

**STATE BOARD OF EQUALIZATION****ASSESSMENT STANDARDS DIVISION**

450 N Street, MIC: 64, Sacramento, California
P. O. Box 942879, Sacramento, CA 94279-0064)

Telephone: (916) 445-4982
FAX: (916) 323-8765

JOHAN KLEHS
First District, Hayward

DEAN F ANDAL
Second District, Stockton

ERNEST J DRONENBURG, JR
Third District, San Diego

BRAD SHERMAN
Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

BURTON W OLIVER
Executive Director
No. 95/31

May 18, 1995

TO COUNTY ASSESSORS:

DISASTER RELIEF:
REPAIR, RESTORATION, OR RECONSTRUCTION

Chapter 33 of the Statutes of 1994 (Senate Bill 1234, Bergeson) amended Section 170 of the Revenue and Taxation Code (all statutory references are to the Revenue and Taxation Code unless otherwise indicated). This was urgency legislation and became effective on March 30, 1994. Section 170 was further amended by Chapter 1222 of the Statutes of 1994 (Senate Bill 1431, Committee on Revenue and Taxation). Chapter 1222 became effective on January 1, 1995. This letter will summarize the provisions of and provide implementing guidelines on both chapters as they apply to Section 170. Chapter 1222 was the Board's housekeeping bill, and its other provisions are summarized in Letter to Assessors 95/05 (dated January 16, 1995).

Existing law authorizes a county board of supervisors to provide by ordinance for the reassessment of property that is damaged or destroyed, without fault on the part of the assessee, by a major misfortune or calamity, upon the application of the assessee or upon the action of the county assessor with the board's approval. Previously, the law required with respect to property that has been so reassessed that the new taxable value of that property, after being fully repaired, restored, or reconstructed, be enrolled on the ensuing lien date.

Chapter 33 amended subdivision (g) of Section 170 to provide that the "new taxable value" of the damaged or destroyed property, after full repair, restoration, or reconstruction, be enrolled on the supplemental roll. This amendment in itself was incorrectly stated. It is not the new taxable value that is enrolled, but the difference between the new taxable value and the taxable value on the roll that is placed on the supplemental roll. In addition, only changes in ownership and new construction are subject to supplemental assessment. Since the restoration of the damaged property is not new construction pursuant to subdivision (c) of Section 70, the supplemental roll cannot be used to restore the taxable value.

To correct these problems, the amendment made by Chapter 1222 provides for (1) an additional assessment or assessments for that period after the date of completion but prior to the ensuing lien date, and (2) the determination of a new taxable value for the property for the lien date following the completion of restoration, repair, or reconstruction. It also authorizes county assessors to apply supplemental assessment provisions in implementing this ordinance. Section 170, as amended by Chapter 1222, now reads in pertinent part (changes are in italics):

“(g) The assessed value of the property in its damaged condition, as determined pursuant to subdivision (b) compounded annually by the inflation factor specified in subdivision (a) of Section 51, shall be the taxable value of the property until it 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.

“(h) (1) *When the property is fully repaired, restored, or reconstructed, the assessor shall make an additional assessment or assessments in accordance with subparagraph (A) or (B) upon completion of the repair, restoration, or reconstruction:*

“(A) *If the completion of the repair, restoration, or reconstruction occurs on or after March 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 completion 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 completion and the taxable value to be enrolled on the roll being prepared.*

“(B) *If the completion of the repair, restoration, or reconstruction occurs on or after June 1, but before the succeeding March 1, then the additional assessment shall be the difference between the new taxable value as of the date of completion and the taxable value on the current roll.*

“(2) *On the lien date following completion of the repair, restoration, or reconstruction, the assessor shall enroll the new taxable value of the property as of that lien date.*

"(3) For purposes of this subdivision, 'new taxable value' shall mean the lesser of the property's (A) full cash value, or (B) factored base year value or its factored base year value as adjusted pursuant to subdivision (c) of Section 70.

"(i) The assessor may apply Chapter 3.5 (commencing with Section 75) of Part 0.5 in implementing this section, to the extent that chapter is consistent with this section."

The remaining subdivisions of Section 170 were relettered.

The amendment to this section creates a new class of assessment: an "additional assessment." An additional assessment is neither an escape nor a supplemental assessment; it is a means of restoring value to the roll as a result of the completion of restoration, repair, or reconstruction of a property that was assessed at a reduced value pursuant to Section 170.

