

PETITIONER REPLY BRIEF

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9 **IN THE NEVADA STATE BOARD OF EQUALIZATION**

10 EMPIRE SOUTHWEST LLC,
11
Petitioner,

12 v.

13 HUMBOLDT COUNTY ASSESSOR
14
Respondent.

CASE NO. 26-111

PETITIONER'S REPLY BRIEF

[HEARING DATE 6-4-26]

15 Petitioner Empire Southwest LLC ("Empire"), through undersigned counsel, hereby replies
16 to the Respondent Humboldt County Assessor's ("Assessor") submission dated May 21, 2026
17 ("Response").

18 I. Introduction.

19 Empire filed its Opening Brief on April 21, 2026, where it identified several issues. At the
20 time, the Nevada State Board of Equalization ("SBOE") record was not available. The record has
21 now been made available 10 days before the hearing. The Response introduces some new
22 arguments but fails to respond to Empire's citations in the Opening Brief. For ease of presentation,
23 the Response's arguments will be categorized as follows: (1) Did Empire fail to supply a list of
24 personal property to comply with Nevada Revised Statutes ("NRS") § 361.245; (2) Did the County

1 Board of Equalization rule Empire's appeal could not be granted pursuant to NRS § 361.345; (3)
2 Does Empire's large Caterpillar equipment qualify as "personal property held for sale by a
3 merchant" and thus exempt under NRS § 361.068; and (4) does a Department of Taxation Advisory
4 Opinion affect this appeal?

5 II. Legal Analysis.

6 A. Empire complied with its requirement to submit a declaration timely.

7 NRS § 361.265 states as follows:

8 **NRS 361.265 Written statement concerning personal property: Demand;
9 contents; return of statement; valuation of unlisted property claimed by absent
or unknown person; penalties.**

10 1. To enable the county assessor to make assessments, he or she shall demand
11 from each natural person or firm, and from the president, cashier, treasurer or
12 managing agent of each corporation, association or company, including all banking
13 institutions, associations or firms within the county, a written statement, signed
14 under penalty of perjury, on forms and in the format prescribed by the county
assessor of all the personal property within the county, owned, claimed, possessed,
controlled or managed by those persons, firms, corporations, associations or
companies. The signature required by this subsection may include an electronic
signature as defined in NRS 719.100.

15 2. The statement must include:

16 (a) A description of the location of any taxable personal property that is owned,
17 claimed, possessed, controlled or managed by the natural person, firm, corporation,
18 association or company, but stored, maintained or otherwise placed at a location
other than the principal residence of the natural person or principal place of business
of the firm, corporation, association or company;

19 (b) The cost of acquisition of each item of taxable personal property including
20 the cost of any improvements of the personal property, such as additions to or
renovations of the property other than routine maintenance or repairs, and the year in
which each item of taxable personal property was acquired; and

21 (c) If the natural person, firm, corporation, association or company owns at least
22 25 mobile or manufactured homes that are being leased within the county for
23 commercial purposes, and those homes have not been converted to real property
pursuant to NRS 361.244, the year, make or model, size, serial number and location
24 of each such mobile or manufactured home.

1 Empire submitted two statements, SBOE pp. 106, 113. The first was submitted July 28,
2 2025, and the second July 29, 2025. SBOE pp. 109, 121. Both were signed under penalty of
3 perjury.

4 NRS § 361.345 states as follows:

5 2. If a person complaining of the assessment of his or her property:
6 (a) Has refused or, without good cause, has neglected to give the county
7 assessor the person's list under oath, as required by NRS 361.265; or
8 (b) Has, without good cause, refused entry to the assessor for the purpose
9 of conducting the physical examination required by NRS 361.260,
10 the county assessor shall make a reasonable estimate of the property and assess it
11 accordingly. No reduction may be made by the county board of equalization from the
12 assessment of the county assessor made pursuant to this subsection. (Emphasis
13 added).

