



STATE OF CALIFORNIA

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January 29, 2003

VIA FACSIMILE

James E. Speed
Executive Director

Re: Fire Suppression Systems, Section 74 Exclusion from New Construction,

Dear Mr. _____ :

This letter is in reply to your correspondence addressed to Assistant Chief Counsel Kristine Cazadd and dated November 5, 2002. Specifically, you ask whether fire suppression systems and equipment installed by your client in pre-existing structures are excluded from the definition of "new construction" by Revenue and Taxation Code section 74.

You indicate that in the opinion of the _____ County Assessor's Office, the language in section 74 limits the exclusion to fire suppression systems and equipment that protect structures only, not those systems and equipment that protect persons, fixtures, and personal property. Finding no such distinction in section 74, you contend that your client's equipment should be excluded from the definition of "new construction." You base that belief on the fact that your client's fire suppression systems and equipment meet the definitions contained in subdivision (c) of section 74 and that they were installed in an existing building, as required by subdivision (e) of that section.

For the reasons hereinafter explained, we agree that, assuming the equipment you describe is fire safety equipment, your client's fire suppression systems and equipment qualify for the exclusion based on the express terms of section 74. As long as fire suppression systems and detection equipment are installed in an existing building, section 74 excludes those systems and equipment from the definition of "new construction" without regard to the type of property being protected.

Background and Facts

1. Your client has installed several Internet Data Centers (IDC's) into existing buildings.
2. To facilitate large-scale applications on the Internet, these centers hold computer equipment, routers, and storage devices.
3. Operation of an IDC requires specialized electrical wiring, fiber optic communications, security systems, and security cages to store and service the computer systems contained therein.
4. In addition to those improvements, IDC's also require uninterruptible power supplies, which include both batteries and diesel-powered electrical generators.
5. To protect IDC personnel and visitors—and the fixtures and personal property contained therein—your client has installed numerous fire suppression systems, including water sprinklers, halon fire suppression systems, and electronic fire detection devices.
6. Despite otherwise meeting the requirements of section 74, the County Assessor's Office refuses to apply this new construction exclusion to your client's fire suppression systems and equipment, claiming that the exclusion applies only to those systems designed to protect structures.

Law and Analysis

As you are aware, section 74 excludes from the definition of “new construction” fire sprinklers, other fire suppression systems, fire detection systems, and fire-related egress improvements when installed in an existing building. Section 74 provides in part:

(a) For purposes of subdivision (a) of Section 2 of Article XIII A of the Constitution, “newly constructed” does not include the construction or installation of any fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement that is constructed or installed on or after November 7, 1984.

(b) Notwithstanding any other provision of this chapter or Chapter 3.5 (commencing with Section 75), neither “newly constructed” nor “new construction” includes the construction or installation of any fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement that is constructed or installed on or after November 7, 1984.

* * *

(e) This section applies only to fire sprinkler systems, other fire extinguishing systems, fire detection systems, and fire-related egress improvements, as defined in this section, that are constructed or installed in an existing building.

Thus, section 74 excludes from the definition of “new construction” those fire sprinkler systems, other fire extinguishing systems, and fire detection systems that meet the definitions contained in subdivision (c) of section 74, if those systems were constructed or installed in an existing building on or after November 7, 1984.

1. Upon Meeting the Definitions Contained in Subdivision (c) of Section 74, Fire Sprinkler Systems, Other Fire Extinguishing Systems, and Fire Detection Systems Are Eligible for Exclusion from the Definition of “New Construction.”

To be eligible for the exclusion, your client’s fire suppression systems and equipment must meet the definitions found in subdivision (c) of section 74:

(1) “Fire sprinkler system” means any system intended to discharge water for the purpose of suppressing or extinguishing a fire, and includes a fire sprinkler system that derives its water from the domestic water supply of the building or structure of which it is a part.