Subdivision (i) of Section 170 provides for the assessor to use supplemental roll procedures for making the Section 170 reduction and for restoring value to the roll on completion of restoration, repair or reconstruction. However, there are important differences in calculating the effective date of supplemental assessments versus calamity relief and restoration, as explained below.

For example, property was damaged on March 10, 1995. The assessed value on March 1, 1994, was \$200,000. Upon receiving a proper application, the assessor determined that the percentage reduction was 60 percent. The assessor reduced the taxable value to \$80,000. In applying the supplemental assessment procedure, it will generate a negative supplemental assessment of \$120,000 for the balance of the 1994-95 fiscal year.

Subdivision (e) of Section 170 provides that relief shall be granted for the month in which the damage occurred. Subdivision (e) also provides that for a partial fiscal year, the taxes shall be "prorated based on the number of months in the year before and after the completion of the restoration" (emphasis added), and subdivision (h)(1)(B) provides that the additional assessment shall be the difference between the new taxable value and the taxable value on the roll as of the date of completion. However, the supplemental assessment procedures provide that the effective date of the event is the first of the month following the event date. Thus, if the supplemental assessment procedures are used without any changes, then the applicant will be short one month of property tax relief. Since subdivision (i) provides that the supplemental procedures must be consistent with Section 170, assessors need to modify their procedures to recognize that relief must be granted for the month in which the damage occurred.

The damaged value shall remain on the roll until the property is reconstructed, restored or repaired. If the property is restored on August 21, 1995, and the new taxable value was determined to be \$202,380 (assuming an inflation factor of 1.19 percent for March 1, 1995), then the assessor shall make an additional assessment of \$122,380 (the difference between the taxable value of \$80,000 and the new taxable value of \$202,380) for the first of the month following the date of restoration. For properties that are partially reconstructed, restored, or repaired on the lien date, calculate the taxable value pursuant to subdivision (g) of Section 170. Properties that are restored during the window period will receive two additional assessments: one for the current roll and one for the roll being prepared.

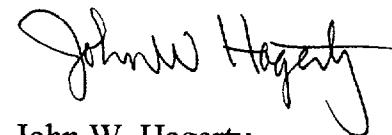
For newly planted fruit and nut trees and grapevines that are replacements for damaged living improvements, the exemption provided in subdivision (i) of Section 3 of Article XIII of the California Constitution is applicable. There shall be no additional assessments as provided herein upon restoration because of the application of the constitutional exemption. After the exemption period, either three or four years, enroll the lower of the factored base year value of the damaged living improvements or the current market value for the ensuing lien date.

Even though there was a technical error in Chapter 33, it did contain the clear expression of the Legislature to place the taxable value of the restored property back on the roll as of the date of restoration. Since that chapter was effective on March 30, 1994, it is our opinion that any restoration that is completed on or after March 30, 1994, should be handled as provided in this letter.

We recognize that subdivisions (e) and (h) of Section 170 conflict with each other when the property is restored in the same fiscal year that the damage occurred. Subdivision (e) provides that the tax liability of the damaged property shall consist of (1) a proration of the taxes based on the undamaged property for the months in the current fiscal year prior to the damage plus (2) a proration of the taxes based on the damaged property for the months in the current fiscal year after the damage. For example, if the damage occurred in January, the corrected tax bill will be based on six months of undamaged assessment and six months of damaged assessment, regardless if the property was restored within 30 days. Subdivision (e) further provides for proration of taxes upon restoration only when the property is damaged in the window period and restored in the next fiscal year. Subdivision (h), on the other hand, provides for additional assessment(s) upon restoration. The intent of Chapters 33 and 1222 is to restore the proper taxable value on the roll by using the supplemental assessment procedures when a damaged property is restored. Thus, until the courts or the Legislature provide otherwise, it is our opinion that assessors use the supplemental assessment procedures provided by subdivision (h) of Section 170 to enroll the new taxable value of property that has been fully repaired, restored, or reconstructed.

If you have questions or comments on assessment procedures for disaster relief, please contact our Real Property Technical Services Section at (916) 445-4982.

Sincerely,



John W. Hagerty
Deputy Director
Property Taxes Department

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