STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
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SUPERSEDED BY LTA 2010/010

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TO COUNTY ASSESSORS:

No. 87/23

REPLACEMENT PROPERTY FOR DISASTER-DAMAGED PROPERTY

Chapter 855 of the Statutes of 1986 (Senate Bill 2535) is an urgency statute which became effective September 17, 1986. This chapter implements Senate Constitutional Amendment 28 which was adopted by the voters in June, 1986 as Proposition 50.

This chapter adds Section 69 to the Revenue and Taxation Code and permits the base-year value of property which is substantially damaged or destroyed by a disaster to be transferred to comparable property which is acquired or newly constructed as a replacement for the substantially damaged or destroyed property. This chapter requires the asssessor to establish a base-year value for the comparable replacement property in accordance with prescribed criteria involving the transfer of the adjusted base-year value of the damaged property to the replacement property. If the replacement property's value exceeds 120 percent of the damaged property's full cash value prior to damage, then the amount over 120 percent will be added to the transferred base-year value. The sum of these amounts then becomes the replacement property's replacement base-year value.

This chapter provides that the base-year value of damaged real property may be transferred to a comparable replacement property under the following conditions:

- The property must be damaged by a major misfortune or calamity and located in an area declared to be in a state of disaster by the Governor (this information is available through the Office of Emergency Services (OES) Disaster Assistance Division at (916) 427-4347).

- The damaged property must have sustained physical damages amounting to more than 50 percent of its full cash value immediately prior to the disaster. Damage includes a reduction in value of property as a result of restricted access to the property where the restricted access was caused by the disaster and is permanent in nature.

- The replacement property must be located in the same county as the damaged property.

- The replacement property must be acquired or newly constructed within two years after the disaster.

- The replacement property must be comparable to the damaged property in size, utility and function. (This chapter also establishes 120 percent of value as a comparability test.)

- The buyer of the replacement property must have been the owner of the damaged property at the time of damage.

This chapter also provides that, at the time the base-year value is transferred to the replacement property, the damaged property shall be reassessed at its current full cash value. Since the damaged property will retain its original adjusted base-year value, the new taxable value for the damaged property will be the lower of its current full cash value or the adjusted base-year value. In other words, the damaged property will receive a "Proposition 8" treatment at the time its base-year value is transferred to the replacement property.

Section 69 also provides that in the event the damaged property is reconstructed, that reconstruction is not eligible for property tax relief under subdivision (c) of Section 70 of the Revenue and Taxation Code; that is to say, any reconstruction of the damaged property shall be deemed to be new construction. There appears to be a conflict between this portion of Section 69 and a portion of Section 2 of Article XIII A which excludes from "newly constructed" the reconstruction of real property after a disaster. Subdivision (e) of Section 2 gives express authority to the Legislature to provide for base-year value transfers. Thus, the sentence in Section 69 which excludes Section 70 relief for reconstruction when the base-year value has been transferred to replacement property under Section 69 is a reasonable interpretation of the applicable constitutional provisions.

The term "property" as used in this bill has been interpreted by the Board to mean the appraisal unit as defined in Revenue and Taxation Code Section 51(e). This means that it should be restricted to only the unit that people in the market typically buy and sell. For example, if the full cash value of a residential property prior to the disaster was $200,000 including a land value of $110,000 and only the improvement is destroyed in the disaster ($90,000), then the owner cannot transfer the base-year value because the damaged property, the appraisal unit, did not sustain damages amounting to more than 50 percent of its full cash value prior to the disaster. However, if both land and improvement suffered damages of $120,000 which is more than 50 percent of the full cash value of the property prior to the disaster ($200,000), then the owner can transfer the adjusted base-year value of the damaged property to a comparable replacement property.

The relief granted by Section 69 shall apply to any comparable replacement property acquired or newly constructed on or after July 1, 1985. In addition, this section will also affect the 1985-86 fiscal year by means of the supplemental roll. Therefore, only if the replacement property was acquired or newly constructed on or after July 1, 1985 can the adjusted base-year value be transferred from the damaged property to the replacement property.

As mentioned above, the purchase or new construction of a replacement property under this section is subject to supplemental assessment since there has been a change in ownership or new construction. However, in this situation, the new base-year value for the replacement property is the replacement base-year value as determined in accordance with the guidelines provided in this section.

A copy of the chaptered bill is enclosed for your information. If you need any additional information, please contact our Technicial Services Section at (916) 445-4982.

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division

VW:wpc
Enclosure
AL-05-2672A