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Executive Director

September 26, 2012

**Re: *New Construction v. Maintenance and Repair
Assignment No. 12-121***

Dear Mr. :

This is in response to your June 4, 2012 email wherein you requested our opinion regarding whether relocating your metal panel garage to another site on your property would constitute new construction under Revenue and Taxation Code¹ section 70, resulting in reassessment of the garage. As explained below, whether the relocation will result in reassessment is a factual determination to be made by the assessor that will depend on the extent of the alterations made to the structure.

Facts

According to your email, you plan to install an active solar energy system on the roof of your detached garage. Because there is insufficient sunlight where your garage is currently located, you intend to move the garage 20 feet to an area where there is unrestricted sunlight. The garage is made of corrugated metal panels and 2' x 4' and 2' x 6' sections of wood. We are told that some of the metal panels and wood will need to be replaced during the move due to rust and termites. You would like to avoid reassessment of the garage and believe you have three options available to you: first, moving the garage 20 feet by use of a crane; second, dismantling the garage and reassembling it 20 feet from the original location; and third, removing the garage and erecting a structure identical in size and shape 20 feet from the original location.

Law and Analysis

A reassessment of property occurs upon the date of a change in ownership or the date of completion of new construction. (Cal. Const. art. XIII A, § 2; see also Rev. & Tax. Code, §§ 60 and 70, et seq.) Section 70 defines "newly constructed" and "new construction" as:

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

¹ All section references are to the Revenue and Taxation Code unless otherwise specified.

(a)(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. (Emphasis added.)

Property Tax Rule² 463 provides in relevant part that "new construction" includes:

(b)(1) Any *substantial addition* to land or improvements, including fixtures, such as...constructing a new building or swimming pool or changing an existing improvement so as to add...square footage....

(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....

(b)(4) Excluded from alterations that qualify as "newly constructed" is construction or reconstruction performed for the purpose of *normal maintenance and repair*, e.g. ...interior or exterior painting, replacement of roof coverings or the addition of aluminum siding to improvements....

The installation of an active solar energy system, as defined, falls within the solar energy system "new construction" exclusion under section 73, and, although adding an active solar energy system may increase the value of your property, the additional value is not assessable to you. The addition of an active solar energy system, therefore, is not included within the meaning of "any addition" in subdivision (a)(1) of section 70 or "any substantial addition" in subdivision (b)(1) of Rule 463. However, where an active solar energy system is added to an existing improvement, the existing structure will not be excluded from assessment by the mere addition of the active solar energy system. While newly constructed active solar energy systems that are constructed as freestanding or parking lot canopies qualify for the exclusion,³ a newly constructed structure that is not part of an active solar energy system is not included in the exclusion and will be assessed at current market value as of the lien date or date of completion of new construction. (Letter to Assessors (LTA) 2008/037, 5/21/08; Property Tax Annotation⁴ (Annotation) 610.0087 (1/17/2006).)

² All subsequent references to "Rules" are to the Property Tax Rules promulgated under title 18 of the California Code of Regulations.

³ See uncodified language designated as a Note to section 73 (Assem. Bill. No. 15 (2011-2012 1st Ex. Sess., §1, subd. (c)).

⁴ Property Tax Annotations are summaries of the conclusions reached in selected legal rulings of board legal counsel published in the Board's Property Tax Law Guide and on the Board's website. See Cal. Code Regs., tit. 18, § 5700 for more information regarding annotations.

Moving the garage 20 feet by use of a crane

Whether a structure can be moved from its original location to another site on the same parcel without triggering reassessment is addressed in LTA 1980/026 at page 2. This LTA provides that improvements that are relocated from one site to another on the same property retain their original base year value.⁵ The LTA goes on to say that the "replacement of existing items such as the building foundation, concrete flat work, steps, etc., will not be considered new construction. However, any additions at the new site not present at the old should be considered new construction and valued as of the date of completion." Thus, relocating the garage as it currently exists to a different site on the same parcel will not cause a reassessment of the garage.

Dismantling the garage and reassembling it 20 feet from the original location

As explained above, it is not new construction if a structure is moved from one location to another within an appraisal unit. In our opinion, it does not matter whether the structure is moved by crane, or by dismantling and reassembling it. Therefore, if you dismantle the garage and rebuild it using the exact same material 20 feet away, it will not constitute new construction. However, you propose to alter the existing structure by replacing "some of these materials" but you do not indicate how much of the wood frame or how many of the metal panels will be replaced. As explained above, if the alterations constitute normal maintenance and repair, they will be excluded from the definition of newly constructed and would not cause a reassessment. (Rule 463, subd. (b)(4).) On the other hand, if the alterations constitute a major rehabilitation, or make the garage the substantial equivalent of a new building, then they will constitute new construction and will be subject to reassessment. (Rev. & Tax. Code, § 70, subds. (a)(2) and (b); Rule 463, subd. (b)(3).) In our opinion, whether the alterations are made before or after the garage is moved should not affect the analysis of whether the activity is basic maintenance and repair or a major rehabilitation.

