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BY LTA 2010/036**

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No. 2001/089

TO COUNTY ASSESSORS:

SEISMIC SAFETY NEW CONSTRUCTION EXCLUSIONS

The Governor signed Assembly Bill 184 (Chapter 330, Statutes of 2001), amending sections 70(d) and 74.5 of the Revenue and Taxation Code¹ relating to new construction exclusions for certain seismic safety improvements. Specifically, Chapter 330 changed the filing deadlines and modified the definition of “improvements utilizing earthquake hazard mitigation technologies.” The legislation became effective on September 25, 2001.

This letter summarizes the current law governing exclusions for seismic safety improvements, and presents questions and answers illustrating the application of the law. In doing so, this letter supersedes Letters To Assessors No. 84/97 (October 5, 1984), No. 91/26 (April 11, 1991) and No. 99/60 (November 5, 1999).

UNREINFORCED MASONRY BUILDING IMPROVEMENTS

Section 70(d) implements Proposition 23, approved by the voters in 1984, and provides a 15-year new construction exclusion for improvements to unreinforced masonry buildings undertaken to comply with local ordinances on seismic safety.

Specifically, section 70(d)(1) provides that locally mandated seismic-safety-related improvements or reconstruction to unreinforced masonry-walled structures will be excluded from new construction for 15 years following the commencement or completion of the reconstruction or improvements. If the property changes ownership during the 15-year period, a new base year value must be established and enrolled for the entire property.

Section 70(d)(2) requires that in the sixteenth year following the required reconstruction or improvement, the assessor shall enroll the excluded property at its current full cash value. This means that qualifying reconstruction may be exempted from assessment in the first tax year in which it exists, whether as construction in progress or as completed work, and in the following 14 tax years. It becomes taxable in the sixteenth tax year following the tax year in which the reconstruction or improvement was begun.

¹ All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

Filing Requirements

Section 70(d)(3) requires the governing body that enacted the local ordinance to issue a certificate of compliance upon request of an owner who has reconstructed or improved a structure in accordance with the ordinance. To receive the new construction exclusion, the property owner must file the certificate with the assessor no later than six months after the completion of the project. The failure to file a certificate of compliance within the prescribed filing period is deemed a waiver of the exclusion for that year. If the certificate is filed after the six-month filing period, the exclusion applies prospectively, starting with the lien date following the filing.

Prior to the enactment of Chapter 330, property owners had to file certificates of completion by April 15. Additionally, prior law did not provide for late filing of certificates.

The following questions and answers should clarify the application of this constitutional amendment and its implementing legislation.

How should the 15-year period be calculated for purposes of applying this exclusion?

Three examples will illustrate the application of this exclusion.

Example 1: Qualifying reconstruction is begun in May 1984, and completed in November 1984. Ordinarily, this situation would require a supplemental assessment on the 1984-85 roll, so 1984-85 is the first year of exclusion. The exclusion would continue through fiscal year 1998-1999. The assessor would then determine the current full cash value of the previously excluded portion as of January 1, 1999, and add this amount to the factored base year value of the property for the 1999-2000 fiscal year.

Example 2: Qualifying reconstruction is begun in June 1984, and completed in April 1985. This timing would otherwise result in the work being assessed as construction in progress on the 1985-86 roll, with supplemental assessments required upon completion for the 1984-85 and 1985-86 rolls. Therefore, the earliest roll to which the exclusion could be applied is the 1984-85 roll. The exclusion would continue through the 1998-1999 fiscal year.

Example 3: Qualifying reconstruction is begun in December 1998, and is completed in October 1999. There would otherwise be an assessment of the construction in progress on January 1, 1999, for the 1999-2000 roll, followed by a supplemental assessment upon completion for the balance of fiscal year 1999-2000. The first year of exclusion is 1999-2000. The portion of reconstruction or improvement so excluded becomes taxable for the 2014-15 fiscal year.

Should construction in progress on the lien date be excluded if it is work necessary to comply with a local seismic safety ordinance?

Yes. Although neither the constitutional amendment nor the statute are explicit on this point, staff's view is that any ambiguity should be resolved in favor of the property owner. Accordingly, the 15-year exclusion should be deemed to begin on the date the seismic-related reconstruction commences. For example, the rebuilding of the walls of an old brick building would be excluded from reappraisal when in progress on January 1, 2000, and also for 14 more years following completion in January 2001. The 15-year exclusion would be applied first to the

2000-01 tax roll, since the reconstruction would ordinarily be subject to assessment on that roll as construction in progress. The exclusion would then apply to the next 14 years.

