



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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December 19, 1996

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

No. 96/79

**NOTICE OF PROPOSED REGULATORY ACTION
BY THE**

STATE BOARD OF EQUALIZATION

**PROPERTY TAX RULE 122.5
FIXTURES**

PUBLIC HEARING: TUESDAY, FEBRUARY 4, 1997 AT 1:30 P.M.

NOTICE IS HEREBY GIVEN:

The State Board of Equalization, pursuant to the authority vested in the Board by Section 15606(c) of the Government Code proposes to amend Regulation 122.5, Fixtures, in Title 18, Division 1 of the California Code of Regulations. A public hearing relevant to this action will be held in Room 121, 450 N Street, Sacramento, at 1:30 p.m., or as soon thereafter as the matter may be heard on, Tuesday, February 4, 1997. Any person interested may present statements or arguments orally at that time and place. Written statements or arguments will be considered by the Board if received by February 4, 1997.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

The State Board of Equalization proposes to amend Property Tax Rule 122.5 (18 California Code of Regulations, §122.5), Fixtures, by adding subdivision (e)(9) to the listing of examples to provide guidance to local assessors on the assessment of automated teller machines (ATM)

Under existing law, the Board is mandated to provide guidance to local assessors in regard to the assessment of various types of real and personal property in order to ensure uniformity throughout the various counties of the state. Recent disagreement has arisen concerning the proper assessment of automated teller machines (ATM) so that it is necessary to provide specific guidance on that type of personal property by adding it as an explicit example to the general rule that governs those assessments.

The express terms of the proposed action, written in plain English, are available from the agency contact person named in this notice.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that Rule 122.5 does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed rule will result in no additional direct or indirect costs or savings to any State Agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, and that there are no other nondiscretionary costs or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

EFFECT ON BUSINESS

Pursuant to Government Code Section 11346.53(c), the Board of Equalization finds that the adoption of Rule 122.5 will have no significant adverse economic impact on business.

The adoption of the proposed rule will not be detrimental to California businesses in competing with businesses in other states.

The regulation as proposed will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The proposed rule will not affect small business because the assessment procedures will apply uniformly to all businesses utilizing automated teller machines in the State of California.

ADVERSE ECONOMIC IMPACT ON PRIVATE PERSONS/BUSINESSES

No impact.

FEDERAL REGULATIONS

There are no comparable federal regulations.

PLAIN ENGLISH STATEMENT

Preparation of the proposed rule included consideration of the plain English requirement and technical terms are defined in more simple language.

AUTHORITY

Section 15606, Government Code.

REFERENCE

Revenue and Taxation Code Sections 105 and 107.

CONTACT

Questions regarding the content of the regulation should be directed to Senior Tax Counsel, James M. Williams, at P.O. Box 942879, 450 N Street, MIC: 82, Sacramento, CA 94279-0082. Telephone: (916) 323-7714 - FAX (916) 323-3387.

Written comments for the Board's consideration or requests to present testimony and bring witnesses to the public hearing should be directed to Ms. Mary Ann Stumpf, Regulations Coordinator, (916) 322-9569, and at P.O. Box 942879, 450 N Street, MIC: 80, Sacramento, CA 94279-0080.

ALTERNATIVES CONSIDERED

The Board must determine that no alternative considered would be more effective in carrying out the purpose for which this action is proposed or be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared a statement of reasons and a strike-out and underscore version (express terms) of the proposed regulation.

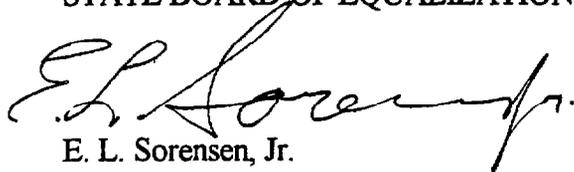
Both of the documents and all information on which the proposed regulation is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. Requests for copies should be addressed to Ms. Mary Ann Stumpf, Regulations Coordinator, (916) 322-9569, at P.O. Box 942879, 450 N Street, MIC: 80, Sacramento, CA 94279-0080.

ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may adopt the proposed regulation if the text remains substantially the same as described in the text originally made available to the public. The text of any modified regulation will be mailed to those interested parties who commented orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Ms. Stumpf. The Board will consider written comments on the modified regulation until such time as the regulation is adopted.

Date: December 3, 1996

STATE BOARD OF EQUALIZATION



E. L. Sorensen, Jr.
Executive Director

Rule 122.5.

FIXTURES.

(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) Property may be considered physically annexed if the weight, the size, or both are such that relocation or removal of the property would be so difficult 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 and is in use or has been used 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.

(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) Computer hardware components are fixtures if extensive improvements, such as a building (or portion of a building), air conditioning, emergency power supply, and a fire suppression system are constructed specifically to accommodate the components, and the improvements are not useful or are only marginally useful other than as housing and support of the components. A computer 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. A computer 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.

(9) An automated teller machine (ATM) is a unit of personal property capable of being used as a separate, free standing unit, and consists of a safe, monitor, keypad, central processing unit, magnetic card reader, cash dispenser, printer/transaction record dispenser and deposit receptor. An ATM is personal property and shall be classified as such if it can be removed or relocated for use at another location without material damage to the ATM or the realty with which it is being used. An ATM installed in the wall of a building is personal property because there is little or no physical attachment, the ATM can be removed and used elsewhere without damage to the ATM and with little or no damage to the structure, and the realty was not designed or extensively modified for the purpose of housing the ATM.

An ATM installed in a structure that was built primarily for the purpose of housing the ATM is a fixture because the realty cannot perform its desired function without the ATM.

For purposes of this subdivision:

The creation or elimination of an opening in an exterior or interior wall through which an ATM is installed does not constitute material damage to the real property.

The construction or removal of a partition or interior wall with access behind it for maintenance of the ATM and an opening through which an ATM is installed does not constitute material damage to the real property.

An ATM installed as a free-standing unit within a building, such as a supermarket or other retail establishment, is personal property. The presence of other banking facilities in such a unit does not change the character of the ATM as personal property.

Authority: Section 15606, government Code.

Referecne: Sections 105, 107, Revenue and Taxation Code.