

SPECIAL TOPIC SURVEY

ASSESSMENT COORDINATION BETWEEN REAL PROPERTY AND BUSINESS PROPERTY DIVISIONS ON TENANT IMPROVEMENTS

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CALIFORNIA STATE BOARD OF EQUALIZATION

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PREFACE

The State Board of Equalization is required by law to periodically audit the assessment programs in each of the 58 California counties. The results and recommendations arising from these field and office audits are published in assessment practices survey reports. In addition, the Board makes periodic statewide surveys limited in scope to specific topics, issues, or problems affecting local property taxation. These special topic surveys, authorized by sections 15640 and 15643 of the Government Code, are conducted as needed by the Board's Property Taxes Department. The findings of these selective surveys are published and distributed to the Legislature, all county assessors, the Members of the Board, and Board staff who are involved with the particular survey issue. Copies of these surveys are also available to concerned individuals in the private sector.

The subject of this special topic survey is the assessment coordination between the real property and business property divisions of the assessors' offices with regard to tenant improvements related to business properties. The goals of this report are to identify effective assessment coordination procedures, and present the staff's position regarding these procedures. This special topic survey was authorized by the Members of the Board of Equalization on December 10, 1998.

The primary source of information regarding current assessment procedures used in county assessors' offices was a questionnaire, with 30 questions, addressed to each of the 58 county assessors (see County Assessors Only # 99/11 dated August 11, 1999). Of the 58 counties, 46 county assessors participated in this survey.

This report was written by staff of the Policy, Planning, and Standards Division of the Property Taxes Department. We wish to express our appreciation for the efforts and cooperation of the Honorable Gary Freeman, Assessor, San Joaquin County, who acted as the lead for the California Assessors' Association on this project, and to all the participating assessors.

David J. Gau, Chief
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CHAPTER 1: INTRODUCTION

This survey focuses on coordination procedures currently being practiced in assessors' offices to transfer information on tenant improvements between the real property and the business property divisions, and to facilitate correct assessments. Depending on how tenant improvements are reported by the taxpayer or discovered by the assessor's staff, the assessment may be processed by the business property division or the real property division.

The assessor has the duty to assess all taxable property at a uniform ratio of its full value and to assure uniformity in taxation. In order to perform these duties, the assessor uses various forms of discovery, including property statement forms prescribed and/or approved by the Board.¹ The assessor furnishes the appropriate property statement forms and instructions to persons required by law or requested by the assessor to file.² In turn, every person owning property that is not otherwise exempt, must file a signed property statement for each assessment year,³ showing "all taxable property owned, claimed, possessed, controlled, or managed by the person filing it and required to be reported thereon."⁴

One of these Board-approved property statement forms is the Business Property Statement (BOE-571-L), commonly known as the 571-L.⁵ This statement contains three main sections, excluding other pages for supplemental schedules. The third section, page 3, is Schedule B, where the business owner reports buildings, building improvements, leasehold improvements (structure items and fixtures), land improvements, land and land development.

The questionnaire sent to the 58 counties contains 30 questions, and the summary of the responses is in Chapter 3 (details are in *Appendix 1*). The reader is cautioned that while only the responses to each question by the majority of assessors are presented in the summary, the staff is not endorsing the majority's methods, practices, or procedures. Chapter 2 of this report is a brief discussion of the importance of "Classification" and some valuation issues related to tenant improvements. The staff's recommendations are presented in Chapter 4.

Finally, related code sections, rules, cases and excerpts from Assessors' Handbook sections are included in the Appendices.

¹ Revenue and Taxation Code section 452, and Title 18, California Code of Regulations, Property Tax Rule 171 (a) discuss Board-prescribed forms for property statements. All section references are to the Revenue and Taxation Code, unless otherwise noted. All rule references are to the Property Tax Rules (Title 18, California Code of Regulations.)

² Rule 171 (d) Assessor to furnish property statements.

³ Section 441 Property statement; other information.

⁴ Section 442 Contents of statement.

⁵ The suffixes to the Property Statement numbers are specific to various operations predefined by the Board.

CHAPTER 2: ASSESSMENT OF TENANT IMPROVEMENTS

IMPROVEMENTS

The assessor is required to prepare an assessment roll listing all assessable property in the county, with the assessed value of land shown separately from improvements.⁶ Section 105 defines *improvements* as:

- (a) all buildings, structures, fixtures, and fences erected on or affixed to the land, and
- (b) all fruit, nut bearing or ornamental trees and vines, not of natural growth, and not exempt from taxation, except date palms under eight years of age.

This survey deals primarily with assessment coordination practices for real property that is leased to others under a leasehold agreement⁷ and the structure and fixture improvements that are frequently done to this type of property. For purposes of this survey, *tenant improvements* are improvements made by or for the tenant, regardless of who pays for them. These are:

Landlord Improvements

For purposes of this report, *landlord improvements* are building improvements made by the real property owner for the benefit of the landlord or the tenant. As used in the property statement and reported by the landlord in Schedule B, these may be structure, fixture, land improvement, or land development items.

Leasehold Improvements

Leasehold improvements are all "improvements or additions to leased property that have been made by the lessee."⁸ These may be reported by the tenant on the property statement under Schedule B as structure, fixture, land improvement, or land development items.

Structure Items

A *structure item*, as described by the Business Property Statement is:

An improvement will be classified as a structure when its primary use or purpose is for housing or accommodation of personnel, personalty, or fixtures and has no direct application to the process or function of the industry, trade, or profession.

⁶ Sections 601, 602, and 607.

⁷ Letter to Assessors (LTA) 78/137 defines leasehold as "...the right of use and occupancy of real property by virtue of a lease agreement."

⁸ Appraisal Institute, *The Dictionary of Real Estate Appraisal*, s.v., "leasehold improvement."

Fixtures

Rule 122.5(a)(1) defines *fixtures* as:

...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.

Land Improvements

Rule 121 describes Land Improvements:

...where a substantial amount of other materials, such as concrete, is added to an excavation, both the excavation and the added materials are improvements...

Land improvements are also defined as:

Relatively permanent structures built on, or physical changes made to, a property to increase its utility and value.⁹

The Business Property Statement gives the examples of "blacktop, curbs, fences."

Land and Land Development

Land is described in Rule 121, in part:

Where there is a reshaping of land or an adding to land itself, that portion of the property relating to the reshaping or adding to the land is land.

Land development is defined as:

The improvement of land with utilities, roads, and services, which makes the land suitable for resale as developable plots for housing or other purposes.¹⁰

The Business Property Statement gives the examples of "fill, grading."

VALUATION AND ASSESSMENT RESPONSIBILITIES

When there is no change in ownership or new construction, sections 50 and 51 require the assessor to value taxable real property at the lesser of its factored base year value or its full cash value, and all other taxable property that is not otherwise exempt at its full value reported as of the lien date.. If there is a change of ownership or completion of new construction, a new base year value must be established for the property which has changed ownership or is newly constructed.

⁹ *The Dictionary of Real Estate Appraisal* (3rd ed. 1993), p. 198.

¹⁰ *The Dictionary of Real Estate Appraisal* (3rd ed. 1993), p. 198.

When the owner of a business is also the owner of the land and building, there is no question as to the proper assessee of the improvements related to business property (i.e., the landlord or tenant improvements). In this case the taxable property is assessed to one account on the secured roll.¹¹

When the owner of the real property (other than fixtures) does not own the business, other possibilities arise. Improvements related to business property may be constructed and paid for by either the landlord (landlord improvements) or the tenant (leasehold improvements), reported by either one, or both, using their own property statement, and in either case are assessable to either party. For tenant improvements, therefore, the responsibilities of auditors and appraisers for valuation and assessment need to be clearly defined and the corresponding systems and procedures distinctly established.¹²

Finally, while the assessor is required to assess all taxable property to the persons owning, claiming, possessing, or controlling the property on the lien date,¹³ the assessor may, at his or her discretion, jointly assess the lessor and tenant of such property on the unsecured roll.¹⁴

OWNERSHIP OF TENANT IMPROVEMENTS AND THE ASSESSEE

In the absence of clear statements of ownership in the rental or lease agreement between the landlord and the tenant from lease inception to lease termination, tenant improvements are owned by the landlord. The California Civil Code section 1013 provides:

When a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed, except as otherwise provided in this chapter, belongs to the owners of the land, unless he chooses to require the former to remove it or the former elects to exercise the right of removal provided for in Section 1013.5 of this chapter.

Consistent with the above, the definition of *Tenant Improvements* as used in this survey is:

Tenant improvements are improvements made by or for the tenant, **regardless of who pays for them.**

When determining ownership of tenant improvements, the lease agreement between the lessor and the tenant is the primary factor that needs to be addressed by both the auditor and the appraiser. Section 405 defines the assessee as the person who owns, claims, possesses, or controls the taxable property.

¹¹ Personal property is assessed on the secured roll if, in the opinion of the assessor, the value of the real property is sufficient to secure payment of the taxes. Otherwise the personal property is to be assessed on the unsecured roll. Revenue and Taxation Code section 134.

¹² See AH 502, *Advanced Appraisal*, Chapter 6 for a more detailed discussion.

¹³ Section 405(a) Assessee.

¹⁴ Section 405(b) Assessee.

NEW CONSTRUCTION OR NORMAL MAINTENANCE AND REPAIR

Section 70 and Rule 463(b) define "new construction" as an addition to real property and any alteration of real property which constitutes a major rehabilitation or which converts the property to a different use. A major rehabilitation is any rehabilitation, renovation or modernization that converts an improvement or fixture to the substantial equivalent of a new improvement or fixture. Such newly constructed property is valued pursuant section 110.1(a)(2)(B).

Rule 463(b)(4) excludes normal maintenance and repair from alterations that are defined as new construction. Revaluation does not normally occur as these are often "expensed" items rather than being capitalized by either the landlord or the tenant.

The following brief definitions of common terms normally associated with *new construction* may help in the assessment of tenant improvements.¹⁵

Addition

"Addition" is the act or process of adding; also, the unit or component of a unit that is added. The act of adding implies that there is a pre-existing structure or base to which something is added. For property tax purposes, an addition to real property—whether land or improvements—is considered new construction. An addition does not, however, result in a change in either the base year or base value of the pre-existing portion of the property.

Alteration

"Alteration" is the act or procedure of altering; also, a modification or a change. Under Rule 463(b)(2), an alteration may qualify as new construction when it either (1) rehabilitates real property to the point that it is "substantially equivalent to new" or (2) converts the real property to a different use.

Change in Use

Subdivision (a)(2) of section 70 and Rule 463(b)(3) state that physical alterations that lead to "a change in the way property is used" qualify as newly constructed. Value added by the physical alteration is assessable, but value attributable solely to the change in use without a corresponding physical alteration is not. There are five basic use types: agricultural, residential, commercial, industrial, and recreational. Any physical alteration of land or improvements that leads to a change from one of these use types to another would qualify as new construction.

Modernization

"Modernization" means taking corrective measures to bring a property into conformity with changes in style, whether interior or exterior, or additions necessary to meet standards of current demand. It normally involves replacing parts of the structure or mechanical equipment with modern replacements of the same kind. If modernization results in a property that is substantially equivalent to new, it qualifies as new construction. Thus, for property tax purposes,

¹⁵ See AH 502, *Advanced Appraisal*, Chapter 6, for a more in-depth discussion of "new construction."

modernization implies curing functional obsolescence and physical deterioration to the degree that the structure or fixture is "substantially equivalent to new" after the modernization has been completed.

Portion Thereof

Both section 70 and Rule 463 use the term "portion thereof" in the context of new construction. A "portion" is a component of a land parcel, an individual structure, or a fixture easily recognized by an appraiser. A "portion" is part of an individual structure designed for independent, separate use within that structure.

Rehabilitation

"Rehabilitation" means the restoration of a property to satisfactory condition without changing the plan, form, or style of a structure. It usually involves curing physical deterioration. If rehabilitation brings about the "substantial equivalent of new" condition of a structure or fixture, it qualifies as new construction for property tax purposes.

Renovation

"Renovation" is a "making into new condition." Like rehabilitation, renovation involves curing items of physical deterioration. When renovation restores a structure or fixture to the "substantial equivalent of new," there is new construction for property tax purposes.

Substantially Equivalent to New

Under Rule 463(b)(3), new construction is assessable when that new construction has converted a fixture or any other improvement, or a portion thereof, to a state "substantially equivalent to new." For example, a very old house is stripped to its studs and rebuilt from the foundation up. The restoration is such that the old house has been converted into a state comparable to that of a new house. The value added by such a conversion would be assessable as new construction. Whether or not construction activity transforms an improvement, fixture, or a portion thereof into a state that is substantially equivalent to new (i.e., into a state where its utility is comparable to new) is a factual determination that must be made on a case-by-case basis.

