



Memorandum

To : Mr. Gordon P. Adelman

Date : July 10, 1986

From : Richard H. Ochsner *RHO*

Subject: Disaster Relief - "Replacement" Property

At our meeting on June 13, you asked that I put my views on the above subject in writing to you.

This question involves two recent letters sent by the Assessments Standards Division to Mr. George L. Singewald, Sr. Auditor-Appraiser, of the Siskiyou County Assessors Office. The facts are that a fire damaged a two-story residence with damage to both stories. The owner removed all of the second story and roofed the remaining fire-damaged first story which he plans to eventually repair. In addition, the owner of this property built a new residence after the fire which is described as being located on the situs property (appraisal unit), although it is located on a different parcel.

The questions presented were:

- 1) Can the replacement provisions of section 170 of the Revenue and Taxation Code be applied to the new residence?
- 2) How should the fire-damaged property be treated?

The response from Assessment Standards (prepared by Dennis Minner) was that section 170 of the Revenue and Taxation Code is applicable to the replacement property as described even though it is physically situated in a location other than the exact spot within the affected property, that is, on a different parcel but within the appraisal unit. With respect to the remaining fire-damaged structure, the staff replied that since section 170 should be applied to the replacement property, the fire-damaged structure must be treated as new construction under sections 70 and 71 of the Revenue and Taxation Code and assigned a new base year value when completed. The old base year value, it was explained, had been "transferred" to the new structure. For the current year and

any subsequent years that the damaged structure remained unfinished, the staff recommended that a construction-in-progress value for the incomplete structure be determined each lien date until complete.

As discussed at our meeting, there is nothing in section 170 which refers to "replacement property." There is also no reference to "replacement property" in subdivision (c) of section 70. Section 170 refers to property which is "restored, repaired, reconstructed." Section 70 refers to property which is "reconstructed." Further, nothing in either of these sections provides for the transfer of a base year value from one improvement to another. (The only provisions which authorize a transfer of base year value are section 68 and proposed section 69.)

I realize that we have taken the position in the past that when a property, which has been completely destroyed by disaster, will be reconstructed, it need not necessarily be reconstructed on the exact location of the original improvement. Note that I refer to this as reconstruction and not replacement. Where a structure is completely destroyed, then reconstruction must start from the ground up. Where a structure is partially damaged, however, it is my opinion that the term reconstruction is limited to restoration of the original structure. If the original structure is still standing, then construction of a second structure would be a replacement rather than a reconstruction. Thus, under the facts presented, the replacement residence constructed by the owner of the described property would be treated as new construction and would not be entitled to the benefits of section 170 or subdivision (c) of section 70. Section 170 would, of course, apply to the fire-damaged property. The owner would be entitled to a reassessment of that property and it could be restored to its original condition without an increase in its original base year value.

It is assumed that the property as described will not qualify for relief under the provisions of SCA 28 (Ellis) which was adopted at the June primary election. SCA 28 permit the Legislature to provide for the transfer of base year value to replacement property acquired or newly constructed as a replacement for disaster damaged or destroyed property.

These provisions will be implemented by SB 2535 (Ellis) when the bill is enacted. SB 2535 adds section 69 to the Revenue and Taxation Code to provide that the base year value of damaged property may, under described circumstances, be transferred to property acquired or constructed as a "replacement" for the substantially damaged or destroyed

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property. These provisions apply to replacement property acquired or newly constructed on or after July 1, 1985.

It is noteworthy that section 69 makes a distinction between "replacement" and "reconstruction." Subdivision (a) provides, in part, that at the time of the transfer of the base year value to the replacement property, the damaged or destroyed property should be reassessed at full cash value. Further, if relief is provided under section 69 by transfer of the base year value, then the damaged or destroyed property shall not be eligible for property tax relief under subdivision (c) of section 70 in the event of its "reconstruction." The context in which the terms "replacement" and "reconstruction" are used makes it clear that these terms are not intended to be synonymous. The use of the term "reconstruction" in section 69 supports the interpretation I have suggested above.

I suggest that our advice to Mr. Singewald be corrected as soon as possible.

RHO:cb

cc: Mr. James J. Delaney
Mr. Robert H. Gustafson
Mr. Verne Walton
Mr. Robert K. Keeling