State of California

Board of Equalization
Legal Division - MIC:83
Telephone (916) 445-4380

Memorandum

To: Honorable Claude Parrish
Honorable John Chiang
Honorable Johan Klehs
Honorable Dean Andal
Honorable Kathleen Connell

Date: December 14, 2001

From: David Gau, Deputy Director
Larry Augusta, Assistant Chief Counsel

Subject: ***Staff Report on Property Tax Relief Related to September 11 Terrorist Attacks***

Pursuant to requests from Board Members Andal, Connell and Klehs, attached is a staff report discussing issues relating to requests for property tax relief related to the September 11 terrorist attacks in New York, Washington, D.C. and Pennsylvania.

This matter will be before you for discussion at the Thursday, December 20, 2001 Administrative Session. If you have any questions, please do not hesitate to contact either of us.

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BOARD OF EQUALIZATION

STAFF REPORT

x Board Meeting
☐ Business Taxes Committee
☐ Customer Service and Administrative Efficiency Committee
☐ Legislative Committee
☐ Property Tax Committee
☐ Other

PROPERTY TAX RELIEF RELATED TO SEPTEMBER 11 TERRORIST ATTACKS

In accordance with requests from Board Members Dean Andal, Kathleen Connell and Johan Klehs[1], the staff researched available options for relief from property tax in California to parties affected by the terrorist events in New York, Washington, D.C. and Pennsylvania. In addition to our research, staff conducted two interested parties meetings, and solicited, received and analyzed comments, economic data and legal opinions submitted by interested parties. Interested parties submitting information included representatives of the airline industry, the hotel and lodging industry and county officials. The information submitted has been accumulated and will be distributed under separate cover, except where it is attached and referred to here.

The results of our research led staff to the following actions and advice, which are summarized below and discussed in more detail in the pages that follow.

Summary of Actions and Advice

1. On November 9, 2001, Executive Director James E. Speed extended the time for accepting applications for reassessment under section 170[2] up to and including December 24, 2001.[3]

2. In accordance with staff's recommendation, the Board on November 28, 2001 adopted Rule 138 on an emergency basis to clarify exemption for aircraft stored in California while being repaired, serviced, overhauled or maintained.

3. On December 5, 2001, the legal staff advised the Board that the provisions of section 194 allowing deferral of the first installment of property taxes did not apply to the events of September 11, 2001.[4]

4. The Legal Division advises that the provisions of section 170 do not apply to declines in value resulting solely from economic loss due to the September 11 attacks.[5]

5. Declines in value should be recognized on the lien date 2002 for the 2002-2003 year upon the submission of appropriate documentation to the assessor.

6. Reductions in commercial flights in and out of California will be reflected in adjustments in the factors used in calculating the allocation formula set forth in section 1152 in the year 2002

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[1] See attachments 1 and 2
[2] All references are to the Revenue and Taxation Code unless otherwise noted
[3] See attachment 3
[4] See attachment 4
[5] See attachment 5

Background

In accordance with the provisions of Article XIII of the Constitution, all property is taxable and, in general, assessed each lien date for property taxation. A provision for immediate reassessment relief for declines in value due to damage or destruction caused by a disaster or another form of "misfortune or calamity" is a relatively recent addition to Article XIII. In general, the focus of this relief has been on physical damage or destruction, with economic damage from lack of access also being considered in some situations. The history of disaster relief is set forth in more detail in Attachment No. 6.

In the context of the events of September 11, there is no question that the value of any aircraft that was destroyed would be removed from the calculations of taxable property. The more difficult issue is whether the disaster relief provisions can be applied to property that suffered no physical damage, but suffered "economic damage" because airports were closed, access was restricted, new time-consuming procedures for check-in were instituted, only ticketed passengers were allowed at the gates, and generally air travel and attendant businesses were negatively affected. That is the issue that the staff was asked to address.

The Federal Aeronautics Administration closed all airports on September 11, and did not allow them to re-open until September 13, and then only under certain strict conditions. Staff is informed that not all airports reopened the same day, but the FAA could not provide staff with a record listing the date each airport opened. In addition, staff is informed that Los Angeles officials restricted access to LAX for private vehicles for a significant period of time. We are not aware of any similar restrictions at other airports in California.

Item No. 1: Action to Extend Filing Period. Immediately following the terrorist attacks, there was considerable uncertainty with respect to what property tax relief, if any, was available to airlines and other affected parties who may have suffered adverse economic effects from the attacks and the resulting closure of airports and downturn in air travel. One question was whether section 170 relief was available and, if so, which properties qualified. Inasmuch as section 170 had a claim-filing deadline of 60 days after the event, the deadline for filing was rapidly approaching without the issue being resolved. Taxpayers and county officials needed more time to study the matter.

On November 9, 2001, Executive Director James E. Speed, using his authority under section 155, extended the time for accepting applications for reassessment under section 170 up to and including December 24, 2001. This was intended to allow additional time for accepting such applications while the issue of applicable relief was under study. Taxpayers were well advised to file these "protective claims," and assessors were encouraged to be generous in accepting these claims. The extension was stated in terms of "accepting" the claims because the Executive Director has authority to extend the time for assessors to perform their functions, but not to grant filing extensions to taxpayers. Assessors have discretion to accept or decline to accept the claims.

Item No. 2: Adoption of Rule 138. On November 15, 2001, staff met with representatives of the airline industry to discuss possible property tax relief. One issue that arose was whether the exemption provided by section 220 would apply to aircraft taken out of revenue service because of the downturn in passengers and the cancellation of flights. Section 220 provides an exemption for aircraft which is in California on the lien date solely for the purpose of being repaired, overhauled, modified or serviced.

Staff was advised that airline management was in the process of determining where to store aircraft that was taken out of revenue service due to the downturn in passenger demand. While out of revenue service, aircraft is required by the FAA to continue to be serviced and maintained on a regular basis to maintain airworthiness.

Airline management was willing to bring the aircraft to California for this interim service and maintenance if it were made clear that the section 220 exemption from property taxes would apply to the aircraft in California.

Staff concluded that the letter and intent of section 220 supported the application of the exemption to the aircraft in question. Staff recommended that the Board adopt Rule 138 to make it clear that the exemption provided by section 220 for aircraft brought into this state for the purpose of being repaired, overhauled, modified or serviced includes the attendant storage of such aircraft. Staff further recommended that the rule be adopted on an emergency basis because the lien date for 2002 was imminent and because airline management was making decisions on maintenance and storage.

The Board adopted Rule 138 on an emergency basis on November 28, 2001, and staff has been advised on December 13, 200 that the emergency rule will be approved by OAL.

Item No. 3: Advice that Section 194 is not Applicable. On December 5, 2001, the legal staff advised the Board that the provisions of section 194 allowing deferral of the first installment of property taxes did not apply to the events of September 11, 2001. In summary, the legal staff concluded that section 194 applied only where the Governor has declared that conditions of disaster exist. While the Governor declared a state of emergency, that declaration was based on a finding of a state of extreme peril, not a finding of a disaster. The full opinion of the legal staff is found in Attachment No. 4.

Item No. 4: Advice that Section 170 is not Applicable. On December 13, 2001, Chief Counsel Timothy Boyer issued his opinion that the disaster relief provisions of section 170 cannot be applied to reduce property taxes on property in California when the income generated from that property has declined as the result of the terrorist events that occurred in New York, Washington, D.C. and Pennsylvania. Section 170 does not apply to these declines in income or to related declines in property value.

The legal staff carefully reviewed the opinion of the Los Angeles County Counsel, as well as the legal analyses presented by Eric Miethke of Nielsen, Merksamer, Parrinello, Mueller & Naylor, and Richard Dewberry of Bewley, Lassleben & Miller. In general, the legal staff rejected the arguments in these opinions, and concluded that section 170 requires physical damage to be applicable. The complete text of Mr. Boyer's opinion is found in Attachment No. 5.

Inasmuch as staff has concluded that section 170 does not apply, staff has not answered a number of questions that would be raised if section 170 were applicable. Among those questions are: the period of time used to measure the damage; the industries and businesses entitled to section 170 relief; industry segments entitled to relief, and whether denials of relief can be appealed to the assessment appeals board.

Item No. 5: Staff Advises that Declines in Value should be Recognized on the Next Lien Date. In addition to meeting with representatives of the airline industry on November 15, staff conducted an interested parties meeting on November 30. Testimony was received from representatives of the hotel and lodging industry, as well as county officials. Based on information presented at each of these two interested parties meetings, staff concluded that there would likely be reductions in property values resulting from the declines in business attributable to the September 11 events. Upon submission of appropriate information, declines in value of both real and personal property should properly be reflected in assessments made on the January 1, 2002 lien date for the 2002-2003 fiscal year.

Staff has previously offered advice on declines in value during the economic declines of the early 1990's. Attached are copies of LTA's No. 92/24 and 92/63.[6]

Item No. 6: Reductions in Airline Business will be Reflected in the Value of the Fleet. Under sections 1150 through 1156, the value of certificated aircraft for property taxation purposes is calculated using a situs allocation formula. The aircraft is deemed to be situated in this state for purposes of taxation only to the extent that such aircraft are normally physically present within California. To determine such extent, an allocation formula is utilized based on a time in state factor and an arrivals and departures factor determined during a representative

[6] Attachments 7 and 8

period in the early part of the year. Insofar as the number of flights is reduced, the value of the fleet subject to tax in 2002-2003 will reflect that reduction.

Additional Information

Attached for the Board's information are two items. The first is a matrix summarizing responses from county assessors on a number of questions relating to the disaster relief claims.[7] The second is a memo from Research and Statistics summarizing the information received from a number of counties regarding the number and value of section 170 claims that have already been filed.[8]

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[7] Attachment 9
[8] Attachment 10

State of California

Kathleen Connell, State Controller

Memorandum

To : Richard C. Johnson
Deputy Director, Property Taxes
Lawrence A. Augusta
Assistant Chief Counsel, Property Taxes
Board of Equalization

Date: November 2, 2001

From : Kathleen Connell
California State Controller
Chair, Board of Equalization Property Tax Committee

Dean Andal DFA
Member, Board of Equalization

Subject: Airline-Related Property Values

The impact of the cowardly September 11th attacks on America extends far beyond New York, Pennsylvania and Washington. We are now experiencing the effects of the attacks on our nation's economy.

Without question no segment of the American economy has been more adversely impacted than the airline industry. In fact, Congress has singled out the airline industry for a multi-billion dollar federal bailout package.

All aviation was grounded immediately after the attack, and the commercial airline industry is experiencing a 20% decline in ridership in the aftermath of the attacks – with no relief in sight. In light of these basic facts, the value of airline industry and related assets in California has surely been diminished in some regard.

We believe it is imperative that the Board of Equalization provide the counties with guidelines for assessing airline-related property in order to ensure adequate recognition of all declines in property value experienced by the airlines and related industries.

