Issue Paper Number **14-004**

BOARD OF EQUALIZATION
**KEY AGENCY ISSUE**

- ☐ Board Meeting
- ☐ Business Taxes Committee
- ☐ Customer Services and Administrative Efficiency Committee
- ☐ Legislative Committee
- ☒ Property Tax Committee
- ☐ Other

# Assessors' Handbook Section 410, Assessment of Newly Constructed Property

## I. Issue

Should the State Board of Equalization (Board) adopt and authorize publication of Assessors' Handbook Section 410 (AH 410), *Assessment of Newly Constructed Property*?

## II. Alternative 1 - Staff Recommendation

Staff recommends that the attached proposed draft of AH 410 be adopted and authorized for publication (see Attachment A).

## III. Alternative 2 – California Taxpayers Association (Cal Tax)

Modify the language in the current draft of AH 410 to include Cal Tax's proposed language. In Cal Tax's view, new construction should not include a portion of an existing structure or other improvement.

## IV. Background

Government Code section 15606, subdivision (e), provides that the Board shall issue instructions, such as those set forth in proposed Assessors' Handbook Section 410 (AH 410).

On June 6, 1978, the voters in California approved Proposition 13 which 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, the Constitution 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 property when purchased, newly constructed, or a change in ownership has occurred.

In its original form and at the time of its passage in 1978, Proposition 13 did not provide for any exclusions for properties that were newly constructed. However, subsequent amendments to article XIII A have been approved by voters which enacted various new construction exclusions. Examples of these include exclusions for property reconstructed following a misfortunate or calamity, new construction activity associated with making a structure more accessible for disabled persons, addition of fire sprinkler systems, and construction of active solar energy systems.

Revenue and Taxation Code section 70 defines the terms *newly constructed* and *new construction* as:

> . . . (1) Any addition to real property, whether land or improvements, including fixtures, since the last lien date; and
>
> (2) Any alteration of land or of any improvement, including fixtures, since the last lien date, that constitutes a major rehabilitation thereof or that converts the property to a different use.
>
> (b) Any rehabilitation, renovation, or modernization that converts an improvement or fixture to the substantial equivalent of a new improvement or fixture is a major rehabilitation of that improvement or fixture. . . .

Section 70 further provides:

> . . . (d)(2) Notwithstanding subdivisions (a) and (b), where a structure, or *any portion thereof*, was reconstructed, as a consequence of completing work on an underground storage tank to comply with federal, state, and local regulations on these tanks, timely reconstruction of the structure shall be considered to have been performed for the purpose of normal maintenance and repair where the structure, *or portion thereof*, after reconstruction is substantially equivalent to the prior structure in size, utility, and function. [Emphasis added.]

The Board further clarified the statutory provisions regarding newly constructed property in 1978 with the adoption of Property Tax Rule 463, *Newly Constructed Property*; and in 1987 with the adoption of Property Tax Rule 463.500, *Date of Completion of New Construction—Supplemental Assessments*.

Topics covered in this proposed new section of the Assessors' Handbook include various assessment and valuation procedures relative to new construction activity, construction in progress on the lien date, exclusions applicable to newly constructed property, and base year value transfers involving new construction.

# V. Discussion

The following is a chronology of the drafting process for the handbook section:

- In August 2008, a draft of proposed AH 410 was distributed via Letter To Assessors 2008/046 requesting comments from interested parties. Suggested language changes and proposed additions were received from interested parties. Since the comments from interested parties were substantial, a second draft of AH 410 was prepared.

- The second draft of AH 410 was distributed on July 29, 2011 in Letter To Assessors 2011/025, and again substantial comments were received from interested parties.

- A third draft of AH 410 was distributed on September 5, 2012 via a Letter To Interested Parties.

- A fourth draft of AH 410 was distributed on September 24, 2013 via a Letter To Interested Parties.

- Staff met with interested parties on October 18, 2013 to discuss the proposed language for the handbook. One outstanding issue remained regarding the new construction concept purported by Cal Tax.

- A final draft was distributed on December 10, 2013 via a Letter To Interested Parties.

The outstanding issue concerns whether there can be assessable new construction as to a portion of an existing structure or other improvement. As a typical example, if a kitchen in a building is renovated to a state "substantially equivalent to new," should this bring about a reassessment as to the portion of the building, that is, the kitchen? Board staff and county assessors believe the answer is "yes" under Revenue and Taxation Code sections 70 and 71, and the specific provisions of Property Tax Rule 463. In general, under Rule 463 there can be new construction as to a portion of an improvement, provided the construction is not for normal maintenance and repair. However, under the alternative view held by Cal Tax, this would not be new construction; rather, new construction can only apply to an entire building or other improvement.

The main regulatory and statutory provisions concerning this issue are found in Rules 463 and 463.500 and Revenue and Taxation Code section 70. These provisions are discussed below.

***Rule 463***

As originally enacted in July 1978, subdivision (b) of the Rule 463 stated:

> When real property, *or a portion thereof*, is newly constructed after the 1975 lien date, the assessor shall ascertain the full value of such "newly constructed property" as of the date of completion. This will establish a new base year value for only that portion of the real property which is newly constructed. . . . [Italics added.]

In August 1979, the Board revised Rule 463 to conform to section 70, the statute addressing new construction enacted in July 1979. The revised rule not only retained most of the language above but also added further references to newly constructed property, improvements, fixtures, or portions thereof in subdivisions (a), (b), and (e); the term *a portion thereof* was used widely in revised Rule 463. Again, when the rule was amended in February 1998, the *portion thereof* language remained.

In addition, when the Board considered new construction in the context of supplemental assessments in 1985, it expressly incorporated into Rule 463.5,[1] subdivision (c), the definition of new construction contained in Rule 463, and added additional examples of portions of property constituting new construction.

### *Section 70*

The enacted statutory provisions in section 70[2] addressed primarily the qualitative aspects of the definition of new construction—that is, the type of activity that qualifies as new construction (for example, addition or alteration, renovation or rehabilitation bringing about a state "substantially equivalent to new"). The focus was to implement, in section 70 and an amended Rule 463,[3] a definition of new construction based on a "major rehabilitation" test rather than an "economic life" test as had been in original Rule 463.

The "value added" concept in assessing new construction in progress was also an issue at this time. Under this concept, only the additional value resulting from the portion of new construction since the prior assessment could be added as construction progresses from lien date to lien date or at the completion of the construction. County assessors proposed that the entire property should be reassessed at the completion of construction, not just the value added from the prior assessment. This view was rejected by the drafters of amended section 70.

In practically all other matters relating to new construction, the Legislature has retained the language in original Rule 463, although the Legislature has had ample opportunity to modify this language and the concepts embodied in it through statute. It has chosen not to do so.

### *Section 70 and Rule 463 Interpreted Consistently*

The Legislature left most of the implementation of the concepts of new construction under article XIII A to the Board in 1978-79. There was no criticism of Rule 463 on the basis of its inconsistency with section 70. Indeed, those who disagreed with various provisions of the rule advocated that section 70 should be amended.

For example, immediately after section 70 and revised Rule 463 were adopted, the Assembly Revenue and Taxation Committee report mentioned above expressed disagreement with some provisions in revised Rule 463, but never indicated that the rule contradicted section 70. To the contrary, the report states:

> In 1978-79 the definition of new construction was left to Board of Equalization regulations (BOE Rule 463). In AB 1488, acting on Task Force recommendations, a statutory definition was enacted for 1979-80 and thereafter. However, perhaps more so than in any other assessment area, what constitutes new construction is very largely determined by the Board rule, which, as amended in response to AB 1488, expands the existing statutory language significantly. There are also more unresolved controversies regarding new construction than any other part of the new law…. (*Implementation of Proposition 13,* Volume 1, "Property Tax Assessment," Assembly Revenue and Taxation Committee, October 29, 1979, page 16).

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[1] Renumbered 463.500.
[2] Assembly Bill 1488, ch. 242, stats. 1979.
[3] In accordance with the *Report of the Task Force on Property Tax Administration,* presented to the Assembly Committee on Revenue and Taxation, January 22, 1979; and the follow-up report *Property Tax Assessment,* prepared by staff of the Assembly Revenue and Taxation Committee, October 29, 1979.

In discussing one of these "unresolved controversies" relating to the phrase *or any portion thereof* (in Rule 463, subdivision (b)(3)), the report indicated that the Legislature should solve the problem in the future by amending section 70:

> And 463(b)(1) is quite specific that "changing an existing improvement so as to add horizontally or vertically to its square footage or to incorporate an additional fixture" constitutes a "substantial addition." This language may result in minor kitchen or bathroom remodeling being counted as new construction, because it "converts the improvement *or any portion thereof* to the substantial equivalent of a new structure or portion thereof or *changes the way in which the portion of the structure that had been altered is used.*" (Italics added, 463(b)(3).) This latter point could result in reappraisal of a utility closet being converted into a bathroom, because of the change in use. In either case, such a restrictive interpretation runs counter to Task Force intent and the discussions in legislative committees, and may be an area for future statutory revisions." (p.32.)

In fact, no further statutory revisions were ever proposed relating to the phrase *a portion thereof*. Rather, Board staff issued many Letters To Assessors (LTA) and legal opinions containing detailed examples showing how there might be new construction as to *a portion thereof*. These opinions provide a consistent interpretation, since 1978, that there can be new construction as to a portion of an improvement. For example, LTA 79/204 (November 30, 1979) addresses the specific problem raised in the staff report of the Assembly Revenue and Taxation Committee quoted above relating to the proper application of *portion thereof.*

In addition to the above LTA, there have been other LTAs that support and explain the language stated in Rule 463 that "when real property, or a portion thereof, is newly constructed after the 1975 lien date, the assessor shall ascertain the full value of such 'newly constructed property' as of the date of completion."

In furtherance of this consistent interpretation that new construction can be a portion of an improvement, in 1982, the Board published the *Assessment Practices Survey—A Report on the Assessment of Newly Constructed Property and Property Under Construction* (Fall 1982) pursuant to the provisions of Government Code section 15640, subdivision (d), which provides that the Board "may periodically conduct statewide surveys limited in scope to specific topics, issues, or problems requiring immediate attention." The Board's report, at page 9, provided:

> A portion is defined as "a section or quantity within a larger thing; a part of a whole." We are concerned with portions when valuing new construction, whether to land or to improvements. Both land and improvements can be broken down into portions. For instance, a farmer might level only 40 acres of his 640-acre section; the homeowner might add a bedroom and a bath to his home. . .
>
> A portion, for property tax purposes, is a component of a land parcel, structure or fixture that is easily recognized by the appraiser; it is a part that has evidence of design for independent, separate use within the structure or fixture as whole. In a hydroelectric plant, it might be the penstock that channels flowing water into a generator; on a large industrial machine, it might be an attached stairway and platform that facilitates servicing and maintenance of the machine; and in a house, it might be a kitchen or bathroom.
>
> It will always require appraisal judgment to correctly identify the portion that has been newly constructed, whether it has been made "like new" or has been physically altered for a new and different use. Similarly, estimating the value added by the alteration will always be a matter of appraisal judgment. . . .

# VI. Alternative 1 - Staff Recommendation

Staff recommends that the attached proposed draft of AH 410 be adopted and authorized for publication (Attachment A).

## A. Description of Alternative 1

Staff recommends that the Board issue guidance that discusses the following topics applicable to newly constructed property pursuant to the provisions of article XIII A:

- Discussion/definition of terms
- Commencement and completion dates
- Applicable approaches to value
- Construction in progress on the lien date
- Property excluded from reassessment
- Base year value transfers
- Off-site improvements

Proposed AH 410 contains comprehensive information regarding the above new construction topics.

## B. Pros of Alternative 1

Alternative 1 is reflective of the best information that is available at this time and will provide a current reference document for county assessors' offices when processing transactions involving newly constructed property. Additionally, Alternative 1 will provide a comprehensive reference for property tax attorneys, taxpayers' representatives, and others interested in property tax assessments in California.

Staff's recommended language accurately reflects existing law as contained in Rules 463 and 463.500 which state that *new construction* or *newly constructed* includes "any physical alteration of any improvement which converts the improvement or any portion thereof to the substantial equivalent of a new structure or portion thereof. . . ." The phrase *or a portion thereof* defines and describes how much of the property can be considered as new construction in subdivisions (a), (b), and (e) of Rule 463. For supplemental assessment purposes, the phrase *or a portion thereof* defines and describes the extent of the property that may be supplementally assessed as new construction in subdivisions (b) and (c) of Rule 463.500.

## C. Cons of Alternative 1

Cal Tax believes that the language in the handbook discussing *or portion thereof* for assessments of newly constructed property, other than disaster assessments, is not correct. Cal Tax writes that, "in effect, as written, the board would be advising assessors to make illegal assessments."

## D. Statutory or Regulatory Change for Alternative 1

None

## E. Operational Impact of Alternative 1

None

### F. Administrative Impact of Alternative 1

#### 1. Cost Impact

No cost impact is anticipated. Electronic copies of the document will be distributed.

#### 2. Revenue Impact

No revenue impact is anticipated as the views expressed in the handbook have been in effect since 1978.

### G. Taxpayer/Customer Impact of Alternative 1

Publication of proposed AH 410 will help to ensure that county assessors' staffs are provided with sufficient information to assist them when processing transactions involving newly constructed property. Additionally, Alternative 1 will provide a comprehensive reference for property tax attorneys, taxpayers' representatives, and others interested in property tax assessments in California.

### H. Critical Time Frames of Alternative 1

None

## VII. Other Alternatives

### A. Description of Alternative 2

Modify the language in proposed AH 410 to include Cal Tax's proposed language (Attachment B). Assessable new construction should not include a portion of an existing structure or other improvement.

### B. Pros of Alternative 2

In a letter from Cal Tax, signed by David R. Doerr, dated January 14, 2014, the following comments were provided in support of Alternative 2:

> CalTax has objections to portions of the proposed Assessors' Handbook on New Construction. . . In short, portions of this handbook recommend that assessments on homes and other structures be increased when only a "portion" of a structure is remodeled. We believe this to be illegal, as it is inconsistent with statute, is unconstitutionally vague, will result in double taxation and will be harmful to the economy.
>
> **It is illegal**
>
> Contrary to board rule (Rule 463), the statute governing new construction does not permit adding to the Proposition 13 base-year value of property the value of remodeling a portion of a structure. Section 70(a) and (b) of the Revenue and Taxation Code read:
>
> > "(a) Newly constructed" and "new construction" means
> >
> > > 1. Any addition to real property, whether land or Improvements, including fixtures, since the last lien date; and
> > >
> > > 2. Any alteration of land or of any improvement, including fixtures, since the last lien date that constitutes a major rehabilitation thereof or that converts the property to a different use

> (b) Any rehabilitation, renovation or modernization that converts an improvement or fixture to the substantial equivalent of a new improvement or fixture is a major rehabilitation of that improvement or fixture."

This is the language that was suggested by the Task Force on Property Tax Administration. The Task Force, which I chaired, was formed by the Assembly after the passage of Proposition 13 to develop a plan for implementing the property tax provisions of the initiative. The phrase "or portion thereof" does not appear in subdivision (a) or (b) of current statute, which is the same as the Task Force recommendation.

One cannot read "or portion thereof" into Section 70(a) and (b), because the Legislature clearly knew how to distinguish when "a portion thereof" would trigger a reassessment, as it used the phrase as a modifier in Section 70(c), relating to property destroyed or damaged by a disaster.

Section 70(c) reads as follows (emphasis added):

> "Notwithstanding subdivisions (a) and (b), where real property has been damaged or destroyed by misfortune or calamity, "newly constructed" and "new construction" does not mean any timely reconstruction of the real property, or portion thereof, where the property after reconstruction is substantially equivalent to the property prior to damage or destruction. Any reconstruction of real property, or portion thereof, that is not substantially equivalent to the damaged or destroyed property, shall be deemed to be new construction and only that portion that exceeds substantially equivalent reconstruction shall have a new base year value determined pursuant to Section 110.1."

The Task Force drafted this language to capture the intent of the majority not to assess remodeling, unless it converts the entire structure to the equivalent of new. I explained the language to the Assembly Revenue and Taxation Committee, including the intent, and it was included without change in legislation carried by the Committee Chair, Assemblyman Willie Brown. As the committee's chief consultant, I accompanied Assemblyman Brown at each hearing to aid Mr. Brown in explaining the proposal.

As I recall, some of the reasons for the limits on new construction assessment were:

The Task Force wanted to limit the number of different base years attached to a single property that would occur if a reassessment of a portion of a structure was permitted.

The Task Force wanted to encourage property owners to renovate and remodel properties without fear of a reassessment. If remodeling a portion of a structure triggers a reassessment, it would have a chilling effect on the remodeling business.

The Task Force did not believe that the value added by remodeling a portion of a structure could be determined with great accuracy. The cost approach for determining value would not be appropriate, as the value of a structure usually is not increased commensurately with the cost of the remodeling. This is common knowledge in the remodeling business. To use the sales factor correctly, one would have to find a comparable structure with a sale before and after the same remodeling. The income approach also would not get us to the added value of any of the remodeled portion of a dwelling.

At the time the language was drafted, the Task Force was critical of the Board of Equalization's interpretation of "new construction" that the board adopted (as Rule 463) on August 22, 1978, after passage of Proposition 13. The Task Force rejected that approach. In response, board staff submitted a minority report, signed by Larry Augusta*, opposing the Task Force recommendation. The board recommended that the definition of new construction should be left to board rule. Apparently, the board implemented this suggestion in its minority report, despite the passage of legislation and this is why the current board rule defining "new construction" is inconsistent with statute. In this new handbook, the staff is following board rule, instead of statute. We do not know of any authority that allows the board to trump a statute with a regulation.

*Note: Larry Augusta, Margaret Shedd, Bob Gustafson and Jeff Reynolds were the official representatives of the State Board of Equalization on the Task Force. Other participants were Verne Walton and Walt Senini.

**It is unconstitutionally vague**

On page 9, the term "portion or portion thereof" is defined as a "component of an individual structure or a fixture that is easily recognized. It is part of an individual structure or fixture that is designed for independent or separate use such as a bathroom or a kitchen in a residence…" From this, no homeowner can figure out what home improvements will be assessed and what will not. Replacing toilets may or may not be reassessable. If kitchen appliances and cabinets are not reassessable (page 27), how is a component of a structure designed for separate use, such as a kitchen, reassessable? (page 9) Further, by exempting certain items on page 27, one can infer that all other items, such as replacing furnaces or wall heaters, or everything else will create a reassessment.

**It will result in double taxation**

The current Proposition 13 base-year values of kitchens and bathrooms recommended for reassessment in this document are already included [in] the base-year value of homes. If the value of the new construction of a portion of property is to be added to the assessed value, the original value of such improvements must be removed from the original base-year value of the structure. Otherwise, the original components and the new components both will be taxed. How do you propose to remove the value of the original components from base year values, particularly since the board is aware that assessments are made on appraisal units, not individual components? We believe that it will be impossible to separate the value of the components of the original appraisal unit value of a structure and, as a result, the recommendations in this handbook will sanction double taxation.

**It will be harmful to the economy**

When the word gets out that the State Board of Equalization is recommending that assessors increase the value of homes and other structures when a "portion thereof" is remodeled, there will be a drop in remodeling. It will have a direct and negative effect on the remodeling business. This drop in business may result in worker layoffs, and less income tax and sales tax revenue. I hope you will agree that this is undesirable.

For these reasons, CalTax believes this handbook is fatally flawed and should not be adopted.

### C. Cons of Alternative 2

Cal Tax indicates in its January 14, 2014 letter that the language in proposed AH 410 is illegal because the language regarding the phrase *or a portion thereof* for newly constructed property is not in the law. On the contrary, it has been law since the adoption of Property Tax Rule 463 in June 1978.

The proposed language in AH 410 is consistent with adopted, long-standing Board regulations and other Board-provided guidance. However, the Board's Property Tax Rules, Letters To Assessors, and legal opinions are not the only writings that use the concept of *a portion of* a property relevant to property taxation. For example, the Legislature uses the concept in its revisions to Revenue and Taxation Code section 51:

> . . .(b) If the real property was damaged or destroyed by disaster, misfortune, or calamity and the board of supervisors of the county in which the real property is located has not adopted an ordinance pursuant to Section 170, or any *portion of* the real property has been removed by voluntary action by the taxpayer, the taxable value of the property shall be the sum of the following. . . . [Italics added.]

Under the argument put forth by Cal Tax, if a taxpayer decides to tear down his garage and not replace it, the county assessor cannot adjust the base year value of the property because there is no such thing as *a portion of* a property for construction purposes.

Additionally, in *Pope v. State Board of Equalization* (1983) 146 Cal.App.3d 1132, 1141, the court found:

> . . . In any event, that portion of the Assembly Revenue and Taxation Committee Report dated October 29, 1979, treating with the meaning of the term "date of completion," contains the following comment: "Rule 463(e) defines this time as the date property or portion thereof is available for use, subject to various considerations." Elsewhere in the report, it is noted that "what constitutes new construction is very largely determined by the Board rule, which as amended in response to AB 1488 expands the existing statutory language significantly." In light of these observations, we cannot assume that the Legislature was either unaware of, or dissatisfied with, the standard adopted by the Board. . . .

Adoption of Alternative 2 would overturn 36 years of consistent advice provided by the Board in Property Tax Rules and other communications regarding newly constructed property. And, contrary to the comments in the Cal Tax January 14, 2014 letter, the 58 county assessors' offices have been following the provisions of Rule 463 since its adoption in 1978 and have been assessing portions of improvements that are newly constructed and meet the parameters of assessable new construction. Thus, adoption of the language as proposed by staff will continue to reflect long-standing practice, is not unconstitutionally vague, and will not cause double taxation or create a harmful environment for the economy.

### D. Statutory or Regulatory Change for Alternative 2

Adoption of Alternative 2 would contain language in conflict with Property Tax Rule 463, *Newly Constructed Property,* and Property Tax Rule 463.500, *Date of Completion of New Construction—Supplemental Assessments*. Accordingly, sections 463 and 463.500 of Title 18 of the California Code of Regulations would need to be amended.

### E. Operational Impact of Alternative 2

Adoption of Alternative 2 would require:

1. Rescission of and revisions to numerous current sections of the Assessors' Handbook (for examples, AH 501, AH 502, and AH 531);
2. Rescission of numerous Letters To Assessors and drafting of new Letters To Assessors;
3. Rescission of annotated legal opinions; and
4. Development and presentation of training sessions for Board and county certified property appraisers.

## F. Administrative Impact of Alternative 2

### 1. Cost Impact

Unknown. Staff time would need to be redirected from other workloads to accommodate implementation of Alternative 2.

### 3. Revenue Impact

Since adoption of Alternative 2 would be a deviation from assessment practices in the counties since 1978, there may be an indeterminate revenue impact. Assessing new construction pursuant to the provisions Rule 463 is the norm, and county assessors have had no reason to statistically quantify this appraisal activity.

## G. Taxpayer/Customer Impact of Alternative 2

Adoption of Alternative 2 would impact taxpayers in two ways:

1. To prevent AH 410 from being in conflict with current Property Tax Rules 463 and 463.500, amendments to these rules should be adopted first, with the language from Alternative 2 included in AH 410 thereafter.

2. In the future, taxpayers who have new construction activity which involves a portion of their property will be treated differently for property taxation purposes than all other taxpayers since 1978.

## H. Critical Time Frames of Alternative 2

None

## Preparer/Reviewer Information

Prepared by: Property and Special Taxes Department; County-Assessed Properties Division

Current as of: April 18, 2014

ASSESSORS' HANDBOOK
SECTION 410

# ASSESSMENT OF NEWLY CONSTRUCTED PROPERTY

MAY 2014

CALIFORNIA STATE BOARD OF EQUALIZATION

| | |
|---|---|
| BETTY T. YEE, SAN FRANCISCO | FIRST DISTRICT |
| SEN. GEORGE RUNNER (RET.), LANCASTER | SECOND DISTRICT |
| MICHELLE STEEL, ORANGE COUNTY | THIRD DISTRICT |
| JEROME E. HORTON, LOS ANGELES | FOURTH DISTRICT |
| JOHN CHIANG | STATE CONTROLLER |

CYNTHIA BRIDGES, EXECUTIVE DIRECTOR

# FOREWORD

On June 6, 1978, the voters in California approved Proposition 13 which 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 the real property. For purposes of this limitation, the Constitution defines *full cash value* to mean a 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. As long as the property has the same owner, its assessed value generally cannot increase by more than 2 percent each year—even if the property's market value is increasing at a faster rate. As a result, the market value of some properties may be higher than the assessed value.

This handbook section discusses the statutes, regulations, and the various statutory exclusions that pertain to newly constructed real property.

Section 15606, subdivision (c), of the Government Code directs the State Board of Equalization to prescribe rules and regulations governing assessors in the performance of their duties, and subdivision (f) provides that the Board shall issue instructions, such as those set forth in this handbook section. While regulations adopted by the State Board of Equalization are binding as law, Board-adopted handbook sections are advisory only. Nevertheless, courts have held that they may be properly considered as evidence in the adjudicatory process.[4]

The citations and law references in this publication were current as of the writing of the handbook section. Board staff met with members of the California Assessors' Association, County Counsels' Association of California, and industry representatives to solicit input for this handbook section. The Board approved this handbook section on April 22, 2014.

David J. Gau
Deputy Director
Property and Special Taxes Department
California State Board of Equalization
May 2014

[4] *Coca-Cola Co. v. State Board of Equalization* (1945) 25 Cal.2d 918; *Prudential Ins. Co. of America v. City and County of San Francisco* (1987) 191 Cal.App.3d 1142; *Hunt-Wesson Foods, Inc. v. County of Alameda* (1974) 41 Cal.App.3d 163.

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# CHAPTER 1: INTRODUCTION

The California Constitution requires that most locally assessed real property be valued for property tax purposes based on its market value on the date of acquisition. For newly constructed property, an assessor must establish a new assessed value as of the date construction is completed.

In most states, the date of completion of new construction is irrelevant to a property's assessment. That is, in most states, property is annually or periodically reassessed based on its current market value. Prior to 1978, California operated under such a market value system; the state's 58 assessors periodically updated the assessed values of all properties to reflect their current market values.

In June 1978, the voters approved Proposition 13, which for most real property replaced the traditional market value assessment system with the acquisition value system that remains in place today. By adopting article XIII A of the California Constitution, Proposition 13 introduced several important changes:

- For most locally assessed real property, assessments were rolled back to the 1975 market value levels.[5] Properties that have not changed ownership or undergone new construction since 1975 are said to have a 1975 *base year value*. Otherwise, a property's base year value is determined as of the date of the most recent change in ownership or, for newly constructed property, the date of completion of the new construction.[6]

- A property's base year value is adjusted each year to reflect inflation as measured by the California Consumer Price Index. An upward adjustment cannot exceed 2 percent per year. In general, these adjustments continue until the property changes ownership or undergoes new construction. The value that reflects the annual inflation indexing is known as the *adjusted* or *factored base year value*. Each year, the adjusted base year value is the maximum assessable amount for the property for that year.[7]

- Newly constructed property is assessed at its current market value[8] as of its date of completion. New construction in progress on the lien date, January 1,[9] is assessed at its market value on that date.[10]

---

[5] For counties that had trended values on the 1975 roll, they had until the 1980 roll to determine and establish a 1975 base year value for all properties.

[6] Revenue and Taxation Code sections 50 through 51.5, and section 110.1. All statutory section references are to the Revenue and Taxation Code unless otherwise designated.

[7] In many examples throughout this text, the inflation adjustment is applied to a base year value going back more than one year. In these examples, we use a compounded factor to calculate the adjusted base year value in one step rather than showing the adjustment for each year. See Letter To Assessors 2011/056 for factors through the 2011-12 fiscal year [www.boe.ca.gov/proptaxes/pdf/lta11056.pdf].

[8] "Current market value" or "market value" as used in this document means "fair market value" as defined in Revenue and Taxation Code section 110.

[9] The lien date was changed from March 1 to January 1 commencing with the 1997 lien date.

[10] Revenue and Taxation Code section 71.

- If new construction occurs on only a portion of a property (for example, the addition of a bedroom), the newly constructed portion is assigned its own base year value; this value represents the assessor's estimate of the market value added by the newly constructed portion. The remainder of the property, which did not undergo new construction, retains its existing base year value.[11] Thus, a property assessment may be composed of multiple base year values based upon prior fractional ownership changes or partial new construction until such time as the entire property interest changes ownership.

- Property assessments are reviewed consistent with section 51 for a decline in value. If the current market value of a property is below its adjusted base year value, the property is temporarily reassessed to reflect the lower value. If a property has multiple base year values, under a decline in value review the total property is reviewed—not individual base year values on a property. At some future year, when the property's current market value exceeds its adjusted base year value(s), the adjusted base year value(s) is restored to the assessment roll.

[11] Revenue and Taxation Code section 71.

# CHAPTER 2: ASSESSMENT OF NEW CONSTRUCTION

## LEGAL FRAMEWORK

Section 2 of article XIII A of the California Constitution (Proposition 13) provides that the full cash value of real property includes the appraised value of that property when *newly constructed*:

> The full cash value means the assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment.

The full value of new construction is that portion of the increase in the value of the total property upon completion that is directly attributable to the assessable new construction. The terms *newly constructed* and *new construction* are defined in section 70 as:

> (a)...(1) Any addition to real property, whether land or improvements, including fixtures, since the last lien date; and
>
> (2) Any alteration of land or of any improvement, including fixtures, since the last lien date that constitutes a major rehabilitation thereof or that converts the property to a different use.
>
> (b) Any rehabilitation, renovation, or modernization that converts an improvement or fixture to the substantial equivalent of a new improvement or fixture is a major rehabilitation of that improvement or fixture.

Property Tax Rule 463[12] interprets the definitions of *newly constructed* and *new construction*. Rule 463(b) provides that newly constructed or new construction include:

- Any substantial addition to land or improvements (including fixtures) such as adding land fill, retaining walls, curbs, gutters, or sewers to land, or constructing a new building or swimming pool, or changing an existing improvement so as to add horizontally or vertically to its square footage or to incorporate an additional fixture.
- Any substantial physical alteration of land which constitutes a major rehabilitation of the land or results in a change in the way the property is used. When an alteration is substantial enough to qualify as assessable new construction, only the value of the alteration will be added to the base year value of the pre-existing land. Increases in land value caused by appreciation or a zoning change rather than new construction will not be enrolled.
- Any physical alteration that converts an improvement (or any portion) to the substantial equivalent of a new improvement or changes the way in which the improvement is used.

[12] All references to Rules or Property Tax Rules are section references to Title 18, Public Revenues, California Code of Regulations.

> Only the value, which is not necessarily the same as the cost, of the alteration should be added to the adjusted base year value of the pre-existing improvement.

Rule 463(b)(4) expressly excludes from the definition of assessable new construction alterations performed for the purpose of normal maintenance and repair, such as routine annual preparation of agricultural land, interior or exterior painting, replacement of roof coverings, or the addition of aluminum siding.

Finally, Rule 463 provides that newly constructed property is to be assessed at its market value as of the date of completion and defines the date of completion. New construction in progress on the lien date is appraised at its market value on that date and on each succeeding lien date until the date of completion.

Throughout this text the term *assessable new construction* is used to denote construction activity which meets the definition of *new construction* pursuant to section 70 and Rule 463, and, therefore, which would require that the assessor make a determination as to whether value has been added.

