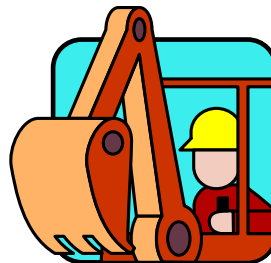


Methods for Valuing Personal Property

2024

Published by
Oregon Department of Revenue



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2024

**Published by
Oregon Department of Revenue
Property Tax Division
(503) 945-8278
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Introduction

Personal property assessment depends on a taxpayer providing self-reporting property data to county assessors. This reported data is the primary source used by the assessor to determine assessed value. There are, however, other data the assessor's staff can gather to use to determine value, including comparison of similar businesses, desk audits, phone audits, or field audits. The assessor must use the best information available to make sure all taxable personal property is being assessed accurately.

This manual provides methods and resources to help county assessors and their staffs develop personal property assessments. The assessor can use this manual as an aid in the discovery, audit, and assessment of personal property. Topics include valuation theory and methods, discovery sources, audit procedures, and laws. The intent of this manual is to provide a guide to developing a sound personal property program throughout the state of Oregon.

Elements of a good personal property program include:

- Written office policies and procedures to provide for:
 - Mailing, receiving, and processing returns.
 - Communicating with taxpayers.
 - Verifying assessments.
 - Valuing noninventory supplies.
- Reporting and discovery. An active program that helps taxpayers report taxable personal property is essential.

This includes sending out forms, educating taxpayers about filing requirements, and checking for new taxable property.

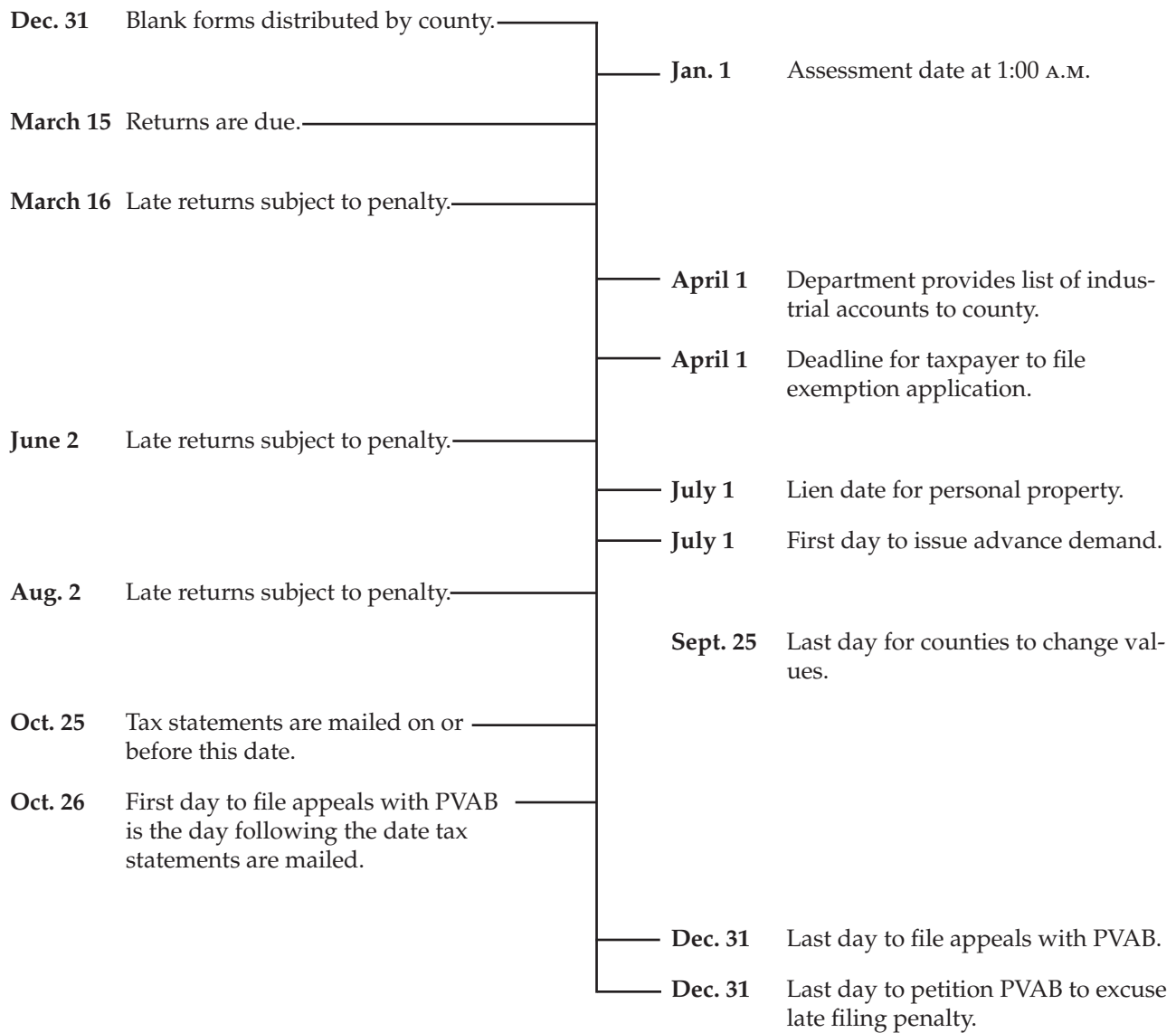
- Valuation standards. Fair and uniform valuation standards from the market should be developed and applied to all taxable personal property.
- Audit procedures. Questionable personal property accounts should be identified and reviewed.

Finally, this manual relates to personal property valuation and assessment. For a more detailed discussion of valuation theory, consult additional appraisal texts provided by professional appraisal groups, such as *Property Appraisal and Assessment Administration*, by The International Association of Assessing Officers; *The Appraisal of Real Estate*, by American Institute of Real Estate Appraisers; and *Appraisal Methods for Real Property*, by the Oregon Department of Revenue.

If you have questions about this manual or the assessment of personal property, call (503) 945-8278 and ask for personal property or write to:

Oregon Department of Revenue
Property Tax Division
955 Center Street NE
Salem OR 97301
www.oregon.gov/dor

Personal property timeline



Calendar of events

(tangible taxable personal property)

Jan.	1	The assessment date as of 1:00 A.M.	308.250
Mar.	15	Deadline for filing personal property returns.	308.290
	16	Late filed returns subject to penalty.	308.296
		<ul style="list-style-type: none"> • Returns filed after March 15 but on or before June 1 are subject to late filing penalty of 5 percent of the tax owed. • Returns filed after June 1 but on or before August 1 are subject to a penalty of 25 percent of the tax owed. • Returns filed after August 1 are subject to a penalty of 50 percent of the tax owed. 	
April	1	Deadline to file exemption application for certain exempt organizations.	307.112
July	1	Lien date for personal property.	311.405
	1	First day to issue advance demand for personal property sold or moved after July 1.	311.465
Sept.	25	Last day to change values on the assessment roll.	308.242
Oct.	25	Tax statements are mailed on or before this date.	311.115
		First day property valuation appeals board accepted by the clerk is the day following the date that tax statements are mailed.	309.100
Dec.	31	Last day to file appeals with the property valuation appeals board.	309.100
	31	Last day to petition the property valuation appeals board to excuse late filing penalty on returns.	308.295
			309.100

Section 1: Valuation

Fundamental appraisal concepts

The final product of any appraisal is an estimate of value and, according to Oregon Revised Statutes (ORS) 308.232, “[a]ll real or personal property . . . shall be valued at 100 percent of its real market value.” While there are many definitions of “value” and kinds of value, ORS 308.205 defines real market value (RMV), or market value. The definition of **RMV** is as follows:

ORS 308.205 states in part:

1. Real market value of all property, real and personal, means the amount in cash which could reasonably be expected to be paid by an informed buyer to an informed seller, each acting without compulsion, in an arm’s-length transaction occurring as of the assessment date for the tax year.
2. Real market value in all cases shall be determined by methods and procedures in accordance with rules adopted by the Department of Revenue and in accordance with the following:
 - a. The amount a typical seller would accept or the amount a typical buyer would offer which could reasonably be expected by a seller of property.
 - b. An amount in cash shall be considered the equivalent of a financing method that is typical for a property.

Appraising is not an exact science. There are, however, certain fundamentals and basic appraisal methods which will enable the appraiser to arrive at a logical and supportable estimate of value. Although these principles generally pertain to real property, the theory behind them also applies to personal property.

Basic appraisal fundamentals to consider when valuing property include anticipation, competition, contribution, opportunity cost, and substitution.

The principle of **anticipation** is that value or present worth is created by the anticipation of future benefits arising from the ownership and use of the property.

The principle of **competition** states that when substantial profits are being made, competition will move in to dissipate that profit. If the profits become excessive, then the competition will become excessive.

The principle of **contribution**, also known as marginal productivity, addresses the fact that cost doesn’t always equal value. It’s the amount of value added or subtracted by a component’s presence or absence on a property as it contributes to the total value.

The principle of **opportunity cost**, considered by many texts to be the same as the principle of substitution, states that the value of a property is measured by the benefits of ownership foregone, or given up, by not choosing or selecting an alternative or competing property.

The principle of **substitution** says that a property’s value can be based upon the value of an equally desirable substitute property. People tend to pay no more for a property than it would cost to acquire substitute property of equivalent utility, assuming there are no costly delays. The principle also recognizes that the substitute property with the lowest price will attract the greatest demand and widest distribution in the market.

Three approaches

Appraising generally involves three approaches used to develop indications of value independently from one another. These approaches are known as the cost, sales comparison (market), and income approaches to value. These indications of value are then reconciled into one final conclusion of market value.

Each of the three approaches has a recognized format, or procedure, to be used to process the data applicable to that approach into an indication of value. The fundamentals of these approaches are relatively simple, but the application is often complex. The appraiser will be dealing with what are often unpredictable quantities and qualities that can’t be reduced to inflexible rules, regulations, formulas, and tables. The appraiser must have an understanding of the basics involved in each approach, the ability to recognize pertinent data, and the skill to select the proper method and apply it to the specific problem involved.

Anyone interested in a more complete discussion of fundamental appraisal theory may consult the following texts: *Property Appraisal and Assessment Administration* (Chicago: International Association of Assessing Officers, 1990); *Assessment of Personal Property* (Chicago: International Association of Assessing Officers, 1988); *The Appraisal of Real Estate* (Chicago: American Institute of Real Estate Appraiser, 14th Ed.); *A Basic Library for Assessors* (Chicago International Association of Assessing Officer, 1989).

The valuation process

The valuation process is the step-by-step approach that allows appraisers a framework or methodology to solve valuation assignments. This systematic process should lead the appraiser to a defensible and supportable value conclusion.

The valuation process involves the following:

1. Determination and identification of the property to be appraised.
2. Data collection.
 - a. General data.
 - 1) Social.

- 2) Economic.
- 3) Governmental.
- 4) Environmental.
- b. Specific data.
 - 1) Sales verification.
 - 2) Property characteristics.
3. Data analysis and highest and best use conclusion.

4. Estimating value by the three approaches.
5. Reconciliation of the three approaches to value.
6. Final estimate of value.

In mass appraisal, the process may not be readily identifiable due to overlapping areas of responsibility. However, all elements of the appraisal process are involved in any appraisal which estimates market value.

Three approaches to value:

The income approach

The income approach is one method of valuing personal property. This approach is based on the principle of anticipation, which states that the market value is the present worth of future benefits (monetary or other) to be received from the ownership of the property.

Income producing property is purchased for the right to receive the future income stream of that property. The appraiser evaluates this income stream in terms of quantity, quality, duration, and shape, and then converts it by means of an appropriate capitalization rate into an estimate of present worth. This estimate is the amount that a prudent investor would be willing to pay now for the right to receive the income stream produced by a particular property. Care must be taken that the rent, expenses, and rates reflect those expected by the typical investor for the type of property being valued. The appraiser must keep in mind that the objective of the appraisal is to estimate market value, allowing the mathematics to reflect the concerns of the typical investor.

Steps in the income approach to value

The basic steps in the income approach are:

1. Estimate potential gross income (monthly payments \times 12 months = annual gross income).
2. Deduct allowable expenses such as transportation costs and special installation costs to compute effective gross income.
3. Estimate expenses before discount, recapture, and taxes.
4. Deduct allowable expenses from gross income to determine net operating income (to be capitalized into an estimate of value).
5. Select the proper capitalization rate (reflects recognition of return of investment, return on investment, and effective tax rate).
6. Determine the proper capitalization procedure to be used.
7. Capitalize the net income into an indication of present value.

The capitalization process expressed in terms of a mathematical formula is:

Potential Gross Income – Allowable Expenses =
Net income before discount, recapture, and taxes

Net Income \div Capitalization Rate = Value

Summary

The validity of this approach requires that the appraiser follow three guidelines:

1. Build a realistic capitalization rate.
2. Make appropriate adjustments for expenses.
3. Select a proper income approach method.

Small errors in capitalization rates or allowable expenses can make a considerable variation in the final estimate of value. When using the income approach, it should be correlated with the cost and market approaches to arrive at the final value estimate. When properly developed, the income approach can be effectively used to value leased property. It may also be used to value machinery and equipment.

Cost approach

The cost approach to value is the most commonly used method to estimate real market value for the assessment of personal property. The cost approach to value is based partly upon the principle of substitution which states that a person will generally pay no more for an item than the cost of acquiring an equally desirable substitute, assuming no unusual delay.

There are two basic variations for appraising personal property with the cost approach. Mathematically the two basic formulas are:

1. (Original acquisition cost \times cost trend index) – accrued depreciation = real market value
2. Replacement or reproduction cost new – accrued depreciation = real market value

Original acquisition cost is the cost of acquiring a particular item of personal property at the appropriate level of trade. Total acquisition costs include freight, installation, taxes, and fees. Acquisition costs must be adjusted to current cost new by the use of cost indexes which are available from several sources. Examples of cost trending tables can be found in Marshall and Swift Appraisal Cost Services.

Reproduction cost is defined as the estimated cost to construct, at current price, an exact duplicate of the item of personal property being appraised using the same material, construction standards, design, quality, and having the same production capacity and all of the item's deficiencies, super adequacies, and obsolescence. Reproduction means a facsimile or replica as nearly like the present property as possible.

Replacement cost is the cost of constructing a substitute item equal to the existing item in quality and utility and/or capacity, but using current technology and materials.

Because the assessor will usually have only the original acquisition costs as reported on the personal property listing, the indexed acquisition cost minus accrued depreciation will typically be used to estimate the value of personal property. The indexed acquisition cost is derived by applying a trending index to adjust the acquisition cost to the relative replacement cost new consistent with the current assessment date. Trending tables have been established which follow changes in price levels for various industry types of property over time.

Depreciation

After the acquisition cost adjustment, replacement or reproduction cost new is calculated as of the base appraisal date. Elements of depreciation must then be considered to derive a final estimate of current value.

Sources of depreciation include physical, functional, and external (economic). Depreciation caused by these

sources may be either curable or incurable.

Physical deterioration is loss in value caused by wear and tear or damage. It is deemed curable if the cost to cure is economically justified as of the date of appraisal. If the cost to cure is not economically justified as of the date of appraisal, it is incurable.

Functional obsolescence is loss in value caused by outdated or incorrect design; the cost to cure is economically justified as of the date of the appraisal. Incurable functional obsolescence is permanent loss in value caused by outdated or incorrect design that is physically or economically impractical to correct as of the date of the appraisal.

External or economic obsolescence is value loss caused by economic forces outside the property. It is seldom curable.

Depreciation in personal property is loss in value from any cause including physical deterioration, functional obsolescence, and/or external obsolescence. Physical depreciation of the item results from usage and sometimes environmental effects. Obsolescence is attributable to either functional or economic considerations. Functional obsolescence is relative to the item itself. It generally results from changing styles and technology, causing an item of personal property to be outmoded by constantly changing techniques, designs, and production standards. External obsolescence results from factors that are external to the item of property such as legislation, regulation, commercial and industrial relocation pattern trends, consumer actions for the product of the time, etc. Generally, factors of depreciation will interact to cause items of personal property to have relatively short physical or economic life spans when compared to real property. Together these forces are referred to as accrued depreciation. Accrued depreciation is the difference between the cost new as of the appraisal date and the present value of an item of personal property. It is a measurement of the total loss in value which has already occurred as of the date of the appraisal.

The formula for calculating accrued depreciation is:

Effective age of the item \times reproduction or replacement cost new = accrued depreciation.

A physical inspection of the various items of personal property will aid the appraiser in the estimation of accrued depreciation. Inspection of the company's books and maintenance records will greatly assist the appraiser in determining age, use, utility, and physical condition of the item. All of these factors must be considered in order to arrive at an estimate of depreciation.

Measuring depreciation

Measuring depreciation is the weakest part of the cost

approach when appraising personal property. Accrued depreciation can be measured in several ways. A loss in productivity can be capitalized into an indication of value loss using the income approach. Accrued depreciation can also be estimated by direct market comparison using sales of comparable units of personal property. Many county assessors apply the appropriate depreciation percentages listed in the “Personal Property Valuation Guidelines” manual, provided by the Oregon Department of Revenue.

Useful life tables, such as those provided by the department, are helpful in estimating the accrued depreciation applicable to personal property. These tables represent what is typically average for a particular category of items. With few exceptions, they do not distinguish between specific items within a particular business activity. If a particular item is suffering from economic obsolescence, additional consideration for that condition must be added. Although using the department’s

depreciation schedule is often the most convenient, easiest, and fastest way to value personal property, it may not be the most accurate.

Summary

The cost approach will generally be the principal method of valuing personal property for mass appraisal purposes. Overlooking the inherent weaknesses of the cost approach, the positive aspects promote the use of this method for tax administration. The application of accrued depreciation is a critical step when using the cost approach to value. Depreciation tables create a generally acceptable standard from which appropriate judgments may be determined. Consistent use of such tables when valuing personal property will aid in achieving uniform and equitable assessments. When assessments are challenged, the appraiser must correlate the cost approach with the other two approaches to value.

Sales comparison approach

The sales approach, like the cost approach, is based upon the principle of substitution, that is the belief that a person will pay no more for a property than the price of an equally desirable substitute within reasonable time limits. In this approach, value is estimated by comparing the subject property to similar properties that have sold. The comparison reflects the most direct evidence of market value because the data is based wholly on the actions of the market place.

Proper collection and analysis of sales data, together with the selection of appropriate units of comparison, is critical in applying the sales comparison approach. This sales data must be adjusted based on market conditions and then applied to the subject of the appraisal.

The use of the sales comparison approach may have limited application in the mass appraisal of personal property due to the difficulty of obtaining enough valid market data.

Sales data

Comparable sales data for personal property may not be readily available to the assessor. Sales that are available may not represent the market at the correct level of trade. There may not sufficient data available to allow meaningful and objective analysis. Sales prices on many items of personal property fluctuate with the seasons of the year. Technological changes render many items obsolete overnight. Local, regional and/or national economics, styles, fads, supply, and demand all affect the stability of the personal property markets. The variable nature of personal property further complicates the estimation of market value. If the conditions of a sale give doubt as to the knowledge, ability, or willingness of the parties involved, the sale may not be usable for appraisal purposes.

Many public and private commercial services publish personal property sales and exchange information, commonly referred to as pricing guides, available to assist the appraiser in valuing personal property. These guides are compiled from analysis of large amounts of data, usually on a regional or national basis. They represent what is considered the typical market price for an item in average condition. Many guides also list prices for accessories related to the basic unit. The guides represent regional or national price levels and frequently must be adjusted in consideration of local market conditions.

Pricing guides are useful as aids to the assessor in verifying values as reported by taxpayers. They will provide an indication of value, but must be used in conjunction with other sources of sales data to arrive at a reasonable estimate of market value.

Steps in the sales comparison approach to value

The sales comparison approach assumes the typical buyer will compare sales and asking prices in order to make the best possible purchase. Realizing the market is subject to error, the appraiser must select a sufficient number of sales at the retail level of trade that reflect the highest degree of comparability possible to reflect the market pattern. Comparable properties that require excessive adjustments may yield indications of value that can't be substantiated.

Five steps are generally used in the comparison process:

1. Sort the personal property into common categories; list manufacturer, model, and vintage year.
2. Research and select sales of comparable items of personal property at the current level of trade.
3. Document and confirm sales data.
4. Tabulate and adjust relevant units of comparisons.
5. Reconcile value indications and estimate value of each item of personal property.

Adjustments are always made from the comparable to the subject. If the comparable is better than the subject in a particular feature, a minus adjustment is applied to the sale price of the comparable property. If the comparable property is inferior in some feature, a plus adjustment is applied.

Unlike sales of comparable real property that are normally adjusted upward for time, the sales of personal property normally must be adjusted downward. This negative adjustment is required because depreciation of personal property typically exceeds the effects of inflation.

Summary

When sufficient market data is available, the assessor should take advantage of using the market approach to value. Generally, the assessor will need to develop market comparables to support the assessment of a unit of personal property when the taxpayer contests the assessment. Using the market approach can help the assessor avoid errors inherent in either the income or cost approach. When appropriately developed, the sales comparison approach can be used for:

- Machinery and equipment.
- Leased equipment.
- Motorized vehicles.
- Boats and trailers.

Trade level valuation concept

Property is appraised at the retail level of trade. In appraising tangible personal property, recognize the trade level at which the property is situated. Also recognize that tangible property normally increases in value as it progresses through production and distribution channels. Such property attains its maximum value as it reaches the consumer level. Personal property is valued at the retail consumer level.

The concept of trade level is important to maintain equity in the appraisal system.

The concept of trade level requires that:

1. Ownership in determining value is disregarded.
2. Determining value doesn't depend on costs.
3. Property carries all increments of value as it moves through the channels of trade.

Trade levels

There are five levels of trade to understand. Trade level is a concept recognized by professional appraisers, attorneys, and the courts. Some statutes mandate the trade level concept in the appraisal process. Many court cases through the years have supported this concept.

1. Manufacturer's level

This level should only be used in the appraisal process when the property is in the hands of the manufacturer and in the local manufacturer's plant.

2. Wholesale level

As property moves through the channels of trade, it increases in cost by virtue of freight, installation, fees, permits, overhead, intracompany profit, etc. These cost factors added to the property result in equity regardless of ownership. Thus, when property moves from the manufacturer's level to the wholesale level, the increments of value must be recognized at that level.

3. Distributor level

In some cases, this level is synonymous with the wholesale level. However, in certain cases there is a difference and, if so, the difference must be recognized in the appraisal process.

4. Retail level

The retail level is relevant in the appraisal of many properties. This includes the full "laid down cost" of the inventory up to this point. The increment of cost here is substantial since the inventory has moved to the level where it will be sold to the user or consumer.

5. User or consumer level

This level contains all costs and is the market cost to the consumer since the property has reached its final destination. In the case of "leased equipment" owned by the manufacturer, the user or consumer level is appropriate.

Real property vs. personal property

Why classify property?

Oregon law defines real property and personal property for property tax purposes in Oregon Revised Statutes (ORS) 307.010 and ORS 307.020. The Oregon Tax Court has also decreed that real property must be assessed as real property and personal property assessed as personal property (*First National Bank vs. Marion County*, 169 Or 595).

Classification procedures

Classification of property as either real or personal is based on ORS 307.010 and ORS 307.020. The Oregon Department of Revenue is responsible for clarifying those statutes, when necessary, with Oregon Administrative Rules (OAR). Administrative rules have the same authority as statutes. The rules that clarify the above-mentioned statutes are OAR 150-307-0010, OAR 150-307-0020, and OAR 150-307-0030.

The Oregon Tax Court ruling in *Seven-Up Bottling Co. of Salem Inc. vs. Oregon Department of Revenue* (case #2398), 3/87, provides a guide for determining real and personal property. Based on this case, the test for real vs. personal property for assessment purposes is actually a test of affixed or erected upon vs. moveable.

The current view states that if the item of property is “affixed to” or “erected upon” land or buildings and isn’t “moveable,” it’s real property. Conversely, if it’s not “affixed to” or “erected upon” land or buildings and is “moveable,” it is personal property. According to the Tax Court opinion in *Seven-Up Bottling Co.*, “. . . As a general rule, the Assessor is not required to consider the intention of the parties or the adaptability of the property.”

Defining the terms

Affixed or erected upon. Items of machinery and equipment that are bolted to, screwed to, nailed to, or attached to the building or land in a permanent manner or are, by virtue of their weight, rendered immovable are considered real property. A freestanding walk-in cooler in a convenience store isn’t considered moveable because of its weight. A service counter or gondola in the same store may be screwed, glued, nailed or otherwise attached to the land or building and, therefore, classed as real property. On the other hand, these items may be held in place by virtue of their weight and be readily moveable and, therefore, classed as personal property.

Moveable. Items of property that can be and are readily moved are personal property. A desk, though heavy, is generally considered moveable. A chair with casters is obviously moveable. Freestanding appliances may be heavy but are generally classed as personal property.

Assessment process

In an 1891 Oregon Supreme Court case, *Helm vs. Gilroy* (20 Or 517), the court stated that the line between real property and personal property is so fine that no rule can fit all cases. A century later, the statement is still accurate. For every clear-cut case there is an exception. Consider the case of DOR appeal #90-3006, *California-Oregon Broadcasting Inc. vs. Jackson County, Oregon*. It’s clear that, except for eleven foam panels that are attached to the building and are therefore correctly classed as real property, the machinery and equipment is moveable and should be classed as personal property. In other cases, the determination won’t be so clear.

Judgments between real and personal property must be made with cooperation between the real and personal property sections in the assessor’s office. This is so that assessable property isn’t overlooked or double assessed. Arriving at accurate assessments and providing equitable treatment is the primary goal.

Taxable personal property

All personal property that enhances or promotes the business is assessable. This includes decor or furnishings unless exempt by statute. Items of tangible personal property described by ORS 307.190(2)(a) are taxable whether or not they are fully depreciated for income tax purposes. Decor and furnishings might include:

- Paintings, posters, pictures, or other forms of art used to decorate the office or business.
- Scale models, sculptures, or carvings located in the building or on the grounds.
- Show cases displaying company products that are new, used, or broken.
- Mobiles, rugs, and tapestries.
- Taxidermist work.
- Aquarium displays and equipment used by the business for decoration.
- Vases or pottery.
- Displays.
- Books.
- Antiques.

Examples of taxable personal property to be reported on this return

(This isn't a complete list)

A/V equipment
Air conditioners
Aircraft equipment
Alarm systems
Amusement devices
Appliances—free standing
Art work
ATM machines—portable
Auto diagnostic electric
Auto repair equipment
Backbars
Bakery equipment
Barber shop equipment
Battery chargers
Beauty shop equipment
Bowling equipment
Bulk plant equipment
Butcher shop equipment
Cabinet shop equipment
Cable TV systems
CAD/CAM equipment
Calculators
Cameras
Cameras-digital-DVD-Video
Car wash equipment
Cash register
Cellular phones
Chain saws
Chairs
Child care furniture
Coin counters
Coin-op laundry equipment
Computers
Concession equipment
Construction tools
Copiers
Costume/tuxedo rentals
Decor
Dental equipment
Desks
Dictation equipment
Dies
Display racks
Dry cleaning equipment
Dryers
DVD players
DVDs (movies)
Electronic mfg. equipment
Fiberglass/boat molds
Filing cabinets
Fish processing equipment
Fitness equipment
Freezers
Frozen food cases
Golf carts and course equipment
Grocery equipment
Grocery store fixtures
Handpieces (dental)

Heavy equipment
Hospital equipment
Hotel furniture/fixtures
Ice cream machines
Ice making machines
Juke boxes
Landscaping equipment
Laser equipment
Lathes
Leasehold improvements
Libraries
Lift trucks
Linens
Logging equipment
Lottery video terminals
Machine shop equipment
Manufacturing—general
Meat processing equipment
Medical-high tech equipment
Medical-lab equipment
Medical-office equipment
Medical-surgical equipment
Medical equipment-major
Mining equipment
Mobile radio/phones
Mobile yard equipment
Modular offices
Molds
Motel furniture/fixtures
Movie production equipment
Musical instrument rentals
Newspaper equipment
Nursing home equipment
Office fixtures
Office furniture
Office machines
Optical equipment
Pagers
Pallet jacks
Pallets/bins/crates
Pay phones
Photographic equipment
Pinball machines
Pool tables
Popcorn machines
Printing equipment
Professional equipment
Professional equipment
Radio and TV broadcast
Radio and TV repair equipment
Recording studio equipment
Refrigerated cases
Rental equipment
Restaurant equipment
Retail store fixtures

Road construction equipment
Safe deposit boxes
Safes
Satellite dish relays
Saw mills—portable
Scanners
Scientific equipment
Service station equipment
Sewing/apparel equipment
Shake mills—portable
Sheet metal fabrication
Shelving
Shingle mills—portable
Signs
Small hand tools—
Barber and beauty
Carpentry
Construction
Landscape
Logging
Mechanics
Medical
Radio and TV shop
Soft drink equipment
Sound equipment
Steam cleaners
Survey equipment
Tanning equipment
Tavern equipment
Telephone systems
Testing equipment
Theatre/projection
Tire recapping equipment
Tool boxes
Touchscreen soft drink
machines
Tractors
TV sets
Typewriters
Unlicensed vehicles
Utility trailers—unlicensed
VCRs
Vending carts
Vending machines
Ventilating fans
Video/DVD game rental equipment
Video games
Video recording equipment
Video tape/DVD rental
equipment
Video tapes (movies) and cases
Video games
Video recording equipment
Video tape/DVD rental
equipment
Video tapes (movies) and cases

Walk-in coolers
Warehouse equipment
Washers
Winery equipment
Woodworking equipment
Workbenches
X-ray equipment

Fixed load and mobile equipment (ORS 801.285)

Air compressors and drills
Asphalt/rock crushing plants
Asphalt spreaders
Backhoes
Bituminous mixer
Bituminous plants
Bituminous spreaders
Bucket loaders
Catering/vendor trucks/
wagons
Concrete mixers
Concrete batch plants
Cranes
Crawlers
Ditchers
Earthmoving equipment
Electric generators
Excavators
Fork lifts
Front end loaders
High lifts
Levelling graders
Lighting plants
Motor graders
Paving equipment
Portable storage bins
Portable storage tanks
Power plants
Rotary screens
Sand classifiers
Scrap metal balers
Scrapers
Skidders
Tractors
Welding equipment
Yarders

Section 2: Confidentiality

Confidentiality

This chapter is intended to clarify your role in providing taxpayer assistance without violating disclosure laws and policies. Another source of information is the *County Disclosure Handbook*, 150-303-429. If you have questions about any inquiries for confidential information, talk to your supervisor.

ORS 308.290(7) describes the confidential material for personal property returns. The law states:

“(7)(a) All returns filed under the provisions of this section and ORS 308.525 and 308.810 are confidential records of the Department of Revenue or the county assessor’s office in which the returns are filed or of the office to which the returns are forwarded under paragraph (b) of this subsection.

(b) The assessor or the department may forward any return received in error to the department or the county official responsible for appraising the property described in the return.

(c) Notwithstanding paragraph (a) of this subsection, a return described in paragraph (a) of this subsection may be disclosed to:

(A) The Department of Revenue or its representative;

(B) The representatives of the Secretary of State or to an accountant engaged by a county under ORS 297.405 to 297.555 for the purpose of auditing the county’s personal property tax assessment roll (including adjustments to returns made by the Department of Revenue);

(C) The county assessor, the county tax collector, the assessor’s representative or the tax collector’s representative for the purpose of:

(i) Collecting delinquent real or personal property taxes; or

(ii) Correctly reflecting on the tax roll information reported on returns filed by a business operating in more than one county or transferring property between counties in this state during the tax year;

(D) Any reviewing authority to the extent the return being disclosed relates to an appeal brought by a taxpayer;

(E) The Division of Child Support of the Department of Justice or a district attorney to the extent the return being disclosed relates to a case for which the Division of Child Support or the district attorney is providing support enforcement services under ORS 25.080; or

(F) The Legislative Revenue Officer for the purpose of preparation of reports, estimates and analyses required by ORS 173.800 to 173.850.

(d) Notwithstanding paragraph (a) of this subsection:

(A) The Department of Revenue may exchange property tax information with the authorized agents of the federal government and the several states on a reciprocal basis, or with county assessors, county tax collectors or authorized representatives of assessors or tax collectors.

(B) Information regarding the valuation of leased

property reported on a property return filed by a lessor under this section may be disclosed to the lessee or other person in possession of the property. Information regarding the valuation of leased property reported on a property return filed by a lessee under this section may be disclosed to the lessor of the property.”

The requirements of confidentiality are further described in ORS 192.501.

Under certain conditions, the personal property returns may become public record. When an appeal of value on a personal property return is heard by the property valuation appeals board, the petitioner will be asked if the items listed in the appeal petition are included in a real or personal property return. If the information on the return will be used as evidence to support the petition, the board chair will advise the petitioner of the petitioner’s right to a confidential hearing.

If the petitioner waives the right to a confidential hearing, the minutes of the hearing along with the board’s decision become public record. If the petitioner requests a confidential hearing, the board chair will clear the room of disinterested parties. The hearing is held in confidence until the board is ready to make its decision. Any taped or written minutes of the confidential hearing are kept separately. The results of the hearing become public record.

Information that appears on the certified tax roll is available to the public unless otherwise noted.

Authorization to disclose

The law protects all returns from unauthorized disclosure and provides penalties to safeguard confidentiality. The taxpayer, however, may authorize the disclosure of all or part of their records to certain people in a number of ways.

The best way is to have the owner of record submit a signed confidentiality waiver request called “Authorization to Represent Taxpayer and/or Disclose Information.” This form removes all doubt about what records may be revealed. A letter signed by the owner with the same information is also acceptable. Copies of confidential tax returns or reports should not be provided without written authorization.

Even if the taxpayer doesn’t give direct authorization, implied consent is permissible under certain circumstances. If an attorney, tax practitioner, or knowledgeable employee of the taxpayer calls about a billing which was recently sent to the taxpayer, it can be assumed that the taxpayer referred the matter to them to help resolve. Failure to file notices, verification or an accounting of payments received, penalties, and payoff balance can be included in this category. The fact that there is no signed authorization on file is not a reason to refuse help to a taxpayer.

Telephone disclosures

Confidential tax information can be disclosed over the telephone if the caller clearly establishes identification as the owner or authorized representative on file. If the employee has any doubt about the identity of the caller or the caller's right to receive such information, a written request may be requested or arrangements may be made to mail the requested information to the taxpayer's address.

