

Memorandum

To: Mr. Dean Kinnee (MIC:64)
Chief, County-Assessed Properties Division

Date: January 24, 2011

From: Daniel Paul (MIC:82)
Tax Counsel

Subject: *Parent-Child Transfers and Disaster Relief*
Assignment No. 10-301

This is in response to _____'s December 16, 2010, email wherein she requested our opinion regarding parent-child transfers and the applicability of the new construction exclusion of Revenue and Taxation Code¹ section 70, subdivision (c). As explained below, it is our opinion that the exclusion of section 70, subdivision (c) may only be granted to a taxpayer who owned property that was damaged or destroyed by misfortune or calamity.

Factual Background

Your email contains the following hypothetical situation (originally posed by the Santa Barbara County Assessor):

A house is burned down in our Tea Fire disaster. The house value is removed from the roll. The owner has, of course, the right to re-build the house under R&T 170 and 70. The mother, however, transfers the property (the vacant lot) to her son. They are approved for Prop 58 inter-family transfer. Can the son rebuild the house and get the exemption from new construction under 170 and 70?

Law & Analysis

A reassessment of property occurs upon the date of a change in ownership or the date of completion of new construction. (Cal. Const. art. XIII A, § 2; see also Rev. & Tax. Code, §§ 60, 70 et seq. and 110.1 subd. (a)(2)(A)-(B).) 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." California Constitution article XIII A, section 2, subdivision (a) provides in relevant part that "full cash value" means the appraised value of real property as shown on the 1975-76 tax bill or "the appraised value of real property when purchased, newly constructed or a change in ownership has occurred after the 1975 assessment."

Under section 170, counties may adopt an ordinance to "provide that every assessee of any taxable property, or any person liable for the taxes thereon, whose property was damaged or

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

destroyed without his or her fault, may apply for reassessment of that property as provided herein." Relief is limited to damage or destruction caused by "misfortune or calamity," and a county may limit this relief to Governor-declared disasters.² (Rev. & Tax. Code, § 170, subd. (a)(1).)

Section 110.1, subdivision (a)(2) requires the establishment of a new base year value when property undergoes a change in ownership or new construction is completed, and if uncompleted, on the lien date. However, when a property qualifies for relief under section 170, a reduced value, determined by the provisions of subdivision (b) of section 170, is entered on the roll. The reduced value remains the value on the roll until the property 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. (Rev. & Tax. Code, § 170, subd. (g).)
(Emphasis added.)

On the lien date following the repair, restoration or reconstruction of the property the lesser of property's full cash value, or factored base year value or its factored base year value as adjusted pursuant to subdivision (c) of section 70, will be enrolled. (Rev. & Tax. Code, § 170, subd. (h)(2) 3.) Section 70, subdivision (c) provides that where real property has been damaged or destroyed by misfortune or calamity, new construction shall not include any "timely reconstruction" of the real property, or portion thereof, where the property after reconstruction is substantially equivalent to the property prior to damage or destruction. Section 70, subdivision (c), in conjunction with section 170, ensures that the repair or reconstruction will not cause the county assessor to enroll a new base year value for the new construction pursuant to section 110.1, subdivision (a)(2)(B) to the extent that such repair or reconstruction is due to the damage or destruction caused by the misfortune or disaster. It is our opinion that when section 70, subdivision (c) is read in conjunction with section 170, the relief provided by the exclusion from new construction is intended for persons whose property was damaged or destroyed without his or her fault, and was not intended to benefit assesses who did not own the property when it was damaged or destroyed. Thus, it is our longstanding position that the taxpayer claiming the new construction exclusion for purposes of section 170 relief must have been the owner of the property when it was damaged or destroyed. (Letter to Assessors 79/39, Question B5.)

Therefore, when a property eligible for relief under section 170 undergoes a change in ownership prior to completion of restoration, the property will be reassessed and a new base year value will be established. The subsequent owner will not qualify for the exclusion from new construction of section 70, subdivision (c) upon the restoration or reconstruction of the property.

² If a county in which the property is located has not adopted an ordinance pursuant to section 170, relief is available on the following lien date where the real property was damaged or destroyed by disaster, misfortune, or calamity under section 51, subdivision (b).

Your hypothetical assumes that damaged property is transferred to an eligible transferee for the purposes of the parent-child exclusion of section 63.1. Pursuant to section 63.1, a change in ownership shall not include certain transfers of real property interests between parents and children and grandparents and grandchildren. A "new base year value" is defined as "the full cash value of property on the date it changes ownership or of new construction on the date it is completed."³ (Rev. & Tax. Code, § 75.8.) Because a qualifying parent-child transfer is not a change in ownership, no new base year value will be established as a result of the transfer from mother to son in your hypothetical. Therefore the base year value of the property will continue to be the reduced value until the property is restored, repaired, reconstructed or other provisions of the law require the establishment of a new base year value. (Rev. & Tax. Code, § 170, subd. (g).) If the son rebuilds the house, he may not receive the exclusion from new construction under section 70, subdivision (c) for the above reasons. Thus, the new construction will be reassessed while in progress and upon its completion pursuant to section 71 and section 110.1, subdivision (a)(2)(B).

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cc: Mr. David Gau MIC:63
Mr. Todd Gilman MIC:70

³ As relevant here, "taxable value" means the base year full value adjusted for any given lien date as required by law or the full cash value for the same date, whichever is less. (Rev. & Tax. Code, § 75.9.)