STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
TELEPHONE (916) 323-7713
FAX (916)323-3387

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.
>
> * * *
>
> "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.
>
> "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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STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

(916) 324-6594

September 5, 1989

Mr. Redacted
Redacted
Redacted

Dear Redacted:

RE: Assessor's Parcel No. 936-300-013-9

This is in response to your recent letter to me in which you asked our opinion concerning your property tax assessment for the 1989-90 assessment year.

The property tax assessment history of the property and other facts as you have described them in written correspondence and telephone conversations are as follows:

Year	Structures	Trees	Land	Total
1978	-0-	-0-	$31,000	$31,000
1979	-0-	-0-	31,620	31,620
1980	$3,528	-0-	32,252	35,780
1981	3,596	-0-	32,896	36,492
1982	3,670	-0-	33,554	37,224
1983	3,706	-0-	33,889	37,595
1984	3,780	$44,100	34,566	82,446
1985	1,433	13,850	35,257	50,540
1986	1,461	14,127	35,962	51,550
1987	1,490	-0-	36,681	38,171
1988	1,519	-0-	37,414	38,993
1989		-0-	89,797	90,297

The foregoing reflects that you acquired the subject property consisting of 5.01 acres of land in Riverside County in September 1977 at a price of $31,000. In 1979, you planted 600 avocado trees and installed irrigation improvements. A base year value for the trees was established in 1984. The reduced tree assessment in 1985 was a result of depressed avocado prices.

The following year the trees were assessed at $14,127 which reflects a two percent increase from the prior year. In each of the next three years, there was a freeze as a result of which 335 trees died. None of the dead trees have been replaced or removed.

For 1989, the Assessor reviewed recent changes in the real estate market in the area of your property and determined that the market value of the entire property was $90,297 of which $89,797 was attributable to land. Mr. Larry Morris of the Assessor's office advised me via telephone that for 1989, frost accounted for only $500 of the decline in tree value. In other words, had there been no frost in 1989, the market value of the property would have been only $500 higher than it would have been had there been no trees on the property. Your concern is whether the 1989 assessment is correct.

The applicable law is found in Revenue and Taxation Code section 51 which provides:

> For purposes of subdivision (b) of Section 2 of Article XIIIA of the California Constitution, for each lien date after the lien date in which the base year value is determined pursuant to Section 110.1, the taxable value of real property shall be the lesser of:
>
> (a) Its base year value, compounded annually since the base year by an inflation factor, which shall be determined as follows:
>
> (1) For any assessment year commencing prior to January 1, 1985, the inflation factor shall be the percentage change in the cost of living, as defined in Section 2212.
>
> (2) For any assessment year commencing after January 1, 1985, the inflation factor shall be the percentage change from December of the prior fiscal year to December of the current fiscal year in the California Consumer Price Index for all items, as determined by the California Department of Industrial Relations; provided, that the percentage increase for any assessment year determined pursuant to paragraph (1) or (2) shall not exceed 2 percent of the prior year's value.
>
> (b) Its full cash value, as defined in Section 110, as of the lien date, taking into account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property, or other factors causing a decline in value.
>
> (c) If the property was damaged or destroyed by disaster, misfortune, or calamity and the board of supervisors of the county in which the property is located has not adopted an ordinance pursuant to Section 170, or removed by voluntary action by the taxpayer, the sum of (1) the lesser of its base year

value of land determined under subdivision (a) or full cash value of land determined pursuant to subdivision (b), plus (2) the lesser of its base year value of improvements determined under subdivision (a) or the full cash value of improvements determined pursuant to subdivision (b), which shall then become the base year value until such property is restored, repaired, or reconstructed or other provisions of law require establishment of a new base year value.

(d) If the property was damaged or destroyed by disaster, misfortune or calamity and the board of supervisors in the county in which the property is locted has adopted an ordinance pursuant to Section 170, its assessed value as computed pursuant to Section 170.

(e) For purposes of subdivisions (a) and (b), "real property" means that appraisal unit which persons in the marketplace commonly buy and sell as a unit, or which are normally valued separately.

(f) Nothing in this section shall be construed to require the assessor to make an annual reappraisal of all assessable property.

Although 335 of your avocado trees were destroyed by disaster, misfortune or calamity (frost), section 51(c) would not apply to determine the taxable value of your property. The reason for that is that in order to be applicable, section 51(c) requires either that the county board of supervisors "has not adopted an ordinance pursuant to section 170" or that the property thus destroyed be "removed by voluntary action of the taxpayer." In this case, the board of supervisors <u>has</u> adopted an ordinance pursuant to section 170 and the dead trees have <u>not</u> been removed by voluntary action of the taxpayer.