Thus, we are asking staff to develop an issue paper detailing available options to provide appropriate relief (including applicable exemptions) to all affected parties. The issue paper should be all-inclusive by discussing the different types of property assessed (e.g. airplanes, PIs, business property and equipment) and industry segments (e.g. commercial, cargo, scheduled and non-scheduled). Any proposed regulatory changes necessary to accomplish this for the January 1, 2002, lien date should also be discussed.

The issue paper should be drafted and ready to be placed on the agenda as soon as possible.

Attachment No. 1

Memorandum

To: David Gau, Deputy Director, Property Tax Division
Larry Augusta, Assistant Chief Counsel, Property Taxes

From: Johan Klehs, Board member, 1st District

Date: 11/21/01

Re: Property Tax relief related to 9/11/01 terrorist attacks

Numerous California industries have suffered economic damage as a result, directly or indirectly, of the unprecedented terrorist attacks made against all of us on September 11. The airlines have reduced flights by about 25-30% , sidelining planes and laying off tens of thousands of workers. Related or dependent industries have also been affected. Thus, many California businesses are facing substantial economic losses, as well as a significantly reduced value of both real and personal property assets.

Payments of local property taxes are due on December 10. Many questions remain as to possible relief from interest and penalties that may be provided to those taxpayers who, as a result of the events following the September 11 terrorist attacks, are unable to pay their property taxes on time. Our taxpayers are entitled to some clear answers to these issues as soon as possible.

It is the Board of Equalization's duty to oversee the assessment practices of the state's 58 county assessors who are charged with establishing property values, including reduced values and other forms of tax relief for properties damaged by disaster. It is my understanding that certain sections of the Revenue and Taxation Code may bring relief to some businesses adversely affected by the recent tragic events, particularly in light of the state of emergency proclamation issued by Governor Davis.

Therefore, I am asking staff to be prepared to answer the following question on November 28:

1. Does a claim for disaster relief filed by a taxpayer pursuant to Revenue & Taxation Code §170 have to be granted, or merely filed, before a taxpayer's claim for deferral of taxes without penalty or interest (under Section 194) may be granted?

A written opinion on this point should then be promptly prepared and distributed to all county assessors in the state.

I am also asking staff to prepare a written opinion as to the following questions:

1. Does Revenue & Taxation Code §170 apply to claims for reduced assessment of property economically damaged as a result, directly or indirectly, of the September 11 terrorist attacks?

2. If the Answer is yes, then during what period of time is the damage to property measured?

3. What types of property are covered by Section 170, for example, does it cover damage to property of businesses other than the airline industry?

The proposed opinion should be brought before the Board no later than December 18.

Attachment No. 2

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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KATHLEEN CONNELL
State Controller, Sacramento

JAMES E. SPEED
Executive Director

November 9, 2001

No. 2001/077

TO: COUNTY ASSESSORS
COUNTY AUDITORS
COUNTY TAX COLLECTORS

TIME FOR FILING APPLICATIONS FOR REDUCED ASSESSMENT DUE TO MISFORTUNE OR CALAMITY UNDER SECTION 170 OF THE REVENUE AND TAXATION CODE

Pursuant to the authority vested in me by section 155 of the Revenue and Taxation Code, I am extending for 40 days the time for accepting applications for reassessment under section 170 of the Revenue and Taxation Code based on damage resulting from the September 11, 2001, disaster. Assessors may accept applications up to and including **December 24, 2001.** This extension applies to all county assessors in the State of California.

In extending this period, I have determined that subdivision (a) of section 170, where applicable, requires applications for reassessment to be filed within 60 days after the September 11th attacks on America, and that the 60th day is November 10, 2001. Since November 10th is a Saturday and the following Monday is a state holiday, this period is extended by law to November 13, 2001, the next regular business day. I have further determined that the events of September 11, 2001, constitute a public calamity, and therefore have extended the period for accepting such applications for 40 days.

In the meantime, Board staff is reviewing the issue of whether disaster relief under section 170 can be granted to taxpayers whose business property was impacted by the events of September 11th. The 40 day extension of the filing period will allow a reasonable time for taxpayers to calculate the impact on their property values, and still meet filing deadlines while state tax officials determine the extent to which relief may be granted under the law.

The extension of the filing period is of particular interest to the airline industry and related businesses. Section 170 includes within the definition of damage a diminution in the value of property as a result of restricted access to property caused by the major misfortune or calamity. Access to many airports in California was restricted in the wake of the terrorist attacks. Thus, a key issue under review is whether the terms of section 170 can be applied not only where restricted access was caused by actual physical damage on or around the property, but also where, as in the case of the events of September 11th, restricted access resulted from emergency measures taken by government in response to a disaster that occurred out of proximity to the property.

Attachment No. 3

By way of a press release dated November 8, 2001, the Board has publicized the extension of the filing period, and we have urged taxpayers who believe they may be entitled to relief to take advantage of this opportunity to preserve their rights to relief. At the same time, we ask assessors in all affected counties to be generous in applying the terms of this extension while the issues relating to possible relief are being resolved.

Questions regarding the extended filing deadline should be directed to Mr. Larry Augusta at (916) 445-6493.

Sincerely,

James E. Speed
Executive Director

JES

State of California

Board of Equalization
Office of the Assistant Chief Counsel-MIC:82
Telephone: (916) 445-6493

Memorandum

To : Honorable Johan Klehs
Board Member - First District

Date: December 5, 2001

From : Larry Augusta
Assistant Chief Counsel, Legal Division

Subject: *Qualification of Prior Opinion Relating to Disaster Relief Property Tax Deferral*

This is in furtherance of my memo to you dated November 28, 2001 relating to deferral of payment of installments of property taxes pursuant to section 194 of the Revenue and Taxation Code. In that memo, I advised you that a claim for disaster relief under R&T Code section 170 need only be filed, not granted, in order to qualify for section 194 postponement relief. While that advice is technically correct, it is not completely responsive in the context in which it was asked.

It is our advice that the provisions of section 194 are not applicable to the events of September 11, 2001. That is, deferral of payment of taxes may not be based on a claim of loss related to the events of September 11, 2001. Our advice is based on the following analysis:

1. To be eligible for deferral, a claim must meet the precise requirements of section 194. While related, the provisions of section 170 do not control. In relevant part, section 194 provides:

   . . .

   (b) "Eligible property" means real property . . . that meets both of the following requirements:

   . . .

   (2) Has sustained *substantial disaster damage* and the disaster resulted in the issuance of a *state of emergency* by the Governor. (italics added)

   . . .

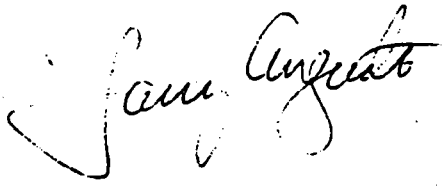
   (f) "Substantial disaster damage" as to real property located in a county declared to be a *disaster* by the Governor . . . (italics added)

2. Under subd. (b) of section 8558 of the Govt. Code, a "state of emergency" means the duly proclaimed existence of conditions of disaster <u>or</u> of extreme peril to the safety of persons or property within the state caused by enumerated conditions. Thus, the Governor can declare a state of emergency exists either because of a disaster, on the one hand, or because of extreme peril on the other hand.

3. The Governor's proclamation of September 11 declared a state of emergency based on a finding, stated in the fifth paragraph of the proclamation, of "conditions of extreme peril." The Governor did not make a finding of disaster.

4. In fact, a close reading of the Governor's proclamation reveals that the entire text is related to conditions supporting the invoking of section 68115 of the Government Code by the Chair of the Judicial Council. It is intended to allow the exercise of the extraordinary powers of the courts to suspend the right to a speedy trial, among other issues. It has nothing to do with disaster relief from property tax.

5. Further proof that the proclamation relates only to section 68115 is that the Governor limited the term of his proclamation to 10 days. If he had intended to declare that a disaster had occurred leading to property tax relief, there would not be the specific ten day limit to the proclamation's effective term.



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cc: Honorable Claude Parrish
Honorable John Chiang
Honorable Dean Andal
Honorable Kathleen Connell

Mr. Jim Speed, MIC:73
Mr. Tim Boyer, MIC:83
Mr. David Gau, MIC:63
Ms. Jennifer Willis, MIC:70

State of California

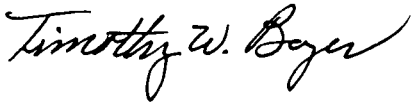
Board of Equalization
Legal Division - MIC:83
Telephone (916) 445-4380

Memorandum

To: Honorable Claude Parrish
Honorable John Chiang
Honorable Johan Klehs
Honorable Dean Andal
Honorable Kathleen Connell

Date: December 14, 2001

From: Timothy W. Boyer
Chief Counsel



Subject: ***Application of Revenue and Taxation Code Section 170 for Economic Damage Resulting from Terrorist Attacks***

As requested, this opinion addresses the issue of whether the disaster relief provisions of Revenue and Taxation Code section 170 can be applied to reduce property taxes on property in California when the income generated from that property has declined as the result of the terrorist events that occurred in New York, Washington, D.C. and Pennsylvania. For the reasons stated hereinafter, it is our opinion that section 170 does not apply to these declines in income or to related declines in property value.

As set forth below, disaster relief would not be available under section 170 in this circumstance as that section provides relief only for property that has suffered actual physical damage. Clearly, the physical damage which caused the claimed economic losses occurred in other states. Under other specified conditions not applicable here, section 170 also provides relief for property that has suffered a diminution in value as a result of restricted access proximately caused by actual physical damage to other property because of a major misfortune or calamity. Additionally, section 170 provides relief for possessory interests in land owned by the state or federal government when a misfortune or calamity has caused suspension or restriction of the permit or other right to enter upon the land.

We have received written opinions from the Honorable Rick Auerbach, Assessor of Los Angeles County, from Mr. Eric Miethke, of Nielsen, Merksamer, Parrinello, Mueller and Naylor dated November 14, 2001 and November 21, 2001 and from Mr. Richard Dewberry of Bewley, Lassleben & Miller, LLP dated December 7, 2001 in which they conclude that section 170 is intended to provide relief for economic damage. A summary of each of their arguments is presented below followed by our response.

Attachment No. 5

(27 Pages)

Board Staff Interpretation of Section 170

The constitution sets forth disaster relief for property subject to property taxation in Article XIII, section 15 which provides

> 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.

Pursuant to that authority, the Legislature adopted section 170 of the Revenue and Taxation Code which provides in pertinent part

> (a) Notwithstanding any provision of law to the contrary, the board of supervisors may, by ordinance, provide that every assessee of any taxable property, or any person liable for the taxes thereon, whose property was damaged or destroyed without his or her fault, may apply for reassessment of that property as provided herein.

