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April 26, 1988

Mr. Allen A. Haim
Chief Deputy
Marin County Counsel
Suite 342 Civic Center
San Rafael, CA 94903

Dear Mr. Haim:

This is in response to your letter of April 1, 1988, requesting the advice of this office on the proper interpretation of subdivision (g) of Revenue and Taxation Code section 170, relating to disaster relief. I have also received letters from Dr. Benson B. Roe, dated April 5, 1988, and Mr. Herbert T. Nadai, dated April 14, 1988, which comment on the statements made in your letter. Your request relates to a situation now pending before the Marin County Assessment Appeals Board No. 1, which requested that you seek this advice.

Based on the letters, I understand that in January of 1983 the Stinson Beach area of Marin County was devastated by a tremendous storm. As a result, ocean front properties were damaged and/or suffered loss from beach erosion. It destroyed 30 to 50 feet of high sand dunes standing between the houses and the open beach. Since Marin County has a disaster relief ordinance, these storm-damaged properties qualified for the reassessment provisions under Revenue and Taxation Code section 170. Applying the provisions of subdivision (b) of section 170, the Assessor reduced the taxable land values in proportion to the percentage reduction in value to the land resulting from the storm. The land values of these properties remained at their reduced taxable values until March 1, 1987. (Presumably, this means that a pro rata tax adjustment was granted for the 1983-84 fiscal year, and that the reduced taxable values, adjusted annually for inflation, were used for the 1984-85, 1985-86, and 1986-87 fiscal years.) Commencing with the 1987-88 fiscal year, the Assessor returned the taxable land values of the subject property to their adjusted base year values. All properties at that time had a current full cash value equal to or higher than the adjusted base year value.

The assessor acted to restore these properties to their adjusted base year land values because sometime prior to March 1, 1987, (date not stated) a rock wall was constructed

along the beach front for the purpose of stabilizing the area and preventing further erosion. The high sand dunes between the houses and the open beach have not been replaced, however. You state "It is not disputed, that all has been done to restore and reconstruct the property. However, the parties agree that it is physically impossible to restore all of the dunes and beach front as they existed prior to the storm in 1983." In part, Dr. Roe states "Property owners contend that there has been no restoration of the damage. We claim that the rock wall only consists of an ugly barrier and not a replacement."

The question presented is whether the Assessor properly returned the taxable land values to their adjusted base year values in 1987-88 or whether these properties should retain their reduced land values for some indefinite period. Although not stated by Dr. Roe, apparently the property owners argue that they are entitled to the reduced taxable land values until the beach front is somehow restored to its original condition.

Property tax relief for property physically damaged by disaster predates Proposition 13. Prior to Proposition 13, all taxable property was assessed, in theory, at its current market value on the lien date and the taxes for the following fiscal year were based upon that value. Thus, where property was damaged or destroyed after the lien date, the taxpayer would be liable for the full amount of the taxes based upon the lien date value. There was no general tax relief provision but the Legislature typically enacted individual relief measures each time some community suffered a general disaster. The relief took the form of a pro rata reduction in taxes for the year in which the damage occurred which reflected the value of the property in its damaged state. This practice resulted in the enactment of several individual bills each year granting special tax relief for the community calamities which occurred in various locations in the State. Eventually, this rather inefficient system was replaced by an amendment of the California Constitution authorizing general disaster relief.

Section 15 of article XIII of the California Constitution, adopted November 5, 1974, provides "The Legislature may authorize local government to provide for the assessment or reassessment of taxable property physically damaged or destroyed after the lien date to which the assessment or reassessment relates." It should be noted that the language of the amendment follows the prior legislative practice of limiting the reassessment relief to the year in which the damage occurs. Section 15 provides the constitutional basis for the disaster reassessment provisions currently found in the Revenue and Taxation Code.

Part of the legislative response to Proposition 13 was Revenue and Taxation Code section 170, relating to the reassessment of property damaged by misfortune or calamity, which was added by Chapter 242 of the Statutes of 1979, in effect July 10, 1979. In part, section 170 departs from the historical pattern of reassessing qualified property to reflect its market value in its damaged state. Rather, it provides for a reduction in the taxable value reflecting the percentage of the damage incurred by the property. Thus, reductions in taxable value may be granted even though the lowered value is considerably less than the current market value of the damaged property. The disaster relief provided by section 170 did continue the historical pattern, however, by limiting the reassessment relief to the one year in which the calamity occurred. Subdivision (g) provided:

"The assessment of the property, in its damaged condition, as determined by this Section, shall be reviewed at the lien date next following the date of the misfortune or calamity and shall be assessed in the same manner as prescribed by law for any other assessable property."

