STATE OF CALIFORNIA *360.0001*

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November 14, 1996

Mr. DeWitt W. Clinton
Los Angeles County Counsel
648 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Attention: Mr. Albert Ramseyer, Senior Deputy

Re: **Disaster Relief Available under Either Subdivision (a) or (c) of Section 51. Depending on Taxpayer Qualification/ Application under Section 170.**

Dear Mr. Ramseyer:

This is in response to your request to Mr. Lawrence Augusta for our opinion concerning the proper interpretation of Revenue and Taxation Code Sections 51 and 170, with specific application to the following set of facts:

1. Taxpayer sustained property damage from the January 17, 1994 Northridge earthquake, but did not timely file a claim for disaster relief pursuant to Section 170 and the Los Angeles County Code §4.64.020 which implements Section 170 in that county.

2. Taxpayer filed an application ("Proposition 8 claim") with the Los Angeles County Assessment Appeals Board (County Board) claiming that the value of its property as of March 1, 1994, declined below its Proposition 13 value, justifying a reduction in its assessed value for that year pursuant to Section 5l(a)(2).

3. The County Board concluded that based on the language in Section 51(c), the exclusive relief for misfortune or calamity is provided only under Section 170 and that Taxpayer's "Proposition 8" claim could not subsume the loss in value attributable to the earthquake. Therefore, the assessor proposes to make an application under Section 5l(a) consistent with the County Board's ruling, such that the relief available to the taxpayer for the earthquake damage is limited to Section 170. Alternatively, the assessor is prepared to adopt an interpretation of Section 5l(a)(2) that prohibits damage from misfortune and calamity from being considered as an

element of a Proposition 8 claim because of the conflicting language in Section 51(c), which specifies Section 170 as the only available remedy for counties with disaster relief ordinances.

4. Your office believes that there is a conflict between Section 51(a)(2) and Section 5l(c) in that an assessor in a county which has a Section 170 ordinance is without authority to reduce the taxable value of properties damaged by disaster, misfortune or calamity under Section 5l(a)(2), since Section 5l(c) requires the assessor to compute the value of such properties pursuant to Section 170 only. You conclude that if the assessor enrolls a decline in value under Section 51(a)(2) to reflect the damage caused by the 1994 earthquake (as the taxpayer requests), there is a violation of Section 51(c). Therefore, your office intends to seek judicial review in the form of declaratory relief, unless a consistent construction of the statute can be reached.

For the reasons hereinafter explained, we believe that there is no conflict and that the provisions in subdivision (a)(2) and subdivision (c) of Section 51 are "in pari materia." Based on the historical development of the two constitutional provisions authorizing disaster relief, (Article XIII, Section 15, and Article XIII A, Section 2(b)), both subdivision (c) and subdivision (a)(l) and (2) were drafted into Section 51 for the purpose of permitting the taxpayer/owner of disaster-damaged property "to make himself whole" by either applying for reassessment under a county's Section 170 ordinance, or by applying for a "Proposition 8" reduction in the base year value which accounts for the disaster loss. The "authority" of the assessor to account for disaster loss when computing the taxable value of a given property under either subdivision (a)(2) or subdivision (c) depends upon the taxpayer's qualification for relief under one or the other of these provisions. In our view, there is no basis for the assessor to deny a reduction in assessed value from disaster damage under subdivision (a)(2) on the ground that the taxpayer was ineligible under subdivision (e), and subdivision (c) is the only disaster relief in a county with a Section 170 ordinance. Rather, subdivisions (a)(2) and (c) are deliberately structured to present the taxpayer and the assessor with alternative remedies for disaster relief.

Historical Development of Disaster Relief Provisions: Art. XIII. Sec. 15 and Art. XIII A. Sec. 2

As you are aware, disaster relief was originally not an inherent part of the property tax system, but was added in increments over time. Even though the purpose of the property tax is to fund the government for the fiscal year following the lien date, there was nothing which required that the property being taxed had to continue to retain its value during that fiscal year. Consequently, without specific disaster relief provisions added to the Constitution, property damaged or destroyed was taxed at its lien date value.

In the system prior to 1974, there were no such provisions. Disaster relief was limited to specific bills enacted by the Legislature extending to individual properties within a geographical area that were damaged or destroyed after the lien date on a disaster-by-disaster basis.

This practice ceased in 1974 when California voters enacted Section 15 of Article XIII of the California Constitution, which permits the Legislature to authorize counties to provide for the

reassessment of property damaged or destroyed after the lien date. That constitutional provision was implemented by Revenue and Taxation Code Sections 155.1-155.14 (subsequently amended as Section 170), authorizing boards of supervisors to provide such relief by ordinance. Once an ordinance was adopted, the burden was on the taxpayer to apply for the relief available; and if the taxpayer met the requirements, the assessor was mandated to extend relief using the Section 170 computation.

