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June 5, 2001

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TO INTERESTED PARTIES:

REVISION OF PROPERTY TAX RULE 122.5,
FIXTURES

As announced in Letter To Assessors 2001/021, the Board directed staff to amend Property Tax Rule 122.5 to specify that agricultural wind machines are properly classified as fixtures. In that letter staff distributed the wording of the proposed amendment to subsection (e) of Rule 122.5. Interested parties were asked to provide changes in the form of alternative text to the draft rule. Staff has reviewed those changes and incorporated those that were deemed appropriate.

Enclosed are (1) a matrix summarizing proposed changes to the draft rule amendment and (2) the draft rule amendment. These two documents will form the basis of discussion at the interested parties meeting. The matrix contains all proposed changes to the draft amendment, originating from interested parties, together with staff's position in regard to each proposed change.

On June 22, 2001, staff will meet with interested parties to discuss proposed changes identified on the matrix. The purpose of the meeting is to reach agreement on rule language. The meeting is scheduled to start at 9:30 a.m. in Room 122, Board of Equalization, 450 N Street, Sacramento.

After the interested parties meeting, the project will proceed as follows:

- Staff to submit issue paper for the Property Tax Committee meeting by July 18, 2001.
- The Board's Property Tax Committee will hear discussion on unresolved issues at its July 31, 2001 meeting

All documents relating to this project are available on the Board's Web site (www.boe.ca.gov) and can be accessed through Property Tax Committee Work Plans. If you have any questions, please contact Lou Ambrose at (916) 445-5580 or lou.ambrose@boe.ca.gov.

Sincerely,

/s/ Richard C. Johnson

Richard C. Johnson
Deputy Director
Property Taxes Department

RCJ:gf
Enclosures

**PROPERTY TAX RULE 122.5, FIXTURES
MATRIX OF PROPOSED ALTERNATIVE LANGUAGE**

Comments on March 29, 2001 Draft

Item	Ref. Pg. Ln.		Source	Proposed Language	Staff Position/Comments
1	All		California Citrus Mutual	California Citrus Mutual agrees with Board staff's proposed draft amendment to subsection (e) of Rule 122.5.	Accepted.
2	1	1	California Assessors' Association	A wind machine consists of a large fan mounted on a tower, <u>which resides upon a concrete base attached in like manner as a building upon the land</u> , a motor to drive the fan, a fuel tank or electrical hookup and related equipment necessary for its operation.	Not accepted. Proposed addition limits annexation to attachment while staff's language reflects subsection (b)(1), which defines physical annexation to include property embedded in land or permanently resting upon land in addition to attachment.
3	1	3	California Assessors' Association	Wind machines are used for agricultural purposes in the protection of crops from adverse weather conditions, <u>and are typically permanently stationed except for routine maintenance</u> .	Not accepted. The test for a fixture is not permanent annexation; the test is that it is intended to remain annexed indefinitely.
4	1	4	California Assessors' Association	When a wind machine is physically annexed to the realty with the intent that it be annexed indefinitely as provided in this rule, it is properly classified as <u>real property a fixture</u> .	Not accepted. This rule example is intended to clarify that a wind machine is a fixture as opposed to a structure.
5	1	6	California Assessors' Association	<u>A wind machine is real property due to the similarity of permanency found in buildings, structures, or fences. A wind machine which is a fixture is an improvement to realty as defined in Revenue and Taxation Code section 105 and Rule 122, but it is not a building, a structure or a fence.</u>	Not accepted. Staff's language distinguishes between structures and fixtures. The proposed revision does not make that distinction.

Item	Ref. Pg. Ln.		Source	Proposed Language	Staff Position/Comments
6	1	8	California Assessors' Association	In a typical application, a wind machine is physically annexed to the realty because it is attached to, imbedded in or permanently resting upon land or improvements. <u>Such annexation is dissimilar from the "physical annexation" as provided in subsection (b)(1) of Rule 122.5.</u> as provided in subsection (b)(1) of this rule with the intent that it remain "annexed indefinitely" as that phrase is defined in subsection (a)(3) of this rule.	Not accepted. Proposed addition contradicts the preceding sentence, which is the language of Rule 122.5 subsection (b)(1).
7	1	1 6	California Assessors' Association	<u>Wind machines have no other use that in conjunction with putting real property to use, and when mounted on a tower, are part of the real property.</u>	Not accepted. Staff's language is consistent with the definition in Rule 122.5. Proposed change is not an element of that definition, which is physical or constructive annexation with the intent that it remain annexed indefinitely, because it incorporates the element of use in conjunction with the real property.
8	1	1 6	California Assessors' Association	For property tax assessment purposes, wind machines that are defined as fixtures shall be appraised in accordance with subsection (e) of rule 461, which subsection provides that, for purposes of decline in value determinations, fixtures and other machinery and equipment classified as improvements constitute a separate appraisal unit.	Not accepted. Staff's language recites the clear direction of Rule 461. There is no authority for not following a duly promulgated rule by which the Board has determined that fixtures constitute a separate appraisal unit.

**PROPOSED STAFF AMENDMENT TO SUBSECTION (E)
OF RULE 122.5, FIXTURES**

- (10) A wind machine consists of a large fan mounted on a tower, a motor to drive the fan, a fuel tank or electrical hookup and related equipment necessary for its operation. Wind machines are used for agricultural purposes in the protection of crops from adverse weather conditions. When a wind machine is physically annexed to the realty with the intent that it be annexed indefinitely as provided in this rule, it is properly classified as a fixture. A wind machine which is a fixture is an improvement to realty as defined in Revenue and Taxation Code section 105 and rule 122, but it is not a building, a structure or a fence. In a typical application, a wind machine is physically annexed to the realty because it is attached to, imbedded in or permanently resting upon land or improvements as provided in subsection (b)(1) of this rule with the intent that it remain “annexed indefinitely” as that phrase is defined in subsection (a)(3) of this rule. A wind machine that is attached to or resting on a truck bed or other movable equipment is personal property and not a fixture because it is not intended to remain annexed indefinitely to realty.