Section 51(d), which provides for a computation of assessed value pursuant to section 170, does not apply here because section 170(b) requires the full cash value of land, improvements and personalty immediately before the damage to exceed the full cash value of the land, improvements and personalty immediately after the damage by $500 in full cash value because of the frost.

Since neither section 51(c) nor section 51(e) is applicable, the taxable value must be determined as the lesser of the compounded base year value under section 51(a) or the full cash value (current market value) determined under section 51(b). For this purpose,

section (e) defines "real property" as "that appraisal unit which persons in the marketplace commonly buy and sell as a unit . . . ." Land and improvements would constitute the appraisal unit for purposes of sections 51(a) and 51(b) as that is the appraisal unit commonly brought and sold by persons in the marketplace.

The compounded base year value under section 51(a) would be the sum of the base year value of the structures, trees and land compounded at two percent per year from the date each base year value was established to the present. That figure by my calculation is $91,027. Since the full cash value under section 51(b) is $90,297, that is the amount the Assessor is required to enroll as of March 1, 1989.

Based on the foregoing analysis, we are of the opinion the Assessor has correctly assessed your property for 1989.

As indicated above, however, section 51(c) would be applicable to determine taxable value for future lien dates if the dead trees were removed. In that event, the improvements and land would be treated separately in accordance with section 51(c) and your taxable value could be considerably less.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult the appropriate assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusion stated above.

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

Very truly yours,

Eric F. Eisenlauer
Tax Counsel

EFE:cb/2159D

Enclosure

cc: Hon. Frank C. Seeley
Riverside County Assessor
Mr. John W. Hagerty
Mr. Verne Walton

Argument in Favor of Proposition 8

This past June, the voters of California overwhelmingly passed Proposition 13 (the Jarvis-Gann initiative), thereby significantly reducing a property tax burden that had become increasingly unfair.

The purpose of this measure, Proposition 8, is 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.

Although Proposition 13 rolled back assessments to 1975-76 values, it overlooked the possibility that a person's property might have been damaged to the extent that it has actually *declined* in value since 1976. Proposition 8 on this ballot would allow assessors to further reduce assessments if such damage has, in fact, occurred.

Moreover, some California families have recently been the victims of large-scale disasters, officially recognized as state emergencies. To cite but one example, more than 200 families saw their homes completely destroyed by fire in Santa Barbara in 1977, and other Californians have suffered similarly from extensive floods, mudslides, and earthquakes.

But when these victims of 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 condition that the new structure is comparable in value to the one being replaced.

Again, in keeping with the spirit and intent of Proposition 13, Proposition 8 will allow assessors to *reduce* assessments to reflect substantial damage, destruction or other factors which cause a decline in property value. This will insure equal treatment under the law, and will prevent additional tax burdens from falling on those who have suffered major property losses, damage or property depreciation since 1976.

Please join the undersigned individuals who have worked so very hard to provide property tax relief for *all* Californians, and VOTE YES ON PROPOSITION 8.

OMER L. BAINS
State Senator, 18th District
Chairman, Senate Majority Caucus

PAUL GANN
President, Peoples Advocate
(Co-author of Proposition 13, the Jarvis-Gann Initiative)

PETER BEHR
State Senator, 2nd District
Chairman, Committee on Insurance and Financial Institutions

No argument against Proposition 8 was submitted

Text of Proposed Law

This amendment proposed by Senate Constitutional Amendment No. 67 (Statutes of 1978, Resolution Chapter 76) expressly amends an existing section of the Constitution; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be inserted or added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE XIII A

Section 2 (a) The full cash value means the ~~County Assessors~~ *county assessor's* valuation of real property as shown on the 1975-76 tax bill under "full cash value"; or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has ~~occured~~ *occurred* after the 1975 assessement. All real property not already assessed up to the 1975-76 ~~tax levels~~ *full cash value* may be reassessed to reflect that valuation. *For purposes of this section, the term "newly constructed" shall not include real property which is reconstructed after a disaster, as declared by the Governor, where fair market value of such real property, as reconstructed, is comparable to its fair market value prior to the disaster*.