## DISCUSSION OF TERMS

Section 70 and Rule 463 use various terms to explain the meaning of assessable new construction. The meanings of some of these terms are self-explanatory; for others, the meaning is less obvious.

### IMPROVEMENTS

As used in this text, the term *improvement* is as provided in section 105 which states:

> "Improvements" includes: (a) All buildings, structures, fixtures, and fences erected on or affixed to the land.

### ADDITION

An *addition* is the act or process of adding. Additions are made to land and improvements, including fixtures. Assessable additions include, but are not limited to:

1. Horizontal or vertical additions to existing improvements, such as:
   - A family room
   - An office mezzanine to a warehouse
2. Installation of new minor improvements or yard improvements to improved properties, such as:
   - A swimming pool or patio
   - Additional paving or fencing on an industrial facility

Additions do not change the base year or base year value of the pre-existing portion of the property. A new base year and base year value is determined for the addition only.

## ALTERATION

An *alteration* is the act or process of altering; a modification or change. An alteration qualifies as assessable new construction when it:

1. Rehabilitates real property (or a portion) to the point that it is like new; or
2. Converts the property (or a portion) to a different use.

The value added by the physical alteration is assessable; however, the value attributable solely to the change in use is not. The appraiser's task is to estimate the value added by the alteration. Examples of assessable alterations include but are not limited to:

- Conversion of a residential garage to living area
- Site development of rural land for the purpose of establishing a residential subdivision
- Remodeling an existing store to a restaurant

Examples of physical alterations to land that lead to a change in use and qualify as new construction include, but are not limited to:

- Leveling dry farmland for use as irrigated row cropland
- Laying gravel on a vacant lot for use as recreational vehicle storage

One example of an alteration that does not lead to a change in use but does qualify as assessable new construction would be a change from a peach orchard to a prune orchard. This is because one improvement is removed (peach trees) and another improvement substantially equivalent to new (prune-plum trees) is added.[13]

## NORMAL MAINTENANCE AND REPAIR

*Normal maintenance* is the action of continuing, carrying on, preserving, or retaining real property or fixtures in proper condition. Maintenance performed on real property is normal when it is regular, standard, and typical. Normal maintenance keeps a property in condition to perform efficiently the service for which it is intended. Normal maintenance is not considered assessable new construction.

The installation of new items that replace old items but provide a similar function is not typically considered assessable new construction. Examples of normal maintenance and repair that on their own do not constitute assessable new construction are:

- Installation of a new shake roof that replaces an existing composition shingle roof

[13] Section 53 provides that that initial base year value for fruit and nut trees and grapevines subject to exemption pursuant to subdivision (i) of Section 3 of Article XIII of the California Constitution shall be the full cash value of those properties as of the lien date of their first taxable year.

- Routine painting
- Replacements or repairs that are periodically required during the life of the improvement, such as replacement of rain gutters

Purchasing a property in poor condition and then replacing multiple items in a short period of time is not standard and typical. Timing and scope of work must be considered to determine when maintenance and repair becomes rehabilitation and renovation that brings an improvement (or a portion) to the substantial equivalent of new. See following discussion of "Substantially Equivalent to New."

## REPLACEMENT

*Replacement* is substituting an item that is fundamentally the same type or utility for an item that is exhausted, worn out, or inadequate. Replacements made as normal maintenance and which do not make the entire improvement substantially equivalent to new are not considered assessable new construction. However, when replacements are as extensive and extreme as to make an improvement (or a portion) *like new*, then the work is considered assessable new construction.

## REMODELING

*Remodeling* is changing the plan, form, or style of a structure. In remodeling, property is removed and other property of like utility is substituted. In some cases, remodeling may constitute assessable new construction. If this is the case, the portion of the factored base year value attributable to the old property should be removed from the assessment roll, and the new property should be enrolled at its current fair market value as of the date of replacement.

## REHABILITATION

*Rehabilitation* is the restoration of a property to satisfactory condition without changing the plan, form, or style of the property. It involves curing physical deterioration. If rehabilitation makes a structure or fixture substantially equivalent to new, it qualifies as assessable new construction. For example, if a structure has been allowed to deteriorate to a point that it is nearly uninhabitable due to lack of normal maintenance and repair, the rehabilitation of that structure to cure all of the physical deterioration may be considered assessable new construction. Whether or not new construction activity transforms an improvement (or a portion) into a state that is substantially equivalent to new is a factual determination that must be made on a case-by-case basis.

## MODERNIZATION

*Modernization* means taking corrective measures to bring a property into conformity with changes in style (whether exterior or interior), or additions necessary to meet standards of current demand. Modernization normally involves replacing part of a structure or fixture with modern replacements of the same kind. For property tax purposes, modernization implies curing functional obsolescence and physical deterioration to the degree that the structure or fixture is substantially equivalent to new. When this is achieved, modernization qualifies as assessable new construction.

## RENOVATION

*Renovation* is making a property into *like new* condition. Thus, in a literal sense, the renovation of an improvement (or a portion) means the improvement has been made substantially equivalent to new and is considered assessable new construction.

## SUBSTANTIALLY EQUIVALENT TO NEW

New construction is assessable when that new construction has converted an improvement (or a portion) to a state *substantially equivalent to new*.[14] For example, a house is stripped and rebuilt from the foundation up. The restoration is such that the house has been converted into a state comparable to that of a new house. The value added by such a conversion would be assessable as new construction, and the value of the removed property must be subtracted from the property's existing base year value.

Section 70(b) provides that assessable new construction includes any major rehabilitation, renovation, or modernization which converts an improvement to the substantial equivalent of new. Whether or not new construction transforms an improvement or fixture (or a portion) into a state that is substantially equivalent to new (into a state where its utility is comparable to new) is a factual determination that must be made on a case-by-case basis.

For example, landlord and leasehold (tenant) improvements, both structure items and fixtures, are frequently renovated, rehabilitated, or modernized. This is often done in order to provide an interior or exterior "facelift" for the space. Existing improvements may be removed and new improvements added, even before the useful life of the existing improvements is over. If such construction activity converts the existing improvements to substantially equivalent to new or is the installation of a new fixture, such activity is assessable new construction to the building (or portion thereof).

***Example 2-1:***

A 20,000 square-foot office building sold for $3 million in July 2000. The building was 20 years old, had been in the same ownership since it was constructed, was in fair condition on the date of sale, and was 100 percent vacant. The tenant improvements were deemed to have no value at the time of sale. The assessor enrolled the sale price.

Shortly after the sale, the new owner removed and replaced all of the tenant improvements. The assessor deems the installation of the new tenant improvements to be a modernization that converts the portions modernized to "substantially equivalent to new." As of the completion date, the assessor assigned the new tenant improvements a base year value of $40 per square foot and enrolled a value of $800,000 for the assessable new construction.

The assessor deems the installation of the new tenant improvements to be a modernization that converts the portions modernized to substantially equivalent to new.

[14] Rule 463(b)(3).

In the course of remodeling, modernization, rehabilitation, extensive or extreme replacements, or renovation, property owners may convert their properties to substantially equivalent to new by altering the existing improvement. In some situations, property owners use both additions and alterations to convert improvements into substantially equivalent to new.

Appraisers must use judgment to determine whether any construction constitutes assessable new construction and may consider, among other things:

- Value added – does the new construction cause the existing improvement (or portion) to equal a substantial percentage of the value of a comparable new improvement (or portion)? Has the new construction caused the value of the existing improvement to increase by a substantial amount?

  This measurement requires an appraisal of the improvement immediately before and after the new construction to estimate the value added, along with an estimate of the value of a comparable new improvement to determine if the new construction is equal to a substantial portion of the property.

- Timing – Were alterations planned, implemented, and completed during a relatively short period of time taking into consideration the magnitude of the project? The timing is important to properly recognize when normal repairs, renovations, or modernization become items of major rehabilitation. Normal maintenance and repairs are typically carried out over a long period of time as the structure or fixture ages and as certain parts become worn out and need replacing.

  As a general rule, individual components such as windows, foundation, roof cover, etc., do not constitute major rehabilitation when replaced, even though considerable expense may have been incurred. It is possible, however, that if enough components are altered or replaced in a relatively short amount of time, and these replacements substantially increase the value of the property, then major rehabilitation may have occurred and should be assessed as new construction.

## PORTION OF AN IMPROVEMENT

Assessable new construction is any physical alteration of an improvement which converts the improvement, *or any portion,* to substantially equivalent to new or changes the way in which the portion of the improvement that was altered is used.[15] The value of the alteration, not necessarily its cost, will be added to the factored base year value of the pre-existing improvement (including fixtures).

In the context of newly constructed property, the term *portion* or *portion thereof* means a component of a land parcel, an individual structure, or a fixture that is easily recognized. It is a part of an individual structure or fixture designed for independent, separate use such as a bathroom or kitchen in a residence. It is also an easily recognized major component, such as

[15] Rule 463(b)(3).

leasehold improvements, in a commercial building as distinct from the building shell. For example, a farmer might level only 40 acres for row crops of 640 acres of dry farm land. That would be a change in use to a portion of the ranch. In an apartment building, each unit would be a portion designed for independent and separate use. The same would be true for a commercial strip shopping center with each bay being a portion.

***Example 2-2***

A property owner converts a 500-square foot garage into living space. The original residence had 1,500 square feet of living space with a 1979 base year value of $50,000 (land $15,000 and improvements $35,000). An appraiser would consider the following data when appraising the new construction:

- Comparable homes of approximately 1,500 square feet with unconverted garages were selling for $450,000 (land $200,000 and improvements $250,000).
- Homes of approximately 2,000 square feet with converted garages were selling for $470,000 (land $200,000 and improvements $270,000).

All else being equal, the value attributable to the garage conversion is indicated by the difference between the market values of the homes with converted garages and the market values of the homes without converted garages ($20,000).

Value enrolled is calculated as follows:

| | | |
|---|---|---|
| Land | $15,000 x 1.75483 (2010 CPI factor) | $26,323 |
| Improvements | $35,000 x 1.75483 (2010 CPI factor) | +61,419 |
| Factored base year value | | $87,742 |
| Plus value of new construction | | +$20,000 |
| Enrolled value | | $107,742 |

Correct identification of a newly constructed portion of an improvement, identification of a portion of an improvement that is substantially equivalent to new, and estimating the market value of that portion is subject to appraisal judgment.

## PROPERTY USE TYPES

Property uses fall under five basic categories or use types:

- Agricultural
- Residential
- Commercial
- Industrial
- Recreational

Any physical alteration of land or improvements that leads to a change from one of these use types to another qualifies as assessable new construction. Only the value added by the physical alteration may be assessed. Any increase in value attributable solely to the change in the property's use must be excluded from the value of the assessable new construction.

Within each general use type there are sub-uses. Any physical alteration that leads to a change from one sub-use to another also qualifies as new construction, as indicated in the examples in Rule 463(b)(2). Thus, leveling dry farmland for use as irrigated row cropland, or laying gravel on a vacant lot for use as recreational vehicle storage, would both qualify as assessable new construction. An alteration that does not lead to a change in use may nevertheless qualify as assessable new construction. For example, a change from a peach orchard to a prune orchard would result in assessable new construction not because of the change in use, but because one improvement is removed and another improvement, substantially equivalent to new, is added. Additionally, even an alteration that does qualify as a change in use, such as conversion from apartment to condominium (or vice versa), will not cause reassessment unless there is a substantial physical alteration leading to that change. When that occurs, only the additional value created by the new construction that facilitates the change in use may be assessed.

The following table lists general use types and sub-uses within each of the five basic classifications. It is not intended as an all-inclusive list, but rather as an illustration.

**TABLE 2-1**
**LIST OF USE-TYPES**

| Use-Type | Sub-Uses | |
|---|---|---|
| ***Agricultural*** | Undeveloped Land<br>Dry Farm<br>Orchards and Groves<br>Kiwis<br>Jojoba Beans | Irrigated Row and Field Crops<br>Grapevines<br>Asparagus<br>Bush Berries |
| ***Residential*** | Single-Family<br>Multi-Family | Condominium<br>Time-Share |
| ***Industrial*** | Mining or Extraction<br>Manufacturing | Processing<br>Warehousing |

| | | |
|---|---|---|
| ***Commercial*** | Office Buildings<br>Financial Buildings<br>Retail Stores<br>Professional Buildings<br>Food Services | Cocktail Lounges<br>Food Sales<br>Automotive Sales<br>Service and Repair Shops |
| ***Recreational*** | Courts<br>Clubhouses<br>Ranges<br>Tracks | Swimming Pools<br>Rinks<br>Fields |

There are many instances where properties involve more than one use-type and/or more than one sub-use.

## CHANGE IN USE

Physical alterations that change the property to a different use qualify as assessable new construction.[16] While the value added by the physical alteration is assessable, the value attributable solely to the change in use is not. (See *Alterations* above for a further discussion of this issue.)

Examples of changes in use include:

- Site development of rural land for the purpose of establishing a residential subdivision;
- Altering rolling, dry grazing land to level irrigated crop land;
- Preparing a vacant commercial lot for use as a parking facility;[17]
- Converting a single-family residence into a duplex; and
- Converting a garage into living area.

***Example 2-3***

The owner of a Victorian single-family residence converts the property to a duplex by adding a kitchen to the second floor and an exterior staircase for separate access. An interior stairway is removed.

This is an example of a physical alteration leading to a change in use. Value attributable to the new construction can be added to the property's value. However, only the value added by the physical alteration may be assessed. Any increase in value attributable solely to the change in the property's use must be excluded from the value of the assessable new construction.

[16] Section 70(a)(2); Rule 463(b)(2), (3).
[17] Rule 463(b)(2).

## COMMON TYPES OF NEW CONSTRUCTION

While not all additions and alterations qualify as new construction under section 70, the following table provides examples of common situations that usually do qualify as assessable new construction:

**TABLE 2-2**
**COMMON TYPES OF ASSESSABLE NEW CONSTRUCTION**

| | |
|---|---|
| ***Improvements*** | • New residential, commercial, or industrial buildings and related structures and fixtures<br>• Square footage added to existing structures, whether vertical or horizontal<br>• Completing previously unfinished improvement areas such as basements, attics, and garages<br>• In-ground swimming pools and spas<br>• Porches and patios<br>• Off-site infrastructure improvements such as utilities an sewers[18]<br>• Subdivision site improvements such as grading, paving, curbs, gutters, sidewalks, drains, utilities, etc.<br>• Converting a warehouse into a restaurant or office space<br>• Incorporating additional improvements such as new interior partitions, walls, ceilings, lighting, restrooms, doors, floor coverings, windows, and wall coverings |
| ***Land*** | • Retaining walls<br>• Piles and caissons<br>• Land grading<br>• Landfill<br>• Altering vacant land for the purpose of establishing a residential, commercial, or industrial development<br>• Developing range, grazing, or rolling land to irrigated row crops, trees, or vines<br>• Developing vacant land for use as a parking facility<br>• Ripping, tilling, leaching, or adding soil amendments to improve the productive capability of agricultural land |

## REMOVED OR RELOCATED IMPROVEMENTS

In general, the relocation of a structure from one parcel to another is assessable new construction.[19] Whenever a structure is removed from land, for whatever length of time or purpose, it becomes personal property. Once the structure becomes personal property, its taxable value becomes its current market value on each lien date until it is re-attached. Upon

[18] Off-site improvements may reflect nonassessable enhancements of land rather than assessable new construction. See discussions in Chapter 3, "New Construction of Off-Site Improvements" and Chapter 7, "Impact Fees, Development Fees, and Off-Site Improvements."
[19] Section 75.10(b).

reattachment to land, the structure is considered newly constructed, and a new base year and base year value for the relocated structure should be established as of the date of completion. The value of the structure is removed from the original site.

However, the relocation of a manufactured home without a change in ownership, whether in the same county or to another county, is not assessable new construction. The provisions of section 75.10, which provide that assessable new construction includes the removal of a *structure* from land, do not pertain to manufactured homes. A *structure* is real property, but a manufactured home is not classified as real property for property taxation purposes.[20] A manufactured home becomes real property only when it is installed on an approved foundation.[21] The addition of accessories (for example, awnings, skirting, decking, or a carport) following relocation of a manufactured home, however, would be considered assessable new construction.[22]

***Example 2-4***

A taxpayer owns parcels A and B. Parcel A is improved with a small house, while parcel B is vacant. The taxpayer prefers the view from vacant parcel B, but he likes the house that is on parcel A. Therefore, the taxpayer moves his house from parcel A to parcel B. Parcel B does not require any site preparation.

The relocation of the house is considered new construction for both parcels A and B. The base year value of the house must be removed from parcel A, and the current market value of the house must be enrolled as the new base year value for the house on parcel B. The land base year values for parcels A and B will remain as before the new construction (moving of the house).

An exception occurs where an improvement is relocated from one site to another within the same appraisal unit. In that event, the relocation should not result in assessable new construction.

***Example 2-5***

A taxpayer owns a Victorian home located on a 12-acre lot. A freeway is constructed that passes within 100 feet of his home. The taxpayer moves his home to the back of his 12-acre lot in order to get away from the freeway noise. He constructs a new foundation and attaches the home to the new foundation. He demolishes the old foundation and returns that portion of the lot to its original form (bare land).

The taxpayer's relocation of his home to the back of the same property would not be considered assessable new construction. Although the removal of a structure from land is considered actual physical new construction[23] and could result in the establishment of a new

[20] Section 5801.
[21] Health and Safety Code section 18551.
[22] See Chapter 7 for further discussion of new construction associated with manufactured homes.
[23] Section 75.10(b).

base year value, in this case the home stayed on the same property. Generally, the value of the new foundation is considered a replacement of the old foundation.

## COMMENCEMENT OF NEW CONSTRUCTION

Identifying the commencement of construction is important in determining the percentage of construction in progress on a lien date. *Commencement of construction* is defined as the performance of physical activities on the property which result in visible changes.[24] These changes, which should be visible to any person inspecting the site, must be recognizable as the initial steps for the preparation of land or the installation of improvements or fixtures.

The date of commencement of construction is also important for institutional exemptions (welfare, religious, etc.). If new construction is commenced within 180 days of the purchase of the land, the land can receive the applicable exemption back to the purchase date.[25]

Activities indicating the commencement of the construction include:

- Clearing and grading land;
- Laying out foundations;
- Excavating foundation footing;
- Fencing a site; or
- Installing temporary structures.

Such activities would also include severing of existing improvements or fixtures.

Commencement of construction does not include preparatory activities such as obtaining architect services, preparing plans and specifications, obtaining building permits, filing subdivision maps, or preparing environmental impact reports.

Commencement of construction must be determined solely on the basis of activities which are apparent on the property undergoing new construction.

- Where a property has been subdivided into separate lots, the commencement of construction is determined on the basis of the activities occurring on each separate lot.
- Where several parcels are adjacent (including when property has been subdivided into separate lots) and will be used as a single unit by the builder for the construction project, the commencement of construction is determined on the basis of the activities which occur on any of the parcels comprising the unit.
- Where the property has been subdivided into separate lots, and several or all of those lots are to be used as a single unit by the builder for the construction project, the

[24] Rule 463.500(c)(3).
[25] Section 75.24.

commencement of construction is determined on the basis of the activities which occur on any of the parcels comprising the unit.

## DATE OF COMPLETION OF NEW CONSTRUCTION

Rule 463.500(b) provides that the *date of completion of new construction* is:

> (b) The date of completion of new construction resulting from actual physical new construction on the site shall be the earliest of either the date upon which the new construction is available for use by the owner or, if all of the conditions of paragraph (b)(1) are satisfied, the date the property is occupied or used by the owner, or with the owner's consent, after the owner has provided a notice in accordance with paragraph (b)(1).
>
> (1) The date of completion of new construction resulting from actual physical new construction shall not be the date upon which it is available for use if the owner does not intend to occupy or use the property and the owner notifies the assessor in writing prior to, or within 30 days after, the date of commencement of construction that he/she/it does not intend to occupy or use the identified property or a specified portion thereof.
>
> (2) The date of completion of new construction resulting from actual physical new construction shall be conclusively presumed to be the date upon which the new construction is available for use by the owner if the assessor fails to receive notice as provided in paragraph (b)(1).

Rule 463.500(c) defines a*vailable for use* as:

> (4) . . . the property, or a portion of it, that has been inspected and approved for occupancy by the appropriate governmental official or, in the absence of such inspection and approval procedures, when the prime contractor has fulfilled all of the contractual obligations. . . .

New construction is not considered *available for use* if it cannot be functionally used or occupied when the new construction is completed. New construction is not available for use until the date that all legal and/or physical impediments to functional use or occupancy are removed.[26]

The final inspection date, as indicated by city or county officials or in the construction contract, may be used to determine whether the property (or a portion) is available for use. When inspection and approval procedures are nonexistent (or they exist but are not performed) and a prime contractor is not involved, the newly constructed property is available for use when outward appearances clearly indicate it is available for the purpose intended.

[26] *Georgiev v. County of Santa Clara* (2007) 151 Cal.App.4th 1428, 1440.

The estimate of the date of completion for purposes of assigning a base year value will depend on whether the project is completed in multiple phases or as a single-phase project. For multiple-phase projects, each phase can be assigned a different base year and should be valued as of the date it is available for use.[27] A presumption of completion may be attached to a building permit final approval or notice of occupancy issued by a local agency.

***Example 2-6***

A taxpayer spent five months renovating an old restaurant into a trendy bistro. His plan was to re-open the restaurant in September. He believed that his restaurant was ready for use as he had completed all construction and complied with all permit requests from the different county and city agencies, except for the county health department. The taxpayer attempted to obtain a final building inspection from the city's building inspector, but was informed that without the county health department's final approval, the building permit could not be finalized.

Even though the date the new construction work was finished was in September, the property was not available for occupancy pending final approval from the county health department and the city's building department. Thus, the new construction would not have been completed for property tax purposes, and the property would not have been reassessed until final approval by the city and county inspectors.

## DISCOVERY OF NEW CONSTRUCTION

Generally, assessors discover new construction through a combination of sources, including:

- Building permits provided by county or city agencies;
- Information furnished on *Business Property Statements*; or
- Documents evidencing required governmental inspections or approvals.

### BUILDING PERMITS

County and city building departments are required to furnish assessors with copies of building permits as soon as possible after they are issued.[28] This procedure is perhaps an assessor's most effective method of discovering new construction.

Additionally, cities and counties must provide the assessor with a copy of any certificate of occupancy or other document showing the date of completion of new construction within their jurisdiction.[29] Copies of such documents must be provided to the assessor within 30 days of the date of issuance.

When a taxpayer files with the city or county an approved set of building plans, the taxpayer must also file a scale copy, designated for the assessor, of the floor plans and exterior dimensions

[27] Rule 463.500(c)(4); *Pope v. State Board of Equalization* (1983) 146 Cal.App.3d 1132.
[28] Section 72(a).
[29] Section 72(b).

of the building.[30] The scale copy must be in sufficient detail to allow the assessor to determine the square footage of the building and, in the case of a residential building, the intended use of each room. The city or county must transmit the designated copy to the assessor as soon as possible after the final plans are approved.

These provisions create valuable sources of information that allow for the timely discovery and assessment of most new construction.

### *BUSINESS PROPERTY STATEMENTS*

The business property division of an assessor's office will often discover information about recent changes to land or improvements. That information, which may come from *Business Property Statements*, audit reports, or other sources, should be reported to the real property division for appropriate action. Coordination between the real property appraisers and the business property auditor-appraisers is an important factor in the discovery of new construction.

### OWNER-BUILDER AND OWNER-DEVELOPER STATEMENTS

An owner-builder or owner-developer of newly constructed property that is sold to a third party must provide the assessor with all information and records regarding that property within 45 days of receipt of a written request by the assessor.[31] The assessor may request information regarding the purchase price and the price paid for upgrades, additions, or for any other supplemental work performed by the owner-builder or owner-developer.

These provisions in the law address situations where builders and buyers of new homes contract for upgrades or additions outside of their purchase agreements. Some home buyers are unaware that the cost of such additional work must be reported to the assessor on the *Preliminary Change of Ownership Report* or *Change in Ownership Statement*[32] as part of the purchase price of the home.

***Example 2-7***

A home buyer who purchases a home for $450,000 selects an additional $40,000 in upgrades in kitchen and flooring options. The home buyer decides to finance the extra improvements through a secondary loan.

These additions may not get reported on the *Preliminary Change of Ownership Report* or *Change in Ownership Statement* and may not be included in the final purchase price reported to the assessor. The $40,000 in upgrades should be added to the base purchase price of $450,000 to determine the total purchase price of the home.

### HEALTH DEPARTMENT

County health departments are required to inspect real property when property is put to certain uses, such as restaurants and medical offices. Additionally, county health departments issue

[30] Section 72(c).
[31] Section 441(d)(2).
[32] Forms BOE-502-A or BOE-502-AH.

permits for the installation of wells, pumps, and septic systems. By obtaining copies of use permits from the county health department, an assessor may discover new construction resulting from a change in use.

## AERIAL PHOTOGRAPHS AND SATELLITE IMAGERY

A series of aerial photographs, reviewed over time, can provide an important resource for the discovery and location of new construction. By comparing older photographs to newer photographs, assessors can determine the areas where new construction has taken place. By comparing that information with appraisal records, it is possible to detect new construction that has escaped assessment.

## FIELD INSPECTION

While conducting field work, both real property appraisers and business property auditor-appraisers should be alert for new construction. Field inspections are the most accurate method of discovering new construction. For some uses, such as property being claimed as exempt under the welfare exemption provisions, field inspections are mandatory.[33]

## NEWS MEDIA REPORTS

Trade journal, newspaper, radio, and television reports can also provide sources of information to aid in the discovery of new construction. News media reports may alert assessors to construction projects such as new industrial facilities, new shopping malls, changes in use, and demolition of existing improvements. Examples of new construction discovery through the media include advertisements for new amusement park rides, grand opening announcements of new port facilities, reports of building demolition, and ground-breaking ceremonies.

[33] Assessors' Handbook Section 267, *Welfare, Church, and Religious Exemptions*, October 2004, p. 103 [www.boe.ca.gov/proptaxes/pdf/ah267.pdf].

# CHAPTER 3: VALUATION PROCEDURES

The valuation of newly constructed property is governed by the same rules and principles that govern the valuation of all other taxable property. That is, the appraiser follows a standardized seven-step appraisal process and uses one or more of the three traditional approaches to value.[34] In this chapter, we focus on several issues of special importance to the valuation of newly constructed property.

## NEW CONSTRUCTION AND THE APPROACHES TO VALUE

### COMPARATIVE SALES APPROACH

The comparative sales approach to value is preferred when adequate market data are available:

> When reliable market data are available with respect to a given real property, the preferred method of valuation is by reference to sales prices. . . .[35]

To value newly constructed property by this method, the property is appraised with and without the new construction as of the date of completion, using the selling prices of comparable properties. The difference between the appraised values is an indicator of the value of the new construction.

A variation of this method is used when the new construction consists of an addition to an existing structure. The value of an addition may sometimes be derived from sales of similar properties without the need to produce two different appraisals. By subtracting the land value from the selling prices of comparable properties, an appraiser can estimate the improvement value and then derive the value per square foot of improvement area.

***Example 3-1***

A taxpayer adds a 200 square-foot addition to his 2,000 square-foot home. The property has a base year value of $250,000, of which $82,000 is allocated to land and $168,000 is allocated to improvements.

The following information is available for comparable properties:

- Homes of similar size and characteristics in the same subdivision as the subject property (without the addition) have been selling for $600,000, of which $180,000 is allocated to land and $420,000 to improvements.
- Homes of similar size and characteristics in the area which have a 300 square-foot addition have been selling for $650,000.

Using the comparative sales approach, the current market value of the addition for the subject property would be calculated as follows:

[34] Assessors' Handbook Section 501, *Basic Appraisal*, Chapter 5 [www.boe.ca.gov/proptaxes/pdf/ah501.pdf].
[35] Rule 4.

The difference between the sales prices for homes with additions and homes without additions is:

$650,000 – 600,000 = $50,000

The market value per square foot of the 300 square-foot additions for the comparable properties is:

$50,000 ÷ 300 square feet = $167 per square foot

The market value for the 200 square-foot addition for the subject property is:

200 square feet x $167 = $33,400

Aspects of the comparative sales approach that should be considered when appraising new construction include:

1. The likely scarcity of comparable sales involving properties with similar new construction projects; and,
2. An estimate of value derived from the comparative sales approach captures all aspects of a change in value, some of which may be attributable to nonassessable construction.

For example, the construction activity may incorporate elements of normal maintenance, or, in the case of an addition, may reduce the functional obsolescence of the property as a whole. These are increments of value that, in most cases, should not be included in the assessment of new construction.

## INCOME APPROACH

When new construction involves income-producing properties, the value of the new construction may be estimated using the income approach. Using current market-derived rates, the appraiser may capitalize the difference in the subject property's economic rent with and without the new construction to yield an estimate of value for the new construction.

As with the comparative sales approach, application of the income approach requires income data and capitalization rates from comparable properties. In certain circumstances, the income approach may capture value attributable to more than just the qualifying assessable new construction.

## COST APPROACH

The cost approach is based on a comparison between the cost to develop a property and the value of the existing property or a similarly developed property. Because participants in the real estate market may relate value to cost, the cost approach may reflect market behavior.[36]

[36] *Property Assessment Valuation,* second edition, published by International Association of Assessing Officers, p. 127.

For an improved property, the cost approach provides a value indication that is the sum of the estimated land value and the estimated depreciated cost of the building and other improvements. Costs necessary to construct a property and make it ready for its intended use include expenditures for the labor and materials, as well as other direct and indirect costs.[37]

The economic principle that provides the foundation for the cost approach is the principle of substitution, which provides that a rational, informed purchaser will pay no more for property than the cost of acquiring an acceptable substitute with like utility, assuming that no costly delay will be encountered in making the substitute.

The cost approach usually works best for newer improvements because construction costs are easier to estimate and there is less depreciation. Although the comparative sales approach is preferred when adequate market information is available, the nature of new construction may limit the availability of relevant market data. In such cases, the cost approach may be preferred. Rule 6 provides:

> (a) The reproduction or replacement cost approach to value is used in conjunction with other value approaches and is preferred when neither reliable sales data (including sales of fractional interests) nor reliable income data are available and when the income from the property is not so regulated as to make such cost irrelevant. It is particularly appropriate for construction work in progress and for other property that has experienced relatively little physical deterioration, is not misplaced, is neither over- nor underimproved, and is not affected by other forms of depreciation or obsolescence. . . .

In the context of real property, the steps employed in the cost approach can be summarized as follows:

1. Estimate the value of the land as if vacant and available for development to its highest and best use as of the valuation date.
2. Estimate the total cost new of the improvements as of the valuation date.
3. Estimate the total amount of depreciation incurred by the improvements.
4. Subtract the total estimated depreciation from cost new to arrive at the depreciated cost of the improvements.
5. Add the land value to the depreciated cost of the improvements to arrive at a value indicator for the total property.

Caution should be used when applying the cost approach, since construction costs may be highly divergent between different projects. In cases of over- or underimprovements, the actual market value of new construction may vary widely from the cost to construct those improvements. To

[37] See Assessors' Handbook Section 531, *Residential Building Costs*, Chapter 531.10, for a complete discussion of costs.

compensate for these potential differences, the values derived using the cost approach should, whenever possible, be checked against values derived from the other approaches.[38]

***Example 3-2***

Owners of a single-family residence construct a new in-ground swimming pool. The actual cost of construction was $35,000. Relevant market data indicate that adding a swimming pool in the neighborhood of the subject property increases the property's market value by only $20,000.

