Rule 139 repealed - See LTA 2006/031

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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Executive Director

June 26, 2002

No. 2002/037

TO COUNTY ASSESSORS,
COUNTY COUNSELS,
AND INTERESTED PARTIES:

CALIFORNIA CODE OF REGULATIONS
TITLE 18. PUBLIC REVENUES

PROPERTY TAX RULE 139, RESTRICTED ACCESS AS DAMAGE ELIGIBLE FOR REASSESSMENT RELIEF PURSUANT TO REVENUE AND TAXATION CODE SECTION 170

Following a scheduled public hearing on March 27, 2002, the State Board of Equalization adopted Property Tax Rule 139, Restricted Access as Damage Eligible for Reassessment Relief Pursuant to Revenue and Taxation Code Section 170. The effective date of the rule is June 15, 2002. Enclosed for your information is a final printed copy of the rule.

In general, Rule 139 clarifies section 170 by providing that relief may be afforded to assessees who either suffered restricted physical access to their properties or whose normal business activities were suspended as a result of compliance with a directive, order, law or other exercise of police or regulatory powers by the federal, state or local government. Thus, Rule 139 clarifies that section 170 applies in those counties with ordinances implementing subdivision (a)(2) of that section, where access to airport property throughout California was restricted immediately after the terrorist attacks of September 11, 2001.

As with any administrative regulation, Rule 139 does not create new law; instead, it interprets and is declaratory of existing statutory law. Thus, although the effective date of the new rule is June 15, 2002, its provisions should be applied to claims for relief under section 170 due to damage and destruction that occurred prior to that date.

Whether Rule 139 should be applied in any particular case depends upon (1) the existence of a local ordinance implementing the terms of section 170, and (2) the specific provisions of such an ordinance. In the case of the terrorist attacks of September 11, 2001, for example, relief should be granted where the subsequent restricted access or suspension of normal business activities

occurred in a county that had in place an ordinance applicable to any misfortune or calamity, as provided in section 170, paragraph (a)(2), and the assessee otherwise qualifies for relief under Section 170 and Rule 139.

Such relief following the terrorist attacks would not be available, however, in a county whose ordinance was limited to relief for a misfortune or calamity in an area declared by the Governor to be in a state of disaster as provided in section 170, paragraph (a)(1). After the terrorist attacks, the Governor did not find any area or region of the state to be in a state of disaster.

An assessor's denial of a claim for disaster relief is reviewable by the local board of equalization or assessment appeals board as a function of the local board's jurisdiction to determine assessed values on the local roll pursuant to Property Tax Rule 302, subsection (a)(1).

If you have any questions about the content of this regulation, please contact Mr. Louis Ambrose at (916) 445-5580; lou.ambrose@boe.ca.gov. If you would like extra copies of this regulation, please write to State Board of Equalization, Supply Unit — Publications, 3920 West Capitol Avenue, West Sacramento, CA 95691. The rule will also be available from the Board's Web site (www.boe.ca.gov).

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property Taxes Department

DJG:mn
Enclosure

State of California

BOARD OF EQUALIZATION

PROPERTY TAX RULES

Chapter 1. State Board of Equalization — Property Tax
Subchapter 2. Assessment
Article 3. Exemptions and Immunities

Rule 139. RESTRICTED ACCESS AS DAMAGE ELIGIBLE FOR REASSESSMENT RELIEF PURSUANT TO REVENUE AND TAXATION CODE SECTION 170

Authority Cited: Section 15606 (c), Government Code.

Reference: Section 170, Revenue and Taxation Code.

(a) For purposes of determining property eligible for reassessment pursuant to Revenue and Taxation Code section 170, the term "damage or destruction" includes diminution in the value of the property resulting from a period of restricted physical access to the property.

(b) "Restricted physical access to the property" means that access to the property was wholly or partially denied to the property owner and/or operator, or that the normal business activities of the property owner and /or operator were suspended as a result of compliance with a directive, order, law or other exercise of police or regulatory powers by the federal, state or local government.