On the other hand, the original Proposition 13 (Article XIII A) did not contain any language indicating that property values might decline in value for any reason, including disasters. To remedy this problem and alleviate tax burdens on the ensuing "new construction" for disaster-damaged property, the Legislature placed on the November 1978 Ballot Proposition 8 to "further the intent of Proposition 13 by easing the property tax burden of disaster victims who have recently lost their homes or suffered real property damage ... [and] allow assessor to further reduce assessments if such damage has, in fact occurred." (Argument in Favor of Proposition 8, November 1978, copy enclosed.) That the provisions of Proposition 8 would apply to disaster-damaged property and would authorize the assessor to calculate the full cash value so as to subsume the loss, was clearly expressed throughout the "Argument in Favor of Proposition 8," portions of which are quoted as follows:

> "Moreover, some California families have recently been the victims of large-scale disasters, officially recognized as state emergencies.
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> * * *
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> "But when these victims of large-scale disasters rebuild their homes or businesses, they come under the provision of Proposition 13 which requires that 'new construction' be assessed at current market value, thus causing a major reassessment upward. Without Proposition 8, those who cannot afford to rebuild at all presumably will still have to pay the 1975-76 assessed value of the home or business as though it were still standing.
>
> "So, although the 'new construction' provision will generally be appropriate, for disaster victims forced to rebuild, it is terribly unfair. Proposition 8 simply says that these unfortunate citizens should be allowed the same 1975-76 rollback that the rest of us receive, on the condition that the new structure is comparable in value to the one being replaced."

Accordingly, Proposition 8 amended the Constitution to provide that: (1) the full cash value base may from year to year not only reflect the inflation rate, but "may be reduced to reflect substantial damage, destruction or other factors causing a decline in value," and (2) when property is damaged or destroyed through a disaster, reconstruction of the property is excluded as "new construction" when the restored structure is comparable in value to the original. (Cal. Const. Art.XIII A, Sec. (2).) Thus, both Articles XIII and XIII A provided taxpayers suffering loss from disaster damage with relief, albeit by means of differing methodologies.

Subdivisions (a)(2) and (c) of Section 51 are "in pari materia" and not in conflict.

When the statutory implementation of Propositions 13 and 8 were being drafted in 1978-79, the Task Force on Property Tax Administration, under the auspices of the Assembly Revenue and Taxation Committee, gave special attention to achieving consistency in the procedures for treating disaster damaged property. Fully recognizing the differences in the two disaster relief provisions in the Constitution (Art.XIII, Sec.15 and Art.XIlI A, Sec.2), its intent was to structure the new disaster relief statute, subsequently codified in Section 51, with the existing disaster relief statute, Section 170, to insure that similar equitable relief would be available to taxpayers whose properties had declined in value (below the factored base year value) due to misfortune or calamity, including disasters. The recommendation from the Task Force on Property Tax Administration to the Assembly Committee on Revenue and Taxation stated in this regard:

> "The Task Force recommends that property damaged or destroyed by any misfortune or calamity, not just those disasters so declared by the Governor, be assessed at the original base year value if the reconstructed property at the time of reconstruction is substantially equivalent to the property as it existed before the damage. The excess value, if any, shall be deemed new construction.
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> "To reassess the totality of a property rebuilt due to a disaster as new construction under Proposition 13 would be totally unfair, as the property owner had no control over the events that caused the new construction. Proposition 13 predicates assessment changes only at times when the taxpayer has some control over the change." (Report of Task Force on Property Tax Administration, to the Assembly Committee on Revenue and Taxation, January 22, 1979, p.65.)"

This deliberate interfacing of the two constitutional provisions was accomplished in AB 1488 (Ch. 242, Stats. 1979) and SB 139 (Ch. 377, Stats. 1981) and codified in Section 51. What the Legislature prescribed in the subdivisions of Section 51 constituted two very specific valuation procedures for properties stricken by disaster, misfortune, or calamity and one general procedure. The general procedure, currently in subdivision (a)(l) and (2), is the legislative expression of the requirements of Proposition 8 as applied to all properties that have declined in value for any reason, including disaster. The two specific procedures, currently in subdivision (b) and subdivision (c), direct the assessor to calculate the value of disaster-damaged property by means of distinct methodologies. In counties without Section 170 ordinances the methodology in subdivision (b) is applicable, and in counties with Section 170 ordinances, subdivision (c) prescribes the Section 170 methodology.