In this case, the addition of the swimming pool should be assessed at its market value of $20,000, rather than the actual construction cost of $35,000.

## ASSIGNING LAND VALUES

Rule 463 provides that new construction includes:

> (b)(2) Any substantial physical alteration of land which constitutes a major rehabilitation of the land or results in a change in the way the property is used.

Examples of alterations to land that would qualify as assessable new construction are:

- Land leveling
- Extensive site preparation prior to building
- Terracing a hillside
- Clearing a brush-covered parcel
- Developing alkali land for farming
- Developing rural land into a subdivision
- Developing a gravel pit

Examples of alterations to land that may not qualify as assessable new construction to land are:

- Re-leveling existing row crop land
- Pulling orchard trees for re-planting. However, if trees are removed for a subdivision development, the cost of removal should be considered.
- Re-building levees or ditches
- Minor site preparation prior to building

[38] For an in-depth discussion of the cost approach, see Assessors' Handbook Section 501, *Basic Appraisal* [www.boe.ca.gov/proptaxes/pdf/ah501.pdf].

## NEW CONSTRUCTION ON VACANT LAND

The assessment of newly constructed property often involves issues about the associated land value. The examples provided below illustrate the issues.

***Example 3-3***

A vacant lot has a 1975 base year value of $10,000. In 2010, the owner built a home on the lot. The fair market value of the unimproved lot before construction was $200,000. After site improvements (leveling, site preparation, and foundation excavation) the fair market value of the land was $240,000. Comparable improved properties were selling for $500,000.

The value enrolled for the property would be as follows:

| | |
|---|---|
| 1975 base year value of land (unimproved) | $10,000 |
| | x 1.89948 |
| Factored base year value of land in 2010 | $18,995 |
| 2010 market value of land with new construction (leveling, site preparation, foundation excavation) | $240,000 |
| Less 2010 market value of land without new construction | -200,000 |
| | $40,000 |
| 2010 assessed value of land | $18,995 |
| | +40,000 |
| | $58,995 |
| 2010 market value of comparable land and improvements | $500,000 |
| Less 2010 market value of comparable land | -240,000 |
| | $260,000 |
| Total assessed value after completion of new construction | |
| Land | $58,995 |
| Improvements | 260,000 |
| | $318,995 |

## NEW CONSTRUCTION AND EXTERNAL APPRECIATION

An assessor must determine the value for any portion of property that has been newly constructed.[39] Any substantial physical alteration of land which constitutes a major rehabilitation or results in a change in the way the property is used meets the definition of assessable new construction.[40] When an alteration to land is substantial enough to qualify as assessable new construction, only the value of the alteration is added to the pre-existing base year value of the land. Appreciation in land value caused by other factors (for example, a zoning change or external market forces) may not be enrolled until a change in ownership of the property occurs.

[39] Section 71.
[40] Rule 463(b)(2).

***Example 3-4***

In 2005, a taxpayer purchased a vacant lot zoned for single-family residential development. At the time of purchase, the market value of the lot was $100,000. The county was not issuing new building permits until a new sanitary sewer system was in place. Additionally, the community service district limited the number of water meters approved each year for new construction. In 2005, lots that had been allocated water meters were selling for $180,000.

In 2010, the taxpayer was granted a water meter for her lot and was able to build her home. Installation of the water meter required only the addition of a small cement pad. In 2010, the market value of the newly constructed home is $350,000, not including the land or land improvements (e.g., water meter construction). Land values in 2010 were $125,000 without water meters granted and $225,000 with meters.

The assessed value of the land and home would be calculated as follows:

| | |
|---|---|
| 2005 market value of land | $100,000 |
| | x 1.07985 |
| 2010 factored base year value of land | $107,985 |
| | |
| 2010 market value of newly constructed home | $350,000 |
| 2010 factored base year value of land | 107,985 |
| 2010 assessed value of total property | $457,985 |

In this instance, the water meter allocation is an easing of a governmental restriction similar to a zoning change. Any additional value attributable to the easing of that governmental restriction is not assessable until the property undergoes a change in ownership. Therefore, an assessor would be precluded from increasing the factored base year value of the land. Any construction to install the water meter would be considered assessable new construction; but, in this case, the value added by the small cement pad was insignificant.

***Example 3-5***

A 50-acre parcel of agricultural land zoned for agricultural use is rezoned for residential subdivision use. The factored base year value of the land before the rezoning is $800,000. The market value of the land after rezoning is $3,000,000. Following rezoning, the owner spends $100,000 to contour the land to facilitate its residential development, but continued to farm the land.

The value to be enrolled is $900,000, which consists of the pre-existing base year value of $800,000, plus the value of the new construction to the land (contouring) of $100,000. The owner's cost was determined to be the current market value of the assessable new construction.

Only the value added by the new construction may be added to the base year value of the land. The value attributable to the change in zoning (the increase in market value) is not assessable until there is a change in use or ownership.

***Example 3-6***

A taxpayer purchased a vacant parcel for $100,000 in an area with minimal utilities available. Subsequently, the city installed a sewer system. As a result of the installation of the sewer system, the market value of parcels increased to $170,000. The owner spent $20,000 to install sewer pipes and connected them to the city's sewer system, but did not proceed with any additional construction.

The installation of the sewer pipes and connection to the city sewer system is assessable new construction. The $20,000 attributable to the new construction should be added to the factored base year value of the land. The owner's cost was determined to be the current market value of the assessable new construction.

The value attributable to appreciation from causes other than the new construction to the land (the increase in market value) is not assessable until the property changes ownership.

## NEW CONSTRUCTION OF OFF-SITE IMPROVEMENTS

Physical changes made to land can add great utility and value. Off-site improvements that are located outside of a property, often referred to as *infrastructure*, also can add value to the land. Off-site improvements include transportation systems, sewage, water and drainage systems, and facilities for electric and gas power and telecommunications.

Off-site improvements or infrastructure can be constructed privately or by government, but in either case the costs must be paid by the property owner/buyer in some manner, either in sales prices, bond obligations, property taxes, or some combination of these. However, most off-site improvements are not assessable new construction.

Off-site improvements, impact fees, and certain development fees—when not directly associated with new construction of a particular property—are considered nonassessable enhancements of land value, rather than assessable new construction. Assessors must distinguish between costs attributable to new construction and those that may enhance the value of the property but are not related to additions or alterations to the property.

***Example 3-7***

A developer acquired 17 acres of unimproved land with the intent of developing a shopping center. As a condition of development, the developer was required to construct a new freeway off-ramp near the site.

Although the freeway off-ramp undoubtedly added to the value of the shopping center (by managing increased traffic), that additional value is not assessable. The off-site improvement is neither an addition to the shopping center, nor is it an alteration of the land. The increase in

the market value of the shopping center's land that is attributable to the freeway off-ramp will be reflected in the marketplace, and will be assessable when the property changes ownership.

## TREATMENT OF NEW CONSTRUCTION

Determination of assessable new construction must be made by the assessor based on the available facts. The following tables provide examples of activities that do and do not represent assessable new construction. These examples are illustrative only and are not intended to be all-inclusive.

**TABLE 3-1**
**EXAMPLES OF ACTIVITIES THAT ARE ASSESSABLE NEW CONSTRUCTION**

| | |
|---|---|
| Installation of new items which did not previously exist, such as:<br>• Bathrooms, fireplaces, air conditioning<br>• Interior offices (in warehouses)<br>• Interior partitions<br>• Fixtures such as service station signs, fuel tanks, or dispensers<br>• Fire protection systems installed in new structures after November 7, 1984 | Converting attics or basements to living areas |
| Substantial kitchen remodel and alteration such as adding built-in~~s~~ appliances where none existed prior, extending countertops, adding new cabinets, and adding or removing part of walls | Replacing space heaters with central heating |
| Converting a single residence to a duplex | Converting a porch to living area |
| Converting a warehouse to a restaurant | Adding a pitched roof to a flat roof |
| Converting a garage into a living area | Upgrading electrical service, such as changing from 100 to 200 amp service |

**TABLE 3-2**
**EXAMPLES OF ACTIVITIES THAT ARE NOT ASSESSABLE NEW CONSTRUCTION**

| | |
|---|---|
| Exterior or interior painting | Covering or replacing stucco with aluminum siding |
| Replacing wall or floor coverings | Replacing roof coverings |
| Refinishing or replacing molding strips, plaster, sheetrock, and wall paneling with similar substitute materials | Total roof replacement (without changing the pitch) |
| Replacing bathroom cabinets | New interior partitions to replace old ones |
| Replacing kitchen cabinets | New canopies to replace old ones |
| Replacing kitchen appliances | New solar, space, or pool heating (replacing old conventional heating) |
| Replacing plumbing fixtures | New fire sprinkler system (replacing old system) |
| Replacing old sinks and bathtubs | Soundproofing homes affected by proximity to airports (insulated walls and ceilings, storm windows, special ventilation systems) |
| Replacing wood frame windows with metal frames | Seismic (earthquake) safety rehabilitation of an existing structure on or after January 1, 1984 |
| Normal, typical, and periodic repairs | Fire protection systems installed on or after November 7, 1984 in existing buildings—these include fire sprinklers, fire extinguishers, fire detection systems, and fire related egress improvements |
| Replacing waterlines with another type | Replacing floor or wall heating units with baseboard heating |
| Replacing cast iron sewer lines with plastic | Replacing home air conditioner or furnace |
| Replacing knob and tube wiring with cable | Replacing central gravity heating with central forced air heating |

Individually, the activities in Table 3-2 are not assessable new construction, but in combination or collectively they may constitute major rehabilitation, renovation, or modernization and may convert a structure into substantially equivalent to new. An assessor must make a determination on a case-by-case basis based on the facts and appraisal judgment. Factors to consider may include timing, scope, or the amount of existing value allocated to the roll for the improvement in question.

## RENOVATION AND REHABILITATION

When extensive renovation or rehabilitation of a property (or a portion) converts it into one that resembles a newly built property, the work is considered assessable new construction and the assessor is required to establish a new base year value.[41] The base year value would not be changed for any portion of a property that does not undergo new construction as a result of renovation or rehabilitation.

***Example 3-8***

A single-family residence was severely damaged by flooding. Before the damage, the property had a base year value of $400,000, with $120,000 allocated to land and $280,000 allocated to improvements. Pursuant to disaster relief provisions,[42] the assessor reduced the base year value to $200,000, allocating $120,000 to land and $80,000 to improvements.

To guard against future floods, the taxpayer removed the old foundation and built a new raised foundation 10 feet above ground level. Additionally, he replaced water-damaged portions of the structure such as floors, sheet rock, and electrical wiring. At the end of construction, the taxpayer had restored his house to its original condition, except for the new foundation.

Rebuilding the flood-damaged portion of the property is excluded from reassessment[43] since the new construction merely brought the property back to its previous condition. The value of the removed foundation must be subtracted from the property's existing base year value, and the value of the newly built raised foundation must be added. The base year value of the house following repair of the flood damage is calculated as follows:

| | | |
|---|---|---|
| Land value | $120,000 | |
| Improvements | | $280,000 |
| Less removal of the old foundation | | -10,000 |
| | | $270,000 |
| Market value of new foundation | $20,000 | |
| | | $270,000 |
| | | +20,000 |
| New base year value of improvements | | $290,000 |
| | | $290,000 |
| Land value | | +120,000 |
| New base year value of repaired home | | $410,000 |

[41] Section 70(b).
[42] Section 170.
[43] See Chapter 5 for detailed discussion of exclusions.

***Example 3-9***

A taxpayer purchased a 1,200 square-foot home for $400,000, with $350,000 allocated for land and $50,000 for improvements. The home is located in a highly coveted neighborhood that has seen many average homes renovated into large mansions. The taxpayer gutted the home to its foundation and studs, built a new perimeter foundation to support additional floors, and rebuilt the home into a three-story, 3,600 square-foot mansion.

The new construction converted the renovated structure to the status of substantially equivalent to new. The base year value of the improvements should be reappraised to the current market values of other comparable properties in the area. A portion of the existing base year value should be retained for the studs and foundation system that were not removed. The base year value of the land would not change.

## ADDITIONS OR ALTERATIONS

For additions, there is no threshold test comparable to the extensive rehabilitation test used for alterations. Although the word *substantial* is not defined in the statute, Rule 463 employs it before both *addition* and *alteration*. The intent is to prevent reassessment of property when minor additions or alterations are completed. Such minor additions or alterations generally would not convert (for assessment purposes) a slightly improved property into one that is substantially equivalent to new.

## NORMAL MAINTENANCE

Normal maintenance and repair would not result in reassessment as assessable new construction since the purpose of it is to substitute parts of an improvement which have become worn-out or obsolete with ones of fundamentally the same type or function. Replacement and repair may fall under normal maintenance and may be excluded from assessment as new construction. However, if the repairs or replacements are so extensive or so extreme as to make an improvement (or a portion) like new, it may be assessable new construction.

***Example 3-10***

A taxpayer purchased a 2,000 square-foot house (4 bedrooms, 3 bathrooms) for $350,000 with $250,000 allocated for improvement and $100,000 for land. The purchase price was lower than the average selling price of comparably sized homes and reflected the fair condition of the house. Subsequently, over a four-year period, the taxpayer made the following repairs and replacements to the house:

<u>Year 1:</u>

- Painted the house inside and out.
- Replaced the lawns in the front and backyards and planted new trees and flowers to replace the dead trees and shrubs.
- Replaced the old deteriorated fence with new redwood fencing.

Year 2:

- Replaced shower enclosures, bath fixtures, and tile floors in all three bathrooms.

Year 3:

- Replaced kitchen countertops, sink, appliances, and flooring.

Year 4:

- Replaced the old wood shingle roof (no change to the pitch) with new composition shingles. The gutters and downspouts were also replaced.

Although substantial work was done on the house, the majority of the work was maintenance as it merely replaced old and deteriorated items with new ones of like kind. No work was done on the foundation, and no new square footage was added. The taxpayer did not add any redesigned features to the house, nor did he improve it to the point that it was the substantial equivalent of a new home. Thus, no assessable new construction occurred.

***Example 3-11***

A taxpayer purchased a 2,000 square-foot house (4 bedrooms, 3 bathrooms) for $175,000, with $75,000 allocated for improvement and $100,000 for land. The house had been in a foreclosure state for several years and had been severely vandalized. The bathroom fixtures, kitchen countertops and sink, HVAC system, and light fixtures throughout the house had been removed. The flooring and walls were soiled, and the roof was in poor condition. The yards and fencing had not been maintained. Subsequently, the taxpayer did the following:

- Installed new bathroom fixtures in all three bathrooms.
- Installed new kitchen countertops, kitchen sink, and appliances.
- Installed a new HVAC system and replaced the ducts throughout the house.
- Installed new light fixtures in the kitchen, dining room, hallways, and bathrooms.
- Replaced the old wood shingle roof (no change to the pitch) with new composition shingles. The gutters and downspouts were also replaced.
- Replaced the soiled carpeting and painted the walls throughout the house.
- Replaced the lawns in the front and backyards and planted new trees and flowers.
- Replaced the old deteriorated fence with new redwood fencing.
- No work was done on the foundation and no square footage was added.

The extensive work that was done on the house was composed of both assessable new construction and nonassessable repairs and replacements. Installation of those items that were not in the house at the time of purchase, and therefore were not included in the purchase price and subsequent base year value, would be considered assessable new construction. Replacement of the unmaintained and worn items may be considered normal maintenance

and repair. On the other hand, all the work collectively may be sufficient to convert the house to the substantial equivalent of new. The facts in each instance should be decided on a case-by-case basis to determine whether or not the new construction activity transforms the improvement (or a portion) into a state that is substantially equivalent to new.

Generally, the replacement of a roof cover by another roof cover is considered normal maintenance and is not assessable as new construction. However, if the roof structure is redesigned to accept another roof cover, then that new roof structure is considered assessable new construction.

***Example 3-12***

A home built in the early 1950's has a flat roof that is in good condition. The owner decides to change the roof line of the home by adding new framing (rafters, trusses, ceiling joists, etc.) that results in a roof line with a pitch to it. The new roof has composition shingles similar to the original flat roof.

The work that was done in constructing the new roof would be considered assessable new construction. It has converted the "portion of" the structure that consists of the roof to a state that is substantially equivalent to new. The assessor must determine what value, if any, the new roof adds to the house. The costs associated with this type of new construction could exceed the value actually added.

## SUPPLEMENTAL ASSESSMENTS

A supplemental assessment is made upon a change in ownership or completion of new construction. The supplemental assessment process was adopted so that reappraisal and reassessment would occur as of the date of a change in ownership or completion of new construction rather than waiting until the next lien date. In the case of new construction, only the value attributable to the new construction is to be enrolled as a supplemental assessment.[44]

If new construction occurs on or after January 1 but on or before May 31, then the reassessment results in two supplemental assessments:

- One for the difference between the new base year value, established as of the date the newly constructed property is completed, and the taxable value on the current roll; and
- One for the difference between the new base year value, established as of the date the newly constructed property is completed, and the taxable value to be enrolled on the roll being prepared.

If the new construction occurs on or after June 1 but before the succeeding January 1, then the reassessment results in one supplemental assessment for the difference between the new base

[44] The supplemental assessment provisions are set forth in sections 75 through 75.80.

year value established as of the date the newly constructed property is completed, and the taxable value on the current roll.[45]

## ESCAPED NEW CONSTRUCTION

An *escape assessment* is a retroactive assessment intended to rectify an omission or error that caused taxable property to be underassessed or not assessed at all. In most cases, once such an omission or error occurs, the property escapes assessment each year thereafter until the underassessment/nonassessment is discovered and corrected. If property that has undergone new construction escapes assessment, the assessor is required to value the property upon discovery for the appropriate valuation date,[46] enroll the appropriate value on the roll being prepared, and process any necessary corrections and escape assessments for prior years within the statute of limitations.[47]

When changing or establishing the base year value for newly constructed property that has escaped assessment, it should be recognized that this will not necessarily result in a change in the taxable or assessed value of the property. For example, even though an addition to property comes to light several years after the new construction was completed and resulted in a slight increase in the base year value of the property in the year of the new construction, overall declines in value of the property in subsequent years may mean that while the property now has a higher factored base year value, no changes in the assessed value in later years are necessary since the property was assessed at its appropriate lower market value. This illustrates that the correction of a base year value is not the same thing as a change in taxable or assessed value.

***Example 3-13***

A single-family home located in Atlas County contained 1,800 square feet of living area when it was originally built in 2007. In August 2009, the owner completed construction of a family room addition which consisted of 400 square feet. The owner acquired all appropriate permits; however, the assessor's office did not discover the new construction until March 2012. The assessor must process a supplemental assessment for the 2009 event date, issue assessments for 2010 and 2011, and enroll the proper value for the 2012 lien date. Since the assessor was unable to find comparable market data, he decided the cost approach was the best method to value the new construction.

An inspection of the property indicated that the family room addition was completed using the same design, construction type, and quality as the construction of the original residence. By using Assessors' Handbook Section 531, *Residential Building Costs* (AH 531),[48] the assessor correctly determined the market value of the addition as of the August 2009 completion date. The quality classification is determined to be a D-7-C. Atlas County has a location adjustment factor of 1.40 for the cost tables contained in AH 531.

[45] Section 75.11.
[46] Section 531.
[47] Section 532.
[48] www.boe.ca.gov/proptaxes/ah531.htm.

| | | |
|---|---|---|
| Square Footage of Original Living Area | 1,800 | |
| Square Footage of the Addition | 400 | |
| Total Square Footage | 2,200 | |
| 2009 AH 531 Cost Factor for 2,200 sq. ft. D-7-C | | $102.14 |
| Location Adjustment for Atlas County | | x 1.40 |
| Indicated Cost Per Square Foot | | $143.00 |
| Concluded Cost of the Addition | | $143.00 |
| | | x 400 |
| | | $57,200 |

►A supplemental assessment for $57,200 should be processed for the August 2009 event date.[49]

In January 2010, the property had declined in value due to the economic downturn in the single-family residential market. The assessor had processed a decline-in-value assessment (Proposition 8) and reduced the property's value by 8 percent. This decline in value should also be reflected in the escape assessment for 2010.

►An escape assessment for $52,624 should be processed for January 2010 ($57,200 – 8%).

In January 2011, the property had further declined in value. The assessor processed a decline-in-value assessment (Proposition 8) and reduced the property's value by an additional 7 percent. This decline in value should also be reflected in the escape assessment for 2011.

►An escape assessment for $48,940 should be processed for January 2011 ($52,624 – 7%).

In January 2012, the property had stabilized and the assessor made no further adjustments to the property's value.

►For the January 2012 lien date, the assessor must enroll the value of the entire 2,200 square foot house.

## DECLINE IN VALUE

### EXCLUDED NEW CONSTRUCTION

Section 51 requires that the county assessor annually enroll the lesser of a property's factored base year value or its full cash value (market value) as of the lien date. *Full cash value* is defined as the amount of cash or its equivalent that property would bring *if exposed for sale* in the open

[49] Section 75.11 provides the statute of limitations provisions for supplemental assessments.

market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other.[50] Since an estimate of full cash value for decline-in-value purposes is made as if the property was exposed for sale, the full cash value should not be reduced by the value of any excluded new construction[51] under the premise that a property being made available for sale would include all segments of the appraisal unit. This analysis is for **comparison purposes only** when determining the factored base year value or the current market value in order for the county assessor to enroll the lesser value on the lien date. This analysis **does not** affect the factored base year value nor the status of any previously excluded new construction.

For example, if a property owner installs a qualified active solar energy system, the system is excluded from assessment as new construction.[52] If the taxpayer were to subsequently sell the property to another person or entity, the system would become assessable. Accordingly, the value of the active solar energy system that was excluded from the meaning of new construction upon completion should be included in an estimate of full cash value made for a decline-in-value review.

## NONEXCLUDED NEW CONSTRUCTION

When assessable new construction occurs on a property while the property is experiencing a decline in value, the current full cash value of the newly constructed property must be determined as of the date the new construction is completed, just as if the existing property were not under a decline-in-value assessment. The value of the newly constructed property must be enrolled, and appropriate notices[53] must be sent to advise the taxpayer of the new base year value established for the new construction. The value of the newly constructed property cannot be "offset" by the current decline-in-value assessment of the original property. However, care must be taken to enroll the proper value for the entire property on the subsequent lien date.

***Example 3-14***

A property is acquired in May 2008 with a market value of $400,000. The enrolled taxable value for January 1, 2009 is $408,000 ($400,000 increased by the 2% CPI[54]). New construction takes place on the property and is completed in August 2009.

In determining the market value of the new construction, comparable sales indicate the value of the property in August 2009 is $380,000 prior to the new construction and $410,000 after the new construction. The full cash value of the new construction is $30,000 ($410,000 - $380,000), not $2,000 ($410,000 - $408,000).

[50] Section 110.
[51] See Chapter 5 for a discussion of the various exclusions from new construction.
[52] Section 73.
[53] Supplemental Assessment Notice(s) or Notice of Assessed Value Change; section 75.31.
[54] Section 75.18.

# CHAPTER 4: CONSTRUCTION IN PROGRESS

For property tax purposes, construction in progress is defined as property under construction on the lien date (January 1). New construction may be an entire structure, such as an entirely new single-family residence or office complex, or only a portion of an improvement, such as a room addition.

Partially completed new construction does not acquire a base year value. Instead, new construction in progress on any lien date is assessed at its market value on that date and on each successive lien date until it is completed. Upon completion, the entire portion of the property which is newly constructed is reappraised at its market value and acquires a base year value.

***Example 4-1***

On the 2009 lien date, new construction was determined to be incomplete, and the assessor added a $250,000 construction-in-progress value to the roll. On November 12, 2009, the construction was 100 percent completed. The assessor determined that the market value of the completed new construction was $460,000 as of the date of completion.

The value to be enrolled as the base year value for the new construction is $460,000 as of November 12, 2009. An incremental or additional value of $210,000 is added to the construction-in-progress value bringing the total enrolled value to $460,000. The $250,000 construction-in-progress value on the 2009 lien date did not establish a base year value for the property.

The assessor must use judgment in determining whether or not portions of a project can be considered complete for purposes of base year valuation. If the project is to be constructed in distinct stages, as in the case of a shopping center or an office complex, with portions being completed and available for use before other portions are constructed, then it is proper to assign a base year value to the completed portions.[55]

If, however, a project is to be constructed as a single facility such that the entire improvement will become available for occupancy within a reasonably short period of time, the total project should be treated as construction in progress until all of the improvement is available for occupancy. The incidental occupancy of a portion of such an improvement would not cause the establishment of a separate base year value for the occupied portion unless there is evidence that there will be a significant time delay before the balance of the improvement is completed.

A residence presents a somewhat different type of problem, particularly recreational homes and owner-built structures. As sometime happens, an owner moves into his owner-built structure before it is fully complete with the intention of finishing it while living there, and after a period of years the owner still has not finished the structure. The valuation determination now becomes more difficult for the assessor. It is not proper to continue valuing this structure year after year as construction in progress. On the other hand, the structure is technically incomplete. The assessor

[55] Rule 463.500(c)(4); *Pope v. State Board of Equalization* (1983) 146 Cal.App.3d 1132.

should use appraisal judgment and establish a base year and base year value when it appears that the structure is substantially equivalent to a completed home and is a livable unit. When the owner finishes the structure at a later date, the additional construction should be considered new construction and assessed accordingly.

A special problem is created if a construction project comes to an unscheduled halt for an extended period. When there are no definite plans for continuation of construction within a reasonable period, the project no longer qualifies as construction in progress and the assessor should establish a base year value for the newly constructed improvements without regard to their incomplete status.

When a project is available for occupancy but is vacant simply for lack of tenants, it should be considered complete and a base year value established. Assume a high-rise structure has the first level complete and the upper levels complete except for interior finishing on the lien date. The plans indicate that the upper levels will be finished as they are leased. In this case, the assessor should establish a base year value for the entire structure as it exists on the lien date. When the interior finishing of the upper levels is constructed, the work should be assessed as new construction on the dates of completion.

***Example 4-2***

Construction on an office complex consisting of four office buildings began on May 1, 2008. The plan called for completion and occupancy of each building separately and in distinct stages. The first building was completed and occupied on May 1, 2009. The first building should be assessed as construction in progress on the January 1, 2009 lien date, and a base year value for that building should be established upon its completion on May 1, 2009.

On October 1, 2009, the developer declared bankruptcy. Construction of the remaining three buildings was halted. The second building had been partially built. There were no plans to resume the project in the near future.

The treatment of the second building requires additional analysis. The assessor could assess the second building as construction in progress on one or possibly two lien dates. However, if the assessor determines that there are no definite plans to continue construction of the second building, the project cannot continue to be considered construction in progress, and the assessor should establish a base year value for the incomplete structure.

## CHANGE IN OWNERSHIP OF PROPERTY UNDER CONSTRUCTION

When a property changes ownership, a new base year value is established at the current fair market value on the date of the change in ownership.[56] If a property changes ownership with partially completed improvements transferred, the partially completed improvements are no longer considered construction in progress. Instead, the partially completed improvements should

[56] Sections 50, 75.10(a), and 110.1(a) and (b).

be valued as part of the entire property that changed ownership and a base year value established on the date of the change in ownership.

## VALUATION OF CONSTRUCTION IN PROGRESS

Determining the value of construction in progress may present a difficult appraisal problem. The same methods and principles that apply when valuing completed improvements are applicable to construction in progress. However, the procedure is usually more difficult due to a lack of market data. The income and sales comparison approaches are of limited use because property under construction is typically not producing any income, and it is difficult to find comparable sales of partially completed projects.

The cost approach is nearly always used in the earliest stages of construction. The cost approach is used to determine the amount of costs in place relative to the partially completed project on the lien date. The total of costs in place on the lien date may be higher or lower than the market value of the new construction in progress on the lien date. When property is completed or close to completion, the sales comparison approach is generally more reflective of fair market value.

## CASE STUDY

On July 1, 2001, a taxpayer who was a building contractor purchased a five-acre lot for $200,000. On this lot he planned to construct a 5,000 square-foot home to be used as his personal residence.

On September 1, 2001, the owner obtained a permit from his local building department to grade the lot and construct a six foot high, 120 foot long retaining wall. The permit fee was $1,500. In addition, the owner had to submit a soil report at a cost of $4,000.

As of November 1, 2001, the owner had completed phase one of the project, which included the following alterations to the land:

- Site preparation work was completed. This work included grading and leveling two acres at a cost of $7,000. The owner graded the land himself. The cost of grading reflected only the rental of the earth moving equipment and grading plans.

- The owner completed a six-inch thick retaining wall made of steel, concrete, and stone. The retaining wall was six feet high and 120 feet long. In building the wall, the owner used materials that were left over from prior building projects. The total cost of building the retaining wall was $7,000 consisting mostly of labor and some materials.

On December 1, 2001, the owner obtained a set of architectural design plans for a 5,000 square-foot house with six bedrooms and six bathrooms for $15,000. The plans included designs for the construction of a modern barn and in-law quarters, which the owner decided he would defer until the main residence was completed.

A week later, the owner obtained a building permit for the residence. This permit fee was $12,500. School fees at a rate of $3.75 per square foot ($3.75 x 5,000 square feet = $18,750) were required for all new construction within the county.

When the permits were received in early 2002 by the appraiser from the assessor's office, she recognized that this owner-builder project would have more than one stage of production, and could take an extended period of time to complete. As such, she decided to assess the completed new construction to the land as the first phase.

The county appraiser further noted that since the owner is also the builder, the owner's costs may not reflect the true market cost of construction. She evaluated the costs for the grading and the retaining wall provided by the owner and compared them to true economic costs as follows:

- Cost of leveling and grading similar land sites in the county is $10,000 per acre. The county appraiser determined $20,000 to be the economic cost for land leveling and grading of the two acres of the subject lot completed on November 1, 2001.

- The cost of the retaining wall provided by the owner was not consistent with local norms. The county appraiser determined that the retaining wall should be considered land improvements.[57] The county appraiser used Assessors' Handbook Section 531, *Residential Building Costs*,[58] to obtain an estimated cost of building the retaining wall which is $14,000.

The county appraiser's treatment of the first phase of the construction, considering actual costs versus economic costs, is shown below.

| **Phase One of the Construction: Land Improvements** | | |
|---|---|---|
| **Description** | **Owner's Costs** | **Economic Costs (Enrolled)** |
| Grading and Leveling (2 acres) | $7,000 | $20,000 |
| Retaining Wall | $7,000 | $14,000 |
| Grading and Retaining Wall Building Permit Fee | $1,500 | $1,500 |
| Soil Report Cost | $4,000 | $4,000 |
| ***Total Phase One Costs*** | **$19,500** | **$39,500** |

Before July 1 of 2002, the county appraiser made and enrolled the valuations for the land sale and the assessable new construction to the land. She analyzed comparable vacant lot sales,[59]

[57] Rule 121 provides that when materials, such as concrete, are added to land to render it amenable to being built upon, the land together with the added materials remains land.
[58] Published annually by the State Board of Equalization.
[59] Pursuant to the time restrictions specified in Revenue and Taxation Code section 402.1.

confirmed that the purchase price of the land represented market value, and enrolled a supplemental assessment of $200,000 for the July 1, 2001 change in ownership of the land. The county appraiser set a base year value date of November 1, 2001 for the completed land improvements and enrolled a supplemental assessment of $39,500. As of January 1, 2002, no further new construction had occurred.