(2) “Other fire extinguishing system” means any system intended to suppress or to extinguish a fire other than by discharging water upon the fire. An “other fire extinguishing system” includes, but is not limited to, a component or application that, solely or primarily for the purposes of fire suppression or extinguishment, is made part of the heating, ventilating, or airconditioning system of a building or structure, a wet chemical system, or a dry chemical system.

(3) “Fire detection system” means any system or appliance intended to detect combustion, or the products thereof, and to activate an alarm or signal, whether audio, visual, or otherwise, including all equipment used to transmit fire alarm activations and related signals to a remote location. A fire detection system includes any system that serves additional functions, but this section shall only apply with respect to that portion of a system that is for fire detection purposes. No portion of a fire detection system as described in this paragraph shall be deemed to be personal property, or shall be deemed to be excluded from that fire detection system, by reason of being owned or controlled by a person other than the owner of property upon which the fire detection system was constructed or installed.

As indicated in your letter, your client has installed numerous fire suppression systems to protect the employees, visitors, and equipment within its IDC's. Those systems include water sprinklers, halon fire suppression systems and electronic fire detection equipment. To determine whether or not your client's fire suppression systems and equipment are eligible for the new construction exclusion, the statutory definitions above must be applied.

Subdivision (c)(1) of section 74 defines "fire sprinkler system" to mean "any system intended to discharge water for the purpose of suppressing or extinguishing a fire." Applying that definition to the facts supplied in your letter, your client's installation of "water sprinklers" would be eligible for the exclusion if such a system anticipated discharging water to suppress or extinguish a fire. From the context of your statement, it appears that the installation of water sprinklers was for the express purpose of suppressing or extinguishing a fire. Consequently, we believe those water sprinklers are eligible for the exclusion.

Apparently, your client has also installed halon fire suppression systems. To qualify for the new construction exclusion, such systems must meet the definition of "other fire extinguishing system" found in section 74, subdivision (c)(2): "[a]ny system intended to suppress or to extinguish a fire other than by discharging water upon the fire. An 'other fire extinguishing system' includes, but is not limited to . . . a dry chemical system." According to a trade association Web site, Halon 1301 is the principal gaseous fire-fighting agent used in clean agent extinguishing systems. Such systems use gases, one form of a dry chemical, to suppress or extinguish fires with no damage to protected areas from the discharge and no residue to clean up.¹ Such systems would appear to meet the definition of "other fire extinguishing system."

In addition to the fire suppression systems described above, your client has installed electronic fire detection devices. Such devices are excluded if they "detect combustion, or the products thereof, and to activate an alarm or signal, whether audio, visual, or otherwise, including all equipment used to transmit fire alarm activations and related signals to a remote location" (Subdivision (c)(3) of section 74). Again, from the context of your letter, it appears that the installation of these electronic fire detection devices was for the express purpose of discovering fires within your client's IDC's and activating the appropriate alarms. Consequently, those detection systems and equipment would appear to be eligible for the exclusion, assuming they meet the definition in subdivision (c)(3) of section 74.

¹ <http://www.fssa.net/faqs.htm>, Fire Suppression Systems Association, Baltimore MD.

2. Interpretation of Section 74

From our discussion, and my conversation with _____, a Supervising Auditor-Appraiser in the _____ County Assessor's Office, it appears that the staff's historical interpretation has been that the section 74 new construction exclusion applies only to fire suppression systems and equipment that protect structures. If those systems and equipment contribute to a business process, the assessor enrolls the cost of that equipment in the form of trade fixtures. As applied to the facts in your case, the assessor claims that your client's fire suppression systems and equipment support the business process of an Internet Data Center, and thus do not qualify for the exclusion. As a result of that position, the assessor will enroll as business machinery and equipment those costs that exceed the Marshall & Swift costs of fire suppression systems and equipment for "normal" structures.

