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(916) 445-4380

March 20, 1992

Mr. John N. Scott, MAI
Alameda County Assessor
1221 Oak Street
Oakland, CA 94612-4288

Attn: Mr. Stephen R. Sara
Chief Deputy Assessor

Dear Mr. Scott:

This is in response to your February 6, 1992, letter to Mr. Richard Ochsner wherein you referred to the Oakland/Berkley October 1991 fire, Article XIII, Section 3(k) of the California Constitution, and Revenue and Taxation Code Section 218 and you asked the following questions concerning the homeowners' exemption from property taxation:

1. On those properties that were totally destroyed, must we deny the homeowners' exemption for any lien date upon which there is no dwelling on the land?
2. On those properties that were partially damaged or that were totally destroyed but partially restored for any lien date, would the application of the homeowners' exemption differ from 1 above? Letter 82/50, answer to Question G16, states in part that temporary absences because of fire do not change the status of a principal place of dwelling.

1. With respect to properties that were totally destroyed, the homeowners' exemption is not available for such properties under the current state of the law. The Board is, of course, fully aware of the hardships suffered by the homeowners who were the victims of the disastrous Oakland/Berkeley fire last October 20 and the Board has the greatest sympathy for them. Unfortunately, for the reasons set out more fully below, it seems clear that the present language of the Revenue and Taxation Code prevents the application of the homeowners' exemption to the subject properties at this time. The Board is hopeful, however, that the Legislature will adopt amendments which will extend the exemption to the fire victims until they are able to rebuild their homes. On Wednesday, March 18, the Board acted to recommend that the Legislature revise the law to provide this necessary relief.

As you are aware, Article XIII, section 3(k) of the Constitution provides that \$7,000 of the full value of a dwelling, as defined by the Legislature, when occupied by the owner as his principal residence, is exempt from property taxation. After restating Article XIII, section 3(k), Revenue and Taxation Code section 218 states, among other things, that:

“‘Dwelling’ means a building, structure or other shelter constituting a place of abode, whether real property or personal property, and any land on which it may be situated....

“The exemption . . . shall first be applied to the building, structure or other shelter and the excess, if any, shall be applied to any land on which it may be located.”

Thus, important for purposes of this inquiry are the existence of a dwelling, as defined, and occupancy by the owner as principal residence. In the case of a totally destroyed dwelling, no dwelling exists; and, of course, there is no occupancy or possibility of occupancy with respect to the destroyed dwelling. While a new dwelling may be constructed in place of the destroyed dwelling, until it has been completed and occupied as a principal place of residence, those requirements for exemption are not met. Thus, as indicated in our March 23, 1982, Letter to Assessor No. 82/50, 1982 Homeowners Exemption – Questions and Answers:

“G24. May the homeowners’ exemption be applied to a dwelling that is under construction on the lien date?

“ANSWER Some dwellings are always under construction to some degree. The exemption should not be allowed on a dwelling that is under construction if the owner lives elsewhere and plans to move into the structure when it is completed”

Additional authority for this conclusion is Article XIII, Section 1 of the Constitution, which provides that unless otherwise provided by the Constitution or laws of the United States, all property is taxable and shall be assessed at the same percentage of fair market value, and Revenue and Taxation Code Section 201, which states that all property in this State, not exempt under the laws of the United States or of this State, is subject to taxation under this code. As indicated I Jim Williams’ May 31, 1978, letter to Mr. Robin W. Allen, copy enclosed, there is no state or federal exemption for privately-owned dwellings in the course of construction.

Finally in this regard, a displace person purchasing and occupying another dwelling as his principal residence while a new dwelling is under construction can, of course, claim a homeowners’ exemption for that dwelling. And a displace person renting his principal residence while a new dwelling is under construction may be eligible for the credit allowed a qualified renter against his personal income tax (Rev. & Tax. Code, Sec. 17053.5).

2. With respect to properties that were partially damaged, in our view, those homeowners’ exemptions continue in effect.

As you have noted, as also indicated in our March 23, 1982, Letter to Assessors No. 82/50, we have been of the opinion that persons who are temporarily absent from their dwellings/residences because of fire, remain eligible for the exemption:

“G16. May a person who is unable to occupy the home he owns during the winter because it is snowed-in, and who obtains temporary residence elsewhere, qualify for the exemption?

“ANSWER: YES. The person should demonstrate that he returns to his home when possible to do so. The exemption does not extend to property which is a vacation or second home, but temporary absences because of fire, flood, or snow do not change the status of principal place of dwelling.”

With respect to properties that were totally destroyed but partially restored for any lien date, the homeowners' exemption is not available for such properties for the reasons set forth in the answer to 1, above.

Very truly yours,

E. L. Sorensen, Jr.
Chief Counsel

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Enclosure

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Honorable William Bennett
Honorable Matthew K. Fong
Honorable Gray Davis
Mr. Burton W. Oliver
Mr. Richard H. Ochsner
Ms. Margaret Shedd
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