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450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082  
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February 23, 2010

**Re: *New Construction – Roof Replacement  
Assignment No. 09-260***

Dear Mr. \_\_\_\_\_ :

This is in response to your December 3, 2009 letter to Mr. Randy Ferris, Assistant Chief Counsel, wherein you requested our opinion regarding whether a roof replacement constituted new construction for the purposes of Revenue and Taxation Code,<sup>1</sup> section 70. As explained below, it is our opinion that the roof replacement is not new construction.

**Facts**

According to your letter, the facts revolve around a light industrial property that has recently been sold. Prior to the sale, an existing condition report stated that the roof, which had a remaining service life of 3-4 years, did not comply with the current building code and needed to be replaced. After the sale, the new owner replaced the roof with a new roof which has a designed life of 15 years, presumably at his own expense.<sup>2</sup> The new owner uses the property for substantially the same purposes as the old owner. You ask whether the new roof is considered new construction under Revenue and Taxation Code, section 70. You also ask our opinion regarding the argument of the county assessor summarized in your letter.

**Law and 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 and 70 et seq.) 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." Section 70, subdivision (a) defines "newly constructed" and "new construction" as:

<sup>1</sup> All section references are to the Revenue and Taxation Code unless otherwise noted.

<sup>2</sup> If the seller provided the funds for the roof replacement as a condition of sale, our opinion may be different.

(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 this case, the issue is whether the replacement of a roof constitutes new construction for the purposes of section 70. Property Tax Rule<sup>3</sup> 463, subdivision (b)(4), which supplements section 70, excludes from the definition of new construction:

. . . construction or reconstruction performed for the purpose of normal maintenance and repair, e.g., routine annual preparation of agricultural land or interior or exterior painting, *replacement of roof coverings* or the addition of aluminum siding to improvements or the replacement of worn machine parts. (Emphasis added.)

Further, Letter to Assessors 78/145, Question 11 states:

Routine and normal maintenance such as painting, *reroofing*, and plumbing repair is not new construction and is not grounds for reappraisal; neither is the replacement of short-lived items such as furnaces, hot water tanks, or fixtures and appliances. Such replacements do not change the use or the life expectancy of the structure. (Emphasis added.)

The rationale for excluding routine maintenance such as reroofing from the definition of new construction is that such maintenance does not constitute a major rehabilitation that converts the property to a different use. That appears to be the case here, where, as you state in your letter, the new owner uses the property for substantially the same purposes as the old owner. Based on the foregoing, it is our opinion that the roof replacement does not constitute new construction within the meaning of section 70 and, as such, no reassessment is warranted. This conclusion is based on the facts included in your letter, and the assumption that there is nothing unusual about this roof replacement which would take it out of the category of routine maintenance and into the category of major rehabilitation.

You also ask us to address what you characterize as the argument of the county assessor. Your letter summarizes the assessor's argument as follows:

The appraiser who makes such arguments makes a distinction between a roof replacement done by an existing property owner under a continuing ownership and a new owner who purchases a property that need [sic] a new roof and subsequently doing so after change in ownership.

He argues that in the latter situation, the purchase price reflects the fact that the roof needs replacement. In other words, should the buyer ask the seller to replace the roof and then would purchase the property, presumably he has to pay more.

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<sup>3</sup> All subsequent references to "Rules" are to the Property Tax Rules promulgated under Title 18 of the California Code of Regulations.

Based on this summary and our subsequent phone conversation, your understanding of the assessor's argument is that a property that has its roof replaced before being sold should be appraised at the same value as a property that has its roof replaced after being sold. Presumably, the rationale is that in both cases, the taxpayer ends up with a property with a new roof, and that it would be unfair to assess the two properties differently.<sup>4</sup>

The base year value of property that changes ownership is determined pursuant to section 110.1, subdivision (a), as the fair market value as of the date that it changes ownership. In this case, the date that the property changed ownership was the date of sale. The assessor was required to determine the fair market value of the property in its condition as of that date. Since the roof was in disrepair as of the date of sale, the assessment should have reflected that fact. For assessment purposes, it is immaterial what the purchaser does with the property after the sale so long as it does not result in a change in ownership or new construction. (Rev. & Tax. Code, §§ 60, 70, and 110.1. Since the roof repair occurred after the sale it should not have been included in the assessment.

It is presumed that the fair market value of real property is the purchase price paid in the transaction unless it is established by a preponderance of the evidence that the real property would not have transferred for that purchase price in an open market transaction. (Rev. & Tax. Code, §110, subd. (b).) In this case, it does not appear that the assessor attempted to rebut the above presumption. However, if the assessor did introduce evidence to rebut the presumption that the purchase price reflects the fair market value of the property, then it would be necessary for us to examine that evidence before issuing an opinion regarding the correct base year value of the property.

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.

Sincerely,

/s/ Daniel Paul

Daniel Paul  
Tax Counsel

DP:yg

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cc: Honorable Ron Thomsen  
President, California Assessors' Association  
Alameda County Assessor

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<sup>4</sup> We note that we did not speak with the assessor and we have no way of verifying that this is his actual argument. This letter is based entirely on the facts you provided and your characterization of the assessor's argument. If either the facts or the assessor's argument are different, then our opinion may change.