

**STATE BOARD OF EQUALIZATION
3850 ARROWHEAD DR, 2ND FLOOR
CARSON CITY, NV 89445**

**PETITIONER: EMPIRE SOUTHWEST, LLC
JOHN HELMS
3300 SAINT ROSE PARKWAY
HENDERSON, NV 89052**

**RE: RESPONSE TO PETITIONERS COMBINED OPENING BRIEF CASE NOS 25-126, 25-127,
25-128 AND 25-152**

BACKGROUND

Empire Southwest, LLC (hereafter referred to as Empire or Petitioner) is a sales and rental company of heavy equipment. Empire markets itself as having a robust rental fleet of heavy equipment and clients enjoy the standard benefits of renting (on-site repairs, large selection of equipment, training, etc). Empire acquired Cashman Equipment in 2022 and assumed their Elko County operations.

As per NRS 361.265, a written statement of all personal property located within the county, signed under the penalty of perjury, must be submitted at the demand of the assessor. This demand was sent to Empire on June 26, 2023. The declaration was returned on July 27, 2023, processed on October 13, 2023, and billed January 31, 2024. Tax Management Associates (hereafter referred to as TMA) was contracted by Elko County in 2023-24 to audit local heavy equipment rental companies after internal reviews determined that they may be underreporting their equipment. The audit found that Empire had \$17,674,240 in reportable equipment, Empire reported \$1,466,140. Empire was notified of this discovery on October 21, 2024, and was given 14 days to dispute it. This office received no dispute, and supplemental billing was generated November 19, 2024. Empire was notified of their right to appeal this valuation to the Board of Equalization. Empire filed an appeal on January 13, 2025, the case was heard by the Elko County Board of Equalization (hereafter referred to as ECBOE) on February 20, 2025, and the appeal was denied. Empire filed an appeal to the State Board of Equalization on March 7, 2025.

Empire asserts that the equipment qualifies for exemption under NRS 361.068(1)(a), which exempts inventory held for sale in the ordinary course of business, that all non-inventory was properly reported and the audit disregarded statute requirements. Empire is asking that their valuation for 2023-24 be reduced to \$2,101,342.

ANALYSIS

Inventory is exempt from taxation: Under Nevada law, personal property is taxable unless specifically exempted. NRS 361.045 defines personal property to include goods, chattels, and stock-in-trade. NRS 361.068 provides an exemption for inventory held for sale in the ordinary

course of business. Equipment held for lease or rent in Nevada is generally considered taxable, as it is used to generate income rather than being held for sale.

In *Sierra Pac. Power Co. v. Department of Taxation*, 96 Nev. 295 (1980), the Supreme Court of Nevada held: “As a general rule, tax exemptions are strictly construed. There is a presumption that the state does not intend to exempt goods or transactions from taxation. Thus, the one claiming exemption must demonstrate clearly an intent to exempt. Any reasonable doubt about the applicability of an exemption must be construed against the taxpayer. Id. at 297 (internal citations omitted).”

Business equipment falls into two categories: taxable (NRS 361.045) and exempt (NRS 361.068). Empire contends that the equipment located in their yard on July 1 is exempt from taxation because statute only requires them to report equipment that is actively leased on July 1 and that exemption of on-site property is the intent of Nevada legislature. NRS 361.265 instructs businesses to report all equipment in the county. The Nevada Personal Property manual explains that if equipment is held for both sale and use, its use will override the intent to sale unless clearly documented by the taxpayer. It posits that “taxation is the rule and exemption is the exception.” Empire stated in the 2023-24 ECBOE case that their business practice is to use new equipment, depreciating its market value, allowing them to be more competitive with second-tier manufacturers. Once a piece of equipment is leased by Empire, they expect it to be leased for a year or longer. Empire adequately reports rental equipment that is off-site for seven other personal property accounts and has not provided evidence that there is any marked difference between the off-site equipment and the equipment in the yard. Under both federal tax law and Nevada property assessment standards, inventory refers to property held primarily for sale in the ordinary course of business and not used in the generation of income. Once property is leased or placed into service, it no longer qualifies as inventory and becomes a depreciable business asset.

The inventory exemption allowed by NRS is narrow- only property held for sale qualifies; the equipment’s active use for revenue defines if it is exempt inventory or reportable equipment. Empire stated in the 2023-24 ECBOE case that they purchase equipment with a future intent to sell but add most of the equipment to the rental fleet to reduce its market value by using the equipment. Future intent does not control classification on the lien date. State guidance emphasizes classification based on actual use; equipment cannot simultaneously derive income and be held in inventory. Guidance also distinguishes consumables from other tangible personal property; leased durable equipment is not “consumed during operation” as required for the exemption in NAC 361.065, undercutting any attempt to re-classify leased assets as exempt consumables. Empire depreciates the equipment as fixed assets, allowing them to deduct those costs over time under federal tax rules, which would not be permitted if the assets were treated as inventory. The Department of Taxation stresses uniform, factual classification to ensure equal assessment; using an “intent to sell someday” argument would create non-uniform treatment and is contrary to the uniform appraisal practice of equal and fair taxation as directed by Nevada law and supporting guidance.

