



STATE BOARD OF EQUALIZATION
PROPERTY TAXES DEPARTMENT
450 N STREET, MIC: 63, SACRAMENTO, CALIFORNIA
(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0063)
TELEPHONE (916) 445-1516
FAX (916) 323-8765

SEE LTA 2007/050

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JOHAN KLEHS
First District, Hayward

DEAN F. ANDAL
Second District, Stockton

CLAUDE PARRISH
Third District, Torrance

JOHN CHIANG
Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

E. L. SORENSEN, JR.
Executive Director

No. 99/62

TO COUNTY ASSESSORS:

NEW CONSTRUCTION EXCLUSION—UNDERGROUND STORAGE TANKS

Chapter 352 of the Statutes of 1999 (Senate Bill 933, Poochigian) became effective on September 7, 1999. This legislation provides a new construction exclusion for underground storage tanks that are improved, upgraded, or replaced to comply with federal, state, and local regulations. In addition, it would provide that structures required to be reconstructed as a result of tank work are to be categorized as “normal maintenance and repair.”

Existing law provides that when property is “newly constructed” it shall be valued and added to the property tax rolls. Exceptions are provided in the Constitution for cases where property must be reconstructed after a disaster or where local ordinances on seismic safety require improvements. Also excluded from “new construction” are alterations performed for the purpose of normal maintenance and repair (e.g., annual preparation of agricultural land, interior or exterior painting, roof replacements or addition of aluminum siding).

Chapter 352 amends section 70 of the Revenue and Taxation Code¹ by adding subdivision (e), which reads as follows:

(e) (1) Notwithstanding the provisions of subdivisions (a) and (b), where a tank must be improved, upgraded, or replaced to comply with federal, state, and local regulations on underground storage tanks, “newly constructed” and “new construction” does not mean the improvement, upgrade, or replacement of a tank to meet compliance standards, and the improvement, upgrade, or replacement shall be considered to have been performed for the purpose of normal maintenance and repair.

(2) Notwithstanding the provisions of subdivisions (a) and (b), where a structure, or any portion thereof, was reconstructed, as a consequence of completing work on an underground storage tank to comply with federal, state, and local regulations on these tanks, timely reconstruction of the structure shall be considered to have been performed for the purpose of normal maintenance and repair where the structure, or portion thereof, after reconstruction is substantially equivalent to the prior structure in size, utility, and function.

¹ All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

Background²

Owners and operators of underground storage tanks across the United States had until December 22, 1998 to comply with federal and state requirements to upgrade or replace tanks and piping installed before 1984, when California's Underground Storage Tank program and more stringent tank requirements came into effect. This deadline was initially established by the U.S. Environmental Protection Agency 10 years ago to allow tank owners sufficient time to comply with the upgrade requirements. In California, State law prohibits the delivery of petroleum products to underground storage tanks after January 1, 1999, if those underground storage tanks were not upgraded or replaced by the December 1998 deadline.

Local agencies regulate approximately 61,000 tanks throughout California. Of those, 55,000 are petroleum tanks and 6,000 are hazardous substance tanks. It is estimated that approximately 29,000 underground storage tanks still need to be removed, replaced or upgraded. Although most of these tanks contain petroleum products, the impact to the public will be minimal as the majority of the tanks that have yet to comply with the law are located at trucking and transportation companies, hospitals, marinas, airports, and federal, state and local agencies.

In addition to being denied gasoline delivery, owners who missed the December 22, 1998 deadline are subject to fines. If a petroleum release is discovered on the property after this deadline, owners who have not upgraded may be ineligible to receive reimbursement for cleanup costs from the State Water Resources Control Board Cleanup Fund.

Upgrades may include retrofitting an existing tank and piping with internal lining, corrosion protection, spill containment, overfill prevention equipment, striker plates and automatic pump shutdown capabilities. Replacing the tank with a new secondary tank system can also satisfy the requirement. Non-petroleum hazardous substances tank systems, like those containing waste oil or chemicals, may not be retrofitted. They must be replaced with secondary containment (double-walled) tank systems.

Upgrade work can still be done after the December 22, 1998 deadline without penalty if the tanks are emptied, temporarily closed and properly sealed prior to the deadline. Tank owners may then choose to replace, upgrade or permanently close the tanks during the temporary closure period.

Chapter 352

Chapter 352 provides 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 shall not be considered new construction, and shall instead be considered to have been performed for the purpose of "normal maintenance and repair." In addition, Chapter 352 provides that if a structure (or portion thereof) was reconstructed as a consequence of completing required work on an underground storage tank, such reconstruction shall be considered to have been performed for the purpose of normal maintenance repair if the reconstruction was timely,

² The "background" information is taken from a California Environmental Protection Agency's News Release dated December 3, 1998.

and if the reconstructed structure (or portion thereof) is substantially equivalent to the prior structure in size, utility, and function.

Some gas stations, which did minimal tank work in complying with the new underground storage tank regulations, would have only slightly disrupted the site or surrounding structures. In other cases, however, gas stations underwent major renovations or complete rebuilding in conjunction with the underground storage tank work. Some of these gas stations have reopened and expanded their previous facilities with other retail establishments, such as fast-food outlets and mini-marts. While the tank work would be excludable, any additional construction that was beyond that necessary to comply with underground storage tank regulations would *not* be eligible for this exclusion. (September 7, 1999)

This exclusion applies *prospectively* and would affect only those property owners who upgrade or replace their tanks after the effective date.

Identifying Tanks Eligible for Exclusion from “New Construction”

Service station fixtures, such as tanks, are typically valued by the county assessor’s business property section based on the acquisition date and cost as reported in Column 2 of Schedule B of the Business Property Statement (“BPS”). A potential problem is keeping track of the old tank cost (and year of acquisition) and the replacement tank cost. For instance: assume a tank costs \$10,000 in 1990 and is reported on the BPS through 1999, but is replaced in 1999 by a tank costing \$20,000. The taxpayer may report on the 2000 BPS the cost of the newer tank and not report the cost of the older tank. It is the older, 1990 tank, though, that needs to be appraised using the \$10,000 cost. As a consequence, the county needs to develop a means to keep track of the original tank’s cost as well as the replacement tank’s cost for use in future appraisals and reference.

Maintaining a record of old and new costs may also facilitate the valuation of the property in case of a change in ownership, since a replacement tank that is excluded from reassessment today would still be reassessed upon a subsequent change in ownership. A determination will also need to be made to identify those tanks that may have been reconstructed or replaced. For those counties that provide taxpayers with the form BOE-571-D (Supplemental Schedule for Reporting Monthly Acquisitions and Disposals of Property Reported on Schedule B of the [BPS]), a tank replacement may be easily identified. Otherwise, a review on a case-by-case basis may be needed.

If you have any questions regarding this exclusion, please contact our Business Property Technical Services Unit at (916) 445-4982.

Sincerely,

/s/ Richard C. Johnson

Richard C. Johnson
Deputy Director
Property Taxes Department

RCJ/grs