

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
--

IN THE NEVADA STATE BOARD OF EQUALIZATION

EMPIRE SOUTHWEST LLC

Petitioner,

vs.

CASE NO. 26-112

ELKO COUNTY ASSESSOR

Respondent.

RESPONDENT’S ANSWERING BRIEF

Tyler J. Ingram
Elko County District Attorney’s Office
Gillian L. Jones
State Bar Number 17144C
540 Court Street, 2nd Floor
Elko, NV 89801
(775) 738-3101
ATTORNEY FOR RESPONDENT

Respondent Elko County Assessor (Assessor), through undersigned counsel, submits this answering brief in accordance with NAC § 361.703 in response to Petitioner Empire Southwest LLC’s (Empire) Opening Brief.

I. Statement of the Case

Empire Southwest LLC (Empire) is a Caterpillar heavy equipment sales, rental and parts company, operating multiple offices, service garages and warehouses in Elko County, which is spread across approximately 25 acres in Elko, Nevada.

1 Accordingly, Empire maintains nine personal property accounts with the Elko County
2 Assessor's office for fiscal year 2025-26.

3 Despite a clear requirement in Nevada Revised Statutes (NRS) § 361.265
4 requiring each person, corporation, association, or company to provide a written
5 statement with all personal property, the Elko County Assessor (Assessor) has been
6 unable to obtain a complete, clear listing of Empire's personal property in Elko
7 County. Assessor has made repeated requests for the required information and
8 provided ongoing clarification; however, significant amounts of personal property in
9 Empire's control are still left unreported, as confirmed by an on-site visit on February
10 9, 2026. Specifically, Empire provided an incomplete personal property declaration
11 for account BU002495. As a result, Assessor estimated the value of omitted property
12 for Empire's personal property accounts, as required by NRS § 361.265(4).

13 Empire appealed and the Elko County Board of Equalization (CBOE) heard the
14 matter on February 19, 2026. CBOE unanimously denied Petitioner's request to
15 change the assessed value, finding that the property was appraised at the proper
16 taxable value in accordance with NRS 361.

17 On March 2, 2026, the Assessor's Association of Nevada received Nevada
18 Department of Taxation Advisory Opinion No. 26-003 (See attached- Exhibit 1). This
19 new Advisory Opinion is new evidence and therefore allowed pursuant to NRS §
20 361.360(2), as it was received after the CBOE hearing. Opinion 26-003 is critical in
this case as it presents updated guidance from the Nevada Department of Taxation on
the ongoing question of whether Petitioner's personal property that is held for the
dual purpose of sale and rental qualifies for a tax exemption.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
--

II. Legal Argument

A. Empire’s Incomplete Declaration Violates Statutory Requirements and the Constitutional Mandate for Uniform and Equal Taxation.

Empire’s continued pattern of incomplete reporting constitutes an ongoing effort to avoid proper taxation of its substantial personal property holdings. Such underreporting directly undermines the Nevada Constitution’s mandate for a uniform and equal rate of assessment and taxation of all property¹ and frustrates the statutory framework designed to ensure that all taxable personal property bears its fair share of the tax burden.

NRS § 361.265(1) expressly requires every person owning taxable personal property to file a **complete** written statement listing all such property, signed under penalty of perjury. Subsection 2 further clarifies what information is required to be disclosed, including: a description of personal property’s location, the cost of acquisition, including the costs of any improvements, and the year in which it was acquired.² This information is required by July 31, unless a good faith exception is requested and granted.³ When a company, such as Empire, fails to provide the required statement, the assessor *shall* estimate the value of the omitted property using the best available information and assess it accordingly.⁴ Which the Elko County Assessor did.

Empire’s original declaration for BU002495 listed only \$2.76 million in acquisition cost. Even after amendment, which added an additional 70 lines of rental

¹ Nev. Const. Art. 10 §1(1).
² NRS § 361.265(2)(a)-(b).
³ NRS § 361. 265(3).
⁴ NRS § 361.265(4).

1 fleet equipment totaling \$5,320,674, it still omitted significant on-site rental assets,
2 shop equipment, attachments, tower lights, generators, and other items confirmed
3 present during the February 2026 site visit. The Elko County Assessor’s estimate on
4 Empire’s personal property was not only authorized but required by statute and
5 upheld by the CBOE. Moreover, Empire’s continual amendments and refusal to
6 provide a complete, comprehensive list of all property by the July 31 due date does
7 not reflect a good faith effort to comply with NRS § 361.265. Empire still has not
8 produced a complete equipment list, which is necessary to remove the estimate.

