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

January 21, 2021

No. 2021/004

TO COUNTY ASSESSORS:

NEW CONSTRUCTION EXCLUSION: GOVERNOR-PROCLAIMED DISASTER

The Legislature has enacted various statutes to afford financial relief to the owners of property physically damaged or destroyed by an unforeseeable occurrence beyond their control. Under Revenue and Taxation Code[1] section 170, if property has been damaged or destroyed by a disaster, the owner may request that the property be reassessed downward immediately to reflect the diminution in current value resulting from the damage or destruction. To receive relief under section 170, the total value of the damage to all taxable property (land, improvements, and personalty) must exceed $10,000.

If damaged property is later restored, repaired, or reconstructed, the property will then be reassessed upward. If the construction is substantially equivalent to the damaged or destroyed property pursuant to section 70(c), the factored base year value is reinstated. However, if the rebuilt property exceeds the substantial equivalent of the property prior to damage or destruction, a new base year value shall be established for the newly constructed portion.

Effective January 1, 2021, Assembly Bill 2013 (Stats. 2020, ch. 124) adds section 70.5 to the Revenue and Taxation Code to establish a bright line "substantially equivalent" test for real property that has been reconstructed to replace property that was substantially damaged or destroyed by a disaster, as declared by the Governor. These provisions apply to real property damaged or destroyed by disasters that occur on or after January 1, 2017.

The specific requirements of section 70.5 include:

- The disaster must be one for which the Governor proclaimed a state of emergency.
- The real property must be substantially damaged or destroyed.
- The replacement improvement must be located on the same site.
- The replacement improvement must be reconstructed within five years after the disaster.
- The replacement improvement must be comparable to the substantially damaged or destroyed property.
- Only the owner(s) of substantially damaged or destroyed property is eligible for relief.

[1] All statutory references are to the Revenue and Taxation Code, unless otherwise stated.

- A property owner who receives relief under section 70.5 is not eligible to transfer the base year value under section 69.

If relief is not available under section 70.5, disaster relief may be available under sections 70(c) and 170, as long as the damage or destruction meets the requirements of section 170.

Governor-Declared Disaster

The Government Code[2] authorizes the Governor to proclaim a state of emergency under specified circumstances, including:

- "State of emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state.
- "Local emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city.

Thus, a disaster "declared" by the Governor means a disaster for which the Governor proclaims a state of emergency. A list of disasters for which the Governor proclaimed a state of emergency is posted on the State Board of Equalization's website under Disaster Relief Resources, at https://www.boe.ca.gov/proptaxes/disaster-relief.htm#Resources.

Substantially Damaged or Destroyed

To qualify for relief under section 70.5, a property must be substantially damaged or destroyed. Property is "substantially damaged or destroyed" if the improvement sustains physical damage amounting to more than 50 percent of the improvement's full cash value immediately prior to the disaster. This is a comparison of the improvement's full cash values before and after the disaster. The difference in values must be more than 50 percent to qualify for relief under section 70.5.

For example, assume a home that has a full cash value of $600,000 is partly damaged in an earthquake for which the Governor declared a state of emergency. The full cash value of the improvement in its damaged state must be less than $300,000 in order for any reconstruction to qualify for relief under section 70.5.

Location and Timing

Section 70.5 is retroactive and applies to real property reconstructed to replace property that was damaged or destroyed by a disaster that occurred on or after January 1, 2017. The reconstructed improvement must be located on the same site as the substantially damaged or destroyed improvement. The reconstructed improvement may, but does not need to, have the same footprint as the damaged or destroyed improvement. However, the reconstructed improvement must be located on the same parcel on which the substantially damaged or destroyed improvement was located.

[2] Government Code (GC) sections 8558 and 8625.

In addition, the reconstruction must be completed within *five* years of the date of the disaster. For example, if a structure was destroyed by the Thomas Fire on December 6, 2017, the property owner would have to complete construction by December 6, 2022.