(b) The ~~fair market~~ *full cash* value base may reflect from year to year the inflationary rate not to exceed ~~two~~ *2* percent ~~(2%)~~ for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, *or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value.*

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 1799, SACRAMENTO, CALIFORNIA 95808)

(916) 445-4982

November 30, 1979

No. 79/207

TO COUNTY ASSESSORS:

REVISIONS IN CALAMITY AND DISASTER RELIEF
ASSESSMENT PROCEDURES IN LIGHT OF ASSEMBLY BILLS 1488 AND 1019

Assembly Bill 1488, Chapter 242 of the 1979 Statutes, repealed the following Revenue and Taxation Code sections:

(1) Section 155.1, Assessment of Damaged or Destroyed Property in Disaster Areas

(2) Section 155.13, Reassessment of Possessory Interest in Property Damaged by Misfortune or Calamity

(3) Section 155.14, Reassessment of Possessory Interest in Property Damaged by Misfortune or Calamity

It also added a new comprehensive Chapter 2.5, Disaster Relief, to Part 1, Division 1 of the Revenue and Taxation Code commencing with Section 170. Assembly Bill 1019, Chapter 1161 of the 1979 Statutes, amended Section 170. The amended section retains most of the essential elements of the earlier law, while addressing itself to valuation of damaged property within the guidelines of Article XIII A. Notable provisions in current law include:

(1) County boards of supervisors are authorized to enact ordinances granting tax relief through reduction in current year assessments for real property, personal property, and/or possessory interest property which has sustained qualifying damage through misfortune or calamity. However, a county may not enact such ordinance for possessory interest property unless it also enacts an ordinance covering property generally.

Any ordinance in effect pursuant to Sections 155.1, 155.13, or 155.14 remains in effect to its terms as if such ordinance was adopted pursuant to and subject to the limitations of the new section.

Any ordinance may specify the time limit in which a property owner may file an application for relief; or if no time is specified in the ordinance, the statute limit is 60 days from the time of damage. If no application is filed but the assessor determines a property has suffered qualifying damage or loss due to a misfortune or calamity, he shall provide an application for reassessment to the last known

property owner. The property owner has 30 days from the assessor's notice in which to file the application.

(2) The definition of qualifying damage is: Any physical damage to land, structures, fixtures or personal property; loss of access; and/or loss of the right to exercise a possessory interest when the right has been suspended by appropriate authority because of a calamity such as drought or fire danger, etc., or any combination of the above whose total value is $5,000 or more full cash value as measured at the time of the damage or loss. This is a change from former law which placed $5,000 as the minimum qualifying damage except in areas declared disaster areas by the Governor; in which case, minimum qualifying damage was $1,000.

(3) Upon receipt of an application, the assessor must verify damage or loss by reappraising, separately, the land, the improvements, and the personal property. If the total value loss is $5,000 or more, the assessor shall determine the percentage of loss to each classification of property and the ratio of damage to undamaged fair market value. The current taxable value shall be adjusted by the same percentage and ratio.

However, the adjustment shall not exceed actual loss. After reappraisal, the assessor shall notify the property owner of the new value and advise him/her that he/she has 14 days from the mailing of the notice in which to appeal the new assessment to the local assessment appeals board. If the assessment is appealed, the board must decide value on the evidence presented. The revised assessment is forwarded to the auditor who enters it on the roll and recomputes the tax liability for the current year based on the tax rate applicable at the time of the damage. The assessee shall be liable for the sum of (1) a prorated portion of the tax due on the property for the fiscal year of the misfortune had the loss not occurred, such proration to be determined on the number of months before the misfortune, plus (2) a prorated portion of the tax due on the property as reassessed based on the number of months the property was in a damaged condition including the month in which misfortune occurred.

If the damage or destruction occurred after March 1 and before the beginning of the next fiscal year, the reassessment shall be utilized to determine the tax liability for the next fiscal year. Provided, however, if the property is fully restored during the next fiscal year, taxes due for that year shall be prorated based on the number of months in the year before and after completion of the restoration.

(4) On the lien date next following the date of the misfortune or calamity, the property shall be reassessed in the same manner as prescribed for other assessable property. Board Rule 461 and Revenue and Taxation Code Section 51(c) apply. If any

portion of the land or improvement is destroyed completely (physically removed from the site), the taxable value of the removed portion shall be deducted from the property's prior year taxable value, i.e., factored base year value, prior to the new assessment.

The value determined under Revenue and Taxation Code Section 51 would then be the sum of (1) the lesser of the base year land value of the remaining land appropriately factored or the current fair market value of the remaining improvement appropriately factored or the current fair market value of the remaining improvement.

When no portion of the land or improvement is actually removed but damage has occurred, the application of Revenue and Taxation Code Section 51(c) can lead to an increase in assessment over that which has been applied in the balance of the year in which the calamity occurred, even though no repairs have been made. This situation can occur, for example, when the market value of a damaged improvement is still higher than the factored base year value of the undamaged improvement.

(5) Chapter 3, New Construction, of the Revenue and Taxation Code also speaks to the issue of damaged property. Section 70(c) says:

> "Where real property has been damaged or destroyed by misfortune or calamity, 'Newly Constructed' and 'New Construction' does not mean any timely reconstruction of the real property, or portion thereof, where the property after reconstruction is substantially equivalent to the property prior to damage or destruction. Any reconstruction of real property, or portion thereof, which is not substantially equivalent to the damaged or destroyed portion, shall be deemed to be new construction and only that portion which exceeds substantially equivalent reconstruction shall have a new base year value determined pursuant to Section 110.1 of the Revenue and Taxation Code."