It is important that the property owner establish to the assessor's satisfaction that the work in progress is in fact required to comply with a local seismic safety ordinance, since only such work can be excluded. If the governing body will not issue a certificate of compliance to the property owner until the reconstruction is complete, he or she can still provide evidence to the assessor that the work is required by showing the original order to comply sent to him or her by the local agency and also a copy of the building permit authorizing the reconstruction or improvement of the building. In staff's view, this interim documentation would meet the statutory requirement.

A building that has been reconstructed has received the exclusion from reappraisal. In the eighth year of this exclusion, the entire property changes ownership. What is the proper assessment procedure?

The entire property, including the previously excluded new construction, must be reappraised at its current full cash value as of the date of the change in ownership, and a supplemental assessment(s) must be enrolled.

Would the late filing by the property owner of a certificate of compliance entitle him/her to partial relief under Section 70(d)?

Yes. If the certificate is filed after the six-month period, then relief would be granted prospectively as of the ensuing lien date. For example, if construction began in July 2000, and was completed in October 2000, the property owner had until April 2001, to file the certificate of compliance. If the taxpayer filed the certificate of compliance with the county assessor in September 2001, the new construction would be assessable for the 2000-01 (supplemental) and 2001-02 fiscal years. The new construction exclusion would apply as of the January 1, 2002, lien date for the 2002-03 fiscal year and would continue through the 2014-15 fiscal year. The late filing of the certificate does not postpone the start of the 15-year period; effectively, it reduces the exclusion period to less than 15 years.

SEISMIC RETROFITTING IMPROVEMENTS AND IMPROVEMENTS UTILIZING EARTHQUAKE HAZARD MITIGATION TECHNOLOGIES

Section 74.5 implements Proposition 127, approved by the voters in 1990, and provides a new construction exclusion for (1) seismic retrofitting improvements and (2) improvements utilizing earthquake hazard mitigation technologies. This exclusion applies only to existing buildings and structures. In addition, the provisions of section 74.5 do not apply to seismic safety reconstruction and improvements to unreinforced masonry structures that qualify for the exclusion provided in section 70(d).

Seismic Retrofitting Improvements

Section 74.5(b)(1) defines "seismic retrofitting improvements." To exclude "seismic retrofitting improvements" from assessment, the improvements must fit into one of the following classifications:

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

In addition, “seismic retrofitting” includes, but is not limited to, those items referenced in Appendix Chapters 5 and 6 of the Uniform Code for Building Conservation (UCBC) of the International Conference of Building Officials. UCBC Appendix Chapter 5 relates to the retrofit of concrete tilt-up buildings and provides requirements for wall anchors and diaphragm cross-ties. UCBC Appendix Chapter 6 relates to prescriptive retrofit of residential cripple walls and foundation anchorage and provides prescriptive guidelines for bracing of cripple walls that can be implemented by the homeowner and/or contractor without requiring numerically based structural design.

Improvements Utilizing Earthquake Hazard Mitigation Technologies

Chapter 330 amends the definition of “improvements utilizing earthquake hazard mitigation technologies” in section 74.5(b)(2) to mean “improvements to existing buildings identified by a local government as being hazardous to life in the event of an earthquake. These improvements shall involve strategies for earthquake protection of structures. These improvements shall use technologies such as those referenced in Part 2 (commencing with section 101) of Title 24 of the California Building Code and similar seismic provisions in the Uniform Building Code.”

Previously, the definition of “improvements utilizing earthquake hazard mitigation technologies” was keyed to certain technologies approved by the State Architect. However, rather than adopting regulations referenced in Health and Safety Code section 16102, the State Architect instead developed guidelines and seismic performance standards to insure the seismic performance of buildings utilizing earthquake hazard mitigation technology.

Change in Ownership

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

Filing Requirements

To receive the new construction exclusion under section 74.5, a property owner must notify the assessor prior to, or within 30 days of, completion of the project that he or she intends to claim the exclusion. Additionally, all documents needed to support the claim must be filed no later than six months after completion of the project. Prior law required supporting documents be filed by the April 15 following the completion of the project.

It is the responsibility of the property owner, primary contractor, civil or structural engineer, or architect to certify to the building department those portions of the project that are either seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies.

Upon completion of the project, the building department is to report to the county assessor the value of those portions of the project meeting either of these definitions.

Claim Form

Section 74.5(d) requires that the State Board of Equalization prescribe the manner and form for claiming the exclusion. The section 74.5 claim form (BOE-64) is being updated to reflect current law. The form will be mailed to you separately when it is completed and approved.

