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Was your California property damaged or destroyed by wildfires?

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CATEGORY:
ARTICLE

CLIENT TYPES:
HIGH-NET-WORTH INDIVIDUALS

PUBLIC COMPANIES

PRIVATE COMPANIES

FARMS AND ESTATES

CONSTRUCTION

HOTELS AND HOSPITALITY

This Insight provides general guidance on property tax questions arising from recent California wildfires or other calamities affecting property values. Our attorneys in San Francisco and other offices focus on temporary or permanent property tax reassessment, deferral of taxes, assessment of new construction and rebuilding in a different location.

Effect on assessed values and property taxes following wildfires or similar disasters

You are entitled to an immediate reduction of the assessed value of your property

If a fire or other sudden disaster destroys your real property or causes damage in excess of $10,000 dollars, you are entitled to an immediate reduction of your property tax liability beginning on the date of damage or destruction. To obtain the reduction, you must submit an application with your local assessor. The forms for the below-referenced counties are:

- **Sonoma County:** Application for Reassessment of Property Damaged by Misfortune or Calamity (Form SCAO 023 6/16 AB)
- **Napa County:** Application for Reassessment of Damaged or Destroyed Property (Form 114-211A Gov (10/2017)
- **Solano County:** Application for Reassessment of Damaged or Destroyed Assessable Property in Excess of $10,000

Applications for reassessment are due 12 months from the date of damage or destruction. We recommend that you file an application as soon as possible so that a new bill can issue and payment can be made to maximize 2017 deductions for state and local property taxes.

Note: As of this writing, the pending tax reform legislation in Congress proposes limiting deductions for state and local property taxes to $10,000. We urge you to stay current on this issue as the legislation takes its final form.

If you require immediate assistance with filing the application, please do not hesitate to contact our offices immediately.

You should notify the assessor of your current mailing address to ensure receipt of tax correspondence

If your property was damaged and your ability to receive mail is compromised, you should designate a new postal address immediately and notify the application county of such change to ensure receipt of any assessment correspondence.

If you need assistance with a change of mail request, please inform us and we will prepare the request on your behalf.

If you need additional time to remit your property tax payment, you are allowed to file a request for deferral of payment of property taxes. Under the deferral statute, you are not required to submit payment until all of the following have occurred: a) the assessor has reassessed the property taking into account the damages; b) the assessor has issued you a corrected bill; and c) 30 days have elapsed since receipt of the corrected bill.

If you would like to request a deferral, please inform us and we will ensure that your request is submitted with the relevant jurisdiction.

Tax efficient options to rebuild, reconstruct, or relocate

You are entitled to rebuild your home and avoid a reassessment for new construction

Ordinarily, the local assessor is required to reassess "new construction" at its current fair market value as of the date of completion (including substantial remodeling). Because this rule would result in hardship to owners who lost their property, the California law provides that for real property damaged by calamity, the term "'new construction' does not mean any timely reconstruction of real property, or portion thereof, where the property after reconstruction is substantially equivalent to the property prior to damage or destruction."

Importantly, the "substantially equivalent" requirement relates to size only, and does not refer to the quality of construction. Thus, it does not matter that the replacement property is a newly-built modern home—you are entitled to transfer the prior factored base year value if the size is the same.

Further, to the extent that you want to rebuild a larger home, you are still permitted to transfer the prior factored base year value, except that any excess new construction will be assessed at current fair market value.

For example, assume that prior to damage, you owned a 2,000 square foot home with a factored base year value of $500,000. After complete destruction of the home, you decide to build a new home of the same size, albeit with new construction materials, design, and layout. Upon completion of construction, the assessor is required to transfer the prior factored base year value of $500,000. As a result, the owner will have no additional property tax liability, even though the assessed value of a brand new home may be much higher.

Using the same example, assume however that you want to build a 3,000 square foot home instead. In such case, the prior factored base year value of $500,000 will transfer, pro rata, to 2,000 square feet, and the excess 1,000 square feet will be assessed at full cash value. Essentially, the owner still benefits from a transfer of base year value, and the assessor must keep track to both values on future tax bills.

You are entitled to purchase a new property in the *same or different county* and transfer the base year value to the new property

If you do not want to rebuild your property in the same location, you can buy or build a new property in the *same county* and transfer your base year value to the replacement property (an "intracounty transfer").

To qualify for an intracounty transfer, you must meet the following requirements: a) the property must be damaged by a magnitude of more than 50% of its fair market value; b) the replacement property must be acquired or constructed within the same county within five years after the damage; and c) the replacement property must be comparable in that it must not exceed 120% of the fair market value of the damaged property before the damage.

If you want to buy or rebuild a replacement *principal residence* in a *different county* while preserving the base year value of damaged property (an "intercounty transfer"), you must meet the following requirements: a) the damaged property must be a principal residence; b) the damaged property and the replacement property must be located in counties that have ordinances approving an intercounty transfer [10 counties have such an ordinance: Contra Costa, Los Angeles, Modoc, Orange, San Francisco, Santa Clara, Solano, Sonoma, Sutter, and Ventura]; c) the replacement property must be purchased within three years of the disaster; and d) the market value of the replacement property must be of equal or lesser value than the damaged property before the damage, [though the statute provides relief of up to 115% of the fair market value depending on the year the replacement property is acquired].

If you wish to explore your options to rebuild, reconstruct, and/or relocate in greater detail, please contact us directly.

Declines in property values not damaged or destroyed by wildfires

For properties not destroyed or partially damaged by wildfires, your property many nonetheless experience a decline in fair market value due to any number of secondary impacts (whether temporary or long-lasting) such as: loss of desirability; potential for further disaster; high numbers of vacant land and damaged properties; nuisance; blight; urban decline; loss of tourism; and disruption to schools and municipal and utility infrastructure.

In such case, Proposition 8 ("Prop 8"), an amendment to California's Constitution, permits a temporary reduction in assessed value when the current fair market value is less than the current assessed value.

Where there is widespread and systematic declines in property value, counties have, in rare circumstances, implemented temporary Prop 8 reductions on their own authority, and without requiring any action by any property owner, to alleviate taxpayers from unwarranted or inflated assessed values.

Thus far, no counties have implemented automatic Prop 8 reductions on behalf of homeowners, though this is to be expected since the tax lien date does not occur until January 1 of each year. We are in contact with the assessors of Sonoma, Napa, and Solano Counties regarding this issue.

While it is impossible to predict the magnitude of the declines in market property values, if you feel that the market value of your property has declined due to the above-referenced secondary impacts, please contact us to discuss the potential for a Prop 8 application for decline in value.

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