CHAPTER 3: SUMMARY

Forty-six (46) counties responded to this survey. One (1) county reformatted the survey questions and gave answers based on conditions they set forth and the corresponding procedures or practices related to those conditions. Where the responses of this county could be directly identified to the questions and response options (the number sequence was also not followed), the responses were included in the tabulation; otherwise, the responses were considered as if no answers were given. See *Appendix 1* for the detailed and graphical tabulation of the survey.

SUMMARY OF RESPONSES

Roll Values and Written Procedures on Tenant Improvements

Twenty-six (26) of the 46 counties responding to this survey have roll values less than \$15 billion. Of the 26 counties, 6 have written procedures regarding assessment of tenant improvements in their counties. Ten (10) counties have roll values between \$15 billion and \$50 billion, and of the 10, 8 have written procedures. Finally, 7 counties represented roll values in excess of \$50 billion. Six (6) of the 7 counties have written procedures. Three (3) counties did not respond to the question regarding the value of the local roll. Two (2) of the 3 counties have written procedures.

Classification of Tenant Improvements and Identification of Assessee

Thirty-nine (39) counties (85 percent) classify tenant improvements as *structure* or *fixture*; 10 use *ownership* of the improvements as the basis for the classification to either *structure* or *fixture*; while 24 use Board and/or internal county guidelines and the Revenue and Taxation Code; 5 did not indicate their basis for classification.

Thirty-eight (38) of the 39 counties that classify tenant improvements as *structure* or *fixture* assess tenant improvements to either the landlord or the tenant. Generally, the assessee is the landlord for structures and the tenant for fixtures. Some counties try to identify who paid for the improvements, while others attempt to use the lease agreements or base the decision on declared statements (section 2188.2) with the assessor's office. Additional assessors' comments include:

- Permanent improvements constructed by a tenant (such as restrooms, offices, HVAC, loading docks, paving, landscaping, etc.) are assessed to landlord. Non-permanent improvements (lighting, partitions, carpeting, cabinets, countertops, etc.) are assessed to the tenant.
- Structural or land improvements purchased by the tenant may be included in the Real Property valuation, and in those instances would be assessed to the landlord. If the structural improvements are determined not to be included in the structural value on the roll, then they may be assessed to the tenant, after

review. Fixture improvements owned by the tenant are generally assessed to the tenant.

- Regional mall tenant improvements are assessed to tenants; smaller retail stores are assessed to the tenant at the request of the landlord or tenant; all others are assessed to landlord.

The remaining 7 counties classify all tenant improvements only as *structure*; 2 assess the tenant for the improvements, while 5 assess either the tenant or the landlord based on who paid for the improvements or based on their leasehold agreements.

Improvements Assessed by the Real Property Division

When there is neither a change in ownership nor new construction, 39 counties (84 percent¹⁶) factor tenant improvements forward with the structure assessment. In relation to the question regarding *classification*, 38 of these 39 counties are the same counties that classify tenant improvements as either *structure* or *fixture* and assess either the landlord or the tenant.

When the existing tenant moves out and is not replaced by a new tenant, leaving the improvements with the landlord, 30 counties (65 percent) factor the improvements with the structure and assess the landlord. Five (5) counties decreased the roll but gave no details as to what is done with the value of the improvement(s) left by the tenant. Eight (8) counties did not answer question 9.

If a new tenant moves in and installs improvements of the same quality as the old improvements, 22 counties (42 percent¹⁷) leave the existing assessment on the roll, while 24 counties (45 percent) remove and replace values for a new assessment. If the improvements by the new tenant are of better quality than the previous tenant, 28 counties (57 percent¹⁸) remove the existing assessment and replace with a new assessment; 13 counties (27 percent) add to the existing assessment.

Improvements Assessed by the Business Property Division

If the business property division is responsible for the valuation of tenant improvements, 36 counties (88 percent¹⁹) use reported costs to determine the initial value of tenant improvements.

Coordination Procedures

Copies of building permits are routed to the business property division by 32 of the 40 counties (80 percent) responding to question 16.

¹⁶ There are 47 responses to question 7 because one county chose two options.

¹⁷ There are 53 responses to question 10 because 7 counties chose more than one option.

¹⁸ There are 49 responses to question 11 because 3 counties chose more than one option.

¹⁹ There are 41 tabulated responses to question 14.

With regard to information reflected in the real property records, 28 of the 46 counties (61 percent) identify the assessee and the tenant improvements, and they also describe how the values are arrived at in their real property records.

Twenty-three (23) counties (50 percent) use standardized referral forms to communicate between divisions regarding improvements reported on the Business Property Statement; 9 of the 23 counties not only require mandatory responses to the originating department but track the responses as well. Some of the comments are:

- Copy of Business Property Statement given to real property appraisers.
- All appraisers and recorders are in the same room. Consultation between business property and real property divisions is done as needed.
- We deal face-to-face with others in our department, as well as with other county departments. We would pick up copies of permits when needed.
- A copy of the Business Property Statement, or depreciation schedule with highlighted item, is sent and computer coded.

Forty-three (43) counties (93 percent) responded that in the course of an audit, real property records are reviewed by the auditor to determine if tenant improvements are being assessed on the real property account; an identical number of counties make adjustments to the real property account when the auditor determines that tenant improvements should be assessed on the business account. Some significant notes are:

- Coordination is through direct communication and coordinated review - usually before a decision is made as to who has assessment responsibility.
- By the auditor notifying the supervising commercial appraiser. The real property file is changed by an appraiser.
- The Auditor-Appraiser makes the changes on the real property record.
- Real property division is given copy of audit findings.
- In a formal letter to the person directly responsible for the valuation of the real property.
- When 'audit physical' is done, a real property appraiser accompanies the auditor.

When tenant improvements are assessed on the real property account, 42 counties (91 percent) make supplemental assessments; when the tenant improvements are assessed on the unsecured

roll, the number of assessors that do supplemental assessments is equal to the number that do not (21).²⁰

Finally, 36 counties (78 percent) use a total property assessment process for any commercial-industrial property. Examples of these properties are:

- Power production plants, heavy industrial, convenience stores with gas service, offices, banks.
- Co-generation plants, hotels/motels, apartments, mobile home parks and cold storage facilities.
- Golf courses, residential care / retirement type homes, industrial plants, refineries.
- Lumber mills, ski resorts, biomass plants and bio technical facilities.
- Special, unique and one of a kind type properties, e.g., a destination resort or theme park.

²⁰ There are 47 tabulated responses to question 30 because one county marked two options.

CHAPTER 4: RECOMMENDATIONS

Objectives

Tenant improvements must be:

- Valued on and at the appropriate date and amount,
- Assessed on one account,
- Assessed on the proper roll (i.e., secured or unsecured), and
- Assessed to the proper assessee

Establish a Comprehensive Set of Written Procedures Between Real Property and Business Property Divisions

Set up written procedures that describe how to systematically and consistently identify and assess tenant improvements to help promote uniform assessment and to ensure that there is only one established set of procedures being used to achieve the correct valuation and assessment of these properties.

Develop and Use an Inter-departmental Memorandum for Coordination

Transfer information between the real property and business property divisions within an assessor's office to avoid duplicate or escape assessment of tenant improvements. One method presented in AH 504, that is recommended by the staff, is the use of inter-departmental memorandum to track and monitor changes to leased property.²¹ Copies of this memorandum are kept in both the real property and business property divisions to provide a complete record of the appraisal, including classification, valuation, and assessee.

Notations on Both the Appraisal Record and the Business Property File

Cross-reference appropriate information contained in the appraisal records and the business property account files to ensure that important information is considered by either one or both the auditor and the appraiser, not only in performing their functions, but more importantly, when answering taxpayer queries.

The appraisal notes should include information regarding the existence of tenant improvements, a description of the improvements, and the basis for valuation. The business property file should include auditor's notations indicating that the appraisal records were reviewed and that discovery information or a copy of the Schedule B of the Business Property Statement was forwarded to the real property division. If the improvements involve more than one account, the appraisal records should indicate in what manner the improvements are assessed (i.e., to whom, secured or unsecured roll, and assessor's parcel number or business property account number).

²¹ See *Appendix 2* of this report for an example.

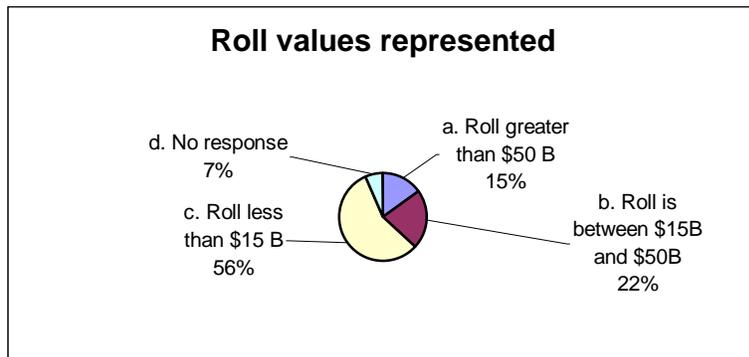
Use a Positive Response System

It is strongly suggested that the procedure used to transfer information between divisions include a positive response system. This is the tracking of a referral of information between divisions to determine what action has been taken on the information by the other division so the appraisal or business property records can be documented appropriately. This will ensure that the property was assessed as intended. Such a system is necessary because misunderstandings or disagreements on procedures can occur between different divisions in an assessor's office. Due to the pressures of completing the assessment roll during the closing weeks of the assessment season or other "rush" periods, it is inevitable that questionable items may be temporarily set aside for future resolution, instead of being immediately resolved. A positive response system ensures that such items will be resolved.

APPENDIX 1: RESULTS OF THE SURVEY

Each question in the survey is listed in the following tabulation. In order to properly count the responses to the survey and allow better readability of the charts, each possible response to a question is assigned a letter, e.g. a, b, c, and d. The numbers enclosed in "[]" are the tabulated responses to the options listed for each question and the graphical representation shows the calculated percentages to total responses.

SIZE OF COUNTY:

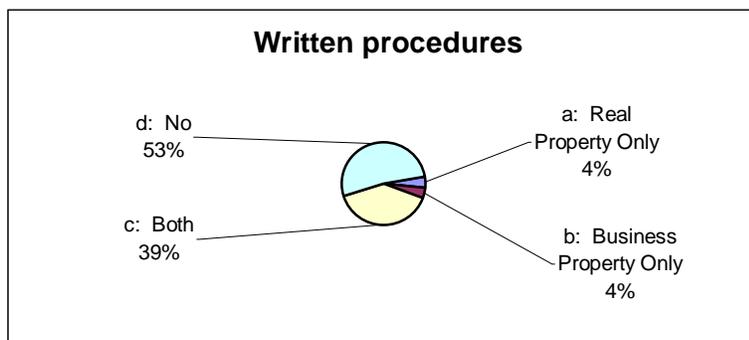


Of the 46 counties responding to the survey:

- [07] a. Over \$50 Billion Local Roll Value
- [10] b. \$15 to \$50 Billion Local Roll Value
- [26] c. Under \$15 Billion Local Roll Value
- [03] d. No response given

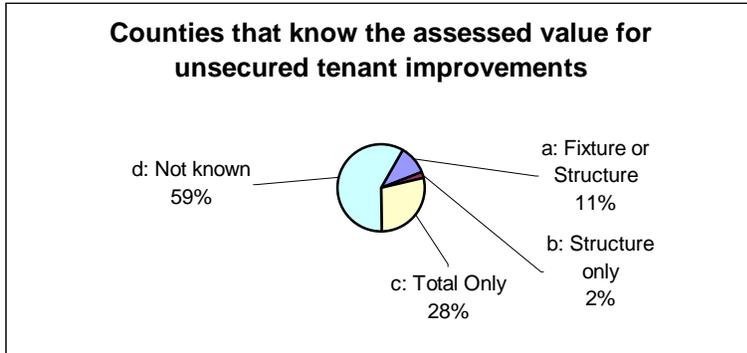
GENERAL

1. Do you have written procedures regarding the assessment of tenant improvements?



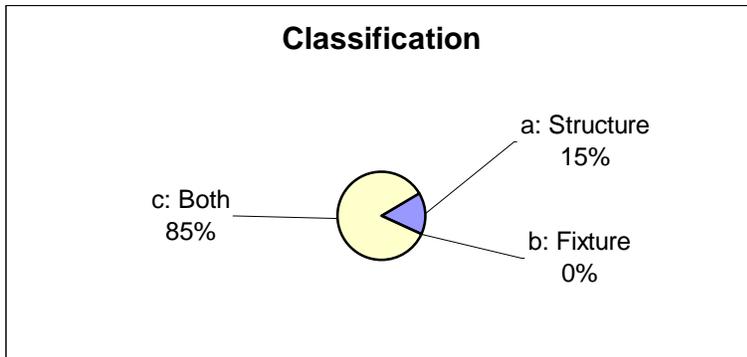
- [02] a. Yes-real property only
- [02] b. Yes-business property only
- [18] c. Yes-Both
- [24] d. No

2. What is the total assessed value for unsecured tenant improvements in your county?



- [05] a. Known as to Fixture or Structure
- [01] b. All under Structure only
- [13] c. Only the total is known
- [27] d. Do not track

3. How are tenant improvements classified?

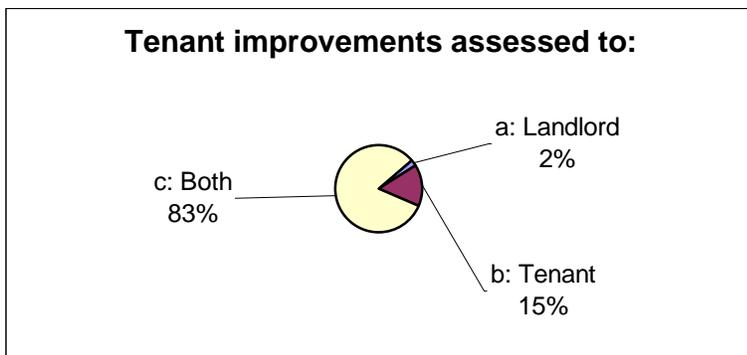


- [07] a. Structure
- [00] b. Fixture
- [39] c. Both

Comments: Of the 39 assessors that classify tenant improvements to both structure and fixture:

- 10: Based on ownership: If owned by lessee/tenant – Fixture;
If owned by lessor/fee owner - Improvement
- 24: Based on Revenue & Taxation Code, SBE “guidelines,” county guidelines
- 05: Basis was not enumerated.