Comparable

The replacement improvement is considered comparable if it is similar in *size, utility, and function* to the substantially damaged or destroyed property. If the replacement improvement exceeds the size, utility, and function tests, partial relief is available.

Size and utility is associated with value, not physical characteristics. Property is similar in *size and utility* if the market value of the newly constructed improvement does not exceed 120 percent of the full cash value of the damaged or destroyed improvement in its pre-damaged condition.

If the full cash value of the replacement improvement does not exceed 120 percent of the full cash value of the damaged or destroyed improvement, then the factored base year value of the damaged or destroyed improvement will be restored without any adjustment.

> **Example:** A D-7, 1,580 square foot single-family residence was destroyed by a wildfire for which the Governor proclaimed a state of emergency. Prior to the date of destruction, the residence had a full cash value of $350,000. The property owner built a D-7.5 replacement residence that was 2,000 square feet and had a full cash value of $400,000. The construction was completed within five years after the disaster. Since the full cash value of the replacement residence was within 120 percent of the destroyed residence's full cash value ($350,000 x 120 percent = $420,000), the factored base year value of the destroyed improvement becomes the factored base year value of the reconstructed residence (plus any interim inflationary adjustments).

Please note that even though a base year value is not enrolled on the assessment roll (the enrolled value is a diminished value reflecting the damage), that base year value continues to be annually adjusted for inflation, as required by section 51. Thus, if a replacement improvement is rebuilt up to five years after the date of disaster, any inflation factoring that occurs between the date of disaster and date of completion of construction shall be included in the restored base year value.

If the full cash value of the replacement property exceeds 120 percent, the amount of full cash value above 120 percent is added to the destroyed improvement's factored base year value. The sum of the factored base year value plus the amount of full cash value above 120 percent becomes the replacement improvement's new base year value.

> **Example:** A D-7, 1,580 square foot single-family residence was destroyed by a wildfire for which the Governor proclaimed a state of emergency. Prior to the date of destruction, the residence had a full cash value of $350,000. The property owner built a D-7.5 replacement residence that was 2,000 square feet and had a full cash value of $450,000. Since the full cash value of the replacement residence was over 120 percent of the destroyed residence's full cash value ($350,000 x 120 percent = $420,000), the amount above 120 percent ($450,000 - $420,000 = $30,000) is added to the factored base year

value. At the time of completion of construction, the destroyed residence's factored base year value was $124,328. Thus, the new base year value of the reconstructed residence is $154,328 ($124,328 + $30,000).

Property is similar in *function* if the replacement improvement is subject to similar governmental restrictions, such as zoning. The replacement improvement must be used in the same manner as the damaged or destroyed property. Properties are similar in use if they fall within the same broad property type, such as residential, commercial, agricultural, or industrial. Any portion of the replacement property that is not similar in function is subject to reassessment to current market value upon completion of construction.

Example: Properties would be considered dissimilar only if their uses crossed over into different property types. If a home is destroyed and a combination convenience store and residence is rebuilt as a replacement, only the residence would be considered comparable to the destroyed property. Consequently, the base year value can be transferred to only the residential portion of the replacement property. The commercial portion (convenience store) would be subject to reassessment at current market value.

Ownership Limitation

Only the owner of substantially damaged or destroyed property is eligible for relief. Owners may be individuals, partnerships, corporations, other legal entities, or a combination thereof. If the property was sold or subject to change in ownership between the date of damage or destruction and the date of completion of new construction, the new owner is not eligible for relief upon completion of construction.

A taxpayer may not receive relief under both sections 69 (intracounty base year value transfer) and 70.5 for the same substantially damaged or destroyed property. For example, if the owner of substantially damaged or destroyed property rebuilds the substantially damaged or destroyed structure and receives relief under section 70.5, then the damaged or destroyed property will no longer be eligible for the base year value transfer under section 69, in the event the owner buys another property.