To be eligible for reassessment the damage or destruction to the property shall have been caused by any of the following:

> (1) A major misfortune or calamity, in an area or region subsequently proclaimed by the Governor to be in a state of disaster, if that property was damaged or destroyed by the major misfortune or calamity that caused the Governor to proclaim the area or region to be in a state of disaster. As used in this paragraph, "damage" includes a diminution in the value of property as a result of restricted access to the property where that restricted access was caused by the major misfortune or calamity.
>
> (2) A misfortune or calamity.
>
> (3) A misfortune or calamity that, with respect to a possessory interest in land owned by the state or federal government, has caused the permit or other right to enter upon the land to be suspended or restricted. As used in this paragraph, "misfortune or calamity" includes a drought condition such as existed in this state in 1976 and 1977.

The plain language of the constitutional provisions and language and context of section 170 indicates that its provisions were intended to apply only for value loss due to physical damage or destruction. Section 15 clearly states the Legislature may authorize local

governments to provide relief for property "physically damaged or destroyed." Where the intent of a provision is expressed in unambiguous terms, the plain meaning of the language governs. *Wilson Curle v. Superior Court of Shasta County* (2001) 24 Cal.4th 1057, 1063.

Furthermore, the plain language of section 170 when read in context indicates that the Legislature intended to implement the provisions of Article XIII, section 15, including the requirement of physical damage. First, section 170 may not be interpreted to provide, contrary to the constitution, for reassessment relief for mere economic loss. A statute inconsistent with the California Constitution is void. *Hotel Employees & Restaurant Employees Internat. Union v. Davis* (1999) 21 Cal.4th 585, 602. Second, there is no indication from its express language that section 170 was intended to apply to loss from causes other than those related to physical damage.

Additionally, the context of section 170 clearly indicates that the Legislature intended qualifying damage to mean some form of physical damage. In this regard, subdivision (g) provides that "the assessed value of the property in its damaged condition, . . . shall be the taxable value of the property until it is restored, repaired, reconstructed or other provisions of the law require the establishment of a new base year value." (Emphasis added.) Subdivision (g) refers to the physical act of restoration, repair or reconstruction as necessary to increase the value of the damaged property. Thus, in order to be restored, repaired or reconstructed, the property must have suffered physical damage rather than mere economic loss.

We find no evidence in the legislative history and application of disaster relief provisions that the Legislature ever intended relief for damage other than physical damage. Section 155.1, the predecessor statute to section 170, was adopted in 1970 pursuant to former section 2.8 of Article XIII which provided that

> 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.

Consistent with Article XIII, section 2.8, Section 155.1 provided relief for taxable property damaged or destroyed by a major misfortune or calamity. Section 155.1 was amended in 1970 to define "damage" as including property that has diminished in value due to restricted access caused by a major misfortune or calamity. Section 155.13 (Stats. 1973, Ch. 901) was later adopted to provide disaster relief for damage or destruction but eliminated the requirement that the misfortune or calamity be major. However, there was never any indication that section 155.1 or section 155.13 was intended to apply to

economic loss in the absence of physical damage. The two published Attorney General opinions interpreting sections 155.1 and 155.13 concluded that their provisions did not "encompass economic loss in the absence of physical injury". See 55 Ops. Cal. Atty. Gen. 412, 413-14 (1972); 58 Ops. Cal. Atty. Gen. 327, 330.

Los Angeles County Counsel's opinion

We address issues raised by the letter of October 17, 2001 from the Honorable Rick Auerbach, Assessor of Los Angeles County addressed to the Deputy Director of the Property Taxes Department, Richard C. Johnson, in which Mr. Auerbach requests that the State Board of Equalization legal staff review the analysis and confirm the conclusions reached by Senior Deputy County Counsel Judy Whitehurst in her analysis dated October 15, 2001. In that analysis, Ms. Whitehurst discusses the availability of immediate property tax reduction relief under section 170 for airport-related businesses in Los Angeles County affected by the terrorist attacks of September 11, 2001. She concludes that the damage and consequent declines in value resulting from restricted access to the property of certain airport-related businesses, such as airlines and airport concessionaires, would be eligible for relief under section 170 assuming that other requirements of that section are met.

Summary of Issues

As set forth below, the Los Angeles County Counsel's opinion ("Counsel's opinion") misinterprets paragraph (a)(2) of section 170 which is not intended to provide relief for diminution in value to property resulting solely from economic damage because that paragraph does not define damage in those terms. Furthermore, paragraph (a)(1) is not applicable because that provision grants relief only when the property which has suffered damage is located in an area or region proclaimed by the Governor to be in a state of disaster. The proclamation issued by Governor Davis on September 11, 2001 found conditions of extreme peril to the safety of persons and property but did not find conditions of disaster. Finally, paragraph (a)(3) is applicable only to possessory interests in land owned by the state or federal government and the airport properties in Los Angeles County are not owned by the state or federal government.

Response and Analysis

As stated above, the "damage" element required by section 170 has been interpreted by 55 Ops. Cal. Atty. Gen. 412, which interpreted "damage" as used in the predecessor statute to section 170[1] to include "economic devaluation [which] directly resulted from restricted

[1] Revenue and Taxation Code section 155.1.

access to property." Based on that opinion, the Counsel's opinion finds that the definition of damage as restricted access generally applies to the each of the conditions set forth in paragraphs (1), (2) and (3) of subdivision (a). Further, the Counsel's opinion finds that the calamity element was met by noting that "the events of September 11, 2001 and response by federal, state and local government were clearly sudden calamitous events." The Counsel's opinion then concludes that relief is available under subdivision (a)(2) because airport property was economically damaged as a result of restricted access caused by the calamity of the terrorist attacks and the response by government authorities.

In our view, paragraph (a)(2) is not intended provide relief for economic damage to property resulting from a diminution in value due to restricted access when such property is not located in the area in which the calamity occurs. The Attorney General's opinion specifically addressed a situation in which property located in a disaster area suffered damage in the form of economic loss due to restricted access as a result of the disaster. Clearly, the disaster did not occur within the state of California and we cannot conclude, as the Counsel's opinion states, that "the response by federal, state and local government" were "sudden, calamitous events."

Moreover, the context of section 170 evidences a legislative intent that restricted access does not constitute damage for purposes of applying the provisions paragraph (a)(2). Damage resulting from a "misfortune or calamity" is generally understood to require direct physical injury to property. *See, e.g. T. L. Enterprises, Inc. v. County of Los Angeles* (1989) 215 Cal.App.3d 876. As an exception to this general definition, paragraph (a)(1) specifically defines "damage" as including "a diminution in value as a result of restricted access." By providing such an exception, we infer that the Legislature did not intend to provide relief for such damage under other circumstances, i.e., other than those set forth in paragraph (a)(1). *See Mutual Life Ins. Co. v. City of Los Angeles* (1990) 50 Cal.3d 402, 410 ("Under the familiar rule of construction, *expressio unius est exclusio alterius*, where exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed.")

With respect to paragraph (a)(1), the Counsel's opinion finds that its provisions may apply in view of the Governor's issuance on September 11, 2001 of a Proclamation of a State of Emergency recognizing "extreme peril to property and restricted access by government agencies." We note, however, that paragraph (a)(1) applies only to damage by major misfortune or calamity within a governor-declared disaster area in the state of California and the proclamation in response to the events of September 11 did not declare a state of disaster.

Government Code section 8558, subdivision (b), the statutory authority for a governor's state of emergency proclamation, provides in the alternative that "'[s]tate of emergency' means the duly proclaimed existence of conditions of disaster *or* of extreme peril to the safety of persons and property within the state . . ." (Italics added.) In the fifth recital of the proclamation the Governor specifically finds that "conditions of extreme peril to the safety of persons and property exist within the State of California." Thus, it is clear that

by issuing the proclamation the Governor declared conditions of extreme peril but did not declare a state of disaster and, therefore, that paragraph (a)(1) does not apply in these circumstances.

The provisions of paragraph (a)(3) apply only to possessory interests in land owned by the state or federal government, if the possessory interest holder's permit or other right to enter upon the land has been suspended or restricted as a result of the misfortune or calamity. It is clearly inapplicable under these facts because the major airports in Los Angeles County, Los Angeles International Airport and Burbank International Airport, are not owned by the state or federal governments. Los Angeles World Airports, which includes Los Angeles International, Ontario, Palmdale and Van Nuys airports, is a self-supporting branch of the City of Los Angeles, governed by a seven-member Board of Airport Commissioners. The other major airport in Los Angeles county, Burbank International, is owned by the Burbank-Glendale-Pasadena Airport Authority, a separate government agency created between the three cities. A local government entity, such as a city or county, may be a political subdivision of the state but property owned by such an entity is not property owned by the state.[2] *See City and County of San Francisco v. County of San Mateo* (1995) 10 Cal.4th 554; *Star-Kist Foods, Inc. v. County of Los Angeles* (1986) 42 Cal.3d 1, 6.

Mr. Miethke's Opinion

Summary of Issues

Mr. Miethke takes the position that the Legislature intended to provide disaster relief for both physical and economic damage. However, the evidence of intent that he points to, the specification of restricted access as damage, indicates a single, limited expansion of the requirement of physical damage. He also argues that the Article XIII, section 15 requirement of physical damage as a condition of disaster relief was adopted contrary to the intent of the drafters and the voters. However, the plain language of a constitutional provision controls and a conflicting statute is void. Notwithstanding section 15, he argues, if the Legislature intended to provide disaster relief for economic loss to personal property, it has the power to do so under Article XIII, section 2 which provides that the Legislature may classify personal property for differential taxation or exemption. In our view, the Legislature did not intend section 170 to provide relief for economic loss to real or personal property and, therefore, it is not necessary to address that argument.

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[2] We note that none of the major airports in California is a possessory interest on property by the state or federal government as required by paragraph (a)(3): John Wayne Airport is owned by the County of Orange, San Francisco International Airport is owned by the Airport Commission established by Charter of the City and County of San Francisco in 1970; Lindbergh Field in San Diego is owned by a port authority, a special government entity; Sacramento International Airport is owned by the County of Sacramento; Oakland International is owned by the Port of Oakland, a city agency; and San Jose International Airport is owned by the City of San Jose.

Response and Analysis

Mr. Miethke presents a chronology and background on the adoption of constitutional and legislative provisions in the area of disaster relief. Based on that information, he concludes that the Legislature always intended that the term "damage" should include both physical and economic loss. As support for his position, he points to the amendment of section 155.1 in the 1970 Regular Session to define the word "damage" to include "property that has diminished in value due to restricted access to the property caused by the major misfortune or calamity." He notes that the Legislature passed the bill despite an Assembly Revenue and Taxation Committee analysis that raised the issue of whether the constitution intended relief for losses in value resulting from causes other than physical damage or destruction. In view of the passage of the legislation, he concludes that "the Legislature considered the constitutional issue squarely and it was decided that the term 'damage' could mean loss of value from things other than direct physical damage."

