



Memorandum

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DEPUTY DIRECTOR
PROPERTY TAXES

Date: June 25, 1998

To: Honorable Dean Andal
Member, Second District

From: Timothy W. Boyer
Chief Counsel

Subject: Plastic Sheets Used to Cover Strawberry Fields

This is in response to your memorandum dated June 16, 1998 which asks "... whether plastic sheets placed on the ground in strawberry fields are assessable if purchased after the January 1 lien date and are disposed of prior to December 31 of the same year." As set forth below, our answer to this question is that, under the described circumstances, the plastic sheets are not assessable to the grower for property tax purposes.

Pursuant to a telephone conversation with your office, the facts underlying this inquiry appear to be as follows: (i) in some cases, after strawberries have been planted, the grower puts plastic sheets down in the fields and does not remove such plastic sheets until after the strawberries have been harvested; (ii) the plastic sheets essentially remain in the fields for the entire nine-month growing period; (iii) the plastic sheets are laid down in order to permit the spraying of herbicides and insecticides underneath such covering; (iv) the plastic sheets are physically attached to the ground; and (v) the grower's intent in laying down such plastic sheets in the fields is that such plastic sheets remain there only for a limited or temporary time period. For purposes of this memorandum, we also assume that the grower not only removes such plastic sheets from the fields prior to the lien date, but that such sheets are actually discarded or otherwise disposed of prior to the lien date -- and not merely stored at some off-site location.

In answering this question, we note that it is assumed that the plastic sheets will not be treated as fixtures -- or real property -- for property tax purposes. The legal staff agrees with this assumption. While the plastic sheets are physically attached to the ground, they do not qualify as fixtures. Thus, they retain their personal property character for property tax purposes.

A fixture is a thing, originally personal property, but later affixed or annexed to realty, so that it is considered real property. (Witkin, Summary of California Law, Vol. 4, "Personal Property," § 70.) Section 660 of the California Civil Code establishes the fundamental rule with regard to whether or not personal property has become a fixture of real property:

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A thing is deemed to be affixed to land when it is ... permanently resting upon it, as in the case of buildings: or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws;

As set forth in *Witkin*, however, the manner of annexation is not the sole factor in determining whether or not an item has become affixed to real property:

There are three main factors: (1) physical annexation; (2) adaptation to use with real property; (3) intention to annex to realty. Of these, intention is the most significant, but the manner of annexation and the use to which the property is put are relevant in determining such intention.

In property taxation cases, the intention test is not subjective, but, instead, "... reduces itself to whether a reasonable person would consider the item to be a permanent part of the property, taking into account annexation, adaptation, and other objective manifestations of permanence. (Emphasis added.)" (*Crocker National Bank vs. City and County of San Francisco* (1989) 49 Cal.3d 881, 887-888.) Turning to the assumed facts in this memorandum, we do not believe that a reasonable, objective observer would consider plastic sheets laid out among strawberry plants to be permanently annexed to the real property.¹ Instead, in our opinion, such an observer would consider such sheets to be inherently temporary and impermanent. Thus, we agree that the plastic sheets should be treated as personal property for property tax purposes.

Given the above conclusion, the next question that arises is whether or not personal property that is acquired after one lien date, and disposed of before the next, is assessable for property tax purposes at any time. Pursuant to section 401.3 of the Revenue and Taxation Code: "The assessor shall assess all property subject to general property taxation on the lien date" Thus, in general, the only property that is subject to assessment for property tax purposes is property that is held by a taxpayer on a lien date. Consequently, since supplemental assessments do not apply to personal property, if a grower annually acquires plastic sheets after January 1 for use in strawberry fields and subsequently disposes of them prior to December 31, then such plastic sheets would not be assessable to the grower.² Of course, our conclusion would be different if, instead of disposing of the plastic sheets, the grower merely removed them from the strawberry fields and stored them for use in the next season; and consequently held them on the next lien date.

¹ While an objective observer would probably consider affixed interior wall-to-wall carpeting to be permanently annexed to the real property, we do not believe that such an observer would have the same impression of plastic sheets in a strawberry field.

² Supplemental assessments only apply to real property. (Revenue & Taxation Code, §§ 75.5 and 75.10.)

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity. Please call Robert Lambert at 324-6593 if you have any questions.

TWB:jd

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cc: Honorable Johan Klehs
Honorable Ernest J. Dronenburg, Jr.
Mr. John Chiang, Acting Member, 4th District
Honorable Kathleen Connell, State Controller
Mr. E. L. Sorensen, Jr. (MIC:73)
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