



STATE OF CALIFORNIA

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Executive Director

November 25, 1997

Re: Revenue and Taxation Code Section 75.12
New Construction Exclusion.

Dear Ms.

This is in response to your letter to Assistant Chief Counsel Larry Augusta, dated September 29, 1997, in which you request a legal opinion regarding application of the exclusion for new construction provided by Revenue and Taxation Code¹ section 75.12. To summarize the facts of your letter,

1. Your client, G (G), purchased from C (C) 445 lots by grant deed recorded August 22, 1997. Development of these lots had begun prior to that purchase in January 1997 and the costs of the development were borne entirely by G.
2. In November 1996, prior to commencing development, C applied for and received from the Ventura County Assessor's office an exclusion for new construction pursuant to section 75.12.
3. On September 5, 1997 G filed a claim for exclusion for new construction. The assessor's office denied the claim because the land development had commenced more than 30 days prior to the date of the claim.

You believe that the Ventura County Assessor's Office incorrectly denied G's claim for exclusion and you ask whether G may qualify under Section 75.12 for the exclusion following a change in ownership of property on which the exclusion had previously been granted. Under the circumstances described, it is our opinion that G is eligible for the exclusion under Section 75.12.

¹All section references are to the Revenue and Taxation Code.

LAW AND ANALYSIS

In order to qualify for the exclusion for new construction (construction for resale exclusion), the claimant must comply with the provisions of Section 75.12. Subdivision (a)(1) of that section provides, for purposes of this discussion, that new construction shall be deemed completed at:

(1) The date upon which the new construction is available for use by the owner, unless the owner does not intend to occupy or use the property. The owner shall notify the assessor prior to, or within 30 days of, the date of commencement of construction that he or she does not intend to occupy or use the property. If the owner does not notify the assessor as provided in this subdivision, the date shall be conclusively presumed to be the date of completion.

In accordance with subdivision (a)(1), the seller, C , timely filed a claim for the exclusion in November 1996 prior to the initial land clearing and infrastructure work on the property that began in January 1997. C 's claim was approved by the Ventura County Assessor's Office. Subsequent to, but within 30 days of, the August 22, 1997 purchase, G filed its claim for exclusion with the assessor's office on or about September 5, 1997.

Definition of "owner" as intended by Section 75.12

Subdivision (a) of section 75.12 requires that an "owner" notify the assessor if he or she "does not intend to occupy or use the property" but does not further define who is an "owner". Principles of statutory construction dictate that, in the absence of a more specific definition, the ordinary and usual meaning of the language expresses the legislative intent of the provision. See, *Central Pathology Service Medical Clinic, Inc. v. Superior Court* (1992) 3 Cal.4th 181, 186-187. For purposes of establishing ownership, Evidence Code section 662 creates a rebuttable presumption that beneficial title follows legal title. That section states: "The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof." Accordingly, an "owner" for purposes of subdivision (a) of section 75.12 is presumed to be the holder of the legal title to the property unless it is demonstrated by clear and convincing evidence that another person holds beneficial title.

As indicated in your letter, C held legal title to the property until the sale and purchase by grant deed transfer on August 22, 1997 and was, therefore, presumed to be the owner of both legal and beneficial title. You also stated, however, that part of the purchase agreement between C and G provided that G would pay for the land development, including costs incurred prior to the sale. By assuming these costs, the assessor's office apparently determined that G acquired beneficial title to the land, and, hence, became the

"owner" at the time the development commenced. As the putative owner, G would have been required to file a claim for new construction exclusion within 30 days of the commencement of the work in January 1997, thereby, rendering untimely the claim filed in August 1997.

It is our opinion, in view of the Evidence Code presumption, that C must be considered the owner of the land prior to the sale unless it can be shown by clear and convincing evidence that beneficial title transferred to G at the time the development work commenced. We have not been provided with copies of the purchase agreement, escrow instructions and related documents and, therefore, we are unable to give an opinion as to whether those documents constitute clear and convincing evidence of beneficial title in G prior to the deed transfer. We assume for purposes of the following analysis that C owned both legal and beneficial title to the land prior to the completion of the August 1997 sale and purchase.

