

tribe pursuant to 25 U.S.C. §465.¹ 25 U.S.C. §465 authorizes the Secretary of the Interior to acquire “any interest in lands, water rights, or surface rights to lands, within or without existing reservations,” and to hold title to such lands and rights “in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired.” The statute also provides that “such lands or rights shall be exempt from State and local taxation.” The Court held that the exemption of trust lands from state and local taxation under §465 extends to permanent improvements on such lands. The Court concluded that the fact that the improvements were owned by a limited liability company, rather than by the tribe itself, was irrelevant.

The Bureau of Indian Affairs has also adopted 25 C.F.R. §162.017(a) which clarifies and confirms 25 U.S.C. §465:

Subject only to applicable Federal law, permanent improvements on the leased land, *without regard to ownership of those improvements*, are not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State. Improvements may be subject to taxation by the Indian tribe with jurisdiction.

Based on the rulings of the Federal courts and Federal regulation, real property such as buildings and improvements located on lands held in trust by the United States Government for an Indian tribe is not taxable property, even when owned by a person or entity other than the tribe. Such property owned by third parties is not exempt per se, because exemption implies that a property is subject to tax which later qualifies for exemption. It is simply not subject to taxation. However, calling such property “non-taxable” as opposed to “exempt” may be a distinction without much of a difference.

There is not a specific exemption in state law for property owned by third parties but located on trust lands. For example, NRS 361.050 specifically exempts all lands and other property *owned by the United States* “not taxable because of the Constitution or laws of the United States.” NRS 361.157(2)(e) exempts otherwise taxable possessory interests in the property of any Indian or of any Indian tribe, band or community which is held in trust by the United States or subject to a restriction against alienation by the United States. Neither of these exemptions cover the property at issue.

APPLICATION:

1.) In order for the Department or assessors to determine whether the real property is non-taxable, it must be established that the property is located on lands owned by the United States held in trust for an Indian tribe. Title records must be checked to confirm said ownership of the land. In addition, the Taxpayer must provide a copy of the lease showing that the subject property is on property owned by the United States and held in trust for the Indian tribe.

2.) For centrally-assessed properties which use unitary valuation methods, the Taxpayer must provide sufficient information for the Department to determine what portion of the unitary assessment represents non-taxable property. The information must include a metes and bounds description of the location of the non-taxable property and a map in sufficient detail to show location in each section, township and range in which the property is located. The information must also include a list of the real property improvements located on trust lands, the date the improvement or structure was built or placed on tribal trust lands, and the portion of original book cost and current book cost less depreciation which represents non-taxable property located on trust lands.

3.) For centrally-assessed properties, the wire-miles or pipeline miles associated with non-taxable property must be separately indicated on wire-mile reports.

¹ See also *United States v. Rickert*, 188 U.S. 432 (1903); and *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973).

4.) For purposes of tracking property for various reports, including the Statistical Analysis of the Roll and the AB 466 Tax Expenditure Report, assessors and the Department should categorize non-taxable property owned by third parties and located on Indian trust lands as "non-taxable" property. If the software used by the assessor is not currently capable of identifying property as "non-taxable," classification as "exempt" will be acceptable. For purposes of AB 466, the legal reference to use for classifying the property will be 25 CFR §162.017(a).

If you have any questions about this guidance letter, please call the Local Government Finance Section of the Division of Local Government Services, Department of Taxation at (775) 684-2100.

WEBSITE LOCATIONS:

Nevada Revised Statutes (NRS): <http://www.leg.state.nv.us/NRS/>
Nevada Administrative Code: <http://www.leg.state.nv.us/NAC/CHAPTERS.html>

Department of Taxation Guidance letters: <http://www.tax.state.nv.us>; then select "Publications;" then select Assessment Standards Publications and "Guidance letters."

Chehalis Case

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CONFEDERATED TRIBES OF THE
CHEHALIS RESERVATION, a federally
recognized Indian tribe on its own
behalf and as parens patriae for its
members; CTGW, LLC, a limited
liability company organized under
Delaware law,

Plaintiffs-Appellants,

v.

THURSTON COUNTY BOARD OF
EQUALIZATION, a political
subdivision of the State of
Washington; JOHN MORRISON,
Thurston County Board of
Equalization member, in his official
capacity; BRUCE REEVES, Thurston
County Board of Equalization
member, in his official capacity;
THURSTON COUNTY, a political
subdivision of the State of
Washington; STEVEN DREW,
Thurston County Assessor, in his
official capacity; SHAWN MYERS,
Thurston County Treasurer;
ELIZABETH LYMAN, Thurston
County Board of Equalization
member,

Defendants-Appellees.

No. 10-35642

D.C. No.
3:08-cv-05562-
BHS

OPINION

2 CHEHALIS TRIBES V. THURSTON CNTY.

Appeal from the United States District Court
for the Western District of Washington
Benjamin H. Settle, District Judge, Presiding

Argued and Submitted
June 5, 2013—Seattle, Washington

Filed July 30, 2013

Before: Arthur L. Alarcón, M. Margaret McKeown,
and Sandra S. Ikuta, Circuit Judges.

Opinion by Judge Ikuta

SUMMARY*

Indian Tribes / Taxation

Reversing the district court's summary judgment, the panel held that state and local governments lack the power to tax permanent improvements built on non-reservation land owned by the United States and held in trust for an Indian tribe pursuant to 25 U.S.C. § 465.

The panel held that pursuant to *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973), the exemption of trust lands from state and local taxation under § 465 extends to permanent improvements on such lands. The panel concluded that the fact that the improvements were owned by

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

a limited liability company, rather than by the tribe itself, was irrelevant, as was the question whether the improvements constituted personal property under state law.

COUNSEL

Gabriel S. Galanda and Anthony S. Broadman, Galanda Broadman, PLLC, Seattle, Washington; Kevin M. Fong (argued) and Blaine I. Green, Pillsbury Winthrop Shaw Pittman, LLP, San Francisco, California, for Plaintiffs-Appellants.

Jon Tunheim, Prosecuting Attorney, Jane Futterman and Scott C. Cushing (argued), Deputy Prosecuting Attorneys, Olympia Washington, for Defendants-Appellees.

Rob Roy Smith, Ater Wynne LLP, Seattle, Washington, for Amicus Curiae Marine View Ventures, Inc., Island Enterprises, Inc., and Port Madison Enterprises.

OPINION

IKUTA, Circuit Judge:

At issue in this case is whether state and local governments have the power to tax permanent improvements built on non-reservation land owned by the United States and held in trust for an Indian tribe. Pursuant to 25 U.S.C. § 465, and *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973), we hold that they do not.

I

The Confederated Tribes of the Chehalis Reservation is a federally recognized Indian tribe in Southwest Washington.¹ In 2002, the Tribe purchased approximately forty-three acres of land known as the “Grand Mound Property,” which was located off the Tribe’s reservation in Thurston County, Washington. Two years later, the Tribe asked the Department of the Interior to buy the Grand Mound Property and hold it in trust for the use and benefit of the Tribe pursuant to the Department’s authority under 25 U.S.C. § 465.² Section 465 authorizes the Secretary of the Interior to acquire “any interest in lands, water rights, or surface rights to lands, within or without existing reservations,” and to hold title to such lands and rights “in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired.” The statute also provides that “such lands or rights shall be exempt from State and local taxation.” *Id.*³

¹ The documents filed with this court inconsistently refer to the Confederated Tribes of the Chehalis Reservation as both the “Tribe” and the “Tribes.” We will use the singular form, as does the Tribe in its brief.

² The parties indicated in passing that the Grand Mound Property was converted to reservation land at some time after the facts at issue in this appeal. Because the parties did not address the effect of this change, we do not reach it here.

³ 25 U.S.C. § 465 states, in pertinent part:

The Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust

In 2005, while the Tribe's request was still pending before the Department, the Tribe and Great Wolf Resorts, Inc. entered into an agreement to form CTGW, LLC, a Delaware limited liability company, for the purpose of building a resort, conference center, and water park (collectively, the Great Wolf Lodge) on the Grand Mound Property. Under the agreement, the Tribe owned an undivided 51 percent interest in CTGW. In 2006, the Department agreed to purchase the Grand Mound Property pursuant to § 465 and to hold the land in trust for the Tribe.

The Tribe and CTGW subsequently entered into a lease agreement that gave CTGW the right to use the Grand Mound Property “for a hotel, indoor water park and convention center and related economic development or for any other lawful purpose” for twenty-five years. Article 11 of that lease provides:

All buildings and improvements on the Premises shall be owned in fee by [CTGW] during the term of this Lease provided that such buildings and improvements (excluding

or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

. . . .

Title to any lands or rights acquired pursuant to this Act or the Act of July 28, 1955 (69 Stat. 392), as amended (25 U.S.C. 608 et seq.) shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

removable personal property and trade fixtures) shall remain on the Premises after the termination of this Lease and shall thereupon become the property of the [Tribe].

In short, under Article 11, CTGW would own the Great Wolf Lodge's physical structures for twenty-five years, at which time the Tribe would become the owner. The Bureau of Indian Affairs approved the lease on July 9, 2007, and it remained in effect at all times relevant to this suit. The Lodge opened the following year.

In 2007, Thurston County began assessing property taxes on the Great Wolf Lodge. The County recognized that § 465 exempted the Grand Mound Property from state and local taxation. It concluded, however, that the structures on the land were not tax exempt, because under the terms of the lease they were owned by CTGW and not the Tribe.

The Tribe and CTGW believed that federal law barred the County from imposing these property taxes, and brought suit against the County and related defendants on September 18, 2008, seeking declaratory and injunctive relief.⁴ The district court awarded summary judgment to the County, holding that state and local governments are not necessarily prohibited from taxing permanent improvements, like the Great Wolf Lodge, that are owned by non-Indians. The Tribe and CTGW

⁴ For convenience, we refer to the defendants collectively as “the County.”

timely appealed,⁵ and we have jurisdiction pursuant to 28 U.S.C. § 1291.

II

On appeal, we review the summary judgment order de novo, asking “whether, viewing the evidence in the light most favorable to” the Tribe and CTGW, “there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law.” *Ellins v. City of Sierra Madre*, 710 F.3d 1049, 1056 (9th Cir. 2013) (quoting *Delia v. City of Rialto*, 621 F.3d 1069, 1074 (9th Cir. 2010)). “[S]ummary judgment is appropriate where there ‘is no genuine issue as to any material fact’ and the moving party is ‘entitled to a judgment as a matter of law.’” *Alabama v. North Carolina*, 130 S. Ct. 2295, 2308 (2010) (quoting Fed. R. Civ. P. 56(c)).

A

This appeal raises the purely legal question whether the exemption of trust lands from state and local taxation under § 465 extends to permanent improvements on such lands.

The law relevant to this appeal traces back to *United States v. Rickert*, 188 U.S. 432 (1903), a case that precedes the enactment of § 465 by over thirty years. In *Rickert*, the

⁵ The County’s argument that the appeal was not timely is meritless. The final judgment in this case issued on April 2, 2010. The Tribe and CTGW filed a Rule 59(e) motion seeking reconsideration, which was denied June 23, 2010. They appealed within thirty days of that denial, making the appeal timely under Federal Rule of Appellate Procedure 4(a)(4)(A)(iv).

federal government challenged the taxes imposed by Roberts County, South Dakota on “certain permanent improvements” on lands within the former Sisseton Indian Reservation. *Id.* at 432–33. The United States had allotted the lands to individual members of the Sisseton band of Sioux Indians, but held the lands in trust for a period of twenty-five years or longer. *Id.* at 435–36 (discussing Act of Feb. 8, 1887, ch. 119, § 5, 24 Stat. 388, 389 (1887) (codified as amended at 25 U.S.C. § 348 (2006))). *Rickert* first held that state and local governments had no power to tax the land itself because it was owned by the federal government. *Id.* at 437–39 (“If, as is undoubtedly the case, these lands were held by the United States . . . it would follow that there was no power in the state of South Dakota, for state or municipal purposes, to assess and tax the lands in question until at least the fee was conveyed to the Indians.”). In reaching this conclusion, the Court relied on the proposition that “property of the United States was exempt by the Constitution of the United States from taxation under the authority of any state.” *Id.* at 438 (citing *Van Brocklin v. Tennessee*, 117 U.S. 151, 155 (1886)). The Court then turned to the related question whether “the permanent improvements, such as houses and other structures upon the lands held by allotment,” were subject to state and local taxes as personal property. *Id.* at 441–42. The Court held that the state and local governments had no power to tax these improvements, concluding that “[e]very reason that can be urged to show that the land was not subject to local taxation applies to the assessment and taxation of the permanent improvements.” *Id.* at 442.

Decades after *Rickert*, the Court again addressed the question whether state and local governments had the power to tax permanent improvements on non-reservation land owned by the United States and held in trust for Indians. *See*

Mescalero Apache Tribe v. Jones, 411 U.S. 145 (1973). In that case, the Mescalero Apache Tribe operated a ski resort on land located adjacent to reservation lands, but outside “the existing boundaries of the reservation.” *Id.* at 146. Although the record did not establish the precise form of the business entity that was operating the ski resort, the Court quickly dispensed with this issue, reasoning that “the question of tax immunity cannot be made to turn on the particular form in which the Tribe chooses to conduct its business” *Id.* at 157 n.13. The Mescalero Apache Tribe challenged two taxes imposed on the ski resort by New Mexico: a tax on the ski resort’s gross receipts, and a use tax “based on the purchase price of materials used to construct two ski lifts at the resort.” *Id.* at 147. The Tribe argued that federal law barred the state from assessing either tax, because the Tribe’s interest in the lands was “within the immunity afforded by § 465.” *Id.* at 155 n.11; *see also id.* at 146.

The Court rejected the Tribe’s argument with respect to the gross receipts tax, holding that § 465 exempted “lands and rights in land” from taxation, and “not income derived from [the land’s] use.” *Id.* at 155. But the Court struck down the use tax, reasoning that this form of tax was equivalent to a tax on land, and therefore barred by § 465. In reaching this conclusion, the Court first noted that the construction material at issue had already been “installed in the construction of the ski lifts,” and was therefore “permanently attached to the realty.” *Id.* at 158. Relying on *Rickert* and § 465, the Court reasoned that “these permanent improvements on the Tribe’s tax-exempt land would certainly be immune from the State’s ad valorem property tax.” *Id.* The Court then held that the tax exemption in § 465 barred the tax New Mexico characterized as a “use tax.” As the Court explained, “‘use’ is among the ‘bundle of privileges that make up property or

ownership’ of property,” and therefore “a tax upon ‘use’ is a tax upon the property itself.” *Id.* at 158 (quoting *Henneford v. Silas Mason Co.*, 300 U.S. 577, 582 (1937)). It followed that the “use of permanent improvements upon land is so intimately connected with use of the land itself that an explicit provision relieving the latter of state tax burdens must be construed to encompass an exemption for the former.” *Id.* at 158 (citing *Rickert*, 188 U.S. at 441–43). On this basis, the Court struck down the tax.

Accordingly, *Mescalero* makes it clear that where the United States owns land covered by § 465, and holds it in trust for the use of a tribe (regardless of “the particular form in which the [t]ribe chooses to conduct its business”), § 465 exempts permanent improvements on that land from state and local taxation.⁶

⁶ In connection with our analysis of *Mescalero*, the Tribe asks us to consider the following regulation recently promulgated by the Bureau of Indian Affairs to further interpret § 465:

Subject only to applicable Federal law, permanent improvements on the leased land, without regard to ownership of those improvements, are not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State. Improvements may be subject to taxation by the Indian tribe with jurisdiction.

25 C.F.R. § 162.017(a). Because this regulation “merely clarifies and confirms” what § 465 “already conveys,” we need not reach the applicability of this regulation or the level of deference owed to the Bureau of Indian Affairs in this context. See *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 20–21 (2007).

B

Mescalero's ruling is dispositive in this case. The Grand Mound Property at issue here is owned by the United States and held in trust pursuant to § 465. Under *Mescalero*, § 465's exemption from state and local taxation applies to the permanent improvements on that land. Thus, neither Thurston County nor any other state or local entity can tax the Great Wolf Lodge or other permanent improvements on that land. Thurston County's property taxes on the Grand Mound Property are therefore invalid under § 465 and *Mescalero*.

The County raises several arguments to counter this conclusion. First, the County attempts to distinguish *Mescalero* on the ground that the improvements at issue in this case are owned by CTGW, not the Tribe itself. *Mescalero* instructs us, however, that this distinction is irrelevant. In that case, as noted above, the form of the business through which the Mescalero Apache Tribe owned and operated the ski resort was unclear. *Mescalero* acknowledged this, but concluded it was unimportant because "the question of tax immunity cannot be made to turn on the particular form in which the Tribe chooses to conduct its business." *Mescalero*, 411 U.S. at 157 n.13. In light of this ruling, the question of immunity from the County's property tax assessments on the Great Wolf Lodge "cannot be made to turn on" the Tribe's decision to give ownership of the Lodge to its limited liability company for the duration of the lease. *See id.*

Second, the County argues that because the Great Wolf Lodge constitutes "personal property" under Washington law, it cannot constitute "lands or rights" as that phrase is used in § 465. *See* R.C.W. 84.04.080 (defining "personal property")

to include “all improvements upon lands the fee of which is still vested in the United States”). This argument also fails. *Mescalero* interpreted the scope of § 465 without reference to state law. As such, it ruled that permanent improvements on land owned by the United States and held in trust for Indians may not be taxed as a matter of federal law. *See Mescalero*, 411 U.S. at 155, 158 (holding, without consideration of New Mexico state law, that permanent improvements are within “the scope of the immunity specifically afforded by” § 465). Therefore, it is irrelevant whether permanent improvements constitute personal property under Washington law. *See* U.S. Const., art. VI, cl. 2; *cf. Drye v. United States*, 528 U.S. 49, 52–53 (1999) (holding that federal law defines “property and rights to property” for purposes of a federal tax statute, irrespective of whether the right is defined as a “property” right under state law).

Accordingly, we are bound by *Mescalero*’s interpretation of § 465 to conclude that Thurston County was barred from taxing the Great Wolf Lodge during the time in which the Grand Mound Property was owned by the United States and held in trust pursuant to § 465. The district court therefore erred in granting summary judgment for the County.

C

The Tribe and CTGW argue in the alternative that the tax here at issue is preempted under *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980). In *Bracker*, relying on Congress’s broad authority to regulate Indians and the “semi-independent position of Indian tribes,” *id.* at 142 (internal quotation marks omitted), the Court held that the validity of state laws taxing transactions between Indians and non-Indians, on reservation land, is to be assessed based on “a

particularized inquiry into the nature of the state, federal, and tribal interests at stake.” *Id.* at 145; *see also Wagon v. Prairie Band of Potawatomi Nation*, 546 U.S. 95, 110–11 (2005) (specifying that *Bracker* applies “only where the legal incidence of the tax [falls] on a nontribal entity engaged in a transaction with tribes or tribal members . . . on the reservation.” (internal quotation marks omitted)). *Bracker* thus creates a balancing test, *Wagon*, 546 at U.S. 110, “designed to determine whether, in the specific context, the exercise of state authority would violate federal law,” *Bracker*, 448 U.S. at 145.

We have applied the *Bracker* balancing test in a variety of circumstances involving the imposition of state or local taxes on non-Indians. *See, e.g., Yavapai-Prescott Indian Tribe v. Scott*, 117 F.3d 1107, 1112 (9th Cir. 1997) (balancing state, federal, and tribal interests, and ruling against preemption of state taxes on food and room sales); *Salt River Pima-Maricopa Indian Cmty. v. Arizona*, 50 F.3d 734, 738 (9th Cir. 1995) (under a *Bracker* analysis, taxes on sales to non-Indians on Indian land were not preempted). Even prior to *Bracker*, we applied a similar mode of analysis in holding that possessory interest taxes on “non-Indian lessees of property held in trust by the United States Government for reservation Indians” are not per se preempted. *See Fort Mojave Tribe v. Cnty. of San Bernadino*, 543 F.2d 1253, 1255 (9th Cir. 1976); *see also Agua Caliente Band of Mission Indians v. Cnty. of Riverside*, 442 F.2d 1184, 1186–87 (9th Cir. 1971). None of these cases involved property taxes, however, so they do not implicate § 465.⁷

⁷ While the distinction between taxes imposed on non-Indian lessees’ rights of possession (as in *Agua Caliente* and *Fort Mojave*) and property taxes imposed on improvements owned by non-Indians (as in *Mescalero*)

Unlike the cases requiring us to undertake a *Bracker* analysis, the case before us involves only property taxes on permanent improvements on non-reservation land owned by the United States and held in trust for Indians.⁸ In this context, we are bound by *Mescalero*'s holding that such taxes are preempted under § 465, and need not consider *Bracker* or any other theory of preemption.

III

Mescalero sets forth the simple rule that § 465 preempts state and local taxes on permanent improvements built on non-reservation land owned by the United States and held in trust for an Indian tribe. This is true without regard to the ownership of the improvements. Because the Supreme Court has not revisited this holding, we are required to apply it. We

may appear formalistic, it is critical here. Where a state or local government assesses a tax on land or improvements covered by § 465, we are bound by § 465 and *Mescalero* to invalidate such taxes. *Cf. Rodriguez de Quijas v. Shearson/American Exp., Inc.*, 490 U.S. 477, 484 (1989) (“If a precedent of [the Supreme] Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls.”). This is not so, however, when state or local governments impose taxes on interests other than the “lands or rights” covered by § 465. In *Agua Caliente*, for example, we stressed that “[t]he California tax on possessory interests does not purport to tax the land as such,” which would be barred by § 465, “but rather taxes the ‘full cash value’ of the lessee’s interest in it,” which is not covered by § 465. 442 F.2d at 1186.

⁸ Although neither the record nor the parties’ briefs reference the tax statute or ordinance under which the County levied its taxes, the parties agree that the tax at issue in this case is a property tax on the Great Wolf Lodge, and not a possessory interest or other type of tax. The tax bills and other evidence in the record support this conclusion.

therefore reverse the district court's summary judgment order and remand for proceedings consistent with this opinion.

REVERSED AND REMANDED.

Bracker Case

WHITE MOUNTAIN APACHE TRIBE ET AL. v.
BRACKER ET AL.

CERTIORARI TO THE COURT OF APPEALS OF ARIZONA

No. 78-1177 Argued January 14, 1980—Decided June 27, 1980

Pursuant to a contract with an organization of petitioner White Mountain Apache Tribe, petitioner Pinetop Logging Co. (Pinetop), a non-Indian enterprise authorized to do business in Arizona, felled tribal timber on the Fort Apache Reservation and transported it to the tribal organization's sawmill. Pinetop's activities were performed solely on the reservation. Respondents, state agencies and members thereof, sought to impose on Pinetop Arizona's motor carrier license tax, which is assessed on the basis of the carrier's gross receipts, and its use fuel tax, which is assessed on the basis of diesel fuel used to propel a motor vehicle on any highway within the State. Pinetop paid the taxes under protest and then brought suit in state court, asserting that under federal law the taxes could not lawfully be imposed on logging activities conducted exclusively within the reservation or on hauling activities on Bureau of Indian Affairs (BIA) and tribal roads. The trial court awarded summary judgment to respondents, and the Arizona Court of Appeals affirmed in pertinent part, rejecting petitioners' pre-emption claim.

Held. The Arizona taxes are pre-empted by federal law. Cf. *Warren Trading Post Co. v. Arizona Tax Comm'n*, 380 U. S. 685. Pp. 141-153.

(a) The tradition of Indian sovereignty over the reservation and tribal members must inform the determination whether the exercise of state authority has been pre-empted by operation of federal law. Where, as here, a State asserts authority over the conduct of non-Indians engaging in activity on the reservation, a particularized inquiry must be made into the nature of the state, federal, and tribal interests at stake, an inquiry designed to determine whether, in the specific context, the exercise of state authority would violate federal law. Pp. 141-145.

(b) The Federal Government's regulation of the harvesting, sale, and management of tribal timber, and of the BIA and tribal roads, is so pervasive as to preclude the additional burdens sought to be imposed here by assessing the taxes in question against Pinetop for operations that are conducted solely on BIA and tribal roads within the reservation. Pp. 145-149.

(c) Imposition of the taxes in question would undermine the federal policy of assuring that the profits from timber sales would inure to the

WHITE MOUNTAIN APACHE TRIBE v. BRACKER 137

136

Opinion of the Court

Tribe's benefit; would also undermine the Secretary of the Interior's ability to make the wide range of determinations committed to his authority concerning the setting of fees and rates with respect to the harvesting and sale of tribal timber; and would adversely affect the Tribe's ability to comply with the sustained-yield management policies imposed by federal law Pp. 149-150.

(d) Respondents' generalized interest in raising revenue is insufficient, in the context of this case, to permit its proposed intrusion into the federal regulatory scheme with respect to the harvesting and sale of tribal timber. P 150.

120 Ariz. 282, 585 P 2d 891, reversed.

MARSHALL, J., delivered the opinion of the Court, in which BURGER, C. J., and BRENNAN, WHITE, BLACKMUN, and POWELL, JJ., joined. POWELL, J., filed a concurring opinion, *post*, p. 170. STEVENS, J., filed a dissenting opinion, in which STEWART and REHNQUIST, JJ., joined, *post*, p. 153.

Neil Vincent Wake argued the cause for petitioner Pinetop Logging Co. *Michael J Brown* argued the cause for petitioner White Mountain Apache Tribe. With them on the briefs were *Leo R. Beus* and *Kathleen A. Rihr*

Ian A. Macpherson, Assistant Attorney General of Arizona, argued the cause for respondents. With him on the brief were *Robert K. Corbin*, Attorney General, and *Anthony B Ching*, Solicitor General.

Elinor Hadley Stillman argued the cause for the United States as *amicus curiae* urging reversal. With her on the brief were *Solicitor General McCree*, *Assistant Attorney General Moorman*, *Deputy Solicitor General Claiborne*, and *Robert L. Klarquist*.

MR. JUSTICE MARSHALL delivered the opinion of the Court.

In this case we are once again called upon to consider the extent of state authority over the activities of non-Indians engaged in commerce on an Indian reservation. The State of Arizona seeks to apply its motor carrier license and use fuel taxes to petitioner Pinetop Logging Co. (Pinetop), an enter-

prise consisting of two non-Indian corporations authorized to do business in Arizona and operating solely on the Fort Apache Reservation. Pinetop and petitioner White Mountain Apache Tribe contend that the taxes are pre-empted by federal law or, alternatively, that they represent an unlawful infringement on tribal self-government. The Arizona Court of Appeals rejected petitioners' claims. We hold that the taxes are pre-empted by federal law, and we therefore reverse.

I

The 6,500 members of petitioner White Mountain Apache Tribe reside on the Fort Apache Reservation in a mountainous and forested region of northeastern Arizona.¹ The Tribe is organized under a constitution approved by the Secretary of the Interior under the Indian Reorganization Act, 25 U.S.C. § 476. The revenue used to fund the Tribe's governmental programs is derived almost exclusively from tribal enterprises. Of these enterprises, timber operations have proved by far the most important, accounting for over 90% of the Tribe's total annual profits.²

The Fort Apache Reservation occupies over 1,650,000 acres, including 720,000 acres of commercial forest. Approximately 300,000 acres are used for the harvesting of timber on a "sustained yield" basis, permitting each area to be cut every 20 years without endangering the forest's continuing productivity. Under federal law, timber on reservation land is owned by the United States for the benefit of the Tribe and cannot be harvested for sale without the consent of Congress.

¹ The Fort Apache Reservation was originally established as the White Mountain Reservation by an Executive Order signed by President Grant on November 9, 1871. By the Act of Congress of June 7, 1897, 30 Stat. 64, the White Mountain Reservation was divided into the Fort Apache and San Carlos Reservations.

² In 1973, for example, tribal enterprises showed a net profit of \$1,667,091, \$1,508,713 of which was attributable to timber operations.

Acting under the authority of 25 CFR § 141.6 (1979) and the tribal constitution, and with the specific approval of the Secretary of the Interior, the Tribe in 1964 organized the Fort Apache Timber Co. (FATCO), a tribal enterprise that manages, harvests, processes, and sells timber. FATCO, which conducts all of its activities on the reservation, was created with the aid of federal funds. It employs about 300 tribal members.

The United States has entered into contracts with FATCO, authorizing it to harvest timber pursuant to regulations of the Bureau of Indian Affairs. FATCO has itself contracted with six logging companies, including Pinetop, which perform certain operations that FATCO could not carry out as economically on its own.³ Since it first entered into agreements with FATCO in 1969, Pinetop has been required to fell trees, cut them to the correct size, and transport them to FATCO's sawmill in return for a contractually specified fee. Pinetop employs approximately 50 tribal members. Its activities, performed solely on the Fort Apache Reservation, are subject to extensive federal control.

In 1971 respondents⁴ sought to impose on Pinetop the two state taxes at issue here. The first, a motor carrier license tax, is assessed on "[e]very common motor carrier of property and every contract motor carrier of property" Ariz. Rev. Stat. Ann. § 40-641 (A)(1) (Supp. 1979). Pinetop is a "contract motor carrier of property" since it is engaged in "the transportation by motor vehicle of property, for compensation, on any public highway" § 40-601 (A)(1) (1974). The motor carrier license tax amounts to 2.5% of the carrier's gross receipts. § 40-641 (A)(1) (Supp. 1979). The second tax at issue is an excise or use fuel tax designed "[f]or the

³ FATCO initially attempted to perform some of its own logging and hauling operations but found itself unable to do these tasks economically.

⁴ Respondents are the Arizona Highway Department, the Arizona Highway Commission, and individual members of each entity.

purpose of partially compensating the state for the use of its highway" Ariz. Rev Stat. Ann. § 28-1552 (Supp. 1979) The tax amounts to eight cents per gallon of fuel used "in the propulsion of a motor vehicle on any highway within this state." *Ibid.* The use fuel tax was assessed on Pinetop because it uses diesel fuel to propel its vehicles on the state highways within the Fort Apache Reservation.

Pinetop paid the taxes under protest,⁵ and then brought suit in state court, asserting that under federal law the taxes could not lawfully be imposed on logging activities conducted exclusively within the reservation or on hauling activities on Bureau of Indian Affairs and tribal roads.⁶ The Tribe agreed to reimburse Pinetop for any tax liability incurred as a result of its on-reservation business activities, and the Tribe intervened in the action as a plaintiff.⁷

Both petitioners and respondents moved for summary judgment on the issue of the applicability of the two taxes to Pinetop. Petitioners submitted supporting affidavits from the manager of FATCO, the head forester of the Bureau of Indian Affairs, and the Chairman of the White Mountain Apache Tribal Council, respondents offered no affidavits dis-

⁵ Between November 1971 and May 1976 Pinetop paid under protest \$19,114.59 in use fuel taxes and \$14,701.42 in motor carrier license taxes. Since that time it has continued to pay taxes pending the outcome of this case. Refund litigation is pending in state court with respect to the five other non-Indian contractors employed by the Tribe, and that litigation has been stayed pending the outcome of this suit.

⁶ For purposes of this action petitioners have conceded Pinetop's liability for both motor carrier license and use fuel taxes attributable to travel on state highways within the reservation. Pinetop has maintained records of fuel attributable to travel on those highways, and computations would evidently be made in order to allocate a portion of the gross receipts taxable under the motor carrier license tax to state highways.

⁷ When Pinetop contracted to undertake timber operations for FATCO in 1969, both Pinetop and FATCO believed that it would not be required to pay state taxes. After respondents assessed the taxes at issue, FATCO agreed to pay them to avoid the loss of Pinetop's services.

puting the factual assertions by petitioners' affiants. The trial court awarded summary judgment to respondents,⁸ and the petitioners appealed to the Arizona Court of Appeals. The Court of Appeals rejected petitioners' pre-emption claim. 120 Ariz. 282, 585 P 2d 891 (1978) Purporting to apply the test set forth in *Pennsylvania v Nelson*, 350 U S. 497 (1956), the court held that the taxes did not conflict with federal regulation of tribal timber, that the federal interest was not so dominant as to preclude assessment of the challenged state taxes, and that the federal regulatory scheme did not "occupy the field." The court also concluded that the state taxes would not unlawfully infringe on tribal self-government. The Arizona Supreme Court declined to review the decision of the Court of Appeals. We granted certiorari. 444 U S. 823 (1980).

II

Although "[g]eneralizations on this subject have become treacherous," *Mescalero Apache Tribe v Jones*, 411 U S. 145, 148 (1973), our decisions establish several basic principles with respect to the boundaries between state regulatory authority and tribal self-government. Long ago the Court departed from Mr. Chief Justice Marshall's view that "the laws of [a State] can have no force" within reservation boundaries, *Worcester v Georgia*, 6 Pet. 515, 561 (1832) ⁹ See *Moe v Salish & Kootenai Tribes*, 425 U S. 463, 481-483

⁸ After the trial court entered summary judgment on the issue of the applicability of the state taxes, the case proceeded to trial on the state-law issue of the manner of calculating the motor vehicle license tax. Final judgment was entered for respondents on all issues after trial. The Arizona Court of Appeals reversed the decision of the Superior Court on the calculation of the motor vehicle license tax. 120 Ariz. 282, 291, 585 P 2d 891, 900 (1978).

⁹ The shift in approach is discussed in *Williams v. Lee*, 358 U. S. 217, 219 (1959), *Organized Village of Kake v. Egan*, 369 U. S. 60, 71-75 (1962), and *McClanahan v. Arizona State Tax Comm'n*, 411 U. S. 164, 172 (1973).

(1976), *New York ex rel. Ray v Martin*, 326 U. S. 496 (1946), *Utah & Northern R. Co. v Fisher*, 116 U. S. 28 (1885). At the same time we have recognized that the Indian tribes retain "attributes of sovereignty over both their members and their territory" *United States v Mazurie*, 419 U. S. 544, 557 (1975). See also *United States v Wheeler*, 435 U. S. 313, 323 (1978), *Santa Clara Pueblo v Martinez*, 436 U. S. 49, 55-56 (1978). As a result, there is no rigid rule by which to resolve the question whether a particular state law may be applied to an Indian reservation or to tribal members. The status of the tribes has been described as "'an anomalous one and of complex character,'" for despite their partial assimilation into American culture, the tribes have retained "'a semi-independent position not as States, not as nations, not as possessed of the full attributes of sovereignty, but as a separate people, with the power of regulating their internal and social relations, and thus far not brought under the laws of the Union or of the State within whose limits they resided.'" *McClanahan v Arizona State Tax Comm'n*, 411 U. S. 164, 173 (1973), quoting *United States v Kagama*, 118 U. S. 375, 381-382 (1886).

Congress has broad power to regulate tribal affairs under the Indian Commerce Clause, Art. 1, § 8, cl. 3. See *United States v Wheeler*, *supra*, at 322-323. This congressional authority and the "semi-independent position" of Indian tribes have given rise to two independent but related barriers to the assertion of state regulatory authority over tribal reservations and members. First, the exercise of such authority may be pre-empted by federal law. See, e. g., *Warren Trading Post Co. v Arizona Tax Comm'n*, 380 U. S. 685 (1965), *McClanahan v Arizona State Tax Comm'n*, *supra*. Second, it may unlawfully infringe "on the right of reservation Indians to make their own laws and be ruled by them." *Williams v Lee*, 358 U. S. 217, 220 (1959). See also *Washington v Yakima Indian Nation*, 439 U. S. 463, 502 (1979), *Fisher*

WHITE MOUNTAIN APACHE TRIBE v. BRACKER 143

136

Opinion of the Court

v *District Court*, 424 U. S. 382 (1976) (*per curiam*), *Kennerly v District Court of Montana*, 400 U. S. 423 (1971) The two barriers are independent because either, standing alone, can be a sufficient basis for holding state law inapplicable to activity undertaken on the reservation or by tribal members. They are related, however, in two important ways. The right of tribal self-government is ultimately dependent on and subject to the broad power of Congress. Even so, traditional notions of Indian self-government are so deeply engrained in our jurisprudence that they have provided an important "backdrop," *McClanahan v Arizona State Tax Comm'n*, *supra*, at 172, against which vague or ambiguous federal enactments must always be measured.

The unique historical origins of tribal sovereignty make it generally unhelpful to apply to federal enactments regulating Indian tribes those standards of pre-emption that have emerged in other areas of the law. Tribal reservations are not States, and the differences in the form and nature of their sovereignty make it treacherous to import to one notions of pre-emption that are properly applied to the other. The tradition of Indian sovereignty over the reservation and tribal members must inform the determination whether the exercise of state authority has been pre-empted by operation of federal law. *Moe v Salish & Kootenai Tribes*, *supra*, at 475. As we have repeatedly recognized, this tradition is reflected and encouraged in a number of congressional enactments demonstrating a firm federal policy of promoting tribal self-sufficiency and economic development.¹⁰ Ambiguities in federal

¹⁰ For example, the Indian Financing Act of 1974, 25 U. S. C. § 1451 *et seq.*, states: "It is hereby declared to be the policy of Congress to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources and where they will enjoy a standard of living from their own productive efforts comparable to that enjoyed by non-Indians in neighboring communities." Similar policies underlie the Indian Self-Determination and Education Assistance Act of 1975,

law have been construed generously in order to comport with these traditional notions of sovereignty and with the federal policy of encouraging tribal independence. See *McClanahan v Arizona State Tax Comm'n*, *supra*, at 174–175, and n. 13. We have thus rejected the proposition that in order to find a particular state law to have been pre-empted by operation of federal law, an express congressional statement to that effect is required.¹¹ *Warren Trading Post Co. v Arizona Tax Comm'n*, *supra*. At the same time any applicable regulatory interest of the State must be given weight, *McClanahan v Arizona State Tax Comm'n*, *supra*, at 171, and “automatic exemptions ‘as a matter of constitutional law’” are unusual. *Moe v Salish & Kootenai Tribes*, 425 U. S., at 481, n. 17

When on-reservation conduct involving only Indians is at issue, state law is generally inapplicable, for the State’s regulatory interest is likely to be minimal and the federal interest in encouraging tribal self-government is at its strongest. See *Moe v Salish & Kootenai Tribes*, *supra*, at 480–481, *McClanahan v Arizona State Tax Comm'n*. More difficult questions arise where, as here, a State asserts authority over the conduct of non-Indians engaging in activity on the reservation. In such cases we have examined the language of the relevant federal treaties and statutes in terms of both the broad

25 U. S. C. § 450 *et seq.*, as well as the Indian Reorganization Act of 1934, 25 U. S. C. § 461 *et seq.*, whose “intent and purpose was ‘to rehabilitate the Indian’s economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism.’” *Mescalero Apache Tribe v Jones*, 411 U. S. 145, 152 (1973), quoting H. R. Rep. No. 1804, 73d Cong., 2d Sess., 6 (1934). See also *Santa Clara Pueblo v Martinez*, 436 U. S. 49 (1978). Cf. Gross, *Indian Self-Determination and Tribal Sovereignty: An Analysis of Recent Federal Policy*, 56 Texas L. Rev 1195 (1978).

¹¹ In the case of “Indians going beyond reservation boundaries,” however, a “nondiscriminatory state law” is generally applicable in the absence of “express federal law to the contrary” *Mescalero Apache Tribe v. Jones*, *supra*, at 148–149.

policies that underlie them and the notions of sovereignty that have developed from historical traditions of tribal independence. This inquiry is not dependent on mechanical or absolute conceptions of state or tribal sovereignty, but has called for a particularized inquiry into the nature of the state, federal, and tribal interests at stake, an inquiry designed to determine whether, in the specific context, the exercise of state authority would violate federal law. Compare *Warren Trading Post Co. v. Arizona Tax Comm'n*, *supra*, and *Williams v. Lee*, *supra*, with *Moe v. Salish & Kootenai Tribes*, *supra*, and *Thomas v. Gay*, 169 U. S. 264 (1898). Cf. *McClanahan v. Arizona State Tax Comm'n*, 411 U. S., at 171, *Mescalero Apache Tribe v. Jones*, 411 U. S., at 148.

III

With these principles in mind, we turn to the respondents' claim that they may, consistent with federal law, impose the contested motor vehicle license and use fuel taxes on the logging and hauling operations of petitioner Pinetop. At the outset we observe that the Federal Government's regulation of the harvesting of Indian timber is comprehensive. That regulation takes the form of Acts of Congress, detailed regulations promulgated by the Secretary of the Interior, and day-to-day supervision by the Bureau of Indian Affairs. Under 25 U. S. C. §§ 405–407, the Secretary of the Interior is granted broad authority over the sale of timber on the reservation.¹²

¹² Federal policies with respect to tribal timber have a long history. In *United States v. Cook*, 19 Wall. 591 (1874), and *Pine River Logging Co. v. United States*, 186 U. S. 279 (1902), the Court held that tribal members had no right to sell timber on reservation land unless the sale was related to the improvement of the land. At the same time the Court interpreted the governing statute as designed "to permit deserving Indians, who had no other sufficient means of support, to cut a limited quantity of timber and to use the proceeds for their support", provided that 10 percent of the gross proceeds should go to the stumpage or

Timber on Indian land may be sold only with the consent of the Secretary, and the proceeds from any such sales, less administrative expenses incurred by the Federal Government, are to be used for the benefit of the Indians or transferred to the Indian owner. Sales of timber must "be based upon a consideration of the needs and best interests of the Indian owner and his heirs." 25 U.S.C. § 406 (a). The statute specifies the factors which the Secretary must consider in making that determination.¹³ In order to assure the continued productivity of timber-producing land on tribal reservations, timber on unallotted lands "may be sold in accordance with the principles of sustained yield." 25 U.S.C. § 407. The Secretary is granted power to determine the disposition of the proceeds from timber sales. He is authorized to promulgate regulations for the operation and management of Indian forestry units. 25 U.S.C. § 466.

Acting pursuant to this authority, the Secretary has promulgated a detailed set of regulations to govern the harvesting

poor fund of the tribe, from which the old, sick and otherwise helpless might be supported." *Id.*, at 285-286.

The Attorney General interpreted the holding in *Cook* to mean that Indians had no right to reservation timber. See 19 Op. Atty. Gen. 194 (1888). This interpretation was overturned by Congress by Act of June 25, 1910, ch. 431, 36 Stat. 855, as amended, 25 U.S.C. § 407, and also repudiated in *United States v. Shoshone Tribe*, 304 U.S. 111 (1938). Thus, as the Court summarized in *United States v. Algoma Lumber Co.*, 305 U.S. 415, 420 (1939), "[u]nder established principles applicable to land reservations created for the benefit of the Indian tribes, the Indians are beneficial owners of the land and the timber standing upon it and of the proceeds of their sale, subject to the plenary power of control by the United States, to be exercised for the benefit and protection of the Indians." See 25 U.S.C. § 196; *United States v. Mitchell*, 445 U.S. 535 (1980).

¹³ Those factors include "(1) the state of growth of the timber and the need for maintaining the productive capacity of the land for the benefit of the owner and his heirs, (2) the highest and the best use of the land, including the advisability and practicality of devoting it to other uses for the benefit of the owner and his heirs, and (3) the present and future financial needs of the owner and his heirs." 25 U.S.C. § 406 (a).

WHITE MOUNTAIN APACHE TRIBE *v.* BRACKER 147

136

Opinion of the Court

and sale of tribal timber. Among the stated objectives of the regulations is the "development of Indian forests by the Indian people for the purpose of promoting self-sustaining communities, to the end that the Indians may receive from their own property not only the stumpage value, but also the benefit of whatever profit it is capable of yielding and whatever labor the Indians are qualified to perform." 25 CFR § 141.3 (a)(3) (1979). The regulations cover a wide variety of matters: for example, they restrict clear-cutting, § 141.5, establish comprehensive guidelines for the sale of timber, § 141.7, regulate the advertising of timber sales, §§ 141.8, 141.9, specify the manner in which bids may be accepted and rejected, § 141.11, describe the circumstances in which contracts may be entered into, §§ 141.12, 141.13, require the approval of all contracts by the Secretary, § 141.13, call for timber-cutting permits to be approved by the Secretary, § 141.19, specify fire protective measures, § 141.21, and provide a board of administrative appeals, § 141.23. Tribes are expressly authorized to establish commercial enterprises for the harvesting and logging of tribal timber. § 141.6.

Under these regulations, the Bureau of Indian Affairs exercises literally daily supervision over the harvesting and management of tribal timber. In the present case, contracts between FATCO and Pinetop must be approved by the Bureau, indeed, the record shows that some of those contracts were drafted by employees of the Federal Government. Bureau employees regulate the cutting, hauling, and marking of timber by FATCO and Pinetop. The Bureau decides such matters as how much timber will be cut, which trees will be felled, which roads are to be used, which hauling equipment Pinetop should employ, the speeds at which logging equipment may travel, and the width, length, height, and weight of loads.

The Secretary has also promulgated detailed regulations governing the roads developed by the Bureau of Indian Affairs.

25 CFR Part 162 (1979) Bureau roads are open to "[f]ree public use." § 162.8. Their administration and maintenance are funded by the Federal Government, with contributions from the Indian tribes. §§ 162.6–162.6a. On the Fort Apache Reservation the Forestry Department of the Bureau has required FATCO and its contractors, including Pinetop, to repair and maintain existing Bureau and tribal roads and in some cases to construct new logging roads. Substantial sums have been spent for these purposes. In its federally approved contract with FATCO, Pinetop has agreed to construct new roads and to repair existing ones. A high percentage of Pinetop's receipts are expended for those purposes, and it has maintained separate personnel and equipment to carry out a variety of tasks relating to road maintenance.

In these circumstances we agree with petitioners that the federal regulatory scheme is so pervasive as to preclude the additional burdens sought to be imposed in this case. Respondents seek to apply their motor vehicle license and use fuel taxes on Pinetop for operations that are conducted solely on Bureau and tribal roads within the reservation.¹⁴ There is no room for these taxes in the comprehensive federal regulatory scheme. In a variety of ways, the assessment of state taxes would obstruct federal policies. And equally important, respondents have been unable to identify any regulatory function or service performed by the State that would justify

¹⁴ In oral argument counsel for respondents appeared to concede that the asserted state taxes could not lawfully be applied to tribal roads and was unwilling to defend the contrary conclusion of the court below, which made no distinction between Bureau and tribal roads under state and federal law. Tr. of Oral Arg. 34–37. Contrary to respondents' position throughout the litigation and in their brief in this Court, counsel limited his argument to a contention that the taxes could be asserted on the roads of the Bureau of Indian Affairs. *Ibid.* For purposes of federal pre-emption, however, we see no basis, and respondents point to none, for distinguishing between roads maintained by the Tribe and roads maintained by the Bureau of Indian Affairs.

the assessment of taxes for activities on Bureau and tribal roads within the reservation.

At the most general level, the taxes would threaten the overriding federal objective of guaranteeing Indians that they will "receive the benefit of whatever profit [the forest] is capable of yielding." 25 CFR § 141.3 (a)(3) (1979) Underlying the federal regulatory program rests a policy of assuring that the profits derived from timber sales will inure to the benefit of the Tribe, subject only to administrative expenses incurred by the Federal Government. That objective is part of the general federal policy of encouraging tribes "to revitalize their self-government" and to assume control over their "business and economic affairs." *Mescalero Apache Tribe v Jones*, 411 U S., at 151. The imposition of the taxes at issue would undermine that policy in a context in which the Federal Government has undertaken to regulate the most minute details of timber production and expressed a firm desire that the Tribe should retain the benefits derived from the harvesting and sale of reservation timber.

In addition, the taxes would undermine the Secretary's ability to make the wide range of determinations committed to his authority concerning the setting of fees and rates with respect to the harvesting and sale of tribal timber. The Secretary reviews and approves the terms of the Tribe's agreements with its contractors, sets fees for services rendered to the Tribe by the Federal Government, and determines stumpage rates for timber to be paid to the Tribe. Most notably in reviewing or writing the terms of the contracts between FATCO and its contractors, federal agents must predict the amount and determine the proper allocation of all business expenses, including fuel costs. The assessment of state taxes would throw additional factors into the federal calculus, reducing tribal revenues and diminishing the profitability of the enterprise for potential contractors.

Finally, the imposition of state taxes would adversely affect the Tribe's ability to comply with the sustained-

yield management policies imposed by federal law. Substantial expenditures are paid out by the Federal Government, the Tribe, and its contractors in order to undertake a wide variety of measures to ensure the continued productivity of the forest. These measures include reforestation, fire control, wildlife promotion, road improvement, safety inspections, and general policing of the forest. The expenditures are largely paid for out of tribal revenues, which are in turn derived almost exclusively from the sale of timber. The imposition of state taxes on FATCO's contractors would effectively diminish the amount of those revenues and thus leave the Tribe and its contractors with reduced sums with which to pay out federally required expenses.

As noted above, this is not a case in which the State seeks to assess taxes in return for governmental functions it performs for those on whom the taxes fall. Nor have respondents been able to identify a legitimate regulatory interest served by the taxes they seek to impose. They refer to a general desire to raise revenue, but we are unable to discern a responsibility or service that justifies the assertion of taxes imposed for on-reservation operations conducted solely on tribal and Bureau of Indian Affairs roads. Pinetop's business in Arizona is conducted solely on the Fort Apache Reservation. Though at least the use fuel tax purports to "compensat[e] the state for the use of its highways," Ariz. Rev. Stat. Ann. § 28-1552 (Supp. 1979), no such compensatory purpose is present here. The roads at issue have been built, maintained, and policed exclusively by the Federal Government, the Tribe, and its contractors. We do not believe that respondents' generalized interest in raising revenue is in this context sufficient to permit its proposed intrusion into the federal regulatory scheme with respect to the harvesting and sale of tribal timber.

Respondents' argument is reduced to a claim that they may assess taxes on non-Indians engaged in commerce on the reservation whenever there is no express congressional statement

to the contrary. That is simply not the law. In a number of cases we have held that state authority over non-Indians acting on tribal reservations is pre-empted even though Congress has offered no explicit statement on the subject. See *Warren Trading Post Co. v. Arizona Tax Comm'n*, 380 U. S. 685 (1965), *Williams v. Lee*, 358 U. S. 217 (1958), *Kennerly v. District Court of Montana*, 400 U. S. 423 (1971). The Court has repeatedly emphasized that there is a significant geographical component to tribal sovereignty, a component which remains highly relevant to the pre-emption inquiry; though the reservation boundary is not absolute, it remains an important factor to weigh in determining whether state authority has exceeded the permissible limits. "The cases in this Court have consistently guarded the authority of Indian governments over their reservations." *United States v. Mazurie*, 419 U. S., at 558, quoting *Williams v. Lee*, *supra*, at 223. Moreover, it is undisputed that the economic burden of the asserted taxes will ultimately fall on the Tribe.¹⁵ Where, as here, the Federal Government has undertaken comprehensive regulation of the harvesting and sale of tribal timber, where a number of the policies underlying the federal regulatory scheme are threatened by the taxes respondents seek to impose, and where respondents are unable to justify the taxes except in terms of a generalized interest in raising revenue, we believe that the proposed exercise of state authority is impermissible.¹⁶

¹⁵ Of course, the fact that the economic burden of the tax falls on the Tribe does not by itself mean that the tax is pre-empted, as *Moe v. Salish & Kootenai Tribes*, 425 U. S. 463 (1976), makes clear. Our decision today is based on the pre-emptive effect of the comprehensive federal regulatory scheme, which, like that in *Warren Trading Post Co. v. Arizona Tax Comm'n*, 380 U. S. 685 (1965), leaves no room for the additional burdens sought to be imposed by state law.

¹⁶ Respondents also contend that the taxes are authorized by the Buck Act, 4 U. S. C. § 105 *et seq.*, and the Hayden-Cartwright Act, 4 U. S. C. § 104. In *Warren Trading Post Co. v. Arizona Tax Comm'n*, *supra*, at 691,

Both the reasoning and result in this case follow naturally from our unanimous decision in *Warren Trading Post Co v Arizona Tax Comm'n*, *supra*. There the State of Arizona sought to impose a "gross proceeds" tax on a non-Indian company which conducted a retail trading business on the Navajo Indian Reservation. Referring to the tradition of sovereign power over the reservation, the Court held that the "comprehensive federal regulation of Indian traders" prohibited the assessment of the attempted taxes. *Id.*, at 688. No federal statute by its terms precluded the assessment of state tax. Nonetheless, the "detailed regulations," specifying "in the most minute fashion," *id.*, at 689, the licensing and regulation of Indian traders, were held "to show that Congress has taken the business of Indian trading on reservations so fully in hand that no room remains for state laws imposing additional burdens upon traders." *Id.*, at 690. The imposition of those burdens, we held, "could disturb and disarrange the statutory plan" because the economic burden of the state taxes would eventually be passed on to the Indians themselves. *Id.*, at 691. We referred to the fact that the Tribe had been "largely free to run the reservation and its affairs without state control, a policy which has automatically relieved Arizona of all burdens for carrying on those same responsibilities." *Id.*, at 690. And we emphasized that "since federal legislation has left the State with no duties or responsibilities respecting the reservation Indians, we cannot believe that Congress intended to leave to the State the privilege of levying this tax." *Id.*, at 691. The present case, we conclude,

n. 18, we squarely held that the Buck Act did not apply to Indian reservations, and respondents present no sufficient reason for us to depart from that holding. We agree with petitioners that the Hayden-Cartwright Act, which authorizes state taxes "on United States military or other reservations," was not designed to overcome the otherwise pre-emptive effect of federal regulation of tribal timber. We need not reach the more general question whether the Hayden-Cartwright Act applies to Indian reservations at all.

136

STEVENS, J., dissenting

is in all relevant respects indistinguishable from *Warren Trading Post*.

The decision of the Arizona Court of Appeals is

Reversed.

[For concurring opinion of MR. JUSTICE POWELL, see *post*, p. 170.]

MR. JUSTICE STEVENS, with whom MR. JUSTICE STEWART and MR. JUSTICE REHNQUIST join, dissenting.

The State of Arizona imposes use fuel and motor carrier license taxes on certain businesses in order to compensate it for their greater than normal use of public roads. See *post*, at 174, n. 3 (POWELL, J., concurring). The issue originally presented to this Court was whether the State was prohibited from imposing such taxes on a non-Indian joint venture (Pinetop Logging Co.) hired by the petitioner Tribe to perform logging operations on the Fort Apache Reservation, when the taxes were based on Pinetop's use of roads located solely within the reservation. In light of the concessions made by both sides at various stages of the litigation, however, I doubt that we should reach that issue in this case. Moreover, even if the merits were properly before us, I could not agree with the Court's determination that the state taxes are pre-empted by federal law.

Between November 1971 and May 1976, Pinetop paid under protest use fuel taxes of \$19,114.59 and motor carrier license taxes of \$14,701.42. The Arizona Court of Appeals determined that the latter assessment improperly denied Pinetop a 60% credit to which it was entitled under state law¹. After allowance for that credit, the total amount of the disputed taxes for the 4½-year period is reduced to about \$25,000 or \$5,000–\$6,000 per year.

¹ Under Arizona law, logging operations are exempt from the motor carrier license tax if the wood they haul is used for pulpwood. In this case 60% of the logs hauled by Pinetop were to be used for pulpwood.

The taxes actually in dispute, however, are considerably less. Pinetop concedes that some of its operations are subject to tax and the State concedes that Pinetop is entitled to additional credits. To understand these concessions it is necessary to note that Pinetop's vehicles operate on four different kinds of roads within the Fort Apache Reservation. (1) state highways, (2) federally funded (Bureau of Indian Affairs) roads serving recreational public needs, (3) tribal roads exclusively financed and maintained by the Indians, and (4) private logging roads built and maintained by loggers such as Pinetop.²

Although Pinetop represents that its use of the Arizona state highways within the reservation is extremely limited, it does not dispute its tax liability for such use. On the other hand, in this Court the State expressly conceded that its assessments were improper under state law to the extent that they applied to operations on either private logging roads³

² In paragraph XIII of their complaint, petitioners alleged:

"There are four categories of roads in the Ft. Apache Indian Reservation which are used by the Plaintiffs in their logging operations: (1) tribal roads financed and maintained by the Indians exclusively; (2) federally funded (Bureau of Indian Affairs) roads serving recreational public needs; (3) state highways; and (4) logging roads built and maintained by loggers. In transporting timber from the woods to the sawmill, plaintiffs' vehicles travel substantially over tribal and BIA roads, although short portions of many of the trips are on state highways.

"The only category of roads on the Fort Apache Indian Reservation which are built or maintained by the State of Arizona, is category (3), state highways. Categories (1), (2), and (4) are financed and maintained by sources other than monies from the State of Arizona. Tribal, BIA and logging roads are not public highways within the meaning of Arizona Revised Statutes Sec. 40-601.9, and thus any use fuel and license motor carrier taxes on these roads are inappropriate."

³ At oral argument, the Assistant Attorney General of the State of Arizona stated:

"But so long as the road remained a private thoroughfare they would not be so traveled and use of those road [sic] would not be subject to the State tax." Tr. of Oral Arg. 32.

WHITE MOUNTAIN APACHE TRIBE v. BRACKER 155

136

STEVENS, J., dissenting

or tribal roads.⁴ If it is conceded that the State may tax Pinetop's use of public roads maintained by the State and may not tax the use of tribal or private roads, the question that arises is whether the public roads maintained by the

Later in the argument he was asked the following question and gave the following answer:

"Mr. Macpherson, quite apart from the question in this case which involves Indian tribes, what about a private owner of land—whether it is the Weyerhaeuser Company or a rancher who owns many square miles of ranch land, does Arizona impose a tax upon his fuel if the vehicle that he owns is used exclusively on his own private property 365 days a year, or this year 366, and never on the public roads of Arizona?"

"MR. MACPHERSON It does not, Your Honor." *Id.*, at 39.

⁴ With respect to tribal roads, the Assistant Attorney General advised the Court at oral argument:

"However, the fact of the matter is that under current State law, under the legislative scheme that exists in Arizona right now, Arizona has no intention of going forward on some purported theory that because the Court of Appeals decision says we can, that we can go ahead and tax use on these tribal roads. I have been assured of that by my client by telephone last night. And other than that we would put that before the Court to apprise the court of what the true facts are." *Id.*, at 35.

In rebuttal, counsel for petitioners expressed surprise at, but nevertheless accepted, the concession made by the State. Counsel stated:

"My good friend, Mr. Macpherson, has just said some remarkable things.

"I think I hear him saying that the State is no longer interested in collecting taxes from tribal roads on the reservation which are not Bureau of Indian Affairs roads. If that is what he said, then I am delighted to accept him accept his concession. But I must also correct some of the suggestions he has made.

"His predecessor, the Attorney for the State of Arizona, argued in the State appellate courts that the State was claiming the right to tax tribal roads. The judgment of the lower court gives the State the right to tax tribal roads. And that is the judgment we are burdened with and that is the judgment which we bring to this Court.

"Our opening briefs state that is the issue. Their briefs acknowledge that is the issue and that was the issue before the Court.

"Trial counsel, Mr. Beus who is here, informs me over the lunch period

Bureau of Indian Affairs are more akin to the former or to the latter. It appears that the BIA roads are like the state highways insofar as they are open to use by the general public.⁵ On the other hand, it also appears that they were constructed

that his understanding was that administrative agreement included the payment of certain taxes allocable to tribal roads.

"QUESTION Well, as I say, that is of some importance, at least to me, whether there is an issue to taxes, either fuel or gross receipts taxes imposed on vehicles insofar as their use was confined to tribal roads.

"Is there, or is there not a dispute?"

"MR. WAKE: I submit there was until Mr. Macpherson spoke.

"QUESTION Well, now you submit there isn't. And I—

"MR. WAKE: I submit there isn't because [counsel] has conceded the issue or [is] withdrawing the issue. And perhaps he can clarify his remarks.

"QUESTION You say you accept it gladly

"MR. WAKE: I accept it gladly but—

"QUESTION You have won your case on the—

"MR. WAKE: Your Honor, I would point out that that being the concession as I understand it, it would be appropriate in any event the judgment of the lower court to be correct in that regard since—" *Id.*, at 54-56.

⁵ The following colloquy occurred at oral argument:

"QUESTION What I meant to say is your real fight is over the right to tax on BIA roads.

"Does the record tell us much about those roads, for example does it tell us whether the State police are on those roads or whether they have speed limits or things like that?"

"MR. MACPHERSON Your Honor, the record does not specifically go into that much detail.

"QUESTION However, it presents us with a hypothetical case quite different from the one you asked us to decide.

"MR. MACPHERSON Well, Mr. Justice Stevens, the case is—we felt it necessary as an ethical consideration to apprise the Court of what the actual situation is.

"But, having said that, the issue, the legal issue, if it please the Court, may still be decided with respect to the BIA road use. The fact of the matter is that BIA roads pursuant to Federal—the Code of Federal Regulations are required to be open to free public use, as a matter of Federal law." *Id.*, at 36-37

and maintained by the Federal Government and are policed by federal and tribal officers.⁶

Under these circumstances I think the most appropriate disposition would be to vacate the judgment of the Arizona Court of Appeals and remand for further consideration in light of the concessions made on behalf of the State in this Court. As the Court and MR. JUSTICE POWELL point out, it is difficult to see why those concessions are not an acknowledgment that the State has no authority to tax the use of roads in which it has no interest. See *ante*, at 148, n. 14 (opinion of the Court), *post*, at 174 (POWELL, J., concurring). If the state court were given an opportunity to focus on this point, we might well find that there is no remaining federal issue to be decided.

Even assuming, however, that the state courts would uphold the imposition of taxes based on the use of BIA roads, despite their similarities to private and tribal roads, I would not find those taxes to be pre-empted by federal law. In *Warren Trading Post v Arizona Tax Comm'n*, 380 U. S. 685, the Court held that state taxation of a non-Indian doing business with a tribe on the reservation was pre-empted because the taxes threatened to "disturb and disarrange" a pervasive scheme of federal regulation and because there was no governmental interest on the State's part in imposing such a burden. See *Central Machinery Co. v Arizona State Tax Comm'n*, *post*, at 168 (STEWART, J., dissenting). In this case we may assume, *arguendo*, that the second factor relied

⁶ "QUESTION Did I understand you to say that Arizona has no responsibility for maintaining the BIA roads?"

"MR. MACPHERSON This is correct, Your Honor.

"QUESTION And did it contribute to the construction of those roads?"

"MR. MACPHERSON So far as the record shows, it did not, Your Honor.

"QUESTION And no police responsibility, either?"

"MR. MACPHERSON That is correct, Your Honor. " *Id.*, at 41-42.

upon in *Warren Trading Post* is present. As a result, Pinetop may well have a right to be free from taxation as a matter of due process or equal protection.⁷ But I cannot agree that it has a right to be free from taxation because of its business relationship with the petitioner Tribe.

As the Court points out, the Federal Government has imposed a detailed scheme of regulation on the tribal logging business. Thus, among other things, the BIA approves and sometimes drafts contracts between the Tribe and non-Indian logging companies such as Pinetop and requires the Tribe and its contractors to follow BIA's dictates as to where to cut, haul, and mark timber, and as to which roads to construct and repair. *Ante*, at 148, n. 14. The Court reasons that, because the imposition of state taxes on non-Indian contractors is likely to increase the price of their services to the Tribe and thus decrease the profitability of the tribal enterprise, the taxes would substantially interfere with this scheme. Thus, the Court states that the taxes threaten the "overriding federal objective" of guaranteeing Indians all the profits the forest is capable of yielding, "undermine" the Federal Government's ability to set fees and rates with respect to non-Indian contractors, and "adversely affect the Tribe's ability to comply with the sustained-yield management policies imposed by federal law" *Ante*, at 149-150.

From a practical standpoint, the Court's prediction of massive interference with federal forest-management programs seems overdrawn, to say the least. The logging operations involved in this case produced a profit of \$1,508,713 for the Indian tribal enterprise in 1973. As noted above, the maximum annual taxes Pinetop would be required to pay would

⁷ The Due Process Clause may prohibit a State from imposing a tax on the use of completely private roads if the tax is designed to reimburse it for use of state-owned roads. Or it may be that once the State has decided to exempt private roads from its taxing system, it is also required, as a matter of equal protection, to exempt other types of roads that are identical to private roads in all relevant respects.

be \$5,000–\$6,000 or less than 1% of the total annual profits. Given the State's concession in this Court that the use of certain roads should not have been taxed as a matter of state law, the actual taxes Pinetop would be required to pay would probably be considerably less.⁸ It is difficult to believe that these relatively trivial taxes could impose an economic burden that would threaten to "obstruct federal policies."