Warrants

When a warrant for the collection of delinquent personal property taxes is recorded at the county courthouse, it becomes a matter of public record. This does not mean that the tax return and all details surrounding the case have lost their confidential status. The public record includes all information contained on the warrant, including the meaning of any codes. This means you can disclose the tax year, type of tax, what penalties were assessed, etc.

Secrecy laws certificate

You must sign this certificate as a condition of employment by the county. Your signature means you have read and understood the disclosure statutes and you are aware of the penalties for unauthorized disclosure.

People working for the county under a contract should sign the certificate if they have potential exposure to confidential materials.

Even though a person has signed the certificate, he or she does not have automatic access to confidential materials. As in all cases, a "need-to-know" must be present to gain access.

Penalties

Be careful! Revealing confidential information to the wrong person is serious. Improper disclosure of certain confidential tax information could result in criminal penalties. See ORS 305.990 and 308.990(3). This means you could be fined up to \$10,000 or by imprisonment for not more than one year in jail, or both. In addition, you

could be liable for civil damages, which are not limited by statute, and dismissed from county service.

Subpoena

Subpoenas should be referred to county counsel for handling.

Any prepaid fees accompanying the subpoena must be turned over with the subpoena. In most cases, they are returned to the issuing party.

Tax court

Generally, taxpayer information presented to the Tax Court loses its confidential status. The court may close the courtroom and seal the records in some cases.

Third-party information received from other taxpayers cannot be revealed in Tax Court unless the court agrees beforehand to keep the information confidential, unless permission is obtained from the third party to disclose the information.

Public records

Every person has the right to inspect any public record of a public body unless otherwise prohibited by law. The disclosure laws prevent personal property records from being examined by unauthorized persons.

An owner has the right to inspect his or her own return. This does not include any third-party information submitted in confidence that may have been attached to the return. The owner under a public records request may examine correspondence, other notes or contact sheets in a file.

Disposal of confidential materials

Any letters, documents, notes, printouts, microfiche, or carbons containing confidential taxpayer information must be disposed of separately from normal trash. Even simple notes containing nothing more than a taxpayer's name, address, or Social Security number are considered confidential. These materials must be disposed of according to county procedures.

Person, agency, or public official	May obtain	Required documentation	Reference	Notes
Accountant	Confidential information as specified by taxpayer with prior written authorization from the taxpayer.	Taxpayer letter of authorization.	ORS 321.684 305.230	Written authorization must include tax year(s), type of return, and the taxpayer's signature.
Administrative Law Judge (presiding over Public Utility Commission Water Company hearings)	Confidential information as specified by the taxpayer with prior written authorization from the taxpayer.	Written authorization from the taxpayer.	ORS 308.290(7)	Written authorization must include tax year(s), type of return, and the taxpayer's signature.
Adult and Family Services	Information about the income and property of parents who abandon or fail to support children receiving public assistance.	Requests must be in writing. Signed secrecy certificates.	ORS 308.290(7) 412.094	Information to be used only to administer public assistance programs for children.
Archivist	May examine and receive any information for storage purposes.	Signed secrecy certificate.	ORS 357.875	Archivist must protect confidentiality of information.
Assessor	Industrial property tax information. Personal property and real property return information.	Signed secrecy certificates by employees of office.	ORS 308.413 308.290 OAR 150-308-0500	On a need-to-know basis in the office where the return is filed, returns filed in more than one county, or transferring property between counties.
Authorized representative	Information from the documents specified in the authorization form. No third-party information will be disclosed.	Taxpayer letter of authorization to represent.	ORS 321.684 305.230	An associate or employee of the representative may have information only if the authorization is broad enough to include that person.
Bankruptcy court/trustee	Information from the return required for filing a claim.	Notification of bankruptcy.	ORS 308.290 311.480	A trustee is the legal custodian of a bankrupt estate and has responsibility and authority to pay claims.

Person, agency, or public official	May obtain	Required documentation	Reference	Notes
Property Valuation Appeals Board	Industrial property tax information. Personal and real property return.		ORS 308.290 308.411	On a need-to-know basis only. The board must convene an executive session.
Bookkeeper	Confidential information as specified by taxpayer with prior written authorization.	Taxpayer letter to represent.	ORS 321.684 305.230	Written authorization must include tax year(s), type of return, and the taxpayer's signature.
Corporation officer	Information from the return, utility assessments, and property appraisals.	Proper ID and authorization on corporate letterhead or listing from return.	ORS 308.290	Information may be provided to a current corporate officer for any tax year of the corporation.
County assessor	Industrial property tax information. Personal property and real property return information.	Signed secrecy certificates by employees of office.	ORS 308.413 308.290 OAR 150-308-0500	On a need-to-know basis in the office where the return is filed, returns filed in more than one county, or accounts transferring property from one county to another.
County governing body	Confidential information as specified by the taxpayer with prior written authorization from the taxpayer.	Authorization from the taxpayer.	ORS 308.290	
County legal counsel	Any confidential information required for the administration of tax laws.	Signed secrecy certificates.	ORS 308.290 203.145	Has access to files of assessor for purpose of rendering legal services to assessor.
Department of Revenue employees	Any confidential information required for the administration of the tax laws.	Signed secrecy certificates.	ORS 308.290 321.684	All information is provided on a strict need-to-know basis.
Division of Child Support, Department of Justice	May have information about the location, income, and property of parents who abandon or fail to support the children receiving public assistance.	Signed secrecy certificate. Requests must be in writing.	ORS 321.684 308.290(7) 180.320 412.094	Information to be used only to administer the public assistance program for children.

Person, agency, or public official	May obtain	Required documentation	Reference	Notes
Grand jury	Information submitted for the prosecution of violations of the criminal laws in connection with the filing of a return or claim.	Signed secrecy certificates.	ORS 305.225	May not be used for prosecution of non-related crimes. Information loses its confidentiality when it is presented as evidence during a trial.
Guardian Tax Court	A guardian of an incapacitated person may have information from that person's return. A guardian of a minor may have information from the minor's return.	Letters of guardianship.	ORS 314.840(1)(a)	
Husband or wife	Information from any property return.	Proper identification or written authorization for separately filed returns.	ORS 308.290(7)	A spouse cannot have information from a separately filed tax return without written authorization.
Individual taxpayer	Information from their own return.	Proper identification.	ORS 192.420 192.501 308.290	
Informant	No information, even if the information provided was useful.		ORS 308.290 314.855	
Internal Revenue Service (IRS)	Information on tax returns of individuals, corporations, partnerships, fiduciaries, and estates.	Must be authorized to request information or have written authorization from taxpayer.	ORS 308.290(7) 321.684 321.381	Information may be exchanged only through the Department of Revenue's IRS liaison or with written authorization from the taxpayer.
Law enforcement agencies (state)	Taxpayer name, address, ID number, amount of check, check date, altered name and address, and the document itself.	Signed secrecy certificates.	ORS 305.225 321.684	Disclosure can only occur when investigation is for mail theft, forgery, counterfeiting, or check altering.
Legislative Revenue Office	Information needed for revenue research and estimates.	Signed secrecy certificates.	ORS 308.290(7) (c)(F) 173.850	Information revealing a taxpayer's identity may not be removed from the office.

Person, agency, or public official	May obtain	Required documentation	Reference	Notes
Lessee	Information regarding valuation of leased property reported on property return filed by lessor.	Proper documentation and identification.	ORS 308.290(7)(d)(B)	
Lessor	Information regarding valuation of leased property reported on the property return filed by lessee.	Proper documentation and identification.	ORS 308.290(7)(d)(B)	
Magistrate Court	Records submitted as evidence in a court case. Once entered, the information normally loses its confidentiality.		ORS 118.525(1) 305.430(2)	Certain records can retain confidentiality if prior arrangements are made with the court.
Oregon State Police	Information from a tax return for criminal investigations in connection with the filing of a return, report, or claim. Violations include perjury, theft, and forgery.	Signed secrecy certificates.	ORS 305.225 321.684	Information requested for evidence in crimes unrelated to the validity of a return, report, or claim cannot be disclosed.
Oregon State University	Timber tax information for surveys and programs related to forest management.	Signed timber tax secrecy certificate.	ORS 321.684(1)(e)	Information is limited to names and addresses of taxpayers filing timber tax returns under the small owner election.
Partner of a partnership	Information from a return, utility assessment, or property appraisal of the partnership.	Proper identification.	ORS 308.290	Individual must have been a partner during any part of the requested tax year.

Person, agency, or public official	May obtain	Required documentation	Reference	Notes
Relative (other than spouse)	Any information pertaining to an authorized year regarding the return, billing, refunds, payments, penalty and interest, or financial information. No restricted third-party information when the information was obtained after the return was filed or in the course of an investigation.	Letter of authorization to represent or power of attorney.	ORS 305.230 321.684	
Reporter	General information only. May not have specific taxpayer information.		ORS 308.290(7)	Refer reporter questions to appointed authority.
Secretary of State	Information necessary for audit of the county or the Department of Revenue.	Signed secrecy certificates.	ORS 308.290(7) 321.684(2)(f)	
Spouse	Information from any property return.	Proper ID or written authorization for separately filed returns.	ORS 308.290(7)	A spouse cannot have information from a separately filed tax return without written authorization.
State Archivist	May examine and receive any information for storage purposes.	Signed secrecy certificates.	ORS 321.684(2)(f) 357.875	Archivist must protect confidentiality of information.
Stockholder/ shareholder	Confidential information only with prior written authorization from corporation officer.	Written authorization from corporation officer.	ORS 308.290(7)	Stockholders and/or shareholders cannot have access to corporation returns without prior authorization.
Tax collector	Information needed to collect delinquent personal property taxes.	Signed secrecy certificate.	ORS 308.290(7)	
Tax Court	Records submitted as evidence in a court case. Once entered, the information normally loses its confidentiality.		ORS 305.430(2)	Certain records can retain confidentiality if prior arrangements are made with the court.

Person, agency, or public official	May obtain	Required documentation	Reference	Notes
Tax preparer	Confidential information only with prior written authorization from the taxpayer.	Written authorization to represent.	ORS 308.290(7)	Written authorization must include tax years, tax program, and the taxpayer's original signature.
Taxpayer	Any information from taxpayer's own return, billings and refunds, payment information, correspondence or other information/data.	Proper identification.	ORS 192.420 192.501 308.290(7)	
Taxpayer's authorized representative	Any information pertaining to an authorized tax year regarding the return, billings, refunds, payments, penalty and interest, or financial information. No restricted third-party information when the information was obtained after the return was filed or in the course of an investigation.	Written authorization to represent.	ORS 305.230 321.684	An associate or employee of the representative may have information only if the authorization is broad enough to include that person.
Title/escrow companies	Confidential information only with prior written authorization from the taxpayer. For Senior and Disabled Deferral program, payoff information is not confidential and may be disclosed.	Written authorization from taxpayer.	ORS 314.835 314.840	Information may be disclosed from a recorded warrant.
Trustee of a trust	Copy of trust agreement.	Written request by trustee.	ORS 128.650	Trustee is the person requested to file the return for the deceased.
Wife or husband	Information from any property return.	Proper ID or written authorization for separately filed returns.	ORS 308.290(7)	A spouse cannot have information from a separately filed tax return without written authorization.

Section 3:

Discovery/Audit Process

Discovery

All taxable personal property is assessed as of the January 1 assessment date in the county where it's located. Taxable personal property is to be reported by March 15 each year. This includes machinery, furniture, equipment, etc., used previously or presently in a business, including items that have been fully depreciated or expensed for income tax purposes.

Individuals, partnerships, firms, and corporations that fail to file a return are subject to assessment through the discovery process. Complete discovery depends upon county funding, cooperation of the taxpayer (owner, lessee, or lessor), and the resources available. Basic office policies and procedures should be developed that govern the discovery of personal property.

Two of the most common methods of discovering personal property are the self-reporting of the taxpayer and field research by county staff members. A taxpayer who has taxable personal property must report it to the county in which the property has situs. Situs is its location on the assessment date (January 1 of any year). The property is taxable for the entire year at its situs. As county staff do appraisals in the field, they should watch for new businesses and relay that information to the personal property personnel.

The following lists are the most usable and proven methods; however, this list isn't inclusive.

At the local level information may be obtained from numerous sources.

- Aerial photographs: Aerial photos, if available, can show the location of equipment and new business construction.
- Building permits: Local cities and counties can often provide lists of permits for new commercial construction and remodeling.
- Bulletin boards in stores, cafes, and other places of business: Bulletin boards can be a good source of information on "repair," "maintenance," and "personal services" types of companies.
- Business directories: Commercially produced directories can provide listings of businesses by address, business name, telephone number, and "doing business as" (dba). A reverse telephone directory also can be useful.
- Business vehicles: Business names and telephone numbers on vehicles can be a starting point for discovering new businesses.
- Chambers of commerce: Local chambers of commerce can supply names of member businesses or provide membership listings for a specific geographic location.
- City and county business license listings: Local

business license listings are one of the most efficient and effective ways to find new businesses.

- Local newspapers: In addition to news stories, some papers publish lists of new businesses and commercial leases. When you scan the newspaper advertisements, play special attention to "Grand Opening" sales and other indicators of change.
- Public health department: A municipal health department may have lists of registered restaurants, hotels/motels, adult foster care homes, and day care centers with the current operators.
- Publications: Phone books newspapers ads, television, trade journals, and the Contractor's Board directory provide useful information.
- Small business associations: Like chambers of commerce, business associations may be able to provide lists of member businesses.
- Tenant lists: Shopping mall or commercial building managers can supply a listing of the tenants, what the lease covers, when the business started operating, and who owns what fixtures in the building. These listings can be used in conjunction with the directories in building lobbies and hallways. Sometimes tenants in sublet space don't appear on the tenant listing, but are shown on building directory.
- Trade directory and reports: Professional directories, if available, can help in identifying certain types of businesses.
- Utility companies: Natural gas, electric, cable television, and other utilities may provide business names, owners, and addresses of businesses.

There are also a number of sources at the state level.

Many business activities require state licensing or registration (see Section 9, Licensing/Registration, page 9-1). Other departments with information include:

- Construction Contractor's Board: The CCB has telephone access for information on builders and landscapers.
- Forestry Department: The Forestry Department can provide information on timber sales. They tell who the purchasers are and where the logging operations are conducting business.
- Marine Board: The Marine Board can provide a list of registered boats. Information includes the name and address of any business that has boats in the state and a description of the property. The Department of Fish and Wildlife can provide information on commercial fishing vessels.
- Oregon Liquor Control Commission: The OLCC can

provide license lists and ownership information for businesses over which they have jurisdiction.

- Secretary of State's office—corporate charters: New corporate charters are recorded with the Secretary of State's office in Salem. Lists of new and existing businesses may be requested.
- Secretary of State's office—Uniform Commercial Code (UCC) forms: A UCC form is filed when a piece of equipment is encumbered with a commercial lien. These forms are filed with the Secretary of State's office in Salem.
- State Lottery: The Lottery office can tell you what equipment is being leased and who is the lessor. See the Appendix for the names and addresses of providers of leased lottery equipment to the state. The lottery equipment leased by the state from a taxable entity is taxable.

Other methods of discovery:

- Drive the county with a tape recorder dictating every business name. Transcribe the information and cross check it with the assessment roll.
- Dexknows.com. This site will list all like businesses, including names, addresses, and telephone numbers.

This can also be cross-checked with the assessment roll.

Once the property has been discovered and the owner or person with control identified, the assessor should establish an account for the business and add the account to the assessment roll. If the discovery occurs after the tax roll is certified in October, the property is added to the assessment and tax rolls using the statutory methods described in the section, "Corrections to the roll." The assessor determines the value to be added from the best available information.

Under ideal conditions, appraisers would physically list individual personal property items. Time and personnel constraints, however, usually dictate the use of a reporting system on a form completed by the taxpayer or agent, and supplemented by periodic audits.

The internet

A vast amount of information is available on the internet. The State of Oregon has a website, www.oregon.gov; the available information is intended to inform the public about state programs and regulations and may be useful for discovery purposes.

Commercial online services have been created to promote local businesses and may be useful for discovery.

Audit

The assessor should establish an audit program designed to ensure a full and proper listing of all personal property in the county on the assessment date. It's the assessor's responsibility to assure all property is being assessed and appraised in a uniform manner. The assessor should establish staff needed, funds required, and programs necessary to accomplish this objective.

It is important to audit for the following reasons:

- Ensure uniformity.
- Ensure correctness of property listed.
- Ensure complete listing of all property.
- Verify that costs listed conform to office standards; i.e., cost includes freight, fees, permits, licenses, material, and installation.

Emphasis should be placed on:

- Major accounts.
- Accounts with significant changes from the previous year.
- Accounts that have leased equipment.
- Accounts that are suspected of being improperly reported.

This could include accounts with poor filing habits. All accounts should be physically audited periodically. Remember that the purpose of an audit is to verify that all personal property items have been reported and the information given is accurate.

In determining whether all assessable items have been reported, special attention should be directed to standby, permanently idled, retired, fully depreciated, and uninstalled equipment. Regardless of book value, such equipment should be listed and valued unless specifically exempted. The status and sites of personal property as of the assessment date determines its assessability for tax purposes.

Additional criteria that may be used when selecting accounts to audit include:

- Chose a value range, compare similar businesses, and audit those with variances.
- Using the state recommended classification system (or the county's version of it), select types of businesses and compare the assessed value of the businesses.
- Review returns of all new businesses and use the review as an opportunity to train the persons responsible for completing the form.

A carefully planned, managed, and properly administered audit program is a tremendous asset to any county. The program usually is cost effective and, if properly managed, gives credibility to the assessor's office.

Typical audit program (step-by-step approach)

Desk/office audits: Since Oregon counties utilize a self-declaration system, a review of each return is necessary. These audits are conducted in the office using guidelines established by the assessor to make sure the return is complete. The return should contain correct information as to the type of business, situs, owner, mailing address, and other useful information. It should also contain an adequate listing of personal property for the type of business being conducted. Changes should be identified and those needing more information should be set aside for the next phase.

Telephone audits: These are one of the quickest and least expensive ways to discover personal property. They are conducted in the office by phone and are used to verify reported data and gather the "additional information" needed after desk audits. Questions should be direct and to the point. Let the taxpayer volunteer information about size, market share, number of employees, expansion, and whatever information gives the auditor a clearer picture of the business and the equipment. Many businesses have a "bare minimum" of equipment. Use benchmark listings as a "checklist" if necessary. This type of audit can be used for a majority of small- to moderate-sized businesses. All non-filers should be contacted.

Correspondence audits: These are generally the same as telephone audits but are more formal. Details can be requested by correspondence when a taxpayer's listing is reviewed. Care must be taken to follow-up on correspondence; it's very easy for the taxpayer to ignore a letter. They are more productive if "targeted" to specific taxpayers rather than general form letters.

Tax return audits: These are more in-depth audits in which information on an income tax return is compared with information on the personal property return. Request a copy of the federal or state income tax return from the taxpayer. Ask for records including the fixed asset list, depreciation schedule, expensed items, and records of assets no longer listed. Comparing the information on the returns will reveal any items that are expended and not reported.

Physical inspections: This can range from the "drive by and see" inspection to the "visit, list, and count" inspection. It can be the most expensive and time consuming of all audit methods. They can be very productive if a

systematic method (cycle area, map and tax lot, like business type, etc.) is used. Staff must be adequately trained in communication skills and appraisal methods. Useful tools are “benchmark” lists, copies of prior returns, business trade journals, etc. These help inform the appraiser as to what to look for and typical real market value.

Field audits: These audits should be conducted by the

personal property staff on a regular basis. Purpose of the field audit is to verify that all personal property items have been reported accurately. Compare the findings with the prior year return. When commercial appraisers visit accounts, they could take a listing of the prior year’s return information and compare it with the assets currently on site.

Corrections to the roll

Corrections or modifications to the roll are handled differently depending on the time of year they are made. For most of the year, the assessor updates and corrects the assessment roll; for part of the year, it is the collector who corrects the tax roll. The roll is the assessment roll while it is in the assessor's office; when it is delivered to the tax collector, it becomes the tax roll or, in some counties, the assessment and tax roll.

The assessor determines the value as of January 1 of all taxable property within county; this becomes the assessment roll. The assessor has control of the roll from January 1 through the date the roll is certified and delivered to the tax collector.

The assessor must deliver the roll to the tax collector in time to ensure tax statements will be mailed by October 25. Once the assessment roll is delivered to the collector, it becomes the tax roll (ORS 311.115). It's the collector who has control of the roll for the remainder of the fiscal/tax year.

Updates and changes

From the January 1 assessment date through September 25, the assessor updates values, revises account information, and does the work necessary to make the assessment roll as accurate as possible.

After September 25, the assessor can make no changes to the roll unless otherwise provided by law (ORS 308.242, 311.208).

Changes authorized by statute include: consolidations and divisions of property, ownership of record, and value updating (those values that existed January 1 but weren't in existence in the prior assessment year). These changes may be made between September 25 and the time rate calculation is finalized if there is time to ensure tax statements will be mailed on or before October 25.

The authority for making these changes derives from ORS 308.219(2), which states that the entire assessment and tax roll is to be printed as of the date the roll is delivered to the tax collector. This printed roll is the roll as prepared September 25 with all corrections, changes, and additions that have occurred up to the date the roll is delivered to the tax collector.

Additional changes by the assessor

The passage of Ballot Measure 50 in May 1997 and the resulting enabling legislation provided the assessor with two more changes that can be made after the assessment roll is delivered to the tax collector.

The first is a correction that increases value on the current year roll only. ORS 311.208 states that the correction applies only to errors that would be subject to correction

under ORS 311.205. The correction must be initiated before December 1. The owner must be notified by mail and the notice must be sent prior to December 1. The notice must state the date and amount of correction, the amount of any additional tax, the date any additional tax due, and the owner's right to appeal to PVAB. The correction is made using the process described in ORS 311.205(3).

The second change the assessor can make after the roll has been certified is value reduction under ORS 308.242. This statute prohibits changes in the assessment roll after September 25 except under certain conditions. The statute says the assessor "may make changes in valuation judgment that result in a reduction in the value of the property" after the assessment roll has been certified and on or before December 31 if no petition has been filed with the property valuation appeals board (PVAB).

The assessor follows the error correction process in ORS 311.205 and ORS 311.216 to 311.232 to make these changes.

If a petition with PVAB has been filed, the assessor may, up to the time of the convening of the board, stipulate to valuation judgment change that will result in a reduction in the value of the property. The assessor uses the process for correcting errors or omissions outlined in ORS 311.205 to make the reduction on the roll.

Collector corrections

After the assessor delivers the roll to the tax collector, the tax collector, as officer in charge of the roll, may correct the roll to conform with facts. Corrections are made with the agreement of the assessor or the Department of Revenue. Direction for correction must be in writing and must state the type of error and statutory authority for correction [ORS 311.205 (2)(a)].

The roll may be corrected for any year, or years, not exceeding five years prior to the last tax roll certified. The tax resulting from a value correction is deemed assessed and imposed for the year to which correction applies and isn't considered in calculating the limitation (Measure 5) impact for the year in which it's billed. The additional value and resulting tax is considered in calculating the limitation impact on an individual account for the year to which the correction applies. The difference between the original tax imposed and the newly calculated imposed tax is added to the roll.

Three specific kinds of roll corrections are authorized by statute after the collector receives the roll: error or omission of another kind, clerical error, and omitted property. The general statute for corrections to the roll is ORS 311.205, and ORS 311.216-232 for omitted property.

Clerical error

ORS 311.205(1)(a) allows the roll to be corrected for clerical errors. Clerical errors are limited to those errors that can be identified just using the records of the assessor or the Department of Revenue. A clerical error is an error in the records that would have been corrected if it had been found prior to the certification of the assessment and tax roll in the year of assessment.

Clerical error is an arithmetic or copying error or misstatement of property value that is apparent from the office records. It's not a value judgment. Administrative rule 150-311-0140 further defines clerical errors.

The omitted property notification process is used to notify the taxpayer of additional taxes imposed due to clerical error.

Other errors or omissions

The tax collector, as officer in charge of the roll, may correct any other error or omission of any kind except valuation judgment [ORS 311.205(1)(b)], except when the account is under appeal to Tax Court if the correction would result in a reduction of tax owed. Examples of other errors or omissions include correction of the tax limit calculation, elimination of an inaccurate assessment (such as property belonging to another on assessment date), the correction of an error in the assessed value of property resulting from an error in the identification of a unit of property, and correction of value change on appeal.

The process for notifying the taxpayer of additional taxes imposed due to the correction of an error or omission of any kind parallels the omitted property notification process.

Errors of this type are further defined in OAR 150-311-0170.

Omitted property

The assessor may correct the roll to add omitted property using the authority in ORS 311.216–311.232. Omitted property is defined as any part of any real, personal, or centrally assessed property that has been omitted due to the assessor's lack of knowledge of its existence. However, undervaluation of a property due to the assessor's failure to consider a portion of the property is not omitted property.

When the assessor discovers omitted property, the property may be added to the current roll and up to the five preceding rolls (ORS 311.216). Upon discovering omitted property, the assessor must notify the property owner of the intention to add the omitted property to the roll (ORS 311.219). The taxpayer has 20 days to show cause why the omitted property shouldn't be added to the roll (ORS 311.219). Unless cause is found, the assessor corrects the assessment roll and gives the collector a written statement instructing the collector to make changes in the tax

roll. The assessor at the time also notifies the taxpayer by written notice, sent by certified mail, of the date and amount of correction (ORS 311.223). The taxpayer may appeal the value of the omitted property to the Magistrate Division of the Tax Court [ORS 311.223(4)]. The taxpayer may not appeal the omitted property value, or correction, to PVAB. The taxpayer is sent a billing for additional taxes and allowed a discount if these taxes are paid by the 16th of the following month (ORS 311.229). To bill the additional tax in October of the current year, the roll must have been corrected no later than June 30.

OAR 150-311-0210 further clarifies omitted property corrections.

Interest and discount

Interest accrues on all additional tax from the 16th of the month following the month the taxes are billed. Interest accrues at the statutory rate.

The added taxes are treated as though they were extended on the tax roll timely in the year billed. The taxes are considered delinquent when other taxes from the year to which these taxes are added become delinquent.

When value is added to the tax roll under ORS 311.205, 311.206, or 311.216 to 311.232 and the tax that becomes due as a result of the addition is paid before the 16th of the month following the month of the extension, a discount is allowed.

Valuation judgment

ORS 311.205(1)(b) states that the officer may correct an error in valuation judgment at any time, in any account, when an appeal has been filed in the tax court alleging that the value on the roll is incorrect if the correction results in a reduction of the tax owed on the account. Any corrections to accounts that are valued by the Department of Revenue under ORS 306.126 and 308.505 to 308.665 may not be made without the prior approval of the department.

Errors in valuation judgment are those where the assessor or the department would arrive at a different opinion of value. Corrections that aren't correction of valuation judgment errors include, but aren't limited to, the elimination of an assessment to one taxpayer of property belonging to another on the assessment date, the correction of a tax limit calculation, the correction of a value changed on appeal, or the correction of an error in the assessed value of property resulting from an error in the identification of a unit of property, but not an error in a notice filed under ORS 310.060.

If the correcting officer is uncertain whether an error or omission is a valuation judgment error, or a correctable error under ORS 311.205, the determination should be considered a valuation judgment OAR 150-311-0150.

Situs

All personal property must be assessed at its situs as of January 1 at 1 A.M. unless specifically provided otherwise (ORS 308.250). This includes property temporarily located in Oregon, not in transit, if:

- It's the intention of the owner that the property be here for the time being,
- The property is performing the function of service for which it was designed in the course of the owner's business, and

- It's not in the state solely for repair.

These same guidelines apply to property with a home base in a county (within the state) other than where it's located. (An example of this is logging equipment in county A, owned by a company with a home base in county B. The equipment in county A is performing its function for the benefit of its owner and is taxable in county A.)

Section 4: Returns

Computation of the personal property return

This is a general guide for computing the personal property return. It deals with most of the problems that arise during the assessment process of personal property, but can't cover all circumstances. Each county will have to develop specific guidelines depending on the system it uses.

Pre-examination of the returns

- Check the returns for changes in mailing address, situs, name, and dba.
- Remove for later processing accounts to be assessed penalties and accounts to be deleted.
- Retain the envelopes from returns postmarked after the due date; the postmark is the primary evidence of late filing.
- Review returns for completeness. Check to see if the taxpayer has completed the form correctly.
- Make sure entries under Schedule 2 aren't totals of all equipment. Often the taxpayer will summarize all equipment in this section.
- Verify that equipment entered in Schedule 5 as owned by the taxpayer isn't listed as leased equipment in Schedule 1.
- Review the prior year's return, the file folder, and the current return for any special notations.

Schedule 1—Leased or rented property

If leased equipment is reported, check the leasing company list or file to see if the lessor is already being assessed. If the lessor is being assessed, write "lessor" in the total column for that lessor. If the lessor isn't being assessed, assess the equipment listed to the lessee's account. Develop a system for cross-referencing leased equipment to avoid either double assessment or not assessing leased equipment.

Schedule 2—Noninventory supplies

Noninventory supplies include paper sacks, printed forms, stationary, business cards, pallets, fuels, medical and dental supplies, carpet samples, cleaning supplies, spare parts, office supplies, fast food containers, restaurant supplies, and all other consumable items. These items don't become a part of the finished product and won't be directly sold to the customer. If no supplies are reported, estimate a value based on similar businesses, add a percentage of the assessed value (such as, $3\% \times 50,000 \text{ AV} = \$1,500 \text{ NIS}$) or refer to prior years' returns to see what was reported. Review the values entered in each of the supply categories and the total for excessively low or high values.

Schedule 3—Floating structures

This schedule is designed to record assessment data about houseboats, boathouses, commercial watercraft, barges, tugs, and similar vessels.

Schedule 4—Libraries

Professional libraries; reference manuals, CDs, and books; technical documents and manuals; federal, state, and local law libraries, etc., are to be reported by the taxpayer along with acquisition dates and costs. Law libraries may be valued by the taxpayer using the market data provided in the Oregon Bar Bulletin. Data provided on compact disc (CD) such as law libraries, graphics files, clip art, photographs, and music are all assessable as library data and should be reported and valued.

Schedule 5—All other property

Most of the furniture, fixtures, machinery, and equipment found in a business will be reported on this schedule unless everything used in the business is leased. Each item of property should be reported clearly enabling the correct classification of the item into the appropriate age/life group. The acquisition date and cost of the item also must be reported. Using the appropriate valuation factor from the personal property valuation guidelines, depreciate the equipment to arrive at real market value. If the information is incomplete, contact the taxpayer for clarification.

Establish office procedures for assessing and taxing reported leasehold improvements. Work with the commercial real property appraisers to be sure all taxable property is assessed but not double assessed.

Most returns should have a value for small hand tools, as there is in-house maintenance in virtually every type of business. Be aware that taxpayers may include values for larger tools that should be reported separately. Verify that the total shown for small hand tools isn't the total estimate of value for Schedule 5. The value given for small hand tools is accepted at the taxpayer's estimate.

Total value

Enter the total real market value for each schedule on the appropriate line in the upper right hand corner on the front of the return. Add all value totals from Schedules 1 through 5 and enter the total RMV on the front of the return.

Because the penalty for late filing or not filing a return is based on the tax levied, the penalty can't be determined until taxes are calculated in October. You will need to

record the date the return was postmarked so the applicable penalty can be computed.

Compare the total value against last year's total. If there is a large difference in value, review the additions/deletions. If there is no explanation for the large increase/decrease, re-check your depreciation factors, calculations, and entries. If there are still unexplained differences, contact the taxpayer.

Be aware that certain items of property shown on the taxpayer's list of depreciable assets may be exempt from taxation such as licensed motor vehicles, aircraft, and watercraft and computer software other than the operating system. Some items listed may be real property such as leased office space, wall-to-wall floor covering, or sprinkler systems. These items shouldn't be included in the determination of the real market value of the taxable personal property.

Depreciation

Depreciation is a loss or reduction in value from any cause. Depreciation can be divided into three categories: physical, functional, and economic. Under each of these types of depreciation there is curable and incurable.

- Curable physical deterioration is loss in value due to breakage, damage, or wear and tear; the financial benefit of curing the problem must exceed the cost of the cure.
- Incurable physical deterioration is loss in value due to breakage, damage, or wear and tear; the cost of the cure must exceed the financial benefit of the cure.
- Curable functional obsolescence is a loss in value due to inadequate, super adequate, or obsolete design; the financial benefit of curing the problem exceeds the cost of the cure.
- Incurable functional obsolescence is a loss in value due to inadequate, super adequate, or obsolete design; the cost to cure exceeds the financial benefit of the cure.
- External or economic obsolescence is a loss in value due to diminished desirability or utility as a result of economic forces outside the property, e.g., changes in government regulations.

Physical deterioration in machinery and equipment is loss of value due to breakage, normal disintegration, and wear and tear on the machinery in service.

Functional obsolescence in machinery and equipment is usually measured in terms of the impact that cost of operation has on the income the machine yields, or the impact that reduced production capacity has on the potential income.

Economic obsolescence in machinery and equipment is the loss in value arising from forces outside the property

itself. This might be caused by laws enacted. For example: logging on federal land compared to private land.

Accrued depreciation is the difference between the property's replacement cost and its market value. Accrued depreciation is generally estimated based on the relationship of effective age to total economic life:

$$\frac{\text{Effective age}}{\text{total economic life}} = \text{\% of depreciation}$$

Effective age is defined as the age indicated by the condition and utility of the property.

Economic life is defined as the estimated period of time that the property will contribute value.

Percent good

When using the market-related cost approach, the appraiser develops a market depreciation (remaining percent good) that doesn't separate these categories of depreciation. Extraordinary properties may require special analysis.

To accurately and uniformly measure market depreciation, the appraiser must develop depreciation benchmarks. The benchmarks should be established for personal property by category.

After categorizing the personal property and estimating replacement cost new, estimate the remaining percent good. Percent good is the key to the market-related cost approach. However, depreciation measurement is the weakest part of the cost approach applied to personal property units.

The percent good ties the cost approach to the market by measuring the remaining percent good after all forms of depreciation have been determined.

Appeals

Taxpayers have the right to appeal the value of personal property when the taxpayer believes the county assessor has wrongly estimated the value of the property. They may also appeal the penalties charged for late filing of a current year's real or personal property return.