14 Thus, the question turns on whether Empire neglected or refused to give a list under oath.
15 All the SBOE record indicates Empire complied with the law's requirements, just as it has for
16 prior years and as Cashman Equipment had for decades before Empire purchased Cashman
17 Equipment. The same individuals from Cashman Equipment are now with Empire performing
18 state and local tax compliance. The statute also allows a "good cause" exception. Empire
19 submitted its declarations timely with information available at the time they were filed and as
20 shown below, had very "good cause" for what it reported. Thus, the clear statutory requirement of
21 submitting timely should triumph, but if not, Empire demonstrated "good cause" for any filing.

22 Next, each property declaration form contains the following instructions for completion.

23 **WHEN PREPARING YOUR EQUIPMENT/ASSET/PERSONAL PROPERTY LIST,
24 PLEASE DO NOT INCLUDE:**

- Any equipment/assets/personal property acquired after July 1, 2025;
- Sales tax;
- Licensed vehicles subject to the Department of Motor Vehicles governmental service tax;
- Inventory held for resale;
- Raw materials held for manufacturing into finished goods;
- Supplies that are consumed during day-to-day operations, that have a useful life of less than one year.

SBOE pp. 106, 113 (emphasis added).

1 In July 2025, Empire was litigating the application of NRS § 361.068 to its Caterpillar and
2 Allied equipment before the SBOE. Thus, following the form’s instructions, Empire did not list
3 Caterpillar and Allied equipment on the form.

4 Next, the property declaration form provides the additional instruction “Please carefully
5 review the following list of previously reported property and cross out any items that are no longer
6 in your possession.” SBOE p. 108, 115. Empire did carefully review the listing and determined
7 that it had NOT previously reported the items. All the Assessor’s information was wrong.

8 Thus, Empire deleted the entire list and submitted a spreadsheet for license EQ000104 with
9 the information that included identification number, description, model, year acquired, acquisition
10 cost, machine location, customer name, address, city. SBOE pp. 110-112. For license EQ001042,
11 Empire submitted a spreadsheet stating asset number, description, acquisition date and acquired
12 value. SBOE p. 122. The property location was Empire’s Winnemucca facility.

13 The Assessor’s statement “as the Taxpayer had neglected to give the county assessor a
14 written statement of all personal property located in Humboldt County” (Response, p. 1) is refuted
15 by the SBOE record. The Assessor’s form includes the instructions that Empire followed and was
16 submitted timely and signed under penalty of perjury. It is wishful thinking for the Assessor, or
17 any county assessor, to believe that the Assessor can merely ignore the instructions on its own
18 form and then argue the property owner “neglected to give the county assessor a written
19 statement.”

20 B. The County Board decision incorrectly cites the actual proceedings.

21 The Humboldt County Board of Equalization decision states that the Board accepted the
22 Assessor’s value because the taxpayer failed to give a complete written statement of all its
23 personal property citing NRS § 361.345(2)(a). SBOE p. 149. However, the minutes from the
24 hearing call into question the accuracy of that statement. The minutes state:

1 After discussion the following motion was made by member Bengochea, was
2 seconded, and passed with members Sheppard, Cerri, Bengochea and Bidart voting
aye and Chairman Stone abstaining:

3 *To remain with the Assessor, that will allow Petitioners, if they want, to go ahead*
4 *and move forward, file an appeal, get this to the State and see if we can't get some*
type of decision, final decision from them.

5 SBOE p. 145.

6 Contrary to the written decision, the motion said nothing about the Board deeming the
7 information submitted by Empire to be incomplete, or that Empire had failed to give a written
8 statement of personal property in the county on the valuation date. Whoever authored the decision
9 badly summarized the Board's actual motion and thus it would be inappropriate to consider any
10 argument on appeal from the Board in that regard.

11 The Assessor states that pursuant to NRS § 361.360(4)(a) the SBOE "should not reduce the
12 assessment on this case as the taxpayer neglected to include assets in their list." Response at 1. The
13 same requirements as NRS § 361.345 require the SBOE to find the taxpayer refused or neglected
14 to provide a list of personal property. As shown above, and in the Opening Brief, Empire timely
15 submitted the property declaration form, having followed all the instructions on the form. The
16 Assessor's argument thus has no merit.