However, Mr. Miethke's inference of legislative intent from the nature of the 1970 amendment is incorrect. The fact that the Legislature determined that there was a need to amend the definition of "damage" as used in section 155.1 to include "restricted access" indicates that, prior to the amendment, relief was available only for direct physical damage. The amendment simply added a limited provision for relief for another type of indirect physical damage, i.e. restricted access causes a loss of value by placing a physical limitation on the use of property. Thus, the more reasonable inference to draw is that the Legislature intended an express limited exception for indirect physical damage and did not intend to provide a broader basis of relief for economic damage. Under the familiar rule of construction, where exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed. *People v. Pieters* (1991) 52 Cal.3d 894, 905.

Mr. Miethke also argues that the constitutional requirement of "physical damage" set forth in Article XIII, section 15 as a precondition for disaster relief is not a valid limitation. He notes that section 15 was added as part of the constitutional revision of 1974 by ACA 32, placed on the November 1974 ballot as Proposition 8, simply as a restatement of former section 2.8 which did not use the adjective "physical" to modify the type of "damage" and, in his view, physical damage was not a necessary precondition to disaster relief under section 2.8.

He further notes that section 15 was not intended to make substantive changes to the provisions of section 2.8 based on the Report of the Constitutional Revision Task Force for Article XIII and the ballot argument in favor of Proposition 8. For that reason, he concludes that the inclusion of the word "physical" in section 15 did not express the intent of the drafters on the Constitutional Revision Task Force.

The same issue was raised regarding another revised provision of Article XIII in Regents of *University of California v. State Bd. of Equalization* (1977) 73 Cal.App.3d 660 and rejected by the court of appeal. In that case, the constitutional provision for exemption of

property used by public schools, section 3, subdivision (d) of Article XIII was also amended by Proposition 8 which added "community colleges, state colleges, and state universities" as institutions within its scope. The Regents argued that property used by the University of California, as a state university, was exempt even though, prior to the amendment, the University of California did not qualify under that provision. In response, the Board argued that, contrary to the intent of the constitution revisions, the addition of an exemption for property used by the University of California constituted a substantive change. The court rejected the Board's argument holding that "while the amendment did 'retain' the substance of what had existed, it also made additions thereto." Id. at 668. The court thus concluded that the purpose of the provision is discerned simply by interpreting its terms "literally". Consistent with the guidance provided by the court, a literal interpretation of section 15 means that physical damage is a prerequisite of disaster relief.

Mr. Miethke also contends in his letter of November 21, 2001 that Article XIII, section 2 gives the Legislature the power to classify personal property for differential taxation or exemption and, therefore, it would be constitutionally permissible to interpret section 170 as providing relief for economic loss. However, his position presupposes that the Legislature intended economic loss as a sufficient condition for relief and, as discussed herein, we have not discerned such a legislative intent in section 170.

Mr. Dewberry's Opinion

Summary of Issues

Mr. Dewberry argues that the word "damage" as used in section 170 should be given its ordinary, usual meaning and that its dictionary definition includes "economic loss." While words of a statute are generally given their ordinary, usual meaning, a fundamental rule of statutory construction requires that in order to discern legislative intent the meaning of language must be construed in context. The context of section 170 clearly indicates that physical damage was intended. In support of his construction, he also refers to section 69 which, in his view, concerns a related matter and includes the word "physical" for the damage requirement. He erroneously concludes that the omission of the word "physical" from the damage provision of section 170 indicates that the Legislature did not intend a physical damage requirement. He further argues that by connecting "damage" and "destruction" with the disjunctive "or" in section 170 the Legislature intended the conditions for relief as two distinct alternatives: non-physical damage and physical destruction. However, the word "or" links merely links the conditions of physical loss based on the extent of the loss: "damage" means partial physical loss and "destruction" means total physical loss.

Response and Analysis

Mr. Dewberry first asserts that the language of section 170 is unambiguous and in the absence of ambiguity, the Legislature's intent is determined by giving the language of section 170 its usual, ordinary meaning. He then points to a dictionary definition of "damage" as meaning "loss or harm" without limitation as to a specific type of loss or harm. Thus, he concludes that "damage" within the meaning of Section 170 includes both physical and economic loss.

The word "damage" is ambiguous. Section 170 does not specify the type of damage for which relief is available[3] and in any case of statutory interpretation, where ambiguity exists, one determines the intent of the Legislature by construing in context the language of the statute. *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1159. "When the statutory language is ambiguous, the court may examine the context in which the language appears, adopting the construction that best harmonizes the statute internally and with related statutes." *People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 192-193.

When read in context, section 170 clearly indicates that the Legislature intended that qualifying damage include only physical damage. In this regard, subdivision (g) provides that "the assessed value of the property in its damaged condition, . . . shall be the taxable value of the property until it is restored, repaired, reconstructed or other provisions of the law require the establishment of a new base year value." (Emphasis added.) Subdivision (g) refers to the physical act of restoration, repair or reconstruction as necessary to increase the value of the damaged property. Thus, in order to qualify for relief, the property must have suffered physical damage rather than mere economic loss.

Mr. Dewberry also argues that the omission of the term "physical damage" from section 170 and the inclusion of that term in Revenue and Taxation Code section 69 indicates that the Legislature did not intend section 170 disaster relief to require physical damage. As support for his position he cites a general rule of statutory construction that the omission of a particular provision from a statute on a particular subject, in this case section 170, and the inclusion of such a provision in another statute concerning a related matter, in this case section 69, indicates an intent that the provision is not applicable to the statute from which it was omitted.

However, his analysis fails because the damage provisions of section 69 and section 170 are clearly different. Section 69 provides relief for property that is "substantially damaged or destroyed" and defines that term to mean "physical damage amounting to more than 50

[3] Compare sections 69 and 69.3 which provide specific definitions of property "substantially damaged or destroyed."

percent of its full cash value immediately prior to the disaster." Section 170 requires only that property be "damaged or destroyed." Thus, each provision defines the conditions of relief according to entirely different criteria. Moreover, Mr. Dewberry's use of the rule of construction is inapplicable because section 69 and section 170 do not concern related matters. Section 69 provides for the transfer of a base year value of a property to another property while Section 170 concerns immediate reassessment of property.

Finally, Mr Dewberry argues that the use of the disjunctive "or" between "damage or destruction" indicates that the Legislature intended that the words would have alternative meanings. He concludes that "property can be damaged without physical destruction of the property in whole or in part." Based on the use of the disjunctive "or" he construes the two types of loss as different in nature - damage is nonphysical and destruction is physical. Although section 170 sets forth two alternative conditions for disaster relief, Mr. Dewberry makes an invalid distinction between those conditions. The only purpose of the word "or" is to link the conditions for which relief is available. They are alternatives, not because they are different in nature, but rather because they differ in terms of the extent of *physical* loss: damage means partial physical loss and destruction means total physical loss. They are stated in the disjunctive because only one condition is necessary for disaster relief.

The foregoing represents the Board legal staff's interpretation of section 170 and, of course, is not binding on counties in the interpretation and implementation of their disaster relief ordinances. However, we note for your information that opinions received from the counties, with the exception of Los Angeles County, concur with the staff's analysis and conclusion. Please see the attached opinions from San Mateo, San Diego and San Bernardino counties.

TWB:tr
prop/prec/misc/01/10lou

Attachments

cc: Mr. James E. Speed, MIC:73
Mr. David Gau, MIC:63
Chief - PPSD, MIC:64
Mr. Harold Hale, MIC:61
Mr. Larry Augusta, MIC:82
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December 11, 2001

Mr. Gordon Ferguson
State Board of Equalization, Property Taxes Department
450 N Street, MIC: 64
Sacramento, California 94279-0064

Re: ***Comments Regarding Revenue & Taxation Code Section 170***

Dear Mr. Ferguson:

Pursuant to the request of the State Board of Equalization ("SBE") staff at the time of the November 30, 2001 interested party meeting, the Office of the San Mateo County Counsel submits the following comments regarding whether section 170 of the Revenue and Taxation Code can be applied to afford property tax relief to those claiming economic damage to their property flowing from the events of September 11, 2001.

A. State Law

The California Constitution unambiguously provides that "[u]nless otherwise provided by [the California] Constitution or laws of the United States . . . [a]ll property is taxable and shall be assessed at the same percentage of market value." Cal. Const., Art. 13, § 1; see also Cal. Rev. & Tax. Code § 201. State law also provides that property is assessed according to its value on the lien date (i.e., January 1). Cal. Rev. & Tax. Code § 401.3 ("The assessor shall assess all property subject to general property taxation on the lien date . . . .").

Section 170 of the Revenue and Taxation Code (the "Code") provides that, under certain circumstances, property owners may be eligible for reassessment of damaged or destroyed property prior to the next lien date following the damage to or destruction of the property in question:

> [T]he board of supervisors [of each county in the State] may, by ordinance, provide that every assessee of any taxable property, or any person liable for taxes thereon, whose property was damaged or destroyed without his or her fault, may apply for a reassessment of that property . . . .

Cal. Rev. & Tax. Code § 170(a).

The Code goes on to state that counties may adopt resolutions providing for reassessment of property damaged under one or more of the following circumstances:

(1) A major misfortune or calamity, in an area or region subsequently proclaimed by the Governor to be in a state of disaster, if that property was damaged or destroyed by the major misfortune or calamity that caused the Governor to proclaim the area or region to be in a state of disaster. As used in this paragraph "damage" includes a diminution in the value of property as a result of restricted access to the property where the restricted access was caused by the major misfortune or calamity.

(2) A misfortune or calamity.

(3) A misfortune or calamity that, with respect to a possessory interest in land owned by the state or federal government has caused the permit or other right to enter upon the land to be suspended or restricted. As used in this paragraph, "misfortune or calamity" includes a drought condition such as existed in this state in 1976 and 1977.

B. <u>County Ordinance Code</u>

Chapter 2.196 of the San Mateo County Ordinance Code ("Ordinance Code")[1] implements section 170(a)(2) of the Code within San Mateo County. The Ordinance Code provides for reassessment of property where it is "damaged or destroyed . . . by a misfortune or calamity . . . ." San Mateo County Ord. Code § 2.196.020. Applications for such reassessment are required to be made with the Assessor within 60 days after the claimed damage or destruction of property. San Mateo County Ord. Code § 2.196.030.[2]

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[1]A copy of chapter 2.196 of the County Ordinance Code is attached to this memorandum.

[2]The SBE has extended the time for filing a reassessment application under section 170 to December 24, 2001.

Thereafter, the Assessor must "verify the amount claimed on the application [for reassessment] in the before and after condition," and "notify the applicant in writing of the amount of the proposed reassessment." San Mateo County Ord. Code § 2.196.050. An applicant dissatisfied with the Assessor's action on its application for reassessment may appeal to the County Assessment Appeals Board within 14 days after the Assessor mails the decision on the application for reassessment. San Mateo County Ord. Code § 2.196.070.