Under these circumstances I find the Court's reliance on the indirect financial burden imposed on the Indian Tribe by state taxation of its contractors disturbing. As a general rule, a tax is not invalid simply because a nonexempt taxpayer may be expected to pass all or part of the cost of the tax through to a person who is exempt from tax. See *United States v Detroit*, 355 U. S. 466, 469, cf. *Washington v Confederated Tribes of Colville Indian Reservation*, 447 U. S. 134. In *Warren Trading Post* the Court found an exception to this rule where Congress had chosen to regulate the relationship between an Indian tribe and a non-Indian trader to such an extent that there was no room for the additional burden of state taxation. In this case, since the state tax is unlikely to have a serious adverse impact on the tribal business, I would not infer the same congressional intent to confer a tax immunity. Although this may be an appropriate way in which to subsidize Indian industry and encourage Indian self-government, I would require more explicit evidence of congressional intent than that relied on by the Court today.

I respectfully dissent.

⁸ The parties have not told us what portion of the taxes is attributable to the use of each of the various types of roads. Thus, we cannot determine how much tax Pinetop would be required to pay for its use of BIA roads.



8800 North Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

Via Email

February 17, 2026

Mr. Jacob Reyes
Appraiser II,
Clark County Assessor's Office
500 S. Grand Central Pkwy, 2nd Floor
Las Vegas, NV 89155

Re: Petition for Review for Eagle Shadow Mountain Solar – Case No. 00031

Dear Mr. Reyes:

This letter is submitted in support of the Petition for Review to the Clark County Board of Equalization submitted by 325MK 8ME, LLC ("**Petitioner**") in Case No. 031. This letter explains why the Eagle Shadow Mountain Solar Project (the "**Solar Facility**" or "**Facility**"), owned and operated by Petitioner but located entirely on land belonging to the Moapa Band of Paiute Indians (the "**Tribe**" or "**Moapa Band**"), is exempt from Nevada property tax.

I. EXECUTIVE SUMMARY

The Facility is located entirely on the Moapa River Indian Reservation (the "**Reservation**"), which consists of approximately 72,000 acres of arid land which are held in trust for the Tribe by the United States. Under the United States Constitution and federal statutes and regulations, lands owned by the United States and held in trust for an Indian tribe are exempt from state and local taxation.¹ Pursuant to Ninth Circuit precedent, and federal statutes and regulations, that exemption extends to permanent improvements upon such tribal lands, regardless of whether owned by an Indian tribe.² The Facility is a permanent improvement and, thus, it is not subject to property taxes imposed by Clark County (the "**County**"). Furthermore, regardless of the permanence of the Facility, federal law limits the authority of a state or county to impose taxes within tribal land; under that federal law, the County lacks authority to impose its property taxes on the Facility.

II. FACTUAL BACKGROUND

¹ See United States Constitution, Article VI(2); see also 25 U.S.C. § 5108; 25 C.F.R. § 162.017.

² *Confederated Tribes of Chehalis Reservation v. Thurston County Board of Equalization*, 724 F.3d 1153, 1157–158 (9th Cir. 2013).



8800 North Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

A. The Moapa Reservation, the Tribal Lease to Petitioner, and Confirmation the Facility Would Be Immune from State Property Tax.

The Moapa Reservation was created by Executive Order in 1873 and originally consisted of over 2,000,000 acres.³ While Congress reduced the size of the Reservation to 1,000 acres in 1875, Congress ultimately restored approximately 71,000 acres in 1980.⁴ The entirety of the Reservation—now about 72,000 acres—is owned by the United States and held in trust for the benefit of the Tribe.

Petitioner and the Tribe negotiated a long-term solar energy ground lease agreement ("**Tribal Lease**"), ultimately executed on May 1, 2020, by which Petitioner leased from the Tribe 2,300 acres within the Reservation to construct and operate a solar energy facility and ancillary improvements.⁵ Under the Tribal Lease, the Tribe has agreed to furnish certain services, including supply of groundwater to the Facility, and to cooperate in various ways with the construction and operation of the Facility. As required by federal law, the Tribal Lease was reviewed and approved by the U.S. Department of the Interior in accordance with federal statutes and the Department's extensive regulations for leasing of tribal lands.⁶ The Tribal Lease is for a 50-year term.

Concurrent with the Tribal Lease, the Tribe and Petitioner entered into a "Tribal Agreement" under which the Tribe agreed to collect certain "payments in lieu of taxes," or "PILOT" payments, from Petitioner.⁷

In the early stages of the Facility's development, the State of Nevada directly informed Petitioner that the Facility is immune from property tax, that "property taxes would be paid to the [T]ribe and not the state," and that Nevada "**does not have jurisdiction over the property taxes paid on [tribal] land.**"⁸ The Tribe and Petitioner relied on the State's position when they decided to invest substantial resources in time, effort and capital to develop the Facility on the Reservation.

³ Executive Order, Establishment of Moapa River Reservation, March 12, 1873.

⁴ Report to Accompany S. 1135, Expansion of Moapa Reservation, Nevada, September 17, 1980.

⁵ A copy of the Tribal Lease is attached hereto as **Exhibit A**.

⁶ Record of Decision, Final Environmental Impact Statement of the Eagle Shadow Mountain Solar Projects, U.S. Dept. of the Interior, Bur. of Indian Affairs, Western Region, dated February 2020. A copy of the Record of Decision is attached to this letter as **Exhibit B**.

⁷ A copy of the Tribal Agreement is attached hereto as **Exhibit C**.

⁸ A copy of this communication is attached to this letter as **Exhibit E** (emphasis added). The State's email was consistent with Nevada Department of Taxation's Guidance Letter 14-001—discussed further, *infra*—which provides: "Based on the rulings of the Federal courts and Federal regulation, real property such as buildings and improvements located on lands held in trust by the United States Government for an Indian tribe is not taxable property, even when owned by a person or entity other than the tribe."



8800 North Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

B. The Facility.

The Facility is located on the Moapa Reservation, approximately 30 miles northeast of Las Vegas, west of I-15 and east of U.S. Highway 93. Access to the Facility is available only via roads maintained by the Tribe.

The Facility is a 300 MW photovoltaic solar energy facility. The Facility was constructed pursuant to Structural Design Plans, which took over eight months to develop due to the unique geographic and geological characteristics of the Reservation.⁹ Work on the Facility started in August 2020, with the bulk of significant grading and sitework completed by March 2021. The solar array construction commenced in December 2020 and concluded April 2023, while construction of the high voltage components of the project was completed in May 2021.

The Facility consists of an electrical substation, module-tracker structures, solar panels, inverters, transmission infrastructure, and water supply systems, among other improvements, all of which are permanently affixed to the land on which they are situated, and all operate together as a unit.¹⁰ Each module consists of 72 solar panels. The modules are physically connected to 200-foot long “trackers” that parallel the ground and are secured in the ground by “earth trusses” or “driven piles.” The modules’ solar panels collect the sun’s energy, and that energy is transmitted through a series of steps, including an inverter, to the electrical substation. At the substation, solar energy is conveyed to a transformer for subsequent transmission. The substation is built with thick cement foundations and steel framing. It is impossible to remove (or move) the Facility without destroying it.

The Facility is owned by Petitioner,¹¹ and it became commercially operable in May 2023. Petitioner has contracted to sell 100% of the Facility’s electricity output to Nevada Energy (“**NV Energy**”), under a 25-year power purchase agreement awarded in 2018.

C. The County’s 2025-26 Tax Bill

On 10/29/2025, the County issued a bill for tax year 2025-26 in which it classified the Facility as personal property and assessed tax against the Facility in the amount of \$2,474,700.58. Petitioner timely paid the assessed amount and submitted an appeal to the County Board of Equalization (the “**Board**”). The Board assigned Case No. 00031 to Petitioner’s case, and notified Petitioner that a hearing was set for February 25, 2026.

⁹ Affidavit of Justin Johnson, attached hereto as **Exhibit D**, at par. 62 (“**Affidavit**”).

¹⁰ For more detail on how the Facility is permanently attached to the Reservation land, see detailed discussion, *infra*, section III.B.ii.

¹¹ Tribal Lease at 7.04.



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III. ANALYSIS

A. Federal Law Preempts Taxation of Real Property and Improvements in Indian Country.

Under longstanding Supreme Court precedent, rooted in fundamental notions of tribal sovereignty and the Supremacy Clause of the U.S. Constitution, states have no power to impose taxes on tribes or their lands absent express authorization by Congress.¹² This fundamental principle applies to tribal lands themselves and to all permanent improvements constructed on those lands, irrespective of who owns the improvements, because permanent improvements are “essentially part of the lands” themselves.¹³ *Rickert* and *Mescalero* are part of an unbroken chain of Supreme Court cases holding that state and local governments may not regulate and tax Indian lands (including permanent improvements) unless expressly authorized by Congress.¹⁴ Said another way, state taxation of tribal lands is preempted, *per se*, because states do not have, and have never had, the authority to impose taxes on the United States or the Indian tribes “for whose benefit the United States holds reservation lands in trust.”¹⁵ These principles alone are sufficient to dispose of state attempts to tax tribal lands and permanent improvements thereon.

Separate and apart from the *per se* preemption doctrine for tribal lands and improvements thereon, the U.S. Supreme Court has developed a balancing test for situations where state taxation in Indian country may be impliedly preempted by federal law.¹⁶ This is known as the *Bracker* balancing test, and it applies not just to taxation of real property but to taxation or regulation of any kind imposed by a state within tribal lands. This balancing test “is not dependent on mechanical or absolute conceptions of state or tribal sovereignty, but has called for a particularized inquiry into the nature of the state, federal, and tribal interests at stake, an inquiry designed to determine whether, in the specific context, the exercise of state authority would violate federal law.”¹⁷

¹² *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 158 (1973) (“*Mescalero*”).

¹³ *United States v. Rickert*, 188 U.S. 432, 442 (1903) (“*Rickert*”); *Confederated Tribes of the Chehalis Reservation v. Thurston County Bd. of Equalization*, 724 F.3d 1153 (9th Cir. 2013) (“*Chehalis*”).

¹⁴ See, e.g., *Cass County v. Leech Band of Chippewa Indians*, 524 U.S. 103, 110 (1998) (“State and local governments may not tax Indian reservation land ‘absent cession of jurisdiction or other federal statutes permitting it.’” (quoting *County of Yakima v. Confederated Tribes and Bands of Yakima Nation*, 502 U.S. 251, 258 (1992))); *McClanahan v. Arizona State Tax Comm’n*, 411 U.S. 164, 170-71 (1973) (“State laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply.”).

¹⁵ *Cotton Petroleum Corporation v. New Mexico*, 430 US 163, 175 (1989). See also *McCulloch v. Maryland*, 4 Wheat. 316 (1819), *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759 (1985).

¹⁶ *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 145 (1980) (“*Bracker*”).

¹⁷ *Bracker*, 448 U.S. at 145.



8800 North Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

B. The County's Taxation of the Facility is Per Se Pre-Empted by Controlling Federal Law.

i. Permanent Improvements to Indian Land Are Exempt from State and Local Tax.

Congress has always intended, and federal courts have always understood, that "as a general rule Indian country falls under the primary civil, criminal, and regulatory jurisdiction of the federal government and the resident Tribe rather than the states."¹⁸ Consistent with this understanding, in 1934, Congress, seeking to establish a mechanism for tribes (with the help of the federal government) to regain control over lands of which they had previously been divested, enacted the Indian Reorganization Act of 1934. The Act, though amended over time, remains on the books today. In its present form, Section 5 of the Act (originally codified at 25 U.S.C. § 465; now 25 U.S.C. § 5108) provides:

"The Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians. . . .

Title to any lands or rights acquired pursuant to this Act or the Act of July 28, 1955 (69 Stat. 392), as amended (25 U.S.C. 608 et seq.) shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, **and such lands or rights shall be exempt from State and local taxation.**"¹⁹

In interpreting § 5108, the Supreme Court has explained that "State and local governments may not tax Indian reservation land absent cession of jurisdiction or other federal statutes permitting it. [The Supreme Court has] consistently declined to find that Congress has authorized such taxation unless it has made its intention to do so unmistakably clear."²⁰ With respect to real property taxes, the prohibition against state taxation has long been understood to apply both to tribal land itself, and to any permanent improvements built upon or affixed to such land.²¹

¹⁸ *Yankton Sioux v. Podhrasky*, 606 F.3d 994, 1006 (8th Cir. 2010).

¹⁹ 25 U.S.C. § 5108 (emphasis added). Note that many cases mentioned in this letter refer both to "Section 5" and to "§ 465" when discussing this statute. These are all the same statute, and this letter refers to it as § 5108, in accordance with its current location in the U.S. Code.

²⁰ *Cass County v. Leech Band of Chippewa Indians*, 524 U.S. 103, 110 (1998), citing *Mescalero*, 411 U.S. at 148 and *County of Yakima v. Confederated Tribes and Bands of Yakima Nation*, 502 U.S. 251 (1992) (internal citations and quotation marks omitted).

²¹ *Mescalero*, 411 U.S. at 158; see also *Rickert*, 188 U.S. at 442 ("Every reason that can be urged to show that the land was not subject to local taxation applies to the assessment and taxation of the permanent improvements.")



8800 North Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

In *Chehalis*—which is binding precedent in the Ninth Circuit, whose jurisdiction includes Nevada and the Reservation—the court held the prohibition against state or county taxation does not depend on the ownership of the permanent improvements. *Chehalis* concerned a waterpark resort built upon land held in trust for the tribe by the U.S. The resort was owned by a joint venture (a separate LLC) between the tribe itself and a non-tribal hospitality developer, Great Wolf Resorts. The tribe owned 51% of the venture, and the developer owned 49%. Thurston County sought to impose property tax on the resort, arguing that—although the land underlying the resort was exempt from state tax under § 5108—the resort itself was subject to tax because it was owned by a non-tribal third party. The Ninth Circuit rejected that argument, holding the county’s position was foreclosed by the Supreme Court’s holding in *Mescalero*, and reaffirmed that permanent improvements built on land owned in trust by the U.S. for an Indian tribe are not subject to state taxation.²² Specifically, the Ninth Circuit held that the Supreme Court’s decision in *Mescalero* “sets forth the simple rule that [§ 5108] preempts state and local taxes on permanent improvements built on non-reservation land owned by the United States and held in trust for an Indian tribe. **This is true without regard to the ownership of the improvements.**”²³

Chehalis is underpinned by the U.S. Supreme Court’s decision in *Mescalero*, where the Supreme Court invalidated a state use tax on permanent improvements located on tribal land, reasoning that this form of tax was equivalent to a tax on land, and therefore barred.²⁴ The Supreme Court’s conclusion was based on the improvements being “permanently attached to the realty” and that “use of permanent improvements upon land is so intimately connected with use of the land itself that an explicit provision relieving the latter of state tax burdens must be construed to encompass an exemption for the former.”²⁵ The Supreme Court concluded that because “these permanent improvements on the Tribe’s tax-exempt land would certainly be immune from the State’s ad valorem property tax,” they must also be exempt from the state’s use tax.²⁶

The State of Nevada has recognized that the *Chehalis* doctrine applies to facilities within Nevada, including in Clark County. Nevada Department of Taxation’s Guidance Letter 14-001, issued in the immediate aftermath of *Chehalis*, states: “Based on the rulings of the Federal courts and Federal regulation, real property such as buildings and improvements located on lands held in trust by the United States Government for an Indian tribe **is not taxable property, even when owned by a person or entity other**

²² *Chehalis*, 724 F.3d at ¶159.

²³ *Id.* (emphasis added).

²⁴ *Mescalero*, 411 U.S. at 158.

²⁵ *Id.*

²⁶ *Id.*



8800 North Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

than the tribe.”²⁷ In applying the principles from Guidance Letter 14-001, the Nevada Department of Taxation and assessors must “determine whether the real property is non-taxable,” and to do so “it must be established that the property is located on lands owned by the United States held in trust for an Indian tribe. Title records must be checked to confirm said ownership of the land. In addition, the Taxpayer must provide a copy of the lease showing that the subject property is on property owned by the United States and held in trust for the Indian tribe.”²⁸

ii. The Facility is a Permanent Improvement to Real Property.

The Facility, including module-tracker structures and substation, is permanently affixed to the Reservation land.²⁹

1. *Module-Tracker Structures.*

Every module at the Facility is physically connected to a tracker. There are 10,618 module-tracker structures at the Facility and each one is physically affixed to the ground by “earth trusses” or “driven piles.”³⁰

Earth trusses are manufactured solar tracker foundations that include five parts and are assembled in an “A” frame configuration. These parts consist of two earth screws that anchor the truss into the ground. Earth screws are about 5 to 7 feet long, each weighing approximately 60 pounds, and with an outside diameter of three inches. The earth screws have continuous flights (or threads) and are hot-dipped galvanized. The earth screws are installed into the ground using a proprietary rig that simultaneously drills a hole and advances the earth screws into bedrock at appropriate depth and angle to secure the structure. Two supporting pipe legs and an earth truss cap are permanently affixed to the earth screw in the field with a custom hydraulic crimper. The earth truss is stabilized and immovable as the screws are embedded nearly 4 feet into the bedrock. The tracker is then bolted to the completed A-Frame earth truss using industrial grade bolts. At the Facility, 83,304 earth trusses were used to permanently connect module-tracker structures to the ground.

Once the earth screws have been secured into bedrock, it is impossible to “unscrew” or remove them without substantially damaging them as well as the structures attached.

²⁷ Emphasis added. Nevada Department of Taxation's Guidance Letter 14-001 is attached to this letter as **Exhibit F**.

²⁸ See **Ex. F [V]** at 2. [CONFIRM THIS IS CORRECT EXHIBIT.]

²⁹ The Facility's Structural Design Plans detail how the project is physically connected to the land. The Structural Design Plans are attached hereto as **Exhibit G**.

³⁰ Photos of the Facility, trackers, module-tracker structures, earth trusses and driven piles are attached hereto as **Exhibit H**. 60% of the Facility module-tracker structures are permanently connected to the ground via earth trusses while 40% use driven pile connections.



8800 North Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

Similar to the removal of a building or a bridge, removal must be performed pursuant to permit-specific decommissioning specifications.

Driven piles are between 8.5 feet and 15.5 feet long and weigh up to 186 pounds. As with earth trusses, to install driven piles a slightly undersized pilot hole is cut deep into the bedrock using a down-hole drill. Then, a mechanical pile driver is used to hammer the driven pile into the pilot hole until it reaches a stable layer of bedrock. This typically requires hammering the driven piles anywhere from 6 to 8 feet into the ground. At that point, the bedrock securely locks the driven pile into a vertically-fixed position, leaving about three to five feet of exposed driven pile above ground. The exposed portion of the driven pile is then bolted to the tracker using the same large-format bolts discussed above. At the Facility, 38,061 driven piles were used to permanently connect module-tracker structures to the ground.

2. Substation.

The Facility substation³¹ is connected to the Reservation land through cement foundations. The substation infrastructure includes two power transformers, each weighing in excess of 50,000 pounds; a control enclosure structure which houses all of the monitoring and controls devices; various high voltage and medium voltage breakers (among other electrical protection devices) and/or switching; a capacitor bank; a backup generator; and a series of steel structures which support the overhead medium- and high-voltage cables. All of these structures and equipment are affixed to individual foundations by anchor bolts. The anchor bolts were either set into the concrete before hardening or drilled and epoxied into already-hardened concrete.

Removal of the substation would destroy the substation itself. After removing ancillary equipment connected to the cement foundations, the steel structures bolted to the cement foundations would still remain. There is no way to remove the cement foundations from the ground without industrial excavation processes that substantially damage these foundations and the land.

iii. Federal Leasing Regulations and Nevada Guidance Confirm that Solar Energy Facilities Are Permanent Improvements.

Because the Facility is located on leased lands held in trust for the Tribe by the United States, an extensive set of federal regulations apply to the Tribal Lease. These regulations include 25 C.F.R. § 162.017(a), which states:

"Subject only to applicable Federal law, permanent improvements on the leased land, without regard to ownership of those improvements, are

³¹ Photos of the Facility's substation are attached hereto as Exhibit I.



8800 North Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State. Improvements may be subject to taxation by the Indian tribe with jurisdiction.” (Emphasis added.)

The regulations go on to say that while leases approved thereunder are subject to both federal and tribal laws, they are not subject to state law except where a tribe or Congress has made state law applicable, which is not the case here.³²

The federal leasing regulations provide that “permanent improvements” mean “buildings, other structures, and associated infrastructure attached to the leased premises.”³³ The Facility consists of solar panels, inverters, transmission infrastructure, water supply systems, and an electrical substation, among other improvements. As explained above, the principal components of the Facility, the module-tracker structures and the substation, are physically affixed to the land in a permanent fashion.

The federal leasing regulations also include specific language contemplating that a non-Indian lessee under a solar energy lease would own any permanent improvements installed during the lease term, and affirming that any “facilities and associated infrastructure” installed by the lessee for the generation and delivery of electricity shall be “considered permanent improvements,” and thereby excluded from state and local taxation under § 162.017.³⁴

Furthermore, the Nevada Department of Taxation has determined (on 43 separate occasions since 2011, and as recently as April of 2025) that all components of a solar project are real property when operated as a unit.³⁵ The State of Nevada’s position, through the Nevada Department of Taxation, is unequivocal and consistent—solar energy facilities are real property, not personal property.³⁶

iv. State Law is “Irrelevant” in Determining the Permanence of Improvements for Purposes of Federal Preemption.

³² 25 CFR § 162.014.

³³ 25 CFR § 162.003.

³⁴ 25 CFR § 162.543-544 (emphasis added).

³⁵ The 43 RETA Fiscal Impact Notes referred to herein are attached hereto as Exhibit J.

³⁶ For example, a comparable solar energy facility called Battle Mountain Solar (“BMS”), located in Humboldt County, Nevada, appealed the Humboldt County Assessor’s property tax valuation to the County Board of Equalization. One of the issues in the case was whether the BMS project should be classified as real or personal property. The County Board of Equalization agreed with the Humboldt County Assessor’s position that it should be classified as real property. In August of 2022, the State Board of Equalization issued an Order in which it acknowledged the County Board of Equalization was correct to classify it as real property. The BMS-Humboldt County Petition for Judicial Review and attached Nevada State Board of Equalization Order are attached hereto as Exhibit N; see Ex. N at 8.



8800 North Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

Analyzing whether any particular improvements should be considered “permanent” for purposes of *per se* preemption is a question of federal law and does not depend on any Nevada state law. The Ninth Circuit Court of Appeals, whose jurisdiction includes Nevada (and the Reservation), addressed this in *Chehalis*. In that case, Thurston County raised the argument that because the subject waterpark would be classified as personal property under Washington state law, it did not fall within the federal tax exemption that applies to tribal lands and permanent improvements thereto. The Ninth Circuit explicitly rejected the county’s position, holding that “permanent improvements on land owned by the United States and held in trust for Indians may not be taxed as a matter of federal law. . . . Therefore, it is irrelevant whether permanent improvements constitute personal property under Washington law.”³⁷

C. Regardless of the Permanence of the Improvements, the County’s Tax is Pre-Empted Under the U.S. Supreme Court’s Bracker Test.

As explained above, *Chehalis* and other binding federal law preempt the County from imposing its property tax on the Facility, *per se*. Because the Facility consists of permanent improvements to tribal trust land, this is a bright-line rule. Furthermore, even if the Facility were deemed to be personal property rather than a permanent improvement, County taxation would still be preempted as a matter of federal law under the *Bracker* test.

Bracker established a balancing test to determine whether it is lawful to tax non-tribal parties engaging in business on tribal land.³⁸ Under *Bracker*, the interests of the applicable tribe and the federal government must be carefully evaluated before being weighed against the interest of the state or county in imposing its tax or regulation.³⁹ In this case, the interests of the Moapa Band and the federal government, and the burden the state tax would impose on each of them and their sovereign powers, are significant, and outweigh the County’s “generalized interest in raising revenue.”⁴⁰

i. Federal Interests.

Where, as here, the federal government has established extensive regulations applicable to the activity being taxed, courts find that imposition of state taxes threatens the ability of the federal government to enforce those regulations and fulfill its obligations toward

³⁷ *Chehalis*, 724 F.3d at 1157-58, citing *Mescalero*, 411 U.S. 145 (emphasis added).

³⁸ *Bracker*, 448 U.S. at 144, 145.

³⁹ *Hoopa Valley Tribe v. Nevins* (“*Hoopa Valley*”), 881 F.2d 657, 661 (9th Cir. 1989).

⁴⁰ *Bracker*, 448 U.S. at 150.



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tribes.⁴¹ As explained above, federal law supports the leasing of tribal land “to allow Indian landowners to use their land profitably for economic development, ultimately contributing to tribal well-being and self-government.”⁴² Further, an “[a]ssessment of State and local taxes would obstruct Federal policies supporting tribal economic development, self-determination, and strong tribal governments.”⁴³

Besides the general regulations that apply to leasing of Indian lands, there are specific regulations that govern the terms on which tribes may enter into leases for solar energy projects, such as the Tribal Lease for the Facility here.⁴⁴ These regulations are extensive, and include provisions (among many others) to ensure the term, compensation, subleasing, mortgaging, and insurance requirements contained in any solar energy lease are fair to the tribe.⁴⁵ And, as stated above, the regulations confirm that any “facilities and associated infrastructure” installed by a non-Indian solar energy lessee of tribal land shall be “considered permanent improvements” and thereby subject to exclusion from state and local taxation.⁴⁶ Imposition of the County’s tax on the Facility would directly undercut these federal objectives.

ii. Moapa Band’s Interests.

The Tribe’s interests here are similarly strong. In *New Mexico v. Mescalero Apache Tribe*⁴⁷ (“*New Mexico*”), the U.S. Supreme Court explained that “when a tribe undertakes an enterprise under the authority of federal law, an assertion of State authority must be viewed against any interference with the successful accomplishment of the federal purpose.”⁴⁸ Tribal interests are undermined by the imposition of state taxes, even where the tax is directly imposed upon non-Indians doing business with the tribe. In *Bracker* itself, a state tax was levied against the business operations of a non-Indian logging company operating on tribal land, and the Supreme Court nonetheless held that the White Mountain Apache Tribe would face a meaningful economic and regulatory burden if the State of Arizona were allowed to impose its tax on the non-Indian logging company. That’s

⁴¹ *Bracker*, 488 U.S. at 149 (“The imposition of the taxes at issue would undermine that policy in a context in which the Federal Government has undertaken to regulate the most minute details of timber production and expressed a firm desire that the Tribe should retain the benefits derived from the harvesting and sale of reservation timber.”); *Ramah*, 458 U.S. at 841–42 (“The direction and supervision provided by the Federal Government for the construction of Indian schools leave no room for the additional burden sought to be imposed by the State through its taxation of the gross receipts paid to Lembke by the Board.”).

⁴² See 77 Fed. Reg. 72440-01 (Dec. 5, 2012), 2012 WL 6019492.

⁴³ See *id.*

⁴⁴ 25 CFR § 162.538 et seq.

⁴⁵ *Id.*

⁴⁶ 25 CFR § 162.543-544.

⁴⁷ 462 U.S. 324 (1983).

⁴⁸ *New Mexico*, 462 U.S. at 336.



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because (among other things) dual taxation puts tribes at a disadvantage in attempting to attract investment from outside businesses, chilling tribal economic development and constraining tribes' sovereign ability to use their own taxing power as a policy tool. "The very possibility of an additional State or local tax has a chilling effect on potential lessees as well as the tribe that as a result might refrain from exercising its own sovereign right to impose a tribal tax to support its infrastructure needs."⁴⁹

In addition, the Moapa Band collects PILOT payments from Petitioner on the Facility pursuant to Section 4 of the Tribal Agreement. That section sets forth two important principles. First, it provides that PILOT payments "shall not exceed \$100 per acre of the aggregate Premises actually leased by Project Company during the year immediately preceding the Pilot Date, which \$100 per acre figure shall increase by three percent (3%) annually."⁵⁰ Second, it provides a cap on PILOT payments by stating that "in no event shall any single annual Pilot Payment due and payable by Project Company hereunder be in an amount greater than eighty percent (80%) of the **real property taxes** that would be imposed by federal, state or local authorities **if the Project were located on land outside the Reservation** in the State of Nevada lying within Clark County Tax District No. 100 (Unincorporated County)."⁵¹ Here, the Facility is located on approximately 2,300 acres of leased real property. Accordingly, the maximum PILOT payment is approximately \$230,000 in year one, with annual 3% increases.

However, Clark County takes the position that almost no part of the Facility is real property and the County characterizes its tax as a personal property assessment. If the County's position is upheld, then the "real property taxes that would be imposed" by Clark County if the Facility was not located on tribal lands would be virtually zero. Accordingly, if Clark County prevails on its position, the cap on the Tribe's PILOT tax under the Tribal Agreement would also be virtually zero, and the Tribe would lose nearly all value of the PILOT fees over the lifetime of the Lease. Over the 50-year Lease term, using 3% increases to the annual PILOT payments, the total revenue generated for the Moapa Band through PILOT payments is nearly \$26,000,000. **The Moapa Band would lose almost all of that value if Clark County's position is upheld.**

It is critical for the County Board to understand what's at stake for the Tribe. Despite the fact that solar improvements on Reservation land have been consistently classified (until now) as real property improvements—and exempt from state taxation—Clark County has changed course, seeking to reclassify these improvements to generate tax revenue. If the County's position is upheld, it would deny the Tribe millions of dollars in PILOT payments

⁴⁹ 77 F.R. 72448.

⁵⁰ Tribal Agreement at Section 4.

⁵¹ *Id.* (emphasis added).



8800 North Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

on which the Tribe relies to provide much-needed public services on the Reservation and for tribal members.

This threatened loss of Tribal revenue would harm tribal economic development, self-determination and tribal government—all of which are express priorities of federal law, as well as federal and tribal interests that weigh heavily in the *Bracker* balancing test.⁵²

iii. County's Interest.

In contrast to the weighty interests of the Tribal and federal government in keeping the Facility free from state taxation, the County's interest in taxing the Facility is weak. Under *Bracker*, the state's "generalized interest in raising revenue" is insufficient to justify the burden that the state's taxation would impose on the tribe's interest in self-government or on the federal regulatory scheme.⁵³ *Bracker* balancing requires that a state's revenue collection on tribal land be related to governmental services that the state provides to the taxpayers in question—i.e., that the state hold "duties or responsibilities" with respect to the matter or property being regulated before imposing its own taxes.⁵⁴ The Ninth Circuit has further clarified, numerous times, that in cases where significant federal and tribal interests exist, a state may impose its taxes **"only if its taxes are 'narrowly tailored' to funding the services it provides in connection with the activities taking place on tribal land."**⁵⁵ Here, the County provides minimal services to the Facility and to the Moapa Reservation generally.⁵⁶ On the contrary, the Tribe itself maintains Reservation roads, including around the Facility; the County's maintenance deteriorates as its road gets closer to the Reservation, and visibly and abruptly stops at the border of the Reservation, as shown in photographs attached as **Exhibit K** to this letter.⁵⁷

Because the County's interest in imposing tax on the Facility is a generalized interest in raising revenue, and because its attempts to do so would have significant negative effects

⁵² *Bracker*, 488 U.S. at 149.

⁵³ *Bracker*, 488 U.S. at 150.

⁵⁴ *Ramah Navajo Sch. Bd. v. Bureau of Rev.* ("Ramah"), 458 U.S. 832, 843-845 (1982).

⁵⁵ *Gila River Indian Cmty. v. Waddell*, 967 F.2d 1404, 1412 (9th Cir. 1992) (emphasis added); see also *Hoopa Valley*, 881 F.2d at 661 ("To be valid, the California tax must bear some relationship to the activity being taxed."); *Crow Tribe of Indians v. State of Mont.*, 819 F.2d 895, 901 (9th Cir. 1987) aff'd sub nom. *Montana v. Crow Tribe of Indians*, 484 U.S. 997, 108 S. Ct. 685, 98 L. Ed. 2d 638 (1988) ("Even if Montana's interests are sufficiently legitimate, there is substantial evidence that the coal taxes are not narrowly tailored to support them.").

⁵⁶ Affidavit at par. [].

⁵⁷ To the extent the County Assessor might argue that maintaining county roads allows access to the Facility and therefore justifies the County's tax on the Facility, the Supreme Court has found that argument unpersuasive. See *Ramah*, 458 U.S. at 843-44 ("The only arguably specific interest advanced by the State is that it provides services to [taxpayer] for its activities off the reservation," which is not a legitimate justification).



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on recognized Tribal and federal interests, the tax is preempted under the *Bracker* balancing test.

D. Conclusion

Because it is permanently attached to the Moapa Reservation, the Facility is exempt from the County's tax under the Indian Reorganization Act, controlling Ninth Circuit precedent, and federal regulations. The exemption does not depend on the classification of the facility as personal or real property under Nevada state law, nor on whether the Facility is owned by the Tribe itself or a non-tribal party. Indeed, the State of Nevada explicitly confirmed that—based on controlling federal law—the Facility is exempt from Nevada's property tax. The Tribe and Petitioner relied on the State's position when they committed resources to develop the Facility on the Reservation, and when they agreed that Petitioner would make PILOT payments to the Tribe in lieu of state property taxes.

Moreover, even if the Facility were deemed personal property, any state tax would be barred under the U.S. Supreme Court's *Bracker* balancing test. *Bracker* and its progeny limit a state or county's authority to impose a tax where, as here, the County provides negligible services to the on-reservation Facility. As discussed above, the Tribal and federal interests in development of the Facility and being free from County taxation outweigh the County's generalized interest in raising revenue.

Petitioner therefore respectfully requests that the tax year 2025-26 assessment on the Facility be reversed by the County Board and the property tax previously paid by Petitioner be refunded.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Huswick", written over a horizontal line.

Eric Huswick
Authorized Signatory

From: [Laura Wickham](#)
To: [Joshua J. Hicks](#)
Cc: [Lezlie J. Helget](#)
Subject: RE: Eagle Shadow Mountain Abatement Application
Date: Tuesday, July 21, 2020 4:31:35 PM
Attachments: [image001.png](#)
[image002.png](#)

Good Afternoon Josh,

Our attorney has reviewed this application as well as our team and we are having difficulty reconciling some things to verify that the project is eligible.

- Would you please specify how much money will be invested as capital investment on non-Tribal Land? We need to ensure the capital investment on non-tribal land will meet the \$10 million mark found in NRS 701A.365 (d)(2). This statute requires capital investment occur in the State of Nevada. Since Tribal Lands are sovereign, the portion of investment occurring on Tribal land is separate.
- According to the information we have reviewed provided in the application, it does not seem any of the project will really be on non-Tribal Land. Therefore, the company would not be able to benefit from either property or sales and use taxes since sales and use tax would not apply to equipment purchased and delivered to Tribal Land.

It would be helpful to have additional information from your team on this matter. If there is a portion of the facility that will be built outside of tribal land, please send us percentage of the project and other helpful specs to assist us in making our determination. Department of Taxation cannot prepare fiscal notes for a project that will be located on Tribal Land since Clark County or the State will not be assessing the project.

In addition, if your team can provide authority on the interpretation for the capital investment requirement in 'this State' we would be happy to review it with our legal team. Please feel free to call or email me with questions or additional information.

Best Regards,

Laura Wickham, LEED Green Associate

Energy Program Manager

Governor's Office of Energy

600 E William Street, Ste. 200

Carson City, NV 89701

C 775.434.4046 | lwickham@energy.nv.gov | <http://energy.nv.gov>



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From: Laura Wickham

Sent: Wednesday, July 08, 2020 12:07 PM

To: Joshua Hicks

Cc: Lezlie J. Helget

Subject: RE: Eagle Shadow Mountain Abatement Application

Good Afternoon Josh,

In reviewing the Eagle Shadow Mountain application we need some clarification. Please provide the following documents/responses at your earliest convenience:

Full unredacted application (Excel) – the Department of Taxation requires this

- Please provide the Contractors/Sub-Contractors list at your earliest convenience (as soon as it is completed) – Taxation will need this in order to process
- Please provide calculation, method, formula etc for total numbers provided on the Construction Employee Schedule and 2nd Quarter Construction Employee Schedule – our numbers do not match those provided in the application
- Please provide a copy of the PPA with NVE demonstrating the number of years this PPA will be in effect
- What percentage of the project is on non-tribal land?
- Matters to be deemed Confidential – Please note the following items cannot be kept confidential as they are needed in order to demonstrate eligibility of the facility:
 - Construction Period – the number of months is required to demonstrate the total amount of payroll benefits
 - Schedule 1 – Estimated total acquisition cost are necessary in order to ensure compliance with the capital investment requirement
 - Schedule 6 – All information is public relating to this schedule as it is utilized both to prepare the fiscal notes and to establish a greater benefit to state over its loss
 - Schedule 7 – Same as Schedule 6

Thank you for your assistance in this matter.

Best Regards,

Laura Wickham, LEED Green Associate

Energy Program Manager

Governor's Office of Energy

600 E William Street, Ste. 200

Carson City, NV 89701

C 775.434.4046 | lwickham@energy.nv.gov | <http://energy.nv.gov>



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From: Joshua Hicks <jhicks@mcdonaldcarano.com>

Sent: Tuesday, June 16, 2020 5:21 PM

To: Laura Wickham <lwickham@energy.nv.gov>

Subject: Eagle Shadow Mountain Abatement Application

Laura,

Please find attached redacted and unredacted applications for Nevada's renewable energy tax abatement program. A check for the filing fee will follow via fed ex. The applications are e-signed, please let me know and I will make arrangements. The contractors and subcontractors tab is blank for now as contracts are being finalized. That information will be updated when contractors are selected.

Thank you,

Josh

Joshua J. Hicks | Partner

McDONALD CARANO

100 West Liberty Street | Tenth Floor

Reno, NV 89501

P: 775.788.2000

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STATE OF NEVADA
DEPARTMENT OF TAXATION

Web Site: <http://tax.state.nv.us>

1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937
Phone: (775) 684-2000 Fax: (775) 684-2020

RENO OFFICE
4600 Kietzke Lane
Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 687-9999
Fax: (775) 688-1303

BRIAN SANDOVAL
Governor
ROBERT R. BARENGO
Chair, Nevada Tax Commission
CHRISTOPHER G. NIELSEN
Executive Director

LAS VEGAS OFFICE
Grant Sawyer Office Building, Suite 1300
555 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

HENDERSON OFFICE
2550 Paseo Verde Parkway, Suite 180
Henderson, Nevada 89074
Phone: (702) 486-2300
Fax: (702) 486-3377

Guidance Letter 14-001

Date: September 17, 2014

To: Centrally-assessed Section, Division of Assessment Standards; County Assessors

From: Terry E. Rubald, Deputy Executive Director, Department of Taxation 

CC: Christopher G. Nielsen, Executive Director, Department of Taxation

Subject: Taxability of real property located on tribal lands held in trust by the U.S. Government

SUMMARY:

This Guidance Letter is intended to clarify that real property located on lands held in trust by the U.S. Government on behalf of Indian tribes, is not taxable for purposes of property tax. This includes property owned by third parties unrelated to an Indian tribe. In the past, real and personal property owned by third parties, but located on trust lands, had been considered subject to property taxation in Nevada pursuant to NRS 361.045. Due to recent decisions by Federal courts, however, any permanent improvements owned by any person or company and located on trust lands, are not taxable property by the State of Nevada and its subdivisions. Personal property owned by unrelated third parties and located on trust lands, however, may continue to be considered taxable property by the State and its subdivisions. Possessory interests in property of any Indian tribe, band or community held in trust by the United States, continue to be exempt pursuant to NRS 361.157(2)(e).

AUTHORITY:

NRS 360.215(6): The Department shall continually supervise assessment procedures which are carried on in the several counties of the State and advise county assessors in the application of such procedures.

NRS 360.215(7) The Department shall carry on a continuing program to maintain and study the assessment of public utilities and all other property assessed by the Department to the end that the assessment is equalized with the property assessable by county assessors.

DISCUSSION:

NRS 361.045 provides that, except as otherwise provided by law, all property of every kind and nature whatever within this state shall be subject to taxation. Recently however, the 9th Circuit, U.S. Court of Appeals, ruled in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization et al* (July 30, 2013) that state and local governments lack the power to tax permanent improvements built on non-reservation land owned by the United States and held in trust for an Indian

tribe pursuant to 25 U.S.C. §465.¹ 25 U.S.C. §465 authorizes the Secretary of the Interior to acquire "any interest in lands, water rights, or surface rights to lands, within or without existing reservations," and to hold title to such lands and rights "in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired." The statute also provides that "such lands or rights shall be exempt from State and local taxation." The Court held that the exemption of trust lands from state and local taxation under §465 extends to permanent improvements on such lands. The Court concluded that the fact that the improvements were owned by a limited liability company, rather than by the tribe itself, was irrelevant.

The Bureau of Indian Affairs has also adopted 25 C.F.R. §162.017(a) which clarifies and confirms 25 U.S.C. §465:

Subject only to applicable Federal law, permanent improvements on the leased land, *without regard to ownership of those improvements*, are not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State. Improvements may be subject to taxation by the Indian tribe with jurisdiction.

Based on the rulings of the Federal courts and Federal regulation, real property such as buildings and improvements located on lands held in trust by the United States Government for an Indian tribe is not taxable property, even when owned by a person or entity other than the tribe. Such property owned by third parties is not exempt per se, because exemption implies that a property is subject to tax which later qualifies for exemption. It is simply not subject to taxation. However, calling such property "non-taxable" as opposed to "exempt" may be a distinction without much of a difference.

There is not a specific exemption in state law for property owned by third parties but located on trust lands. For example, NRS 361.050 specifically exempts all lands and other property *owned by the United States* "not taxable because of the Constitution or laws of the United States." NRS 361.157(2)(e) exempts otherwise taxable possessory interests in the property of any Indian or of any Indian tribe, band or community which is held in trust by the United States or subject to a restriction against alienation by the United States. Neither of these exemptions cover the property at issue.

APPLICATION:

1.) In order for the Department or assessors to determine whether the real property is non-taxable, it must be established that the property is located on lands owned by the United States held in trust for an Indian tribe. Title records must be checked to confirm said ownership of the land. In addition, the Taxpayer must provide a copy of the lease showing that the subject property is on property owned by the United States and held in trust for the Indian tribe.

2.) For centrally-assessed properties which use unitary valuation methods, the Taxpayer must provide sufficient information for the Department to determine what portion of the unitary assessment represents non-taxable property. The information must include a metes and bounds description of the location of the non-taxable property and a map in sufficient detail to show location in each section, township and range in which the property is located. The information must also include a list of the real property improvements located on trust lands, the date the improvement or structure was built or placed on tribal trust lands, and the portion of original book cost and current book cost less depreciation which represents non-taxable property located on trust lands.

3.) For centrally-assessed properties, the wire-miles or pipeline miles associated with non-taxable property must be separately indicated on wire-mile reports.

¹ See also *United States v. Rickert*, 188 U.S. 432 (1903); and *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973).

4.) For purposes of tracking property for various reports, including the Statistical Analysis of the Roll and the AB 466 Tax Expenditure Report, assessors and the Department should categorize non-taxable property owned by third parties and located on Indian trust lands as "non-taxable" property. If the software used by the assessor is not currently capable of identifying property as "non-taxable," classification as "exempt" will be acceptable. For purposes of AB 466, the legal reference to use for classifying the property will be 25 CFR §162.017(a).

If you have any questions about this guidance letter, please call the Local Government Finance Section of the Division of Local Government Services, Department of Taxation at (775) 684-2100.

WEBSITE LOCATIONS:

Nevada Revised Statutes (NRS): <http://www.leg.state.nv.us/NRS/>
Nevada Administrative Code: <http://www.leg.state.nv.us/NAC/CHAPTERS.html>

Department of Taxation Guidance letters: <http://www.tax.state.nv.us>; then select "Publications;" then select Assessment Standards Publications and "Guidance letters."



CLARK COUNTY BOARD OF EQUALIZATION

Case # 31

Assessor Information

Case Summary

00031

Owner: EAGLE SHADOW MOUNTAIN
SOLAR

Parcel Number: 229299

Mailing Address: 8800 GAINES CENTER DR SUITE
100

Appeal #: 00031

Fiscal Year #: 2025-2026 Unsecured

SCOTTSDALE AZ 85258-2193

BOE Date #: 02/25/2026 08:00 am Commission
Chambers

Appraiser: Jacob Reyes

Land Use Code: 0

Neighborhood
Code: 0

Situs: 0 MOAPA SOLAR RD MOAPA

Total Acres: 0.0000

Legal
Description:



Totals for all Parcels						
	2024-2025		2025-2026		2026-2027	
	Assessed	Taxable	Assessed	Taxable	Assessed	Taxable
Land Value	0	0	0	0	0	0
Improvement Value	0	0	0	0	0	0
Supplemental Value	0	0	0	0	0	0
Total	0	0	0	0	0	0

APPEAL FORM # 26-00031



Clark County Board of Equalization

PETITION FOR REVIEW OF TAXABLE VALUATION

Submit this Petition Form no later than 5 p.m. of the date due. Most types of appeals must be filed no later than January 15th. If the appeal involves valuation of property escaping taxation, or a determination that agricultural property has been converted to a higher use, a different due date may apply.

Please Print or Type:

Part A. PROPERTY OWNER/PETITIONER INFORMATION (Agents Information to be completed in Part H)

NAME OF PROPERTY OWNER AS IT APPEARS ON THE TAX ROLL EAGLE SHADOW MOUNTAIN SOLAR AREVON ENERGY					
NAME OF PETITIONER (IF DIFFERENT FROM PROPERTY OWNER) 325MK 8ME, LLC				TITLE	
MAILING ADDRESS OF PETITIONER (STREET ADDRESS OR P.O. BOX) 8800 N Gainey Center Dr., STE 100				EMAIL ADDRESS indirect-tax@arevonenergy.com	
CITY Scottsdale	STATE AZ	ZIP CODE 85258	DAYTIME PHONE 480-653-8450	ALTERNATE PHONE 775-313-2387	FAX NUMBER

Part B. PROPERTY OWNER ENTITY DESCRIPTION

Check organization type which best describes the Property Owner if an entity and not a natural person. Natural persons may skip Part B.

- ☐ Sole Proprietorship ☐ Trust ☐ Corporation
☒ Limited Liability Company (LLC) ☐ General or Limited Partnership ☐ Government or Governmental Agency
☐ Other, please describe:

The organization described above was formed under the laws of the State of Delaware

The organization described above is a non-profit organization ☐ Yes ☒ No

Part C. RELATIONSHIP OF PETITIONER IN PART C TO PROPERTY OWNER IN PART A

Check box which best describes the relationship of Petitioner to Property Owner: ☐ Additional information may be necessary. Please see Instructions.

- ☐ Self ☐ Trustee of Trust ☐ Employee of Property Owner
☐ Co-owner, Partner, Management Member ☐ Officer of Company
☒ Employee or Officer of Management Company
☐ Employee, Officer, or Owner of Lessee of leasehold, possessory interest, or beneficial interest in real property.
☐ Other, please describe:

Part D. PROPERTY IDENTIFICATION INFORMATION

1. Enter Physical Address of Property:

ADDRESS 0	STREET/ROAD MOAPA SOLAR RD	CITY (IF APPLICABLE) MOAPA	COUNTY
PURCHASE PRICE:		PURCHASE DATE:	

2. Enter Applicable Assessor Parcel Number or Personal Property Account Number from assessment notice or tax bill:

ASSESSOR'S PARCEL NUMBER (APN)	ACCOUNT NUMBER 229299
--------------------------------	--------------------------

3. Does this appeal involve multiple parcels? Yes ☐ No ☒ List multiple parcels on a separate, letter-sized sheet.

If yes, enter number of parcels: Multiple parcel list is attached.

Appeals must be single parcels unless multiple contiguous parcels act as a single unit.

4. Check Property Type: ☒

- | | | |
|---|--|---|
| ☐ Vacant Land | ☐ Mobile Home (Not on foundation) | ☐ Mining Property |
| ☐ Residential Property | ☐ Commercial Property | ☐ Industrial Property |
| ☐ Multi-Family Residential Property | ☐ Agricultural Property | ☒ Personal Property |
| ☐ Possessory Interest in Real or Personal property | | ☐ Exemption |

5. Check Year and Roll Type of Assessment being appealed:

☒ 25-26 Unsecured Roll
--

Part E. VALUE OF PROPERTY

Property Owner: What is the value you seek? Write N/A on each line for values which are not being appealed. See NRS 361.025 for the definition of Full Cash Value.

Property Type	Assessor's Taxable Value	Owner's Opinion of Value
Land		
Buildings		
Personal Property		0
Possessory interest in real property		
Exempt Value		
Total	282,630,733	0

APPEAL FORM # 26-00031

Part F. TYPE OF APPEAL

Check box which best describes the authority of the County Board to take jurisdiction to hear the appeal.

- ☒ NRS 361.357: The full cash value of my property is less than the computed taxable value of the property.
- ☐ NRS 361.356: My property is assessed at a higher value than another property that has an identical use and a comparable location to my property.
- ☐ NRS 361.355: My property is overvalued because other property within the county is undervalued or not assessed; and have attached the proof showing the owner, the location, the description and the taxable value of the undervalued property.
- ☐ NRS 361.155: I request a review of the Assessor's decision to deny my claim for exemption from property taxes.
- ☐ NRS 361A.280: The Assessor has determined my agricultural property has been converted to a higher use and that deferred taxes are now due.
- ☐ NRS 361.769: My property has been assessed as property escaping taxation for this year and/or prior years.

Part G. WRITE A STATEMENT DESCRIBING THE FACTS AND/OR REASONS FOR YOUR APPEAL, REQUEST FOR REVIEW OR COMPLAINT. (ATTACH A SEPARATE PAGE IF MORE ROOM IS NEEDED)

Eagle Shadow Mountain Solar is located on tribal land owned by the Moapa Band of Paiutes and exempt from state and local taxation.

CERTIFICATION

I certify (or declare) under penalty of perjury under the laws of the State of Nevada that the foregoing and all information hereon, including any accompanying statements or documents, is true, correct, and complete to the best of my knowledge and belief; and that I am either (1) the person who owns or controls taxable property, or possesses in its entirety taxable property, or the lessee or user of a leasehold interest, possessory interest, beneficial interest or beneficial use, pursuant to NRS 361.334; or (2) I am a person employed by the Property Owner or an affiliate of the Property Owner and I am acting within the scope of my employment. If Part H below is completed, I further certify I have authorized the agent named therein to represent the Property Owner as stated and I have the authority to appoint the authorized agent named in Part H.

	Authorized Signatory
Owner/Petitioner Signature	Title
Eric Huswick	1/15/2026
Print Name of Owner/Petitioner	Date

Part H. AUTHORIZATION OF AGENT

Complete this section only if an agent, including an attorney, has been appointed to represent the Property Owner/Petitioner in proceedings before the County Board. Read instructions for further information.

I hereby authorize the agent whose name and contact information appears below to file a petition to the Clark County Board of Equalization and to contest the value and/or exemption established for the properties named in Part D(2) of this Petition.

I further authorize the agent listed below to receive all notices and decision letters related thereto; and represent the Petitioner in all related hearings and matters including stipulations and withdrawals before the Clark County Board of Equalization. This authorization is limited to the appeal of property valuation for the tax roll and fiscal year named in Part D(5) of this Petition.

Authorized Agent Contact Information:

NAME OF AUTHORIZED AGENT:			TITLE:		
AUTHORIZED AGENT COMPANY, IF APPLICABLE:			EMAIL ADDRESS:		
MAILING ADDRESS OF AUTHORIZED AGENT (STREET ADDRESS OR P.O. BOX)					
CITY	STATE	ZIP CODE	DAYTIME PHONE	ALTERNATE PHONE	FAX NUMBER

I hereby accept appointment as the authorized agent of the Property Owner in proceedings before the County Board.

CERTIFICATION

Agent Signature required only if Petitioner did not sign certification and a separate Agent Authorization will be submitted.

I certify (or declare) under penalty of perjury under the laws of the State of Nevada that the foregoing and all information hereon, including any accompanying statements or documents, is true, correct, and complete to the best of my knowledge and belief; and I am the authorized agent with authority to petition the Clark County Board subject to the requirements of NRS 361.362 and NAC 361.TBD (7012) and the limitations contained in the Agent Authorization Form to be separately submitted

Authorized Agent Signature	Title
Print Name of Signatory	Date
☐ I hereby withdraw appeal to the Board of Equalization	
Signature of Owner or Authorized Agent/Attorney	Date

CLARK COUNTY BOARD OF EQUALIZATION

ASSESSOR RECOMMENDS HOLDING
CURRENT TAXABLE VALUE
PENDING ANALYSIS TO FOLLOW



ADDENDUM TO FOLLOW



CLARK COUNTY BOARD OF EQUALIZATION

Case # 31

Miscellaneous Information



**OFFICE OF THE
COUNTY ASSESSOR**

BRIANA JOHNSON

Clark County Assessor

(702) 455-3882 • Fax: (702) 455-0018

www.clarkcountynv.gov/assessor

Melissa Martinet, Deputy Director of Assessment Services
Mary Ann Weidner, Deputy Director of Assessment Services

01/15/2026

Case Number:

31

Parcel/PPID Number:

229299

EAGLE SHADOW MOUNTAIN SOLAR
C/O 325MK 8ME, LLC ~ C/O AREVON ENERGY
8800 GAINEY CENTER DR SUITE 100
SCOTTSDALE AZ 85258-2193

Dear Sir or Madam:

We have received your **Petition for Review to the Clark County Board of Equalization**. If you have additional information relevant to your case that you would like to submit for review, please provide it to our office as soon as possible. In order for your information to be included in the printed copy of your case, **it must be submitted at least seven days prior to your scheduled hearing date**. If you have to present **additional** information on the day of your hearing, **you must provide ten copies to the board**.

You will be notified of your hearing date by email.

1) **Email**. All correspondence will be sent to the email provided on the appeal form unless otherwise specified. To change your noticing email:

- Email your request to boe@ClarkCountyNV.gov
- Enter your Case # first and then "BOE Hearing Notification" in the subject line.
- In the body of the email, provide your case number, address, phone number and parcel number.

2) **Certified letter**. If no email is provided, you will receive notification by certified letter.

Your hearing will be scheduled between now and the end of February. You should attend the hearing and be prepared to discuss the taxable value of your property before the Board. For additional information regarding the appeal process and electronic hearing notification, please refer to the appeal instructions provided with your appeal form.

Our appraisal staff will prepare and submit to the Board a case with information which describes our position regarding your property valuation. This case information will be provided to you at the hearing, or you may contact our office to check availability prior to the hearing. Please contact our office if you have any questions in this regard.





togetherforbetter

OFFICE OF THE
COUNTY ASSESSOR

BRIANA JOHNSON

Clark County Assessor

(702) 455-3882 • Fax: (702) 455-0018

www.clarkcountynv.gov/assessor

Melissa Martinet, Deputy Director of Assessment Services
Mary Ann Weidner, Deputy Director of Assessment Services

01/15/2026

EAGLE SHADOW MOUNTAIN SOLAR

Case Number: 31

Parcel/PPID Number: 229299

325MK 8ME LLC
8800 N GAINEY CENTER DR
100
SCOTTSDALE AZ 85258

Dear Sir or Madam:

We have received your **Petition for Review to the Clark County Board of Equalization**. If you have additional information relevant to your case that you would like to submit for review, please provide it to our office as soon as possible. In order for your information to be included in the printed copy of your case, **it must be submitted at least seven days prior to your scheduled hearing date**. If you have to present **additional** information on the day of your hearing, **you must provide ten copies to the board**.

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Our Team

Meet the passionate, mission-driven leaders who champion Arevon's success.

Executive Leadership



Kevin Smith
Chief Executive Officer



Bob Krakauer
Chief Financial Officer

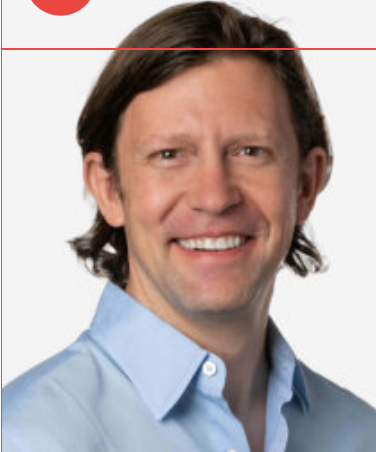


Justin Johnson
Chief Operating Officer



Denise Tait
Chief Investment
Officer





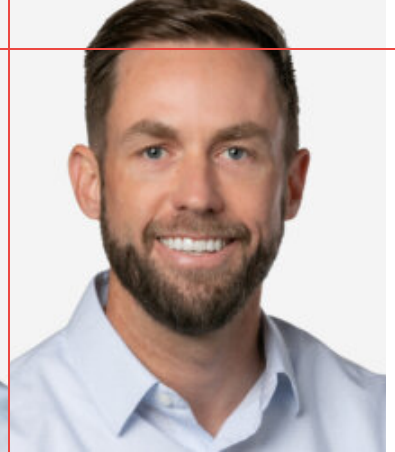
Tommy Greer
Chief Commercial
Officer



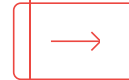
Shanelle Montana
Chief Development
Officer



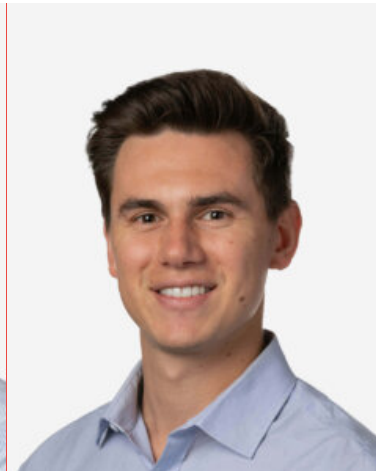
Vesco Petrov
General Counsel



Jon Faltis
Chief People Officer



Senior Leadership

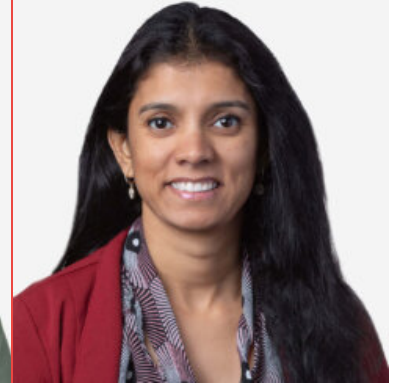


Matthew Barone
Vice President,
Environmental Affairs

Daniel Casement
Vice President, Market
Operations and
Structuring

Josh Coon
Vice President,
Development

Katherine Gensler
Vice President,
Government Affairs
and Marketing

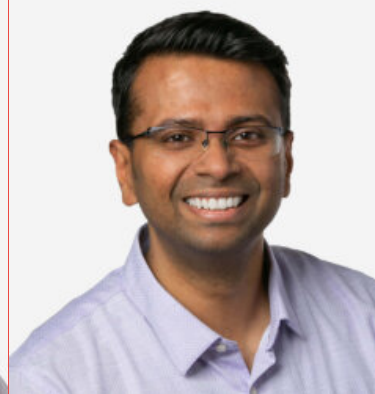


Eric Huswick
Vice President,
Finance

Nimmi Kavasery
Managing Director,
Project Finance

Lydia Li
Director, Investment

Brindavani Malladi
Vice President,
Interconnection



Chris Matthews
Vice President,

Nick Maynard
Vice President,

Anand Narayanan
Senior Vice President,

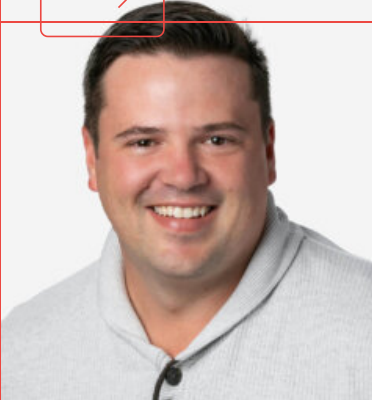
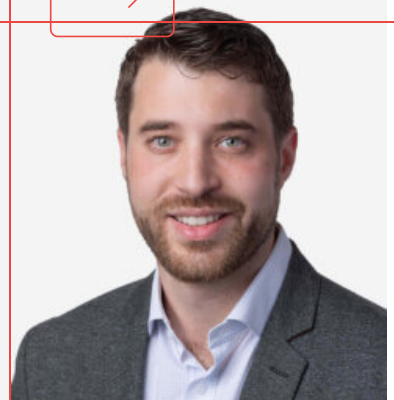
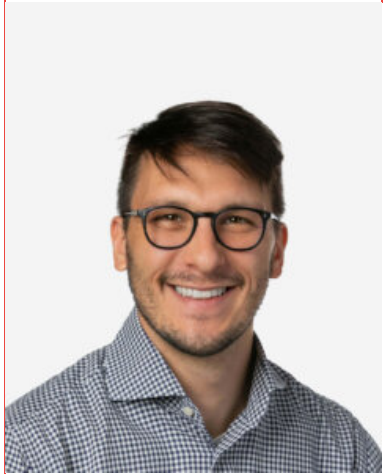
Greg Patzer
Vice President,

Development

Engineering
(<https://arevonenergy.com/>)

Asset Management

Construction

**Tina Raether**Vice President,
Accounting**Jeremy Rand**Senior Vice President,
Procurement**Deirdra Redmon**Vice President,
Treasurer**Joe Santo**Managing Director,
Investment**Paul Smerchanski**Vice President,
Origination



Corporate
Headquarters

8800 North Gainey Center Drive
Suite 100
Scottsdale, AZ 85258

(480) 653-8450 (tel:4806538450)
info@arevonenergy.com
(mailto:info@arevonenergy.com)

(https://www.linkedin.com/company/arevon/)

(https://www.youtube.com/@arevonenergy)

About
(https://arevonenergy.com/about/)

Portfolio
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(https://arevonenergy.com/technologies/)

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Careers
(https://arevonenergy.com/careers/)

Contact
us/
(https://arevonenergy.com/contact-us/)





Explore Arevon's Renewable Energy Projects

All Technology Status Size

Clackamas 7

Molalla, Oregon
Capacity: 2.96 MWdc
COD: 2020

Colorado State University Pueblo

Pueblo, Colorado
Capacity: 7.13 MWdc
COD: 2021

Community Solar Garden

Pueblo, Colorado
Capacity: 2.00 MWdc
COD: 2020

**AREVON****Condor Energy Storage Project**[\(https://arevonenergy.com/\)](https://arevonenergy.com/)

Sierra County, California

Capacity: 200 MW

COD: 2024

[\(https://www.condorenergystorage.com/\)](https://www.condorenergystorage.com/)**Cormorant Energy Storage Project**

Daly City, California

Capacity: 250 MW

COD: Anticipated 2026

[\(https://www.cormorantenergystorage.com/\)](https://www.cormorantenergystorage.com/)**Croton Harmon**

Croton-on-Hudson, New York

Capacity: 4.13 MWdc of Solar and 3.75 MW of Storage

COD: Anticipated 2025

Crow Mountain Solar Project

Pope County, Arkansas

Capacity: 187 MWdc

COD: Anticipated 2030

Desert Oasis Solar-plus-Storage Project

Sierra County, New Mexico

Capacity: 195 MWdc of Solar and 150 MW of Storage

COD: Anticipated 2029

Eagle Shadow Mountain Solar Project

Clark County, Nevada

Capacity: 383 MWdc

COD: 2023



« Previous Page 1 ... 2 3 4 5 6 ... 19 Next Page »

Resources [See All \(/resources/\)](/resources/)

Explore a valuable array of resources designed to deepen your understanding of Arevon, our commitment to responsible development and operations, our collaborative partners, and the innovative technologies driving our projects forward.



Videos
[\(/resource-type/videos/\)](/resource-type/videos/)



FAQs
[\(/resources#faq\)](/resources#faq)



Corporate
Headquarters

8800 North Gainey Center Drive
Suite 100
Scottsdale, AZ 85258

(480) 653-8450 (tel:4806538450)
info@arevonenergy.com
(mailto:info@arevonenergy.com)

(https://www.linkedin.com/company/arevon/)

(https://www.youtube.com/@arevonenergy)

About
(https://arevonenergy.com/about/)

Portfolio
(https://arevonenergy.com/portfolio/)

Our Team (https://arevonenergy.com/about/our-team/)

Technologies
(https://arevonenergy.com/technologies/)

Sustainability
(https://arevonenergy.com/about/sustainability/)

Awards (https://arevonenergy.com/about/awards/)

Careers
(https://arevonenergy.com/careers/)

Contact
us/
(https://arevonenergy.com/contact-us/)



CLARK COUNTY BOARD OF EQUALIZATION

Case # 31

Addendum

Case Summary
00031

Owner: EAGLE SHADOW MOUNTAIN
SOLAR

Parcel Number: 229299

Mailing Address: 8800 GAINES CENTER DR SUITE
100

Appeal #: 00031

Fiscal Year #: 2025-2026 Unsecured

SCOTTSDALE AZ 85258-2193

BOE Date #: 02/25/2026 08:00 am Commission
Chambers

Appraiser: Jacob Reyes

Land Use Code: 0

Neighborhood
Code: 0

Situs: 0 MOAPA SOLAR RD MOAPA

Total Acres: 0.0000

Legal
Description:



Totals for all Parcels						
	2024-2025		2025-2026		2026-2027	
	Assessed	Taxable	Assessed	Taxable	Assessed	Taxable
Land Value	0	0	0	0	0	0
Improvement Value	0	0	0	0	0	0
Supplemental Value	0	0	0	0	0	0
Total	0	0	0	0	0	0

APPEAL FORM # 26-00031



Clark County Board of Equalization

PETITION FOR REVIEW OF TAXABLE VALUATION

Submit this Petition Form no later than 5 p.m. of the date due. Most types of appeals must be filed no later than January 15th. If the appeal involves valuation of property escaping taxation, or a determination that agricultural property has been converted to a higher use, a different due date may apply.

