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December 6, 2007

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Executive Director

No. 2007/050

TO COUNTY ASSESSORS:

NEW CONSTRUCTION EXCLUSION—UNDERGROUND STORAGE TANKS

On November 15, 1999, the Board issued Letter To Assessors 99/62 (LTA) advising county assessors of the passage of Senate Bill 933 (Chapter 352, Stats. of 1999). That legislation added Revenue and Taxation Code section 70, subdivision (e), to provide that where an underground storage tank must be improved, upgraded, or replaced to comply with federal, state, and local regulations on underground storage tanks, the tank work is not considered new construction but is instead considered "normal maintenance and repair."

Since the issuance of LTA 99/62, there have been questions about what type of work is eligible for the exclusion from new construction pursuant to section 70, subdivision (e). Specifically, the questions pertain to whether certain types of work (for example, vapor recovery systems, piping, and Veeder-Root monitoring systems) qualify as "the improvement, upgrade, or replacement of a tank" pursuant to section 70. LTA 99/62 advised that upgrades may include retrofitting an existing tank and piping with internal lining, corrosion protection, spill containment, overflow prevention equipment, striker plates, and automatic pump shutdown capabilities. The issue of what types of work qualify for the exclusion under section 70 is especially pertinent in light of additional requirements imposed by federal, state, and local regulations.

While the Revenue and Taxation Code is silent on what is to be considered a "tank," Health and Safety Code section 25281 provides, in part:

(m) "Pipe" means any pipeline or system of pipelines that is used in connection with the storage of hazardous substances and that is not intended to transport hazardous substances in interstate or intrastate commerce or to transfer hazardous materials in bulk to or from a marine vessel.

(u) "Tank" means a stationary device designed to contain an accumulation of hazardous substances which is constructed primarily of nonearthen materials, including, but not limited to, wood, concrete, steel, or plastic that provides structural support.

Section 25299.100 of the Health and Safety Code further defines "tank" as:

(d) "Tank" means an underground storage tank, as defined in Section 25281, used for the purpose of storing petroleum, as defined in Section 25299.22. "Tank" also includes under-dispenser containment systems, spill containment systems, enhanced monitoring and control systems, and vapor recovery systems and dispensers connected to the underground piping and the underground storage tank.

Accordingly, tanks and their appurtenances mandated by federal, state, and local requirements, including vapor recovery systems and monitoring systems, fall within the meaning of section 70, subdivision (e), and should be excluded from new construction.

If you have questions regarding this exclusion, please contact the County-Assessed Properties Division at 916-445-4982.

Sincerely,

/s/David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

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