17 C. Empire's large Caterpillar equipment is exempt from tax.

18 The Assessor raises a novel, and new argument regarding whether Empire's property tax
19 appeal should be heard by the SBOE or whether it should be heard by the Nevada Tax Commission
20 ("NTC"). Response at 1. This argument reflects the Assessor's failure to understand the jurisdiction
21 of both administrative agencies.

22 This matter began as a property valuation appeal under NRS § 361.357 which allows the
23 owner of property asserting that its property's taxable value exceeds the property's full cash value
24 to appeal to the County Board of Equalization. Empire followed this requirement asserting that

1 because the Assessor failed to recognize Empire's right to have certain property as exempt, the
2 property's taxable value exceeded the property's full cash value. The appeal process is the
3 aggregate taxable value, and Empire appealed the aggregate taxable value the Assessor determined
4 for two personal property accounts.

5 The NTC, conversely, plays no role in the question of whether the Assessor's property's
6 taxable value exceeds the property's full cash value. The NTC's role in the property valuation
7 process is to establish taxable values for certain types of property. NRS § 361.315. The values set
8 by the NTC may be appealed directly to the SBOE. NRS § 361.403.

9 The Assessor cites NRS § 360.095(4) regarding the NTCs authority. This statute's heading
10 is "Principles for adoption of regulations, policies of enforcement and policies for auditing of
11 taxpayers by Nevada Tax Commission." The specific subsection the Assessor cites allows the NTC
12 to promulgate regulations, enforcement or auditing policies for "exemptions or waivers." Empire's
13 protest is that it qualifies for the property tax exemption found in NRS § 361.068 for personal
14 property held for sale by a merchant. The question of whether Empire's large Caterpillar equipment
15 meets the statutory exemption requirement does not involve any "regulations, enforcement or
16 auditing policies" and thus the statute has no applicability to Empire's appeal or the SBOE's
17 adjudication of that appeal.

18 The Assessor's next argument is that if "heavy equipment rental assets are exempt" there
19 must be some mechanism for the assessors to report the fiscal impact to the state on a tax
20 expenditures report." Response at 1. This argument confuses multiple tax law principles and thus
21 Empire's reply to it will be brief.

22 First, there is no claim that heavy equipment rental assets are exempt. Rental companies
23 such as United Rental can make no claim they are holding heavy equipment inventory for sale as
24

1 the exclusive Nevada based authorized dealer for that equipment. That company exists to rent
2 equipment until it is no longer physically capable of further rental.

3 Empire's argument is that it is a merchant that sells tangible personal property, remitting
4 millions of dollars in sales tax to the State of Nevada each year on those sales. Empire is the only
5 Nevada based authorized Caterpillar equipment dealer. Empire large Caterpillar equipment items
6 meet the definition of "personal property held for sale by a merchant." NRS § 361.068. Empire is
7 not a heavy equipment rental company. Empire is a heavy equipment sales company. In that
8 capacity, it sells new and used equipment. Some of the used equipment is purchased already used
9 by Empire for sale. Some of the used equipment is purchased new, and then is rented out for various
10 business reasons, and then sold as used equipment – sometimes to the person who rented it first for
11 an extended test drive.

12 Second, the statute the Assessor cites, NRS § 360.137, requires the Department of Taxation
13 Executive Director to prepare a tax expenditures report. A "tax expenditure" is defined as "any law
14 of this State that exempts, in whole or in part, certain persons, income, goods, services or property
15 from the impact of established taxes, including, without limitation, tax abatements, tax credits, tax
16 deductions, tax deferrals, tax exemptions, tax exclusions, tax subtractions and preferential tax
17 rates." NRS § 360.137(4).

18 The most recent tax expenditure report available online is for 2023 and 2024. It is found at:

19 https://tax.nv.gov/wp-content/uploads/2024/11/ExpenditureReport_FY2324_FINAL.pdf

20 Page 119 is the listing for the tax expenditure for business property and consumables,
21 personal property held for sale by merchant. Here is an excerpt from that page:

22 2023 - Expenditure Explanation: This data is not available.

23 2024 - Expenditure Explanation: This data is not available.