In January 2003, the county appraiser returned to the property to inspect phase two of the construction and to assess the construction in progress. She noted the following had taken place:

| **Phase Two of the Construction: Residence** | | |
|---|---|---|
| **Description** | **Owner's Costs** | **Economic Costs (Enrolled)** |
| Architectural Plan Fee (Indirect Cost) | *****$10,000 | *****$10,000 |
| Building Permit Fee | $12,500 | $12,500 |
| Foundation | $20,000 | $25000 |
| Framing | $15,000 | $30,000 |
| Roof | $20,000 | $25,000 |
| Sheathing and Stucco | $10,000 | $12,000 |
| Electrical Rough-ins | $10,000 | $13,000 |
| Plumbing Rough-ins | $15,000 | $18,000 |
| ***Total Phase Two Costs*** | ***$112,500*** | ***$145,500*** |

*Prorate to exclude fee for design of the barn and in-law quarters

The total cost of construction provided by the owner for work done in 2002 ($112,500) was lower than the local norm ($145,500). Certain work was done by the owner himself, while other work was done by specialized subcontractors. In either case, most of the owner's costs did not reflect the true costs of construction, but represented a discounted cost as the owner used his extensive contacts within the industry to obtain favorable prices from subcontractors and materials suppliers.

The county appraiser considered the school impact fee, but determined that this item constituted an off-site nonassessable fee.[60] She also realized that while builder's overhead and profit were included in the economic costs, any entrepreneurial profit would be addressed and included in the final valuation via the sales comparison approach. The appraiser enrolled economic costs for the 2003 lien date construction-in-progress value, which more accurately reflected market costs.

[60] See Assessors' Handbook Section 502, *Advanced Appraisal*, (page 131) for a more detailed discussion of development fees and off-site improvements [www.boe.ca.gov/proptaxes/pdf/ah502.pdf] .

In January 2004, the county appraiser again visited the property and found that construction in progress was 90 percent complete, with the exception being the basement and yard improvements. The owner stated that the interior finish work was being done by outside contractors and that costs expended for calendar year 2003 were $150,000. The county appraiser found this in line with economic costs. She removed the prior 2003 lien date increment of $145,500 and enrolled a 2004 lien date construction-in-progress value of $295,500 ($145,500 + $150,000).

Upon final inspection from the building department, the owner and his family moved into their new home on April 1, 2004. According to the owner, his total cost of construction from phase one through final inspection was $310,000.

The county appraiser informed the owner that the date of completion is the date the property or a portion of it is available for use after final inspection by the appropriate governmental official,[61] in this instance April 1, 2004. Furthermore, the county appraiser advised that on the date of completion, the completed portion of the newly constructed property must be assessed at its full market value. Any subsequent construction, such as finishing the interior of the basement or constructing the barn or in-law quarters, would be considered new construction in progress and continue to be assessed at its market value on the lien date and every lien date thereafter until completion.

The county appraiser used the comparative sales method to estimate a total property value of $800,000. Properties with similar characteristics in the area were selling for $800,000. Raw land parcels of similar size were selling for $300,000. The value of all improvements, including land improvements, was calculated as follows:

$800,000 - $300,000 = $500,000

Use of the comparative sales approach requires no adjustment for countywide school fees since its presence or absence is separately distinguished in this approach.

However, a portion of the $500,000 value reflects the improvements to land previously enrolled. Assuming that the comparable properties have similar characteristics, an adjustment must be made to avoid double assessment of the land improvements. The county appraiser found that the subject's land improvements with a base value of $39,500 as of November 2001 now had a current market value of $50,000 in April 2004.

The base year value of land and improvements was enrolled as follows:

[61] Rule 463(e).

| | |
|---|---|
| 2002 base year value of land | $200,000 |
| 2002 base year value of land improvements | $39,500 |
| | x 1.03904 |
| Adjusted base year value of land in 2004 | $248,850 |
| Current market value of improvements in 2004 | $500,000 |
| Less: Current market value of improvements to land | -50,000 |
| 2004 base year value of improvements | $450,000 |
| Adjusted base year value of land | $248,850 |
| Base year value of improvement | +$450,000 |
| ***Total 2004 Assessed Value*** | $698,850 |

The assessor removed the 2004 lien date construction-in-progress value of $295,500 and also enrolled a new base year value of $450,000 for the house as of the date of completion of the new construction, April 1, 2004.

For the 2004-05 assessment roll, the assessor enrolled a factored base year value of $698,850 for the property. The allocation was $248,850 to land and $450,000 to improvements.

Since the date of completion, April 1, 2004, is in the supplemental window period, the assessor must enroll two supplemental assessments—one for the remaining portion of the current roll year (2003-04) and one for the roll being prepared (2004-05).[62]

***2003-04 First Supplemental Assessment***

| | |
|---|---|
| New Base Year Value of House on April 1, 2004 | $450,000 |
| Less 2003 Lien Date Value for Improvement— Construction in Progress | - 145,500 |
| Net Supplemental Value | $304,500 |

***2004-05 Second Supplemental Assessment***

| | |
|---|---|
| New Base Year Value of House on April 1, 2004 | $450,000 |
| Less 2004 Lien Date Value for Improvements— Construction in Progress | - 295,500 |
| Net Supplemental Value | $154,500 |

The first supplemental covers the period from the date of completion to the end of the 2003-04 roll year (April 1, 2004 through June 30, 2004). Therefore, the assessor enrolled a value of $304,500 on the 2003-04 supplemental roll for the house as of its completion date, April 1, 2004. The second supplemental covers the entire 2004-05 roll year (July 1, 2004 through June 30, 2005). Thus, the assessor enrolled a value of $154,500 on the 2004-05 supplemental roll.

[62] See Assessors' Handbook Section 201, *Assessment Roll Procedures*, page 73, for a discussion of the billing process for supplemental assessments.

# CHAPTER 5: EXCLUSIONS

Article XIII A, section 2 of the California Constitution provides for certain exclusions from the definition of *new construction*. These exclusions, which are implemented by various statutory provisions, preclude the assessment of the qualifying new construction until there is a change in ownership. The property tax incentive for the following exclusions is in the form of a *new construction exclusion*. It is not an exemption. Therefore, the new construction of a qualifying property will not result in either an increase or a decrease in the assessment of the existing property. Some of the exclusions are automatic, while others must be applied for by the property owner.

Since an estimate of full cash value for decline-in-value purposes is made as if the property was exposed for sale, the full cash value should not be reduced by the value of any excluded new construction under the premise that a property being made available for sale would include all segments of the appraisal unit. This analysis is for comparison purposes only when determining the factored base year value or the current market value in order for the county assessor to enroll the lesser value on the lien date. This analysis does not affect the factored base year value nor the status of any previously excluded new construction.

## UNDERGROUND STORAGE TANKS

In 1999, legislation created a new construction exclusion for underground storage tanks. That legislation added section 70, subdivision (e), to provide that where an underground storage tank must be improved, upgraded, or replaced to comply with federal, state, and local regulations on underground storage tanks, the tank work is not considered new construction but is instead considered normal maintenance and repair.

Upgrades to storage tanks may include:

- Retrofitting an existing tank and piping with internal lining, corrosion protections, spill containment, overfill prevent equipment, striker plates, and automatic pump shutdown capabilities.
- Replacing the tank with a new secondary tank system.
- Installing non-petroleum hazardous substance tank systems, like those containing waste oil or chemicals.

In addition, if a structure (or portion) is reconstructed as a consequence of the tank replacement, such reconstruction should also be considered normal maintenance, as long as the reconstruction is timely and is substantially equivalent to the prior structure in size, utility, and function. Any additional construction that is beyond the size, utility, and function of the original structure is not subject to the exclusion and should be valued as new construction.

There is no requirement for the property owner to apply for this exclusion. If permitted work is being performed that appears to meet the definition of this exclusion, the assessor should contact

the taxpayer and determine the nature of the project. A new tank being installed to replace an old tank because of a mandate by a governmental agency would be considered nonassessable maintenance. However, all other new tanks would be assessable new construction.

Tracking the cost of an old tank (and year of acquisition) and the costs of a replacement tank can be problematic. When real property changes ownership subsequent to a tank replacement exclusion, the exclusion no longer applies. Therefore, it is important to keep records sufficient to track and identify tanks that have been reconstructed or replaced, as well as tracking the old and new tank costs. A replacement tank would be reassessed at its value as of the sale or transfer date. If the allocated value attributed to the tank by the new owner on the *Business Property Statement* does not represent fair market value, the assessor should assess the tank using its actual historical cost, accounting for any applicable depreciation.

***Example 5-1***

A tank costs $10,000 in 1990 and is reported on the *Business Property Statement* through 1999. The tank is replaced in 1999 by a tank costing $20,000 because of a federal mandate.

The taxpayer reports on the 2000 *Business Property Statement* the cost of the newer tank and not the cost of the older tank. However, it is the cost of the older 1990 tank that should be used to value the replacement tank until the property undergoes a change in ownership.

## RECONSTRUCTION AFTER A MISFORTUNE OR CALAMITY

The reconstruction of real property that has been damaged or destroyed by misfortune or calamity is not reassessable new construction[63] if the following requirements are met:

1. The property is reconstructed in a timely fashion; and

2. The property after reconstruction is substantially equivalent to the property prior to the damage or destruction. Any reconstruction of real property, or portion thereof, that exceeds the substantial equivalent of the damaged or destroyed property will be deemed to be new construction; only that portion of the reconstruction that exceeds substantially equivalent reconstruction will have a new base year value.[64]

The phrase *reconstructed in a timely fashion* is not defined in section 70. This determination must be made by the assessor based on each set of circumstances. If a taxpayer is precluded from rebuilding for an extended period of time because of delays outside of his or her control, that factor must be considered by the assessor. For example, if a taxpayer cannot rebuild his or her home because the utilities have not been restored, that fact must be taken into account.

Conversely, if there are no external reasons for delay in rebuilding and the taxpayer cannot provide the assessor with a reasonable explanation for an extended delay, the assessor must

[63] Section 70.
[64] Section 70(c).

ultimately make a decision as to when the property no longer qualifies for relief following a misfortune or calamity event.

## STATUTORY PROVISIONS

The Legislature has enacted various statutes with different filing procedures applicable to property that has been damaged or destroyed by a disaster. The purpose of these statutes is to afford financial relief to the owners of property physically damaged or destroyed by an unforeseeable occurrence beyond their control.[65] There are certain prerequisites that must be met before relief is available under any of the disaster relief provisions:

- The property must sustain *physical* damage as opposed to economic devaluation by reason of its proximity to a disaster area.[66]
- The physical damage to the property must be as a result of a sudden misfortune or disaster, not due to damage that occurred gradually over an extended period of time.
- The disaster must not be the fault of the property owner.

Many of the disaster relief provisions are available only under conditions where the Governor has proclaimed a state of emergency. Most commonly in California, the Governor proclaims a state of emergency for the existence of perilous conditions from fires, floods, storms, or earthquakes.[67] All proclamations since 1991 affecting property taxes are posted on the State Board of Equalization's website.[68]

### Section 70

Section 70 provides an exclusion from reassessment for reconstruction of property following a disaster. The provisions do not require an ordinance by the county board of supervisors.

Specific requirements of section 70(c) include:

- The damage may result from any disaster outside the fault of the property owner; there does not have to be a Governor-proclaimed state of emergency.
- The provisions apply only to real property.
- The reconstructed property must be substantially equivalent to the damaged or destroyed property.
- The reconstruction of damaged or destroyed real property must be done timely.

Any reconstruction of real property that exceeds the substantial equivalent of the damaged or destroyed property will be deemed to be new construction, and a new base year value should be established for the newly constructed portion.

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[65] *T. L. Enterprises, Inc. v. County of Los Angeles* (1989) 215 Cal.App.3d 876, 880.
[66] 55 Ops. Cal. Atty. Gen. 412, 413-14 (1972); *Warren A. Slocum v. State Board of Equalization* (2005) 134 Cal.App.4th 969.
[67] Government Code section 8558.
[68] www.boe.ca.gov/proptaxes/pdf/Disasterlist.pdf.

## Section 170

If property has been damaged or destroyed by a disaster, the owner may request that the property be reassessed downward immediately to reflect the diminution in current value resulting from the damage or destruction. This immediate downward reassessment procedure is available only in those counties where the board of supervisors has adopted an ordinance authorizing the disaster relief provisions of section 170.[69]

Specific requirements of the section 170 provisions include:

- The damage or destruction may be the result of a disaster that subsequently caused the Governor to proclaim a state of emergency or it may be the result of other types of disaster.[70]
- The total value of the damage to all taxable property (land, improvements, and personalty) must exceed $10,000.[71]
- An application may be filed with the assessor within the time specified in the county ordinance or within 12 months after the damage or destruction, whichever is later.[72]
- Where no application has been filed by the property owner, an assessor may, within the provisions of an ordinance adopted by the board of supervisors, reassess a qualifying property and then notify the last known owner of the reassessment.[73]
- When there is no general ordinance adopted by the board of supervisors and no application for reassessment is made by the property owner, the assessor may, with the approval of the board of supervisors on a case-by-case basis, reassess a qualifying property and then notify the last known owner of the reassessment.[74]

If damaged property is later restored, repaired, or reconstructed, the property will then be reassessed upward. The newly determined value cannot exceed its prior adjusted base year value, including inflation factoring for the period in which relief for damage was given, even though the fair market value may be higher. However, if the rebuilding of the property results in assessable new construction as defined in Rule 463 (that is, the rebuilt property exceeds the substantial equivalent of the property prior to damage or destruction), a new base year value should be established for the newly constructed portion.

## Sections 172 and 172.1

Sections 172 and 172.1 extend the disaster relief provisions of section 170 to manufactured homes. Unlike section 170, the county board of supervisors does not need to adopt an ordinance to implement the provisions of sections 172 and 172.1.

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[69] As of July 2011, all counties except Fresno County have disaster relief ordinances pursuant to section 170. Section 51(b) provides lien date disaster relief for counties that have not adopted a section 170 ordinance.
[70] Section 170(a)(1).
[71] Section 170(b).
[72] Section 170(a)(3).
[73] Section 170(a).
[74] Section 170(*l*).

Specific requirements of sections 172 and 172.1 include:

- The damage must be the result of a disaster that subsequently caused the Governor to proclaim a state of emergency.[75]
- The replacement manufactured home must be comparable in size, utility, and location with the destroyed manufactured home.[76]
- A manufactured home must be *destroyed* by a disaster. For assessment purposes, this means the manufactured home must have sustained damage in excess of the economic cost to cure the damage, or be declared a *total loss* for insurance purposes.

There are no pro rata tax reduction provisions, and no relief is available where a manufactured home has been only partially damaged. The owner of a destroyed manufactured home is assured that, if he or she replaces the home with a comparable unit, the property taxes or annual vehicle license fee will not suddenly increase.

A claimant whose replacement manufactured home is subject to local property taxation must apply to the assessor for relief. The assessor will enroll the replacement manufactured home at a taxable value calculated as either:

1. If the destroyed manufactured home was subject to local property tax, its taxable value at the time of its destruction; or
2. If the destroyed manufactured home was subject to the vehicle licensing fee, the taxable value that would produce the same amount of property tax as the vehicle license and registration fees due on the destroyed home for the year prior to its destruction.

If the assessor determines that the replacement home is not comparable, in addition to number (1) or (2) above, the assessor will enroll as new construction that portion of the reconstructed or replaced home that exceeds substantial equivalence to the destroyed manufactured home. The value calculated for the replacement home will be adjusted annually by the inflation factor.[77]

If the replacement manufactured home is subject to the vehicle license fee, the Department of Housing and Community Development will handle the fee adjustments necessary to maintain equivalence to the prior license fee or local property tax.

## Section 5825

Section 5825 provides for owners of manufactured homes relief similar to that provided to owners of other taxable property under section 170. Specifically, an owner of a manufactured home that is damaged or destroyed without the owner's fault in an event *not* resulting in a Governor-proclaimed state of emergency is eligible for an immediate pro rata reduction in assessment. However, this relief is available only to manufactured homes classified as personal

[75] Section 172.1(a).
[76] Section 172.1(a). See Assessors' Handbook Section 511, *Assessment of Manufactured Homes and Parks*, for a discussion of comparability of manufactured homes [www.boe.ca.gov/proptaxes/pdf/ah511final.pdf] .
[77] Section 5813.

property and not to those classified as real property pursuant to Health and Safety Code section 18551 (placed on a permanent foundation).

Specific requirements of section 5825 include:

- The reconstruction or replacement of a damaged or destroyed manufactured home must be done timely;[78] and
- The reconstructed or replacement manufactured home must be substantially equivalent to the damaged or destroyed manufactured home.[79]

Any reconstruction or replacement of a manufactured home subject to local property taxation which is not substantially equivalent to the damaged or destroyed manufactured home will be deemed to be assessable new construction, and a new base year value should be established for the newly constructed portion. The sum of the base year value of the damaged or destroyed manufactured home and the value of any assessable new construction will be enrolled as the base year value for the reconstructed or replacement manufactured home.

If a manufactured home subject to the vehicle license fee is destroyed or damaged and is replaced by a substantially equivalent manufactured home subject to local property taxation, the assessor will determine a base year value for the replacement home so that the property taxes levied will be the same amount as the vehicle license fee for the destroyed home for the year prior to its destruction or damage.[80]

## NEW CONSTRUCTION NOT ELIGIBLE FOR DISASTER RELIEF

New construction following damage to real property by a calamity or misfortune is not eligible for disaster relief if the rebuilt improvements are not substantially equivalent to the property prior to damage or destruction.[81] If any portion of the new construction exceeds substantial equivalence to the prior improvement, then that portion will have a new base year value.

***Example 5-2***

A taxpayer owned a 1,200 square-foot residence that was totally destroyed when his property was flooded. He timely replaced the damaged property with a 3,500 square-foot residence.

The additional square footage which exceeded the original 1,200 square-foot structure should be assessed as new construction. The rebuilt structure will have ~~a~~ two base year values. The pre-existing base year value will continue for the 1,200 square-foot portion of the rebuilt structure, and the additional 2,300 square feet will be appraised at market value as of the date of completion and a separate base year value will be established for that portion.

[78] Section 5825(c).
[79] Section 5825(c).
[80] See Chapter 7 for further discussion of new construction for manufactured homes.
[81] Section 70(c).

## Similar Design Type

To be eligible for the new construction exclusion, the replacement property must have the same design type and must be classified on the basis of the same use as the original property. For example, residential properties must be replaced with similar residential properties.

***Example 5-3***

A taxpayer owns a vacation home which is destroyed by a fire. He decides that building a motel on his property in place of his vacation home would be more profitable.

The taxpayer's replacement of the home with a motel is not eligible for disaster relief. The reconstructed property is not substantially equivalent to the property prior to the damage or destruction. Accordingly, the motel is considered new construction.

## Damage Resulting from Neglect

*Misfortune* is commonly understood to signify adversity that happens to one in an unpredictable or chance manner, arising by accident or without the will or concurrence of the person who suffers from it. The terms *misfortune* or *calamity* refer to sudden events associated with natural forces such as hurricanes, floods, and fires. Damage resulting from neglected maintenance would not qualify as misfortune or calamity.

***Example 5-4***

A taxpayer's home is undergoing major renovation and reconstruction as a result of termite and dry rot damage. The taxpayer applied for disaster relief under section 70.

The request for disaster relief under section 70 should be denied. The type of damage incurred was not due to disaster but to neglect and lack of maintenance.

## Damage Over Time

Damage which occurs over a period of time does not meet the definition of property damaged by a disaster or calamity and does not qualify for relief.

***Example 5-5***

The property owners of a golf course began using reclaimed water to irrigate the greens. It was soon determined that the reclaimed water contained a high level of sodium that was damaging the grass and plants. The property owners spent $2,000,000 on extensive rehabilitation, renovation, and modernization which included a new drainage and irrigation system, new cart paths and path bridges, tree removal, and a complete reworking of course tees, fairways, bunkers, and greens.

The damage occurred gradually and over a period of time as the sodium accumulated in the soil. Therefore, the event that caused the damage does not qualify as a misfortune or calamity. The reconstruction to the property constitutes assessable new construction and should be appraised at market value and a new base year value established.

# SEISMIC SAFETY

Article XIII A of the California Constitution was amended[82] to combine two former new construction exclusions for seismic retrofitting. Section 74.5 provides a new construction exclusion for the addition of any seismic retrofitting components to existing buildings and structures. The provisions of section 74.5 do not apply to any seismic retrofitting components of an entirely new structure.

## SEISMIC RETROFITTING IMPROVEMENTS

*Seismic retrofitting components* include both seismic retrofitting improvements and improvements using earthquake hazard mitigation technologies. In order to exclude seismic retrofitting improvements from assessment the improvements must fit into one of the following classifications:

- Retrofitting or reconstructing to abate falling hazards that pose serious danger.
- Structural strengthening.
- Improvements resisting seismic force levels during an earthquake to significantly reduce the hazards to life and safety and also provide safe entry and exit during and immediately after an earthquake.

Seismic retrofitting improvements do not include alterations, such as new plumbing, electrical, or other added finishing materials, completed in addition to seismic-related work.[83]

*Improvements utilizing earthquake hazard mitigation technologies* are improvements to existing buildings identified by a local government as being hazardous to life in the event of an earthquake.

## FILING REQUIREMENTS

To receive the new construction exclusion, a property owner must notify the assessor prior to, or within 30 days of, completion of the project that he or she intends to claim the exclusion. Additionally, all documents needed to support the claim must be filed no later than six months after completion of the project.

It is the responsibility of the property owner, primary contractor, civil or structural engineer, or architect to certify to the building department those portions of a project that are seismic retrofitting components pursuant to section 74.5. Upon completion of the project, the building department is to report to the assessor the costs of those portions of the project meeting this definition.

[82] Proposition 13, June 8, 2010; SCA 4, Stats. 2008, Res. ch. 115.
[83] Appendix A of the *International Existing Building Code* of the International Code Council.

To receive the new construction exemption for seismic retrofitting construction, the taxpayer must file a claim form[84] with the assessor in the county where the property is located.

### CHANGE IN OWNERSHIP

When a property that has been granted a seismic retrofitting exclusion undergoes a change in ownership, the entire property, including the previously excluded new construction, is reassessed at its current full cash value as of the date of transfer. The new construction exclusion is available only to the property owner who completes the construction; it is not passed along to subsequent owners.

## FIRE SPRINKLERS

Installation in an existing building or structure of any fire sprinkler system, fire detection system, fire-related egress, or other fire extinguishing system is excluded from the definition of new construction or newly constructed real property and is precluded from additional property tax assessment.[85]

Section 74(c) defines the following terms:

1. *Fire sprinkler system* is any system intended to discharge water for the purpose of suppressing or extinguishing a fire, and includes a fire sprinkler system that derives its water from the domestic water supply of the building or structure of which it is a part.

2. *Other fire extinguishing systems* is any system intended to suppress or to extinguish a fire other than by discharging water upon the fire and includes, but is not limited to:

   - A component or application that is made part of the heating, ventilating, or air-conditioning system of a building or structure; or
   - A wet or dry chemical system.

3. *Fire detection systems* is any system or appliance intended to detect combustion, or the products thereof, and to activate an alarm or signal, whether audio, visual, or otherwise, including all equipment used to transmit fire alarm activations and related signals to a remote location.

4. *Fire-related egress improvement* is any improvement intended to do either of the following:

   - Provide a new or improve an existing fire escape; or
   - Provide a means of safeguarding or improving the safety of individuals who cannot evacuate a structure at the time of a fire emergency.

[84] Form BOE-64, *Claim for Seismic Safety Construction Exclusion from Assessment.*
[85] Section 74.

***Example 5-6***

The owners of Internet Data Center (IDC) installed new fire extinguishing and fire suppression systems in an existing building. The operation of IDC requires specialized electrical wiring, fiber optic communications, security systems, security cages, and uninterruptible power supplies to store and service the computer systems. The new fire detection and extinguishing systems were specially designed to suppress fires without damaging the sensitive electronic components and the electrical and fiber-optic wiring.

The new fire detection and suppression system should be excluded from assessment as new construction pursuant to the section 74 exclusion.

Section 74 excludes fire suppression systems and equipment that protect people, structures, fixtures, and personal property. The intent of the exclusion when approved by the voters and the Legislature in 1985 was to provide an incentive for owners of existing buildings or structures to install fire suppression and detection systems by providing a shield against any increase in property taxes. The new construction exclusion is available only to the property owner who completes the construction; it is not passed along to subsequent owners.

***Example 5-7***

A taxpayer purchases a fire detection system from an alarm company and it was attached to the taxpayer's building. The detection system was still controlled by the alarm company.

Agreements between the company installing a detection system and a property owner do not control the classification of the property. The fire detection system is real property and cannot be assessed as personal property. No portion of a fire detection system is considered personal property by reason of being owned or controlled by a person other than the owner of property upon which the fire detection system was constructed or installed.[86]

Any fire detection system that is physically annexed to improvements with the intent that it remains annexed indefinitely is considered real property and cannot be assessed as personal property. The value of such systems is to be attributed to the real property, and is to be excluded from assessment as new construction. The increase in value attributable to construction of these systems is not subject to property taxation until a change in ownership occurs.

Whether the taxes are paid indirectly through agreements with the alarm company or directly by the building owner, either through tax payment contracts or increased charges, the intent of the exclusion is that the building owner not incur any additional costs because of installation of a fire detection system.

[86] Section 74(c)(3).

# DISABLED ACCESS

Proposition 110[87] authorized the Legislature to exclude from the term *newly constructed* certain construction, installation, or modifications made for the purpose of making a dwelling that is eligible for the homeowners' exemption more accessible to a severely disabled person. The Legislature codified this provision by adding section 74.3 to the Revenue and Taxation Code.

Proposition 177[88] expanded this exclusion to include all other buildings or structures. Section 74.6, which implements Proposition 177, applies to all existing buildings or structures *except* those dwellings eligible for exclusion under section 74.3.

## PRINCIPAL PLACE OF RESIDENCE

Construction, installation, or modification of any portion or structural component of an existing single- or multiple-family dwelling is excluded from the definition of new construction if the construction is for the purpose of making the dwelling more accessible to a severely and permanently disabled person who is a permanent resident of the dwelling.[89]

To qualify for this exclusion the following conditions must be met:

- The dwelling must be eligible for the homeowners' exemption;
- New construction on existing dwellings must be completed on or after June 6, 1990; and
- The work performed must be for the purpose of making the dwelling more accessible to a severely and permanently disabled person who is a permanent resident of the dwelling.

*Accessible* is defined to mean the combination of elements with regard to any dwelling that provides for access to, circulation throughout, and the full use of the dwelling and any fixture, facility, or item therein.[90]

*Severely and permanently disabled person* is defined as any person who has a physical disability or impairment, whether from birth or by reason of accident or disease, that results in a functional limitation as to employment or substantially limits one or more major life activities of that person, and that has been diagnosed as permanently affecting the person's ability to function, including, but not limited to, any disability or impairment that affects sight, speech, hearing, or the use of any limbs.[91] New construction associated with mental or emotional disabilities does not qualify for the exclusion under this section. However, any construction associated with physical impairment resulting from mental or emotional disabilities may qualify for this exclusion.

[87] Approved by California voters on June 5, 1990.
[88] Approved by California voters on June 7, 1994.
[89] California Constitution, article XIII A, section 2(c)(3); section 74.3(a).
[90] Section 74.3(c).
[91] Section 74.3(b).

The exclusion provided by section 74.3 does not apply to the construction of an entirely new dwelling.[92] Only improvements or features that specially make an existing dwelling more accessible to a disabled resident may be excluded. The value of any other improvement, addition, or modification is not excluded from assessment unless it is merely incidental to the qualified improvements or features.

The construction of an entirely new addition, such as a bedroom or bath, that duplicates existing facilities in the dwelling that are not otherwise available to the disabled resident solely because of his or her disability will be deemed to make the dwelling more accessible.

***Example 5-8***

A taxpayer is severely and permanently disabled and confined to a wheelchair. He constructs a new addition to his home with special features specific to individuals confined to wheelchairs. The new construction includes extra wide doors and specially designed bathroom facilities.

The new construction is eligible for section 74.3 exclusion.

The new construction exclusion applies only to making a dwelling's existing fixtures, facilities, or items in the home more accessible to a disabled person. However, the Legislature intended to include the construction of certain new additions.

The concept of making *full use of the dwelling* is defined as making it more accessible.[93] If any portion of the home is inaccessible by a disabled resident, then the construction of an addition which makes the home more accessible falls within the category of providing for the *full use of the dwelling*.

The exclusion can be applied where entirely new additions (such as a bedroom and bathroom) are constructed to allow the disabled resident to replace the use of certain portions of the home to which they did not have prior access. It is within the judgment of an assessor inspecting additions or modifications for which a claim under this section is made to establish that the new construction was in fact made for the purpose of making the dwelling more accessible to a disabled resident. Any new construction which is not merely incidental to the qualified improvements is assessable.

The following are examples of modifications undertaken to accommodate a disabled resident and to provide for the full use of a dwelling:

- Kitchen remodeled to accommodate a disabled resident in a wheelchair (new cabinets, lower kitchen countertop, new kitchen appliances, and removed kitchen island).
- Enlarged doorways and installed ramps to accommodate wheelchair access.

[92] Section 74.3(e).
[93] Section 74.3(c).

- Addition of ramps, handrails, ingress and egress improvements, elevated stair lifts, and elevators either within or attached to the existing dwelling.
- Conversion of an existing family room into a bedroom and the addition of a wheelchair accessible bathroom.
- Garage conversion into bedroom and bathroom for a disabled person.
- Addition of a bedroom and bathroom for a disabled person.

The following examples do not qualify for the exclusion from new construction:

- Construction of an entirely new dwelling. However, the added value of any features in the home which specially adapt the home for use by a disabled person (for example, wider doorways, enlarged bathroom facilities, rails, or ramps) would be excluded from new construction.
- Pool or spa added under physician's orders. However, any special features or customization necessary in the pool or spa to make it more accessible to the disabled resident would be excluded from new construction.
- Enlargement of the living room where the additional space was not for the purpose of accommodating the disabled resident.
- The addition of a family room to a home which previously did not have one.

## Change in Ownership

When a property that has been granted a disabled access exclusion undergoes a change in ownership, the entire property, including the previously excluded new construction, is reassessed at its current full cash value as of the date of transfer. The new construction exclusion is available only to the property owner who completed the construction; it is not passed along to subsequent owners.

The benefits under section 74.3 are in the form of an exclusion from new construction, not an exemption from new construction. Therefore, once granted the exclusion remains in effect until the property changes ownership.

***Example 5-9***

In September 2008, a taxpayer completed modifications to his principal place of residence to accommodate access by his minor daughter who is disabled. The taxpayer filed for and was granted the new construction exclusion under section 74.3. In December 2010, the taxpayer and his daughter moved from the modified home to another principal place of residence. The original property is now a rental property.

Since the original property has not undergone a change in ownership, the new construction excluded in 2010 cannot be reassessed by the assessor simply because the disabled person no longer resides in the home.

### Filing Requirements

Certain filing requirements must be followed to receive the new construction exclusion for disabled persons.[94] The disabled person, his or her spouse, or his or her legal guardian must submit both of the following statements:[95]

1. A statement signed by a licensed physician or surgeon, of appropriate specialty, which certifies that the person is severely and permanently disabled and identifies specific disability-related requirements necessitating accessibility improvements or features;[96] and

2. A statement by the claimant that identifies the construction, installation, or modification that was in fact necessary to make the dwelling more accessible to the disabled person.[97]

The assessor may charge a fee to the disabled person, or his or her spouse, or legal guardian sufficient to cover the cost of processing and administering the claim.[98]

## Buildings Other Than Principal Place of Residence

Construction which includes the installation, removal, or modification of any portion of an existing building to make it more accessible or more usable to a disabled person is excluded from assessment as new construction.[99] The exclusion does not apply to the construction of an entirely new building or structure, or to the construction of an entirely new addition to an existing building or structure.