C. Los Angeles County Counsel's Opinion

Judy Whitehurst, a Senior Deputy County Counsel in the office of the Los Angeles County Counsel, recently opined, in a written opinion to the Los Angeles County Assessor, that section 170 of the Code covers losses sustained by property owners who are unable to gain access to their property due to restrictions on access to their facilities at, or their operations on, airports.

Specifically, Ms. Whitehurst read section 170(a)(2), which covers "damage or destruction" to property caused by "[a] misfortune or calamity," to include a diminution in the value of property caused by limitations on airport access:

> The events of September 11, 2001 and response by federal, state and local government were clearly sudden calamitous events. In the case of airports, government action resulted in closure of and significant restricted access to property, causing damage. Some airports, particularly Los Angeles International, continue to experience significant restricted access. As such, based on section § 170(a)(2) these taxpayers would be allowed to apply for reassessment.[3]

The Los Angeles County Assessor has requested that the SBE endorse the view expressed in Ms. Whitehurst's opinion.

D. SBE Interested Party Meetings / ATA Position

On November 15 and 30, 2001, the SBE convened "interested party meetings." At the November 15 meeting, the Air Transport Association ("ATA"), through its counsel, Eric Menthke, argued that "damages," as used in section 170, should be interpreted by the SBE to include economic losses in value to ATA members' realty and personalty due to factors other

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[3]Ms. Whitehurst goes on to suggest that the sections 170(a)(1) and (3) may also apply to limitations on airport access. This analysis is not relevant to San Mateo County, as it has, by ordinance, authorized reassessment only under section 170(a)(2).

than direct physical damage. In support of its position, the ATA set forth its view of the legislative history of the statutory provisions that eventually became section 170, and concluded that "[t]here is no definitive legislative pronouncement that 'damage' does not include economic damage." The ATA maintained that, in the absence of such legislative history, the SBE should define damages to include economic losses, even in the absence of physical damage to the property in question.

E. San Mateo County Counsel's Comments

It is axiomatic that "[w]here . . . legislative intent is expressed in unambiguous terms, [courts] must treat the statutory language as conclusive," and that, in such cases, "no resort to extrinsic aids is necessary or proper." Jenkins v. County of Los Angeles (1999) 74 Cal. App. 4th 542, 530 (citing Briggs v. Eden Council for Hope & Opportunity (1999) 19 Cal. 4th 1106, 1119-20). It is also well-established that "[t]he provisions of a statute should be construed in context and harmonized whenever possible, and rendering some words surplusage is to be avoided." Fig Garden Park No. 2 Ass'n v. Local Agency Formation Comm. (1984) 162 Cal. App. 3d 336, 342. To read section 170 as encompassing economic losses in value caused by factors other than physical damage would violate each of the canons of statutory construction discussed above.

In order to make a claim under section 170, a property owner must show that property "was damaged or destroyed." In the instant case, no one seeking a section 170 reassessment claims that property was *destroyed*.[4] Rather, the parties seeking section 170 relief assert that their property has been *damaged* due to a diminution in value.

However, there is nothing in the text of section 170 explicitly providing for reassessment under section 170 on the basis of mere economic losses. Similarly, the legislative history of section 170 and its precursor statutes provides no hint that the legislature sought to provide for misfortune or calamity reassessments in the absence of physical damage to property.[5]

Moreover, when read in its proper context, it is manifestly clear that physical damage to property is required to qualify for section 170 relief. Specifically, section 15 of Article 13 of the

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[4]The San Mateo County Assessor has provided section 170 relief with respect to the aircraft that were *destroyed* on September 11, 2001.

[5]The ATA has offered no support for the remarkable proposition that the Legislature's failure to explicitly exclude the possibility of section 170 reassessments in the absence of physical damage to property somehow empowers the SBE to allow for reassessments on the basis of pure economic losses. This is particularly telling in light of the clear constitutional and legislative mandate that property be assessed at full value as of each lien date.

California Constitution, which both predates section 170 as it currently exists, and which authorized the Legislature to adopt that statute, makes unambiguous that the Legislature's power to authorize reassessments of property due to disasters applies only to property that has been *physically* damaged:

> 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.

Cal. Const., Art. 13, § 15 (emphasis added).

Putting aside the statute's plain meaning, the ATA's proffered reading of section 170 would render at least part of the California Constitution's text surplusage. Specifically, if "damage" is read to encompass pure economic losses to property, section 15 of article 13 of the Constitution, which requires *physical* damage to property to qualify for a reassessment, would be rendered meaningless.[6]

It should also be noted that for the last thirty years, those called upon to address the issue have uniformly concluded that section 170 and its precursor statutes apply only in the case of *physical* damage to property. See 55 Ops. Cal. Atty. Gen. 412, 413-14 (1972) ("[I]t is abundantly clear that the Legislature did not regard the word 'damage' as encompassing economic loss except in those instances where economic devaluation directly resulted from restricted access to property."); 58 Ops. Cal. Atty. Gen. 327, 330 ("As noted in the prior opinion of this office, the words 'damaged or destroyed' as used [in the precursor statutes to section 170] d[o] not encompass economic loss in the absence of physical injury."); State Board of Equal. Letter to Assessors (Jan. 24, 1977) (lack of snow at ski resort does not qualify as a casualty because there was no physical damage).

The Attorney General opinions and Letter to Assessors cited above, which state that *physical* damage to property is required in order to qualify for a misfortune or calamity

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[6]In light of section 15 of article 13 to the California Constitution, the SBE's expansion of section 170 to include pure economic losses to property in the absence of physical damage would give rise to substantial constitutional questions. The courts of this state have long advised that statutes should be read, if possible, to avoid constitutional issues. See, e.g., Metromedia, Inc. v. City of San Diego (1982) 32 Cal. 3d 180 ("If the terms of a statute are by fair and reasonable interpretation capable of a meaning consistent with the requirements of the Constitution, the statute will be given that meaning, rather than another in conflict with the Constitution.") (internal quotation and citation omitted).

reassessment, all pre-date several major amendments to the statutes (ultimately consolidated into section 170) providing for such reassessments. Tellingly, no legislative pronouncement regarding calamity reassessments takes issue with these Attorney General and SBE opinions. Cf. Cannon v. University of Chicago 441 U.S. 677, 696-97 (1979) (construing text of Title IX of the Education Amendments Act of 1972 as creating a private cause of action where courts had interpreted nearly identical language in Title VI as creating a private cause of action and noting, "it is always appropriate to assume that our elected representatives, like other citizens, know the law . . ."); S & M Inv. Co. v. Tahoe Reg'l Planning Agency, 911 F.2d 324, 326 (9th Cir. 1990) ("If the term at issue has a settled meaning, we must infer that the legislature meant to incorporate the established meaning, unless the statute dictates otherwise.").

Similarly, the Attorney General opinions cited above (as well as the amendment of the State Constitution to provide for misfortune and calamity reassessments due to *physical* damage) pre-date San Mateo County's 1975 adoption of an ordinance providing for misfortune and calamity reassessments. It is therefore appropriate to conclude that San Mateo County (and, likely, numerous other counties throughout the State) adopted its resolution with the understanding that *physical* damage (as opposed to mere economic loss) to property would be required to qualify for a misfortune or calamity reassessment. A change in the well-established understanding of what sort of "damages" qualify for section 170 relief would undoubtably upset the long-settled and reasonable expectations of those counties that have adopted section 170 ordinances. Likewise, an expansive reading of section 170, such as that proposed by the ATA, could well have the unintended consequence of spurring counties to repeal their section 170 ordinances.

Finally, the opinion of the Los Angeles County Counsel appears to this office erroneous to the extent that it holds that one can qualify for a misfortune or calamity reassessment under section 170(a)(2) due to restricted access to the property in question. As noted, section 170(a)(1), which applies to major misfortunes or calamities in areas proclaimed by the Governor to be in a state of disaster, provides that "damage" may include a diminution in value as a result of restricted access to property. Section 170(a)(2) does not define "damage" in such terms.

> "Under the maxim *expressio unius est exclusio alterius* . . . the enumeration of acts, things, or persons as coming within the operation or exception of a statute will preclude the inclusion by implication in the class covered or excepted of other acts, things, or persons. Under this rule, if a statute contains an express exception or exceptions, it will be presumed that no other exceptions were intended." 58 Cal. Jur. 3d (1980) Statutes, § 115, p. 503 (footnotes omitted).

In the case of section 170, the Legislature explicitly set forth (in section 170(a)(1)) a definition

of "damage" to property that includes diminutions in value due to restricted access to that property. It follows that no such definition of "damage" should be read into section 170(a)(2).

Please contact Deputy County Counsel John Nibbelin at 650-363-4757 if you have questions regarding this memorandum.

Very truly yours,

THOMAS F. CASEY III, COUNTY COUNSEL

By: _____
John D. Nibbelin, Deputy

TFC:JDN/ag

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Chapter 2.196

REASSESSMENT OF DAMAGED OR DESTROYED PROPERTY

Sections:

2.196.010	Purpose and authority.
2.196.020	Eligibility.
2.196.030	Time to apply.
2.196.040	Form of application.
2.196.050	Reassessment.
2.196.060	Reassessment without application.
2.196.070	Appeal.
2.196.080	Computation of payment or refund of taxes.
2.196.090	Deferral of nondelinquent supplemental roll taxes on qualifying real property and mobile homes damaged or destroyed by the 1989 earthquake and aftershocks.

2.196.010 Purpose and authority.

The purpose of this chapter is to effectuate California Constitution article 13, section 2.8, and Revenue and Taxation Code section 170 by providing for reassessment of property damaged or destroyed by misfortune or calamity. (Prior code § 2950; Ord. 2303, 04/15/75; Ord. 2401, 11/16/76; Ord. 2771, 03/09/82)

2.196.020 Eligibility.

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 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 section 2.196.030, apply for reassessment thereof by delivering to the Assessor a written application showing absence of fault, the condition and value, if any, of the property immediately before and after the damage or destruction, and that the damage exceeded five thousand dollars. (Prior code § 2951; Ord. 2303, 04/15/75; Ord. 2401, 11/16/76)

2.196.030 Time to apply.

Such applications shall be made within sixty (60) calendar days after the damage or destruction. (Prior code § 2952; Ord. 2303, 04/15/75; Ord. 2401, 11/16/76)

2.196.040 Form of application.

The application shall be on a form approved or furnished by the Assessor. It shall be executed under penalty of perjury, or verified by affidavit if executed outside California. (Prior code § 2953; Ord. 2303, 04/15/75; Ord. 2401, 11/16/76)

2.196.050 Reassessment.

Upon receiving a proper application, the Assessor shall verify the amounts claimed on the application in the before and after condition. The Assessor shall then compute a percentage relationship of loss and reduce the current assessed value by that percentage. He shall notify the applicant in writing of the amount of the proposed reassessment. The notice shall indicate the applicant's appeal rights as set forth in section 2.196.070. (Prior code § 2954; Ord. 2303, 04/15/75; Ord. 2401, 11/16/76)

2.196.060 Reassessment without application.

If no such application is made and the Assessor determines that within the preceding six months a property has suffered damage caused by misfortune or calamity, which may qualify the property owner for relief under this ordinance, the Assessor may reassess the property as provided in section 2.196.050 and notify the last known owner of the property of the reassessment. (Prior code § 2954.1; Ord. 2771, 03/09/82)

2.196.070 Appeal.

The applicant may appeal the proposed reassess-

San Diego County's Response To Calamity Claims

Re: Calamity claims related to September 11, 2001 incidents

We have received approximately 154 calamity claim applications based on the September 11, 2001 incident. These applications are filed under section 170 of the Revenue and Taxation Code. The following is our interpretation of how this section applies to these applications:

170 (a) (1) Relates to the reassessment of property damaged or destroyed by a major misfortune or calamity, in an area or region subsequently proclaimed by the Governor to be in a state of disaster, if that property was damaged or destroyed by the major misfortune or calamity that caused the Governor to proclaim the area or region to be in a state of disaster.

