STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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No. 87/50

TO COUNTY ASSESSORS:

RULE 131, FRUIT AND NUT TREE AND GRAPEVINE EXEMPTION

A question has arisen regarding Section (e) of Property Tax Rule 131. Section (e) reads:

> "(e) GRAFTING. Where a previously exempt tree or vine has attained commercial production and there is a grafting which causes a reoccurrence of a nonproducing period (except for nurse limbs), this shall be treated as a new planting which creates a new exemption period. Any other grafting or budding or inarching does not create a new exemption period." (Emphasis added.)

Assessors and orchard growers have been contacting us to say that a literal reading of this rule is causing a hardship on some growers. Apparently, modern orchard farming practices include planting root stock saplings, or even seeds, and then in about the second or third year, top the stock with the permanent graft. Most orchard growers are maintaining that the four-year exemption, as provided for in Revenue and Taxation Code Section 211, should begin anew at the time of the permanent graft. However, Rule 131(e) seems to require that the trees first reach commercial production for any major grafting to initiate a new four-year exemption period.

Section 3(i), Article XIII of the California Constitution exempts, "Fruit and nut trees until four years after the season in which they were planted in orchard form...." Rule 131 defines an orchard as "a systematic planting of fruit and nut-bearing trees--as opposed to individual plants for ornamental purposes." We have researched the history of the writing of this rule. No where in our research could we find a definition of "planted in orchard form."

It has been argued, with some persuasiveness, that the "orchard form" phrase could (and should) be applied when describing the plants and not the field. In other words, the trees have not been planted in orchard form until the trees are in the final mode in which they will bear cash crops. The root

stock may have been planted sometime in the past, but until the permanent graft of the producing nut or fruit stock is made, the tree is not in "orchard form".

We have had equally persuasive arguments that this logic is contrary to Revenue and Taxation Code Section 223. The wording in this section strongly implies that once the trees are removed from nursery status, and are planted in the field, they are "planted in orchard form." Here, the phrase seems to mean field planting in a systematic spaced manner that is recognizable as an orchard.

As a result of the inquiries and widely divergent opinions as to the meaning of the rule and statutes, we asked for an opinion from our legal staff. Mr. James Delaney, Chief Counsel for the Board, advised us that although the phrases "orchard" and "planted in orchard form" could be construed as possibly ambiguous, the intent of the law to grant only a four-year exemption period is quite clear. Therefore, he concludes that the most literal reading of the rule must take precedence. In other words, only if an orchard or vineyard has attained commercial production and then is grafted so thoroughly as to make it nonproducing, should the exemption be restored just as though the producing tree had been replaced by a nonproducing tree. In no other instance is it proper to grant more than the original four or three-year exemption.

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division

VW:wpc
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