To qualify for the new construction exclusion provided by Section 74.6, the following conditions must be met:

- The new construction must be completed on or after June 7, 1994;
- The new construction must be for the purpose of making the building more accessible to, or more usable by, a disabled person;
- The new construction must be made to an existing building;
- Newly constructed buildings or entirely new additions to existing buildings do not qualify;
- The new construction must not qualify for the new construction exclusion provided by section 74.3 (principal place of residence); and
- Only new construction associated with physical impairments is eligible for this exclusion. New construction associated with mental or emotional disabilities does not qualify for the exclusion under this section. However, any construction associated with physical impairment resulting from mental or emotional disabilities may qualify for this exclusion.

[94] Section 74.3.
[95] Section 74.3(f).
[96] Form BOE-62-A, *Certificate of Disability.*
[97] Form BOE-63, *Disabled Persons Claim for Exclusion of New Construction.*
[98] Section 74.3(g).
[99] Section 74.6.

## Types of Improvements

Types of qualifying construction, improvements, modifications, or alterations of an existing building or structure include:[100]

- Access ramps,
- Widening of doorways and hallways,
- Barrier removal and access modifications to restroom facilities,
- Elevators, and
- Any other accessibility modification of a building or structure that would cause it to meet or exceed the accessibility standards of the 1990 Americans with Disabilities Act (Public Law 101-336) and the most recent edition to the California Building Standards Code that is in effect on the date of the application for a building permit.

## Filing Requirements

The property owner, primary contractor, civil engineer, or architect must submit to the assessor a statement that identifies those specific portions of the project that constitute construction, installation, removal, or modification improvements to the building or structure to make the building or structure more accessible to, or usable by, a disabled person.[101]

In order to receive the new construction exclusion, the property owner must notify the assessor prior to or within 30 days of completion of a project. All documents necessary to support the exclusion from new construction must be filed[102] by the property owner with the assessor no later than six months after the completion of the project.[103]

***Example 5-10***

A department store chain remodeled three of its stores. The plan calls for widening doorways, constructing access ramps for wheelchairs, and modifying restrooms to improve accessibility for their disabled customers. All remodeling work took place within the existing buildings. However, in one store the company decided that it was more cost-effective to build a new restroom facility attached to the building rather than convert the existing one.

The new construction for all work related to improving access for disabled persons should be excluded for reassessment, except the construction of the new restroom. The construction of the new restroom should be valued at market value and a base year value established.

[100] Section 74.6(f).
[101] Section 74.6(e).
[102] Form BOE-63-A, *Claim for Disabled Accessibility Construction Exclusion from Assessment.*
[103] Section 74.6(g).

## ACTIVE SOLAR ENERGY SYSTEM

An *active solar energy system* is defined as:

> . . . a system that, upon completion of the construction of a system as part of a new property or the addition of a system to an existing property, uses solar devices, which are thermally isolated from living space or any other area where the energy is used, to provide for the collection, storage, or distribution of solar energy.[104]

Article XIII A, section 2(c)(1) of the California Constitution, implemented by section 73, provides that the construction or addition of any active solar energy system is excluded from the definition of assessable new construction. This exclusion is scheduled to remain in effect only until January 1, 2017.[105] Active solar systems that qualify for exclusion prior to January 1, 2017 will continue to be excluded until there is a subsequent change in ownership.[106]

Active solar energy systems may be installed in several application environments, including but not limited to:

- Residential
- Commercial
- Industrial
- Agricultural
- Government
- Exempt organizations

An active solar energy system may be used for any of the following:[107]

- Domestic, recreational, therapeutic, or service water heating
- Space conditioning
- Production of electricity
- Process heat
- Solar mechanical energy

An active solar energy system includes storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items. *Parts* include spare parts that are owned by the owner of, or maintenance contractor for, an active solar energy system for which the parts were specifically purchased, designed, or fabricated for installation in that system.

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[104] Section 73(b)(1).
[105] Section 73(i).
[106] See the *Guidelines for Active Solar Energy Systems New Construction Exclusion* for a detailed discussion of the new construction exclusion for solar energy systems.
[107] Section 73(b)(3).

In general, the use of solar energy in the production of electricity involves the transformation of sunlight into electricity through the use of devices such as solar cells or toner collectors. However, an active solar energy system includes only equipment used up to, but not including, the stage of the transmission of use of the electricity.[108] Therefore, storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items are excluded from assessment as new construction. In addition, pipes, ducts, furnaces, and hot water heaters that are used exclusively to carry energy derived from solar energy are also excluded from assessment as new construction.

An active solar energy system does not include:

- Solar swimming pool heaters
- Hot tub heaters
- Passive energy systems
- Wind energy systems

An active solar energy system does not include auxiliary equipment, such as furnaces or hot water heaters, which use a source of power other than solar energy to provide usable energy. Dual-use equipment, such as ducts and hot water tanks used by both auxiliary equipment and solar energy equipment, is considered active solar energy system property only to the extent of 75 percent of its full cash value.

***Example 5-11***

A company constructs a solar energy facility that includes solar energy panels, connection equipment, and a building that houses the control panels. The company claimed the entire facility, including storage facilities and fences, should be excluded from assessment.

New construction of the active solar energy system should be excluded from assessment. However, the property used in conjunction with the system, such as the storage buildings and fences, constitutes assessable new construction.

***Example 5-12***

The owner of a gas station installed a carport over existing parking spaces for the convenience of his customers and installed active solar panels on top of the carport. The property owner claimed the solar panels and the carport were exempt from assessment as new construction.

The construction of a carport that has active solar panels installed on its roof is not excluded from assessment unless the carport itself is part of the active solar energy system. In this example, the carport is not part of an active solar energy system but rather serves as the mounting point for the solar panels. Further, the carport appears to serve the primary function

[108] Section 73(c)(1)(B).

of providing shade and shelter for customers rather than being a functioning part of an active solar energy system.

### FILING REQUIREMENTS

Section 73 was amended[109] to allow the new construction exclusion of the active solar energy system to be conveyed to the first buyer of a new building containing such a system, if the following conditions are met:

- The owner-builder does not intend to occupy or use the building;
- The owner-builder had not previously claimed the active solar energy system new construction exclusion;
- The first buyer purchases the building prior to it becoming subject to reassessment to the owner-builder, as prescribed in subdivision (d) of section 75.12 (a discussion of this section follows in the Builders' Exclusion section); and
- The first buyer files the appropriate claim form with the assessor.[110]

If the builder is fully assessed for the property on the lien date following the date of completion of the new construction and the initial purchaser buys the property after the lien date, the initial purchaser would not be eligible for the active solar energy system new construction exclusion.

***Example 5-13***

A home with an active solar energy system is completed on November 15, 2009, and the new construction of the home is 100 percent complete on the lien date for purposes of determining the assessed value of the property for the 2010-2011 regular roll.

If the home sold on or before December 31, 2009, the initial purchaser *would* be eligible for the new construction exclusion for the solar energy system. If the home did not sell until after the lien date, for example on January 2, 2010, the initial purchaser *would not* be eligible for the new construction exclusion for the solar energy system because the builder would receive the exclusion as of the lien date.

## BUILDERS' EXCLUSION

When real property is being constructed, the assessor must determine the fair market value of the portion of the property that is under construction at each lien date. When the construction is complete, the assessor determines the fair market value of the newly constructed property. Section 71 states:

> . . . New construction in progress on the lien date shall be appraised at its full value on such date and each lien date thereafter until the date of completion, at which time

[109] Assembly Bill 1451, Stats. 2008, ch 538.
[110] Form BOE-64-SES, *Initial Purchaser Claim for Solar Energy System New Construction Exclusion.*

the entire portion of property which is newly constructed shall be reappraised at its full value.

For construction in progress on the lien date, generally it is the builder who is responsible for the property taxes. Section 75.12 implements the exclusion from supplemental assessment commonly known as the *builders' exclusion*. The exclusion allows builders to avoid reassessment of their inventories and defers the date of assessment of new construction. The exclusion is automatic and no notice is required if all three of the following conditions are met:[111]

1. The property is subdivided into five or more parcels in accordance with the Subdivision Map Act, or any successor to that law;
2. The map describing the parcels has been recorded; and
3. 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.

Alternatively, a builder can notify 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.[112] Failure to qualify for this exclusion either automatically or by providing notice to the assessor will result in a reassessment of the property on the date the construction is completed. Therefore, within 30 days of commencement of construction, the builder/owner must determine if he or she is required to give notice to the assessor or if the automatic exclusion applies.

For the builders' exclusion, new construction is considered completed at the date upon which 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.[113] Property is not considered occupied if the occupancy or use is in conjunction with an offer for a change of ownership, such as use of the property as a model home.[114]

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

[111] Section 75.12(a)(1)(B).
[112] Section 75.12(a)(1)(A).
[113] Section 75.12(b)(1).
[114] Section 75.12(b)(2).

# CONTAMINATED PROPERTIES

Article XIII A, section 2(i) of the California Constitution provides for the transfer of the base year value of qualified contaminated property to a replacement property, and excludes from the definition of new construction any repairs to or replacement of property necessary to remediate environmental problems on qualified contaminated property. A *qualified contaminated property* is real property that has been rendered uninhabitable or unusable by the presence or remediation of environmental problems and is located on a site that a state or federal agency has designated as a toxic or environmental hazard or as an environmental clean-up site.[115]

## STATUTORY PROVISIONS

New construction does not include the repair or replacement of a substantially damaged or destroyed structure on qualified contaminated property where the remediation of the environmental problems required the destruction of, or resulted in substantial damage to, a structure located on that property.[116] The repaired or replacement structure must be similar in size, utility, and function to the original structure. This exclusion is specific to structures and is not applicable to land.

Section 74.7(b) defines the following terms:

- *Substantially damaged or destroyed* means the structure sustains physical damage amounting to more than 50 percent of its full cash value immediately prior to the damage.
- *Similar in function* means the replacement structure is subject to similar governmental restrictions, including, but not limited to, zoning.
- *Similar in size and utility* means the size and utility of the structure are interrelated and associated with its value. A structure is similar in size and utility only to the extent that the replacement structure is, or is intended to be, used in the same manner as the substantially damaged or destroyed structure, and its full cash value does not exceed 120 percent of the full cash value of the replaced structure if that structure was not contaminated. For these purposes:
    - A replacement structure or any portion thereof used or intended to be used for a purpose substantially different than the use made of the replaced structure, shall, to the extent of the dissimilar use, be considered not similar in utility.
    - A replacement structure, or portion thereof, that satisfies the use requirement but has a full cash value that exceeds 120 percent of the full cash value of the structure if that property were not contaminated will be considered, to the extent of the excess, not similar in utility and size.

[115] California Constitution, article XIII A, section 2(i)(2).
[116] Section 74.7(a).

To the extent that replacement property (or any portion) is not similar in function, size, and utility, the property (or portion) will have a new base year value established.[117]

Only the owner of the property substantially damaged or destroyed in the process of remediation of the contamination, whether one or more individuals, partnerships, corporations, and other legal entities (or a combination) will receive property tax relief under this section.[118]

## NEWLY CONSTRUCTED REPLACEMENT PROPERTY

The assessment of new construction on contaminated property presents unique challenges within the context of Proposition 13 and current property tax law. The situations that arise are as varied as the types of properties that become contaminated. Furthermore, the remediation activities range from basic containment to elaborate cleanup followed by monitoring procedures and measures to prevent future contamination.

The issues facing assessors include:

1. Whether or not remediation work is considered assessable new construction; and
2. Valuation of the new construction.

When assessing land, an assessor must consider the effect upon value of any enforceable land use restrictions.[119] The restrictions include, but are not limited to:

- Environmental constraints applied to the use of land; and
- Hazardous waste land use restrictions.[120]

If a property is subject to statutorily imposed environmental constraints, an assessor is required to consider such constraints in valuing the property. When the use of land has thus been restricted which reduces the property's value below the value on the roll, an assessor must reassess the land on the lien date following the adoption or imposition of the restriction.

It is rebuttably presumed that an owner of real property participated or acquiesced in rendering the real property uninhabitable or unusable if that owner is related to any individual or entity that committed that act in any of the following ways:[121]

- The owner is a spouse, parent, child, grandson, grandchild, or sibling of that individual;
- The owner is a corporate parent, subsidiary, or affiliate of that entity;
- The owner has control of that entity; or
- The owner is owned or controlled by that entity.

[117] Section 74.7(b)(4).
[118] Section 74.7(c).
[119] Section 402.1(a).
[120] Health and Safety Code section 25240.
[121] California Constitution, article XIII A, section 2(i)(3).

If this presumption is not overcome, the owner may not receive the relief from property taxes.

In determining whether remediation is assessable new construction, an assessor must consider the following:

- Whether the remediation constitutes an addition to the property. Any addition to real property which does not have an applicable exclusion should be considered assessable new construction.[122] The addition must be substantial.[123] The addition of a new element is considered assessable new construction.[124]
- Whether the remediation alters the property. Any alteration of land or of any improvement (including fixtures) since the last lien date which constitutes a major rehabilitation of the property or which converts it to a different use is considered assessable new construction.[125] Rule 463(b)(2) and (b)(3) interpret that statutory provision for land and improvements, respectively, as follows:
    - The alteration to land is substantial and constitutes a major rehabilitation or changes the property's use.
    - The alteration to an improvement converts the improvement to the substantial equivalent of a new structure or changes its use.
- Whether the remediation is part of normal maintenance or repair. Normal maintenance and repair are excluded from alterations that qualify as assessable new construction.[126]
- Whether the remediation is excludable. While there are several statutory exclusions available, the most relevant is the environmentally contaminated property exclusion provided for by section 74.7.
- Whether there has been an intervening change in ownership. A different treatment of remediation (that would have qualified for the section 74.7 exclusion) is required if the property has a change in ownership after the contamination but before the remediation.[127] Property that was uninhabitable or unusable, and the environmental problem was known to the owner at the time of acquisition or construction, does not qualify for exclusion.[128]

***Example 5-14***

A paint manufacturing facility had a discharge of industrial solvents on its property. As part of the remediation, and in order to contain the spill and prevent contamination from

[122] Section 70(a)(1).
[123] Rule 463(b)(1).
[124] Section 70(a)(1); Rule 463.
[125] Section 70(a)(2).
[126] Rule 463(b)(4).
[127] California Constitution, article XIII A, section (2)(i).
[128] California Constitution, article XIII A, section 2(i).

spreading to the surrounding areas, the facility was required to construct a retaining wall and to install several monitoring wells.

The addition of the retaining wall and monitoring wells, which did not previously exist on the property, qualify as assessable new construction. The assessor must determine the market value of the new construction and establish a base year value.

In determining whether an alteration to land constitutes a major rehabilitation, the law and the courts fail to provide a bright line test as to how much remediation work must be completed to qualify as major rehabilitation. When remediation to land merely restores that land to its original size, utility, and function, it does not meet the standard of major rehabilitation and, therefore, is not assessable new construction. Instead, such restorative remediation might be considered maintenance or repair.[129]

***Example 5-15***

A paint manufacturing facility is required to clean up contaminated soil. This entails removing the contaminated soil and replacing it with clean fill.

Normally, adding new landfill is considered a substantial addition to land and may be considered assessable new construction.[130] However, adding the landfill in this case is not an addition of something that had not existed before but rather replacing something removed and should not be considered assessable new construction.

***Example 5-16***

A paint manufacturing facility sustained significant contamination and sold the property before any remediation work started. The new owner acquired the facility at a discounted price in consideration of costs that would be necessary to clean up the facility.

Since the new owner had knowledge of the contamination at the time of purchase and it sold at a discount, the new constructions exclusions are not available.[131]

## VALUATION PROCEDURES

When the discovery of contaminated property and the full remediation is accomplished within a single year, the appraisal is straight forward and there is no need to adjust the base year value. On the other hand, when it is known on the lien date that the property was contaminated and remediation has not begun, then the property may be eligible for a Proposition 8 decline in value.[132] If a structure is removed and the reconstruction does not start until after the next lien date, the removal of the structure should be reflected on the supplemental roll.

[129] Rule 463(b)(4).
[130] Rule 463(b)(1).
[131] Section 2(i)(2)(A) of article XIII A of the California Constitution.
[132] *Firestone Tire & Rubber Co. v. Monterey County*, (1990) 223 Cal.App.3d 382.

The California Constitution provides protection for property owners whose property is destroyed by health and life threatening toxic waste buried on their property.[133] Although there are no specific statutory provisions, it is reasonable to assume that upon the completion of a replacement structure or reconstruction of an original structure that had been rendered unusable or uninhabitable by contamination, the factored base year value of the original structure should be reinstated, similar to the provisions following a disaster or calamity.[134]

## DATE OF COMPLETION

Many hazardous waste cleanup projects are long-term operations. Some projects take years or decades of continuous cleanup and rehabilitation work. Moreover, in some cases a complete rehabilitation of the property may never be achieved. The difficulty for an assessor is determining the date of completion of cleanup and rehabilitation work.

The date of completion of new construction for assessment purposes for a hazardous waste cleanup project is the date on which the property is deemed operational and functional.[135] A remedy becomes *operational and functional* the earliest of either:

- One year after construction is completed; or
- When the remedy is determined concurrently by the California Environmental Protection Agency and Department of Toxic Substances Control to be functioning properly and performing as designed.

Therefore, communicating with the lead agency about a project and its progress will be necessary to establish whether a remedial action has been deemed operational and functional.

## ONGOING OPERATIONS AND MAINTENANCE

Once a project is operational and functional, and it has entered the *operation and maintenance*[136] phase, any further additions or alterations must be analyzed individually to see whether they constitute assessable new construction. However, assessors should presume that work during this phase is normal maintenance of the project and not new construction. Only when there is an addition or alteration which substantially heightens the rehabilitation, rather than just maintaining it, should operation and maintenance activities be considered assessable new construction.

## FILING REQUIREMENTS

In order to receive the new construction exclusion for contaminated property, the property owner must notify the assessor in writing that he or she intends to claim the exclusion prior to or within 30 days of completion of a project. All documents necessary to support the exclusion must be

[133] Article XIII A, section 2(i).
[134] Section 69.3.
[135] 40 Code of Federal Regulations, section 300.435, subdivision (f)(2).
[136] Health and Safety Code section 25318.5. *Operation and maintenance* means those activities initiated or continued at a hazardous substance release site following completion of a response action that are deemed necessary by the department or regional board in order to protect public health or safety or the environment.

filed by the property owner with the assessor no later than six months after completion.[137] A claimant is not eligible for the exclusion unless the claimant provides to the assessor the following information:[138]

1. Proof that the claimant did not participate in, or acquiesce to, any act or omission that rendered the real property uninhabitable or unusable or is related to any individual or entity that committed that act or omission;

2. Proof that the qualified contaminated property has been designated as a toxic or environmental hazard or as an environmental cleanup site by an agency of the State of California or the federal government;

3. The address and the assessor's parcel number (if known) of the qualified contaminated property; and

4. The date of the claimant's purchase and the date of completion of the new construction.

[137] Form BOE-65-CP, *Claim for Transfer of Base Year Value from Qualified Contaminated Property to Replacement Property*.
[138] Section 74.7(d).

# CHAPTER 6: BASE YEAR VALUE TRANSFERS

There are various instances when a base year value for a property can be transferred to a newly constructed replacement property. They include provisions regarding the transfers for:

- Property owned by persons 55 years or older or permanently and severely disabled
- Property acquired under eminent domain proceedings
- Property damaged or destroyed in a calamity or disaster
- Property in a contaminated state

## 55 AND OVER/PERMANENTLY DISABLED

Since 1986, there have been three amendments to article XIII A of the California Constitution affecting the transfers of base year values for senior citizens and disabled persons. The implementing statute for the three amendments is section 69.5. Briefly, these amendments to article XIII A were as follows:

*Proposition 60*, passed in November 1986. This proposition allows persons over age 55, who transfer their residence and buy or build a replacement residence of equal or lesser value[139] in the same county within two years, to transfer the old residence's base year value to the new residence.

*Proposition 90*, passed in November 1988. This proposition extends the relief allowed by Proposition 60 to replacement residences located in a different county from the original residence,[140] if the county of the replacement residence has adopted an ordinance participating in the intercounty transfer program.[141]

*Proposition 110*, passed in June 1990. This proposition further extends the relief allowed by Propositions 60 and 90 to severely and permanently disabled persons, permitting them to transfer the base year values of their original residences to replacement residences of equal or lesser value under specified circumstances.

### STATUTORY PROVISIONS

Section 69.5 allows a homeowner to transfer the existing base year value to a replacement dwelling under the following conditions:

- If the replacement property is located in a different county than the original property, the county in which the replacement dwelling is located must have a current ordinance allowing base year value transfers from other counties.

[139] As defined in section 69.5(g)(5).
[140] As defined in section 69.5(b)(2).
[141] A listing of counties that have adopted ordinances implementing the section 69.5 provisions is posted on the Board's website at www.boe.ca.gov/proptaxes/faqs/propositions60_90.htm.

- As of the date of sale of the original property, the claimant or the claimant's spouse must be at least 55 years of age or severely and permanently disabled. There is no age requirement for persons who are severely and permanently disabled.

- Neither the claimant nor the claimant's spouse has previously been granted the property tax relief provided by section 69.5. The sole exception to this requirement is if relief was first granted for age, relief can be granted a second time if the claimant or claimant's spouse subsequently becomes severely and permanently disabled, and has to move because of the disability.

- The original property was eligible for the homeowner's exemption or the disabled veterans' exemption either at the time it was sold or within two years of the purchase or new construction of the replacement dwelling.

- As a result of its transfer, the original property must (1) be subject to reappraisal at its current full cash value in accordance with sections 110.1 or 5803; or (2) receive a base year value determined in accordance with section 69 (intracounty disaster relief), section 69.3 (intercounty disaster relief), or section 69.5 because the original property qualified as a replacement property under one of those sections.

- The replacement dwelling is purchased or newly constructed within two years of (before or after) the sale of the original property.

- The replacement dwelling must be eligible for the homeowner's exemption or the disabled veterans' exemption at the time the claim is filed.

- The replacement dwelling must be of equal or lesser value as compared to the original property. This means that the full cash value of the replacement dwelling on the date of purchase or completion of new construction must not exceed:

  (1) **100 percent** of the full cash value of the original property as of the date of sale, if the replacement dwelling is purchased or newly constructed prior to the date of sale of the original property;

  (2) **105 percent** of the full cash value of the original property as of the date of sale, if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property; or

  (3) **110 percent** of the full cash value of the original property as of the date of sale, if the replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

  The full cash value of the original property includes any inflationary factoring that occurs between the sale of the original property and the purchase of the replacement dwelling. The full cash value of the replacement dwelling does not include any inflationary factoring.

- If the original property was substantially damaged or destroyed by misfortune or calamity and sold in its damaged state, the full cash value is determined immediately prior to the misfortune or calamity.

## NEWLY CONSTRUCTED REPLACEMENT PROPERTY

For a claimant to receive relief under section 69.5, the construction of the new residence must be completed within two years of the sale of the original property; the full cash value of the land and the new structure must be determined as of the date of completion.[142] The date of completion of new construction is the date upon which the property has been inspected and approved for occupancy by the local building department.[143]

However, a claimant who purchases replacement land more than two years before the sale of the original property, but completes construction of the residence within two years of the sale of the original property, is eligible for the benefit, provided that the other statutory requirements are met. The full cash value of the lot and improvements as of the date of completion of new construction must be equal to or less than the full cash value of the original property as of the date of sale. If construction is not completed within two years, regardless of the reason, the property will not qualify for relief under section 69.5.

If new construction is completed on an existing replacement dwelling (such as a room addition, garage, or pool) *after* the filing and granting of a claim for base year value transfer, the benefits of section 69.5 may be extended to new construction if all of the following conditions are met:[144]

- The new construction is completed within two years of the date of sale of the original property;
- The owner notifies the assessor in writing within six months after completion of the new construction; and
- The full cash value of the new construction on the date of completion plus the full cash value of the replacement dwelling on the date of acquisition is not more than the adjusted new base year value of the original property determined when the claim was granted.

This does not apply to a situation where a replacement dwelling is purchased and the base year value transferred, and then subsequently the property owner demolishes the home and builds a new home in its place. This, in essence, would result in transferring the base year value a second time to the replacement home. Under these circumstances, the newly constructed home should be assessed as new construction and given a new base year value.

[142] Section 69.5(b)(5) and (6); see also *Wunderlich v. Santa Cruz* (2010) 178 Cal.App.4th 680.
[143] Rule 463.500(c)(4).
[144] Section 69.5(h)(4).

### FILING REQUIREMENTS

The property tax relief provided by section 69.5 is not automatic. A claim form[145] must be timely filed with the assessor of the county in which the replacement dwelling located. A claim form must be filed within three years of the purchase or completion of new construction of the replacement dwelling,[146] with certain exceptions.[147]

## EMINENT DOMAIN

The base year value may be transferred for real property purchased or newly constructed as a replacement for comparable property[148] if the person acquiring or constructing the property has been displaced by eminent domain proceedings, by acquisition by a public entity, or governmental action that has resulted in a judgment of inverse condemnation.[149]

### STATUTORY PROVISIONS

The replacement property must be acquired or newly constructed after the earliest of the following dates:

- The date the initial written offer is made for the property taken by the acquiring entity;
- 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;
- The date a "Notice of Determination," "Notice of Exemption," or other similar notice, as required by the California Environmental Quality Act is recorded by the public entity acquiring the taxpayer's property and the public project has been approved; or
- The date, as declared by the court, that the property was taken.

Property acquired or newly constructed prior to these dates is not eligible for relief. However, a structure may be eligible for relief when the structure was constructed on land that is ineligible because it was acquired prior to the above dates. 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.

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[145] Form BOE-60-AH, *Claim for Person(s) at Least 55 Years of Age for Transfer of Base Year Value to Replacement Dwelling;* or form BOE-62, *Disabled Persons Claim for Transfer of Base Year Value to Replacement Dwelling.*
[146] Section 69.5(f)(1)(F).
[147] Section 69.5(m).
[148] Rule 462.500(c).
[149] Article XIII A, section 2, subdivision (b), California Constitution.

## NEWLY CONSTRUCTED REPLACEMENT PROPERTY

An assessor must consider the following in determining the appropriate adjusted base year value of comparable replacement property:[150]

(1) Compare the award or purchase price paid by the acquiring entity for the property taken or acquired with the full cash value of the comparable replacement property.

(2) If the full cash value of the comparable replacement property does not exceed 120 percent of the award or purchase price of the property taken, then the adjusted base year value of the property taken shall become the replacement property's base year value, regardless of the allocation between land and improvements.

(3) If the full cash value of the replacement property exceeds 120 percent of the award or purchase price of the property taken, then the amount of the full cash value over 120 percent of the award or purchase price paid shall be added to the adjusted base year value of the property taken. The sum of these amounts shall become the replacement property's base year value.

(4) If the full cash value of the comparable replacement property is less than the adjusted base year value of the property taken, then that lower value shall become the replacement property's base year value.

(5) If there is no award or purchase price paid by the acquiring entity (for example, an exchange) for the property taken, then the full cash value of the acquired property and the full cash value of the replacement property shall be determined by the assessor of the county in which each property is located for the purpose of applying the other provisions of this subdivision. The procedure set forth in subdivision (d)(1) through (d)(4) shall then be applied to determine the replacement property's base year value.

(6) A base year value may be reallocated upon the transfer of the replacement property. The appraisal unit that is normally bought and sold in the market place may be used to determine the amount of base year value that is allocated to the property taken.[151]

## FILING REQUIREMENTS

A replacement property must be acquired or newly constructed before a request can be made to transfer the base year value. A claim form[152] to request a transfer of a base year value must be filed with the assessor, in the county where the replacement property is located, within four years of the public entity acquiring the property.[153]

[150] Rule 462.500(c).
[151] Rule 462.500(d).
[152] Form BOE-68, *Claim for Base Year Value Transfer—Acquisition by Public Entity*.
[153] Rule 462.500(g).

# DISASTER RELIEF

Sections 69 and 69.3 provide that owners of real property that has been substantially damaged or destroyed in a disaster may transfer the base year value of the damaged property to a comparable property acquired or constructed as a replacement.

## WITHIN THE SAME COUNTY

Specific requirements of section 69 apply to all property types and include:

- The property was damaged or destroyed in a disaster for which the Governor proclaimed a state of disaster.[154]
- The damaged or destroyed property (the land or the improvements) must have sustained physical damage amounting to more than 50 percent of its current market value immediately prior to the damage.[155]
- The replacement property must be located in the same county as the original property.[156]
- The replacement property must be acquired or newly constructed within five years after the disaster.[157]
- The replacement property is considered comparable if it is similar in size, utility, and function to the destroyed property. [158]
- Any portion of the replacement property that is not similar in function, size, and utility is considered to have undergone a change in ownership when the replacement property is acquired or newly constructed.[159]

An assessor must use the following procedure in determining the appropriate replacement base year value of comparable newly constructed replacement property:[160]

- If the full cash value of the comparable replacement property does not exceed 120 percent of the full cash value of the property substantially damaged or destroyed, then the adjusted base year value of the property substantially damaged or destroyed shall be transferred to the comparable replacement property as its replacement base year value.
- If the full cash value of the replacement property exceeds 120 percent of the full cash value of the property substantially damaged or destroyed, then the amount of the full cash value over 120 percent of the full cash value of the property substantially damaged or destroyed shall be added to the adjusted base year value of the property substantially

[154] Section 69(a).
[155] Section 69(c)(1).
[156] Section 69(a).
[157] Section 69(a). Pursuant to section 69(f), the five years may be extended to seven years by an ordinance adopted by the San Diego County Board of Supervisors specifically for property damaged or destroyed by the Cedar Fire that commenced in October 2003.
[158] Section 69(c)(2).
[159] Section 69(c)(2)(C).
[160] Section 69(b).

damaged or destroyed. The sum of these amounts shall become the replacement property's replacement base year value.

- If the full cash value of the comparable replacement property is less than the adjusted base year value of the property substantially damaged or destroyed, then that lower value shall become the replacement property's base year value.
- The full cash value of the property substantially damaged or destroyed shall be the amount of its full cash value immediately prior to its substantial damage or destruction, as determined by the assessor of the county in which the property is located.

### WITHIN ANOTHER COUNTY

Section 69.3 extends the base year value transfer provisions to replacement properties located in a county other than the original property that was damaged or destroyed, provided the county board of supervisors has adopted an ordinance that authorizes such transfers. The provisions of section 69.3 apply only to property that constitutes the principal place of residence of the owner of the property that was damaged or destroyed in a Governor-declared disaster.

Specific requirements of section 69.3 include:

- The property was damaged or destroyed in a disaster for which the Governor proclaimed a state of disaster.[161]
- The damaged or destroyed property (the land or the improvements) must have sustained physical damage amounting to more than 50 percent of its current market value immediately prior to the damage.[162]
- The damaged or destroyed property (original property) must be owned and occupied by a claimant as his or her principal place of residence (eligible for the homeowners' exemption or the disabled veterans' exemption).[163]
- The replacement property must be located in a county that has adopted an ordinance accepting such transfers.[164]
- The replacement property must be acquired or newly constructed within three years after the disaster.[165]
- The replacement property must have a full cash value equal to or lesser than that of the original property.