24

1 Put simply, the State of Nevada makes no effort at all, ever, to track what the possible
2 property tax would be if all business personal property held for sale by merchants were instead
3 subject to the property tax. The Assessor is grasping at straws.

4 D. The 2026 Advisory Opinion has no impact at all on this appeal.

5 The Assessor included an Advisory Opinion dated March 2, 2026 (“Opinion”) with the
6 Response. SBOE p. 168. Based on the Opinion, the Assessor claims that personal property held for
7 sale and lease is subject to property tax unless the taxpayer can demonstrate that no lease occurred.
8 Response p. 2. From the Opinion’s conclusion, the Assessor states that because large Caterpillar
9 equipment is placed in the rental fleet, it must be declared because there are leases and thus they are
10 taxable. There is much to unravel here, and thus this will be organized by section.

11 1. The Opinion applies, if at all, from the date it was issued.

12 Property taxation is based upon valuation on a specific date. NRS § 361.260 states that the
13 Assessor shall determine the taxable value for all property in the county as of July 1. Empire’s
14 protest is for the property’s taxable value on July 1, 2025. The issuance of the Opinion nine months
15 after the valuation date, and after Empire had already had its appeal heard at the County Board of
16 Equalization and already filed its appeal to the SBOE, makes it inapplicable to any current appeal.

17 2. The Opinion has a specific use and does not bind the SBOE or Empire.

18 The Opinion states “It should be noted that the conclusions reached in this advisory opinion
19 are not binding on any administrative body or any court of law, but rather these findings are the
20 Department’s interpretation of the applicable statutes, case law, regulations, and other rules.” SBOE
21 p. 170. Further, the Opinion states “This opinion is based upon the representations, documents,
22 facts, and assumptions that have been included or referenced therein and the assumption that such
23 information is accurate, true, and authentic.” SBOE p. 170.

1 The request for an advisory opinion was made on December 30, 2025. SBOE p. 171. The
2 SBOE had ruled that Empire's Caterpillar equipment met the statutory exemption requirement in a
3 decision dated December 9, 2025. Thus, at the time the request was made, the Assessor had the
4 opportunity to appeal the SBOE decision but chose not to. Instead, it appears now, the Assessor
5 prompted the Assessor's Association of Nevada to make an advisory opinion request.

6 The request notes the SBOE decision in Empire. SBOE p. 171. It claims the earlier advisory
7 opinion has caused "confusion and potential misapplication." Id. The request states:

8 Furthermore, during the September 2025 State Board of Equalization hearings State
9 Board Member Bancroft opined that when the tax-exempt heavy equipment is rented
10 that the property becomes taxable pursuant to NRS 361.159 and that county assessor
11 could assess and collect taxes from the renter for the proportional use of the tax
12 exemption equipment/inventory. Such an interpretation is not consistent with the
13 current provisions of Nevada law and would be impracticable for county assessor as
14 equipment could be rented to multiple people throughout the fiscal year. SBOE p.
15 172.

16 The SBOE minutes from the September 2025 meeting reflect the following:

17 25-128 – Jim Susa appeared on behalf of the Petitioner. Andy Heiser appeared on
18 behalf of the Humboldt County Assessor's Office. Member Bancroft made a motion
19 to incorporate all testimony and discussion from case 25-127 in case 25-128.
20 Chairman Morse seconded the motion. All in favor. Motion carried. Member
21 Bancroft made a motion that the Caterpillar equipment acquired by Empire
22 Southwest for the purpose of resale, even though a portion may be rented, be treated
23 as exempt inventory. Chairman Morse seconded the motion. Chairman Morse and
24 Members Bancroft and Cadwell voted aye. Member Burke voted nay. Motion
carried. (SBOE minutes for September 29-30, 2025, p. 3).

There is no mention of NRS § 361.159 in the SBOE's minutes. However, the transcript of
the SBOE hearing is included in SBOE case no. 26-112 involving Elko County - hereby
incorporated by this reference. Member Bancroft states that NRS § 361.159 "does not apply to an
assessment of a tax against an owner of the property." Exhibit A hereto, p. 43, ll. 13-16 (Case no.
26-112, SBOE p. 279). Next, during deliberations, Member Bancroft states the "statute does not
control the disposition in this case." Exhibit A hereto, p. 89, ll. 8-9 (Case no. 26-112, SBOE p. 325).