However, the language and methodology in subdivision (c) are mandatory on the assessor only if certain qualifying prerequisites are met. First, the county must have a valid and operative Section 170 ordinance. Second, the damage to the property must have resulted from an actual "disaster, misfortune or calamity," as defined in Section 170, subdivision (a). (T.L. Enterprises, Inc. v. County of Los Angeles, 215 Cal.App.3d 876 (1989).) Third, the amount of damage

caused must be equal to the $5,000 minimum specified in Section 170, subdivision (b). (See Eisenlauer Letter, 9/5/89, attached.) Finally, within 60 days of the disaster, an application for relief must be filed and approved under Section 170, subdivision (a), or within six months of the disaster, the board of supervisors' authorization to grant relief at the assessor's request per Section 170, subdivision (e) must be obtained. The language in Section 170 clearly indicates that application for relief must be made under one or the other of these provisions. The necessity of the taxpayer "applying" for relief or the assessor obtaining board approval to grant relief, has long been incorporated into the statute as a prerequisite to the determination that a particular taxpayer may even "qualify" for the relief requested. (See Letter to Assessors No. 79/207, copy enclosed, regarding such application qualifications.) Where the taxpayer chooses not to apply for Section 170 relief, and the assessor does not apply for board of supervisors' approval to grant Section 170 relief, there is no mandate per Section 51(c) on the assessor to calculate the value pursuant to Section 170.

In contrast to the specific relief in subdivision (c), the general procedure in all counties, with or without a Section 170 disaster relief ordinance, under subdivision (a)(l) and (2), mandates the assessor to establish the taxable value of all properties (whether disaster-damaged or not), as the lesser of (1) its factored base year value or (2) its full cash value on the lien date, taking into account any "reductions in value due to damage, destruction, depreciation, obsolescence, removal ... , or other factors causing a decline in value." Subdivision (a) (1) and (2) was structured as the "on-going procedure" for the assessor to handle any property whose market value had fallen below the base year value, whether involuntarily because of disaster damage or economic recession, or voluntarily because of removal of property. In other words, the procedure in subdivision (a)(l) and (2) is a standing requirement intended to effectuate the voters' intent in adopting Proposition 8.

The language used in Proposition 8, (specifically Article XIIIA, Section 2(b)) is in fact closely analogous to the wording in Section 51(a)(2) when it states, "(b) The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year, ... or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value." (Emphasis added.)

Similarly, the wording in Section 5l(a)(2) is clear, unambiguous, and open to the same meaning when it requires the assessor to calculate "the full cash value ... taking into account reductions in value due to damage, destruction, depreciation, ... or other factors causing a decline in value." Unlike subdivision (c), subdivision (a)(2) does not exclude any class of real property from its scope, regardless of whether or not it is located in a county with a Section 170 ordinance.

Thus, the legislative scheme was simultaneously integrative and comprehensive in that the taxpayer with disaster-damaged property could select the more specific remedy under subdivision (c) when applicable, or the more general remedy under subdivision (a)(l) and (2), when the more specific remedies were either not applicable or not able to "make the taxpayer whole" in a particular situation. Since subdivision (c) requires the assessor to calculate the taxable value of disaster-damaged property pursuant to Section 170, the rather strict prerequisites of Section 170

must first be met in order to qualify for relief under its provisions. As previously mentioned, Section 170 is a statutory implementation of Article XIII, Section 15 which embodies a specific and an entirely distinct set of parameters for disaster relief, as opposed to Proposition 8, Article XIIIA Section 2(b) implemented by subdivision (a)(l) and (2), which simply requires without any prerequisites, that "the lesser of ... the base year value or ... the full cash value ... taking into account reductions ... due to destruction. " must be enrolled.

Taxpayers and assessors have been advised on several occasions that if the more specific provisions in subdivision (c) are inapplicable (failure to qualify under Section 170 for whatever reason), the assessor must still apply the requirements of subdivision (a)(2), which may provide the taxpayer with a reduction in value depending on the facts of the case. For example, in a county with a Section 170 ordinance, we advised a taxpayer whose orchard was damaged by unusual inclement weather (freeze) that if Section 51 (c) could not be applied to the property, because the amount of loss in full cash value did not meet the $5,000 minimum required by Section l70(b), the taxpayer still had a remedy under Section 5l(a)(2). The assessor properly enrolled the full cash value which accounted for the damage, since it was lower than the factored base year value for that year. (See Eisenlauer letter, September 5, 1989, attached.) Similarly, in the case of T.L. Enterprises, Inc. v. County of Los Angeles, 215 Cal.App.3d 876 (1989), the taxpayer sought relief under the county's Section 170 ordinance, but such relief was held to be inapplicable because an actual "disaster, misfortune or calamity," as described in Section 5l(c) (and Section l 70(a)), was not the cause of the damage. The facts indicated that the although the taxpayer could have filed a "Proposition 8 claim" under Section 5l(a)(2), the fair market value of the land alone had already exceeded the adjusted base year value of both the land and improvements. Thus, there was a factual, not a legal reason. that the assessment appeals board could not grant the taxpayer relief under section 51 (a)(2).

