



(916) 445-8485

May 6, 1976

Mr. E. C. Williams
San Diego County Assessor
County Administration Center
1600 Pacific Highway
San Diego, California 92101

Dear Mr. Williams:

This is in response to your April 27, 1976, letter to Mr. James Delaney concerning an application for reassessment pursuant to section 155.13 of the Revenue and Taxation Code which you have received. The application is based upon a robbery which occurred a few weeks after the lien date. While it can be argued that robbery or theft are within the meaning of "misfortune or calamity" as used in the section, we believe that they are not.

Initially, Assembly Constitutional Amendment No. 30 was placed on the ballot for the June 4, 1974, primary election as Proposition 4 and was adopted by the electorate, at which time section 155.13 simultaneously became operative. Per the analysis by Legislative Counsel:

"California's Constitution now requires that taxable property generally be assessed at its market value for purposes of property taxation. That value is determined as of March 1 of each year. However, the Constitution contains an exception for some property which is damaged or destroyed after March 1.

"That constitutional exception now allows the Legislature to authorize local governments to provide for the reassessment of property for property tax purposes where: (1) after the lien date (March 1) the property is damaged or destroyed by a "major" misfortune or calamity, and (2) the property is located in an area which is subsequently proclaimed by the Governor to be in a state of disaster.

"This measure would amend the Constitution to allow the Legislature to authorize local governments to reassess property for tax purposes where it has been damaged or destroyed as a result of misfortune or calamity, whether or not the misfortune or calamity is "major" and whether or not the property is located in an area subsequently proclaimed by the Governor to be in a state of disaster.

* * *

"Statute Contingent Upon Adoption of Above Measure

"If this measure is approved by the voters, Chapter 901 of the Statutes of 1973 will add Section 43013 to the Government Code and add Section 155.13 to the Revenue and Taxation Code.

"The text of Chapter 901 is on record in the office of the Secretary of State in Sacramento and will be contained in the 1973 published statutes. A digest of that Chapter is as follows:

"Authorizes counties and chartered cities to provide for reassessment of property damaged or destroyed by misfortune or calamity according to currently prescribed procedures, eliminating the present requirements that (1) the misfortune or calamity be major, (2) the property be located in an area proclaimed by the Governor to be in a state of disaster, and (3) the property be damaged or destroyed by the major misfortune or calamity causing the Governor's proclamation."

Consistent therewith, voters were advised to vote "Yes" if they wanted to authorize the Legislature to provide for the reassessment of property for tax purposes when property is damaged or destroyed by misfortune or calamity after the lien date of any tax year without the requirements that the misfortune or calamity be major and that the property be located in an area subsequently declared by the Governor to be in a state of disaster. Nothing in the analysis nor in the arguments and rebuttals which followed the analysis is to the effect that losses attributable to theft were to be within the meaning of "misfortune or calamity" as used in the section. Accordingly, we have proceeded upon the premise that the comparable language of sections 155.1 and 155.13 indicates that "misfortune or calamity" as used in the latter section should be construed similarly to "misfortune or calamity" as used, to our knowledge, in the former section, that is, as encompassing the action of natural physical forces.

We believe that this position is consistent with that expressed in 58 Ops.Cal.Atty.Gen. 327, CV 74-257, May 14, 1975, copy enclosed. In concluding that "misfortune or calamity" as used within section 155.13 encompasses any type of adversity which befalls one in an unpredictable manner, reference is made to 26 U.S.C. section 165(c)(3) at page 330:

"This construction is also consistent with judicial construction of the federal statutory provisions relating to an analogous federal income tax casualty deduction. The Internal Revenue Code provides a deduction for losses arising from 'fire, storm, shipwreck, or other casualty'. 26 U.S.C., § 165(c)(3).

May 6, 1976

'Casualty' is defined for purposes here relevant as 'an unfortunate accident' or a 'mishap'. The Random House Dictionary of the English Language (1966). Indeed, 'misfortune' is listed as a synonym to 'casualty' in Webster's New International Dictionary (2d ed. 1934). It is evident from the foregoing that the same element of chance or unpredictability is attributable to 'casualty' as is attributable to 'misfortune or calamity'. For this reason, federal decisions construing 'casualty' as used within 26 U.S.C., § 165(c)(3) can be helpful."

Indeed, as thereafter indicated, "casualty" embraces almost any loss arising through the action of natural physical forces so long as the element of unexpectedness is present.