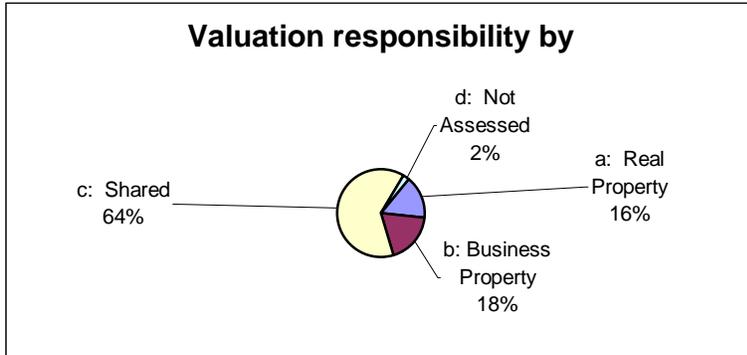
4. Tenant improvements are assessed to:



- [01] a. Landlord only
- [07] b. Tenant only
- [38] c. Both

VALUATION

5. If separately assessed, who has valuation responsibility for tenant improvements for the property types listed in the survey?

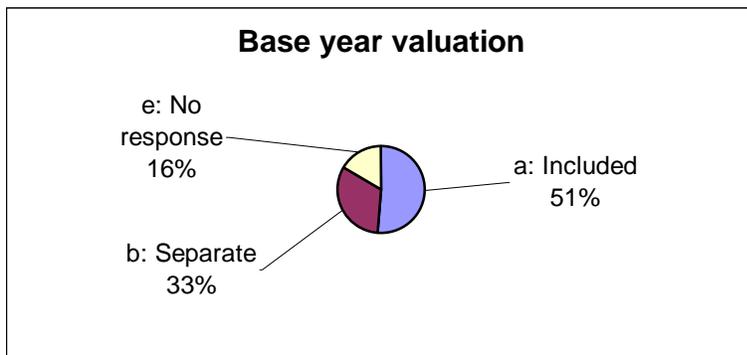


- [07] a. By real property
- [08] b. By business property
- [28] c. Shared by both real and business property
- [01] d. Not separately assessed

Comments: The tabulation is only for 44 of the 46 respondents because only the responses, which are clustered to real property division, or business property division, or shared, are considered in the graph. One county did not answer the question, while another county (#41) has real property doing Regional Malls, business property doing Neighborhood & Strip Centers and Other Retail, and both real property and business property divisions doing Offices.

REAL PROPERTY ASSESSMENT

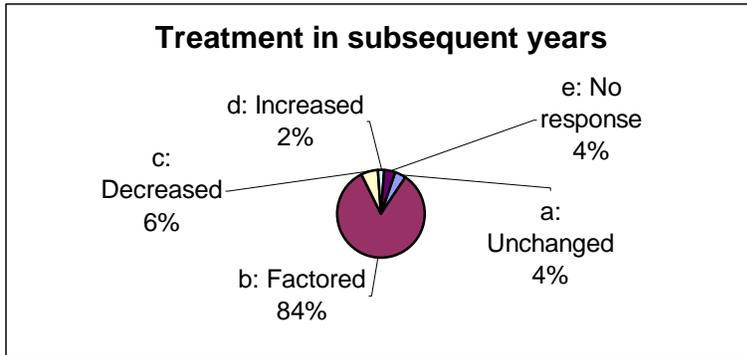
6. If the real property division is responsible for the valuation of the tenant improvements, how is the base year value determined?



- [25] a. Included in the structure value
- [16] b. Separately assessed
- [08] c. No response given

Comments: Of the 16 that separately assess tenant improvements, 14 respondents use the cost method to value the improvements. Two did not specify the method that the county uses. Also, the tabulation has a total of 49 because 3 counties marked 2 options each.

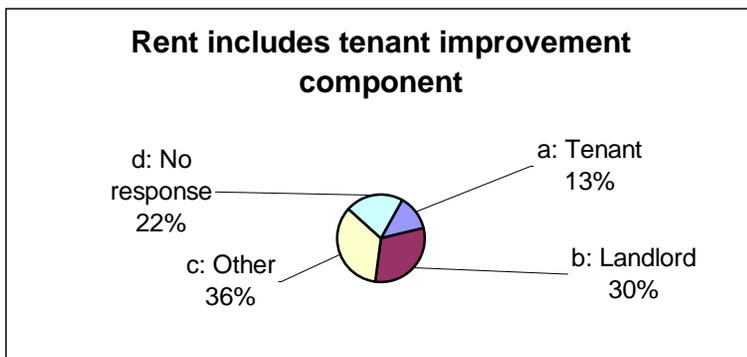
7. How are the assessments for tenant improvements treated in subsequent years if there has been no change in ownership or new construction?



- [02] a. Unchanged
- [39] b. Factored forward with structure assessment.
- [03] c. Decreased
- [01] d. Increased
- [02] e. No response given

Comments: There are 47 responses tabulated because one county chose two options on this question.

8. If the rent for the real property includes a component for tenant improvements:

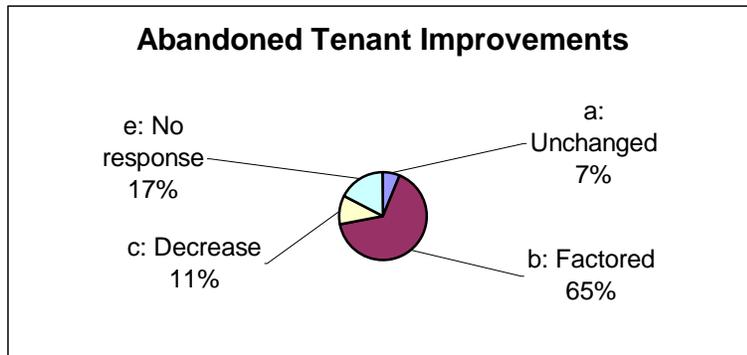


- [06] a. Capitalize the actual rent into an assessment to the landlord and assess any tenant improvement value to the tenant?
- [14] b. Determine a rent that reflects the total value of the tenant improvement and capitalize that rent into an assessment to the landlord?
- [16] c. Use another method
- [10] d. No response given

Comments: Some of the answers to other methods used by the respondents are:

- Capitalize the economic rent of typical building improvements and assess to the landlord. Any atypical or excess (over) improvement is assessed to tenant.
- Typically, we do not know the private arrangements, so we generally assess at cost to the party that paid for the assets.

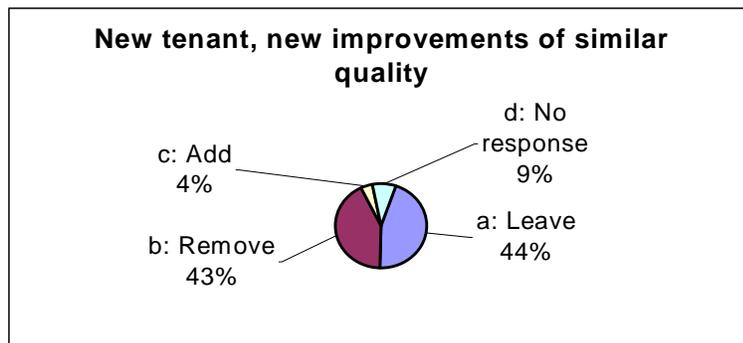
9. When the existing tenant moves out and is not replaced by a new tenant, how are the tenant improvements treated?



- [03] a. Unchanged
 [30] b. Factored with the structure assessment.
 [05] c. Decreased
 [08] d. No response given

Comments: Of the 5 counties that "decrease" the roll for the abandoned tenant improvements, the landlord is assessed. Of the 8 that did not mark any choice for Question 9, 3 commented that the tenant improvements are treated as "abandoned" and "re-appraised to the secured owner."

10. When the existing tenant is replaced by a new tenant who installs new tenant improvements of similar quality, do you:



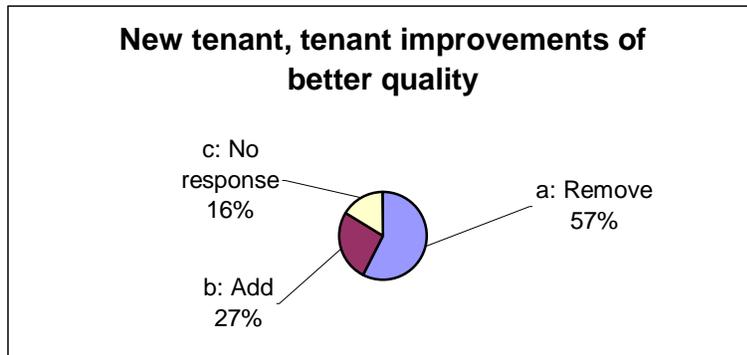
- [22] a. Leave the existing assessment on the roll
 [24] b. Remove existing assessment and replace with new assessment
 [03] c. Add additional assessment to existing assessment
 [04] d. No response given

Comments: There are 53 responses because 7 counties marked more than one option.

Some of the methods used by the 24 respondents that remove the existing assessment and replace it with a new assessment are:

- Tenant's reported cost.
- Use reported cost by new owner on statement. If assessed by the real property division, then no value change-basically replacement.
- Added as new construction. (Section 70 & 71)
- If assessed on the Business Property Statement, the old basis is canceled and a new value is determined based upon historic cost less tear out.

11. When the existing tenant is replaced by a new tenant who installs tenant improvements of better quality, do you:



[28] a. Remove existing /
replace with new
assessment

[13] b. Add additional
assessment to existing
assessment

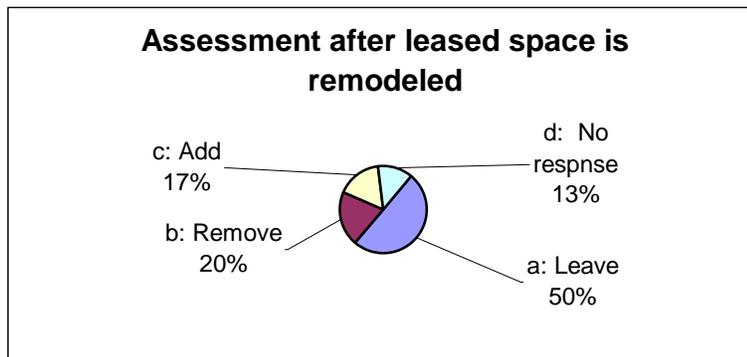
[08] c. No response given

Comments: There are 49 responses because 3 counties chose multiple options.

Some assessors' comments regarding the basis for the 'new assessment' are:

- We consider this a change in ownership of tenant improvements and find a new Base Year value.
- Section 70 and 71
- Request historical cost. If it is provided and appears to be within the normal band for the type of improvement, we would use it. If the historical cost is not provided, or is deemed too high or too low, we would use department replacement cost factors.
- Depends on the degree the market recognizes a difference in rents.
- If assessed on the Business Property Statement, the old basis is canceled and a new value is determined based upon historic cost less tear out.
- Based on the increase in Market Value - the difference is added to factored base of tenant improvements.
- Business division: for industrial accounts, remove existing assessment and replace with new assessment; for Real Property, use cost data, income and market approaches to develop additional assessment for new construction and to determine that new assessment for property does not exceed its value in the market place.

12. If the leased space is remodeled by either the landlord or the tenant, do you:



- [27] a. Leave the existing assessment on the roll unchanged.
- [11] b. Remove the old assessment and establish a new base year value for the new improvements.
- [09] c. Add an increment for the new construction
- [07] d. No response given

Comments: There are 54 responses to the question because seven counties chose 2 options, while one chose 3 options.