Please Print or Type:

Part A. PROPERTY OWNER/PETITIONER INFORMATION (Agents Information to be completed in Part H)

NAME OF PROPERTY OWNER AS IT APPEARS ON THE TAX ROLL EAGLE SHADOW MOUNTAIN SOLAR AREVON ENERGY					
NAME OF PETITIONER (IF DIFFERENT FROM PROPERTY OWNER) 325MK 8ME, LLC				TITLE	
MAILING ADDRESS OF PETITIONER (STREET ADDRESS OR P.O. BOX) 8800 N Gainey Center Dr., STE 100				EMAIL ADDRESS indirect-tax@arevonenergy.com	
CITY Scottsdale	STATE AZ	ZIP CODE 85258	DAYTIME PHONE 480-653-8450	ALTERNATE PHONE 775-313-2387	FAX NUMBER

Part B. PROPERTY OWNER ENTITY DESCRIPTION

Check organization type which best describes the Property Owner if an entity and not a natural person. Natural persons may skip Part B.

- ☐ Sole Proprietorship ☐ Trust ☐ Corporation
☒ Limited Liability Company (LLC) ☐ General or Limited Partnership ☐ Government or Governmental Agency
☐ Other, please describe: _____

The organization described above was formed under the laws of the State of Delaware

The organization described above is a non-profit organization ☐ Yes ☒ No

Part C. RELATIONSHIP OF PETITIONER IN PART C TO PROPERTY OWNER IN PART A

Check box which best describes the relationship of Petitioner to Property Owner: ☐ Additional information may be necessary. Please see Instructions.

- ☐ Self ☐ Trustee of Trust ☐ Employee of Property Owner
☐ Co-owner, Partner, Management Member ☐ Officer of Company
☒ Employee or Officer of Management Company
☐ Employee, Officer, or Owner of Lessee of leasehold, possessory interest, or beneficial interest in real property.
☐ Other, please describe: _____

Part D. PROPERTY IDENTIFICATION INFORMATION

1. Enter Physical Address of Property:

ADDRESS 0	STREET/ROAD MOAPA SOLAR RD	CITY (IF APPLICABLE) MOAPA	COUNTY
PURCHASE PRICE:		PURCHASE DATE:	

2. Enter Applicable Assessor Parcel Number or Personal Property Account Number from assessment notice or tax bill:

ASSESSOR'S PARCEL NUMBER (APN)	ACCOUNT NUMBER 229299
--------------------------------	--------------------------

3. Does this appeal involve multiple parcels? Yes ☐ No ☒ List multiple parcels on a separate, letter-sized sheet.

If yes, enter number of parcels: _____ Multiple parcel list is attached.

Appeals must be single parcels unless multiple contiguous parcels act as a single unit.

4. Check Property Type: ☒

- | | | |
|---|--|---|
| ☐ Vacant Land | ☐ Mobile Home (Not on foundation) | ☐ Mining Property |
| ☐ Residential Property | ☐ Commercial Property | ☐ Industrial Property |
| ☐ Multi-Family Residential Property | ☐ Agricultural Property | ☒ Personal Property |
| ☐ Possessory Interest in Real or Personal property | | ☐ Exemption |

5. Check Year and Roll Type of Assessment being appealed:

☒ 25-26 Unsecured Roll
--

Part E. VALUE OF PROPERTY

Property Owner: What is the value you seek? Write N/A on each line for values which are not being appealed. See NRS 361.025 for the definition of Full Cash Value.

Property Type	Assessor's Taxable Value	Owner's Opinion of Value
Land		
Buildings		
Personal Property		0
Possessory interest in real property		
Exempt Value		
Total	282,630,733	0

APPEAL FORM # 26-00031

Part F. TYPE OF APPEAL

Check box which best describes the authority of the County Board to take jurisdiction to hear the appeal.

- ☒ NRS 361.357: The full cash value of my property is less than the computed taxable value of the property.
- ☐ NRS 361.356: My property is assessed at a higher value than another property that has an identical use and a comparable location to my property.
- ☐ NRS 361.355: My property is overvalued because other property within the county is undervalued or not assessed; and have attached the proof showing the owner, the location, the description and the taxable value of the undervalued property.
- ☐ NRS 361.155: I request a review of the Assessor's decision to deny my claim for exemption from property taxes.
- ☐ NRS 361A.280: The Assessor has determined my agricultural property has been converted to a higher use and that deferred taxes are now due.
- ☐ NRS 361.769: My property has been assessed as property escaping taxation for this year and/or prior years.

Part G. WRITE A STATEMENT DESCRIBING THE FACTS AND/OR REASONS FOR YOUR APPEAL, REQUEST FOR REVIEW OR COMPLAINT. (ATTACH A SEPARATE PAGE IF MORE ROOM IS NEEDED)

Eagle Shadow Mountain Solar is located on tribal land owned by the Moapa Band of Paiutes and exempt from state and local taxation.

CERTIFICATION

I certify (or declare) under penalty of perjury under the laws of the State of Nevada that the foregoing and all information hereon, including any accompanying statements or documents, is true, correct, and complete to the best of my knowledge and belief; and that I am either (1) the person who owns or controls taxable property, or possesses in its entirety taxable property, or the lessee or user of a leasehold interest, possessory interest, beneficial interest or beneficial use, pursuant to NRS 361.334; or (2) I am a person employed by the Property Owner or an affiliate of the Property Owner and I am acting within the scope of my employment. If Part H below is completed, I further certify I have authorized the agent named therein to represent the Property Owner as stated and I have the authority to appoint the authorized agent named in Part H.

	Authorized Signatory
Owner/Petitioner Signature	Title
Eric Huswick	1/15/2026
Print Name of Owner/Petitioner	Date

Part H. AUTHORIZATION OF AGENT

Complete this section only if an agent, including an attorney, has been appointed to represent the Property Owner/Petitioner in proceedings before the County Board. Read instructions for further information.

I hereby authorize the agent whose name and contact information appears below to file a petition to the Clark County Board of Equalization and to contest the value and/or exemption established for the properties named in Part D(2) of this Petition.

I further authorize the agent listed below to receive all notices and decision letters related thereto; and represent the Petitioner in all related hearings and matters including stipulations and withdrawals before the Clark County Board of Equalization. This authorization is limited to the appeal of property valuation for the tax roll and fiscal year named in Part D(5) of this Petition.

Authorized Agent Contact Information:

NAME OF AUTHORIZED AGENT:		TITLE:			
AUTHORIZED AGENT COMPANY, IF APPLICABLE:		EMAIL ADDRESS:			
MAILING ADDRESS OF AUTHORIZED AGENT (STREET ADDRESS OR P.O. BOX)					
CITY	STATE	ZIP CODE	DAYTIME PHONE	ALTERNATE PHONE	FAX NUMBER

I hereby accept appointment as the authorized agent of the Property Owner in proceedings before the County Board.

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Agent Signature required only if Petitioner did not sign certification and a separate Agent Authorization will be submitted.

I certify (or declare) under penalty of perjury under the laws of the State of Nevada that the foregoing and all information hereon, including any accompanying statements or documents, is true, correct, and complete to the best of my knowledge and belief; and I am the authorized agent with authority to petition the Clark County Board subject to the requirements of NRS 361.362 and NAC 361.TBD (7012) and the limitations contained in the Agent Authorization Form to be separately submitted

Authorized Agent Signature	Title
Print Name of Signatory	Date
☐ I hereby withdraw appeal to the Board of Equalization	
Signature of Owner or Authorized Agent/Attorney	Date



OFFICE OF THE COUNTY ASSESSOR

BRIANA JOHNSON
Clark County Assessor
(702) 455-4997 • Fax: (702) 455-0191
www.clarkcountynv.gov/assessor

Melissa Martinet, Deputy Director of Assessment Services
Mary Ann Weidner, Deputy Director of Assessment Services

Withdrawal of Appeal from the Board of Equalization

02/18/2026
EAGLE SHADOW MOUNTAIN SOLAR
8800 GAINES CENTER DR SUITE 100
SCOTTSDALE, AZ 85258-2193

RE: Appeal No. 31
Account No(s). 229299

Dear Taxpayer:

The Appraisal Division of the Clark County Assessor's Office has completed the review of the taxable value of the above property under appeal. After careful consideration of the facts involved, our conclusion is that the current assessment does not exceed full cash value and is fair and equitable. For these reasons, it is our opinion that no changes are justifiable at this time. Therefore, the taxable value will remain as follows:

Fiscal Year:	2025-2026
Total Taxable Value	\$282,630,733

By signing below, Petitioner agrees to the above determination. Please return this letter to our office before your scheduled hearing. You may mail to the address below, email to rudy.reyes@clarkcountynv.gov or FAX to 702-380-9641.

Sincerely,

Jacob Reyes

Appraisal Division

I HEREBY WITHDRAW MY APPEAL TO THE BOARD OF EQUALIZATION:

X _____
Signature of owner or authorized agent

DATE _____





CLARK COUNTY BOARD OF EQUALIZATION

Case # 31

Assessor Information

Clark County Assessor Case Summary

Unsecured Roll - Personal Property

Direct Appeal to County

Case #: 31 Year Subject To Appeal: 2025/2026 Assessor Account: 229299 Business / Owner Name: EAGLE SHADOW MOUNTAIN SOLAR Location Address: MOAPA SOLAR RD, MOAPA Property Type: Solar Electric Power Generation Date of Valuation: 7/1/2025 Declaration received: 7/31/2025 Certified Taxable Value: 282,630,733 Recommended Taxable Value: 282,630,733	Appraiser: Jacob Reyes Appeal Issue: Valuation & Legal Declaration meets requirements of NRS 361.265
---	--

Notes

Eagle Shadow Mountain Solar is a utility-scale photovoltaic power plant located on the Moapa Band of Paiutes' tribal land, within the Moapa Indian Reservation.

The subject property was valued using NRS, NAC, and the Personal Property Manual.

There is no exemption for property owned by a non-tribal entity that is sitting on leased tribal land.

EAGLE SHADOW MOUNTAIN SOLAR 229299 - Value Detail

Asset ID	Description	Year Acquired	Acquisition Cost	Taxable Value	Dept Code
TOTAL			460,850,294	282,630,733	
	SOLAR SYSTEM BLOCKS 11 & 14	2023	74,600,001	56,464,741	PV
	SOLAR SYSTEM BLOCK 12	2022	37,400,000	24,538,140	PV
	INVENTORY	2023	242,379	183,457	PV
	SOLAR SYSTEM BLOCKS 1-10 & 13	2021	348,300,000	201,178,080	PV
	SOLAR SYSTEM	2024	307,914	266,315	PV



**CLARK COUNTY
OFFICE OF THE DISTRICT ATTORNEY**

Civil Division

STEVEN B. WOLFSON

District Attorney

500 S. Grand Central Pkwy, Suite 5075 • Las Vegas, NV 89155 • 702-455-4761 • Fax: 702-382-5178 • TTY and/or other relay services: 711

BRIGID J. DUFFY
Assistant District Attorney

KAREN S. CLIFFE
Assistant District Attorney

LISA LOGSDON
County Counsel

ALEXANDER CHEN
Assistant District Attorney

PAMELA WECKERLY
Assistant District Attorney

February 11, 2026
Via Email Only

David Denman, Manager
jde@ClarkCountyNV.gov

Re: Eagle Shadow Mountain Solar, 325MK, 8ME, LLC c/o Arevon Energy

Dear Mr. Denman:

Question and Brief Answer

(1) What constitutes personal property under Nevada law for taxation purposes rather than an improvement to real property?

Under Nevada law all property of every kind and nature shall be subject to taxation. NRS 361.045. In addition to the definition of personal and real property in NRS 361.030 and NRS 361.035, Appendix E of the Nevada Department of Taxation personal property manual also provides guidance on determining whether property is real or personal. The assessor must consider whether an 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. In general, property that does not meet the criteria of real property is personal property.

(2) Can property (interest in real property or personal property) be taxed if the property is located on tribal land, but owned by a non-tribal entity?

It depends. The general rule is that tribal land/property is not taxable, but if improvements are made on tribal lands and are owned by a non-tribal entity then the improvements that the tribe has no ownership interest in can be taxable.

(3) Are the Tenant Improvements as defined in the lease between the Moapa Band of Paiute Indians ("Tribe") and 325Mk 8 ME LLC ("Eagle Shadow") taxable?

Yes. Pursuant to Section 7.04(B) of the lease the Tenant Improvements are owned and controlled by the Eagle Shadow. In this case, the Tribe does not currently have any ownership interest in the Tenant Improvements. Under Section 12 of the lease between the Tribe has the following options: (1) require Eagle Shadow to remove all the Tenant's Property, including the Tenant Infrastructure Improvements; (2) require Eagle Shadow to remove all the Tenant's Property, except for the Tenant Infrastructure Improvements or (3) not remove any of Tenant's Property, including the Tenant Infrastructure Improvements. If the Tribe elects to have the Tenant Property and Tenant Infrastructure Improvements remain, the Tribe must purchase the improvements for the fair market value of the property. See Section 12.03 of the Lease. Furthermore, the lease provides that upon the termination of the lease the Tenant Improvements must be removed by Eagle Shadow, and the property must be restored to substantially the same condition as the beginning of the lease unless the Tribe elects to purchase the Tenant Improvements. Since the Tribe does not currently have any ownership interest in the Tenant Improvements, the Tenant Improvements are taxable under state and federal law.

Opinion

Determining Real Property vs. Personal Property

NRS 361.035 defines real property as all houses, buildings, fences, ditches, structures, erections, railroads, toll roads and bridges, or other improvements built or erected upon any land. But subsection 3 of NRS 361.035 provides an exception to the general rule of real property. If there is an agreement entered into for the dismantling, moving or carrying away or wrecking of the property described as real property in subsection 1 of NRS 361.035, then property **must** be classified as personal property. Emphasis added. Here, the parties entered a lease, which requires the decommissioning of the Tenant Improvements, if the Tribe does not elect to purchase the Tenant Improvements. Upon termination of the lease Section 12 of the lease requires, at the Tribe's election, that Eagle Shadow remove all of Tenant's Property, including Tenant Infrastructure Improvements. Section 12 also requires a decommissioning plan which will restore the property to substantially the same condition as the beginning of the lease. See definition of "decommissioning" in Section 12.02 of the lease. Since the lease has a requirement to remove the Tenant Improvements under Nevada law the Tenant Improvements are personal property in accordance with NRS 361.035(3).

In addition to the statutory definition of real property, Appendix E of the Department of Taxation's Personal Property Manual provides guidance on determining whether fixtures are real or personal property. Appendix E provides three tests: (1) physical annexation; (2) constructive annexation; and (3) intent. Under the first test if the property can be removed without substantially damaging the item or the land then it's mostly like personal property. Under the second 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 would be real property. Under the third test, the assessor can consider the intention of the owner, such as written agreements between the real property owner and the owner of the property being taxed.

Lastly, similar to the guidance in Appendix E, the United State Tax Court, in *Whiteco Industries v. Commission on Internal Revenue*, 65 T.C. 664 (1975) established six criteria for distinguishing personal property from permanent structures for tax purposes. The six criteria to consider are: (1) capability and history of being moved; (2) whether the property was designed or constructed to remain permanently in place; (3) circumstances indicating the expected or intended duration of affixation; (4) substantiality and time required for removal; (5) damage sustained upon removal; and (6) manner of affixation to the land. The Assessor analyzed each criteria under the *Whiteco* case and found that the Tenant Improvements are personal property. See, Exhibit A, Assessor's analysis using the test in Appendix E and the criteria established in the *Whiteco* case.

The Assessor's office has correctly assessed the Tenant Improvements owned by Eagle Shadow as personal property based on Nevada law, Appendix E of the Department of Taxation's Personal Property Manual and the criteria established in *Whiteco* case.

Taxation of a Non-Tribal Entity on Tribal Land

The taxation of property located on tribal land is complex, flexible and sensitive to the particular facts and legislation involved and requires a particularized examination of the relevant state, federal and tribal interests, including tribal sovereignty and independence. *Cotton Petroleum Corporation v New Mexico*, 430 US 163 (1989).

Whether or not states are preempted from taxation on tribal lands is governed by the Indian Reorganization Act, which states title to any lands or rights acquired pursuant to this Act of the Act of July 28, 1955 shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such **lands or rights** shall be exempt from State and local taxation. Emphasis added. In order to determine whether the property is not subject to taxation you have to determine the tribe's lands or rights. According to the Bureau of Indian Affairs those rights include "any interests, benefits, and rights inherent in the ownership of the real property. 25 CFR 150.2. Here, the Tribe does not have any ownership interest in the solar facility until it chooses to purchase the solar facility from Eagle Shadow. The Tribe will not have the right to purchase the solar facility for at least for twenty-five (25) years as NV Energy have the right to purchase the solar facility at the end of its twenty-five (25) year agreement with Eagle Shadow.

In 2013, the United States Court of Appeals, Ninth Circuit in *Confederated Tribes of Chehalis Reservation v Thurston County Board of Equalization*, 724 F.3d 1153 (2013) held that improvements owned by an LLC, which the tribe was the majority owner (51%) were not taxable because of the tribal ownership in the LLC and at the end of the lease the improvements reverted to the tribe. In *Chehalis*, the Ninth Circuit held that the particular form in which the tribe chose to conduct its business was irrelevant as long as the tribe had an ownership interest in the improvements. Based on this federal court decision, on September 17, 2014, the Nevada Department of Taxation issued Guidance Letter 14-001 regarding the taxability of permanent improvements owned by any person or company that were located on tribal trust land. The Department of Taxation opined that real property such as buildings and improvements located on **lands held in trust** by the United States Government for an Indian Tribe are not taxable property, even when owned by a person or entity other than the tribe. *This guidance also states that personal property owned by unrelated third parties and located on trust lands may continue to be considered taxable property by the State and its subdivisions.* While the Department's guidance is helpful it cannot be read to create a bright-line rule that any buildings or improvements located on tribal land are exempt from taxation. Taxation of property located on tribal land must be analyzed on a case-by-case basis.

In this case, the Assessor taxed the Tenant Improvements as personal property owned by a non-tribal entity, therefore under the Department's guidance the Tenant Improvements are taxable, but even if the Assessor had determined that the Tenant Improvements were improvements to real property and not personal property the Tenant Improvements made by Eagle Shadow would still be taxable as the facts in this case are different from *Chehalis*. The *Chehalis* decision turned on very specific facts regarding the tribe's ownership interest in the improvements, which are absent from this case.

Mostly recently the Arizona Supreme Court ruled that Section 5 of the Indian Reorganization Act does not expressly exempt state and local taxes imposed on permanent improvements affixed by non-Indian lessees to land owned by the federal government in trust for Indians when the parties agree that the lessee owns those improvements. *South Point Energy Center, LLC v. Arizona Department of Revenue*, 508 P.3d 246 (2022). In *South Point Energy*, the Arizona Supreme Court ruled that a power plant owned and operated by South Point Energy was not exempt from taxation solely because the plant was located on tribal land. The power plant owned by South Point Energy had similar characteristics to the facts in this case. The lease agreement between the Fort Mohave Indian Tribe and South Point Energy was clear that South Point Energy owned and controlled all the improvements and at the end of the lease South Point Energy had the obligation to remove all above-ground real property improvements.

The Arizona Supreme Court, which is subject to Ninth Circuit Court of Appeal precedent, found that the *Chehalis* decision was distinguishable because the tribe did not have any ownership interest in the solar facility. In *Chehalis* (Great Wolf Lodge) and *Mescalero* (operated an off-reservation ski resort), the tribe was found to have ownership interest in the property or business that was being taxed. While the Ninth Circuit Court of Appeals in *Chehalis* found it was irrelevant or unimportant how the tribe held ownership in these businesses, the Ninth Circuit still require the tribe to have rights to the property in order for the property to be non-taxable.

The Arizona Supreme Court in *South Point Energy* analyzed various tribal taxation cases and found that under the *Chehalis* and *Mescalero* decisions that Section 5 of the Indian Reorganization Act is not a categorical bar to taxation especially when the tax does not infringe on the tribe's ownership interest.

The facts of this case are more akin to the property in the *South Point Energy* case than *Chehalis*. Unlike *Chehalis* where the tribe owned 51% of the LLC operating the property and the ownership of the improvements reverted to the tribe at the end of the lease, here the lease is clear that Eagle Shadow as the tenant is the owner of the Tenant Improvements. See Section 7.04 of lease. The lease provides the Tribe with the option of requiring Eagle Shadow to remove the Tenant Improvement or the Tribe can purchase the Tenant Improvements. See Section 12 of lease. Under the lease the Tribe has no ownership interest in the Tenant Improvements unlike the tribe in *Chehalis*. The relationship between the Tribe and Eagle Shadow is like the relationship between the tribe and South Point Energy as the parties have agreed that Eagle Shadow owns the improvements not the Tribe and therefore the property should be taxed and is not exempt or preempted under state or federal law.

Upon finding that federal law did not preempt the Arizona Department of Revenue from imposing property taxes upon South Point Energy, the Arizona Supreme Court remanded the case to the Arizona Court of Appeals to determine whether the State of Arizona was preempted under the *Bracker* interest-balancing test. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980). Under the *Bracker* interest-balancing test the court must consider: (1) the extent of the federal and tribal regulations governing the taxes activity; (2) whether the economic burden of the tax falls on the tribe or the non-Indian entity; and (3) the extent of the state interest in justifying the imposition of the taxes.

Several courts have analyzed the imposition of state or local taxes on non-Indians under *Bracker* balancing test. Under the first prong of the test the courts in both *South Point Energy* and *Pickrel Lake Outlet Association v. Day County*, 953 N.W.2d 82 (2020) found that Congress had not authorized the Bureau of Indian Affairs to preempt

the State's authority to tax structures owned by non-Indians. While the federal government retains exclusive power to regulate Indian affairs, it has asserted little to no regulatory power in the area of state-imposed ad valorem taxes on structures owned by non-Indians and it is generally within the province of the State to assess property taxes. *South Point Energy Center, LLC v. Arizona Department of Revenue*, 257 Ariz. 216 (2024) citing *Pickrel Lake*, 953 N.W.2d at 94. The Ninth Circuit in *Desert Water Agency* adopted the Department of Interior position that 25 CFR 162.017 has no effect on preemption and has no legal effect at all as it does not purport to preempt any specific state taxes. The only thing 25 CFR 162.017 does, according to the Department of Interior is to state publicly the agency's interpretation of existing law (namely *Bracker*). *Desert Water Agency v. United States Department of Interior*, 849 F.3d 1250, 1255. (9th Cir. 2017). Furthermore, in *Barona Band of Mission Indians v. Yee*, 528 F.3d 1184 (2008), the court found that the federal interest in supporting tribal economic self-sufficiency diminishes when the commercial activity is structured to exploit tax exemptions. Clearly, there is no absolute federal or tribal regulations preempting the taxation of property owned by non-Indian entities.

The second prong of the *Bracker* balancing test evaluates who is responsible for the property taxes. Here, Eagle Shadow is responsible for the property taxes on the Tenant Improvements not the Tribe. Furthermore, the tribal land is not being taxed, therefore, Eagle Shadow would fail the second part of the *Bracker* test.

The third prong of the *Bracker* balancing test requires the court to consider the state's interest in justifying the imposition of the tax. In the same way that the court in *South Point Energy* found a substantial government interest in the imposition of taxes, here the tax revenue supports local services that help Eagle Shadow, its employees and the Tribe.

Here, there is no overarching federal interest, the Tribe is not responsible for the payment of the personal property taxes assessed on the property owned and the ad valorem taxes provide fundamental government services to the residents of the reservation, such as education, indigent services, medical services, general improvements in the areas surrounding the reservation, therefore, under the *Bracker* balancing test the imposition of personal property tax is not preempted by federal law.

It is important to note that on June 30, 2025, the United States Supreme Court denied South Point Energy's request for the high court to review the federal preemption issue regarding the State's ability to tax permanent improvement owned by nontribal entities but situated on tribal lands.

David Denman
February 11, 2026

Page 7

Conclusion

The Assessor's decision to categorize the Tenant Improvements as personal property and not real property is supported by Nevada law, but regardless of whether the Tenant Improvements are assessed as personal or real property, the Assessor's office has lawfully assessed the Tenant Improvements owned by Eagle Shadow as the Tenant Improvements are not preempted or exempt under state or federal law. There is not a one size fits all solution regarding the taxation of improvements on tribal land but based on the facts of this case it is clear that the property being taxed is not owned or held in trust for the Tribe but instead is owned and operated by a non-tribal entity, therefore, subject to taxation.

Sincerely,

STEVEN B. WOLFSON
DISTRICT ATTORNEY

BY: /s/ Lisa V. Logsdon
LISA V. LOGSDON
County Counsel
Lisa.Logsdon@ClarkCountydanv.gov

cc: Briana Johnson, County Assessor

EXHIBIT A

EXHIBIT A

Personal Property -vs- Real Property Analysis (Whiteco, Inc -vs- Commissioner & Appendix E of Personal Property Manual)			
Whiteco Test	Result	Analysis	Appendix E Test
1. Is it capable of being moved?	YES	Solar panels are disconnected from wires & supports. Ojjo Truss Foundation system is screwed into the ground & can be unscrewed for removal. Inverters & housings can be lifted & removed as a unit. Everything that is in the ground other than the Ojjo Truss Foundation system is direct imbedded not cemented in.	Physical Annexation Constructive Annexation Intent
2. Is it designed or constructed to remain permanently in place?	NO	Design is of a non-permanent nature. Ojjo Truss Foundation system is screwed into ground and can be unscrewed for-removal. Fence posts are direct imbedded not cemented in for removal. Invertors & housings are a prefabbed unit that can be lifted and removed or put into place.	Physical Annexation Constructive Annexation Intent
3. Are there circumstances that show the intended length of fixation? Circumstances which show the property may or will have to be moved/removed?	YES	Panels are warrantied for 20 years. Lease has an expiration. Lease has a requirement for potential removal at end of lease. Security bond or cash payment put down as part of lease for returning land to original state.	Intent

4. Is the property/equipment readily removable and how much effort is involved?	YES	Inverters are sitting on gravel bed & are complete housed units that can be removed readily. Property in the ground such as fence posts are direct imbedded and removable without damage. Solar panels and electrical wiring can be removed readily without damage. A-frames screwed in ground per manufacturer/installer can easily be removed without damage by unscrewing the screws holding them in.	Physical Annexation Constructive Annexation Intent
5. How much damage will the property/equipment sustain during removal?	Minimal to none	Information from Nexttracker concerning the Ojjo Earth Truss Foundation (A-frames supporting panels) states removal by unscrewing screws no damage should occur.	Physical Annexation Constructive Annexation Intent
6. How is the property/equipment affixed to the land?	In a non-permanent manner	Property such as fences are direct imbedded not cemented in. The Ojjo Earth Truss Foundation is screwed into the ground & can be removed by unscrewing the screws holding it to the ground. Invertors & housing units can easily be lifted from the ground with no damage and easily loaded on trucks to be removed.	Physical Annexation Constructive Annexation

What happens when a solar facility is decommissioned?



Background

In general, solar projects receive an approval for construction, and operate between thirty and forty years. Upon completion of the economic life of a project or, potentially permit expiration, the project owner will determine to apply for a new permit or remove the facility. Solar panels can operate past thirty years - albeit at lower efficiency - the owner can keep the panels, or "repower" the site by upgrading the panels with more efficient solar technology.

Otherwise, the project owner can decommission the facility. Decommissioning refers to removal of equipment and restoration of the site. Unlike some other forms of development, a decommissioned solar project site can be repurposed for other uses, such as agricultural production.

Often solar project permits define how a solar project is to be decommissioned. For an industry-suggested policy framework for decommissioning, including plan submittal, requirements, and financial security, please visit [Renewable Energy Facility Decommissioning: Industry Recommendations](#).

Panels

Solar panels are guaranteed to produce at least 80% of their original power rating after 25 years¹. Panels may be re-used or re-sold: There is an emerging market for second generation panels, often for off-grid applications or electrification in developing countries^{1,2}.

Panels may also be refurbished or recycled. Eighty-five percent of the weight of a solar panel is glass and aluminum: materials commonly recycled. There is a growing network of waste management firms in the United States that offer options for panel recycling³. Some manufacturers, such as Ohio-based First Solar, have a take-back program to refurbish panels⁴.

Can solar panels be sent to a landfill? In the U.S., waste is separated into hazardous (not accepted at ordinary landfills) and solid waste (generally accepted at ordinary landfills) based on a series of tests. A solar panel's waste status is determined based on the outcome of the Toxic Characteristic Leaching Procedure (TCLP) test. This Environmental Protection Agency test is designed to simulate landfill disposal and determine the risk of hazardous substances leaching out of the landfill. Most modern solar panels pass the TCLP test. However, some older panels (i.e., from the 1990s) and potentially some newer models may not pass some of the leachate limits to the TCLP test⁵.

Racking

Racking systems are used to mount solar panels, and in some cases, slowly track the path of the sun to capture as much energy as possible. Pile-driven posts are placed several feet below ground to ensure the system is secure and can withstand severe weather. During decommissioning, these posts are pulled from the ground using back hoes or other tools. However, if a post cannot be removed, it is typically cut at a depth specified by the community approval and covered with soil. Posts are made from galvanized steel and racking system components are mostly aluminum or galvanized steel. These components are easily recyclable and sold as scrap.

¹IEA and IRENA. 2016. End-of-life management: solar photovoltaic panels. Available at: <https://www.irena.org/publications/2016/Jun/End-of-life-management-Solar-Photovoltaic-Panels>

²Ndzibah, et al. 2021. End of life analysis of solar photovoltaic panel: roadmap for developing economies.

Available at: <https://www.emerald.com/insight/content/doi/10.1108/IJESM-11-2020-0005/full/pdf?title=end-of-life-analysis-of-solar-photovoltaic-panel-roadmap-for-developing-economies>

³NREL. Solar Photovoltaic Module Recycling: A Survey of U.S. Policies and Initiatives. March 2021. <https://www.nrel.gov/docs/fy21osti/74124.pdf>

Wires

Wires connect the solar system and ultimately deliver the electricity to the grid. Aboveground wires and wires shallower than 3 feet underground are removed, copper and/or aluminum wiring and associated electronic equipment are sold as scrap or recycled to the extent practical use.

Inverters & Transformers

Inverters convert direct current generated from the panels into alternating current; transformers step up the voltage of the project to match that of the nearby transmission line. During the decommissioning process, this equipment is dismantled, and various parts are refurbished, recycled, or landfilled as appropriate.

Foundations

Inverters and transformers are typically bolted onto steel or concrete foundations. Upon decommissioning the foundations are broken up and removed to be recycled, sold as scrap, and/or landfilled. Once debris is removed, the area is backfilled with native or similar soils.

Fencing

Fence posts can be pulled out using skid-steer loaders or other light equipment. All fence parts and foundations are removed from the site and reconditioned and reused, recycled, or landfilled as appropriate.

Vegetation

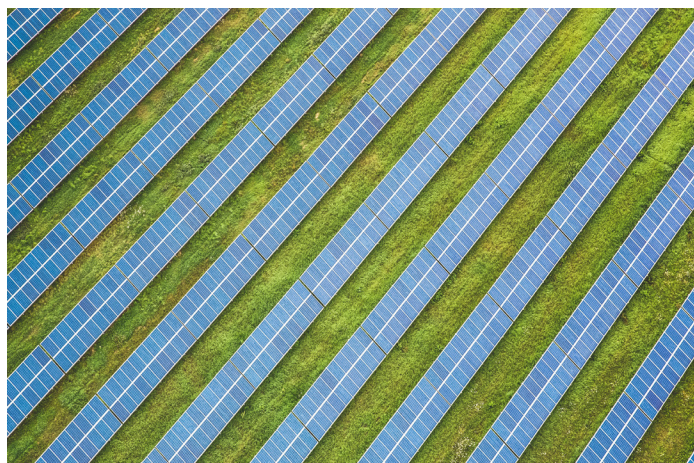
Any portions of the site with compacted soil will be de-compacted and any excavations backfilled with soils to restore the site for future use. As a final step of decommissioning, the site will be revegetated to help with erosion and dust control as required or returned to agricultural use.

Access Roads

Unless agreed upon by the landowner and allowed by permit, access roads will be removed by excavating aggregate for reuse elsewhere, replacing soils to level the terrain, and de-compaction.

Decommissioning Costs

The costs of decommissioning do not fall upon the community or landowners, rather they are the responsibility of the project owner. While costs vary by region and project size, third party engineering estimates may forecast a negative cost of project decommissioning. This is because the salvage value of modules, PV racking, steel posts and copper wiring can exceed the costs of⁶ equipment removal and land restoration.



⁴First Solar. Recycling. Accessed August 2021. Available at: <https://www.firstsolar.com/en/Modules/Recycling>

⁵Ibid.

⁶DNV GL – Energy. Decommissioning Costs Analysis. Prepared for Wisconsin Public Service Commission. Available via <https://apps.psc.wi.gov/ERF/ERFview/viewdoc.aspx?docid=388211>, 32-page attachment within file.

Nevada Governor's Office of Energy
Renewable Energy Tax Abatement Application

AFN:

Facility Information	EAGLE SHADOW MTN.	6/12/2020
Date of Submittal to GOE:		
Type of Incentives (Please check all that the company is applying for on this application)		
☒ Sales & Use Tax Abatement	☒ Property Tax Abatement	
Company Information (Legal name of company under which business will be transacted in		
Company Name:		325MK 8ME LLC
Department of Taxation's Tax Payer ID number:		
Federal Employer ID number (FEIN, EIN or FID):		
NAICS Code:		221114
Description of Company's Nevada Operations: The Company is developing and hopes to build and operate a utility-scale solar power plant on the Moapa River Indian Reservation, with a generation tie line, both located in Clark County, NV.		
Percentage of Company's Market Inside Nevada:		100%
Mailing Address: c/o 8minute Solar Energy LLC, 5455 Wilshire Blvd., Ste 2010		
City: Los Angeles, CA 90036		
Phone: (323) 525-0900		
APN:		
Taxation District where facility is located:		Clark Co, NV & Moapa Reservation
Nevada Facility		
Type of Facility (please check all that are relevant to the facility)		
☐ Geothermal ☐ Process Heat from Solar Energy ☒ Solar PV ☐ Solar Thermal ☐ Wind ☐ Biomass ☐ Waterpower ☐ Fuel Cells ☒ Transmission that is interconnected to a renewable energy or geothermal ☐ Transmission that contributes to the capability of the electrical grid to accommodate and transmit electricity produced from Nevada renewable		
Name Plate Production Capacity of the Facility:		300 MW AC
Net Output Production Capacity of the Facility in MW:		300 MW AC
Annual Net Production Capacity of the Facility in MWh (or other appropriate unit):		

Nevada Governor's Office of Energy
Renewable Energy Tax Abatement Application
AFN:

Estimated total capital investment:	339,000,000
Percent of total estimated capital investment expended in Nevada:	100%
Anticipated date or time range for the start of construction:	
Anticipated date for the Commerical Operation Date (COD) of the facility:	
Construction period (in months). Note: time period must match payroll calculations	
Address of the Real Property for the Generation Facility:	Pending
City: Outside city limits in Clark County, NV, approximately 30 miles northeast of Las Vegas on land owned by the Moapa Band of Paiute Indians	
Size of the total Facility Land (acre):	2098

Are you required to file any paper work with the PUC and/or FERC?		YES
If yes,	Purpose of the Filing with PUC: UEPA Permit	Filing Date OR Anticipated filing Date:
If yes,	Purpose of the Filing with FERC: Exempt Wholesale Generator	Filing Date OR Anticipated filing Date:

List All the county(s), Cities, and Towns where the facility will be	
1	Clark County, Moapa River Indian Reservation
2	Clark County, BLM Land (portion of generation tie-line)
3	
4	
5	
6	
7	
8	
9	

Nevada Governor's Office of Energy
Renewable Energy Tax Abatement Application
AFN:

CHECKLIST - PLEASE ATTACH:

1	Description of the Technology and Complete Facility including generation, transmission or distribution, the physical point at which the ownership of energy is transferred and nature of the connection to the transmission grid
2	Complete and legal description of the location of the proposed facility, including a regional facility map that identifies the location, county boundaries and state boundaries of the proposed facility or a reference to any such map of appropriate scale
3	Description of any natural or nonrenewable resources that will be affected by or required to be used in the construction or operation of the proposed facility, including statement of any areas of mitigation, controversy, issue or concern
4	Summary of the PUC and FERC Dockets if any PUC and FERC filing have started
5	Copy of the Business Plan for the Nevada Facility
6	For Expansion Applications, Copy of the most recent assessment schedule and tax bill from the County Assessor's Office or the Department of Taxation
7	Website link to company profile
8	Copy of the Current Nevada State Business License
9	Facility Information Form
10	Employment Information, construction, and permanent employee salary schedules
11	Supplemental Information Form
12	Taxation Reporting Forms (Summary Sheet and Schedules 1 through 8)
13	Names and contact information for construction company, contractors, subcontractors
14	Letter from the utility or company describing the highlights of PPA, LOI, or MOU.
15	Confidential Information Identification Form

Nevada Governor's Office of Energy
Renewable Energy Tax Abatement Application
AFN:

List of Required Permits or Authorizations for the Proposed Facility

	Permit or Authorization Title	Issuing Agency	Project Circumstance Requiring Permit or Authorization	Steps to Obtain Permit	Application Date	Approval Date or Expected Approval Date
I. Federal Permits or Authorizations						
	Right-of-Way Authorization N-99229	Bureau of Land Management	Utility system application on federal lands	NEPA analysis which resulted in an Environmental Impact Statement; Record of Decision which will authorize the right-of-way.		
	Biological Opinion	US Fish and Wildlife Service	Potential take of federal threatened or endangered species	NEPA analysis; Section 7 consultation between BIA and USFWS		
	Solar Energy Ground Lease Approval	Bureau of Indian Affairs	Solar facility proposal on tribal land held in trust by the Bureau of Indian Affairs.	NEPA analysis which resulted in an Environmental Impact Statement; Record of Decision; BIA and Moapa Band of Paiutes approval of solar energy ground lease		
	Section 106 Consultation	Bureau of Indian Affairs / Nevada State Historic Preservation Officer / Bureau of Land Management	NEPA review of a federal undertaking	Conduct cultural resources survey and submit to BIA; Federal agencies consult with Nevada State Historic Preservation Officer; Federal agencies and SHPO concur on how to address potential project impacts on cultural resources and document agreement in Memorandum of Understanding		
II. State of Nevada Permits or Authorizations						
	Application for Energy Projects Funds for the Recovery of Costs	Nevada Department of Wildlife	Renewable energy project review	Submit application and fee		
	Utility Environmental Protection Act Permit to Construct The Eagle Shadow Mountain Interconnection Facilities	Public Utilities Commission of Nevada	230-kV terminal addition and associated facilities within the Reid Gardner Substation	Submit application		
	Special Purpose Permit	Nevada Department of Wildlife	Translocating desert tortoise	Submit application and fee		

State of Nevada
Renewable Energy Tax Abatement Application
AFN:

NOTE: Project contractors, subcontractors, and other entities including owner that will be purchasing goods and equipment for the construction of the Facility are entitled to claim or receive the sales and use tax abatement

Contractors and Subcontractors List

Vendor 1	
Tax ID	
Contact	
Mailing Address	
E-Mail	
Vendor 2	
Tax ID	
Contact	
Mailing Address	
E-Mail	
Vendor 3	
Tax ID	
Contact	
Mailing Address	
E-Mail	
Vendor 4	
Tax ID	
Contact	
Mailing Address	
E-Mail	
Vendor 5	
Tax ID	
Contact	
Mailing Address	
E-Mail	
Vendor 6	
Tax ID	
Contact	
Mailing Address	
E-Mail	
Vendor 7	
Tax ID	
Contact	
Mailing Address	
E-Mail	

State of Nevada
Renewable Energy Tax Abatement Application
AFN:

Nevada Governor's Office of Energy
Renewable Energy Tax Abatement Application

AFN:

Employment Information

Employment

New Operations or Expansion

CONSTRUCTION EMPLOYEES	Full Time	Part Time
Number of anticipated construction employees who will be employed during the entire construction phase ?	300	
Number of anticipated construction employees who will be employed during the entire construction phase that will be Nevada Residents ?	150 or more	
Average anticipated hourly wage of construction employees, excluding management and administrative employees:	\$41.08	
Number of anticipated construction employees who will be employed during the second-quarter of construction *?	150	
Percentage of anticipated second-quarter * construction employees who will be Nevada Residents ?	50% or more	
Number of anticipated second-quarter * construction employees who will be Nevada Residents ?	75 or more	
PERMANENT EMPLOYEES		
Number of anticipated permanent employees who will be employed as of the end of its first fourth-quarter of new operations or expansion?	1	9
Average anticipated hourly wage of permanent employees, excluding management and administrative employees:	25.82	25.82
Number of permanent employees who were employed prior to the expansion?	n/a	
Average hourly wage of current permanent employees, excluding managements and administrative employees	n/a	

Employee Benefit Program for Construction Employees

Health insurance for construction employees and an option for dependents must be offered upon employment

List Benefits Included (medical, dental, vision, flex spending account, etc): 325MK 8ME LLC has not yet chosen a contractor to provide construction labor. Benefits for construction employees and their dependents will be determined by vendors and will be required to meet or exceed the requirements of NRS 701A.365(1)(e)(4)(I) & (II) and NAC 701A.590(5). Compliance with these requirements is mandatory for vendors and is so stated in the contracts to be provided to such vendors. Copies of such contracts shall be available upon request.	
Name of Insurer: To be determined once 325MK 8ME LLC chooses its contractors and subcontractors	
Cost of Total Benefit Package: TBD	Cost of Health Insurance for Construction Employees: TBD

* For reporting purposes, the "second quarter of construction" is weeks 13 through 26 of a 52-week construction period. However, if the construction period is expected to last more or less than 52 weeks, justification may be provided to and considered by the Director of the Governor's Office of Energy as to why there should be an adjustment in the duration or timing of the "second quarter of construction".

State of Nevada
Renewable Energy Tax Abatement Application
AFN:

Construction Employee Schedule

List all anticipated construction employees and associated wages for all persons who will be working on the construction of the facility during the **entire construction period**. *Please provide the formula utilized to arrive at the numbers below**

FULL TIME EMPLOYEES

		(a)	(b)	(c) = (a)+(b)	(e) = (c) x (d)	(f) = $\Sigma(e) / \Sigma(c)$
#	Job Title	# of Nevada Employees	# of Non-Nevada Employees	Total # of Employees	Total Hourly Wage per category (\$)	Average Hourly Wage (\$)

	Construction Employees, excluding					
	Management and Administrative Employees	150	150	300	\$12,600.00	
	TOTAL	150	150	300	12,600	\$41.08
TOTAL CONSTRUCTION PAYROLL		19,656,000 for 16-month period				

Nevada Governor's Office of Energy
Renewable Energy Tax Abatement Application
AFN:

Second Quarter Construction Employee Schedule

List all anticipated construction employees and associated wages for all persons who will be working on the construction of the facility during the **second quarter of construction**. *Please provide the formula utilized to arrive at the numbers below**

FULL TIME EMPLOYEES

		(a)	(b)	(c) = (a)+(b)	(e) = (c) x (d)	(f) = $\Sigma(e) / \Sigma(c)$
#	Job Title	# of Nevada Employees	# of Non-Nevada Employees	Total # of Employees	Total Hourly Wage per job title (\$)	Average Hourly Wage (\$)

	Construction Employees, excluding					
	Management and Administrative Employees	75	75	150	\$6,300.00	
	TOTAL	75	75	150	6,300.00	\$42.00

TOTAL CONSTRUCTION PAYROLL	3,780,000.00 for second quarter
-----------------------------------	--

* # Construction Workers x Hours Per Week

Manhours per Week x Average Hourly Wage

of Weeks x Total Weekly Payroll = Yearly Payroll

Nevada Governor's Office of Energy
Renewable Energy Tax Abatement Application
AFN:

Permanent Employee Schedule

List all anticipated permanent employees who will be employed by the Nevada Facility as of the end of its first fourth-quarter of new operations or expansion and the employment per job title will continue next 20 years. *Please provide the formula utilized to arrive at the numbers below**

		(c)	(f) = $\Sigma(e) / \Sigma(c)$
#	Job Title	# of Employees	Average Hourly Wage (\$)
1	Management and Administrative Employees		
FULL TIME			
2	Permanent Employees, excluding Managemenet and Administrative Employees	1	
PART TME			
3	Permanent Employees, excluding Managemenet and Administrative Employees	9	
TOTAL		10	\$26.00
Full Time (40 hrs/Wk)			\$54,080
Part Time (20 hrs/Wk)			\$1,216,800
TOTAL ANNUAL PAYROLL			\$1,270,880

* # Employees x Hours Per Week x 52 Weeks x Average Hourly Wage

**Nevada Governor's Office of Energy
Renewable Energy Tax Abatement Application
AFN:**

Supplemental Information

Please respond to each question. Answers to the questions will assist Department of Taxation staff in determining whether the facility should be locally or centrally assessed. Other questions will assist staff in understanding whether the reported replacement costs capture all aspects of taxable value.

1) Will you have a possessory interest in any governmentally owned property for this facility? Please describe if yes.

The facility will be constructed on land owned by and leased from the Moapa River Indian Reservation. However, the facility's 12.4 mile gen-tie line will cross land, some of which is owned by the Bureau of Land Management (BLM), and land held in trust by the Bureau of Indian Affairs (BIA) for the Moapa Band of Paiutes and administered by the BLM.

2) Will the facility, including generation, transmission, or distribution cross state or county boundaries? If yes, please describe.

No.

3) Is the facility owned by a subsidiary of a company that is interstate or intercounty in nature? Name and location of the subsidiary company, if yes.

No.

4) At what physical point is the ownership of energy transferred? Describe the location and nature of the connection to the transmission grid.

The point of interconnection is the 230kV NV Energy Reid Gardner Substation

5) Will the facility be eligible for other abatements or exemptions such as pollution control exemptions? Please describe if yes

No.

6) Has your company applied and/or been approved for any abatements or exemptions for this facility or any other facility by the State of Nevada and/or local governments? If yes, list the abatements awarded, name and location of the project, name of the awardee, date of approval, amounts and status of the accounts

No.

7) Has your company applied for, or planning to apply for, an exempt wholesale generator designation as defined in 15 U.S.C 79z-5A?

[REDACTED]

8) If an EIS or EA has been performed, please supply the ROD number.

[REDACTED]

9) Has an appraisal been performed on any portion of this land or project?

No.

10) Has a Power Purchase Agreement been executed?

Yes, a Long-Term Renewable Power Purchase Agreement has been executed with Nevada Power Company d/b/a NV Energy

**Nevada Governor's Office of Energy
Renewable Energy Tax Abatements Application
AFN:**

**Summary Report
Schedules 1 through 8**

Company: 325MK 8ME LLC

Division: N/A

Line No.	Schedule	Total Estimated RCNLD or Transaction Cost	Department Use Only
1	Sch. 1 Personal Property - Property Tax - Total from Col. J. *	24,034,038	
2	Sch. 2 Real Property - Improvements - Total from Col. F. *	36,231,441	
3	Sch. 3 Real Property - Land - Total from Col. I		
4	Sch. 4 Operating Leases - Total from Col. F *	732,552	
5	Sch. 5 Contributions in Aid of Construction - Total from Col. F	3,050,000	
6	Sch. 6 First Year Estimated Sales & Use Tax - Total from Col. J	1,981,094	
7	Sch. 7 Second Year Estimated Sales & Use Tax - Total from Col. J	5,943,283	
8	Sch. 8 Third Year Estimated Sales & Use Tax - Total from Col. J		

** The final determination of the classification of property as real or personal is made by the county assessor for locally-assessed property or by the Department of Taxation for centrally-assessed property. Placement of property on these sheets of the application is made for purposes of this fiscal note only and is not determinative of the final classification of property by the appropriate taxing official.*

**Nevada Governor's Office of Energy
Renewable Energy Tax Abatements Application
AFN:**

**Property Tax: Personal Property
Schedule 1**

Company Name: 325MK 8ME LLC

Division: N/A

Instructions:

(1) List each item of personal property subject to property tax in Col A. Pursuant to NRS 361.030, personal property includes stocks of goods on hand; any vehicle not included in the definition of vehicle in NRS 371.020; all machines and machinery, all works and improvements, and all property of whatever kind or nature not included in the term "real estate" as that term is defined in NRS 361.035.

(2) For each item in Col. A, complete the requested information in Col. B and Col. D (if applicable), Col. C and Col. D through Col. J.

(3) The total estimated cost reported in Col. H should include estimated or actual costs of installation and costs of transportation per NAC 361.1351 and NAC 361.1355. Costs of installation include the costs of direct labor, direct overhead and the capitalized expense of interest or imputed charges for interest which are necessary to make the property operational.

(4) Use the Personal Property Manual published by the Department of Taxation to determine the Cost Less Depreciation in Column (J). Select the Life Schedule that is closest to the estimated life of the personal property listed in Col. I. See <http://tax.state.nv.us>. Then select: *Publications/Locally Assessed Properties/Personal Property Manual*.

(5) Attach additional sheets as necessary.

A	B	C	D	E	H	I	J
Personal Property Itemized Description	G/L Account No. (if applicable)	Purchased by Facility Owner (FO) Contractor (C) Subcontractor (SC)	Date Purchased (if applicable)	Date Received or Estimated Date of Receipt in Nevada	Estimated Total Acquisition Cost	Estimated Life of Personal Property	Estimated Acquisition Cost Less Depreciation
SCADA/MET		C				10	
MODULES		FO				30	
RACKING/POSTS		C				30	
TRACKERS / INVERTERS		C				20	
ELECTRICAL - A/C and D/C		C				15	
O&M: COMPUTERS, FURN/FIXT		C				5	
Grand Total					282,787,891		24,034,038

Nevada Governor's Office of Energy
Renewable Energy Tax Abatements Application
AFN:

Property Tax: Real Property Improvements

Company Name: 325MK 8ME LLC **Schedule 2**

Division: N/A

Instructions:

- (1) List each item of real property improvements subject to property tax in Col A. Pursuant to NRS 361.035, real property includes all houses, buildings, fences, ditches, structures, erections, railroads, toll roads and bridges, or other improvements built or erected upon any land, whether such land is private property or public property; as well as mobile or manufactured improvements.
- (2) For each item in Col. A, complete the requested information in Col. B (if applicable), and Col. C through Col. F.
- (3) The total estimated cost reported in Col. F should include estimated or actual costs of labor (do not include construction or operational employee totals from previous tab), materials, supervision, contractors' profit and overhead, architects' plans and specifications, engineering plans, building permits, site preparation costs, sales taxes and insurance; costs of buying or assembling land such as escrow fees, legal fees, right of way costs, demolition, storm drains, rough grading or other land improvement costs, yard improvements including septic systems, signs, landscaping, paving, walls, yard lighting; off-site
- (4) Use Schedule 3 to report land; Schedule 4 to report operating leases; and Schedule 5 to report contributions in aid of
- (5) Attach additional sheets as necessary.

A	B	C	F
Real Property Improvements Itemized Description	G/L Account No. (if applicable)	Estimated Date of Completion	Estimated Total Construction Cost
SUBSTATION			
GEN-TIE TRANSMISSION LINE			
O&M BUILDING			
ROADS			
FENCING			
REVEGETATION			
SUBSTATION CIVIL			
OTHER/OVERHEAD/SITE PREP			
Grand Total			36,231,441

**Nevada Governor's Office of Energy
Renewable Energy Tax Abatements Application
AFN:**

Company: 325MK 8ME LLC

Division: N/A

**Property Tax: Real Property Land
Schedule 3**

Show the requested data for **all land**, owned or leased, in Nevada.

A	B	C	D	E		F	G	H	I
Where Situated				Brief Description, Size of the Land (acre), Date Acquired	Assessor's Parcel Number (APN)	Owned (O) Leased (L) Rented (Rtd)	G/L Account Number (if applicable)	Purchase Price (if applicable)	Assessor's Taxable Value
Line #	County	City or Town	Tax District						
1									
2	CLARK	N/A		MOAPA TRIBAL LAND 2,098 ACRES	n/a	L			n/a
3									
4	CLARK			BLM GENTIE	See Suppl. Info.	L			
5									
6									
7									
8									
9									
10									
11									
12	Grand Total								0

**Nevada Governor's Office of Energy
Renewable Energy Tax Abatements Application
AFN:**

Company Name: 325MK 8ME LLC

**Property Tax: Operating Leases
Schedule 4**

Division: N/A

Instructions:

- (1) List each operating lease for real or personal property. Designate whether the lease is for real or personal property in Col. C.
- (2) For each item in Col. A, complete the requested information in Col. B (if applicable), and Col. C through Col. F.
- (3) The total estimated cost reported in Col. E and Col. F should contain the costs appropriate to real or personal property. For definitions, please refer to Schedule 1 for personal property and Schedule 2 for Improvements.
- (4) Report the Annual Lease Payment in Col. G; the term of the lease in Col. H; and any residual value at the end of the lease term in Col. I.
- (5) Attach additional sheets as necessary.

A	B	C	E	F	G	H	I
Operating Lease Itemized Description	G/L Account No. (if applicable)	Real or Personal Property?	Lessor's Replacement Cost Per Unit	Estimated Total Replacement Cost	Annual Lease payment	Lease Years Remaining	Residual Value
LAND @ MOAPA TRIBE		REAL (LAND)					
BLM ROW?		REAL (LAND)					
		** - Payment made for 30 year period					
Grand Total				732552			

Nevada Governor's Office of Energy
Renewable Energy Tax Abatements Application
AFN:

Company Name: 325MK 8ME LLC **Property Tax: Contributions in Aid of Construction**
 Division: N/A **Schedule 5**

Instructions:

- (1) List all contributions in aid of construction (CIAC). CIAC is defined in NAC 361.260 as property which has been contributed to a utility by a prospective customer or which has been constructed by the utility and paid for by the prospective customer for which no reimbursement is required to be made by the utility to the prospective customer as a prerequisite to obtaining service.
- (2) For each item in Col. A, complete the requested information in Col. B (if applicable), and Col. C through Col. F.
- (3) The total estimated cost reported in Col. E and Col. F should contain the costs appropriate to real or personal property. For definitions, please refer to Schedule 1 for personal property and Schedule 2 for Improvements.
- (4) Attach additional sheets as necessary.

A	B	C	D	E	F
Contributions in Aid of Construction (CIAC) Itemized Description	G/L Account No. (if applicable)	Real or Personal Property?	Number of Units	Replacement Cost Per Unit	Estimated Total Replacement Cost
Interconnection Facilities to be owned by NV Energy		Real	1	3,050,000	3,050,000
Grand Total					3050000

Nevada Governor's Office of Energy
Renewable Energy Tax Abatements Application
AFN:

Company Name: 325MK 8ME LLC

Division: N/A

Sales and Use Tax
First Year of Eligible Abatement
Schedule 6

Instructions:

- (1) Column A: List each item of personal property or materials and supplies subject to sales and use tax (please include leases. Refer to NRS Chapter 372 for taxable events.
(2) Column B: For each item in column A, list applicable account number.
(3) Column C: List the Facility Owner, Contractor or Subcontractor that will be purchasing the personal property or materials and supplies subject to sales and use tax.
(4) Column D: List the date the personal property or materials and supplies were purchased.
(5) Column E: List the date that possession of the personal property or materials and supplies will be taken.
(6) Column F: List the cost of the personal property or materials and supplies.
(7) Column G: List the county where possession will be taken and the applicable sales tax rate of that county. *Find the appropriate sales/use tax rate on the Department of Taxation's website at <http://tax.state.nv.us>. Then scroll to "Quick Links" and select "Sales/Use Tax Rate Map".*
(8) Column H: Multiply Column F by the Sales Tax Rate in Column G.
(9) Attach additional sheets as necessary.

A	B	C	D	E	F	G		H
Personal Property or Materials and Supplies Itemized Description	G/L Account No. (if applicable)	Purchased by Facility Owner (FO) Contractor (C) Subcontractor (SC)	Date Purchased	Date of Possession	Total Transaction Cost	County and Applicable Sales Tax Rate	TRIBAL NON-TRIBAL	Estimated Sales Tax Paid or to be Paid
SCADA/MET						2.60%		
MODULES						2.60%		
RACKING/POSTS						2.60%		
TRACKERS / INVERTERS						2.60%		
ELECTRICAL - A/C and D/C						2.60%		
SUBSTATION						2.60%		
GEN-TIE TRANSMISSION LINE						2.60%		
O&M BUILDING						2.60%		
FENCING						2.60%		
Grand Total					76195929.6			1,981,094

Nevada Governor's Office of Energy
Renewable Energy Tax Abatements Application
AFN:

Company Name: 325MK 8ME LLC

Division: N/A

Sales and Use Tax
Second Year of Eligible Abatement
Schedule 7

Instructions:

- (1) Column A: List each item of personal property or materials and supplies subject to sales and use tax (please include leases. Refer to NRS Chapter 372 for taxable events.
(2) Column B: For each item in column A, list applicable account number.
(3) Column C: List the Facility Owner, Contractor or Subcontractor that will be purchasing the personal property or materials and supplies subject to sales and use tax.
(4) Column D: List the date the personal property or materials and supplies were purchased.
(5) Column E: List the date that possession of the personal property or materials and supplies will be taken.
(6) Column F: List the cost of the personal property or materials and supplies.
(7) Column G: List the county where possession will be taken and the applicable sales tax rate of that county. *Find the appropriate sales/use tax rate on the Department of Taxation's website at <http://tax.state.nv.us>. Then scroll to "Quick Links" and select "Sales/Use Tax Rate Map".*
(8) Column H: Multiply Column F by the Sales Tax Rate in Column G.
(9) Attach additional sheets as necessary.

A	B	C	D	E	F	G		H
Personal Property or Materials and Supplies Itemized Description	G/L Account No. (if applicable)	Purchased by Facility Owner (FO) Contractor (C) Subcontractor (SC)	Date Purchased	Date of Possession	Total Transaction Cost	County and Applicable Sales Tax Rate	TRIBAL NON TRIBAL	Estimated Sales Tax Paid or to be Paid
SCADA/MET								
MODULES								
RACKING/POSTS								
TRACKERS / INVERTERS								
ELECTRICAL - A/C and D/C								
SUBSTATION								
GEN-TIE TRANSMISSION LINE								
O&M BUILDING								
FENCING								
Grand Total					228,587,789			5,943,283

**Nevada Governor's Office of Energy
Renewable Energy Tax Abatements Application
AFN:**

APPLICANT: 325MK 8ME LLC

Attestation and Signature

I, _____Benjamin Droz____, by signing this Application, I do hereby attest and affirm under penalty of perjury the following:

- (1) I have the legal capacity to submit this Application on behalf of the applicant;
- (2) I have prepared and personally knowledgeable regarding the contents of this Application; and
- (3) The content of this Application are true, correct, and complete.

Benjamin Droz

Name of person authorized for signature:

Authorized Signatory

Title:

DocuSigned by:

Benjamin Droz

5E243FA7362C424...

Signature:

12 June 2020

Date:

Nevada Governor's Office of Energy
Renewable Energy Tax Abatement Application
AFN:

This Application contains confidential information: Yes ☒ No

If yes, please identify any information in the within Application or documents submitted herewith, which Applicant considers confidential or trade secret information. Further, identify: (1) the applicable statutory authority or agreement preventing public disclosure of the information; and (2) Applicant's rationale underlying non-disclosure of the information or document(s).

Applicant acknowledges that the burden of demonstrating confidentiality or trade secret status lies with the Applicant, and Applicant agrees to defend and indemnify the State and its agencies for honoring such designation. Notwithstanding, Applicant understands that the over-inclusive designation of information or documents as confidential or trade secret may cause the Nevada State Office of Energy to conduct further inquiry of the Applicant into the confidentiality of the information, potentially delaying submission of the Application to the Nevada Energy Director.

Material for which confidentiality is claimed :

1. State and Federal Taxpayer ID
2. Annual Net Production
3. State and Federal FERC, PUCN and Permit Filing Dates
4. Wholesale Generator and Certain EIS Information
5. Personal Property Acquisition Costs
6. Real Property Improvement Construction Costs
7. Operating Lease Payments and Replacement Costs
8. Non-Aggregate Tangible Property Acquisition Costs and Estimated Sales Tax

Basis for claims of confidentiality :

This application includes confidential and proprietary trade secret and economic information as defined by Nevada law. Prohibitions on the public disclosure of such information is provided in the Uniform Trade Secrets Act (NRS Chapter 600A), NRS 49.325, NRS 360.247, NRS 360.250, NRS 361.044, NRS 372.750, NRS 703.190, NRS 793.196, NRS 239.010, et. seq., NRS 241.020, and NAC 701A.565; NAC 239.699 and NAC 360.182. The confidential and proprietary trade secret and economic information has been obscured in the redacted version of this application.

Certificate Of Completion

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Subject: Please DocuSign: NV Abatement Signature Page.pdf	
Source Envelope:	
Document Pages: 1	Signatures: 1
Certificate Pages: 1	Initials: 0
AutoNav: Enabled	Envelope Originator:
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Time Zone: (UTC+01:00) Amsterdam, Berlin, Bern, Rome, Stockholm, Vienna	Bahnhofstrasse 22
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Benjamin Droz
bdroz@capdyn.com
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Signature

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In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	6/12/2020 10:16:18 PM
Certified Delivered	Security Checked	6/12/2020 10:16:25 PM
Signing Complete	Security Checked	6/12/2020 10:16:29 PM
Completed	Security Checked	6/12/2020 10:16:29 PM
Payment Events	Status	Timestamps



KeyCite Yellow Flag

Distinguished by [Parnell v. Western Sky Financial, LLC](#), N.D.Ga., April 28, 2014

724 F.3d 1153

United States Court of Appeals, Ninth Circuit.

CONFEDERATED TRIBES OF the CHEHALIS RESERVATION

a federally recognized Indian tribe on its own behalf and as parens patriae for its members; CTGW, LLC, a limited liability company organized under Delaware law, Plaintiffs–Appellants,

v.

THURSTON COUNTY BOARD OF EQUALIZATION, a political subdivision of the State of Washington; John

Morrison, Thurston County Board of Equalization member, in his official capacity; [Bruce Reeves](#), Thurston County Board of Equalization member, in his official capacity; Thurston County, a political subdivision of the State of Washington; [Steven Drew](#), [Thurston County Assessor](#), in his official capacity; [Shawn Myers](#), Thurston County Treasurer; Elizabeth Lyman, Thurston County Board of Equalization member, Defendants–Appellees.

No. 10–35642

|

Argued and Submitted June 5, 2013.

|

Filed July 30, 2013.

Synopsis

Background: Tribe and lessee brought action against county, challenging assessment of property taxes on leased property. Cross-motions for summary judgment were filed. The United States District Court for the Western District of Washington, [Benjamin H. Settle, J.](#), 2010 WL 1406524, awarded summary judgment to county, finding that state and local governments were not prohibited from taxing permanent improvements, like resort on leased property, that were owned by non-Indians, and 2010 WL 2595232, denied in part tribe's motion to amend. Tribe and lessee appealed.

[Holding:] The Court of Appeals, [Ikuta](#), Circuit Judge, held that land and permanent improvements on land were exempt from state and local taxation.

Reversed.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Headnotes (1)

[1] **Taxation** Indian lands and other property

Land where lessee operated resort was held in trust for use of tribe, and thus land and permanent improvements on land were exempt from state and local taxation. Indian Reorganization Act, § 5, 25 U.S.C.A. § 465.

[10 Cases that cite this headnote](#)

[More cases on this issue](#)

Attorneys and Law Firms

*1153 [Gabriel S. Galanda](#) and [Anthony S. Broadman](#), Galanda Broadman, PLLC, Seattle, WA; [Kevin M. Fong](#) (argued) and [Blaine I. Green](#), Pillsbury Winthrop Shaw Pittman, LLP, San Francisco, CA, for Plaintiffs–Appellants.