[161] Section 69.3(b)(5).
[162] Section 69.3(b)(12).
[163] Section 69.3(b)(9).
[164] A listing of counties that have adopted ordinances implementing the section 69.3 provisions is posted on the Board's website at www.boe.ca.gov/proptaxes/faqs/disaster.htm.
[165] Section 69.3(a)(1).

The *equal or lesser value* test means that the full cash value of the replacement property must not exceed one of the following:[166]

- One hundred five percent of the amount of the full cash value of the original property immediately prior to the disaster if the replacement property is purchased or newly constructed within the first year following the date of the damage or destruction of the original property.
- One hundred ten percent of the amount of the full cash value of the original property immediately prior to the disaster if the replacement property is purchased or newly constructed within the second year following the date of the damage or destruction of the original property.
- One hundred fifteen percent of the amount of the full cash value of the original property immediately prior to the disaster if the replacement property is purchased or newly constructed within the third year following the date of the damage or destruction of the original property.

### FILING REQUIREMENTS

If the owner of damaged or destroyed property receives tax relief under either sections 69 or 69.3 by transferring the base year value to a replacement property, then the damaged property will no longer be eligible for property tax relief in the event the owner later reconstructs the damaged property.

Only the owner(s) of the property substantially damaged or destroyed can receive property tax relief under sections 69 or 69.3. The taxpayer must file a claim[167] with the assessor in the county where the replacement property is located.

## CONTAMINATED PROPERTIES

Article XIII A, section 2(i) of the California Constitution (1) provides for the transfer of the base year value of qualified contaminated property to a replacement property, and (2) excludes from the definition of new construction any repairs to or replacement of property necessary to remediate environmental problems on qualified contaminated property.[168] A *qualified contaminated property* is real property that has been rendered uninhabitable or unusable by the presence or remediation of environmental problems and is located on a site that a state or federal agency has designated as a toxic or environmental hazard or as an environmental clean-up site.[169]

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[166] Section 69.3(b)(6).

[167] Form BOE-65-P, *Claim for Intracounty Transfer of Base Year Value for Property Damaged or Destroyed in a Governor-Declared Disaster to Replacement Property*; form BOE-65-PT, *Claim for Intercounty Transfer of Base Year Value from Principal Residence Damaged or Destroyed in a Governor-Declared Disaster to Replacement Property.*

[168] See Chapter 5 for a discussion of the new construction exclusion.

[169] California Constitution, article XIII A, section 2(i)(2).

## STATUTORY PROVISIONS

Section 69.4 allows a property owner to sell or otherwise transfer a qualified contaminated property and transfer its base year value to a comparable replacement property of equal or lesser value that is purchased or newly constructed within five years after the sale or transfer of the qualified contaminated property.[170] If, prior to the sale, the property owner repairs or reconstructs the damaged improvement and receives the new construction exclusion under section 74.7, then the base year value cannot be transferred to a replacement property.[171]

Both the qualified contaminated property and the replacement property must be located in the *same* county. If not, the county in which the replacement property is located must have a resolution authorizing intercounty transfers under section 69.4. However, as of the date of this handbook, none of the 58 counties has passed such a resolution.

## COMPARABLE

*Comparable* means a replacement property is similar in utility and function to the property that it replaces. Property is similar in function and utility if it is, or is intended to be, used in the same manner as a qualified contaminated property.[172]

## VALUE COMPARISON

The replacement property must be of equal or lesser value as compared to the original property. *Equal or lesser value* means the fair market value of the replacement property on the date of purchase or completion of new construction cannot exceed:[173]

- **105 percent** of the fair market value of the original property as if uncontaminated if a replacement property is purchased or newly constructed within the **first year** following the date of sale or transfer of the original property.
- **110 percent** of the fair market value of the original property as if uncontaminated if a replacement property is purchased or newly constructed within the **second year** following the date of sale or transfer of the original property.
- **115 percent** of the fair market value of the original property immediately as if uncontaminated if a replacement property is purchased or newly constructed within the **third year** following the date of sale or transfer of the original property.
- **120 percent** of the fair market value of the original property immediately as if uncontaminated if a replacement property is purchased or newly constructed within the **fourth year** following the date of sale or transfer of the original property.

[170] Section 69.4(b).
[171] Section 69.4(d).
[172] Section 69.4(e)(7).
[173] Section 69.4(e)(2).

- **125 percent** of the fair market value of the original property immediately as if uncontaminated if a replacement property is purchased or newly constructed within the **fifth year** following the date of sale or transfer of the original property.

## NEWLY CONSTRUCTED REPLACEMENT PROPERTY

If a lot is purchased and comparable structures constructed, the construction of the comparable structures must be completed within five years of the sale or transfer of the qualified contaminated property.[174] The date of completion of new construction is the date upon which the property has been inspected and approved for occupancy by the local building department.[175] For purposes of the value comparison test, the fair market value of the lot and structures as of the date of completion of construction is compared to the market value of the qualified contaminated property as if uncontaminated on the date of sale or transfer.[176]

## FILING REQUIREMENTS

Only the owner of a qualified contaminated property is eligible for relief under section 69.4.[177] It is rebuttably presumed that an owner of real property participated or acquiesced in rendering the real property uninhabitable or unusable if that owner is related to any individual or entity that committed that act in any of the following ways:[178]

- The owner is a spouse, parent, child, grandson, grandchild, or sibling of that individual;
- The owner is a corporate parent, subsidiary, or affiliate of that entity;
- The owner has control of that entity; or
- The owner is owned or controlled by that entity.

If this presumption is not overcome, the owner may not receive the relief from property taxes.

In order to transfer the base year value, a claim must be filed within three years after a replacement property is acquired or new construction is completed. The law does not provide for prospective relief if the filing deadline is missed. Section 69.4(f)(3) requires that the State Board of Equalization prescribe the form for claiming the exclusion.[179] A claimant is not eligible for the exclusion unless the claimant provides to the assessor the following information:

- Proof that a qualified contaminated property has been designated as a toxic or environmental hazard or as an environmental clean-up site by an agency of the State of California or the federal government.

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[174] Section 69.4(b).
[175] Rule 463.500(c)(4).
[176] Section 69.4(d)(4).
[177] Section 69.4(e)(6).
[178] California Constitution, article XIII A, section 2(i)(3).
[179] Form BOE-65-CP, *Claim for Transfer of Base Year Value from Qualified Contaminated To Replacement Property*.

- Proof that the owner did not participate in, or acquiesce to, any act or omission that rendered the real property uninhabitable or unusable, as applicable, or is not related to any individual or entity that committed that act or omission.

# CHAPTER 7: MISCELLANEOUS ISSUES

## RESIDENTIAL DEVELOPMENT PROJECTS

### IMPACT FEES, DEVELOPMENT FEES, AND OFF-SITE IMPROVEMENTS

Impact fees, certain development fees, and off-site improvements may reflect nonassessable enhancements of land value, rather than assessable new construction. In California, development impact fees are governed by the Mitigation Fee Act.[180] Under the Act, the following terms are defined:

1. A *development project* is any project undertaken for the purpose of development and includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.[181]

2. A *fee* is a monetary exaction other than a tax or special assessment that a local agency charges an applicant in exchange for approval of a development project to defray some of the costs for public facilities, with certain exclusions.[182]

3. A *local agency* is a county, city, city and county, school district, special district, authority, agency, and other municipal public corporation or district, or other political subdivision of the state.[183]

4. *Public facilities* are public improvements, public services, and community amenities.[184]

The general rule under the Act is that development impact fees charged by a local agency on a residential development project are not required to be paid until the date of the final inspection or the date the certificate of occupancy is issued, whichever is earlier. When expended by a developer, the amounts paid to local agencies for development fees do not constitute new construction that is immediately assessed under article XIII A as real property that is newly constructed. However, upon sale, an increase in the value of the land attributable to the development fee is included in the reassessed value, and would be included in the purchase price paid by a subsequent buyer.

It is important to note that nonassessable enhancements to land, such as impact fees, are not reassessed upon completion or payment because of the limitations placed on reassessments by article XIII A, not because such enhancements to land do not increase the value of the property. The increase in property value created by enhancements is not captured immediately. They are captured upon change in ownership of the property, and are reflected in the purchase price paid by the buyer.

[180] Government Code sections 66000 et seq.
[181] Government Code section 66000(a).
[182] Government Code section 66000(b).
[183] Government Code section 66000(c).
[184] Government Code section 66000(d).

Once a developer sells a lot for which it has already paid the fees, all amounts paid by the purchaser would constitute the purchase price under section 110(b). Accordingly, the full cash value would presumptively be such purchase price, even if such amounts were characterized as a reimbursement to the developer for the fees.

## RESIDENTIAL DEVELOPMENT LOTS

When using actual costs to value new construction, appraisers should distinguish between costs attributable to new construction and those costs that may enhance the value of the land but are not costs related to additions or alterations of real property.

***Example 7-1***

A large-scale residential development is built adjacent to a major freeway. As part of the development, the builder agrees to (1) construct a new freeway off-ramp leading to the development; and (2) widen the major streets adjoining the development.

Although each of these activities may enhance the value of the development, it is possible that the costs associated with these activities enhance the land value, and should not be included in the new construction valuation of the improvements.

The proper procedure for assessing newly created residential development lots prior to sale is predicated on:

- The unit that is being valued prior to sale of the lots;
- The date the streets and related improvements are actually accepted by the city or county and become the responsibility of the government entity; and
- Special terms, if any, that were known to the buyer at the time the land was bought.

When a new subdivision map is filed and new lot parcels are created, there are no grounds for reassessment. The base year value placed on the lots should be an allocated portion of the prior base year value of the total acreage involved. The value should be allocated to the portion of the property designated as streets and right-of-ways as well as to the lots. Allocation may be done in several ways, but in those instances where the lots are relatively equal in utility, a square-foot basis is generally preferred.

When a subdivision map is filed, the map usually contains a certificate of acceptance from the government entity. This certificate does not constitute an official acceptance of the land by the government entity. It is only an acceptance of the offer of dedication, and the government entity does not incur any liability at this point.

Official acceptance occurs, almost invariably, after the off-site improvements (streets, curbs, sidewalks, drainage, utilities, etc.) are completed by the contractor. At this time, another resolution is filed indicating the acceptance of both the right-of-ways and improvements in the city/county road system. This is the key document that establishes the date the street area

becomes exempt from taxation. Because of the sequence of events, the street improvements, as well as all lot improvements, remain taxable to the developer until the second resolution is filed.

The appraisal unit is the entire subdivision acreage until the lots and right-of-ways are actually transferred. The value of all improvements within the subdivision should be allocated over the entire subdivision, including both the lot and street parcels. There are several possible methods of allocation, but in most instances, a square-foot allocation is preferred.

When the street right-of-ways and improvements are accepted by the city or county, only the value of land and improvements allocated to the street parcel should be removed from the assessment roll, unless special circumstances were present and specified at the time of the sale of the land to the developer. This determination must be made on a case-by-case basis.

## TAXABLE POSSESSORY INTERESTS

Rule 20 contains the provisions for both possessory interests and taxable possessory interests. The rule provides:

> (a) Possessory Interests. "Possessory interests" are interests in real property that exist as a result of:
>
> > (1) A possession of real property that is independent, durable, and exclusive of rights held by others in the real property, and that provides a private benefit to the possessor, except when coupled with ownership of a fee simple or life estate in the real property in the same person; or
> >
> > (2) A right to the possession of real property, or a claim to a right to the possession of real property, that is independent, durable, and exclusive of rights held by others in the real property, and that provides a private benefit to the possessor, except when coupled with ownership of a fee simple or life estate in the real property in the same person; or
> >
> > (3) Taxable improvements on tax-exempt land.
>
> (b) Taxable Possessory Interests. "Taxable possessory interests" are possessory interests in publicly-owned real property. Excluded from the meaning of "taxable possessory interests," however, are any possessory interests in real property located within an area to which the United States has exclusive jurisdiction concerning taxation. Such areas are commonly referred to as federal enclaves. . . .

When real property is newly constructed after the 1975 lien date, the assessor must determine the full value of the newly constructed property as of the time the property is available for use.[185] If a lessee of a taxable possessory interest constructs improvements on the tax-exempt land, the newly constructed improvements may or may not be considered to be property of the

[185] Article XIII A, section 2, California Constitution; Rule 463.

governmental entity owning the land. This consideration affects whether the improvements are to be assessed in fee to the lessee or as a taxable possessory interest. The determination of the taxability of improvements should be determined as follows:

- If a lessee constructs improvements on tax-exempt land and retains ownership of a fee simple or life estate in the improvements, the improvements are to be valued in fee to the lessee, and a renewal of the land lease would not cause a reassessment of the improvements.

- If a lessee constructs improvements on tax-exempt land and the improvements constructed by the lessee become the property of the public agency owning the land, the lessee would have a taxable possessory interest in the improvements and a renewal of the land lease would cause a reassessment of the possessory interest in both the land and improvements.

For a more detailed discussion of possessory interests see Assessors' Handbook Section 510, *Assessment of Possessory Interests*.[186]

## MANUFACTURED HOMES

New construction of a manufactured home is defined in section 5825. This section supersedes the general definition of new construction in section 70 since section 5825 specifically relates to manufactured homes. Section 5825 reads in part:

> "Newly constructed" and "new construction" means:
>
> (1) Any substantial addition to a manufactured home since the last lien date; and
>
> (2) Any alteration of the manufactured home which constitutes a major rehabilitation thereof or which converts the property to a different use.
>
> (b) Any rehabilitation, renovation, or modernization which converts a manufactured home to the substantial equivalent of a new manufactured home is a major rehabilitation of such manufactured home.

New construction in progress on the lien date must be appraised at its full value on such date and each lien date thereafter until the date of completion, at which time the entire portion of the manufactured home which is newly constructed will be reappraised at its full value.[187] The base year value of the remainder of the property which did not undergo new construction should not be changed.

[186] www.boe.ca.gov/proptaxes/pdf/ah510.pdf.
[187] Section 5825(e).

## RELOCATION OF MANUFACTURED HOMES

The relocation of a manufactured home without a change in ownership, whether in the same county or to another county, is not assessable new construction.

The provisions of section 75.10, which provide that new construction includes the removal of a *structure* from land, do not pertain to manufactured homes. A *structure* is real property, and a manufactured home is not classified as real property for property taxation purposes,[188] unless it is installed on an approved foundation.[189] The addition of accessories, such as awnings, skirting, decking, or carport, following relocation of a manufactured home, however, would be considered assessable new construction.

## MANUFACTURED HOMES SUBJECT TO VLF

A manufactured home subject to the Vehicle License Fee (VLF) is not subject to property taxation. Therefore, any new construction of a manufactured home subject to the VLF is not assessable.[190] However, new construction of accessories associated with a manufactured home may be assessable.

***Example 7-1***

> A taxpayer purchased a manufactured home, subject to the VLF, with interior space of 1,440 square feet. The taxpayer poured a steel reinforced concrete perimeter foundation around the coach. The siding was replaced with stucco. The entire roof was removed and replaced with a medium pitched hip roof with tile covering. A bay window addition was built on the front, and two other additions were built on either side of the manufactured home. The interior was gutted to the studs, the sub-floor was strengthened, and all rough plumbing and wiring was replaced. Insulation was added throughout and the existing walls were replaced with drywall. The existing windows were replaced with dual pane, double-hung windows. The kitchen received good hardwood cabinets, tile counters, and built-in appliances. The rebuilt manufactured home is now 1,744 square feet.
>
> The substantial reconstruction of the manufactured home does not fall under the definition of new construction.[191] The key fact is that both before and after the remodeling the manufactured home was subject to the VLF.

However, manufactured home accessories may be real property and alteration or addition of such accessories (or a portion) may constitute assessable new construction. Accessories include, but are not limited to:[192]

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[188] Section 5801.
[189] Health and Safety Code section 18551.
[190] For a more discussion of manufactured homes, see Assessor Handbook Section 511, *Assessment of Manufactured Homes and Parks* [www.boe.ca.gov/proptaxes/pdf/ah511final.pdf].
[191] Section 5825(a).
[192] Health and Safety Code section 18008.5.

- Awnings
- Storage cabinets
- Carports
- Skirting
- Heaters
- Coolers
- Fences
- Windbreaks
- Porches

Accessories may be real or personal property but, unless they qualify as household furnishings,[193] they are generally subject to local property taxation, regardless of whether the manufactured home to which they belong is subject to local property taxation.

As an exception, accessories installed on rented or leased land with a manufactured home first sold prior to January 1, 1977, are presumed to be subject to the VLF and not local property tax.[194] Prior to 1977, the Department of Motor Vehicles applied the VLF to the entire purchase price of the manufactured home, including the value of any accessories. This presumption may be rebutted by evidence that an accessory was not included in the VLF base for the manufactured home or was not otherwise subject to the VLF. Therefore, to the extent it can be established that the manufactured home accessories constructed in conjunction with the remodeling of the property are not included in and subject to the VLF, they would be assessed as new construction subject to local roll assessment.

[193] Section 3(m), article XIII of the California Constitution; section 224.
[194] Section 5805.

# APPENDIX 1: REVENUE AND TAXATION CODE

## Part 0.5, Implementation of Article XIII A, California Constitution
## Chapter 3, New Construction

## SECTIONS 70 – 74.7

**70. (a)** "Newly constructed" and "new construction" means:

(1) Any addition to real property, whether land or improvements, including fixtures, since the last lien date; and

(2) Any alteration of land or of any improvement, including fixtures, since the last lien date that constitutes a major rehabilitation thereof or that converts the property to a different use.

**(b)** Any rehabilitation, renovation, or modernization that converts an improvement or fixture to the substantial equivalent of a new improvement or fixture is a major rehabilitation of that improvement or fixture.

**(c)** Notwithstanding subdivisions (a) and (b), where real property has been damaged or destroyed by misfortune or calamity, "newly constructed" and "new construction" does not mean any timely reconstruction of the real property, or portion thereof, where the property after reconstruction is substantially equivalent to the property prior to damage or destruction. Any reconstruction of real property, or portion thereof, that is not substantially equivalent to the damaged or destroyed property, shall be deemed to be new construction and only that portion that exceeds substantially equivalent reconstruction shall have a new base year value determined pursuant to Section 110.1.

**(d)** (1) Notwithstanding subdivisions (a) and (b), where a tank must be improved, upgraded, or replaced to comply with federal, state, and local regulations on underground storage tanks, "newly constructed" and "new construction" does not mean the improvement, upgrade, or replacement of a tank to meet compliance standards, and the improvement, upgrade, or replacement shall be considered to have been performed for the purpose of normal maintenance and repair.

(2) Notwithstanding subdivisions (a) and (b), where a structure, or any portion thereof, was reconstructed, as a consequence of completing work on an underground storage tank to comply with federal, state, and local regulations on these tanks, timely reconstruction of the structure shall be considered to have been performed for the purpose of normal maintenance and repair where the structure, or portion thereof, after reconstruction is substantially equivalent to the prior structure in size, utility, and function.

**71.** The assessor shall determine the new base year value for the portion of any taxable real property which has been newly constructed. The base year value of the remainder of the property assessed, which did not undergo new construction, shall not be changed. New construction in progress on the lien date shall be appraised at its full value on such date and each lien date thereafter until the date of completion, at which time the entire portion of property which is newly constructed shall be reappraised at its full value.

**72. (a)** A copy of any building permit issued by any city, county, or city and county shall be transmitted by each issuing entity to the county assessor as soon as possible after the date of issuance.

**(b)** A copy of any certificate of occupancy or other document that shows the date of completion of new construction issued or finalized by any city, county, or city and county, shall be transmitted by each entity to the county assessor within 30 days after the date of issuance or finalization.

**(c)** At the time an assessee files, or causes to be filed, an approved set of building plans with the city, county, or city and county, a scale copy of the floor plans and exterior dimensions of the building designated for the county assessor shall be filed by the assessee or his or her designee. The scale copy shall be in sufficient detail to allow the assessor to determine the square footage of the building and, in the case of a residential building, the intended use of each room. The county assessor may require the floor plans be provided to the county assessor in an electronic format, if available. An assessee, or his or her designee, where multiple units are to be constructed from the same set of building plans, may file only one scale copy of floor plans and exterior dimensions, so long as each application for a building permit with respect to those building plans specifically identifies the scale copy filed pursuant to this section. However, where the square footage of any one of the multiple units is altered, an assessee, or his or her designee, shall file a scale copy of the floor plan and exterior dimensions that specifically identifies the alteration from the previously filed scale copy. The receiving authority shall transmit that copy to the county assessor as soon as possible after the final plans are approved.

**(d)** The board of supervisors of a county may enact, by a majority vote of its entire membership, an ordinance, resolution, or board order that requires the local agency that approves the tentative map or maps, and any conditions of approval for the tentative map or maps that are filed with a county or a city in that county, to submit a copy of the map or maps, and any conditions of approval for the tentative map or maps, to the county assessor as soon as possible after the map or maps are filed. The ordinance, resolution, or board order may require that the map or maps be provided to the county assessor in an electronic format, if available in that form.

**73. (a)** Pursuant to the authority granted to the Legislature pursuant to paragraph (1) of subdivision (c) of Section 2 of Article XIII A of the California Constitution, the term "newly constructed," as used in subdivision (a) of Section 2 of Article XIII A of the California Constitution, does not include the construction or addition of any active solar energy system, as defined in subdivision (b).

**(b)** (1) "Active solar energy system" means a system that, upon completion of the construction of a system as part of a new property or the addition of a system to an existing property, uses solar devices, which are thermally isolated from living space or any other area where the energy is used, to provide for the collection, storage, or distribution of solar energy.

(2) "Active solar energy system" does not include solar swimming pool heaters or hot tub heaters.

(3) Active solar energy systems may be used for any of the following:

(A) Domestic, recreational, therapeutic, or service water heating.

(B) Space conditioning.

(C) Production of electricity.

(D) Process heat.

(E) Solar mechanical energy.

**(c)** For purposes of this section, "occupy or use" has the same meaning as defined in Section 75.12.

**(d)** (1) (A) The Legislature finds and declares that the definition of spare parts in this paragraph is declarative of the intent of the Legislature, in prior statutory enactments of this section that excluded active solar energy systems from the term "newly constructed," as used in the California Constitution, thereby creating a tax appraisal exclusion.

(B) An active solar energy system that uses solar energy in the production of electricity includes storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items. In general, the use of solar energy in the production of electricity involves the transformation of sunlight into electricity through the use of devices such as solar cells or other solar collecting equipment. However, an active solar energy system used in the production of electricity includes only equipment used up to, but not including, the stage of conveyance or use of the electricity. For the purpose of this paragraph, the term "parts" includes spare parts that are owned by the owner of, or the maintenance contractor for, an active solar energy system that uses solar energy in the production

of electricity and which spare parts were specifically purchased, designed, or fabricated by or for that owner or maintenance contractor for installation in an active solar energy system that uses solar energy in the production of electricity, thereby including those parts in the tax appraisal exclusion created by this section.

(2) An active solar energy system that uses solar energy in the production of electricity also includes pipes and ducts that are used exclusively to carry energy derived from solar energy. Pipes and ducts that are used to carry both energy derived from solar energy and from energy derived from other sources are active solar energy system property only to the extent of 75 percent of their full cash value.

(3) An active solar energy system that uses solar energy in the production of electricity does not include auxiliary equipment, such as furnaces and hot water heaters, that use a source of power other than solar energy to provide usable energy. An active solar energy system that uses solar energy in the production of electricity does include equipment, such as ducts and hot water tanks, that is utilized by both auxiliary equipment and solar energy equipment, that is, dual use equipment. That equipment is active solar energy system property only to the extent of 75 percent of its full cash value.

**(e)** (1) Notwithstanding any other law, for purposes of this section, "the construction or addition of any active solar energy system" includes the construction of an active solar energy 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. The exclusion from "newly constructed" provided by this subdivision applies to the initial purchaser who purchased the new building from the owner-builder, but only if the owner-builder did not receive an exclusion under this section for the same active solar energy system and only if the initial purchaser purchased the new building prior to that building becoming subject to reassessment to the owner-builder, as described in subdivision (d) of Section 75.12. The assessor shall administer this subdivision in the following manner:

(A) The initial purchaser of the building shall file a claim with the assessor and provide to the assessor any documents necessary to identify the value attributable to the active solar energy system included in the purchase price of the new building. The claim shall also identify the amount of any rebate for the active solar energy system provided to either the owner-builder or the initial purchaser by the Public Utilities Commission, the State Energy Resources Conservation and Development Commission, an electrical corporation, a local publicly owned electric utility, or any other agency of the State of California.

(B) The assessor shall evaluate the claim and determine the portion of the purchase price that is attributable to the active solar energy 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:

(i) That portion of the value of the new building attributable to the active solar energy system.

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

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

(2) The State Board of Equalization, in consultation with the California Assessors' Association, shall prescribe the manner, documentation, and form for claiming the new construction exclusion required by this subdivision.

**(f)** Notwithstanding any other law, the exclusion from new construction provided by this section shall remain in effect only until there is a subsequent change in ownership.

**(g)** This section applies to property tax lien dates for the 1999-2000 fiscal year to the 2015-16 fiscal year, inclusive.

**(h)** The amendments made to this section by the act that added this subdivision apply beginning with the lien date for the 2008-09 fiscal year.

**(i)** (1) This section shall remain in effect only until January 1, 2017, and as of that date is repealed.

(2) Active energy solar systems that qualify for an exclusion under this section prior to January 1, 2017, shall continue to be excluded on and after January 1, 2017, until there is a subsequent change in ownership.

**74. (a)** For purposes of subdivision (a) of Section 2 of Article XIII A of the Constitution, "newly constructed" does not include the construction or installation of any fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement that is constructed or installed on or after November 7, 1984.

**(b)** Notwithstanding any other provision of this chapter or Chapter 3.5 (commencing with Section 75), neither "newly constructed" nor "new construction" includes the construction or installation of any fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement that is constructed or installed on or after November 7, 1984.

**(c)** For purposes of this section:

(1) "Fire sprinkler system" means any system intended to discharge water for the purpose of suppressing or extinguishing a fire, and includes a fire sprinkler system that derives its water from the domestic water supply of the building or structure of which it is a part.

(2) "Other fire extinguishing system" means any system intended to suppress or to extinguish a fire other than by discharging water upon the fire. An "other fire extinguishing system" includes, but is not limited to, a component or application that, solely or primarily for the purposes of fire suppression or extinguishment, is made part of the heating, ventilating, or air-conditioning system of a building or structure, a wet chemical system, or a dry chemical system.

(3) "Fire detection system" means any system or appliance intended to detect combustion, or the products thereof, and to activate an alarm or signal, whether audio, visual, or otherwise, including all equipment used to transmit fire alarm activations and related signals to a remote location. A fire detection system includes any system that serves additional functions, but this section shall only apply with respect to that portion of a system that is for fire detection purposes. No portion of a fire detection system as described in this paragraph shall be deemed to be personal property, or shall be deemed to be excluded from that fire detection system, by reason of being owned or controlled by a person other than the owner of property upon which the fire detection system was constructed or installed.

(4) "Fire-related egress improvement" means any improvement intended to do either of the following:

(A) Provide any new, or improve any existing, means of egress for individuals from a structure, or any portion thereof, in which a fire is in progress, as to which there is an imminent threat that a fire may soon be in progress, or as to which individuals therein might be subjected to health hazards or the risk of physical injury due to a fire elsewhere.

(B) With respect to individuals who for any reason cannot evacuate a structure in which a fire is in progress, provide a means of safeguarding, or increasing the safety of, those individuals until the time that the rescue of those individuals can be effected.

(5) "Existing building" means any building or structure already erected at the time that a fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement is constructed or installed in that building or structure.

**(d)** Any system or improvement referred to in this section shall be deemed to have been constructed or installed on or after November 7, 1984, if the actual construction or installation thereof is completed on or after November 7, 1984, regardless of when the actual construction or installation thereof was commenced or any building permit pertaining thereto was issued.

**(e)** This section applies only to fire sprinkler systems, other fire extinguishing systems, fire detection systems, and fire-related egress improvements, as defined in this section, that are constructed or installed in an existing building.

**74.3. (a)** For purposes of subdivision (a) of Section 2 of Article XIII A of the California Constitution, "newly constructed" does not include the construction, installation, or modification of any portion or structural component of an existing single- or multiple-family dwelling that is eligible for the homeowner's exemption as described in Section 218, if the construction, installation, or modification is for the purpose of making the dwelling more accessible to a severely and permanently disabled person who is a permanent resident of the dwelling.

(b) For purposes of this section, "a severely and permanently disabled person" is any person who has a physical disability or impairment, whether from birth or by reason of accident or disease, that results in a functional limitation as to employment or substantially limits one or more major life activities of that person, and that has been diagnosed as permanently affecting the person's ability to function, including, but not limited to, any disability or impairment that affects sight, speech, hearing, or the use of any limbs.

**(c)** For purposes of this section, "accessible" means that combination of elements with regard to any dwelling that provides for access to, circulation throughout, and the full use of, the dwelling and any fixture, facility, or item therein. The construction of an entirely new addition, such as a bedroom or bath, that duplicates existing facilities in the dwelling that are not otherwise available to the disabled resident solely because of his or her disability, shall be deemed to make the dwelling more accessible within the meaning and for the purposes of this section.

**(d)** The exclusion provided by this section shall apply only to those improvements or features that specially adapt a dwelling accessibility by a severely and permanently disabled person. The value of any improvement, addition, or modification excluded pursuant to this section shall not include any other functional improvement, addition, or modification to the property unless it is merely incidental to the qualified improvements or features.

**(e)** The exclusion provided by this section shall not apply to the construction of an entirely new dwelling.

**(f)** The construction, installation, or modification, with regard to an existing building, for purposes of making the structure more accessible to a disabled person, shall be eligible for exclusion pursuant to this section only if the disabled person, or his or her spouse or legal guardian, submits to the assessor both of the following:

(1) A statement signed by a licensed physician or surgeon, of appropriate specialty which certifies that the person is severely and permanently disabled as defined in subdivision (b), and identifies specific disability-related requirements necessitating accessibility improvements or features.

(2) A statement that identifies the construction, installation, or modification that was in fact necessary to make the structure more accessible to the disabled person.

**(g)** The assessor may charge a fee to the disabled person or his or her spouse or legal guardian sufficient to reimburse the assessor for the costs of processing and administering the statement required by subdivision (f).

**(h)** This section shall apply to construction, installations, or modifications completed on or after June 6, 1990.

**74.5. (a)** For purposes of subdivision (a) of Section 2 of Article XIII A of the California Constitution, "newly constructed" and "new construction" does not include that portion of an existing structure that consists of the construction or reconstruction of seismic retrofitting components, as defined in this section.

**(b)** For purposes of this section, all of the following apply:

(1) "Seismic retrofitting components" means seismic retrofitting improvements and improvements utilizing earthquake hazard mitigation technologies.