Some of the responses regarding leaving the existing assessment on the roll unchanged are:

- Depends on the value of the remodel. If the lease space is the same quality as before (i.e., can not generate higher market rent) no value change is made.
- Real estate tenant improvements, ceiling and partitions are not deducted as they are considered as the standard tenant improvement allowance. Note: Business property division assumes, for the most part, that all improvements, specified by the handbook, have been abandoned by the former tenant and new assessments are made on any new.
- Typically,...would depend on highest and best use.
- Depends upon the degree of remodeling done.
- If assessed on the appraisal, the value is not changed - considered repairs and maintenance.
- Replacement

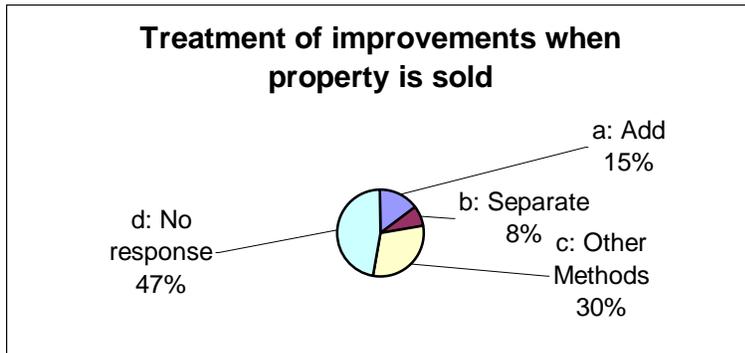
Some of the comments regarding removing the old assessment and establishing a new base year are:

- New improvements not included in design type of building; complete removal of old tenant improvements in entire building and replacement with new.
- If assessed on the Business Property Statement, the old basis is canceled and a new value is determined based upon historic cost less tear out.

Some of the comments regarding adding an increment for the new construction are:

- Add new construction based on percentage of the structure that is remodeled.
- Only if something is added that had not been previously assessed.
- Depends on whether it adds value; if it does, there would be an increment for new construction like any other remodel or addition based on costs of new improvements.
- Generally add increment for the value added. However, the other two may be used depending on change in use and how extensive remodel is.

13. If you assess all tenant improvements to the landlord, how do you treat them upon a sale of the property?



- [06] a. Add the tenant improvement value to the sales price.
- [03] b. Establish a separate assessment for the existing tenants.
- [12] c. Other methods
- [19] d. No response given

Comments: There are only 40 responses to questions 13 through 16 because six counties did not receive one page of the survey.

Some responses regarding other valuation methods used when the property is sold are:

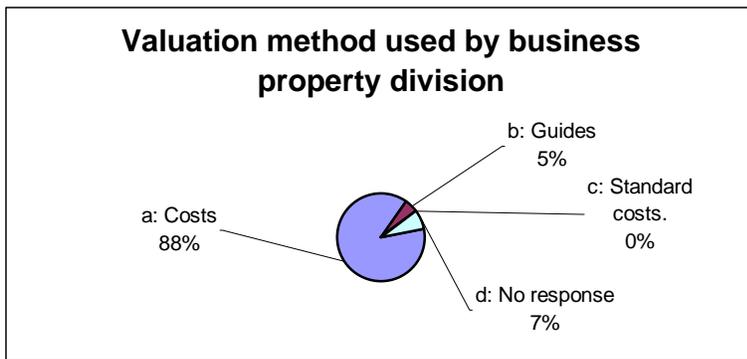
- If improvements are determined to be owned by the landlord, they are included in sales price. If owned by tenant, they are assessed by the business property section to the tenant.
- By assessing only the landlord improvements, the purchase reflects only those included in the sale. Therefore, nothing additional is necessary. The improvements assessed to the tenants are being assessed on the unsecured roll.
- Use sales questionnaire and/or phone interview to determine to what extent sales price included tenant improvements or possibly shell value only.

Of the 19 counties that did not answer the question, some of their comments are:

- Use sales price as Market Value if supported by sales/RCLD data.
- Assume the sales price includes the improvements because landlord is owner of the land improvements.
- We only assess landlord owned tenant improvements to the landlord so no adjustment for those tenant improvements.

BUSINESS PROPERTY ASSESSMENT

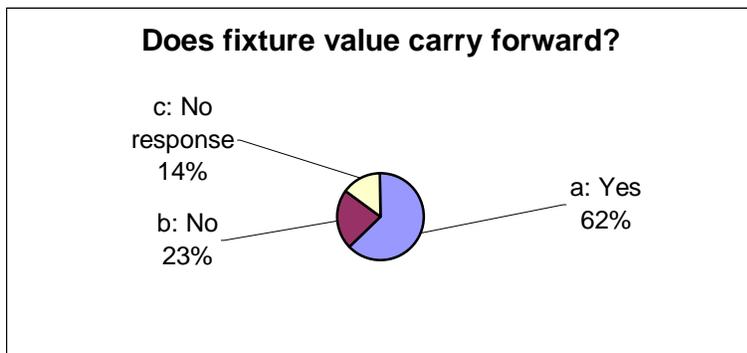
14. If the business property division is responsible for the valuation of the tenant improvements, how is the initial value determined?



- [36] a. Reported costs
- [02] b. Valuation guides
- [00] c. Standard costs
- [03] d. No response given

Comment: There are 41 responses instead of 40, because 1 county chose two options for this question.

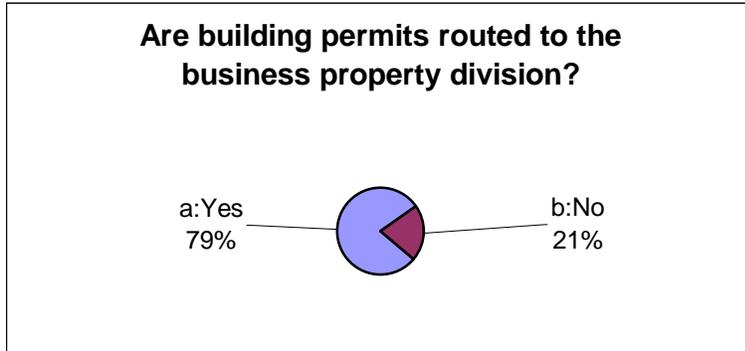
15. If the tenant improvements are assessed as fixtures by the business division and the value is changed on appeal, does this value carry forward for future years?



- [25] a. Yes
- [09] b. No
- [06] c. No response given

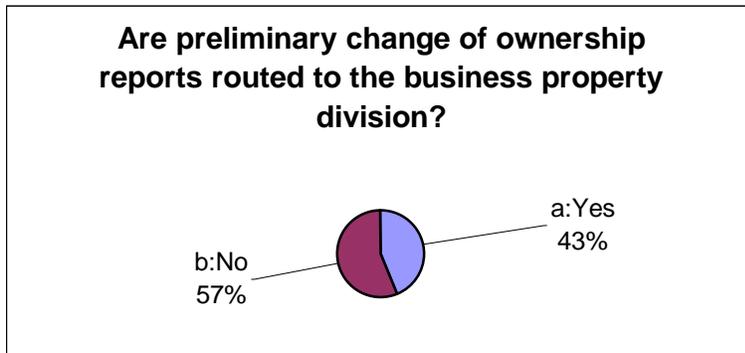
COORDINATION

16. Are building permits for tenant improvements routed to the business property division?



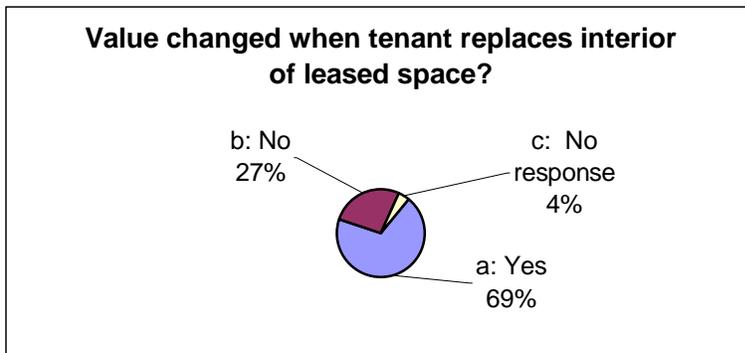
[32] a. Yes
[08] b. No

17. Are copies of preliminary change of ownership reports for commercial/industrial buildings, apartment complexes, and manufactured home parks forwarded to the business division for review?



[20] a. Yes
[26] b. No

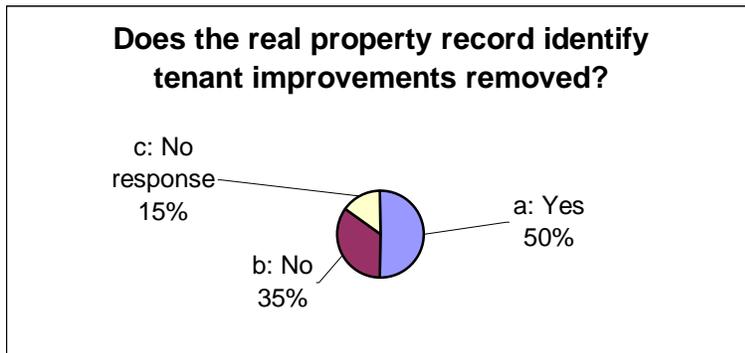
18. If a tenant completely replaces the interior of their leased space, is the assessed value changed?



[33] a. Yes
[13] b. No
[02] c. No response given

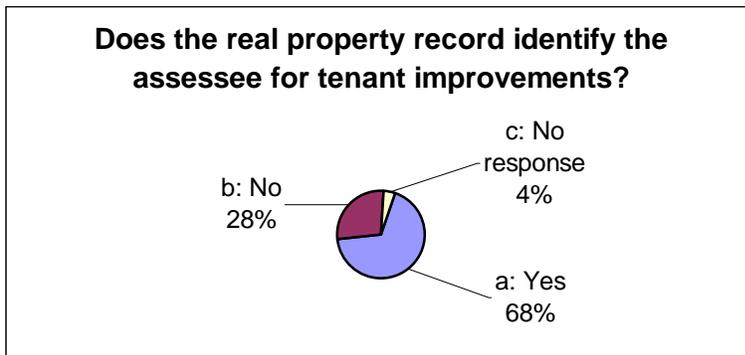
Comment: There are 48 responses tabulated because two counties chose more than one option.

19. Does the real property record identify tenant improvements removed from leased property?



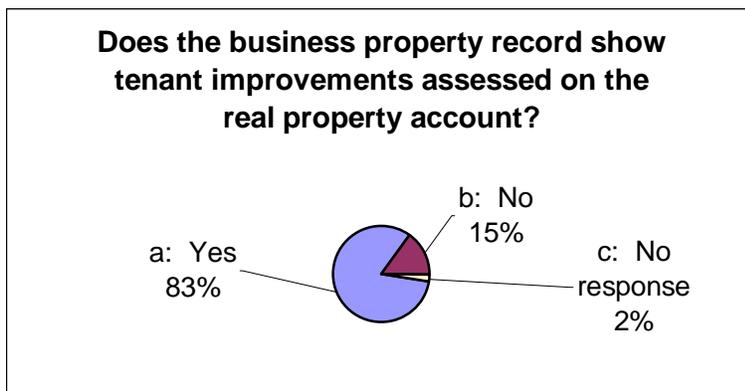
[23] a. Yes
 [16] b. No
 [07] c. No response given

20. Does the real property record identify who is being assessed for tenant improvements?



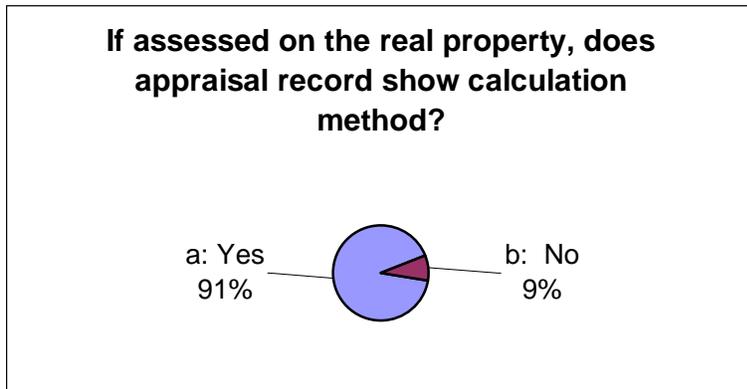
[31] a. Yes
 [13] b. No
 [02] c. No response given

21. Does the business property record identify tenant improvements reported on the business property statement but assessed on the real property account?



