

STATE OF MICHIGAN



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TO: All Assessing Officers

FROM: State Tax Commission

RE: Assessment of Nursery Stock Seasonal Protection Units

The General Property Tax Act provides that for the purpose of taxation, real property includes "all lands within the state, and all buildings and fixtures thereon."

The Michigan Court of Appeals, 96 Mich. App. 551, has described the factors that are to be considered. The following excerpts are from the opinion cited above that involved real or personal property of a bank. The personal property of a bank would be exempt.

"The test to be applied in order to ascertain whether or not an item is a fixture emphasizes three factors:

- (1) Annexation to the realty, either actual or constructive;
- (2) Adaptation or application to the use or purpose of that part of the realty to which it is connected or appropriated; and
- (3) Intention to make the article a permanent accession to the realty."

"The intention which controls is that manifested by the objective, visible facts. The permanence required is not equated with perpetuity. It is sufficient if the item is intended to remain where affixed until worn out, until the purpose to which the realty is devoted is accomplished or until the item is superseded by another item more suitable for the purpose."

The Court observed in the case of fixtures such as a bank vault door or a bank drive-up window, "Furthermore, each item is adapted to the use of the realty. In fact, not only is the present use of these buildings dependent on the presence of these items, none of these items can be used unless they are affixed to a building or land."

It is the position of the State Tax Commission that a structure usually covered by polyethylene and used for seasonal protection of nursery stock is real property and not exempt personal property.

The assessing officer should appraise the frame and supporting base, if any, as real property. In addition the value of the water system, heating system, and electrical distribution and lighting are to be added as part of the real property.

A polyethylene sheet cover of less than .007 inches (7 mils) thickness and which is removed each year in the usual practice, should not be considered in valuing the nursery stock seasonal protection unit.