At the same time that section 165(c)(3) provides a deduction for losses arising from fire, storm, shipwreck, or other casualty, it continues on and provides a deduction for losses arising from theft. While the Attorney General's Opinion delves into the definition of casualty and references federal decisions construing "casualty" as used within section 165(c)(3), however, it is silent with respect to theft and federal decisions construing "theft" as used within section 165(c)(3). The logical explanation for such omissions is that because theft is not within the meaning of "misfortune or calamity" as used in section 155.13, any reference thereto or to decisions construing "theft" would be irrelevant and hence, would serve no useful purpose.

Very truly yours,

J. Kenneth McManigal
Tax Counsel

JKM:el
Encl

bc Mr. Abram F. Goldman (. . .)
Mr. Walter Senini
Mr. Jack F. Eisenläuer
Mr. L. Gene Mayer
Legal Section

OFFICE OF THE ATTORNEY GENERAL
State of California

EVELLE J. YOUNGER
Attorney General

OPINION

of

EVELLE J. YOUNGER
Attorney General

PHILIP M. PLANT
Deputy Attorney General

No. CV 74/257

MAY 14, 1975

THE HONORABLE JOHN B. HEINRICH, SACRAMENTO COUNTY
COUNSEL has requested an opinion on the following two questions:

1. What is the meaning of "misfortune or calamity" as
used in Revenue and Taxation Code section 155.13?

2. Do local agencies have authority under Revenue and
Taxation Code section 155.13 to limit reassessment to taxpayers
experiencing specific types of misfortunes or calamities such as
loss by fire?

The conclusions are:

1. "Misfortune or calamity" as used within Revenue and
Taxation Code section 155.13 encompasses any type of adversity
which befalls one in an unpredictable manner.

2. Local agencies do not have authority under Revenue
and Taxation Code section 155.13 to limit reassessment to tax-
payers experiencing specific types of misfortunes or calamities.

ANALYSIS

Revenue and Taxation Code section 155.13 was enacted in 1973 but its operative date was contingent upon the adoption of Assembly Constitutional Amendment No. 30 of the 1973-1974 Regular Session. Assembly Constitutional Amendment No. 30 was placed on the ballot for the June 4, 1974 primary election as Proposition 4 and was adopted by the electorate at which time Revenue and Taxation Code section 155.13 simultaneously became operative.

Proposition 4 amended Article XIII, Section 2.8 of the California Constitution in such a manner as to grant power to the Legislature to authorize assessment or reassessment of property damaged or destroyed after the lien date by a misfortune or calamity. Section 2.8, as it read prior to this amendment, granted power to the Legislature to authorize such assessments or reassessments only in instances where the misfortune or calamity was major and only when the damaged or destroyed property was located in an area or region which was subsequently proclaimed by the Governor to be in a state of disaster. The original section 2.8 appears below with the provisions deleted by the 1974 amendment printed in strikeout type.

"The Legislature shall have the power to authorize local taxing agencies to provide for the assessment or reassessment of taxable property where after the lien date for a given tax year taxable property is damaged or destroyed by a ~~major~~ misfortune or calamity and the ~~damaged or destroyed~~ property is ~~located in an area or region which was subsequently~~ proclaimed by the Governor to be in a state of ~~disaster.~~"

Revenue and Taxation Code section 155.13 represents the legislative exercise of the power conferred by section 2.8 as amended in 1974. It generally spells out procedures whereby property damaged or destroyed by misfortune or calamity can be reassessed. For purposes here relevant, it is only necessary to refer to the first paragraph of section 155.13 which reads as follows:

"Notwithstanding any provision of law to the contrary, the board of supervisors may, in any year, by ordinance, provide that every person who at 12:01 a.m. on the immediately preceding March 1 was the owner of, or had in his possession, or under his control, any taxable property, or who acquired such property after such date and is liable for the taxes thereon for the fiscal year commencing the immediately following July 1, which property was thereafter damaged or destroyed, without his fault, by a misfortune or calamity, may,

within the time specified in the ordinance, apply for reassessment of such property by delivering to the assessor a written application showing the condition and value, if any, of the property immediately after the damage or destruction, which damage must be shown therein to be in excess of one thousand dollars (\$1,000). The application shall be executed under penalty of perjury, or if executed outside the State of California, verified by affidavit."