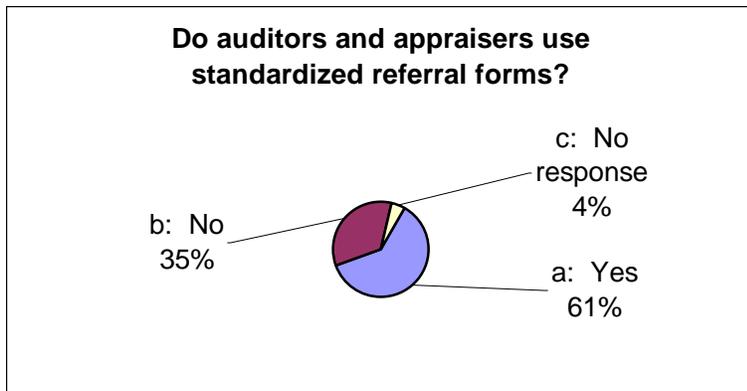
[38] a. Yes
 [07] b. No
 [01] c. No response given

22. If the tenant improvements are being assessed on the real property, does the appraisal record describe how the value was reached?



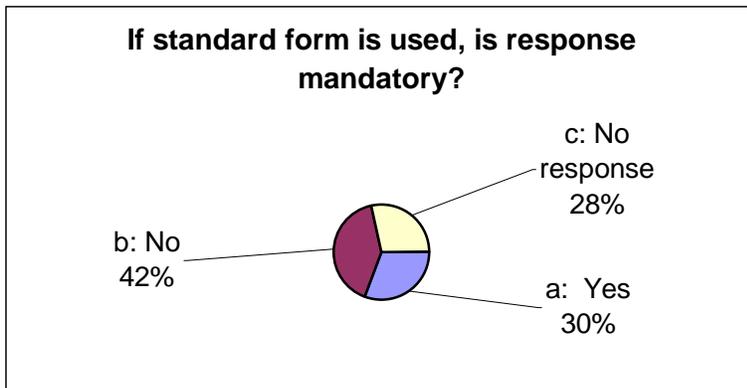
[42] a. Yes
[04] b. No

23. Do auditors and appraisers use a standardized referral form to communicate between divisions regarding improvements reported on a Business Property Statement?



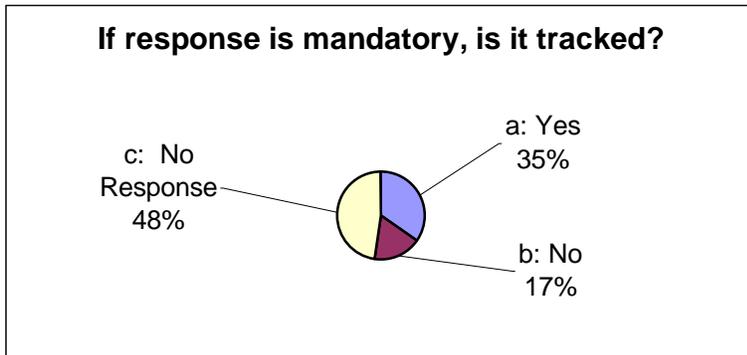
[28] a. Yes
[16] b. No
[02] c. No response given

24. If a standard communication form is used, does it require a mandatory response to the originating division to document the action taken regarding the information on the form?



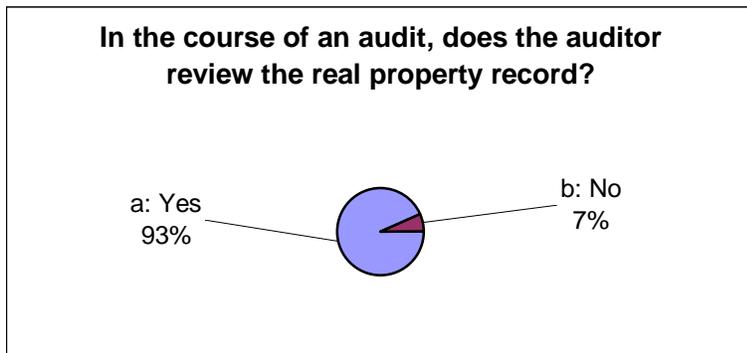
[14] a. Yes
[19] b. No
[13] c. No response given

25. If a response to a communication is required, are responses tracked to ensure follow-up to every communication sent?



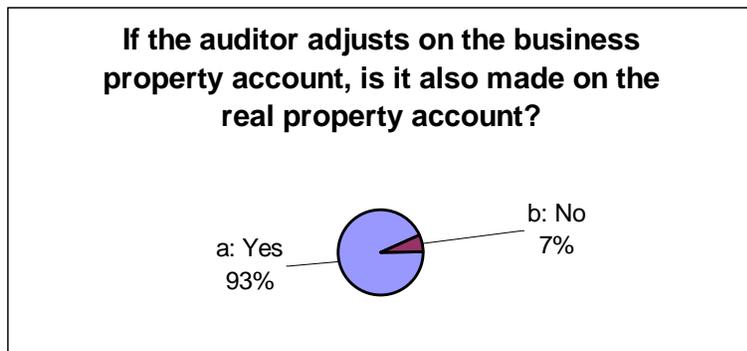
[16] a. Yes
 [08] b. No
 [22] c. No response given

26. In the course of an audit, does the auditor review the real property record to determine if tenant improvements are being assessed on the real property account?



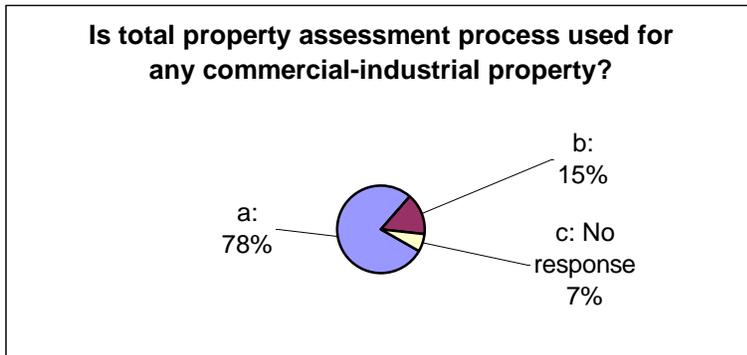
[43] a. Yes
 [03] b. No

27. When an audit is conducted and the auditor determines the tenant improvements should be assessed on the business account, is the adjustment also made to the real property account?



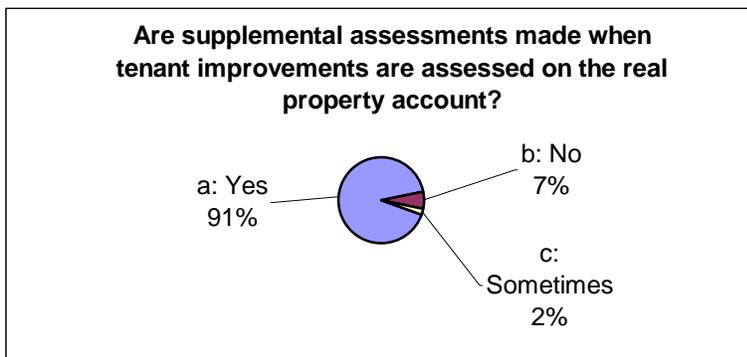
[43] a. Yes
 [03] b. No

28. Do you use a total property assessment process for any commercial-industrial property?



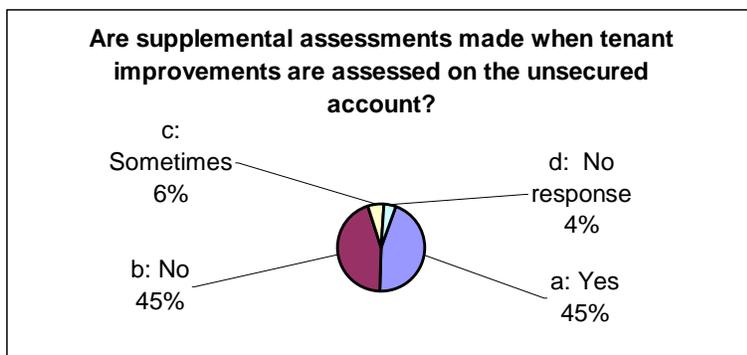
[36] a. Yes
 [07] b. No
 [03] c. No response given

29. Are supplemental assessments made for tenant improvements when the improvements are assessed on the real property account?



[42] a. Yes
 [03] b. No
 [01] c. Sometimes

30. Are supplemental assessments made for tenant improvements when the improvements are assessed on the unsecured business account?



[21] a. Yes
 [21] b. No
 [03] c. Sometimes
 [02] d. No response given

APPENDIX 2: COORDINATION OF TENANT IMPROVEMENT APPRAISALS²²

Transferring information between the real property and business property divisions within an assessor's office can help to avoid duplicate or escape assessment of landlord and leasehold improvements—both of which may include structure items and fixtures. One method used to track and monitor this transfer of information in some assessors' offices is an inter-departmental memorandum. This memorandum is sent between departments (i.e., between the real property division and business division) with a copy of the improvement source document (e.g., building permit, change in ownership statement, etc.). As shown in the table below, the memorandum includes three copies; one copy kept by the originator to verify completion of the assessment, one copy for the real property file, and one copy for the business property file.

The intent of the memorandum is to provide a complete record of the appraisal, including classification, valuation, and assessee. It summarizes all appraisal information for the business file and real property record. The following table illustrates how an inter-departmental memorandum may be used in practice.

Sample procedures using an Inter-Departmental Memorandum for coordination

- The business property division receives a property statement reporting additions on Schedule B. After reviewing the property statement, the auditor-appraiser initiates a memorandum to the real property division addressing these additions.
- The originator (auditor-appraiser) keeps the original memorandum (copy #1). Next, the auditor-appraiser attaches copies #2 and #3 to a copy of Schedule B and forwards that information to the real property division. The auditor-appraiser retains the original (copy #1) to track the appraisal of the improvements.
- Using the memorandum and its attachments, the real property appraiser determines any applicable value changes. After valuing the property, the real property appraiser places copy #2 in the real property file.
- Using the final copy (#3), the real property appraiser notifies the business property division of the appraisal, along with any recommendations for the auditor-appraiser.

Description of method

The following steps describe one method of coordinating the appraisal of landlord and leasehold improvements as it is used by some assessors' offices. Under this method, information regarding landlord or leasehold improvements is referred to and from the real property and business property divisions for evaluation and appropriate action.

²² Copied from AH 504, *Assessment of Personal Property and Fixtures*, Appendix B.

After proper classification, the real property appraiser values the property reported in Columns 1, 3, and 4 (i.e., *Structure Items Only*, *Land Improvements*, *Land and Land Development*), while the auditor-appraiser values the property reported in Column 2 (i.e., *Fixtures Only*). This method requires that the business division provide a copy of Schedule B (and the Supplemental Schedule) from the Business Property Statement to the real property appraiser each year, or whenever a change is reported from the prior year's schedule.

As discussed above, a memorandum should be attached to this documentation. After a review of the statement and/or inspection of the property, the real property appraiser notifies the auditor-appraiser of the action taken (on copy #3 of the memorandum). In the event that the assessee does not correctly classify the improvements, the real property appraiser's review should include consideration of both non-fixture real property items (Columns 1, 3, and 4) and fixtures (Column 2). Based on a building permit received earlier in the year, for instance, the real property appraiser may add value to real property, believing those improvements to be structure items. However, the assessee may report the same improvements on the property statement as fixtures. If the real property appraiser does not receive a copy of Schedule B of this statement, and review the costs as they were reported, a duplicate assessment may occur.

This communication process works both directions. Although the memorandum could originate from either division, it more often originates from the business division.

Example

Following is an example of an assessment of leasehold improvements using the suggested procedures outlined above. The example demonstrates only one method to coordinate the assessment of leasehold improvements; it is not the only proper method.

| |
|--|
| Assessment of tenant improvements |
|--|

- In August 1997, a tenant obtained a building permit valued at \$60,000 to install restaurant improvements in a new strip mall. During September 1997, the real property division received a copy of this building permit. The real property appraiser copied the permit and forwarded it to the business division with an attached memorandum. Since this was done in a timely manner, a copy of the permit was in the business file prior to receipt of the Business Property Statement.
- In April 1998, the business division received a property statement from the assessee (the tenant) reporting the actual cost of the improvements as \$48,000. The assessee classified and reported all leasehold improvements as fixtures on Schedule B, Column 2. No items were reported in Columns 1, 3, and 4.

- The property statement included a supplemental schedule that details the total cost additions on Schedule B. The list of additions and their cost are shown below:

| EXAMPLE SUPPLEMENTAL SCHEDULE (SCHEDULE B) | |
|---|-------------|
| Description | Cost |
| Electrical wiring to restaurant equipment | \$ 2,500 |
| Flooring | 5,000 |
| Rough plumbing to restaurant equipment | 5,000 |
| Walk-in refrigerator | 10,000 |
| Store front | 2,500 |
| Sign in front of restaurant | 500 |
| Interior wall paint | 1,000 |
| Light fixtures & ceiling fans | 3,500 |
| Stainless steel sink in kitchen | 1,000 |
| Booths | 10,000 |
| Counters | 3,000 |
| Dishwasher | 2,500 |
| Hood | 1,500 |
| Total | \$48,000 |

Step 1: Verification of Costs

Since the amount on the building permit did not match the actual cost reported by the business owner, it was appropriate to verify actual costs. It is important to note when the value indicated on a building permit varies from the total costs reported on a property statement. In general, this variance may occur due to several reasons: (1) the tenant may have overestimated the cost of improvements; (2) the landlord and tenant may have split the cost of the improvements; or (3) the business owner may have underreported the cost of the leasehold improvements.