This section does not apply to the effects of the September 11, 2001 incidents. The Governor of California did not declare a state of disaster for any area in the state of California.

170 (a) (2) Relates to the reassessment of property damaged or destroyed by a major misfortune or calamity.

This section has always been applied to property that suffers physical damage. There is a basis for this in a 1972 Attorney General Opinion addressing the issue of whether "damage" encompassed economic devaluation in the absence of physical injury or restricted access. (1972) 55 Ops. Cal. Atty. Gen. 412. The Attorney General found that except in those instances where economic devaluation directly resulted from restricted access to property, the legislature did not regard "damage" as pure economic loss.

170 (a) (3) Relates to the reassessment of possessory interest in land owned by the **state or federal government** where the misfortune or calamity caused the permit or other right to enter upon the land to be suspended or restricted.

The only possible application of this section to the September 11, 2001 incident would be to possessory interests in land owned by the state or federal governments. In San Diego, the airport is on land owned by the San Diego Unified Port District and therefore does not qualify under this section. In addition, we have checked with the Port District and although they have received requests to temporarily reduce the rents they charge to their tenants, so far all they have done is to slightly extend the time to make the rental payments.

Although we agree that many of the businesses at the airport as well as those businesses related to tourism and travel have been adversely effected by the events of September 11, 2001, we also feel that the relief granted under Section 170 is not the appropriate vehicle. Upon proper application, we will review values for a temporary reduction under Section 51 of the R&T Code (Proposition 8).

Even if a calamity was considered to be valid for these types of properties, Section 170 requires that the value be restored when the property is "fully repaired, restored, or reconstructed". There is no doubt that the date of restoration would be disputed and that the taxpayer might argue that since business is still down, the calamity still exists.

If we view the primary reason for granting the reduction on a Possessory Interest to be access, then the only time that access at the airport was limited was less than a week. The Possessory Interest Assessment is typically calculated using present worth of the rents paid during the term of possession. The reduction would be a very small amount when looking at the total term of possession.

Conclusion: Under 170 (a) (2) we intend to grant all applications for reassessment of those specific aircraft destroyed in the September 11, 2001 incidents in New York and Washington DC if those specific aircraft were part of the fleet flying into San Diego County for the 2001-2002 tax year.

If you have any questions, please call Craig Rustad, Chief Deputy at (619) 531-5475.

OFFICE OF ASSESSOR

172 West Third Street • San Bernardino, CA 92415-0310
www.sbcounty.gov/assessor

County of San Bernardino

DONALD E. WILLIAMSON
Assessor

M.F. "MIKE" BROPHY
Assistant Assessor
Chief of Staff

DONNA D. MUÑOZ
Assistant Assessor
Assessment Services

December 6, 2001

State Board of Equalization
Property Taxes Department
ATTN: Mr. Gordon Ferguson
Sent by Fax

RE: IMPACT OF THE SEPTMENBER 11 ATTACKS ON CALIFORNIA BUSINESSES OPTIONS FOR PROPERTY TAX RELIEF

Dear Property Tax Department:

We appreciate the opportunity to provide input for proposed guidance from the SBE on application of Rev. and Tax. Code section 170 to the tragic events of September 11.

We believe that California law prohibits application of section 170 relief to mere economic devaluation of the property in the absence of actual physical injury or restricted access. In Attorney General Opinion No. CV72-145, 55 Cal.Ops.Atty.Gen 412 (1972), the AG concluded that the predecessor to RTC § 170 (RTC § 155.1) does not encompass "economic devaluation of the property in the absence of physical injury or restricted access." This provides legal support for a standard that relief under RTC § 170 is not granted for economic devaluation in the absence of physical injury or restricted access. That is, golf courses and hotels and restaurants that experienced a mere loss of business are clearly not entitled to relief because there was no "physical injury" or "restricted access."

In T.J. Enterprises, Inc. v. County of Los Angeles (1989) 215 Cal.App.3d 876, the California Court of Appeal held that total destruction to an office building over an eight-year period due to the settling of the foundation was the result of "natural forces" and did not result from a "disaster, misfortune or calamity" entitling the taxpayer to relief under RTC §170. The court noted that a "calamity" is defined as "an extraordinarily grave event." The court also noted that the event took place over an extended period of time and that the taxpayer was not in the position of the victim of an earthquake, flood or fire because the taxpayer "could take steps to alleviate the condition" (by replacing material under the building, as a consultant had recommended). This case provides additional support for a standard that relief under RTC § 170 is not be granted for economic devaluation in the absence of physical injury or restricted access, because where there is no physical damage or restriction, the taxpayer can take steps to remedy the loss (e.g., additional marketing). The case also supports such a standard because the court disapproved use of statutory relief for problems that arise over extended periods of time (like loss of sales).

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In addition, it should be noted that possessory interests in airports in San Bernardino County are valued to exclude the enterprise value, which means they are not valued by reference to the foot-traffic or sales at the airport. Thus, in situations where an airport store is open to passengers but not visitors due to new security restrictions, we do not believe the PI has been "restricted" so as to warrant a reduction in value.

As to airlines, the valuation of their property is governed by a settlement agreement, and the agreement does not provide for a valuation reduction under section 170. A copy of the first page of this agreement and paragraph 6 is attached. Our County counsel believes that the settlement agreement precludes granting Section 170 claims.

San Bernardino county has adopted an ordinance to implement section 170. This is Title 1, Division 4, Chapter 5(copy attached).

San Bernardino County has received 42 claims to this date and the requested value reduction is approximately $286,000,000. Of this, 11 claims are from airlines for aircraft allocated value reductions, and the total value reduction requested is $208,000,000.

At present we do not plan to grant any of claims we have received. We are awaiting the outcome of the Board of Equalization's deliberations and the December 24, 2001, deadline for filing claims before we take any action. We trust the Board will give clear answers to all the issues raised in the interested parties meeting and this submission.

Very Truly Yours,
Donald E. Williamson, Assessor

Alfred Polchow

Alfred Polchow
Supervising Auditor-Appraiser

Current version

TITLE 1: GOVERNMENT AND ADMINISTRATION
DIVISION 4. PURCHASING, REVENUE AND TAXATION
CHAPTER 5: Reassessment of Damaged Property.
Sections:

14.051 Application Requirements.
14.052 Reassessment and Right of Appeal.
14.053 Reassessment Without Application.
14.054 Tax Rate and Proration Formula.
14.055 Lien Date Review and Taxable Value.
14.056 Tax Refunds.

14.051 Application Requirements.

Every person who at 12:01 a.m. on January 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 immediately following July 1, which property was thereafter damaged or destroyed, without his fault, by a misfortune or calamity, may, within sixty (60) days of such misfortune or calamity, 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 before and after the damage or destruction, which damage must be shown therein to be in excess of five thousand dollars ($5,000). The application shall be executed under penalty of perjury, or if executed outside the State of California, verified by affidavit.

Adopted Ordinance #1940 (1974); Amended Ordinance 2117 (1976); Amended Ordinance #2658 (1982); Amended Ordinance #3752 (1999);

14.052 Reassessment and Right of Appeal.

Upon receiving a proper application, the Assessor shall verify the amounts claimed on the application in the before and after condition. The Assessor shall then compute a percentage relationship of loss and reduce the current assessed value by that percentage. The Assessor shall notify the applicant in writing of the amount of the proposed reassessment. The notice shall state that the applicant may appeal the proposed reassessment to the Assessment Appeals Board within fourteen (14) days of the date of mailing the notice. If an appeal is requested within the fourteen (14) day period, the Board shall hear and decide the matter as if the proposed reassessment had been entered on the roll as an assessment made outside the regular assessment period. The decision of the Board regarding the damaged value of the property shall be final, provided that a decision of the Assessment Appeals Board regarding any reassessment made pursuant to this section shall create no presumption as regards the value of the affected property subsequent to the date of the damage. If the amount of damage, as verified by the Assessor, is not at least five thousand dollars ($5,000), no adjustment shall be made to said roll and no taxes shall be canceled or refunded.

Adopted Ordinance #1940 (1974); Amended Ordinance 2117 (1976); Amended Ordinance #2658 (1982);

14.053 Reassessment Without Application.

If no such application is made and the Assessor determines that within the preceding six months a property has suffered damage caused by misfortune or calamity, which may qualify the property owner for relief under provisions of this ordinance, the Assessor may reassess the property in the same manner as provided for in Section 14.052 and notify the last known owner of the property of the reassessment.

Adopted Ordinance #1940 (1974); Amended Ordinance 2117 (1976); Amended Ordinance #2658 (1982);

14.054 Tax Rate and Proration Formula.

The tax rate fixed for property on the roll on which the property so reassessed appeared at the time of the misfortune or calamity, shall be applied to the amount of the reassessment and the assessee shall be liable for: (1) a prorated portion of the taxes that would have been due on the property for the current fiscal year had the misfortune or calamity not occurred, such proration to be determined on the basis of the number of months in the current fiscal year prior to the misfortune or calamity; plus (2) a proration of the tax due on the property as reassessed in its damaged or destroyed condition, such proration to be determined on the basis of the number of months in the fiscal year after the damage or destruction, including the month in which the damage was incurred. If the damage or destruction occurred after March 1 and before the beginning of the next fiscal year, the reassessment shall be utilized to determine the tax liability for the next fiscal year provided, however, if the property is fully restored during the next fiscal year, taxes due for that year shall be prorated based on the number of months in the year before and after the completion of restoration.