[Jon Tunheim](#), Prosecuting Attorney, Jane Futterman and Scott C. Cushing (argued), Deputy Prosecuting Attorneys, Olympia WA, for Defendants–Appellees.

[Rob Roy Smith](#), Ater Wynne LLP, Seattle, WA, for Amicus Curiae Marine View Ventures, Inc., Island Enterprises, Inc., and Port Madison Enterprises.

Appeal from the United States District Court for the Western District of Washington, [Benjamin H. Settle](#), District Judge, Presiding. D.C. No. 3:08–cv–05562–BHS.

*1154 Before: [ARTHUR L. ALARCÓN](#), [M. MARGARET McKEOWN](#), and [SANDRA S. IKUTA](#), Circuit Judges.

OPINION

[IKUTA](#), Circuit Judge:

At issue in this case is whether state and local governments have the power to tax permanent improvements built on non-

reservation land owned by the United States and held in trust for an Indian tribe. Pursuant to 25 U.S.C. § 465, and *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 93 S.Ct. 1267, 36 L.Ed.2d 114 (1973), we hold that they do not.

I

The Confederated Tribes of the Chehalis Reservation is a federally recognized Indian tribe in Southwest Washington.¹ In 2002, the Tribe purchased approximately forty-three acres of land known as the “Grand Mound Property,” which was located off the Tribe’s reservation in Thurston County, Washington. Two years later, the Tribe asked the Department of the Interior to buy the Grand Mound Property and hold it in trust for the use and benefit of the Tribe pursuant to the Department’s authority under 25 U.S.C. § 465.² Section 465 authorizes the Secretary of the Interior to acquire “any interest in lands, water rights, or surface rights to lands, within or without existing reservations,” and to hold title to such lands and rights “in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired.” The statute also provides that “such lands or rights shall be exempt from State and local taxation.” *Id.*³

In 2005, while the Tribe’s request was still pending before the Department, the Tribe and Great Wolf Resorts, Inc. entered into an agreement to form CTGW, LLC, a Delaware limited liability company, for the purpose of building a resort, conference center, and water park (collectively, the Great Wolf Lodge) on the Grand Mound Property. Under the agreement, the Tribe owned an undivided 51 percent interest in CTGW. In 2006, the Department agreed to purchase the Grand Mound Property pursuant to § 465 and to hold the land in trust for the Tribe.

The Tribe and CTGW subsequently entered into a lease agreement that gave CTGW the right to use the Grand Mound Property “for a hotel, indoor water park and convention center and related economic development or for any other lawful purpose” for twenty-five years. Article 11 of that lease provides:

***1155** All buildings and improvements on the Premises shall be owned in fee by [CTGW] during the term of this Lease

provided that such buildings and improvements (excluding removable personal property and trade fixtures) shall remain on the Premises after the termination of this Lease and shall thereupon become the property of the [Tribe].

In short, under Article 11, CTGW would own the Great Wolf Lodge’s physical structures for twenty-five years, at which time the Tribe would become the owner. The Bureau of Indian Affairs approved the lease on July 9, 2007, and it remained in effect at all times relevant to this suit. The Lodge opened the following year.

In 2007, Thurston County began assessing property taxes on the Great Wolf Lodge. The County recognized that § 465 exempted the Grand Mound Property from state and local taxation. It concluded, however, that the structures on the land were not tax exempt, because under the terms of the lease they were owned by CTGW and not the Tribe.

The Tribe and CTGW believed that federal law barred the County from imposing these property taxes, and brought suit against the County and related defendants on September 18, 2008, seeking declaratory and injunctive relief.⁴ The district court awarded summary judgment to the County, holding that state and local governments are not necessarily prohibited from taxing permanent improvements, like the Great Wolf Lodge, that are owned by non-Indians. The Tribe and CTGW timely appealed,⁵ and we have jurisdiction pursuant to 28 U.S.C. § 1291.

II

On appeal, we review the summary judgment order de novo, asking “whether, viewing the evidence in the light most favorable to” the Tribe and CTGW, “there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law.” *Ellins v. City of Sierra Madre*, 710 F.3d 1049, 1056 (9th Cir.2013) (quoting *Delia v. City of Rialto*, 621 F.3d 1069, 1074 (9th Cir.2010)). “[S]ummary judgment is appropriate where there ‘is no genuine issue as to any material fact’ and the moving party is ‘entitled to a judgment as a matter of law.’” *Alabama v. North*

Carolina, 560 U.S. 330, 130 S.Ct. 2295, 2308, 176 L.Ed.2d 1070 (2010) (quoting Fed.R.Civ.P. 56(c)).

A

This appeal raises the purely legal question whether the exemption of trust lands from state and local taxation under § 465 extends to permanent improvements on such lands.

The law relevant to this appeal traces back to *United States v. Rickert*, 188 U.S. 432, 23 S.Ct. 478, 47 L.Ed. 532 (1903), a case that precedes the enactment of § 465 by over thirty years. In *Rickert*, the federal government challenged the taxes imposed by Roberts County, South Dakota on “certain permanent improvements” on lands within the former Sisseton Indian Reservation. *Id.* at 432–33, 23 S.Ct. 478. The United States had allotted the lands to individual members of the Sisseton band of Sioux Indians, but held the lands in trust for a period of twenty-five years or longer. *Id.* at 435–36, 23 S.Ct. 478 (discussing Act of Feb. 8, 1887, ch. 119, § 5, 24 *1156 Stat. 388, 389 (1887) (codified as amended at 25 U.S.C. § 348 (2006))). *Rickert* first held that state and local governments had no power to tax the land itself because it was owned by the federal government. *Id.* at 437–39, 23 S.Ct. 478 (“If, as is undoubtedly the case, these lands were held by the United States ... it would follow that there was no power in the state of South Dakota, for state or municipal purposes, to assess and tax the lands in question until at least the fee was conveyed to the Indians.”). In reaching this conclusion, the Court relied on the proposition that “property of the United States was exempt by the Constitution of the United States from taxation under the authority of any state.” *Id.* at 438, 23 S.Ct. 478 (citing *Van Brocklin v. Tennessee*, 117 U.S. 151, 155, 6 S.Ct. 670, 29 L.Ed. 845 (1886)). The Court then turned to the related question whether “the permanent improvements, such as houses and other structures upon the lands held by allotment,” were subject to state and local taxes as personal property. *Id.* at 441–42, 23 S.Ct. 478. The Court held that the state and local governments had no power to tax these improvements, concluding that “[e]very reason that can be urged to show that the land was not subject to local taxation applies to the assessment and taxation of the permanent improvements.” *Id.* at 442, 23 S.Ct. 478.

Decades after *Rickert*, the Court again addressed the question whether state and local governments had the power to tax permanent improvements on non-reservation land owned by the United States and held in trust for Indians. See *Mescalero*

Apache Tribe v. Jones, 411 U.S. 145, 93 S.Ct. 1267, 36 L.Ed.2d 114 (1973). In that case, the Mescalero Apache Tribe operated a ski resort on land located adjacent to reservation lands, but outside “the existing boundaries of the reservation.” *Id.* at 146, 93 S.Ct. 1267. Although the record did not establish the precise form of the business entity that was operating the ski resort, the Court quickly dispensed with this issue, reasoning that “the question of tax immunity cannot be made to turn on the particular form in which the Tribe chooses to conduct its business” *Id.* at 157 n. 13, 93 S.Ct. 1267. The Mescalero Apache Tribe challenged two taxes imposed on the ski resort by New Mexico: a tax on the ski resort's gross receipts, and a use tax “based on the purchase price of materials used to construct two ski lifts at the resort.” *Id.* at 147, 93 S.Ct. 1267. The Tribe argued that federal law barred the state from assessing either tax, because the Tribe's interest in the lands was “within the immunity afforded by § 465.” *Id.* at 155 n. 11, 93 S.Ct. 1267; see also *id.* at 146, 93 S.Ct. 1267.

The Court rejected the Tribe's argument with respect to the gross receipts tax, holding that § 465 exempted “lands and rights in land” from taxation, and “not income derived from [the land's] use.” *Id.* at 155, 93 S.Ct. 1267. But the Court struck down the use tax, reasoning that this form of tax was equivalent to a tax on land, and therefore barred by § 465. In reaching this conclusion, the Court first noted that the construction material at issue had already been “installed in the construction of the ski lifts,” and was therefore “permanently attached to the realty.” *Id.* at 158, 93 S.Ct. 1267. Relying on *Rickert* and § 465, the Court reasoned that “these permanent improvements on the Tribe's tax-exempt land would certainly be immune from the State's ad valorem property tax.” *Id.* The Court then held that the tax exemption in § 465 barred the tax New Mexico characterized as a “use tax.” As the Court explained, “‘use’ is among the ‘bundle of privileges that make up property or ownership’ of property,” and therefore “a tax upon ‘use’ is a tax upon the property itself.” *Id.* at 158, 93 S.Ct. 1267 (quoting *1157 *Henneford v. Silas Mason Co.*, 300 U.S. 577, 582, 57 S.Ct. 524, 81 L.Ed. 814 (1937)). It followed that the “use of permanent improvements upon land is so intimately connected with use of the land itself that an explicit provision relieving the latter of state tax burdens must be construed to encompass an exemption for the former.” *Id.* at 158, 93 S.Ct. 1267 (citing *Rickert*, 188 U.S. at 441–43, 23 S.Ct. 478). On this basis, the Court struck down the tax.

Accordingly, *Mescalero* makes it clear that where the United States owns land covered by § 465, and holds it in trust for

the use of a tribe (regardless of “the particular form in which the [t]ribe chooses to conduct its business”), § 465 exempts permanent improvements on that land from state and local taxation.⁶

B

Mescalero’s ruling is dispositive in this case. The Grand Mound Property at issue here is owned by the United States and held in trust pursuant to § 465. Under *Mescalero*, § 465’s exemption from state and local taxation applies to the permanent improvements on that land. Thus, neither Thurston County nor any other state or local entity can tax the Great Wolf Lodge or other permanent improvements on that land. Thurston County’s property taxes on the Grand Mound Property are therefore invalid under § 465 and *Mescalero*.

The County raises several arguments to counter this conclusion. First, the County attempts to distinguish *Mescalero* on the ground that the improvements at issue in this case are owned by CTGW, not the Tribe itself. *Mescalero* instructs us, however, that this distinction is irrelevant. In that case, as noted above, the form of the business through which the Mescalero Apache Tribe owned and operated the ski resort was unclear. *Mescalero* acknowledged this, but concluded it was unimportant because “the question of tax immunity cannot be made to turn on the particular form in which the Tribe chooses to conduct its business.” *Mescalero*, 411 U.S. at 157 n. 13, 93 S.Ct. 1267. In light of this ruling, the question of immunity from the County’s property tax assessments on the Great Wolf Lodge “cannot be made to turn on” the Tribe’s decision to give ownership of the Lodge to its limited liability company for the duration of the lease. See *id.*

Second, the County argues that because the Great Wolf Lodge constitutes “personal property” under Washington law, it cannot constitute “lands or rights” as that phrase is used in § 465. See R.C.W. 84.04.080 (defining “personal property” to include “all improvements upon lands the fee of which is still vested in the United States”). This argument also fails. *Mescalero* interpreted the scope of § 465 without reference to state law. As such, it ruled that permanent improvements on land owned by the United States and held in trust for Indians may not be taxed as a matter of federal law. See *Mescalero*, 411 U.S. at 155, 158, 93 S.Ct. 1267 (holding, without consideration of New Mexico state law, that permanent improvements are “within ‘the scope of the immunity specifically afforded by’” § 465). Therefore,

it is irrelevant whether permanent improvements constitute personal property under Washington law. See U.S. Const., art. VI, cl. 2; cf. *Drye v. United States*, 528 U.S. 49, 52–53, 120 S.Ct. 474, 145 L.Ed.2d 466 (1999) (holding that federal law defines “property and rights to property” for purposes of a federal tax statute, irrespective of whether the right is defined as a “property” right under state law).

Accordingly, we are bound by *Mescalero*’s interpretation of § 465 to conclude that Thurston County was barred from taxing the Great Wolf Lodge during the time in which the Grand Mound Property was owned by the United States and held in trust pursuant to § 465. The district court therefore erred in granting summary judgment for the County.

C

The Tribe and CTGW argue in the alternative that the tax here at issue is preempted under *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 100 S.Ct. 2578, 65 L.Ed.2d 665 (1980). In *Bracker*, relying on Congress’s broad authority to regulate Indians and the “semi-independent position of Indian tribes,” *id.* at 142 (internal quotation marks omitted), the Court held that the validity of state laws taxing transactions between Indians and non-Indians, on reservation land, is to be assessed based on “a particularized inquiry into the nature of the state, federal, and tribal interests at stake.” *Id.* at 145, 100 S.Ct. 2578; see also *Wagnon v. Prairie Band of Potawatomi Nation*, 546 U.S. 95, 110–11, 126 S.Ct. 676, 163 L.Ed.2d 429 (2005) (specifying that *Bracker* applies “only where the legal incidence of the tax [falls] on a nontribal entity engaged in a transaction with tribes or tribal members ... on the reservation.” (internal quotation marks omitted)). *Bracker* thus creates a balancing test, *Wagnon*, 546 U.S. at 110, 126 S.Ct. 676, “designed to determine whether, in the specific context, the exercise of state authority would violate federal law,” *Bracker*, 448 U.S. at 145, 100 S.Ct. 2578.

We have applied the *Bracker* balancing test in a variety of circumstances involving the imposition of state or local taxes on non-Indians. See, e.g., *Yavapai–Prescott Indian Tribe v. Scott*, 117 F.3d 1107, 1112 (9th Cir.1997) (balancing state, federal, and tribal interests, and ruling against preemption of state taxes on food and room sales); *Salt River Pima–Maricopa Indian Cmty. v. Arizona*, 50 F.3d 734, 738 (9th Cir.1995) (under a *Bracker* analysis, taxes on sales to non-Indians on Indian land were not preempted). Even prior to *Bracker*, we applied a similar mode of analysis in holding that

possessory interest taxes on “non-Indian lessees of property held in trust by the United States Government for reservation Indians” are not per se preempted. See *Fort Mojave Tribe v. Cnty. of San Bernardino*, 543 F.2d 1253, 1255 (9th Cir.1976); see also *Agua Caliente Band of Mission Indians v. Cnty. of Riverside*, 442 F.2d 1184, 1186–87 (9th Cir.1971). None of these cases involved property taxes, however, so they do not implicate § 465.⁷

*1159 Unlike the cases requiring us to undertake a *Bracker* analysis, the case before us involves only property taxes on permanent improvements on non-reservation land owned by the United States and held in trust for Indians.⁸ In this context, we are bound by *Mescalero*'s holding that such taxes are preempted under § 465, and need not consider *Bracker* or any other theory of preemption.

III

Mescalero sets forth the simple rule that § 465 preempts state and local taxes on permanent improvements built on non-reservation land owned by the United States and held in trust for an Indian tribe. This is true without regard to the ownership of the improvements. Because the Supreme Court has not revisited this holding, we are required to apply it. We therefore reverse the district court's summary judgment order and remand for proceedings consistent with this opinion.

REVERSED AND REMANDED.

All Citations

724 F.3d 1153, 13 Cal. Daily Op. Serv. 8085, 2013 Daily Journal D.A.R. 9964

Footnotes

- 1 The documents filed with this court inconsistently refer to the Confederated Tribes of the Chehalis Reservation as both the “Tribe” and the “Tribes.” We will use the singular form, as does the Tribe in its brief.
- 2 The parties indicated in passing that the Grand Mound Property was converted to reservation land at some time after the facts at issue in this appeal. Because the parties did not address the effect of this change, we do not reach it here.
- 3 25 U.S.C. § 465 states, in pertinent part:

The Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

....

Title to any lands or rights acquired pursuant to this Act or the Act of July 28, 1955 (69 Stat. 392), as amended (25 U.S.C. 608 et seq.) shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.
- 4 For convenience, we refer to the defendants collectively as “the County.”
- 5 The County's argument that the appeal was not timely is meritless. The final judgment in this case issued on April 2, 2010. The Tribe and CTGW filed a Rule 59(e) motion seeking reconsideration, which was denied

June 23, 2010. They appealed within thirty days of that denial, making the appeal timely under [Federal Rule of Appellate Procedure 4\(a\)\(4\)\(A\)\(iv\)](#).

- 6 In connection with our analysis of [Mescalero](#), the Tribe asks us to consider the following regulation recently promulgated by the Bureau of Indian Affairs to further interpret [§ 465](#):

Subject only to applicable Federal law, permanent improvements on the leased land, without regard to ownership of those improvements, are not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State. Improvements may be subject to taxation by the Indian tribe with jurisdiction.

[25 C.F.R. § 162.017\(a\)](#). Because this regulation “merely clarifies and confirms” what [§ 465](#) “already conveys,” we need not reach the applicability of this regulation or the level of deference owed to the Bureau of Indian Affairs in this context. See [Watters v. Wachovia Bank, N.A.](#), 550 U.S. 1, 20–21, 127 S.Ct. 1559, 167 L.Ed.2d 389 (2007).

- 7 While the distinction between taxes imposed on non-Indian lessees' rights of possession (as in [Agua Caliente](#) and [Fort Mojave](#)) and property taxes imposed on improvements owned by non-Indians (as in [Mescalero](#)) may appear formalistic, it is critical here. Where a state or local government assesses a tax on land or improvements covered by [§ 465](#), we are bound by [§ 465](#) and [Mescalero](#) to invalidate such taxes. Cf. [Rodriguez de Quijas v. Shearson/American Exp., Inc.](#), 490 U.S. 477, 484, 109 S.Ct. 1917, 104 L.Ed.2d 526 (1989) (“If a precedent of [the Supreme] Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls.”). This is not so, however, when state or local governments impose taxes on interests other than the “lands or rights” covered by [§ 465](#). In [Agua Caliente](#), for example, we stressed that “[t]he California tax on possessory interests does not purport to tax the land as such,” which would be barred by [§ 465](#), “but rather taxes the ‘full cash value’ of the lessee's interest in it,” which is not covered by [§ 465](#). [442 F.2d at 1186](#).
- 8 Although neither the record nor the parties' briefs reference the tax statute or ordinance under which the County levied its taxes, the parties agree that the tax at issue in this case is a property tax on the Great Wolf Lodge, and not a possessory interest or other type of tax. The tax bills and other evidence in the record support this conclusion.

257 Ariz. 216

Court of Appeals of Arizona, Division 1.

SOUTH POINT ENERGY

CENTER LLC, Plaintiff/Appellant,

v.

ARIZONA DEPARTMENT OF

REVENUE, et al., Defendants/Appellees.

No. 1 CA-TX 20-0004

|

Filed March 19, 2024

|

Review Denied December 3, 2024

Synopsis

Background: Non-Indian lessee of land on Indian reservation initiated lawsuits seeking refund of payments for county and state property taxes imposed on power plant that it operated on the land. The Arizona Tax Court, Nos. TX2013-000522, TX2014-000451, TX2015-000850, TX2016-001228, TX2017-001744, TX2018-000019, and TX2019-000086, [Christopher T. Whitten](#), J., consolidated lawsuits and granted summary judgment for the Arizona Department of Revenue (ADOR) and county. Lessee appealed. The Court of Appeals, [251 Ariz. 263, 490 P.3d 372](#), reversed and remanded. ADOR and county filed petition for review, which was granted. The Supreme Court, [253 Ariz. 30, 508 P.3d 246](#), vacated in part and remanded.

Holdings: On remand, the Court of Appeals, [Bailey](#), J., held that:

[1] extent of federal and tribal regulations governing the taxed activity did not weigh in favor of implied federal preemption;

[2] economic burden of state's and county's property tax fell on lessee rather than the tribe, which weighed against implied federal preemption; and

[3] substantial state interest existed justifying imposition of state's and county's taxation of plant, and thus taxation was not impliedly preempted by federal law.

Affirmed.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Headnotes (21)

[1] **Appeal and Error** 🔑 De novo review

Appeal and Error 🔑 Summary Judgment

The Court of Appeals reviews the entry of summary judgment de novo, viewing the facts in the light most favorable to the nonmoving party.

[2] **Appeal and Error** 🔑 Summary Judgment

The Court of Appeals will affirm the entry of summary judgment if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. [Ariz. R. Civ. P. 56\(a\)](#).

[3] **Federal Preemption** 🔑 Indians

Taxation 🔑 Indian lands and other property

Non-Indian lessee of land on Indian reservation had burden to prove implied federal preemption of state tax law in lessee's action seeking refund of payments for county and state property taxes imposed on power plant that it operated on the land. [25 U.S.C.A. § 5108](#).

[4] **Indians** 🔑 Appeal or other review

Federal preemption regarding state or local taxes imposed on non-Indians doing business on a reservation is a question of law, and the Court of Appeals can decide the issue based on a de novo analysis of the record before it. [25 U.S.C.A. § 5108](#).

[5] **Statutes** 🔑 Intent

The primary goal of the Court of Appeals in interpreting federal statutes is to determine and give effect to Congress's intent.

- [6] **Statutes** 🔑 Plain Language; Plain, Ordinary, or Common Meaning

Statutes 🔑 Context

Statutes 🔑 Relation to plain, literal, or clear meaning; ambiguity

When interpreting a federal statute, the Court of Appeals reads words within the statutory context and aims to bring about the plain, logical meaning of a statute unless doing so would bring about an absurd result.

- [7] **Statutes** 🔑 In general; factors considered

Statutes 🔑 Relation to plain, literal, or clear meaning; ambiguity

When interpreting ambiguous language in a federal statute, the Court of Appeals considers secondary interpretive principles, such as an act's subject matter, history, and purpose, and the consequences of differing interpretations.

- [8] **Federal Preemption** 🔑 Grounds for preemption in general

Express statutory authorization is not necessarily required for federal preemption of state law to apply.

- [9] **Federal Preemption** 🔑 Occupation of field; field preemption

In the absence of express preemptive language, Congress' intent to preempt all state law in a particular area may be inferred where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress left no room for supplementary state regulation.

- [10] **Federal Preemption** 🔑 Presumptions and burden of proof

The Court of Appeals will not lightly presume that federal preemption exists.

- [11] **Federal Preemption** 🔑 Indians

Municipal, County, and Local Government 🔑 Particular Cases and Contexts

Taxation 🔑 Indian lands and other property

In determining whether a state or local tax on non-Indians doing business on an Indian reservation is preempted, a court undertakes a particularized inquiry into the nature of the state, federal, and tribal interests at stake, an inquiry designed to determine whether, in the specific context, the exercise of state authority would violate federal law.

- [12] **Federal Preemption** 🔑 Indians

Municipal, County, and Local Government 🔑 Particular Cases and Contexts

Taxation 🔑 Indian lands and other property

For a court balancing the state, federal, and tribal interests at stake while determining whether a state or local tax on non-Indians doing business on the reservation is preempted, traditional notions of Indian sovereignty provide a crucial backdrop against which any assertion of state authority must be assessed, as does the fact that both the tribes and the federal government are firmly committed to the goal of promoting tribal self-government, a goal embodied in numerous federal statutes.

- [13] **Taxation** 🔑 Indian lands and other property

If the state authority to impose a tax on non-Indians doing business on an Indian reservation interferes or is incompatible with federal and tribal interests, the state authority will be preempted, unless the state interests at stake are sufficient to justify the assertion of state authority.

- [14] **Federal Preemption** 🔑 Indians

Taxation 🔑 Indian lands and other property

In determining whether a state or local tax on non-Indians doing business on the reservation is preempted, courts must consider (1) the extent of the federal and tribal regulations governing the taxed activity; (2) whether the economic burden of the tax falls on the tribe or the non-Indian individual or entity; and (3) the extent of the state interest in justifying the imposition of the taxes.

[15] Taxation 🔑 Indian lands and other property

A federal statutory scheme, agency regulations, and day-to-day agency supervision can inform the federal and tribal interests and signal a federal regulatory scheme that is so pervasive that it preempts the state tax on non-Indians doing business on the reservation.

[16] Taxation 🔑 Indian lands and other property

A state tax on non-Indians doing business on a reservation may be impermissible on federal-preemption grounds when a number of the policies underlying the federal regulatory scheme are threatened by application of the tax, and the taxing authority is unable to justify the taxes except in terms of a generalized interest in raising revenue.

[17] Municipal, County, and Local Government 🔑 Particular Cases and Contexts

Taxation 🔑 Indian lands and other property

Extent of federal and tribal regulations governing the taxed activity did not weigh in favor of implied federal preemption of state's and county's taxation of electric power generating plant that non-Indian lessee operated on Indian reservation; pervasiveness of federal regulation of tribal lease was immaterial because no aspect of the lease was subject to tax, and federal regulation of power plants applied to all power plants regardless of their location. 25 C.F.R. § 162.017(a).

[18] Municipal, County, and Local Government 🔑 Particular Cases and Contexts

Taxation 🔑 Indian lands and other property

Economic burden of state's and county's property tax fell on non-Indian lessee of land on Indian reservation, rather than the tribe, which weighed against implied federal preemption of state's and county's taxation of lessee's electric power generating plant; tax was being levied on plant and related improvements, all of which were wholly and separately owned by lessee, and not on the land, which the tribe owned, no partnership existed between lessee and tribe, and tribe's land was not part of assessed property since lessee's property never became part of land.

[19] Taxation 🔑 Indian lands and other property

Principles of federal Indian law, whether stated in terms of pre-emption, tribal self-government, or otherwise, do not authorize Indian tribes to market an exemption from state taxation to persons who would normally do their business elsewhere.

[20] Municipal, County, and Local Government 🔑 Particular Cases and Contexts

Taxation 🔑 Indian lands and other property

As to the extent of the state interest in justifying the imposition of taxes on non-Indians doing business on an Indian reservation, there is no proportionality requirement imposed on the taxing authority, and preemption should occur only when there has been a complete abdication or noninvolvement by the state or county.

[21] Municipal, County, and Local Government 🔑 Regulation of Private Conduct; Police Power

Taxation 🔑 Indian lands and other property

Substantial state interest existed justifying imposition of state's and county's taxation

of electric power generating plant that non-Indian lessee operated on Indian reservation, and thus taxation was not impliedly preempted by federal law; tax revenue supported local services that helped lessee, its employees, and Indian tribe, tax helped county maintain roads that provided important and commonly used access to plant, and tax supported numerous other state and county services, some of which aided reservation, including flood control, law enforcement, emergency planning, local fire districts, libraries, and oversight of pipelines used to fuel plant.

****1132** Appeal from the Arizona Tax Court, No. TX2013-000522, TX2014-000451, TX2015-000850, TX2016-001228, TX2017-001744, TX2018-000019, TX2019-000086 (Consolidated), The Honorable [Christopher T. Whitten](#), Judge. **AFFIRMED**

Attorneys and Law Firms

Lewis Roca Rothgerber Christie LLP, Phoenix, By Patrick Derdenger, [Karen M. Jurichko Lowell](#), Co-Counsel for Plaintiff/Appellant

Dickinson Wright PLLC, Phoenix, By Bennett [Evan Cooper](#), [Vail C. Cloar](#), Co-Counsel for Plaintiff/Appellant

Gammage & Burnham, P.L.C., Phoenix, By Cameron [C. Artigue](#), [Christopher L. Hering](#), Counsel for Defendants/Appellees Arizona Department of Revenue and Mohave County

Arizona Attorney General's Office, Phoenix, By Kimberly J. Cygan, Counsel for Defendant/Appellee Arizona Department of Revenue

Arizona Attorney General's Office, Phoenix, By Jerry A. Fries, Counsel for Defendant/Appellee Mohave County

Kewenvoyouma Law, PLLC, Tempe, By Verrin T. Kewenvoyouma, Christopher Love, Co-Counsel for Amici Curiae Fort Mojave Indian Tribe, et al.

Jenner and Block, LLP, Washington, D.C., By Charles W. Galbraith, Pro Hac Vice, Co-Counsel for Amici Curiae Fort Mojave Indian Tribe, et al.

Judge [Cynthia J. Bailey](#) delivered the opinion of the Court, in which Presiding Judge [Paul J. McMurdie](#) and Judge [D. Steven Williams](#) joined.

OPINION

[BAILEY](#), Judge:

218** ¶1 Plaintiff South Point Energy Center, LLC (“South Point”) appeals the tax court’s summary judgment for the Arizona Department of Revenue (“ADOR”) and Mohave County (collectively, “the County”). South Point argues that the tax court erred in concluding that the County’s valuation and taxation of South Point’s electric power generating plant (“the Plant”) is not preempted under [White Mountain Apache Tribe v. Bracker](#), 448 U.S. 136, 100 S.Ct. 2578, 65 L.Ed.2d 665 (1980). The issue comes to us on remand from the Arizona Supreme Court, which directed us to consider whether applying the [Bracker](#) interest-balancing test evidences *1133** ***219** Congress’s implicit intent to preempt taxing the Plant—a question previously raised by South Point on appeal but not decided by this court. *See S. Point Energy Ctr. LLC v. Ariz. Dep’t of Revenue (South Point I)*, 251 Ariz. 263, 268, ¶ 24, 490 P.3d 372, 377 (App. 2021), *vacated in part and remanded by S. Point Energy Ctr. LLC v. Ariz. Dep’t of Revenue (South Point II)*, 253 Ariz. 30, 39, ¶¶ 37–38, 508 P.3d 246, 255 (2022). For the following reasons, we affirm the tax court, which correctly ruled that the Plant is not exempt from the County’s tax under [Bracker](#).

FACTS AND PROCEDURAL HISTORY¹

¶2 In 1999, Calpine Construction Finance Co. (“Calpine”), a non-Indian-owned entity, leased 320 acres of undeveloped land on a long-term basis from the Fort Mojave Indian Tribe (“the Tribe”) to build and operate the Plant on reservation land. Beginning operations in 2001, the Plant is a “merchant plant” that sells electrical energy to public and private utility companies for resale to end-users. It does not supply electrical power to the Tribe or any person or entity on the reservation. The Tribe did not finance the Plant and does not contribute any operating funds.

¶3 Mohave County then assessed ad valorem property taxes against the Plant based on valuations determined by ADOR. *See* former [Ariz. Const. art. 9, § 2\(13\)](#) (“All property in the

state not exempt under the laws of the United States or under this constitution or exempt by law under the provisions of this section shall be subject to taxation to be ascertained as provided by law.”)²; accord *Ariz. Rev. Stat. (“A.R.S.”) § 42-11002*. ADOR assessed the value of the Plant itself and the personal property used to operate the Plant; ADOR did not assess the value of the underlying land.

¶4 Calpine paid the taxes and unsuccessfully sued for a refund, arguing the Tribe, as lessor, owned all improvements to the leased property, thereby exempting the Plant from state taxation according to federal law. See *Calpine Constr. Fin. Co. v. Ariz. Dep’t of Revenue*, 221 Ariz. 244, 249, ¶ 22, 211 P.3d 1228, 1233 (App. 2009); see also *Cass Cnty. v. Leech Lake Band of Chippewa Indians*, 524 U.S. 103, 110, 118 S.Ct. 1904, 141 L.Ed.2d 90 (1998) (“State and local governments may not tax Indian reservation land ‘absent cession of jurisdiction or other federal statutes permitting it.’” (quoting *Cnty. of Yakima v. Confederated Tribes & Bands of Yakima Nation*, 502 U.S. 251, 258, 112 S.Ct. 683, 116 L.Ed.2d 687 (1992))). On appeal, this court acknowledged the general rule that a lessor owns all real property improvements made by a lessee, but concluded the parties’ lease varied that rule by providing that Calpine owned all improvements. *Calpine Constr.*, 221 Ariz. at 248, ¶¶ 16–17, 211 P.3d at 1232. Consequently, this court affirmed the tax court’s judgment that Calpine was liable for property taxes based on the value of the Plant and related personal property. See *id.* at 246, ¶ 1, 211 P.3d at 1230.

¶5 After a series of transactions involving Calpine and several of its related entities, the Tribe’s land and the Plant were sublet to South Point, another Calpine-related entity, with the Tribe’s consent and approval by the United States Bureau of Indian Affairs (“the BIA”). In 2012, the Tribe and Calpine’s successor-lessees, which are included in references to “South Point,” executed an amended lease that remained in place during this lawsuit. The amended lease provides that no partnership exists between the Tribe and South Point. The amended lease also reaffirms that the Plant and “all [i]mprovements and associated materials, supplies, and equipment” are “owned and controlled” by South Point, and that at the expiration of the lease, South Point must remove all above-ground ****1134 *220** real property improvements and personal property, excepting roads and foundations.

¶6 The amended lease contemplates that ad valorem property taxes may be assessed on the Plant. In addition, the amended lease requires South Point to timely pay all taxes levied by

any governmental entity to prevent the imposition of any liens and to hold the Tribe harmless against any imposed liens. The BIA approved the amended lease.

¶7 South Point initiated these consolidated lawsuits seeking a refund of payments for property taxes imposed from 2010 to 2018, to the extent they were based on valuations of the Plant. See *A.R.S. § 42-11005* (authorizing a lawsuit to recover illegally levied, assessed, or collected taxes). South Point did not challenge the tax assessments based on ownership of the Plant, as Calpine did in its earlier lawsuit. Instead, South Point argued that § 5 of the Indian Reorganization Act of 1934 (“the Act”), see *25 U.S.C. § 5108* (former *25 U.S.C. § 465*), expressly preempts states from imposing property taxes on any real property improvements, regardless of ownership, located on land held in trust by the federal government to benefit Indian tribes or individual Indians. Alternatively, South Point argued that applying the balancing test announced in *Bracker* demonstrates Congress’s implicit intent to preempt taxing the Plant.

¶8 The tax court rejected both of South Point’s arguments and granted summary judgment for the County. We reversed, concluding § 5 of the Act expressly and categorically exempted permanent improvements on the Tribe’s land from state taxation regardless of ownership. See *South Point I*, 251 Ariz. at 269, ¶ 30, 490 P.3d at 378. We remanded for the tax court to conduct an analysis under *Whiteco Industries, Inc. v. Commissioner*, 65 T.C. 664 (1975),³ to determine which, if any, of the assets making up the Plant constituted permanent tax-exempt improvements. *South Point I*, 251 Ariz. at 269, ¶ 30, 490 P.3d at 378. We did not apply the *Bracker* balancing test but directed the tax court to do so in considering whether property taxes on the Plant’s impermanent assets were preempted. *Id.*

¶9 The Arizona Supreme Court granted the County’s petition for review to decide whether the Act’s § 5 “expressly preempts taxing permanent improvements constructed on tribal lands acquired under that section when those improvements are owned by non-Indians.” *South Point II*, 253 Ariz. at 33, ¶ 9, 508 P.3d at 249. The supreme court then vacated a portion of our opinion, holding that the Act does not expressly preempt Mohave County’s ad valorem property tax on the Plant. *Id.* at 31, 39, ¶¶ 1, 37–38, 508 P.3d at 247, 255. The court remanded the case to this court, see *ARCAP 23(m)(2)*, to decide the remaining issue we had not addressed: “whether the tax court correctly ruled that the Plant is also not impliedly exempt

from the County's tax under *Bracker*,” *South Point II*, 253 Ariz. at 39, ¶ 37, 508 P.3d at 255.

¶10 On remand, we ordered additional briefing by the parties and invited other interested parties to file amicus briefs, setting forth their respective positions on the issue.⁴ We now address the question presented to us on remand, and after consideration of *Bracker* and its progeny, we affirm the tax court.

DISCUSSION

[1] [2] ¶11 “We review the tax court's entry of summary judgment de novo, viewing the facts in the light most favorable to South Point as the nonmoving party.” *South Point II*, 253 Ariz. at 33, ¶ 10, 508 P.3d at 249 (citing *Dinsmoor v. City of Phoenix*, 251 Ariz. 370, 373, ¶ 13, 492 P.3d 313, 316 (2021)). We will affirm if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* (citing **1135 *221 *Dinsmoor*, 251 Ariz. at 373, ¶ 13, 492 P.3d at 316; Ariz. R. Civ. P. 56(a)).

[3] [4] ¶12 Preemption is a question of law, and we can decide the issue “based on a *de novo* *Bracker* analysis of the record before us.” *Seminole Tribe of Fla. v. Stranburg*, 799 F.3d 1324, 1329 (11th Cir. 2015). The burden rests on South Point, as plaintiff, to prove implied federal preemption of state law. See *Pickernel Lake Outlet Ass'n v. Day Cnty.*, 953 N.W.2d 82, 92, ¶ 23 (S.D. 2020).

[5] [6] [7] ¶13 Our primary goal in interpreting federal statutes is to determine and give effect to Congress's intent. See *Steven H. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 566, 570, ¶ 14, 190 P.3d 180, 184 (2008) (citing federal cases). We read words within the statutory context and aim to bring about the plain, logical meaning of a statute unless doing so would bring about an absurd result. See *Conroy v. Aniskoff*, 507 U.S. 511, 515–16, 113 S.Ct. 1562, 123 L.Ed.2d 229 (1993); *Armstrong Paint & Varnish Works v. Nu-Enamel Corp.*, 305 U.S. 315, 332–33, 59 S.Ct. 191, 83 L.Ed. 195 (1938); *Welch v. Cochise Cnty. Bd. of Supervisors*, 251 Ariz. 519, 523, ¶ 11, 494 P.3d 580, 584 (2021). If the language is ambiguous, we consider secondary interpretive principles, such as an act's subject matter, history, and purpose, and the consequences of differing interpretations. See *Conroy*, 507 U.S. at 516–18, 113 S.Ct. 1562; *United States v. Am. Trucking Ass'ns*, 310 U.S. 534, 543–44, 60 S.Ct. 1059, 84 L.Ed. 1345 (1940); *Welch*, 251 Ariz. at 523, ¶ 11, 494 P.3d at 584.

¶14 By statute, the United States Secretary of the Interior can acquire “any interest in lands, water rights, or surface rights to lands, within or without existing reservations ... for the purpose of providing land for Indians.” 25 U.S.C. § 5108. This statute further provides that “[t]itle to any lands or rights acquired ... shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.” 25 U.S.C. § 5108.

[8] [9] [10] ¶15 In *South Point II*, our supreme court determined that although § 5 of the Act “preempts state and local taxes imposed on land and rights acquired by the Secretary of the Interior and titled in the name of the United States in trust for Indian tribes or individual Indians,” “[w]hen that lessee is a non-Indian, § 5 does not preempt a state or locality from taxing the improvements.” 253 Ariz. at 39, ¶ 36, 508 P.3d at 255. Thus, under the facts present here, no express authorization for preemption exists under § 5 of the Act. But express authorization is not necessarily required for preemption to apply. See *Bracker*, 448 U.S. at 144, 100 S.Ct. 2578. “In the absence of express pre-emptive language, Congress’ intent to pre-empt all state law in a particular area may be inferred where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress ‘left no room’ for supplementary state regulation.” *Hillsborough Cnty. v. Automated Med. Laboratories, Inc.*, 471 U.S. 707, 713, 105 S.Ct. 2371, 85 L.Ed.2d 714 (1985) (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S.Ct. 1146, 91 L.Ed. 1447 (1947)). We will not, however, lightly presume that preemption exists. See *Washington v. Confederated Tribes of Colville Indian Rsrsv.*, 447 U.S. 134, 155–56, 100 S.Ct. 2069, 65 L.Ed.2d 10 (1980).

[11] [12] [13] ¶16 *Bracker* imposes a balancing test that applies when “a State asserts authority over the conduct of non-Indians engaging in activity on the reservation.” 448 U.S. at 144, 100 S.Ct. 2578. To determine whether a state or local tax on non-Indians doing business on the reservation is preempted, a court undertakes a “particularized inquiry into the nature of the state, federal, and tribal interests at stake, an inquiry designed to determine whether, in the specific context, the exercise of state authority would violate federal law.” *Id.* at 145, 100 S.Ct. 2578; accord *Dep't of Tax'n & Fin. of N.Y. v. Milhelm Attea & Bros., Inc.*, 512 U.S. 61, 73, 114 S.Ct. 2028, 129 L.Ed.2d 52 (1994) (“Resolution of conflicts of this kind does not depend on ‘rigid rules’ or on ‘mechanical’ or absolute conceptions of state or tribal sovereignty,” but

instead on ‘a particularized inquiry’ ” (quoting *Bracker*, 448 U.S. at 142, 145, 100 S.Ct. 2578)). In balancing these interests, “[t]he traditional notions of Indian sovereignty provide a crucial ‘backdrop’ against which any assertion of State authority must be assessed,” as does the fact that “both the tribes and the Federal Government are firmly committed to the goal of promoting tribal self-government, a goal embodied in numerous federal statutes.” *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334–35, 103 S.Ct. 2378, 76 L.Ed.2d 611 (1983) (internal citations omitted). If the state authority “interferes or is incompatible with” federal and tribal interests, the state authority will be preempted, “unless the State interests at stake are sufficient to justify the assertion of State authority.” *Id.* at 334, 103 S.Ct. 2378 (citations omitted).

[14] [15] [16] ¶17 In applying *Bracker*, courts must consider “(1) the extent of the federal and tribal regulations governing the taxed activity; (2) whether the ‘economic burden’ of the tax falls on the tribe or the non-Indian individual or entity; and (3) the extent of the state interest in justifying the imposition of the taxes.” *Ute Mountain Ute Tribe v. Rodriguez*, 660 F.3d 1177, 1187 (10th Cir. 2011). A federal statutory scheme, agency regulations, and day-to-day agency supervision can “inform the federal and tribal interests” and “signal a federal regulatory scheme that is so pervasive that it preempts the state tax.” *Seminole Tribe*, 799 F.3d at 1337 (citing *Bracker*, 448 U.S. at 145–48, 100 S.Ct. 2578). Further, a tax may be impermissible when “a number of the policies underlying the federal regulatory scheme are threatened” by its application, and the taxing authority is “unable to justify the taxes except in terms of a generalized interest in raising revenue.” *Bracker*, 448 U.S. at 151, 100 S.Ct. 2578.

¶18 Courts have applied the *Bracker* interest-balancing test in several circumstances involving the imposition of state or local taxes on non-Indians. *See, e.g., Yavapai–Prescott Indian Tribe v. Scott*, 117 F.3d 1107, 1111–12 (9th Cir. 1997) (ruling against preemption of state transaction privilege taxes on lodging, food, and beverage sales on tribal land); *Gila River Indian Cmty. v. Waddell*, 91 F.3d 1232, 1236, 1239 (9th Cir. 1996) (allowing transaction privilege taxes on tickets and concessionary items at a raceway and concert center on tribal land); *Salt River Pima–Maricopa Indian Cmty. v. Arizona*, 50 F.3d 734, 736, 738 (9th Cir. 1995) (holding that taxes on sales to non-Indians by a non-Indian business on Indian land were not preempted). *But see Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue of N.M.*, 458 U.S. 832, 841–43, 102 S.Ct.

3394, 73 L.Ed.2d 1174 (1982) (holding that a tax imposed on the gross receipts that a non-Indian construction company received from a tribal school board for the construction of a school for Indian children on the reservation was preempted because the Interior Department had a detailed regulatory plan for Indian schooling and the State of New Mexico had declined to take any responsibility for the education of the Indian children).

¶19 None of the aforementioned cases dealt with a property tax like the one at issue, however. In *Seminole Tribe*, an Indian tribe sued the Florida Department of Revenue executive director, challenging the imposition of a rental tax on rent paid to the tribe by non-Indian lessees for the use of commercial space at the tribe's casinos. 799 F.3d at 1326–27. The 11th Circuit Court of Appeals held that the tax was preempted, partly because it was a tax on “a right in land” rather than a tax on economic activity or tangible property removed from the land. *Id.* at 1331–32. In effect, *Seminole Tribe* held that the leases were so connected to the land that their taxation amounted to taxation of the land itself. *Id.* at 1329, 1331. Similarly, in *Confederated Tribes of Chehalis Reservation v. Thurston County Board of Equalization*, the Ninth Circuit Court of Appeals barred property taxes on permanent improvements on non-reservation Indian trust lands. 724 F.3d 1153, 1159 (9th Cir. 2013).

¶20 This case is distinguishable from *Seminole Tribe* and *Chehalis*. Here, the amended lease provides that the Plant and related operating equipment are owned and controlled by South Point, which must remove all above-ground real property improvements and personal property, except roads and foundations, at the expiration of the lease. And neither the land itself nor South Point's leasehold interest in the land is a factor in the tax because (1) in determining the tax, ADOR assessed only the value of the Plant itself and the personal property used to operate it and did not assess the value of the underlying land, and (2) the amended lease provides that no partnership exists between the Tribe and South Point. Since land owned by the Tribe is exempt from state property taxes, no portion of the fee interest, including South Point's leasehold interest, is taxed.

[17] ¶21 South Point relies on United States Department of the Interior/BIA regulations—and specifically 25 C.F.R. § 162.017(a)—as support for its preemption argument. Recently, the South Dakota Supreme Court upheld an ad valorem property tax assessed by a local taxing authority on non-Indian owners of structures and permanent

improvements located on Indian trust land. See *Pickrel Lake*, 953 N.W.2d at 85, ¶ 1.⁵ In considering the extent of the regulations governing the taxed activity, the court rejected reliance on 25 C.F.R. § 162.017(a) as authority for implied preemption, concluding that “Congress has not authorized the BIA to preempt the State’s authority to tax structures owned by non-Indians.” *Pickrel Lake*, 953 N.W.2d at 92–93, ¶¶ 25–29; see also *South Point II*, 253 Ariz. at 39, ¶ 35, 508 P.3d at 255 (holding that “the regulation itself [25 C.F.R. § 162.017(a)] cannot preempt the County’s tax” and “we have no need to defer to the Department of Interior’s interpretation” (citations omitted)). The *Pickrel Lake* court further concluded that any preemptive language in the federal regulations should have no impact on its analysis and found “little evidence of congressional intent to supersede the State’s authority.” 953 N.W.2d at 93, ¶ 30 (citing *Wyeth v. Levine*, 555 U.S. 555, 576, 129 S.Ct. 1187, 173 L.Ed.2d 51 (2009)); see also *South Point II*, 253 Ariz. at 39, ¶ 35, 508 P.3d at 255 (“The Department of Interior has taken the position in other cases that ‘§ 162.017 has no legal effect at all,’ and ... is ‘agnostic’ on whether any specific state tax is preempted.” (citing *Desert Water Agency v. U.S. Dep’t of the Interior*, 849 F.3d 1250, 1254–55 (9th Cir. 2017) (adopting the view that the phrase “[s]ubject only to applicable Federal law” in the regulation means subject to a *Bracker* analysis))).

¶22 The court also reasoned that although the federal government retains exclusive power to regulate Indian affairs, it “has asserted little to no regulatory power in the area of state-imposed ad valorem taxes on structures owned by non-Indians,” and “[i]t is generally within the province of the State to assess property taxes.” *Pickrel Lake*, 953 N.W.2d at 94, ¶ 31 (citations omitted). The court noted that courts “presume that ‘Congress does not intend to pre-empt areas of traditional state regulation,’ ” and “assume the State retains its historic power to regulate by imposing state and local taxes.” *Id.* (citations omitted). Finally, in concluding that implied preemption did not apply, the *Pickrel Lake* court held: “Because there is little or no federal regulatory scheme in place with respect to property taxes, and because the State’s taxation does not implicate Indians or their tribes, thereby implicating federal law, the State’s assessment of nondiscriminatory ad valorem property taxes against structures owned exclusively by non-Indians [on Indian trust land] is not [impliedly] preempted by federal law.” *Id.* at ¶ 32. See also *N. Border Pipeline Co. v. State*, 237 Mont. 117, 772 P.2d 829, 835 (1989) (upholding a state property tax on a pipeline crossing tribal land); *Thomas v. Gay*, 169 U.S. 264, 273–74, 18 S.Ct. 340, 42 L.Ed. 740 (1898) (holding

that Oklahoma could tax cattle owned by non-Indian lessees of Indian land and rejecting the suggestion that the tax constituted a tax on the land); *Utah & N. Ry. Co. v. Fisher*, 116 U.S. 28, 29–30, 33, 6 S.Ct. 246, 29 L.Ed. 542 (1885) (upholding a territorial tax of a section of a non-Indian’s railroad that crossed onto reservation land, reasoning that the tax did not interfere with tribal sovereignty).⁶

****1138 *224** ¶23 The truisms relied on by the *Pickrel Lake* court apply here as well, and South Point points to nothing about the federal regulation of power plants that is more extensive or intensive when a plant is on tribal land or how a particularized inquiry into the nature of the federal, tribal, and state interests at stake leads to the conclusion that the tax is preempted. See generally *Ute Mountain Ute Tribe*, 660 F.3d at 1187. As the tax court noted, the pervasiveness of federal regulation of tribal leases is immaterial because no aspect of the lease is subject to tax, and federal regulation of power plants applies to all power plants regardless of their location; thus, if state or local taxation of power plants on reservations is preempted, state taxation on every other power plant would also be preempted.

[18] [19] ¶24 As for whether the economic burden of the County’s property tax falls on the non-Indian entity (South Point) or the Tribe, see *id.*, it is clear the tax is being levied on the Plant and related improvements, all of which are wholly and separately owned by South Point, and not on the land, which the Tribe owns, and that no partnership exists between South Point and the Tribe. Thus, South Point is the actual taxpayer and bears the tax’s legal incidence. See *Circle K Stores, Inc. v. Apache Cnty.*, 199 Ariz. 402, 407, ¶ 13, 18 P.3d 713, 718 (App. 2001). Moreover, the United States Supreme Court has rejected the argument that when the federal government’s or a tribe’s interest in economic development on reservations—and the associated profitability that comes with that interest—might be indirectly affected, that indirect burden supports granting non-Indian contractors immunity from state or local taxation:

It is, of course, reasonable to infer that the existence of the state tax imposes some limit on the profitability of Indian oil and gas leases—just as it no doubt imposes a limit on the profitability of off-reservation leasing arrangements—but that is precisely the same indirect burden that we

rejected as a basis for granting non-Indian contractors an immunity from state taxation in *Helvering v. Mountain Producers Corp.*, 303 U.S. 376 [58 S.Ct. 623, 82 L.Ed. 907] (1938); *Oklahoma Tax Comm'n v. United States*, 319 U.S. 598 [63 S.Ct. 1284, 87 L.Ed. 1612] (1943); *Oklahoma Tax Comm'n v. Texas Co.*, 336 U.S. 342 [69 S.Ct. 561, 93 L.Ed. 721] (1949); *Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation*, 425 U.S. 463 [96 S.Ct. 1634, 48 L.Ed.2d 96] (1976); and *Colville*, 447 U.S. at 134 [100 S.Ct. 2069].

Cotton Petroleum Corp. v. New Mexico, 490 U.S. 163, 191, 109 S.Ct. 1698, 104 L.Ed.2d 209 (1989) (citations cleaned up); accord *Waddell*, 91 F.3d at 1239 (concluding that indirect economic effects, including those flowing from double taxation, were insufficient grounds to preempt a state tax). As the Supreme Court previously stated in *Colville*, “We do not believe that principles of federal Indian law, whether stated in terms of pre-emption, tribal self-government, or otherwise, authorize Indian tribes thus to market an exemption from state taxation to persons who would normally do their business elsewhere.” 447 U.S. at 155, 100 S.Ct. 2069.

¶25 Moreover, no salient argument exists that should the property tax not be paid, the State could impose a tax lien on the underlying real property, thereby damaging the Tribe. We cannot see how a tax lien could be imposed on land exempt from taxation, and A.R.S. § 42-17153 provides that “a tax that is levied on real or personal property is a lien on the assessed property.” (Emphasis added.) Under the amended lease, South Point's property never becomes part of the land, so the Tribe's land is not part of the assessed property.

[20] ¶26 Finally, as to the extent of the state interest in justifying the imposition of the taxes, see *Ute Mountain Ute Tribe*, 660 F.3d at 1187, we conclude that although South Point demands few direct services from the state or Mohave County, there has also been no complete declination of responsibility for services as found to exist in *Ramah Navajo School Board*, see 458 U.S. at 843–45, 102 S.Ct. 3394, cited

in *Cotton Petroleum*, 490 U.S. at 184–87, 109 S.Ct. 1698. As the *Cotton Petroleum* court recognized, there ****1139 *225** is no “proportionality requirement” imposed on the taxing authority, and preemption should occur only when there has been a “complete abdication or noninvolvement” by the state or County. 490 U.S. at 185, 109 S.Ct. 1698.

[21] ¶27 Here, the tax revenue supports local services that help South Point, its employees, and the Tribe, including “services on the reservation” and “services off the reservation that benefit the reservation and members of the Tribe.” See *id.* at 171 n.7, 185, 109 S.Ct. 1698 (relying on the trial court's factual findings to distinguish the case from *Bracker* and *Ramah Navajo School Board*). For example, the tax revenue supports the local school districts, and both tribal-member children and children of South Point non-Indian employees attend schools in these districts. See *N. Border Pipeline*, 772 P.2d at 835 (finding no preemption because “the State's interest in funding the school districts involved here and providing local services outweighs the federal/tribal interests asserted”). Additionally, the tax helps Mohave County maintain roads that provide important and commonly used access to the Plant. Revenue from the tax also supports numerous other state and County services—some of which aid the reservation—including flood control, law enforcement and emergency planning, local fire districts, libraries, the County Recorder, and the Arizona Corporation Commission's oversight and inspection of the pipelines used to fuel the Plant. A substantial state interest exists justifying the imposition of the taxes, and the funding of these numerous services militates against finding an implied preemption of the County's tax. Accordingly, application of the interest-balancing test announced in *Bracker* does not establish Congress's implicit intent to preempt taxing the Plant.

CONCLUSION

¶28 We affirm the tax court, which correctly ruled that the Plant is not impliedly exempt from the County's tax under *Bracker*.

All Citations

257 Ariz. 216, 118 Arizona Cases Digest 18, 546 P.3d 1130

Footnotes

- 1 The facts set out in this section are largely taken from our supreme court's opinion in [South Point II](#). See [253 Ariz. at 31–33, ¶¶ 2–8, 508 P.3d at 247–49](#).
- 2 In the November 8, 2022 general election, voters approved Proposition 130 to amend the Arizona Constitution with regard to property tax exemption provisions. [Article 9, Section 2, of the Arizona Constitution](#) was amended effective December 5, 2022, to reflect the results of the election, and Section 2(A) now provides: “All property in this state that is not exempt under the laws of the United States or under this section is subject to taxation as provided by law.”
- 3 Whether an asset is a permanent improvement or personal property turns on the guidelines set out in [Whiteco](#). See [65 T.C. at 672–73](#). See also [PPL Corp. v. Comm’r](#), [135 T.C. 176, 193–97 \(2010\)](#); [Trentadue v. Comm’r](#), [128 T.C. 91, 99–108 \(2007\)](#).
- 4 At oral argument on remand, the parties agreed that we need not remand for a [Whiteco](#) analysis.
- 5 The court applied what it deemed a “standard preemption analysis” rather than a [Bracker](#) analysis after noting (1) the parties agreed [Bracker](#) did not apply, (2) the Tribe had not intervened, and (3) the record contained no evidence that (a) tribal interests weighed against the county's taxation authority with respect to non-Indian lessees, (b) the county's separate ad valorem tax affected the Tribe's ability to lease the land, or (c) the taxes had otherwise impacted tribal interests. [Pickerel Lake](#), [953 N.W.2d at 88, ¶ 12](#).
- 6 [Bracker](#) cited both [Thomas](#) and [Fisher](#) but did not overrule either case. See [448 U.S. at 142, 145, 100 S.Ct. 2578](#); see also [Mashantucket Pequot Tribe v. Town of Ledyard](#), [722 F.3d 457, 472 \(2d Cir. 2013\)](#) (concluding that “[Thomas](#) [and other pre-[Bracker](#) non-Indian lessee cases] inform[]” but do not forgo a [Bracker](#) analysis).

253 Ariz. 30
Supreme Court of Arizona.

SOUTH POINT ENERGY
CENTER LLC, Plaintiff/Appellant,
v.
ARIZONA DEPARTMENT OF
REVENUE, et al., Defendants/Appellees.

No. CV-21-0130-PR

|

Filed April 26, 2022

Synopsis

Background: Non-Indian lessee of land owned by the federal government in trust for Indians initiated lawsuits seeking refund of payments for county property taxes imposed on power plant it operated on the land. The Arizona Tax Court, Nos. TX2013-000522, TX2014-000451, TX2015-000850, TX2016-001228, TX2017-001744, TX2018-000019, TX2019-000086, [Christopher T. Whitten](#), J., consolidated the lawsuits and granted summary judgment for the county. Lessee appealed. The Court of Appeals, Division One, [Cynthia Bailey](#), J., [251 Ariz. 263, 490 P.3d 372](#), reversed and remanded. County's petition for review was granted.

Holdings: The Supreme Court, [Timmer](#), J., held that:

[1] as a matter of first impression, the Indian Reorganization Act does not expressly exempt state and local taxes imposed on permanent improvements affixed by non-Indian lessees to land owned by the federal government in trust for Indians when the parties agree that the lessee owns those improvements, and

[2] ad valorem tax imposed on power plant was not preempted by the Act.

Court of Appeals' opinion vacated in part and remanded.

Procedural Posture(s): On Appeal; Petition for Discretionary Review; Motion for Summary Judgment; Review of Administrative Decision.

West Headnotes (12)

[1] **Appeal and Error** 🔑 De novo review

Appeal and Error 🔑 Summary Judgment

Supreme Court reviews the entry of summary judgment de novo, viewing the facts in the light most favorable to the nonmoving party.

3 Cases that cite this headnote

[2] **Appeal and Error** 🔑 Summary Judgment

Supreme Court will affirm summary judgment on appeal if there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. [Ariz. R. Civ. P. 56\(a\)](#).

1 Case that cites this headnote

[3] **Appeal and Error** 🔑 Choice of Law

Prior court's preemption decisions are issues of law that are reviewed de novo by the Supreme Court.

[4] **Appeal and Error** 🔑 Statutory or legislative law

Supreme Court reviews statutory interpretations de novo as an issue of law.

1 Case that cites this headnote

[5] **Federal Preemption** 🔑 Congressional Intent or Purpose

Within constitutional limits, Congress may generally preempt application of state law in a few ways, including by so stating in express terms, which is known as "express preemption." [U.S. Const. art. 6, cl. 2](#).

[6] **Indians** 🔑 Preemption

Court faced with a preemption challenge to state law applied to non-Indian activities conducted on an Indian reservation, absent express

preemption, should make a particularized inquiry into the nature of the state, federal, and tribal interests at stake to determine whether, in the specific context, the exercise of state authority would violate federal law; if so, the state law is impliedly preempted.

[7] **Statutes** 🔑 Intent

Primary goal in interpreting a statute is to determine and give effect to Congress's intent.

[8] **Statutes** 🔑 Plain Language; Plain, Ordinary, or Common Meaning

Statutes 🔑 Context

Statutes 🔑 Relation to plain, literal, or clear meaning; ambiguity

When interpreting a statute, the court reads words in context and effectuates the plain meaning of the statute unless doing so would be absurd.

1 Case that cites this headnote

[9] **Statutes** 🔑 In general; factors considered

If the language of a statute is ambiguous, the court considers secondary interpretive principles, such as the statute's subject matter, history, and purpose, and the consequences of differing interpretations.

1 Case that cites this headnote

[10] **Landlord and Tenant** 🔑 Ownership of improvements in general

General rule that a permanent structure placed upon and attached to realty by a tenant is real property belonging to the lessor does not apply when the lease provides that the tenant owns the permanent improvements.

[11] **Federal Preemption** 🔑 Indians

Indians 🔑 Preemption

Taxation 🔑 Indian lands and other property

The Indian Reorganization Act does not expressly exempt state and local taxes imposed on permanent improvements affixed by non-Indian lessees to land owned by the federal government in trust for Indians when the parties agree that the lessee owns those improvements. 25 U.S.C.A. § 5108.

[12] **Indians** 🔑 Land held in trust in general

Indians 🔑 Preemption

Non-Indian lessee owned power plant on land purportedly acquired by the federal government under the Indian Reorganization Act and held in trust for the benefit of the tribe, and thus, the Act did not expressly preempt county's ad valorem property tax on the plant, since the lease provided that lessee owned the permanent improvements. 25 U.S.C.A. § 5108.

[More cases on this issue](#)

****247** Appeal from the Arizona Tax Court, The Honorable [Christopher T. Whitten](#), Judge, Nos. TX2013-000522, TX2014-000451, TX2015-000850, TX2016-001228, TX2017-001744, TX2018-000019, TX2019-000086 (Consolidated)

Opinion of the Court of Appeals, Division One, [251 Ariz. 263, 490 P.3d 372 \(App. 2021\)](#), **VACATED IN PART AND REMANDED**

Attorneys and Law Firms

[Bennett Evan Cooper](#) (argued), [Vail C. Cloar](#), Dickinson Wright PLLC, Phoenix; [Pat Derdenger](#), [Karen Lowell](#), Lewis Roca Rothgerber Christie LLP, Phoenix, Attorneys for South Point Energy Center LLC

[Cameron C. Artigue](#) (argued), Camila Alarcon, [Christopher L. Hering](#), Gammage & Burnham, P.L.C., Phoenix, Attorneys for Arizona Department of Revenue, et al.

[Charles W. Galbraith](#), Jenner and Block LLP, Washington, D.C.; [Verrin T. Kewenvoyouma](#), Christopher Love, Kewenvoyouma Law, PLLC, Tempe, Attorneys for Amici Curiae Fort Mojave Indian Tribe, the Navajo Nation, the Gila River Indian Community, Gila River Indian Community

Utility Authority, the Inter-Tribal Association of Arizona, and the National Congress of American Indians

[James M. Susa](#), DeConcini McDonald Yetwin & Lacy, P.C., Tucson, Attorneys for Amicus Curiae County Supervisors Association of Arizona and the Arizona Association of Counties

VICE CHIEF JUSTICE TIMMER authored the opinion of the Court, in which CHIEF JUSTICE BRUTINEL and JUSTICES BOLICK, LOPEZ, BEENE, MONTGOMERY, and KING joined.

Opinion

VICE CHIEF JUSTICE TIMMER, opinion of the Court:

***31** ¶1 The issue here is whether the Indian Reorganization Act of 1934 (the “Act”) expressly preempts Mohave County’s ad valorem property tax on a power plant owned by non-Indian lessees of land purportedly acquired by the federal government under the Act and held in trust for the benefit of an Indian tribe. We hold the Act does not expressly preempt this tax.

BACKGROUND

¶2 In 1999, Calpine Construction Finance Co. (“Calpine”), a non-Indian-owned entity, leased 320 acres of undeveloped land on a long-term basis from the Fort Mojave Indian Tribe (the “Tribe”) to construct and operate an electric power generating plant (the “Plant”) on reservation lands. The Plant, which began operating in 2001, is a “merchant plant” that sells electrical energy to public and private utility companies for resale and redistribution to end-users. It does not supply electrical energy to the Tribe or to any person or entity located on the reservation. The Tribe did not finance the Plant’s construction and does not contribute any operating funds.

***32 **248** ¶3 After the Plant was built, Mohave County assessed ad valorem property taxes against the Plant based on valuations determined by the Arizona Department of Revenue (“ADOR”). See [Ariz. Const. art. 9, § 2\(13\)](#) (“All property in the state not exempt under the laws of the United States or under this constitution or exempt by law under the provisions of this section shall be subject to taxation to be ascertained as provided by law.”); [A.R.S. § 42-11002](#) (to same effect). ADOR assessed only the value of the Plant itself and the

personal property used to operate it; ADOR did not assess the value of the underlying land.

¶4 Calpine paid the taxes and unsuccessfully sued for a refund, arguing the Tribe, as lessor, owned all improvements to the leased property, thereby exempting the Plant from state taxation pursuant to federal law. See [Calpine Constr. Fin. Co. v. Ariz. Dep’t of Revenue](#), 221 Ariz. 244, 249 ¶ 22, 211 P.3d 1228, 1233 (App. 2009); see also [Cass County v. Leech Lake Band of Chippewa Indians](#), 524 U.S. 103, 110, 118 S.Ct. 1904, 141 L.Ed.2d 90 (1998) (“State and local governments may not tax Indian reservation land ‘absent cession of jurisdiction or other federal statutes permitting it.’” (quoting [County of Yakima v. Confederated Tribes & Bands of Yakima Nation](#), 502 U.S. 251, 258, 112 S.Ct. 683, 116 L.Ed.2d 687 (1992))). In the ensuing appeal, the court of appeals acknowledged the general rule that a lessor owns all real property improvements made by a lessee but concluded the parties’ lease varied that rule by providing that Calpine owns all improvements. [Calpine Constr.](#), 221 Ariz. at 248 ¶¶ 16–17, 211 P.3d at 1232. Consequently, the court affirmed the tax court’s judgment that Calpine was liable for property taxes based on the value of the Plant and related personal property. See [id.](#) at 246 ¶1, 211 P.3d at 1230.

