



STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
TELEPHONE 916-322-3682 • FAX 916-323-3387
www.boe.ca.gov

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Executive Director

December 3, 2009

Re: *Opinion Request – Disabled Person Accessibility Exclusion (Section 74.3)*
Assignment No.: 09-109

Dear Ms. _____ :

This letter is in response to your June 29, 2009, letter to Assistant Chief Counsel, Randy Ferris, and your subsequent letter to Tax Counsel _____ dated September 8, 2009, regarding the application of section 74.3 of the Revenue and Taxation Code¹ to exclude from reassessment construction made to a property to make it handicapped accessible.² You have filed an assessment appeal regarding this issue, and consistent with our policy we have discussed your matter with the _____ County Assessor (assessor) staff. For the reasons discussed below, we conclude that it would be reasonable for the assessment appeals board (AAB) to conclude that only certain portions of the new construction are eligible for exclusion from reassessment under section 74.3. If you believe that all of the new construction should be excluded under section 74.3, then we recommend that you provide additional evidence consistent with our analysis below.

Factual Background

Our understanding of the facts was developed from your submissions³ and information obtained from the assessor. You acquired a "cabin" located at _____ Lane, _____, CA (APN _____) (property or home) in 1991 as a secondary home. At the time, your principal residence was a home you owned in _____, in _____ County. The original cabin was 480 square feet, with a 5' x 7' bathroom and an open area with cooking facilities. The assessor classified the property as a "recreational cabin."

As a result of an injury accident you became permanently and severely disabled, within the meaning of section 74.3, subdivision (b)⁴, on December 1, 1996. In 2005 you were

¹ The current version of this statutory section is enclosed, per your request. All section references are to the Revenue and Taxation Code unless otherwise indicated.

² You have also sent us a separate opinion request on November 24, 2009 regarding various procedural matters for your upcoming hearing. That request will be answered in a separate letter.

³ Quoted references to factual statements and descriptions are from your submissions.

⁴ Section 74.3, subdivision (b) defines "a severely and permanently disabled person" as:

diagnosed with macular degeneration and underwent surgery in both eyes. As a result of your reduced vision you require additional equipment for reading, including a "CCTV" that requires 30 inches of space on a table next to your desk, a large screen monitor, and other equipment that takes up additional space on your desktop. You currently use a walker, and in the future expect to be using a wheel chair on a full-time basis. You also expect to require "assisted living" and/or "full time assistance" in the future, and state the original design for the constructed property would accommodate a full-time care provider living with you.

You also state that one of your sons also became handicapped in 1989, and that he would also qualify as "severely and permanently disabled" under section 74.3, subdivision (b). You state that your son has several conditions which require his current use of a "Hoyer lift," breathing machine, and "hospital equipment," and future use of a wheel chair. Furthermore, both you and your son have skin conditions that require you to avoid sun exposure. This son now lives with you on the property.

Also in 2005, you sold your home in _____ and became a permanent resident of _____ as of December 20, 2005. You temporarily resided at the home of one of your adult children until the first phase of construction was complete, at which time you moved into the property. The assessor granted a homeowner's exemption for the property in 2006.

A "preconstruction residence" permit was issued on November 14, 2005 to alter the cabin into a residence that would be wheelchair accessible and allow for a full-time care provider. A revised permit was issued on December 21, 2005. We assume that the work performed under these two permits is what you describe as the "first phase," and was comprised of incorporating the four original walls and the original 480 square foot area into the current "fully functional" kitchen and eating area, as well as the addition of approximately⁵ 1,480 square feet for a 480 square foot living room, a combination bedroom/bathroom and a "study," each of which is somewhat less than 500 square feet, and a porch. Your correspondence also mentions "patio and porch coverings" for sun protection, but it is unclear what these consist of and to what extent these were new or modifications of the original structure. We assume that the work performed under these permits was completed as of November 26, 2006, and is the subject of your current assessment appeal.⁶ (For convenience, we will sometimes refer to the work that is the subject of your appeal as the "new construction.")

An appraiser from the assessor's office inspected the property on January 23, 2008, at which point the first phase was complete, and the second phase was underway. There has been

any person who has a physical disability or impairment, whether from birth or by reason of accident or disease, that results in a functional limitation as to employment or substantially limits one or more major life activities of that person, and that has been diagnosed as permanently affecting the person's ability to function, including, but not limited to, any disability or impairment that affects sight, speech, hearing, or the use of any limbs.

Our opinion assumes that you meet this criteria, and that you have not asked for our opinion as to whether you do in fact meet these criteria. If you do not, then I believe that you understand that you would not qualify for this exclusion from reassessment.