In contrast, we respectfully disagree, since section 74 does not include language limiting the exclusion to only those fire sprinkler systems, other fire extinguishing systems, and fire detection systems associated with the protection of structures. Such a limitation is found nowhere in the language of section 74. Absent the express language creating such a restriction, it is improper for the assessor or any adjudicating body to imply one, since the Legislature has preempted the subject area. *People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476.

Reading the legislative history of SCA 58 (Boatwright), Resolution Chapter 56 of 1985, the intent of the exclusion was to benefit all property owners who install fire suppression systems and equipment, by providing a shield against any increase in property taxes that might otherwise result from retrofitting a property with fire safety equipment:

This measure would provide that, for the purposes of this constitutional provision, the Legislature may provide that the term "newly constructed" does not include the construction or installation of *any* fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvements, as defined by the Legislature, which is constructed or installed after this measure's effective date. [Emphasis added]

It seems clear from the foregoing that the new construction exclusion found in section 74 is not limited to only those fire suppression and detection systems associated with the protection of structures. Such an analysis of section 74 would frustrate the purpose of the exclusion, which is to provide an incentive for taxpayers to install fire suppression and detection systems by authorizing the avoidance of increased property tax assessments for property owners who install them. Although the assessor or the board must make a factual determination about whether your client's specific fire suppression systems and equipment meet the definitions contained in section 74, there is no limitation in the statute that would prohibit the application of the exclusion for equipment installed to protect personal property or trade fixtures.

3. Those Systems Have Been Constructed or Installed in an Existing Building.

Subdivision (e) of section 74 limits the exclusion to only those fire sprinkler systems, other fire extinguishing systems, and fire detection systems constructed or installed in an existing building. The Legislature defined “existing building” in subdivision (c)(5) of section 74:

“Existing building” means any building or structure already erected at the time that a fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement is constructed or installed in that building or structure.

According to the facts contained in your letter, “[T]he properties in question are Internet Data Centers (IDCs) built in pre-existing structures as of the January 1, 2001 lien date. The taxable property consists of leasehold improvements made to the structures to accommodate an IDC.” If in fact, the IDC’s in question are built within pre-existing structures at the time of their construction, those structures must have already been erected at the time the fire suppression and detection systems were installed. Based on the facts and circumstances presented in your letter, these systems were installed into an existing building.

4. Those Systems Have Been Constructed or Installed on or after November 7, 1984.

Subdivisions (a) and (b) of section 74 limit the exclusion to only those fire sprinkler systems, other fire extinguishing systems, and fire detection systems constructed or installed on or after November 7, 1984. In subdivision (d) of section 74, the Legislature created the following presumption regarding the date of completion:

Any system or improvement referred to in this section shall be deemed to have been constructed or installed on or after November 7, 1984, if the actual construction or installation thereof is completed on or after November 7, 1984, regardless of when the actual construction or installation thereof was commenced or any building permit pertaining thereto was issued.”

Referring again to the facts contained in your letter, “[T]he properties in question are Internet Data Centers (IDCs) built in pre-existing structures as of the January 1, 2001 lien date.” Assuming the fire suppression and detection systems in question were built into structures as of the January 1, 2001 lien date, they were clearly installed on or after November 7, 1984.

Conclusion

Section 74 does not differentiate between fire suppression systems installed to protect structures and those systems installed to protect the persons, fixtures, and personal property contained therein. So long as the fire sprinkler systems, other fire extinguishing systems, and fire

detection systems constructed or installed by your client (1) meet the definitions contained in subdivision (c) of section 74; (2) were constructed or installed in an existing building; and, (3), were constructed or installed on or after November 7, 1984, section 74 excludes those systems and equipment from the definition of “new construction.” Assuming the fire suppression systems and equipment installed by your client meet those requirements—as described by the facts contained in your letter—those systems and equipment qualify for the exclusion.

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

Sincerely,

/s/ Michael Lebeau

Michael Lebeau
Tax Counsel
Legal Department

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cc:

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