The first inquiry to be dealt with herein is directed toward the meaning of the phrase "misfortune or calamity" as used in the above quoted portion of section 155.13 (and as used in Article XIII, section 2.8 as amended in 1974).

This phrase has not been construed by the courts. Further, the phrase "major misfortune or calamity" as it appeared in section 2.8 prior to the 1974 constitutional amendment (and in Rev. and Tax. Code sec. 155.1 enacted in implementation thereof) has not been judicially construed either.

Moreover, the phrase "misfortune or calamity" is not a phrase with a technical meaning associated with matters of state or federal taxation nor is it defined elsewhere by statute. Accordingly, unless otherwise intended or indicated, this phrase should be given its "ordinary meaning and receive a sensible construction in accord with the commonly understood meaning thereof". County of Los Angeles v. Frisbie, 19 Cal.2d 634, 642 (1942).

The popular meaning associated with the word "misfortune" is "adverse fortune" or "bad luck". The Random House Dictionary of the English Language (1966). Synonyms are "mis-chance" or "mishap". Id. "Fortune" as used in the instant context is defined as "chance" or "luck". Id. From the foregoing, it is plain that "misfortune" is commonly understood to signify adversity that befalls one in an unpredictable or chance manner, arising by accident or without the will or concurrence of the person who suffers from it. Black's Law Dictionary (4th ed., 1951).

The addition of "calamity" as an alternative to "misfortune" in the phrase "misfortune or calamity" adds little. The popular definition of "calamity" is "a great misfortune; disaster". The Random House Dictionary of the English Language (1966); Black's Law Dictionary (4th ed. 1951). As so defined, "calamity" becomes but a form of "misfortune" and the definition of the latter term is necessarily inclusive of the former.

Having thus concluded that the commonly understood meaning of the phrase "misfortune or calamity" signifies adversity that befalls one in an unpredictable manner, we must test this meaning against the apparent scope and purpose of section 155.13. Words "must be construed in context, keeping in mind the nature and obvious purpose of the statute" West Pico Furniture Co. v. Pacific Finance Loans, 2 Cal.3d 594, 608 (1970), quoting from Johnstone v. Richardson, 103 Cal.App.2d 41, 46 (1951).

It is apparent from a reading of 155.13 in its entirety that its objective is to afford financial relief to property owners whose property has been damaged or destroyed after the lien date through no fault of their own. The construction of "misfortune or calamity" discussed above is consistent with this objective in that it would encompass generally all types of adversity which were chance in nature and which would therefore appear a proper basis for financial relief in the form of reassessment.

This construction is also consistent with judicial construction of the federal statutory provisions relating to an analogous federal income tax casualty deduction. The Internal Revenue Code provides a deduction for losses arising from "fire, storm, shipwreck, or other casualty". 26 U.S.C. § 165(c)(3). "Casualty" is defined for purposes here relevant as "an unfortunate accident" or a "mishap". The Random House Dictionary of the English Language (1966). Indeed, "misfortune" is listed as a synonym to "casualty" in Webster's New International Dictionary (2d ed. 1934). It is evident from the foregoing that the same element of chance or unpredictability is attributable to "casualty" as is attributable to "misfortune or calamity". For this reason, federal decisions construing "casualty" as used within 26 U.S.C. § 165(c)(3) can be helpful.^{1/}

A "casualty" as used in this body of federal law has been defined as "an accident resulting from an unknown cause and occurring unexpectedly, suddenly, without being foreseen and without design" Tank v. C.I.R., 270 F.2d 477, 482 (6th Cir., 1959) and authorities cited therein. While a detailed discussion of what is and is not a "casualty" as above defined can be

1. A limitation upon the scope of the term "casualty" as used within 26 U.S.C. § 165(c)(3) does arise through the application of the rule of ejusdem generis. Thus, the casualty must be of similar character to a fire, storm or a shipwreck. See generally 5 Mertens' Law of Federal Income Taxation § 28.57. However, for purposes of assessing the meaning of "casualty" generally, this limitation should be disregarded.

found in 5 Mertens' Law of Federal Income Taxation § 28.57, it is clear that it embraces just about any loss arising through the action of natural physical forces so long as the element of unexpectedness is present. Thus the analogous federal decisions construing the word "casualty" support the previously described definition of "misfortune or calamity" as adversity that befalls one in an unpredictable manner.