⁵ We were provided some plan details by the assessor's office, however, all measurements stated are approximate, and are assumed for the purposes of this analysis only.

⁶ In August 2007, you obtained another permit for the "second and final phase," to provide accessibility and "facilities for cooking, laundry, bedrooms and baths." The construction undertaken pursuant to all of the permits, added two bedrooms, two bathrooms, laundry area and study for a total of 2,754 square feet. The second phase of work was completed as of May 27, 2009, and is not being considered in this appeal.

no subsequent inspection of the house by the assessor, although attempts have been made by the assessor (a "field check" on July 22, 2009) and by you to schedule it. We were provided with some exterior photographs and rough floor plan sketches, but no pictures or detailed plans of the interior of the property.

Your assessment appeal hearing was originally scheduled for February 29, 2009, and has been continued to January 13, 2010. On June 25, 2009, you submitted a claim to exclude all of the construction under appeal from reassessment by filing forms BOE-63 and BOE-63-A, including the statements required under section 74.3, subdivision (f), with the assessor.⁷ While it appears that you and the assessor have several issues related to this appeal, and you have obtained the advice of the Board of Equalization's County-Assessed Properties Division regarding other issues related to this appeal, it is our understanding that the AAB wishes to consider the opinion of the Board of Equalization's Legal Department as to the eligibility of the new construction for the section 74.3 exclusion. We will therefore limit our discussion and analysis in this letter to that issue.⁸

Legal Background

A reassessment of property occurs upon the date of a change in ownership or the date of completion of new construction. (Cal. Const. art. XIII A, § 2; see also Rev. & Tax. Code, §§ 60 and 70 et seq.) California Constitution article XIII A, section 2, subdivision (a) provides in relevant part that full cash value means the appraised value of real property as shown on the 1975-76 tax bill or "the appraised value of real property when purchased, newly constructed or a change in ownership has occurred after the 1975 assessment." Section 70, subdivision (a) defines "newly constructed" and "new construction" as:

- (1) Any addition to real property, whether land or improvements (including fixtures), since the last lien date; and
- (2) Any alteration of land or of any improvement (including fixtures) since the last lien date that constitutes a major rehabilitation thereof or that converts the property to a different use.

Subdivision (b) of section 70 provides that "Any rehabilitation, renovation, or modernization that converts an improvement to the substantial equivalent of a new improvement is a major rehabilitation of that improvement." In other words, not all improvements fall within the definition of "new construction." If, however, the improvement constitutes "new construction" as defined in section 70, then section 71 provides that:

The assessor shall determine the new base year value for the portion of any taxable real property which has been newly constructed. The base year value of the remainder of the property assessed, which did not undergo new construction, shall not be changed.

⁷ We assume that these documents would be considered sufficient and timely.

⁸ There are certain threshold requirements that you must meet in order for the section 74.3 exclusion to apply. Although you will need to establish that you meet these requirements, for the purposes of this letter, we will assume that you and your son are permanent residents of the cabin, that you and your son meet the definition of severely and permanently disabled persons, and that the property qualifies for the homeowner's exemption.

Furthermore, new construction in progress on the January 1 lien date is 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 that is newly constructed is reappraised at its full value. (Rev. & Tax. Code, § 71.) Therefore, when real property, or a portion thereof, is newly constructed after the 1975 lien date, the assessor is required to ascertain the full value of such newly constructed property as of the date of completion. (Property Tax Rule 463, subd. (a).)

Proposition 110 was passed by the voters on June 5, 1990, and the Legislature added section 74.3 to the Revenue and Taxation Code to implement Proposition 110. Section 74.3, subdivision (a) excludes from the term "newly constructed" the "construction, installation, or modification" of "any portion or structural component" to make an existing dwelling that is eligible for the homeowner's exemption more accessible to a severely and permanently disabled person who is a permanent resident of the dwelling. "Accessible" is defined to mean the combination of elements with regard to any dwelling that provides for access to, circulation throughout, and the full use of the dwelling and any fixture, facility, or item therein. (Rev. & Tax. Code, § 74.3, subd. (c).) Specifically, section 74.3, subdivision (c) provides that:

The construction of an entirely new addition, such as a bedroom or bath, that duplicates existing facilities in the dwelling that are not otherwise available to the disabled resident solely because of his or her disability, shall be deemed to make the dwelling more accessible within the meaning and for the purposes of this section.

The exclusion only applies to improvements or features that make a dwelling more accessible to a disabled resident. Any other improvement, addition, or modification is not eligible for the exclusion unless it is merely incidental to the qualified improvements or features. (Rev. & Tax. Code, § 74.3, subd. (d).) Furthermore, the exclusion does not apply to the construction of an entirely new dwelling. (Rev. & Tax. Code, § 74.3, subd. (e).)

