

610.0004 **Builders Exclusion.** There is no conflict between Revenue and Taxation Code section 75.12, which excludes individuals from paying supplemental assessments if all the requirements of that section are met, and Revenue and Taxation Code section 71, which requires assessment of construction in progress on the lien date. Section 75.12 relates to supplemental assessments, i.e., assessments made in the interim period between one lien date and the lien date in the subsequent year, and section 71 relates to assessments on the regular roll on the lien date. C 2/18/97. (M99-1)



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Executive Director

February 18, 1997

General Counsel
Home Builders Association of Northern California
P.O. Box 5160
San Ramon, CA 94583

Re: Revenue and Taxation Code section 75.12¹

Dear :

This is in response to your facsimile to Larry Augusta, Assistant Chief Counsel, State Board of Equalization, dated November 18, 1996. You included a copy of a letter sent by you to Gus Kramer, Contra Costa County Assessor, dated November 12, 1996; attached to that letter was a document issued by the Contra Costa County Assessor entitled "Builder's Exclusion". You inquire as to whether there is a conflict between section 75.12 (the section providing for the Builder's Exclusion) and section 71 with regard to the assessment of new construction in progress.

You have underlined the following portions set forth on the Contra Costa County document "Builder's Exclusion":

Many business people in the construction industry are unaware that under Section 75.12 of the Revenue and Taxation Code they can be legally **exempted** from payment of supplemental tax bills resulting from the completion of new construction, simply by requesting a "Builder's Exclusion." (Emphasis in original.)

* * *

Builders should be aware that after the exclusion is granted[,] they are still responsible for payment of supplemental tax bills based upon the purchase of land for development, and for payment of annual secured tax bills based

¹ All statutory references are to the Revenue and Taxation Code unless otherwise specified.

on the value of land and new construction complete or incomplete on March 1 of each year.²

Briefly, our answer is - no, there is no inconsistency between the law and the Contra Costa County document. Section 71 relates to assessment on the regular roll on the lien date; section 75.12 relates to supplemental assessments, i.e., assessments made in the interim period between one lien date and the lien date in the subsequent year.

Law and Analysis

California Constitution, article XIII A (widely known as Proposition 13) provides that property is assessed pursuant to its base year value. Section 50, one of the statutes implementing the constitutional provision, provides:

For purposes of base year values as determined by Section 110.1, values determined for property which is purchased or changes ownership after the 1975 lien date shall be entered on the roll for the lien date next succeeding the date of the purchase or change in ownership. Values determined after the 1975 lien date for property which is newly constructed shall be entered on the roll for the lien date next succeeding the date of completion of the new construction. The value of new construction in progress on the lien date shall be entered on the roll as of the lien date. (Emphasis added.)

Thus, as emphasized above, section 50 provides that new construction in progress is valued and assessed on the lien date. The Contra Costa County document quoted above, which refers to "new construction complete or incomplete on March 1 [the lien date] of each year" is consistent with this statute.

Section 71 is more specific than section 50 as to new construction in progress; it provides in part:

... New construction in progress on the lien date shall be appraised at its full value on such date and each lien date thereafter until the date of completion, at which time the entire portion of property which is newly constructed shall be reappraised at its full value.

The source of perplexity may be that the Builder's Exclusion applies to supplemental assessments and not to annual lien date or regular roll assessments. Supplemental assessments are made in the interim period between lien dates. The laws related to supplemental assessment provide for reassessment when there is change in ownership or completion of new construction

²Effective January 1, 1997, the lien date is January 1, 1997, not March 1. This document will no doubt be revised to substitute January 1 for March 1.

in the interim period between lien dates.³ The legislative intent of the statutes pertaining to supplemental assessments is "to promote increased equity resulting from changes in assessed value due to changes in ownership and completion of new construction at the time they occur." See section 75. Section 75.12, the Builder's Exclusion, exempts from supplemental assessment the new construction completed by individuals who meet certain criteria set forth in the statute. Again, please note that the lien date changed from March 1 to January 1 effective January 1, 1997. Section 75.12 now in effect provides for a January 1 lien date; except for that change, it is the same as the prior version of section 75.12. Section 75.12 now in effect provides:

(a) For the purposes of this chapter, new construction shall be deemed completed on the earliest of the following dates:

(1) The date upon which the new construction is available for use by the owner, unless the owner does not intend to occupy or use the property. The owner shall notify the assessor prior to, or within 30 days of, the date of commencement of construction that he or she does not intend to occupy or use the property. If the owner does not notify the assessor as provided in this subdivision, the date shall be conclusively presumed to be the date of completion.

(2) If the owner does not intend to occupy or use the property, the date the property is occupied or used with the owner's consent.

(3) If the property cannot be functionally used or occupied on the date it is available for use considering the type of property and any special facts and circumstances affecting use or occupancy, the date the property can be functionally used or occupied.

(b) For the purposes of this section:

(1) "Occupy or use" means the occupancy or use by the owner, including the rental or lease of the property, except as provided in paragraph (2).

(2) Property shall not be considered occupied or used by the owner or with the owner's consent if the occupancy or use is incidental to an offer for a change of ownership, including, but not limited to, use of the property as a model home.

(c) The board, after consultation with the California Assessors Association, shall adopt rules and regulations defining the date of

³ Section 75.11 provides for two time frames related to the issuance of supplemental assessments: from the lien date to May 31 and from June 1 to the (next) lien date. (A change in lien dates is reflected in a new section 75.11, effective January 1, 1997.) If the Builder's Exclusion is approved for any particular parcel, the distinction between these two time periods is not relevant.

completion of new construction in accordance with this section. The rules and regulations shall not define the date of completion in a manner that the date of completion of all new construction is postponed until the following lien date.

(d) Nothing in this section shall preclude the reassessment of that property on the assessment roll for January 1 following the date of completion.

(e) The owner of any property who notifies the assessor pursuant to subdivision (a) that he or she does not intend to occupy or use the property shall notify the assessor within 45 days of the earliest date that any of the following occur:

(1) The property changes ownership pursuant to an unrecorded contract of sale.

(2) The property is leased or rented.

(3) The property is occupied or used by the owner for any purpose other than provided in subdivision (b).

(4) The property is occupied or used with the owner's consent for any purpose other than provided in subdivision (b).

(f) The failure to provide the assessor the notice required by subdivision (e), whether requested or not, shall result in a penalty in the amount specified in Section 482.

You have cited the case of *Shafer v. State Board of Equalization* (1985) 174 Cal.App.3d 423. As you quote in your letter, section 75.12 applies to supplemental assessments, i.e., reassessments made in the interim period between lien dates.⁴ The Contra Costa County document is consistent with this case. Supplemental assessments are distinguished from lien date or regular roll assessments which are provided for in section 50 and section 71, cited above.

Conclusion

The Builder's Exclusion, set forth in section 75.12, excludes individuals from paying supplemental assessments if all requirements of that section are met. On the annual lien date (previously March 1; effective January 1, 1997, January 1), completed new construction and incomplete construction in progress is assessed at full value pursuant to section 50 and section 71.

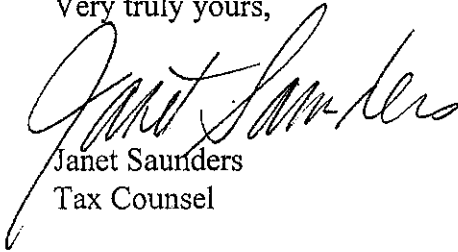
⁴See Property Tax Rule 463.5 (Title 18, California Code of Regulations) for a further explanation of section 75.12.

February 18, 1997

The views expressed in this letter are, of course, only advisory in nature. They are not binding upon the assessor 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 goal are appreciated.

Very truly yours,



Janet Saunders
Tax Counsel

JS:jd

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cc: The Honorable Gus Kramer
Contra Costa County Assessor

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

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