In this case, the auditor-appraiser contacted the business owner prior to sending a copy of the property statement to the real property appraiser. The auditor-appraiser found that the business owner overestimated the cost of improvements when applying for the permit. Thus, the property statement represented actual cost.

Step 2: Transfer of information

The business property division forwarded a memorandum to the real property division with copies of Schedule B and the supplemental schedule. On the memorandum, the auditor-appraiser referenced (1) the September 1997 memorandum received from the real property division and (2) the information received from the assessee in step 1. Utilizing all information available aids in the proper classification of improvements.

Step 3: Classification

Depending upon the established policy of the assessor's office, either the auditor-appraiser or real property appraiser may classify the property. For this example, the real property appraiser classified the leasehold improvements. The real property appraiser classified the property as follows:

| CLASSIFICATION BY REAL PROPERTY APPRAISER | | | |
|--|-----------------|------------------|----------------|
| | Cost | Structure | Fixture |
| Electrical wiring to restaurant equipment | \$ 2,500 | | \$ 2,500 |
| Flooring | 5,000 | 5,000 | |
| Rough plumbing to restaurant equipment | 5,000 | | 5,000 |
| Walk-in refrigerator - not integral part of building | 10,000 | | 10,000 |
| Store front | 2,500 | 2,500 | |
| Sign in front of restaurant | 500 | | 500 |
| Interior wall paint | 1,000 | 1,000 | |
| Light fixtures and ceiling fans | 3,500 | 3,500 | |
| Stainless steel sink in kitchen | 1,000 | | 1,000 |
| Booths | 10,000 | | 10,000 |
| Counters | 3,000 | | 3,000 |
| Dishwasher | 2,500 | | 2,500 |
| Hood | 1,500 | | 1,500 |
| Total | <u>\$48,000</u> | \$12,000 | \$36,000 |

Step 4: Determination of Assessee

In this example, the assessee was determined to be the tenant. As discussed earlier, improvements can be assessed to either the landlord or the tenant, on either the secured or unsecured roll. Commonly, as in this example, they are assessed to the party that paid for the improvements.

Step 5: Valuation

A. Valuation of Structure Items

After classification, the real property appraiser determined the value of the structure items listed above. If land improvements, land, and land development were reported (Columns 3 and 4 of Schedule B), the real property appraiser would have valued these improvements as well.

B. Valuation of Fixtures

After valuing the structure items, the real property appraiser forwarded a copy of Schedule B along with copy #3 of the memorandum—detailing the action taken—to the auditor-appraiser. Using that information, the auditor-appraiser must then value the fixtures. As discussed earlier, fixtures are real property; they must be valued, at the lesser of (1) their full cash value or fair market value or (2) their factored base year value.

The auditor-appraiser valued and enrolled the fixtures as shown below:

| VALUATION OF FIXTURES | | | | | |
|-----------------------------|----------|--------------|---------------------|-------------------|------------------------------|
| | Cost | Index Factor | Percent Good Factor | Fair Market Value | Indexed Value (2% Inflation) |
| Total 1997 Cost of Fixtures | \$36,000 | 100 | .94 | \$33,840 | \$36,720 |
| Enrolled Value | | | | \$33,840 | |

Step 6: Enrollment of Value

In general, the assessed value can be enrolled to either the secured or unsecured roll account depending on how the assessor's office enrolls leasehold improvements (i.e., on the secured roll to the land and building owner; or on the unsecured roll to the tenant who paid for improvements). When the tenant is determined to be the assessee, both values (structure value and fixture value) are enrolled on the unsecured account with the business personal property. Since the value of fixtures is used in the determination of a mandatory audit, separation of the structure and fixture values on the unsecured account is necessary.

Step 7: Clearly Identify the Leasehold Improvements on the Appraisal Records

The final step documents the assessment on appraisal records. Notes regarding the leasehold improvements in both the real property appraisal records and in the business property files will assist in verification of the assessment(s) and can help to avoid efforts in future assessment years. These notes summarize the information relied upon during the appraisal and identify the actions taken. The memo(s) and attached copies of source documents are kept in the appraisal records as support.

APPENDIX 3: STATUTORY EXCERPTS²³

REVENUE AND TAXATION CODE SECTION

50. Base year value for property purchased or changes ownership.

For purposes of base year values as determined by Section 110.1, values determined for property which is purchased or changes ownership after the 1975 lien date shall be entered on the roll for the lien date next succeeding the date of the purchase or change in ownership. Values determined after the 1975 lien date for property which is newly constructed shall be entered on the roll for the lien date next succeeding the date of completion of the new construction. The value of new construction in progress on the lien date shall be entered on the roll as of the lien date.

70. “Newly constructed,” “new construction.”

(a) “Newly constructed” and “new construction” means:

- (1) Any addition to real property, whether land or improvements (including fixtures), since the last lien date; and
- (2) Any alteration of land or of any improvement (including fixtures) since the last lien date which constitutes a major rehabilitation thereof or which converts the property to a different use.

(b) Any rehabilitation, renovation, or modernization which converts an improvement or fixture to the substantial equivalent of a new improvement or fixture is a major rehabilitation of such improvement or fixture.

(c) Notwithstanding the provisions of subdivisions (a) and (b), where real property has been damaged or destroyed by misfortune or calamity, “newly constructed” and “new construction” does not mean any timely reconstruction of the real property, or portion thereof, where the property after reconstruction is substantially equivalent to the property prior to damage or destruction. Any reconstruction of real property, or portion thereof, which is not substantially equivalent to the damaged or destroyed property, shall be deemed to be new construction and only that portion which exceeds substantially equivalent reconstruction shall have a new base year value determined pursuant to Section 110.1.

²³ This appendix contains the statutes, or portions thereof, relevant to the discussions in this report as of the date of publication. The reader is cautioned that the statutory language presented may not reflect current statute.

(d)

- (1) Notwithstanding the provisions of subdivisions (a) and (b), where a structure must be improved to comply with local ordinances on seismic safety, “newly constructed” and “new construction” does not mean the portion of reconstruction or improvement to a structure, constructed of unreinforced masonry bearing wall construction, necessary to comply with the local ordinance. This exclusion shall remain in effect during the first 15 years following that reconstruction or improvement (unless the property is purchased or changes ownership during that period, in which case the provisions of Chapter 2 (commencing with Section 60) of this division shall apply).
- (2) In the sixteenth year following the reconstruction or improvement referred to in paragraph (1), the assessor shall place on the roll the current full cash value of the portion of reconstruction or improvement to the structure which was excluded pursuant to this subdivision.
- (3) The governing body which enacted the local ordinance shall issue a certificate of compliance upon the request of the owner who, pursuant to a notice or permit issued by the governing body which specified that the reconstruction or improvement is necessary to comply with a seismic safety ordinance, so reconstructs or improves his or her structure in accordance with the ordinance. The certificate of compliance shall be filed by the property owner with the county assessor on or before the following April 15. The provisions of this subdivision shall not apply to any structure for which a certificate is not filed.

71. New base year value.

The assessor shall determine the new base year value for the portion of any taxable real property which has been newly constructed. The base year value of the remainder of the property assessed, which did not undergo new construction, shall not be changed. New construction in progress on the lien date shall be appraised at its full value on such date and each lien date thereafter until the date of completion, at which time the entire portion of property which is newly constructed shall be reappraised at its full value.

74. Fire Sprinkler Systems, Extinguishing Systems, Etc.

- (a) For purposes of subdivision (a) of Section 2 of Article XIII A of the Constitution, “newly constructed” does not include the construction or installation of any fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement which is constructed or installed on or after November 7, 1984.

74.5. **Seismic retrofitting improvements.**

- (a) For purposes of paragraph (4) of subdivision (c) of Section 2 of Article XIII A of the California Constitution, “newly constructed” and “new construction” does not include seismic retrofitting improvements and improvements utilizing earthquake hazard mitigation technologies, to an existing building or structure.

74.6. **Disabled person accessibility exclusion.**

- (a) For purposes of paragraph (5) of subdivision (c) of Section 2 of Article XIII A of the California Constitution, “newly constructed” and “new construction” does not include the construction, installation, removal, or modification of any portion or structural component of an existing building or structure to the extent that it is done for the purpose of making the building or structure more accessible to, or more usable by, a disabled person.

103. **“Property.”** “Property” includes all matters and things, real, personal, and mixed, capable of private ownership.

104. **“Real estate,” “real property.”** “Real estate” or “real property” includes:

- (a) The possession of, claim to, ownership of, or right to the possession of land.
- (b) All mines, minerals, and quarries in the land, all standing timber whether or not belonging to the owner of the land, and all rights and privileges appertaining thereto.
- (c) Improvements.

105. **“Improvements.”** “Improvements” includes:

- (a) All buildings, structures, fixtures, and fences erected on or affixed to the land.
- (b) All fruit, nut bearing, or ornamental trees and vines, not of natural growth, and not exempt from taxation, except date palms under eight years of age.

110.1. **“Full cash value” under Article XIII A.**

For purposes of subdivision (a) of Section 2 of Article XIII A of the California Constitution, “full cash value” of real property, including possessory interests in real property, means the fair market value as determined pursuant to Section 110 for either of the following:

- (1) The 1975 lien date.
- (2) For property which is purchased, is newly constructed, or changes ownership after the 1975 lien date, either of the following:
- (A) The date on which a purchase or change in ownership occurs.

- (B) The date on which new construction is completed, and if uncompleted, on the lien date.

405. Assessee.

- (a) Annually, the assessor shall assess all the taxable property in his county, except state-assessed property, to the persons owning, claiming, possessing, or controlling it on the lien date. The assessor may assess the property on the secured roll to the person owning, claiming, possessing or controlling it for the ensuing fiscal year.
- (b) The assessor may assess all taxable property in his county on the unsecured roll jointly to both the lessee and lessor of such property.
- (c) Notices of assessment and tax bills relating to jointly assessed property on the unsecured roll shall be mailed to both the lessee and the lessor at their latest addresses known to the assessor.

602. Contents. This local roll shall show:

- (a) The name and address, if known, of the assessee.
- (b) Land, by legal description.
- (c) A description of possessory interests sufficient to identify them.
- (d) Personal property. A failure to enumerate personal property in detail does not invalidate the assessment.
- (e) The assessed value of real estate, except improvements.
- (f) The assessed value of improvements on the real estate.
- (g) The assessed value of improvements assessed to any person other than the owner of the land.
- (h) The assessed value of possessory interests.
- (i) The assessed value of personal property, other than intangibles.
- (j) The revenue district in which each piece of property assessed is situated.
- (k) The total taxable value of all property assessed, exclusive of intangibles.
- (l) Any other things required by the board.

607. Land and improvements. Land and improvements thereon shall be separately assessed.

608. **Improvement.** Improvements shall be assessed by the assessor by showing their value opposite the description of the parcel of land on which they are located, if they are assessed to the same assessee.

2188. **Improvements.** Every tax on improvements is a lien on the taxable land on which they are located, if they are assessed to the same person to whom the land is assessed.

2188.1 **Improvements assessed to other than owner of land.** Every tax on improvements assessed to a person other than the assessee of the land on which they are located may become a lien on the real property of the owner of such improvements or be assessed on the unsecured roll. In order for such tax on improvements to be a lien on any parcel of real property of the owner of such improvements, the fact of such a lien must be indicated on the secured roll where such parcel of real property is listed.

2188.2 **Statement of seaparate ownership.** Whenever improvements are owned by a person other than the owner of the land on which they are located, the owner of the improvements or the owner of the land may file with the assessor a written statement before the lien date attesting to their separate ownership, in which event the land and improvements shall not be assessed to the same assessee.

Such written statement shall not be required annually following the year in which it has been filed but shall remain in effect until such time as either, or both, of said separate ownerships shall have been transferred or until such weitten statement of separate ownership shall have been cancelled by either the owner of the land or the owner of the improvement.

2188.4. **Leased land; separate assessment.** Whenever a portion of a parcel of land, other than that used for grazing or other agricultural purposes and property assessed by the State Board of Equalization, is subject to a lease which is recorded or for which a memorandum of lease is recorded and which provides for a term (including options to renew) of 15 years or more from the commencement date of the lease and which requires the lessee to pay, or to reimburse the lessor for, the property taxes (or any portion thereof) on the leased premises, the assessor shall separately assess the land and improvements subject to the lease and the land and improvements not subject to the lease upon application for such separate assessments by the lessor or lessee prior to the lien date; provided the boundaries of the leased area do not pass through any improvement except along a bearing partition; and provided that each parcel as described must have access frontage on a dedicated street.