14.055 Lien Date Review and Taxable Value.

The assessed value of the property in its damaged condition, compounded annually by the inflation factor specified in subdivision (a) of Section 51 of the California Revenue and Taxation Code, shall be the taxable value of the property until it is restored, repaired, reconstructed or other provisions of the law require the

establishment of a new base year value. If partial reconstruction, restoration, or repair has occurred on any subsequent lien date, the taxable value shall be increased by an amount determined by multiplying the difference between its factored base year value immediately before the calamity and its assessed value in its damaged condition by the percentage of the repair, reconstruction, or restoration completed on that lien date. When the property is fully repaired, restored or reconstructed, its new taxable value shall be the lesser of (1) its full cash value, or (2) its factored base year value or its factored base year value as adjusted pursuant to subdivision (c) of Section 70 of the California Revenue and Taxation Code. The new taxable value shall be enrolled on the lien date following completion of the repair, restoration or reconstruction.
Adopted Ordinance #1940 (1974); Amended Ordinance 2117 (1976); Amended Ordinance #2658 (1982);

14.056 Tax Refunds.
Any tax paid in excess of the total tax due shall be refunded to the taxpayer pursuant to Chapter 5 of the California Revenue and Taxation Code (commencing with Section 5096), as an erroneously collected tax or by order of the Board of Supervisors without the necessity of a claim being filed pursuant to Chapter 5 of the California Revenue and Taxation Code.
Adopted Ordinance #1940 (1974); Amended Ordinance 2117 (1976); Amended Ordinance #2658 (1982);
14.057 Adopted Ordinance #2117 (1976); Deleted Ordinance 2658 (1982);

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into by and between Alaska Airlines, Inc., American Airlines, Inc., America West Airlines, Inc., Continental Airlines, Inc., Delta Air Lines, Inc., Federal Express Corporation, Northwest Airlines, Inc., Trans World Airlines, Inc., Southwest Airlines Co., United Air Lines, Inc., United Parcel Service, Inc., US Airways, Inc., Wings West Airlines, Inc., (hereinafter collectively referred to as "Airlines"), in their own right or as successors-in-interest, and the Counties of Alameda, Contra Costa, El Dorado, Fresno, Humboldt, Kern, Los Angeles, Monterey, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Joaquin, San Mateo, Santa Barbara, Santa Clara and Solano (hereinafter collectively referred to as the "Counties").

RECITALS

WHEREAS, the Airlines, or some of them, have filed various actions, claims for refund and applications for changed assessments against some or all of the Counties over certain property taxes which are further described herein; and

WHEREAS, the Counties have denied liability for refunds in these actions, claims for refunds and applications for changed assessments; and

WHEREAS, the parties wish to resolve their differences and terminate the certain actions, claims for refund and applications for changed assessment as identified in this Settlement

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6. For all tax years beginning with the 1998-1999 tax year, and for all escape assessments levied and assessed after April 1, 1998, Airlines agree to assert no claims for tax refunds or applications for changed assessments (1) on the taxability, valuation or equalization of possessory interests covered by section 107.9 if the assessor has valued the subject property in accordance with section 107.9 or (2) on the valuation or equalization of aircraft through tax year 2003-2004 if the assessor has valued the subject property in accordance with section 401.15; provided, however, that this covenant does not apply to claims relating to (a) audit adjustments and offsets as set forth in Revenue and Taxation Code section 469 or (b) the correction of reporting errors raised by an Airline or (c) the allocation of aircraft values. The Airlines further agree that they will not assert in any application for changed assessment or action for refund that (1) the Assessor has violated Property Tax rule 20 or (2) that there is no taxable possessory interest governed by the valuation provisions of section 107.9, provided that the assessor has applied the methodology in that section.

7. The Counties which are parties to this Agreement have already determined that aircraft model 757-200 PF is affected by extraordinary obsolescence within the meaning of section 401.15 (b)(2) and (c)(2), and therefore, the parties agree that the values presumed to be correct under section 401.15 during the six year period for this aircraft model will be the values originally set by the California Assessor's Association for the 1998 lien date and that no further showing of extraordinary obsolescence is required unless any Airline wishes to demonstrate additional obsolescence justifying a lower value.

p.7 San Bernardino Assessor 9093876361

Attachment No. 6 to
Staff Report on Property Tax Relief
Related to September 11 Terrorist Attacks
December 13, 2001

Background and History of Disaster Relief from Property Tax in California

Since the purpose of the property tax is to fund government for the fiscal year following the lien date, disaster relief was originally not an inherent part of the property tax system. Without specific disaster relief provisions added to the Constitution, property damaged or destroyed is taxed at its lien date value.

The current provisions for disaster relief were added in increments over time. Prior to 1964, there were no such provisions, and disaster relief was limited to specific bills enacted by the Legislature extending to individual properties within a geographical area that were damaged or destroyed after the lien date on a disaster-by-disaster basis. While section 220, the exemption for aircraft being repaired was enacted in 1955, it was not a disaster relief provision.

The practice of adopting statutes for each disaster ceased in 1964 when California voters enacted Proposition 12 (adding section 2.8 to Article XIII of the California Constitution), which authorized the Legislature and counties to provide for property tax relief when property was damaged by a natural disaster declared to be in a disaster area by the Governor. Section 2.8 was amended in 1966 to allow relief for a major misfortune or calamity. This constitutional provision was implemented by Revenue and Taxation Code sections 155.1-155.14 in 1970 (subsequently amended as section 170), authorizing boards of supervisors to provide the reassessment of property damaged or destroyed after the lien date by ordinance. Once an ordinance was adopted, the burden was on the taxpayer to apply for the relief available; and if the taxpayer met the requirements, the assessor was mandated to extend relief using the Section 170 value calculation.

An amendment of section 155.1 in the 1970 Regular Session defined the word "damage" to include "property that has diminished in value due to restricted access to the property caused by the major misfortune or calamity." Prior to the amendment, relief was available only for *direct* physical damage. The amendment added a limited provision for relief for *indirect* physical damage, i.e. restricted access causes a loss of value by placing a *physical* limitation on the use of property. In applying this requirement, Board staff advised taxpayers whose access to their properties was restricted due to a landslide, that disaster relief was available only if the damage prevented them from using their property. Thus, the requirements for section 170 relief have always been narrow and specific.

This is illustrated by the constitutional amendment in 1974, in which section 15 was added to Article XIII as part of the constitutional revision of 1974 by ACA 32, (Proposition 8) - as a restatement of former section 2.8. While the former section 2.8 did not use the adjective "physical" to modify the type of "damage," section 15 did include

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the word, "physical." The Report of the Constitutional Revision Task Force for Article XIII and the ballot argument in favor of Proposition 8, indicate that section 15 was not intended to make substantive changes to the provisions of section 2.8. For this reason, the inclusion of the word "physical" in section 15 expresses the literal understanding and intent of the drafters on the Constitutional Revision Task Force as they interpreted former section 2.8.

While the original Proposition 13 (Article XIII A) also did not contain any disaster relief provisions for value declines, the Legislature placed on the November 1978 Ballot, Proposition 8, a broad value reduction provision applicable to disaster-damaged property and any properties that declined below the adjusted base year value for any reason. Its express purpose was to "further the intent of Proposition 13 *by easing the property tax burden of disaster victims* who have recently lost their homes or suffered real property damage ... [and] allow assessor to further reduce assessments if such damage has, in fact, occurred." (Argument in Favor of Proposition 8, November 1978).

Both Articles XIII, sec.15 and XIII A, section 2 now provide taxpayers suffering loss from disaster damage with relief, with the broader remedy available under XIII A, section 2. When the statutory implementation of Propositions 13 and 8 were being drafted in 1978-79, the Task Force on Property Tax Administration gave special attention to achieving consistency in the procedures for treating disaster damaged property, while simultaneously respecting the differences. In adopting the broader form of relief in section 51, the Legislature fully recognized the major differences by (1) allowing relief for any type of decline in value, economic or physical, (2) initiating the relief on the first lien date following the decline, rather than midyear, and (3) mandating all assessors to provide relief with or without the taxpayer's application or a disaster relief ordinance.

This deliberate interfacing of the two constitutional provisions was accomplished in AB 1488 (Ch. 242, Stats. 1979) and SB 139 (Ch. 377, Stats. 1981) and codified in Sections 170 and 51. Thus, the legislative scheme was simultaneously integrative and comprehensive in that the taxpayer with disaster-damaged property could receive the more specific section 170 relief - if qualified under the disaster relief ordinance of that county, or the more general relief under section 51, when section 170 was either not applicable or not able to "make the taxpayer whole" in a particular situation.

The Board staff has advised taxpayers and assessors on several occasions that if the more specific provisions in section 170 are inapplicable, the assessor must still apply the requirements of section 51, subdivision (a)(2), by providing the taxpayer with a reduction in value where appropriate. Where orchards, for example, were damaged by unusual inclement weather (freeze) and the amount of loss in full cash value did not meet the $5,000 minimum required by Section 170(b), the assessor was advised to enroll the full cash value which accounted for the damage, since it was lower than the factored base year value for that year, under Section 51(a)(2).

Attachment No. 6 to
Staff Report on Property Tax Relief
Related to September 11 Terrorist Attacks
December 13, 2001

Whenever historical events occur that cause real property to decline in value, the Board has consistently taken the position that assessors have an independent responsibility to prepare an assessment roll which properly reflects both constitutional and statutory requirements, including the discovery of properties with assessments in excess of their current market values. (Article XIII A, Section 2(b).) We have urged assessors to be proactive in reviewing particular property types, geographical areas, or categories of properties which require adjustment for declining value.

Moreover, if the assessor refuses to properly adjust the value, the taxpayer may file an application for reduced assessment, and if successful in an assessment appeal, or if the assessor agrees with the taxpayer and stipulates to a reduced value (Section 1603(c)), the value may be reduced by any amount determined by the appeals board or stipulated to by the assessor. The assessment appeals board has full authority to determine the proper value of the property and to grant a reduction, based upon the facts set forth at the hearing. (Article XIII, Section 16.)

Given the nature of the historical events of September 11th and the resultant value declines to certain properties involved in the travel industry (airlines, hotels), the constitutional and statutory background establishes a duty on each assessor and/or the local appeals boards to consider whether a reduction in value is justified under Section 51(a)(2) for that particular property. Because the attacks did not occur in California however, the section 170 requirement for physical damage was not met; therefore, with the exception of the aircraft that were physically destroyed in the attacks, relief under section 170 is not available.

Prepared by Kristine Cazadd
Legal Division

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
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Third District, San Diego
MATTHEW K. FONG
Fourth District, Los Angeles
GRAY DAVIS
Controller, Sacramento

BURTON W. OLIVER
Executive Director

March 20, 1992

No. 92/24

See Ltr 92/63

TO COUNTY ASSESSORS:

DECLINES IN VALUE

As you know, property values in some areas of California have declined or stagnated due to the current recession in our economy. As a result, property owners who purchased at the height of the market may have a factored base year value which exceeds the current market value of their property. Therefore, to ensure that these property owners receive the benefits of Proposition 8, surveys of geographical areas or property use-types suspected of experiencing declines in value may be warranted. Press releases issued by your office will serve as a reminder to the taxpayers that they should notify you of potential overassessments.

Proposition 8, which added Section 2(b) of Article XIII A of the California Constitution, requires the assessor to recognize declines in value if the market value of the property on March 1 falls below its factored base year value.

