

APPENDIX E

2025-26 PERSONAL PROPERTY MANUAL: VALUATION GUIDELINES

Determining Whether Fixtures are Real or Personal Property

NRS 361.333 requires that each major class of property be examined to determine whether there is equality of assessment. One of the principal classes of property is personal property, pursuant to NRS 361.227(4). Uniformity and equality of assessment thus depend on proper classification. Although NRS 361.035 defines real estate and NRS 361.030 defines personal property, in practice it is sometimes difficult to tell whether an item is personal property or a fixture that is part of the real estate. As the Attorney General stated in Opinion #41 (1963), “the classification depends on the facts of each particular case.” The assessor is encouraged to consult the Division of Local Government Services and/or the District Attorney in difficult cases.

A fixture may be defined as an item that was originally personal property which has been installed or attached to land or an improvement in a permanent manner. There is an abundant amount of case law which discusses three tests often used in deciding whether an item is a fixture. The tests are:

1. Physical Annexation;
2. Constructive Annexation, also called Adaptation; and
3. Intent

Under the first test, annexation, an item is a fixture if it is attached to, imbedded in or permanently resting upon land or an improvement, or is attached by other means that are normally used for permanent installation, and cannot be removed without substantially damaging the item or the land or improvement with which it is being used. For example, an item which is attached to real property for stability and has quick disconnect attachments such as simple wiring and conduit connections may not meet the test for a permanent fixture.

Under the second test, constructive annexation, an item is a fixture if the use or purpose of an item that is not otherwise physically annexed to land or an improvement is so adapted that it is:

- A. A necessary, integral or working part of the land or improvement;
- B. Designed or committed for use with the land or improvement; or
- C. So essential to the land or improvement that the land or improvement cannot perform its desired function without the nonattached item.

Using the constructive annexation test, if the purpose of the item is to augment the use of the improvement no matter how it is attached, such as an elevator, the item must be considered a fixture. Another example would be heating, ventilation, and air conditioning equipment (HVAC). Equipment used to heat, ventilate, or cool a structure is considered to be real property.

Permanently attached personal property may be temporarily removed for repair or renovation onsite and still be considered permanently attached. Permanently attached fixtures do not include movable tangible personal property that is attached for convenience, stability, or an obviously temporary purpose.

Underlying both the physical or constructive annexation tests is a determination of intent. An assessor must consider whether the item is intended to be a permanent part of the land or improvement, taking into account

physical or constructive annexation, and other objective manifestations of permanence. NAC 361.1127 provides examples of objective manifestations of permanence.

A trade fixture may be distinguished from a fixture. It is an item of personal property that is non-permanently attached to real property for the purpose of conducting a business or trade; and has a unique identity and function separate from the real property to which it is attached. NAC 361.11745 provides a definition of trade fixture.

Pursuant to NRS 361.244, a mobile or manufactured home becomes real property when the Assessor has listed it on the tax roll as real property. The classification of mobile and manufactured homes as real property may be made when the requirements enumerated in NRS 361.244(1) and (2) are met. This includes the issuance of a Real Property Notice by the Manufactured Housing Division of the Department of Business and Industry. Factory-built housing becomes real property once it is permanently affixed to the land. These housing units conform to the Uniform Building Code and are not titled. As such they are not personal property nor are they considered “conversions”. These “UBC” homes do not exhibit the HUD placards found on manufactured housing. Instead, they may have a placard referencing NRS 461.080 and their serial numbers may begin with the characters “UBC”.

In general, personal property is defined by exception pursuant to NRS 361.030. Property that does not meet the criteria of real property is personal property. To assist in making the determination on real and personal property, which occurs on a case-by-case basis, the six-factor Whiteco test, in which the following questions were developed in helping determine if property was/is considered tangible personal property or real property. The six questions are:

1. Is the property capable of being moved, and has it in fact been moved?
2. Is the property designed or constructed to remain permanently in place?
3. Are there circumstances which tend to show the expected or intended length of affixation — that is, are there circumstances which show that the property may or will have to be moved?
4. How substantial a job is removal of the property and how time consuming is it? Is it “readily removable”?
5. How much damage will the property sustain upon its removal?
6. What is the manner of affixation of the property to the land? Can it be removed without causing damage?

The Assessor should recognize that certain fixtures such as bars, stages, walk-in coolers, or bank drive-ups, may already be included in the real property component of the Assessor’s Taxable Value. The Assessor should review the differing building occupancies of the Marshall-Swift cost manuals to ensure that a component of real or personal property is not double-assessed. The improper classification of any component of taxable property as real or personal does not render the valuation void or invalid.

For further research and explanation, please consult:

Attorney General Opinion 2012-10 (10-31-2012) (as it applies to fixtures, not to trade fixtures)

Attorney General Opinion #41 (1963)

Attorney General Opinion No. 2000-04

Marvin Arnold, Respondent, v. Goldfield Third Chance Mining Co, 32 Nev. 447; 109 P. 718 (1910)

National Advertising Co. v. State Department of Transportation, 116 Nev. Adv. Op. No. 10, (Feb. 2, 2000)

Fondren, et al, v. K/L Complex Ltd., et al., 106 Nev. 705; 800 P.2d 719; (1990)
Morse Signal Devices of California v. County of Los Angeles, 161 Cal. App. 3d 570; 207 Cal Rptr. 742 (1984)
Crocker National Bank v. City and County of San Francisco, 782 P.2d 278 (1989)
State v. Pioneer Citizens Bank of Nevada, 85 Nev. 395 (1969)
Kaiser Co. v. Reid (1947) 30 Cal.2d 610
Whiteco Industries, Inc. v. Commissioner, 65 T.C. 664 (1975)

References:

International Association of Assessing Officers, Standard on the Valuation of Personal Property, December 2005. This publication may be obtained free of charge from the IAAO website at <http://docs.iaao.org/media/standards/StandardValuationPersonalProperty.pdf>

The Appraisal Institute: The Appraisal of Real Estate, 14th Edition, Chicago: 2013