74.8 is enclosed (see Attachment A). If you have any questions regarding the rain water capture system new construction exclusion, please contact our Assessment Services and Training Unit at 1-916-274-3350.

Sincerely,

/s/ David Yeung

David Yeung, Chief
County-Assessed Properties Division
Property Tax Department

DY:gs
Enclosure

Effective January 31, 2018, Section 74.8 is added to the Revenue and Taxation Code, to read:

74.8. (a) *“Newly constructed” and “new construction” do not include the construction or addition of a rain water capture system.*

(b) For purposes of this section, “rain water capture system” means a facility designed to capture, retain, and store rain water flowing off a building rooftop or other manmade aboveground hard surface for subsequent onsite use.

(c) (1) Notwithstanding any other law, for purposes of this section, “the construction or addition of a rain water capture system” includes the construction of a rain water capture system incorporated by the owner-builder in the initial construction of a new building that the owner-builder does not intend to occupy or use.

(2) The exclusion provided by this section applies to the initial purchaser who purchased the new building from the owner-builder only if the owner-builder did not receive an exclusion pursuant to this section for the same rain water capture system and only if the initial purchaser purchased the new building prior to that building become subject to reassessment to the owner-builder, as described in subdivision (d) of Section 75.12.

(d) This section shall be administered as follows:

(1) The initial purchaser of the new building shall file a claim with the assessor and provide to the assessor any documents necessary to identify the value attributable to the rain water capture system included in the purchase price of the new building. The claim shall also identify the amount of any rebate for the rain water capture system provided to either the owner-builder or the initial purchaser.

(2) The assessor shall evaluate the claim and determine the portion of the purchase price that is attributable to the rain water capture system. The assessor shall then reduce the new base year value established as a result of the change in ownership of the new building by an amount equal to the difference between the following two amounts:

(A) That portion of the value of the new building attributable to the rain water capture system.

(B) The total amount of all rebates, if any, described in paragraph (1) that were provided to either the owner-builder or the initial purchaser.

(3) The extension of the new construction exclusion to the initial purchaser of a new constructed new building shall remain in effect only until there is a subsequent change in ownership of the new building.

(e) This section applies to new construction completed on or after January 1, 2019.

(f) This section shall remain in effect only until January 1, 2029, and as of that date is repealed.

**INITIAL PURCHASER
CLAIM FOR RAIN WATER CAPTURE SYSTEM
NEW CONSTRUCTION EXCLUSION**

California law provides that under certain circumstances the initial purchaser of a building with a rain water capture system may qualify for a reduction in the assessed value of the property. In order to qualify for this reduction, this claim form must be completed and signed by the buyer and filed with the Assessor. Please refer to the General Information section for details.

NAME AND MAILING ADDRESS

(Make necessary corrections to the printed name and mailing address.)

CLAIMANT NAME (LAST, FIRST, MIDDLE INITIAL)

ADDRESS

CITY

STATE

ZIP

EMAIL ADDRESS

DAYTIME TELEPHONE NUMBER

()

ASSESSORS PARCEL NUMBER

PURCHASE DATE

INSTALLATION DATE

Check and complete the following:

1. \$ What is the value attributable to the rain water capture system included in the purchase price of the new building? **Attach a copy of any documents necessary to identify the type and value of the rain water capture system included in the purchase price.**
2. \$ What is the amount of any rebate for the rain water capture system provided to either the owner-builder or you? (See General Information)

BUILDER NAME

TITLE

ADDRESS

CITY

STATE

ZIP

EMAIL ADDRESS

DAYTIME TELEPHONE NUMBER

()

CERTIFICATION

I certify (or declare) that the foregoing and all information hereon, including any accompanying statements or documents, is true, correct and complete to the best of my knowledge and belief.

SIGNATURE OF CLAIMANT

DATE



GENERAL INFORMATION

Revenue and Taxation Code section 74.8 states, in part:

- (b) For purposes of this section, "rain water capture system" means a facility designed to capture, retain, and store rain water flowing off a building rooftop or other manmade aboveground hard surface for subsequent onsite use.
- (c) (1) Notwithstanding any other law, for purposes of this section, "the construction or addition of a rain water capture system" includes the construction of a rain water capture system incorporated by the owner-builder in the initial construction of a new building that the owner-builder does not intend to occupy or use.
 - (2) The exclusion provided by this section applies to the initial purchaser who purchased the new building from the owner-builder only if the owner-builder did not receive an exclusion pursuant to this section for the same rain water capture system and only if the initial purchaser purchased the new building prior to that building become subject to reassessment to the owner-builder, as described in subdivision (d) of Section 75.12.
- (d) This section shall be administered as follows:
 - (1) The initial purchaser of the new building shall file a claim with the assessor and provide to the assessor any documents necessary to identify the value attributable to the rain water capture system included in the purchase price of the new building. The claim shall also identify the amount of any rebate for the rain water capture system provided to either the owner-builder or the initial purchaser.
 - (2) The assessor shall evaluate the claim and determine the portion of the purchase price that is attributable to the rain water capture system. The assessor shall then reduce the new base year value established as a result of the change in ownership of the new building by an amount equal to the difference between the following two amounts:
 - (A) That portion of the value of the new building attributable to the rain water capture system.
 - (B) The total amount of all rebates, if any, described in paragraph (1) that were provided to either the owner-builder or the initial purchaser.
 - (3) The extension of the new construction exclusion to the initial purchaser of a new constructed new building shall remain in effect only until there is a subsequent change in ownership of the new building.
- (e) This section applies to new construction completed on or after January 1, 2019.
- (f) This section shall remain in effect only until January 1, 2029, and as of that date is repealed.