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TO COUNTY ASSESSORS:

DEFINITION OF THE TERM "FAULT" IN SECTION 170 OF THE REVENUE AND TAXATION CODE

Section 170 of the Revenue and Taxation Code authorizes county boards of supervisors to enact ordinances to provide for reassessment of property that has been damaged or destroyed by a misfortune or calamity. Subdivision (a) of §170 states that "[n]otwithstanding any provision of law to the contrary, the board of supervisors may, by ordinance, provide that every assessee of any taxable property, or any person liable for the taxes thereon, whose property was damaged or destroyed without his or her fault, may apply for reassessment of that property as provided herein." (Emphasis added.)

The statute further requires that the damage or destruction must have been caused by either "a major misfortune or calamity in an area or region subsequently proclaimed by the Governor to be in a state of disaster" or, alternatively, by a "misfortune or calamity." The operative terms are "misfortune or calamity." Section 170, as enacted, was based on former §155.13, which also required that eligibility for relief be contingent on whether the owner was at fault.

We have received several questions asking whether "fault" in this context requires an intentional act or whether mere negligence would suffice.

As explained below, we believe that "fault" as used in Revenue and Taxation Code §170 (all statutory references are to the Revenue and Taxation Code unless otherwise indicated) encompasses acts or omissions involving some degree of willfulness and foreseeability. At a minimum, "fault" means "willful negligence," but not "ordinary negligence."

Construction of the Word "Fault"

The legislative history of both §155.13 and §170 does not reveal any indication of legislative intent regarding "fault." In reviewing the precedent opinions we found no instances in which the term "fault" was defined. A search of case law turned up only one case discussing a building owner's entitlement to a reduced assessment of its property due to misfortune or calamity. The court in that case, *T. L. Enterprises, Inc.* v. *County of Los Angeles* (215 Cal.App.3d 876, 880 (1989)) held that the event causing the loss must be distinct, out of the ordinary, unforeseeable, and beyond the control of the owner. However, the concept of fault was not discussed.

In 1975 the Office of the Attorney General was asked to construe the meaning of "misfortune or calamity" as used in former §155.13 (58 Op. Att'y. Gen. 327 (1975)). The opinion determined that a "calamity" was a type of misfortune and, in referring to analogous federal law, found that the terms "casualty" and "misfortune" were synonymous. A review of the federal decisions interpreting the casualty loss statutes of the Internal Revenue Code confirmed that the ordinary meaning of "misfortune or calamity" was a proper construction. Because the federal casualty loss statutes are similar in purpose to the disaster relief provisions of §170, federal cases construing those statutes are also useful in construing "fault."

Ordinary Meaning of "Fault"

"Fault," according to its ordinary meaning, is a wrongful act or omission undertaken with a conscious decision such that the consequences are reasonably foreseeable. Such conduct can also be described as "willful negligence." It involves a lesser degree of conscious design than intentional conduct -- which requires that the actor desires to cause the consequences of his act, or that he believes that the consequences are substantially certain to result. And, "willful negligence" involves a greater degree of conscious design than ordinary negligence -- which requires only that the actor ought to have known the consequences.

The distinction between ordinary negligence, willful negligence, and intentional conduct is illustrated by the example of a person whose home catches fire due to smoking. The person would be liable for ordinary negligence if the fire started because he unknowingly emptied burning cigarette refuse into a wastebasket containing flammable material. A person would be "willfully negligent" if he consciously decided to smoke within a few inches of an open container of gasoline and it caught fire. One would act intentionally if he threw the lit cigarette into the gasoline container. "Willful negligence" is defined as conduct of an unreasonable character, consciously done, without regard for known risks or risks so obvious that the person must have been aware of it and so great as to make it highly probable that harm would follow. It usually is accompanied by a conscious indifference to the consequences, amounting almost to willingness that the consequences

will follow. This definition must be tested against the apparent scope and purpose of §170.

"Fault" as "Willful Negligence" in the context of Section 170.

The objective of §170 is to afford financial relief to property owners whose property has been damaged or destroyed by misfortune or calamity after the lien date. Misfortune or calamity has been defined as "adversity that befalls one in an unpredictable or chance manner, arising by accident or without the will or concurrence of the person who suffers from it." (58 Op. Att'y. Gen., supra at 329.) According to this definition, the intent of §170 is to provide relief for an adverse event for which an owner had no forewarning.

Holding an owner to an ordinary negligence standard of conduct would be contrary to the stated purpose of §170. One who is ordinarily negligent, by definition, acts inattentively or inadvertently and, thus, does not foresee the consequences of his or her actions. It would make no sense to hold someone responsible for unforeseeable consequences when the purpose of §170 is to provide relief for unforeseeable events. On the other hand, "fault" construed as "willful negligence" is wholly consistent with the objective of §170. One who acts in a willfully negligent manner can foresee or predict the outcome of his or her actions with some degree of certainty due to his or her conscious disregard of obvious or known risks and their consequences. Therefore, construing "fault" as "willful negligence" means that disaster relief would be available to a property owner who caused damage or destruction through ordinary carelessness but would deny relief to an owner who consciously ignored risks despite the reasonable foreseeability of harmful consequences.

Judicial Construction of Federal Casualty Loss Statutes

Defining "fault" as "willful negligence" is also consistent with judicial construction of the federal statutory provisions relating to the analogous federal income tax casualty loss deduction. It has been long held that a casualty loss may result where the loss was due to the taxpayer's negligence. In *Heyn* v. *Commissioner* (46 T.C. 302, 308 (1966)), the court held that failure to exercise due care would not necessarily bar a casualty loss deduction for a landslide. The court cited Treasury regulations pertaining to automobiles which allowed for casualty losses when the damage resulted from ordinary negligence but not willful acts or willful negligence. In *White* v. *Commissioner* (48 T.C. 430, 435 (1967)), the court, following the *Heyn* case, held that "mere negligence on the part of the owner-taxpayer has long been held not to necessitate the holding that an occurrence falls outside the ambit of 'other casualty.' Needless to say, the taxpayer may not knowingly or willfully sit back and allow himself to be damaged in his property or willfully damage the property himself." Thus, federal decisions construing the nature of a casualty loss support the construction of "fault" as "willful negligence."

Conclusion

Where a statutory definition is unclear and the legislature has not provided any interpretive guidance, statutory language must be given ordinary meaning so long as that meaning is consistent with the scope and purpose of the statute. The common dictionary definition of "fault" as "willful negligence" is consistent with the purpose of §170. This means that disaster relief would be available to a property owner who caused damage or destruction to the property through ordinary negligence. However, relief would be denied to an owner who consciously ignored risks despite the reasonable foreseeability of harmful consequences. The willful negligence standard is also consistent with the federal judicial construction of analogous federal income tax casualty loss statutes.

If you have any questions or comments concerning the definition of "fault," please contact our Real Property Technical Services Section at (916) 445-4982.

Sincerely,

Richard C. Johnson
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