Moreover, we have consistently taken the position that apart from any application of specific disaster relief provisions, the assessor has an independent responsibility to prepare an assessment roll which properly reflects both constitutional and statutory requirements, including duty to discover properties with assessments in excess of their current market values. (Article XIII A, Section 2(b).) We have urged assessors to be proactive in reviewing particular property types, geographical areas, or categories of properties which require adjustment for declining value. (See Letters to Assessors Nos. 92/63, 93/71, attached.) The general procedure in Section 51(a)(2) for adjusting the base year value to reflect such declines. whether disaster related, economic, etc, applies to all counties whether or not they have adopted a Section 170 ordinance. With or without a Section 170 ordinance, the assessor has the responsibility under Section 5l(a)(2) to independently lower assessed values to reflect declines in market values for any reason until the assessment roll is completed and delivered to the auditor. Thereafter, the taxpayer may file an application for reduced assessment under subdivision (a)(2), and if successful in an assessment appeal, or if the assessor agrees with the taxpayer and stipulates to a reduced value (Section 1603(c)), the value may be reduced by any amount determined by the appeals board or stipulated to by the assessor.

Once the assessment appeals board has jurisdiction, it has full authority to determine the proper value of the property and to grant a reduction, based upon the facts set forth at the hearing. Article XIII, Section 16 of the California Constitution requires that the local board

> " ... shall equalize the value of all property on the local assessment roll by adjusting individual assessments."

As such, in our view, it is the duty of the County Board in the instant case to consider all of the facts related to the fair market value of the property after the January 1994 earthquake, and to determine whether a reduction in value is justified under Section 51(a)(2) for that particular property. Since the law presumes under Property Tax Rule 321 that the assessor has properly assessed all properties fairly and on an equal basis, the taxpayer has the burden of proof at the hearing to convince the County Board that the assessment should be reduced. If the taxpayer establishes that because of the disaster, there was an actual loss equivalent to the amount of the decline in value the taxpayer is requesting, then the County Board may reduce the value accordingly. The County Board is required to determine the taxable value of the property on the condition that no greater relief may be granted than is justified by the evidence produced. (Property Tax Rules 321 and 324.) In reaching such a determination, the County Board is not limited by the taxpayer's opinion of value, nor the assessor's opinion of value, nor the value which would have resulted from the calculation under Section l70(b) had that calculation been requested. Rather, when the appeal is brought under Section 51(a)(2), the County Board has both the authority and the duty to determine the "full cash value" of the property during the appeal period, "taking into account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property, of other factors causing a decline in value," and if this is less than the factored base year value, to determine that this is the taxable value of that property.

Based on the foregoing, we conclude that the language and intent of Section 51 present the taxpayer seeking a reduction in the assessed value of disaster-damaged property with the option of choosing a specific remedy in subdivision (c) or the general remedy in subdivision (a)(2). Such taxpayer in a county with a Section 170 ordinance does not "lose" his remedy under Section 51(a)(2) if he chooses not to submit the required application or does not otherwise qualify for Section 170 relief. Neither the assessor nor the assessment appeals board in a county with a Section 170 ordinance, which confirms the existence of disaster-damaged property may refuse to account for the loss and reduce the full cash value per Section 51(a)(2) on the ground that subdivision (c) is the sole and exclusive remedy for disaster-damaged properties. Likewise, the taxpayer in a county with a Section 170 ordinance may not be prohibited from filing a "Proposition 8 claim" and from having his/her application for reduced value from disaster damage considered in an assessment appeal, simply because he/she chose not to apply for Section 170 relief (Section 51, subdivision (c)).

Hopefully, this information has provided you with some assistance and a possible direction for future consideration. Please note that the views expressed in this letter are advisory only and are not binding on your office or on the assessor or assessment appeals board of any county. Our

intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this objective are appreciated.

Sincerely,

Kristine Cazadd
Senior Tax Counsel

KEC:ba
Attachments:

cc: The Honorable Kenneth H. Hahn
Los Angeles County Assessor

Mr. Jim Speed, MIC:63
Mr. Dick Johnson MIC:64
Ms. Jennifer Willis, MIC:70

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