1 These two statements caused Empire to change its litigation arguments for this year, as noted in the
2 Opening Brief, p. 6. NRS § 361.159 only applies to tax the user, not the owner. See NRS §
3 361.159(2) (Taxes must be assessed to lessees or users of exempt property).

4 From Member Bancroft's comments, the advisory opinion request concludes that his
5 comments are "not consistent with the provisions of Nevada law." Instead, the request states that it
6 would be impractical for Assessors to implement and thus Member Bancroft's comments on how
7 Nevada law works should be ignored in favor of a simpler rule. The simpler rule being that the use
8 of any exempt personal property, even for one day, extinguishes completely the exempt nature of
9 the property and that the property owner, not the user, should therefore be taxed.

10 3. The Opinion's conclusion ignores the statute's wording and narrow purpose.

11 The Opinion cites NRS § 361.159 and then states that "property that is otherwise exempt
12 loses its tax-exempt status when leased or used in a for-profit business." SBOE p. 169. The statute
13 does not conclude that the property loses its tax-exempt status. The statute states "the leasehold
14 interest, possessory interest, beneficial interest or beneficial use of any such lessee or user of the
15 property is subject to taxation." NRS § 361.159(1). That use is measured by a formula that has two
16 apportionment factors, one based on value used, and one based on time used. For example, if **one**
17 machine is rented for **one** day in the fiscal year prior to July 1, the statute measures the beneficial
18 use by the machine's taxable value times 1/365, and that is then the taxable portion. The Opinion
19 states the entire machine is subject to tax, and that the machine owner, not the user is to be taxed.

20 Next, the narrow purpose of NRS § 361.159 can be shown through the court cases that led to
21 the statute's enactment and later amendment. The statutory framework arose from federal cases
22 involving property owned by the United States but utilized by private parties in connection with for-
23 profit business activity. In United States v. City of Detroit, 355 U.S. 466 (1958), the United States
24 Supreme Court upheld a Michigan statute taxing a private party's use of government-owned

1 property, concluding the tax was imposed on the private user's interest and not on the exempt
2 government property itself. See also United States v. Township of Muskegon, 355 U.S. 484 (1958)
3 (upholding local tax on federally owned manufacturing plant used by private company in
4 performance of government contract); United States v. Boyd, 378 U.S. 39 (1964) (upholding
5 Tennessee's contractor's use tax as applied to private companies contracting with the Atomic
6 Energy Commission to manage, operate, and maintain plants).

7 Nevada later enacted NRS §§ 361.157 and 361.159 in 1965 to address similar use of
8 federally owned property at the Nevada Test Site in Nye County. See U.S. v. State ex rel. Beko, 88
9 Nev. 76, 493 P.2d 1324 (1972).

10 The original Nevada statutes taxed the private contractor "in the same amount and to the
11 same extent as though the lessee or user were the owner" of the exempt property. However, in
12 United States v. Nye County, Nevada, 938 F.2d 1040 (9th Cir. 1991), the Ninth Circuit held the
13 prior version of NRS § 361.159 unconstitutional because it failed to segregate the contractor's
14 possessory or beneficial use interest from the exempt federal government ownership interest. The
15 Ninth Circuit specifically explained that Nevada could constitutionally enact "a statute taxing a
16 lessee's possessory interest in, or a user's beneficial use of, property owned by the United States,"
17 but that the prior statute improperly taxed the contractor "as if it were the owner of the property."
18 Id. at 1043.

19 In direct response to Nye County, the Nevada Legislature amended NRS §§ 361.157 and
20 361.159 to tax only the "leasehold interest, possessory interest, beneficial interest or beneficial use"
21 of the user, measured proportionally by the portion of property used and the percentage of time
22 used. The amended statutes were later upheld as constitutional in United States v. Nye County,
23 Nevada, 178 F.3d 1080, 1085 (9th Cir. 1999), where the Ninth Circuit explained that Nevada had
24 "shifted the subject of the taxes from the property itself to the beneficial use of that property."