Section 75.12 applies to any "owner".

The Board staff has addressed interpretative questions supporting the application of this exclusion to a "new" or succeeding owner/builder on several occasions in the past.

In Letter to Assessors No. 83/132, December 16, 1983, we stated the following:

QUESTION 1: When property under construction transfers, is the new owner/builder eligible for the exclusion under Section 75.12?

ANSWER 1: Upon application, the new owner/builder could receive the exclusion. However, there would be a supplemental assessment for the change in ownership, including the construction completed to the date of transfer, and the new owner would have to apply for the exclusion prior to beginning any construction.

This interpretation makes it clear that the exclusion is available to any owner/builder who applies for the exclusion prior to, or within 30 days of beginning any construction.

In a letter to an assessor of another county on March 13, 1984, we addressed a similar question in the following manner:

QUESTION: Builder A starts constructing a new structure. He applies and qualifies for the construction for resale exclusion. Before completing construction, he sells the uncompleted property to Builder B, who proceeds to complete the construction solely for the purpose of resale. Does the exclusion on construction for resale continue to apply?

ANSWER: There has been a change in ownership so there is a supplemental assessment for the property based on the value at the time of sale. The exclusion continues if the new owner/builder files and qualifies within 30 days of resuming work.

QUESTION: Similar to the above, however, the original builder [in this instance] fails to apply for and qualify for the construction for resale exclusion. Is the buyer who proceeds to complete construction with the sole purpose of resale, eligible for the exclusion from supplemental assessment on the new construction value added after he purchases the property?

ANSWER: Yes. There will be a supplemental assessment based on the value at the time of sale, but the new owner may receive the exclusion on that portion of the final value added after the sale, provided he doesn't occupy, rent, lease, etc. the property.

The terms "new construction" and "owner" are to be interpreted in the same time reference.

We have consistently taken the position that the terms "prior to, or within 30 days of, the date of commencement of new construction" and "owner" stated in subdivision (a)(1) of section 75.12, refer to all construction undertaken by the then-present owner/builder. There is nothing in these terms or in the statutory language indicating that subsequent owners are forever bound by the action or inaction of their predecessors. The provisions of section 75.12 consider the activities of each succeeding owner of the property separately in their respective time frames. Thus, each succeeding owner must apply for and separately qualify for the exclusion for new construction under section 75.12, based upon the time frame within which he or she is operating.

There is no legislative intent to deny the exclusion under section 75.12 to succeeding owners following a change in ownership.

The legislative history indicates that the purpose of the statute was to permit builders to avoid reassessment of their standing inventories, except that which was completed on the lien date each year. Consistent with taxation principles regarding other inventory in the state, subdivision (a)(1) facilitates the administration of this exclusion and enables assessors to determine each owner/builder's inventory by requiring that the owner/builder notify the assessor's office prior to, or within 30 days of, commencement of construction.

The Board staff supported the "commencement" of construction date, rather than "completion" of construction date, in order to track changes in ownership readily and to require each succeeding owner to apply for and qualify for the exclusion. The "commencement of construction" date is a clearly identified date for mechanic's lien and construction loan priority purposes. Therefore, all owner/builders, whether original or succeeding, are required to provide the assessor with the commencement of construction date in order to ease the assessor's burden.

Ms.

-5-

November 25, 1997

To interpret this provision as requiring succeeding owners to notify the assessor's office within 30 days of the original construction is contrary to the intent, and would, in effect, prevent succeeding owners from ever qualifying, thereby discouraging potential buyers from completing abandoned or partially completed projects.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very Truly Yours,

Louis Ambrose
Tax Counsel

LA:so

cc: Honorable Glenn E. Gray, Ventura County Assessor
Mr. Dick Johnson, MIC:63
Policy, Planning, and Standards Division, MIC:64
Ms. Jennifer Willis, MIC:70
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