CONCLUSION

Two publications that discuss seismic safety improvements, *The Commercial Property Owner's Guide to Earthquake Safety (1998 Edition)* [CSSC 97-01] and *The Homeowner's Guide to Earthquake Safety 1998 Edition* [CSSC 98-01], are available from the Seismic Safety Commission. These publications may be downloaded from their Web site at www.seismic.ca.gov/ssepub.htm or are available for purchase. For further information regarding these publications, please contact the Seismic Safety Commission at (916) 263-5506.

The updated URL as of 11/22/2024 is <https://ssc.ca.gov/>

Enclosed is a copy of sections 70(d) and 74.5 with the changes denoted by strikeout/underline. If you have any questions regarding these new construction exclusions, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property Taxes Department

DJG:grs

Enclosure

CHAPTER 330, STATUTES OF 2001

Revenue and Taxation Code section 70(d) is amended to read:

(d) (1) Notwithstanding the provisions of subdivisions (a) and (b), where a structure must be improved to comply with local ordinances on seismic safety, “newly constructed” and “new construction” does not mean the portion of reconstruction or improvement to a structure, constructed of unreinforced masonry bearing wall construction, necessary to comply with the local ordinance. This exclusion shall remain in effect during the first 15 years following that reconstruction or improvement (unless the property is purchased or changes ownership during that period, in which case the provisions of Chapter 2 (commencing with Section 60) of this division shall apply).

(2) In the sixteenth year following the reconstruction or improvement referred to in paragraph (1), the assessor shall place on the roll the current full cash value of the portion of reconstruction or improvement to the structure that was excluded pursuant to this subdivision.

(3) The governing body that enacted the local ordinance shall issue a certificate of compliance upon the request of the owner who, pursuant to a notice or permit issued by the governing body that specified that the reconstruction or improvement is necessary to comply with a seismic safety ordinance, so reconstructs or improves his or her structure in accordance with the ordinance. The certificate of compliance shall be filed by the property owner with the county assessor ~~on or before the following April 15. The provisions of this subdivision shall not apply to any structure for which a certificate is not filed~~ not later than six months after the completion of the project. The failure to file a certificate of completion within the prescribed filing period shall be deemed a waiver of the exclusion for that year.

Revenue and Taxation Code section 74.5 is amended to read:

(a) For purposes of paragraph (4) of subdivision (c) of Section 2 of Article XIII A of the California Constitution, “newly constructed” and “new construction” does not include seismic retrofitting improvements and improvements utilizing earthquake hazard mitigation technologies, to an existing building or structure.

(b) For purposes of this section:

(1) “Seismic retrofitting improvements” means retrofitting or reconstruction of an existing building or structure, to abate falling hazards from structural or nonstructural components of any building or structure including, but not limited to, parapets, appendages, cornices, hanging objects, and building cladding that pose serious danger. “Seismic retrofitting improvements” also means either structural strengthening or providing the means necessary to ~~reduce~~ resist seismic force levels that would otherwise be experienced by an existing building or structure during an earthquake, so as to significantly reduce hazards to life and safety while also providing for the substantially safe ingress and egress of building occupants during and immediately after an earthquake. “Seismic retrofitting improvements” does not include alterations, such as new plumbing, electrical, or other added finishing materials, made in addition to seismic-related work performed on an existing structure. “Seismic retrofitting” includes, but is not limited to, those items referenced in Appendix Chapters 5 and 6 of the Uniform Code for Building Conservation of the International Conference of Building Officials.

(2) “Improvements utilizing earthquake hazard mitigation technologies” means improvements to existing buildings identified by a local government as being hazardous to life in the event of an earthquake, ~~that utilize earthquake hazard mitigation technologies approved by the State Architect pursuant to Section 16102 of the Health and Safety Code~~ These improvements shall involve strategies for earthquake protection of structures. These

improvements shall use technologies such as those referenced in Part 2 (commencing with Section 101) of Title 24 of the California Building Code and similar seismic provisions in the Uniform Building Code.

(c) The property owner, primary contractor, civil engineer, or architect shall certify to the building department those portions of the project that are seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies. Upon completion of the project, the building department shall report the value of those portions of the project that are seismic retrofitting improvements and improvements utilizing earthquake hazard mitigation technologies to the county assessor.

(d) In order to receive the exclusion, the property owner shall notify the assessor prior to, or within 30 days of, completion of the project that he or she intends to claim the exclusion for seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies. The State Board of Equalization shall prescribe the manner and form for claiming the exclusion. All documents necessary to support the exclusion shall be filed by the property owner with the assessor ~~on or before the following April 15~~ not later than six months after the completion of the project.

(e) The exclusion from “newly constructed” and “new construction” under this section is not applicable to seismic safety reconstruction and improvements that qualify for the exclusion provided in subdivision (d) of Section 70.

(f) This section shall only apply to projects completed on or after January 1, 1991.