(2) "Seismic retrofitting improvements" means retrofitting or reconstruction of an existing building or structure, to abate falling hazards from structural or nonstructural components of any building or structure including, but not limited to, parapets, appendages, cornices, hanging objects, and building cladding that pose serious danger. "Seismic retrofitting improvements" also means either structural strengthening or

providing the means necessary to resist seismic force levels that would otherwise be experienced by an existing building or structure during an earthquake, so as to significantly reduce hazards to life and safety while also providing for the substantially safe ingress and egress of building occupants during and immediately after an earthquake. "Seismic retrofitting improvements" does not include alterations, such as new plumbing, electrical, or other added finishing materials, made in addition to seismic-related work performed on an existing structure. "Seismic retrofitting" includes, but is not limited to, those items referenced in Appendix A of the International Existing Building Code of the International Code Council.

(3) "Improvements utilizing earthquake hazard mitigation technologies" means improvements to existing buildings identified by a local government as being hazardous to life in the event of an earthquake. These improvements shall involve strategies for earthquake protection of structures. These improvements shall use technologies such as those referenced in Part 2 (commencing with Section 1.1.1.) of Title 24 of the California Building Code and similar seismic provisions in the International Building Code.

**(c)** The property owner, primary contractor, civil or structural engineer, or architect shall certify to the building department those portions of the project that are seismic retrofitting components, as defined in this section. Upon completion of the project, the building department shall report to the county assessor the costs of the portions of the project that are seismic retrofitting components.

**(d)** In order to receive the exclusion, the property owner shall notify the assessor prior to, or within 30 days of, completion of the project that he or she intends to claim the exclusion for seismic retrofitting components. The State Board of Equalization shall prescribe the manner and form for claiming the exclusion. All documents necessary to support the exclusion shall be filed by the property owner with the assessor not later than six months after the completion of the project.

**(e)** The Legislature finds and declares that the reconstruction and improvement actions that were excluded from "newly constructed" and "new construction" by Chapter 1187 of the Statutes of 1983 meet the requirements of "construction or reconstruction of seismic retrofitting components on an existing structure," as provided in the act that amended this subdivision. Therefore, a structure constructed of unreinforced masonry bearing wall construction that is receiving a 15-year new construction exclusion as provided by Chapter 1187 of the Statutes of 1983 on the operative date of this act shall continue to receive, pursuant to this section, an exclusion after the 15-year period expires, unless the property is purchased or changes ownership, in which case Chapter 2 (commencing with Section 60) applies.

**74.6. (a)** For purposes of paragraph (4) of subdivision (c) of Section 2 of Article XIII A of the California Constitution, "newly constructed" and "new construction" does not include the construction, installation, removal, or modification of any portion or structural component of an existing building or structure to the extent that it is done for the purpose of making the building or structure more accessible to, or more usable by, a disabled person.

(b) For the purposes of this section, "disabled person" means a person who suffers from a physical impairment that substantially limits one or more of that person's major life activities.

**(c)** The exclusion provided for in subdivision (a) shall apply to all buildings or structures except for those buildings or structures that qualify for the exclusion provided for in subdivision (a) of Section 74.3.

**(d)** The exclusion provided for in this section does not apply to the construction of an entirely new building or structure, or to the construction of an entirely new addition to an existing building or structure.

**(e)** For purposes of the exclusion provided for in subdivision (a), the property owner, primary contractor, civil engineer, or architect shall submit to the assessor a statement that shall identify those specific portions of the project that constitute construction, installation, removal, or modification improvements to the building or structure to make the building or structure more accessible to, or usable by, a disabled person.

**(f)** For the purposes of the exclusion provided for in subdivision (a), the construction, improvement, modification, or alteration of an existing building or structure may include, but is not limited to, access ramps, widening of doorways and hallways, barrier removal, access modifications to restroom facilities,

elevators, and any other accessibility modification of a building or structure that would cause it to meet or exceed the accessibility standards of the 1990 Americans with Disabilities Act (Public Law 101-336) and the most recent edition to the California Building Standards Code that is in effect on the date of the application for a building permit.

**(g)** In order to receive the exclusion provided for in this section, the property owner shall notify the assessor prior to, or within 30 days of, completion of any project covered by this section that he or she intends to claim the exclusion for making improvements of the type specified in subdivision (a). The State Board of Equalization shall prescribe the manner and form for claiming the exclusion. All documents necessary to support the exclusion shall be filed by the property owner with the assessor not later than six months after the completion of the project.

**(h)** This section applies to any construction, installation, removal, or modification completed on or after June 7, 1994.

**74.7. (a)** For purposes of subparagraph (B) of paragraph (1) of subdivision (i) of Section 2 of Article XIII A of the California Constitution, "new construction" does not include the repair or replacement of a substantially damaged or destroyed structure on qualified contaminated real property where the remediation of the environmental problems required the destruction of, or resulted in substantial damage to, a structure located on that property. The repaired or replacement structure shall be similar in size, utility, and function to the original structure.

**(b)** For purposes of this section:

(1) "Substantially damaged or destroyed" means the structure sustains physical damage amounting to more than 50 percent of its full cash value immediately prior to the damage.

(2) "Similar in function" means the replacement structure is subject to similar governmental restrictions, including, but not limited to, zoning.

(3) "Similar in size and utility" means the size and utility of the structure are interrelated and associated with its value. A structure is similar in size and utility only to the extent that the replacement structure is, or is intended to be, used in the same manner as the substantially damaged or destroyed structure, and its full cash value does not exceed 120 percent of the full cash value of the replaced structure if that structure was not contaminated. For purposes of this paragraph:

(A) A replacement structure or any portion thereof used or intended to be used for a purpose substantially different than the use made of the replaced structure, shall, to the extent of the dissimilar use, be considered not similar in utility.

(B) A replacement structure or portion thereof that satisfies the use requirement but has a full cash value that exceeds 120 percent of the full cash value of the structure if that property were not contaminated, will be considered, to the extent of the excess, not similar in utility and size.

(4) To the extent that replacement property, or any portion thereof, is not similar in function, size, and utility, the property, or portion thereof, shall have a new base year value determined pursuant to Section 110.1.

**(c)** Only the owner or owners of the property substantially damaged or destroyed in the process of remediation of the contamination, whether one or more individuals, partnerships, corporations, other legal entities, or a combination thereof, shall receive property tax relief under this section.

**(d)** In order to receive the exclusion provided for in this section, the property owner shall notify the assessor in writing that he or she intends to claim the exclusion prior to, or within 30 days of, completion of any project covered by this section. All documents necessary to support the exclusion shall be filed by the property owner with the assessor not later than six months after the completion of the property. A claimant shall not be eligible for the exclusion provided by this section unless the claimant provides to the assessor the following information:

(1) Proof that the claimant did not participate in, or acquiesce to, any act or omission that rendered the real property uninhabitable or unusable, as applicable, or is related to any individual or entity that committed that act or omission.

(2) Proof that the qualified contaminated property has been designated as a toxic or environmental hazard or as an environmental cleanup site by an agency of the State of California or the federal government.

(3) The address and, if known, the assessor's parcel number of the qualified contaminated property.

(4) The date of the claimant's purchase and the date of completion of new construction.

**(e)** This section applies to new construction completed on or after January 1, 1995.

# APPENDIX 2: PROPERTY TAX RULES

## Title 18, Public Revenues
## California Code of Regulations

## RULE 463. NEWLY CONSTRUCTED PROPERTY

Reference: Article XIII A, Sections 1 and 2, California Constitution.
Section 15606, Government Code.

**(a)** When real property or a portion thereof, is newly constructed after the 1975 lien date, the assessor shall ascertain the full value of such "newly constructed property" as of the date of completion. This will establish a new base year full value for *only* that portion of the property which is newly constructed, whether it is an addition or alteration. The taxable value on the total property shall be determined by adding the full value of new construction to the taxable value of preexisting property reduced to account for the taxable value of property removed during construction. The full value of new construction is only that value resulting from the new construction and does not include value increases not associated with the new construction.

**(b)** "Newly constructed" or "new construction" means and includes:

(1) Any substantial addition to land or improvements, including fixtures, such as adding land fill, retaining walls, curbs, gutters or sewers to land or constructing a new building or swimming pool or changing an existing improvement so as to add horizontally or vertically to its square footage or to incorporate an additional fixture, as that term is defined in this section.

(2) Any substantial physical alteration of land which constitutes a major rehabilitation of the land or results in a change in the way the property is used. Examples of alterations to land to be considered new construction are: site development of rural land for the purpose of establishing a residential subdivision; altering rolling, dry grazing land to level irrigated crop land; or preparing a vacant lot for use as a parking facility.

**(A)** In any instance in which an alteration is substantial enough to require reappraisal, only the value of the alteration shall be added to the base year value of the pre-existing land or improvements. Increases in land value caused by appreciation or a zoning change rather than new construction shall not be enrolled, for example:

| | |
|---|---|
| 1. Land value 1975 | = $10,000 |
| 2. Land Value 1978 | = $20,000 |
| 3. Value of alteration 1978 | = $ 5,000 |
| 4. Value of structure added 1978 | = $75,000 |
| 1979 roll value (1+3+4) | = $90,000 (must be adjusted to reflect appropriate indexing) |

**(B)** Alterations to land which do not constitute a major rehabilitation or which do not result in a change in the way the property is used shall not result in reappraisal.

(3) Any physical alteration of any improvement which converts the improvement or any portion thereof to the substantial equivalent of a new structure or portion thereof or changes the way in which the portion of the structure that had been altered is used, e.g., physical alterations to an old structure to make it the substantial equivalent of a new building without any change in the way it is used or alterations to a warehouse that makes it usable as a retail store or a restaurant. Only the value, not necessarily the cost, of the alteration shall be added to the appropriately indexed base year value of the pre-existing structure.

(4) Excluded from alterations that qualify as "newly constructed" is construction or reconstruction performed for the purpose of normal maintenance and repair, e.g., routine annual preparation of agricultural land or interior or exterior painting, replacement of roof coverings or the addition of aluminum siding to improvements or the replacement of worn machine parts.

(5) Any substantial physical rehabilitation, renovation or modernization of any fixture which converts it to the substantial equivalent of a new fixture or any substitution of a new fixture. Substantial equivalency shall be ascertained by comparing the productive capacity, normally expressed in units per hour, of the rehabilitated fixture to its original productive capacity.

**(c)** For purposes of this regulation, "fixture" is defined as an improvement whose use or purpose directly applies to or augments the process or function of a trade, industry, or profession.

**(d)** New construction in progress on the lien date shall be appraised at its full value on such date and each lien date thereafter until the date of completion, at which time the entire portion of property which is newly constructed shall be reappraised at its full value.

**(e)** For purposes of this regulation, the date of completion is the date the property or portion thereof is available for use. In determining whether the real property or a portion thereof is available for use, consideration shall be given to the date of the final inspection by the appropriate governmental official, or, in the absence of such inspection, the date the prime contractor fulfilled all of his contract obligations, or in the case of fixtures, the date of the completion of testing of machinery and equipment.

History: Adopted June 29, 1978, effective July 3, 1978.
Amended September 26, 1978, effective October 2, 1978.
Amended January 25, 1979, effective March 1, 1979. Applicable to assessments for 1979 and years thereafter.
Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.
Amended February 25, 1998, effective June 12, 1998.

## RULE 463.500. DATE OF COMPLETION OF NEW CONSTRUCTION—SUPPLEMENTAL ASSESSMENTS

Reference: Sections 75.10, 75.11, 75.12, Revenue and Taxation Code.

**(a) APPLICATION.** The provisions of this section are applicable only to supplemental assessments levied pursuant to Chapter 3.5 (commencing with Section 75) of Part 0.5 of Division 1 of the Revenue and Taxation Code.

**(b) DATE OF COMPLETION OF NEW CONSTRUCTION.** The date of completion of new construction resulting from actual physical new construction on the site shall be the earliest of either the date upon which the new construction is available for use by the owner or, if all of the conditions of paragraph (b) (1) are satisfied, the date the property is occupied or used by the owner, or with the owner's consent, after the owner has provided a notice in accordance with paragraph (b) (1).

(1) The date of completion of new construction resulting from actual physical new construction shall not be the date upon which it is available for use if the owner does not intend to occupy or use the property and the owner notifies the assessor in writing prior to, or within 30 days after, the date of commencement of construction that he/she/it does not intend to occupy or use the identified property or a specified portion thereof.

(2) The date of completion of new construction resulting from actual physical new construction shall be conclusively presumed to be the date upon which the new construction is available for use by the owner if the assessor fails to receive notice as provided in paragraph (b) (1).

**(c) DEFINITIONS.**

(1) "Property" means land, improvement(s) including fixtures, and mobilehome(s) subject to taxation under Part 13 (commencing with Section 5800) of Division 1 of the Revenue and Taxation Code.

(2) "New Construction resulting from actual physical new construction" means "new construction" as defined in Section 463, subsections (b) and (f).

"New construction resulting from actual physical new construction" also includes: (A) the installation of a new fixture which is an addition or is a replacement of an existing fixture; (B) the rehabilitation, renovation or modernization of any fixture which converts it to the substantial equivalent of a new fixture; (C) the severance of improvements, including structures and fixtures, which is associated with new construction; (D) the severance on, or after, March 1, 1985, of fixtures which qualify for assessment pursuant to Sections 75.15 and 75.16 of the Revenue and Taxation Code, whether or not the severance is associated with other new construction; or (E) the severance on, or after, July 31, 1985, of structures, whether or not the severance is associated with other new construction.

"New construction resulting from actual physical new construction" does not include: (A) the severance prior to March 1,1985, of improvements, including structures and fixtures, which is not associated with other new construction; (B) the severance on, or after, March 1,1985 of any improvements, other than structures or fixtures, which is not associated with other new construction; (C) the severance prior to July 31,1985, of structures which is not associated with other new construction; or (D) the discontinued use of improvements, including structures and

fixtures, which are not physically severed from the property but which are made redundant by newly installed or erected structures, fixtures, or other improvements.
Examples: (A) The installation of a multi-level printing press (a fixture) as an addition to existing facilities constitutes actual physical new construction.

(B) The installation of a printing press as the replacement of an existing press is also actual physical new construction.

(C) The complete renovation of an existing press to the substantial equivalent of a new press constitutes actual physical new construction.

(D) The severance of the old press (also a fixture) is actual physical new construction if it is associated with the installation of the new press or other new construction, or if it occurred on or after March 1, 1985.

(3) "Commencement of construction" means the performance of physical activities on the property which results in changes which are visible to any person inspecting the site and are recognizable as the initial steps for the preparation of land or the installation of improvements or fixtures. Such activities include clearing and grading land, layout of foundations, excavation of foundation footing, fencing the site, or installation of temporary structures. Such activities also include the severance of existing improvements or fixtures.

"Commencement of construction" does not include activities preparatory to actual construction such as obtaining architect services, preparing plans and specifications, obtaining building permits or zoning variances or filing subdivision maps or environmental impact reports.

"Commencement of construction" shall be determined solely on the basis of activities which occur and are apparent on the property undergoing new construction. Where several parcels are adjacent and will be used as a single unit by the builder for the construction project, the commencement of construction shall be determined on the basis of the activities which occur on any part of the several parcels comprising the unit. Where a property has been subdivided into separate lots, the commencement of construction shall be determined on the basis of the activities occurring on each separate lot. Where the property has been subdivided into separate lots and several or all of those lots will be used as a single unit by the builder for the construction project, the commencement of construction shall be determined on the basis of the activities which occur on any part of the several parcels comprising the unit.

(4) "Available for use" means that the property, or a portion thereof, has been inspected and approved for occupancy by the appropriate governmental official or, in the absence of such inspection and approval procedures, when the prime contractor has fulfilled all of the contractual obligations. When inspection and approval procedures are non-existent or exist but are not utilized and a prime contractor is not involved, the newly constructed property is available for use when outward appearances clearly indicate it is immediately usable for the purpose intended. Fixtures are available for use when all testing necessary for proper operation or safety is completed.

New construction is not available for use if, on the date it is otherwise available for use, it cannot be functionally used or occupied. In that case, the property is not available for use until the date that any legal or physical impediment to functional use or occupancy is removed.

If a structure is constructed with the expectation that the tenant(s) will have improvements added after a lease(s) is executed, "available for use" means that point in time when the structure is ready to receive tenant improvements, whether or not there are any tenants at that time and regardless of who is to construct the improvements. If a construction project is completed in stages with some portions available for occupancy prior to completion of the total project, any portion of the project ready to receive tenant improvements is available for use even though other portions of the project are not ready for such improvements. In the case of physical alterations to land, such as leveling, "available for use" means that point in time when the land is ready for use by the owner and no further new construction is required for the new use. In the case of fixtures added as part of a larger new construction project, "available for use" means that point in time when the project, including the fixture, is ready for use.

(5) "Occupied or used" means the physical occupancy of the property by the owner or any physical use of the property by the owner, except where such occupancy or use is incidental to an offer for a change of ownership. "Occupied or used" also includes the rental or lease of the property or any occupancy or use of the property by third persons with the owner's consent. The occupancy or use of the property occurs on the earliest date when the property is physically occupied or used, or when the agreed upon term of occupancy commences. "Used" does not include the transfer of legal title to the property as security.

(6) "Functionally used or occupied" means that the property is or can be used or occupied for the purpose for which it was constructed. The purpose for which the property was constructed or improved shall be determined on the basis of the type of property and any special facts or circumstances which affect its use or occupancy. Property shall not be considered "functionally used or occupied" if any legal restriction or physical impediment beyond the owners' control prevents the use of the property for the purpose intended.

Examples: (A) A building intended for use as a warehouse can be functionally used when physical construction is completed even though the property to be stored has not arrived at the site.

(B) Land improved by leveling and the installation of an irrigation system which converts it from grazing land to farm land can be functionally used when the improvement activity is completed even though the planting season will not commence for several months.

(C) An office or hotel building on which construction is completed cannot be functionally used if it is uninhabitable because of the lack of power, water or sewer service, or if a natural disaster, such as a flood or earth slide, prevents reasonable public access to the facility.

(7) "Available for use" means that the property, or a portion thereof, has been inspected and approved for occupancy by the appropriate governmental official or, in the absence of such inspection and approval procedures, when the prime contractor has fulfilled all of the contractual obligations. Where the use or occupancy is visible to, or ascertainable by, the assessor, it shall be rebuttably presumed that the property is occupied or used with the owner's consent. If the owner has received actual or constructive notice of the occupancy or use, failure of the owner to communicate an objection to the user or enforce his rights to remove the occupant within a reasonable time shall be evidence of consent.

(8) "Incidental to an offer for a change of ownership" means that an activity is usual or necessary to the holding of property for sale in the regular course of business. It includes any use or occupancy arising from the demonstration or display of the property for the purpose of selling that property or other property in the vicinity under the same ownership. It includes use of the property by the owner or by any person using the property with the owner's consent. Use of property as a model home, a sales office, or as a temporary storage facility for building materials or furnishings intended to be installed in other property to be held for sale, shall be considered to be incidental to an offer for a change in ownership.

Temporary use of the property as lodging by a potential buyer for the purpose of sales promotion shall be considered incidental to an offer for a change of ownership. The use of this property, however, by a potential buyer as a principal residence pending the arrangement or approval of the financing necessary to complete the purchase is not incidental to an offer for a change in ownership.

(9) "Structures" means all improvements subject to supplemental assessment other than living improvements (trees and vines) and fixtures which qualify for assessment pursuant to Sections 75.15 and 75.16 of the Revenue and Taxation Code.

History: Adopted May 28, 1987, effective August 20, 1987.

# APPENDIX 3: GLOSSARY OF TERMS

| Term | Definition |
|---|---|
| ***Active Solar Energy System*** | A system that uses solar devices, which are thermally isolated from living space or any other area where the energy is used, to provide for the collection, storage, or distribution of solar energy. |
| ***Additions*** | The act of adding implies that there is a pre-existing structure or base to which something is added. Additions are made to land and improvements, including fixtures. |
| ***Alteration*** | The act or process of altering; a modification or change. |
| ***Appraisal Unit*** | The unit that people in the market typically buy and sell or that is normally valued separately. |
| ***Assessed Value*** | The taxable value of a property against which the tax rate is applied. |
| ***Assessment*** | Placing a value on property for the purpose of property taxation. |
| ***Agricultural Use*** | Use of land for the purpose of producing an agricultural commodity for commercial purposes. |
| ***Assessment Roll*** | A listing of all taxable property within a county. It identifies, at a minimum: (1) the property (usually by assessor's parcel number); (2) the tax-rate area where the property is located; (3) the name (if known) and mailing address of the assessee; (4) the assessed value of the property, including separate assessed values for land, improvements, and personal property; (5) penalties (if any); and (6) the amount (if any) of specified exemptions (homeowners', church, welfare,). Distinct assessment rolls include the locally assessed secured and unsecured regular assessment rolls, the locally assessed supplemental assessment roll, and the state assessed roll (which is added to the locally assessed secured roll). |
| ***Base Year Value*** | A property's fair market value as of either the 1975 lien date or the date the property was last purchased, newly constructed, or underwent a change in ownership after the 1975 lien date. |
| ***Building Improvements*** | Improvements to a structure. |
| ***Change in Ownership*** | A transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest. |

***Comparative Sales Approach*** An approach to value by reference to sale prices of the subject property or comparable properties; the preferred approach when reliable market data are available.

***Commencement of Construction*** The performance of physical activities on a property which result in visible changes. These changes should be visible to any person inspecting the site and are recognizable as the initial steps for the preparation of land or the installation of improvements or fixtures.

***Cost Approach*** A value approach using the following procedures to derive a value indicator: (1) estimate the current cost to reproduce or replace an existing structure without untimely delays; (2) deduct all accrued depreciation; and (3) add the estimated land value and an amount to compensate for entrepreneurial profit (if present).

***Depreciation*** A decrease in utility resulting in a loss in property value; the difference between estimated replacement or reproduction cost new as of a given date and market value as of the same date. There are three principal categories of depreciation:

(1) Physical Deterioration. The loss in utility and value due to some physical deterioration in the property; considered curable if the cost to cure is equal to or less than the value added by curing it.

(2) Functional Obsolescence. The loss in utility and value due to changes in the desirability of the property; attributable to changes in tastes and style or the result of a poor original design. Functional obsolescence is curable if the cost to cure is equal to or less than the value added by curing it.

(3) External (or Economic) Obsolescence. The loss in utility and value due to an incurable defect caused by external negative influences outside the property itself.

***Economic Obsolescence*** An element of accrued depreciation; a defect, usually incurable, caused by influences outside the site—sometimes called external obsolescence.

***Economic Rent*** The amount of rental income that could be expected from a property if available for rent on the open market, as indicated by the prevailing rental rates for comparable properties under similar terms and conditions; economic rent is distinguished from contract rent, which is the actual rental income for the subject property as specified in a lease; economic rent is also referred to as market rent.

***Fair Market Value*** The amount of cash or its equivalent that property would bring if exposed for sale in an open market under conditions in which neither buyer nor seller take advantage of the exigencies of the other and both with knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used, and of the enforceable restrictions upon those uses and purposes.

***Full Value*** — The fair market value, full cash value, or such other value standard as is prescribed by the Constitution or the Revenue and Taxation Code.

***Full Value of New Construction*** — That portion of the increase in the value of a total property upon completion that is attributable directly to the qualifying new construction.

***Functional Obsolescence*** — Curable: an element of accrued depreciation; a curable defect caused by a defect in the structure, materials, or design.

Incurable: an element of accrued depreciation; a defect caused by a deficiency or a superadequacy in the structure, materials, or design, which is not financially feasible or practical to correct.

***Highest and Best Use*** — The most profitable use of a property at the time of the appraisal; that available use and program of future use that produces the highest present land value; must be legal, physically possible, financially feasible, and maximally profitable.

***Improvements*** — All buildings, structures, fixtures, and fences erected on or affixed to the land; all fruit, nut bearing, ornamental trees and vines not of natural growth and not exempt from taxation, except date palms under eight years of age.

***Income Approach*** — Any method of converting an income stream or a series of future income payments into an indicator of present value.

***Land*** — Real estate, or real property, except improvements. It includes the possession of, claim to, ownership of, or right to possession of land; and all mines, minerals, and quarries in the land; all standing timber whether or not belonging to the owner of the land; and all rights and privileges appertaining thereto.

***Lien Date*** — All taxable property (both state and locally assessed) is assessed annually for property tax purposes as of 12:01 a.m. on January 1. It is referred to as the lien date because on this date the taxes become a lien against all real property assessed on the secured roll.

***Major Rehabilitation*** — Major rehabilitation is defined as any rehabilitation, renovation, or modernization, which converts an improvement to the substantial equivalent to new.

***Modernization*** — Taking corrective measures to bring a property into conformity with changes in style, whether exterior or interior, or additions necessary to meet standards of current demand. Modernization normally involves replacing part of the structure or mechanical equipment with modern replacements of the same kind. For property tax purposes, modernization implies curing functional obsolescence and physical deterioration to the degree that the structure or fixture is substantially equivalent to new.

***New Construction*** Any addition to real property, whether land or improvements (including fixtures) since the last lien date; any alteration of land or improvements (including fixtures) since the last lien date that constitutes a major rehabilitation or which converts the property to a different use.

***Normal Maintenance*** The action of continuing, carrying on, preserving, or retaining something; it is the work of keeping something in proper condition. Maintenance performed on real property is normal when it is regular, standard, and typical. Normal maintenance keeps a property in condition to perform efficiently the service for which it is intended.

***Off-Site Improvements*** Improvements that are located outside the subject property (often termed infrastructure) that add value to land. Off-site improvements include such works as transportation systems; sewage, water and drainage systems; and facilities for electric and gas power and telephonic communication.

***Personal Property*** Personal property includes all property except real property.

***Principle of Substitution*** A buyer will not pay more for one property than for another that is equally desirable. This principle assumes rational, prudent market behavior with no undue cost due to delay.

***Property*** Property includes all matters and things—real, personal, and mixed—that are capable of private ownership.

***Purchase Price*** The amount of money a buyer agrees to pay and a seller agrees to accept in an exchange of property rights; sale price is based on a particular transaction, not necessarily on what the typical buyer would pay or the typical seller would accept.

***Real Property*** The possession of, claim to, ownership of, or right to the possession of land; all mines, minerals, and quarries in the land; all standing timber whether or not belonging to the owner of the land, and all rights and privileges appertaining thereto; and improvements. The term is synonymous with "real estate."

***Rehabilitation*** The restoration of a property to satisfactory condition without changing the plan, form, or style of a structure. It involves curing physical deterioration.

***Reproduction Cost*** The cost to replace an existing property with a replica as of a particular date. Strictly construed, reproduction cost calls for identical materials and quality of workmanship.

***Replacement Cost*** The cost to replace an existing property with a property of equivalent utility as of a particular date.

***Remodeling*** Changing the plan, form, or style of a structure to correct deficiencies.

***Renovation*** Making a property into new condition.

***Replacement*** Substituting an item that is fundamentally the same type or utility for an item that is exhausted, worn out, or inadequate.

***Sales Comparison Approach*** See comparative sales approach.

***Sales Data or Market Method of Measuring Depreciation*** When adequate sales data are available, the sales data or market method is the most direct and preferred method of measuring depreciation. This measurement of depreciation is taken from the actions of buyers and sellers in the market. In this method, in the case of real property, the appraiser analyzes a number of sales of improved properties and subtracts the estimated land value for each sale from the selling price. The remainder is the building's contribution to the sale price, which is then compared to the current cost of a new building. The difference is the total depreciation.

***Structure*** A building; an improvement whose primary use or purpose is for housing or accommodation of personnel, personalty, or fixtures and has no direct application to the process or function of the industry, trade, or profession.

***Substantially Equivalent to New*** See "major rehabilitation," "modernization," "rehabilitation," "remodel," and "renovation."

***Supplemental Assessment*** An assessment of the full cash value of property or portion thereof as of the date a change in ownership occurs or new construction is completed which establishes a new base year value for the property.

***Taxable Possessory Interest*** Possessory interests in publicly owned real property. Excluded from the meaning are any possessory interests in real property located within an area to which the United States has exclusive jurisdiction concerning taxation. Such areas are commonly referred to as federal enclaves.

***Taxable Value*** For real property subject to article XIII A of the California Constitution, the base year value adjusted for any given lien date as required by law or the full cash value (market value) for the same lien date, whichever is less. For personal property, the full cash value for the lien date each year.

