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STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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May 24, 1994

BURTON W. OLIVER
Executive Director

Sierra County Assessor
Courthouse

Dear [redacted]

I am responding to a fax of your letter dated May 17, 1994 requesting our opinion of whether the drilling of a new non-agricultural well is new construction under Article XIII A of the California Constitution (commonly known as Proposition 13). The facts as I understand them from your letter are:

- On January 8, 1992, a property owner purchased a single family residence for \$25,450.00. Your office reappraised this property due to the change in ownership.
- On June 23, 1992, the owner obtained a building permit to drill a new well on the subject property.
- On July 2, 1992, the well was completed and a final approval was given by the local building department.
- Subsequent to the final, your office assessed the new well and the filling in of the old well as new construction for a net assessment increase of \$1,800.00.
- In your county, the Sierra County Auditor, pursuant to Section 75.55(a) of the Revenue and Taxation Code,¹ cancels small supplemental tax bills. Because of this provision, in your opinion, it is doubtful that the above facts will result in a supplemental tax bill.

¹All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

However, the taxpayer is appealing this assessment. You are requesting our opinion as to whether the construction of a new well as a replacement well is new construction under the provisions of Proposition 13.

Subdivision (a) of Section 2 of Article XIII A of the California Constitution provides in part that "full cash value" means the March 1, 1985 full cash value or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred. The implementation of this provision is found in Section 110.1(a), which similarly provides that full cash value means the fair market value on the 1975 lien date or, thereafter, the value on the date on which a purchase or change in ownership occurs or the date on which new construction is completed.

For the purposes of new construction, Section 70 defines "new construction" as either (1) any addition to real property, or (2) any alteration of land or of any improvement which constitutes a major rehabilitation thereof or which converts the property to a different use. Section 71 requires the assessor to determine the new base year value for the portion of any taxable real property which has been newly constructed.

There provisions are interpreted by the Board's Property Tax Rule 463 "Newly Constructed Property". Subdivision (a) of Rule 463 provides, in part, that when real property is newly constructed after the 1975 lien date, the assessor shall ascertain the full value of the newly constructed property as of the date of completion.

Subdivision (b) of Rule 463 goes on to further define the term "new construction" and reflects the statutory categories of additions and alterations. Subdivision (b)(1) includes in the definition any substantial addition to land or improvements and cites as examples, landfill, retaining walls, curbs, gutters or sewers, etc. Subdivision (b)(2) refers to any substantial physical alteration of land which constitutes a major rehabilitation or results in a change in the way the property is used.

Examples of the alterations include site developments of rural land for the purpose of establishing a residential subdivision, converting rolling, dry grazing land to irrigated crop land, and preparing a vacant lot for use as a parking facility. Subdivision (b)(3) includes any physical alteration of any improvement which (1) converts the improvement to the substantial equivalent of a new structure or (2) changes the way in which the structure is used. Excluded from alterations that qualify as "newly constructed" is construction 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. Subdivision (b)(5) includes any physical rehabilitation of any fixture which converts it to the substantial equivalent of a new fixture.

It is important to note that the provisions of the statutes and regulations discussed above divides new construction into two types: (1) additions or (2) alterations which constitutes a major rehabilitation or converts the property to a different use. The only construction excluded from the definition of new construction are alterations for the purpose of normal maintenance and repair.

In your situation, wells are classified as land (Board Rule 124). The addition to the land, i.e., the drilling of a well, is clearly new construction. Something was added to the land that was not there before. There was no alteration of any kind to either the land or the improvement. Therefore, the exclusion from new construction for normal maintenance and repair does not apply.

In addition, you asked whether the filling of the old well is new construction subject to a negative supplemental assessment. Section 75.10(b) reads in relevant part:

"For purposes of this chapter, 'actual physical new construction' includes the removal of a structure from land."

We have provided guidance on this provision in letter to assessors 86/09. On page 2 a number of examples of removal of a structure were provided, one of those examples reads as follows:

- "(8) A well that is abandoned, plugged off, and its derrick and external structures removed, rendering it the equivalent of being permanently severed from the real property."

Therefore, in light of the above guidance, we agree with your handling of the filling of the old well. When the well is filled, rendering it permanently severed from the real property, this is removal of a structure from land and therefore, new construction. The base year value of the old well should be removed from the land value. In your situation, since the filling of the old well and the addition of the new well occurred together, you treated them as one new construction generating a net assessment increase of \$1,800. We find no problems with your approach.

Honorable William G. Copren

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May 24, 1994.

I hope this clearly outlines our position on this situation. If you have any questions, please call the Real Property Technical Services Section at (916) 445-4982.

Sincerely,

Verne Walton, Chief
Assessment Standards Division

VW:kmc