



STATE BOARD OF EQUALIZATION

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No. 93/05

TO COUNTY ASSESSORS:

PROPOSITION 110
NEW CONSTRUCTION EXCLUSION FOR DISABLED RESIDENTS

Proposition 110, approved by the voters on June 5, 1990, authorized the Legislature to extend existing base year value transfer provisions available to persons over the age of 55 years to severely disabled persons. Proposition 110 also authorized the Legislature to exclude from the term "newly constructed" certain construction, installation, or modification if made for the purpose of making a dwelling more accessible to a severely disabled person.

The exclusion for the new construction portion of Proposition 110 added paragraph (3) to Section 2(c) of Article XIII A of the California Constitution. It provides that for purposes of subdivision (a), the Legislature may provide that the term "newly constructed" shall not include:

"The construction, installation, or modification on or after the effective date of this paragraph of any portion or structural component of a single or multiple family dwelling which is eligible for the homeowner's exemption if the construction, installation, or modification is for the purpose of making the dwelling more accessible to severely disabled person."

To implement this exclusion, the Legislature added Section 74.3 to the Revenue and Taxation Code (Chapter 1494, Statutes of 1990, Assembly Bill 3438, Cannella, effective September 30, 1990). This letter clarifies our position on the type of improvements eligible for the exclusion under Section 74.3.

Section 74.3(a) of the Revenue and Taxation Code reads, in pertinent part:

". . . 'newly constructed' does not include the construction, installation, or modification of any portion or structural component of an existing single- or multiple-family dwelling which is eligible for the homeowner's exemption as described in Section 218, if the construction, installation, or modification is for the purpose of making the dwelling more accessible to a severely and permanently disabled person who is a permanent resident of the dwelling."

Subdivision (c) of Section 74.3 defines "accessible" as "that combination of elements with regard to any dwelling which provides for access to, circulation throughout, and the full use of, the dwelling and any fixture, facility, or item therein."

Subdivision (a) of Section 74.3 can be interpreted to mean that the new construction exclusion applies only to making a dwelling's existing fixtures, facilities, or items in the home more accessible to a disabled person, but does not apply to the construction of completely new additions. According to the bill's author, the Legislature did not intend to preclude the exclusion from applying to the construction of new additions. In fact, when presenting the bill in Legislative hearings, the bill's author used the scenario of the construction of certain new additions in demonstrating the impact of the proposed legislation. Specifically, the example of qualifying improvements used in discussions was the construction of an additional bathroom or bedroom if other bathrooms or bedrooms located in the home were for some reason inaccessible to the disabled resident.

Subdivision (b), in part, defines making a dwelling more accessible by providing for the "full use" of the dwelling. An argument can be made that if any portion of the home is inaccessible by a disabled resident, then the construction of an addition which is accessible to the disabled resident falls into the category of providing for the full use of the dwelling.

Based upon discussion with the bill's author and the definition of "accessible" as providing for the full use of a dwelling, we believe the new construction exclusion of Section 74.3 can be applied where entirely new additions (such as a bedroom and bathroom) are constructed to allow the disabled resident to replace the use of certain portions of the home to which they did not have prior access. Consequently, we believe that Section 74.3 excludes from the definition of new construction the construction of completely new additions as well as the modification of existing fixtures, facilities, or items in the home.

Subdivision (d) of Section 74.3 reads:

"The exclusion provided by this section shall apply only to those improvements or features that specially adapt a dwelling accessibility by a severely and permanently disabled person. The value of any improvement, addition, or modification excluded pursuant to this section shall not include any other functional improvement, addition, or modification to the property unless it is merely incidental to the qualified improvements or features."

It is within the judgment of the appraiser inspecting additions or modifications for which a claim under Section 74.3 is made to establish that the new construction was in fact made for the purpose of making the dwelling more accessible to a disabled resident. Any new construction which is not merely incidental to the qualified improvements is assessable.

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In the enclosed examples, we provide our opinion as to whether certain modifications undertaken for the purpose of accommodating a disabled resident of the home qualify for the exclusion from new construction under Section 74.3. If you have any questions concerning the new construction exclusion provided by Section 74.3, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,



Verne Walton, Chief
Assessment Standards Division

VW:sk
Enclosure

DISABLED RESIDENT NEW CONSTRUCTION EXCLUSION

(Revenue and Taxation Code Section 74.3)

Qualifying New Construction

Additions as replacements for existing rooms in the home to allow the disabled resident full use of the home.

Modification of existing rooms to allow the disabled resident full use of the home.

A conversion or remodel of existing rooms to allow the disabled resident full use of the home.

Special features added to existing fixtures, facilities, or items in the home to allow the disabled resident full use of the home.

Customization of existing fixtures, facilities, or items in the home to allow the disabled resident full use of the home.

Non-Qualifying New Construction

Additions not primarily constructed to provide accessibility for a disabled person.

Additions for rooms which did not previously exist in the home (i.e., family room, dining room, recreation room, utility room, or garage).

Swimming pools, spas, or saunas.

In the following examples, we provide our opinion as to whether certain modifications undertaken for the purpose of accommodating a disabled resident of the home qualifies for the exclusion from new construction under Section 74.3

Example 1:

Kitchen remodeled to accommodate a disabled resident in a wheelchair (new cabinets, lower kitchen counter top, new kitchen appliances, remove kitchen island).

° Qualifies

Example 2:

Interior remodeled, e.g., enlarged doorways, ramps, to accommodate wheelchair access.

° Qualifies

Example 3:

Addition of ramps, handrails, ingress and egress improvements, elevated stair lifts, and elevators either within or attached to the existing dwelling.

° Qualifies

Example 4:

Conversion of an existing family room into a bed and bath for a disabled person.

° Qualifies

Example 5:

Garage conversion into bedroom and bathroom for a disabled person.

° Qualifies

Example 6:

Conversion of an existing family room to a bedroom and the construction of a bathroom addition to the home for a disabled person.

° Qualifies

Example 7:

Room additions of a bedroom and bathroom for a disabled person.

° Qualifies

Example 8:

Existing garage and utility room inaccessible to a disabled resident; new garage and utility room was built which is accessible to the disabled resident.

° Qualifies

Example 9:

Construction of entirely new dwelling

° Does not qualify. See Section 74.3(e).
However, the added value of any features in the home which specially adapt the home for use by a disabled person (e.g., wider doorways, enlarged bathroom facilities, rails, ramps) would be excluded from new construction.

Example 10:

Pool or spa added under physician's orders.

- ° Does not qualify.
However, any special features or customization necessary in the pool or spa to accommodate the disabled resident are not assessable.

Example 11:

Living room enlarged, however, the additional space was not for the purpose of accommodating the disabled resident.

- ° Does not qualify. See Section 74.3(d).

Example 12:

Family room added to a home which did not previously have one.

- ° Does not qualify. See Section 74.3(d).