It should be noted that section 155.13 requires that the "misfortune or calamity" result in "damaged or destroyed" property which came about "without . . . [the owner's] fault". As noted in a prior opinion of this office, the words "damaged or destroyed" as used in the comparably worded section 155.1 of the Revenue and Taxation Code does not encompass economic loss in the absence of physical injury. 55 Ops.Cal.Atty.Gen. 412 (1972).

The second question to be addressed herein is whether local agencies have authority under Revenue and Taxation Code section 155.13 to limit reassessment to taxpayers experiencing specific types of misfortunes or calamities. It is concluded that section 155.13 does not authorize the local agencies to provide for reassessment only in instances of specific types of misfortunes or calamities.

Section 155.13 provides that the local board of supervisors may by ordinance "provide that every person who . . . was the owner of, . . . any taxable property, . . . which property was thereafter damaged or destroyed, without his fault, by a misfortune or calamity, may, . . . apply for reassessment" A fair reading of this language leads to the conclusion that the Legislature has authorized the local board of supervisors to provide for reassessment in the circumstances spelled out therein and nothing more. There is nothing to suggest that the Legislature thereby authorized the local board of supervisors to permit reassessment in only certain of the situations spelled out therein. To the contrary, the great detail in which procedures, limitations and terms are spelled out in section 155.13 suggests that no discretion was intended to be conferred upon the local board of supervisors to limit the implementation of such a reassessment. If the local board of supervisors by ordinance provides for reassessment, it must allow reassessment to all property owners whose property has been "damaged or destroyed, without his fault, by a misfortune or calamity" without qualification.

In addition to the fact that the above construction of section 155.13 is the only construction possible without doing violence to the reasonable meaning of the language used therein, it should be noted that this construction is most compatible with the uniform operation of the property taxation system statewide. To authorize each local board of supervisors

to specify what particular types of misfortunes or calamities would justify reassessment would result in inconsistent applications of the reassessment provisions between counties with a resultant lack of uniformity which would be at least undesirable and at most productive of possible equal protection problems. It is the rule that in construing a statute the court "must presume that the Legislature intended to enact a valid statute, and adopt an interpretation that, consistent with the statutory language and purpose, eliminates doubt as to its constitutionality". Charles S. v. Board of Education, 20 Cal.App.3d 83, 94 (1971).

* * * * *

(916) 323-7713

December 3, 1984

Mr. Dick Frank
San Luis Obispo County Assessor
Room 101, County Government Center
San Luis Obispo, CA 93408

Attention: Mr. James Smothers, SGA
Deputy County Assessor

Dear Mr. Smothers:

Interpretation of Revenue and Taxation Code
Section 170 (Assessment of Property Damaged
or Destroyed by Misfortune or Calamity)

This is in response to your letter to Chief Counsel James Delaney dated November 2, 1984. You ask if property stolen and not recovered can be reassessed under Revenue and Taxation Code Section 170 even though the property does not suffer actual damage.

We are of the opinion that Revenue and Taxation Code Section 170 does not permit reassessment of property unless such property is physically damaged or destroyed by misfortune or calamity. We reach this conclusion by the following reasoning.

California Constitution, Article XIII, Section 15 provides that the Legislature may authorize local government to provide for the assessment or reassessment of taxable property physically damaged or destroyed after the lien date to which the assessment or reassessment relates. Revenue and Taxation Code Section 170 represents the legislative exercise of the power conferred by this constitutional provision. Section 170 generally spells out the procedures whereby property damaged or destroyed by misfortune or calamity can be reassessed. Notice that the California Constitution calls for the property to be "physically damaged or destroyed". Also, the California Attorney General, in

Mr. Dick Frank

-2-

December 3, 1984

his interpretation of this section (55 Ops. Atty. Gen. 412, 11-17-72, interpretation of former Rev. & Tax. Code § 155.1), concluded that property subject to reassessment by reason of damage or destruction by misfortune or calamity must be physically damaged. Therefore, it appears to us that a taxpayer is not entitled to a reassessment under Section 170 unless the property suffers actual or physical damage. Granted, the financial loss to the taxpayer could be identical whether the property is destroyed by damage or loss by theft, however, the Constitution and the statute appears to be clear that property is not entitled to reassessment in the absence of physical damage or destruction.

Very truly yours,

Robert R. Keeling
Tax Counsel

RRK:fx

bc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Legal Section