The assessor shall thereafter continue to make such separate assessments until the expiration date of the lease or at an earlier date should the lessor or lessee file a written request that the separate assessments be discontinued. The assessor may, in his discretion, assess the leased premises to the lessor or the lessee; provided, that if the lessor is assessed, all notices of assessment and tax bills relating to the leased premises shall be mailed to the lessor in care of the lessee at the lessee's latest address known to the assessor, or a copy of such notices and bills shall be mailed to the lessee at such address.

APPENDIX 4: PROPERTY TAX RULES

TITLE 18, PUBLIC REVENUE

CALIFORNIA CODE OF REGULATIONS

Rule 121. LAND.

Reference: Sections 110, 401, Revenue and Taxation Code.

Land consists of the possession of, claim to, ownership of, or right to possession of land; mines, quarries, and unextracted mineral products; unsevered vegetation of natural growth; standing timber, whether planted or of natural growth; and other perennial vegetation that is not an improvement (see section 122). Where there is a reshaping of land or an adding to land itself, that portion of the property relating to the reshaping or adding to the land is land. However, where a substantial amount of other materials, such as concrete, is added to an excavation, both the excavation and the added materials are improvements, except that whenever the addition of other materials is solely for the drainage of land to render it arable or for the drainage or reinforcement of land to render it amenable to being built upon, the land, together with the added materials, remains land. In the case of property owned by a county, municipal corporation, or a public district, however, fill that is added to taxable land is an improvement.

Rule 122. IMPROVEMENTS.

Reference: Sections 105, 110, 401, 401.5, Revenue and Taxation Code.

Improvements consist of buildings, structures, fixtures, and fences erected on or affixed to land; planted fruit and nut trees and vines that are taxable, other than date palms between four and eight years of age; and planted ornamental trees and vines. Where a substantial amount of materials other than land, such as concrete, is added to an excavation, both the excavation and the added materials are improvements, except that whenever the addition of other materials is solely for the drainage of land to render it arable or for the drainage or reinforcement to land to render it amenable to being built upon, the land, together with the added materials, remains land. In the case of property owned by a county, municipal corporation or a public district, fill that is added to taxable land is an improvement.

Rule 122.5. FIXTURES.

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

Section 5, Chapter 1556, Stats. 1982.

(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 remains 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) typically consists of a safe, monitor, keypad, central processing unit, magnetic card reader, cash dispenser, printer/transaction record dispenser and deposit receptor. An ATM installed as a freestanding or counter-top unit within a building, such as a bank, supermarket or other retail establishment, is personal property. However, 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. An ATM installed in the wall of a building is a fixture because the portion of the realty containing the ATM was designed or extensively modified for the specific purpose of housing the ATM and cannot perform its desired function without the ATM.

Rule 462.001. CHANGE IN OWNERSHIP—GENERAL

Reference: Sections 60–67, Revenue and Taxation Code.

A “change in ownership” in real property occurs when there is a transfer of a present interest in the property, including the transfer of the right to beneficial use thereof, the value of which is substantially equal to the value of the fee interest. Every transfer of property qualified as a “change in ownership” shall be so regarded whether the transfer is voluntary, involuntary, by operation of law, by grant, gift, devise, inheritance, trust, contract of sale, addition or deletion of an owner, property settlement, or any other means. A change in the name of an owner of property not involving a change in the right to beneficial use is excluded from the term “transfer” as used in this section.

Rule 462.080. CHANGE IN OWNERSHIP—POSSESSORY INTERESTS

Reference: Sections 60, 61, 62, 67, Revenue and Taxation Code.

Section 15606, Government Code

(a) GENERAL RULE. The creation, renewal, extension, sublease, or assignment of a taxable possessory interest in tax exempt real property for any term is a change in ownership. “Renewal” and “extension” do not include the granting of an option to renew or extend an existing agreement pursuant to which the term of possession of the existing agreement would, upon exercise of the option, be lengthened, whether the option is granted in the original agreement or subsequent thereto. “Assignment” of a possessory interest means the transfer of all rights held by a transferor in a possessory interest.

(b) EXCEPTIONS. The following do not constitute changes in ownership of taxable possessory interests:

- (1) An interest, whether an estate for years or an estate for life, created by a reservation in an instrument deeding the property to a tax-exempt governmental entity.
- (2) Any renewal or extension of a taxable possessory interest during the reasonable anticipated term of possession used by the assessor in establishing the initial base year value of the interest, in which case, a change in ownership occurs at the end of the reasonably anticipated term of possession used by the assessor to value that interest.
- (3) A sublease of a taxable possessory interest for a term including renewal options, that does not exceed half the length of the remaining term of the leasehold, including renewal options.
- (4) The termination of a sublease of a taxable possessory interest with an original term, including renewal options, that did not exceed half the length of the remaining term of the leasehold, including renewal options, when the sublease was entered into.
- (5) Any transfer of a sublessee’s interest in a taxable possessory interest, with a remaining term, including renewal options, that does not exceed half of the remaining term of the leasehold.

- (6) Any transfer of a taxable possessory interest subject to a sublease with a remaining term, including renewal options, that exceeds half the length of the remaining term of the leasehold, including renewal options.

Rule 462.100. CHANGE IN OWNERSHIP—LEASES.

Reference: Sections 60, 61, 62, 67, Revenue and Taxation Code.

Section 15606, Government Code.

- (a) The following transfers of either the lessee's interest or the lessor's interest in taxable real property constitute a change in ownership of such real property:

(1) Lessee's Interest:

- (A) the creation of a leasehold interest in real property for a term of 35 years or more.
- (B) the transfer, sublease, or assignment of a leasehold interest with a remaining term of 35 years or more.
- (C) the termination of a leasehold interest which had an original term of 35 years or more.

(2) Lessor's Interest:

- (A) The transfer of a lessor's interest in taxable real property subject to a lease with a remaining term of less than 35 years.
- (B) The transfer of a lessor's interest in taxable real property subject to multiple leases, one or more of which is for a remaining term of less than 35 years and one or more of which is for a remaining term of 35 years or more, in which case there is a change in ownership of the portion of the property subject to the lease(s) with a remaining term of less than 35 years.

- (b) The following transfers of either the lessee's interest or the lessor's interest in taxable real property do not constitute a change in ownership of such real property.

(1) Lessee's interest:

- (A) The creation of a leasehold interest in real property for a term of less than 35 years.
- (B) The transfer, sublease, or assignment of a leasehold interest with a remaining term of less than 35 years (regardless of the original term of the lease).
- (C) The termination of a leasehold interest which had an original term of less than 35 years.

(2) Lessor's interest:

(A) The transfer of a lessor's interest in real property subject to a lease with a remaining term of 35 years or more, whether to the lessee or another party.

(c) Once a change in ownership of taxable real property subject to a lease has been deemed to have occurred, the entire property subject to the lease is reappraised (i.e., the value of both the lessee's interest and the reversion).

(d) The calculation of the term of a lease for all purposes of this section shall include written renewal options.

(e) It shall be conclusively presumed that all homes (other than mobilehomes subject to Part 13 of Division 1 of the Revenue and Taxation Code) eligible for the homeowners' exemption which are on leased land have written renewal options on the lease of such land of at least 35 years, whether or not such renewal options in fact exist in any contract or agreement.

Rule 463. NEWLY CONSTRUCTED PROPERTY.

Reference: Article XIII A, Sections 1, 2, California Constitution.

Section 15606, Government Code.

(a) When real property, or a portion thereof, is newly constructed after the 1975 lien date, the assessor shall ascertain the full value of such "newly constructed property" as of the date of completion. This will establish a new base year full value for *only* that portion of the property which is newly constructed, whether it is an addition or alteration. The taxable value on the total property shall be determined by adding the full value of new construction to the taxable value of preexisting property reduced to account for the taxable value of property removed during construction. The full value of new construction is only that value resulting from the new construction and does not include value increases not associated with the new construction.

(b) "Newly constructed" or "new construction" means and includes:

(1) Any substantial addition to land or improvements, including fixtures, such as adding land fill, retaining walls, curbs, gutters or sewers to land or constructing a new building or swimming pool or changing an existing improvement so as to add horizontally or vertically to its square footage or to incorporate an additional fixture, as that term is defined in this section.

(2) Any substantial physical alteration of land which constitutes a major rehabilitation of the land or results in a change in the way the property is used.

Examples of alterations to land to be considered new construction are: site development of rural land for the purpose of establishing a residential subdivision; altering rolling, dry grazing land to level irrigated crop land; or preparing a vacant lot for use as a parking facility.

(A) In any instance in which an alteration is substantial enough to require reappraisal, only the value of the alteration shall be added to the base year value of the pre-existing land or improvements. Increases in land value caused by appreciation or a zoning change rather than new construction shall not be enrolled, for example:

1. Land value 1975 = \$10,000

2. Land value 1978 = \$20,000

3. Value of alteration 1978 = \$5,000

4. Value of structure added 1978 = \$75,000

1979 roll value (1+3+4) = \$90,000 (must be adjusted to reflect appropriate indexing)

(B) Alterations to land which do not constitute a major rehabilitation or which do not result in a change in the way the property is used shall not result in reappraisal.

(3) Any physical alteration of any improvement which converts the improvement or any portion thereof to the substantial equivalent of a new structure or portion thereof or changes the way in which the portion of the structure that had been altered is used, e.g., physical alterations to an old structure to make it the substantial equivalent of a new building without any change in the way it is used or alterations to a warehouse that makes it usable as a retail store or a restaurant. Only, the value, not necessarily the cost, of the alteration shall be added to the appropriately indexed base year value of the pre-existing structure.

(4) Excluded from alterations that qualify as “newly constructed” is construction or reconstruction performed for the purpose of normal maintenance and repair, e.g., routine annual preparation of agricultural land or interior or exterior painting, replacement of roof coverings or the addition of aluminum siding to improvements or the replacement of worn machine parts.

(5) Any substantial physical rehabilitation, renovation or modernization of any fixture which converts it to the substantial equivalent of a new fixture or any substitution of a new fixture. Substantial equivalency shall be ascertained by comparing the productive capacity, normally expressed in units per hour, of the rehabilitated fixture to its original productive capacity.

(c) For purposes of this regulation, “fixture” is defined as an improvement whose use or purpose directly applies to or augments the process or function of a trade, industry, or profession.

(d) New construction in progress on the lien date shall be appraised at its full value on such date and each lien date thereafter until the date of completion, at which time the entire portion of property which is newly constructed shall be reappraised at its full value.

(e) For purposes of this regulation, the date of completion is the date the property or portion thereof is available for use. In determining whether the real property or a portion thereof is available for use, consideration shall be given to the date of the final inspection by the

appropriate governmental official, or, in the absence of such inspection, the date the prime contractor fulfilled all of his contract obligations, or in the case of fixtures, the date of the completion of testing of machinery and equipment.

**Rule 463.500. DATE OF COMPLETION OF NEW CONSTRUCTION—
SUPPLEMENTAL ASSESSMENTS.**

Reference: Sections 75.10, 75.11, 75.12, Revenue and Taxation Code.

(a) APPLICATION. The provisions of this section are applicable only to supplemental assessments levied pursuant to Chapter 3.5 (commencing with Section 75) of Part 0.5 of Division 1 of the Revenue and Taxation Code.

(b) DATE OF COMPLETION OF NEW CONSTRUCTION. The date of completion of new construction resulting from actual physical new construction on the site shall be the earliest of either the date upon which the new construction is available for use by the owner or, if all of the conditions of paragraph (b) (1) are satisfied, the date the property is occupied or used by the owner, or with the owner's consent, after the owner has provided a notice in accordance with paragraph (b) (1).

- (1) The date of completion of new construction resulting from actual physical new construction shall not be the date upon which it is available for use if the owner does not intend to occupy or use the property and the owner notifies the assessor in writing prior to, or within 30 days after, the date of commencement of construction that he/she/it does not intend to occupy or use the identified property or a specified portion thereof.
- (2) The date of completion of new construction resulting from actual physical new construction shall be conclusively presumed to be the date upon which the new construction is available for use by the owner if the assessor fails to receive notice as provided in paragraph (b) (1).

(c) DEFINITIONS.

- (1) "Property" means land, improvement(s) including fixtures, and mobilehome(s) subject to taxation under Part 13 (commencing with Section 5800) of Division 1 of the Revenue and Taxation Code.
- (2) "New Construction resulting from actual physical new construction" means "new construction" as defined in Section 463, subsections (b) and (f).

