



STATE BOARD OF EQUALIZATION
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Executive Director

February 8, 2002

TO COUNTY ASSESSOR,
COUNTY COUNSELS, AND
OTHER INTERESTED PARTIES:

No. 2002/009

NOTICE OF PROPOSED REGULATORY ACTION
BY THE
STATE BOARD OF EQUALIZATION

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

PUBLIC HEARING: WEDNESDAY, MARCH 27, 2002 AT 1:30 P.M.

NOTICE IS HEREBY GIVEN:

The State Board of Equalization, pursuant to the authority vested in the Board by section 15606 (c) of the Government Code, proposes to adopt Rule 139 – Restricted Access as Damage Eligible for Reassessment Relief Pursuant to Revenue and Taxation Code section 170 in Title 18, Division 1 of the California Code of Regulations. A public hearing on the proposed adoption of the regulation will be held in Room 121, 450 N Street, Sacramento, at 1:30 p.m., or as soon thereafter as the matter may be heard, on March 27, 2002. Any person interested may present statements or arguments orally at that time and place. Written statements or arguments will be considered by the Board if received by March 27, 2002.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 170 of the Revenue and Taxation Code authorizes a county board of supervisors to enact an ordinance that provides for the reassessment of property damaged or destroyed by misfortune or calamity as of the date of occurrence of the damage or destruction. For purposes of applying section 170, the proposed rule interprets damage or destruction as including restricted access that results in a diminution of the property's value. Restricted access resulting in a diminution of property value constitutes damage or destruction within the meaning of section 170 because it imposes a physical limitation on the use of property that adversely affects its value. The proposed rule also provides that reassessment relief may be granted only for the duration of the period of restricted access and prescribes the method of reappraisal for the period of restricted access and of reassessment at the termination of the period.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that proposed Rule 139 does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed rule will not result in direct or indirect cost or savings to any State agency, any costs to local agencies or school districts that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, or other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5 (a)(8), the Board of Equalization makes an initial determination that the adoption of amendments to Rule 139 will not have a significant statewide adverse economic impact directly affecting business.

The adoption of the proposed rule will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The rule as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed rule will not affect small business because the proposed rule interprets and makes specific the required assessment practice of county assessors for property damaged or destroyed by misfortune or calamity and does not impose any additional compliance or reporting requirements on taxpayers.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action

SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

FEDERAL REGULATIONS

Proposed Rule 139 has no comparable Federal regulations.

AUTHORITY

Government Code section 15606, subdivision (c).

REFERENCE

Section 170, Revenue and Taxation Code.

CONTACT

Questions regarding the substance of the proposed rule should be directed to Mr. Louis Ambrose, Senior Tax Counsel, Property Tax Section, telephone (916) 445-5580, fax (916) 323-3387, email Lou.Ambrose@boe.ca.gov or by mail to the State Board of Equalization, Attn: Louis Ambrose, MIC:82, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0082.

The Board will consider comments on the rule if received by March 27, 2002. Written comments for the Board's consideration, notice of intent to present testimony or witnesses, and inquiries concerning the proposed administrative action should be directed to Ms. Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, email Diane.Olson@boe.ca.gov or to Ms. Joann Richmond, Property Taxes Analyst, telephone (916) 322-1931, email Joann.Richmond@boe.ca.gov or by mail to the State Board of Equalization, Attn: Diane Olson or Joann Richmond, MIC:80, P.O. Box 942879, Sacramento, CA 94279-0080.

ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed rule amendment. Those documents and all information on which the proposal is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. Requests for copies should be addressed to Ms. Diane Olson, Regulations Coordinator, (916) 322-9569, at P. O. Box 942879, 450 N Street, MIC:80, Sacramento, CA 94279-0080. The express terms of the proposed regulation (rule) amendment is available on the Internet at the Board's website <http://www.boe.ca.gov>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed rule amendment. It is also available for public inspection at 450 N Street, Sacramento, California.

ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may, in accordance with law, adopt the proposed rule if the text remains substantially the same as described in the text originally made

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available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the rule amendment. The text of the modified rule will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified rule will be available to the public from Ms. Olson. The State Board of Equalization will consider written comments on the modified rule for fifteen days after the date on which the modified rule is made available to the public.

Dated: February 8, 2002

STATE BOARD OF EQUALIZATION

Deborah Pellegrini
Chief, Board Proceedings Division

DP:dgo
Enclosure

Rule 139. Restricted Access as Damage Eligible for Reassessment Relief Pursuant to Revenue and Taxation Code section 170.

- (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 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 reopened, 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.

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

Reference: Sections 170, Revenue and Taxation Code.