



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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DOUGLAS D. BELL
Executive Secretary

No. 83/64

May 31, 1983

TO COUNTY ASSESSORS, COUNTY COUNSELS,
ASSESSMENT APPEALS BOARDS AND
OTHER INTERESTED PARTIES:

PROPERTY TAXES RULE 122.5

Enclosed is a notice of public hearing to be held Tuesday, July 26, 1983, at 2:00 p.m., in Room 102, 1020 N Street, Sacramento, California, on proposed Property Taxes Rules 122.5, Fixtures.

Existing law provides that all property, including possessory interests in real property, is subject to property taxation unless otherwise exempted. Existing law further provides that an item of personal property which has become constructively annexed to real property is a fixture and constitutes real property.

The rule proposed for adoption defines constructive annexation and provides criteria for determining when an item of personal property has been constructively annexed for property tax assessment purposes.

Written comments for the Board's consideration or requests to present testimony at the public hearing should be directed to me at the above address. Questions regarding the rule should be directed to Eric Eisenlauer, Staff Counsel, at (916) 445-6453.

Sincerely,

Janice Masterton
Assistant to Executive Secretary

JM;ms
Enclosure

NOTICE OF PROPOSED REGULATORY ACTION
BY THE
STATE BOARD OF EQUALIZATION

NOTICE IS HEREBY GIVEN that the State Board of Equalization, pursuant to the authority vested by Section 15606 of the Government Code, and to implement, interpret, or make specific Sections 105 and 107 of the Revenue and Taxation Code, proposes to adopt Regulation 122.5 to Title 18 of the California Administrative Code, relating to property tax.

PUBLIC NOTICE: Notice is further given that a public hearing relevant to this action will be held in Room 102, Consumer Affairs Building, 1020 N Street, Sacramento, California, at 2:00 p.m., on July 26, 1983. Any person interested may present statements or arguments orally at that time and place.

INFORMATIVE DIGEST: Existing law provides that all property, including possessory interests in real property, is subject to property taxation unless otherwise exempted. Existing law further provides that an item of personal property which has become constructively annexed to real property is a fixture and constitutes real property.

The rule proposed for adoption defines constructive annexation and provides criteria for determining when an item of personal property has been constructively annexed for property tax assessment purposes.

ESTIMATE OF COST OR SAVINGS: The State Board of Equalization has determined that the proposed change does not impose a mandate on local agencies or school districts and will result in no direct or indirect cost or savings to any state, local, or federal agency, school district, nor in federal funding to the state.

The cost impact on private persons or businesses is expected to be insignificant. This proposal will not have a significant adverse economic impact on small businesses.

INQUIRIES: Inquiries concerning this matter may be directed to Janice Masterton, at (916) 445-6479.

WRITTEN COMMENTS: Written statements or arguments will be considered by the Board if received by July 26, 1983; written statements or arguments are requested by July 6, 1983.

STATEMENT OF REASONS; EXPRESS TERMS: The Board has prepared a statement of the purpose of the proposed action and the information relied upon in making the change, and a strikeout and underscore version (express terms) of the proposed changes, both of which are available to the public upon request.

RULE 122.5, FIXTURES (DRAFT)

Reference: Sections 105 and 107, Revenue and Taxation Code

(a) DEFINITION.

(1) A fixture is an item of tangible property, the nature of which was originally personalty, but which is classified as realty for property tax purposes because it is physically or constructively annexed to realty with the intent that it remain annexed indefinitely.

(2) The manner of annexation, the adaptability of the item to the purpose for which the realty is used, and the intent with which the annexation is made are important elements in deciding whether an item has become a fixture or remains personal property. Proper classification, as a fixture or as personal property, results from a determination made by applying the criteria of this rule to the facts in each case.

(3) The phrase "annexed indefinitely" means the item is intended to remain annexed until worn out, until superseded by a more suitable replacement, or until the purpose to which the realty is devoted has been accomplished or materially altered.

(b) PHYSICAL ANNEXATION.

(1) Property is physically annexed if it is attached to, imbedded in, or permanently resting upon land or improvements in accordance with Section 660 of the Civil Code, or by other means that are normally used for permanent installation. If the property being classified cannot be removed without substantially damaging it or the real property with which it is being used, it is to be considered physically annexed. If the property can be removed without material damage but is actually attached, it is to be classified as a

fixture unless there is an intent, as manifested by outward appearance or historic usage, that the item is to be moved and used at other locations.

(2) Force of gravity, size, or both may constitute physical annexation providing the weight or size is such that the item appears to be intended to remain in place indefinitely.

(3) Property shall not be considered physically annexed to realty solely because of attachment to the realty by "quick disconnect" attachments, such as simple wiring and conduit connections.

(c) CONSTRUCTIVE ANNEXATION.

