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(916) 445-6453

August 6, 1982

Attention: Redacted

Dear Redacted

Property Tax Rule 463(b)

This is in reply to the handwritten note which was enclosed with your letter of July 28, 1982, to Glenn Rigby.

The question raised in the note is whether the test of significant rehabilitation is an increase in the net income.

Whether there has been a major rehabilitation (and therefore "new construction") within the meaning of Revenue and Taxation Code Section 70 and Property Tax Rule 463 must be determined on a case-by-case basis as has been your practice. The latest guideline applicable is Assessors' Letter 79/204, a copy of which is enclosed for your reference.

The following constitutes "new construction" under the applicable provisions:

"Any physical alteration of any improvement which converts the improvement or any portion thereof to the substantial equivalent of a new structure or portion thereof or changes the way in which the portion of the structure that has been altered is used."

To say that the above test is satisfied every time there is a physical alteration in an improvement which results in an increase in net income goes too far. An increase in net income, however, is a significant factor and in many cases may be the most significant factor in determining whether the above test has been satisfied.

If for example, the net income after the alteration is increased as a result of the alteration to a level comparable to the net income of a substantially equivalent new structure, the test would appear to be satisfied.

If, on the other hand, the net income after the alteration remains unchanged, the alteration may not constitute "new construction". (See for example Glenn Rigby's letter of November 25, 1981, a copy of which is enclosed.)

Obviously, the more difficult case is the one which falls between the above two hypothetical cases. In such a case, the increase in net income resulting from the alteration would be a fact to be considered along with other facts but would seldom be solely determinative of whether "new construction" has occurred.

If you have any further questions regarding this matter, please let me know.

Very Truly Yours,

Eric F. Eisenlauer  
Tax Counsel

EFE:fr

Enclosures

bc: Mr. Gordon P. Adelman  
Mr. Robert H. Gustafson  
Mr. Verne Walton  
Legal Section