(c) "Restricted area" means the entire area to which access was wholly or partially denied or in which normal business activities were suspended.

(d) The term "property eligible for reassessment" means property located within the restricted area as defined in subsection (c). The term includes real and personal property, and includes property which was deemed physically situated in the state on the lien date and subject to property taxation. The term does not include property permanently located outside the boundaries of the restricted area.

(e) The period of restricted physical access includes only that period of time beginning with the date of commencement of governmental action resulting in wholly or partially denying access to the property owner and/or operator or resulting in the suspension of normal business activities, and ending with the date of termination of the governmental action.

(f) Upon receiving a proper application for reassessment, or under the conditions specified in section 170, subdivisions (a) or (l) when no application has been filed, the assessor shall reappraise the property and determine separately the full cash value of land, improvements and personalty immediately before and after the commencement of the period of restricted access. If the sum of the full cash values of the land, improvements and personalty before the commencement of the period exceeds the sum of the values after commencement of the period by the amount stated in section 170, the assessor shall also separately determine the percentage reductions of value in land, improvements and personalty due to the damage or destruction. The assessor shall reduce the values appearing on the assessment roll by the percentages of damage or destruction computed pursuant to section 170, and the taxes due on the property shall be adjusted as provided in subdivision (e) of section 170. However, the amount of the reduction shall not exceed the actual loss.

(g) At the termination of the period of restricted access, the assessor shall make an additional assessment or assessments in accordance with subparagraph (1) or (2):

(1) If the termination of the period occurs on or after January 1, but on or before May 31, then there shall be two additional assessments. The first additional assessment shall be the difference between the new taxable value as of the date of termination and the taxable value on the current roll. The second additional assessment shall be the difference between the new taxable value as of the date of termination and the taxable value to be enrolled on the roll being prepared.

(2) If the termination of the period of restricted access occurs on or after June 1, but before the succeeding January 1, then the additional assessment shall be the difference between the new taxable value as of the date of termination and the taxable value on the current roll.

(h) In determining the new taxable value of the property after the termination of the period of restricted access, the assessor shall consider any changes in procedures or operations, changes in rules relating to access to the property, enhanced security measures or other changed conditions related to the period of restricted access that have an impact on the value of the property after the removal of the restriction.

(i) The assessor may require that an applicant claiming diminution in value due to restricted access shall provide documentation specific to the property interest at issue including, but not limited, to expert opinions of value, comparable sales information, or other information commonly relied upon to establish economic obsolescence.

Example. Access to airport property throughout California was restricted immediately after the terrorist attacks of September 11, 2001. Air carriers were ordered to ground all flights until further notice. In effect, all airports in California were closed, and no civilian access was permitted. On September 13, 2001, the FAA allowed airports to reopen and carriers to resume operations if certain conditions were met. Although the airports were re-opened, additional security measures were imposed, and access to certain areas was restricted to ticketed passengers. Air carriers and airport concessionaires suffered significant reductions in business during the closure and thereafter. Under these conditions air carriers, air cargo carriers and all air commerce-related business, concessions and services, owning, leasing or occupying property located within the boundaries of the airport, (including commercial aircraft), are eligible to submit applications for reassessment if the damage to their property exceeds the amount stated in section 170. In accordance with subsection (f) of this rule, the assessor shall reappraise the subject property by comparing the values of the property before September 11 to the values during the period of restricted access and make appropriate adjustments to the values appearing on the assessment roll. Any taxes due on the property shall be adjusted accordingly. At the termination of the period of restricted access, the assessor shall reassess the property in accordance with subsection (g)(2) of this rule.

History: Adopted March 27, 2002, effective June 15, 2002. Added rule to interpret provisions of Revenue and Taxation Code section 170 to specify that the term "damage or destruction" includes restricted access to property caused by a misfortune or calamity or a major misfortune or calamity when that restricted access results in a diminution in the value of the property. The rule specifies that relief is available only to the extent of the value loss sustained during the period of restricted access, prescribes the methods of reappraisal for the period of damage and provides appraisal guidance for reassessment upon termination of that period.