1 Thus, the statutory and judicial history of NRS § 361.159 confirms that the statute was
2 enacted and amended to address taxation of a nonexempt user’s limited beneficial use of otherwise
3 exempt property — primarily federally-owned property used by private contractors — not to render
4 the entirety of exempt inventory taxable whenever a lease occurs.

5 4. Citations regarding exemption cases are inapplicable.

6 The Opinion cites several cases for the proposition that “tax exemptions are strictly
7 construed in favor of finding taxability.” SBOE p. 169. Each case demonstrates how the Opinion
8 misunderstands the exact language it quotes. Shetakis Distributing v. State, 108 Nev. 901, 839 P.2d
9 1315 (1992) involved a sales tax audit and assessment of a business that sold food and non-food
10 items to hotels, restaurants and other businesses involved in food preparation. The assessment was
11 based on Shetakis failure to collect sales tax on rock salt, waxed paper and foil. The appeal issue
12 was whether Shetakis was a retailer. A retail sale is defined as a sale for any purpose other than for
13 resale in the regular course of business. NRS § 372.050(1).

14 The case was about the scope of the tax applying to Shetakis, who argued that all its sales
15 were for “resale in the regular course of business.” Shetakis 108 Nev. at 906, 839 P. 2d at 1319. The
16 Court’s analysis determined that Shetakis’ evidence of the rock salt being resold because it was
17 rubbed on prime rib was not credible because of the volume sold (\$1,000 in sales over a 45-day
18 period – that is a lot of prime rib!). The Court’s then concluded that the evidence of wax paper and
19 foil being resold “is even scantier than that offered for the rock salt.” Id. Contrary to the Opinion’s
20 citation, the case had nothing to do with interpreting whether the terms of a tax exemption applied
21 to the questioned activity.

22 Next, Sierra Pacific Power v. Department of Taxation, 96 Nev. 295, 607 P.2d 1147 (1980)
23 involved a sales tax exemption. The specific exemption language provided a sales tax exemption for
24 “matter used to produce domestic heat.” Id. 96 Nev. at 297, 607 P.2d at 1148. Sierra Pacific

1 purchased oil to utilize in its electric generating. It unsuccessfully asserted that because the
2 electricity was utilized for households, it met the “domestic heat” component of the statute. The
3 Court noted that the Legislature’s use of the term “domestic” must have meant some limitation on
4 the exemption. The Court applied the rule of statutory interpretation that ambiguous words in
5 statutes granting tax exemption should be construed against the exemption to conclude Sierra
6 Pacific’s use of the oil was commercial or industrial, and not domestic.

7 Empire asserts that it meets the requirements of NRS § 361.068 that provides a property tax
8 exemption for “personal property held for sale by a merchant.” Which of those eight words does the
9 Opinion conclude is ambiguous requiring the statutory interpretation rule to be applied? If it is the
10 word “sale” then it is undisputed that all large Caterpillar equipment Empire holds is purchased with
11 the sole intention, not just primary purpose, to sell the equipment.

12 III. Conclusion.

13 The Response cobbles together various legal citations in an effort to present the Assessor’s
14 case for upholding the County Board’s decision. Each argument lacks merit. The Opinion is highly
15 suspect for multiple reasons and only applies to the party that requested it. While all county
16 assessors are bound to follow the Department of Taxation’s interpretation of taxing statutes, nobody
17 else is.

18 RESPECTFULLY SUBMITTED this 28th day of May, 2026.

19 DeCONCINI McDONALD YETWIN & LACY, P.C.

20 By: /s/ James M. Susa
21 James M. Susa
22 *Attorneys for Petitioner*

23 ORIGINAL of the foregoing E-Filed
24 this 28th day of May, 2026, with:
Nevada State Board of Equalization
stateboard@tax.state.nv.us

1 I hereby certify that I have this day served the foregoing document upon all parties of record in this
2 proceeding by mailing a copy thereof, properly addressed, to the following:

3 Andy Heiser
4 Humboldt County Assessor
50 West Fifth Street
Winnemucca, NV 89445

5 /s/ Edwina Campbell
6 Legal Assistant
DeConcini McDonald Yetwin & Lacy, PC
Tucson, Arizona

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Exhibit A

Exhibit A

1 field and personal property that's in the yard?

