

STATE BOARD OF EQUALIZATION



Douglas Mo Item # M1

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PUBLIC COMMENTEversheds Sutherland (US) LLP
500 Capitol Mall, Suite 1750
Sacramento, CA 95814D: +1 916.241.0505
F: +1 916.241.0501douglasmo@eversheds-sutherland.com

April 30, 2020

Via E-Mail (Sue.Blake@boe.ca.gov)Sue Blake
Senior Tax Counsel
State Board of Equalization
455 Golden Gate Ave., Suite 10500
San Francisco, CA 94102**Re: SBE Property Tax Relief Tax Force - Subgroup 3 (R&T Code Section 170)**

Dear Ms. Blake,

Thank you for your efforts with this subgroup.

We believe that Section 170 of the Revenue and Taxation Code is applicable to COVID-19 related damage if the property owner suffers restricted access to his or her property.

As outlined in Section 170(a)(1), interim valuation relief may be available to taxpayers if, *inter alia*:

1. There is a major misfortune or calamity, in an area or region subsequently proclaimed by the Governor to be in a state of disaster.
2. The subject property is damaged or destroyed by the major misfortune or calamity without the fault of the taxpayer. For purposes of this subsection, "damage" includes "a diminution in the value of property as a result of restricted access to the property where that restricted access was caused by the major misfortune or calamity."

Governor Newsom's Proclamation of a State of Emergency on March 4, 2020, covering the entire State of California, satisfies the first criteria recited above.

As to the second criteria, we are aware that the California Constitution, Article XIII, Section 15, uses the words "physical damage." It is within the purview of the Legislature to give meaning to these words, and such meaning is cloaked with a strong presumption of constitutionality. In the context of Section 170(a)(1), the Legislature has determined that "restricted access" constitutes a form of physical damage.

We note that the constitutionality of Section 170(a)(1) has not been called into question since its enactment in 1979. If any assessor believes that Section 170(a)(1), and in particular its adoption of "restricted access" as a form of physical damage is unconstitutional, his or her sole remedy is to bring a declaratory relief action under Section 1060 of the Code of Civil Procedure. Rev. & Tax. Code § 538. We are not aware that any such action has been brought. Moreover, in *Slocum v. State Board of Equalization*, 134 Cal.App.4th 969 (2005), the Court of Appeal strongly suggested that the Legislature's interpretation was a permissible one—characterizing restricted access as a form of "indirect physical damage." We agree with the Court of Appeal's conclusion that "restricted access" is a form of physical damage.

We understand that some assessors have questioned whether an epidemic is the type of disaster that can give rise to a claim under Section 170(a)(1). But a "disaster," under Section 8680.3 of the California Government Code, is defined as a "fire, flood, storm, tidal wave, earthquake, terrorism, **epidemic**, or other similar public calamity that the Governor determines presents a threat to public safety." (emphasis added). Government Code Section 8558(b) is to the same effect. It defines a state of emergency to mean the "existence of condition of disaster or of extreme peril to the safety of persons and property within the state caused by conditions such as air pollution, fire, flood, storm, **epidemic**, riot, drought, cyberterrorism, sudden and severe energy shortage" (emphasis added). By making Section 170(a)(1) relief contingent on the existence of a "disaster" and by explicitly defining an "epidemic" to be a form of disaster, the Legislature has evinced a clear intent to include damage caused by an epidemic within the scope of Section 170(a)(1). Contrary to the arguments being made by the assessors, the Legislature did not except "epidemics" from the types of "disasters" covered by the statute.

Respectfully submitted,



Douglas Mo