

New Construction

Albert Zamarripa, VP

Issue: Do replacement parts for fixtures (equipment) qualify for the assessment exclusion per Section 70 of the California R & T Code and the State Board of Equalization- Rule 463

Rule 122.5 - Definition - (1) A fixture is an item of tangible property, the nature of which was originally personalty (emphasis added), but which is classified as realty for property tax purposes because it is physically or constructively annexed to realty with the intent that it remain annexed indefinitely. (2) The manner of annexation, the adaptability of the item to the purpose for which the realty is used, and the intent with which the annexation is made are important elements in deciding whether an item has become a fixture or remains personal property. Proper classification, as a fixture or as personal property, results from a determination made by applying criteria of this rule to the facts of the case

Often, equipment located at manufacturing plants are fixtures due to their annexation to the realty (bolted down) in addition to their primary purpose. Per Rule 122.5, personal property that meets the 3 primary criteria of becoming a fixture may become real property, due to Physical Annexation, Constructive Annexation and Intent. Intent being the primary measure since the fixed equipment was intended by the user to remain annexed indefinitely.

Assessor Handbook 504- Fixed Machinery and Equipment

Assessor handbook 504 clarifies the matter concerning Fixed Machinery & Equipment (FME). FME is defined as equipment which is physically or constructively annexed and intended to remain indefinitely with the realty.

The SBE states that M&E may be erroneously categorized as M&E, when in fact it should be reported as a fixture. The Board also states that "In addressing the question of annexation, we initially observe that the common law test of technical affixation of the article to the realty is no longer an absolute prerequisite to "fixture status." The definition of affixation has long been argued but the SBE has clarified that even equipment which is not physically bolted down can be considered fixtures, solely by the intent of the item.

Rule 463

New construction applies to "real property" or a portion thereof whether it is an addition or alteration. Item b(4) indicates that "excluded from alterations that qualify as "newly constructed" is construction or reconstruction performed for the purpose of normal maintenance and repair and includes replacement of worn machine parts.

Continued.....



Escape Assessments

Ron Gangloff, Esq. VP

What are they? Escape assessments typically refer to property belonging to or possessed by a taxpayer where the taxpayer failed to report or the assessor failed to assess such property of taxpayer. This failure to assess ultimately results in property that "escaped" being assessed.

Now that the 571L filings are being processed, the audit season is in full swing. In any case in which locally assessable trade fixtures and business tangible personal property owned, claimed, possessed, or controlled by a taxpayer engaged in a profession, trade, or business has a full value of four hundred thousand dollars or more, the assessor shall audit the books and records of that profession trade, or business at least once each four years. (Revenue and Taxation Code § 469.).

An army of county auditors is now engaged in the task of making its four-year rounds of taxpayers situated in their County, looking specifically for property that has escaped assessment. Once the audit is completed the escape assessment tax bills are sent out. Sometimes the escapes are large and sometimes they are small but they are all worth taking a look at.

No matter how small the escape taxes owed are, the original underlying assessment can be opened for review, for each year an escape is issued. For example if a company paid \$500,000 per year in real and personal property taxes those assessments can be reviewed for accuracy, for each year with an escape even if the escape bills were only \$1,000. In other words a very small escape assessment can yield very large reductions.

Once the audit is complete an appeal must be filed on the escape(s) and the underlying assessments. This must be done within sixty days of receipt of the tax bills in counties of the first class and within sixty days of receipt of notice in all other counties.



Listen to this career advice!

Here are some words of wisdom from some of the world's richest people...

"If you're so smart, why aren't you rich?" is a smart-aleck question to ask, but sometimes the wealthy have useful advice to impart. Here are some words of wisdom from some of the world's richest people:

- Steve Jobs (co-founder of Apple Computer): "When I was 17, I read a quote that went something like: 'If you live each day as if it was your last, some day you'll most certainly be right.' It made an impression on me, and since then, for the past 33 years, I have looked in the mirror every morning and asked myself: 'If today were the last day of my life, would I want to do what I am about to do today?' And whenever the answer has been 'no' for too many days in a row, I know I need to change something."
- Michael Dell (founder of Dell): "Try never to be the smartest person in the room. And if you are, I suggest you invite smarter people, or find a different room."
- J.K. Rowling (author of the Harry Potter novels): "Had I really succeeded at anything else, I might never have found the determination to succeed in the one arena I believed I truly belonged."
- Carlos Slim Helu (world's richest person): "I don't want to live thinking about how I'll be remembered."
- Warren Buffett (chairman of Berkshire Hathaway): "I don't look to jump over 7-foot bars: I look around for 1-foot bars that I can step over."
- Mark Zuckerberg (co-founder of Facebook): "If we want to have the biggest impact, the best way to do this is to make sure we always focus on solving the most important problems."
- Cathie Black (president of Hearst Magazines): "Most people see taking risks as opening themselves up to unnecessary, maybe even dangerous chances. But the truth is, avoiding risks won't keep you safe, nor will it guarantee a smooth ride at work or in life."