¶5 After a series of transactions involving Calpine and several of its related entities, the Tribe’s land and the Plant were sublet to South Point Energy Center LLC (“South Point”), another Calpine-related entity, with the Tribe’s consent and approval by the Bureau of Indian Affairs (the “BIA”). In 2012, the Tribe and Calpine’s successor-lessees, which we include in our references to “South Point” for convenience, executed an amended lease, which remained in place during this lawsuit. Among other things, the amended lease provides that no partnership exists between the Tribe and South Point. It further reaffirms that the Plant and “all [i]mprovements and associated materials, supplies, and equipment” are “owned and controlled” by South Point, and that at the expiration of the lease, South Point must remove all above-ground real property improvements and personal property, excepting roads and foundations.

¶6 The amended lease contemplates that ad valorem property taxes may be assessed on the Plant. The lease requires South Point to timely pay all taxes levied by any governmental entity to prevent imposition of any liens and to hold the Tribe harmless against any liens that are imposed. The BIA approved the amended lease.

¶7 South Point initiated these consolidated lawsuits seeking a refund of payments for property taxes imposed from 2010 to 2018, to the extent they were based on valuations of the Plant. See A.R.S. § 42-11005 (authorizing suit to recover illegally levied, assessed, or collected taxes). South Point does not challenge the tax assessments based on ownership of the Plant, as Calpine did in its earlier lawsuit. Instead, South Point argues that § 5 of the Act, 25 U.S.C. § 5108, expressly preempts states from imposing property taxes on any real property improvements, regardless of ownership, located on land held in trust by the federal government for the benefit of Indian tribes or individual Indians. Alternatively, South Point argues that application of a balancing test announced in *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 100 S.Ct. 2578, 65 L.Ed.2d 665 (1980), evidences Congress's implicit intent to preempt taxing the Plant.

¶8 The tax court rejected both of South Point's arguments and granted summary judgment for Mohave County and ADOR (collectively, the "County"). The court of appeals reversed, reasoning that § 5 of the Act expressly and categorically exempts permanent improvements on the Tribe's land from state taxation regardless of ownership. *33 **249 *S. Point Energy Ctr. LLC v. Ariz. Dep't of Revenue*, 251 Ariz. 263, 269 ¶ 30, 490 P.3d 372, 378 (App. 2021). It remanded for the tax court to determine which, if any, of the assets making up the Plant constitute the tax-exempt permanent improvements. *Id.* The court did not itself apply the balancing test under *Bracker* but instead instructed the tax court to do so in considering whether property taxes on the Plant's impermanent assets were taxable. *Id.*

¶9 We granted review to decide whether § 5 of the Act expressly preempts taxing permanent improvements constructed on tribal lands acquired under that section when those improvements are owned by non-Indians, an issue of statewide importance.

DISCUSSION

I.

[1] [2] [3] [4] ¶10 We review the tax court's entry of summary judgment de novo, viewing the facts in the light most favorable to South Point as the nonmoving party. *Dinsmoor v. City of Phoenix*, 251 Ariz. 370, 373 ¶ 13, 492 P.3d 313, 316 (2021). We will affirm if there is no genuine dispute of material fact and the State is entitled to judgment as a matter

of law. *Id.*; Ariz. R. Civ. P. 56(a). We review the prior courts' preemption decisions and their interpretation of § 5 of the Act de novo as issues of law. See *Conklin v. Medtronic, Inc.*, 245 Ariz. 501, 504 ¶ 7, 431 P.3d 571, 574 (2018) (preemption); *Brenda D. v. Dep't of Child Safety*, 243 Ariz. 437, 442 ¶ 15, 410 P.3d 419, 424 (2018) (statutory interpretation).

II.

A.

[5] [6] ¶11 The Supremacy Clause of the United States Constitution makes valid federal laws predominate over conflicting state laws. See U.S. Const. art. 6, cl. 2. Within constitutional limits, Congress may generally preempt application of state law in a few ways, including "by so stating in express terms," which is known as "express preemption." See *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 203–04, 103 S.Ct. 1713, 75 L.Ed.2d 752 (1983) (describing different types of preemption). In deciding whether state laws apply to non-Indian activities conducted on an Indian reservation, the Court in *Bracker* provided an additional pathway for finding federal preemption. 448 U.S. at 144–45, 100 S.Ct. 2578. A court faced with a preemption challenge in that circumstance, absent express preemption, should make "a particularized inquiry into the nature of the state, federal, and tribal interests at stake ... to determine whether, in the specific context, the exercise of state authority would violate federal law." *Id.* If so, the state law is impliedly preempted. See *id.*; see also *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 176–77, 109 S.Ct. 1698, 104 L.Ed.2d 209 (1989) ("It bears emphasis that although congressional silence no longer entails a broad-based immunity from taxation for private parties doing business with Indian tribes, federal preemption is not limited to cases in which Congress has expressly—as compared to impliedly—preempted the state activity.").

¶12 The only issue before us is whether § 5 of the Act expressly preempts application of Arizona's ad valorem tax laws against the Plant. See *Confederated Tribes of Chehalis Rsr. v. Thurston Cnty. Bd. of Equalization*, 724 F.3d 1153, 1159 (9th Cir. 2013) (stating that when § 5 of the Act applies to preempt taxation, there is no need to consider implied preemption under *Bracker*).

B.

¶13 Section 5 of the Act provides in relevant part:

The Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

....

Title to any lands or rights acquired pursuant to this Act or the Act of July 28, 1955 *34 **250 (69 Stat. 392), as amended (25 U.S.C. 608 et seq.) shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, **and such lands or rights shall be exempt from State and local taxation.**

25 U.S.C. § 5108 (emphasis added). South Point argues that the above-emphasized language categorically exempts the Plant from the County's property tax regardless of ownership. The County asserts that because the Plant is not owned by the United States in trust for the Tribe or for individual Indians, the Plant is not included in "such lands or rights" exempt from tax under § 5.

[7] [8] [9] ¶14 Our primary goal in interpreting § 5 is to determine and give effect to Congress's intent. See *Steven H. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 566, 570 ¶ 14, 190 P.3d 180, 184 (2008). We read words in context and effectuate the plain meaning of § 5 unless doing so would be absurd. See *Welch v. Cochise Cnty. Bd. of Supervisors*, 251 Ariz. 519, 523 ¶ 11, 494 P.3d 580, 584 (2021). If the language is ambiguous, we consider secondary interpretive principles, such as the Act's subject matter, history, and purpose, and the consequences of differing interpretations. *Id.*

¶15 We start with § 5's plain language. The provision exempts "such lands or rights" from state and local taxation. § 5108. "Such lands or rights" are identified as "any interest in lands, water rights, or surface rights to lands" acquired by the Secretary of the Interior "for the purpose of providing land for Indians" and titled "in the name of the United States in trust for [an] Indian tribe or [an] individual Indian." *Id.* These "lands or rights" can be located "within or without existing reservations." *Id.* Thus, to fall under § 5's tax exemption, the

Plant must be (1) an "interest in lands, water rights, or surface rights to lands," (2) acquired by the Secretary of the Interior pursuant to § 5, and (3) titled "in the name of the United States in trust for the Indian tribe or [an] individual Indian." See *id.* The primary issue here is whether the Plant is included within the federal government's ownership rights, and thus the Tribe's beneficial rights, in the land underlying the Plant. If it is, and § 5's additional requirements are satisfied, the Plant is tax exempt.

[10] ¶16 The Act itself does not delineate the rights included in the federal government's ownership of land under § 5. According to the BIA, those rights include "any interests, benefits, and rights inherent in the ownership of the real property." 25 C.F.R. § 150.2. As acknowledged in *Calpine Construction*, such rights generally include ownership of permanent improvements constructed by a tenant on leased property. 221 Ariz. at 248 ¶ 16, 211 P.3d at 1232; see also *Cutter Aviation, Inc. v. Ariz. Dep't of Revenue*, 191 Ariz. 485, 492, 958 P.2d 1, 8 (App. 1997) (recognizing that generally "a permanent structure placed upon and attached to the realty by a tenant is real property belonging to the lessor"). This general rule does not apply when, as here, the lease provides that the tenant owns the permanent improvements. See *Calpine Constr.*, 221 Ariz. at 248 ¶¶ 16–17, 211 P.3d at 1232; *Cutter Aviation*, 191 Ariz. at 492, 958 P.2d at 8. The BIA recognizes this exception as applying to leases of land owned by the federal government pursuant to § 5. 25 C.F.R. § 162.415(a) ("A business lease must specify who will own any permanent improvements the lessee constructs during the lease term and may specify under what conditions, if any, permanent improvements the lessee constructs may be conveyed to the Indian landowners during the lease term.").

¶17 It is settled that South Point, not the federal government, owns the Plant. *Calpine Constr.*, 221 Ariz. at 248 ¶ 17, 211 P.3d at 1232. Based on this fact alone, § 5 seemingly does not exempt the Plant from the County's property taxes because the land owned by the United States in trust for the Tribe does not include the Plant. See § 5108. As South Point notes, however, the Supreme Court expansively applied § 5 in *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 93 S.Ct. 1267, 36 L.Ed.2d 114 (1973), to exempt a state tax imposed on a tribal entity for using permanent improvements it constructed and owned on land leased from the federal government. In doing so, the Court relied on *United States v. Rickert*, 188 U.S. 432, 441–43, 23 S.Ct. 478, 47 L.Ed. 532 (1903), a pre-Act *35 **251 case, which disallowed a state property tax on permanent improvements constructed by Indians on land held

in trust for them by the federal government. We therefore consider these cases in determining whether § 5 broadly applies to categorically exempt all permanent improvements affixed to land owned by the federal government in trust for Indians. *See James v. City of Boise*, 577 U.S. 306, 307, 136 S.Ct. 685, 193 L.Ed.2d 694 (2016) (concluding that state and federal courts are bound by the Supreme Court's interpretation of federal law); *Weatherford ex rel. Michael L. v. State*, 206 Ariz. 529, 532 ¶ 8, 81 P.3d 320, 323 (2003) (acknowledging that a Supreme Court decision on a substantive federal issue binds the state courts on that issue).

¶18 The Court in *Rickert* addressed whether a South Dakota county could assess and impose property taxes on permanent improvements and personal property owned by Indians and used in cultivating lands allotted them under the now-defunct General Allotment (Dawes) Act of 1887, ch. 119, 24 Stat. 388 (codified as amended in scattered sections of 25 U.S.C.). 188 U.S. at 432–33, 23 S.Ct. 478. That act authorized the federal government to allot agricultural and grazing lands on Indian reservations to individual Indians. General Allotment Act, § 1. Upon allotment, the land was owned by the government in trust for the sole use and benefit of allottee Indians for twenty-five years, at which time the government would convey fee simple title to them and discharge the trust. *Id.* § 5. After all Indians were allotted reservation lands, any remaining lands could be sold to the United States, which could then open them to non-Indians for homesteading. *Id.* “[T]he allotment process was designed to assimilate Indians into the larger society,” the theory being that by the time they took fee title to the lands, the Indians would have adapted to the mainstream western agricultural economy. Philip P. Frickey, *A Common Law for Our Age of Colonialism: The Judicial Divestiture of Indian Tribal Authority over Nonmembers*, 109 Yale L.J. 1, 14–15 (1999).

¶19 The *Rickert* Court first concluded that the South Dakota county lacked authority “to assess and tax the lands in question until at least the fee was conveyed to the Indians.” 188 U.S. at 437, 23 S.Ct. 478. It characterized the allotted trust lands as “an instrumentality employed by the United States” to benefit Indians and reasoned that permitting taxation would defeat the government's statutory obligation to convey the land in fee to allottees free of any encumbrances, including tax liens. *Id.* at 437–38, 23 S.Ct. 478.

¶20 The Court applied similar reasoning in holding the county could not assess and tax the Indians' permanent improvements or personal property (cattle, horses, and the

like), the latter having been purchased with federal funds to fulfill the government's goal of aiding the Indians in successfully cultivating the allotted lands. *See id.* at 441–45, 23 S.Ct. 478. The Court stated that allotting lands to individual Indians evidenced Congress's expectation that those lands “would be improved and cultivated by the allottee,” and concluded “that object would be defeated if the improvements [and personal property] could be assessed and sold for taxes.” *Id.* at 442, 23 S.Ct. 478. Responding to the county's suggestion that the government's only interest was conveying the allotted land free from encumbrance after twenty-five years and not the improvements or personalty, the Court explained that the government owed a duty of “care and protection” to the Indians that transcended its contractual obligation. *Id.* at 442–43, 23 S.Ct. 478. “The government would not adequately discharge its duty to these people if it placed its engagements with them upon the basis merely of contract, and failed to exercise any power it possessed to protect them in the possession of such improvements and personal property as were necessary to the enjoyment of the land held in trust for them.” *Id.* at 443, 23 S.Ct. 478.

¶21 After *Rickert*, and by the 1920s, allotment proved disastrous for Indian tribes and individual Indians. *See Frickey, supra*, at 15 (describing the loss of “huge amounts of Indian land ... through sales and tax foreclosures” after the Indians became fee owners of the allotted lands); L. Scott Gould, *The Consent Paradigm: Tribal Sovereignty at the Millennium*, 96 Colum. L. Rev. 809, 829 (1996) (“Although the [General Allotment *36 **252 Act] was ostensibly intended to reduce poverty among Indians, it had the opposite effect.”). Confronting this failure, Congress passed the Act in 1934 “to rehabilitate the Indian's economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism” by giving Indian tribes and Indians control of their own property and affairs. *See Mescalero*, 411 U.S. at 152, 93 S.Ct. 1267 (quoting H.R. Rep. No. 73-1804, at 6 (1934)). In addition to authorizing the Secretary of the Interior to acquire lands, water rights, or surface rights in trust for Indians, the Act discontinued the allotment program and strengthened means for Indian tribes and Indians to self-govern and perpetuate their cultures. *See Indian Reorganization (Wheeler-Howard) Act*, Pub. L. No. 73-383, 48 Stat. 984 (1934) (codified as amended at 25 U.S.C. §§ 461–479) (describing the Act as one “[t]o conserve and develop Indian lands and resources; to extend to Indians the right to form business and other organizations; to establish a credit system for Indians; to grant certain rights of home rule

to Indians; to provide for vocational education for Indians; and for other purposes”).

¶22 This brings us to *Mescalero*. The Mescalero Apache Tribe owned and operated an off-reservation ski resort in New Mexico, which the tribe developed under the Act. *Mescalero*, 411 U.S. at 146, 93 S.Ct. 1267. Specifically, the United States Forest Service leased land to the tribe, and the federal government loaned the tribe money to build and equip the resort.¹ See *id.* New Mexico imposed both a sales tax on the resort's gross receipts and a use tax for the tribe's use of two ski lifts operating at the resort. See *id.* at 146–47, 93 S.Ct. 1267. In the tribe's subsequent challenge under § 5 of the Act, then codified at 25 U.S.C. § 465, the Court upheld the sales tax, reasoning that “[o]n its face, the statute exempts land and rights in land, not income derived from its use.” *Id.* at 155, 93 S.Ct. 1267. The Court acknowledged that an exemption for sales tax is arguably supported by the context and purposes of § 5 but concluded that “absent clear statutory guidance, courts ordinarily will not imply tax exemptions.” *Id.* at 155–56, 93 S.Ct. 1267; see also *id.* at 156, 93 S.Ct. 1267 (stating that a tax exemption affecting Indians “can not [sic] rest on dubious inferences” but must be expressed by Congress “in plain words” (quoting *Okla. Tax Comm'n v. United States*, 319 U.S. 598, 607, 63 S.Ct. 1284, 87 L.Ed. 1612 (1943))).

¶23 The Court reached a contrary conclusion regarding the use tax, which taxed the tribe's use of the ski lifts and was assessed based on the out-of-state purchase price for the materials used to construct the lifts. See *id.* at 147, 158, 93 S.Ct. 1267. The Court initially noted the ski lifts had been permanently attached to the land and, citing *Rickert*, concluded they “would certainly be immune from the State's ad valorem property tax.” *Id.* at 158, 93 S.Ct. 1267. It found that the same immunity extended to the use tax, reasoning that use of land “is among the ‘bundle of privileges that make up property or ownership’ of property and, in this sense, at least, a tax upon ‘use’ is a tax upon the property itself.” *Id.* (quoting *Henneford v. Silas Mason Co.*, 300 U.S. 577, 582, 57 S.Ct. 524, 81 L.Ed. 814 (1937)). And because “use of permanent improvements upon land is so intimately connected with use of the land itself,” the Court concluded that § 5's exemption applied to the use tax. *Id.*

¶24 South Point argues *Mescalero* categorically bars the County's assessment of property taxes on the Plant under § 5 regardless of South Point's ownership of the facility. It asserts that, as with use of the ski lifts in *Mescalero*, the Plant is included within the “bundle of privileges” comprising the

Tribe's beneficial ownership of the land underlying the Plant, and taxing the Plant necessarily, and impermissibly, taxes that “bundle.” The County counters *Mescalero* had “nothing to do with the taxation of non-Indian property,” and we should therefore apply the plain language of § 5 to find it does not exempt the Plant from the County's tax.

*37 **253 ¶25 We do not read *Mescalero* as applying § 5 to exempt taxation of non-Indian-owned permanent improvements. First, the Court's analysis solely concerned tribal property and tribal activities. A tribal-owned entity owned and used the ski lifts, and New Mexico assessed the use taxes “against the [Mescalero Apache] Tribe.” *Id.* at 147, 93 S.Ct. 1267. The Court did not address whether New Mexico could impose a use tax on non-Indians using property at the ski resort or whether it could assess a property tax on non-Indian-owned property affixed to the resort land.

¶26 Second, *Rickert*, which the *Mescalero* Court relied on for its use-tax analysis, turned on the property owners' status as Indians. Specifically, *Rickert* prohibited imposition of property taxes on Indian-owned permanent improvements and personal property on allotted lands to avoid taxing “an instrumentality” employed by the federal government to benefit and protect allottee Indians in improving and cultivating trust lands. 188 U.S. at 437, 442–44, 23 S.Ct. 478; cf. *M'Culloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 436–37, 4 L.Ed. 579 (1819) (disallowing a state-levied tax on the operations of a national bank that, in violation of the Supremacy Clause, interfered with the federal government's execution of powers). Taxing permanent improvements owned by non-Indians would not affect those objectives. Thus, it does not necessarily follow that *Rickert*, as applied in *Mescalero* to interpret § 5, exempts non-Indian-owned property from state taxation.

¶27 Third, before *Mescalero*, the Court had refused to extend *Rickert*'s “federal instrumentality” analysis to exempt state property taxes and state excise taxes for non-Indian lessees of Indian lands if those taxes were imposed on similarly situated persons. See *Okla. Tax Comm'n v. Tex. Co.*, 336 U.S. 342, 343, 366–67, 69 S.Ct. 561, 93 L.Ed. 721 (1949) (holding that a non-Indian lessee of mineral rights on lands allotted under the General Allotment Act was not immunized by the Supremacy Clause from state taxes levied against both the lessee's property used in producing petroleum and on the oil and gas produced in the tax year); *Taber v. Indian Territory Illuminating Oil Co.*, 300 U.S. 1, 3–5, 57 S.Ct. 334, 81 L.Ed. 463 (1937) (upholding a state's non-

discriminatory ad valorem property taxes on dwelling, tool house, garage, and equipment used by non-Indian lessee of restricted Indian lands to produce oil and gas). The Court in *Oklahoma Tax Commission v. Texas Co.* concluded that “whether immunity shall be extended in situations like these is essentially legislative in character,” and because Congress had not created such immunity by affirmative action, the taxes there were validly levied. 336 U.S. at 365–66, 69 S.Ct. 561.

¶28 The *Mescalero* Court recognized that *Oklahoma Tax Commission v. Texas Co.* and other cases had “cut to the bone the proposition that restricted Indian lands and the proceeds from them were—as a matter of constitutional law—automatically exempt from state taxation.” 411 U.S. at 150, 93 S.Ct. 1267. In determining § 5’s applicability, the Court also relied on *Oklahoma Tax Commission v. Texas Co.* in stating that “[l]esseees of otherwise exempt Indian lands are also subject to state taxation.” *Id.* at 157, 93 S.Ct. 1267. In light of this pronouncement, if the Court had interpreted § 5 as also exempting permanent improvements owned by non-Indian lessees from state and local taxation, we would expect the Court to have said so rather than leaving confusion in its wake. It did not.

¶29 Fourth, applying *Mescalero*’s holding outside the context of Indian-owned property would ignore § 5’s requirement that the federal government own the “lands or rights” in trust for an Indian tribe or for individual Indians. See § 5108. *Mescalero* included permanent improvements and their use as among the “bundle of privileges” making up property or property ownership because such improvements are “intimately connected with use of the land itself.” 411 U.S. at 158, 93 S.Ct. 1267. But when ownership of permanent improvements is purposefully plucked from that bundle, as occurred here, it loses that intimate connection. In that circumstance, the Indian beneficiary has no possessory or use interest in the permanent improvements, and the federal government’s “lands or rights” do not include those improvements.

*38 **254 ¶30 *Chehalis* does not persuade us that *Mescalero* interpreted § 5 as imposing the categorical bar urged by South Point. There, the Ninth Circuit considered whether § 5 preempted a county tax on a resort, conference center, and water park owned by a limited liability company and built on land held in trust by the United States for the *Confederated Tribes of Chehalis Reservation*. 724 F.3d at 1154–55. The tribe, which formed the company and owned an undivided 51% interest in it, leased the land to the

company for twenty-five years. *Id.* at 1154. Per the lease, the tribe would take ownership of all buildings and other improvements at the end of the leasehold term. *Id.* at 1154–55.

¶31 The Ninth Circuit found *Mescalero* dispositive and held the county was barred from taxing the company’s permanent improvements. See *id.* at 1157–58. In its concluding paragraph, the court stated, “*Mescalero* sets forth the simple rule that [§ 5] preempts state and local taxes on permanent improvements built on non-reservation land owned by the United States and held in trust of an Indian tribe. *This is true without regard to the ownership of the improvements.*” *Id.* at 1159 (emphasis added). In isolation, this statement supports South Point’s view of *Mescalero*. But the body of the opinion clarifies that § 5 preemption applies to permanent improvements regardless of the ownership vehicle a tribe uses to own the improvements. Specifically, the court rejected the county’s argument that *Mescalero* was distinguishable because a private company rather than the Confederated Tribes of Chehalis Reservation itself owned the permanent improvements. See *id.* at 1157. The court characterized *Mescalero* as instructing that “the question of tax immunity cannot be made to turn on the particular form in which the [t]ribe chooses to conduct its business.” *Id.* at 1156 (quoting *Mescalero*, 411 U.S. at 157 n.13, 93 S.Ct. 1267). The court then concluded that “the [t]ribe’s decision to give ownership of the [permanent improvements] to its limited liability company for the duration of the lease” was irrelevant. *Id.* at 1157. *Chehalis*, therefore, does not support applying *Mescalero* to exempt the tax against the Plant. Alternately, if the Ninth Circuit indeed intended the broader reading of *Mescalero* urged by South Point, we reject that reading for the reasons previously explained. See *supra* ¶¶ 25–29.

¶32 We are also unpersuaded that other federal authorities cited by South Point establish that § 5 preempts the County’s tax on the Plant. In *Seminole Tribe of Florida v. Stranburg*, 799 F.3d 1324, 1326 (11th Cir. 2015), one issue was whether § 5 exempted a state tax on rents paid by a non-Indian lessee of food-court operations inside two Indian-owned casinos. Under Florida law, the tax was imposed for the “privilege [of engaging] in the business of renting, leasing, letting, or granting a license for the use of any real property,” assessed against the lessee and collected by the landlord, which remitted the tax to the state. *Id.* (alteration in original) (quoting Fla. Stat. § 212.031(1)(a)). Relying heavily on *Mescalero*, the Eleventh Circuit concluded that § 5 preempted the rental tax. *Id.* at 1328–32. The court described *Mescalero* as “stand[ing] for the proposition that [§ 5] precludes state taxation of that

'bundle of privileges that make up property or ownership of property.' ” *Id.* at 1330 (quoting *Mescalero*, 411 U.S. at 158, 93 S.Ct. 1267). After concluding that leasing property “is a fundamental privilege of property ownership,” the court found that Florida's tax on that privilege was tantamount to the use tax at issue in *Mescalero* and similarly preempted. *Id.*

¶33 *Stranburg* did not apply *Mescalero*’s holding to taxing non-Indian-owned permanent improvements because the case did not involve taxing such improvements. Nevertheless, South Point seizes on *Stranburg*’s description of *Mescalero* as meaning § 5 preempts state and local taxes on privileges attending Indians’ beneficial ownership of property, asserts the Tribe’s ownership privileges include benefitting from South Point’s “use of the land and any permanent improvements,” and argues the tax here infringes those privileges and are therefore preempted under § 5. This is a leap too far. The County’s property tax is not imposed on South Point’s rental payments, so the tax does not burden the Tribe’s use of its land as was the case in *Stranburg*. And as previously explained, the Tribe has no ownership interest *39 **255 in the Plant, so the tax could not infringe on it. *Cf. Okla. Tax Comm’n*, 336 U.S. at 353, 69 S.Ct. 561 (stating that the taxes there raised no issues regarding the immunity of Indian lands because “[t]here is no possibility that ultimate liability for the taxes may fall upon the owner of the land”). Thus, because the Tribe derives no benefit from the Plant, the tax cannot infringe on it.

¶34 South Point also asks us to give weight to a Department of Interior regulation concerning Indian land leases. *See Wade v. Ariz. State Ret. Sys.*, 241 Ariz. 559, 563, 390 P.3d 799, 803 (2017) (acknowledging that absent legislative direction, the court will give weight to an agency’s construction of the system it administers). Title 25, § 162.017(a) of the Code of Federal Regulations states that “[s]ubject only to applicable Federal law, permanent improvements on the leased land, without regard to ownership of those improvements, are not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State.”

¶35 The regulation does not persuade us to interpret § 5 differently. First, the regulation itself cannot preempt the County’s tax. *See Kansas v. Garcia*, — U.S. —, 140 S. Ct. 791, 801, 206 L.Ed.2d 146 (2020) (stating preemption can arise only from “the Constitution itself or a valid statute enacted by Congress”). Second, Congress has provided direction on the exemption at issue by enacting § 5. We can ascertain that provision’s meaning by applying interpretive

principles, and we have no need to defer to the Department of Interior’s interpretation. *See Wade*, 241 Ariz. at 563, 390 P.3d at 803 (recognizing the judiciary has final authority in interpreting statutes). Third, the regulation is “[s]ubject ... to applicable Federal law,” which includes § 5, the cases interpreting it, and *Bracker*. § 162.017(a). The Department of Interior has taken the position in other cases that “§ 162.017 has no legal effect at all,” and the department is “agnostic” on whether any specific state tax is preempted. *Desert Water Agency v. U.S. Dep’t of the Interior*, 849 F.3d 1250, 1254 (9th Cir. 2017). Instead, the regulation merely reflects the agency’s view that when a *Bracker* analysis is conducted, “the federal and tribal interests at stake are strong enough to have a preemptive effect in the generality of cases.” *See id.*; *see also Stranburg*, 799 F.3d at 1337–38 (declining to defer to § 162.017 and describing the preamble to the regulations as “outlin[ing] the *Bracker* balancing test and then appl[ying] it generally”).

[11] ¶36 In sum, § 5 preempts state and local taxes imposed on land and rights acquired by the Secretary of the Interior and titled in the name of the United States in trust for Indian tribes or individual Indians. Ownership rights in land generally include permanent improvements affixed to that land by a lessee but not if the parties agree that the lessee owns those improvements. When that lessee is a non-Indian, § 5 does not preempt a state or locality from taxing the improvements. Neither *Mescalero* nor other federal authorities provides otherwise.

[12] ¶37 Here, South Point indisputably owns the Plant, and the property taxes fall solely on it and not the Tribe’s land. Consequently, § 5 does not exempt the Plant from taxation, and the court of appeals erred by holding otherwise. Considering our decision, we need not address the County’s additional argument that exemption does not apply because the Secretary of the Interior did not acquire the land underlying the Plant pursuant to § 5. Because the court of appeals did not address whether the tax court correctly ruled that the Plant is also not impliedly exempt from the County’s tax under *Bracker*, we remand to the court of appeals to decide that issue. *See S. Point Energy Ctr.*, 251 Ariz. at 268 ¶ 24, 490 P.3d at 377.

CONCLUSION

¶38 For the foregoing reasons, we vacate the court of appeals’ opinion ¶¶ 9–24 and the first sentence in ¶ 30. We remand

to the court of appeals to decide the remaining issue left undecided by that court.

All Citations

253 Ariz. 30, 69 Arizona Cases Digest 4, 508 P.3d 246

Footnotes

- 1 The Court acknowledged that “[t]he ski resort land was not technically ‘acquired’ ‘in trust for the Indian tribe.’” *Mescalero*, 411 U.S. at 155 n.11, 93 S.Ct. 1267. It nevertheless concluded that § 5 applied to the tribe’s interest in the land as “it would have been meaningless for the United States, which already had title to the forest, to convey title to itself for the use of the Tribe.” *Id.*

End of Document

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Ojjo Earth Truss Foundation System

Engineered for Rocky, Hard Rock, and Mixed Soil Types

As the solar industry accelerates and project complexity increases, the need for innovative solutions to address diverse soil conditions has become more important. NextTracker's patented Ojjo Earth Truss® foundation system, part of NextTracker's comprehensive suite of NX Foundation Solutions, excels in rocky, hard rock, and mixed soils offering an efficient, light on land, and cost-effective alternative to traditional foundations. Coupling a resilient truss structure with semi-automated installation equipment, Ojjo Earth Truss integrates seamlessly with NX Horizon™ solar tracker systems to streamline engineering and procurement while overcoming the most difficult ground conditions.

Innovative Technology

The Ojjo Earth Truss foundation system utilizes the semi-automated Truss Driver™, a hollow ground-screw, a drill shaft and drill bit to simultaneously drill and drive. This innovative design accelerates installation, reduces costs, and simplifies logistics, eliminating the need for pre-drilling. With a generous five-foot reveal window, the system can also accommodate uneven terrain with zero or minimal site grading. This technology ensures precise, consistent installation while mitigating subsurface risks and preventing disruptions or cost overruns.

Key Benefits



EFFICIENT INSTALLATION
Avoid pre-drilling, delays
and cost overruns



PRECISE ALIGNMENT
Prevent rework with GPS
and real-time QC



IMPROVED SAFETY
Reduce hazards
and crew fatigue



LIGHT-ON-LAND
Minimize noise and land
disturbance

Build on hard and rocky soils without pre-drilling

The Ojjo Earth Truss® foundation system works in synergy with the Truss Driver™ installation machine to perform rapid, accurate, semi-automated installation. Together, the Earth Truss and Truss Driver eliminate the need for pre-drilling and can dramatically reduce or eliminate grading, resulting in significant time and cost savings with reduced environmental impact, versus traditional piles.



Ojjo Earth Truss

- The hollow screw design allows for direct drilling and driving in place, efficiently installing foundations in hard soils.
- Specifically designed to mount NX Horizon, the screws, legs and truss caps are crimped together by the Truss Driver for a secure, lifetime connection.
- A range of leg lengths enables up to a 5-foot reveal window

Earth Truss Driver

- With GPS based positioning, intelligent closed-loop control and a simple operator interface, the Truss Driver installs the Earth Truss system with precision and speed.
- The automated drill and drive operation ensures consistent, repeatable screw installation across varied and changing soil conditions. The machine adjusts embedment depth and supports setting of final alignment via high-power crimp tools and built-in quality control checks.

GENERAL

Applicable Tracking System	NX Horizon, NX Horizon-XTR
Targeted Soil Conditions	Rocky, hard rock, mixed
N-S Slope	Up to 15%
E-W Slope	Up to 15%
Tracker Elevation Range	1.0 to 3.0 meters

COMPONENTS

Screw	Threads eliminate reliance on skin friction. Driven at an angle, loaded in tension. Designed for shallow embedment depth.
Leg	Legs form efficient truss structure once connected from Screws to Truss Caps.
Truss Cap	Connects a pair of legs to NX Horizon BHA.
Connections	Fast-connect crimp and engineered fasteners.
Materials	Galvanized steel. Range of costing thicknesses available.

INSTALLATION

Machine Type	Ojjo Truss Driver
Pile Placement	GPS based
Screw Driving	Patented, simultaneous "drill and drive" technology for hard, rocky soils.
Leg Assembly	Crimped to each pair of screws and truss cap; height adjustable.
Tracker Assembly	No additional alignment or fastening steps required.

SERVICES

Geotech Analysis	NX supported
Foundation Engineering Package	NX supported
Pull-Out Testing	NX supported
Training	NX supported





Foundations for All

Across all ground conditions, Nextpower's integrated tracker-plus-foundation platforms present the ideal solution for helping you land solar anywhere – on time and on budget.

[Request a Quote](#)

How Nextpower Foundations Deliver

Whether in medium soils, rocky ground, or frost-heave conditions, our integrated foundation systems are built for efficiency, safety, and reliability throughout your project's lifetime.



Types of Embedment

As a leader, Nextpower has
experience worldwide, delivering
performance on the most challenging

Build on Any Ground

Overcome the toughest site conditions with
tailored foundation solutions, from
straightforward sites to the most complex
geology. Our portfolio covers frost-heave, hard
rock, soft soils, and everything in between.



NX Anchor

Engineered for long-term stability in a wide array of soil conditions including soft, expansive, medium, and frost-heave. Integration of the foundation system with NX Horizon™ trackers reduces parts, streamlines installation, and expands feasibility for diverse site conditions.

[See Details](#)



NX Earth Truss

For projects facing hard, rocky, and mixed soils, NX Earth Truss® eliminates pre-drilling and accelerates installation via its integrated tracker-plus-foundation engineering. Combining advanced drill-and-drive technology with a robust truss system and semi-automated installation, the results are precise, durable, and efficient performance from the ground up.

[See Details](#)



Traditional Piles

For straightforward soil conditions, our proven pile solutions offer reliable performance, cost efficiency, and seamless compatibility with NX Horizon tracker platforms. Leveraging gigawatts of field experience, these foundations have supported vast volumes of solar capacity worldwide.



Simplified Procurement, Proven Solution

Nextpower supports site assessment through installation with established pile technology that streamlines planning and minimizes complexity, enabling projects in uncomplicated soils to progress swiftly and with minimal risk.

Precision You Can Count On

Using industry-leading geotechnical methods at every site, we verify precision and performance. Whether paired with NX Horizon or NX Horizon XTR™, our traditional piles are customized for site requirements and optimized for construction efficiency.

Additional Resources and Case Studies

See how Nextpower foundations meet diverse project and construction requirements. Explore real-world examples of unified design and execution – delivering high-performance solar at scale with expert support.

[View All](#)



BLOG

NX Earth Truss in Oil Country: A New Power Couple

February 13, 2026



PRESS RELEASE

Nextracker Unveils NX Foundation Solutions Enabling Solar “Anywhere”

September 9, 2024





PRESS RELEASE

Nextracker Acquires Ojjo to Expand Utility-Scale Solar Tracker Foundations Business

June 20, 2024



DATASHEET

NX Anchor™ Foundation System

September 6, 2024



NX Earth Truss

Hard ground, handled – with an innovative, integrated foundation system for rocky, hard rock, and mixed sub-soil conditions.

[Request a Quote](#)

Break new ground with Nextpower's hard-soil specialist

With competition for prime solar sites increasing, success often means building on less-than-perfect ground. Sites with hard, rocky ground often require expensive and costly pre-drilling. NX Earth Truss™ tackles rocky, hard, and mixed soils with innovative foundation engineering and seamless integration with NX Horizon™. The semi-automated NX Truss Driver delivers precision installation for accelerated builds – all while reducing grading, delays, and risk of costly overruns.



How NX Earth Truss Powers Through Rock & Rubble

Precision meets power with a foundation system that can drill and drive its way to success in the toughest ground. The integrated design eliminates separate pre-drilling steps and ensures precise bearing placement in 3D space for consistent, reliable installs.



Drill-and-Drive Technology

A patented hollow screw, drill shaft, and expanding bit with automated rotary control, depth settings, and water mist penetrate rock and hard earth, combining drilling and pile installation in a single, efficient motion with improved consistency and reduced site impact.



Designed for Flexibility

With multiple leg heights available, Earth Truss can be adapted to uneven terrain. Up to 5 feet of reveal tolerance reduce grading and civil works.

Single-Pass Installation

The semi-automated NX Truss Driver enables one-touch installation with simple controls and smart automation. Foundation and tracker-bearing supports are installed into one continuous operation.



Seamless NX Horizon Integration

Each truss is securely crimped together with the Truss Driver's onboard crimping jaws, creating a unified structure with the industry's most trusted tracker, NX Horizon – reducing part count, requiring fewer fasteners, and resulting in up to 20% faster tracker builds.

Unlock Hard-Ground Potential

Sites once considered too complex no longer demand heavy earthworks or pre-drilling. With NX Earth Truss and the Truss Driver, projects move quickly from challenging terrain to fully built, slashing timelines and expanding viable site options.



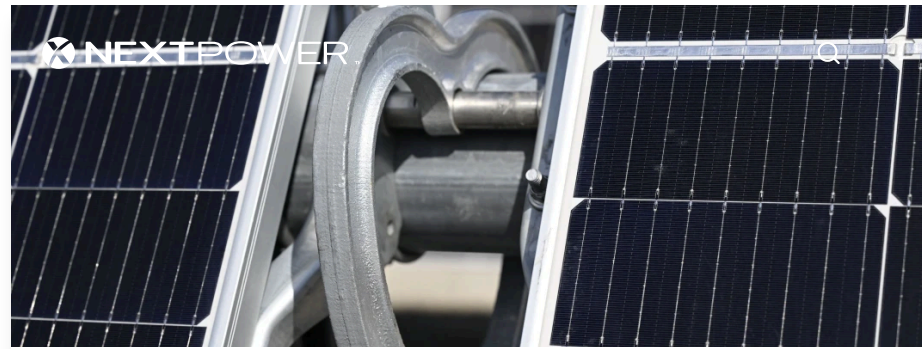
Eliminate Pre-Drilling

Patented drill-and-drive technology removes the need for separate pre-drilling, streamlining logistics and reducing installation risk.



GPS-enabled Alignment

Calibrated GPS positions bearing caps in 3D space for highly accurate placement, maintaining precision in variable subsurface conditions and eliminating costly rework.



Optimized for Efficiency

Integrated tracker–foundation parts replace multiple separate components, reducing material use, fastening steps, and requiring up to 20% less assembly labor.



Tread Lightly

Low noise, minimal dust, and reduced grading preserve site integrity and community goodwill. With no large, heavy beams required, worker safety in the field is also improved.



Additional Resources and Case Studies

Discover how NX Earth Truss is accelerating builds and unlocking challenging sites previously considered unviable.

[View All](#)



BLOG

NX Earth Truss in Oil Country: A New Power Couple

February 13, 2026



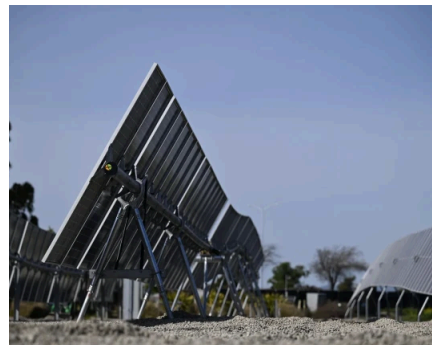
NX Earth Truss



CASE STUDY

Oregon Case Study

September 6, 2024



DATASHEET

NX Earth Truss™ Foundation System Datasheet

September 6, 2024



PRESS RELEASE

Nextracker Debuts NX Earth Truss Foundation Solution in Australia, Backed by ARENA

October 16, 2025



Get in Touch

See how Nextpower delivers smarter solar at every stage of project development.



OJJO Gemini



NEVADA DEPARTMENT OF TAXATION
Division of Excise and Local Government Services

PERSONAL PROPERTY
MANUAL:
VALUATION GUIDELINES
2025-2026

Division of Excise and Local Government Services

Personal Property Manual: Valuation Guidelines 2025-2026

Department of Taxation
Division of Excise and Local Government Services
3850 Arrowhead Drive
Carson City, NV 89706
Phone 775.684.2100 • Fax 775.684.2020

Adopted by
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CONTENTS

2025-26 PERSONAL PROPERTY MANUAL – VALUATION GUIDELINES

Introduction	iii
Exempt Property.....	iii
Procedures for Determining Taxable Value.....	iv
A Note on NAICS.....	vi
2025-26 Cost Conversion Factors	1
Three (3) Year Life	1
Five (5) Year Life	2
Seven (7) Year Life	3
Ten (10) Year Life.....	4
Fifteen (15) Year Life	5
Twenty (20) Year Life	6
Thirty (30) Year Life.....	7
Mobile Homes (Sold On Or After July 1, 1982).....	8
Billboards.....	10
Special Properties	12
Short-Life Property.....	12
Information Systems	12
Taxable Software (Not Associated with Computer-Integrated Machinery).....	14
Computer-Integrated Machinery	15
Robots and Robotic Devices	15
Computerized Equipment.....	17
High-Tech Medical Diagnostic Equipment.....	17
High-Tech Electronic Medical Equipment.....	18
Office Furniture, Retail Sales Equipment, Other	18
Mobile or Manufactured Homes	19

Billboards.....	20
Life Expectancy Guidelines.....	21
Agriculture and Forestry	21
Mining.....	22
Utilities	23
Construction	23
Manufacturing.....	25
Wholesale Trade.....	33
Retail Trade.....	34
Transportation and Warehousing.....	34
Information.....	36
Real Estate, Rental, and Leasing.....	38
Professional, Scientific, and Technical Services	39
Waste Management and Remediation Services.....	39
Health Care and Social Assistance	40
Arts, Entertainment, and Recreation	41
Accommodation and Food Services	42
Other Services	43
Appendix 'A' Nevada Revised Statutes and Nevada Administrative Code Related to Personal Property	45
Appendix 'B' Methodology Used to Estimate Cost Indexes.....	53
Appendix 'C' Methodology Used to Estimate Expected Useful Life.....	56
Appendix 'D' Exemptions from Property Taxes.....	58
Exemptions from Property Taxes.....	58
Table of Exemptions	59
Appendix 'E' Determining Whether Fixtures are Real or Personal Property	72
Index	74

INTRODUCTION

2025-26 PERSONAL PROPERTY MANUAL – VALUATION GUIDELINES

The schedules presented herein are interpretive guidelines for use by county assessors to establish taxable value, pursuant to the requirements of NRS 361.227(4) and NAC 361.1365 and 361.1375.

CLASSIFICATION OF PROPERTY

Personal property is defined in NRS 361.030 and includes (j) “all property of whatever kind or nature, except vehicles as defined in NRS 371.020, not included in the term “real estate.” Real estate is defined in NRS 361.035, and includes land, houses, buildings, fences, ditches, structures,¹ erections, railroads, other improvements, and property rights. Real property is further defined in NAC 361.11715 as land, fixtures, improvements; on-site enhancements; and any rights, interests, benefits and privileges belonging or attached to the land.

[NRS 361.333](#) requires that each major class of property be examined to determine whether there is equality of assessment. 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 or real property. 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 Excise and Local Government Services and/or the District Attorney in difficult cases.

All references to statutes and regulations may be found in [Appendix A](#) of this Manual.

EXEMPT PROPERTY

[NRS 361.050](#) through [NRS 361.187](#) provide exemptions for assorted types of eligible property, including household goods; business inventories; property in transit; property owned by government entities, charitable organizations or veterans; and fine art for display.

Additionally, [NRS 361.228\(1\)](#) provides that

All intangible personal property is exempt from taxation, including, without limitation:

- (a) Shares of stock, bonds, mortgages, notes, bank deposits, book accounts such as an acquisition adjustment and credits, and securities and chooses in action of like character; and
- (b) Goodwill, customer lists, contracts and contract rights, patents, trademarks, trade names, custom computer programs, copyrights, trade secrets, franchises and licenses.

A complete discussion of exemptions and a cross-reference table is included in [Appendix D](#) of this manual.

¹ Structures include self-supporting structures other than buildings which carry gravity loads and resist the effects of earthquakes. They are generally not designed for continuous human occupancy and may be open to the environment, part of landscape design elements, or part of infrastructure systems (transport, water, energy). Examples of non-building structures include silos, chimneys, stacks, cooling towers, bins and hoppers, amusement structures, and monuments. See *American Society of Civil Engineers, “Minimum Design Loads for Buildings and Other Structures,” Revision of ASCE Standard 7-98, SEI/ASCE 7-02, 2nd Edition, Section 9.14, Nonbuilding Structures, p. 186. See also Bachman, Robert and Susan Dowty, “Nonstructural Component or Nonbuilding Structure,” originally published in *Building Safety Journal* (April-May, 2008).*

PROCEDURES FOR DETERMINING TAXABLE VALUE

To calculate the taxable value of personal property, [NAC 361.1371](#) and [NAC 361.1375](#) require the assessor to determine four input values:

- Acquisition cost
- Acquisition year
- Expected life, and
- Cost conversion factor

The personal property declaration submitted by the taxpayer pursuant to [NRS 361.265](#) should list the acquisition cost for each item and the year acquired. The declaration should also contain sufficient information to identify each item's industry classification (NAICS code), property type, and corresponding expected life.

Acquisition Cost

For personal property mobile or manufactured homes, acquisition cost means replacement cost when new, which equals the retail selling price to the original owner. For other types of personal property including billboards, acquisition cost means the actual cost of property to its present owner. For all personal property, acquisition cost includes any expense required to place the asset into service except sales tax—including all charges for transportation, installation, accessories, and profit and overhead, as well as additions to or renovations of the property other than routine maintenance or repairs. Observe, however, that the cost of manufactured homes does not include appurtenant improvements like outbuildings, decks, or paving. The assessor should value these separately as real property and depreciate as appropriate.

Should a taxpayer fail to file a valid personal property declaration or sufficient data is not otherwise available for the assessor to establish acquisition cost, [NRS 361.265](#) authorizes the assessor to make an estimate of the value of the property. [NAC 361.139](#) further requires the assessor to estimate its acquisition cost using any nationally recognized valuation technique. Because [NRS 361.265\(5\)](#) defines failure to file a declaration as a misdemeanor, assessors should advise taxpayers to file complete, accurate, and timely personal property declarations. In addition, if the reported acquisition cost appears inconsistent with market data, the assessor may request documentation for the cost reported and may pursue penalties for perjury if necessary.

Acquisition Year

For mobile and manufactured homes, the acquisition year equals the year of the sale to the original owner, which often corresponds to the manufacturer's model year. For all other personal property, the acquisition year equals the year the current owner purchased or leased the property. Observe that the acquisition year remains constant at the year first sold for manufactured homes but resets to the year acquired each time billboards or equipment change owners.

Expected life

The Life Expectancy Guidelines section assigns typical asset lives to each major industrial classification grouped by NAICS code. For example, all industries classified as *Agriculture and Forestry* (NAICS .11) have 15 year lives, while *Mining* (NAICS .21) assigns a 20-year life to *Oil and Gas Exploration* (NAICS .2111) and a 15-year life to *Mining* (NAICS .2121 & .2122).

Certain items within industries appear separately as Itemized Equipment with specific lives that may differ from the industry norm. For example, *Agriculture and Forestry* industries with a typical 15-year life expectancy also use specialized equipment whose asset lives equal 7, 10 or 20 years. To improve accuracy, assessors should employ the itemized equipment lives whenever they can assign a specific life expectancy to a particular item.

Having identified the industry classification for the subject account the assessor then assigns its appropriate NAICS code and corresponding expected lives to its assets. *See discussion on NAICS below for current requirements.*

Readers may also use the alphabetical listing of personal property by general type found in the [Index](#) of this Manual to locate the appropriate expected life for individual items. Because some industries use similar types of business equipment, like desks or computers, readers should select the NAICS classification that best describes the subject account.

Besides these NAICS Life Expectancy Guidelines, the Personal Property Manual also contains a Special Properties section with descriptions and asset life tables for:

- Short-life property subject to rapid obsolescence;
- Items similar to real property classified as personal, like mobile and manufactured homes or billboards;
- Generic business equipment found across many industries, like furniture and trade fixtures or computers; and
- Specialized assets like high-tech medical diagnostic equipment whose economic lives differ substantially from industry norms.

Cost Conversion Factors

Based on the acquisition cost, acquisition year and expected life for an item, the assessor should select the appropriate Cost Conversion Factor from the tables published in the Personal Property Manual.

Cost Conversion Factors contain three components: Cost Index, Age and Percent Good. To satisfy the requirement of [NAC 361.1375\(2\)](#) the department develops Paasche indexes for manufactured homes, billboards, and business equipment derived from pertinent Marshall Swift comparative cost multiplier tables, the West Urban, All Items CPI index, and the PPI Index for Capital Equipment, Stage of Processing. These indexes inflate replacement cost new expressed in acquisition year nominal dollars into replacement cost new expressed in current year nominal dollars.

Cost indexes do not apply to mobile and manufactured homes first sold prior to July 1, 1982, whose taxable value always equals 20% of their original selling price. Cost indexes for equipment and billboards do not accrue beyond their expected lives; such items have a constant residual cost conversion factor equal to their residual percent good multiplied by the residual year cost index.

To comply with [NAC 361.130\(2\)\(b\)](#), however, cost indexes do apply to mobile and manufactured homes first sold on or after July 1, 1982. Even though mobile homes fully depreciate after sixteen years, applying the cost index to the years between the current year minus 16 and 1982 may actually produce a temporary increase in taxable value.

[NAC 361.1375\(4\)&\(5\)](#) specify declining balance depreciation with a 5% residual (salvage value) for all property types except manufactured homes and billboards, which use straight line depreciation. Unless the Department has conducted a market study or has otherwise obtained information which indicates a different residual amount, the Department currently relies on a double declining balance method for all equipment and a 5% residual; 5% per year depreciation with a 20% residual for mobile homes (16 year life), and 1.5% per year depreciation with a 25% residual for billboards (50 year life).

Percent good equals (1 - accrued depreciation) for the given asset age, where age equals the current year (first year of the biennium) minus the acquisition year. For example, for the 2025-26 fiscal year, an asset acquired in 2018 has an age of seven years, a manufactured home first sold in 1992 has an age of thirty-three years. Although one could calculate depreciation directly, the tables reduce this process to a simple lookup.

To calculate taxable value using the Personal Property Manual, the assessor completes three steps:

- Select the appropriate expected life table,
- Look up the cost conversion factor for the given acquisition year and,
- Multiply the acquisition cost by the indicated cost conversion factor.

As usual, assessed value equals 35% of taxable value.

A NOTE ON NAICS

The North American Industry Classification System ([NAICS](#)) replaced the Standard Industrial Classification (SIC) in 1997. NAICS is based on a production-oriented concept, meaning that it groups establishments into industries according to similarity in the processes used to produce goods or services.

NAICS in the United States was designed for [statistical purposes](#). However, NAICS is frequently used for various administrative, regulatory, contracting, taxation, and other non-statistical purposes.

For additional information and complete tables, readers may consult the US Census Bureau website <http://www.census.gov/eos/www/naics/>

The Department highly recommends assessors use the NAICS code on each personal property account. Use of the NAICS code will assist in the proper valuation of property pursuant to this Personal Property Manual because the NAICS code identifies the type of industry engaged in by the taxpayer.

In addition, the NAICS code is now a required component on the Statistical Analysis of the Roll Reports required by the Department in NRS 361.390 (3) in order to keep track of tax expenditures per NRS 360.137. For those concerned about the availability of the NAICS code to business taxpayers, use of the NAICS code will be widespread because taxpayers subject to the new Commerce Tax are required to provide the NAICS code. In addition, the NAICS code is required on applications for abatement to the Governor's Office on Economic Development and the Governor's Office on Renewable Energy. **The Department recommends assessors collect the NAICS code on Personal Property Declarations used by business taxpayers.**

2025-26 COST CONVERSION FACTORS

THREE (3) YEAR LIFE

NEVADA DEPARTMENT OF TAXATION

THREE (3) YEAR LIFE

200% DECLINING BALANCE

YEAR ACQUIRED	AGE	COST INDEX	PERCENT DEPRECIATION	PERCENT GOOD	CONVERSION FACTOR
2025	0	1.00	0.0	100.0	1.0000
2024	1	1.01	67.0	33.0	0.3333
2023	2	1.04	89.0	11.0	0.1144
2022	3	1.10	95.0	5.0	0.0550
Residual		1.10	95.0	5.0	0.0550

FIVE (5) YEAR LIFE**NEVADA DEPARTMENT OF TAXATION****FIVE (5) YEAR LIFE****200% DECLINING BALANCE**

YEAR ACQUIRED	AGE	COST INDEX	PERCENT DEPRECIATION	PERCENT GOOD	CONVERSION FACTOR
2025	0	1.00	0.0	100.0	1.0000
2024	1	1.01	40.0	60.0	0.6060
2023	2	1.04	64.0	36.0	0.3744
2022	3	1.10	78.0	22.0	0.2420
2021	4	1.19	87.0	13.0	0.1547
2020	5	1.24	95.0	5.0	0.0620
Residual		1.24	95.0	5.0	0.0620

SEVEN (7) YEAR LIFE

NEVADA DEPARTMENT OF TAXATION**SEVEN (7) YEAR LIFE****200% DECLINING BALANCE**

YEAR ACQUIRED	AGE	COST INDEX	PERCENT DEPRECIATION	PERCENT GOOD	CONVERSION FACTOR
2025	0	1.00	0.0	100.0	1.0000
2024	1	1.01	29.0	71.0	0.7171
2023	2	1.04	49.0	51.0	0.5304
2022	3	1.10	64.0	36.0	0.3960
2021	4	1.19	74.0	26.0	0.3094
2020	5	1.24	81.0	19.0	0.2356
2019	6	1.26	88.0	12.0	0.1512
2018	7	1.29	95.0	5.0	0.0645
Residual		1.29	95.0	5.0	0.0645

TEN (10) YEAR LIFE**NEVADA DEPARTMENT OF TAXATION****TEN YEAR LIFE****200% DECLINING BALANCE**

YEAR ACQUIRED	AGE	COST INDEX	PERCENT DEPRECIATION	PERCENT GOOD	CONVERSION FACTOR
2025	0	1.00	0.0	100.0	1.0000
2024	1	1.01	20.0	80.0	0.8080
2023	2	1.04	36.0	64.0	0.6656
2022	3	1.10	49.0	51.0	0.5610
2021	4	1.19	59.0	41.0	0.4879
2020	5	1.24	67.0	33.0	0.4092
2019	6	1.26	74.0	26.0	0.3276
2018	7	1.29	79.0	21.0	0.2709
2017	8	1.32	84.0	16.0	0.2112
2016	9	1.35	90.0	10.0	0.1350
2015	10	1.35	95.0	5.0	0.0675
Residual		1.35	95.0	5.0	0.0675

FIFTEEN (15) YEAR LIFE

NEVADA DEPARTMENT OF TAXATION

15 YEAR LIFE

200% DECLINING BALANCE

YEAR ACQUIRED	AGE	COST INDEX	PERCENT DEPRECIATION	PERCENT GOOD	CONVERSION FACTOR
2025	0	1.00	0.0	100.0	1.0000
2024	1	1.01	13.0	87.0	0.8787
2023	2	1.04	25.0	75.0	0.7800
2022	3	1.10	35.0	65.0	0.7150
2021	4	1.19	44.0	56.0	0.6664
2020	5	1.24	51.0	49.0	0.6076
2019	6	1.26	58.0	42.0	0.5292
2018	7	1.29	63.0	37.0	0.4773
2017	8	1.32	68.0	32.0	0.4224
2016	9	1.35	72.0	28.0	0.3780
2015	10	1.35	76.0	24.0	0.3240
2014	11	1.37	80.0	20.0	0.2740
2013	12	1.39	84.0	16.0	0.2224
2012	13	1.41	87.0	13.0	0.1833
2011	14	1.44	91.0	9.0	0.1296
2010	15	1.47	95.0	5.0	0.0735
Residual		1.47	95.0	5.0	0.0735

TWENTY (20) YEAR LIFE

NEVADA DEPARTMENT OF TAXATION

20 YEAR LIFE

200% DECLINING BALANCE

YEAR ACQUIRED	AGE	COST INDEX	PERCENT DEPRECIATION	PERCENT GOOD	CONVERSION FACTOR
2025	0	1.00	0.0	100.0	1.0000
2024	1	1.01	10.0	90.0	0.9090
2023	2	1.04	19.0	81.0	0.8424
2022	3	1.10	27.0	73.0	0.8030
2021	4	1.19	34.0	66.0	0.7854
2020	5	1.24	41.0	59.0	0.7316
2019	6	1.26	47.0	53.0	0.6678
2018	7	1.29	52.0	48.0	0.6192
2017	8	1.32	57.0	43.0	0.5676
2016	9	1.35	61.0	39.0	0.5265
2015	10	1.35	65.0	35.0	0.4725
2014	11	1.37	69.0	31.0	0.4247
2013	12	1.39	72.0	28.0	0.3892
2012	13	1.41	75.0	25.0	0.3525
2011	14	1.44	78.0	22.0	0.3168
2010	15	1.47	80.0	20.0	0.2940
2009	16	1.47	83.0	17.0	0.2499
2008	17	1.51	86.0	14.0	0.2114
2007	18	1.56	89.0	11.0	0.1716
2006	19	1.62	92.0	8.0	0.1296
2005	20	1.67	95.0	5.0	0.0835
Residual		1.67	95.0	5.0	0.0835

THIRTY (30) YEAR LIFE**NEVADA DEPARTMENT OF TAXATION****30 YEAR LIFE****200% DECLINING BALANCE**

YEAR ACQUIRED	AGE	COST INDEX	PERCENT DEPRECIATION	PERCENT GOOD	CONVERSION FACTOR
2025	0	1.00	0.0	100.0	1.0000
2024	1	1.01	7.0	93.0	0.9393
2023	2	1.04	13.0	87.0	0.9048
2022	3	1.10	19.0	81.0	0.8910
2021	4	1.19	24.0	76.0	0.9044
2020	5	1.24	29.0	71.0	0.8804
2019	6	1.26	34.0	66.0	0.8316
2018	7	1.29	38.0	62.0	0.7998
2017	8	1.32	42.0	58.0	0.7656
2016	9	1.35	46.0	54.0	0.7290
2015	10	1.35	50.0	50.0	0.6750
2014	11	1.37	53.0	47.0	0.6439
2013	12	1.39	56.0	44.0	0.6116
2012	13	1.41	59.0	41.0	0.5781
2011	14	1.44	62.0	38.0	0.5472
2010	15	1.47	64.0	36.0	0.5292
2009	16	1.47	67.0	33.0	0.4851
2008	17	1.51	69.0	31.0	0.4681
2007	18	1.56	71.0	29.0	0.4524
2006	19	1.62	73.0	27.0	0.4374
2005	20	1.67	75.0	25.0	0.4175
2004	21	1.74	77.0	23.0	0.4002
2003	22	1.77	79.0	21.0	0.3717
2002	23	1.80	81.0	19.0	0.3420
2001	24	1.82	83.0	17.0	0.3094
2000	25	1.85	85.0	15.0	0.2775
1999	26	1.89	87.0	13.0	0.2457
1998	27	1.90	89.0	11.0	0.2090
1997	28	1.92	91.0	9.0	0.1728
1996	29	1.96	93.0	7.0	0.1372
1995	30	2.01	95.0	5.0	0.1005
Residual		2.01	95.0	5.0	0.1005

MOBILE HOMES SOLD ON OR AFTER JULY 1, 1982**NEVADA DEPARTMENT OF TAXATION****MOBILE HOMES SOLD ON OR AFTER JULY 1, 1982****16 YEAR STRAIGHT LINE**

YEAR FIRST SOLD	AGE	COST INDEX	PERCENT DEPRECIATION	PERCENT GOOD	CONVERSION FACTOR
2025	0	1.00	0.0	100.0	1.0000
2024	1	1.01	5.0	95.0	0.9595
2023	2	1.05	10.0	90.0	0.9450
2022	3	1.12	15.0	85.0	0.9520
2021	4	1.24	20.0	80.0	0.9920
2020	5	1.32	25.0	75.0	0.9900
2019	6	1.35	30.0	70.0	0.9450
2018	7	1.37	35.0	65.0	0.8905
2017	8	1.43	40.0	60.0	0.8580
2016	9	1.45	45.0	55.0	0.7975
2015	10	1.46	50.0	50.0	0.7300
2014	11	1.47	55.0	45.0	0.6615
2013	12	1.50	60.0	40.0	0.6000
2012	13	1.56	65.0	35.0	0.5460
2011	14	1.60	70.0	30.0	0.4800
2010	15	1.62	75.0	25.0	0.4050
2009	16	1.64	80.0	20.0	0.3280
2008	17	1.67	80.0	20.0	0.3340
2007	18	1.74	80.0	20.0	0.3480
2006	19	1.83	80.0	20.0	0.3660
2005	20	1.93	80.0	20.0	0.3860
2004	21	2.03	80.0	20.0	0.4060
2003	22	2.11	80.0	20.0	0.4220
2002	23	2.15	80.0	20.0	0.4300
2001	24	2.17	80.0	20.0	0.4340
2000	25	2.20	80.0	20.0	0.4400
1999	26	2.26	80.0	20.0	0.4520
1998	27	2.29	80.0	20.0	0.4580
1997	28	2.31	80.0	20.0	0.4620
1996	29	2.36	80.0	20.0	0.4720
1995	30	2.38	80.0	20.0	0.4760
1994	31	2.42	80.0	20.0	0.4840

Continued on next page ...

NEVADA DEPARTMENT OF TAXATION
MOBILE HOMES SOLD ON OR AFTER JULY 1, 1982
16 YEAR STRAIGHT LINE (Continued)

YEAR FIRST SOLD	AGE	COST INDEX	PERCENT DEPRECIATION	PERCENT GOOD	CONVERSION FACTOR
1993	32	2.49	80.0	20.0	0.4980
1992	33	2.58	80.0	20.0	0.5160
1991	34	2.65	80.0	20.0	0.5300
1990	35	2.69	80.0	20.0	0.5380
1989	36	2.75	80.0	20.0	0.5500
1988	37	2.86	80.0	20.0	0.5720
1987	38	2.94	80.0	20.0	0.5880
1986	39	2.96	80.0	20.0	0.5920
1985	40	3.01	80.0	20.0	0.6020
1984	41	3.07	80.0	20.0	0.6140
1983	42	3.24	80.0	20.0	0.6480
Residual		1.00	80.0	20.0	0.2000 ²

²For Mobile Homes Sold on or Before July 1, 1982.

BILLBOARDS**NEVADA DEPARTMENT OF TAXATION**
BILLBOARDS
50 YEAR STRAIGHT LINE

YEAR ACQUIRED	AGE	COST INDEX	PERCENT DEPRECIATION	PERCENT GOOD	CONVERSION FACTOR
2025	0	1.00	0.0	100.0	1.0000
2024	1	1.00	1.5	98.5	0.9850
2023	2	1.01	3.0	97.0	0.9797
2022	3	1.04	4.5	95.5	0.9932
2021	4	1.18	6.0	94.0	1.1092
2020	5	1.27	7.5	92.5	1.1748
2019	6	1.29	9.0	91.0	1.1739
2018	7	1.32	10.5	89.5	1.1814
2017	8	1.37	12.0	88.0	1.2056
2016	9	1.40	13.5	86.5	1.2110
2015	10	1.40	15.0	85.0	1.1900
2014	11	1.42	16.5	83.5	1.1857
2013	12	1.44	18.0	82.0	1.1808
2012	13	1.47	19.5	80.5	1.1834
2011	14	1.51	21.0	79.0	1.1929
2010	15	1.55	22.5	77.5	1.2013
2009	16	1.54	24.0	76.0	1.1704
2008	17	1.57	25.5	74.5	1.1697
2007	18	1.62	27.0	73.0	1.1826
2006	19	1.69	28.5	71.5	1.2084
2005	20	1.77	30.0	70.0	1.2390
2004	21	1.87	31.5	68.5	1.2810
2003	22	1.96	33.0	67.0	1.3132
2002	23	1.99	34.5	65.5	1.3035
2001	24	2.02	36.0	64.0	1.2928
2000	25	2.05	37.5	62.5	1.2813
1999	26	2.12	39.0	61.0	1.2932
1998	27	2.15	40.5	59.5	1.2793
1997	28	2.18	42.0	58.0	1.2644

Continued on next page ...