PVAB appeals

The taxpayer may appeal to PVAB. The petition may be filed with the clerk of the board anytime after the date tax statements are mailed, but no later than December 31.

When the taxpayer appeals, the burden of proof is on the taxpayer. Convincing evidence must be presented that the assessor's estimate of value is wrong. The taxpayer must show the value requested is correct. The value the board considers is the value of the property as it existed on the January 1 assessment date of the tax year.

The county PVAB may determine:

- Whether the assessor's value fairly reflects real market value for the tax year.

The board may waive all or a portion of a penalty imposed for the late filing of a return if:

- The taxpayer can prove there was good and sufficient cause for the late filing, or
- The year for which the return was filed was both the first year that a return was required to be filed and the first year you filed a return.

An appeal to PVAB must contain a list of the individual items or the schedules/categories that identify the property being appealed, the value(s) on the tax roll, and the value(s) being requested. The board doesn't have jurisdiction to act on an incomplete or incorrect (defective) petition. If a petition is defective, it should be returned to the petitioner for correction. If not corrected within the time limit allowed, the board must dismiss the appeal.

After logging the original petition, the clerk should attach a copy of the original petition to the "Notice of Defective Petition" and return the copy to the petitioner. The clerk may stamp the copy of the petition "amended" for easy reference when it's returned.

- The petitioner has no less than 20 days from the mailing date of the notice, to amend the petition.
- The petition must be dismissed as defective if it isn't amended as of the time of the hearing.

Board procedures

The taxpayer doesn't have to appear before PVAB. If the petitioner elects not to appear, evidence must be included with the petition.

If the petitioner elects to appear before the board, evidence doesn't need to be included with the petition. The petitioner will receive at least five days written notice of the hearing. When the petitioner appears, a copy of any evidence to be considered must be given to the board. This information won't be returned. Neither side needs to be represented by legal counsel.

The board will consider evidence from the petitioner and the county assessor. **If the board is reviewing information contained in a confidential personal property return, the hearing will be in executive session unless the taxpayer waives the right to a confidential hearing.**

The board will notify both parties in writing of the decision. If either side isn't satisfied with the decision, they have a right to appeal.

Appeals filed with county assessor

Taxpayers have the right to appeal the penalty imposed for late filing. Upon application of the taxpayer, the assessor may waive the liability for property tax late filing penalties if the taxpayer:

- Has never filed a personal property tax return in this state;
- Has failed to file a property tax return for one or more consecutive years;
- Hasn't previously received relief from property tax late filing penalties under ORS 308.295(7) or 308.296(8); and
- Files an application for relief from property tax late filing penalties that satisfies the following:

An application for relief from property tax late filing penalties shall include a statement by the taxpayer setting forth the basis for relief from property tax late filing penalties and a statement under oath or affirmation that the basis for relief from property tax late filing penalties as stated in the application is true.

The county assessor may allow the application for relief from property tax late filing penalties if the assessor finds the reason given by the taxpayer in the application are sufficient to excuse the failure to file property tax returns at issue in the application. If the assessor allows the application, the assessor may deny or grant relief from property tax late filing penalties in whole or in part. The determination of the assessor whether to

grant the application in whole or in part and whether to permit the taxpayer to pay the owing tax penalties, if any, in installments is final. The assessor shall notify the taxpayer of the decision.

Appealing county board decisions

Step 1. The petitioner may appeal to the Magistrate Division of the Oregon Tax Court. There is a filing fee for all Magistrate Division appeals.

Decisions made by the Magistrate Division can be appealed to the Regular Division of the Oregon Tax Court and then to the Oregon Supreme Court.

Step 2. File a complaint.

To appeal, a complaint must be filed within 30 days (not a month) after the board's order is mailed.

Trial and hearing procedure

Both the trials and hearings at the Magistrate's Division are informal. Since neither party is bound by the decision of the county board, new evidence and arguments

may be presented at this level of hearing. When a decision is reached, both parties will be contacted by mail.

Appealing the Magistrate's Division decision to the Oregon Tax Court

If an appeal is made to the Magistrate's Division and either party disagrees with the decision, an appeal may be filed with the Regular Division of the Oregon Tax Court. To appeal, a complaint must be filed with the court clerk within 60 days (not two months) after the date of the Magistrate's decision. The clerk will notify all parties of the trial date and time.

Appealing the Tax Court decision to the Oregon Supreme Court

If either party isn't satisfied with the Tax Court decision, there is one final step in the appeal process: appeal to the Oregon Supreme Court.

For more information, read the section on appeals in the *Property Valuation Appeals Board Manual* published by the Oregon Department of Revenue. Additional information can be found in information circulars published by the Oregon Department of Revenue.

Appeals Matrix

Issue	Where	When	Statute
Appeals			
PVAB decision	Magistrate	Within 30 days	ORS 305.280
Magistrate decision	Regular Division	Within 60 days	ORS 305.501
Regular Division judgment	Supreme Court	Within 30 days	ORS 19.255
Department of Revenue decision	Magistrate	Within 90 days	ORS 305.280
Timely value appeals			
Value on tax statement	PVAB	By December 31	ORS 309.100
Industrial—Appraised by Department of Revenue	Magistrate	By December 31	ORS 305.403; ORS 309.100
Industrial—Appraised by County Assessor	PVAB	By December 31	ORS 305.403; ORS 309.100
Omitted property; error correction	Magistrate	Within 90 days	ORS 311.223
Current year increase; notice mailed prior to Dec 1	PVAB	By December 31	ORS 311.208
Centrally assessed property	Dept. of Revenue	June 15	ORS 308.584
Timely non-value appeals			
Late filing penalty—real; personal	PVAB	By December 31	ORS 308.295(5); ORS 308.296(6)
Late filing penalty—real; personal	Assessor	No deadline	ORS 308.295(7); ORS 308.296(8)
Late Filing penalty—omitted	Magistrate	Within 90 days	ORS 311.223
PVAB penalty decision	None		
Exemptions—denial or disqualification	Magistrate	Within 90 days	ORS 305.275; ORS 305.280
Exemptions—late filed application (Hardship)	Dept. of Revenue	December 15	ORS 307.475
Special assessments—denial or disqualification	Magistrate	Within 90 days	ORS 308A.718; ORS 305.280
Special assessments—late filed application (Hardship)	Department of Revenue	December 15	ORS 307.475
Proration of tax, July 1 value determination—late filed application (Hardship)	Department of Revenue	December 15	ORS 307.475
Other action of assessor or tax collector	Magistrate	Within 90 days	ORS 305.275; ORS 305.280
Senior citizen deferral—denial or disqualification	Magistrate	Within 90 days	ORS 311.668
Enterprise zone—failure or refusal to authorize	Magistrate	Within 90 days	ORS 285C.140(9)
Enterprise zone—waiver of authorization requirement	Department of Revenue		ORS 285C.140(12)
Appeals—not timely filed			
Good and sufficient cause; 20 percent error for residential	Magistrate	Current and two prior years	ORS 305.288
Agreement to facts; extraordinary circumstance; assessor reduction; stipulation	Dept. of Revenue	Current and two prior years	ORS 306.115
Pendency of prior appeal	Dept. of Revenue	Dec. 15 or 6 months	ORS 305.285

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Section 5: Using Computers

Automation

The use of computers by counties to capture the information for the assessment and tax rolls is widespread. Many counties use personal computers (PCs) in conjunction with large mainframes or networks. For other counties, personal computers alone can meet their needs.

If a county is capturing the assessment roll information on a computer, then the information needed to develop a process for listing data from the personal property returns is available.

Programs to access the information must be designed carefully. The information should be easy to input, easy to modify, and easy to extract in a useful format. Key elements needed from the database include account number, name of business, owner, mailing address, situs address, map/tax lot, tax code, value, date received, and timely/late file notation. Other useful information includes telephone number(s), business type classification, identification of all industrial accounts and whether the state or county has jurisdiction, whether one owner has multiple properties, and cross references to leased equipment and to the real property account.

A typical automation cycle is incorporated in processing returns. After changes are noted on existing accounts, these changes are entered into the database, printed out (called a hard copy), then reviewed for accuracy. Many systems use this routine to apply valuation factors to a database of equipment. It reduces errors because

information entered correctly won't change unless it's done manually. This eliminates the need to calculate a return item by item and then total those calculations.

With proper design, valuation factors can be entered once each year and applied to each account. The equipment list can be updated once each year for additions and deletions for each account. This list is then carried over to subsequent years.

Counties may want to consider encouraging taxpayers to file their equipment database on computer disk if the information can be easily adapted to the county's system. Utilizing an asset list on disk would eliminate the need for individual line-item data entry. Elements necessary would include an asset description, age, purchase date, and cost. Details on saving the file in a compatible format, completing the rest of the filing form, and signing the "Taxpayer's declaration" could be addressed by the taxpayer and county representative.

Many counties have used automation to set up a classification system for personal property. Other uses include developing typical values for non-filers and for unreported items in businesses.

Another benefit of automation is the ability to use information for audit lists, trending analysis, benchmark studies, and comparative analysis (conformity testing). A well-designed program can save countless hours of manual labor.

Personal property classification system

A standardized personal property classification system is available for use by county assessors' offices. Using the system provides easy and rapid identification of types of businesses and simplifies research for appeals, studies, annual maintenance, and field reviews. The system can facilitate internal audit procedures and expedite error checking. A classification system can enhance the efficiency of the assessor's office.

This system, when fully implemented, would consist of a three-digit property class number placed on each account. Counties are encouraged to use the full system. If a county weren't able to incorporate the full system, an abbreviated version using the ten main categories would work.

The primary category number is always the first digit of the class. Classes are:

- 1 – Industrial.
- 2 – Small manufacturing/shops.
- 3 – Contractors.
- 4 – Professional offices.
- 5 – Stores.
- 6 – Dining/entertainment.

7 – Housing/rental/accommodations.

8 – Service (personal and other).

9 – Exempt accounts.

0 – Miscellaneous.

This system is designed to be refined by subdividing the primary categories into smaller units with the second and third digit providing small units of comparison. For example, a logging company would be found in the "Contractors" category and the first digit would be a "3." The subclass would be "1" for logging and the last digit would further identify the size and type of operation. A large operator, such as Weyerhaeuser, would be a class "311." See an example of the system on the following page.

Exempt accounts are those with a first digit of "9." These are accounts that, for a variety of reasons, have no taxable value. This classification would include accounts of a taxpayer with less than \$10,000 of total personal property value in the county and accounts of tax exempt entities.

Miscellaneous accounts are, for the most part, leasing and rental companies, many of which file one return for several different locations.

3. Contractors	1. Logging	1. Logging—X-Large
		2. Logging—Large \$500K-\$1M
		3. Logging—Average \$100K-\$500K
		4. Logging—Average \$50K-\$100K
		5. Logging—Small \$25K-\$50K
		6. Logging—Small, less than \$25K
		7. Logging—Chipping equipment
		8. Logging—Aerial services
		9. Logging—Reforestation salvage
	2. Road construction & excavation	
		1. Construction—Road
		2. Oiling—Road maintenance
		3. Pipeline installation
		4. Cable installation—TV, phone, etc.
		5. Asphalt—Road building/excavation/concrete paving
		6. Septic systems—Installation/service
		7. Backhoe—Excavation, excavation-small
		8. Gravel—Except industrial quarry & sand (not ind.)
	3. Marine	
		1. Dredging—Marine
		2. Pile driving salvage—Marine contractor
		3. Stevedoring
		4. Booming contractor—Marine log storage contractor

Section 6: Addendum

Oregon Revised Statutes (ORS)
Oregon Administrative Rules (OAR)
Property tax decisions

Statutes

The following statutes are arranged by subject material followed by the statute number. This will help you find answers to questions by subject matter if the statute number isn't known. However, this list isn't inclusive.

Agricultural products in possession of farmer.	307.325	Definitions for ORS 308.149 to 308.166.	308.149
Appeals of value upon summary or accelerated collection of taxes.	309.150	Definitions for ORS 297.020, 297.230, 297.405 to 297.740, and 297.990.	297.405
Appeals to tax court to be heard by magistrate division; exception; mediation; conduct of hearings; decisions; appeal de novo to tax court judge.	305.501	Definitions for ORS 446.003 to 446.200 and 446.225 to 446.285 and ORS chapters 195, 196, 197, 215, and 227.	446.003
Assessing property record as assessment roll; changes in ownership or description of real property and manufactured structures assessed as personal property.	308.210	Department testing work of county assessors; supplementing assessment list; special assessor.	308.335
Assessment, taxation, and exemption of watercraft and materials of shipyards, ship repair facilities, and offshore drilling rights.	308.256	Disposition of penalties.	308.302
Assessor's authority to change roll after September 25 limited; when changes permitted; stipulations.	308.242	Distraining property about to be removed from state or dissipated.	311.470
Beverage containers.	307.402	Duty of assessor to assess properly.	308.330
Bona fide purchaser; when taxes become lien.	311.235	Effect of property transfer or lease termination on lien and on taxability of property.	311.410
Cargo containers.	307.835	Environmentally sensitive logging equipment.	307.827
Certain machinery and equipment used in agricultural, aquacultural or fresh shell egg industry operations.	307.397	Examining witnesses, books and records; reference of matter to department upon failure to produce records or testify.	308.316
Certificate of assessment to person assessed.	308.325	Farm machinery and equipment; personal property used in farm operations; limitation.	307.394
Certificate or registration fees.	830.790	Field burning smoke management equipment.	307.391
Certification of eligibility of machinery and equipment.	307.457	Findings and declarations.	307.824
Correcting errors or omissions in rolls.	311.205	Fishing, boat license fees in lieu of other taxes and licenses on crab pots; reports to county assessor.	508.270
Correction of rolls; filing statement of facts; notice to taxpayer; powers of assessor; appeal.	311.223	"Fixed load vehicle."	801.285
Criminal penalties.	305.990	Funds exempt from certain taxes.	748.414
Date when writing, remittance, or electronic filing deemed received by tax officials.	305.820	Inventory.	307.400
Definitions; application for exemption; exemption.	307.455	Irrigation equipment.	307.398
Definition of mobile modular unit; statement of value; receipt.	308.866	Mandamus to require placing of omitted personal property on roll.	311.232
Definition of "personal property"; inapplicability to certain utilities.	307.020	"Manufactured structure."	801.333
		Manufactured structures classified as real or personal property; effect of classification on other transactions.	308.875
		Mobile field incinerators.	307.390
		Notice and payment of taxes before movement of mobile modular unit.	308.865

Notice of intention to add omitted property to rolls; treatment of unreported or understated property; duty of tax collector.	311.216	Property of the United States held under lease or other interest less than fee; deduction for restricted use.	307.060
Notice of intention to assess omitted property	311.219	Property owned or leased by municipalities, dock commissions, airport districts, or ports; exception; payments in lieu of taxes to school districts.	307.120
Notice required when current roll corrections increase value; time for payment of additional taxes; appeals.	311.208		
Nursery stock.	307.315	Property subject to assessment generally.	307.030
Partnership property; liability of either partner for whole tax.	308.120	Property to be valued at 100 percent real market value and assessed at assessed value.	308.232
Penalties.	307.990	Public property held by taxable owner under contract of purchase.	307.100
Penalties.	308.990	Public property leased or rented by taxable owner; exceptions.	307.110
Penalty for failure to file real property or combined return on time; notice; waiver of penalty.	308.295	Public records conditionally exempt from disclosure.	192.501
Penalty for failure to file return reporting only personal property; notice; waiver of penalty.	308.296	Real market value defined; rules.	308.205
Penalty for neglecting to file real property or combined return with intent to evade taxation.	308.300	Registration fees as substitute for taxes on vehicles; exemptions.	803.585
Personal property.	308.105	Requiring taxpayer to furnish list of taxable property.	308.285
Personal property returns to note penalty for delinquency.	308.297	Returns; personal property; exception; real property; combined real and personal returns for industrial property; confidentiality and disclosure; lessor-lessee elections; rules.	308.290
Persons who may appeal due to acts or omissions.	305.275	Sessions; hearing of petitions; applications to excuse penalty; adjournment.	309.026
Petitions; filing; hearings; notice of hearing; representation at hearing.	309.100	Short title.	297.555
Property held under lease, sublease, or lease-purchase by institution, organization or public body other than state.	307.112	Skyline and swing yarders.	307.831
Property of art museums, volunteer fire departments, or literary, benevolent, charitable, and scientific institutions.	307.130	Special assessment; collection.	446.525
Property of forest protection agencies.	307.125	"Special use trailer."	801.500
Property of industry apprenticeship or training trust.	307.580	Standard forms for tax statement and personal property tax return.	306.245
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- First National Bank of Portland v Marion County et al. (169 Or 595).....6-9**
This case deals with the taxation of bank and trade fixtures. If the statute doesn't specifically provide for assessing separate interests in real property, such property should be assessed as a unit to the owner of the fee.
- James Helm et al. v Wm. Gilroy (20 Or 517)6-31**
This case deals with who is responsible for the repayment of taxes on property when it's leased and the property is affixed to the building. Is it real or personal property?

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- King Estate Winery, Inc., v Department of Revenue (14 OTR 169)6-37**
Processing equipment and other items located at a winery are subject to personal and real property taxation.
- H-P Ventures, Inc., dba Adventures Video v Department of Revenue (13 OTR 330).....6-46**
The values of videotapes are established from the information of the owner and support the department findings.
- Phillippe and Bonnie Girardet v Department of Revenue (13 OTR 44)6-53**
Land under wine tasting room is taxable and not exempt. It may, however, be entitled to special assessment.
- Jackson County Tax Collector v Department of Revenue (12 OTR 498)6-65**
The tax collector as the addressee may determine what proof is satisfactory to corroborate proof of mailing.
- Cove Sportsman Club v Department of Revenue (11 OTR 40)6-69**
Items that belong to a club are taxable.
- Seven-up Bottling Co. of Salem v Department of Revenue (10 OTR 400).....6-78**
The courts defined the difference between "real" and "personal" property. This decision expands the three-prong test for property. Courts found that the subject property was "affixed" or "erected upon" real property and not readily movable. The courts ruled that property not readily moveable was "real," not "personal."
- West Foods, Inc. v Department of Revenue (10 OTR 7).....6-87**
Courts found that mushroom growing in plaintiff's sheds constituted an "agricultural or horticultural use," but that the subject property, growing beds, wasn't personal property and therefore not eligible for tax exemption under ORS 310.308 (now ORS 307.400).
- Western States Fire Apparatus (4 OTR 11)6-91**
Personal property is taxable at its situs. Property located in Oregon temporarily or in transit has no taxable situs in Oregon and isn't subject to ad valorem taxation.
- Durkee v Lincoln County Assessor (TC-MD 020321D).....6-103**
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- Steve Jonas, Opinion and Order 97-1278, July 19976-113**
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- Oregon Trail Mushroom Co., Opinion and Order 89-0989, December 1996.....6-117**
At issue is whether the subject property is tangible personal property and therefore exempt under ORS 307.400 or real property. The distinction is made between "real" and "personal" property.

Hillcrest Vineyard, Opinion and Order 96-0132, May 1996.....	6-121
Personal property used in the processing of grapes into wine isn't exempt from taxation. The exemption ends with the processing of the crop, and as the items at issue here are primarily, if not exclusively, used to change the grapes into wine, there can be no exemption under ORS 307.400	
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Penalties are applied to accounts for which returns are filed late. A separate return is to be filed for each tax code area in which property is located. Even though the taxpayer reported several accounts on the same form, he was subject to a penalty on each account.	
California-Oregon Broadcasting, Inc., Opinion and Order 90-3006, October 1992.....	6-125
The issue is the proper classification of the subject property. The county has assessed the property as real property improvements and the taxpayer contends the items are movable personal property.	
Meadow Outdoor Advertising, Opinion and Order 84-6534 and 85-0641, June 1987	6-126
The sole issue to be determined is whether the 29 off-premises advertising signs should be assessed as real property or as personal property for ad valorem tax purposes.	
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Supreme Court

169 Or 595

Argued June 18; reversed October 20; rehearing denied
November 17, 1942

FIRST NATIONAL BANK OF PORTLAND v. MARION COUNTY ET AL.

(130 P. (2d) 9)

Taxation—National banks

1. "National banks" are "agencies of the United States", created under its laws to promote its fiscal policies, and the property of such banks may not be taxed under state authority except as Congress consents, and then only in conformity with such restrictions as Congress may impose.

Taxation—Bank fixtures and equipment

2. Since Congress has not consented to the taxation by states of personalty of national banks, banking fixtures and equipment of national bank, if taxable at all by the state as the property of the bank, could be taxed only as realty.

Taxation—Trade fixtures

3. If trade fixtures are classified as personalty for purpose of taxation, they must be taxed, if at all, as personalty and not as realty, and, if such fixtures are a part of the realty and are to be taxed as realty, the assessors have no authority to assess them as personalty.

Taxation—National banks

4. National bank's trade fixtures and equipment all, or practically all, of which could be removed from leased premises without any substantial injury to building, could not be taxed to the national bank as "realty".

See 26 R. C. L. 109.

61 C. J., Taxation, 272.

Before KELLY, Chief Justice, and BAILEY, LUSK,
RAND, ROSSMAN and BRAND, Associate Justices.

Appeal from Circuit Court, Marion County.

L. G. LEWELLING, Judge.

Suit by The First National Bank of Portland against Marion county, A. C. Burk, as sheriff of Marion county, R. Shelton, as assessor of Marion county, and Earl L. Fisher, Charles V. Galloway, and Wallace S. Wharton, as members of and constituting the State Tax Com-

mission of the state of Oregon, to enjoin the foreclosure of an alleged tax lien against property owned by the plaintiff, and for a decree declaring assessment of the tax null and void. From a judgment in favor of the defendants, the plaintiff appeals.

REVERSED. REHEARING DENIED.

V. V. Pendergrass and *R. R. Bullivant* (Pendergrass, Spackman & Bullivant), all of Portland, for appellant.

Miller B. Hayden, District Attorney, of Salem (George L. Belt, of Salem, on the brief), for respondents Marion county, A. C. Burk, and R. Shelton.

Ralph R. Bailey and *James G. Smith*, Assistant Attorneys General, on the brief, for respondents Earl L. Fisher, Charles V. Galloway, and Wallace S. Wharton, as members of State Tax Commission.

Platt, Henderson, Warner & Cram, of Portland, for United States National Bank of Portland, amicus curiae.

BAILEY, J. This suit was instituted by The First National Bank of Portland against Marion county, the sheriff and the assessor of Marion county, and the individual members of the state tax commission, to enjoin the foreclosure of an alleged tax lien against property owned by the plaintiff, and for a decree declaring the assessment of the tax null and void. From a decree in favor of the defendants the plaintiff has appealed.

The property here involved, which was attempted to be assessed by Marion county, consists of banking fixtures and equipment located on the first and mezzanine floors and in the basement of the First National

Bank building in Salem, Oregon. The purported tax lien covers attempted assessments of such property for the years 1929 to 1939, inclusive. The banking fixtures and equipment were assessed as real property, to the plaintiff's vendor and later to the plaintiff. The land on which the building is located, together with the building, was during those periods assessed as real property to T. A. Livesley, Inc., an Oregon corporation, the owner of the fee.

1, 2. National banks are agencies of the United States, created under its laws to promote its fiscal policies, and the property of such banks may not be taxed under state authority except as Congress consents, and then only in conformity with such restrictions as Congress may impose: 12 U. S. C. A., § 548; *First National Bank of Guthrie Center v. Anderson*, 269 U. S. 341, 70 L. Ed. 295, 46 S. Ct. 135. Congress has not consented to the taxation by states of the personal property of national banks; hence the banking fixtures and equipment involved herein, if taxable at all by the state of Oregon as the property of national banks, may be taxed only as real property.

On January 22, 1927, First National Bank in Salem, a national banking association, leased from T. A. Livesley, Inc., for a period of twenty-five years, "the first story and mezzanine floor in the rear or south end" of an eleven-story building, "together with convenient space for a vault, stairway, corridor and lavatory in the basement thereof, and ingress and egress thereto," for the purpose of conducting a general banking business. In a supplemental agreement entered into February 19, 1927, it was provided that "the said lessee is empowered and authorized to remove from said premises so leased all furniture and mov-

able equipment and all improvements and furnishings placed in said premises by said lessee, including oak and walnut woodwork, marble work, lighting fixtures, bronze and iron grillwork, vault doors and all other vault equipment, and the same shall not be considered for the purposes of such lease as fixtures." The premises leased to First National Bank in Salem comprised the entire ground floor of the structure known as the First National Bank building, with the exception of that part thereof used as a general lobby and entrance to the upper floors of the building.

Shortly after entering into this lease, First National Bank in Salem proceeded to install in the leased premises various trade fixtures, including counters, desks, tellers' cages, wickets, partitions, files and lighting fixtures, a vault door and vault equipment, including safe-deposit boxes, also marble work, including marble counters and check desks, benches and wainscoting on the vestibule walls.

After conducting a banking business on the leased premises for five or six years, First National Bank in Salem went into liquidation. Sometime during the summer of 1933 The First National Bank of Portland, plaintiff herein, purchased from First National Bank in Salem certain assets of the latter bank, including notes, bonds, bank accounts, furnishings and banking equipment. Among the assets so purchased were the following:

- "8 upright steel lockers
- 2 lobby benches
- 2 marble and bronze glass top lobby check desks
approximately 3' 2" x 8' 8"
- 1 drinking fountain
- 3 large and 2 small chandeliers

All cage and counter fixtures, comprising 8 marble front, glass and bronze top cages, with returns, partitions, shelving, backs and doors, and approximately 70 lineal feet of marble front and top counter railing, together with doors, gates and glass plate, forming a part of such fixtures; also safe-deposit booths, bookkeeping room partitions, and all wainscoting, both marble and wood, and mezzanine rail partition, consisting of metal, wood and glass paneling.

One electric wall clock

1 12-inch Herring Hall Marvin Safe Co. circular vault door, four movement time lock, together with frame, casings and architraves.

1 9-inch emergency entrance vault door with Sargent and Greenleaf, 3 movement time lock, together with frame and casings."

The plaintiff is a national banking association with its principal place of business in Portland, Oregon. It operates a branch bank in Salem in the quarters formerly occupied by First National Bank in Salem, which premises on September 25, 1933, it leased from T. A. Livesley, Inc., for a period of ten years with an option for ten additional years. The leasing agreement contains this provision:

"The lessee has purchased from the First National Bank in Salem all the fixtures, equipment and appurtenances, of every kind and nature, installed by said bank in the leased premises, including, among other things, all oak and walnut woodwork, marble work, lighting fixtures, bronze and iron grillwork, vault doors and vault equipment. All of said fixtures, improvements or appurtenances of every kind and nature, including any that may be hereafter installed in any portion of the leased premises by the lessee, shall belong to the lessee and may be removed by it at any time,

either prior to the termination of this lease or within a reasonable time thereafter.”

In the erection of the First National Bank building, T. A. Livesley, Inc., constructed a vault with concrete walls, ceiling and floor. The vault door was supplied by First National Bank in Salem, and with its frame or vestibule was delivered to the premises as a unit. It was installed in the vault opening by the tenant bank, by placing about two inches of sand and cement (not concrete) between the vault walls and the door frame. The door and its frame or vestibule weighed between fifteen and seventeen tons and could be removed by chipping away the sand and cement between the frame and the main walls of the vault, without injury to the building.

The evidence is to the effect that it is customary for banks to remove such vault doors to replace them or to set them up in new quarters. The installation of vault doors is well described by the opinion in *San Diego Trust & Savings Bank et al. v. San Diego County et al.*, 16 Cal. (2d) 142, 105 P. (2d) 94, 133 A. L. R. 416.

Chandeliers furnished by the tenant bank were fastened to the ceiling in the usual manner required by their varying sizes. Much of the banking equipment was fastened to the floor with anchors or bolts of bronze or other metal and was readily removable by unscrewing or cutting the bolts. A large part of the equipment has been moved about by the plaintiff. All, or practically all the banking fixtures and equipment involved herein can be removed without any substantial injury to the building.

At the time First National Bank in Salem leased from T. A. Livesley, Inc., that part of the building which it later occupied, the interior thereof was un-

finished. The bank at its own expense laid a marble floor, painted and decorated the walls and ceiling and installed marble wainscoting. Whether the assessor attempted to assess the marble floor and the painting and decoration of the walls and ceiling to the plaintiff and its vendor does not appear. In relation to this matter the plaintiff in its brief states:

“* * * In so far as the painting and decorations are concerned, appellant agrees that they constitute a part of the building and that it has no interest whatsoever in attempting to remove the paint from the walls. . . .

“In other words, if the county wants to assess the painting and decorations and the marble which appellant’s predecessor may have placed upon the floor, it should do so because they constitute a part of the building and such assessment should be to the owner of the building.”

For the year 1929 the assessor of Marion county made an assessment against T. A. Livesley, Inc., covering “fr. Lots No. 1 and 2, Block No. 34, value of all lots \$20,800.00, value of improvements on town lots, \$90,000.00, total value of taxable property as equalized by board of equalization, \$110,800.00.” Immediately after the name of T. A. Livesley, Inc., appeared the following: “First National Bank in Salem, fr. Lots No. 1 and 2, Block No. 34, value of all lots \$....., value of improvements on town lots \$25,000.00, total value of taxable property as equalized by board of equalization. \$25,000.00.”

That notation was continued up to and including the tax year 1933-1934. From 1935 to 1939, inclusive, the property formerly assessed to First National Bank in Salem was taxed under the same description to The First National Bank of Portland, with the

exception that for the years 1937 to 1939, inclusive, the valuation was reduced from \$25,000 to \$15,000.

On July 6, 1939, pursuant to § 110-820, O. C. L. A., the sheriff of Marion county as tax collector amended the description in the assessment against the banks to read as follows: "All fixtures, equipment and appurtenances of every kind and nature, including among other things, all oak and walnut woodwork, marble work, lighting fixtures, bronze and iron grillwork, vault doors and vault equipment affixed to the premises described as follows: Fractional part of lots 1 & 2 block 34, Salem Original."

The assessments for the years 1929 to 1934, inclusive, were made by Oscar Steelhammer, county assessor. In 1935 Mr. Steelhammer died, and R. Shelton, chief deputy assessor since 1918, was appointed as his successor and has continued in office. Mr. Shelton as a witness was unable to state what property of First National Bank in Salem had been included in the assessments made by Mr. Steelhammer. After Shelton became assessor he continued the assessments under the same designation used by his predecessor in office, without personally checking on the property assessed. He reduced the valuation in 1937, as above noted, because he was of the opinion that The First National Bank of Portland had not acquired all the property formerly assessed to First National Bank in Salem.

The plaintiff contends that the relief sought by it should have been granted for the following reasons: (1) That the banking fixtures and equipment attempted to be taxed by the defendant county were trade fixtures, hence personal property and therefore not taxable to a national bank; (2) that the tax laws of the state make no provision for the assessment of

trade fixtures as real property to the owner thereof who is a lessee of the premises where such fixtures are used; and (3) that the description of the property sought to be taxed is so indefinite and uncertain that the various assessments here involved are, in their entirety, void.

Unless authority be found in the tax laws to assess trade fixtures as real property to the tenant in possession of the premises where such fixtures are used, the assessment in the instant case must be declared void. We shall therefore first consider the second reason advanced by the plaintiff as above noted. The assessments here in question covered, as heretofore stated, a period from 1929 to 1939, inclusive. Attention will necessarily be given first to the laws in effect at the time the first such assessment was made.

Section 69-102, Oregon Code 1930, is in part as follows:

“The terms ‘land,’ ‘real estate’ and ‘real property,’ as used in this act, shall be construed to include the land itself, whether laid out in town lots, or otherwise, above and under water, all buildings, structures, substructures, superstructures and improvements erected upon, under or above, or affixed to the same, and all rights and privileges thereto belonging or in any wise appertaining; also any estate, right, title or interest whatever in land or real property, less than the fee simple”.

That section further provides that in all cases in which the grantor of land has, in the deed conveying the same, reserved unto himself “the right to enter upon and use any or all of the surface ground necessary for the purpose of exploring, prospecting for, developing or otherwise extracting” minerals, gases or oils,

such reservation "shall be deemed, and is hereby declared to be, an estate and interest in land". It also declares that all franchises and privileges granted pursuant to any law or municipal ordinance and owned or used by any person or corporation, other than the right to be a corporation, all water rights, water power, and all "mines, minerals, quarries, fossils, and trees in or upon the land" are interests in land.

By § 69-109, Oregon Code 1930, it is provided that lands held on a contract for the purchase thereof and belonging to the state, county or municipality, and school and other state lands, shall be considered for the purpose of taxation as the property of the person so holding the same, and the improvements thereon shall be considered as real property for all purposes of taxation, and as the property of the person so holding the same.

It is specifically provided by § 69-211, Oregon Code 1930, that whenever any mineral, gas, coal, oil or other similar interests in real estate are owned separately and apart from and independently of the rights and interests owned in the surface of real estate, such interests may be assessed and taxed separately from such surface rights and may be sold for taxes in the same manner and with the same effect as other interests in real estate are sold for taxes.

Section 69-231, Oregon Code 1930, provides the mode of assessing property for taxation. By that section the assessor is required to enter upon the assessment roll a full and complete assessment of all property in his county on March 1 of each year, "including a full and precise description of the lands and lots owned by each person therein named, on March 1 of said year, . . . which description shall correspond with the plan or plat of any town laid out or recorded;

and said lands or town lots shall be valued at their true cash value, taking into consideration the improvements on the land and in the surrounding country, and any rights or privileges attached thereto or connected therewith". The section then provides how the true cash value of property shall be ascertained. It further declares that no assessment shall be invalidated by a mistake in the name of the owner of the real property assessed or by the omission of the name of the owner or by the entry of a name other than that of the true owner, if the property be correctly described; "and, provided further, where the name of the true owner, or the owner of record, of any parcel of real property shall be given, such assessment shall not be held invalid on account of any error or irregularity in the description; provided, such description would be sufficient in a deed of conveyance from the owner; or on account of any description upon which, in a contract to convey, a court of equity would decree a conveyance to be made."

By § 69-242, Oregon Code 1930, the assessor is required to set down in the assessment roll a description of each tract or parcel of land to be taxed. That section further provides how land shall be described.

Section 69-245, Oregon Code 1930, specifies that an undivided interest in land may be assessed and taxed as such.

The procedure to foreclose delinquent real property taxes is prescribed by § 69-807, Oregon Code 1930. The summons in such proceedings must contain a description of the property and the name of the owner or owners of the legal title thereof as the same appears of record, if known.

