

Memorandum

To : Honorable Bill Leonard

Date: May 3, 2007

From : Kristine Cazadd
Chief Counsel

Subject: New Construction – Addition of New Room to Existing House

This is in response to your April 5, 2007 request for a legal opinion regarding the assessment of new construction. Specifically, you asked: "When a county-assessed property owner makes an improvement to an existing house, is the Assessor required to increase the property's assessed value by the value of the improvement only?" As explained in more detail below, the answer to your question is affirmative; only the new construction receives a new base year value in accordance with the relevant law.

Law and Analysis

California Constitution article XIII A, sections 1 and 2 provide a limitation on the assessment of property taxes and a procedure for establishing the currently taxable value of locally-assessed real property by reference to a base year full cash value, which is then modified annually to reflect an increase in the inflation rate¹ not to exceed two percent per year or declines in value. (See Rev. & Tax. Code, §§ 50 and 51; see also, Property Tax Rule² 460.) Property Tax Rule 460, subdivision (b) provides the definitions, which govern the construction of article XIII A, sections 1 and 2. Specifically, subdivision (b) provides in relevant part:

(1) **BASE YEAR.** The assessment year 1975-76 serves as the original base year. Thereafter, any assessment year in which real property, or a portion thereof, is purchased, is newly constructed, or changes ownership shall become the base year used in determining the full value for such real property, or a portion thereof.

(2) **FULL CASH VALUE.**

(A) The full cash value of real property means:

¹ For each lien date after the lien date in which the base year value full value is determined, the full value of real property is modified to reflect the percentage change in the cost of living, as defined in Revenue and Taxation Code section 51; provided that, such value does not reflect an increase in excess of 2 percent of the taxable value of the preceding lien date. (Property Tax Rule 460, subd. (b)(5).)

² All Property Tax Rule references are to the California Code of Regulations, title 18.

1. The 'full cash value' as defined in section 110.1 of the Revenue and Taxation Code, as of the lien date 1975 for properties with a 1975-76 base year, or
2. The 'full cash value' as defined in section 110 of the Revenue and Taxation Code as of the date such real property is purchased, is newly constructed, or changes ownership after the 1975 lien date.

Thus, any assessment year in which real property or a portion thereof, is newly constructed, becomes the new base year used in determining the full value for such real property, or a portion thereof.

As to new construction, Revenue and Taxation Code section 70, subdivision (a) defines "newly constructed" and "new construction" as:

- (1) Any addition to real property, whether land or improvements (including fixtures), since the last lien date; and
- (2) Any alteration of land or of any improvement (including fixtures) since the last lien date that constitutes a major rehabilitation thereof or that converts the property to a different use.

In other words, not all improvements fall within the definition of "new construction." If, however, the improvement constitutes "new construction" as defined in section 70, then section 71 provides that:

The assessor shall determine the new base year value for the portion of any taxable real property which has been newly constructed. The base year value of the remainder of the property assessed, which did not undergo new construction, shall not be changed.

Furthermore, new construction in progress on the January 1 lien date is appraised at its full value on such date and each lien date thereafter until the date of completion, at which time the entire portion of property that is newly constructed is reappraised at its full value. (Rev. & Tax. Code, § 71.) Therefore, when real property, or a portion thereof, is newly constructed after the 1975 lien date, the assessor is required to ascertain the full value of such newly constructed property as of the date of completion. (Property Tax Rule 463, subd. (a).)

Property Tax Rule 463 interprets and implements sections 70 and 71. Subdivision (a) of Rule 463 provides that when the new base year value is established for new construction, the new base year value is for "*only* that portion of the property which is newly constructed, whether it is an addition or alteration." (Emphasis in original.) This language, especially the emphasis placed on the word "*only*," implements the statutory prohibition that "[t]he base year value of the remainder of the property assessed, which did not undergo new construction, shall not be changed." (Rev. & Tax. Code, § 71.)

Property Tax Rule 463, subdivision (a) further explains that:

The taxable value on the total property shall be determined by adding the full value of the new construction to the taxable value of preexisting property reduced to account for the taxable value of property removed during construction. *The full value of new construction is only that value resulting from the new construction and does not include value increases not associated with the new construction.* (Emphasis added.)

In other words, when a property owner adds a new room to an existing house, such addition constitutes new construction under section 70, subdivision (a). As a result, the new room will receive a new base year value based on its current fair market value as of the date of the completion of the new construction. However, the pre-existing portion retains its existing adjusted base year value. (See Assessors' Handbook section 502, Advanced Appraisal, p.130.) Thus, the assessment of a single property may have multiple base year values until there is a change in ownership of the entire property at which time a new base year value for the entire property is established.

Lastly, we note that Rule 463, subdivision (e) provides that the date of completion of new construction is the date the property or portion thereof is available for use. Subdivision (e) provides that:

In determining whether the real property or a portion thereof is available for use, consideration should be given to the date of the final inspection by the appropriate governmental official, or, in the absence of such inspection, the date the prime contractor fulfilled all of his contract obligations. . . .

Therefore, it is possible that when the construction project is completed in stages, with some portions available for use prior to the completion of the entire project, that a base year value can be separately established for the completed portions without regard to the incomplete status of the total project. (See Letter to Assessors No. 80/77.)

To summarize, when a new room is added to an existing house, only the new room will receive a new base year value; the remaining pre-existing property will retain its existing adjusted base year value.

KC:pb
Chief Counsel/Final/New Construction
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- Honorable John Chiang
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- Mr. David Gau MIC:63
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