



STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
TELEPHONE (916) 445-5580
FAX (916) 323-3387
www.boe.ca.gov

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April 24, 2000

Hon. Joseph F. Pitta, Assessor
County of Monterey
P.O. Box 570 - Courthouse
Salinas, CA 93902

**RE: *Application of Revenue and Taxation Code Section 70, Subdivisions (b) and (c) –
Additional Comments Submitted by Taxpayer's Attorney***

Dear Mr. Pitta,

This is in reply to your letter of February 29, 2000 to Assistant Chief Counsel Larry Augusta in which you request our further consideration of the exclusion from reassessment of new construction pursuant to Revenue and Taxation Code section 70, subdivision (c), which was the subject of my opinion letter dated October 5, 1999. As you explain in your letter, the taxpayer's attorney, Mr. K _____, has provided additional information which he believes justifies conclusions other than those stated in the previous opinion letter. I have reviewed Mr. K _____'s letter and spoken to him by telephone and, for the reasons set forth below, we remain of the view that the conclusions in the October 5, 1999 letter are correct.

Additional Information

In his letter, Mr. K _____ asserts that the conclusions in the opinion letter are incorrect for the following two reasons. First, he believes that reliance on *T.L. Enterprises, Inc. v. County of Los Angeles* (1989) 215 Cal.App.3d 876 as a definitive interpretation of the phrase "misfortune or calamity" is misplaced because the court of appeal was construing section 51, subdivision (c), rather than the statutory provision in issue, section 70, subdivision (c). Secondly, he asserts that an Opinion of the Attorney General has construed the meaning of "misfortune or calamity" in the predecessor statute to section 70 and has concluded that no "suddenness" requirement exists. In support of the foregoing points, he advances the following analysis:

The court of appeal in *T.L. Enterprises, Inc.* construed section 51, subdivision (c) which pertains to real property damaged or destroyed by "disaster, misfortune or calamity", a narrower standard than that of section 70, subdivision (c). As interpreted by the court, that provision requires that the damage or destruction must have resulted from a sudden event, not a gradual process, to qualify for relief. Section 70, subdivision (c), which affords relief for damage or destruction due to "misfortune or calamity", is a less restrictive standard that does not require that the damage or destruction must have resulted from a sudden

event. Therefore, *T.L. Enterprises, Inc.* is not relevant to the construction of “misfortune or calamity” as used in section 51, subdivision (c).

Also, Opinion of the Attorney General No. CV 74-257, dated May 14, 1975 interpreted “misfortune or calamity” as used in former Revenue and Taxation Code section 155.13 and concluded that neither type of event required an element of “suddenness”. As section 155.13 is the predecessor statute to section 70, section 70 likewise does not require that the damage or destruction result from a sudden event.

In our telephone conversation on March 8, 2000, Mr. K informed me that the golf course was one of the first built on the Monterey Peninsula. The course has inadequate drainage because it was not built on a sand bed as were other more recently built golf courses on the peninsula. Therefore, the damaging sodium deposited in the soil by the reclaimed water used for irrigation could not be flushed in the same manner as was done to mitigate the damage on the other golf courses on the peninsula.

Law and Analysis

In *T.L. Enterprises, Inc.* the court of appeal interpreted section 51, subdivision (d), to provide for reassessment relief for property damaged or destroyed by a sudden, unforeseeable event. Subdivision (d) was subsequently relettered as subdivision (c), which provides that if the county in which the damaged or destroyed real property is located has adopted an ordinance pursuant to section 170, then the applicable relief is the taxable value of the real property at its assessed value as computed pursuant to Section 170.

Similar to section 51, subdivision (c), section 170 provides for reassessment relief for property that is damaged or destroyed. However, pursuant to section 170, such property is eligible for reassessment if the damage or destruction has been caused by a “misfortune or calamity” rather than a “disaster, misfortune or calamity” as required by section 51, subdivision (c). Thus, section 51, subdivision (c) incorporates the provisions of section 170, including “misfortune or calamity” as the type of event triggering eligibility.

Accordingly, for the purpose of applying section 51, subdivision (c), the court in *T.L. Enterprises, Inc.* was required to define an event that constituted a “misfortune or calamity” which, the court held, was a sudden, distinct occurrence of damage or destruction within the meaning of section 170. In construing section 170 to require the element of “suddenness”, the court reasoned that

Relief in such circumstances [for a process of gradual damage], moreover, would be inconsistent with the short limitations period for filing an application for reassessment pursuant to section 170. . . . Clearly a condition which develops over years is not of the type anticipated.

Further, the court explained that “[t]he specification of drought as a misfortune or calamity in subdivision (a)(3) of section 170, despite the usual worsening of the condition over time, reinforces the view that in general a distinct occurrence is required. The subdivision appears to be tailored to provide relief for a situation which the authors believed would otherwise be excluded.”

Thus, contrary to Mr. K [redacted]’s assertion, the court in *T.L. Enterprises*, by interpreting section 170, did hold that damage or destruction resulting from “misfortune or calamity” requires causation from a sudden event and, as indicated in my October 5, 1999, letter, section 70, subdivision (c), like section 170, requires damage or destruction resulting from “misfortune or calamity”.

With respect to the cited Opinion of the Attorney General issued in 1975, former section 155.13 is the predecessor to section 170, not section 70 as asserted by Mr. K [redacted]. Thus, when the court of appeal interpreted section 170 in the *T.L. Enterprises, Inc.* case in 1989, the court implicitly rejected the opinion’s conclusion that “suddenness” was not required as an element of an event constituting a “misfortune or calamity”. Former section 155.13 provided, in relevant part, that a county board of supervisors was authorized to adopt an ordinance allowing a taxpayer to apply for reassessment of property “damaged or destroyed, without his fault, by a misfortune or calamity . . .” Likewise, section 170 provides disaster relief by way of reassessment under substantially the same circumstances as former section 155.13. As indicated, section 70, subdivision (c) similarly provides for an exclusion from new construction “where real property has been damaged or destroyed by misfortune or calamity” . . .

Furthermore, section 155.13 could not have been a predecessor to section 70 because section 155.13, Stats. 1973, Ch. 901, was in effect prior to the enactment of Article XIII A, the constitutional amendment pursuant to which section 70 was adopted in 1979. Section 2 of Article XIII A defines “full cash value”, in relevant part, as the appraised value of real property when “newly constructed” after the 1975 assessment. Thereafter, subdivision (c) of section 70 was added to implement an exclusion from new construction for timely reconstruction of real property damaged or destroyed by misfortune or calamity. Thus, the relief afforded by subdivision (c) of section 70 was not even contemplated when section 155.13 became effective because the property tax assessment scheme of Article XIII A had not been adopted and “new construction” was not an assessment event.

Finally, Mr. K [redacted]’s representation that the golf course was unable to mitigate damage by flushing the soil after the damage occurred does not change our conclusion that ongoing watering was a gradual cause of the damage rather than a sudden distinct occurrence as required for “misfortune or calamity”. In *T.L. Enterprises, Inc.*, the fact that the property owner was able to take steps to remedy the damage was not key to the court’s interpretation of sections 51 and 170. In our view, the court noted that repairs could have been made only to demonstrate the gradual nature of the process over the years that the damage occurred, which is also the case in this instance.

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.

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April 24, 2000
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Very truly yours,

/s/ Louis Ambrose

Louis Ambrose
Tax Counsel

LA:tr
prop/precdnt/disaster/00/01lou

cc: Mr. Dick Johnson, MIC:63
Mr. David Gau, MIC:64
Mr. Charles Knudsen, MIC:62
Ms. Jennifer Willis, MIC:70