Section 69-820, Oregon Code 1930, makes further provision in regard to the procedure on foreclosure,

the judgment which shall be entered and the method of sale. It states, among other things, that:

“* * * The court shall give judgment and decree for such taxes, assessments, penalties, interest and costs, as shall appear to be due upon the several lots or tracts described in said summons and application for judgment and decree, and such judgment and decree shall be a several judgment against and lien upon each tract or lot, or part of a tract or lot, for each kind of tax or assessment included therein”.

The same section thus provides for the sale of real property on tax foreclosure:

“At such sale the person offering to pay the amount due on each tract or lot for the least quantity thereof shall be the purchaser of such quantity, which shall be taken from the east side of such tracts or lot, and the remainder thereof shall be discharged from the lien. In determining such piece or parcel of such lot or tract, a line is to be drawn due north and south, far enough west of the eastern point of tract to make the requisite quantity.”

Certain amendments of the tax laws were made by the legislature in 1935. The only essential change in the first part of § 69-102, *supra*, thereby effected was that, after the word “improvements,” the following words were added: “machinery, equipment or fixtures”. In the last part of the section the provision as to severable interests was expanded to declare that the ownership of standing timber, with a right to enter upon the ground to remove such timber, is an interest in real property: § 69-102, Oregon Code 1935 Supplement.

Section 69-211, *supra*, was also amended, to provide that, “Whenever any standing timber, or any

mineral, coal, oil, gas or other severable interest in or part of real property is owned separately and apart from the rights and interests owned in the surface ground of such real property," such interest may be assessed and taxed separately from the surface rights "and may be sold for taxes in the same manner and with the same effect as other interests in real property are sold for taxes": § 69-211, Oregon Code 1935 Supplement.

The other sections of Oregon Code 1930 hereinabove cited and discussed were not substantially changed until after the making of the last of the assessments here involved.

It is contended by the defendants that the plaintiff and its predecessor in ownership of the trade fixtures here in question owned an interest in the real property where such fixtures were maintained. That would amount to an interest not only in the bank building, but also in the land on which the building stands. The nature of such interest, whether a leasehold or something else, is not made clear by the defendants in their argument. They assert in their brief, however, that, "Under statutes similar to those in Oregon, courts almost universally have held that the interest of the lessee is taxable to the lessee as real property"; and numerous cases are cited by them in support of that statement.

The first of such cases is *Aberg v. Moe*, 198 Wis. 349, 224 N. W. 132, 226 N. W. 301. The Wisconsin statute involved therein was, as stated by counsel for the defendants, similar to that of Oregon. The Wisconsin statute, however, provided that "all buildings on lands under lease or permit, including buildings located on railroad right of way or on other lands not subject to local assessment, shall be assessed as real estate to the

owners of such buildings.” The facts set forth in the opinion indicate that the land was not taxable. The property had been leased and a building constructed thereon, and the assessor attempted to assess the leasehold interest in the property. In passing upon the right to assess such interest, the court said:

“Under the provisions of these statutes throughout the history of the state lands have been assessed to the owner. No doubt the legislature might empower the assessor to assess the leasehold interest against the lessees and so divide up the property for the purposes of taxation. That, however, has never been the policy of our law so far as we know except for a brief period when the state undertook to tax the respective interests of the mortgagor and mortgagee separately. The entire property, including all interests in it, is assessed to the owner of the property as defined in the statute, and the right of every person claiming any interest in the property subordinate to the fee, whether under lease, contract, or otherwise, is extinguished if the property be sold in the exercise of the taxing power. If we were now to hold that the interest of the lessee under a lease should be separately assessed, how could it be held in other cases that where assessed to the owner the interest of the lessee could be cut off? If a lease creates a separable taxable interest in the lessee in one case, it does in all cases. The fact that the fee is exempt in one case and not in another does not change the nature of the lessee’s interest. A holding to that effect would involve a complete reversal of the public policy of this state throughout its history, and if a change of that kind is to be brought about it should be done by legislative action, not by a judicial holding made to fit a particular case.”

In the case of *In re Indian Territory Illuminating Oil Company*, 43 Okla. 307, 142 P. 997, which also is

cited by the defendants herein in support of their argument, it was held that gas leases were not subject to taxation as real property or otherwise. The court thus reasoned:

"The provisions of the statute already adverted to provide a complete system for the levying of all taxes upon an *ad valorem* basis; and we can find no warrant in any of them for levying an *ad valorem* tax upon an oil and gas lease as such. Generally, an oil and gas lease, a school land lease, or a lease of any sort, for that matter, undoubtedly is property. But, as we have heretofore stated, property itself is a creature of the law, and the classification thereof for purposes of taxation belongs exclusively to the legislative department. * * *

"* * * It is also observable that in many jurisdictions various interests in real property for purposes of taxation are made severable and assessable in the names of the owners of the respective interests. That, however, is not the case in this state. Under our system of taxation, real property, which for purposes of taxation means the 'land itself, all buildings, stocks, improvements, or other fixtures of whatsoever kind thereon and all rights and privileges thereto belonging or in any wise appertaining, and all mines, minerals, quarries or trees under or on the same,' must be assessed in the name of the owner of the land."

See also, in this connection, *State v. Shamblin*, 185 Okla. 126, 90 P. (2d) 1053.

In *Jetton v. University of the South*, 208 U. S. 489, 52 L. Ed. 584, 28 S. Ct. 375, cited by the defendants, the statute of Tennessee, in which state the case arose, provided that the interest of a lessee should be assessed to the owner of such interest separately from other interests in the real estate. It was contended by the university that the property owned by it was tax-free

and that therefore the legislature could not provide for the assessment of a leasehold interest in its property. The court held that the legislation in question was valid, and that because it specifically provided that a leasehold interest should be assessed to the lessee the university could not complain.

The cases of *City of Chicago v. University of Chicago*, 302 Ill. 455, 134 N. E. 723, 23 A. L. R. 244, and *Moeller v. Gormley*, 44 Wash. 465, 87 P. 507, are the remaining authorities cited by the defendants to the proposition that under statutes similar to those of Oregon, "courts almost universally have held that the interest of the lessee is taxable to the lessee as real property." As to the former of these cases, the Illinois statute provides, according to the opinion therein, that, "When real estate which is exempt from taxation is leased to another whose property is not exempt, and the leasing of which does not make the real estate taxable, the leasehold estate and appurtenances shall be listed as the property of the lessee thereof, or his assignee, as real estate."

Moeller v. Gormley, *supra*, involved the taxation of a lease of state tidelands, and the court in that case, under a statute similar to § 69-102, Oregon Code 1930, did hold that although the fee of the land was exempt from taxation, a leasehold interest in the land could be taxed.

The authorities on which the defendants rely do not support their contention that the leasehold interest in real property should be assessed to the lessee as real property. Quite to the contrary, all those cases, with the exception of *Moeller v. Gormley*, *supra*, hold that if the statute does not specifically provide for assessing separate interests in real property, such

property should be assessed as a unit to the owner of the fee. Moreover, the facts in *Moeller v. Gormley*, supra, differ materially from those in the case at bar, for in that instance the land itself was not assessable and there was not an assessment of the fee to the owner thereof and in addition an assessment of a leasehold interest to the lessee.

In 26 R. C. L., Taxation, § 111, page 136, we find the following statement:

“* * * Property is, however, a word of most general import and includes every kind of right and interest, capable of being enjoyed as property and recognized as such, upon which it is practicable to place a money value. Land or any estate or interest therein is undoubtedly property; but inasmuch as a parcel of land is generally taxed as a unit and the different estates or interests therein are not separately assessed, the question of what interests in real estate constitute property does not frequently arise. When, however, the fee of a parcel of land is exempt from taxation and a lesser estate or interest therein is not, such estate or interest may be taxed if it is of such a character as to constitute property.”

And in § 318, at page 360 of the same text, this is said:

“Whether taxes on real estate are assessed upon the real estate itself, regardless of ownership, or are assessed upon individuals by reason of their ownership, it is not in most jurisdictions the policy of the law to require the assessors to tax the different estates and interests which may exist in a single parcel of land to the respective owners thereof, but the assessment is a unit upon the sum of the interests.”

See also, in this connection, *Donovan v. City of Haverhill*, 247 Mass. 69, 141 N. E. 564, 30 A. L. R. 358.

This court in *Nehalem Timber Company v. Columbia County*, 97 Or. 100, 189 P. 212, 191 P. 318, also laid down the rule that real property should be assessed as a unit to the owner of the legal estate rather than to the owners of separate interests in it. In that instance the land was owned by the federal government, which had entered into a contract to sell certain timber thereon to the plaintiff timber company. The assessor of the defendant county attempted to assess the timber to the plaintiff as real property. That was done before provision was made by statute for the separate assessment of timber. The court, after quoting the Oregon statute defining real property, which was practically identical with the similar statute in effect in 1929, observed:

“For tax purposes this legislation inseparably yokes the timber to the land on which it is growing. The statute was further amended in 1919, but as only the taxes of 1916 are here involved, no notice will be taken of the latter legislation. It is a general principle that taxes follow the legal title, and this seems to be the sense and spirit of this statute. It refers to the land itself, which includes the growing timber thereon. The taxing power is not concerned with indefinite equities. It is said in section 3586, L. O. L., as so amended, that—

“‘No assessment shall be invalidated by a mistake in the name of the owner of the real property assessed, or by the omission of the name of the owner, or the entry of a name other than that of the true owner, if the property be correctly described.’

“All of which indicates that the legal estate alone is the subject of taxation.”

The statutes of Oregon relating to taxation make no provision for the assessment of a leasehold interest

to the lessee. In other words, various interests in real property are not, for the purpose of taxation, made severable and assessable in the names of the owners of the respective interests, except in certain specified instances, such as those mentioned by § 69-211, Oregon Code 1935 Supplement, and § 69-245, Oregon Code 1930, as well as "improvements made by persons on lands claimed by them under laws of the United States, the fee of which is still vested in the United States": §§ 69-103 and 69-232, Oregon Code 1930. According to these last two sections, such improvements are classified as personal property.

A further answer to the defendants' argument that the assessments against the banks could be upheld as assessments against their leasehold interests is the fact that there was no attempt to identify the assessed property as leasehold interests.

The defendants make the further assertion that the plaintiff has, and First National Bank in Salem had, an interest in the real property because the trade fixtures used by them in conducting their respective banking businesses were attached to the First National Bank building. No attempt is made to define the interest so owned. The assessor of Marion county testified that the only instance, within his knowledge, of assessing trade fixtures in Marion county to the tenant of leased premises as real property, was the assessment of the plaintiff's equipment and that of First National Bank in Salem; and that in all other cases trade fixtures were assessed by him as personal property.

The defendants contend that it does not make any difference in ordinary cases whether trade fixtures are assessed as personal property or as real property.

because the amount of taxes levied would be the same in either instance. In the case at bar, since the trade fixtures can be assessed against a national bank, if at all, only as real property, an exception has been made by the assessor and they have been classified as real property.

Section 69-726, Oregon Code 1930, provides that all taxes levied against personal property "shall be a debt due and owing from the person against whom said taxes are charged for said personal property", and if such taxes are not paid before becoming delinquent or upon demand of the assessor, the county levying them "may, in addition to the remedies now provided by statute for the collection of taxes against personal property, maintain an action . . . against said person against whom said tax has been levied for the collection thereof"; and upon application of the county, writs of attachment shall be issued by the clerk of the court.

By § 69-721, Oregon Code 1930, the sheriff is required, in collecting taxes against personal property, to levy upon sufficient goods and chattels, belonging "to the person, firm, or corporation or association charged with such taxes, if the same can be found in the county, by taking them into his possession, to pay such delinquent taxes".

The owner of real property has no personal liability for taxes assessed against it unless he "has substantially dissipated, destroyed or removed" the value of such property: § 69-901, Oregon Code 1930.

In the cases of *Turner v. Spokane County*, 150 Wash. 524, 273 P. 959, *Town of Langlade v. Crocker Chair Co.*, 190 Wis. 226, 208 N. W. 799, and *Ford Hydro-Electric Co. v. Town of Aurora*, 206 Wis. 489,

240 N. W. 418, it was held that the assessment of certain improvements of real property as personalty instead of realty was null and void.

3. The county assessors of this state may not assess trade fixtures as real or personal property as expediency suggests. If trade fixtures are classified as personal property for the purpose of taxation, they must be taxed, if at all, as personal property, and not as realty. On the other hand, if such fixtures are a part of the real property and are to be taxed as real property, the assessors have no authority to assess them as personalty. If we were to hold that The First National Bank of Portland owns an interest in the tract of land on which the First National Bank building is located, because it is the owner of certain trade fixtures kept and used by it in that building, and that such interest in the real property should be assessed to the plaintiff bank as real property, then it would follow that in all other instances trade fixtures should be assessed to the owner thereof as real property. If the ownership of trade fixtures creates a separable taxable interest in the realty in one case, it does in all cases.

To require the county assessors to assess all trade fixtures in the names of the owners thereof as real property would impose upon them Herculean tasks and result principally in confusion. The law does not contemplate any such procedure.

4. We are not here passing upon the question of whether the plaintiff's trade fixtures and equipment are real property or personal property within the meaning of those terms as used in our tax law. Nor are we deciding whether or not such trade fixtures and equipment may be taxed to the owner of the legal

estate as fixtures annexed to or improvements of real property. No attempt was made to assess them to the owner of the legal estate. We do hold that under our statutes the various interests in real property for purposes of taxation are not made separable and assessable in the names of the owners of the respective interests except as hereinabove designated.

As there was no authority for the defendant county in this instance to assess the banking fixtures and equipment to the plaintiff as real property, the attempted assessments were void and the relief prayed for by the plaintiff should have been granted. The conclusion which we have reached renders unnecessary a discussion of the other grounds assigned by the plaintiff for a reversal of the decree. The decree appealed from is reversed and the cause is remanded to the circuit court with direction to enter a decree in conformance with this opinion. Costs will not be allowed in this court.

BELT, J., did not participate in the decision or consideration of this case.

JAMES HELM ET AL. v WM. GILROY ET AL.

PRELIMINARY INJUNCTION—PROVISIONAL REMEDY—TITLE.—A preliminary injunction is a provisional remedy, the sole object of which is to preserve the subject in controversy in its then condition; and courts of equity in granting or refusing the same, should in no manner anticipate the ultimate determination of the question of right involved.

WHEN APPEAL WILL LIE FROM ORDER GRANTING OR REFUSING SAME.—An order granting or refusing a preliminary injunction does not ordinarily partake of the nature of a final judgment to such an extent as to warrant an appeal therefrom; but when the court not only refused the injunction, but entered a decree settling the rights of the parties, an appeal will lie.

ASSIGNEE UNDER GENERAL ASSIGNMENT LAW, TITLE OF.—An assignee, under the general assignment law, takes no better title than his assignor, and is affected by all the equities existing as against him.

FIXTURES, WHEN AS BETWEEN MORTGAGOR AND MORTGAGEE, MACHINERY IS.—As between mortgagor and mortgagee, machinery necessary for and used in the operation of a sash and door and planing mill, when affixed to the building by screws, bolts, pulleys and bands, is a fixture, and subject to the lien of the mortgage.

Jackson county: L. R. WEBSTER, Judge.

Plaintiff appeals. Modified.

The property in controversy in this suit is certain machinery necessary for and used in operating what is known as a sash and door factory and planing mill at Ashland, Oregon. This machinery was purchased on April 22, 1887, of the Parke & Lacy Machinery Company, of Portland, by defendant Wm. M. Gilroy, and one Youle, who were the owners of the real estate, water-power and building in which the machinery was placed. The agreement between the P. & L. M. Co. and Gilroy & Youle was, in form, a lease for twelve months, at a stipulated rental of \$2,093, payable \$900 in cash, and balance at stated times during the year; and upon the payment of this rent Gilroy & Youle were to have the right to purchase the property for two dollars. By this lease, Gilroy & Youle agreed that they would not permit the machinery, or any part thereof, to be affixed to real estate. After said machinery was received at Ashland, it was placed in the building prepared for it, and attached thereto by screws, bolts, pulleys and bands in the manner such machinery is usually attached to buildings. Gilroy & Youle used and operated said mill and machinery for some time, when Gilroy purchased the interest of Youle and continued to use and operate the same until May 13, 1889, when he and his wife executed and delivered to one G. F. Pennebaker their mortgage to secure the payment of the sum of \$3,500 on or before one year after date, which mortgage was subsequently assigned to plaintiffs. This mortgage in terms only describes the real estate upon which said mill is situ-

ated and its appurtenances. Two days after the execution of the mortgage, Gilroy made a general assignment for the benefit of his creditors to defendant Rogers of all his property. On January 30, 1890, there remained due from Gilroy & Youle to the P. & L. M. Co. on the purchase price of said machinery, \$879.89. Rogers paid the same from money in his hands as assignee, and received from the company a bill of sale of said machinery. On May 13, 1890, no payments having been made on the mortgage, plaintiffs commenced a suit to foreclose the same, making Gilroy and wife and Rogers defendants, but neither of them appeared or made defense thereto. On August 11, 1890, the plaintiff filed an amended complaint, which, among other things, particularly described said machinery, and alleged that it was a part of the realty and subject to the lien of plaintiff's mortgage, and that defendant Rogers, as assignee of Gilroy, was in possession of the property and threatened to remove the machinery and sell and dispose of the same, and would do so unless enjoined by order of the court, and praying for a preliminary injunction. Rogers answered, denying that the machinery was a part of the realty or subject to the lien of plaintiff's mortgage, and alleging the purchase by him of the P. & L. M. Co. A reply having been filed, the cause was heard before the court on the 26th of August, 1890, and a decree entered adjudging that the machinery was not part of the real estate described in plaintiff's mortgage, nor subject to the lien thereof; and hence this appeal.

H. K. Hanna, for Appellant.

Austin S. Hammond, for Respondent.

BEAN, J.—This case comes here on appeal from an order denying a preliminary injunction. The record is in a very unsatisfactory condition. In place of trying the issue between the parties in the original suit to foreclose plaintiff's mortgage, as should have been done, it seems it was tried on a proceeding for a preliminary injunction, in aid of the original suit. In this proceeding, the court, after hearing the evidence, not only denied the writ, but entered a decree determining the question as to whether the property in controversy was subject to the lien of plaintiff's mortgage, thereby splitting up the original cause of suit; in the original suit entering a decree foreclosing the mortgage and ordering the real prop-

erty sold to satisfy the amount due plaintiff, and in the ancillary proceedings for an injunction, determining the question as to whether the machinery was a part of such realty, when the entire question should have been put in issue either by the original or an amended complaint and determined by one decree.

A preliminary injunction is only a provisional remedy, the sole object of which is to preserve the subject in controversy in its then condition and without determining any question of right, merely to prevent the further perpetration of wrong, or the doing of any act whereby the right in controversy may be materially injured or endangered. In granting or refusing temporary relief by preliminary injunction, courts of equity should in no manner anticipate the ultimate determination of the question of right involved. They should merely recognize that a sufficient case has or has not been made out to warrant the preservation of the property or rights *in statu quo* until a hearing upon the merits, without expressing a final opinion as to such rights. (1 High Inj. § 4; Hill's Code, §§ 408, 411.) The granting or refusing such an injunction rests largely within the discretion of the court, and being merely an interlocutory order, made during the progress of the cause, does not ordinarily partake of the nature of a final judgment or decree to such an extent as to warrant an appeal therefrom. (2 High Inj. § 1693.) But in this case, the court not only refused the injunction but entered a decree settling the rights of the parties, and in effect determined the suit so as to prevent a decree therein, so far as this machinery is concerned, and therefore it must necessarily be an appealable order or decree under section 535, Hill's Code; (*Smith v. Walker*, 57 Mich. 456; *Tol. A. A. & N. Mich. Ry. v. Det. L. & N. R. R.* 61 Mich. 9.)

From what has already been said, it follows that so much of the decree of the court below as adjudges and decrees "that the machinery referred to and described in plaintiff's complaint for injunction is not a part of the real estate in controversy in this suit, and not included in plaintiff's mortgage," must be reversed. But since the question seems to have been determined in the court below on a full hearing of the evidence, which is made a part of the transcript, and both parties expressed a desire on the argument that we

should examine the case on its merits, we have concluded to do so.

It is argued for respondent that under the agreement between the P. & L. M. Company and Gilroy & Youle, the machinery in controversy did not become fixtures, but retained its character as chattels, notwithstanding its annexation to the building in which it was placed, and was therefore not subject to the lien of the plaintiff's mortgage. Before discussing this question, it will be well to understand the relationship of the parties to this record. The defendant Rogers, who alone is contesting plaintiff's claim, is the assignee of the defendant Gilroy, plaintiff's mortgagor, under the general assignment law of this state. As such assignee he succeeds only to the rights of his assignor, and is affected by all the equities existing as against him. He takes the property subject to all existing valid liens and charges. He acquires no better title than his assignor, and in this suit can make no defense to the mortgage that his assignor could not make. (*Jacobs Bros. & Co. v. Ervin*, 9 Or. 52; *Gammons v. Holman*, 11 Or. 284; Burrill on Assignment § 391.) The fact that he may have paid the P. & L. M. Co. with funds belonging to him as assignee the balance due to it from Gilroy & Youle on the purchase price of the machinery, does not change his relationship to the property in any way. It is in effect the same as if Gilroy himself had made the payment. He does not acquire title to this property by virtue of the bill of sale from the P. & L. M. Co., but by virtue of the deed of assignment from Gilroy. While the agreement between the P. & L. M. Co. and Gilroy & Youle was in form a lease, it was in effect a sale, and whatever right if any the company may have had as against this property was never asserted by it. It follows, therefore, that if the property in controversy was subject to the lien of plaintiff's mortgage, as between them and Gilroy, such lien exists as against this defendant. The question then as to whether this machinery became a fixture as to the P. & L. M. Co. is immaterial in this case, and we forbear to express an opinion thereon.

It has often been remarked that the law of fixtures is one of the most uncertain titles in the entire body of jurisprudence. The line between personal property and fixtures is often so close and so nicely drawn that no precise rule has

or can be laid down to control in all cases. Each case must depend largely on its own particular facts. The reports and text-books are filled with decisions and discussions of this question, but none of the rules laid down are infallible or of universal application. We shall not attempt to quote from them, nor enter into any detailed discussion of the the question. We could not hope to throw any new light upon the vexed question. The weight of modern authority, keeping in mind the exceptions as to constructive annexation, admitted by all the authorities to exist, seems to establish the doctrine that the true criterion of an irremovable fixture consists in the united application of several tests: (1) Real or constructive annexation of the article in question to the realty. (2) Appropriation or adaptation to the use or purpose of that part of the realty with which it is connected. (3) The intention of the party making the annexation, to make the article a permanent accession to the freehold, this intention being inferred from the nature of the article affixed, the relation and situation of the party making the annexation, the policy of the law in relation thereto, the structure and mode of the annexation and the purpose or use for which the annexation has been made. (*Henkle v. Dillon*, 15 Or. 610; *Ewell on Fixtures*, 21; *Teaff v. Hewitt*, 1 Ohio St. 511; *Thomas v. Davis*, 76 Mo. 72; *Clore v. Lambert*, 78 Ky. 224; *Southbridge Sav. Bank v. Stevens Tool Co.* 130 Mass. 547.) Applying these rules to the facts in hand, it is clear that the property in controversy as between the mortgagor and mortgagee must be regarded as fixtures. Its annexation to the realty was sufficiently permanent to enable it to be used for the purposes intended, and was of the character usual with such machinery. It is act the plaintiff in that action suffered some damage. This view of the subject disposes of the estoppel.

The defense of the statute of limitations must also fail. Mrs. Owens, under whom defendant claims, says she never set up or intended to claim any land not within the calls of her deed; and, further, it very clearly and conclusively appears from the evidence that for a great many years, whatever authority she exercised over the premises in dispute was permissive on the part of Mr. Abraham; that she fully recognized his title, and that he agreed with her that he would never disturb her as long as she wished to occupy

it. It would be a misnomer and a confusion of all legal distinctions to call such an occupancy adverse, or to suppose that by a continuance for any length of time it might be the source of title by adverse enjoyment.

The decree appealed from must therefore be affirmed.

BEAN, J., having presided at the trial of this case in the court below, did not sit here.

Oregon Tax Court

14 OTR 169

IN THE OREGON TAX COURT

Property Tax

No. 3939

FILED
OREGON TAX COURT

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STATE COURT ADMINISTRATOR

KING ESTATE WINERY, INC., an
Oregon Corporation,

Plaintiff,

v.

DEPARTMENT OF REVENUE,
State of Oregon,

Defendant.

BY Kenny Peterson

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff (taxpayer) appeals the denial of a property tax exemption for 1994-95, for personal property used in taxpayer's winery. Taxpayer contends that such property is exempt under ORS 307.400 as farm machinery and equipment. The matter has been submitted to the court on taxpayer's Motion for Summary Judgment and defendant's response.

FACTS

King Estate Winery and King Estate Vineyards are owned by Edward J. King, Jr. and managed by the same officers and directors in an integrated operation. Grapes grown in the King Estate Vineyards and grapes from other surrounding vineyards are processed by the winery into wine. The vineyard and the winery are adjacent to each other and located in an exclusive farm use (EFU) zone in Lane County.

The winery building, containing approximately 110,000 square feet, houses a crush pad and equipment used for stemming, crushing, fermenting, storing, and bottling the wine. There is also a laboratory for analysis, a dining room, and guest facilities. The dining room and guest rooms, like the tasting room, are used to entertain guests and clients to promote the sale of the wine.

The tangible personal property in question falls into different classes. Class 6 property consists of barrels, racks, rollers, bungs, staves, portable roto dumps, fume hoods, hoses, fittings, pumps, valves, tanks, seals, washers, and other moveable equipment used to stem and crush the grapes, filter the juice, and ferment and store the wine. Class 9 property consists of furniture and furnishings in the dining room and guest rooms, including bookcases, tables, china, silverware, and chairs. Class 12/14 property consists of computer equipment and related equipment used for making wine, keeping fermentation records, inventory control, sales, accounting, and bookkeeping. Class 15 property consists of rolling stock such as fork lifts, scissor lifts, and an electric generator. Finally, there are materials and supplies constituting both inventory and noninventory items.

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ORS 307.400(3)¹ exempts certain tangible personal property defined as "inventory" from taxation. "Inventory" includes:

"(a) Farm machinery and equipment used primarily in the preparation of land, planting, raising, cultivating, irrigating, harvesting or placing in storage of farm crops; or

"(b) Farm machinery and equipment used primarily for the purpose of feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or bees or for dairying and the sale of dairy products; or

"(c) Farm machinery and equipment used primarily in any other agricultural or horticultural use or animal husbandry or any combination thereof[.]"
ORS 307.400(3).

Inventory also includes tangible personal property unrelated to farming which is stock in trade held for sale in the ordinary course of business. ORS 307.400(3)(f).

ISSUE

Is tangible personal property used in a winery "farm machinery and equipment" within the meaning of ORS 307.400?

COURT'S ANALYSIS

The statutes do not define farm machinery and equipment. However, ORS 215.203, relating to zoning, defines what constitutes "farm use" of land within an EFU zone. This definition is incorporated by reference in ORS 308.345 and ORS 308.370 relating to the special assessment of land as

¹ All references to the Oregon Revised Statutes are to the 1993 Replacement Part.

farmland. In Anadromous, Inc. v. Dept. of Rev., 11 OTR 272 (1989), this court held that the legislature intended special assessment of farmland to be consistent with the exemption of farm machinery and equipment. That is, if land qualifies for special farm use assessment under the definition in ORS 215.203, then machinery and equipment utilized in that particular qualifying activity will constitute farm machinery and equipment for purposes of ORS 307.400.

Both parties acknowledge that vineyards qualify as farm use. The question presented here is whether a winery and wine-tasting rooms are farm use. In Girardet v. Dept. of Rev., 13 OTR 44 (1994), this court held that a winery is in the same relationship to a vineyard as a barn is to an alfalfa farm or a storage shed to an onion farm. In so holding, the court relied upon Craven v. Jackson County, 308 Or 281, 779 P2d 1011 (1989). In that case, the Oregon Supreme Court was asked to decide whether a proposed winery and accompanying retail activity was a lawful conditional use in an EFU zone. In examining the statute that defines farm use for EFU zones, the court stated:

"By statute, farm use means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting, and selling crops, among other uses. ORS 215.203(2) (a). * * * 'Current employment' of land includes * * * '[l]and under buildings supporting accepted farm practices.' ORS 215.203(2) (b) (F). * * *

"Fermentation of grapes grown and sale of wine on site represent an accepted farming practice as defined. Wineries, which process the yield of vineyards, and

tasting rooms, which accompany the winery to promote its product, are 'accepted farming practices' because they are 'customarily utilized in conjunction with' vineyards. Those uses are included within an EFU zone." Id., 308 Or at 285.

Although the Supreme Court's analysis is unqualified, this court is now persuaded that it no longer represents the law. Moreover, upon further analysis, this court acknowledges that Girardet went too far and must be overruled.

The guiding principle in statutory construction is always legislative intent. PGE v. Bureau of Labor and Industries, 317 Or 606, 610, 859 P2d 1143 (1993). In attempting to discern legislative intent with regard to what constitutes farm use, it is necessary to consider the context of the statute, e., the relationship between ORS 215.203 which defines farm use and allows those uses outright within an EFU zone, and ORS 215.213 and ORS 215.283, which list permitted nonfarm uses and conditional uses within an EFU zone. The problem, as noted in Girardet, is that there is general or overlapping language in both. Specifically, ORS 215.203(2)(b)(F) includes as farm use "[l]and under buildings supporting accepted farm practices." At the same time, ORS 215.213(1)(f) suggests that land under "[n]onresidential buildings customarily provided in conjunction with farm use" would be a permitted use within an EFU zone, but would not be an outright farm use. Likewise, ORS 215.283(1)(f) indicates that land under "[t]he dwellings and other buildings customarily provided in conjunction with farm use" is not farm

use. Obviously, land under a building "customarily provided in conjunction with farm use," ORS 215.213(1)(f), will often be "under buildings supporting accepted farm practices," ORS 215.203(2)(b).

If a barn, silo or other farm-type building comes within the description of ORS 215.203, it qualifies as farm use and is allowed outright in an EFU zone. This is true even if it also comes within one of the general descriptions contained in ORS 215.213 or ORS 215.283. Hence, the general descriptions in ORS 215.213 and ORS 215.283 will control only in those factual situations where the building in question does not support accepted farm practices. This appears to be the basis for the Supreme Court's finding in Craven that a winery comes within the definition of an "accepted farm practice." A winery is a building "customarily provided in conjunction with" the farm use of growing wine grapes. Therefore, as the Supreme Court found, it qualified as farm use under ORS 215.203.

However, if a specific land use such as breeding of greyhounds or wineries is listed in ORS 215.213 or ORS 215.283 as a nonfarm use, it is indicative of the legislature's intent that such use is not considered farm use under the general description in ORS 215.203. The specific listing acts to remove it from qualifying as farm use even if it falls within the general language of ORS 215.203.

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ORDER DENYING REHEARINGS

"Ordinarily, when the legislature includes an express provision in one statute, but omits such a provision in another statute, it may be inferred that such an omission was deliberate." Oregon Business Planning Council v. LCDC, 290 Or 741, 749, 626 P2d 350 (1981).

In 1989, the Oregon legislature specifically added wineries to the list of permitted and conditional uses in ORS 215.213 and 215.283. Or Laws 1989, ch 525. In Craven, the Oregon Supreme Court construed ORS 215.213 and ORS 215.283 before those statutes specifically listed wineries. In a footnote, the court pointed out that the 1989 legislature had enacted prospective legislation which listed a winery as a nonfarm or conditional use in ORS 215.213 and ORS 215.283. Craven, 308 Or at 286 n3. Consequently, this court must conclude that if the Supreme Court were called upon to construe those statutes as amended, which includes the year in question, it would not find that a winery is a "building supporting accepted farm practices" under ORS 215.203. To do so would render the specific listing of wineries in ORS 215.213 and ORS 215.283 meaningless. It would also render ORS 215.452 meaningless.²

² ORS 215.452(1) provides:

"A winery, authorized under ORS 215.213(1)(t) and 215.283(1)(r), is a facility that produces wine with a maximum annual production of:

"(a) Less than 50,000 gallons and that:

"(A) Owns an onsite vineyard of at least 15 acres;

This court erred in Girardet by failing to carry the analysis to its conclusion. The court saw the overlapping general descriptions and relied upon Craven in concluding that a winery was a farm use. However, it failed to recognize that for the year in question, ORS 215.213 and ORS 215.283 specifically listed wineries and, therefore, the legislature intended to exclude them from the definition of farm use in ORS 215.203. Girardet is overruled.

The court concludes that the legislature did not intend a winery to be a farm use within the meaning of ORS 215.203. Accordingly, machinery and equipment utilized in a winery is not farm machinery and equipment and does not qualify for exemption from property taxes under ORS 307.400. It is possible that some of the subject tangible personal property may constitute

"(C) Has a long-term contract for the purchase of all of the grapes from at least 15 acres of a vineyard contiguous to the winery; or

"(D) Obtains grapes from any combination of subparagraph (A), (B) or (C) of this paragraph; or

"(b) At least 50,000 gallons and no more than 100,000 gallons and that:

"(A) Owns an onsite vineyard of at least 40 acres;

"(B) Owns a contiguous vineyard of at least 40 acres;


"(C) Has a long-term contract for the purchase of all of the grapes from at least 40 acres of a vineyard contiguous to the winery; or

"(D) Obtains grapes from any combination of subparagraph (A), (B) or (C) of this paragraph."

Inventory" which is stock in trade or held primarily for sale in the course of business. That is a factual issue which is not presently before the court. Now, therefore,

IT IS ORDERED that plaintiff's Motion for Summary Judgment is denied.

Dated this 3rd day of April, 1997.


Carl N. Byers
Judge

13 OTR 330

IN THE OREGON TAX COURT

Property Tax

No. 3705

FILED
OREGON TAX COURT

1995 JUL 19 AM 9:01

CLERK

Nancy Pittman

H-P VENTURES, INC., dba)
ADVENTURES VIDEO,)
Plaintiff,)
v.)
DEPARTMENT OF REVENUE,)
State of Oregon,)
Defendant.)

OPINION

The Wasco County assessor determined that certain video tapes owned by Taxpayer are not exempt as "inventory" and assessed them as omitted property for the 1991-92 through 1993-94 tax years. Taxpayer appeals from the Department of Revenue's opinion and order sustaining the omitted property assessments.