The effect of subdivision (g) of section 170 was that after the assessment year in which the calamity occurred, the property was assessed at the lesser of its factored base year value or the current market value in its damaged condition.

Subdivision (g) of section 170 was amended in 1981 by Chapter 377 (SB 139, Speraw), to its present form. This legislation was sponsored by the State Board of Equalization.

Subdivision (g) provides, in part:

The assessed value of the property, in its damaged condition, as determined pursuant to subdivision (b) . . . shall be the taxable value of the property until it is restored, repaired, reconstructed or other provisions of law require the establishment of a new base year value.

* * *

When the property is fully repaired, restored or reconstructed, its new taxable value shall be the lesser of (1) its full cash value, or (2) its factored base year value or its factored base year value as adjusted pursuant to subdivision (c) of section 70. The new taxable value shall be enrolled on the lien date following completion of the repair, restoration, or reconstruction.

Related provisions may be found in Revenue and Taxation Code sections 51(c) and (d), and 70(c). Property Tax Rule 461, subdivision (e), generally paraphrases subdivision (g) of Revenue and Taxation Code section 170. Because the language of the rule is more general than the statute being interpreted, it is not helpful in determining the issue presented here. Further, subdivision (f) of Property Tax Rule 463 provides interpretive guidance where real property is reconstructed after a disaster. As will be explained below, it does not appear that the damaged property at issue here has been reconstructed and thus the provisions of this rule are also not helpful.

Subdivision (g) of section 170 provides that qualified property shall be assessed each year after the year of disaster at the specially reduced taxable value until it is restored, repaired, reconstructed or has acquired a new base year value. It is apparent from the history of the disaster relief provisions, the provisions of the Constitution, and the language of this subdivision that the relief extended by this provision is intended to be temporary. Subdivision (g) refers to "taxable value" and it is clear that a permanent reduction in base year value is neither authorized nor intended. Indeed, nothing in either the provisions of the Constitution or any of the statutory provisions discussed above support such a conclusion. Rather, it mandates that the "taxable value" be restored to the lesser of either full cash value (i.e., current market value), its factored base year value, or its factored base year value adjusted pursuant to subdivision (c) of section 70 to reflect new construction, when the property is "fully repaired, restored or reconstructed."

The test, then, is whether the subject Marin County land has been "fully repaired, restored or reconstructed" as those terms are used in subdivision (g). In using three terms, the Legislature intended that each have its separate meaning. The dictionary definition of "repaired" is to restore or put back to a sound or healthy state. This is distinguished from the meaning of "restored" which is to put back to a former or original state. "Reconstruction" means to construct or build again. The latter term implies that there was an original structure or building which is being built again. Obviously, this term would not apply to the situation before us since there were no manmade structures involved in the destruction of the beach front. The term "restored" is also not applicable here since it is apparent that the beach front has not been put back into its original condition. As I understand it, there is, in fact, no practical way to restore the beach front to its original state.

April 26, 1988

The term "repair" means to put back into a sound or healthy state and not to restore to original condition. In determining whether damaged property has been "repaired," the term must be given a reasonable, common sense interpretation in light of all of the circumstances. In many cases, the term "repair," particularly when applied to land as distinguished from structures, may be limited to measures which simply prevent further damage when there is no practical means of doing more.

Obviously, the question of whether the Marin County beach front has been fully repaired is a question of fact which ultimately must be decided by your appeals board based upon the record before it. Based on the information supplied by you and Dr. Roe, the parties seem to agree that the construction of the rock wall to prevent further erosion is about all that can be reasonably done in this situation. In light of this, I would conclude that the property has been fully repaired, for purposes of subdivision (g) of section 170. Accordingly, I conclude that in 1987 the Assessor properly assessed the subject properties at their adjusted base year values.

Very truly yours,



Richard H. Ochsner
Assistant Chief Counsel

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