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BURTON W. OLIVER
Executive Director

No. 94/47

TO COUNTY ASSESSORS:

PROPOSITION 177:
DISABLED PERSONS' ACCESS NEW CONSTRUCTION EXCLUSION

The voters of California approved Assembly Constitutional Amendment 8 (Proposition 177) on June 7, 1994. This amendment authorizes the Legislature to exclude from the term "newly constructed" certain types of construction on an existing building. The exclusion applies if the construction, installation, removal, or modification is for the purpose of making the existing building more accessible to, or usable by, a disabled person. The amendment added paragraph (5) to subdivision (c) of Section 2 of Article XIII A of the California Constitution and reads in part:

"For purposes of subdivision (a), the Legislature may provide that the term "newly constructed" shall not include any of the following:

. . .

"(5) The construction, installation, removal, or modification on or after the effective date of this paragraph of any portion or structural component of an existing building or structure if the construction, installation, removal, or modification is for the purpose of making the building more accessible to, or more usable by, a disabled person."

To implement this exclusion, in anticipation of the passage of Proposition 177, the Legislature in 1993 added Section 74.6 to the Revenue and Taxation Code (Chapter 1148 of the Statutes of 1993, Assembly Bill 1202, Hauser). While this chapter was effective on January 1, 1994, it became operative on June 7, 1994, with the adoption of Proposition 177. Therefore, qualifying new construction completed on or after June 7, 1994, is eligible for the exclusion.

QUALIFICATION REQUIREMENTS

To qualify for the new construction exclusion provided by Section 74.6 (all statutory- references are to the Revenue and Taxation Code unless otherwise indicated), the following conditions must be met:

- The new construction must be completed on or after June 7, 1994.
- The new construction must be for the purpose of making the building more accessible to, or more usable by, a disabled person.
- The new construction must be made to an existing building.
- Newly constructed buildings or entirely new additions to existing buildings do not qualify.
- The new construction must not qualify for the new construction exclusion provided by Section 74.3 (new construction exclusion for existing single- or multiple-family dwellings eligible for the homeowners' exemption).

Subdivision (b) of Section 74.6 defines "disabled person" as:

"...a person who suffers from a physical impairment that substantially limits one or more of that person's major life activities."

Please note that only new construction associated with physical impairments is eligible for this exclusion. New construction associated with mental or emotional disabilities does not qualify for the exclusion under this section. However, any construction associated with physical impairment resulting from mental or emotional disabilities may qualify for this exclusion.

Section 74.6(f) provides examples of the types of improvements eligible for exclusion under this provision and reads in part:

"For the purposes of the exclusion provided for in subdivision (a), the construction, improvement, modification, or alteration of an existing building or structure may include, but is not limited to, access ramps, widening of doorways and hallways, barrier removal, access modifications to restroom facilities, elevators, and any other accessibility modification of a building or structure that would cause it to meet or exceed the accessibility standards of the 1990 Americans with Disabilities Act (Public Law 101-336) and the most recent edition to the California Building Standards Code that is in effect on the date of the application for a building permit."

Only improvements or features that specifically make an existing building more accessible to, or usable by, a disabled person may be excluded. By dictionary definition, "accessible" means that which can be approached or entered and easy to approach or enter. Under Section 74.3 (the exclusion for residential properties), "accessible" is defined as "that combination of elements with regard to any dwelling which provides for access to, circulation throughout, and the full use of, the dwelling and any fixture, facility, or item therein." While the definition of "accessible" in Section 74.3 is expressly limited to the purposes of that section, it provides reasonable guidance for determining the types of improvements that make an existing building more "accessible" for purposes of Section 74.6.

Section 74.3(c) also reads:

"The construction of an entirely new addition, such as a bedroom or bath, which duplicates existing facilities in the dwelling that are not otherwise available to the disabled resident solely because of his or her disability, shall be deemed to make the dwelling more accessible within the meaning and for the purposes of this section."

However, under Section 74.6, entirely new additions or structures do not qualify for the exclusion, even though the additions may duplicate existing facilities. In addition, any improvements or features that make a new building or addition more accessible to, or usable by, a disabled person do not qualify for this exclusion. For example, a fast food restaurant's restroom facilities are not accessible to disabled people. The restaurant constructs an entirely new restroom facility that is accessible to disabled people. Neither this new building nor any features of the building that improves accessibility to a disabled person qualifies for the new construction exclusion under Section 74.6.

Generally, the value of new construction is not assessable until its date of completion, with the exception of new construction in progress on the lien date (March 1). The value of construction partially complete on the lien date is part of the taxable value of property for the following fiscal year. Consequently, construction in progress qualifying for exclusion under Section 74.6 that existed on the 1994 lien date continues to be fully taxable for the 1994-95 tax year regardless of the completion date. If the project was completed prior to June 7, 1994, it is subject to supplemental assessment and its base year value will be included in future lien date assessments. If the project is completed on or after June 7, 1994 (and the claim form is filed timely), there will be no supplemental or future lien date assessments of the eligible new construction. In addition, the assessor on the ensuing lien date following June 7, 1994, must deduct the assessment for the qualifying construction in progress from all future fiscal years.

Where there is construction in progress qualifying for the exclusion under Section 74.6 for any lien date after June 7, 1994, we recommend the assessor exclude from assessment the construction in progress on the lien date and encourage the taxpayer to file a claim as soon as possible. Claims may be filed during construction. Where there is construction in progress on any lien date after June 7, 1994, but only a portion of the new construction will be excluded under Section 74.6, we recommend the assessor estimate the portion of the new construction that will be eligible for the exclusion under Section 74.6 and do not assess that portion on the lien date.

CLAIMS

To receive the exclusion, the property owner must file a claim prior to, or within 30 days of, completion of any project notifying the assessor that the owner intends to claim the exclusion. The property owner, primary contractor, civil engineer, or architect shall state on the claim those portions of the project that make the building more accessible to, or usable by, a disabled person. The property owner shall file all documents necessary to support the exclusion with the assessor no later than six months after the completion of the project.

Since Section 74.6 is operative June 7, 1994, there may be some construction projects completed very soon after that date. In order to qualify for this exclusion, the property owner must file a claim within 30 days of completion of the project. We urge you to notify all builders and property owners of this potential property tax benefit as soon as possible. In order to provide notification to builders and property owners of this property tax benefit, we suggest you obtain the cooperation of the building inspection departments to maintain a supply of these claim forms at their public counters. In addition, you may consider sending to property owners who had obtained building permits a mailer listing all property tax benefits with the appropriate follow-up claim forms to minimize the chance of eligible claimants missing the filing deadline.

As required by Section 74.6(g), the State Board of Equalization approved a prescribed claim form for this exclusion on August 4, 1994. A copy of this form will be sent under a separate letter on forms.

Questions pertaining to the claim form should be directed to Bill Minor at (916) 445-4982. If you have other questions or comments regarding the contents of this letter, please contact our Real Property Technical Services Section at the same number.

Sincerely,

John W. Hagerty
Deputy Director
Property Taxes Department

JWH:kmc