Quotes

Important Business Property Statement Dates

Patrick Laake, Tax Consultant

Until one has loved an animal, a part of one's soul remains unawakened.

—Anatole France

Leadership is practiced not so much in words as in attitude and in actions.

—Harold S. Geneen

The best way to appreciate your job is to imagine yourself without one.

—Oscar Wilde

There is nothing in the world so irresistibly contagious as laughter and good humor.

—Charles Dickens

To accomplish great things we must not only act, but also dream; not only plan, but also believe.

—Anatole France

It's not whether you get knocked down, it's whether you get up.

—Vince Lombardi

A person without a sense of humor is like a wagon without springs. It's jolted by every pebble on the road.

—Henry Ward Beecher

The greatest healing therapy is friendship and love.

—Hubert Humphrey

Laughter is the sound of the soul dancing.

—Jarod Kintz

“Ninety percent of education is encouragement.”

—Anatole France

Now that it is spring it is time to file your Business Property Statement (571L) with the county. While completing this task it is important to keep a few dates in mind to avoid certain repercussions. If you keep these dates in mind while filing you will avoid the 10% late filing penalty which is required according to Revenue and Taxation Code 463.

The First date to keep in mind is April 1st. According to Revenue and Taxation Code 441 (b), "The property statement shall be declared to be true under the penalty of perjury and filed with the assessor between the lien date and 5 p.m. on April 1st. But do not fear if you cannot submit the property statement on April 1st you still have time to submit the statement and avoid a penalty. To avoid the late filing penalty you must submit your statements by May 7.

According to Revenue and Taxation Code 441 (b), "The penalty provided by Section 463 applies for property statements not filed by May 7th." In other words May 7th is your last day to file if you want to avoid the 10% penalty. So in other words the time between April 1st and May 7th is a grace period in which the county will not apply the penalty.

So now that you have filed your return and you realized that you made an error when entering in your data. What should you do? Well don't worry you have the ability to submit an amended return on or before May 31st.

You should contact the County with any questions or concerns about filing procedures. They will be able to assist you with filing instructions. Just remember to have your statement to the county by May 7th to avoid any penalties.

Continued from front page.....

Assessment Practices Survey - California State Board of Equalization, Fall 1982

The topic of that which qualifies as new construction is discussed in the State Board of Equalizations Assessment Practices Survey. On page 7 the SBE discusses normal maintenance. The literature succinctly states that normal maintenance will ensure that a property will experience an economic life of typical duration. Depreciation tables are based upon presumed normal maintenance; they are typical representation of the value behavior of a maintained property.

The Survey indicates that alterations or additions may be so substantial as to require assessment thereof, if the improvement to the existing property brings it to a state of substantially equivalent to new, in which case the value added shall be assessed. However the SBE goes on to define substantially equivalent to new (page 8) to mean that the improvement must be physically altered to a point where the new value is at least 80 percent of the value of a comparable new property.

Summary

The 80% of replacement cost new provides an adequate guideline from which to quantify the level of improvement added to a property. This should leave very little ambiguity for Assessors to make a determination whether repairs or replacements should be assessable.

TOOTING OUR HORN

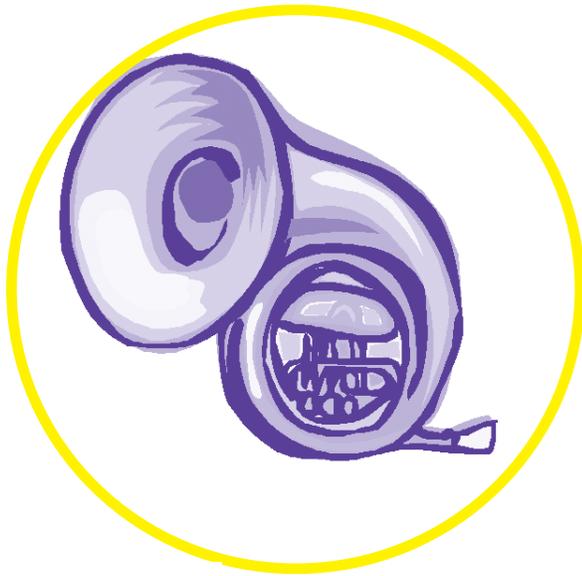
Although this is an informational newsletter, we would like to take the opportunity to brag about a sampling of our successes, from various industries, in the last quarter. These are a few examples of the refunds that our clients have received from the county, due to our work.