In determining whether construction activity is either maintenance and repair or a major rehabilitation, the facts in each instance should be reviewed by the assessor on a case-by-case basis to determine whether or not the new construction activity transforms the improvement (or a portion of the improvement) into a state that is substantially equivalent to new. (AH 502, p. 117.) Thus, we are unable to give you a definitive opinion as to whether the materials you propose to replace would be considered new construction or maintenance and repair of the garage. Previous annotations, LTAs, and sections of AH 502, however, provide some guidance on the distinction between routine maintenance and new construction.

For example, reroofing is considered routine maintenance and does not constitute a major rehabilitation that converts the property to a different use, even when the new roof has a life of 15 years and the previous roof had 3-4 years remaining life. (Annotation 610.0055 (2/23/10).) Replacing a shake shingle roof with fire-resistant concrete tiles is classified as repair and replacement. (AH 502, p. 119.) When soundproofing a home located near an airport, the installation of insulation, storm windows, special ventilating systems, and the construction of interior insulated walls fall into the category of replacement items and not new construction.

⁵ We note that BOE staff has interpreted LTA 1994/014 as impacting only Question 2 of LTA 1980/026, thereby leaving Question 1 intact, i.e. that relocating improvements from one site to another on the same parcel is not considered new construction. Additionally, although Assessors' Handbook Section 410 (AH 410), *Assessment of Newly Constructed Properties*, is currently in draft form, the rule as stated in LTA 1980/026 is restated in AH 410. You may view the draft form of AH 410 at LTA 2011/025 (July 29, 2011), p 11.

(Annotation 610.0095 (10/30/78).) Interior or exterior painting and the addition of aluminum siding are alterations that are not treated as new construction. (Rule 463, subd. (b)(4).) When an owner of a condominium acquires an adjacent condo and installs a door in a common wall between the units, this is not new construction and, if it is viewed as an addition, it would not be a substantial addition. (Annotation 610.0050 (1/9/87).) The rebricking of a commercial furnace every three or four years constitutes routine maintenance, whereas the shut-down of the furnace every eight years for a month during which time 50 percent to 90 percent of the furnace bricks are replaced constitutes "major rehabilitation" subject to reappraisal. (Annotation 610.0075 (6/9/83).) Replacing wood frame windows or replacing corroded galvanized steel pipe with copper pipe are both classified as repair and replacement and not new construction (AH 502, p. 119), and replacing dry rot or termite damaged joists, studs, rafters, stairway and/or exterior siding is listed as an example of an alteration that should not be considered new construction. (LTA 78/188, p. 2.)

While most replacements are considered "normal maintenance and repair," replacements can be so extensive as to make a building substantially equivalent to new. (AH 502, p. 119.) For example, when a very old house is stripped to its studs and rebuilt from the foundation up, the old house has been converted into a state comparable to that of a new house and the value added by the conversion would be assessable new construction. (AH 502, p. 117.) "In such situations, the *degree of replacement* determines whether the construction activity meets the definition of normal repair and maintenance or if it qualifies as new construction." (AH 502, p. 119.) (Emphasis added.) Common types of new construction include adding square footage to existing structures; finishing previously unfinished improvement areas such as basements, attics, and garages; adding swimming pools and in-ground spas; or adding porches or patios. (AH 502, p. 118.) An alteration that converts an improvement to a new use or changes the way in which a portion of the structure is used results in new construction, such as converting existing floor space into an additional bath. (Rule 463, subd. (b)(3); LTA 78/145, p. 3.) The complete renovation of an older structure or portion thereof is an example of new construction. (Annotation 610.0060, citing LTA 79/204, p. 2.) Where the owner of a Victorian converts the property to a duplex by adding a kitchen to the second floor and an exterior staircase for access, the alterations are subject to reappraisal. (*Ibid.*, Question 2.)

Based on the foregoing, it is our opinion that if the garage is dismantled and reassembled on a different site within the same parcel using the original material, replacing only a few metal panels and sections of wood framing, the activity would appear to fall under the category of repair and maintenance. You might discuss other possibilities with the assessor to see if, for example, replacing all metal panels with new aluminum panels could be viewed as the addition of aluminum siding thus avoiding reassessment (see Rule 463, subd. (b)(4)); or you may want to consider building a simple structure at the new site with its sole function being that of holding the active solar energy device.

Removing the garage and erecting a structure identical in size and shape 20 feet from the original location

Once the original structure is removed, replacing it with an entirely new structure is no longer an alteration, but rather the addition of a new improvement to the property. As such, the new structure would meet the definition of new construction under section 70, subdivision (a)(1) and Rule 463, subdivision (b)(1) and would be reassessed.

Finally, we note that because questions of whether alterations constitute repair and maintenance or new construction are highly fact-sensitive, "[w]hether or not new construction activity transforms an improvement, fixture, or a portion thereof into a state that is substantially equivalent to new . . . is a factual determination that must be made on a case-by-case basis." (AH 502, p. 117.)

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

/s/ Susan Galbraith

Susan Galbraith
Tax Counsel

SG/mcb

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cc: Honorable

County Assessor

Mr. David Gau	MIC:63
Mr. Dean Kinnee	MIC:64
Mr. Todd Gilman	MIC:70