In accordance with Board Rule 463, Newly Constructed Property, new construction is deemed not to have occurred if (a) the full value of the reconstructed property is substantially equivalent to its full value prior to the disaster, or (b) the property is reconstructed in a timely manner and is substantially equivalent in size, use, and quality to the property that existed prior to the disaster.

Examples of Calamity Procedures

EXAMPLE 1: Assume the county has a calamity ordinance under Chapter 2.5, Section 170 of the Revenue and Taxation Code. The subject property is a residence located in an expensive neighborhood and on a hillside. Recent rains have been heavy. In November 1979,

a mud slide occurs which (1) destroys the structure and (2) damages the site by depositing dirt upon it. Further assume (1) the property has a 1975 base year, (2) the tax rate for the current tax year is 1 percent of taxable value, and (3) the property is not restored by the following March 1, lien date.

(A) Current Year Taxable Value:

Land	$83,200	
(1975 base value) x 1.0824 (1979 factor)		$ 90,000
Improvement	$249,500	
(1975 base value) x 1.0824 (1979 factor)		270,000
Total		$360,000
Tax Rate		x .01
Current year tax liability		$ 3,600

(b) Fair Market Value Before the Calamity:

Land	$120,000
Improvement	300,000
Total	$420,000

(C) Fair Market Value After the Calamity:

Land	$90,000	
($120,000 less $30,000 to remove burden and regrade)		
Improvement	0	
Total	$90,000	
Percent of land value remaining		$\frac{\$\ 90,000}{\$120,000}$ = 75%
Percent of improvement value remaining		$\frac{-0-}{\$300,000}$ = 0%

(D) Computation for Tax Liability of Property in Damaged Condition:

Land	.75 x $90,000	$ 67,500
Improvement	.00 x $270,000	0
Total		$ 67,500
Tax rate		x .01
Tax liability for damaged property		$ 675

(E) Calamity Relief Tax Liability Proration:

4 (months undamaged) / 12 (months in year)	x $3,600	$ 1,200
8 (months damaged) / 12 (months in year)	x $675	450
		$ 1,650

(F) Taxable Value on March 1, 1980:

Land (The lesser of $91,857 ($83,200 x 1.04) and $90,000 market value)	$90,000
Improvement	0
Total	$90,000
Tax rate	x .01
Tax liability	$ 900

EXAMPLE 2: Assume the property above is restored to the substantial equivalent in September of 1980. The lot has been cleared and a duplicate house has been built on the site. However, the owner has added a detached garage that did not previously exist. The assessor determines that such a garage adds $25,000 to the value of the property. The 1981-82 tax liability would be computed as follows:

Land	$83,200 x 1.126	$ 93,683.00
Replacement Improvements	$249,500 x 1.126	280,937.00
New garage		25,000.00
Taxable value		$399,620.00
Tax rate		x .01
Tax liability 1981-82		$ 3,996.20

If the destroyed home had been replaced with a new home that was larger than the previous version so that the new home did not meet the tests of substantial equivalency contained in Rule 463, the full value of the newly constructed portion, i.e., the market value of the additional living area, would be added to the 1981-82 assessment in the same manner as the value attributable to the new garage.

EXAMPLE 3: Assume the calamity described in Example 1 takes place on April 15, 1980, the restoration as described in Example 2 is completed by December 15, 1980, and the market values before and after the calamity are the as in Example 1.

(A) Tax Relief Proration for 1979-80 year:

9 (months undamaged) / 12 (months in year)	x $3,600	$2,700
3 (months damaged) / 12 (months in year)	x 675	169
Total		$2,869

(B) Initial Taxable Value for 1980-81:

Land	$67,500
Improvement ($270,000 x .00)	0

(C) Taxable value for 1980-81 After Restoration:

Land	$ 91,857 ($83,200 x 1.104)
Restored Improvement	275,448 ($249,500 x 1.104)
Total	$367,305*

(D) Determination of 1980-81 Tax Liability:

6 (months damaged) / 12 (months in year)	x $ 675	$ 337
6 (months restored) / 12 (months in year)	x $3,673*	1,837
		$2,174

* The $25,000 garage, as new construction, cannot be enrolled until the following lien date.

If you have any questions regarding calamity valuation procedures, please contact John McCoy or Don Ide of our staff; phone number (916) 445-4982.

Sincerely,

Verne Walton, Chief
Assessment Standards Division

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