The following table arrays the changes that Cal Tax wants the Board to consider when adopting Assessors' Handbook Section 410 (see "Alternative 2").

| PAGE/ LINE | BOE STAFF RECOMMENDED TEXT | CAL TAX RECOMMENDED TEXT |
|---|---|---|
| 2<br>Line 1 | If new construction occurs on only a portion of a property (for example, the addition of a bedroom), the newly constructed portion is assigned its own base year value; this value represents the assessor's estimate of the market value added by the newly constructed portion. The remainder of the property, which did not undergo new construction, retains its existing base year value. Thus, a property assessment may be composed of multiple base year values based upon prior fractional ownership changes or partial new construction until such time as the entire property interest changes ownership. | ~~If new construction occurs on only a portion of a property (for example, the addition of a bedroom), the newly constructed portion is assigned its own base year value; this value represents the assessor's estimate of the market value added by the newly constructed portion. The remainder of the property, which did not undergo new construction, retains its existing base year value. Thus, a property assessment may be composed of multiple base year values based upon prior fractional ownership changes or partial new construction until such time as the entire property interest changes ownership.~~ |
| 3<br>Line 9 | The full value of new construction is that portion of the increase in the value of the total property upon completion that is directly attributable to the assessable new construction. | ~~The full value of new construction is that portion of the increase in the value of the total property upon completion that is directly attributable to the assessable new construction.~~ |
| 3<br>Line 32 | Any physical alteration that converts an improvement (or any portion) to the substantial equivalent of a new improvement or changes the way in which the improvement is used. | Any physical alteration that converts an improvement ~~(or any portion)~~ to the substantial equivalent of a new improvement or changes the way in which the improvement is used. |
| 5<br>Line 1 | Additions do not change the base year or base year value of the pre-existing portion of the property. | ~~Additions do not change the base year or base year value of the pre-existing portion of the property.~~ |
| 5<br>Line 6 | 1. Rehabilitates real property (or a portion of it) to the point that it is like new; or<br>2. Converts the property (or a portion of it) to a different use. | 1. Rehabilitates real property ~~(or a portion of it)~~ to the point that it is like new; or<br>2. Converts the property ~~(or a portion of it)~~ to a different use. |
| 6<br>Line 5 | Timing and scope of work must be considered to determine when maintenance and repair becomes rehabilitation and renovation that brings an improvement (or a portion) to the substantial equivalent of new. | Timing and scope of work must be considered to determine when maintenance and repair becomes rehabilitation and renovation that brings an improvement ~~(or a portion)~~ to the substantial equivalent of new. |
| 6<br>Line 13 | However, when replacements are as extensive and extreme as to make an improvement (or a portion) *like new*, then the work is considered assessable new construction. | However, when replacements are as extensive and extreme as to make an improvement ~~(or a portion)~~ *like new*, then the work is considered assessable new construction. |
| 6<br>Line 18 | If this is the case, the portion of the factored base year value attributable to the old property should be removed from the assessment roll, and the new property should be enrolled at its current fair market value as of the date of replacement. | ~~If this is the case, the portion of the factored base year value attributable to the old property should be removed from the assessment roll, and the new property should be enrolled at its current fair market value as of the date of replacement.~~ |

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| 6<br>Line 27 | Whether or not new construction activity transforms an improvement (or a portion) into a state that is substantially equivalent to new is a factual determination that must be made on a case-by-case basis. | Whether or not new construction activity transforms an improvement ~~(or a portion)~~ into a state that is substantially equivalent to new is a factual determination that must be made on a case-by-case basis. |
| 7<br>Line 2 | Thus, in a literal sense, the renovation of an improvement (or a portion) means the improvement has been made substantially equivalent to new and is considered assessable new construction. | Thus, in a literal sense, the renovation of an improvement ~~(or a portion)~~ means the improvement has been made substantially equivalent to new and is considered assessable new construction. |
| 7<br>Line 6 | New construction is assessable when that new construction has converted an improvement (or a portion) to a state *substantially equivalent to new*. | New construction is assessable when that new construction has converted an improvement ~~(or a portion)~~ to a state *substantially equivalent to new*. |
| 7<br>Line 14 | Whether or not new construction transforms an improvement or fixture (or a portion) into a state that is substantially equivalent to new (into a state where its utility is comparable to new) is a factual determination that must be made on a case-by-case basis. | Whether or not new construction transforms an improvement or fixture ~~(or a portion)~~ into a state that is substantially equivalent to new (into a state where its utility is comparable to new) is a factual determination that must be made on a case-by-case basis |
| 7<br>Line 20 | If such construction activity converts the existing improvements to substantially equivalent to new or is the installation of a new fixture, such activity is assessable new construction to the building (or portion thereof). | If such construction activity converts the existing improvements to substantially equivalent to new or is the installation of a new fixture, such activity is assessable new construction to the building ~~(or portion thereof)~~. |
| 8<br>Line 5 | Value added – does the new construction cause the existing structure (or portion) to equal a substantial percentage of the value of a comparable new structure (or portion)? | Value added – does the new construction cause the existing structure ~~(or portion)~~ to equal a substantial percentage of the value of a comparable new structure ~~(or portion)~~? |
| 8<br>Line 9 | This measurement requires an appraisal of the improvement immediately before and after the new construction to estimate the value added, along with an estimate of the value of a comparable new improvement to determine if the new construction is equal to a substantial portion of the property. | ~~This measurement requires an appraisal of the improvement immediately before and after the new construction to estimate the value added, along with an estimate of the value of a comparable new improvement to determine if the new construction is equal to a substantial portion of the property.~~ |
| 8<br>Line 25 | **Portion of an Improvement**<br>New construction is any physical alteration of an improvement which converts the improvement, *or any portion of it,* to substantially equivalent to new or changes the way in which the portion of the improvement that was altered is used. The value of the alteration, not necessarily its cost, will be added to the factored base year value of the pre-existing structure.<br>In the context of newly constructed property, the term *portion* or *portion thereof* means a component of a land parcel, an individual structure, or fixture that is easily recognized. It is a part of an individual structure designed for independent, separate use such as a bathroom or kitchen. For example, a farmer might level only 40 acres for row crops of 640 acres of ranch land. That would be a change in use to a portion of the ranch. In an apartment building, each unit would be a portion designed for independent and separate use. The same | ~~**Portion of an Improvement**~~<br>~~New construction is any physical alteration of an improvement which converts the improvement, *or any portion of it,* to substantially equivalent to new or changes the way in which the portion of the improvement that was altered is used. The value of the alteration, not necessarily its cost, will be added to the factored base year value of the pre-existing structure.~~<br>~~In the context of newly constructed property, the term *portion* or *portion thereof* means a component of a land parcel, an individual structure, or fixture that is easily recognized. It is a part of an individual structure designed for independent, separate use such as a bathroom or kitchen. For example, a farmer might level only 40 acres for row crops of 640 acres of ranch land. That would be a change in use to a portion of the ranch. In an apartment building, each unit would be a portion designed for independent and separate use. The same~~ |

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| | would be true for a commercial strip shopping center with each bay being a portion.<br>***Example 2-1***<br>A property owner converts a 500-square foot garage into living space. The original residence had 1,500 square feet of living space with a 1979 base year value of $50,000 (land $15,000 and improvements $35,000). An appraiser would consider the following data when appraising the new construction:<br>• Comparable homes of approximately 1,500 square feet with unconverted garages were selling for $450,000 (land $200,000 and improvements $250,000).<br>• Homes of approximately 2,000 square feet with converted garages were selling for $470,000 (land $200,000 and improvements $270,000).<br>All else being equal, the value attributable to the garage conversion is indicated by the difference between the market values of the homes with converted garages and the market values of the homes without converted garages ($20,000).<br>Value enrolled is calculated as follows:<br>Land $15,000 x 1.75483 (2010 CPI factor) $26,323<br>Improvements $35,000 x 1.75483 (2010 CPI factor) +61,419<br>Factored base year value<br>Plus value of new construction<br>Enrolled value<br>Correct identification of a newly constructed portion of an improvement, identification of a portion of an improvement that is substantially equivalent to new, and estimating the market value of that portion is subject to appraisal judgment. | ~~would be true for a commercial strip shopping center with each bay being a portion.~~<br>~~***Example 2-1***~~<br>~~A property owner converts a 500-square foot garage into living space. The original residence had 1,500 square feet of living space with a 1979 base year value of $50,000 (land $15,000 and improvements $35,000). An appraiser would consider the following data when appraising the new construction:~~<br>~~• Comparable homes of approximately 1,500 square feet with unconverted garages were selling for $450,000 (land $200,000 and improvements $250,000).~~<br>~~• Homes of approximately 2,000 square feet with converted garages were selling for $470,000 (land $200,000 and improvements $270,000).~~<br>~~All else being equal, the value attributable to the garage conversion is indicated by the difference between the market values of the homes with converted garages and the market values of the homes without converted garages ($20,000).~~<br>~~Value enrolled is calculated as follows:~~<br>~~Land $15,000 x 1.75483 (2010 CPI factor) $26,323~~<br>~~Improvements $35,000 x 1.75483 (2010 CPI factor) +61,419~~<br>~~Factored base year value~~<br>~~Plus value of new construction~~<br>~~Enrolled value~~<br>~~Correct identification of a newly constructed portion of an improvement, identification of a portion of an improvement that is substantially equivalent to new, and estimating the market value of that portion is subject to appraisal judgment.~~ |
| 13<br>Line 26 | He demolishes the old foundation and returns that portion of the lot to its original form (bare land). | He demolishes the old foundation and returns ~~that portion of the~~ lot to its original form (bare land). |
| 15<br>Line 9 | Rule 463.500(b): (1) The date of completion of new construction resulting from actual physical new construction shall not be the date upon which it is available for use if the owner does not intend to occupy or use the property and the owner notifies the assessor in writing prior to, or within 30 days after, the date of commencement of construction that he/she/it does not intend to occupy or use the identified property or a specified portion thereof. | Rule 463.500(b): (1) The date of completion of new construction resulting from actual physical new construction shall not be the date upon which it is available for use if the owner does not intend to occupy or use the property and the owner notifies the assessor in writing prior to, or within 30 days after, the date of commencement of construction that he/she/it does not intend to occupy or use the identified property ~~or a specified portion thereof~~. |

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| 15<br>Line 19 | Rule 463.500(c) defines a*vailable for use* as:<br>(4) …the property~~, or a portion of it,~~ that has been inspected and approved for occupancy by the appropriate governmental official or, in the absence of such inspection and approval procedures, when the prime contractor has fulfilled all of the contractual obligations…. | Rule 463.500(c) defines a*vailable for use* as:<br>(4) …the property~~, or a portion of it,~~ that has been inspected and approved for occupancy by the appropriate governmental official or, in the absence of such inspection and approval procedures, when the prime contractor has fulfilled all of the contractual obligations…. |
| 15<br>Line 27 | The final inspection date, as indicated by city or county officials or in the construction contract, may be used to determine whether the property (or a portion of it) is available for use. | The final inspection date, as indicated by city or county officials or in the construction contract, may be used to determine whether the property ~~(or a portion of it)~~ is available for use. |
| 19<br>Line 16 | A variation of this method is used when the new construction consists of an addition to an existing structure. The value of an addition may sometimes be derived from sales of similar properties without the need to produce two different appraisals. By subtracting the land value from the selling prices of comparable properties, an appraiser can estimate the improvement value and then derive the value per square foot of improvement area.<br>***Example 3-1***<br>A taxpayer adds a 200 square-foot addition to his 2,000 square-foot home. The property has a base year value of $250,000, of which $82,000 is allocated to land and $168,000 is allocated to improvements.<br>The following information is available for comparable properties:<br>• Homes of similar size and characteristics in the same subdivision as the subject property (without the addition) have been selling for $600,000, of which $180,000 is allocated to land and $420,000 to improvements.<br>• Homes of similar size and characteristics in the area which have a 300 square-foot addition have been selling for $650,000.<br>Using the comparative sales approach, the current market value of the addition for the subject property would be calculated as follows:<br>The difference between the sales prices for homes with additions and homes without additions is: | ~~A variation of this method is used when the new construction consists of an addition to an existing structure. The value of an addition may sometimes be derived from sales of similar properties without the need to produce two different appraisals. By subtracting the land value from the selling prices of comparable properties, an appraiser can estimate the improvement value and then derive the value per square foot of improvement area.~~<br>~~***Example 3-1***~~<br>~~A taxpayer adds a 200 square-foot addition to his 2,000 square-foot home. The property has a base year value of $250,000, of which $82,000 is allocated to land and $168,000 is allocated to improvements.~~<br>~~The following information is available for comparable properties:~~<br>~~• Homes of similar size and characteristics in the same subdivision as the subject property (without the addition) have been selling for $600,000, of which $180,000 is allocated to land and $420,000 to improvements.~~<br>~~• Homes of similar size and characteristics in the area which have a 300 square-foot addition have been selling for $650,000.~~<br>~~Using the comparative sales approach, the current market value of the addition for the subject property would be calculated as follows:~~<br>~~The difference between the sales prices for homes with additions and homes without additions is:~~ |

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| | $650,000 – 600,000 = $50,000<br>The market value per square foot of the 300 square-foot additions for the comparable properties is:<br>$50,000 ÷ 300 square feet = $167 per square foot<br>The market value for the 200 square-foot addition for the subject property is:<br>200 square feet x $167 = $33,400 | ~~$650,000 – 600,000 = $50,000~~<br>~~The market value per square foot of the 300 square-foot additions for the comparable properties is:~~<br>~~$50,000 ÷ 300 square feet = $167 per square foot~~<br>~~The market value for the 200 square-foot addition for the subject property is:~~<br>~~200 square feet x $167 = $33,400~~ |
| 23<br>Line 28 | An assessor must determine the value for any portion of property that has been newly constructed. | ~~An assessor must determine the value for any portion of property that has been newly constructed.~~ |
| 28<br>Line 2 | When extensive renovation or rehabilitation of a property (or a portion) converts it into one that resembles a newly built property, the work is considered assessable new construction and the assessor is required to establish a new base year value.[38] The base year value would not be changed for any portion of a property that does not undergo new construction as a result of renovation or rehabilitation. | When extensive renovation or rehabilitation of a property ~~(or a portion of it)~~ converts it into one that resembles a newly built property, the work is considered assessable new construction and the assessor is required to establish a new base year value. ~~The base year value would not be changed for any portion of a property that does not undergo new construction as a result of renovation or rehabilitation.~~ |
| 28<br>Line 17 | Rebuilding the flood-damaged portion of the property is excluded from reassessment[40] since the new construction merely brought the property back to its previous condition. | Rebuilding the flood-damaged ~~portion of the~~ property is excluded from reassessment[40] since the new construction merely brought the property back to its previous condition. |
| 29<br>Line 9 | A portion of the existing base year value should be retained for the studs and foundation system that were not removed. | ~~A portion of the existing base year value should be retained for the studs and foundation system that were not removed.~~ |
| 29<br>Line 23 | However, if the repairs or replacements are so extensive or so extreme as to make an improvement (or a portion) like new, it may be assessable new construction. | However, if the repairs or replacements are so extensive or so extreme as to make an improvement ~~(or a portion)~~ like new, it may be assessable new construction. |
| 31<br>Line 2 | The facts in each instance should be decided on a case-by-case basis to determine whether or not the new construction activity transforms the improvement (or a portion) into a state that is substantially equivalent to new. | The facts in each instance should be decided on a case-by-case basis to determine whether or not the new construction activity transforms the improvement ~~(or a portion)~~ into a state that is substantially equivalent to new. |
| 31<br>Line 9 | ***Example 3-12***<br>A home built in the early 1950's has a flat roof that is in good condition. The owner decides to change the roof line of the home by adding new framing (rafters, trusses, ceiling joists, etc.) that results in a roof line with a pitch to it. The new roof has composition shingles similar to the original flat roof.<br>The work that was done in constructing the new roof would be considered assessable new construction. It has converted the "portion of" the | ~~***Example 3-12***~~<br>~~A home built in the early 1950's has a flat roof that is in good condition. The owner decides to change the roof line of the home by adding new framing (rafters, trusses, ceiling joists, etc.) that results in a roof line with a pitch to it. The new roof has composition shingles similar to the original flat roof.~~<br>~~The work that was done in constructing the new roof would be considered assessable new construction. It has converted the "portion of" the~~ |

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| | structure that consists of the roof to a state that is substantially equivalent to new. The assessor must determine what value, if any, the new roof adds to the house. The costs associated with this type of new construction could exceed the value actually added. | ~~structure that consists of the roof to a state that is substantially equivalent to new. The assessor must determine what value, if any, the new roof adds to the house. The costs associated with this type of new construction could exceed the value actually added.~~ |
| 35<br>Line 2 | For property tax purposes, construction in progress is defined as property under construction on the lien date (January 1). New construction may be an entire structure, such as an entirely new single-family residence or office complex, or only a portion of an improvement, such as a room addition.<br>Partially completed new construction does not acquire a base year value. Instead, new construction in progress on any lien date is assessed at its market value on that date and on each successive lien date until it is completed. Upon completion, the entire portion of the property which is newly constructed is reappraised at its market value and acquires a base year value.<br>***Example 4-1***<br>On the 2009 lien date, new construction was determined to be incomplete, and the assessor added a $250,000 construction-in-progress value to the roll. On November 12, 2009, the construction was 100 percent completed. The assessor determined that the market value of the completed new construction was $210,000 as of the date of completion.<br>The value to be enrolled as the base year value for the new construction is $210,000 as of November 12, 2009. The $250,000 construction-in-progress value on the 2009 lien date did not establish a base year value for the property.<br>The assessor must use judgment in determining whether or not portions of a project can be considered complete for purposes of base year valuation. If the project is to be constructed in distinct stages, as in the case of a shopping center or an office complex, with portions being completed and available for use before other portions are constructed, then it is proper to assign a base year value to the completed portions.[193]<br>If, however, a project is to be constructed as a single facility such that the entire improvement will become available for occupancy within a reasonably short period of time, the total project should be treated as construction in progress until all of the improvement is available for occupancy. The incidental occupancy of a portion of such an improvement would not cause the establishment of a separate base year value for the occupied portion unless there is evidence that there will be a significant time delay before the balance of the improvement is completed. | ~~For property tax purposes, construction in progress is defined as property under construction on the lien date (January 1). New construction may be an entire structure, such as an entirely new single-family residence or office complex, or only a portion of an improvement, such as a room addition.~~<br>~~Partially completed new construction does not acquire a base year value. Instead, new construction in progress on any lien date is assessed at its market value on that date and on each successive lien date until it is completed. Upon completion, the entire portion of the property which is newly constructed is reappraised at its market value and acquires a base year value.~~<br>~~***Example 4-1***~~<br>~~On the 2009 lien date, new construction was determined to be incomplete, and the assessor added a $250,000 construction-in-progress value to the roll. On November 12, 2009, the construction was 100 percent completed. The assessor determined that the market value of the completed new construction was $210,000 as of the date of completion.~~<br>~~The value to be enrolled as the base year value for the new construction is $210,000 as of November 12, 2009. The $250,000 construction-in-progress value on the 2009 lien date did not establish a base year value for the property.~~<br>~~The assessor must use judgment in determining whether or not portions of a project can be considered complete for purposes of base year valuation. If the project is to be constructed in distinct stages, as in the case of a shopping center or an office complex, with portions being completed and available for use before other portions are constructed, then it is proper to assign a base year value to the completed portions.[193]~~<br>~~If, however, a project is to be constructed as a single facility such that the entire improvement will become available for occupancy within a reasonably short period of time, the total project should be treated as construction in progress until all of the improvement is available for occupancy. The incidental occupancy of a portion of such an improvement would not cause the establishment of a separate base year value for the occupied portion unless there is evidence that there will be a significant time delay before the balance of the improvement is completed.~~ |

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| | A residence presents a somewhat different type of problem, particularly recreational homes and owner-built structures. As sometime happens, an owner moves into his owner-built structure before it is fully complete with the intention of finishing it while living there, and after a period of years the owner still has not finished the structure. The valuation determination now becomes more difficult for the assessor. It is not proper to continue valuing this structure year after year as construction in progress. On the other hand, the structure is technically incomplete. The assessor should use appraisal judgment and establish a base year and base year value when it appears that the structure is substantially equivalent to a completed home and is a livable unit. When the owner finishes the structure at a later date, the additional construction should be considered new construction and assessed accordingly. | ~~A residence presents a somewhat different type of problem, particularly recreational homes and owner-built structures. As sometime happens, an owner moves into his owner-built structure before it is fully complete with the intention of finishing it while living there, and after a period of years the owner still has not finished the structure. The valuation determination now becomes more difficult for the assessor. It is not proper to continue valuing this structure year after year as construction in progress. On the other hand, the structure is technically incomplete. The assessor should use appraisal judgment and establish a base year and base year value when it appears that the structure is substantially equivalent to a completed home and is a livable unit. When the owner finishes the structure at a later date, the additional construction should be considered new construction and assessed accordingly.~~ |
| | A special problem is created if a construction project comes to an unscheduled halt for an extended period. When there are no definite plans for continuation of construction within a reasonable period, the project no longer qualifies as construction in progress and the assessor should establish a base year value for the newly constructed improvements without regard to their incomplete status. | ~~A special problem is created if a construction project comes to an unscheduled halt for an extended period. When there are no definite plans for continuation of construction within a reasonable period, the project no longer qualifies as construction in progress and the assessor should establish a base year value for the newly constructed improvements without regard to their incomplete status.~~ |
| | When a project is available for occupancy but is vacant simply for lack of tenants, it should be considered complete and a base year value established. Assume a high-rise structure has the first level complete and the upper levels complete except for interior finishing on the lien date. The plans indicate that the upper levels will be finished as they are leased. In this case, the assessor should establish a base year value for the entire structure as it exists on the lien date. When the interior finishing of the upper levels is constructed, the work should be assessed as new construction on the dates of completion. | ~~When a project is available for occupancy but is vacant simply for lack of tenants, it should be considered complete and a base year value established. Assume a high-rise structure has the first level complete and the upper levels complete except for interior finishing on the lien date. The plans indicate that the upper levels will be finished as they are leased. In this case, the assessor should establish a base year value for the entire structure as it exists on the lien date. When the interior finishing of the upper levels is constructed, the work should be assessed as new construction on the dates of completion.~~ |
| | ***Example 4-2***<br>Construction on an office complex consisting of four office buildings began on May 1, 2008. The plan called for completion and occupancy of each building separately and in distinct stages. The first building was completed and occupied on May 1, 2009. The first building should be assessed as construction in progress on the January 1, 2009 lien date, and a base year value for that building should be established upon its completion on May 1, 2009. On October 1, 2009, the developer declared bankruptcy. Construction of the remaining three buildings was halted. The second building had been partially built. There were no plans to resume the project in the near future.<br>The treatment of the second building requires | ~~***Example 4-2***~~<br>~~Construction on an office complex consisting of four office buildings began on May 1, 2008. The plan called for completion and occupancy of each building separately and in distinct stages. The first building was completed and occupied on May 1, 2009. The first building should be assessed as construction in progress on the January 1, 2009 lien date, and a base year value for that building should be established upon its completion on May 1, 2009. On October 1, 2009, the developer declared bankruptcy. Construction of the remaining three buildings was halted. The second building had been partially built. There were no plans to resume the project in the near future.~~<br>~~The treatment of the second building requires~~ |

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| | additional analysis. The assessor could assess the second building as construction in progress on one or possibly two lien dates. However, if the assessor determines that there are no definite plans to continue construction of the second building, the project cannot continue to be considered construction in progress, and the assessor should establish a base year value for the incomplete structure. | ~~additional analysis. The assessor could assess the second building as construction in progress on one or possibly two lien dates. However, if the assessor determines that there are no definite plans to continue construction of the second building, the project cannot continue to be considered construction in progress, and the assessor should establish a base year value for the incomplete structure.~~ |
| 40<br>Line 7 | The county appraiser informed the owner that the date of completion is the date the property or a portion of it is available for use after final inspection by the appropriate governmental official,[58] in this instance April 1, 2004. Furthermore, the county appraiser advised that on the date of completion, the completed portion of the newly constructed property must be assessed at its full market value. | The county appraiser informed the owner that the date of completion is the date the property ~~or a portion of it~~ is available for use after final inspection by the appropriate governmental official,[58] in this instance April 1, 2004. Furthermore, the county appraiser advised that on the date of completion, ~~the completed portion of~~ the newly constructed property must be assessed at its full market value. |
| 42<br>Line 30 | In addition, if a structure (or portion) is reconstructed as a consequence of the tank replacement, such reconstruction should also be considered normal maintenance, as long as the reconstruction is timely and is substantially equivalent to the prior structure in size, utility, and function. | In addition, if a structure ~~(or portion)~~ is reconstructed as a consequence of the tank replacement, such reconstruction should also be considered normal maintenance, as long as the reconstruction is timely and is substantially equivalent to the prior structure in size, utility, and function. |
| 43<br>Line 23 | Any reconstruction of real property, or portion thereof, that exceeds the substantial equivalent of the damaged or destroyed property will be deemed to be new construction; only that portion of the reconstruction that exceeds substantially equivalent reconstruction will have a new base year value.[60] | Any reconstruction of real property~~, or portion thereof,~~ that exceeds the substantial equivalent of the damaged or destroyed property will be deemed to be new construction~~; only that portion of the reconstruction that exceeds substantially equivalent reconstruction will have a new base year value~~.[60] |
| 45<br>Line 25 | However, if the rebuilding of the property results in assessable new construction as defined in Rule 463 (that is, the rebuilt property exceeds the substantial equivalent of the property prior to damage or destruction), a new base year value should be established for the newly constructed portion. | ~~However, if the rebuilding of the property results in assessable new construction as defined in Rule 463 (that is, the rebuilt property exceeds the substantial equivalent of the property prior to damage or destruction), a new base year value should be established for the newly constructed portion.~~ |
| 46<br>Line 21 | If the assessor determines that the replacement home is not comparable, in addition to number (1) or (2) above, the assessor will enroll as new construction that portion of the reconstructed or replaced home that exceeds substantial equivalence to the destroyed manufactured home. | ~~If the assessor determines that the replacement home is not comparable, in addition to number (1) or (2) above, the assessor will enroll as new construction that portion of the reconstructed or replaced home that exceeds substantial equivalence to the destroyed manufactured home.~~ |
| 47<br>Line 22 | If any portion of the new construction exceeds substantial equivalence to the prior structure, then that portion will have a new base year value. | ~~If any portion of the new construction exceeds substantial equivalence to the prior structure, then that portion will have a new base year value.~~ |
| 47<br>Line 24 | ***Example 5-2***<br>A taxpayer owned a 1,200 square-foot residence that was totally destroyed when his property was flooded. He timely replaced the damaged property with a 3,500 square-foot residence.<br>The additional square footage which exceeded the | ~~***Example 5-2***~~<br>~~A taxpayer owned a 1,200 square-foot residence that was totally destroyed when his property was flooded. He timely replaced the damaged property with a 3,500 square-foot residence.~~<br>~~The additional square footage which exceeded the~~ |

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| | original 1,200 square-foot structure should be assessed as new construction. The rebuilt structure will have ~~a~~ two base year values. The pre-existing base year value will continue for the 1,200 square-foot portion of the rebuilt structure, and the additional 2,300 square feet will be appraised at market value as of the date of completion and a separate base year value will be established for that portion. | ~~original 1,200 square-foot structure should be assessed as new construction. The rebuilt structure will have a two base year values. The pre-existing base year value will continue for the 1,200 square-foot portion of the rebuilt structure, and the additional 2,300 square feet will be appraised at market value as of the date of completion and a separate base year value will be established for that portion.~~ |
| 52<br>Line 5 | Construction, installation, or modification of any portion or structural component of an existing single- or multiple-family dwelling is excluded from the definition of new construction if the construction is for the purpose of making the dwelling more accessible to a severely and permanently disabled person who is a permanent resident of the dwelling.[85] | Construction, installation, or modification of ~~any portion or~~ structural component of an existing single- or multiple-family dwelling is excluded from the definition of new construction if the construction is for the purpose of making the dwelling more accessible to a severely and permanently disabled person who is a permanent resident of the dwelling.[85] |
| 55<br>Line 9 | Construction which includes the installation, removal, or modification of any portion of an existing building to make it more accessible or more usable to a disabled person is excluded from assessment as new construction.[95] | Construction which includes the installation, removal, or modification ~~of any portion~~ of an existing building to make it more accessible or more usable to a disabled person is excluded from assessment as new construction.[95] |
| 59<br>Line 27 | When real property is being constructed, the assessor must determine the fair market value of the portion of the property that is under construction at each lien date. | ~~When real property is being constructed, the assessor must determine the fair market value of the portion of the property that is under construction at each lien date.~~ |
| 59<br>Line 31 | Section 71: New construction in progress on the lien date shall be appraised at its full value on such date and each lien date thereafter until the date of completion, at which time the entire portion of property which is newly constructed shall be reappraised at its full value. | Section 71: New construction in progress on the lien date shall be appraised at its full value on such date and each lien date thereafter until the date of completion, at which time the entire ~~portion of~~ property which is newly constructed shall be reappraised at its full value. |
| 61<br>Line 27 | Section 74.7(b): A replacement structure or any portion thereof used or intended to be used for a purpose substantially different than the use made of the replaced structure, shall, to the extent of the dissimilar use, be considered not similar in utility.<br>A replacement structure, or portion thereof, that satisfies the use requirement but has a full cash value that exceeds 120 percent of the full cash value of the structure if that property were not contaminated will be considered, to the extent of the excess, not similar in utility and size. | Section 74.7(b): A replacement structure ~~or any portion thereof~~ used or intended to be used for a purpose substantially different than the use made of the replaced structure, shall, to the extent of the dissimilar use, be considered not similar in utility.<br>A replacement structure~~, or portion thereof,~~ that satisfies the use requirement but has a full cash value that exceeds 120 percent of the full cash value of the structure if that property were not contaminated will be considered, to the extent of the excess, not similar in utility and size. |
| 62<br>Line 1 | To the extent that replacement property (or any portion) is not similar in function, size, and utility, the property (or portion) will have a new base year value established.[113] | To the extent that replacement property ~~(or any portion)~~ is not similar in function, size, and utility, the property ~~(or portion)~~ will have a new base year value established.[113] |
| 72<br>Line 18 | Any portion of the replacement property that is not similar in function, size, and utility is considered to have undergone a change in ownership when the replacement property is acquired or newly constructed.[155] | ~~Any portion of~~ the replacement property that is not similar in function, size, and utility is considered to have undergone a change in ownership when the replacement property is acquired or newly constructed.[155] |

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| 81<br>Line 26 | New construction in progress on the lien date must be appraised at its full value on such date and each lien date thereafter until the date of completion, at which time the entire portion of the manufactured home which is newly constructed will be reappraised at its full value.[183] | New construction in progress on the lien date must be appraised at its full value on such date and each lien date thereafter until the date of completion, at which time the ~~entire portion of the~~ manufactured home which is newly constructed will be reappraised at its full value.[183] |
| 82<br>Line 29 | However, manufactured home accessories may be real property and alteration or addition of such accessories (or a portion) may constitute assessable new construction. | However, manufactured home accessories may be real property and alteration or addition of such accessories ~~(or a portion)~~ may constitute assessable new construction. |
| Page 92 | Rule 463: **(a)** When real property or a portion thereof, is newly constructed after the 1975 lien date, the assessor shall ascertain the full value of such "newly constructed property" as of the date of completion. This will establish a new base year full value for *only* that portion of the property which is newly constructed, whether it is an addition or alteration. | Rule 463: **(a)** When real property ~~or a portion thereof,~~ is newly constructed after the 1975 lien date, the assessor shall ascertain the full value of such "newly constructed property" as of the date of completion. This will establish a new base year full value for ~~*only* that portion of~~ the property which is newly constructed~~, whether it is an addition or alteration~~. |
| Page 92 | Rule 463: **(b)**(3) Any physical alteration of any improvement which converts the improvement or any portion thereof to the substantial equivalent of a new structure or portion thereof or changes the way in which the portion of the structure that had been altered is used, e.g., physical alterations to an old structure to make it the substantial equivalent of a new building without any change in the way it is used or alterations to a warehouse that makes it usable as a retail store or a restaurant. | Rule 463: **(b)**(3) Any physical alteration of any improvement which converts the improvement ~~or any portion thereof~~ to the substantial equivalent of a new structure ~~or portion thereof~~ or changes the way in which ~~the portion of~~ the structure that had been altered is used, e.g., physical alterations to an old structure to make it the substantial equivalent of a new building without any change in the way it is used or alterations to a warehouse that makes it usable as a retail store or a restaurant. |
| Page 93 | Rule 463: **(e)** For purposes of this regulation, the date of completion is the date the property or portion thereof is available for use. In determining whether the real property or a portion thereof is available for use, consideration shall be given to the date of the final inspection by the appropriate governmental official, or, in the absence of such inspection, the date the prime contractor fulfilled all of his contract obligations, or in the case of fixtures, the date of the completion of testing of machinery and equipment. | Rule 463: **(e)** For purposes of this regulation, the date of completion is the date the property or portion thereof is available for use. In determining whether the real property ~~or a portion thereof~~ is available for use, consideration shall be given to the date of the final inspection by the appropriate governmental official, or, in the absence of such inspection, the date the prime contractor fulfilled all of his contract obligations, or in the case of fixtures, the date of the completion of testing of machinery and equipment. |
| Page 93 | Rule 463.500: **(b)**(1) The date of completion of new construction resulting from actual physical new construction shall not be the date upon which it is available for use if the owner does not intend to occupy or use the property and the owner notifies the assessor in writing prior to, or within 30 days after, the date of commencement of construction that he/she/it does not intend to occupy or use the identified property or a specified portion thereof. | Rule 463.500: **(b)**(1) The date of completion of new construction resulting from actual physical new construction shall not be the date upon which it is available for use if the owner does not intend to occupy or use the property and the owner notifies the assessor in writing prior to, or within 30 days after, the date of commencement of construction that he/she/it does not intend to occupy or use the identified property ~~or a specified portion thereof~~. |

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| Page 94 | Rule 463.500: **(c)**(4) "Available for use" means that the property, or a portion thereof, has been inspected and approved for occupancy by the appropriate governmental official or, in the absence of such inspection and approval procedures, when the prime contractor has fulfilled all of the contractual obligations. | Rule 463.500: **(c)**(4)"Available for use" means that the property~~, or a portion thereof,~~ has been inspected and approved for occupancy by the appropriate governmental official or, in the absence of such inspection and approval procedures, when the prime contractor has fulfilled all of the contractual obligations. |
| 100 | Supplemental Assessment: An assessment of the full cash value of property or portion thereof as of the date a change in ownership occurs or new construction is completed which establishes a new base year value for the property | Supplemental Assessment: An assessment of the full cash value of property ~~or portion thereof~~ as of the date a change in ownership occurs or new construction is completed which establishes a new base year value for the property |