Empire cites Advisory Opinion 23-005, issued December 2023 by the Nevada Department of Taxation office that states a taxpayer's primary purpose for holding the personal property determines exemption status. This opinion indicates that the assessor is charged with determining if the taxpayer's primary purpose meets the standards of exemption. This opinion is limited to interpreting NRS 361.068 (1)(a) and only applies to businesses "primarily engaged in renting or leasing." Empire denied that they are primarily a rental company during their 2023-24 ECBOE case, which would make the opinion inapplicable, however, this office recognizes that Empire offers sales and rentals, so this guidance was taken into consideration. The opinion states that "equipment held for rent or lease is taxable as personal property unless an exemption applies." It further states, "It is the taxpayer's burden to prove entitlement to an exemption... county assessors...may investigate whether personal property alleged to be both for sale and for lease is exempt from taxation under NRS 361.068 (1)(a) and thereby require the taxpayers who are the subject of your request to meet their burden of proving entitlement." This office made an inquiry, and Empire provided an equipment list that gave asset numbers, meter counts, lease dates and the rental account name from which a particular piece of equipment was to be invoiced from. This indicated that the equipment was held for use on-site and available for lease. Empire's practice of leasing equipment to generate depreciation negates any exemption their equipment might have had as inventory because it is understood that the equipment will be leased before it is sold and remains available for lease until it is sold or disposed of. Note: This advisory opinion was given in December 2023, and was not available to Empire in July 2023, giving it no part in Empire choosing to underreport in 2023-24.

Empire has met all requirements for reporting taxable property: Empire feels they adequately comply with NRS 361.159 and report equipment no differently than how Cashman Equipment reported equipment prior to the Empire acquisition. This is inaccurate because Cashman Equipment included on-site equipment in their filings and did not claim exemptions for their equipment. NRS 361.159 refers to equipment (not inventory) held by exempt entities (government, charitable or religious organization, hospital/medical facility, fraternal/veteran organization or educational institution) that is leased to others for profit. This type of equipment is only taxable when in an active lease because this is the only time it is not covered by the exemption. NRS 361.159 was not applicable to Cashman Equipment, like Empire, as a private for-profit company, Cashman was not an exempt entity.

Cashman reported 257 on-site assets in 2021-22 and 146 assets in their final filing in 2022-23. Empire's first filing in 2023-24 listed 54 onsite. Based on the TMA audit findings and statements made by Empire during the ECBOE, this office had reason to believe there were additional assets that were not reported. The audit of the 2023-24 filing found 250 unreported assets, including equipment Empire acknowledged that was only available for lease because they are not authorized to sell it (they refer to this equipment as Allied equipment). They testified to the ECBOE that "Empire has regularly reported the Allied equipment to the County Assessor." 83 pieces of Allied equipment were discovered during the audit that had not been reported.

The auditor's conclusions disregard the statute's requirements: TMA acts as an administrative support service for the assessor by contacting taxpayers to validate submitted

information by requesting and reviewing financial records (federal tax returns, depreciation schedules, trial balances, etc) in accordance with NRS 361.263. The findings were provided to Elko County and Empire for review. Elko County reviewed this information, eliminated equipment not subject to personal property tax (plated vehicles) and concluded that Empire had underreported their equipment in 2023-24. Empire generates profit from leasing equipment and often their clients also utilize the equipment for profit, making it subject to taxation. NRS 361 offers sufficient guidance for an assessor to determine that Empire's equipment is not exempt as inventory even when taking Advisory Opinion 23-005 into account.

FINDINGS

Empire maintains that the subject equipment was held primarily for sale and therefore exempt under NRS 361.068. However, based on the documentation submitted, the assessor determined that the equipment was used in leasing operations and not held as inventory. The taxpayer must demonstrate that the equipment qualifies for an exemption by providing appropriate documentation (contracts, depreciation schedules, internal use logs, federal tax treatment, etc). Based on the information and evidence Empire provided, the assessor concluded that the equipment in question does not qualify as inventory. NRS 361.068 makes no exemption for equipment that will be sold in the future after acquiring depreciation in market value. Empire underreported their equipment on the 2023-24 declaration and was supplementally billed as a remedy. The valuation was appealed to the ECBOE and was denied as there was no statutory support for the petitioner's case. This decision was consistent with Nevada statutory law, case law, and official guidance. It ensures fair and equitable taxation for businesses operating in Elko County and upholds the integrity of the personal property tax system.

CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2025, I served a true and correct copy of the foregoing Response to the following parties:

John Helms
Empire Southwest LLC
3300 Saint Rose Parkway
Henderson, NV 89052
☒ By U.S. Mail
☒ By Email

Nevada State Board of Equalization
stateboard@tax.state.nv.us
☐ By U.S. Mail
☒ By Email

Signature:

T Dickenson

Tammie Dickenson-Personal Property Appraiser