"New construction resulting from actual physical new construction" also includes:

- (A) the installation of a new fixture which is an addition or is a replacement of an existing fixture;

- (B) the rehabilitation, renovation or modernization of any fixture which converts it to the substantial equivalent of a new fixture;
- (C) the severance of improvements, including structures and fixtures, which is associated with new construction;
- (D) the severance on, or after, March 1, 1985, of fixtures which qualify for assessment pursuant to Sections 75.15 and 75.16 of the Revenue and Taxation Code, whether or not the severance is associated with other new construction; or
- (E) the severance on, or after, July 31, 1985, of structures, whether or not the severance is associated with other new construction.

“New construction resulting from actual physical new construction” does not include:

- (A) the severance prior to March 1, 1985, of improvements, including structures and fixtures, which is not associated with other new construction;
- (B) the severance on, or after, March 1, 1985 of any improvements, other than structures or fixtures, which is not associated with other new construction;
- (C) the severance prior to July 31, 1985, of structures which is not associated with other new construction; or
- (D) the discontinued use of improvements, including structures and fixtures, which are not physically severed from the property but which are made redundant by newly installed or erected structures, fixtures, or other improvements.

Examples:

- (A) The installation of a multi-level printing press (a fixture) as an addition to existing facilities constitutes actual physical new construction.
- (B) The installation of a printing press as the replacement of an existing press is also actual physical new construction.
- (C) The complete renovation of an existing press to the substantial equivalent of a new press constitutes actual physical new construction.
- (D) The severance of the old press (also a fixture) is actual physical new construction if it is associated with the installation of the new press or other new construction, or if it occurred on or after March 1, 1985.

(3) “Commencement of construction” means the performance of physical activities on the property which results in changes which are visible to any person inspecting the site and are

recognizable as the initial steps for the preparation of land or the installation of improvements or fixtures. Such activities include clearing and grading land, layout of foundations, excavation of foundation footing, fencing the site, or installation of temporary structures. Such activities also include the severance of existing improvements or fixtures.

“Commencement of construction” does not include activities preparatory to actual construction such as obtaining architect services, preparing plans and specifications, obtaining building permits or zoning variances or filing subdivision maps or environmental impact reports.

“Commencement of construction” shall be determined solely on the basis of activities which occur and are apparent on the property undergoing new construction. Where several parcels are adjacent and will be used as a single unit by the builder for the construction project, the commencement of construction shall be determined on the basis of the activities which occur on any part of the several parcels comprising the unit. Where a property has been subdivided into separate lots, the commencement of construction shall be determined on the basis of the activities occurring on each separate lot. Where the property has been subdivided into separate lots and several or all of those lots will be used as a single unit by the builder for the construction project, the commencement of construction shall be determined on the basis of the activities which occur on any part of the several parcels comprising the unit.

(4) “Available for use” means that the property, or a portion thereof, has been inspected and approved for occupancy by the appropriate governmental official or, in the absence of such inspection and approval procedures, when the prime contractor has fulfilled all of the contractual obligations. When inspection and approval procedures are non-existent or exist but are not utilized and a prime contractor is not involved, the newly constructed property is available for use when outward appearances clearly indicate it is immediately usable for the purpose intended. Fixtures are available for use when all testing necessary for proper operation or safety is completed.

New construction is not available for use if, on the date it is otherwise available for use, it cannot be functionally used or occupied. In that case, the property is not available for use until the date that any legal or physical impediment to functional use or occupancy is removed.

If a structure is constructed with the expectation that the tenant(s) will have improvements added after a lease(s) is executed, “available for use” means that point in time when the structure is ready to receive tenant improvements, whether or not there are any tenants at that time and regardless of who is to construct the improvements. If a construction project is completed in stages with some portions available for occupancy prior to completion of the total project, any portion of the project ready to receive tenant improvements is available for use even though other portions of the project are not ready for such improvements. In the case of physical alterations to land, such as leveling, “available for use” means that point in time when the land is ready for use by the owner and no further new construction is required for the new use. In the case of fixtures added as part of a larger new construction project, “available for use” means that point in time when the project, including the fixture, is ready for use.

(5) “Occupied or used” means the physical occupancy of the property by the owner or any physical use of the property by the owner, except where such occupancy or use is incidental to an offer for a change of ownership. “Occupied or used” also includes the rental or lease of the property or any occupancy or use of the property by third persons with the owner’s consent. The occupancy or use of the property occurs on the earliest date when the property is physically occupied or used, or when the agreed upon term of occupancy commences. “Used” does not include the transfer of legal title to the property as security.

(6) “Functionally used or occupied” means that the property is or can be used or occupied for the purpose for which it was constructed. The purpose for which the property was constructed or improved shall be determined on the basis of the type of property and any special facts or circumstances which affect its use or occupancy. Property shall not be considered “functionally used or occupied” if any legal restriction or physical impediment beyond the owners’ control prevents the use of the property for the purpose intended.

Examples:

(A) A building intended for use as a warehouse can be functionally used when physical construction is completed even though the property to be stored has not arrived at the site.

(B) Land improved by leveling and the installation of an irrigation system which converts it from grazing land to farm land can be functionally used when the improvement activity is completed even though the planting season will not commence for several months.

(C) An office or hotel building on which construction is completed cannot be functionally used if it is uninhabitable because of the lack of power, water or sewer service, or if a natural disaster, such as a flood or earth slide, prevents reasonable public access to the facility.

(7) “Owner’s consent” means the express or implied agreement of an owner to allow the property, or a portion thereof, to be physically occupied or used by a third person. Where the use or occupancy is visible to, or ascertainable by, the assessor, it shall be rebuttably presumed that the property is occupied or used with the owner’s consent. If the owner has received actual or constructive notice of the occupancy or use, failure of the owner to communicate an objection to the user or enforce his rights to remove the occupant within a reasonable time shall be evidence of consent.

(8) “Incidental to an offer for a change of ownership” means that an activity is usual or necessary to the holding of property for sale in the regular course of business. It includes any use or occupancy arising from the demonstration or display of the property for the purpose of selling that property or other property in the vicinity under the same ownership. It includes use of the property by the owner or by any person using the property with the owner’s consent. Use of property as a model home, a sales office, or as a temporary storage facility for building materials

or furnishings intended to be installed in other property to be held for sale, shall be considered to be incidental to an offer for a change in ownership. Temporary use of the property as lodging by a potential buyer for the purpose of sales promotion shall be considered incidental to an offer for a change of ownership. The use of this property, however, by a potential buyer as a principal residence pending the arrangement or approval of the financing necessary to complete the purchase is not incidental to an offer for a change in ownership.

(9) “Structures” means all improvements subject to supplemental assessment other than living improvements (trees and vines) and fixtures which qualify for assessment pursuant to Sections 75.15 and 75.16 of the Revenue and Taxation Code.

APPENDIX 5: PROPERTY TAX ANNOTATIONS

170.0050 **Improvements Owned by Other Than Landowner.** If a request for separate assessment of separately owned improvements is made under Revenue and Taxation Code Section 2188.2, the assessor may, at his elective discretion, assess the improvements on the secured roll to the owner of the improvements if the assessment can be secured by a lien against other land in his county owned by the owner of the improvements so assessed, or he may assess the improvements on the unsecured roll to the owner of the improvements. C 7/12/84.

170.0051 **Improvements Owned by Other Than Landowner.** If a tenant owns improvements located in a structure on land both owned by the landlord either the landlord or tenant may file a statement of separate ownership and thereby force the assessor to separately assess the property owned by each. Revenue and Taxation Code Section 2188.2 is mandatory. C 12/6/89.

170.0052 **Improvements Owned by Other Than Landowner.** Revenue and Taxation Code Section 2188.2 applies when *some* of the improvement are owned by a person other than the owner of the land on which they are located as well as when *all* of the improvements are so owned. C 4/7/94.

APPENDIX 6: COURT CASE SUMMARIES

Lawrence v. F. W. Woolworth Co. (1965) 63 Cal.2d 119.

A tenant, under a lease which does not provide for tax payment and which authorizes the tenant to construct improvements upon the property which the tenant may remove during the term of the lease, is liable for the increased taxes caused by the improvements.

Security Data, Inc. v. Contra Costa County (1983) 145 Cal.App. 3d 108.

The term "improvements" is much more comprehensive than "fixtures", and while it includes fixtures it includes also many things that may not be classified as fixtures.

Security Pacific National Bank v. Los Angeles County (1984) 161 Cal.App. 3d 877.

In determining whether an article is a fixture, there are three tests: the manner of its annexation, its adaptability to the use and purpose for which the realty is used, and the intention of the party making the annexation. The manner of annexation and the use to which the realty is put are relevant in determining the crucial element of intention to make the article a permanent part of the realty. Great expense or difficulty in removal are indicative of intended permanence.

Simms v. Los Angeles County (1950) 35 Cal.2d 303.

In determining whether articles constitute fixtures, and therefore improvements, within the meaning of this section, the determining factor is whether there was an intention to make a permanent accession to the real property as reasonably manifested by outward appearances. Neither the status of the party by whom the articles have been installed, nor the length of the lease under which the party is in possession of the real property, is controlling. The fact that the fixtures are removable pursuant to express or implied contract between the landlord and tenant does not necessarily negative the element of permanence, nor is the contract binding upon the taxing authorities.

Tele-Vue Systems, Inc. v. Contra Costa County (1972) 25 Cal.App. 3d 340.

A permanently affixed interior household connection to a cable television system installed by the system owner who neither owns nor controls the connection constitutes a fixture and is assessable to the owner of the realty rather than to the system owner.

Valley Fair Fashions, Inc. v. Valley Fair (1966) 245 Cal.App. 2d 614.

An assessment of improvements to the lessee in possession and control was not erroneous even though the land was assessed to the landlord and he owned the improvements.

Ventura, County of v. Channel Islands State Bank, (1967) 251 Cal.App. 2d 240.

A sign and a night depository constituting trade fixtures, owned by a bank and installed on a leased premises were properly classified as improvements under section 105 and real property under section 104 even though assessed to the lessee and placed on the unsecured roll. The lessee-bank (owning trade fixtures attached to landlord's realty) was the proper assessee. Where a statement of separate ownership as provided in section 2188.2 is not filed, the assessor is not required to assess lessee-owned trade fixtures to the landlord.

GLOSSARY OF TERMS

| <u>Term</u> | <u>Definition</u> |
|------------------------------|---|
| Appraisal Unit | That property which persons in the marketplace normally buy and sell as a unit or which is normally valued separately. |
| Assessed Value | The taxable value of a property against which the tax rate is applied. |
| Assessee | Person who owns, claims, possesses, or controls the property on the lien date. |
| Base Year Value | In accordance with section 110.1 of the Revenue and Taxation Code, a property's base year value is its fair market value as of either the 1975 lien date or the date the property was last purchased, newly constructed, or underwent a change in ownership after the 1975 lien date. |
| Building Improvements | Improvements to a structure. |
| Change in Ownership | A transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the fee interest. |
| Economic Life | The period of time over which improvements to real property contribute to property value. |
| Fixture | An item of tangible property, the nature of which was originally personal property, but which is classified as real property for property tax purposes because it is physically or constructively annexed to real property with the intent that it remain annexed indefinitely. |
| Improvements | All buildings, structures, fixtures, and fences erected on or affixed to the land; all fruit, nut bearing, ornamental trees and vines, not of natural growth, and not exempt from taxation, except date palms under eight years of age. |
| Landlord Improvements | Improvements made by the real property owner. |
| Lease | A written document in which the rights to use and occupy land or structures are transferred by the owner to another for specified period of time in return for a specified rent. |
| Leaseback | A transaction in which an investor purchases property and leases it back to the seller, generally under lease terms and conditions that are not negotiable. |

| <u>Term</u> | <u>Definition</u> |
|--------------------------------------|---|
| Leasehold | The lessee's interest in property; the right to use and occupy real property during the term of the lease, subject to any contractual restrictions. |
| Leasehold/Tenant Improvements | Improvements made by the lessee/tenant. |
| Lessee | One who has the right to use or occupy property under a lease agreement; a tenant. |
| Lien Date | All taxable property (both state and locally assessed) is assessed annually for property tax purposes as of 12:01 a.m. on January 1, which is called the lien date. It is referred to as the lien date because on this date the taxes become a lien against all real property assessed on the secured roll. |
| Personal Property | Personal property includes all property except real property. |
| Property | Property includes all matters and things – real, personal, and mixed – that are capable of private ownership. |
| Real Property | The possession of, claim to, ownership of, or right to the possession of land; all mines, minerals, and quarries in the land; all standing timber whether or not belonging to the owner of the land, and all rights and privileges appertaining thereto; and improvements; in California property tax law, the term is synonymous with "real estate." |
| Reversionary Rights | The rights of the lessor at the expiration of a lease; the estate returned or due to be returned. |
| Secured Roll | That part of the assessment roll containing state assessed property and property the taxes on which are a lien on real property sufficient, in the opinion of the assessor, to secure payment of taxes. |
| Sublease | An agreement in which the lessee in a prior lease conveys the right of use and occupancy of a property to another. |
| Trade Fixture | A type of fixture which is "trade-related." |
| Unsecured Roll | Property on the unsecured roll. |