FACTS

Taxpayer began operating a small video store in December 1990 in The Dalles. It purchased the bulk of its 2,500 video tapes from a broker in Portland. Ninety percent of the tapes purchased were older movies costing \$7.50 and \$8.50 each and the remaining 10 percent were newer releases (90 days or less on the market) for which Taxpayer paid \$10 to \$30 each. Taxpayer also purchases new releases for \$60 to \$70 each.

The video store receives approximately 80 percent of its gross income from rentals. Its computerized records show the story of each video tape, the number of times it is rented and

OPINION

Page 1.

how many copies are sold. Taxpayer's witness testified that all of its video tapes are for sale, advertised to the public by posting signs. There are no special racks or locations for sale tapes and only a small percentage of them are marked with a sale price. Taxpayer also special orders video tapes for customers.

Taxpayer's manager prepared and filed a personal property tax return for the 1991-92 tax year. Before doing so the manager talked to staff in the local assessor's office to obtain assistance with the form. The manager testified that he told the assessor's office he believed the video tapes were inventory and therefore exempt. The staff person acknowledged that some video stores claimed the tapes as exempt while others reported them as taxable. Finding no strong disagreement, the manager decided they were exempt and treated them as such. However, in 1993, the assessor's office decided that rental video tapes were taxable and added their value to the rolls for three years as omitted property.

ISSUES

Taxpayer's complaint raises three issues:

1. Is the subject property exempt from taxation as inventory under ORS 307.400?
2. If it is not exempt, is the assessor's office estopped from denying that it is exempt?
3. If the subject property is taxable, what is its real market value for the assessment years in question?

EXEMPTION ANALYSIS

The relevant portions of ORS 307.400 provide:¹

"(2) All inventory shall be exempt from ad valorem taxation.

"(3) As used in subsection (2) of this section, 'inventory' means the following tangible personal property:

" * * * * *

"(f) Items of tangible personal property described as materials, supplies, containers, goods in process, finished goods and other personal property owned by or in possession of the taxpayer, that are or will become part of the stock in trade of the taxpayer held for sale in the ordinary course of business."

Taxpayer claims the subject video tapes are exempt as inventory on two separate grounds. First, all of the video tapes in Taxpayer's video store are for sale and, therefore, constitute inventory. Second, all video tapes including new releases will become part of the inventory held for sale.

Taxation is the rule and exemption is the exception. Exemption statutes are narrowly construed, and the taxpayer must clearly bring itself within the terms of the statute. Mercy Medical Center, Inc. v. Dept. of Rev., 12 OTR 305 (1992). To construe the statute the court must look to its text and context. PGE v. Bureau of Labor and Industries, 317 Or 606, 859 P2d, 1143 (1993).

The statute exempts property "held for sale in the ordinary course of business." Taxpayer's business consists of

¹ All references to the Oregon Revised Statutes are to the 1991 Replacement Part.

80 percent rentals and 20 percent sales. The court finds that property held for rent is not exempt because it is not "held for sale in the ordinary course of business." The language of the statute indicates the legislature intended to exempt property which is primarily held for sale.

The context of the statute is not particularly helpful. The legislature has used ORS 307.400 as an accumulation bin for agricultural and other exemptions. There is no consistent theme or policy to aid the court in construing the statute. Taxpayer argues that property which "will become" part of the inventory held for sale is also made exempt by the statute. However, a strict but reasonable construction would limit this phrase to property held or used by manufacturing and processing businesses. Otherwise, all personal property could be considered exempt under the philosophy of the ancient but cynical adage that "everything is for sale at the right price." The exemption in question is intended to benefit businesses which sell property in the ordinary course of business. It was not intended to exempt personal property which is used to produce rental income and later sold as an incidental benefit of its ownership.

The court concludes that the exemption is limited to property which is primarily held for sale. Although an incidental rental of property held for sale will not destroy the exemption, the burden of proof is on the taxpayer. In this case,

Taxpayer's primary business is renting videos and therefore the video tapes are primarily held for rental.²

ESTOPPEL CLAIM

To meet the requirements of an estoppel claim, Taxpayer must establish: Misleading conduct on the part of an official, good faith reliance on that conduct, and injury. Portland Adventist Hospital v. Dept. of Rev., 8 OTR 381 (1980). Taxpayer has not met this burden. Taxpayer did not present evidence of misleading conduct or reliance by Taxpayer to its damage. Taxpayer does not claim that the assessor gave wrong information or misled its employees. Rather, Taxpayer maintains the assessor knew of its position in 1991 and was obligated to act. When the assessor failed to act, he waived the right to correct the roll. This is a claim of waiver, not estoppel.

The evidence indicates that communication between Taxpayer and the assessor was ambiguous at best. There was no indication that the assessor accepted Taxpayer's characterization or treatment of the video tapes for property tax purposes. Waiver is a voluntary relinquishment of a known right. Waterway Terminals v. P.S. Lord, 242 Or 1, 406 P2d 556 (1965). Taxpayer introduced no evidence to show that the assessor voluntarily and knowingly relinquished the right to challenge Taxpayer's claim of exemption. Moreover, ORS 311.205 gives the assessor five years

² If video tapes are held primarily for sale, such as by segregation in a separate rack or location and advertised for sale, they may be exempt even though the primary business of the owner is rentals.

to add the property as omitted property. This implies that the legislature allows assessors up to five years to correct their mistakes. See Freightliner Corp. v. Dept. of Rev., 275 Or 13, 549 P2d 662 (1976).

REAL MARKET VALUE

Taxpayer introduced little evidence of value.

Taxpayer's former manager testified that, in his opinion, the value of the subject inventory was only \$3.50 to \$4.50 per tape for the entire inventory. This appears to be based on another video store's offer of \$4.50 per tape for the entire inventory. The Department of Revenue's witness, owner of two video stores, testified that the older movies cost approximately \$7.50 each and the newer, popular movies cost \$25-\$30 each. Information provided to the assessor by Taxpayer indicated the average retail selling price per tape was \$13.32. The appraiser used \$13.50 to arrive at the values for the omitted property.

The correct measure of real market value to be applied in this case is the typical cost to Taxpayer, not the retail price to Taxpayer's customers. What is being taxed are video tapes held primarily for rent. The real market value of video tapes held primarily for rent is the owner's cost of obtaining those tapes. Based on the evidence, the court finds that the average cost of Taxpayer's tapes was \$8 for 90 percent of them and \$25 for 10 percent or \$9.70 (\$10 rounded) overall. Accordingly, the court finds the real market value of the omitted property was as follows:

OPINION

Page 6.

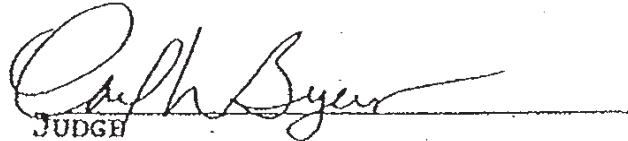
Tax Year

Omitted Real Market Value

1991-92	\$10,560.00
1992-93	12,300.00
1993-94	14,310.00

Judgment will be entered in accordance with this
opinion. Costs to neither party.

Dated this 18th day of July, 1995.


JUDGE

13 OTR 44

ATTORNEY REPORT ON COURT DECISION AFFECTING DEPARTMENT OF REVENUE POLICY OR PROCEDURE AND RECOMMENDATION ON APPEAL

Case Name: Phillippe and Bonnie Girardet v. Dept. of Revenue Date Decided: 02/09/94
Attorney: James J. McLaughlin Tax Court No.: 3510 DOJ File No. 150-303-4TX230-93

SUBJECT AREA:

PROPERTY TAX	<u>X</u>	TIMBER SEVERANCE TAX	___
PERSONAL INCOME TAX	___	INHERITANCE/GIFT TAX	___
CORPORATION EXCISE/INCOME TAX	___	OTHER	___

DIVISION AFFECTED: ___ Audit X PTD ___ Appeals ___ Collections

1. PREVAILING PARTY: ___ DOR ___ COUNTY X TAXPAYER

2. SUMMARY OF DECISIONS ON MAJOR ISSUES: (Identify each issue, the court's decision, and whether the department or the taxpayer prevailed.)

Is the land under a winery building located wholly within a vineyard in an exclusive farm use zone itself a farm use entitled to special assessment under ORS 308.370?

The tax court decided that the land under a winery building was entitled to special assessment, relying upon *Craven v. Jackson County*, 308 Or 281, 779 P2d 1011 (1989), which it said implicitly overruled *Sokol-Blosser v. Dept. of Rev.*, 8 OTR 196 (1979). The tax court's reading of *Craven* is not unreasonable, though it is not the only possible reading of *Craven* and not the reading that the department used.

The court used a method of analysis different from that used recently in *Kang v. Dept. of Rev.*, 12 OTR 407 (1993).

In the current case, the tax court did not explain why it used a different method of analysis from that used in *Kang*, nor did the tax court in this case discuss *Kang*.

ATTORNEY REPORT

3. IMPACT ON DEPARTMENT OF REVENUE POLICY OR PROCEDURE (check all that apply):

- ☐ No change required
- ☐ Requires change in department policy or procedure
- ☐ Rulemaking advised: Specify: _____
- ☐ Legislative action needed: Specify: _____
- ☒ Other (specify): Whether as a tax policy matter, tax reduction or partial exemption for land under winery buildings or the building itself as a farm use is a "good thing" or not is not for the Department of Justice to say.

That policy determination must be made by the Department of Revenue and the elected county assessors. If the better policy is to seek to deny exemption or reduction of tax for land under winery buildings or winery buildings themselves, then the Department of Revenue or the affected assessors must approach the legislature for relief.

4. RECOMMENDATION CONCERNING APPEAL/PETITION FOR REHEARING:

Appeal is not recommended.

Date Notice of Appeal must be filed: Not yet known. Appeal notice due 30 days after judgment filed. Judgment has not yet been filed.



DM:imb/JGG08F4E

2 - ATTORNEY REPORT

IN THE OREGON TAX COURT

Property Tax

1994 FEB 22 PM 4:11

CLERK

Helma Foster

PHILLIPPE and BONNIE GIRARDET,
dba GIRARDET WINE CELLARS,

Plaintiffs,

v.

DEPARTMENT OF REVENUE,
State of Oregon,

Defendant,

DOUGLAS COUNTY ASSESSOR,

Intervenor.

CASE NO. 3510

JUDGMENT

THIS MATTER came on for hearing before this court on cross motions for summary judgment by the parties on the 19th day of January, 1994, the plaintiffs appearing by and through their attorney, David L. Canary, of Garvey, Schubert & Barer, the defendant appearing by the through James McLaughlin, Assistant Attorney General, and the Intervenor waiving its right to orally argue its motion. The court having duly considered the stipulation of facts, the affidavits and the oral and written arguments submitted by the parties, the court finds that there is no genuine issue as to any material fact and that the plaintiffs are entitled to judgment as a matter of law; now, therefore,

IT IS THE HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That the subject property, the approximately one-half acre of land beneath plaintiffs' winery and tasting room apart of Douglas County Assessor's Account No. 10813-00/28-07-31B-700,

1 - JUDGMENT

LAW OFFICES

GARVEY, SCHUBERT & BARER
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS
ELEVENTH FLOOR
121 S.W. MORRISON STREET
PORTLAND, OREGON 97204-3141

1 qualifies as farm use under ORS 215.203(2)(a) because the winery
2 and tasting room, by processing grapes grown from its own
3 vineyards, as well as from other Douglas County vineyards, is an
4 integral part of the agricultural operations of a vineyard which
5 constitutes farm use and, therefore, land under the winery and
6 tasting room is "land under buildings supporting accepted farm
7 practices" qualifying the subject property for special farm use
8 assessment pursuant to ORS 308.370.

9 2. Douglas County's disqualification of the subject
10 property for special farm use assessment in this case was
11 improper. Therefore, Douglas County is ordered to reinstate the
12 subject property on the appropriate property tax rolls as subject
13 to special farm use assessment and plaintiffs are entitled to a
14 refund of any ad valorem taxes paid on the difference between the
5 value placed upon the 1992-93 tax rolls for the subject property
6 after disqualification and the special farm use value
7 attributable to farm use property in Douglas County of a similar
8 class, together with statutory interest.

9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the
0 court that the following money judgment is awarded to plaintiffs:

1 Money Judgment

2 Creditor: Phillippe and Bonnie Girardet, dba
Girardet Wine Cellars

3 Creditor's Attorney: David L. Canary
4 Garvey, Schubert & Barer
5 121 S.W. Morrison Street
6 11th Floor
Portland, Oregon 97204

2 - JUDGMENT

LAW OFFICES
GARVEY, SCHUBERT & BARER
A PARTNERSHIP OF PROFESSIONAL CORPORATION
ELEVENTH FLOOR
121 S.W. MORRISON STREET
PORTLAND, OREGON 97204-3141
(503) 228-3939

Debtors:

Douglas County Assessor and the
Oregon Department of Revenue

Debtors' Counsel:

Theodore R. Kulongoski
Oregon Attorney General
James J. McLaughlin
Assistant Attorney General
100 Justice Building
1162 Court Street
Salem, OR 97310
Counsel for the Department
Revenue

Paul E. Meyer
Assistant Douglas County Counsel
Office of the County Counsel
Douglas County Courthouse
Roseburg, OR 97470
Counsel for Douglas County

Amount:

\$105.00

Interest:

Simple, 9 percent per annum, from
the date of this judgment until
paid.

DATED this 22nd day of February, 1994.


CARL N. BYERS, Judge
OREGON TAX COURT

44347

3 - JUDGMENT

LAW OFFICES

GARVEY, SCHUBERT & BARER
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS
ELEVENTH FLOOR
121 S.W. MORRISON STREET
PORTLAND, OREGON 97204-3141
(503) 228-3939

Opinions and Orders

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing (1) PLAINTIFFS' STATEMENT OF COSTS AND DISBURSEMENTS and (2) JUDGMENT on the 14th day of February, 1994, on the following:

Theodore R. Kulongoski
Oregon Attorney General
James J. McLaughlin
Assistant Attorney General
100 Justice Building
1162 Court Street
Salem, OR 97310

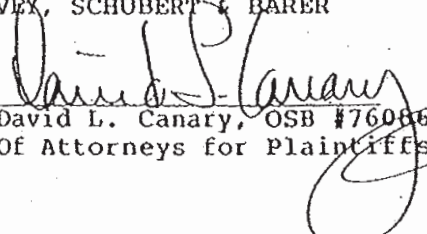
Paul Meyer
Assistant Douglas County Counsel
Office of the County Counsel
Douglas County Courthouse
Roseburg, OR 97470

by mailing a complete and correct copy thereof, contained in a sealed envelope, postage prepaid, to said addresses as set forth above and deposited in the United States Mail.

Dated this 14th day of February, 1994.

GARVEY, SCHUBERT & BARER

By


David L. Canary, OSB #76086
Of Attorneys for Plaintiffs

44478

PAGE 1 - CERTIFICATE OF SERVICE

LAW OFFICES
GARVEY, SCHUBERT & BARER
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS
ELEVENTH FLOOR
121 S.W. MORRISON STREET
PORTLAND, OREGON 97204-3141
(503) 228-3939

IN THE OREGON TAX COURT

Property Tax

No. 3510

FILED
OREGON TAX COURT

1994 FEB .9 AM 9:30

STATE CLERK REGISTRAR

BY Delma Foster

PHILLIPPE and BONNIE GIRARDET,)
dba GIRARDET WINE CELLARS,)
)
 Plaintiffs,)
)
 v.)
)
DEPARTMENT OF REVENUE,)
State of Oregon,)
)
 Defendant,)
)
DOUGLAS COUNTY ASSESSOR,)
)
 Intervenor.)

ORDER

This matter is before the court on cross motions for summary judgment. Plaintiffs contend that the land under their winery qualifies for special farm use assessment. Defendant and intervenor contend that wineries are nonfarm use.

The parties have stipulated to the facts.¹

(Stipulation of Facts at 1.) Plaintiffs own 54 acres in an exclusive farm use zone, of which 18 acres comprise the vineyard. The land in question is approximately one-half acre in size and is surrounded by the vineyard. The winery building has about 10,072 square feet and contains equipment for crushing and fermenting grapes, storage tanks, bottles and barrels, a small

¹ The parties rely upon the Stipulation of Facts submitted to the Department of Revenue for the administrative hearing.

laboratory, a tasting room and wash rooms. (Stipulation of Facts at 2.) The vineyard has the potential for producing 72 tons of grapes which can be processed into about 9,000 to 14,000 gallons of wine. Because the winery has a total production capacity of 25,000 gallons, it can and does use grapes from other vineyards. (Stipulation of Facts at 3.)

ORS 308.370 provides for special assessment of land located within a farm use zone "which is used exclusively for farm use as defined in ORS 215.203(2)."² ORS 215.203(2) provides:

"(a) As used in this section, 'farm use' means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. 'Farm use' includes the preparation and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise. 'Farm use' also includes the propagation, cultivation, maintenance and harvesting of aquatic species. It does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3) of this section or land described in ORS 321.267(1)(e) or 321.415(5).

"(b) 'Current employment' of land for farm use includes:

"* * * * *

"(F) Land under buildings supporting accepted farm practices; * * *."

² All citations to Oregon Revised Statutes are to the 1991 Replacement Part.

The legislature apparently recognized that some types of agriculture require more than a barn or silo to store the agricultural product. For example, an orchardist may need to be able to process fruit on his property to the extent of washing, sorting, coating with wax, and packaging. In making the distinction, the legislature has reasonably looked to the usual practices of each industry. The legislature has expressed this approach in ORS 215.203(2)(c) which provides:

"As used in this subsection, 'accepted farming practice' means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use."

In Sokol Blosser Winery v. Dept. of Rev., 8 OTR 196 (1979), this court construed the quoted language. Applying Oregon's long-established statutory rule of strict construction with regard to exemptions (see Hibernian Benevolent Society v. Kelly, 29 Or 173, 196, 42 P 3, 6 (1895), Corbett Inves't Co. v. State Tax Com., 181 Or 244, 250, 181 P2d 130, 132 (1947)), this court held that converting grapes to wine was not a farm use. That decision found a legislative intent to preserve land used to produce natural products but not land used to produce new products "via processing." 8 OTR at 200. Thus, the land beneath a winery was not entitled to farm use assessment. Id.

Plaintiff contends that Sokol Blosser has been implicitly overruled by Craven v. Jackson County, 308 Or 281, 779

P2d 1011 (1989). In that case, construing ORS 215.203(2)(c), the court stated:

"Fermentation of grapes grown and sale of wine on site represent an accepted farming practice as defined. Wineries, which process the yield of vineyards, and tasting rooms, which accompany the winery to promote its product, are 'accepted farming practices' because they are 'customarily utilized in conjunction with' vineyards. Those uses are included within an EFU zone."

Id. at 285.

Defendant and intervenor contend that Craven is not controlling because it was a zoning case and not for taxation purposes. They argue that the above language is merely dicta.³

It is not helpful to look at other statutes for guidance. ORS 215.213 and ORS 215.283, provide for specific uses in EFU zones. Both statutes divide the specific uses into two categories, unconditional uses and conditional uses. While some of the unconditional uses are clearly nonfarm uses, such as churches and schools, others are typically considered a farm use. ORS 215.213(f). The conditional uses are likewise a mixture of farm and nonfarm uses within the common meaning of those words.

In reviewing the statutes, particularly past legislative changes, it is clear the legislature has given mixed signals. The distinction between farm and nonfarm uses are not respected in either category or terminology. Reasoning would

³ The issue before the court was whether the winery and related retail activity were lawful conditional uses in an EFU zone under ORS 215.283(2)(a).

indicate that if a specific use is a farm use it would not require listing as an approved or conditional use. Nevertheless, barns and silos are specifically listed. ORS 215.213(1)(f). Also, the statutes are not consistent in their terminology. Although ORS 215.213(2) does not characterize the conditional uses, ORS 215.283(2) does characterize them as "nonfarm uses." In summary, while these statutes indicate what uses are possible in an EFU zone, they do not provide a clear basis for inferring the uses that are considered "farm use" as opposed to "nonfarm use."

The court finds that the subject land qualifies for farm use. The building on the land qualifies as "a winery, as described in ORS 215.452." ORS 215.213(1)(t). In Craven v. Jackson County, the Oregon Supreme Court directly construed the very provision at issue here. The court there stated:

"Because a young vineyard is a farm use under ORS 215.203, a winery building, of the character and dimensions 'customarily provided' as an integral part of the agricultural operations constituting that farm use, qualifies under ORS 215.213(1)(f) as acceptable use within an EFU zone and may be constructed even before any grapes grown on the site mature."

Id. at 286.

In short, the Oregon Supreme Court found that a winery for a vineyard is no different than a barn for an alfalfa grower or a storage shed for an onion farmer. Although Craven is a land use case, it addresses the very issue upon which special farm use assessment is conditioned. Sokol Blosser Winery v. Dept. of Rev. is overruled. Now, therefore,

IT IS ORDERED that plaintiffs' Motion for Summary Judgment is granted; and

IT IS FURTHER ORDERED intervenor's Motion for Summary Judgment is denied.

Dated this 9th day of February, 1994.


JUDGE



OREGON TAX COURT
520 JUSTICE BUILDING
SALEM, OREGON
97310

CARL N. BYERS
JUDGE

NANCY PETERSON
Clerk

(503) 378-4251

RECEIVED
FEB 11 1994

GENERAL COUNSEL
DEPT. OF JUSTICE
SALEM, OREGON

VELMA C. FOSTER
Official Court Reporter

February 9, 1994

Mr. David L. Canary
Garvey, Schubert & Barer
Attorneys at Law
Eleventh Floor
121 S.W. Morrison Street
Portland, OR 97204-3141

Mr. James J. McLaughlin
Assistant Attorney General
Tax Section, General Counsel Division
Department of Justice
100 Justice Building
Salem, OR 97310

Mr. Paul E. Meyer
Assistant County Counsel
Office of County Counsel
Douglas County Courthouse
Roseburg, OR 97470

Re: Girardet v. Department of Revenue,
Douglas County Assessor, Intervenor, No. 3510

Gentlemen:

Enclosed is a copy of Judge Carl N. Byers' Order in the above-entitled matter. The judge asks that counsel for plaintiff prepare a form of judgment and submit it to the court within 10 days from receipt of this letter. In accordance with TC Rule 70 of the Rules of the Oregon Tax Court, opposing party then has 10 days in which to object to the form of judgment submitted, unless such 10-day period is waived.

Very truly yours,

Velma Foster
Deputy Clerk

Encl.

Citation/Title

12 Or. Tax 498, 1993 WL 343935, Jackson County Tax Collector v. Department of Revenue, (Or.Tax 1993)

12 Or. Tax 498

JACKSON COUNTY TAX COLLECTOR, Plaintiff,
v.
DEPARTMENT OF REVENUE, State of Oregon, Defendant.

No. 3401.
Oregon Tax Court.
Aug. 25, 1993.

ORDER

TAXATION 1096

371 -----

371XV Income Taxes

371XV(C) Assessment, Payment and Enforcement

371XV(C)2 Payment and Enforcement

371k1096 Payment in general.

Tax 1993.

Tax collector's policy of requiring a postmark, a letter from the post office, or parcel delivery service, or other credible corroborating evidence as proof of mailing was consistent with ORS 305.820, which gives the tax collector discretion to determine what proof is satisfactory.

Byers, Judge.

This matter is before the court on plaintiff's Motion for Summary Judgment.

FACTS

A taxpayer claimed to have deposited her property tax payment in a United States postal deposit box at about 7:30 a.m. on November 15, 1991. However, the envelope was not postmarked until November 18, 1991. Because the envelope containing the payment was postmarked after November 15, 1991, plaintiff did not allow the three percent timely payment discount and notified the taxpayer that an additional \$74.32 was owed. The taxpayer appealed to defendant. After a hearing, defendant found her testimony credible and held she was entitled to the three percent discount. Plaintiff appealed that decision to this court.

LAW

Plaintiff's Motion for Summary Judgment asserts defendant erred as a matter of law. ORS 305.820(1)(a) provides that any remittance sent through the United States mail:

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"[S]hall be deemed filed or received on the date shown by the post-office cancellation mark stamped upon the envelope containing it, or on the date it was mailed if proof *satisfactory to the addressee* establishes that the actual mailing occurred on an earlier date."

(Emphasis added.)

Plaintiff's position is as follows: As the "addressee," the tax collector has discretion to determine what proof is satisfactory. Plaintiff has exercised this discretion by adopting the following policy:

"Postmark dates are the preferred proof of mailing. Postmark dates are conclusive unless the taxpayer is able to support a claim of earlier mailing with corroborating evidence. Taxpayer may support a claim of timely mailing by presenting a postal receipt, letter from the post office or parcel delivery service, or other credible corroborating evidence. A taxpayer's uncorroborated assertion of timely mailing is not satisfactory proof of mailing."

Plaintiff contends that by accepting the taxpayer's uncorroborated assertion of timely mailing, defendant is overruling plaintiff's policy and depriving plaintiff of the discretion conferred upon that office by statute.

ISSUE

At oral argument, the parties agreed that the tax collector's exercise of discretion is subject to review by defendant. The issue is what standard of review is to be applied. Defendant contends that it is entitled to exercise "de novo" review. Defendant has supervisory authority over the administration of the tax laws (ORS 306.115) and directly reviews appeals from acts or conduct of tax collectors.

Plaintiff contends that defendant's review is restricted to an "abuse of discretion" standard. Plaintiff points out that the statute specifically delegates authority to determine what proof is satisfactory to "the addressee." For defendant to exercise de novo review would be to change the essential directive of the statute.

DISCUSSION

The court finds it is consistent for defendant's supervisory authority to be limited to an "abuse of discretion" standard of review. In using the terms "satisfactory to the addressee," the legislature conferred broad discretion upon individual tax collectors. The legislature must have contemplated that individual tax collectors would implement the statute in different ways. Thus, there is no basis for inferring a need for uniformity. If the legislature wanted uniformity, it could have delegated authority to defendant to promulgate a rule. It is possible to infer that the legislature recognized mistakes occur

in the mail system. The legislature may have felt that individual tax collectors would be familiar with their local postal systems, their practices, strengths and failings. For example, the tax collector in a rural area may be aware of weather conditions, illnesses or breakdowns in vehicles which could delay postmarking mail. (FN1) In making the delegation, the legislature has authorized those who deal with the problems on a day-to-day basis at the local level to make case-by-case decisions.

The court finds it is not unreasonable for the plaintiff to require corroborating evidence. The policy, as stated, does not require written proof. The corroborating evidence could be the testimony of an individual who witnessed the mailing or of a postal employee who explains why the mail was not postmarked in a timely fashion. Requiring some corroborating evidence is not an abuse of discretion. It would be an abuse of discretion if plaintiff refused to consider any evidence other than the post-office cancellation mark stamped upon the envelope. Such a policy would foreclose the exercise of any discretion.

The court finds defendant erred in overruling plaintiff's determination that the taxpayer did not offer satisfactory proof of timely mailing. Accordingly, defendant's Opinion and Order must be set aside and plaintiff's Motion for Summary Judgment should be granted. Now therefore,

IT IS ORDERED that plaintiff's Motion for Summary Judgment is granted.
FN1. This is not intended to impugn the postal service's hard-established reputation that "neither snow, nor rain, nor heat, nor night, stays these
mriers from the swift completion of their appointed rounds."

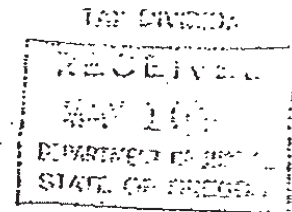
IN THE OREGON TAX COURT

Property Tax

No. 2663

FILED IN THE
CLERK OF THE
COURT
W. J. J. J. J.

COVE SPORTSMANS CLUB, a)
Non-profit Corporation, and)
UNION SPORTSMANS CLUB, a)
Non-profit Corporation,)
Plaintiffs,)
v.)
DEPARTMENT OF REVENUE,)
State of Oregon,)
Defendant.)



OPINION

This is a property tax case involving two separate plaintiffs but simple facts. Each of the plaintiffs own a building located on land occupied but not owned by them. Union Sportsman Club (Union) occupies land owned by the Oregon Department of Transportation, Highway Division, under a Land Use Permit. (Ex. 4.) Although the permit can be terminated by the owner on six months' notice, Union has occupied the land and its clubhouse has been on the property since 1921. The Cove Sportsmans Club (Cove) is in a similar situation. It occupies land owned by the Episcopal Church under an annual lease. (Ex. 3.) While it is only a one-year lease, Cove has occupied the land with its clubhouse since 1952.

Plaintiffs contend for minimal assessed values for their clubhouses on the grounds that without ownership of the

land the buildings have little value. Their reasoning is sound in that the short-term interest in the land implies that plaintiffs could be required to move their improvements on short notice. Since moving the buildings would incur substantial moving expenses, such a situation could detract from the market value of the buildings.

The thrust of plaintiffs' valuation evidence was to the effect that the buildings are to be valued without regard to the land. That is, in plaintiffs' view, the subject properties are like buildings which must be moved. Plaintiffs' evidence indicated that comparable buildings which must be moved typically sell for anywhere from \$200 to \$500. Plaintiffs' witness, a qualified building mover, testified that it would cost anywhere from \$15,000 to \$18,000 to move Cove's building and \$20,000 to \$24,000 to move Union's building. Under these circumstances, plaintiffs' appraiser, who could not find any sales of buildings in comparable circumstances, concluded that the sales of buildings that must be moved were a valid indication of the true cash value of the buildings. Reasoning that a knowledgeable purchaser would not pay much for a building on land owned by another where the building could be required to be removed on short notice, he concluded that such buildings would have only salvage value.

The question, then, is: What effect does the short-term interest in the land have on the assessed value to

put on the buildings? For purposes of ad valorem taxation the court finds none.

ORS 308.205 defines true cash value as the "market value" of the property as of the assessment date. The first and immediate question that must be answered in this case is whether there is a "market" for the subject buildings.

Plaintiffs' evidence established that there was a market, albeit a small one, for houses that must be moved. However, the court finds that this market is not applicable to the subject clubhouses. There was no evidence that the subject clubhouses must be moved. The evidence merely showed that the right to use the land could be terminated within one year or less. This point is significant because, in fact,

plaintiffs' use of the respective parcels has never been terminated. The Cove building has been in its present location over 30 years and the Union building over 60 years. Under these circumstances, it would be improper to value the subject buildings as if they must be moved.

ORS 308.205(1) provides that:

"If the property has no immediate market value, its true cash value is the amount of money that would justly compensate the owner for loss of the property."

In the court's view, the best measure of the loss to the owners in this case is the depreciated costs of the buildings.¹

Defendant argued that the full value of the buildings was taxable to plaintiffs without regard to the

time limitations under the lease or land permit by virtue of the holding in R. L. K. and Co. v. Tax Commission, 249 Or 603, 438 P2d 985 (1968). In that case, the taxpayer operated a government owned property, known as Timberline Lodge, under a special-use permit issued by the United States Forest Service. In holding that the permittee's interest is subject to taxation on the full value of the property, the court explained:

"But we are not concerned with a sale of property in this case; the evaluation is made for the purpose of taxation. The value of property is in its use. The state can tax that value to the person who, for the tax period, is using it. If the possessor is making a full use of the property, the value to him is exactly the same as it would be were he the owner. In effect, the lessee is the owner for each tax year he remains in possession under his lease, subject to any diminution in value resulting from restrictions made applicable to him which would not be applicable to an owner in fee." Ibid at 606.

Although the facts are somewhat different here, the basic rule is the same. Plaintiffs must pay tax on the full value of the buildings because they have full use of them. The land and the buildings combined have a particular value. How the ownership interests may be divided should have no consequence for purposes of taxing property. In this case, the tax is being imposed on the owners of the buildings because the tax law, in effect, ignores the value of any other interests in the property. Swan Lake Mldg. Co. v. Dept. of Rev., 257 Or 622, 478 P2d 393, 480 P2d 713 (1971). By constructing buildings on land in which they hold only a

Short-term interest, plaintiffs have created a situation where much of the building value contingently resides with the owner of the land. That is, the land owners can affect the value of plaintiffs' interests in the buildings by terminating plaintiffs' rights to use the land. However, this does not diminish the value of the buildings for ad valorem tax purposes. It is merely necessary to recognize that some of the value contingently resides with the owners of the land. Until such time as the owners of the land take action to terminate plaintiffs' use of the land, all of the building value is assessable to the owners of the buildings.

Based upon the above, the court finds that the true cash value of the improvements for the Cove Sportsmans Club as of January 1, 1986, was \$22,480 and the true cash value of the improvements for Union Sportsman Club as of January 1, 1986, was \$17,720. Defendant to recover its costs herein.

Dated this 10th day of May, 1988.


JUDGE

1 Plaintiffs' appraiser testified that he had no quarrel with the reasonableness of the estimates of defendant but believed that they did not apply because of the different ownership of the land.

IN THE OREGON TAX COURT

Property Tax

No. 2663

FILED BY 28 MAY 32

CLERK OF COURT

Kathy Little

COVE SPORTSMANS CLUB, a)
non-profit corporation, and)
UNION SPORTSMANS CLUB, a)
non-profit corporation,)

Plaintiffs,)

v.)

DEPARTMENT OF REVENUE)
State of Oregon)

Defendant.)

ORDER CORRECTING OPINION

It has come to the court's attention that while the pleadings show that the Union Sportsmans Club improvements were assessed as of January 1, 1986 at \$17,720, the evidence of true cash value before the court was no greater than \$15,500, and this is the value that should be determined by the court in its opinion. Now, therefore,

IT IS HEREBY ORDERED that the opinion in this case issued May 10, 1988 is hereby corrected by deleting the figure \$17,720 from line 16 of page 5 of the opinion and inserting the figure of \$15,500 as the true cash value of the Union Sportsmans Club improvements as of January 1, 1986.

DATED this 20th day of May, 1988.

Carl H. Boyer
OREGON TAX COURT JUDGE

TER:acw/1488t

IN THE OREGON TAX COURT

Property Tax

No. 2663

1
2
3
4 COVE SPORTSMANS CLUB, a)
non-profit corporation, and)
5 UNION SPORTSMANS CLUB, a)
non-profit corporation,)
6)
Plaintiffs,)
7)
v.)
8)
DEPARTMENT OF REVENUE)
9 State of Oregon)
10 Defendant.)