NEVADA DEPARTMENT OF TAXATION

BILLBOARDS

50 YEAR STRAIGHT LINE

YEAR ACQUIRED	AGE	COST INDEX	PERCENT DEPRECIATION	PERCENT GOOD	CONVERSION FACTOR
1996	29	2.22	43.5	56.5	1.2543
1995	30	2.26	45.0	55.0	1.2430
1994	31	2.32	46.5	53.5	1.2412
1993	32	2.39	48.0	52.0	1.2428
1992	33	2.46	49.5	50.5	1.2423
1991	34	2.51	51.0	49.0	1.2299
1990	35	2.56	52.5	47.5	1.2160
1989	36	2.64	54.0	46.0	1.2144
1988	37	2.73	55.5	44.5	1.2149
1987	38	2.83	57.0	43.0	1.2169
1986	39	2.87	58.5	41.5	1.1911
1985	40	2.91	60.0	40.0	1.1640
1984	41	2.98	61.5	38.5	1.1473
1983	42	3.08	63.0	37.0	1.1396
1982	43	3.16	64.5	35.5	1.1218
1981	44	3.31	66.0	34.0	1.1254
1980	45	3.60	67.5	32.5	1.1700
1979	46	3.99	69.0	31.0	1.2369
1978	47	4.40	70.5	29.5	1.2980
1977	48	4.79	72.0	28.0	1.3412
1976	49	5.09	73.5	26.5	1.3489
1975	50	5.40	75.0	25.0	1.3500
Residual		5.40	75.0	25.0	1.3500

SPECIAL PROPERTIES

2025-26 PERSONAL PROPERTY MANUAL – VALUATION GUIDELINES

SHORT-LIFE PROPERTY

Expected LifeThree (3) years

Short-Life Property consists of items prone to rapid obsolescence or susceptible to breakage, loss or abnormal wear and tear.

Examples include:

Linens	Uniforms
Glassware	Pots, Pans, Utensils
Barware	Motion Picture Prints
Silverware	Rental Video Tapes, DVDs, CDs

Jigs, Dies, and Molds

Patterns, jigs, dies and molds fall into this category when the type of product manufactured, industry class, use of caustic chemicals, or physical deterioration associated with production volume act to shorten their useful lives and thus require their frequent replacement. Examples include injection molds for plastic parts of high-tech devices or dies used in heavy equipment production.

Ideally, assessors should identify the industrial application and determine the actual service lives of equipment used in current production from owner declarations or surveys of average lives from individual manufacturers before classifying such property as Short-life.

Digital Cameras

Digital cameras fall into two basic categories: professional and snapshot. In recent years, consumer-grade, digital snapshot and video cameras have become a generic commodity. They offer small, flimsy LCD monitors, low image resolution, and lack advanced features like interchangeable lenses. Only snapshot cameras qualify as Short-life property.

INFORMATION SYSTEMS

Life expectancies for computers and peripherals fall into four broad categories:

PCs, Tablets, and associated peripherals	Three (3) years
Mini-computers (AS 400, VAX)	Three (3) years
Servers	Five (5) years
Mainframe Computers (IBM 360)	Seven (7) years

An information system consists of computers and peripheral equipment used for processing normal business transactions and the maintenance, retrieval, and analysis of business records.

A computer functions as a programmable, electronically activated device capable of accepting information, applying prescribed processes to the information, and supplying the results of these processes with or without human intervention. It usually contains a central processing unit that provides storage, logic, arithmetic, and control capabilities. Observe that adding machines and electronic calculators do not fall into this category.

To assign appropriate expected lives to computing equipment, assessors need to recognize the differences among mainframes, servers, client computers and personal computers.

Recent advances in computing technology make differentiating mainframes, minicomputers and servers difficult, especially for laymen. When in doubt, consult manufacturer marketing divisions, service literature, or websites to determine how they classify their various product lines.

A mainframe serves as a high-performance computer used for large-scale computing environments that demand greater availability and security than smaller-scale machines can offer. Banks, government agencies, insurance companies, credit card companies, and other organizations that perform massive transaction processing typically use mainframe systems. It is also possible to obtain a server which contains many "blades," each of which is used for a single application.² Currently, there are blade servers that have as many as 160 blades.

Mainframes should not be confused with servers, or with a server that uses software to spin off many virtual servers, each with its own computer operating system. Servers usually cost considerably more than personal computers, have more processing power and substantial amounts of computer memory. They are therefore significantly more expensive than most personal computers and they are often kept in service longer than personal computers. Servers are often dedicated to specific tasks like

- Transaction processing (On Line Transaction or OLT servers)
- print queuing and printing (print server)
- running mission critical software, clustering, fail-over and load-balancing (application server)
- audio and video transmission (audio video server)
- exchanging short bursts of written information and opinions in an environment that offers real-time discussions (chat servers)
- sending and receiving faxes without using fax machines (fax server)
- File Transfer Protocol – moving files between computers while providing security and, organization, and transfer control (FTP server)

Historically, mainframes have been associated with centralized rather than distributed computing, although that distinction has blurred as smaller computers become more powerful and mainframes become more multi-purpose. Today, mainframes can serve both distributed users and smaller servers in computing networks. Interestingly, a mainframe actually resides within a server box.

² A major advantage of a blade server is that it dramatically reduces cabling requirements.

A key distinguishing feature of a mainframe is that it takes computing power away from end users and puts it in a central location. Another way to visualize a mainframe is to think of the computer as a super server, with multiple operating systems.

Here is a link to the [Family Tree And Chronology of some of the older IBM Mainframes](#). This link will take you to the [IBM page for System Z Mainframes](#).

By comparison, minicomputers are stand-alone computers (computer systems with attached terminals and other devices) sold to small and mid-size businesses for general business applications and to large enterprises for department-level operations. In recent years, the minicomputer has evolved into the "mid-range server" and is part of a network. IBM's [AS/400e](#) is a good example.

Peripheral equipment consists of the auxiliary machines which are designed to be placed under the control of a central processing unit. Peripheral equipment may include card readers, card punches, mass storage units, paper tape equipment, keypunches, data-entry devices, teleprinters, terminals, tape drives, disc drives, disc files, disc packs, visual image projector tubes, card sorters, plotters, collators, small inkjet printers, small laser printers, and small desktop all-in-one devices (e.g. printer/fax/scanner combination) that are sold as commodities in retail outlets and which are rapidly replaced as faster machines with new features are added.

Although one could classify computers by processor architecture, number of users supported, total system throughput, etc, ultimately the classification boils down to total system cost and the total time required to amortize the assets. Again, taxpayer records that reveal the actual service lives and disposition values of their own data processing equipment provide the best source of verifiable market data.

TAXABLE SOFTWARE (NOT ASSOCIATED WITH COMPUTER-INTEGRATED MACHINERY)

Expected Life Three (3) years

Nevada law treats standard, prewritten software programs as tangible personal property.³ A standard prewritten program, often called canned or off-the-shelf software, means a generic application not originally developed and produced for a specific user. This includes any programs, procedures, rules, and associated documentation pertaining to the operation of a computer system. Custom software programs consist of original, one-of-a-kind computer applications developed under contract exclusively for the particular requirements of a specific user. Custom computer programs qualify as exempt intangible personal property pursuant to NRS 361.228.

³ **According to the IRS**, "Computer software is not a section 197 intangible even if acquired in connection with the acquisition of a business, if it meets all of the following tests.

- It is readily available for purchase by the general public.
- It is subject to a nonexclusive license.
- It has not been substantially modified.

If the software meets the tests above, it can be depreciated and may qualify for the section 179 expense deduction and the special depreciation allowance (if applicable)." <http://www.irs.gov/publications/p225/ch07.html>

COMPUTER-INTEGRATED MACHINERY

Expected Life Seven (7) years

Computer integrated machinery, including its integrated programming or software, exhibits the following characteristics:

- The machinery and computer sell as a single unit.
- The machinery cannot operate without the computer and the computer cannot perform functions outside the machinery.
- The components of the computer form an integral, structural part of the equipment itself; it is not economically or functionally feasible to replace the computer without replacing the entire machine.
- For income tax purposes, depreciation accrues to the total cost of the machine and computer as a unit.
- The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.
- Embedded programming or pre-loaded software designed primarily for the function of the machine into which it is integrated runs the computer.

Examples of computer-integrated machinery include computer driven mills; computer integrated manufacturing machinery; computer integrated fabrication machinery; computerized machine lathes; and computerized assembly machinery.

ROBOTS AND ROBOTIC DEVICES

Expected Life:

Industrial and Service Robots Ten (10) years

Medical Robots Seven (7) years

Robotic Devices Five (5) years

This category includes robots and robotic devices operating in both industrial and non-industrial environments. The assessor should assign expected lives to the robots and robotic devices separately. Any robotic machines or devices that do not meet the characteristics of a robot as set forth by the International Organization for Standardization (ISO) are not considered robot for personal property assessment purposes.

Robots and robotics are usually used interchangeably but robotics has a broader meaning than the term robots. The ISO created a differentiation between robotic devices and robots. **Robotic Devices** are “mechanisms developed with robotic technology but not fulfilling all characteristics of a robot.” For example, *teleoperated remote manipulator, haptic device, end-effector, unpowered exoskeleton, two-axis industrial manipulator*. **Robots** are “programmed actuated mechanism with a degree of autonomy to perform locomotion, manipulation, or positioning.”

Robots are mainly mechanical or hardware but also contain some level of programming (software component). The hardware or physical component includes the body/frame, central processing unit (CPU) or control system for processing and executing instructions, sensors for collecting data from the environment, actuators (motors) for physical movement, end effectors for completion of tasks, and power supply for providing energy to the robot. The software (program) is an integral part for robots to operate for its intended use. The combination of

programming software and control system provides the robot the capability to perform and complete its tasks. The software can be upgraded or modified depending on the business needs.

In general, robots are categorized by their primary use or intended application. Nowadays, the most common robot types include industrial robots used for manufacturing (e.g., automotive, aerospace, electronics, consumer goods, etc) and service robots used for retail and hospitality, healthcare, and logistic businesses. The following provides the definition and distinction between the industrial robot and the service robot in accordance with the ISO standards.

Industrial Robot

An industrial robot is “a multifunctional, reprogrammable, automatically controlled manipulator, programmable in three or more axes that can be fixed in one area or mobile for use in industrial automation applications” (ISO 8373:2012). Thus, industrial robots are fully autonomous machines that do not require human intervention and can be re-programmed to perform several functions such as welding, painting, assembly/disassembly, pick and place for printed circuit boards, packaging and labeling, palletizing, product inspection, material handling, cutting, or grinding, testing, etc. Single-purpose automated machines that cannot be re-programmed to perform other tasks or need a human operator are not considered industrial robot. Autonomous Mobile Robots (AMR) used in industrial environments that have less than three axes (movement) and lack of manipulation capabilities are not considered industrial robots. Robots not intended for industrial applications are also not considered industrial robot.

Six Major Types of Industrial Robots Based on Mechanical Structure:

1. Articulated Robots – most common industrial robot; emulate human arm (have three to six rotary joints) that allows a wide range of movement; capable of lifting heavy objects.
2. Cartesian Robots – have three prismatic joints for the movement of the tool and three rotary joints for its orientation in space (can only move linearly in three directions – forward and backward, up and down, and side to side); rigid in all three axes which makes them accurate.
3. Cylindrical Robots – characterized by rotary joint at the base and at least one prismatic joint connecting its links (can move vertically and horizontally); commonly used in small spaces and ideal for objects that require circular symmetry (e.g., wires, pipes).
4. Spherical (Polar) Robots – an older technology; a combination of two rotational joints and one linear joint creating a spherical-shaped working space; commonly used for painting and welding.
5. SCARA (Selective Compliance Assembly Robot Arm) Robots – characterized by two parallel joints which provide movement in X-Y plane; rotating shafts are positioned vertically at the effector; ideal for assembly application and palletization.
6. Delta Robots – consist of parallel links connected to a common base (spider-like arm); useful for direct control tasks and high maneuvering operations (pick-and-place).

Service Robot

A service robot is a robot “that performs useful tasks for humans or equipment excluding industrial automation applications.” A degree of autonomy (full or partial) is required for service robots. Thus, service robots are either fully autonomous or operated by a built-in control system, with manual override options, and assist people by performing repetitive, dull, dirty, or dangerous tasks. Service robots are for professional use. Examples include logistics and delivery robots, social robots, restaurant/waiter robots, cleaning robots, disinfection robots, kitchen/chef robots, agricultural robots, aerial robots (drones), underwater robots, etc.

Medical Robot

The "new" ISO robotics vocabulary standard ISO 8373:2021 defines medical robots as a third category next to industrial and service robots. A medical robot is a robot intended to be used as medical electrical equipment or medical electrical systems. It is controlled by a surgeon (not autonomous). An example of medical robot is the Da Vinci Surgical System. Currently, it is the only surgical robot approved by the Food and Drug Administration (FDA) to perform surgical procedures. Da Vinci assists surgeons in performing gynecological surgeries, urological, head and neck, thoracic, colorectal, cardiac and general surgeries. This robot machine consists of three parts: the control center (which carry the surgeon's seat allowing a 3D-magnified, high-definition view and use of hand and foot controls); the patient cart (which holds the surgical instruments and the camera); and the vision cart (which contains a video screen). In line with high-tech electronic medical equipment, the medical robot is assigned a seven-year life.

COMPUTERIZED EQUIPMENT

Expected Life:

Free-standing computer system Seven (7) years or
Generic personal computer Three (3) years
Equipment component.....NAICS industry class life

This category includes machines controlled by computers that sell as a separate unit from the machine and can perform additional functions outside the machine. The assessor should assign expected lives to the two components separately; the computer equipment has the same expected life as similar computer equipment; the machinery has the expected life assigned to its specific industry.

Examples include:

Computerized Machine Lathes,
 Computerized Assembly Machinery,
 Cash Management Systems,
 3-D Printers.

HIGH-TECH MEDICAL DIAGNOSTIC EQUIPMENT

Expected Life Five (5) years

High-tech medical diagnostic equipment exhibits these characteristics:

- Used in medical or dental facilities;
- Subject to accelerated functional and economic obsolescence caused by rapid technological development.

Examples include:

[Cardiac Ultrasonic Scanners](#)
[CAT \(Comp Tomography\) Scanners](#)
[Diagnostic Ultrasounds](#)

[General Ultrasonic Scanners](#)
[MRI \(Magnetic\) Scanners](#)
[Nuclear Medicine Cameras](#)
[OB/GYN Ultrasonic Scanners](#)
[PET Scanners](#) (Positron Emission)
[All Portable Units of Same](#)

Endoscopy Equipment (amnioscopes, angioscopes, arthroscopes, bronchoscopes, colonoscopes, cystoscopes, encephaloscopes, esophagoscopes, gastroscopes, hysteroscopes, laparoscopes, laryngoscopes, mediastinoscopes, nephroscopes, proctoscopes, rhinoscopes, thoracoscopes, endoscopy tower, endoscopy camera, endoscopy light sources, endoscopy video processors, insufflators, and electrosurgical units)

HIGH-TECH ELECTRONIC MEDICAL EQUIPMENT

Expected Life:

Cardiac laser units **Three (3) years**
Other items **Seven (7) years**

High-tech electronic medical equipment exhibits these characteristics:

- Used in medical or dental facilities;
- Subject to accelerated functional and economic obsolescence caused by rapid technological development.

Examples include patient monitors of all kinds:

[Anesthesia Monitors, Machines
and Devices](#)
[Apnea Monitors](#)
[Blood Pressure Monitors](#)
[Chart Recorders](#)
[Defibs](#)
[Dopplers](#)
[EEG Machines](#)
[EKG Machines](#)

[External Pace Makers](#)
[Heart Rate Devices](#)
[Medical Laser Units](#)
[Neurological Monitors](#)
[Oximeters](#)
[Oxygen Analyzers](#)
[Spirometers](#)
[Systolic Monitors](#)
[Temperature Monitors](#)

OFFICE FURNITURE, RETAIL SALES EQUIPMENT, OTHER

This category includes furniture and equipment that can be found across industries.

Description	Life in Years
Air Conditioners	15
Air Conditioners, Window	7
Cash Registers (electronic)	7

Coin-wrap Equipment.....	15
Copy and Duplicating Machines.....	5
Cabinets and Shelving	15
Check-out Counters	15
Data Processing Equipment (See Also Information Systems)	7
Décor	15
Displays, Cases, and Racks	15
Mailing Machines.....	7
Office Furniture (Desks, Chairs, Filing Cabinets)	15
Office Kitchen Appliances (Microwave Ovens, Refrigerators).....	15
POS – Point-of-Sale Computer Systems ⁴	7
Signs ⁵ (Other than Billboards and electronic).....	15
Signs, Electronic.....	7
Sound Systems (background and public address).....	7

MOBILE OR MANUFACTURED HOMES

This section applies only to mobile or manufactured homes classified as personal property. Pursuant to NRS 361.561, those units identified as a "travel trailer," "utility trailer" and "van conversion," in Chapter 482 of NRS and any other vehicle required to be registered with the department of motor vehicles and public safety are subject to property tax unless registered and taxed pursuant to Chapter 371 of NRS. Such unregistered units and vehicles must be taxed in the manner provided in NRS 361.562 to 361.5644, inclusive.

The sticker issued pursuant to NRS 361.5643 must be affixed to a mobile or manufactured home in such a way that the sticker is clearly visible from the street. The window decal is not required for licensed mobile units or on units considered real property and may be issued at the option of the county assessor.

NRS 361.325(3) segregates mobile homes into two different categories for assessment purposes based on age. Mobile homes sold on or after July 1, 1982 shall be classified according to those factors which most closely determine their useful lives. In establishing the value of other mobile homes, the commission shall begin with the retail selling price and depreciate it by 5 percent per year, but not below 20 percent of its original amount. The assessment ratio in all cases is 35 percent of the computed taxable values. See NAC 361.130 for additional information on the calculation of value for mobile homes.

Depreciation schedules and cost conversion factors apply to the 2025-26 Secured and Unsecured Tax Rolls. The 2025-26 Cost Conversion Index for Mobile or Manufactured Homes appears on pages 8-9 of this manual.

⁴ Point-of-Sale systems include all peripherals and handheld devices used to take electronic payments or to collect related data with the exception of smartphones, tablets and POS tablets. Smartphones, tablets and POS tablets should be given a three-year life.

⁵ See Appendix E to determine whether signs are real or personal property. Personal property signs include vinyl and fabric banners and sign-waving mannequins.

B I L L B O A R D S

[NRS 361.013](#) defines a billboard as ". . . a sign that directs attention to a business, commodity, service, entertainment or attraction that is sold, offered or exists at a location other than the premises on which the sign is located."

[NRS 361.227](#) requires that depreciation of a billboard must be calculated at 1.5 percent of the cost of replacement for each year after the year of acquisition of the billboard, up to a maximum of 50 years. Additional information on the calculation of billboards may be found in NAC 361.1305.

Depreciation schedules and cost conversion factors apply to the 2025-26 Secured and Unsecured Tax Rolls. The 2025-26 Cost Conversion Index for Billboards may be found on pages 10-11 of this manual.

LIFE EXPECTANCY GUIDELINES

2025-26 PERSONAL PROPERTY MANUAL

NAICS Industry Code.....Description.....Life in Years

11 AGRICULTURE AND FORESTRY

For the purposes of this manual, the following descriptions apply only to those items which can be classified as Personal Property. The designated life does not apply to Real Property or fixtures which have been converted to Real Property.

111	Crop Production	15
	Personal property includes machinery and equipment such as tractors , combines , hay balers , forage harvesters , unlicensed farm vehicles including utility trailers , wagons and utensils used to grow crops mainly for food and fiber. The subsection comprises establishments, such as farms, orchards, groves, greenhouses, and nurseries, primarily engaged in growing crops, plants, vines, or trees (including Christmas trees) and their seeds.	
	Itemized Equipment	
	Fertilizer Distribution	10
	Laser sending and receiving equipment	10
	Seed cleaning machinery and equipment	20
	Seed cleaning equipment – portable	10
112	Animal Production	15
	Personal property includes machinery and equipment used to raise or fatten animals for the sale of animals or animal products. The subsection comprises establishments, such as ranches, farms, and feedlots primarily engaged in keeping, grazing, breeding, or feeding animals. These animals are kept for the products they produce or for eventual sale.	
	Itemized Equipment	
1125	Animal Aquaculture , including nets and pens	7
11212	Dairy Production	15
1123	Egg Packing Equipment	20
113	Forestry and Logging	15
	Personal property includes machinery and equipment used to: (1) cut timber; (2) cut and transport timber; and (3) produce wood chips in the field, including stationary saw mills, skidders, and log loaders.	
	Itemized Equipment	
	Chain saws	7
	Portable saw mill	7

21 MINING

For the purposes of this manual, the following descriptions apply only to those items which can be classified as Personal Property. The designated life does not apply to Real Property or fixtures which have been converted to Real Property.

2111	Oil and Gas Extraction 20 Personal property used in oil and gas extraction are used to explore for crude petroleum and natural gas. A typical example of personal property in this category would include inventory and spare parts. Itemized Equipment Bolted and fiberglass tanks 15 Drilling rigs 15 Heaters, treaters, knockout dryer, separators, conditioning equipment 15 LACT units, metering devices, manifolds 15 Motors, engines, drive units 10 Secondary recovery (injection pumps, re-pressure equipment) 15 Transformers 30
2122	Metal Ore Mining 15 Personal property used in developing the mine site, mining or quarrying dimension stone. A typical example of personal property in this category would include inventory and spare parts. Itemized Equipment Oxygen generation 20 Mobile equipment, heavy use* 7
2123	Nonmetallic Mineral Mining and Quarrying..... 15 Personal property used in developing the mine site, mining or quarrying dimension stone. A typical example of personal property in this category would include inventory and spare parts.

* Heavy use is defined as in operation for more than one shift per day, seven days a week. Mining mobile equipment eligible for this category includes haul packs, loaders, shovels, dozers, graders, backhoes, drilling trucks, and excavators.

2 2 U T I L I T I E S

For the purposes of this manual, the following descriptions apply only to those items which can be classified as **Personal Property**. The designated life does not apply to **Real Property** or fixtures which have been converted to **Real Property**.

- 2211 Electric Power Generation, Transmission, and Distribution 30**
 Personal property used in generating, transmitting, and/or distributing electric power. A typical example of personal property in this category would include inventory and spare parts.
- 2212 Natural Gas Distribution..... 30**
 Personal property used in (1) operating gas distribution systems (e.g., mains, meters); (2) establishments known as gas marketers that buy gas from the well and sell it to a distribution system; (3) establishments known as gas brokers or agents that arrange the sale of gas over [gas distribution systems](#) operated by others; and (4) establishments primarily engaged in transmitting and distributing gas to final consumers. A typical example of personal property in this category would include inventory and spare parts.
- 2213 Water, Sewage, and Other Systems 30**
 Personal property used in establishments primarily engaged in operating water treatment plants and/or operating water supply systems. A typical example of personal property in this category would include inventory and spare parts.
- 221330 Steam and Air-Conditioning Supply 30**
 Personal property used in providing steam, heated air, or cooled air. A typical example of personal property in this category would include inventory and spare parts.

2 3 C O N S T R U C T I O N

For the purposes of this manual, the following descriptions apply only to those items which can be classified as **Personal Property**. The designated life does not apply to **Real Property** or fixtures which have been converted to **Real Property**.

- 236 Construction of Buildings 15**
- 237 Heavy and Civil Engineering Construction 15**
- 238 Specialty Trade Construction 15**
 Personal property used primarily in the construction of buildings, major engineering projects such as highways and dams, and specialty trades such as pouring concrete, site preparation, plumbing, painting, and electrical work. Includes fixed load and mobile equipment such as:
[Air compressors](#) [Motor graders/leveling graders](#)

238

Specialty Trade Construction *continuation...*

Air drills	Paving equipment
Asphalt plants	Portable shop
Asphalt spreaders	Portable storage bins
Backhoe/loaders	Portable storage tanks
Carryalls	Power hoists
Cement mixers/spreaders	Power shovels
Crusher/crushing plant	
Roadrollers/sheepsfoot rollers	Sand classifiers and drags
Crawler cranes/ tractors	Scarifiers and rollers
Ditchers/diggers	Scrap metal balers
Earthmoving scrapers	Scrubber screens and plant feeders
Excavators	Welder
Fork lifts	Wiring Equipment
Front end loaders / bucket loaders	
Mixmobiles	

Itemized Equipment**Cranes**

Bridge	20
Jib	20
Mobile Telescopic	10
Electric generating equipment	20
Electronic controlled infrared/laser instruments	10
Power tools (saws, drills, etc.)	7
Hand tools.....	7
Mobile equipment , heavy use ⁶	7

⁶ Heavy use is defined as in operation for more than one shift per day, seven days a week

31 MANUFACTURING

For the purposes of this manual, the following descriptions apply only to those items which can be classified as Personal Property. The designated life does not apply to Real Property or fixtures which have been converted to Real Property.

311	Food	15
	Personal property used in this industry transform livestock and agricultural products into products for intermediate or final consumption. The food products manufactured in these establishments are typically sold to wholesalers or retailers for distribution to consumers, but establishments primarily engaged in retailing bakery and candy products made on the premises not for immediate consumption are included. Includes equipment such as walk-in coolers , freezers and other refrigeration , grain tanks , bottling and canning equipment in the following industries:	
3111	Animal food manufacturing	
3112	Grain and oil seed milling	
3113	Sugar and confectionery product manufacturing	
3114	Fruit and vegetable preserving and specialty food manufacturing	
31141	Frozen food manufacturing	
31142	Fruit and vegetable canning	
3115	Dairy product manufacturing	
3116	Animal slaughtering and processing	
3117	Seafood product preparation and packaging	
3118	Bakeries and tortilla manufacturing	
311811	Retail bakeries	
311812	Commercial bakeries	
3119	Other food manufacturing, such as honey processing	
	Itemized Equipment	
	Cereal manufacturing	20
	Grain elevators , non-farm	20
	Mechanical portion of packing and sorting line equipment 2nd view	30
	Electronic portion of line equipment ⁷	10
312	Beverage and Tobacco Product Manufacturing	15
	Personal property used to manufacture beverages and tobacco products. Please note that ice manufacturing, while not a beverage, is included with nonalcoholic beverage manufacturing because it uses the same production process as water purification.	

⁷ If electronic component's original cost cannot be separated from other line assets, use 20 years.

312	Beverage and Tobacco Product Manufacturing <i>continuation...</i>	
	Manufacturing processes include:	
	31211 Soft drink manufacturing	
	31212 Breweries	
	31213 Wineries	
	31214 Distilleries	
	Itemized Equipment	
	Cold Storage and Ice-making equipment	20
313	Textile Mills	15
	Personal property used in the main processes in this industry which include preparation and spinning of fiber, knitting or weaving of fabric, and the finishing of the textile.	
314	Textile Product	15
	Personal property used in creation of textile products. With a few exceptions, processes used in this industry are generally cut and sew (i.e., purchasing fabric and cutting and sewing to make non-apparel textile products, such as sheets and towels).	
315	Apparel Manufacturing	15
	Personal property used in the Apparel Manufacturing industry. This industry includes a diverse range of establishments manufacturing full lines of ready-to-wear apparel and custom apparel: apparel contractors, performing cutting or sewing operations on materials owned by others; jobbers performing entrepreneurial functions involved in apparel manufacture; and tailors, manufacturing custom garments for individual clients.	
316	Leather and Allied Product Manufacturing	15
	Personal property used to transform hides into leather by tanning or curing and fabricating the leather into products for final consumption. It also includes the manufacture of similar products from other materials, including products (except apparel) made from "leather substitutes," such as rubber, plastics, or textiles It includes dyeing or dressing furs.	
321	Wood Product Manufacturing.....	15
	The production processes of the Wood Product Manufacturing sub sector include sawing, planing, shaping, laminating, and assembling of wood products starting from logs that are cut into bolts, or lumber that then may be further cut, or shaped by lathes or other shaping tools . The lumber or other transformed wood shapes may also be subsequently planed or smoothed, and assembled into finished products, such as wood containers.	

322	Paper Manufacturing.....	15
3221	Pulp, paper and paperboards mills	15
	Personal property used in the manufacturing of pulp and involves separating the cellulose fibers from other impurities in wood or used paper. The manufacturing of paper involves matting these fibers into a sheet.	
3222	Converted Paper Product Manufacturing	15
	Personal property used in the manufacture of paperboard containers including corrugating, cutting, and shaping machinery to form paperboard into containers. Paper bag and coated and treated paper manufacturing establishments cut and coat paper and foil. Stationery product manufacturing establishments make a variety of paper products used for writing, filing, and similar applications. Other converted paper product manufacturing includes, in particular, the conversion of sanitary paper stock into such things as tissue paper and disposable diapers.	
323	Printing and related support activities	15
	Personal property including presses, used to transfer an image from a plate, screen, film, or computer file to some medium, such as paper, plastics, metal, textile articles, or wood. The most prominent of these methods is to transfer the image from a plate or screen to the medium (lithographic, gravure, screen, and flexographic printing). When publishing and printing are done in the same establishment, the establishment is classified under Industry Code 51, Information.	
	Itemized Equipment	
	Digital or non-impact printing equipment	5
	(Uses a computer file to directly “drive” the printing mechanism to create the image)	
	Blue Print Machines	15
	Blue Print Machines – small table model	7
	3-D Printers	7
324	Petroleum and Coal Products Manufacturing	20
	Personal property used to transform crude petroleum and coal into usable products. The dominant process is petroleum refining that involves the separation of crude petroleum into component products through such techniques as cracking and distillation. Products such as asphalt coatings and petroleum lubricating oils are made.	

325	Chemical Manufacturing.....	15
3251	Basic Chemical Manufacturing	15
	Personal property used in both basic chemical processes, such as thermal cracking and distillation, and in petrochemical processes, such as (1) manufacturing acyclic (i.e., aliphatic) hydrocarbons such as ethylene, propylene, and butylenes made from refined petroleum or liquid hydrocarbon and/or (2) manufacturing cyclic aromatic hydrocarbons such as benzene, toluene, styrene, xylene, ethyl benzene, and cumene made from refined petroleum or liquid hydrocarbons.	
3254	Pharmaceutical and Medicine Manufacturing.....	15
	Personal property used in one or more of the following: (1) manufacturing biological and medicinal products; (2) processing (i.e., grading , grinding , and milling) botanical drugs and herbs; (3) isolating active medicinal principals from botanical drugs and herbs; and (4) manufacturing pharmaceutical products intended for internal and external consumption in such forms as ampoules , tablets , capsules, vials, ointments, powders, solutions, and suspensions.	
3255	Paint, Coating, and Adhesive Manufacturing	15
	Personal property used to (1) mix pigments, solvents, and binders into paints and other coatings, such as stains, varnishes, lacquers, enamels, shellacs, and water repellant coatings for concrete and masonry, and/or (2) manufacture allied paint products, such as putties, paint and varnish removers, paint brush cleaners, and frit .	
326	Plastics and Rubber Products	15
3261	Plastics Product Manufacturing	15
	Personal property used in processing new or spent (i.e., recycled) plastics resins into intermediate or final products, using such processes as compression molding ; extrusion molding ; injection molding ; blow molding ; and casting .	
	Itemized Equipment	
	Special tools	7
3262	Rubber Product Manufacturing	15
	Personal property used in the industry group comprised of establishments primarily engaged in processing natural, and synthetic or reclaimed rubber materials into intermediate or final products using processes such as vulcanizing, cementing , molding , extruding , and lathe-cutting .	
	Itemized Equipment	
	Special tools	7

327	Nonmetallic Mineral Product.....	20
	Personal property used to transform mined or quarried nonmetallic minerals, such as sand, gravel, stone, clay, and refractory materials , into products for intermediate or final consumption. Processes used include grinding, mixing, cutting, shaping, and honing.	
3271	Clay Product and Refractory Manufacturing	15
	Personal property used in shaping, molding, glazing, and firing pottery, ceramics, and plumbing fixtures made entirely or partly of clay or other ceramic materials.	
3272	Glass and Glass Product Manufacturing	15
	Personal property used in manufacturing glass and/or glass products. Establishments in this industry may manufacture glass and/or glass products by melting silica sand or cullet or purchasing glass.	
	Itemized Equipment	
	Special tools	5
3273	Cement and Concrete Product Manufacturing	20
	Personal property used in manufacturing Portland, natural, masonry, pozzalanic, and other hydraulic cements.	
	Itemized Equipment	
	Quarry equipment {XE "quarry equipment"} (Yahoo search).....	15
	Portable ready-mix plants	15
3274	Lime and Gypsum Product Manufacturing	20
	Personal property used in manufacturing lime from calcitic limestone, dolomitic limestone, or other calcareous materials, such as coral, chalk, and shells. Lime manufacturing establishments may mine, quarry, collect, or purchase the sources of calcium carbonate.	
3279	Abrasive Product Manufacturing	20
	Personal property used in manufacturing abrasive grinding wheels of natural or synthetic materials, abrasive-coated products, and other abrasive products.	
327991	Cut Stone and Stone Product Manufacturing	15
	Personal property used in cutting, shaping, and finishing granite, marble, limestone, slate, and other stone for building and miscellaneous uses. Stone product manufacturing establishments may mine, quarry, or purchase stone.	

331	Primary Metal Manufacturing	20
	Personal property used to smelt and/or refine ferrous and nonferrous metals from ore, pig or scrap, using electrometallurgical and other process metallurgical techniques. Metal alloys and super alloys are also manufactured by introducing other chemical elements to pure metals. The output of smelting and refining, usually in ingot form, is used in rolling, drawing, and extruding operations to make sheet, strip, bar, rod, or wire, and in molten form to make castings and other basic metal products. Includes: 3311 Iron and Steel Mills and Ferroalloy Manufacturing	
	Itemized Equipment	
	Special Tools	7
332	Fabricated Metal Product Manufacturing	15
	Personal property is used to transform metal into intermediate or end products, other than machinery, computers and electronics, and metal furniture or treating metals and metal formed products fabricated elsewhere. Important fabricated metal processes are forging, stamping, bending, forming, and machining, used to shape individual pieces of metal; and other processes, such as welding and assembling, used to join separate parts together.	
	Itemized Equipment	
	Special Tools	5
333	Machinery Manufacturing	15
	Personal property used to create end products that apply mechanical force, for example, the application of gears and levers, to perform work. Some important processes for the manufacture of machinery are forging, stamping, bending, forming, and machining that are used to shape individual pieces of metal. Processes, such as welding and assembling are used to join separate parts together. Although these processes are similar to those used in metal fabricating establishments, machinery manufacturing is different because it typically employs multiple metal forming processes in manufacturing the various parts of the machine.	
	333314 Optical Instrument and Lens Manufacturing	15
	Personal property used in: (1) manufacturing optical instruments and lens, such as binoculars, microscopes (except electron, proton), telescopes, prisms, and lenses (except ophthalmic); (2) coating or polishing lenses (except ophthalmic); and (3) mounting lenses (except ophthalmic).	
334	Computer and Electronic Product Manufacturing	7
	Personal property used in the manufacture of computers, computer peripherals, communications equipment, and similar electronic products and components. The design and use of integrated circuits and the application of highly specialized miniaturization	

technologies are common elements in the production technologies of the computer and electronic industry.

- 3341 Computer and Peripheral Equipment Manufacturing7**
- Personal property [used in manufacturing and/or assembling electronic computers](#), such as mainframes, personal computers, workstations, laptops, and computer servers; and computer peripheral equipment, such as storage devices, printers, monitors, input/output devices and terminals.
- Personal property [used in manufacturing wire telephone and data communications equipment](#). These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are [central office switching equipment](#), cordless telephones (except cellular), [PBX equipment](#), telephones, telephone answering machines, [LAN modems](#), [multi-user modems](#), and other [data communications equipment](#), such as bridges, hubs, routers, and gateways.
- 3343 Audio and Video Equipment Manufacturing 10**
- Personal property used in manufacturing electronic audio and video equipment for home entertainment, motor vehicle, public address and musical instrument amplifications. Examples of products made include video cassette recorders, televisions, stereo equipment, speaker systems, household-type video cameras, jukeboxes, and amplifiers for musical instruments and public address systems.
- 3344 Semiconductor and Other Electronic Components 5**
- Personal property [used in manufacturing semiconductors](#) and other components for electronic applications. Examples of products made by these establishments are capacitors, resistors, microprocessors, bare and loaded printed circuit boards, electron tubes, electronic connectors, and computer modems.
- Includes:
- [clean room equipment](#), [crystal growing equipment](#), [deionized water systems](#), [encapsulation equipment](#), photo mask and wafer manufacturing equipment, semiconductor chemical and gas systems, semiconductor electrical systems, and semiconductor test equipment.

3345	Navigation, Measuring, Medical, Control Instrument Manufacturing	7
	Personal property used in manufacturing navigational, measuring, electro medical, and control instruments. Examples of products made by these establishments are aeronautical instruments, appliance regulators and controls (except switches), laboratory analytical instruments, navigation and guidance systems, and physical properties testing equipment.	
335	Electrical Equipment, Appliance, and Component Manufacturing	15
	Personal property used to manufacture products that generate , distribute and use electrical power , such as electric lamp bulbs, lighting fixtures, small and major electrical appliances, electric motors, generators, transformers, switchgear apparatus, devices for storing electrical power (e.g., batteries), for transmitting electricity (e.g., insulated wire), and wiring devices (e.g., electrical outlets, fuse boxes, and light switches).	
336	Transportation Equipment Manufacturing	15
	Personal property used in production processes similar to those of other machinery manufacturing establishments - bending, forming, welding, machining, and assembling metal or plastic parts into components and finished products.	
	The section includes:	
3361	Motor Vehicle Manufacturing	
3362	Motor Vehicle Body & Trailer Manufacturing	
3363	Motor Vehicle Parts Manufacturing	
3365	Railroad Rolling Stock Manufacturing	
3364	Aerospace Product and Parts Manufacturing.....	15
	Personal property used in one or more of the following: (1) manufacturing complete aircraft, missiles, or space vehicles; (2) manufacturing aerospace engines, propulsion units, auxiliary equipment or parts; (3) developing and making prototypes of aerospace products; (4) aircraft conversion (i.e., major modifications to systems); and (5) complete aircraft or propulsion systems overhaul and rebuilding (i.e., periodic restoration of aircraft to original design specifications).	
	This section includes:	
	336412 Aircraft Engine and Engine Parts Manufacturing	
337	Furniture and Related Product Manufacturing	10
	Personal property used to make furniture and related articles, such as mattresses, window blinds, cabinets, and fixtures. The processes used in the manufacture of furniture include the cutting, bending, molding, laminating, and assembly of such materials as wood, metal, glass, plastics, and rattan.	

339 Miscellaneous Manufacturing 15

Personal property used in the manufacture of products as diverse as medical equipment and supplies, jewelry, sporting goods, toys, and office supplies.

33991 Jewelry and Silverware Manufacturing 15

Personal property used in: (1) manufacturing, engraving, chasing, or etching jewelry; (2) manufacturing metal personal goods (i.e., small articles carried on or about the person, such as compacts or cigarette cases); (3) manufacturing, engraving, chasing, or etching precious metal solid, precious metal clad, or pewter cutlery and flatware; (4) manufacturing, engraving, chasing, or etching personal metal goods (i.e., small articles carried on or about the person, such as compacts or cigarette cases); (5) stamping coins; (6) manufacturing unassembled jewelry parts and stock shop products, such as sheet, wire, and tubing; (7) cutting, slabbing, tumbling, carving, engraving, polishing, or faceting precious or semiprecious stones and gems; (8) re-cutting, re-polishing, and setting gem stones; and (9) drilling, sawing, and peeling cultured and costume pearls.

4 2 W H O L E S A L E T R A D E

For the purposes of this manual, the following descriptions apply only to those items which can be classified as Personal Property. The designated life does not apply to Real Property or fixtures which have been converted to Real Property.

423 Wholesale Trade Fixtures and Equipment 15

Trade fixtures (as opposed to fixtures) and equipment are used in establishments engaged in wholesaling merchandise, generally without transformation, and rendering services incidental to the sale of merchandise. Wholesalers sell merchandise to other businesses and normally operate from a warehouse or office. See also separate listings for specific types of equipment.

423440 Other Commercial Equipment Merchant Wholesalers (lockers (except refrigerated) merchant wholesalers) Example: Product Delivery Lockers retail and e-commerce.

423740, Refrigeration Equipment and Supplies Merchant Wholesalers (lockers, refrigerated, merchant wholesalers) Example: Product Delivery Lockers retail and e-commerce.

4 4 R E T A I L T R A D E

For the purposes of this manual, the following descriptions apply only to those items which can be classified as Personal Property. The designated life does not apply to Real Property or fixtures which have been converted to Real Property.

Includes the personal property for the following:

441	Motor Vehicle and Parts Dealers.....	15
442	Furniture and Home Furnishing Stores.....	15
443	Electronics and Appliance Stores.....	15
444	Building Material and Garden Equipment and Supply Stores	15
445	Food and Beverage Stores (including Convenience Stores)	15
446	Health and Personal Care Stores.....	15
447	Gasoline Stations	15
448	Clothing and Clothing Accessories Stores	15
451	Sporting Goods, Hobby, Book, and Music Stores	15
452	General Merchandise Stores.....	15
453	Miscellaneous Store Retailers, including	15
	4531 Florists	15
454	Non-store Retailers.....	15
	See also separate listings for specific types of equipment.	

4 8 T R A N S P O R T A T I O N A N D W A R E H O U S I N G

For the purposes of this manual, the following descriptions apply only to those items which can be classified as Personal Property. The designated life does not apply to Real Property or fixtures which have been converted to Real Property.

481	Air Transportation	20
	Personal property includes most airplanes; helicopters (rotorcraft); drones weighing over 50 pounds; and aircraft, all of which have a life of 20 years. There are some exceptions, which are itemized below.	
	Itemized Equipment	
	Kit built Aircraft	15
	Gliders	15
	Hot Air Balloons	15
	Experimental Aircraft.....	15
	Drones weighing 50 pounds or less.....	10

482	Rail Transportation.....	20
	482112 Short Line Railroads	
	Itemized Equipment	
	Railroad Rolling Stock	20
483	Water Transportation	20
	Personal property used in providing inland water transportation of passengers and/or cargo on lakes, rivers, or intracoastal waterways.	
484	Truck Transportation	10
	Itemized Equipment	
	Light Trucks	7
	General freight Trucks	10
	Tractor-trailers	10
485	Transit and Ground Passenger Transportation	10
	Personal property includes equipment used in Transit and Ground Passenger Transportation. This industry includes a variety of passenger transportation activities, such as urban transit systems; chartered bus, school bus, and interurban bus transportation and taxis.	
	Itemized Equipment	
	Buses.....	15
	Automobiles, unlicensed	7
492	Couriers and Messengers	15
	Personal property used in the provision of intercity and/or local delivery of parcels. These articles can be described as those that may be handled by one person without using special equipment. Messengers, which usually deliver within a metropolitan or single urban area, may use bicycle, foot, small truck, or van.	
493	Warehousing and Storage.....	15
	Personal property used in operating warehousing and storage{XE "storage:} facilities for general merchandise, refrigerated goods, and other warehouse products. These establishments provide facilities to store goods. They do not sell the goods they handle.	

51 INFORMATION

For the purposes of this manual, the following descriptions apply only to those items which can be classified as Personal Property. The designated life does not apply to Real Property or fixtures which have been converted to Real Property.

511	Publishing Industries	15
	Personal property used in the publishing of newspapers, magazines, other periodicals, and books, as well as directory and mailing list and software publishing.	
512	Motion Picture Production and Sound Recording	7
	Personal property used in the production and/or distribution of motion pictures, videos, television programs, or commercials; in the exhibition of motion pictures; or in the provision of postproduction and related services. Sound recording machinery and equipment is used in producing and distributing musical recordings, in publishing music, or in providing sound recording and related services.	
	512131 Motion Picture Theaters	15
	Includes projection equipment, furniture and trade fixtures.	
515	Broadcasting and Telecommunications	<i>See Categories</i>
	51511 Radio Broadcasting.....	10
	Personal property used in broadcasting audio signals. These establishments operate radio broadcasting studios and facilities for the transmission of aural programming by radio to the public, to affiliates, or to subscribers. In recognition of the FCC change from analog to digital broadcasting equipment in radio, television, and cable industries, all analog equipment MAY be valued using a seven-year life. All other equipment will remain at the life indicated. The assessor will still be responsible for measuring obsolescence if any.	
	Itemized Equipment	
	Radio Production Equipment	7
	Service and Repair Equipment	10
	51512 Television Broadcasting	10
	Personal property used in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. In recognition of the FCC mandated change from analog to digital broadcasting equipment in radio, television, and cable industries, all analog equipment MAY be valued using a three-year life. All other equipment will remain at the life indicated. The assessor will still be responsible for measuring obsolescence if any.	
	Itemized Equipment	
	Television Production Equipment	7
	Service and Repair Equipment	10

517 Telecommunications See Itemized Equipment

Wired telecommunications personal property used in (1) operating and maintaining switching and transmission facilities to provide point-to-point communications via landlines, microwave, or a combination of landlines and satellite linkups or (2) furnishing telegraph and other non-vocal communications using their own facilities. Wireless telecommunications assets are used in operating and maintaining switching and transmission facilities that provide omni-directional communications via airwaves, such as cellular telephone or paging services. For handheld devices used to take electronic payments, see Point-of-Sale descriptions.

Itemized Equipment

Central Office Equipment, except computer-based switching equipment	15
Computer-based switching equipment	5
Distribution Plant (if personal property)	30
Fiber optic cable	15
Paging Systems	5
Microwave Systems, except towers	10
Station Equipment	10
Telephone equipment, including, telex, facsimile and Two-Way Radio	5
Cellular Telephones, Smartphones, Hand-helds, Tablets and POS Tablets, and PDAs.....	3

517110 Cable and Other Program Distribution See Itemized Equipment

Personal property used in distribution systems for broadcast programming. Head end assets are defined as the electronic control center -- generally located at the antenna site of a CATV system -- usually including antennas, preamplifiers, frequency converters, demodulators, modulators and other related equipment which amplify, filter and convert incoming broadcast TV signals to cable system channels. Microwave systems include assets such as antennas, transmitting and receiving equipment, and broad band microwave assets. Program origination equipment includes assets such as cameras, film chains, video tape recorders, lighting, and remote location equipment excluding vehicles. Service and test assets include oscilloscopes, field strength meters, spectrum analyzers, and cable testing equipment. Subscriber connection and distribution systems include assets such as trunk and feeder cable, connecting hardware, amplifiers, power equipment, passive devices, directional taps, pedestals, pressure taps, drop cables, matching transformers, multiple set connector equipment, and converters. In recognition of the FCC mandated change from analog to digital broadcasting equipment in radio, television, and cable industries all analog equipment MAY be valued using a seven-year life. All other equipment will remain at the life indicated. The assessor will still be responsible for measuring obsolescence if any.

Itemized Equipment

Coaxial Cable, installed inside buildings	15
Fiber Optic Cable	15
Head end Equipment, except towers	10
Microwave Systems, except towers	10
Program Origination Equipment	10
Satellite Dish Relay; Earth station equipment	10
Box converters having specialized computer components	3
Service and Test Equipment	10
Subscriber Connection and Distribution Systems	10

518 Internet Service Providers, Web Search Portals, and Data Processing Services

For life expectancy, please see Special Properties

Personal property assets used by Internet Service Providers, Web Search Portals, and Data Processing Services to provide: (1) access to the Internet; (2) search facilities for the Internet; and (3) data processing, hosting, and related services.

519 Other Information Services 15

Personal property assets used in supplying information, storing information, providing access to information, and searching and retrieving information. The main components of this group are news syndicates, libraries, and archives. It includes law and medical libraries.

5 3 REAL ESTATE, RENTAL, AND LEASING

For the purposes of this manual, the following descriptions apply only to those items which can be classified as Personal Property. The designated life does not apply to Real Property or fixtures which have been converted to Real Property.

532 Rental and Leasing Services 15

Personal property includes a wide array of tangible goods, such as automobiles, computers, consumer goods, and industrial machinery and equipment, to customers in return for a periodic rental or lease payment.

Itemized Equipment

Formal wear and costume rental	3
Bottled water Dispensers & Equipment	7
Furniture Rental & Leasing	7
Heavy equipment	<i>See Construction (Code 23)</i>
Lawn and Garden equipment	7

Linens and Uniforms	3
Musical Instrument rentals	7
Rent-to-Own Merchandise	7
Ski Equipment Rentals	7
Video Tapes	<i>See Special Properties</i>
<i>See also separate listings for specific types of equipment.</i>	

54 PROFESSIONAL, SCIENTIFIC, & TECHNICAL SERVICES

For the purposes of this manual, the following descriptions apply only to those items which can be classified as Personal Property. The designated life does not apply to Real Property or fixtures which have been converted to Real Property.

- See Itemized Equipment

Itemized Equipment

Laboratory equipment , except electronic and computerized	15
Laboratory equipment, electronic and computerized	7
Medical and law libraries (<i>See also other information services</i>).....	15
Photography	15
Professional and scientific equipment (<i>See also NAICS Code 3345</i>)	7
Professional libraries.....	15
Surveying Equipment	
GPS	7
Non-GPS	15

56 WASTE MANAGEMENT AND REMEDIATION SERVICES

For the purposes of this manual, the following descriptions apply only to those items which can be classified as Personal Property. The designated life does not apply to Real Property or fixtures which have been converted to Real Property.

5616	Investigation and Security Services	15
	Personal property includes burglar and fire alarms and locking devices, along with equipment necessary for installation, repair, or monitoring services or (2) remote monitoring of electronic security alarm systems.	
	Itemized Equipment	
	Closed Circuit TV – Camera System	7
	Firearms	20

	Locksmith Equipment, including:	
	Mechanical and electronic locking devices	20
	Safes and security vaults	20
5617	Services to Buildings and Dwellings	15
	Includes the fixtures and equipment for the following:	
	56171 Exterminating and Pest Control Services	
	56172 Janitorial Services	
	56173 Landscaping Services	
	56174 Carpet and Upholstery Cleaning Services	
	Itemized Equipment	
	Carpet Cleaning	15
	Lawn mowing Equipment	7
562	Waste Management and Remediation Services	10
	Personal property used in the collection, treatment, and disposal of waste materials. This includes establishments engaged in local hauling of waste materials; operating materials recovery facilities (i.e., those that sort recyclable materials from the trash stream); providing remediation services (i.e., those that provide for the cleanup of contaminated buildings, mine sites, soil, or ground water); and providing septic pumping and other miscellaneous waste management services.	
	Itemized Equipment	
	Garbage Dumpsters.....	10
	Portable toilets	10

62 HEALTH CARE AND SOCIAL ASSISTANCE

For the purposes of this manual, the following descriptions apply only to those items which can be classified as Personal Property. The designated life does not apply to Real Property or fixtures which have been converted to Real Property.

621	Ambulatory Health Care Services	15
	Personal property used by health practitioners in the provision of outpatient services, with the facilities and equipment not usually being the most significant part of the production process. Includes the fixtures and equipment for the following:	
	6211 Offices of Physicians	
	6212 Offices of Dentists	
	6213 Offices of Other Health Practitioners, including Chiropractors, Optometrists, Mental Health Practitioners, and Physical, Occupational, and Speech Therapists	

Medical and Dental Instruments Not Otherwise Noted in Special Properties, include:

All Portable Units of Same

Angiographic X-ray units	Mesoptometers
Chest X-ray Units	Microscopes
Dental X-ray Units	Portable X-ray Units
Exam tables and chairs	Radiographic X-ray Units
Fluorographic X-ray Units	Special Procedure X-ray Units
Lensometer	Sterilizers
Mammographic X-ray Units	

622	Hospitals	15
	Personal property used to provide inpatient health services, particularly specialized facilities and equipment that form a significant and integral part of the production process. <i>See list above for examples of equipment.</i>	
	<i>See also Special Properties for Medical Diagnostic and Medical Lab.</i>	
6244	Child Day Care Facilities	10
	Personal property used in providing day care of infants or children.	

71 ARTS, ENTERTAINMENT, AND RECREATION

For the purposes of this manual, the following descriptions apply only to those items which can be classified as Personal Property. The designated life does not apply to Real Property or fixtures which have been converted to Real Property.

711	Performing Arts, Spectator Sports, and Related	10
	Includes projection equipment, furniture and trade fixtures such as movable set props, aerial and acrobatic equipment, rigging, costumes, production lighting, and special effects equipment.	
	Itemized Equipment	
	Electronic Equipment including Sound Systems	7
	Seating, stages including fixed set designs, hydraulics, fountains	15
	Support operations, including equipment and furniture for dressing rooms, ticket booths, snack bars, offices	15 ⁸
	Water tanks.....	20 ⁹

⁸ May be considered to be real property fixtures. The cost may be established from Marshall & Swift.

711212	Car racing – race cars.....	3
713	Amusement, Gambling and Recreation Industries	15
	Personal property used to (1) operate facilities where patrons can primarily engage in sports, recreation, amusement, or gambling activities and/or (2) provide other amusement and recreation services, such as supplying and servicing amusement devices in places of business operated by others; operating sports teams, clubs, or leagues engaged in playing games for recreational purposes; and guiding tours without using transportation equipment.	
	Itemized Equipment	
	Amusement Park (does not include structures)	15
	Bowling Alley Pinsetters and Other Equipment	15
	Bowling Electronic Scoring Machines	7
	Gaming Equipment:	
	Electronic Slots, or Computers	7
	Player Tracking Systems	7
	Mechanical Slots.....	15
	Other	15
	Golf Carts, Electric	7
	Golf Course Machinery and Equipment, except Lawn Mowing Equipment.....	15
	Golf Course Lawn Mowing Equipment.....	7
	Juke Box.....	15
	Ski Area Equipment: Snow Cats and Packers	7
	Ski Rentals.....	7
	Video and Flipper Games	7

72 ACCOMMODATION AND FOOD SERVICES

For the purposes of this manual, the following descriptions apply only to those items which can be classified as Personal Property. The designated life does not apply to Real Property or fixtures which have been converted to Real Property.

721	Accommodation.....	15
	Personal property used in: (1) traveler accommodation, (2) recreational accommodation, and (3) rooming and boarding houses.	
	Itemized Equipment	
	Apartment Furnishings.....	15
	Hotel Furnishings.....	10

⁹ May be considered to be real property fixtures. The cost may be established from Marshall & Swift.

	Outdoor Patio Furnishings	7
	Fire and Security Equipment.....	15
	Health Spa Equipment: Manual	15
	Health Spa Equipment: Electronic	7
	Heavy Use Washers	7
	Linens, Glassware, Silverware, and Uniforms (not rented)	3
	Televisions.....	5
	Telephone Systems (<i>See also NAICS Code 517</i>)	5
722	Food Services and Drinking Places.....	15
	The industry groups are full-service restaurants; limited-service eating places; special food services, such as food service contractors, caterers, and mobile food services; and drinking places.	
	Itemized Equipment	
	Bar	15
	Coffee Brewing Equipment	15
	Walk-in Coolers (<i>See Also NAICS 311</i>)	15
	Linens, Glassware, Silverware, and Uniforms (not rented)	3
	Televisions, Digital.....	5
	Televisions, Analog.....	5
	Vending Machines	15

81 OTHER SERVICES

For the purposes of this manual, the following descriptions apply only to those items which can be classified as Personal Property. The designated life does not apply to Real Property or fixtures which have been converted to Real Property.

Establishments in this sector are primarily engaged in activities, such as equipment and machinery repairing, promoting or administering religious activities, grant making, advocacy, and providing dry cleaning and laundry services, personal care services, death care services, pet care services, photofinishing services, temporary parking services, and dating services.

811	Repair and Maintenance	15
	Personal property used to restore machinery, equipment, and other products to working order. These establishments also typically provide general or routine maintenance (i.e., servicing) on such products to ensure they work efficiently and to prevent breakdown and unnecessary repairs.	

Includes the fixtures and equipment for the following:

- 8111 Automobile Repair and Maintenance
- 811192 Car Washes
- 8112 Electronic & Precision Equipment
- 8113 Commercial Equipment Repair and Maintenance
- 8114 Personal and Household Goods Repair and Maintenance
- 81143 Footwear and Leather Goods Repair

Itemized Equipment

Auto Repair Diagnostic Equipment (Electronic)	7
Small Tools (See Hand Tools, NAICS 423120)	7
Welding Equipment.....	15
EV Charging Stations.....	15

812 Personal and Laundry Services..... 15

Includes the equipment and some trade fixtures for the following (See *Appendix D* for determination of real or personal property):

- 8121 Personal Care Services
- 81211 Hair, Nail and Skin Care Services
- 81219 Other, including Diet and Weight Reducing – Fitness
- 8122 Death Care Services
- 81221 Funeral Homes
- 81222 Cemeteries and Crematories
- 8123 Dry Cleaning and Laundry Services
- 81231 Coin-operated Laundries and Dry Cleaners
- 81232 Dry Cleaning and Laundry, except Coin-operated
- 8129 Other Personal Services
- 81291 Pet Care (except Veterinary)
- 81292 Photo-finishing

Itemized Equipment

Coin Laundries.....	15
Heavy Use Washers	7
Commercial Dry Cleaning Equipment.....	15

APPENDIX A

2025-26 PERSONAL PROPERTY MANUAL

NEVADA REVISED STATUTES AND NEVADA ADMINISTRATIVE CODE RELATED TO PERSONAL PROPERTY

(This listing may not be comprehensive. Please consult the statutes and regulations. You may find the statutes and regulations on the internet at <http://leg.state.nv.us/law1.cfm>).

Nevada Revised Statutes

NRS 361.013 “Billboard” defined. “Billboard” means a sign that directs attention to a business, commodity, service, entertainment or attraction that is sold, offered or exists at a location other than the premises on which the sign is located.

(Added to NRS by [1989, 1817](#))

NRS 361.028 “Manufactured home” defined. “Manufactured home” has the meaning ascribed to it in [NRS 489.113](#).

(Added to NRS by [2001, 1540](#))

NRS 361.029 “Mobile home” defined. “Mobile home” means a vehicular structure, built on a chassis or frame, which is designed to be used with or without a permanent foundation and is capable of being drawn by a motor vehicle. It may be used as a dwelling when connected to utilities or may be used permanently or temporarily for the advertising, sales, display or promotion of merchandise or services. The term does not include a recreational park trailer as defined in [NRS 482.1005](#).

(Added to NRS by [1989, 169](#); A [2001, 1727](#))

NRS 361.030 “Personal property” defined.

1. “Personal property” means:
 - (a) All household and kitchen furniture.
 - (b) All law, medical and miscellaneous libraries.
 - (c) All goods, wares and merchandise.
 - (d) All chattels of every kind and description, except vehicles as defined in [NRS 371.020](#).
 - (e) Stocks of goods on hand.
 - (f) Any vehicle not included in the definition of vehicle in [NRS 371.020](#).
 - (g) All locomotives, cars, rolling stock and other personal property used in operating any railroad within the State.
 - (h) All machines and machinery, all works and improvements, all steamers, vessels and watercraft of every kind and name navigating or used upon the waters of any river or lake within this State or having a general depot or terminus within this State.
 - (i) The money, property and effects of every kind, except real estate, of all banks, banking institutions or firms, bankers, moneylenders and brokers.
 - (j) All property of whatever kind or nature, except vehicles as defined in [NRS 371.020](#), not included in the term “real estate” as that term is defined in [NRS 361.035](#).

2. Gold-bearing and silver-bearing ores, quartz or minerals from which gold or silver is extracted, when in the hands of the producers thereof, shall not mean, not be taken to mean, nor be listed and assessed under the term “personal property” as used in this section, but are specially excepted therefrom, and shall be listed, assessed and taxed as provided by law. [Part 3:344:1953]—(NRS A 1963, 305, 1121; [1983, 1191](#); [2013, 3115](#))

NRS 361.035 “Real estate” and “real property” defined.

1. “Real estate” or “real property” means:
 - (a) All houses, buildings, fences, ditches, structures, erections, railroads, toll roads and bridges, or other improvements built or erected upon any land, whether such land is private property or property of this state or of the United States, or of any municipal or other corporation, or of any county, city or town in this state.
 - (b) Any mobile home, factory-built housing or manufactured home which meets the requirements of [NRS 361.244](#).
 - (c) The ownership of, or claim to, or possession of, or right of possession to any lands within this state.
 - (d) The claim by or the possession of any person, firm, corporation, association or company to any land.
2. The property described in subsection 1 must be listed under the head of “real estate.”
3. Except as otherwise provided in [NRS 361.2445](#), when an agreement has been entered into, whether in writing or not, or when there is sufficient reason to believe that an agreement has been entered into, for the dismantling, moving or carrying away or wrecking of the property described in subsection 1, the property must be classified as personal property, and not real estate.
4. For the purposes of this chapter, “real estate” or “real property” does not include leasehold or other possessory interests in land owned by the Federal Government on which land the Federal Government is paying taxes to the State of Nevada or is, pursuant to contractual obligation, paying any sum in lieu of taxes to the State of Nevada.
 [Part 3:344:1953]—(NRS A 1957, 358; 1975, 1655; [1979, 824](#); [1993, 1183](#); [1999, 3465](#))

NRS 361.045 Taxable property. Except as otherwise provided by law, all property of every kind and nature whatever within this state shall be subject to taxation.

[Part 1:344:1953; A 1954, 29; 1955, 340]

NRS 361.227 Determination of taxable value.

1. Any person determining the taxable value of real property shall appraise:
 - (a) The full cash value of:
 - (1) Vacant land by considering the uses to which it may lawfully be put, any legal or physical restrictions upon those uses, the character of the terrain, and the uses of other land in the vicinity.
 - (2) Improved land consistently with the use to which the improvements are being put.
 - (b) Any improvements made on the land by subtracting from the cost of replacement of the improvements all applicable depreciation and obsolescence. Depreciation of an improvement made on real property must be calculated at 1.5 percent of the cost of replacement for each year of adjusted actual age of the improvement, up to a maximum of 50 years.
2. The unit of appraisal must be a single parcel unless:
 - (a) The location of the improvements causes two or more parcels to function as a single parcel;
 - (b) The parcel is one of a group of contiguous parcels which qualifies for valuation as a subdivision pursuant to the regulations of the Nevada Tax Commission; or
 - (c) In the professional judgment of the person determining the taxable value, the parcel is one of a group of parcels which should be valued as a collective unit.
3. The taxable value of a leasehold interest, possessory interest, beneficial interest or beneficial use for the purpose of [NRS 361.157](#) or [361.159](#) must be determined in the same manner as the taxable value of the property would otherwise be determined if the lessee or user of the property was the owner of the property and it was not exempt from taxation, except that the taxable value so determined must be reduced by a percentage of the taxable value that is equal to the:
 - (a) Percentage of the property that is not actually leased by the lessee or used by the user during the fiscal year; and
 - (b) Percentage of time that the property is not actually leased by the lessee or used by the user during the fiscal year, which must be determined in accordance with [NRS 361.2275](#).
4. The taxable value of other taxable personal property, except a mobile or manufactured home, must be determined by subtracting from the cost of replacement of the property all applicable depreciation and obsolescence. Depreciation of a billboard must be calculated at 1.5 percent of the cost of replacement for each year after the year of acquisition of the billboard, up to a maximum of 50 years.
5. The computed taxable value of any property must not exceed its full cash value. Each person determining the taxable value of property shall reduce it if necessary to comply with this requirement. A person determining whether taxable value exceeds that full cash value or whether obsolescence is a factor in valuation may consider:
 - (a) Comparative sales, based on prices actually paid in market transactions.
 - (b) A summation of the estimated full cash value of the land and contributory value of the improvements.
 - (c) Capitalization of the fair economic income expectancy or fair economic rent, or an analysis of the discounted cash flow.

➤ A county assessor is required to make the reduction prescribed in this subsection if the owner calls to his or her attention the facts warranting it, if the county assessor discovers those facts during physical reappraisal of the property or if the county assessor is otherwise aware of those facts.

6. The Nevada Tax Commission shall, by regulation, establish:

(a) Standards for determining the cost of replacement of improvements of various kinds.

(b) Standards for determining the cost of replacement of personal property of various kinds. The standards must include a separate index of factors for application to the acquisition cost of a billboard to determine its replacement cost.

(c) Schedules of depreciation for personal property based on its estimated life.

(d) Criteria for the valuation of two or more parcels as a subdivision.

7. In determining, for the purpose of computing taxable value, the cost of replacement of:

(a) Any personal property, the cost of all improvements of the personal property, including any additions to or renovations of the personal property, but excluding routine maintenance and repairs, must be added to the cost of acquisition of the personal property.