We have previously advised that the exclusion can be applied to new additions that replace the use of "portions" of the home to which the disabled person did not have prior access.⁹ Thus, it is not required that a new addition necessarily correspond to a specific existing inaccessible room. The new addition need only provide access to a "facility" or "portion" of the existing dwelling. This point is illustrated in the response to question 23 on the Board's webpage containing Frequently Asked Questions about New Construction¹⁰:

23. My husband has recently become wheelchair-bound. We own a home with one small bathroom and no family room. In addition to installing a ramp, we would like to add a usable bathroom for him and a family room since the living room is very small and it is difficult for him to get around in it. Would both of these additions be excluded from new construction assessment under the disabled persons' accessibility exclusion?

⁹ "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." (Letter to Assessors 93/05 (1/21/1993).)

¹⁰ <http://www.boe.ca.gov/proptaxes/faqs/newconstruction.html>.

The bathroom addition would clearly be within the disabled persons' accessibility exclusion. Any new additions may duplicate existing facilities if it makes a homeowner's dwelling more accessible to the physically disabled by providing for the "full use" of the dwelling. Although the addition of a family room does not duplicate an existing room, if the existing living room has limited space that makes it difficult for the disabled person to get around, the addition of a family room would essentially be a duplicate living room necessary to make the dwelling more accessible, and, thus, could be excluded from new construction. It is within the judgment of the appraiser who is inspecting the additions or modifications, however, to determine whether the new construction was, in fact, made with the intent to make the dwelling more accessible to a disabled resident.

However, new additions that do not meet these criteria are not eligible for the exclusion. For example, we have advised that the exclusion does not apply to the enlargement of a living room where the additional space is not for the purpose of accommodating the disabled resident, or to the addition of a family room to a home which previously did not have one. In other words, if an addition or any other new construction does not "specially adapt a dwelling accessibility by a severely and permanently disabled person," or is not "merely incidental to qualified improvements," it is not eligible for the exclusion. (Rev. & Tax. Code, 74.3, subd. (d).)

You stated that when designing the new construction, you consulted federal, state and local laws, regulations, and guidelines to determine the size of the rooms and the accessibility features, some of which you mention in your correspondence. Specifically, you state the following in your letter dated June 29, 2009 (emphasis in original deleted):

The Americans with Disabilities Act (1990) Accessibility Guidelines and the California Building Codes relating to Housing Accessibility for the disabled were the references for the rooms to be constructed based on my need for wheelchair accessibility.

In reviewing the American with Disabilities Act requirements and the California Building Codes for handicapped accessibility, I noted that the minimum requirements are usually two to two and a half times the average public access. My home was designed with the same considerations. The total square footage today is 2754 square feet which by the same standards provided in public buildings under ADA requirements equates to approximately 1377 square foot in a normal residence. The total square foot of my home is not excessive by ADA comparisons or California Building Code for handicapped accesses allocated for public spaces. It still takes an area of five feet just to turn around in a wheelchair whether you are at home or in a public facility.

You further explain that:

It was my original intention to just add bedrooms, baths and study, however, County Guidelines for Single-Family Residential Construction, requires the main room (living room) to be no less than 10' x

12'. Based on that requirement I doubled the size of the room to 20' x 24' (per ADA Accessibility Guidelines and CA Building Code requirements for handicapped accessibility as stated above) to allow for the wheelchair access and to accommodate a Hoyer Lift and other medical equipment that will be needed in the near future. All doorways exceed 36 inches, six doorways that are 72 inches wide within these three rooms to allow for "access to, circulation throughout, and the full use of, the dwelling, and any fixture, facility, or item therein (CA Codes 74.3c)".

Also, in your September 8, 2009 letter you also state that "The placement of furniture in each room allows for the 60 inch wheel chair turnaround space required by ADA guidelines and California Building Codes for handicapped accessibility."

Analysis

As described above, it is our understanding that you modified a one room, one bathroom cabin to a one bedroom, one bath home with a full kitchen, living room, and a study.¹¹ In our opinion, it appears reasonable to conclude that the cabin's original open area served the functions of a kitchen, eating area, living room, bedroom, and study area, and that the original cabin was almost or totally inaccessible to a disabled person within the meaning of section 74.3. Our analysis incorporates this as an assumption. Our analysis focuses on the extent to which each modification to the original cabin floor area and each addition of new rooms would "duplicate the existing facilities" of the original cabin within the meaning of section 74.3, and therefore qualify for the exclusion.