JUDGMENT

11 In accordance with the written opinion of this court,
12 dated and filed May 10, 1988, as corrected by this court's
13 order of May 20, 1988;

14 IT IS ORDERED AND ADJUDGED:

15 1. Except as modified below, defendant's Opinion and
16 Order Nos. 86-2237 and 86-2238, dated September 1, 1987, are
17 affirmed.

18 2. As of January 1, 1986, the true cash value of the
19 improvements owned by the Cove Sportsmans Club, identified as
20 Account No. 3S4016 1300A1 in the records of the Union County
21 Assessor, was \$22,480.

22 3. As of January 1, 1986, the true cash value of the
23 improvements owned by the Union Sportsmans Club identified as
24 Account No. 4S4018 1900A1 in the records of the Union County
25 Assessor, was \$15,500.

26 //

4. The Union County assessment and tax rolls shall be corrected in accordance with this judgment, and any refund due either plaintiff shall be promptly paid with statutory interest.

5. Defendant is awarded its costs and disbursements in the amount of \$60.

DATED this 1st day of June, 1988.



OREGON TAX COURT JUDGE

TEB:gcw/1488t

10 OTR 400

SEVEN-UP BOTTLING CO. OF SALEM, INC.

v.

DEPARTMENT OF REVENUE

(TC 2398)

Court found that the subject property was "affixed" or "erected upon" real property and not readily movable. Therefore, based upon ORS 307.010 and 307.020, the court ruled that the property was "real," not "personal."

Taxation - Real property in general

1. "Real property" includes "machinery, equipment or fixtures erected upon, under, above or affixed to the same." (ORS 307.010(1)).

Taxation - Personal property in general

2. "Personal property" includes "all chattels and movables." (ORS 307.020(3)).

Statutes - Construction and operation - Judicial authority and duty

3. Courts are statutorily mandated not to add to or subtract from a statute but to interpret it according to the terms therein. (ORS 174.010).

Statutes - Construction and operation - Meaning of language

4. In construing a statute, words of common usage are to be given their natural and obvious meaning.

Taxation - Liability of persons and property - Nature of property

5. The context of the "law of fixtures" is to be distinguished from the determination of real and personal property for *ad valorem* tax purposes.

Taxation - Constitutional requirements - Equality and uniformity

6. *Ad valorem* tax laws are intended to promote uniformity of taxation and reasonable ease of administration. These objectives cannot be met if assessors must rely on the common law test of "fixtures."

Administrative law - Rules and regulations - Validity

7. Although not binding on the court, an administrative rule is entitled to great weight.

Administrative law - Rules and regulations - Validity

8. To the extent that OAR 150-307.010 attempts to narrow the statute, it is invalid.

Trial held in courtroom of Oregon Tax Court, Salem, on December 16, 17 and 29, 1986.

David A. Rhoten, Salem, represented plaintiff.

Joseph A. Laronge, Assistant Attorney General, Department of Justice, Salem, represented defendant.

Decision for defendant rendered March 13, 1987.

CARL N. BYERS, Judge.

Plaintiff is the owner of certain machinery and equipment used in its business of bottling and distributing soft drinks. Plaintiff's property was assessed for the 1984-85 tax year as real property by the Marion County Assessor. Defendant upheld the assessor's characterization of the machinery and equipment and plaintiff appeals to this court seeking a determination that the property is personal property, not real property.¹

The property in question consists of the machinery and equipment one would expect to find in a soft drink bottling plant. Numerous conveyors connect the machines used for washing, filling, capping, labeling and packaging the bottles. There are fluid tanks, air compressors, heaters, water treatment and a palletizing machine. All of these are integrated and interrelated by pipes, wiring and conveyors as is necessary to process and produce plaintiff's product. The court viewed the premises to enable it to better understand the evidence submitted in this case.

Much of the testimony related to how the equipment was attached to the buildings or to other equipment. Some of the equipment, such as the large bottle washer, the palletizer and some conveyors is not attached to the building but merely rest in place by virtue of its weight. However, these items are attached to other equipment such as conveyors, pipes or wiring. Some equipment is attached to the building by bolts or screws, but, as plaintiff points out, it could be removed without significant damage to the building. In some areas the building has been modified to accommodate the conveyors, pipes and heating ducts which pass through the walls or the roof.

The single issue before the court is whether plaintiff's machinery and equipment is "movable" within the meaning of ORS 307.020(3).

Plaintiff makes much of the fact that the building in

¹ Plaintiff's counsel explained that while both real and personal property are taxable, real property values are generally trended up with inflation while personal property values are decreased in accordance with certain set depreciation schedules. If this is true, it certainly raises questions as to the accuracy of the assessment in one of the two directions.

which the equipment is housed is not owned by plaintiff and is readily adaptable to other light industrial or commercial uses. For the reasons set forth below, ownership of the building by another party has little bearing on the determination of the issue at hand.²

Resolution of the issue in this case is aided by the fact that the Court can look to two statutes rather than just one. ORS 307.010(1) defines real property while ORS 307.020(3) defines personal property. The issue posed in this case requires the court to draw the line between the two definitions for purposes of administering the tax statutes.

1, 2. The statutory definitions with which we are concerned are as follows:

“‘Land,’ ‘real estate’ and ‘real property’ include the land itself, above or under water, all buildings, structures, improvements, machinery, equipment or fixtures erected upon, under, above or affixed to the same; * * *.” (ORS 307.010(1).)

“‘Tangible personal property’ means and includes all chattels and movables, such as boats and vessels, merchandise and stock in trade, furniture and personal effects, goods, livestock, vehicles, farming implements, movable machinery, movable tools and movable equipment.” (ORS 307.020(3).)³

3. The first rule of the search in statutory construction is to focus on the statute itself. *Whipple v. Howser*, 291 Or 475, 632 P2d 782 (1981). The court is expressly admonished by the legislature in ORS 174.010 not to add to or subtract from a statute but “simply to ascertain and declare what is, in terms or in substance, contained therein.” In interpreting this statutory direction, the Oregon Supreme Court has said:

“We ought never to import into a statute words which are not to be found there, unless from a careful consideration of the entire statute it be ascertained that to import such words is necessary to give effect to the obvious and plain intention and meaning of the legislature. Under the directions of the statute

² Even if it did in this case it is questionable whether it should be given much weight since the shareholders of plaintiff are the owners of the building.

³ Both parties have alluded to the legislative history of the statute defining tangible personal property, pointing out that the 1939 amendment which added “all machinery and equipment used in the manufacture of raw or partially manufactured products” was deleted 20 years later. While this history was interesting, it is, as plaintiff points out, not very helpful.

last referred to [ORS 174.010] we are not at liberty to give effect to any supposed intention or meaning in the legislature, unless the words to be imported into the statute are, in substance at least, contained in it." *Barrett et al. v. Union Bridge Co.*, 117 Or 566, 570, 245 P 308, 45 ALR 527 (1926), quoted in *Whipple v. Howser, supra*, at 480.

4. Having thus established a line of sight, one final admonition with regard to statutory construction is appropriate.

"In construing a statute, words of common use are to be taken in their natural and obvious meaning and significance. That sense of the word is to be adopted which best harmonizes with the context and promotes the policy and objectives of the legislation." *State ex rel Nilsen v. Ore. Motor Ass'n*, 248 Or 133, 137, 432 P2d 512 (1967). See also *Canteen Company of Oregon v. Dept. of Rev.*, 8 OTR 450 (1980).

In beginning its search, the court recognizes that the term "movable" is broad enough in the ordinary sense to cover a wide area. Somewhere in that vast semantic plain between the immovable mountain and the constantly moving ocean to be found the line between real and personal property. The purpose of the legislature in crafting its definitions was to distinguish the two types of property for purposes of administering the laws of property taxation. This suggests that a simple rule, one easy to understand and to apply, is desirable and intended by the legislature.

Defendant, in the course of administering the property tax laws, has promulgated a rule which more specifically defines real property with regard to machinery and equipment. OAR 150-307.010(1)(2)(b). (1) and (2) define "erected upon" and "affixed" as follows:

" 'Erected upon' means being permanently situated in one location on real property and adapted to use in the place. For example, a heavy piece of machinery or equipment is set upon a foundation without being fastened thereto, but is an integral part of the function or design of the facility.

" 'Affixed' means being securely annexed to the real property. For example, items attached by bolts, screws, nails or built into the structure are securely annexed; items attached by electrical connections are not securely annexed."

Plaintiff contends that this rule is “an unconstitutional expansion” of the statute. (Plaintiff’s Memorandum, at 18.) Plaintiff asserts that “erected” is synonymous with “built” and that if the subject property falls within the definition of ORS 307.010 it is because it is “annexed,”⁴ not “erected upon.”

Upon examination, the court agrees that the administrative rule goes beyond the statute, but not necessarily in the direction plaintiff claims. Plaintiff claims that the rule is too broad, whereas in the court’s view it may be too narrow.

5. Defendant’s administrative rule appears to have adopted to some extent the common law “three-prong test” of annexation, adaptation and intention. *Waldorf v. Elliott*, 214 Or 437, 442, 330 P2d 355 (1958). It should be noted that the test is usually applied in the “law of fixtures.” *Highway Com. v. Feves et al*, 228 Or 273, 365 P2d 97 (1961). That context is to be distinguished from the determination of real and personal property for ad valorem tax purposes.

ORS 307.010(1) uses the terms “affixed to,” and “erected upon.” As can be seen from the regulations quoted above, defendant has interpreted the word “affixed” to mean “securely annexed.” While the term affixed in and of itself connotes an element of permanence, the court is not sure that it also connotes “securely.” In fact, large items may be found constructively “affixed” to the land or buildings merely by virtue of their weight and size. *Waldorf v. Elliott*, 214 Or 437, 330 P2d 355 (1958).

Likewise, the term “erected upon” does indeed, as plaintiff contends, connote the idea of assembling, building or constructing. The regulation’s definition of erected upon contains two elements: (1) That the item be “permanently situated in one location,” and (2) that it be “adapted to use in the place.” While these elements may be consistent with the concept of being built or constructed upon, they do not constitute a complete definition. Many large machines are brought on

⁴ The statute uses the term “affixed,” not “annexed.” While there may be some overlapping in meaning and general usage, it would appear that the term “affixed” connotes being physically attached while “annexed” is a broader term which implies an addition to something without the particular means by which it is added. See Webster’s Third New International Dictionary 87 (1961).

site in pieces and assembled or "erected." Even large machines which are brought on site as a unit often require special foundations, modification of the building's electrical panels and switches, special wiring, plumbing, venting, access ramps, openings and other forms of construction. In this sense, then, such machines are "erected upon" the real property.

To the extent that the regulation requires more than what the common ordinary words convey, it goes beyond the statute. For example, in subparagraph (4) of OAR 150-307.010(1)(2), the regulation indicates that if, after applying the tests of "annexation and adaptability" there is still doubt, then it is appropriate to look to the "intention of the parties." Again, these are the common law tests relating to law of fixtures. The statute does not use these terms. The statute does not say "affixed with intent" or "affixed and adapted." It simply says "affixed." There is no indication in the statute itself that the legislature intended application of the common law test.

6. Not only is the common law test not required by the statute, it is generally inconsistent with the statute. Ad valorem tax laws are intended to promote uniformity of taxation and reasonable ease of administration. These objectives cannot be met if the assessor must rely upon the common law test.

"[U]niformity of taxation cannot be attained unless a uniform classification of real and personal property is established. Just as assessors are not bound by private agreements, they should not be frustrated or hindered in performing their vital function by the necessity of ferreting out the often undisclosed and secret intentions of lessors and lessees relative to the terms of a lease. For the most part, assessors must be allowed to act on the basis of outward appearances." *Trabue Pittman Corp. v. Los Angeles County*, 29 Cal 2d 385, 175 P2d 512, 517 (1946).

This view is consistent with the holding in *Warm Springs Lbr. Co. v. Tax Com.*, 217 Or 219, 225, 342 P2d 143 (1959), where the court held that an agreement between parties "cannot control the action of the state when exercising its taxing power." Citing *Trabue Pittman Corp. v. County of Los Angeles*, *supra*. If the intent of the parties cannot control for tax purposes, how can the common law test be properly applied?

7. The court recognizes that defendant's administrative rule has been in effect for many years and is entitled to great weight.

"[T]he interpretation of an ambiguous statute by an agency charged with its administration is entitled to great weight, although it is not binding on the courts." *Curly's Dairy v. Dept. of Agriculture*, 244 Or 15, 21, 415 P2d 740 (1966).

8. The court also recognizes that it has previously applied the common law test in construing ORS 307.020(3). *Bylund v. Dept. of Rev.*, 9 OTR 76 (1981).⁵ Nevertheless, the court now recognizes that the statute is not as narrow as might be interpreted under the common law test. For example, a machine "affixed to" a building is real property regardless of the intent of the parties or its "adaptability." To the extent that the regulation attempts to narrow the statute, it is invalid.

Returning to the issue in this case, having considered the field of meaning from the perspective of real property, it is now appropriate to view the field facing from the ocean and consider the definition of personal property. It is apparent that ORS 307.020(3) emphasizes the notion of movement or movability. Defendant correctly argues that the structure of the statute invites application of the statutory rule of construction *ejusdem generis*.

"Where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words. Where the opposite sequence is found, i.e., specific words following general ones, the doctrine is equally applicable, and restricts application of the general term to things that are similar to those enumerated.

"* * * If the general words are given their full and natural meaning, they would include the objects designated by the specific words, making the latter superfluous. If on the other hand, the series of specific words is given its full and natural meaning, the general words are partially redundant. The rule accomplishes the purpose of giving effect to both the particular and the general words, by treating the particular words as

⁵ In *Bylund v. Dept. of Rev.*, 9 OTR 76 (1981), this court did apply the common law "three-prong test" to determine whether TV cable drops were real or personal property. The court in that case may have been unduly influenced by the fact that the parties all agreed that the three-prong test may be used.

indicating the class, and the general words as extending the provisions of the statute to everything embraced in that class, though not specifically named by the particular words.'

"The resolution of this conflict by allowing the specific words to identify the class and by restricting the meaning of general words to things within the class is justified on the ground that had the legislature intended the general words to be used in their unrestricted sense, it would have made no mention of the particular words." 2A Sutherland Statutory Construction § 47.17 (4th ed).

Under this rule, the general terms "machinery," "tools" and "equipment" are more narrowly viewed in light of the specific types of property listed in the statute. As a general rule, the specific types of items listed in the statute are not "affixed" to anything. Consequently, they are "readily movable as opposed to apparently stationary or fixed items." OAR 150-307.020(3). In this light, machinery, tools and equipment which are nailed, bolted, screwed or glued to real property are not "movable" within the meaning of the statute.

The "bright line" sought by plaintiff distinguishing real from personal property may be substantially dimmer and less distinct than hoped for. However, the court believes that the above conclusions provide a view which facilitates administration of the tax laws. As a general rule, the assessor is not required to consider the intention of the parties or the adaptability of the property. He merely has to determine whether the property is "affixed to" or "erected upon" land or buildings. The court recognizes that under this rule there may still be some cases in which there is a question as to whether an item is real or personal property. It is difficult to conceive of a general rule which would aptly fit all the possible types of property. The one principle that abides is that the statute must be the standard.

Applying the above to the subject property, the court finds that most of the subject property is "affixed" or "erected upon" real property. Most of the equipment is bolted or screwed to the walls, ceilings or floor and attached by pipes, ducts and conduits. This equipment is not moved except when modifying the operational layout. In fact, movement of the equipment would be inconsistent with the operation and function it performs. Movement would usually result in misalignment, leaks and faulty application of the products. The very

purpose of the small bolts and screws plaintiff refers to is to prevent movement.

It seems likewise clear that the equipment in question is not "freely movable" as asserted by plaintiff. (Plaintiff's Memorandum, at 8.) "Freely movable" suggests something that, if not designed to be moved on its own wheels, rails or pontoons, could easily be placed on such means of movement and moved. What actually would be required in this case would be the disassembly of a complex arrangement of equipment. Numerous pipe fittings and connections would have to be undone, machinery, pipes and valves would have to be detached from walls, floors and ceilings and a number of holes would have to be patched or plugged in the building. By plaintiffs' own evidence, it would take approximately 20 days to remove the subject property from the building. It would not reasonably take anywhere near the time to remove a like amount of "boats and vessels, merchandise and stock in trade, furniture and personal effects, goods, livestock, vehicles" or "farming implements" from the building. The difference between the latter types of property and the subject property is that the subject is "affixed to" or "erected upon" real estate while the latter is "readily movable."

In finding that "most" of the subject property is not personal property but real property, the court recognizes that there may be some items which are not real property. Specifically, some of the smaller tanks in the syrup room, which are not attached to the building but are free-standing, and which are not connected with plumbing connections but drained through flexible rubber hoses, are personal property. Such items are readily movable from one part of the room or plant to another. On the other hand, the large stainless steel tank, pictured in Exhibit 5, is attached by solid plumbing connections. Its weight and bulk, as well as the plumbing attachments, render it not "movable." There may be other specific property which is an exception to the court's general finding that the subject machinery and equipment is real property, not personal property. If the parties are unable to agree on such items, they may submit a list of such items to the court for specific determination before judgment is entered. Costs to neither party.

WEST FOODS, INC.

v.

DEPARTMENT OF REVENUE

(TC 1748)

Court found that mushroom growing in plaintiff's sheds constituted an "agricultural or horticultural use" but that the subject property, growing beds, was not personal property and therefore not eligible for tax exemption under ORS 310.608 (now ORS 307.400). The beds were part of the real property and the appraiser's failure to include the beds in the growing rooms resulted in an underevaluation, not an "omission"; therefore, the beds were not subject to additional taxes as omitted property.

Taxation - Exemptions - Statutory provisions

1. Inventory, defined as tangible personal property, including equipment, used in agricultural or horticultural use is exempt from ad valorem taxation. ORS 310.608. (Now ORS 307.400).

Taxation - Levy and assessment - Rural or agricultural lands

2. Mushroom growing in plaintiff's sheds constitutes an "agricultural or horticultural use."

Fixtures - Nature and requisites of conversion into realty

3. Plaintiff's growing beds are not personal property. The beds and the buildings housing the beds are a single economic unit and are part of the realty.

Taxation - Mode of assessment - Omissions and defects

4. If any buildings, structures or improvements on lands have been omitted from assessment and taxation, they may be assessed as omitted property. ORS 311.207.

Taxation - Mode of assessment - Omissions and defects

5. Growing rooms (with growing beds as an integral part of the real property) were included in the 1973 appraisal. The failure of the appraiser to include the beds resulted in an undervaluation, not an omission of any "buildings, structures or improvements."

Trial held December 17, 1984, in the courtroom of Oregon Tax Court, Salem.

Gregory R. Mowe, Stoel, Rives, Boley, Fraser and Wyse, Portland, represented plaintiff.

G. F. Bartz, Assistant Attorney General, Department of Justice, Salem, represented defendant.

Decision for plaintiff rendered January 15, 1985.

EDWARD H. HOWELL, Judge Pro Tem.

Plaintiff appeals from an order of the Department of Revenue denying plaintiff's claim for a property tax exemption for certain property used in the growing of mushrooms at its plant in Salem. Originally the true cash value of the mushroom plant was also an issue but at trial the parties have agreed upon the value.

1. The tax year involved is 1980-1981 and at that time¹ ORS 310.608 (now ORS 307.400) provided in pertinent part:

"(2) All inventory shall be exempt from ad valorem taxation.

"(3) As used in subsection (2) of this section, 'inventory' means the following tangible personal property:

"(a) Farm machinery and equipment used in the planting, raising, cultivating or harvesting of farm crops or used for the purpose of feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or bees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof."

2. The defendant found that the growing of mushrooms did not qualify as a "farm" in relation to the statute allowing an exemption for "farm machinery and equipment." The growing process for mushrooms consists of preparation of the compost which is a mixture of straw, manure and some topsoil. The compost is pasteurized and placed in wooden racks called growing beds in the growing rooms in concrete block buildings. Mushroom spores are seeded into the compost, the mushrooms harvested and the growing process repeated approximately four times per year. I find that mushroom growing in plaintiff's sheds constitutes an "agricultural or horticultural use" within the above statute. Except for the fact that mushrooms are grown indoors, I see no difference between mushroom growing and any other farm crop.

The next issue is whether the growing beds constitute personal property as plaintiff contends and therefore are eligible for the exemption.

The growing beds are made of wood and extend the length of the buildings separated by a central aisle. The beds are in tiers extending seven tiers high with a catwalk in the middle. The boards upon which the catwalk rests are "toenailed" into the side walls of the building and the vertical posts are also attached to the ceiling in the same manner. The beds are not bolted or attached to the concrete floor. There was testimony that attaching the beds to the ceiling and walls is only for the alignment and construction of the beds and was not for support of the beds. The bottom bed boards or slats in each of the growing beds upon which the compost is placed are

¹ Formerly ORS 310.608 allowed a property tax exemption for farm inventory. In 1975, "inventory" was defined as farm machinery used in "planting, cultivating, or harvesting of farm crops." In 1977, the definition was broadened to include farm machinery "and equipment" used for "any other agricultural or horticultural use."

completely loose and are removed and stacked up during the filling and removal of the compost.

In *Marsh v. Boring Furs, Inc.*, 275 Or 579, 551 P2d 1053 (1976), the Supreme Court held that mink pens suspended from sheds that housed the pens were real property. The court quoted Brown on Personal Property (3rd ed 1975) § 16.1, at 517:

“* * * Would the ordinary reasonable person validly assume that the article in question belongs to and is part of the real estate on which it is located—such assumption to be based on a consideration of the nature of the article itself, permanent or temporary; the degree of its attachment, firm or slight, and whether, according to the custom of the time and place the article was an appropriate and ordinary adjunct to the land or building in which it was located?”

The court also stated that if the property is located in a building specially prepared for it a strong inference arises that it was intended to become a part of the realty.

3. In my opinion, the growing beds and the buildings housing the beds are a single economic unit and are part of the realty. While the slats are loose and are removed at times during the replacement of old compost with new compost most of the time the slats are covered with several inches of compost.

OMITTED PROPERTY

The defendant contends the county is entitled to assess the growing beds² as omitted property for the years 1975 through 1979 under ORS 311.207, which states in part:

“(1) Whenever, after the return of the assessment rolls to the county assessor by the board of equalization, the assessor discovers or receives credible information, or if he has reason to believe that any real or personal property, including property subject to assessment by the Department of Revenue, or any buildings, structures, improvements or timber on land previously assessed without the same, has from any cause been omitted, in whole or in part, from assessment and taxation on the current assessment and tax rolls or on any such rolls for any year or years not exceeding five years prior to the last roll so returned, he shall give notice as provided in ORS 311.209.”

The mushroom operation was appraised by Marion County in 1973 and the true cash value of the plant placed on the assessment roll. The property was appraised next as of

January 1, 1980. In the meantime, between 1973 and 1980, the only additions made to the plant were the construction of beds 11-22 in 1975 and beds 79-104 in 1978. Plaintiff contends and defendant denies that the construction of beds 11-22 in 1975 were reported as additions to the real property. Plaintiff concedes that the construction of beds 79-104 in 1978 were not reported and agrees that an assessment against beds 79-104 as omitted property is correct.

Apparently from 1973, the time of the first appraisal, until 1975, when beds 11-22 were added, the plaintiff was paying taxes on the true cash value of the mushroom plant as determined by the 1973 appraisal of the plant. The defendant contends that the growing beds involved (except 11-22 and 79-104 built after the 1973 appraisal) were left out of the 1973 appraisal and therefore are omitted property under the statute and subject to taxes for the five years 1975 to 1979, inclusive. The defendant's appraiser who made the 1980 appraisal testified that the field notes made for the 1973 appraisal included the growing rooms but did not include the growing beds in the rooms. According to him, the former appraiser simply "missed" the growing beds.³ The appraiser testified that the growing beds in 1973 would be an integral part of the growing rooms and would be considered as real property.

4. ORS 311.207, *supra*, states, in effect, that if any buildings, structures or improvements on lands have been omitted in whole or in part from assessment and taxation they may be assessed as omitted property.

5. Here the growing rooms were included in the 1973 appraisal. The growing beds were an integral part of the growing rooms and were part of the real property. The growing rooms were valued and placed upon the assessment and tax rolls. The failure of the appraiser to include the beds in the growing rooms resulted in an undervaluation of the growing rooms and not an omission of any "buildings, structures or improvements" under the statute. See *Tradewell Stores, Inc. v. Snohomish County*, 69 Wash2d 352, 418 P2d 466 (1966); and *Star Iron & Steel Company v. Pierce County*, 5 Wash App 515, 488 P2d 776 (1971). Thus, beds 1-10, 30-39, 40-49, 55-65, and 67-68 are not subject to the additional taxes for the years 1975-1979. I find also that beds 11-22 built in 1975 were not reported as additions to the real property and subject to the additional taxes for 1976 to 1979, inclusive. Beds 79-104 built in 1978 have been conceded by plaintiff to be subject to the additional tax.

³ Some mention appears in the record that the original appraiser did not open the doors to the growing rooms.

WESTERN STATES FIRE APPARATUS, INC. v. DEPARTMENT OF REVENUE

Suit to set aside order of department holding plaintiff liable for personal property taxes in Washington County. Court held that plaintiff was liable for tax on his inventory and trucks, but that property belonging to Oregon municipalities and out-of-state owners was not subject to assessment and taxation in Oregon.

Taxable situs—Personal property—Owner's domicile

1. Generally the taxable situs of personal property is the owner's domicile.

Taxable situs—Personal property—Temporary absence from owner's domicile

2. Personal property temporarily outside of owner's county of domicile retained its taxable situs in that county.

Exemption—Property of Oregon public body—Fire district

3. Personal property of Oregon fire districts which is intended for the corporate purposes of those districts is exempt from taxation. ORS 307.090(1).

Exemption—Property of Oregon public body—Temporarily in possession of plaintiff

4. Personal property of Oregon fire districts which is exempt under ORS 307.090(1) does not lose its exemption because temporarily in possession of plaintiff on assessment day.

Exemption—Property of county in the state of Washington

5. Exemption granted by ORS 307.090(1) does not apply to property owned by county in State of Washington.

Taxable situs—Personal property—Temporarily in Oregon

6. Property belonging to out-of-state owner did not have taxable situs in Oregon when it was temporarily in Oregon on assessment day for installation of parts.

Property taxation—No taxable situs in Oregon

7. Property whose location in Oregon was temporary or transient and which therefore had no taxable situs in Oregon was not subject to ad valorem property taxation by Washington County.

Property taxation—Ownership—Beneficial ownership

8. Ownership for purposes of property taxation contemplates beneficial ownership and while location of bare legal title is a factor to be considered, it is not determinative.

Taxable situs—Personal property—Temporarily in Oregon

9. Property temporarily in plaintiff's shop on assessment day did not have taxable situs in Oregon.

Property taxation—No taxable situs in Oregon

10. Property not situated in Oregon on assessment date within meaning of ORS 307.030 was not subject to ad valorem property taxation in Oregon.

Exemption—Personal property—Unaffixed parts

11. Evidence does not establish that parts not affixed to chassis on assessment day were exempt from taxation.

Trial had July 22, 1969, in Washington County Courthouse, Hillsboro, Oregon.

Eugene E. Feltz, Casey, Palmer and Feltz, Portland, represented plaintiff.

Richard A. Uffelman, Assistant Attorney General, Department of Revenue, Salem, represented defendant.

Decision in part for plaintiff and in part for defendant rendered December 12, 1969.

EDWARD H. HOWELL, Judge.

Plaintiff appeals from an order of the Department of Revenue sustaining the action of the Washington County Department of Revenue in adding certain personal property to the assessment roll as omitted property. The tax year involved is 1967-68.

The plaintiff is a custom manufacturer of fire trucks for fire districts and other municipal corporations. The plaintiff does not manufacture the truck chassis, but affixes the hoses, pumps, ladders and other necessary fire equipment to the chassis to form a completed fire truck. The chassis are acquired in two ways. In some instances the municipality orders the chassis directly from the dealer or manufacturer

and has it delivered to plaintiff for installation of the equipment mentioned. In other cases the plaintiff obtains bids for the chassis from the dealer or manufacturer, the bid is directed to and accepted by the municipality and the order for the chassis is placed by plaintiff for the purchaser. The purchaser either pays the manufacturer directly or pays the plaintiff for both the chassis and plaintiff's services and the plaintiff then pays the manufacturer for the chassis. Generally in such cases the plaintiff is paid upon delivery and acceptance by the purchasers. Plaintiff receives no profit from the sale of the chassis by the dealer to the municipality and the transaction is handled in this manner solely as a convenience to the purchaser. Plaintiff's profit is received from the sale and installation of the parts placed on the chassis to produce the type of fire truck required by the municipality.

On January 1, 1967, plaintiff had six chassis on hand plus certain parts and equipment which plaintiff claims had been or were going to be placed on the chassis. Also on January 1, 1967, plaintiff was the owner of four fire trucks which it had taken in on trade and had loaned to four municipalities, all located outside of Washington County. The plaintiff did not report on its personal property tax return the value of the chassis, the parts or the four fire trucks which were on loan and contends that they were exempt from personal property taxation. The assessor added the value of the property to the rolls as omitted property and his action was affirmed by the Department of Revenue.

The first issue is whether the four trucks owned by plaintiff and loaned to municipalities outside of

Washington County are subject to personal property taxation. Three of the fire trucks were loaned to municipalities in Oregon and one in Washington. The trucks were loaned as a convenience to the municipality and plaintiff received no remuneration. The trucks were not licensed and plaintiff paid no personal property taxes in any jurisdiction on the trucks.

The plaintiff contends that as the trucks were outside Washington County on the assessment date the county lacked jurisdiction to make the personal property tax assessment.

ORS 307.030 states that all real and personal property *situated* within this state, except as otherwise provided by law, is subject to assessment and taxation. The assessor is required by ORS 308.210 to assess the value of all taxable property within the county. ORS 308.105 states that personal property may be assessed in the name of the owner or any person having possession or control of the property and if two or more persons jointly are in possession or control of the personal property it may be assessed to any one or all of such persons.

1. Generally the taxable situs of personal property is considered to be the domicile of the owner, unless it is shown that the property has attained an actual situs of a permanent nature in another jurisdiction. *Ainsworth v. County of Filmore*, 166 Neb 779, 90 NW2d 360 (1958). In *Ace Construction Co. v. Board of Equalization*, 169 Neb 77, 98 NW2d 367 (1967) (citing *Ainsworth*), the court stated that the taxability of personal property at the domicile of the owner is not affected by occasional excursions to a foreign jurisdiction. In *Brock & Co. v. Board of Supervisors of Los Angeles County*, 132 Cal App2d

550, 90 P2d 353 (1939), the court was interpreting a statute similar to ORS 307.030 which required that all taxable property shall be assessed in the county, city or district in which it is situated. The court held that the term "situated" "connotes a more or less permanent location or situs, and the requirement of permanency must attach before tangible personal property which has been removed from the domicile of the owner will attain a situs elsewhere.'" Citing *Brock v. Supervisors*, 8 Cal2d 286, 65 P2d 791, 110 ALR 700 (1937).

2. Here the plaintiff was the owner of the trucks and because of the loan to other municipalities, their situs outside of Washington County was only temporary. Upon termination of the loan they would be returned to their permanent base at plaintiff's location. They were subject to taxation in Washington County and should have been reported on plaintiff's personal property tax return.

The question of the taxability of the six truck chassis and the parts affixed thereto which plaintiff had on hand on January 1, 1967, requires a consideration of several separate factors.

Three of the six chassis were purchased directly from the dealer or manufacturer by the municipalities. Two of these chassis were purchased by Oregon municipal corporations and the third was purchased by Skagit County, Washington.

The two chassis that were purchased by the Oregon municipalities will be considered first. These chassis, purchased by Cedar Mills and Clatskanie Rural Fire Protection Districts directly from the dealer or manufacturer, were delivered to plaintiff for installation of the various parts mentioned. The

cost of the chassis was paid directly to the dealer and the cost of the installed parts paid separately to plaintiff.

ORS 307.090(1) states: "Except as provided by law, all property of the state and all public or corporate property *used or intended for corporate purposes* of the several counties, cities, towns * * * and all other public or municipal corporations in this state, is exempt from taxation." (Emphasis supplied.)

3. Cedar Mills and Clatskanie fire districts were the owners of these two chassis which were in the temporary possession of the plaintiff only for the purpose of installation of the fire equipment required by the purchaser. As the two chassis were the property of the districts and were intended for corporate purposes of the fire districts they were exempt from taxation under ORS 307.090 above.

4. The defendant argues that although the plaintiff may not have been the owner of the two trucks, the assessor was entitled to assess the property to the plaintiff because ORS 308.105(2) provides that "Personal property may be assessed in the name of the owner or of *any person having possession or control thereof.*" (Emphasis supplied.)

The trucks, exempt from taxation under ORS 307.090(1) because they were owned by municipal corporations in Oregon and intended for corporate purposes, did not lose their exemption because they were temporarily in the possession of plaintiff on assessment day, January 1, 1967. *Weinstein, Executrix v. Watson, Assessor*, 184 Or 508, 200 P2d 383 (1948). In *Weinstein* the assessment involved property temporarily in the possession of a pawnbroker. The statutes in effect at the time provided that mortgaged or

pledged personal property was considered the property of the person in possession for purposes of taxation; that "except as otherwise specifically provided" all personal property shall be assessed for taxation; that wearing apparel and other personal property were exempt and that personal property may be assessed in the name of the owner or person having possession or control.

The assessor attempted to assess the plaintiff pawnbroker for the wearing apparel and the personal effects that had been pledged with him. The court held that the exemption given the wearing apparel and personal effects was granted to the property as compared to the owner and stated:

"To declare that a temporary interruption of the custody by the actual owner of exempt personal property destroys the exemption of such personal property for the purposes of assessment and taxation would be to cause such personal property of all literary, benevolent, charitable and scientific institutions and of public libraries, as might be in the possession of a third person on the tax assessment day, to become taxable. Obviously, the legislature did not intend any such a result, nor should the statute be so construed." 184 Or at 515.

The two trucks owned by Cedar Mills and Clatskanie fire districts were exempt and did not lose their exemption because they were in the temporary possession of the plaintiff.