(b) An improvement made on land, a county assessor may use any final representations of the improvement prepared by the architect or builder of the improvement, including, without limitation, any final building plans, drawings, sketches and surveys, and any specifications included in such representations, as a basis for establishing any relevant measurements of size or quantity.

8. The county assessor shall, upon the request of the owner, furnish within 15 days to the owner a copy of the most recent appraisal of the property, including, without limitation, copies of any sales data, materials presented on appeal to the county board of equalization or State Board of Equalization and other materials used to determine or defend the taxable value of the property.

9. The provisions of this section do not apply to property which is assessed pursuant to [NRS 361.320](#).

(Added to NRS by 1965, 1445; A 1969, 1451; 1975, 65, 1656; [1977, 1318](#); [1979, 79](#); [1981, 788, 789](#); [1983, 1047, 1884, 1885](#); [1987, 2075](#); [1989, 668, 1818](#); [1993, 2312](#); [1997, 1111](#); [1999, 1029](#); [2001, 842](#); [2003, 2758](#); [2009, 1216](#); [2013, 3116](#))

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

1. To enable the county assessor to make assessments, he or she shall demand from each natural person or firm, and from the president, cashier, treasurer or managing agent of each corporation, association or company, including all banking institutions, associations or firms within the county, a written statement, signed 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](#).

2. The statement must include:

(a) A description of the location of any taxable personal property that is owned, claimed, possessed, controlled or managed by the natural person, firm, corporation, 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;

(b) The cost of acquisition of each item of taxable personal property including 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

(c) If the natural person, firm, corporation, association or company owns at least 25 mobile or manufactured homes that are being leased within the county for 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 of each such mobile or manufactured home.

3. The statement must be returned not later than July 31, except for a statement mailed to the taxpayer after July 15, in which case it must be returned within 15 days after demand for its return is made. Upon petition of the property owner showing good cause, the county assessor may grant one or more 30-day extensions.

4. If the owners of any taxable property not listed by another person are absent or unknown, or fail to provide the written statement as described in subsection 1, the county assessor shall make an estimate of the value of the property and assess it accordingly. If the name of the absent owner is known to the county assessor, the property must be assessed in that name. If the name of the owner is unknown to the county assessor, the property must be assessed to "unknown

owner,” but no mistake made in the name of the owner or the supposed owner of personal property renders the assessment or any sale of the property for taxes invalid.

5. If any person, officer or agent neglects or refuses on demand of the county assessor or his or her deputy to give the statement required by this section, or gives a false name, or refuses to give his or her name or sign the statement, the person, officer or agent is guilty of a misdemeanor.

[Part 5:344:1953]—(NRS A 1967, 558; 1969, 1452; [1981, 327](#); [1983, 519](#), [1193](#); [1985, 748](#); [1987, 531](#); [1989, 1820](#); [2003, 2761](#); [2005, 2656](#))

NRS 361.325 Nevada Tax Commission to establish valuations of mobile homes and land; property escaping taxation to be placed on assessment roll.

1. On or before the first Monday in June of each year, the Nevada Tax Commission shall:

(a) Fix and establish the valuation for assessment purposes of all mobile homes in the State.

(b) Classify land and fix and establish the valuation thereof for assessment purposes. The classification of agricultural land must be made on the basis of crop, timber or forage production, either in tons of crops per acre, board feet or other unit, or animal unit months of forage. An animal unit month is the amount of forage which is necessary for the complete sustenance of one animal unit for 1 month. One animal unit is defined as one cow and calf, or its equivalent, and the amount of forage necessary to sustain one animal unit for 1 month is defined as 900 pounds of dry weight forage.

2. The valuation of mobile homes and land so fixed and established is for the next succeeding year and is subject to equalization by the State Board of Equalization.

3. In establishing the value of new mobile homes sold on or after July 1, 1982, the Nevada Tax Commission shall classify them according to those factors which most closely determine their useful lives. In establishing the value of other mobile homes, the Commission shall begin with the retail selling price and depreciate it by 5 percent per year, but not below 20 percent of its original amount.

4. The Nevada Tax Commission shall cause to be placed on the assessment roll of any county property found to be escaping taxation coming to its knowledge after the adjournment of the State Board of Equalization. This property must be placed upon the assessment roll prior to the delivery thereof to the ex officio tax receiver. If such property cannot be placed upon the assessment roll of the proper county within the proper time, it must be placed upon the tax roll for the next ensuing year, in addition to the assessment for the current year, if any, and taxes thereon must be collected for the prior year in the same amount as though collected upon the prior year’s assessment roll.

5. The Nevada Tax Commission shall not raise or lower any valuations established by the State Board of Equalization unless, by the addition to any assessment roll of property found to be escaping taxation, it is necessary to do so.

6. Nothing in this section provides an appeal from the acts of the State Board of Equalization to the Nevada Tax Commission.

[7:177:1917; A 1929, 299; 1939, 279; 1945, 78; 1953, 576]—(NRS A 1957, 314; 1963, 1123; 1967, 825; 1975, 1105, 1660, 1762; [1981, 859](#); [1983, 1195](#))

Nevada Administrative Code

NAC 361.1127 “Fixture” defined. ([NRS 360.090](#), [360.250](#)) “Fixture” means an item, other than a trade fixture, that was originally personal property which has been installed or attached to land or an improvement in a permanent manner. As used in this section, “installed or attached to land or an improvement in a permanent manner” means that:

1. Either:

(a) An item 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; or

(b) The use or purpose of an item that is not otherwise physically annexed to land or an improvement is so adapted that it is:

(1) A necessary, integral or working part of the land or improvement;

(2) Designed or committed for use with the land or improvement; or

(3) So essential to the land or improvement that the land or improvement cannot perform its desired function without the nonattached item; and

2. A reasonable person would consider the item to be a permanent part of the land or improvement, taking into account annexation, adaptation and other objective manifestations of permanence, including, without limitation, whether:
- (a) Removal of the item would destroy the item or cause significant damage to the real property to which it is installed or attached;
 - (b) The historic use of the item indicates an intention to leave the item in place;
 - (c) The terms of a written agreement between parties indicates the intention of a tenant or lessee to remove or transfer ownership of the item; or
 - (d) Ownership of the item would be conveyed with a transfer of the real property to which it is installed or attached.
- (Added to NAC by Tax Comm'n by R039-10, 8-13-2010, eff. 7-1-2012; A by R068-12, 9-14-2012)

NAC 361.11715 "Real property" defined. ([NRS 360.090](#), [360.250](#))

1. "Real property" has the meaning ascribed to it in [NRS 361.035](#) and includes:
 - (a) Land;
 - (b) Fixtures;
 - (c) Improvements;
 - (d) On-site enhancements; and
 - (e) Any rights, interests, benefits and privileges belonging or attached to the land.
2. The term does not include a trade fixture.

(Added to NAC by Tax Comm'n by R039-10, 8-13-2010, eff. 7-1-2012; A by R068-12, 9-14-2012)

NAC 361.130 Mobile or manufactured home. ([NRS 360.090](#), [360.250](#), [361.227](#), [361.2445](#), [361.325](#))

1. The taxable value of a mobile home or manufactured home which constitutes real property is the cost of replacement of the mobile home or manufactured home less depreciation and obsolescence.
 2. In determining the taxable value of a mobile home or manufactured home which constitutes personal property, each county assessor shall, if the mobile home or manufactured home was sold as new:
 - (a) Before July 1, 1982, value it at its retail selling price when sold to the original owner less depreciation at 5 percent per year, to a maximum depreciated value of 20 percent of its original retail selling price.
 - (b) On or after July 1, 1982, value it at replacement cost, when new, less depreciation. Replacement cost when new is the retail selling price to the original owner adjusted by factors reflected in the annual *Personal Property Manual*.
 ➤ Depreciation must be calculated pursuant to the schedule located in the annual *Personal Property Manual*. Additional depreciation and obsolescence may be calculated separately.
 3. The retail selling price of a mobile home or manufactured home includes all charges for transportation, installation, accessories, profit and overhead.
 4. If the owner of a mobile home or manufactured home which has been converted to real property wishes to convert the mobile home or manufactured home back to personal property, the county assessor shall provide the owner with a form for an affidavit of conversion which has been approved by the Commission and which must be recorded in the county recorder's office pursuant to [NRS 361.2445](#) before the mobile home or manufactured home may be removed from the tax rolls. The affidavit of conversion may include information concerning the cost of acquisition of the mobile home or manufactured home. All signatures required pursuant to [NRS 361.2445](#) to effectuate the conversion must be notarized.
 5. The county assessor shall value the mobile home or manufactured home as personal property upon satisfaction of all the requirements set forth in [NRS 361.2445](#) if the mobile home or manufactured home remains within the jurisdiction of the county assessor.
 6. If a mobile home or manufactured home which has been converted to real property is completely destroyed and removed from real property, the county assessor shall remove the mobile home or manufactured home from the tax roll.
- [Tax Comm'n, Property Tax Reg. part No. 2, eff. 1-14-82]— (NAC A 10-10-83; 6-29-84; 5-16-86; R031-03, 8-4-2004; R166-07, 6-17-2008)

NAC 361.1305 Billboards. ([NRS 360.090](#), [360.250](#), [361.227](#))

1. The taxable value of a billboard is the cost of replacement of the billboard less depreciation and obsolescence.
2. The cost of replacement of a billboard must be computed by multiplying the cost of acquisition to the current owner by the appropriate factor located in the annual *Personal Property Manual*. The factor that corresponds to the year the billboard was acquired must be used. Additional depreciation and obsolescence may be calculated separately.

(Added to NAC by Tax Comm'n, eff. 8-2-90; A by R031-03, 8-4-2004)

Determination of Taxable Value of Personal Property

NAC 361.1345 Definitions. ([NRS 360.090](#), [360.250](#), [361.227](#)) As used in [NAC 361.1345](#) to [361.139](#), inclusive, unless the context otherwise requires, the words and terms defined in [NAC 361.1351](#), [361.1355](#) and [361.1361](#) have the meanings ascribed to them in those sections.

(Added to NAC by Tax Comm'n by R034-03, eff. 12-4-2003)

NAC 361.1351 "Acquisition cost" and "original cost" defined. ([NRS 360.090](#), [360.250](#), [361.227](#)) "Acquisition cost" or "original cost" means the actual cost of property to its present owner, including, without limitation, the costs of transportation and the costs of installation.

(Added to NAC by Tax Comm'n by R034-03, eff. 12-4-2003)

NAC 361.1355 "Costs of installation" defined. ([NRS 360.090](#), [360.250](#), [361.227](#)) "Costs of installation" means the costs of direct labor, direct overhead and the capitalized expense of interest or imputed charges for interest which are necessary to make the property operational.

(Added to NAC by Tax Comm'n by R034-03, eff. 12-4-2003)

NAC 361.1361 "Personal Property Manual" defined. ([NRS 360.090](#), [360.250](#), [361.227](#)) "*Personal Property Manual*" means a manual for the valuation of personal property that is published by the Department annually pursuant to [NAC 361.1365](#).

(Added to NAC by Tax Comm'n by R034-03, eff. 12-4-2003)

NAC 361.1365 *Personal Property Manual: Publication; contents; approval; use.* ([NRS 360.090](#), [360.250](#), [361.227](#))

1. The Department will annually publish a *Personal Property Manual* which describes the methods and standards that must be used for the valuation of personal property. The manual must include, without limitation, annually updated:

(a) Cost-index factors that must be used in the conversion of acquisition cost into an estimate of replacement cost new;

(b) Expected-life schedules that indicate the category of expected life for each type of property or type of industry in which the property is used; and

(c) Percent-good tables which indicate the rate of depreciation that must be applied.

2. The *Personal Property Manual* must be approved by the Commission before publication. The Department, at least 1 month before presenting the manual to the Commission for approval, must disclose all proposed modifications to the manual and hold a public workshop on the modifications.

3. Each county assessor shall use the *Personal Property Manual* in determining the taxable value of personal property.

(Added to NAC by Tax Comm'n by R034-03, eff. 12-4-2003)

NAC 361.1371 Procedure for determination of taxable value. ([NRS 360.090](#), [360.250](#), [361.227](#))

1. The taxable value of personal property must be determined by adjusting the acquisition cost of the property by a cost-index factor and reducing the adjusted acquisition cost by an estimate of applicable depreciation. The taxable value so determined shall be deemed to be the indicator of value of replacement cost new less depreciation.

2. In determining taxable value, a county assessor shall use the schedules in the *Personal Property Manual* that show the cost-index factors, the rates of depreciation and the percent good by year. The assessor shall use the schedules by:

(a) Selecting the appropriate expected useful life of the personal property; and

(b) Selecting the appropriate cost-index factor, based on the year of acquisition of the property, and applying it to the acquisition cost of the property.

↳ The result shall be deemed to be the replacement cost new of the property.

3. The assessor shall select the method of applying depreciation to the personal property by either:

- (a) Multiplying the adjusted acquisition cost of the property by the rate of depreciation and subtracting the result from the adjusted acquisition cost; or
 - (b) Multiplying the adjusted acquisition cost of the property by the percent-good factor.
- The result from either approach shall be deemed to be the taxable value of the property.
(Added to NAC by Tax Comm'n by R034-03, eff. 12-4-2003)

NAC 361.1375 Determination of expected life, cost-index factors and depreciation. ([NRS 360.090](#), [360.250](#), [361.227](#))

1. Personal property must be categorized by the specific type of property that it is or by the type of industry in which it is used. Each category must be assigned to a schedule of expected life which is based on commonly available sources of information, including, without limitation, the life expectancy guidelines published by the Marshall and Swift Valuation Service and any other sources published in the *Personal Property Manual*.
 2. The cost-index factors published in the *Personal Property Manual* must be determined by calculating the average change in costs over time. The Department shall identify the sources used to calculate the average change.
 3. For purposes of calculating the amount of applicable depreciation, personal property must be assigned to one of the following expected lives:
 - (a) Three-year life;
 - (b) Five-year life;
 - (c) Seven-year life;
 - (d) Ten-year life;
 - (e) Fifteen-year life;
 - (f) Twenty-year life; or
 - (g) Thirty-year life.
 4. Depreciation must be calculated over the expected life of the personal property by using the declining balance method, except that tables which provide a method other than the declining balance method for calculating depreciation may be used if the tables have been approved by the Commission and included in the *Personal Property Manual*.
 5. For purposes of calculating the rate of depreciation, a residual amount of 5 percent must be used. Percent-good tables using a residual amount other than 5 percent may be adopted by the Commission if the Department has conducted a market study or has otherwise obtained information which indicates that a different residual amount is appropriate for the category in which the personal property is placed pursuant to subsection 1.
- (Added to NAC by Tax Comm'n by R034-03, eff. 12-4-2003)

NAC 361.138 Reported acquisition cost for leased equipment. ([NRS 360.090](#), [360.250](#), [361.227](#)) For leased equipment, the reported acquisition cost is the cost which the user of the property would incur if the equipment were purchased, less any discount customarily allowed by a seller.
(Added to NAC by Tax Comm'n, eff. 10-10-83; A by R034-03, 12-4-2003)

NAC 361.139 Personal property acquired with real property for lump sum; use of other valuation techniques. ([NRS 360.090](#), [360.250](#), [361.227](#))

1. In determining the taxable value of personal property which was acquired with real property for a lump sum, the assessor may refer to appropriate guides which list the cost of equipment to determine the value of the personal property in relation to the value of the real property. In addition, the assessor may estimate the age of the equipment by inspecting it or discussing the approximate value of the equipment with manufacturers, dealers or other persons in the business who have knowledge of the value of the equipment. The serial number, if it exists, may enable a manufacturer to determine the date of manufacture and the original cost.
2. If sufficient data is not otherwise available to establish acquisition cost, or if the assessor determines that a reported acquisition cost is not equal to the fair market value of the property at the time of acquisition plus any costs of transportation and costs of installation, the assessor may use any nationally recognized valuation technique to determine the acquisition cost, including, without limitation:
 - (a) Establishing the current cost of replacement of the property with new property by reference to current manufacturing costs. If the current cost of replacement is known, the assessor shall apply depreciation to that cost to determine the taxable value.

(b) Using a guide which lists the cost or a procedure recognized by businesses which use such equipment to determine the taxable value. Before such a guide or procedure may be used, an assessor must receive approval from the Executive Director.

(c) Using information based on current market data.

3. Upon request, the Division of Local Government Services of the Department will provide information on various guides which may be used to determine original cost.

(Added to NAC by Tax Comm'n, eff. 10-10-83; A 6-29-84; R034-03, 12-4-2003; R068-12, 9-14-2012)

NAC 361.11745 "Trade fixture" defined. ([NRS 360.090](#), [360.250](#)) "Trade fixture" means an item of personal property that:

1. Is installed or attached nonpermanently to real property by an owner or tenant for the purpose of conducting a business or trade and not for the enhancement of the real property to which it is installed or attached; and

2. Has a unique identity and function which is related to the business or trade for which it is installed or attached, and which is distinct from the real property to which it is installed or attached.

(Added to NAC by Tax Comm'n by R068-12, eff. 9-14-2012)

Excerpts from Department of Taxation Letter of Guidance

Letter dated December 2, 2004, responding to County Assessors' Question:

"In determining the proper amount of depreciation to be applied to personal property using the Department's Personal Property Manual, does the year of acquisition refer to a calendar year or a fiscal year?"

Short Answer:

The use of the year of acquisition is dependent on the fiscal year only with regard to the correct selection of the Personal Property Manual to be used. The year of acquisition is otherwise an actual date during a calendar year that indicates the age of the property to be used in the expected life tables.

(Please ask the department for a copy of the letter if you wish to read the entire discussion.)

APPENDIX B

2025-26 PERSONAL PROPERTY MANUAL

Methodology Used to Estimate Cost Indexes

The percent change in each index is measured between the current year and the prior year. The mean of the sum of the changes for each year of the expected life table is calculated and becomes the basis for the cost index to trend acquisition cost to a current replacement cost.

Sources Used to Estimate Cost Indexes

Producer Price Index (PPI)

The Producer Price Index (PPI) is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPIs measure price change from the perspective of the seller. This contrasts with other measures, such as the Consumer Price Index (CPI), that measure price change from the purchaser's perspective. Sellers' and purchasers' prices may differ due to government subsidies, sales and excise taxes, and distribution costs.

Data Source

- The PPI sample includes over 16,000 establishments providing approximately 64,000 price quotations per month supplemented with data from other sources for some areas.
- Establishments are selected for the PPI survey via systematic sampling of a list of all firms in the industry.
- Participation by firms is completely voluntary.
- Participating establishments report price data online through a secure website.
- Good and services included in the PPI are weighted by value-of-shipsments data contained in the 2017 economic censuses.
- Industries and products undergo systematic resampling as needed, to account for changing market conditions.

The Producer Price Index series reference has been updated from a Stage of Processing ID code to a Final Demand-Intermediate Demand Goods Index. The conversion may be found in an Index Concordance Table located at <http://www.bls.gov/ppi/fdidconcordance.htm>, which converts SOP3200, Capital equipment, to FD41312, Private capital equipment. The PPI Index using FD41312 may be found at <http://www.bls.gov/ppi/fdidsf16.htm>.

Consumer Price Indexes (CPI)

The consumer price index (CPI) is a measure of the average change over time in the prices paid by urban consumers or households for a market basket of consumer goods and services. The Bureau of Labor Statistics publishes CPIs for two population groups: (1) the CPI for Urban Wage Earners and Clerical Workers (CPI-W), which covers households of wage earners and clerical workers that comprise approximately 29 percent of the total population and (2) the CPI for All Urban Consumers (CPI-U) and the

Chained CPI for All Urban Consumers (C-CPI-U), which cover approximately 93 percent of the total population and include in addition to wage earners and clerical worker households, groups such as professional, managerial, and technical workers, the self-employed, short-term workers, the unemployed, and retirees and others not in the labor force.

The CPI represents all goods and services purchased for consumption by the reference population (CPI-U or CPI-W). BLS has classified all expenditure items into more than 200 categories, arranged into eight major groups. Major groups and examples of categories in each are as follows:

- FOOD and BEVERAGES (breakfast cereal, milk, coffee, chicken, wine, full-service meals and snacks)
- HOUSING (rent of primary residence, owners' equivalent rent, fuel oil, bedroom furniture)
- APPAREL (men's shirts and sweaters, women's dresses, jewelry)
- TRANSPORTATION (new vehicles, airlines fares, gasoline, motor vehicle insurance)
- MEDICAL CARE (prescription drugs and medical supplies, physicians' services, eyeglasses and eye care, hospital services)
- RECREATION (televisions, cable television, pets and pet products, sports equipment, admissions)
- EDUCATION AND COMMUNICATIONS (college tuition, postage, telephone services, computer software and accessories)
- OTHER GOODS AND SERVICES (tobacco and smoking products, haircuts and other personal services, funeral expenses)

Also included within these major groups are various government-charged user fees, such as water and sewerage charges, auto registration fees, and vehicle tolls. The CPI also includes taxes (such as sales and excise taxes) that are directly associated with the prices of specific goods and services. However, the CPI excludes taxes (such as income and Social Security taxes) not directly associated with the purchase of consumer goods and services.

The CPI does not include investment items, such as stocks, bonds, and life insurance. (These items relate to savings and not to day-to-day consumption expenses.)

The Consumer Price Index series ID reference is CUUR0400SA0, CUUS0400SA0 for area West Urban, All Items. The base period is 1982-84 = 100. The data may be found at http://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUUR0400SA0,CUUS0400SA0.

Marshall Valuation Service

Marshall Valuation Service publishes a national average equipment cost index based on industry type. The Department measures the change in the index for each category of industry from the prior year.

Market Tests

In addition to the sources already cited, the Department conducts market tests to validate the results of applying the cost indices to particular items of personal property. The original cost of a selected sample of personal property items is trended using the proposed cost index conversion factor. The result of this calculation is compared to the actual average resale of the item obtained from various market research sources. The purpose of the market test is to ensure the proposed cost indices do not result in a value which exceeds full cash value. The market tests are also used to establish hypothetical market-based depreciation schedules. The sources of information for the market comparisons include the following:

- **N.A.D.A., The Manufactured Housing Cost Guide**, (Online Version) (J.D. Power) The Guide provides the average retail book value by manufacturer, model, and region of mobile home, with tables for options. Values are provided for homes one to fourteen years of age, and conversion tables for homes older than 14 years.
- **Aircraft Bluebook Price Digest Online**, (Online Version) (Price Digests, Informa Business Media, Inc., Overland Park, KS). The Bluebook provides representative average retail prices of fixed wing aircraft and helicopters.
- **Grounds Maintenance Equipment Blue Book Online**, (Online Version) (Price Digests, Informa Media, Overland Park, KS). The Blue Book provides the estimated average resale or retail price, excluding options of power equipment.
- **Powersport Vehicle Blue Book**, (Online Version) (Price Digests, Informa Business Media, Inc., Overland Park, KS). The Blue Book provides pricing in the powersports industry, including snowmobiles, personal watercraft, trailers, and motorcycles.
- **The Official Tractor Blue Book Online**, (Online Version) (Price Digests, Informa Business Media, Inc., Overland Park, KS). The Blue Book provides the estimated average resale or retail price, excluding options of power equipment.
- **Green Guide for Construction Equipment**, (Online Version) (Equipment Watch, 6151 Powers Ferry Road, Suite 200, Atlanta, GA 30339) The values in this guide are derived from a reporting system of equipment dealers, distributors, manufacturers, auctioneers and contractors. It is based on both surveys and averaging of actual sales. These volumes include Volume 1: Earthmoving Equipment, Volume 2: Lifting Equipment and Volume 3: Other Equipment (Compaction, Concrete and Crushers).
- **Orion Research Corporation**, (Roger Rohrs Publisher) (<http://www.usedprice.com>) The website is the electronic successor to the Orion Blue Book. It determines the used prices of computers and peripherals based on dealer surveys gathered nationwide. Dealers are asked to provide the “asking price,” “Selling price,” and “days to sell.” The used price is then calculated based on what an average store could sell the product for in 30 days or less. Orion Research states that this data is updated on an ongoing basis.

APPENDIX C

2025-26 PERSONAL PROPERTY MANUAL

Methodology Used to Estimate Expected Useful Life

The Department estimates the expected useful life of different types of personal property by surveying a variety of sources. Expected useful life is defined as the amount of time an item of personal property can be expected to last before it wears out, decays, gets used up, becomes obsolete, or loses its value from natural causes. The life is measured from the time the property is first put into service until it is retired from service or permanently withdrawn from use in a trade or business, or when the production of income ceases because the property has been sold, exchanged, converted to personal use, abandoned, or otherwise destroyed.

The Department does not have the resources available to perform its own mortality or actuarial studies. However, there are other sources that do perform this service. The sources itemized below include actuarial studies of the Internal Revenue Service, Marshall and Swift Costing Service, and the California State Board of Equalization. Also included are the surveys of several western states and certain industries.

Sources Used to Estimate Expected Useful Life

Marshall Swift Valuation Service, “Residential Cost Handbook”, (Marshall & Swift, L.P., December 2022) Costs ranges are based on averages created for the US and Canada, and other items listed are based on what is readily available today.

Marshall Swift Valuation Service, “Life Expectancy Guidelines,” (Marshall & Swift, L.P., January 2023)

Depreciable assets are listed by industry group and are extracted from U.S. Treasury Department Internal Revenue Service Publication 534 titled “Depreciation.” The Guidelines list ranges of life. In certain cases, the IRS was not the primary source. In those cases, the range of life is based on a composite of studies of equipment, bookkeeping practices and appraisers’ opinions as compiled from a consensus of recognized trade groups, suppliers and other interested parties. Computers and terminals are one example of an independent study conducted by Marshall & Swift.

Department of the Treasury, Internal Revenue Service, [Publication 946](#), “How to Depreciate Property,” and [Publication 534](#), “Depreciating Property Placed in Service Before 1987.”

These two publications specifically identify types of property and the expected useful life. For instance, an example of five-year property is computers and peripheral equipment.

Arizona:

Arizona Department of Revenue Personal Property Manual

California:

California Assessors' Handbook Section 581, January

California Assessors' Association Economic Life and Minimum Percent Good Table (Section IV)

California Assessors' Association Business Assessment Factors, January

Colorado:

Colorado Department of Local Affairs Personal Property Manual,

Montana:

Montana Department of Revenue Personal Property Depreciation Schedules and Trend Tables

New Mexico:

New Mexico Taxation and Revenue Department Business Personal Property Valuation Guidelines

Oregon:

Oregon Department of Revenue Personal Property Valuation Guidelines

Utah:

Utah State Tax Commission Recommended Personal Property Valuation Schedules and Registered Vehicle Uniform Fees

Washington:

Washington State Department of Revenue Personal Property Manual,

Personal and Industrial Property Valuation Guidelines,

Combined Trended Investment Tables for Personal and Industrial Property (Percent Good Indicators)

Wyoming:

Wyoming Department of Revenue Personal Property Valuation Manual,

Life, Trending, and Depreciation Tables

APPENDIX D

2025-26 PERSONAL PROPERTY MANUAL: VALUATION GUIDELINES

Exemptions from Property Taxes

Article 10, Section 1 of the Nevada Constitution requires the "valuation for taxation of **all** property, real, personal and possessory...." NRS 361.045 also provides that, except as otherwise provided by law, all property of every kind and nature whatever within this state shall be subject to taxation. Other statutes, however, grant exemptions to particular types of property. Some are granted exemption at face-value, and other types of property must qualify according to specific criteria in order to receive the exemption.

The types of exemptions range from partial exemptions granted to veterans, disabled veterans, surviving spouses and blind persons to exemptions from taxation for all real and personal property granted to governmental entities, religious, charitable and non-profit organizations, and individual organizations which are specifically cited. In many cases, the statutes specifically recite that the property must be used to carry out the legitimate function of the organization, and if not, the property becomes taxable.

For the types of exemptions which must go through a qualification process, the county assessors must collect, evaluate and process the various claims for property tax exemptions. Application forms which have been approved by the Nevada Tax Commission should be made available. Each form should request information regarding taxpayer contact information, the type of exemption being claimed, the property which the exemption, if granted, would affect, a statement or statements why the property qualifies for the exemption, and supporting documentation if necessary. The purpose of any form is to provide sufficient information to help assessors make a reasoned determination to approve or deny applications.

In the event a claim for exemption is ambiguous or open to interpretation, how the property is used may indicate whether or not an exemption applies. The general rule espoused by the courts is that strict construction of exemption statutes applies to exemptions for property held in private ownership but not to exemptions for public property where exemption is the rule and taxation the exception. 2 Thomas M. Cooley, *The Law of Taxation*, § 673 at 1414-15 (4th ed. 1924). Said another way, property held in private ownership must strictly comply with all the criteria established for the exemption because "taxation is the rule and exemption the exception." On the other hand, for property held by a public entity, the rule is reversed to say "exemption is the rule and taxation the exception."

The purpose in establishing a broad construction of exemption for public entities is to prevent an escalating spiral of unnecessary taxation and administrative costs with no benefit to the public. 16 Eugene McQuillin, *The Law of Municipal Corporations*, § 44.57 at 206 (3rd ed. 1994). If one governmental entity chooses to tax the property of another governmental entity, the governmental entity forced to pay taxes may have to levy and collect new taxes to meet the demands of the tax. 2 Cooley, *supra*, § 621 at 1313. The effect of such a tax spiral is that the public would be taxing itself to raise money to pay itself.

In cases where it is not clear whether an exemption should be granted, assessors should solicit legal advice from the county district attorney's (D.A.) office.

The attached chart lists the current status of specific exemptions available in the statutes, in alphabetical order.

Table of Exemptions

Legend:					
Due Date for Application:					
(1) No application required					
(2) One time only until status changes. The claim must be made by June 15 th . See <i>NRS 361.155 (1) and (3)</i>					
(3) Annually, by June 15 th . See <i>NRS 361.155 (1)</i>					
(4) Annually, by July 1 st . See <i>NAC 361.062</i>					
(5) Annually, by December 30 th . See <i>NRS 362.050</i>					
Exemption Type	NRS Reference	NAC Reference	Property Type	Due Date for Application See Legend	Explanation
Airport	361.061(1)		Real	(2)	Improvement of land by the public as an airport is a municipal purpose, whether or not the airport is owned or operated by a local government.
American Land Conservancy	361.111		Real	(2)	Real property including improvements is exempt if: the property is held for acquisition by a Federal, state or local government and the said government has agreed in writing to consider acquiring said real property; or if the property will be held indefinitely and vested in the listed conservancy organization. If the property is held for purposes of conservation for any entity other than the State or local government, the land must be assessed as first-class pasture. If the property is transferred for purposes other than conservation, taxes must be collected for each year it was exempt.

Exemption Type	NRS Reference	NAC Reference	Property Type	Due Date for Application See Legend	Explanation
American National Red Cross and Nevada Chapters	361.110		Both	(2)	All real and personal property is exempt, unless it is used for a purpose other than the legitimate functions of the organization. <i>See also YMCA, YWCA, American National Red Cross, Salvation Army Corp, GSA, Camp Fire Girls, BSA, Sierra Arts Foundation, Nevada Museum of Art, Inc.</i>
Apprenticeship Programs	361.106		Both	(2)	Real and personal property of an apprenticeship program is exempt if (1) the property is held in a trust created by 29 U.S.C. § 186 or (2) is owned by a local or state apprenticeship committee and the program is operated by a qualifying organization and registered and approved by the state apprenticeship council.
Archaeological Conservancy	361.111, AB 209 (2007)		Real	(2)	See explanation under American Land Conservancy.
Architectural Barrier Removal for Disabled Persons	361.087		Real	(2)	Improvements to a residence occupied by a person with a disability are exempt. The person must claim the benefit by filing an affidavit setting forth the nature of the improvement and the date of making the improvement. See statute for examples.
Bank Deposits	Article 10		Personal	(1)	Articles of personal property deemed to represent an interest in real or personal property already assessed and taxed is exempt.
Bee Colonies	361.068		Personal	(1)	Bee colonies are exempt personal property.

Blind Persons	361.085		Both	(3)	Property of blind persons up to an assessed value of \$3,000, as modified by CPI, is exempt. The original affidavit of claim must be accompanied by a certificate from a physician certifying the person is blind. Renewal affidavits must be completed each year.
Boats	361.068		Personal	(1)	All boats are exempt.
Bonds	Article 10		Personal	(1)	Articles of personal property deemed to represent an interest in real or personal property already assessed and taxed is exempt.
Book Accounts	Article 10		Personal	(1)	Articles of personal property deemed to represent an interest in real or personal property already assessed and taxed is exempt.
Boulder City Museum and Historical Association	361.110		Both	(2)	All real and personal property is exempt, unless it is used for a purpose other than the legitimate functions of the organization. <i>See also YMCA, YWCA, American National Red Cross, Salvation Army Corp, GSA, Camp Fire Girls, BSA, Sierra Arts Foundation.</i>
Boy Scouts of America	361.11		Both	(2)	All real and personal property is exempt, unless it is used for a purpose other than the legitimate functions of the organization. <i>See also Nevada Museum of Art.</i>
Business Inventories & Consumables	361.068	361.065	Personal	(1)	Property consumed during the operation of the business, as differentiated from a component part of a manufactured item, is exempt. The property must meet the criteria listed in NAC 361.065.
Camp Fire Girls Inc.	361.11		Both	(2)	All real and personal property is exempt, unless it is used for a purpose other than the legitimate functions of the organization. <i>See also Nevada Museum of Art.</i>
Campers, Slide-in & Shells	361.068		Personal	(1)	All slide-in campers and camper shells are exempt.

Carnival, Circus, Convention, Display, Exhibition, Fair	361.068		Personal	(1)	Personal property, transient in nature, owned by a non-resident and located in this state for use by or in a carnival, circus, convention, display, exhibition or fair is exempt. <i>See also transient personal property.</i>
Cost of collection	361.068		Personal	(1)	Personal property for which the annual taxes would be less than the cost of collecting those taxes is exempt. NTC determines level of cost.
Cemeteries and Graveyards - Public	361.130		Real	(1)	Exempt cemeteries and graveyards must be open to the public and no charge is made for burial.
Cemeteries and Graveyards – Private	361.132		Real	(2)	Real property of a nonprofit corporation governed by the provisions of NRS Chapter 82 formed for the purposes of procuring and holding lands to be used exclusively for a cemetery are exempt, so long as the lots or plats remain dedicated to the purpose of a cemetery.
Charitable Foundation: See <i>University</i>	361.098		Both	(2)	All property owned by the charitable foundation established by the Board of Regents of University of Nevada is exempt unless it is used for a purpose other than carrying out the legitimate functions of the foundation.
Charitable Organizations	361.135		Both	(2)	See Lodges
Charitable Corporations	361.140		Both	(2)	Property actually occupied and used by corporation meeting certain qualifying criteria is exempt.
Charter School Leased Property	361.096		Both	(2)	All property leased or rented to a charter school is deemed to be used for an educational purpose and is exempt. Only the portion of the property that is used for the lease or rental to a charter school is exempt.

Churches & Chapels	361.125		Both	(2)	Buildings and personal property used for religious worship other than marriage chapels, is exempt. The property must be owned by a recognized religious society or corporation. If the property is used for other than church purposes and a rent is received, the property is not exempt.
Church Land, see also <i>"Land Used for Worship"</i>	361.125		Real	(2)	Parcels of land used exclusively for worship, including without limitation, both developed and undeveloped portions of a parcel.
Counties, Town, Municipal Corp	361.060		Both	(1)	Property of counties, domestic municipal corporations, irrigation drainage, reclamation district, or town, except for certain community pastures, is exempt. See also <i>Nevada Rural Housing Authority, Irrigation Districts</i>
Conservation District	361.060		Real	(1)	Real property acquired on or after 7-1-2003 by a conservation district is exempt.
Defenders of Wildlife	361.135		Both	(2)	See <i>Lodges for explanation.</i>
Disabled Veterans	361.091		Both	(3)	Up to \$20,000 assessed value of property, adjusted by CPI, may be exempt, based on a sliding scale of disability of the veteran-owner. Only the property of residents or their surviving spouses meeting certain qualifying criteria is eligible for exemption.
Drainage Ditches, Canals & Irrigation Systems	361.070		Real	(1)	Drainage ditches and canals along with the lands included in the right-of-way of the ditch or canal are exempt. Each part of a permanently installed irrigation system, including pipes, concrete linings of ditches and headgates, are exempt.
Elderly & Handicapped Housing	361.086		Real and personal used for housing	(2)	All real property and mobile or modular housing and related facilities for elderly or handicapped persons are exempt if certain qualifying criteria are met.
Eagles Club	361.135		Both	(2)	See <i>Lodges for explanation</i>
Elks Club	361.135		Both	(2)	See <i>Lodges for explanation.</i>

Energy Systems (fka Heating & Cooling Systems)	701A.200 (fka 361.079)	361.052- 361.058	Both	(1)	The value of a qualified system is not included in the assessed value of the building of which it is a part. Qualified systems in commercial or industrial buildings receiving certain other abatements or exemptions are ineligible for this exemption. System must conform to standards established by the Department.
Fine Art for Public Display	361.068; 361.186	361.030 – 361.044	Personal	(3)	The exemption is limited to certain kinds of works of art purchased for \$25,000 or more and meets certain public display requirements. When a taxpayer collects an admission fee, the amount of exemption is reduced by the net revenue received by taxpayer. <i>See NRS and NAC requirements.</i>
Girl Scouts of America	361.11		Both	(2)	All real and personal property is exempt, unless it is used for a purpose other than the legitimate functions of the organization. <i>See also Nevada Museum of Art.</i>
Habitat for Humanity	361.115		Both	(2)	All property is exempt unless it is used for a purpose other than carrying out the legitimate functions of the organization. <i>See also Nevada Children's Foundation, Nevada Heritage Association.</i>
Hospital	361.083		Real	(2)	Property on which stands a hospital or other charitable asylum for the care or relief of orphans or sick, infirm or indigent persons owned by a qualifying non-profit corporation, is exempt. If the property is used for a different purpose, the property is taxable. <i>See also orphan children.</i>
Household Goods and Furniture	361.069	361.085	Personal	(1)	Household goods, furniture except certain appliances and furniture of time-share projects, are exempt. Examples are in both statute and regulation.
Irrigation, Drainage, Reclamation District	361.060		Both	(1)	See Counties, Towns for explanation.
Knights of Pythias	361.135		Both	(2)	<i>See Lodges for explanation.</i>
Knights of Columbus	361.135		Both	(2)	<i>See Lodges for explanation.</i>

Lahontan Audubon Society	361.135		Both	(2)	<i>See Lodges for explanation.</i>
Land Used for Worship	361.125		Real	(2)	<i>See Church Land for explanation.</i>
Livestock	361.068		Personal	(1)	Livestock is exempt. Livestock is defined at NAC 361A.055. See also Article 10 (6).
Lodges & Other Charitable Organizations	361.135		Both	(2)	Funds, furniture, paraphernalia and regalia owned by certain charitable organizations as well as real estate and fixtures are exempt. If the real estate is leased, the exemption does not apply to the portion so leased or rented.
Low Income Housing Projects	361.082	361.089	Both	(3)	That portion of real property and tangible personal property used for housing and related facilities for persons with low incomes is exempt if the property meets certain criteria.
Masons	361.135		Both	(2)	<i>See Lodges for explanation.</i>
Mortgages	Article 10		Personal	(1)	Articles of personal property deemed to represent an interest in real or personal property already assessed and taxed is exempt.
Motor Vehicles	361.067		Personal	(1)	Vehicles defined in NRS 371.020 are exempt, except mobile homes. NRS 371.020 refers to NRS 482 and 706. Under NRS 482.210, special mobile equipment is not licensed and is therefore taxable for property tax.
Nathan Adelson Hospice	361.088		Both	(2)	All property is exempt, unless it is used for any purpose other than carrying out the legitimate functions of hospice care.
National Audubon Society	361.135		Both	(2)	<i>See Lodges for explanation.</i>
Nature Conservancy	361.111		Real	(2)	<i>See explanation under American Land Conservancy.</i>
Nevada Children's Foundation	361.115		Both	(2)	<i>See Habitat for Humanity for explanation.</i>
Nevada Heritage Association	361.115		Both	(2)	<i>See Habitat for Humanity for explanation.</i>
Nevada Land Conservancy	361.111		Real	(2)	<i>See explanation under American Land Conservancy.</i>

Nevada Museum of Art	361.11		Both	(2)	All real and personal property is exempt, unless it is used for a purpose other than the legitimate functions of the organization. <i>See also YMCA, YWCA, American National Red Cross, Salvation Army Corp, GSA, Camp Fire Girls, BSA, Sierra Arts Foundation.</i>
Nevada Rural Housing Authority	361.060		Real	(1)	<i>See explanation under Counties, Cities</i>
Noncommercial Theaters	361.145		Both	(2)	Buildings, furniture & equipment of noncommercial theaters owned and operated by nonprofit educational corporations organized for the exclusive purpose of conducting theater practice classes and the production of plays on a nonprofessional basis are exempt.
Nonprofit Private Schools	361.105		Both	(2)	All property is exempt from taxation.
Odd Fellows	361.135		Both	(2)	<i>See Lodges for explanation.</i>
Orphan Children or Sick, Infirm or Indigent Persons	361.083		Real	(2)	Land and buildings use for the care or relief of orphans or of sick, infirm or indigent persons owned by a nonprofit corporation organized or existing pursuant to NRS 82, is exempt. <i>See also Hospitals.</i>
Patented Mining Claims	362.010-362.095		Real	(5)	Upon receipt of an affidavit from the county recorder pursuant to NRS 362.050, the assessor shall exclude from the roll the assessment against the patented mine or mining claim named in the affidavit.
Pershing County Kids, Horses, Rodeo Inc.	361.107		Both	(2)	All real and personal property is exempt, unless it is used for a purpose other than the legitimate functions of the organization.
Personal Property Held for Sale by Merchant	361.068		Personal	(1)	Personal property held for sale by a merchant is exempt.
Personal Property Held for Sale by Manufacturer	361.068		Personal	(1)	Personal property held for sale by a manufacturer is exempt.

Personal Property in Transit	361.160-361.185	361.062	Personal	(4)	Claims must be submitted to county assessor in which the warehouse is located and a certification from the warehouse as to the status of the property must be attached.
Pipe & Irrigation Equipment	361.068		Personal	(1)	Pipe and other agricultural equipment used to convey water for the irrigation of legal crops is exempt.
Pollution Control Devices	361.077	361.046-361.050	Both	(3)	Property used as a facility, device, or method for the control of air or water pollution is exempt. Taxpayer must supply an annual affidavit to assessor on a form approved by Department. Certain property is not exempt per NAC 361.046.
Possessory Interest – Vending Stands	361.159		Personal	(3)	The possessory interest in otherwise exempt property is taxable, except for vending stands operated by blind persons under the auspices of the Bureau of Services to the Blind – DETR.
Possessory Interest – Public Airport	361.159		Personal	(2)	The possessory interest in otherwise exempt property is taxable, except for personal property owned and used in a public airport.
Possessory Interest – Public Airport, Park, Market, Fairground	361.157(2)(a)		Real	(2)	The possessory interest in otherwise exempt property is taxable, except for real property located upon a public airport, park, market, or fairground. Certain leased property on a public airport made available for purposes other than the purposes of a public airport is taxable.
Possessory Interest – Federal Property	361.157(2)(b)		Real	(1)	A possessory interest in federal property for which PILT payments are made is exempt.
Possessory Interest – State-supported Educational Institution	361.157(2)c		Real	(1)	A possessory interest in the property of any state-supported educational institution is exempt, except any part located within a TIA created pursuant to NRS 278C.155.

Possessory Interest – Taylor Grazing Act, USFS, BuRec	361.157(2)(d)		Real	(1)	A possessory interest in property used by persons, associations or corporations according to the Taylor Grazing Act, United States Forest Service or the Bureau of Reclamation is exempt.
Possessory Interest – Indian Tribe	361.157(2)(e)		Real	(1)	A possessory interest in property of any Indian held in trust by the U.S. is exempt.
Possessory Interest – Vending Stands of the Blind	361.157(2)(f)		Real	(1)	A possessory interest in vending stand locations operated by blind persons under the auspices of the Bureau of Services to the Blind and Visually Impaired – DETR, is exempt.
Possessory Interest – Geothermal Leases	361.157(2)(g)		Real	(1)	A possessory interest in geothermal leases for resources which have not been put into commercial production, is exempt.
Possessory Interest – Public Officer or Employee	361.157(2)(h)		Real	(1)	A possessory interest in property that is leased, loaned or made available to a public officer or employee in the course of public employment, is exempt.
Possessory Interest – Parsonage	361.157(2)(i)		Real	(1)	A possessory interest in a parsonage owned by a recognized religious society or corporation when used exclusively as a parsonage, is exempt.
Possessory Interest – Charitable or Religious Residence	361.157(2)(j)		Real	(1)	A possessory interest in a residence used by a person carrying out the activities of a charitable or religious organization is exempt
Possessory Interest – Shelter for Elderly or Indigent	361.157(2)(k)		Real	(1)	A possessory interest in property which is used to provide shelter at a reduced rate to the elderly or indigent is exempt.
Possessory Interest – Rental of Meeting Rooms	361.157(2)(l)		Real	(1)	A possessory interest in property used as meeting rooms or similar facilities for periods of less than 30 consecutive days is exempt.
Possessory Interest – Daycare	361.157(2)(m)		Real	(1)	A possessory interest in property used as a daycare by a nonprofit organization is exempt.

Promissory Notes	Article 10		Personal	(1)	Articles of personal property deemed to represent an interest in real or personal property already assessed and taxed is exempt.
Privately Owned Airports Used by Public	361.061(2)		Real	(2)	Privately owned airport property used for a public purpose, except areas from which income is derived, is exempt.
Privately Owned Parks Used by Public	361.0605	361.080	Real	(2)	The initial claim for exemption must be accompanied by a copy of the agreement with a local government that the property may be used by the public without charge. A sign must also be posted at each entrance to park. The exemption does not include areas from which income is derived.
Public Function Trusts	361.062		Both	(2)	Property of a trust created for the benefit of any public function pursuant to law is exempt, however, PILT monies may be paid to the beneficiary if so, provided in any agreement contained in creating the trust.
Radioactive Fallout Shelters	361.078		Real	(3)	Residential property is exempt up to \$1,000 in assessed value if it meets certain qualifying conditions.
Raw Materials & Components Consumed in the Process of Manufacture	361.068		Personal	(1)	Raw materials are exempt when they are held by a manufacturer for manufacture into products. Supplies consumed in the process of manufacture are also exempt.
Salvation Army Corps	361.11		Both	(2)	All real and personal property is exempt, unless it is used for a purpose other than the legitimate functions of the organization. <i>See also Nevada Museum of Art.</i>
School Districts	361.065		Both	(1) school dist	All property owned by any legally created school district or charter school and devoted to public school purposes is exempt.
				(2) charter school	

Sierra Arts Foundation	361.11		Both	(2)	All real and personal property is exempt, unless it is used for a purpose other than the legitimate functions of the organization. <i>See also Nevada Museum of Art.</i>
State Lands	361.055		Both	(1)	All property owned by the state, except land assigned to the Department of Wildlife, is exempt. PILT payments are made by the Department of Wildlife.
Stocks	Article 10		Personal	(1)	Articles of personal property deemed to represent an interest in real or personal property already assessed and taxed is exempt.
Surviving Spouse	361.080		Both	(3)	Property of surviving spouses up to an assessed value of \$1,000, as modified by CPI, is exempt. The original affidavit of claim must be accompanied by a death certificate showing the claimant was married to the deceased at the time of their death. Renewal affidavits must be completed each year.
Surviving Spouses of Disabled Veterans	361.091		Both	(3)	See Disabled Veterans.
Transient Personal Property	361.068		Personal	(1)	Personal property owned by a non-resident and located in Nevada for purposes of a display, exhibition, convention, carnival, fair or circus is exempt. <i>See also Carnival, fair circus.</i>
United States	361.050		Both	(1)	All property owned by the United States is exempt.
University Fraternities & Sororities	361.100		Real	(2)	Real property owned by fraternities and sororities whose members are students at UNR or UNLV and use the property as their home, is exempt.
University System: Charitable Foundation	361.098		Both	(2)	All property owned by a charitable foundation established by the Board of Regents of the University of Nevada is exempt, unless it is used for a purpose other than the legitimate functions of the foundation.

University System Leased Property	361.099	361.070	Both	(2)	Property leased to the Nevada System of Higher Education is exempt if the total consideration from the lease is less than 10 percent of the fair market value of the property. Certain documentation must be provided. <i>See NAC 361.070.</i>
Unpatented Mines & mining Claims	361.075		Real	(1)	Unpatented mines and mining claims are exempt, except for possessory interests in lands held by U.S. or state of Nevada.
Vehicles	361.067		Personal	(1)	<i>See Motor Vehicles</i>
Veterans	361.09		Both	(3)	Up to \$2,000 assessed value, adjusted by CPI, of property may be exempt. Only the property of residents meeting certain qualifying criteria is eligible for exemption.
Veteran Organizations	361.095		Both	(2)	Up to \$10,000 assessed value, adjusted by CPI, of Funds, furniture, paraphernalia and regalia owned by certain charitable organizations as well as real estate and fixtures, is exempt. If the real estate is leased, the exemption does not apply to the portion so leased or rented.
Volunteer Fire Departments	361.150		Both	(2)	All property is exempt, unless it is used for any purpose other than carrying out the legitimate functions of a volunteer fire department.
Water Users' Nonprofit Associations	361.073		Both	(2)	All property is exempt, unless it is used for any purpose other than carrying out the legitimate functions of a water users' nonprofit cooperative corporation.
Young Men's Christian Association	361.110		Both	(2)	All real and personal property is exempt, unless it is used for a purpose other than the legitimate functions of the organization. <i>See also Nevada Museum of Art.</i>
Young Women's Christian Association	361.110		Both	(2)	All real and personal property is exempt, unless it is used for a purpose other than the legitimate functions of the organization. <i>See also Nevada Museum of Art.</i>

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

APPENDIX F

2025- 26 PERSONAL PROPERTY MANUAL: VALUATION GUIDELINES

UTILITY SCALE PHOTOVOLTAIC SOLAR FARM 30 YEAR LIFE 200% DECLINING BALANCE

NAC 361.1375 requires that each category of property must be assigned to a schedule of expected life which is based on commonly available sources of information, including, without limitation, the life expectancy guidelines published in Marshal and Swift Valuation Service and any other sources published in the Personal Property Manual.

NAC 361.1375(4) allows that Depreciation must be calculated over the expected life of the personal property by using the declining balance method, except that tables which provide a method other than the declining balance method for calculating depreciation may be used if the tables have been approved by the Commission.

Utility Scale Solar Farms have provided for a unique study in depreciation. There has been rapid de-appreciation of the cost to construct and build solar farms. With this the normal cost indexes which generally account for an appreciating market to bring prior years costs current have proven insufficient in determining a current acquisition cost to be depreciated. The below proposed table is made in accordance with subsection 4 of NAC 361.1375. A market study was conducted to produce a depreciation table to better reflect and ensure that taxable value of such structures do not exceed full cash value according to NRS 361.227.

This table would only be applicable to Utility Scale Solar Farms that are classified as personal property. That classification is made on a case by case basis with the assistance of the guidance provided in Appendix E. Cost Indexes are currently only provided back to 2007 as that is availability of data but will be updated in future years.

UTILITY SCALE PHOTOVOLTAIC SOLAR FARM 30 YEAR LIFE 200% DECLINING BALANCE

YEAR ACQUIRED	AGE	PROPOSED COST INDEX	PERCENT DEPRECIATION	PERCENT GOOD	PROPOSED CONVERSION FACTOR
2025	0	1.00	0.0	100.0	1.0000
2024	1	0.93	7.0	93.0	0.8649
2023	2	0.87	13.0	87.0	0.7569
2022	3	0.81	19.0	81.0	0.6561
2021	4	0.76	24.0	76.0	0.5776
2020	5	0.70	29.0	71.0	0.4970
2019	6	0.64	34.0	66.0	0.4224
2018	7	0.57	38.0	62.0	0.3534
2017	8	0.51	42.0	58.0	0.2958
2016	9	0.45	46.0	54.0	0.2430
2015	10	0.40	50.0	50.0	0.2000
2014	11	0.35	53.0	47.0	0.1645
2013	12	0.30	56.0	44.0	0.1320
2012	13	0.25	59.0	41.0	0.1025
2011	14	0.21	62.0	38.0	0.0798
2010	15	0.17	64.0	36.0	0.0612
2009	16	0.13	67.0	33.0	0.0429
2008	17	0.10	69.0	31.0	0.0310
2007	18	0.06	71.0	29.0	0.0174
2006	19		73.0	27.0	
2005	20		75.0	25.0	
2004	21		77.0	23.0	
2003	22		79.0	21.0	
2002	23		81.0	19.0	
2001	24		83.0	17.0	
2000	25		85.0	15.0	
1999	26		87.0	13.0	
1998	27		89.0	11.0	
1997	28		91.0	9.0	
1996	29		93.0	7.0	
1995	30		95.0	5.0	
Residual			95.0	5.0	

Used 2022-2023 data from Berkley Labs.

30 years of solar data unavailable.

Currently, solar data only goes back to 2007.

INDEX

2025-26 PERSONAL PROPERTY MANUAL

3

3-D Printers.....17

5

5, 11, 12, 49, 50, 51, 52, 53, 54, 55, 56 iii, 72, 73

A

accommodation
 traveler.....42
ACCOMMODATION INDUSTRY42
 accommodation:.....42
 Acquisition Cost..... iv, v
 Acquisition Year..... iv, v
 actuarial studies.....56
 adding machines13
 advocacy43
 aeronautical instruments.....32
 agents23
 gas agent.....23
AGRICULTURE AND FORESTRY.....21
 Air compressors.....23
Air Conditioners.....18
air conditioners, window.....18
 Air drill24
 aircraft32, 34, 55
 Aircraft Bluebook Price Digest55
 aircraft conversion.....32
 alarms
 burglar and fire39
 electronic security.....39
 ambulatory health care services.....40
 amplifiers31, 37
 amusement.....42
 amusement activities.....42
 amusement park.....42
 amusement, gambling and recreation industries42
 analog equipment.....36, 37
 angiographic X-ray units41
 Animal Aquaculture21
 Animal food manufacturing25
 Animal slaughtering and processing25
 antenna site37
 antennas37
 antennas37
 apartment furnishings42

apparel26
 apparel manufacturing.....26
 appliance regulators.....32
appraisers56
ARTS, ENTERTAINMENT, AND RECREATION41
 asking price.....55
 asphalt.....27
 Asphalt plants24
 Asphalt spreaders24
 assembling.....26, 30, 31, 32
 assessed value vi
 assessor.....19, 36, 37, 52, 73
 assets
 headend.....37
 audio.....13, 31, 36
 audio and video equipment31
 audio signals
 broadcasting.....36
 aural programming.....36
 auto repair diagnostic equipment44
 automobile repair and maintenance.....44
 automobiles38
 auxiliary machines.....14
 average resale55
 average retail prices55

B

background sound systems19
 Bakeries and tortilla manufacturing.....25
 bakery.....25
 balloons, hot air34
 bar30
 Barware12
 base period.....54
 basic chemical manufacturing.....28
 bending30, 32
 Beverage.....25, 26, 34
 Beverage and Tobacco Product Manufacturing25, 26
 bicycle35
 billboards.....v, 10, 19, 20
 Billboards.....20
 bins.....24
 BLS.....54
 Blue Book55
 blue print machines.....27
 boarding houses42
 Bolted and fiberglass tanks22
 bolts.....26
 books.....36

bottling	25
bowling alley pinsetters and other equipment	42
bowling electronic scoring machines	42
box converters (cable)	38
breakdown	
preventing.....	43
breeding.....	21
Breweries	26
bridges	31
broad band microwave assets	37
broadcast TV signals	37
broadcasting	36, 37
Bureau of Labor Statistics	53
burglar and fire alarms	39
Bus	35
bus, chartered.....	35

C

cabinets.....	32
Cabinets and Shelving	19
cable	
coaxial.....	38
fiber optic.....	38
subscriber connection and distribution systems	38
cable industries.....	36, 37
cable system channels	37
cable testing equipment	37
calendar year	52
California State Board of Equalization	56
camera	12, 31, 37
digital - point-and-shoot	12
camera, digital.....	12
candy	25
canning	25
car washes	44
card punches.....	14
card readers.....	14
card sorters.....	14
Cardiac Ultrasonic Scanners.....	17
carpet and upholstery cleaning services.....	40
carpet cleaning	40
carving	33
case law	72
cases	19, 33
Cash Management Systems	17
Cash Registers	18
cassette	31
CAT	17
categories	12, 19, 54
CATV system	37
C-CPI-U.....	54
cellular	31, 37
cellular telephones	37
cemeteries and crematories	44
Central Office Equipment	37
central office switching equipment	31
central processing unit.....	13, 14

Cereal manufacturing.....	25
chain saws	21
Chained CPI for All Urban Consumers	54
chairs	19, 41
exam	41
Chart Recorders	18
chartered bus	35
chasing, or etching jewelry.....	33
check out counters	19
chemical manufacturing.....	28
child day care facilities	41
chiropractors	40
Christmas tree	21
cigarette cases.....	33
civil engineering construction	23
clerical workers	53
closed circuit tv	39
coatings	27, 28
coaxial cable	38
coffee brewing equipment.....	43
coin laundries	44
Coin-wrap Equipment	19
cold storage	26
collators	14
combines	21
commercial bakeries	25
commercial dry cleaning equipment.....	44
commercial equipment repair and maintenance.....	44
commercials	36
compacts.....	33
complete aircraft or propulsion systems overhaul and rebuilding	32
computer ...12, 13, 14, 15, 17, 18, 27, 30, 31, 37, 38, 42, 54, 55, 56	
computer driven mills.....	15
computer integrated manufacturing machinery	15
computer-based switching equipment	37
computer-integrated machinery.....	15
computer driven mills	15
computer integrated fabrication machinery	15
computer integrated manufacturing machinery.....	15
computerized assembly machinery.....	17
computerized machine lathes;.....	15, 17
computerized assembly machinery.....	15, 17
COMPUTERIZED EQUIPMENT	
Cash Management Systems.....	17
computerized machine lathes	15, 17
computes	13
concrete	
pouring	23
conditioning equipment	22, 72
connecting hardware	37
construction	
buildings	23
civil engineering.....	23
Construction	23, 38
consumer goods	38, 54
Consumer Price Index.....	53, 54

Contents	i
conversion factor	19, 20, 55
converted paper product manufacturing	27
coolers	
walk in	43
Copy and Duplicating Machines	19
cordless telephones	31
corrugating	27
Cost Conversion Factors	v, 19, 20
Cost Conversion Index	19, 20
Cost Index	v
cost of replacement	20
costume rental	38
county assessor	19, 52
couriers and messengers	35
CPI	53, 54
CPI for All Urban Consumers	53
CPI for Urban Wage Earners and Clerical Workers	53
CPI Index	v
CPI-U	53, 54
CPI-W	53, 54
cracking	27, 28
crane	
bridge	24
jib 24	
mobile	24
crops	21
crude	22, 27
crushing	24
crushing plant	24
curing	26
custom garments	26
cutlery and flatware	33
cutting	26, 27, 28, 29, 32, 33
CUUR0400SA0	54
CUUS0400SA0	54

D

Dairy product manufacturing	25
Dairy Production	21
dams	23
data	14, 31, 38, 53, 54
data communications equipment	31
data processing equipment	19
data-entry devices	14
dating services	43
days to sell	55
dealer surveys	55
dealers	34, 55
death care	43
death care services	43, 44
Décor	19
Defibs	18
demodulators	37
dental instruments	41
dentists	40
Depreciable assets	56

Depreciating Property Placed in Service Before 1987	56
depreciation	14, 20, 52, 55
depreciation schedules	55
desks	19
Diagnostic Ultrasounds	17
dies	12
diggers	24
digital broadcasting equipment	36, 37
digital camera	12
point-and-shoot	12
digital video camera	12
dimension stone	22
directory	36
directory and mailing list and software publishing	36
disc drives	14
disc files	14
disc packs	14
displays	19
distillation	27, 28
Distilleries	26
distribution	23, 25, 36, 37, 53
distribution plant	37
distribution system	23, 37
distribution systems	
gas	23
domestic producers	53
Dopplers	18
dressings	26
drilling	22, 33
drilling rigs	22
drive units	22
dry cleaning	43
dry cleaning and laundry services	44
duplicating machines	19
dyeing	26

E

EEG Machines	18
EKG Machines	18
electric generating equipment	24
electric power	23
electrical work	23
electronic & precision equipment	44
electronic calculators	13
electronic control center	37
electronic controlled infrared/laser instruments	24
electronic locking devices	40
electronic security alarm	39
engines	22, 32
engraving	33
equality of assessment	iii, 72
equipment	
commercial dry cleaning	44
electronic	44
lawn and garden	38
lawn mowing	40
mobile	22, 23

precision.....	44
program origination	37
service and test	38
telephone.....	37
equipment and machinery repairing	43
EV Charging Stations.....	44
EV Charging Stations 15	44
exam tables and chairs	41
excavators.....	22, 24
excise taxes	53, 54
exempt property	iii
EXEMPTIONS FROM PROPERTY TAXES	58
expected life	iv, v, 17, 52, 53
Expected Life	v
expected life table	52, 53
Expected useful life.....	56
Experimental Aircraft.....	34
exterminating and pest control services.....	40
External Pace Makers	18
extraction	
oil and gas	22

F

fabricating.....	26, 30
faceting	33
farms.....	21
feeding.....	21
feedlots.....	21
Fertilizer	21
fiber	21, 26
fiber optic cable	37, 38
field strength meters	37
fifteen year life.....	5
filing cabinets	19
finishing	26, 29, 44
fire and security equipment.....	43
fiscal year	52
Five-year life	2, 12
Five-year Life	17
fixed wing aircraft	55
fixtures.....	v, 29, 32, 40, 44, 72, 73
flatware.....	33
flipper games	42
florists	34
fluorographic X-ray Units.....	41
food.....	21, 25, 43
footwear repair.....	44
forage harvesters.....	21
fork lifts.....	24
formal wear	38
forming	30, 32
fountains.....	41
freezers	25
frequency converters.....	37
frit28	
Fruit and vegetable preserving	25
full cash value	55

full-service restaurants.....	43
funeral homes	44
furniture.....	v, 18, 30, 32, 36, 54
furniture and fixtures	36
furniture and trade fixtures.....	v
furniture leasing.....	38
furniture rental.....	38

G

gambling.....	42
gambling activities.....	42
gaming	
electronic slots	42
mechanical slots	42
player tracking systems	42
gas	23, 31
gas brokers	23
gasoline stations.....	34
gateways	31
gems	33
general freight trucks	35
general or routine maintenance.....	43
General Ultrasonic Scanners	18
glass.....	29, 32
gliders.....	34
golf carts.....	42
goods and services	53, 54
government subsidies	53
government-charged user fees	54
GPS	39
grain	25
grain elevators, non-farm.....	25
Grain elevators, non-farm	25
grain tanks.....	25
grant making	43
grazing	21
greenhouses	21
grinding	28, 29
Grounds Maintenance Equipment Blue Book	55
groves.....	21
guidelines.....	iv, 21, 56
guiding tours	42

H

hair, nail and skin care services	44
hand tools.....	24, 44
hay balers	21
headend assets.....	37
health and personal care stores	34
HEALTH CARE AND SOCIAL ASSISTANCE	40
health practitioners.....	40
health services	
inpatient	41
health spa equipment	43
Heart Rate Devices	18

heavy equipment	38
heavy use washers	43, 44
helicopters	34, 55
highways	23
hoists	
power	24
Hospitals	41
hot air balloons	34
hotel furnishings	42
How to Depreciate Property	56
hydrocarbons	28
hypothetical market-based depreciation schedules	55

I

IAAO	73
ice-making equipment	26
including utility trailers	21
industrial machinery	38
Information	19, 27, 36, 38, 57
Information Services	38
information systems	13, 19
injection pumps	22
inland water transportation	35
inpatient health services	41
input/output devices	31
intangible	14
intangible personal property	14
Internal Revenue Service	56
International Association of Assessing Officers	73
Internet	38
Internet service providers	38
interurban bus	35
IRS	14, 56
itemized equipment. iv, 21, 22, 24, 25, 26, 27, 28, 29, 30, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44	
Itemized Equipment section. iv, 21, 22, 24, 25, 26, 27, 28, 29, 30, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44	

