



(916) 324-6594

September 27, 1984

M

Dear M

This is in reply to your letter of August 31, 1984 to Richard Ochsner in which you ask the following:

"Would you please provide the Sierra County Assessor's Office with a legal opinion as to the meaning of California Revenue and Taxation Code, Section 107(b). This office needs a legal analysis and definition as to what 'Taxable improvements on tax-exempt land' means.

"Does this mean that a person who builds and owns improvements on federal land creates a taxable possessory interest in the improvements he apparently owns?

"If there is a possessory interest in leasehold improvements constructed on leased federal land pursuant to Section 107(b), and if the land lease is renewed (renewal of possessory interest in land), do the improvements become appraisable pursuant to Section 61(b)?"

Revenue and Taxation Code Section 107(b) has not been defined by the courts, nor has it been defined specifically in Property Tax Rule 21. While it may be possible to develop a suitable definition through researching the legislative history of the section, I don't believe that is necessary in order to answer the questions raised in your letter. The key here, as indicated by Rule 21(a), is that a possessory interest in either land or improvements means "an interest in real property which exists as a result of possession, exclusive use,

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or a right to possession or exclusive use of land and/or improvements unaccompanied by the ownership of a fee simple or life estate in the property ..." (Emphasis added.)

Thus, if a lessee (or permittee) of federal land constructs improvements thereon and retains ownership of a fee simple or life estate in the improvements, he does not have a possessory interest in the improvements, he does not have a possessory interest in the improvements and a renewal of the land lease would not trigger a reappraisal of the improvements. See Letter to Assessors No. 80/49, dated March 21, 1980, a copy of which is enclosed.

If, on the other hand, the improvements constructed by the lessee become the property of the government, the lessee would have a taxable possessory interest in the improvements and a renewal of the land lease would trigger a reappraisal of the possessory interest in both the land and improvements under Section 61 (b).

It is, therefore, necessary in such cases for the assessor to determine whether the improvements are owned by the lessee or by the government. To make this determination, the assessor will need to review the lease agreement. The lease may provide that at the expiration of the lease, all improvements of the lessee shall remain on the premises and become the property of the lessor in which case the lessee would have a possessory interest in the improvements. Or, the lease may permit or require the lessee to remove improvements he has made to the property at the expiration of the lease in which case the lessee would be the owner of the improvements rather than a possessory interest therein. If the lease agreement is silent on the subject, the general rule is that the lessor retains ownership of the improvements at the expiration of the lease. (Civil Code Section 1013.) One possible exception to the general rule is the trade fixture doctrine, which would permit a lessee to remove his trade fixtures at any time during the continuance of the lease. (Civil Code Section 1019.) The difficulty in applying this exception, of course, is determining to what extent lessee improvements can be characterized as trade fixtures. Enclosed for your further information is a copy of a letter from M _____ to the attention of M _____ dated _____ concerning the question of the ownership of improvements.

If we can be of further assistance to you in determining the ownership of improvements in any particular instance, please let us know.

Very truly yours,

Eric F. Eisenlauer
Tax Counsel

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Enclosures