Section 2(b) of Article XIII A states that:

> "The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, <u>or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value</u>." (Emphasis added.)

Section 51 of the Revenue and Taxation Code is the implementing legislation for Proposition 8; it states in part:

> "For purposes of subdivision (b) of Section 2 of Article XIII A of the California Constitution, for each lien date in which the base year value is determined pursuant to Section 110.1, the taxable value of real property shall be the lesser of:
>
> "(a) Its base year value, compounded annually since the base year by an inflation factor . . . .

Attachment No. 7

"(b) Its full cash value, as defined in Section 110, as of the lien date, taking into account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property, or other factors causing a decline in value. [Emphasis added] . . . .

"(e) For purposes of subdivisions (a) and (b), 'real property' means that appraisal unit which persons in the marketplace commonly buy and sell as a unit, or which are normally valued separately.

"(f) Nothing in this section shall be construed to require the assessor to make an annual reappraisal of all assessable property."

The following list of letters to assessors provides guidance on implementing the provisions of Proposition 8:

No. 79/39 - Questions and Answers Pertaining to Decline in Value
No. 82/25 - The Consumer Price Index and Property Having Stagnant or Declining Value
No. 86/04 - Applying Proposition 8 to Fractional Interests in Real Property
No. 86/36 - Declines in Values on First Lien Date (Proposition 8)

If you have any questions concerning Proposition 8, please feel free to contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division

VW:sk

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
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GRAY DAVIS
Controller, Sacramento
BURTON W. OLIVER
Executive Director

September 25, 1992

No. 92/63

TO COUNTY ASSESSORS:

DECLINES IN VALUE
ASSESSMENT UNIFORMITY

The Members of the Board of Equalization continue to hear that property owners in some counties may not be receiving the property tax benefit they are entitled to as a result of Proposition 8. These economic times have resulted in the decrease of property values which is unparalleled since the passage of Proposition 13. The Board feels strongly that property owners entitled to reduced property taxes should receive priority from assessors at least equal to their other responsibilities. We recently issued Letter to Assessors 92/24, dated March 20, 1992, to ensure that those owners of property with factored base year values exceeding current market value receive the benefit of Proposition 8. This letter will stress the obligation of the assessor to inventory and process declines in value with the same diligence and resource expended on increases in values.

Taxpayers have proposed rule changes to the Board on how to address declines in value which they feel would be more directive to county assessors. However, at this time the Board feels the process of continuing to provide guidance and information through Letters to Assessors is the most effective and responsive way to address this issue.

Proposition 13 added Article XIII A to the California Constitution. Proposition 8 amended Article XIII A to require the assessor to recognize declines in value if the market value of the real property on March 1 falls below its factored base year value.

The first sentence of Section 1(a) of Article XIII A reads as follows:

> "The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property."

Proposition 8 amended Section 2(b) of Article XIII A of the California Constitution to read that:

> "The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value."

Attachment No. 8

Section 51 of the Revenue and Taxation Code is the implementing legislation for Section 2(b). It reads in part:

> "For purposes of subdivision (b) of Section 2 of Article XIII A of the California Constitution, for each lien date after the lien date in which the base year value is determined pursuant to Section 110.1, the taxable value of real property shall be the lesser of:
>
> "(a) Its base year value, compounded annually since the base year by an inflation factor, . . .
>
> "(b) Its full cash value, as defined in Section 110, as of the lien date, taking into account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property, <u>or other factors causing a decline in value</u>. (Emphasis added.)
>
> ". . .(e) For purposes of subdivisions (a) and (b), 'real property' means that appraisal unit which persons in the marketplace commonly buy and sell as a unit, or which are normally valued separately.
>
> "(f) Nothing in this section shall be construed to require the assessor to make an annual reappraisal of all assessable property."

Property Tax Rule 461(d) reads, in pertinent part:

> ". . . the assessor shall prepare an assessment roll containing the base year value appropriately indexed or the current lien date full value, whichever is less. . .In preparing such rolls the assessor is not required to make an annual reappraisal of all assessable property.
>
> ". . . When the current full value of property is less than its base year full value indexed to the current lien date, the full value shall be enrolled as the current taxable value."

The assessor's responsibility is to prepare an assessment roll which appropriately reflects both Constitutional and statutory provisions. Along with the responsibility to reassess property when a change in ownership or new construction occurs, the assessor has a responsibility to discover properties where assessments are in excess of their current value. Assessors are not required to annually appraise every assessable property. However, we urge assessors to be proactive in seeking particular property types, geographical areas of property, or categories of properties (such as those purchased at or near the peak of the real estate market) which require adjustment for declining value. We recognize the budgetary and workload problems assessors are facing throughout California but stress the need to properly allocate resources between the assessment decrease workload and the assessment increase workload.

Proactive suggestions for discovery of property with market values at levels below pending or actual assessed value include:

* Informational inserts to be included with future tax bills to alert taxpayers.

* Active public outreach program including information and public service announcements in radio, television, and newspapers.

* Surveys of geographical areas of property use-types suspected of experiencing declines in value.

* Reviewing assessment appeals to identify declining value trends.

* Reviewing assessments in areas where property owners have notified your office that their property has suffered a decline in value.

* Special mailings targeted to property owners to inform them of the potential for a reduction in their assessed value.

* Using automated sales ratio studies as a method of discovering geographical and use-types of property significantly impacted by the recession.

* Providing appropriate resource allocation for discovering and processing assessments declining in value. Resource management should create a level playing field for adjusting both decreases and increases of assessment.

For the most part, it is our impression that assessors have made it a high priority to provide declines in value relief where appropriate. By following some or all of the above suggestions, we believe all assessors can take the initiative to value declining properties appropriately.

The Board has asked that staff provide assistance to any county in reviewing their approach of identifying properties affected by declines in value. At the same time, they are aware that the California Assessors' Association is reviewing this issue and can offer assessors grappling with this issue advice on methods successfully used by counties.

If assessors believe certain aspects of this issue have been overlooked, please contact the Real Property Technical Services Unit at (916) 445-4982. The Board will schedule continued discussions on declines in value as necessary.

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division

VW:sk

SUMMARY OF RESPONSES FROM ASSESSORS

County	Has a 170 ord.	How many claims related to Sept 11 attacks?	What types of properties are the claims for?	Estimate of total value reduction being requested.	Has county extended 170 filing deadline?	Does county intend to offer 170 relief for any property related to Sept. 11 attacks?
Alameda	Yes	60	32-Airlines 20-Hotels 3-Airline food service 3-Shipping 2-Airport Concession	$530 million	Yes	Will review all claims.
Amador	Yes	None	N/A	N/A	No	
Butte	Yes	1	Airline	No amount	Yes	Undecided
Contra Costa	Yes	6	1-Amusement park 5- Hotels	20-50%	No	No
Del Norte	Yes		Airlines	No	No	No
El Dorado	Incident specific	1	Hotel		No	Undecided
Kern	Yes	5	Hotels	No amount	No	No
Los Angeles	Yes	313	Airlines, airport related services, hotels, theme parks, other	Several hundred million dollars	Yes	Airlines, & airport PI's
Madera	Yes	1	Hotel	Unknown	Yes	No
Merced	Yes	None	N/A	N/A	Yes	N/A
Modoc	Yes	None	N/A	N/A	No	No
Monterey	Yes	3	1-Airline 2-Hotels	16 million	Yes	Undecided
Napa	Yes	None	N/A	N/A	Yes	Undecided
Orange	Yes	52	Airlines, hotels, rental car agencies, office bldgs, Amusement park	400 million several large claimants did not specify amount	Yes	Undecided
Sacramento	Yes	2	Hotels	1.8 million	Yes	Undecided
San Bernardino	Yes	42	11-Airlines	286 million	Yes	No
San Diego	Yes	154	Not listed	Unknown	Unknown	Yes, damaged aircraft
San Francisco	Yes	31	70%-Hotels	20-50%	Yes	Undecided
San Mateo	Yes	132	Hotels, airlines, airport support, car rental agencies, other airport tenants	2.5 billion	Undecided	No

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Santa Barbara	Yes	7	Hotels, airlines	20-50%	Yes	Undecided
Santa Clara	Yes	40	Airlines, in-flight catering, airport PI's, & hotels	135 million does not include 6 major airlines	No	No
Shasta	Yes	1	Airline	No amount	No	No
Sonoma	Yes	6	4-Hotels 1-Golf Course 1-commercial building	67 Million	No	No
Stanislaus	Yes	2	1-Hotel 1-Airline	5 million	Yes	No
Sutter	Yes	None	N/A	N/A	Yes	Undecided

State of California

Memorandum

Board of Equalization
Agency Planning and Research Division

To : Mr. David Gau, Deputy Director
Property Taxes

Date : December 13, 2001

From : Aileen Takaha Lee
Research & Statistics Section

Subject : Events of September 11 and Section 170 Property Tax Relief

On November 30, Board staff conducted a meeting of all interested parties to discuss the possible application of Revenue and Taxation Code section 170 to businesses affected by the September 11 terrorist attacks. Under section 170, the board of supervisors may, by ordinance, provide property tax relief for taxpayers whose property has suffered a loss in value by damage from a misfortune or calamity.

Throughout the state, businesses have filed claims for property tax relief for the economic consequences of the September 11 events. Airlines, on-site concessionaires, and other airport- and airline-related businesses including in-flight catering and shipping services have been adversely impacted by restricted access. Tourist-related businesses including hotels, resorts, amusement parks, and golf courses have also requested relief for the decline in income due to the drop in business activity following the attacks.

Earlier this month staff requested from the counties information regarding the number and amount of section 170 claims. Responses were received from 25 counties. To date, these counties report they have received 859 claims for value reductions totalling nearly $4 billion. As might be expected, most of the claims are concentrated in the counties with the major airports. The total value reduction being requested in Alameda, Orange, San Bernardino, San Mateo and Santa Clara counties amounts to $3.85 billion; the bulk of the claims in these counties is for airlines and other airport-related businesses. The value reduction for Los Angeles County, mainly for LAX and Burbank, is estimated to be several hundred million dollars. San Diego County did not provide an estimate of the total value reduction for the 154 claims in their county.

In addition, there are a number of claims for other tourist-related businesses, such as lodging, amusement parks, and golf courses requesting relief for the decline in income due to the drop in business activity following the attacks. For example, hotels comprise seventy percent of the 31 claims in San Francisco. In general, the amount of value reduction for these businesses was not specified by the taxpayer but instead was broadly estimated: e.g., a reduction of 20 to 50 percent of the current assessed value; the current assessed value for the largest of these properties easily exceeds $100 million each. This may be an indication that even the taxpayer has found it difficult to pinpoint how much of the decline in income they have suffered is due to the September 11 events as opposed to the economic downturn that started earlier this year.

ATL:ems

cc: Ms. Laurie Frost
Mr. Larry Augusta
Mr. Dave Hayes

Attachment No. 10