8 B. Empire’s Caterpillar Equipment Held for Both Sale and Rental is
9 Taxable.

9 The next critical issue is to determine if the missing equipment is taxable or
10 qualifies for an exemption. In its opening brief, Petitioner relies heavily on last year’s
11 State Board of Equalization (SBOE) rulings and the 2023 Department of Taxation
12 Advisory Opinion (No. 23-005). NRS § 361.360(5) limits SBOE decisions to the
13 fiscal year in which they are rendered. Thus, last year’s opinions have no
14 precedential value here. Moreover, the facts for this fiscal year have changed
15 materially: (1) Empire’s statement of property remains incomplete after amendment;
16 (2) The February 2026 site visit confirmed unreported personal property; and (3)
17 Advisory Opinion 26-003 is more applicable to this matter than Opinion 23-005 and
18 provides new and pertinent Department guidance rejecting the primary purpose/intent
19 to sell argument relied on by Empire.

19 Advisory Opinion 26-003 concludes: “... all such property is subject to
20 personal property tax, except for items where the taxpayer can clearly establish that
21 no lease occurred.” (Emphasis added.) Opinion 26-003 applies NRS § 361.159 to

1 strip the NRS § 361.068(1)(a) exemption, for personal property held for sale by a
2 merchant, once the property is placed into a for-profit rental/lease arrangement.
3 Accordingly, lien date use dictates the exemption, and the primary purpose test is
4 insufficient. Empire must provide proof that no-lease/rental occurred on the disputed
5 large equipment and if leased, taxation applies.

6 Empire relies on the legislative findings in Section 1 of AB735 of the 1993
7 legislative session stating it restricts NRS §361.159 to property owned by an exempt
8 entity, such as the government⁵; however, this is incorrect. Those findings addressed
9 a specific problem: the federal court’s ruling in United States v. Nye County, which
10 invalidated Nevada’s prior possessory-interest tax on federal government property
11 leased to private contractors.⁶ However, Legislative findings and history are merely
12 explanatory and do not override the clear statutory language.⁷ The operative
13 amendment enacted in Section 3 of the same bill, which relates to NRS § 361.159,
14 deliberately used the broader phrase: “**personal property... which for any reason is**
15 **exempt from taxation**”. (Emphasis added). The Legislature could have inserted
16 limiting language but chose not to. Accordingly, Advisory Opinion 26-003 reflects
17 the Department’s current official interpretation applying the statute to privately
18 owned dual-purpose equipment. The Department opined that personal property that
19 is otherwise exempt, such as Caterpillar equipment held for sale, loses its tax-exempt
20

⁵ Petitioner’s Opening Brief, page 3-4.

⁶ U.S. v. Nye Co., Nev., 938 F.2d 1040 (9th Cir. 1991);
archive.leg.state.nv.us/Session/67th1993/93minutes/A_TX_615.html.

⁷ Erwin v. State, 111 Nev. 1535, 1538–39, 908 P.2d 1367, 1369 (1995); Bisch v. Las Vegas Metro.
Police Dep’t, 129 Nev. 328, 336, 302 P.3d 1108, 1114 (2013)

1 status when leased or used in a for profit business. Therefore, all the identified
2 Caterpillar equipment (including the large Caterpillar equipment identified on page 4
3 of Petitioner’s brief) owned by Empire Southwest that is ever rented/leased is
4 considered taxable and cannot be excluded pursuant to NRS § 361.068(1)(a).

5 III. Conclusion

6 The Elko County Assessor respectfully requests that the State Board of
7 Equalization deny Petitioner’s appeal in full, affirm the CBOE’s ruling of the
8 Assessor’s estimated assessment and find that all Caterpillar equipment that is rented
9 or leased is taxable business personal property under NRS §§ 361.068, 361.159 and
10 Advisory Opinion 26-003.

11 Dated this 22nd day of May 2026.

12 TYLER J. INGRAM
13 Elko County District Attorney



14 By: _____
15 Gillian L. Jones
16 Deputy District Attorney
17 State Bar No. 17144C

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
--

CERTIFICATE OF SERVICE

I certify that this document was filed electronically with the Nevada State Board of Equalization at stateboard@tax.state.nv.us on the ____ day of May 2026, and Electronic Service of the Respondent’s brief shall be served on all parties of record as follows: (both electronically and via U.S. mail)

DeConcini McDonald Yetwin & Lacy, P.C.
James M. Susa
2525 E. Broadway Blvd., Suite 200
Tucson, AZ 85716-5300
jsusa@dmyl.com

and

Chad Olsen
3300 St. Rose Parkway
Henderson, NV 89052
Chad.olsen@empire-cat.com

 /s/ Janet Iribarne
Elko County Assessor