(1) Property not physically annexed to realty (including fixtures) is constructively annexed if it is a necessary, integral, or working part of the realty. Factors to be considered in determining whether the property is a necessary, integral, or working part of the realty are whether the nonattached item is designed and/or committed for use with specific realty, and/or whether the realty can perform its desired function without the nonattached item.

(2) Property connected to the realty by quick disconnect conduits which contain power or electronic cable, or allow for heating, cooling, or ventilation service to the connected property is constructively annexed only if it satisfies one of the factors in paragraph (c)(1).

(d) INTENT.

(1) Intent is the primary test of classification. Intent is measured with--not separately from--the method of attachment or annexation. If the appearance of the item indicates that it is intended to remain annexed indefinitely, the item is a fixture for

property tax purposes. Intent must be inferred from what is reasonably manifested by outward appearance. An oral or written agreement between parties, such as a contract between lessor and lessee, is not binding for purposes of determining intent.

(2) The phrase "reasonably manifested by outward appearance" means more than simple visual appearance. A reasonable knowledge of the relationship of the item being classified to the realty with which it is being used is required to determine whether physical or constructive annexation has occurred.

(3) Historic usage of a property may be considered in determining whether or not a property is intended to remain annexed indefinitely. "Historic usage" means the normal and continuing use of the property as an item that is annexed either indefinitely or only temporarily.

(e) EXAMPLES. The following examples are illustrative of the foregoing criteria. The classification in each example is based only on the limited description offered. Classification of an actual property must be based on all the relevant facts concerning that property.

(1) A stair and a walkway that are bolted to a large machine (the machine is a fixture) to facilitate operation and routine maintenance of the machine are fixtures because they are physically annexed by the bolts and they are necessary for the normal operation of the machine. A stair and a walkway that are bolted to a machine to facilitate a major overhaul of the machine and that will be removed and used elsewhere after the overhaul is completed are personal property because the physical attachments are clearly temporary.

(2) A printing press that weighs several tons, is held in place by gravity, and which because of its size cannot be removed from the building without substantial damage to the building is regarded as physically annexed and is a fixture. A free-standing safe, although of considerable weight, is personal property if it is movable without damage to itself or to the real property wherein it is located and the real property was not designed or constructed specifically to accommodate the safe.

(3) Headsets and special stools designed to be used with a telephone switchboard (the switchboard is a fixture) are not physically annexed, but they are constructively annexed because they are designed specifically for use with the switchboard, the switchboard cannot be used properly without them, and they are not usable or only marginally usable independently of the switchboard. Ordinary office chairs used with a switchboard remain personal property because their design makes them fully usable for other purposes.

(4) A special tool, die, mold, or test device is constructively annexed to a fixture if it is specifically designed for use on or in conjunction with the particular fixture and the intended use of the fixture would be impaired without the item. A common hand tool or general-purpose test device is personal property even if in practice the item is used only on the fixture.

(5) A crane that operates on rails but is too large or too heavy for ordinary railroad tracks or cannot be operated off the property because the rails are not connected to railroad tracks is constructively annexed to the rails.

STAFF MEMORANDA AFTER PUBLIC HEARING OR REVISIONS
TO PUBLISHED VERSION OF THE REGULATION: In the event there
are any staff memoranda included in the rule making file
after the close of the public hearing these memoranda will
be available to the public upon request from Mrs. Masterton
for a period of 15 days after the public hearing.

In the event there are any revisions to the
published version of the regulation, these revisions
will be available to the public from Mrs. Masterton for
a period of 15 days after the public hearing.

Following the hearing, the State Board of
Equalization, upon its own motion, or at the instance of
any interested person, may in accordance with law adopt
the changes proposed without further notice.

Dated: May 26, 1983

STATE BOARD OF EQUALIZATION

Douglas D. Bell

Douglas D. Bell
Executive Secretary

(6) A floating dry dock that is designed for use with adjacent shore facilities at a single location is a fixture even though the dry dock is occasionally moved to facilitate dredging under the dry dock. A floating dry dock that is used at several locations is personal property even though it is used primarily at one location in conjunction with special shore facilities.

(7) A computer system is a fixture where extensive improvements, such as a building (or portion of a building), air conditioning, emergency power supply, and an elaborate fire suppression system are constructed specifically to accommodate the computer system, and the improvements are not useful or are only marginally useful other than as housing and support of the computer system. A small, general-purpose computer (or computer system) is personal property if it can be moved without material damage or expense and it is not essential to the intended use of the real estate. An equally small computer (or computer system) is constructively annexed to a fixture if it is dedicated to controlling or monitoring the fixture and is otherwise necessary for the intended use of the fixture.

(8) Machines that are not physically annexed to the realty and that do not operate interdependently with the realty are personal property even though special flooring, conduits, and/or overhead racks are installed to accommodate wiring from a power source to the machines, because special accommodations for wiring are normal features of an industrial building and the building is fully usable for its intended purpose (as an industrial building) without the particular machines.