J

janitorial services	40
jewelry	33, 54
jigs	12
jobbers	26
juke box	42

K

keypunches	14
knitting	26
knockouts	22

L

labor force	54
laboratory analytical instruments	32

laboratory equipment	39
LACT units	22
laminating	26, 32
LAN	31
land	72, 73
landlines	37
landscaping services	40
laser sending and receiving equipment	21
lathes	15, 17, 26
laundries	
coin	44
laundry services	43
lawn and garden equipment	38
lawn mowing equipment	40
leagues	42
leasing	
furniture	38
leather	26
leather and allied product manufacturing	26
lensometer	41
Letter of Guidance	52
life expectancy	12, 15, 17, 18, 38
Life Expectancy Guidelines	iv, 21, 56
lifts	24
light trucks	35
lime	29
line equipment	25
linens	12, 39, 43
linens, glassware, silverware, and uniforms (not rented)	43
liquid hydrocarbons	28
livestock	25
loaders	21, 22, 24
bucket	24
front end	24
Locksmith equipment	40
log loaders	21
logs	26
lubricating oils	27
lumber	26

M

machinery	
computer integrated	15
machining	30, 32
magazines	36
mailing list	36
Mailing Machines	19
Mainframe computer	12
mainframes	13, 31
maintenance	43
automotive	44
major modifications to systems	32
mammographic X-ray Units	41
manifolds	22
manufactured homes	v, 19, 73
Manufactured Housing Guide Cost CD-ROM	55
manufacturing	

hydrocarbons	28
MANUFACTURING	25, 26, 27, 28, 29, 30, 31, 32, 33
abrasive product	29
animal foods	25
bakeries and tortilla	25
Beverage and Tobacco Product	25, 26
biological products	28
lime	29
medicinal products	28
metal	33
nonalcoholic beverages	25
paper	27
soft drink	26
specialty foods	25
sugar and confectionary products	25
market comparisons	55
market research	55
market research sources	55
market study	v
market tests	55
market-based depreciation schedules	55
Marshall Swift	v
mass storage units	14
mean	53
Mechanical and electronic locking devices	40
medical equipment and supplies	33
medical instruments	41
Medical Laser Units	18
mental health practitioners	40
mesoptometers	41
messengers	35
metal	24, 27, 30, 32, 33
metal forming processes	30
metal ore mining	22
metering devices	22
microscopes	41
microwave assets	37
Microwave ovens	19
Microwave systems	37, 38
mineral mining	22
miniaturization technologies	31
Mini-computers	12, 15
MINING	22
Mixmobiles	24
mobile equipment	22, 23, 24
<u>mobile homes</u>	10, 19, 55
Mobile or Manufactured Homes	19
modems, LAN	31
modems, multi-user	31
modulators	37
molding	28, 29, 32
monitors	18, 31
patient	18
systolic	18
temperature	18
mortality	56
motion pictures	36
Motor Vehicle Body & Trailer Manufacturing	32

Motor Vehicle Manufacturing	32
motorcycles	55
motors	32
MRI (Magnetic) Scanners	18
multi-user modems	31
musical instrument amplifications	31
musical instruments	31, 39

N

N.A.D.A.	55
NAC 361.1371	iv
NAC 361.1375	iv
NAICS	v, vi, 21, 39, 43, 44
NAICS 311	43
NAICS Code 517	43
navigation	32
navigation and guidance systems	32
nets	21
Neurological Monitors	18
Nevada Administrative Code	45
Nevada Department of Taxation	52, 55, 73
Nevada Revised Statutes	45
newspapers	36
nonalcoholic beverage manufacturing	25
North American Industry Classification System	vi
NRS	iii, iv, 14, 19, 20, 31, 72, 73
Chapter 371	19
NRS 361.030	iii, 72, 73
NRS 361.035	iii, 72
<u>NRS 361.227</u>	20, 72
NRS 361.227(4)	72
NRS 361.244	73
NRS 361.325(3)	19
NRS 361.5643	19
Nuclear Medicine Cameras	18
nurseries	21

O

OB/GYN Ultrasonic Scanners	18
obsolescence	v, 12, 17, 18, 36, 37
obsolete	56
occupational therapists	40
Office Furniture	18, 19
office supplies	33
offices	41
oil 22, 25, 54	
Oil and Gas Extraction	22
omni-directional communications	37
optometrists	40
orchards	21
ore	30
original cost	55
Orion Research Corporation	55
oscilloscopes	37

oscilloscopes, field strength meters, spectrum analyzers, and cable testing equipment. Subscriber connection and distribution systems include assets such as trunk and feeder cable, connecting hardware	37
other personal services.....	44
outdoor patio furnishings	43
outpatient services	40
overhaul and rebuilding.....	32
Oximeters	18
Oxygen Analyzers	18
oxygen generation	22

P

pacemakers

external	18
packaging	25
packing and sorting	25
paging services.....	37
paging systems.....	37
paint and varnish removers	28
paint brush cleaners	28
paint products.....	28
paint, coating, and adhesive manufacturing.....	28
painting	23
paper manufacturing	27
paper tape equipment	14
Paperboard	27
patient monitors	18
patterns	12
PBX.....	31
PCs	12
pens	21
Penton Business Media, Inc.	55
Percent Good	v, vi
periodic restoration	32
periodicals.....	36
peripheral equipment.....	13, 31, 56
peripherals	12, 15, 30, 55
personal and household goods repair and maintenance.....	44
personal care services.....	43, 44
Personal Computers (PCs)	12, 13, 31
personal metal goods	33
personal property.....	iv, v, 14, 19, 52, 55, 56, 72, 73
Personal Property Manual	52
personal property, intangible	14
personal watercraft	55
pet care	43, 44
PET Scanners (Positron) Emission	18
petrochemical processes	28
petroleum	22, 27, 28
petroleum and coal products manufacturing	27
petroleum refining.....	27
pharmaceutical and medicine manufacturing	28
photo-finishng.....	43, 44
Photography	39
physical properties testing equipment	32
physical therapists	40

physically annexed	72
physicians	40
plant	
distribution	37
plants.....	21, 23, 24, 29
plastics.....	26, 27, 28, 32
plotters	14
plumbing	23, 29
population	53, 54
portable toilets	40
portable x-ray units	41
POS	19
pouring concrete	23
power equipment.....	37
power hoists	24
Power shovels	24
power tools	24
Powersport Vehicle Blue Book	55
PPI	53
PPI Index	v
PPI sample	53
preamplifiers	37
precious metal.....	33
precious or semiprecious stones and gems	33
pressure equipment	22
price change	53
Primedia Business Magazines.....	55
printing.....	13, 27
flexographic	27
gravure	27
lithographic	27
screen	27
printing and related support activities	27
procedures for determining taxable value	iv
Producer Price Index	53
Professional libraries	39
PROFESSIONAL, SCIENTIFIC, AND TECHNICAL SERVICES	39
Program origination equipment	37
projection equipment	36
public address systems	19, 31
publishing	27, 36
pulp, paper and paperboards mills.....	27
pumps	
injection.....	22
putties	28

Q

quarrying	22
-----------------	----

R

racks	19
radio	36, 37
two-way.....	37
rail transportation	35
ranches	21

real estate.....	iii, 38, 72
REAL ESTATE, RENTAL, AND LEASING	38
real property.....	v, 19, 72, 73
recreation.....	42
recreation activities.....	42
recreational accommodation.....	42
reference population.....	54
refined petroleum.....	28
refrigeration.....	25
regulations.....	45
religious activities.....	43
rentals.....	
ski equipment.....	39
rent-to-own merchandise.....	39
repair.....	
automotive.....	44
repairing.....	
equipment.....	43
machinery.....	43
resampled.....	53
restaurants.....	
full-service.....	43
limited service.....	43
special food.....	43
restoration.....	32
restore machinery.....	43
retail bakeries.....	25
Retail Sales Equipment.....	18
retail selling price.....	iv, 19
RETAIL TRADE	34
retailers.....	25
retailing.....	25
retirees.....	54
rigs, drilling.....	22
Roadrollers/.....	24
Roger Rohrs Publisher.....	55
rollers.....	24
road.....	24
sheepsfoot.....	24
rooming and boarding houses.....	42
rotorcraft.....	34
routers.....	31
routine maintenance.....	43
rubber.....	26, 28

S

safes.....	40
sales and excise taxes.....	53, 54
satellite linkups.....	37
saw mills.....	21
Scanners.....	
Cardiac.....	17
CAT (Comp Tomography) Scanners.....	17
Diagnostic Ultrasound.....	17
General Ultrasound.....	18
Magnetic.....	18
MRI.....	18

Portable.....	18, 41
Scarifiers.....	24
scrubber screens.....	24
secured.....	19, 20
security vaults.....	40
seed cleaning equipment – portable.....	21
seed cleaning machinery and equipment.....	21
seeds.....	21
self-employed.....	54
seller.....	53
Selling price.....	55
semiprecious stones and gems.....	33
serial number.....	73
service.....	
valuation.....	54, 56
service and test equipment.....	38
services.....	44
dry cleaning and laundry.....	44
hair, nail and skin care.....	44
other personal.....	44
personal care.....	44
Seven-year life.....	3, 12
Seven-year Life.....	15, 17, 18
shaping.....	26, 27, 29
shaping tools.....	26
Short Life Property.....	12
short line railroads.....	35
short-life property.....	v
short-term workers.....	54
shovels.....	
power.....	24
signs	19
signs, electronic	19
ski area equipment.....	
snow cats and packers.....	42
ski equipment rentals.....	39
skidders.....	21
slabbing.....	33
small tools.....	44
snowmobiles.....	55
soft drink manufacturing.....	26
software publishing.....	36
sound systems	19, 41
speaker systems.....	31
special procedure X-ray units.....	41
special properties.....	v, 12, 38, 39, 41
specialty food manufacturing.....	25
specialty trade construction.....	23, 24
specific life.....	iv
spectrum analyzers.....	37
speech therapists.....	40
spirometers	18
sporting goods.....	33
sports.....	42, 54
sports activities.....	42
sports teams.....	42
spreaders.....	
cement.....	24

stages	73
State Board of Equalization	56
station equipment	37, 38
statutes	45
stereo equipment	31
stock shop products	33
stones	33
storage devices	31
Stores	34
straight line depreciation	v
structure	72
Subscriber connection and distribution systems	37, 38
Sugar and confectionery product manufacturing	25
sum of the changes	53
suppliers	56
Supply	
air conditioning	23
steam	23
Surveying equipment	39
switches	32
switching and transmission facilities	37
switching equipment	
computer based	37
Systolic Monitors	18

T

TABLE OF EXEMPTIONS	59
tables	
exam	41
tailors	26
tanks	22, 24, 25, 41
tanning	26
tape drives	14
tax roll	19, 20, 73
taxable value	iv, vi, 19
Taxable Value	
Procedures for Determining	iv
taxis	35
Telecommunications	36, 37
wired	37
wireless	37
telephone answering machines	31
telephone equipment	37
telephone systems	43
telephones	
cellular	37
teleprinters	14
television broadcasting	36
television programs	36
televisions	31, 36, 37, 43, 54
Temperature Monitors	18
temporary parking services	43
Ten-year life	4
terminals, computer	14, 31, 56
test equipment	22, 31
textile mills	26
textile product	26

textiles	26
The Appraisal Institute	73
The Appraisal of Real Estate	73
therapists	
physical, occupational and speech	40
thermal cracking and distillation	28
<u>Thirty-year life</u>	7
Three-year life	1, 12, 14, 15
Three-year Life	12, 17, 18
timber	21
Tobacco	25, 26
tools	44
hand	44
small	44
toys	33
tractors	21, 24
tractor-trailers	35
trade fixtures	36
trade groups	56
trailers	21, 35, 55
trailers, tractors	35
transformers	22, 32, 37
transit and ground passenger transportation	35
transit systems	35
transmitting	23, 32, 37
transportation	iv, 35, 42
interurban bus	35
transportation activities	35
TRANSPORTATION AND WAREHOUSING	34
transportation equipment	42
travel trailer	19
traveler accommodation	42
treaters	22
trees	21
trend acquisition cost	53
truck	35
Truck Transportation	35
trucks, general freight	35
trucks, light	35
trunk and feeder cable	37
tubing	33
tumbling	33
Twenty-year life	6
two-way radio	37

U

U.S. Treasury Department Internal Revenue Service	
Publication	56
unemployed	54
uniforms	12, 39
unlicensed farm vehicles	21
unsecured	19, 20
urban transit systems	35
UsedPrice.com	55
utensils	21
UTILITIES	23
utility trailer	19, 21

V

valuation	73
Valuation Service	54, 56
value	
full cash	55
Value, taxable	iv, 19
van	19, 35
vending machines	43
veterinary	44
video	12, 13, 31, 36, 37
video cassette recorders	31
video equipment	31
video games	42
video tapes	12, 39
vines	21
visual image projector tubes	14

W

wage earners	53
wagons	21
walk-in coolers	25, 43, 73
warehousing and storage	35
washers	
heavy use	43, 44
WASTE MANAGEMENT	39, 40
water purification	25
water repellant coatings	28
water supply systems	23
Water Transportation	35

water treatment plants	23
weaving	26
web search portals	38
welder	24
welding	30, 32
welding equipment	44
West Urban	54
WHOLESALE TRADE	33
wholesalers	25
window air conditioners	18
Wineries	26
wire	30, 31, 32, 33
wiring equipment	24
wood	21, 26, 27, 32
wood chips	21
wood containers	26
wood product	26
workers	54

X

X-ray units	
angiographic	41
fluorographic	41
mammographic	41
portable	41
special procedure	41

Y

year of acquisition	20, 52
---------------------------	--------

NRS 361.035 “Real estate” and “real property” defined.

1. “Real estate” or “real property” means:
 - (a) All houses, buildings, fences, ditches, structures, erections, railroads, toll roads and bridges, or other improvements built or erected upon any land, whether such land is private property or property of this state or of the United States, or of any municipal or other corporation, or of any county, city or town in this state.
 - (b) Any mobile home, factory-built housing or manufactured home which meets the requirements of [NRS 361.244](#).
 - (c) The ownership of, or claim to, or possession of, or right of possession to any lands within this state.
 - (d) The claim by or the possession of any person, firm, corporation, association or company to any land.
2. The property described in subsection 1 must be listed under the head of “real estate.”
3. Except as otherwise provided in [NRS 361.2445](#), when an agreement has been entered into, whether in writing or not, or when there is sufficient reason to believe that an agreement has been entered into, for the dismantling, moving or carrying away or wrecking of the property described in subsection 1, the property must be classified as personal property, and not real estate.
4. For the purposes of this chapter, “real estate” or “real property” does not include leasehold or other possessory interests in land owned by the Federal Government on which land the Federal Government is paying taxes to the State of Nevada or is, pursuant to contractual obligation, paying any sum in lieu of taxes to the State of Nevada.

[Part 3:344:1953]—(NRS A [1957, 358](#); [1975, 1655](#); [1979, 824](#); [1993, 1183](#); [1999, 3465](#))

NRS 361.345 Power of county board of equalization to change valuation of property; review of changes in valuation and estimation of certain property by county assessor; notice of addition to assessed valuation.

1. Except as otherwise provided in subsection 2, the county board of equalization may:
 - (a) Determine the valuation of any real or personal property placed on:
 - (1) The secured tax roll which was assessed by the county assessor; or
 - (2) The unsecured tax roll which was assessed by the county assessor on or after May 1 and on or before December 15; and
 - (b) Change and correct any valuation found to be incorrect either by adding thereto or by deducting therefrom such sum as is necessary to make it conform to the taxable value of the property assessed, whether that valuation was fixed by the owner or the county assessor. **The county board of equalization may not reduce the assessment of the county assessor unless it is established by a preponderance of the evidence that the valuation established by the county assessor exceeds the full cash value of the property or is inequitable.** A change so made is effective only for the fiscal year for which the assessment was made. The county assessor shall each year review all such changes made for the previous fiscal year and maintain or remove each change as circumstances warrant.
2. If a person complaining of the assessment of his or her property:
 - (a) Has refused or, without good cause, has neglected to give the county assessor the person's list under oath, as required by [NRS 361.265](#); or
 - (b) Has, without good cause, refused entry to the assessor for the purpose of conducting the physical examination required by [NRS 361.260](#), the county assessor shall make a reasonable estimate of the property and assess it accordingly. **No reduction may be made by the county board of equalization from the assessment of the county assessor made pursuant to this subsection.**
3. If the county board of equalization finds it necessary to add to the assessed valuation of any property on the assessment roll, it shall direct the clerk to give notice to the person so interested by registered or certified letter, or by personal service, naming the day when it will act on the matter and allowing a reasonable time for the interested person to appear.

NAC 361.741 Appeal of decision of county board: Burden of proof; order and length of presentations. (NRS 361.375) In a hearing concerning an appeal from a decision of a county board:

1. The petitioner has the burden of proof.
2. The order and length of presentations will ordinarily be:
 - (a) A brief orientation by the county assessor or the county assessor's staff;
 - (b) A presentation of not more than 15 minutes by the petitioner;
 - (c) A presentation of not more than 15 minutes by the respondent; and
 - (d) A rebuttal of not more than 5 minutes by the petitioner.

3. If the State Board allows a party, pursuant to [NRS 361.360](#) and [361.400](#) and [NAC 361.739](#), to present new evidence, the State Board will extend the length of the party's presentation by the time required to present the evidence and, in the case of new testimony, for the State Board to question the witness.

(Added to NAC by St. Bd. of Equalization by R018-97, eff. 12-19-97; A by R029-05, 6-28-2006)

Whiteco Industries, Inc. v. Commissioner, 65 T.C. 664 (1975)

Dec. 31, 1975 · United States Tax Court · Docket Nos. 3918-73, 3919-73, 7188-74

65 T.C. 664

Whiteco Industries, Inc., et al., 1 Petitioners v. Commissioner of Internal Revenue, Respondent

*John S. Pennell, Don S. Harnack, and George W. Benson, for the petitioners.
Harmon B. Dow, for the respondent.*

1

Cases of the following petitioners are consolidated herewith: Whiteco Industries, Inc., and Subsidiaries, docket Nos. 3919-73 and 7188-74.

*670 OPINION

We must decide whether the petitioner's outdoor advertising signs may qualify for the investment credit of section 38.

Property can qualify for the investment credit only if it constitutes "section 38 property." Such term is defined in section 48(a)(1), which provides in relevant part:

(a) Section 38 Property.—

(1) In GENERAL. — * * * the term "section 38 property" means—

(A) tangible personal property, or

(B) other tangible property (not including a building and its structural components) but only if such property—

(i) is used as an integral part of manufacturing, production, or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services, * * *

The petitioner argues that the outdoor advertising signs qualify for the investment credit either as "tangible personal property" within the meaning of section 48(a)(1)(A) or as "other tangible property" within the meaning of section 48(a)(1)(B). We hold that the signs constitute "tangible personal property." In light of our holding, we do not address the petitioner's alternative contention.

Although this Court has not ruled on the type of property in issue herein, the Court of Claims recently held, in two companion cases, *Alabama Displays, Inc. v. United States*, [507 F. 2d 844](#) (1974), and *National Advertising Co. v. United States*, [507 F. 2d 850](#) (1974), that outdoor advertising signs, indistinguishable from the ones before us, constitute tangible personal property. We believe the result reached by the Court of Claims is sound, and for the reasons set forth hereinafter, we reach the same result.

The statute contains no definition of the term "tangible personal property," but committee reports relating to the enactment of the investment credit do contain many

statements which are helpful in understanding the types of property intended to be included within the term. The Income Tax Regulations also contain many relevant guidelines. The technical explanations at ^{*671}attached to the House and Senate committee reports provide that the term “tangible personal property” for purposes of section 48:

includes any tangible property except land, and improvements thereto, such as buildings or other inherently permanent structures thereon (including items which are structural components of such buildings or structures). * * * [H. Rept. No. 1447, 87th Cong., 2d Sess. (1962), 1962-3 C.B. 405, 515-516; S. Rept. No. 1881, 87th Cong., 2d Sess. (1962), 1962-3 C.B. 707, 858.]

Thus, all tangible property constitutes tangible personal property unless it is excluded because it is land or an improvement thereto. A building is given as an example of an improvement, but the common characteristic which is attributed to improvements is that they are “inherently permanent structures.” Section 1.48-1(c), Income Tax Regs., adopts the same definition of tangible personal property as that given in the technical explanations to the committee reports, and the regulations characterize improvements as “inherently permanent structures.”³ Accordingly, as both parties recognize, resolution of the issue before us turns on whether the petitioner’s outdoor advertising signs are “inherently permanent structures.”

The term “inherently permanent structure” does not describe a clearly recognizable or defined class of property. The committee report also states: “Tangible personal property is not intended to be defined narrowly here, nor to necessarily follow the rules of State law.” H. Rept. No. 1447, *supra*, 1962-3 C.B. at 415. Thus, although under State law, fixation to the land is a basis for distinguishing personal property from other property, such basis is not to be relied upon for purposes of deciding what property may qualify for the investment credit. Such a rule is illustrated by the following statement in the committee report:

Assets accessory to the operation of a business, such as machinery, printing presses, transportation or office equipment, refrigerators, individual air-conditioning units, grocery counters, testing equipment, display racks and shelves, etc., generally constitute tangible personal property for purposes of section 48, *even though such assets may be termed fixtures under local law*.*** [S. Rept. No. 1881, *supra*, 1962-3 C.B. at 858; emphasis supplied.]

See also H. Rept. No. 1447, *supra*, 1962-3 C.B. at 516.

^{*672}In line with such legislative history and regulations, the decided cases have held that affixation to land does not per se exclude the property from the category of tangible personal property. See *Kenneth D. LaCroix*, 61 T.C. 471, 488 (1974); *Estate of Shirley Morgan*, 52 T.C. 478, 483 (1969), *affd. per curiam* 448 F. 2d 1397 (9th Cir. 1971). In deciding whether property is to be classified as tangible personal property for purposes of the investment credit, the courts have developed several questions to be considered:

(1) Is the property capable of being moved, and has it in fact been moved? *Alabama Displays, Inc. v. United States*, 507 F. 2d. at 849; *Joseph Henry Moore*, [58 T.C. 1045](#), 1052 (1972), *affd. per curiam* [489 F. 2d 285](#) (5th Cir. 1973). The evidence clearly shows that the petitioner's signs are capable of being moved and have in fact been moved.

(2) Is the property designed or constructed to remain permanently in place? *Joseph B. Weirick*, [62 T.C. 446](#), 451 (1974); *C. C. Everhart*, [61 T.C. 328](#), 330 (1973); *Beverly R. Roberts*, [60 T.C. 861](#), 866 (1973). The evidence in this case indicates that the petitioner's signs are not designed or constructed to last permanently. They are designed or constructed to 'last for the term of a contract between the petitioner and one of its advertisers. On the average, the term of a contract will last only 5 years. At the end of such period, the sign structure requires substantial renovation. A new sign face must be attached, some stringers must be replaced, and poles are either replaced or straightened and recemented.

(3) Are there circumstances which tend to show the expected or intended length of affixation, i.e., are there circumstances which show that the property may or will have to be moved? *Alabama Displays, Inc. v. United States*, *supra*; *Kenneth D. LaCroix*, [61 T.C. at 487](#). The petitioner does not intend, nor could it realistically expect, the signs to remain permanently in place. The petitioner realizes that in numerous situations it may have to move its signs at the expiration of a contract with an advertiser, or prior thereto. The signs may have to be moved because the owner of the leased land does not renew the lease or exercises his option to develop his land, or because there is a change in the location of the road or the occurrence of some other condition which makes the position of the sign no longer desirable. The Court of Claims placed great emphasis upon such ^{*673}facts to demonstrate the inherently temporary nature of the affixation of the signs therein. *Alabama Displays, Inc. v. United States*, 507 F. 2d at 845; *National Advertising Co. v. United States*, 507 F. 2d at 851-852. Such court also used such facts to distinguish the signs therein from the pilings which were used to secure a floating dock and which we found were not tangible personal property. *Estate of Shirley Morgan*, *supra*.

(4) How substantial a job is removal of the property and how time-consuming is it? Is it "readily removable"? *Estate of Shirley Morgan*, [52 T.C. at 483](#). The disassembly and removal of a sign is a relatively quick and easy process. Although specific figures were not supplied for the time necessary to remove the sign face and the stringers, it appears that the process may be accomplished quickly, using merely a hammer and a sledge hammer or an ax. Removal of the poles for a 40-foot sign takes only an hour or an hour and a half.

(5) How much damage will the property sustain upon its removal? *King Radio Corp. v. United States*, [486 F. 2d 1091](#), 1096 (10th Cir. 1973). Much of the sign assembly is not damaged when it is moved. The only necessary wastage is that portion of the poles surrounded by concrete, but the remaining portions of the poles are used for other signs. If the sign is moved upon the expiration of a contract with an advertiser, the sign face is also replaced.

(6) What is the manner of affixation of the property to the land? *Joseph B. Weirick, supra*; *C. C. Everhart, supra*; *Beverly R. Roberts, supra*. The poles on which the petitioner's signs are mounted are placed in the ground and surrounded by concrete; yet, such poles can easily be removed from the ground, and as a matter of practice, they are so removed.

In our judgment, the application of these criteria to the facts of this case leads to the conclusion that the outdoor advertising signs of the petitioner were not inherently permanent. They were not expected to last indefinitely; inevitably, they would have to be moved in a relatively short time; and they could be removed easily. Such signs are manifestly less permanent in nature than other properties which the courts have found to be tangible personal property for purposes of the investment credit: *King Radio Corp. v. United States, supra*; *Minot Federal Savings & Loan Assn. v. United States*, [435 F.2d 1368](#) (8th Cir. 1970) (movable partition system fastened to the floor and ceiling by ⁶⁷⁴screws or masonry nails); *Marineland of the Pacific, Inc.*, [T.C. Memo. 1975-288](#) (338-foot sky tower); *Joseph B. Weirick*, [62 T.C. 446](#) (1974) (holddown towers for a ski lift and its cable support as well as wooden passenger ramps); *Joseph Henry Moore*, [58 T.C. 1045](#) (1972) (mobile homes placed on concrete blocks); *Estate of Shirley Morgan*, [52 T.C. 478](#) (1969) (a floating dock held down by pilings). Moreover, the Income Tax Regulations specifically provide that "neon and other signs, which * * * [are] contained in or attached to a building" are tangible personal property for purposes of the credit allowed by section 38. Sec. 1.48-l(c), Income Tax Regs. Certainly, such signs may be constructed, designed, and affixed in a much more permanent fashion than the signs of the petitioner.

In deciding what property qualifies for the investment credit as tangible personal property, some very subtle distinctions have been suggested. It is difficult to reconcile the position maintained by the Commissioner in this case with his own rulings. He has allowed property, far more inherently permanent than the petitioner's signs, to qualify: Rev. Rul. 74-602, 1974-[2 C.B. 12](#) (gasoline storage tanks of approximately 8,000-gallon capacity (located usually below ground but some above ground and not generally moved during useful life) and associated piping in a retail gasoline station); Rev. Rul. 71-104, 1971-[1 C.B. 5](#) (burner and 14-story preheater structure for cement kiln facility); Rev. Rul. 70-236, 1970-[1 C.B. 8](#) (liquified petroleum gas equipment); Rev. Rul. 70-160, 1970-[1 C.B. 7](#) (boiler facility to produce steam used in the manufacture of furniture); Rev. Rul. 70-103, 1970-[1 C.B. 6](#) (a diesel generator, fuel tanks, exhaust equipment, a chlorinator, vault doors with combination locks, dehumidifiers, pumps, space heaters, safety doors, and louvers); Rev. Rul. 69-602, 1969-[2 C.B. 6](#) (propane gas storage tanks and water heaters installed on customers' premises); Rev. Rul. 69-557, 1969-[2 C.B. 3](#) (dry kiln structures to remove moisture from wood); Rev. Rul. 67-349, 1967-[2 C.B. 48](#) (wall-to-wall carpeting installed in guest rooms, office space, bar areas, and dining rooms of a motel); and Rev. Rul. 65-79, 1965-[1 C.B. 26](#) (bank vault doors, night depository facilities, walk-up and drive-up teller's windows). As a court, we must be guided by rational principles in making our decisions, and if those items of property are to be treated as tangible personal property, we see no rational basis for disqualifying the petitioner's outdoor advertising signs.

^{*675}The Commissioner argues that the petitioner's signs cannot qualify as tangible personal property, in any event, because the House committee report specifically excludes such outdoor advertising signs. The passage on which he relies is:

In order to qualify for the credit, property (other than tangible personal property and research or storage facilities used in the specified activities) must be used as an integral part of one or more of the specified activities. Thus, for example, section 38 property would ordinarily not include such assets as pavements, parking areas, *advertising displays*, outdoor lighting facilities, or swimming pools which, although used as a part of the overall business operation, are not used directly in the specified activities. * * * [H. Rept. No. 1447, *supra*, 1962-3 C.B. at 517; emphasis supplied.]

This same argument was rejected by the Court of Claims in *Alabama Displays, Inc. v. United States*, [507 F. 2d 844](#) (1974). We also believe the argument is misplaced and therefore reject it.

There- are a number of reasons for rejecting the Commissioner's argument. In the first place, it is not clear as to what is meant by the term "advertising displays." There is some indication that the term may have been used to refer to show windows. A spokesman for the American Retail Federation appeared before the Senate Finance Committee and urged the committee to allow the investment credit with respect to a retailer's show windows, and it may have been those show windows to which the committee meant to refer. Hearings Before the Senate Committee on Finance on H.R. 10650, 87th Cong., 2d Sess., part 3, 1019 (1962). In addition, it is not clear that the committee had in mind such property as the petitioner's signs. The committee may have intended to indicate merely that the advertising displays of a person engaged in manufacturing or production were not an integral part of his business, and the committee may not have intended to make any reference to a person who was in the advertising business. The Court of Claims adopted this view of the language in the legislative history. *Alabama Displays, Inc. v. United States*, *supra*. Moreover, the committee merely indicated that advertising displays are not ordinarily to qualify for the investment credit, but the committee may have had in mind advertising displays that were much more substantial and more permanent than the petitioner's signs..For these reasons, we are not persuaded that the committee intended to indicate that outdoor advertising signs of the type ^{*676}erected by the petitioner could not qualify for the investment credit.

Decisions will be entered under Rule 155.

3

Sec. 1.48-1(c), Income Tax Regs., in relevant part, provides:

(c) *Definition of tangible personal property.* * * * For purposes of this section, the term "tangible personal property" means any tangible property except land and improvements thereto, such as buildings or *other inherently permanent structures* (including items which are structural components of such buildings or structures). * * * [Emphasis supplied.]

Jacob Reyes

From: James Bergstrom <jbergstrom@arevonenergy.com>
Sent: Wednesday, February 18, 2026 3:16 PM
To: Jacob Reyes
Subject: RE: Support for appeal case number 00031
Attachments: RE_ Eagle Shadow Mountain Abatement Application Exhibit E.pdf

No problem.

Thank you,

James Bergstrom
 Senior Tax Manager
 Office (480) 653-8450
 Mobile (775) 313-2387



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From: Jacob Reyes <Rudy.Reyes@ClarkCountyNV.gov>
Sent: Wednesday, February 18, 2026 3:13 PM
To: James Bergstrom <jbergstrom@arevonenergy.com>
Subject: RE: Support for appeal case number 00031

Hi James,

The file named: RE Eagle Shadow Mountain Abatement Application Exhibit E.msg did not upload. Would you be able to email that pdf to me? I will add it manually.

Thank you

My office hours are Monday – Thursday, 0600-1630 PST.

Jacob Reyes

Appraiser II



togetherforbetter

500 S. Grand Central Pkwy, 2nd Floor | Las Vegas, NV 89155

Email: Rudy.reyes@clarkcountynv.gov

Direct: 702.455.3945 | Office: 702.455.3882

ClarkCountyNV.gov



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From: James Bergstrom <jbergstrom@arevonenergy.com>
Sent: Wednesday, February 18, 2026 2:42 PM
To: Jacob Reyes <Rudy.Reyes@ClarkCountyNV.gov>
Cc: Vincent Kelly <vmk@ClarkCountyNV.gov>
Subject: RE: Support for appeal case number 00031

No problem at all, the documents have been uploaded to your drive. Yes I think a call in the morning would be great. I am free from 7:30 to 10:30 and 11-12. Should I just call your number or set up a teams call?

Thank you,

James Bergstrom
 Senior Tax Manager
 Office (480) 653-8450
 Mobile (775) 313-2387



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From: Jacob Reyes <Rudy.Reyes@ClarkCountyNV.gov>
Sent: Wednesday, February 18, 2026 2:32 PM
To: James Bergstrom <jbergstrom@arevonenergy.com>
Cc: Vincent Kelly <vmk@ClarkCountyNV.gov>
Subject: RE: Support for appeal case number 00031

Good afternoon James,

Thank you for this additional information.

As for the emails I received for an external link, we are not allowed to use any external links to view or receive documents. If you have additional documents you wish to add to your case before 3pm PST, please use the following internal link information:

Site: <https://secureftp.co.clark.nv.us/>

User: aoboepetitioners

PW: 4zH%0V;92dB/y\?^

In reviewing the information, we hold our position. I have attached the Stipulation letter if you wish to accept the no change.

If you still wish to discuss anything further over the phone, tomorrow before morning will be fine.

Thank you.

My office hours are Monday – Thursday, 0600-1630 PST.

Jacob Reyes

Appraiser II



togetherforbetter

500 S. Grand Central Pkwy, 2nd Floor | Las Vegas, NV 89155

Email: Rudy.reyes@clarkcountynv.gov

Direct: 702.455.3945 | Office: 702.455.3882

ClarkCountyNV.gov



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From: James Bergstrom <jbergstrom@arevonenergy.com>

Sent: Wednesday, February 18, 2026 1:51 PM

To: Jacob Reyes <Rudy.Reyes@ClarkCountyNV.gov>

Cc: Eric Huswick <EHuswick@arevonenergy.com>; Chris Clark <cclark@arevonenergy.com>; Jim Wadhams <jlwadhams@blackwadhamslaw.com>; Craig Becker <craig.becker@pillsburylaw.com>; Vesco Petrov <VPetrov@arevonenergy.com>; Blaine Green <blaine.green@pillsburylaw.com>; Allan Vanvliet <allan.vanvliet@pillsburylaw.com>

Subject: Support for appeal case number 00031

Mr. Reyes,

Attached is a letter explaining our position on Eagle Shadow Mountain property taxes. In addition to this a share drive has been sent from my IT to provide you access to the exhibits referenced in this and various documents. Once you have had a chance to digest this I would love to set up some time this week to have a quick discussion about how best to move forward.

Thank you,

James Bergstrom

Senior Tax Manager

Office (480) 653-8450

Mobile (775) 313-2387



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CLARK COUNTY BOARD OF EQUALIZATION

Case # 31

Miscellaneous Information



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BRIANA JOHNSON

Clark County Assessor

(702) 455-3882 • Fax: (702) 455-0018

www.clarkcountynv.gov/assessor

Melissa Martinet, Deputy Director of Assessment Services
Mary Ann Weidner, Deputy Director of Assessment Services

togetherforbetter

01/15/2026

Case Number: 31
Parcel/PPID Number: 229299

EAGLE SHADOW MOUNTAIN SOLAR
C/O 325MK 8ME, LLC ~ C/O AREVON ENERGY
8800 GAINEY CENTER DR SUITE 100
SCOTTSDALE AZ 85258-2193

Dear Sir or Madam:

We have received your **Petition for Review to the Clark County Board of Equalization**. If you have additional information relevant to your case that you would like to submit for review, please provide it to our office as soon as possible. In order for your information to be included in the printed copy of your case, **it must be submitted at least seven days prior to your scheduled hearing date**. If you have to present **additional** information on the day of your hearing, **you must provide ten copies to the board**.

You will be notified of your hearing date by email.

1) **Email**. All correspondence will be sent to the email provided on the appeal form unless otherwise specified. To change your noticing email:

- Email your request to boe@ClarkCountyNV.gov
- Enter your Case # first and then "BOE Hearing Notification" in the subject line.
- In the body of the email, provide your case number, address, phone number and parcel number.

2) **Certified letter**. If no email is provided, you will receive notification by certified letter.

Your hearing will be scheduled between now and the end of February. You should attend the hearing and be prepared to discuss the taxable value of your property before the Board. For additional information regarding the appeal process and electronic hearing notification, please refer to the appeal instructions provided with your appeal form.

Our appraisal staff will prepare and submit to the Board a case with information which describes our position regarding your property valuation. This case information will be provided to you at the hearing, or you may contact our office to check availability prior to the hearing. Please contact our office if you have any questions in this regard.





**OFFICE OF THE
COUNTY ASSESSOR**

BRIANA JOHNSON

Clark County Assessor

(702) 455-3882 • Fax: (702) 455-0018

www.clarkcountynv.gov/assessor

Melissa Martinet, Deputy Director of Assessment Services
Mary Ann Weidner, Deputy Director of Assessment Services

togetherforbetter

01/15/2026

EAGLE SHADOW MOUNTAIN SOLAR

Case Number: 31

Parcel/PPID Number: 229299

325MK 8ME LLC
8800 N GAINEY CENTER DR
100
SCOTTSDALE AZ 85258

Dear Sir or Madam:

We have received your **Petition for Review to the Clark County Board of Equalization**. If you have additional information relevant to your case that you would like to submit for review, please provide it to our office as soon as possible. In order for your information to be included in the printed copy of your case, **it must be submitted at least seven days prior to your scheduled hearing date**. If you have to present **additional** information on the day of your hearing, **you must provide ten copies to the board**.

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2) **Certified letter**. If no email is provided, you will receive notification by certified letter.

Your hearing will be scheduled between now and the end of February. You should attend the hearing and be prepared to discuss the taxable value of your property before the Board. For additional information regarding the appeal process and electronic hearing notification, please refer to the appeal instructions provided with your appeal form.

Our appraisal staff will prepare and submit to the Board a case with information which describes our position regarding your property valuation. This case information will be provided to you at the hearing, or you may contact our office to check availability prior to the hearing. Please contact our office if you have any questions in this regard.





Our Team

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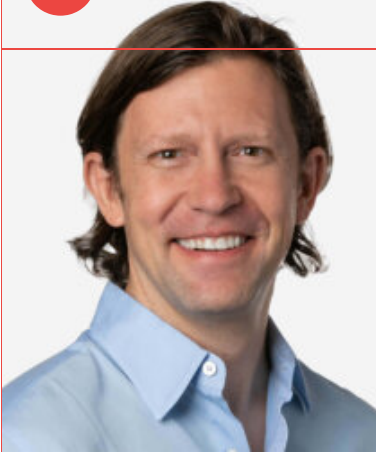


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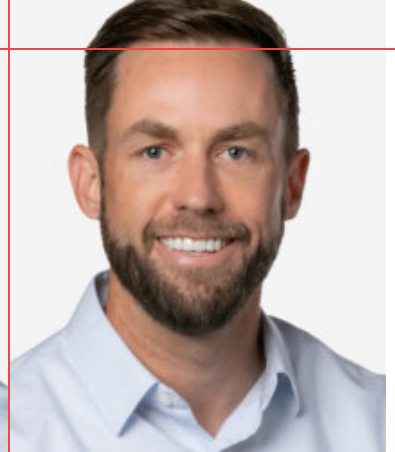
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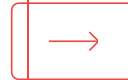
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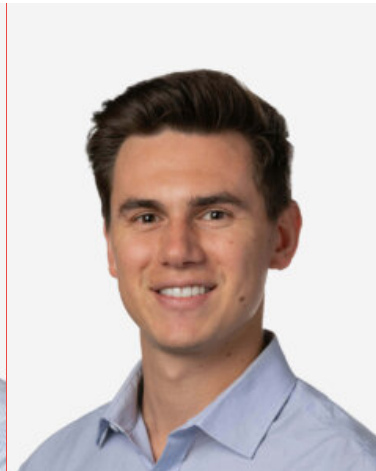
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Senior Leadership

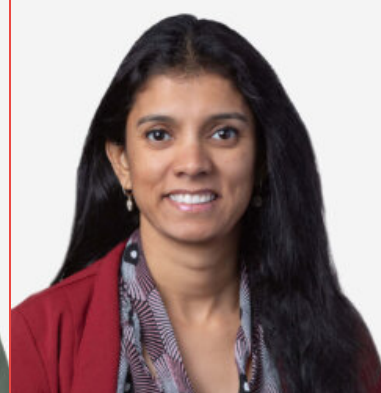
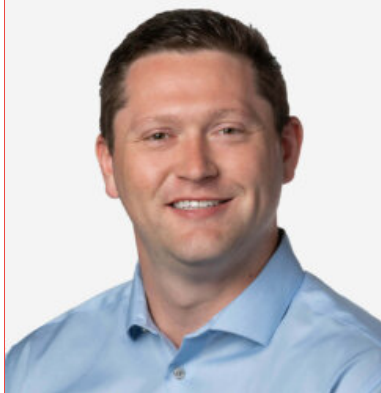


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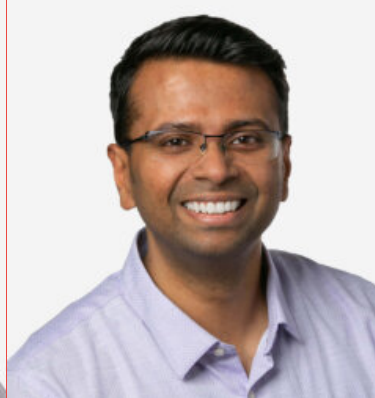
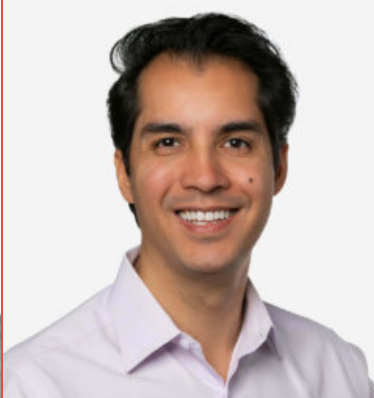


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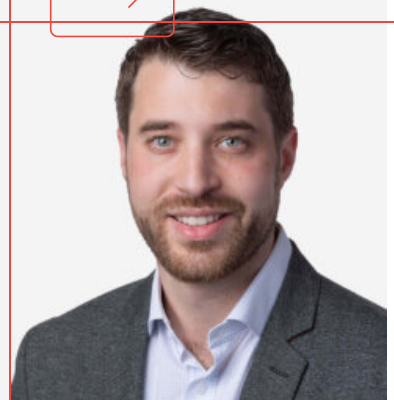
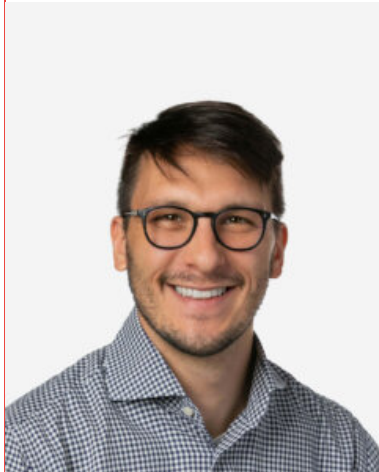
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Corporate
Headquarters

8800 North Gainey Center Drive
Suite 100
Scottsdale, AZ 85258

(480) 653-8450 (tel:4806538450)

info@arevonenergy.com
(mailto:info@arevonenergy.com)

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Capacity: 2.96 MWdc
COD: 2020

Colorado State University Pueblo
Pueblo, Colorado
Capacity: 7.13 MWdc
COD: 2021

Community Solar Garden
Pueblo, Colorado
Capacity: 2.00 MWdc
COD: 2020



Condor Energy Storage Project

(<https://arevonenergy.com/>)
San Diego, California
Capacity: 200 MW
COD: 2024

(<https://www.condorenergystorage.com>)

Cormorant Energy Storage Project

Daly City, California
Capacity: 250 MW
COD: Anticipated 2026

(<https://www.cormorantenergystorage.com>)

Croton Harmon

Croton-on-Hudson, New York
Capacity: 4.13 MWdc of Solar and 3.75 MW of Storage
COD: Anticipated 2025

Crow Mountain Solar Project

Pope County, Arkansas
Capacity: 187 MWdc
COD: Anticipated 2030

Desert Oasis Solar-plus-Storage Project

Sierra County, New Mexico
Capacity: 195 MWdc of Solar and 150 MW of Storage
COD: Anticipated 2029

Eagle Shadow Mountain Solar Project

Clark County, Nevada
Capacity: 383 MWdc
COD: 2023



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(480) 653-8450 (tel:4806538450)

info@arevonenergy.com
(mailto:info@arevonenergy.com)

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PETITION 31: EAGLE SHADOW MOUNTAIN SOLAR/AREVON ENERGY

Parcel Number(s): 229299
Petitioner Duly Sworn: James Bergstrom and Jim Wadhams
Document(s) Submitted: *See Attached*

DISCUSSION:

TERRY FARR

Okay, please state your name and address again for the record.

JAMES BERGSTROM

James Bergstrom 8800 North County Center drive, Scottsdale, Nevada or Scottsdale, Arizona 85383.

TERRY FARR

And to be clear, I'm calling Case 31 Eagles Shadow Mountain.

JIM WADHAMS

Thank you Mr. Chair. My name is Jim Wadhams, spelled W-A-D-H-A-M-S with the Law firm of Black and Wadhams here on behalf of 325 MK LLC, otherwise known as Eagle Shadow Mountain Solar Facility.

TERRY FARR

And address for the record sir.

JIM WADHAMS

I apologize. 969 Edinburgh E-D-I-N-B-U-R-G-H Fields F-I-E-L-D-S Court, Las Vegas, Nevada 89138.

TERRY FARR

Thank you sir. Mr. Reyes.

JACOB REYES

Good morning. Members of the Board, Jacob Reyes with the Clark County Assessor's Office. This is for Case 31 is for Assessor account number 229299. It is an appeal concerning the personal property assessment of Eagles Shadow Mountain Solar for fiscal year 2025-2026, and can be found on page 647 of the addendum book. Eagle Shadow Mountain Solar is a utility scale photovoltaic power plant located on the Moapa Band of Paiutes Tribal Land within the Moapa Indian Reservation. The facility occupies approximately 2,100 acres and operates under a long-term purchase agreement with NV Energy. The Moapa Band of Paiutes does not own this property. The Solar Farm is owned by Arevon Energy, a non-tribal entity. The Assessor recommends holding the value of \$282,630,733 for fiscal year 2025-2026.

TERRY FARR

Thank you, gentlemen.

JAMES BERGSTROM

We have some, this is already in the record, but we wanted to add page numbers for quick reference. So can I give you the work.

JIM WADHAMS

I'll be referencing a couple of the attachments on there and my client Mr. Bergstrom can remind me of the page number and what was just handed out. I might be able to quickly direct you to what I'm going to

be referring to. As stated by the Assessor's Office. This is on Indian Trust Land. There's just no question. That's essentially a stated fact not in disagreement. We're not going to take your time talking about discounted cash flows, capitalized income approach, comparable sales. That is not the issue. The issue simply is the assessed valuation is incorrect because this property is exempt.

It is exempt under several basic principles. One is the United States Constitution that says that U.S. land and treaties are supreme. The second is the Supreme Court cases. The United States Supreme Court has addressed this issue in the cases of Rickert and Mescalero that are cited in there. I'm not going to go through the legal analysis of those because they are a long-standing law. The most important one however, is the Ninth Circuit case that was decided in 2014 in legal time that is fairly recent that case held. And the Ninth Circuit of course I think everybody knows, includes Nevada. So, their decisions bind this state as well. The Ninth Circuit in a case referred to as Chehalis made the decision that state and local laws imposing taxes on Indian land, Indian trust land are preempted, they're preempted and it matters not whether it includes improvements that may be owned and operated by private operators. So that's the basic principle. Pursuant to that decision in 2014, the State of Nevada issued guidance, which is in the packet at page—

JAMES BERGSTROM

18 and 19.

JIM WADHAMS

—18 and 19, that indicated to the county assessors that that exemption now is clear and applies at state and county level. The second element is a letter that's attached at page probably 20 and 21.

JAMES BERGSTROM

No less, 15, 16.

JIM WADHAMS

I'm sorry, 15 and 16 from the Office of the Governor, the Governor's Office of Energy stated in 2021 to the petitioner here today that they could rely upon that 2014 decision, the guidance letter and a statement from that office that the property and the improvements were exempt from state property tax, sales and use tax. And you can read the language of that letter, it's specific and broad. And I should say the same thing about the language of the guidance. The department was unequivocal in their statement going forward that as a result of that Ninth Circuit case, Chehalis, this property is exempt from taxation. I well realize that there has been a suggestion that this is personal property and listening to the previous case and of course this one with 2,000 acres and a solar field that we all see when we drive either north or south, any direction out of this valley now sort of challenges one's common sense to think that that's personal property that could be picked up and carried off.

And as in the letter that was on file February 17, it's made very clear that the construction process itself is an annexation to the land. These are deeply driven piles that hold these solar fields in place. There's concrete foundations that could only be removed with substantial disruption to both the land and the facility. This is not a trailer park that you can put wheels under and roll them off. The adaptation of course to the land is through the engineering that is referenced in there. It took several years actually, or several months anyway, to engineer this so that these solar fields would be safely and permanently affixed to that land. And the intent clearly was between the parties, between the Moapa Tribe and my client to enter into a permanent long-term relationship there. This is a 50 year lease. And despite my white hair, 50 years is almost a lifetime. Not quite, but almost. But it's a long term, it's not a pick-up and leave when you're ready. It is long term.

So, these are permanent improvements. Having said that, I remind that the Ninth Circuit case specifically said the duration of the improvements do not change their decision that taxation of the property on Indian Trust Land is preempted. So, I think, oh, and by the way, if we have a suggestion that because it's personal property, which we clearly contest, and I think the law clearly does not allow that. In fact [NRS] 361.035 says that structures, erections, and improvements in buildings on real property are real property and must be classified under the heading of real property. So, it's a bit curious as to how this became personal property when it's clearly a structure and it's clearly erected on the land and without even getting into the engineering, it is there for the long haul. That it can be taxed separately despite the Ninth Circuit decision. And I just leave that to your review that Ninth Circuit case is without equivocation, that that is preempted. Should there have been some implication in this treaty or the agreement with the Indians that there could be taxation.

There is a balancing test that was decided by another Supreme Court case called *Bracker B-R-A-C-K-E-R*, which is referenced and cited in that letter that was filed on February 17. That requires a balancing test. We have no indication that such a test was ever done and we think it's because it's preempted by the Ninth Circuit decision. So, with all respect, I request that the Board equalize this valuation for tax purposes. Although this property has market value, it has no taxable value because it is exempt and equalizing it with other tax-exempt properties that is taking it off the rolls and recording it at zero is not only appropriate, it's mandated by state policy from the Department of Taxation and United States Supreme Court and the Ninth Circuit Court of Appeals. I thank you for your time and appreciate any questions that I can answer.

TERRY FARR

Thank you. Mr. Reyes?

JACOB REYES

Yes, Members of the Board, Jacob Reyes with the Clark County Assessor's Office. The Assessor's case begins on page 1,586 of the addendum book. The Department of Taxation has stated that the determination of real property versus personal property is left up to the County Assessor. The Assessor's Office, excuse me, values all of the utility grade solar farms in Clark County as personal property. The subject property was valued using NRS, NAC, and the Personal Property Manual. This year the Personal Property Manual, as you guys heard on the previous case, added a depreciation table specific to utility scale photovoltaic solar farms. There is no exemption for property owned by non-tribal entity that is sitting on leased tribal land. The Clark County DA's Office will be speaking on the legal aspect of the appellants petition.

LISA LOGSDON

Thank you, Lisa Logsdon, for the record. Just to give a little history, this was a direct appeal to the State Board of Equalization last year. A lot of these same arguments were made to the State Board. The state board at that time determined to uphold the Assessor's recommendation and that decision is on appeal at the district court. So just to give some context. But here the land is not listed to be clear, the land is not being taxed. We've reviewed and there's a DA opinion on page, let's see here, 1,588 through 1,597. So, the first part of the DA's Office opinion goes through real property versus personal property.

And so here, as the Assessor's Office has testified, these are improvements that have been determined to be personal property. That's how we do all of the solar farms in Clark County. So, I think that's consistent. But with respect to the taxation on tribal lands, the property owners argued that they're tax-exempt. And this is in my opinion, misplaced on the Chehalis decision. In that decision what the Ninth Circuit ruled was, it was regarding a Great Wolf Lodge that was created and that Great Wolf Lodge was owned by an LLC (Limited Liability Company). And so, the tribe owned 51% of that LLC. And what the Ninth Circuit said is

that the courts aren't going to get into the tribes business matters and it's not relevant of how they choose to have ownership in it, but they need to have ownership interest in the property. And so here, these improvements are not owned by the tribe.

They're not held in trust by the tribe. Eagle Shadow is the sole owner of those. And that's clear in the lease, in Section 7.04 of the lease. And while the lease permits the tribe to purchase these at a later date, the tribe has no current property interest in those. And so, it's distinguishable from the Chehalis case in that matter. In Chehalis, the tribe owned 51% through the LLC. So, and I think that also shows in the guidance that has been issued by the tax commission. It says in the guidance personal property owned by unrelated third parties and located on trust lands, however, may continue to be considered taxable property. And that's what the Assessor's Office is doing. So, we've looked at their ownership analysis and we've determined that the tribe doesn't have an ownership in this property. So being a complicated legal issue, we've looked at new case law across the country and there's a recent decision out of Arizona. Now it's an Arizona State Court decision, but it's very similar to the circumstances in this case. And so, it's South Point Energy versus the Arizona Department of Revenue.

And in that case, the Arizona Supreme Court found that the federal law did not preempt the state of Arizona from taxing these properties. They determined that the Chehalis decision was distinguishable just as the Fort Mojave tribe in that case didn't have any ownership interest in the solar facility. And then the Arizona Supreme Court remanded it back to the Court of Appeals to determine the Bracker analysis under the U.S. Supreme Court, White Mountain Apache versus Bracker. And under the Bracker balancing task, the courts considers three factors, the extent of federal and tribal regulations regarding the taxed activity, whether the economic burden of the tax falls on the tribe or the non-tribal entity, and the extent of the state's interest in justifying the imposition of taxes. So here a federal government retains exclusive power to regulate Indian affairs, but the federal government's asserted little to no regulatory power over the area for the state to impose ad valorem taxes. There are various cases across the country which are cited in the DA opinion where non-tribal entities are taxed for improvements on tribal land.

While supporting tribal economic sufficiency is an important federal interest, that interest can be diminished when commercial activity is structured to avoid taxes. And under the second prong here, the tribal entity is not responsible for the taxes. The lease is clear that these tax responsibilities are of Eagle Shadow and under the third prong there's a strong state interest in justifying the imposition of taxes. These property taxes support local services that also benefit the tribe and their members.

So here we think the facts are more aligned with the solar facility in Arizona in the case law that's come out of that. And it is important to note to that in Arizona, the solar facility in that case filed a writ to the U.S. Supreme Court and that was denied. So, the U.S. Supreme Court chose not to look at this. So, if it was so clearly federally preempted, I think it's saying that the federal justices, the U.S. Supreme Court did not review this case. So, I think the taxation and these improvements in this case is not preempted by federal law and are lawfully taxed.

TERRY FARR

Members of the Board.

JIM WADHAMS

Mr. Chair, I apologize if I might, I don't want to put the Board through listening to lawyers arguing about case law because that's what we're all trained to do. I think the point here, a couple of quick points if I might, the reference to say that solar farms are personal property is fine, cars are personal property, lots of things can be in common. The question is, is it in a circumstance where it's exempt? As this Board well knows nonprofit schools, their property is exempt, not public schools, the nonprofit ones, their property

is exempt as well. And so, the characteristic of the fact that a solar farm that's commercial as opposed to an Indian land may be visually identical, doesn't mean it is treated the same for taxation.

And again, I don't want to belabor the discussion about the case law other than to say the State of Nevada and you have now a copy of it at your desk on page 2, the second page of that opinion, which would be page 19. If you can turn to that. It's very simple. Real property such as buildings and improvements located on land held in trust by the United States government for an Indian tribe is not taxable property even when owned by a person or entity other than— That is a statement from the State Department of Taxation to County Assessors. I'm not sure I'm prepared to argue that there's any subtle meaning to that. That seems pretty direct and pretty straightforward and I'm suggesting I guess under the law of Nevada where a Dillon's rule state is everybody knows the state sets the policy and the state has stated the policy.

The Governor's Office one could argue under [NRS] 360.294 that reliance upon the Governor's Office is different than the reliance in that statute of a written statement from an employee of the Department of Taxation. I answer it this way, the governor is the boss of all state employees. Some credence should be given to his direction. And two, Terry Rubald, who I knew personally was an employee of the State Department of Taxation who issued that public guidance. If taxpayers cannot rely upon the state that sets the policy and supervises the counties, who can we rely upon? So, I appreciate your time and your consideration. Thank you.

DAVID DENMAN

David Denman with the Clark County Assessor's Office. Is it all right if I make a comment?

TERRY FARR

Of course.

DAVID DENMAN

A similar argument to this was brought up in the State Board of Equalization case last year and Jeff Mitchell, the Deputy Director of the department, told the State Board of Equalization that it was up to the County Assessors to make a determination on whether something was real or personal property. When we make that determination, we don't just go out and say, "Oh, today we want this to be personal property." We use Appendix C, which has three tests in it, and down at the bottom of that appendix we use the white code tests, which are six tests set up in a court case to help us determine whether we put something on as real or personal property. All of the photovoltaic solar farms in Clark County are on his personal property and most of the ones through the rest of Nevada are. There are a few that aren't, but the majority of the solar farms in Nevada are on this personal property.

GLENN ANDERSON

I just want to ask a quick question. The ownership of the actual equipment, the tribe doesn't have anything to do with that. It's strictly a lease.

DAVID DENMAN

David Denman with the Clark County Assessor's Office. As far as we've been able to determine or find out, the tribe owns none of the property used to generate solar power from this facility. They only own the land and we're not taxing the land.

TERRY FARR

Go ahead.

JAMES BERGSTROM

So, I can confirm that, as of right now, the tribe doesn't own any of the property, but they have an option to purchase it at the end of the term of the lease. Additionally, as far as the state saying that they use the same test on all the solar properties, since it's on tribal land, they have to use the federal test. They can't use their same state test to be able to determine whether it's real or personal property. And I don't believe they've said that they've done that. Federal law dictates since it's on tribal land. So I don't even believe they've done the proper test to determine whether or not it's real or personal, even though we contend that even if it's personal, it wouldn't matter.

TIO DIFEDERICO

I'm kind of struggling with this being personal property because as an appraiser for 40 years I've followed what the Appraisal Institute is called personal property, and that is not permanently affixed property and we've, everybody on this Board I'm sure has appraised plenty of those and said we didn't include any personal property in this appraisal. In an apartment complex, we don't include the lounge chairs, but this is permanently affixed and this CFR (Code of Federal Regulations) states, it doesn't matter who owns it, you can't tax it. So, I don't understand why we're here. To me, this seems pretty cut and dry that this isn't taxable. So, I don't want to make a motion yet because I don't want to hear if somebody else has some ideas, but that's where I'm leaning.

JACOB REYES

Can I make a comment?

TERRY FARR

Sure.

JACOB REYES

Jacob Reyes with the Clark County Assessor's Office, I do want to bring up that this truss that's being used for this particular solar farm is one of the innovative type of truss systems that are being used now. It's called an NX Earth Truss system, which it takes about 4 minutes and 28 seconds to install one of the truss systems A frames and they claim nextpower.com, which is the new company that bought out Ojjo, if I'm pronouncing that correctly, that this is a type of truss that you can install and to remove it, you simply reverse the process. It takes one machine to primarily drive these anchors or not even anchors because that's a different type of truss that they use. It's an anchoring truss. This one specifically actually just screws in and screws out of the ground.

TIO DIFEDERICO

In China. They build a hospital in one day. So that doesn't sway me.

LISA LOGSDON

I'm sorry. I do want to clarify the DA opinion, whether it's personal property or real property under the federal analysis is the same. It's still taxable, at least under our analysis. And so, there's no distinction under federal law whether the Assessor's Office has chosen to classify it as personal property or real property under our analysis.

TAMI CAMPA

Okay, but under the guidance letter, there is a difference, right?

LISA LOGSDON

Yes. And I would argue that the guidance letter doesn't go far enough. It's just a blanket statement relying on Chehalis. And I think you have to read that in the context of Chehalis, which means that the tribe has

an ownership interest in it. And I think it's important when it says no held in trust on behalf of the tribe, and this is fairly new, but there has been updated case law since then out of Arizona recently and across the country. Let me get my opinion here, and I can tell you about one out of California as well.

TAMI CAMPA

Yeah, I was going to ask about that too because then it said held in trust by the United States government.

LISA LOGSDON

Yeah, so these improvements are not held in trust because they're solely owned by Eagle Shadow. But if the tribe had an ownership interest in them, then we would be looking at a different analysis.

TIO DIFEDERICO

But the CFR says it doesn't matter who owns them.

LISA LOGSDON

What federal regulation?

TIO DIFEDERICO

25 CFR 162017, the one that was provided on page 19. It says regardless, without regard to ownership of those improvements. So, it doesn't matter who owns them, they're on federal land. So that's where I'm struggling here. I don't see it.

LISA LOGSDON

Yeah, let me, I addressed that in my opinion.

TIO DIFEDERICO

If we're going to, I'll make a motion that we deny the Assessor and consider this non-taxable land. I don't know how to word it.

TAMI CAMPA

I wanted to hear before that though, about the Arizona case where they denied the writ. Was that the same type of personal property or real property? Were they buildings or what?

LISA LOGSDON

It was a solar facility. It was a complete solar facility. I believe in Arizona they taxed it as real property. Where in Nevada, we've determined that solar facilities are personal property, at least in Clark County.

TAMI CAMPA

Well then that's a little different too then if they taxed as personal property. And this guidance letter says real property.

LISA LOGSDON

Correct.

GLENN ANDERSON

Well, I have a question too. So, I mean, we talked about there's a lot of solar facilities around the state, and I know a lot of these are built on, for example, in Boulder City, which is a non—They're not taxed. They're tax-exempt. So, you're considering all of that personal property, right? You're taxing those. Same manner.

DAVID DENMAN

David Denman with the Clark County Assessor's Office. Yes, whether it's on BLM (Bureau of Land Management) land or private land or the land of Boulder City or tribal land, we assess them as personal property.

GLENN ANDERSON

So, my point, I guess, is even if it's tax-exempt land for some other government entity, you're taxing it because you're considering it personal property?

DAVID DENMAN

Correct. The only difference in this and what we do elsewhere is any other exempt land, there would be a possessory interest tax under NRS 361.157 because a taxable entity is using non-taxable land for its taxable purpose.

JIM WADHAMS

Mr. Chair, if I might, and I promise I wouldn't get into a lawyerly debate except I would point those last two questions I think are really important. If you look at page 19 in your packet, that's the second page of the state's guidance, which unless somebody can show me documents otherwise, that guidance has not been changed. At the paragraph that carries over at the top of the page, the State Department of Taxation says about the Chehalis case, the Ninth Circuit case, "The court concluded that the fact that the improvements were owned by a limited liability company rather than by the tribe itself was irrelevant." And talking about other properties, Indian trust land is specific. These cases are dealing with Indian trust land. So again, I don't want to be in a debate. Your counsel's very competent. We could have long discussions, but this is a question of whether this property is taxable and I think the constitution, the federal law and the state directives say that it is not. Thank you.

TERRY FARR

My question for the Assessor, who owns the land that this is on?

DAVID DENMAN

David Denman with the Clark County Assessor's Office. The Moapa Tribe owns the land.

TERRY FARR

Okay, so would that then mean that the land is held in trust by the U.S. government on behalf of Indian tribes?

DAVID DENMAN

In my opinion, yes.

MOTION

TERRY FARR

Okay. Based on that information, I'm going to concur with Mr. DiFederico and say, because the property is on Moapa Tribe land, that it is not subject to taxation.

TIO DIFEDERICO

Is that's a motion?

TERRY FARR

That's my motion. Please cast your votes. It is going to be appealed anyway, so.

VOTE

VOTING AYE: Terence J. Farr, Tami L. Campa, Tio S. DiFederico, Heidi Meidenbauer

VOTING NAY: Glenn Anderson

ABSENT: None

ABSTAIN: None

TERRY FARR

And that motion passes. The Assessor's Office does have the right to appeal that decision.

JIM WADHAMS

Thank you, Mr. Chair and Members.

FINAL ACTION:

Denied the Assessor's recommendation (for no change in the total taxable value of \$282,630,733) based on the information provided and because the property is on Moapa Tribe land it is not subject to taxation.