STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
PROPERTY TAX DEPARTMENT
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064
1-916-274-3350 ● FAX 1-916-285-0134
www.boe.ca.gov

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TO COUNTY ASSESSORS:

VALUATION AND APPEAL OF NEW CONSTRUCTION IN PROGRESS

On February 25, 2016, the Third District Court of Appeal issued its opinion in *Jon Virgil Ellis v. County of Calaveras* (*Ellis*)[1] regarding whether the lien date value of construction in progress is a "base year value" that may only be increased by the inflation factor adjustment until construction is complete, as well as whether the taxpayer's appeal of the assessor's lien date valuation of construction in progress was timely filed.

The court held that, pursuant to Revenue and Taxation Code[2] section 110.1, the lien date value of construction in progress is a base year value. As explained further below, pursuant to section 71 and Property Tax Rule[3] 463, construction in progress is appraised at full cash value on the lien date and each lien date thereafter; thus a new base year value is established every lien date for construction in progress. Furthermore, the court found that the taxpayer's appeal filed November 29, 2012, challenging the assessor's determination of the 2010 base year value for construction in progress, was timely filed under section 80(a)(3). A petition for review was denied by the California Supreme Court on June 15, 2016.

This decision supersedes guidance provided in Assessors' Handbook Section 502, *Advanced Appraisal*, page 131, which states that:[4]

> . . . [p]artially completed new construction does not acquire a base year value. Instead, new construction in progress on any lien date is assessed, in effect, as a separate appraisal unit at its market value on that date, and on each successive lien date until it is completed. Upon completion, the entire portion of the property which is newly constructed is reappraised at its market value, and acquires its own base year value.

[1] (2016) 245 Cal.App.4th 64.
[2] All statutory references are to the Revenue and Taxation Code unless otherwise indicated.
[3] All references to Property Tax Rule or Rules are to sections of Title 18 of the California Code of Regulations.
[4] The decision also supersedes the guidance provided in Assessors' Handbook Section 410, *Assessment of Newly Constructed Property*, page 36.

In this case, the taxpayer constructed a large, detached garage on his property in Calaveras County. In 2009, the assessor assessed the partially constructed garage at $140,000. The taxpayer sought a reduction of the assessment from the county assessment appeals board (AAB). In July 2010, the AAB reduced the value of the garage to $117,600 based on a finding that construction was only 75 percent complete. In February 2011, the taxpayer contested that finding in the trial court, and the parties reached a settlement agreement that the assessed value of the partially constructed garage for the 2009 lien date was $25,000.

For lien date 2010, the assessor assessed the partially constructed garage at $117,600. The assessor reassessed the partially constructed garage again for lien date 2011. Construction of the garage was completed in 2012, and a supplemental assessment issued. The taxpayer also received a regular assessment for the 2012 lien date.

The taxpayer filed an application with the AAB to reduce the assessment for his 2010 property taxes on November 29, 2012. He argued that the 2009 lien date value of $25,000 was the "base year value" of the partially constructed garage, and as such, had to be applied in subsequent years. He also argued that his appeal was timely filed within four years of the base year value being entered on the tax roll in satisfaction of section 80. The county argued that the 2009 lien date value applied only for the 2009 tax year, and that neither the 2009 nor 2010 lien date values were base year values. The county further argued that the taxpayer's appeal was time-barred because it was not filed on or before November 30, 2010 as required by section 1603. The AAB determined that the taxpayer's appeal was not timely filed and that it therefore lacked jurisdiction to hear the appeal. The trial court subsequently dismissed the case for substantive and procedural reasons, and the taxpayer sought review in the Court of Appeal.

With respect to whether the lien date valuation of construction in progress was a base year value, the Court of Appeal looked to the plain language of section 110.1, which states in relevant part:

> (a) For purposes of subdivision (a) of Section 2 of Article XIII A of the California Constitution, "full cash value" of real property . . . means the fair market value as determined pursuant to Section 110 for either of the following:
>
> (1) The 1975 lien date.
>
> (2) For property which is purchased, is newly constructed, or changes ownership after the 1975 lien date, either of the following:
>
> (A) The date on which a purchase or change in ownership occurs.
>
> (B) The date on which new construction is completed, and if uncompleted, on the lien date.
>
> (b) *The value determined under subdivision (a) shall be known as the base year value for the property*. [Emphasis added.]

Since section 110.1(b) clearly states that the value determined in subdivision (a), including the value of uncompleted new construction (i.e., construction in progress), is a base year value, the court concluded that the taxpayer's appeal challenging the value established by the assessor as of the 2010 lien date for the partially completed garage was an appeal challenging a base year value. Because the court held that the assessment of the partially completed construction as of the 2010 lien date was a base year value, the taxpayer's assessment appeal was timely filed under section 80(a)(3).

The court further clarified that the base year value for construction in progress is reappraised at its full value each lien date until construction is complete; thus, the taxpayer was incorrect in contending that the 2009 lien date value established a base year value subject only to inflationary adjustment until construction was complete. Rather, the court, citing section 71 and Rule 463(d), stated:

> [I]t is clear that where construction is not complete as of the lien date, the "[n]ew construction in progress on the lien date shall be 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 which is newly constructed shall be reappraised at its full value. [Citations.][5]

The court concluded that while the taxpayer's appeal was timely filed, he was not entitled to the relief sought because section 80, subdivision (a)(5), provides that:

> . . . any reduction in assessment made as a result of an appeal under this section shall apply for the assessment year in which the appeal is taken and prospectively thereafter.

The court explained:

> If a taxpayer were to successfully show that a base year value was incorrect and had to be reduced, he would only be entitled to a retroactive reduction in the base year value for purposes of recalculating the current and prospective regular assessment based on that base year value. But, as noted above, because there was construction ongoing, the 2009 base year value was superseded by the 2010 assessment, which, in turn, was superseded by the 2011 assessment, which was superseded by the 2012 assessment, and finally by the 2012 supplemental assessment when construction was completed.
>
> And, the assessment value would only be reduced for purposes of a refund of taxes in the year in which the application was filed and in succeeding tax years.[6]

This case clarifies several principles in the valuation and appeal of new construction in progress:

1. Pursuant to section 110.1, the value of construction in progress on the lien date is a base year value.

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[5] *Ellis supra*, 245 Cal.App.4th, at p. 72; original italics.
[6] *Id*. at pp. 72–73.

2. Pursuant to section 71 and Rule 463(d), construction in progress shall be appraised at its full value each lien date until construction is complete.

3. Appeals challenging an assessor's valuation of construction in progress are appeals of base year values under section 80, and taxpayers may file such applications in the year of the assessment or in any of the three succeeding years.[7]

4. A taxpayer who successfully appeals a base year value on construction in progress is entitled to a refund of taxes only if the appeal was filed in the same year the base year value was established and only for the year in which that base year value was established. The appeal must be filed in the same year the base year value was established since section 80(a)(5) limits refunds to the year in which the appeal was filed and in succeeding tax years. If the appeal is filed within the section 80(a)(3) deadline but in a year subsequent to the establishment of the base year value, a refund cannot be granted since it would be for a year prior to the filing of the application for appeal. A refund is available only for the year in which the base year value on construction in progress was established because that base year value is valid only for that year. New base year values are established for subsequent lien dates on which the construction is still in progress.

If you have any questions regarding this case, please contact the County-Assessed Properties Division at 1-916-274-3350.

Sincerely,

/s/ Dean R. Kinnee

Dean R. Kinnee
Deputy Director
Property Tax Department

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[7] Section 80, subdivision (a)(5).