2 MR. SUSA: Yes, sir.

3 MEMBER BANCROFT: Where do you find that
4 distinction in the statutes?

5 MR. SUSA: I find that distinction in NRS
6 361.159 that states that when personal property, which
7 is otherwise --

8 MEMBER BANCROFT: I've read it. I don't need
9 it read to me, but that applies to possessory interest.

10 MR. SUSA: Pardon?

11 MEMBER BANCROFT: 361.159 --

12 MR. SUSA: Yes.

13 MEMBER BANCROFT: -- applies to the
14 assessment of a tax on a possessory interest. It does
15 not apply to an assessment of a tax against an owner of
16 the property.

17 MR. SUSA: Okay. I'm not sure where you're
18 going with it. We took the position it was taxable.

19 MEMBER BANCROFT: Well, you may have taken
20 the wrong position.

21 MR. SUSA: Well, we'll be happy to file
22 refund claims. But we took the position that it was
23 taxable and we, in fact, paid tax on all those things
24 that were in the field.

25 MEMBER BANCROFT: You may be due a refund.

ELKO COUNTY BOARD OF EQUALIZATION

FEBRUARY 19, 2026

ASSESSOR'S EXHIBIT: M-13

CASE NO.: 26-001

SBE 26-112 - Pg 279

1 There's been a lot of discussion. So that,
2 in my opinion, creates two categories of equipment:
3 Cat equipment, which is purchased with the primary
4 purpose for resale; Allied equipment, which is not
5 purchased for resale. So they -- so that's the first
6 distinction.

7 There's been a lot of discussion about
8 NRS 361.159. That statute does not control the
9 disposition in this case. That statute contemplates an
10 owner or a lessor, in whose hands the personal property
11 is exempt, and a user, or lessee, who uses the property
12 in a business conducted for profit.

13 The statute authorizes the assessment of a
14 possessory interest tax against the user or the lessee,
15 based on the use of the property, in a business
16 conducted for profit. It does not authorize assessment
17 of a tax against the owner/lessor.

18 In this case, Empire Southwest holds the
19 property for both sale and lease, the Cat equipment for
20 both sale and lease. I believe it's demonstrated that
21 its primary purpose for purchasing the property was to
22 sell it. The property it should be treated as exempt
23 from taxation under 361.068, regardless of whether the
24 property is in the field or in the yard.

25 The lessee who rents the equipment -- the

ELKO COUNTY BOARD OF EQUALIZATION

FEBRUARY 19, 2026

ASSESSOR'S EXHIBIT: M-59

CASE NO.: 26-001

SBE 26-112 - Pg 325

1 lessee who rents the equipment from Empire may be
2 assessed a tax on their possessory interest in that
3 equipment. But NRS 361.159 does not authorize
4 assessment of possessory interest tax against Empire.

5 So that's my kind of read on the situation.
6 But you're paying the tax, which should be legitimately
7 assessed against your lessees. That might be
8 convenient for you to do from a business perspective.
9 It may be convenient for the assessors for you to be
10 remitting that tax on equipment in the field, but I
11 don't think it's required.

12 How was that? Thoughts?

13 MR. CADWELL: It's a legal argument, I guess.
14 I struggle with once something is being rented,
15 especially once you get to reasonable hours, I mean, I
16 don't look it -- I don't look at Empire being a used
17 equipment dealer, you know, so -- you know, once you
18 hit some hour -- hours on the machine, I don't know, it
19 seems like by default it's rental. You know, it's not
20 a -- I do agree Empire is in the business of selling
21 equipment. That's all I've ever thought of them as,
22 equipment and parts. Once you buy the equipment, so
23 you keep buying parts. It's a good business model.

24 But when you hit -- when you hit some hours
25 on the machine, it basically becomes used, and it's not

ELKO COUNTY BOARD OF EQUALIZATION

FEBRUARY 19, 2026

ASSESSOR'S EXHIBIT: M-60

CASE NO.: 26-001