

916-445-5047

November 9, 1979

Mr. Loyal E. Keir
Deputy County Counsel
County of Riverside
3535 Tenth Street, Suite 300
Riverside, CA 92501

Dear Mr. Keir:

You ask if the owner of Cable TV property, classified as trade fixtures, has the right to have the assessment of his property placed upon the secured roll and be secured thereon by a possessory interest in real property.

We understand that some of the company's property is a possessory interest (PI) in land, some is a PI in improvements to land, some is improvements to real property as trade fixtures, that all of the assessee's trade fixtures and personal property was assessed on the unsecured roll, and all the assessee's possessory interests were assessed on the secured roll.

The assessee's opportunity to be assessed for PI's upon the secured roll was established by Assembly Bill 2463 (Stats. 1978, Ch. 576) for the tax year 1978-79 and by Senate Bill 239 (Stats. 1979, Ch. 4) for all subsequent years. These two bills amend Section 107 of Revenue and Taxation code to permit the county board of supervisors to declare that a PI may be sufficient security for taxes owed. I will presume your board of supervisors has made such an election.

The operative words of Section 107(b) empowering the board of supervisors to declare a PI to be sufficient security for taxes owed are:

"All possessory interests may, in the discretion of the county board of supervisors, be considered as sufficient security for the payment of any taxes levied thereon and may be placed on the secured roll."

We interpret this section to have embodied power in the board of supervisors to place any one or all PI's on the secured roll. The PI may be in land or improvements to land, including trade fixtures. The statute does not provide any discretionary choice by the assessor as to which roll a PI is to be assessed. Our interpretation is supported by the actions of Los Angeles County where all PI's are placed upon the secured roll. The assessor is acting in furtherance of a resolution by the county board of supervisors that declares a PI shall be its own security for taxes owed. (Copies of the resolution and county board letters into the county assessor are enclosed.)

We do not find the local assessment appeals board to have the power to place a PI on the secured roll, even if that body is the board of supervisors sitting in the capacity of an appeals board. The statute specifically limits the power to place a PI on the secured roll to the board of supervisors sitting as a board of supervisors.

Personal property may, at the discretion of the county assessor, be secured to a PI that is assessed on the secured roll. We reach this conclusion by noting that a PI is real property (see Rev. & Tax. Code sections 104 & 107) and that personal property may be secured to any real property if the assessor issues a certificate of security (see Rev. & Tax. Code section 2189.3).

Trade fixtures owned by the assessee may be placed upon the secured roll or unsecured roll, at the discretion of the assessor. (See Rev. & Tax. Code sections 109, which defines the secured and unsecured rolls and the assessor's discretionary power of selection, and 2188.1, which permits assessment of improvements on the secured roll to other than the land owner.) Poles and lines owned by an assessee on lands of another would be examples of such trade fixtures. Fixtures publicly owned in which the assessee has a right to use may be treated as a possessory right owned by the assessee and assessed the same as any other PI. If the board of supervisors so elects, the assessment of a PI in fixtures must be placed upon the secured roll, otherwise it must be placed upon the unsecured roll.

Generally, the assessor has sole discretion as to the election of the roll upon which an assessment is placed. (See San Mateo County v. Maloney, (1886) 71 Cal. 205, in which it was held that the assessor's judgment was not reviewable once he collected and paid over the taxes to the county treasurer.) Several other Revenue and Taxation Code sections afford the assessor discretionary power to classify property as to the roll upon which it is placed. (See Rev. & Tax. Code sections 134, 4840 & 2189.3.)

Section 1613 of the Revenue and Taxation Code subjects the assessor to review and to the authority of the local assessment appeals board. But I interpret the appeals board's authority to be limited to the power to correct assessors' clerical errors and errors in judgment as to the value. The section leaves the assessor an unreviewable power to exercise judgment and discretion as to the roll upon which property is assessed.

I conclude that after the roll is complete and transmitted to the county auditor, there is no provision of law that permits trade fixtures or personal property assessments placed by the assessor upon the unsecured roll to be moved to the secured roll.

Very truly yours,

Robert R. Keeling
Tax Counsel

RRK:fr
Enclosures

cc: Mr. Frank C. Seeley
Riverside County Assessor

bc: Mr. Verne Walton
Legal Section

This document has been reproduced based on an original copy from the referenced agency/board. Upon request, the BOE can provide a copy of the source document; however, for an official copy of the document, we recommend reaching out to the referenced agency/board.

County of Los Angeles
seal

Minutes of the Board of Supervisors
County of Los Angeles, State of California

James S. Mize, Executive Officer
Clerk of the Board of Supervisors
383 Hall of Administration
Los Angeles, California 90012

Assessor

At its meeting held March 20, 1973, the Board took the following action:

126

On motion of Supervisor Hayes, seconded by Supervisor Hahn, unanimously carried, the Board made a finding that possessory interests are sufficient security for the payment of property taxes levies on these assessments.

In further action, it was ordered that these assessments, commencing in the 1973-74 fiscal year, be placed on the secured property tax roll, allowing their payment on a twice yearly basis, rather than once a year as is now required.

Copies distributed:

Each Supervisor
Chief Administrative Officer
County Counsel
Treasurer-Tax Collector

In 1972, the Board sponsored legislation to allow unsecured possessory interest property taxes to be collected in two installments. The Governor has signed this bill which gives the Board discretion to make the necessary finding to implement this program.

I THEREFORE MOVE:

1. That the Board find that possessory interests are sufficient security for the payment of property taxes levies on these assessments.
2. That these assessments commencing in the 1973-74 fiscal year be placed on the secured property tax roll, allowing them to pay their taxes twice a year rather than once a year as now required.

MOTION

Hahn
Debs Signature
Hayes
Ward
Schabarum