Business Personal Property

| | |
|------------------------------------|----------------|
| Advertising and Marketing Services | \$101,417.90 |
| Commercial Printer | \$104,211.56 |
| Cement Manufacturing | \$2,369,033.66 |
| Construction Contractor | \$33,921.75 |
| Dairy | \$47,224.59 |
| DVD Manufacturer | \$72,219.94 |
| Data Center | \$154,980.16 |
| Food Wholesaler | \$33,964.90 |
| Food Manufacturing | \$30,720.84 |
| Fruit Farming | \$37,696.76 |
| Grocery Stores | \$51,644.76 |
| Hospital | \$26,940.21 |
| Instrument Manufacturer | \$39,107.49 |
| Medical Device Manufacturer | \$884,841.60 |
| Mining | \$294,443.60 |
| Nursery & Floriculture Production | \$454,411.83 |
| Race Track | \$32,923.21 |
| Vitamin Manufacturer | \$32,710.37 |
| Warehousing and Storage | \$74,787.72 |

Real Property

| | |
|-------------------------------------|-----------|
| Office Property - SD County | \$197,480 |
| Multifamily Property - LA County | \$52,794 |
| Industrial Property - SB | \$64,004 |
| Storage Property (2) - LA County | \$65,510 |
| Retail Property (4) - OC | \$37,234 |
| Industrial Property - (7) LA County | \$244,602 |
| Multifamily Property - LA County | \$17,359 |
| Retail Property - LA County | \$24,574 |



TaxTidbits

Business Property Statement (571-L Forms)

- * Businesses are required by law to file a Business Property Statement if the aggregate cost of business personal property is \$100,000 or more or if the Assessor requests the information
- * Separate filings are required for each business location
- * Statements are due April 1
- * A 10% penalty will be applied if a statement is received after May 7
- * Business Property Statements are private documents and are held confidential by the Assessor



Special Purpose Property!

J.P. Patel, Sr. Tax Consultant

Have you ever heard the assessor say that your property is special-purpose? Chances are pretty good you have, if you are an owner-occupier of the real property. There are a couple of questions that should be asked when a taxpayer hears this statement from the assessor.

The first question is what does the assessor mean by special purpose? There is no definition of a special-purpose building in the Revenue and Taxation Code. The assessor, when faced with this question may say that the building was constructed for a specific use and that there are very few buildings like that one. They also may say that a special-purpose property would not or cannot be adapted for any other use. The interesting thing is that many times the assessor is able to say this without ever looking inside the building.

The next question is how does this affect a property's value? Some assessors argue that since there are few like properties the comparable sales approach and the income approach are not reliable approaches to value. This leaves the assessor relying on the cost approach. The cost approach has always and will always be a viable way to value a property. However, the cost approach usually comes in at the high end of the value range, due to the difficulty of estimating depreciation. When using comparable sales and the income approach, depreciation is inherent in the value. In the cost approach, depreciation is a separate calculation with many forms and variables that is estimated by the appraiser.

That is why an assessor likes to say your property is special-purpose. He may then rely on the cost approach and make his own estimate of the depreciation of the property. The assessor rarely sees anything wrong with a building, and is very conservative in estimating depreciation.

So then what can you do as a taxpayer? First, just because the assessor says that your property is special-purpose does not mean that there isn't an opportunity for a reduction. It is important to do all three approaches to value. Look at what other similar type of buildings are selling and leasing for in your area. When looking at the cost approach, look at all forms of depreciation and other factors including over or under improvements that would affect the value negatively.

Is There Baseball In Heaven?

Two old men had been best friends for years, and they both live to their early 90's, when one of them suddenly falls deathly ill. His friend comes to visit him on his deathbed, and they're reminiscing about their long friendship, when the dying man's friend asks, "Listen, when you die, do me a favor. I want to know if there's baseball in heaven."

The dying man said, "We've been friends for years, this I'll do for you." And then he dies.

A couple days later, his surviving friend is sleeping when he hears his friend's voice. The voice says, "I've got some good news and some bad news. The good news is that there's baseball in heaven."

"What's the bad news?"

"You're pitching on Wednesday."





Presort Std
U.S. Postage
PAID
WMS

David L. Gangloff Jr., Esq.
CEO & Principal
Property Tax Assistance Co., Inc.
16600 Woodruff Ave.
Bellflower, CA 90706

For information please contact:

Lisa Henry
562-282-5911
LHenry@property-taxes.com

www.property-taxes.com

Bellflower, CA (Corporate Headquarters)
Property Tax Assistance Co., Inc.
16600 Woodruff Ave.
Bellflower, CA 90706
Phone 562-920-1864 Fax 562-920-5775
PTA@property-taxes.com

Bay Area Office
Property Tax Assistance Co., Inc.
1981 N. Broadway, Suite 342
Walnut Creek, CA 94596
Phone 925-942-1004 Fax 925-942-0369

Property Tax Update



It's spring fever. That is what the name of it is. And when you've got it, you want - oh, you don't quite know what it is you do want, but it just fairly makes your heart ache, you want it so! ~Mark Twain