Before we discuss each room individually, we note that we have briefly reviewed for guidance documents that discuss federal and state accessibility requirements.¹² We have not been able to identify a general "rule of thumb" that recommends doubling standard spaces or spacing, as you suggest in your letters. Rather, it appears that there are specific formulas and guidelines that apply to each space and function to be made accessible. Most relevantly, we have not identified any specific directive as to the meaning of "double the size of the room" that you explain was your basis for designing the living room, and note that when you "double" the linear dimensions of a room, you quadruple the resulting square footage. It also appears that some of the dimensions that you have incorporated into the design exceed ADA minimums. We strongly suggest that you present to the assessor and the AAB the specific standards and guidelines that support each element of the design of your new construction, and be prepared to explain how the minimum guidelines and standards are implemented in the resulting new construction you seek to have excluded from reassessment, as well as how any additional space above the minimum is necessary to accommodate your home's disabled residents. Also, we understand that the assessor has been attempting to conduct another inspection of the property prior to the hearing. We are of the opinion that such information is valuable in assisting in the resolution of fact-based determinations such as this one, and encourage both you and the assessor to make every effort to have this inspection performed as soon as possible.

¹¹ As noted above, you later added another bedroom and bathroom with laundry area.

¹² ADA Guidelines, CA Building Code 2007 revisions.

Kitchen and Eating Area

Because the original dwelling provided cooking facilities and an area (within the open area) that could be used as an eating area, as we understand it, the assessor considers that the 480 square foot size does not appear to be more than what would be required to accommodate a disabled resident, we think that it would be reasonable for the AAB to conclude that the entire original cabin area, which is now a full kitchen and eating area, may qualify for the exclusion.

Bedroom/Bathroom Combination

Because the original cabin provided a sleeping area and a bathroom, we are of the opinion that the addition of an accessible bedroom and bathroom would qualify for the exclusion. We understand that the assessor considers a standard bedroom to be 10' x 12' (120 square feet) and a standard bathroom to be 4' x 8' (48 square feet). We note that the size of the added bedroom/bathroom combination, at 480 square feet, is nearly three times the size of a standard bedroom/bathroom combination. You refer to an ADA standard that accessible rooms should generally be twice as large as "standard" rooms. If the AAB finds this to be a reasonable formula, or if the AAB determines that another formula is appropriate, you should be prepared to explain to the AAB why the square footage that is more than 336 square feet (or as otherwise allowed by the appropriate formula) is required to accommodate the disabled residents of the home; otherwise, it would be reasonable to find that the exclusion does not apply to the excess space unless the AAB concluded that such excess space was merely incidental to the qualifying space.

Living Room

It could be argued that there was never a separate "living room" in the original cabin, so this addition should not qualify for the exclusion. However, we think it is reasonable to characterize a portion of the open area of the cabin as serving as the equivalent of a living room, and that the added living room provides access to that "facility" of the original cabin. Therefore we are of the opinion that the addition of a separate living room is not necessarily disqualifying. We understand that the assessor considers a standard living room to be 10' x 15' (150 square feet). You stated that you followed County guidelines that require a minimum size living room to be 10' x 12' (120 square feet), then you doubled the dimensions to 20' x 24', resulting in 480 square feet, i.e., four times the square footage. You should be prepared to explain to the AAB how much of the square footage is for the purpose of making the living room facility of the original cabin accessible to the disabled residents of the home, with the understanding that only that portion of the living room might qualify for the exclusion.

Study

Although we also think that it is reasonable to characterize a portion of the open area of the cabin as capable of serving as a "study" where a desk and computer could be used, we think that only a small portion of the 480 square foot study would be considered to duplicate this facility and therefore qualify for exclusion. The equipment you require to accommodate your disabilities appears to fit reasonably on two desktops, so in our opinion it would be reasonable to limit the portion of the study area that is eligible for exclusion to the space required for two desks and wheelchair access to them. You should be prepared to explain to the AAB why any additional space in the study area is required to accommodate the disabled residents of the home.

In conclusion, we are of the opinion that it would be reasonable for the AAB to determine that only portions of the rooms you added to the property qualify for the exclusion. We believe that each room and function must be analyzed in light of the relevant accessibility guidelines and the requirements of the disabled residents of the home. Except to the extent that the exclusion in section 74.3 applies, the newly constructed portions of your home should be reassessed by the assessor to determine an appropriate base year value for these portions of your home.

The views expressed in this letter are advisory in nature only; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

/s/ Carole Ruwart

Carole Ruwart
Tax Counsel III (Specialist)

KL/CR/yg

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Enclosure: Revenue and Taxation Code section 74.3.

cc: (w/out enclosure)

Honorable

County Assessor

Mr. David Gau	MIC:63
Mr. Dean Kinnee	MIC:64
Mr. Todd Gilman	MIC:70