5. The next issue is whether the truck purchased directly from the dealer or manufacturer by Skagit County, Washington, and in plaintiff's hands on January 1, 1967, was exempt from taxation. Contrary to the two trucks purchased directly from the dealer by the two Oregon municipalities, the truck is not

exempt under ORS 307.090(1) because the exemption therein is granted to property owned and used or intended for use by municipal corporations "in this state." Therefore the truck is taxable to the plaintiff if it was "situated" within this state as stated in ORS 307.030, and if it was within the possession and control of plaintiff as required by ORS 308.105(2). If the truck did not have "a more or less permanent location or situs" in this state, (*Brock & Co. v. Board of Supervisors of Los Angeles County, supra*) then it cannot be said to have been situated here within the meaning of ORS 307.030 classifying taxable property as property "situated" within this state. If the chassis did not have a taxable situs in Oregon then it is not necessary to decide whether plaintiff had possession or control of the chassis because plaintiff cannot be assessed and taxed for property which did not have a taxable situs in Oregon.

6, 7. The truck was acquired by Skagit County, Washington, directly from the dealer. The bid was made by the dealer to Skagit County, accepted by the county and the purchase price paid to the dealer. The only association plaintiff had with the truck was to have it temporarily in its possession in order to add certain necessary items to the chassis. The situation is the same as if Skagit County had sent the truck to the plaintiff's shop for repair and the truck was temporarily in plaintiff's shop on assessment day. Its location in Oregon was purely temporary or transient as compared to local or permanent, and the truck was not subject to Washington County ad valorem personal property taxation because it was not property "situated" in this state within the meaning of ORS 307.030.

The other three trucks in plaintiff's shop on January 1, 1967, were all purchased by municipal corporations located in the State of Washington. As mentioned previously, the bids for the chassis were submitted by the dealers or manufacturers to the municipalities and accepted by them, although the order for the chassis was placed with the dealer or manufacturer by the plaintiff as a service to the municipalities. The chassis were delivered by the manufacturers or dealers to plaintiff for installation of the additional items. The purchasers paid plaintiff a total amount for both the chassis and the plaintiff's installation and plaintiff paid the dealers for the cost of the chassis.

If the truck chassis were owned by plaintiff they would have had a taxable situs in Oregon and would be properly assessed to plaintiff. If the truck chassis were owned by the Washington municipalities they would not have been exempt property under ORS 307.090 because they were not owned by a municipality "in this state." However, if they were owned by the Washington municipalities in order to be taxable to the plaintiff the chassis must have been "situated" in this state and under the possession and control of plaintiff on January 1, 1967.

8. It is not necessary to determine who has technical legal title to the chassis because the beneficial ownership of the chassis was in the municipalities. The dealer's bid was made to and accepted by the municipalities who paid for the trucks although the payment was made to the dealer through the plaintiff. The plaintiff had no interest in the truck chassis other than the contractual obligation to add the additional fire parts and be paid for the parts and the installa-

tion. While bare legal title to the trucks is a factor to be considered it is sufficient here that the beneficial ownership of the truck chassis was in the Washington municipalities and not in the plaintiff. *Mitchell Aero, Inc. v. City of Milwaukee*, 42 Wis2d 656, 168 NW2d 183 (1969); *C. C. Moore & Co. v. Quinn*, 149 Cal App 2d 666, 308 P2d 781 (1957).

9. The chassis were not situated within the State of Oregon because their location in plaintiff's shop on assessment day was temporary, not permanent or local. *Brock Co. v. Board of Supervisors of Los Angeles County*, *supra*.

10. As these three chassis belonging to the Washington municipalities were not situated in Oregon on January 1, 1967, within the meaning of ORS 307.030, they did not have a taxable situs in Oregon and were not taxable to plaintiff.®

The defendant Department of Revenue concedes that if any of the trucks are exempt from taxation all parts which plaintiff had attached to the trucks on January 1, 1967, would also be exempt.

The remaining issue concerns whether other parts in plaintiff's inventory which had not yet been attached to the truck chassis were also exempt from taxation.

The inventory consists of items such as pumps, lights, and sirens which have been purchased by plaintiff to be eventually installed on chassis which had been ordered but not yet delivered to plaintiff. The

® Neither did the plaintiff have the type of possession or control of the chassis as required by ORS 308.105. The plaintiff was not using the fire trucks for fire purposes and was not using them for his own benefit. His possession resembled that of a bailee who possessed the trucks to make necessary repairs and when the repairs were completed was obligated to return the trucks to the owners.

parts are purchased by plaintiff, billed and delivered to plaintiff who later collects from the purchasers.

Plaintiff also carries a general inventory of parts which have not been purchased for a specific order and which are available for sale to any purchaser.

Plaintiff's president testified that the parts ordered for a specific chassis are kept separate from the general inventory. However, he also testified that a municipality which has placed an order for parts to be placed on a specific chassis often came in and withdrew the parts, apparently for some other use.

11. The evidence does not establish that the parts were exempt from taxation. The plaintiff ordered the parts, paid for them and later sold them to the municipalities who were free to acquire them for purposes other than installation on the specific chassis ordered. To allow an exemption for these parts would amount to exempting inventories of any manufacturer who happened to have municipalities as customers.

It is impossible to determine from the evidence the true cash value of the plaintiff's nonexempt property on hand on January 1, 1967, and the case must be remanded to the Department of Revenue for a determination of true cash value. The plaintiff was on a fiscal year basis from March 31 to April 1. On March 31, 1967, plaintiff's balance sheet showed inventories of \$130,991.88. The defendant contends that this amount should be used as plaintiff's inventory as of January 1, 1967. The plaintiff contends that its January 1, 1967, nonexempt inventory amounted to \$5,813.91. Neither amount is acceptable because the defendant's valuation includes items which are exempt and the plaintiff's valuation omits nonexempt items. Plaintiff has further contended that the "work in

progress" figures on the March 31, 1967, balance sheet are not indicative of what was on hand on January 1. No decision is made as to the appropriateness of the March 31 balance sheet figures and the case is remanded to the Department of Revenue for the parties to determine the true cash value of the nonexempt inventory as of January 1, 1967.

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

BRUCE A. DURKEE)	
and DEBORAH L. DURKEE,)	
)	
Plaintiffs,)	TC-MD 020321D
)	
v.)	
)	
LINCOLN COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs appeal the real market value of their personal property for tax year 2001-02.

A trial was held in the courtroom of the Oregon Tax Court, Salem, Oregon, on Tuesday, March 22, 2005. Bruce A. Durkee (Durkee) appeared on behalf of Plaintiffs. Kathy Leib (Leib) Personal Property Specialist, appeared on behalf of Defendant.

I. STATEMENT OF FACTS

Plaintiffs own and operate the Driftwood Village Motel, a 12-room facility offering “oceanfront studios and suites with gorgeous views.” (Def’s Ex G-1.) The motel is located in Newport, Oregon. Plaintiffs are appealing the real market value of the personal property used in the operation of their motel.

Previously, Plaintiffs appeared in this court, appealing the real market value of their personal property for tax years 2000-2001, including an omitted personal property assessment for tax years 1996-97 through 2000-2001. The total adjudicated value of Plaintiffs’ personal property for tax year 2000-2001 was \$19,360. The magistrate concluded that the real market value of the personal property reported by Plaintiffs on their annual personal property tax return was \$10,500 for tax year 2000-2001. Further, the magistrate determined that the omitted

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personal property was fully depreciated and concluded that the real market value of the omitted personal property was \$8,860 for all tax years appealed. Durkee testified that the value of “omitted property” was an “arbitrary” amount. He testified that Defendant’s personal property valuation factors requires a 30 percent salvage value. (Ptfs’ Ex 3, Personal Property Valuation Factors, Table 2.) Using the court’s prior determination of a fully depreciated value of \$8,860, Durkee testified that the original cost of the omitted property could be computed and would be substantially in excess of his original cost (\$8,642) for those items. (*Id.*)

Plaintiffs allege that the real market value of all the personal property used in their business for tax year 2001-02 is no more than \$7,561. Defendant placed the adjudicated value of \$19,360 on the tax roll for tax year 2001-02. Durkee testified that between 2000-2001 and 2002-03, the personal property used in the operation of their motel remained the same, with no significant additions or deletions. Leib testified that, based on her review of the personal property found during the audit and the assets listed on Plaintiffs’ 2002-03 personal property tax return, the 2001-02 real market value should be \$20,555. (Def’s Ex A.) Leib noted for the court that many of the items reported by Plaintiffs on their 2002-03 personal property tax return were not included by Plaintiffs in their filed 2001-02 return, even though Leib saw them in use when she audited the motel. Leib concluded that the 2000-2001 adjudicated value supports her determination of value for tax year 2001-02.

To aid the court in determining the real market value of their personal property, Plaintiffs submitted advertisements for various items of personal property used in operating the motel. Defendant submitted “pictures and values of equipment found at used furniture/equipment stores in Lincoln City, OR.” (Def’s Ex PL.) Defendant provided the court with information and pictures taken from the Driftwood Village website and photographs of the personal property

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taken by Leib during her site visit to audit the Plaintiffs' filed personal property tax returns. (Def's Exs G and H.) In addition, Defendant submitted a Questionnaire for Confirmation of Commercial Property Sales, for the March 20, 1999, sale of Trollers Lodge, a 12-room motel located in Depoe Bay, along with information taken from the Trollers Lodge website. (Def's Exs E and F.) In response to a question asking if the personal property was sold along with the Trollers Lodge facility, the seller answered yes, and estimated the value to be \$29,400. (Def's Ex E.) Defendant did not submit a listing of the personal property sold.

At trial, Durkee objected to Defendant's audit of his personal property that he labeled an unauthorized search of his motel. He asked the court whether the search was legal under Oregon law and if omitted property discovered during an audit conducted for one tax year, could be projected forward to future tax years. In his opening statement, Durkee stated that he believed "the validity and legality of that search for this and future tax years is very much an open question since the law treats each tax year as a separate entity." Durkee testified that he had not objected to the audit because at the time he did not know that he could deny Defendant access to his property. Durkee accompanied Leib and two representatives from the Oregon Department of Revenue as they took pictures and recorded the personal property in use at the motel.

Durkee raised another issue that he labeled question of notice. In his opening statement, he advised the court "that the assessor followed the notification rules for the 2000/2001 tax year," but "there was absolutely no notice provided for the 2001/2002 tax year and the defendant will be unable to produce any documentation of such notice because it does not exist." Durkee alleged that the omitted property "cannot be applied to the account for the 2001/2002 tax year since they did not comply with the notification requirements contained in the law."

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II. PRELIMINARY MATTER

On March 16, 2005, Durkee wrote to the court advising it that he might “object to any and/or all of the information contained in those two packets being admitted as evidence in this trial due to the defendants failure to comply with the instructions of the court regarding the submission of same.” The two packets referenced by Durkee contained identical information submitted to the court and Plaintiffs by Defendant. The first packet of information was submitted in response to a request by Plaintiffs to provide a listing of the personal property assessed for both the 2001-02 and 2002-03 tax years. Defendant agreed to provide that information by November 15, 2004. That information was received by Plaintiffs and the court on or about December 1, 2004. The second packet of information labeled Defendant’s exhibits was submitted for trial. Defendant’s exhibits were the same information submitted to the court and Plaintiffs in December 2004. Those exhibits were submitted one day later than the agreed exchange date.

At trial, Durkee objected to all of Defendant’s information being admitted. In response, Leib testified that she mailed the exhibits on Saturday, March 12, 2005. She thought the exhibits would reach the court and Plaintiffs by the exchange date, Monday, March 14, 2005. Unfortunately, both the court and Plaintiffs received the exhibits on Tuesday, March 15, 2005. The court reviewed the court’s exchange rule with the parties and expressed disappointment that Defendant had failed to comply with the agreed exchange date.

This court has faced a similar situation where the defendant’s exhibits, containing information previously provided to the plaintiff during the pending appeal, were submitted one day beyond the agreed exchange date. In that case, the court admitted the defendant’s exhibits because the plaintiff had ample opportunity to review the exhibits prior to trial. In this case, the

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information contained in the exhibits was previously submitted to both the court and Plaintiffs in December 2004, which was over three-and-one-half months prior to trial. The court will follow its prior decision where the facts were substantially the same as presented in this case. The court will admit Defendant's exhibits because the admission of Defendant's exhibits does not create undue prejudice or surprise.

III. ANALYSIS

The issue before the court is the real market value of Plaintiffs' personal property used in the operation of their motel. This court determined a real market value of Plaintiffs' property for tax year 2000-2001. *See Durkee et al v. Lincoln County Assessor*, TC-MD No 010491F (Control) (Dec 27, 2001). The law provides that an adjudicated value is "entered on the assessment and tax rolls for the five assessment years next following the year for which the order is entered." ORS 309.115(1).¹ However, if an adjudicated value is appealed, the court must review the evidence and determine the real market value for the tax year under appeal. Plaintiffs appeal the real market value of their personal property for tax year 2001-02.

In *Durkee*, the court stated that all personal property is taxed at 100 percent of its real market value. *See* ORS 308.250(1). The court recited the definition of real market value found in ORS 308.205, which states in pertinent part:

"(1) Real market value of all property, real and personal, means the amount in cash that could reasonably be expected to be paid by an informed buyer to an informed seller, each acting without compulsion in an arm's length transaction occurring as of the assessment date for the tax year."

The court, in defining how the real market value of personal property is valued, concluded that the acceptable method under the statute was an in-place, in-use method. The court held that

¹ All references to the Oregon Revised Statutes (ORS) are to year 2001 unless otherwise noted.

Defendant's "approach" followed "the process outlined in the rule [OAR 150-308.205(A)(4)] by valuing the property based on its contribution to the continued operation of the motel and the value of the property if the business were sold as a going concern." *Durkee* at 9. There have been no statutory or rule changes and the valuation approach is applicable to the tax year before this court.

Plaintiffs have the burden of proof. *See* ORS 305.427, stating that "[t]he burden of proof shall fall upon the party seeking affirmative relief and the burden of going forward with the evidence shall shift as in other civil litigation." Plaintiffs must "establish their claim by a preponderance of the evidence, or the more convincing or greater weight of evidence." *Schaefer v. Dept. of Rev.*, TC No 4530, WL 914208 (July 12, 2001) (citing *Feves v. Dept. of Rev.*, 4 OTR 302 (1971)). In this case, Plaintiffs presented limited evidence of real market value other than the value reported on the personal property tax return they filed. Plaintiffs submitted advertisements for items they allege were comparable to the personal property in their motel. (Ptfs' Exs 3-1 – 3-12.) No receipts, with the exception of a receipt for a washer purchased April 10, 2001, after the assessment date, were submitted. Plaintiffs followed the same approach they argued in the prior trial, alleging that the value of the personal property is the price a buyer would pay for each individual item of property. The court rejected that approach in the prior appeal and concluded that the correct approach is an in-place, in-use method. This court agrees with that prior holding.

In *Durkee*, the court determined the real market value for all of Plaintiffs' personal property was \$19,360 for the 2000-2001 tax year. Because the court did not assign a value to each of the items of personal property, Defendant allocated the value among the various items. Even though there was no significant change in Plaintiffs' personal property in use at the motel,

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Leib concluded that the real market value for the 2001-02 tax year should be \$20,555 based on her audit and determination of the value.

In support of her determination of value, Leib introduced a 1999 sale of a 12-unit motel and all personal property with \$29,400 of the total sale price allocated to the personal property. The court is unable to determine whether the value of the personal property sold is comparable to Plaintiffs' personal property because a complete asset listing including a description of each item with year or model information was not submitted.

In *Durkee*, the court held that in "numerous instances" Defendant's "opinion of value is higher than the original cost or replacement cost of the property," resulting in "too high" of an "overall assessed value." *Durkee* at 10. Relying on Plaintiffs' filed return and the advertisements for similar items, Durkee challenged Defendant's values, specifically the value of the washer, dryer and espresso machine, and the quantity of a number of items, including pillows and table saws. The court observes that Defendant overstated the quantity of some of the items assessed, *e.g.*, pillows. In addition, Defendant continued to report an "opinion of value" in excess of "replacement cost," specifically for some of the more expensive items, such as queen size mattresses, window coverings, nightstands and bench grinders.

Even though Defendant's estimate of value contains some errors which are noted below, the court finds that Defendant, in contrast to Plaintiffs, valued all of Plaintiffs' personal property in use as of the assessment date. In reaching its conclusion of value for the tax year currently at issue, the court reminds the parties that they agreed for the 2001-02 tax year there were no substantial changes, *e.g.*, additions or deletions, to Plaintiffs' personal property assessed in the prior year, 2000-2001, or subsequent year, 2002-03. Plaintiffs were unable to convince the court that the assets reported by Defendant based on its audit were not in use during the tax year at

DECISION TC-MD 020321D 7

issue. The court accepts Defendant's asset listing and adjusts its determination of value as noted below. After evaluating the facts and considering the evidence and testimony, the court determines that the real market value of Plaintiffs' personal property for tax year 2001-02 is \$17,855.²

Plaintiffs raised two other issues for the court to address. Plaintiffs' filed return for tax year 2001-02 did not include the omitted personal property added to the tax roll in 2000-2001.³ Durkee asked the court to exclude the value of the omitted property because Defendant failed to follow the statutory notice requirements and the value of omitted property should not be "projected forward." Any statutory notice requirements placed on Defendant were fulfilled when Defendant sent its "Notice of Correction to Assessment Roll Pursuant to O.R.S. 311.216" (Notice), dated May 7, 2001. (Ptfs' Ex 1.) After that date, the property was no longer "omitted property" because it was added to the tax roll in 2000-2001. Contrary to Plaintiffs' belief that the omitted property cannot be projected forward, the law clearly states that "all personal property shall be assessed for taxation each year at its situs as of the day and hour of assessment prescribed by law." ORS 308.105(1). The property labeled omitted property lost its status as
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² The court's determination of real market value is computed as follows:

Defendant's Value (Def's Ex A, Column K)	\$20,555
Add: Bedspreads/Comforters/Linens omitted from total	250
Adjustments:	
Pillows (\$1000; court's value \$500)	< 500>
Queen size mattresses (\$1,650; court's value \$1,000)	< 650>
Draperies (\$2,460; court's value \$1,000)	< 1,460>
Bench grinders (\$300; court's value \$100)	< 200>
Nightstands (\$315; court's value \$175)	< 140>
Total Real Market Value, Tax year 2001-02	\$ 17,855

³ Durkee testified that the personal property tax return he filed for tax year 2002-03 included the omitted property added to the tax roll in 2000-2001.

“omitted” when it was added to the tax roll in the prior year. All of Plaintiffs’ personal property in use must be valued as of the assessment date, January 1, 2001.

Durkee objected to what he termed an illegal search by Defendant.⁴ The time for Plaintiffs to raise an objection to the audit has long since passed. Durkee testified that he allowed Defendant access to his property to audit the personal property reported on his filed personal property tax return. Durkee’s characterization of Defendant’s audit as “illegal” misrepresents his own role in allowing Defendant access and accompanying Leib as she took pictures and recorded the assets she observed.

IV. CONCLUSION

The court concludes that Defendant’s determination of the value of Plaintiffs’ personal property using an in-place, in-use approach is an acceptable method of valuation. After careful consideration of the evidence and testimony, the court adjusted Defendant’s estimate of value and concluded that the real market value of Plaintiffs’ personal property for the 2001-02 tax year is \$17,855. Now, therefore,

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⁴ To the extent that Plaintiffs’ allegation is in the nature of a tort claim against the county, this court does not have jurisdiction to adjudicate that claim. *See Sanok v. Grimes*, 294 Or 684, 662 P2d 693 (1983).

IT IS THE DECISION OF THIS COURT that the real market value of Plaintiffs' personal property for tax year 2001-02 is \$17,855.

Dated this _____ day of June 2005.

JILL A. TANNER
PRESIDING MAGISTRATE

If you want to appeal this Decision, file a Complaint in the Regular Division of the Oregon Tax Court, by mailing to: 1163 State Street, Salem, OR 97301-2563; or by hand delivery to: Fourth Floor, 1241 State Street, Salem, OR.

Your Complaint must be submitted within 60 days after the date of the Decision or this Decision becomes final and cannot be changed.

This document was signed by Presiding Magistrate Jill A. Tanner on June 6, 2005 . The Court filed and entered this document on June 6, 2005.

Department of Revenue

STATE OF OREGON DEPARTMENT OF REVENUE

In the Matter of the Appeal of Steve Jonas Concerning Certain Property Tax Assessment Matters for the 1996-97 Tax Year.

OPINION AND ORDER No. 97-1278

The petitioner has appealed the assessed value of certain personal property identified in the Morrow County assessment and taxation records as Assessor's Account No. 71041 for the 1996-97 tax year. The petitioner timely appealed from an omitted property assessment and jurisdiction therefore lies in ORS 311.211(4).

A hearing of this matter was held on July 10, 1997. Dan Robinson, Hearings Officer for the Oregon Department of Revenue, presided. Mr. Jonas appeared by telephone and testified on his own behalf. The county was represented by Sandi Patton.

The appeal involves the value of the petitioner's video tapes, some 3511 in all. The current roll value is \$19,435. Mr. Jonas requests a reduction to \$10,533.

SUMMARY OF THE EVIDENCE

The petitioner acquired title to several thousand video tapes in the fall of 1995 pursuant to a lawsuit brought in the state of Florida. He transported the tapes to Oregon and opened up a video rental store in Hemmiston. There are 200 "new" tapes and 3311 used videos. Mr. Jonas testified that the value of videos drops quickly after the initial release, as interest wanes once viewers have seen the film or rented the video.

Mr. Jonas reported the value of the videos to be \$14,644 on his personal property return. The used tapes were valued at \$4.00 each, for a total of \$13,244, and the newer ones at \$7.00 each, for a total of \$1400. Mr. Jonas testified that the purchase price was \$16,555 (\$5 each) for the used tapes and \$12,000 (\$60 each) for the new ones. Mr. Jonas argues that the information shared with him by the county indicates that the guidelines published by the Department of Revenue specify that video tapes should be valued at 24 percent of cost, which places the value of the used tapes at \$12,581, or \$3.80 per tape. The parties agree that the value of the "new" tapes should be set at \$2200, or \$11.00 apiece.

Ms. Patton contends that the department's guidelines refer only to new tapes, and that absent a reported value, all tapes are to be valued for assessment and tax purposes at \$11.00 each. Mr. Jonas disagrees, pointing out that the one-page guideline reads:

"VIDEO: Rental tapes to be reported at cost and assessed at 24 % of cost. If no cost information then use \$11.00 per each tape with no further depreciation."

Ms. Patton feels that the used tapes are already sufficiently depreciated, with an assessed value of \$5 each, and would in fact be valued at \$11.00 each if the petitioner had not reported the cost. Again, Ms. Patton testified as to her understanding that the department's guidelines regarding the 24 percent of cost valuation method apply only to new video rental tapes. After considerable discussion on this issue, the parties could not come to agreement. The hearings officer suggested that it was a matter to be decided on the basis of research and resolved in the final decision of the department, subject, of course, to reconsideration, should further appeal be made.

The guidelines referred to by the petitioner are part of a set of guidelines prepared by the department titled "Personal Property Valuation Guidelines." The guidelines were revised in June of 1997. The revisions do not alter the approach recommended for video rental tapes. The guidelines discuss the valuation of video tapes in two separate places, pages 45 and 58 (57 before the revision in 6/97). Page 45, titled "Video Rental Stores", contains an example, wherein tapes are purchased at various prices from a high of \$50 to a low of \$10. The formula used is to calculate the total cost and apply the factor of 24 percent to the total purchase price for all tapes. The petitioner, herefore, is correct in his assertion as to the interpretation of the department's guidelines. However, that does not mean that the recommended approach is the best or only approach to be used in valuing video tapes.

The issue is the market value of the used video tapes. The petitioner testified convincingly that his rental business in Hermiston is struggling financially to show a profit and that in his eyes the tapes have very little value. However, market value in this appeal is aimed at determining what a prospective buyer would pay for the tapes, not what revenue they generate in a given location. ORS 308.205 defines market value as:

"the minimum amount in cash that could reasonably be expected from an informed seller acting without compulsion from an informed buyer acting without compulsion, in an arm's-length transaction during the fiscal year." ORS 308.205.

This definition applies to personal property as well as real property. See ORS 308.250(1). Many factors impact the income derived from renting video tapes, including the rental charge and the demand in the area of the rental business. Unlike real property, which is unique and immobile, personal property can be sold and transported

to a new location, where it may then generate considerable revenues. For that reason, the tapes may sell for more than the current owner feels they are worth from the perspective of the income he receives in rental fees.

The Oregon Tax Court has considered valuation appeals involving video rental tapes on a number of occasions. In a recent case, H-P Ventures v. Dept. of Revenue, 13 OTR 330 (1995), Judge Byers noted that:

"[T]he correct measure of real market value to be applied in this case is the typical cost to the Taxpayer, not the retail price to Taxpayer's customers. What is being taxed are video tapes held primarily for rent. The real market value of video tapes held primarily for rent is the owner's cost of obtaining those tapes."

Id., at 332.

The tapes are currently valued for assessment purposes at their purchase price of \$5.00 each. They were acquired in the fall of 1995 in connection with a lawsuit. The county opined that the "purchase" may not be arm's-length, given the facts of their acquisition. In any event, the burden is on the petitioner to demonstrate by a preponderance of the evidence that the used tapes should be valued at 24 percent of their cost, as he claims, and Mr. Jonas has failed to do so. Guidelines are just that; they are not the final say in this matter. Mr. Jonas has presented no independent evidence as to the value in the market of the tapes at issue other than their purchase price. In fact, he conceded that they may sell for \$4 or \$5 apiece.

DECISION OF THE DEPARTMENT

The department finds that the petitioner has failed to demonstrate that the used video tapes are assessed in excess of their real market value. Consequently, their value shall remain undisturbed. The value of the newer tapes shall be reduced be to \$2200, or \$11.00 each.

The responsible county tax officials are hereby directed to correct the value appearing on the assessment and tax rolls in accordance with this decision and to refund any excess taxes paid, with interest, pursuant to ORS 311.806 through 311.812.

IT IS SO ORDERED.

Dated and mailed at Salem, Oregon, this 28th day of July, 1997.

Page 3 Appeal of Steve Jonas (1996-97)
Case No. 97-1278

DEPARTMENT OF REVENUE



ALLEN J. BROWN
Deputy Director

Notice: If you want to appeal this decision, file a complaint in the Oregon Tax Court, 520 Justice Building, Salem, Oregon, 97310. **YOUR COMPLAINT MUST BE FILED WITHIN 60 DAYS AFTER THE MAILING DATE SHOWN ABOVE, OR THIS DECISION WILL BECOME FINAL AND CANNOT BE CHANGED.**

le 4 Appeal of Steve Jonas (1996-97)
Case No. 97-1278

STATE OF OREGON
DEPARTMENT OF REVENUE

In the Matter of the Appeal)

of)

OPINION AND ORDER

O.T.M. Company, formerly Oregon Trail)
Mushroom Company, from an Order of the)
Malheur County Board of Equalization)
Concerning Certain Property Assessments)
for the 1985-86 through 1987-88 Tax)
Years.)

No. 89-0989

A telephone hearing was held before Craig Myers, Hearings Officer for the Oregon Department of Revenue, at 1 p.m. on September 18, 1990, originating from the Revenue Building, Salem, Oregon. Participating were:

- 1) Gregory Howe, counsel for the petitioner;
- 2) Paul Rutten, general partner of O.T.M. Company;
- 3) Dick Heisinger, Malheur County Assessor; and
- 4) Wayne Hug, chief appraiser for the Malheur County Assessor.

Petitioner appealed to the department from an order of the Malheur County Board of Equalization regarding the true cash value ascribed to the property identified as Assessor's Account No. P-50303 on the 1985-86 through 1987-88 tax rolls.

The subject property is certain machinery and equipment used in petitioner's mushroom growing operation. Included are the following:

1/1/87

Keyser Harvester
Self-propelled tunnel fill-line
Three-meter tunnel winch
Six-roll bed winch
55-inch x 20-foot cleanout conveyer
Headfilling machine
11-foot undercar conveyer
36-foot incline conveyer
Grow racks
Keyser root-collecting machine
Picking lorries
Mushroom slicer
Harvester

1/1/85 and 1/1/86

Keyser Harvester
Tunnel fill-line
Tunnel winch
Bed winch
Cleanout conveyer
Headfilling machine
Undercar conveyer
Incline conveyer
Grow racks
Scratching machine
Leveling machine

Petitioner has appealed from an exemption denial on the subject property pursuant to ORS 305.275. Petitioner argued that the property was exempt under ORS 307.400.

DISCUSSION

On March 11, 1988, Alyce Coleman, formerly of the Malheur County Assessor's Office, advised petitioner that a cancelation of assessment on the subject property would be made for years 1985, 1986, and 1987. On April 20, 1988, Ms. Coleman issued a follow-up letter indicating that a refund would be issued on the now exempt "personal" property.

When no refund was made, petitioner contacted the Malheur County Assessor. On May 26, 1989, the assessor responded that no refund was appropriate since he considered the subject property "real" and taxable. Petitioner's subsequent appeal to the Malheur County Board of Equalization was denied. While the 1989 board had no authority to consider these matters, it appears the board order constitutes the taxpayer's actual knowledge of the county's final decision on this issue.

Arguments made before the department by the petitioner focus on the fact that the subject property is free-standing and movable, and that mushroom growing constitutes an "agricultural or horticultural use" within the meaning of ORS 307.400. Petitioner concludes that the subject machinery and equipment is tangible personal property which qualifies for exemption as inventory under ORS 307.400.

According to ORS 307.400(3)(a), exempt inventory is:

Farm machinery and equipment used primarily in the preparation of land, planting, raising, cultivating, irrigating, harvesting or placing in storage of farm crops; . . .

One item of tangible personal property at issue which clearly fails to meet the exemption criteria in ORS 307.400 is the mushroom slicer. This is processing equipment and is taxable personal property. (See Sokol Blosser Machinery v. Dept. of Rev., 8 OTR 196 (1979).

The Oregon Tax Court in West Foods v. Dept. of Rev., 10 OTR 7 (1985), clearly established that mushroom growing qualifies as an "agricultural or horticultural use." However, the court also held that the West Foods growing beds are a part of the realty and not tangible personal property entitled to the inventory exemption. The court found that the beds and buildings housing them are a single economic unit.

Gregory Howe, who was also counsel for the taxpayer in West Foods, argued in his case that the subject growing beds are different from those at West Foods. These are completely free standing and allegedly easily moved.

Page 2 Opinion and Order No. 89-0989
O.T.M. Company, formerly Oregon Trail Mushroom Company

He also pointed out that the taxpayer has a state-of-the-art operation relying on a much higher degree of mechanization.

As at West Foods, the subject growing beds have removable slats which form the bottom of the beds. Most of the time, these slats are covered with several inches of compost. Like the beds at West Foods, the subject beds are assembled in parallel racks several tiers high and reach the growing room ceilings. Unlike West Foods, the subject racks are not " toenailed " into the sidewalls of the building and are not otherwise attached, though they are similarly self-supporting.

Mr. Howe pointed out that the taxpayer's growing operation is state-of-the-art and relies on a high degree of mechanization. The grow racks were assembled in a precise way to accommodate mechanical cultivating, planting, and harvesting. Steel tracks are set in the concrete floor and in the grow racks themselves to permit accurate alignment of the movable equipment with the beds during operation.

To determine whether any of the subject property is real property, and therefore not exempt inventory, a review of the statutes is necessary. According to ORS 307.010(1), "Real Property" includes "... machinery, equipment or fixtures erected upon, above or affixed to the (land) ..."

OAR 150-307.010(1)(2) states:

(b) Erected upon. "Erected upon" means being permanently situated in one location on real property and adapted to use in the place. For example, a heavy piece of machinery or equipment is set upon a foundation without being fastened thereto, but is an integral part of the function or design of the facility.

(c) Affixed. "Affixed" means securely annexed to the real property. For example, items attached by bolts, screws, nails or built into the structure are securely annexed; items not securely annexed may be found to be constructively affixed to the land or building and considered real property by virtue of their weight or size.

OAR 150-307.020(3) states that "movable equipment" (personal property) "... includes items readily movable as opposed to apparently stationary or affixed items."

Based on the language of the statutes and administrative rule, it is clear that the subject grow racks are real property. Their weight and size mandate on-site assembly, and they are definitely not intended to be moved. Such movement would be inconsistent with their operation and function. In addition, the growing rooms themselves were specifically designed to accommodate these support structures.

All of the remaining equipment at issue operates on wheels and is clearly "movable equipment," allegedly meeting the definition of exempt inventory. However, it was custom engineered and built for use exclusively with the subject grow racks. It is similar to a one-of-a-kind bridge crane or dock crane operation, involving steel wheels or rubber tires guided on or along a network of tracks.

These items are also accurately described within OAR 150-3076.010(1) as "Erected upon" . . . being permanently situated in one location on real property and adapted to use in the place." This equipment is uniquely designed (adapted) to the dimensions of the grow racks and most of it is "permanent" by virtue of its dependence on special building modifications (a network of tracks and support structures) for its operation.

A review of Seven-Up Bottling Co. of Salem, Inc., v. Dept. of Rev., 10 OTR 400 (1987), reveals the need for caution when categorizing equipment according to the intentions of lessor or lessee. For example, "a machine 'affixed to' a building is real property regardless of the intent of the parties or its 'adaptability'." Seven-Up supra. Therefore, the evidence in this case was weighed on the basis of outward appearances in an effort to preserve uniformity of taxation and avoid subjective interpretation or reliance on the secret intentions of the taxpayers.

While the subject property is used for cultivating, planting, and harvesting a crop which constitutes an "agricultural or horticultural" commodity within the meaning of ORS 307.400, it does not qualify as exempt inventory. Since it is erected upon the real property, it becomes real property and cannot be exempted as tangible personal property. It does not resemble the farming vehicles or equipment intended for exemption by the legislature and described in the statutes. Therefore, the department finds that the property at issue is taxable, and that petitioner's appeal must be denied.

IT IS SO ORDERED.

Witness my hand and mailed at Salem, Oregon, this 17th day of December, 1992

CERTIFIED TO BE A TRUE COPY
Mary J. Bauman
Office Services Center
DEPARTMENT OF REVENUE

DEPARTMENT OF REVENUE

Richard A. Moore
RICHARD A. MOORE, DIRECTOR

Notice: If you want to appeal this decision, file a complaint in the Oregon Tax Court, 520 Justice Building, Salem, Oregon 97310. YOUR COMPLAINT MUST BE FILED WITHIN 60 DAYS AFTER THE MAILING DATE SHOWN ABOVE, OR THIS DECISION WILL BECOME FINAL AND CANNOT BE CHANGED.

