STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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TO COUNTY ASSESSORS:

A COMPARABILITY STANDARD FOR GOVERNOR-DECLARED DISASTERS (REVENUE AND TAXATION CODE SECTION 69)

General

In light of tragic events in recent months, it is important to review the proper administration of certain property tax relief available to affected property owners.

In June 1986, the state's voters approved Proposition 50, amending the State Constitution to authorize the Legislature to provide for property tax relief in the event of a disaster, as declared by the Governor. Recently, the Oakland hills fire, the Northcoast earthquakes, and the Los Angeles riots were all grave enough that the Governor declared a state of emergency in each affected county.

Letter to assessors 87/23, dated March 10, 1987, outlines the Legislature's implementation of Proposition 50. As noted in the letter, Section 69 was added to the Revenue and Taxation Code to provide the relief approved by the voters. Specifically, Section 69 provides that the base year value of property which is substantially damaged or destroyed by a disaster, as declared by the Governor, may be transferred to comparable replacement property within the same county which is acquired or newly constructed within two years after the disaster.

Determining Comparability

Detailed advice on administration of Section 69 is provided in letter 87/23 --we will not repeat that information in this letter. However, it is important to elaborate on the issue of determining the comparability of the replacement property and the damaged or destroyed property. This issue is crucial because relief is only available to the extent that the replacement property and the damaged or destroyed property are deemed comparable.

Section 69 provides in part that replacement property is comparable to the damaged or destroyed property if it is similar in size, utility, and function to the property which it replaces.

More specifically, the section provides that property is similar in function if the replacement property is subject to similar governmental restrictions, such as zoning. As to size and utility, the section provides that both of these attributes of property are interrelated and associated with value, and that property is thus similar in size and utility only to the extent that the replacement property is, or is intended to be, used in the same manner as the damaged or destroyed property, and its full cash value does not exceed 120 percent of the full cash value of the damaged or destroyed property.

Similarity in function will probably be the assessor's most objective determination as to comparability, since governmental restrictions should be readily ascertainable. Determining similarity in size and utility, however, has the potential of being a more difficult problem, inasmuch as this issue depends on a subjective judgment about the similarity in use.

The Legislature seems to have intended a broad interpretation of what is considered similar in use. This is indicated by the language of Section 69(c)(2)(B)(i), which provides that a replacement property or any portion thereof used or intended to be used for a purpose substantially different than the use made of the property substantially damaged or destroyed shall to the extent of the dissimilar use be considered not similar in utility.

Thus, for purposes of determining comparability, replacement property should be considered to be used in the same manner as the damaged or destroyed property unless the two uses are substantially different.

Obviously, the determination of what uses are substantially different is a subjective determination in itself. However, in the interest of promoting statewide uniformity, the Board recommends that properties be considered similar in use if they fall within the same broad property type; e.g., residential, commercial, agricultural, industrial.

For example, single-family residences, duplexes, triplexes, and apartments, --all residential properties--would be considered similar in use. The same would be true for commercial properties, such as retail stores, restaurants, theaters, and offices. Thus, properties would be considered dissimilar only if their uses crossed over into different property types. For example, a duplex and a theater would be considered dissimilar since one is residential property and the other commercial property.

Section 69 provides that the replacement property must be used or intended to be used in the same manner as the damaged or destroyed property. Thus, a replacement property, used for residential purposes prior to acquisition by the owner of a damaged or destroyed commercial property, may be considered similar in use if the owner intends to put the property to commercial use.

For the damaged or destroyed property, however, it is the actual use, rather than a contemplated use, which controls the determination of similarity. For example, where the damaged or destroyed property consists of a residence located on land zoned for commercial use, any replacement property would have to fit that same description. To the extent that the replacement property is dissimilar, e.g., the structure is used for commercial purposes, relief under Section 69 would not be available. Put another way, relief would be available only to the portion of the replacement property that is used in the same manner as the damaged or destroyed property.

Given the unlimited variety of comparability scenarios that could arise, and the obvious need for firsthand knowledge of the properties being compared, subjective judgment by the assessor is necessary in all cases. Thus, the advice contained in this letter is general in nature and may not apply in many specific cases.

A copy of letter 87/23 is enclosed for your reference. If you have any questions, please call our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division

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Enclosure