Mr. Verne Walton July 12, 1984

Robert R. Keeling

Review of Letter to Inyo County Tax Collector on Subject of Securing Foreign Improvements

This is in response to your memo date June 8, 1984, in which you asked us to review your proposed response to the Inyo County Tax Collector. Your letter deals with the question of which roll is to be used (secured or unsecured) when assessments are made on improvements owned by persons other than the owner of the underlying land.

Before 1947, the assessor, at his discretion, could assess separately owned improvements to the owner of such improvements or to the owner of the underlying land. (Trabue Pittman Corporation v. County of Los Angeles, (1946) 29 cal. 2d 385, at p. 401, and as interpreted in Valley Fair Fashions, Inc. v. Valley Fair, (1966) 245 Cal. App. 2d 614 at 616). If the assessor had not secured separately assessed improvements to the underlying land, he must have placed the assessment on the unsecured roll. (Trabue Pittman Corporation, supra, as interpreted by County of Ventura v. Channel Islands State Bank, (1967) 251 Cal. App. 2d 240 at 245.) This conclusion has logical support, for if the assessor were to assess separately owned improvements on the secured roll, not secured by land, then the enforcement of the tax lien could prove exceedingly difficult if the improvement owner is in bankruptcy. (See 18 Ops. Cal. Atty. Gen. 26.) Also, the Legislature appears to have recognized that a tax lien on improvements should be secured to land because when enacting Sections 2188.1 and 2188.2 of the Revenue and Taxation code, it cited as reasons:

"Some counties assess improvements to the tenants installing such improvements rather than to the assessee of the land upon which such improvements are located. Nevertheless, under the existing law, it is necessary to make such improvement assessments a lien upon such land. In such counties it will simplify the assessment procedure if such lien is eliminated; thereby facilitating the assessment of property and the orderly flow of tax revenue for the support of all functions of local government….:

Apparently, the Legislature recognized that without special legislation, the assessor was without authority of assess separately owned improvements on the secured roll unless such improvements were secured by the underlying land. (Also see T. M. Cobb Co. v County of Los Angeles, (1976) 16 Cal. 3d 606, 624, 627: People v. Smith, 123 Cal. 70. 73.)

With the enactment of Sections 2188.1 and 3188.2, the taxpayer now has the right to be separately assessed for his separately owner improvements. However, the language of 2188.1 appears to require that the improvement owner must also own land elsewhere within the county to which such improvement can be secured, otherwise the separate assessment must be made on the unsecured roll. For example, 2188.1 provides:

> 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 lien must be indicated on the secured toll where any such parcel of real property is listed.

Note that this sentence distinguishes the words "improvements" and "parcel of real property". In my view, "parcel of real property" can only be "land", since the assessor's parceling system does not assign parcel numbers to any property other than land or property connected with the land. (Rev. & Tax. Code § 327; see Ah 271, p. 8, § Bi.) This conclusion is further enforced by the observation that 2188.1 was amended in 1961 to add the words "or be assessed on the unsecured roll" in the first sentence. (Stats. 1961, p. 3216, Ch. 1412). Such addition is clear inference that the Legislature intended that the assessor use the unsecured roll for assessment of improvements no secured to land.

Another inference that the Legislature intended that separately assessed improvements be assessed on the unsecured roll, if not secured to land, is the provision of Revenue and Taxation Code Section 2191.3 (a) (3). That section provides for recording a certificate of delinquency for the collection of taxes for assessments on the unsecured roll for improvements assessed pursuant to the provisions of Revenue and Taxation Code Section 2188.2. It appears the Legislature intended for such separately assessed improvements to be assessed on the unsecured roll – otherwise there would be no need to made this Section 2191.3 (a) (3) provision. Again, if the assessor was to have the free election to assess separately owned improvements on the secured roll, there would have been no need for the Legislature to go to so much trouble to provide for placing such improvements on the unsecured roll.

In my view, I see the assessor's election under 2188.1 and 2188.2 to be as follows:

1. If no request is made for separate assessments of separately owned improvements, then the assessor my, at his elective discretion, assess the improvements on the secured roll as a lien against the underlying land or he may assess the improvements on the unsecured roll to the owner of the improvements.

2. If a request for separate assessment of the separately owned improvements is made under 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.

RRK:fr

Cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Legal Section