A copy of the new section 70.5 is enclosed. If you have any questions regarding section 70.5, please contact the County-Assessed Properties Division at 1-916-274-3350.

Sincerely,

/s/ David Yeung

David Yeung
Deputy Director
Property Tax Department

DY:gs
Enclosure

Effective January 1, 2021, section 70.5 is added to the Revenue and Taxation Code, to read:

70.5. (a) Notwithstanding Section 70, and pursuant to Section 2 of Article XIII A of the Constitution, the base year value of property that is substantially damaged or destroyed by a disaster, as declared by the Governor, may be applied to replacement property reconstructed on the site of the damaged or destroyed property within five years after the disaster as a replacement for the substantially damaged or destroyed property if that reconstructed property is comparable to the substantially damaged or destroyed property. A person who owns substantially damaged or destroyed property that receives property tax relief under this section shall not be eligible for property tax relief provided under Section 69.

(b) (1) The replacement base year value of the reconstructed property shall be determined in accordance with this section.

(2) The assessor shall use the following procedure in determining the appropriate base year value of the reconstructed property:

(A) If the full cash value of the reconstructed property does not exceed 120 percent of the full cash value of the property substantially damaged or destroyed, then the adjusted base year value of the property substantially damaged or destroyed shall apply to the reconstructed property as its base year value.

(B) If the full cash value of the reconstructed property exceeds 120 percent of the full cash value of the property substantially damaged or destroyed, then the amount of the full cash value over 120 percent of the full cash value of the property substantially damaged or destroyed shall be added to the adjusted base year value of the original property substantially damaged or destroyed. The sum of these amounts shall become the reconstructed property's base year value.

(C) If the full cash value of the reconstructed property is less than the adjusted base year value of the original property substantially damaged or destroyed, then that lower value shall become the reconstructed property's base year value.

(D) The full cash value of the property substantially damaged or destroyed shall be the amount of its full cash value immediately prior to its substantial damage or destruction, as determined by the county assessor of the county in which the property is located.

(c) For purposes of this section:

(1) Property is substantially damaged or destroyed if the improvements sustain physical damage amounting to more than 50 percent of the improvements' full cash value immediately prior to the disaster.

(2) Reconstructed property shall be considered comparable to the original property substantially damaged or destroyed if it is similar in size, utility, and function to the property which it replaces. For purposes of this paragraph:

(A) Property is similar in function if the reconstructed property is subject to similar governmental restrictions, such as zoning.

(B) (i) Both the size and utility of property are interrelated and associated with value. Property shall be considered similar in size and utility only to the extent that the reconstructed property is, or is intended to be, used in the same manner as the original property substantially damaged or destroyed and its full cash value does not exceed 120 percent of the full cash value of the original property substantially damaged or destroyed.

(ii) A reconstructed property or any portion of reconstructed property used or intended to be used for a purpose substantially different than the use made of the original property substantially damaged or destroyed shall to the extent of the dissimilar use be considered not similar in utility.

(iii) A reconstructed property or any portion of reconstructed property that satisfies the use requirement but has a full cash value that exceeds 120 percent of the full cash value of the original property substantially damaged or destroyed shall be considered, to the extent of the excess, not similar in utility and size.

(C) To the extent that reconstructed property or any portion of reconstructed property is not similar in function, size, and utility, the property or portion of that property shall be considered to be newly constructed.

(3) "Disaster" means a major misfortune or calamity in an area subsequently proclaimed by the Governor to be in a state of disaster as a result of that misfortune or calamity.

(d) Only the owner or owners of the property substantially damaged or destroyed, whether one or more individuals, partnerships, corporations, other legal entities, or a combination thereof, shall be eligible to receive property tax relief under this section. Relief under this section shall be granted to an owner or owners of substantially damaged or destroyed property who have reconstructed that property.

(e) This section shall apply to real property damaged or destroyed by misfortune or calamity on or after January 1, 2017.