Page 4 Opinion and Order No. 89-0989
O.T.M. Company, formerly Oregon Trail Mushroom Company

STATE OF OREGON
DEPARTMENT OF REVENUE

In The Matter of the Appeal of
HILLCREST VINEYARD
Concerning Certain Property Tax
Matters for the 1995-96 Tax Year
OPINION AND ORDER NO. 96-0132

A telephone hearing was held at 11 a.m. March 16, 1996. Scot A. Sideras, hearings officer for the Department of Revenue, presided.

This hearing was to consider the appeal of Hillcrest Vineyard. Richard Sommer appeared and made his arguments.

The Douglas county assessor responded. Ali Vincent-lough, the Deputy Assessor, was present.

At issue is the assessment, for the 1995-96 tax year, of Douglas county property identified by account number 267-0107. The appeal was made in a timely manner. Jurisdiction lies in ORS 305.275 and 305.280.

* * * * *

The personal property at issue is the machinery and equipment used by Hillcrest Vineyard. There are two aspects of the appeal. The first is the exemption of the items. The second is their valuation.

As to the exemption, Hillcrest contends that the assets are exempt from tax as farm machinery and equipment. The conclusion of the agency is that these items, consisting of implements such as barrels, drums, conveyors, pumps, corks, filters, tanks, and labeler, are taxable. The exemption ends with the processing of the crop, and as the items at issue here are primarily, if not exclusively, used to change the grapes into wine there can be no exemption under ORS 307.400 and its accompanying administrative rule. That land beneath a winery and tasting room may qualify for special assessment as farm use for purposes of ORS 215.203 does not change this conclusion.

With the now assets found to be taxable their valuation becomes important. Since the personal property return was filed August 1, 1995 the return was not processed prior to the September 20, 1995 closure of the roll. The disputed amount was added through an omitted property assessment. Following a careful

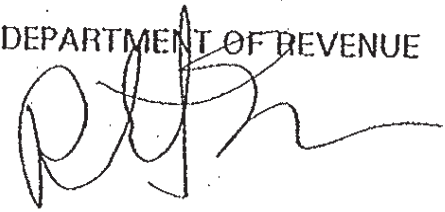
review of the property and a dialogue with Mr. Sommer, Douglas County recommended reducing the assessment from \$171,260 to \$102,576.

The appeal is granted to the extent of reducing the assessed value of the property. The appropriate officers of Douglas County shall make the necessary corrections. If, after these changes, any taxes previously paid are now found to have been paid in excess, that excess shall be refunded, with interest as set out in ORS 311.806 and 311.812.

IT IS SO ORDERED.

Dated and mailed at Salem, Oregon, this *6th* day of *May*, 1996.

DEPARTMENT OF REVENUE



RICHARD A. MUNN, DIRECTOR

Notice: If you want to appeal this decision, file a complaint in the Oregon Tax Court, 520 Justice Building, Salem, Oregon 97310. YOUR COMPLAINT MUST BE FILED WITHIN 60 DAYS AFTER THE MAILING DATE SHOWN ABOVE, OR THIS DECISION WILL BECOME FINAL AND CANNOT BE CHANGED..

**STATE OF OREGON
DEPARTMENT OF REVENUE**

**In the Matter of the Appeal of
DENNIS E. PINHEIRO
Regarding Certain Personal Property Tax Matters
for Tax Year 1993-94
OPINION AND ORDER NO. 94-0825**

The petitioner has appealed the assessment of a late filing penalty by Douglas County for certain personal property identified by the following account numbers:

9.1550	9.2383	9.2393	9.2403
9.2374	9.2384	9.2394	9.2404
9.2375	9.2385	9.2395	9.2405
9.2376	9.2386	9.2396	9.2406
9.2377	9.2387	9.2397	9.2407
9.2378	9.2388	9.2398	9.2408
9.2379	9.2389	9.2399	9.2409
9.2380	9.2390	9.2400	9.2410
9.2381	9.2391	9.2401	
9.2382	9.2392	9.2402	

A timely appeal was filed establishing jurisdiction in ORS 305.275.

A hearing was held on October 10, 1994, before Glen Pfefferkorn, Hearings Officer. Participating in the hearing were: Dennis Pinheiro, petitioner, and Ali Vincent-Lough, representing Douglas County.

Dennis Pinheiro testified he filed his 1993 personal property return late. The county had requested additional information and on the due date, he was very busy. Since he thought the penalty would be \$10, he elected to postpone filing the return. He was surprised to receive a billing for \$380. Ten dollars for each of the 38 accounts. In the past, he had reported the value of all property in one lump sum. He alleges he is being penalized for cooperating with the county.

Ali Vincent-Lough testified that the petitioner never filed a 1991 Personal Property Tax Return. In 1992, he filed a return and combined the value of property at all locations. He was requested to provide more detail. When he failed to respond, the county issued one property tax bill. The 1993 return was filed correctly, listing separately property located at various locations throughout the county. However, when the return was received after the due date, a late penalty was assessed on each account.

OPINION OF THE DEPARTMENT

As required by statute and set forth on the personal property tax return, a separate return is to be prepared for each tax code area in which property is located. The county has, as a convenience to the taxpayer, allowed one return to be filed with a schedule, listing property in each code area.

ORS 308.295(2) requires a delinquent penalty of \$1 per \$1,000 of assessed value, but not less than \$10 or more than \$250. Even though the petitioner filed one form with a schedule attached, listing property at various locations, the statute requires a penalty for what would have been each separate return. Therefore, the penalty was properly assessed.

Petitioner's reason for filing late does not qualify as good and sufficient cause.

For the above reasons, the penalty must be sustained.

IT IS SO ORDERED.

Dated and mailed at Salem, Oregon, this 4th day of November, 1994.

DECLINED TO BE A TRUE COPY

Mary Gellaburne

Deputy Revenue Officer
DEPARTMENT OF REVENUE

DEPARTMENT OF REVENUE

[Signature]

RICHARD A. MORRIS, DIRECTOR

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Page 2 Opinion and Order No. 94-0825
Dennis E. Pinheiro

STATE OF OREGON

DEPARTMENT OF REVENUE

In the Matter of the Appeal)

of)

California-Oregon Broadcasting, Inc.,)
Concerning Machinery and Equipment)
Assessments for the 1990-91 Tax Year.)

OPINION AND ORDER

No. 90-3006

Petitioner appealed to the Oregon Department of Revenue concerning the assessment of certain machinery and equipment for the 1990-91 tax year. The property is identified in the Jackson County tax records as Account No. 1-37029-9.

The issue is the proper classification of the subject property. The county has assessed it as real property improvements pursuant to ORS 307.010(1). The taxpayer contends the items are movable personal property pursuant to ORS 307.020(3). The value of the property is not at issue; the parties agree the market value was \$359,760 on the assessment date. The parties further agree the property is entirely assessable by Jackson County for the 1990-91 tax year. The only issue is whether it should be classified as real property improvements or movable personal property.

Hearing was convened by Jeffrey S. Mattson, Hearings Officer for the Oregon Department of Revenue, on July 23, 1991, in the Jackson County Courthouse at Medford, Oregon. Douglass H. Schmor, attorney-at-law, represented petitioner. Testifying as witnesses were Becky Barry, William Smullin, Steve Aase, and Bill Kirk. Participating for the Jackson County Assessor were David B. Arrasmith and Ron Coffman.

THE PROPERTY

The subject property consists of (primarily) electronic equipment used for video transmission and editing. Additionally, some "rack systems," similar to furniture, are also a part of this assessment. Because the case presents a question of fact, the Hearings Officer was aided by a view of the subject property.

The taxpayer spoke of 11 foam panels that are attached to the wall. They admit that these (only) are real property fixtures and should be classified as such. The assessed value is \$427 total for these panels. I agree they shall be classified as real property improvements.

The machinery and equipment is housed in a building that was earlier a warehouse. There was no substantial remodeling of the building after its purchase. The site is still adaptable to commercial or warehouse use if the owner decides to vacate the premises.

subject property is predominantly editing equipment that is used for commercials and the taxpayer's own production services. They help produce video productions. The items are not essential for broadcast purposes.

The subject property is easily removable. No change in the structure was required to erect them. Different components are plugged together by cables.

Petitioner's witnesses spoke of technological changes in the industry and need to consistently upgrade the equipment. This notion is enhanced by the component-parts nature of the overall system. If one item fails or becomes obsolete, it does not affect the entire process; it may be replaced on that basis only.

The subject property is located in one of three rooms. The majority is in the master control room. The rest of the equipment is either in a production control room or the edit "A" room.

Most of the subject property is connected to each other. The majority of them are through twist-lock video cables. Other fasteners are sound cables with male-female connections or other joints similar to computer cables.

Each of the subject property could be removed without damage to the building. They can be easily transported and moved by one person, in the majority of the cases. They all operate on standard AC wall socket power sources.

The property is removed for several reasons. These include operator needs, maintenance, replacement, and repair upon failure. The chief engineer testified that every day at least something is relocated.

THE LAW

The statutes involved are ORS 307.020 and ORS 307.010. ORS 307.010 defines "real property" to include machinery and equipment erected upon or affixed to land:

"real property" includes the land itself, above or under water; all buildings, structures, improvements, machinery, equipment or fixtures erected upon, above or affixed to the same; * * *.

ORS 307.020 defines "tangible personal property" to include movable machinery and equipment:

(3) "Tangible personal property" means and includes all chattels and movables, such as boats and vessels, merchandise and stock in trade, furniture and personal effects, goods, livestock, vehicles, farming implements, movable machinery, movable tools, and movable equipment. (Emphasis added.)

The accompanying Administrative Rules add examples to the statutes. AR 150-307.010(1) includes the following statement: "Erected upon" means being permanently situated in one location on real property and adapted to use in the place. "Affixed" means securely annexed to the real property.

UAR 150-307.020(3) includes the notion that personal property includes those items "readily movable as opposed to apparently stationary or fixed items."

Here, the items clearly are readily movable and not fixed nor constantly stationary.

The test is not whether a piece of machinery or equipment is designed to permit removal; the test is whether it is designed to be moved in the ordinary course of business.

In the case of Saunders v. Dept. of Rev., 300 Or 384, 711 P2d 961 (1985), the court stated:

Whatever the result might be if only ORS 307.020(3) were involved, the legislative history of ORS 307.400(3) shows that the legislature, in creating the exemption (for inventory), intended to exempt described personal property that generally is moved or movable in the ordinary course of business.

Here, the portability factor is important to petitioner. That is part of the attraction of component parts in the overall, integrated system. The county cites the case of Seven-Up Bottling Co. of Salem v. Dept. of Rev., 10 OTR 400 (1987). That case involved the heavy equipment and machinery that was clearly designed or intended to be moved about in the ordinary course of business. Here, the movement of the equipment interfered with and was inconsistent with the operation and function it performed. The evidence established it would take 20 days to remove the subject property from the site. This is markedly different from the one-day estimate advanced for the subject property. In the tax court case certain personal property items, including the tanks, were readily movable from one part of the room or plant to another. This is more akin to the subject property at issue in our case.

California cases cited by petitioner support the concept of electronic equipment as personal property. Exchange Bank v. Sonoma, 59 Cal App 3d 608 (1976); Crocker National Bank v. City and County of San Francisco, 264 Cal Rptr 139, 782 P 278 (1989); Allstate Insurance Company v. County of Los Angeles, 161 Cal App 3d 877, 207 Cal Rptr 888 (1984); and Security Data v. County of Contra Costa, 193 Cal Rptr 121, 145 Cal App 3d 108 (1983).

CONCLUSION

The county assessor focuses on "the system" and not the individual components. The collection yields a classification as real property improvements, according to Jackson County. Because they are attached to one another, they are annexed, argues the assessor. This argument and approach by the county ignores the statutory language of "readily movable." I find the property is readily movable under the presented facts.

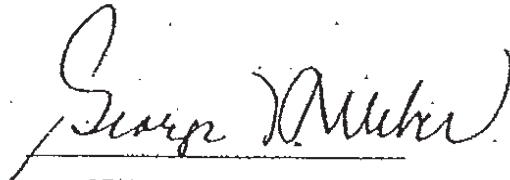
I have thoroughly evaluated the evidence in this matter. The electronic equipment in this case and the other items at issue are more properly termed movable personal property pursuant to ORS 307.020.

THEREFORE, the Jackson County Assessor shall take such steps as necessary to comply with the above findings and reclass the subject property in the county records as personal property for the 1990-91 tax year, with the exception of the 11 foam panels mentioned above.

IT IS SO ORDERED.

Dated and mailed at Salem, Oregon, this 8th day of October, 1992.

DEPARTMENT OF REVENUE

A handwritten signature in cursive script, appearing to read "George H. Weber", is written over a horizontal line.

GEORGE H. WEBER
DEPUTY DIRECTOR

Notice: If you want to appeal this decision, file a complaint in the Oregon Tax Court, 520 Justice Building, Salem, Oregon 97310. YOUR COMPLAINT MUST BE FILED WITHIN 60 DAYS AFTER THE MAILING DATE SHOWN ABOVE, OR THIS DECISION WILL BECOME FINAL AND CANNOT BE CHANGED.

DEPARTMENT OF REVENUE

In the Matter of the Appeal)
)
 of)
)
 Meadow Outdoor Advertising)
 from an Act of the Wasco County)
 Assessor Concerning Certain)
 Property Tax Matters for the)
 1984-85 and 1985-86 Tax Years.)

OPINION AND ORDER

Nos. 84-6534 and
85-0641
(Consolidated)

Petitioner, Meadow Outdoor Advertising, appeals to the Department of Revenue from an act of the Wasco County Assessor concerning certain property tax matters for the 1984-85 and 1985-86 tax years. The subject properties are specifically identified in Appendix "A" attached hereto and incorporated herein by this reference.

A hearing was held before Karen Hightower, Hearing Officer for the Department of Revenue, on July 17, 1985, at the PUD Office Building, The Dalles, Oregon. Participating were:

- 1) Ronald W. Somers, attorney-at-law, representing the petitioner;
- 2) Chris Zukin, general manager, part-owner, and corporate president of Meadow Outdoor Advertising, testifying as a witness for the petitioner;
- 3) Bernard Smith, district attorney, representing the Wasco County Assessor; and
- 4) Herb Crook, Jr., Wasco County Assessor.

Also present were Fred Cook and Dennis Shutte. The record was reopened March 26, 1987 and closed April 30, 1987.

Jurisdiction to consider this matter is provided by ORS 305.275 and 305.280.

The sole issue to be determined is whether the subject properties, 29 off-premises advertising signs, should be assessed as real property or as personal property for ad valorem tax purposes.

FACTS

The record shows that for the 1984-85 and 1985-86 tax years the subject properties were assessed by the Wasco County Assessor as real property. Petitioner contends that the subject off-premises advertising signs should be assessed as personal property.

The essential facts are undisputed.

For both tax years at issue, petitioner was engaged in the business of constructing, maintaining, and renting off-premises outdoor billboards. These billboards display advertising of the products and services of petitioner's customers, who rent sign space from the petitioner. All of petitioner's signs are erected on property of unrelated persons who own land along the major roadways in Wasco County. The location of the signs is determined primarily by traffic exposure.

Petitioner's leases with the property owners vary in terms. Generally, these leases provide for the erection and maintenance of billboards on the property in exchange for an annual consideration to the landowner. The leases provide that the billboards remain petitioner's property and the petitioner has a right to remove them. All of the leases have finite terms and removal clauses which are totally independent from the major use of the realty. Some removal clauses are as short as 24 hours.

Petitioner's signs have three major components: 1) a "sign face," 2) "stringers," and 3) a base structure.

Petitioner's sign faces vary in size, ranging from 10 x 24 feet to 10 1/2 x 48 feet. The sign face panels are attached to boards or metal bars, called "stringers," which have been attached horizontally to the base structures. Each billboard assembly can house from one to two advertisements. Approximately 50 percent of petitioner's billboards are equipped with lighting fixtures.

The base structures used to support petitioner's signs are generally of two types: 1) steel "I" beams, and 2) wooden poles. The wooden poles, usually creosote protected, are placed vertically into the ground at a depth of 6 to 8 feet. The steel "I" beams are generally set in concrete foundations 8 to 10 feet deep. The holes for these base structures are dug by an auger and are approximately 24 inches in diameter. The number and size of the poles used will vary depending on the size of the sign face and how high the sign must be to be visible to motorists.

The signs are constructed, erected, and maintained by the petitioner under contracts between petitioner and its customers.

The petitioner can, and does in fact, move and remove its signs. Specifically, in the last five-year period, four of the subject signs were removed and three or four new signs were erected.

There are numerous situations which may require the petitioner to remove its signs. The petitioner may need to move its signs to new locations in the event the view of the sign from the road becomes obstructed. Signs may need to be moved when a change takes place in the ownership of the leased property, or when a landowner decides to develop the realty. A change in the location or use of a road, or the expiration of a contract with an advertiser or a landowner may also require the removal of a sign.

Advertisements for the billboard structures, themselves, emphasize that billboards are specifically designed to allow for quick installation and removal. For example:

"Tough but versatile, the complete system may be very easily removed and relocated with no loss of structure." Advertisement from American Lighting Standards Corporation. (Petitioner's Exhibit No. 4.)

"Butler outdoor panels go up and come down easily . . . are easily moved at less cost . . . and are 100 percent salvageable." Advertisement from Butler. (Petitioner's Exhibit No. 6.)

In summary, movement is planned for and expected in the ordinary course of petitioner's business.

Removal of petitioner's displays is a relatively quick and easy process. First, the sign face and stringers are disassembled. Most of petitioner's supporting structures are then removable by a backhoe. Mr. Zukin, petitioner's president and general manager, testified that it took approximately 8 to 12 working hours to remove one of their largest signs; a 10 foot by 48 foot billboard with six cemented telephone poles as supports. First, the sign face, built in sections, was dismantled. Then the stringers and lights were removed. Finally, the small concrete caps of the telephone poles were pulled completely out with a backhoe. Removal of the footings takes approximately 20 minutes. Petitioner's steel "I" beam signs set in concrete are usually cut off six inches to one foot below grade and then filled over with the surrounding surface.

When a sign is removed, most of it is reused; only that part of the pole surrounded by concrete is lost as wastage.

DISCUSSION

The petitioner argues that the subject off-premises advertising signs should be taxed as personal property while the county asserts that the subject billboards should be taxed as real property.

The taxpayer asserts that since off-premises advertising signs are movable in the ordinary course of petitioner's business, the "movable" requirement of ORS 307.020(3) has been met.

Petitioner points to a line of federal cases which have found billboards to be essentially movable, as opposed to "inherently permanent structures." These cases involve interpretation of federal tax laws for investment tax credit purposes, however.

It is also the case that the California, New York, and Ohio courts have found billboards to be "personal property." In City of Cleveland v. Zimmerman, 253 NE 2d 327, 331, 22 Ohio Misc. 424 (1951), an Ohio court, looking primarily at the intention of the parties, found billboard advertising signs to be "personal property" as opposed to fixtures. In New York, the court found off-premises advertising signs to be fixtures for the purposes of eminent domain proceedings, and personal property as between lessee and lessor. George F. Stein Brewery, Inc. v. State, 103 N.Y.S. 2d 946, 200 Misc. 424 (1951). And in California, the court used the traditional "three-prong test" to find advertising signs to be "personal property." Breyfogle v. Tighe, 58 Cal. App. 301, 208 P 1008 (1922).

Finally, the taxpayer asserts that Oregon statutes already treat billboards as if they were personal property. Under ORS 377.700 through 377.780 (1983), the Motorist Information Act treats outdoor advertising signs as portable and temporary. The statute requires annual permits to be issued, restricts the placement, location, and sizes, and provides for State removal upon "abandonment" or "noncompliance." The taxpayer argues that it would be unreasonable to treat petitioner's signs as "portable" units for highway beautification and safety purposes, and on the other hand treat them as permanently fixed improvements for taxation purposes.

While it is clear from the evidence that the billboards at all times remain the property of the petitioner and as between the lessee and lessor could be considered "personal property," it is equally clear that an agreement between the parties as to the nature of the installation is not binding on a taxing authority. Shields v. Dept. of Rev., 266 Or 461, 513 P2d 784 (1973); Warm Springs Lbr. v. Tax Comm., 217 Or 219, 225, 342 P2d 143, 146 (1959).

For purposes of Oregon ad valorem taxation, the definitions in ORS 307.010(1) and ORS 307.020(3) control. Warm Springs Lumber Co. v. Tax Comm., 217 Or 219, 226, 342 P2d 143, 146 (1959); Bylund v. Dept. of Rev., 9 OTR 76, 79 (1981).

"Real property" is defined in ORS 307.010(1):

(1) 'Land,' 'real estate' and 'real property' include the land itself, above or under water; all buildings, structures, improvements, machinery, equipment or fixtures erected upon, under, above or affixed to the same; . . .

"Tangible personal property" is defined in ORS 307.020(3):

(3) 'Tangible personal property' means and includes all chattels and movables, such as boats and vessels, merchandise and stock in trade, furniture and personal effects, goods, livestock, vehicles, farming implements, movable machinery, movable tools and movable equipment.

The Oregon Supreme Court has closely scrutinized the definition of "real property" under ORS 307.010(1) in two significant tax cases.

In Warm Springs Lumber Co. v. State Tax Comm., 217 Or 219 (1959), the court decided that the buildings in question, principally a sawmill, dry kilns, planing mill, factory warehouse, and sorting sheds were "real property" for purposes of taxation because they were "erected upon" the land under the definition of ORS 307.010.

In the most recent case, Saunders v. Dept. of Rev., 300 Or 384, at 390 (1985), the court concluded that Harvestores are "real property" for purposes of ad valorem taxation because they are structures "erected upon" or "affixed to" the land pursuant to the definition in ORS 307.010(1).

Conversely, the ORS 307.020(3) definition of tangible personal property makes repeated reference to "movable." It includes "all chattels and movables, . . . movable machinery, movable tools, and movable equipment."

As the Oregon Tax Court recently held in Seven-Up Bottling Co. of Salem, Inc. v. Dept. of Rev., OTC No. 2398 (not yet published, issued March 13, 1987), the structure of this statute invites application of the statutory rule of construction eiusdem generis:

Where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words. Where the opposite sequence is found, i.e., specific words following general ones, the doctrine is equally applicable, and restricts application of the general term to things that are similar to those enumerated.

. . . If the general words are given their full and natural meaning, they would include the objects designated by the specific words, making the latter superfluous. On the other hand, if the series of specific words is given its full and natural meaning, the general words are partially redundant. The rule 'accomplishes the purpose of giving effect to both the particular and the general words by treating the particular words as indicating the class, and the general words as extending the provisions of the statute to everything embraced in that class, though not specifically named by the particular words.'

The resolution of this conflict by allowing the specific words to identify the class and by restricting the meaning of general words to things within the class is justified on the ground that

had the legislature intended the general words to be used in their unrestricted sense, it would have made no mention of the particular words. 2A Sutherland Statutory Construction §47.17 (4th ed.).

As a general rule, the specific types of items listed in ORS 307.020(3), i.e., boats, vessels, vehicles, movable machinery, and movable equipment, are not "affixed" to anything. Viewed in this light, the subject off-premises advertising signs, which are supported by base structures consisting of either steel "I" beams or wooden poles, appear not to be "movable" within the meaning of ORS 307.270(3). The steel "I" beams are generally set in concrete foundations 8 to 10 feet deep and the wooden poles are placed vertically in the ground at a depth of 6 to 8 feet. As such, these structures are more properly considered to be "erected upon" or "affixed to" the land within the meaning of ORS 307.010(1).

In summarizing the distinction between real and personal property, the Oregon Tax Court states:

As a general rule, the assessor is not required to consider the intention of the parties or the adaptability of the property. He merely has to determine whether the property is "affixed to" or "erected upon" land or buildings. Seven-Up Bottling, supra, OTC No. 2398 at 10.

In Saunders, at 390, the Oregon Supreme Court states:

ORS 307.010(1) does not require permanence; it only requires that the structure be erected upon or affixed to the land.

This is a close case. The evidence supports the conclusion that off-premises advertising signs are movable in the ordinary course of petitioner's business. The signs are placed and changed to meet short-lived market demands; i.e., traffic and changing consumer needs. The petitioner does not intend, nor could it realistically expect, the signs to remain permanently in place. Moreover, the subject billboards are not an integral part of the land to which they are affixed, nor do they add to the land's primary use or purpose. Finally, the evidence supports the conclusion that the billboards are specifically designed to allow for quick installation and removal without damage to the land.

Nevertheless, the Oregon courts have determined that ORS 307.010(1) merely requires that property be "erected upon" or "affixed to" the land. The terms of a statute must be followed by the Department of Revenue in exercising its taxing authority.

Accordingly, the department finds that the subject billboards are "real property" as defined in ORS 307.010(1) and were properly taxed as such. Petitioner's request for relief is denied.

IT IS SO ORDERED.

Dated and mailed at Salem, Oregon this *23rd* day of *June* 1987.

CERTIFIED TO BE A TRUE COPY

DEPARTMENT OF REVENUE



Office Services Center
DEPARTMENT OF REVENUE

/s/ RICHARD A. MUNN, DIRECTOR

¹ It should be noted that this is apparently a case of first impression in Oregon.

Notice: If you are dissatisfied with this decision, you may appeal it to the Oregon Tax Court, 520 Justice Building, Salem, Oregon 97310, within 60 days of the date of mailing shown above. ORS 305.560.

APPENDIX "A"

<u>Account Numbers</u>	<u>Assessed Value Improvements (1983-84)</u>	<u>True Cash Value Improvements (1983-84)</u>
68280	\$3,210	\$
66890	1,550	1,700
91940	900	990
14510	750	820
33940	1,250	1,380
33840	1,530	1,680
33620	1,540	1,690
49000	1,510	1,660
39060	550	600
48620	1,600	1,760
68030	1,280	1,410
66990	3,550	3,900
66770	3,190	3,510
84790	5,520	6,070
84840	5,760	6,340
33600	5,060	5,570
33420	2,780	
32930	1,760	1,940
21780	2,790	3,070
12300	5,290	5,820
9020	2,930	3,220
34300	1,780	1,960
43160	2,390	2,630
84900		1,580
85100		3,470
85120	2,180	2,400
68300		6,070
8890	2,040	2,240
9090	2,740	3,010

STATE OF OREGON
DEPARTMENT OF REVENUE

In the Matter of the Appeal

of

Reter Fruit Company Concerning
Certain Personal Property
Assessments for the Tax Years
1978-79 through 1983-84,
Inclusive.

OPINION AND ORDER

No. 3-2482-15

A hearing was held before Jeffrey S. Mattson, Hearing Officer for the Department of Revenue, on June 7, 1984, in the Justice building at Medford, Oregon. The record was closed on August 10, 1984.

David L. Moore, Attorney at Law, represented Petitioner. Floyd Baker, Managing Partner, was present as a witness.

Roy Bashaw, County Legal Counsel, represented the Jackson County Department of Assessment and Taxation. Bill Droll, County Appraiser, testified as a witness.

Neal Stiffler, Oregon Department of Revenue Appraiser, testified as an independent appraisal witness at the Hearing Officer's request.

Decision for the Respondent.

OPINION

Petitioner appeals to the Oregon Department of Revenue concerning certain personal property assessments for the tax years 1978-79 through the 1983-84, inclusive. The subject property is identified in the Jackson County tax records as Account Nos. 2-253-7 and 1-2018-8MI. Petitioner contends the subject property qualifies

for exemption as farm machinery and equipment pursuant to ORS 310.608 and 307.400.

The Department of Revenue has no jurisdiction to consider any tax years except 1982-83 and 1983-84. See ORS 306.115. The years earlier than that are hereby dismissed.

The subject property consists of various items and components used to process locally-grown pears for retail sales. Also included are three steel buildings. The individual items were described in detail by Petitioners' chief witness. Exhibits and further descriptions pertaining thereto were offered by the parties at the hearing.

Due to the specialized nature of the subject property and the critical legal question presented, the Hearing Officer asked for pertinent independent appraisal expertise. This was provided by Neal Stiffler, a highly qualified appraiser with the Oregon Department of Revenue Assessment and Appraisal Division.

Mr. Stiffler had the full cooperation of Petitioners' employees. He was able to tour the subject plant, make inquiries and take photographs. The latter exhibits were especially helpful in understanding the properties under appeal. His "general observations" included the following:

The properties in question were production lines which were affixed to buildings designed for a form of product work. The buildings were equipped with additional lighting, wiring and plumbing to accommodate both equipment and human needs. Items like separate bathrooms, grading lights and large water and wiring supplies were standard. Second-floor balconies or lofts were used to facilitate boxed productions. I found the production line

2 Opinion and Order No. 3-2482-15
Reter Fruit Company

to be part of or adjacent to their cold storage buildings. The cold storage was an integral part of the operation.

* * *

I observed the plant at a time of their off season and found minimal removal of any equipment, lines, or machinery. The equipment and machinery consistently complemented the purpose for which the underlying realty was used for and tied the process to the realty.

* * *

The process usually includes the following:

1. Pears are sprayed with chemicals (Butalane) to stop bacteria and fungus when they first arrive from the field.
2. Pears are coated by a water soda-ash mixture to neutralize sugar density and allow floating.
3. Special boxes and pads are used to store and ship the fruit to prevent bruising.
4. Boxed pears are then kept in cold storage (around 30 degrees) to stop or retard the natural ripening process.

ORS 308.105 provides for taxation of personal property as follows:

(1) Except as otherwise specifically provided, all personal property shall be assessed for taxation each year at its situs as of the day and hour of assessment described by law (January 1, in this case).

(2) Personal property may be assessed in the name of the owner or of any person having possession or control thereof. Where two or more persons jointly are in possession or have control of any personal property like separate bathrooms, grading lights and large water and wiring supplies were standard. Second-floor balconies or lofts were used to facilitate boxed productions. I found the production line in trust or otherwise, it may be assessed to any one or all of such persons.

ORS 307.400 (and its predecessor, ORS 310.608) command that the following tangible personal property is exempt from ad valorem taxation:

Farm machinery and equipment used primarily for the purpose of feeding, breeding, management and sale of, or the produce of any agricultural or horticultural product.

In order to qualify for the exemption claimed by Petitioner, the property must be both: (a) tangible, personal property; and (b) used in the "production of" an agricultural or horticultural product.

The authorities and the parties herein agree that:

A three-prong test, that a degree of annexation, nature of adaptation and intention, must be utilized in determining whether a particular property retains its character as personal property or loses that separate character and becomes a fixture upon its attachment to real property. Teaff v. Hewitt, 1 Ohio St 511 (59 Am Dec 634), (a leading case on the law of fixtures, it has long been followed in Oregon, California, Washington and in many other jurisdictions). Marsh v. Boring Furs, Inc., 275 Or 579, 581, 551 P2d 1053, 1054 (1976); Bunn v. Assets Realization Co., 141 Or 298, 361, 16 P2d 370, 371, rehearing denied, 17 P2d 1118 (1933); Roseburg Nat. Bank v. Camp., 89 Or 67 74 173 P 313, 315 (1918). In the Roseburg case, the conclusion was reached that there could be no one test by which to determine in all cases whether the chattel had become a part of the freehold, but that it required the united application of the following test:

(1) Real or constructive annexation of the article in question to the realty.

(2) Appropriation or adaptation to the use or purpose of that part of the realty with which it is connected.

(3) The intention of the party making the annexation, to make the article a permanent accession to the freehold, this intention being inferred from the nature of the article affixed, the relation and

situation of the party making the annexation, the policy of the law in relation thereto, the structure and mode of the annexation and the purpose or use for which the annexation has been made. Roseburg Nat. Bank v. Camp, supra, at 74;

Bylund v. Dept. of Rev., 9 OTR 76, 79-80 (1981).

Under the test, as set forth above, the subject property is not tangible, personal property. Instead, it is completely adapted to the real property. This is fully supported by the testimony and conclusions of Mr. Stiffler presented at the hearing.

Finally, under the facts as presented, the subject property is not used as part of the harvesting process. That earlier process ceased once the pears were removed from the field. After the fruit is dumped from the tote bins, the subject property is then, and only then, used in the sorting, wrapping, cleaning, packaging and boxing of the fruit. This is more than the mere harvesting of fruit.

Such a finding is consistent with other Opinion and Orders of the Oregon Department of Revenue, such as:

<u>O&O No.</u>	<u>Date</u>	<u>Appeal Name</u>	<u>Subject</u>
81-1457	5-10-82	Strome	Mint still
82-847	7-01-82	Southern Oregon Sales	Pears
83-274A	3-21-83	Venell Farms	Seed Cleaning
83-4011	12-26-83	Werth	Potatoes
83-4004	12-06-83	Mid-Valley Helicopter	Mint still
84-1027	4-30-84	Saunders	Livestock feed

For all of the above reasons, I find that the subject property is not exempt from taxation as farm machinery and equipment for the 1982-83 and 1983-84 tax years.

//

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Reter Fruit Company

Petitioner's witness stated that he believed certain property contained in Account No. 1-2018-844 as overvalued. He requested a reduction. Other than this naked assertion, his opinion was not supported by any market data whatsoever.

To prevail in an administrative appeal before the Department of Revenue, the party seeking affirmative relief must prove his or her claim by a preponderance of the evidence. OAR 150-305.115(6)(6). This has not been done. Therefore, Petitioner's appeal must be denied.

IT IS SO ORDERED.

Dated and mailed at Salem, Oregon, this 19th day of March, 1985.

DEPARTMENT OF REVENUE

/s/ RICHARD A. MUNN, DIRECTOR

CERTIFIED TO BE A TRUE COPY

Margy J. Lookin

Office Services Center
DEPARTMENT OF REVENUE

Notice: If you are dissatisfied with this decision, you may appeal it to the Oregon Tax Court, 520 Justice Building, Salem, Oregon 97310, within 60 days of the date of mailing shown above. ORS 305.560.

6 Opinion and Order No. 3-2482-15
Reter Fruit Company

Department of Justice Opinions

FROHNMAYER
ATTORNEY GENERAL



JACK L. LANDAU
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

GENERAL COUNSEL DIVISION

Justice Building

Salem, Oregon 97310

Telephone: (503) 378-4620

FAX: (503) 378-3784

September 9, 1991

Bruce Zimmerman
Department of Revenue
256 Revenue Building
Salem, OR 97310

Re: Hay Processing Equipment
DOJ File No. 150-301-4TX120-91

Dear Mr. Zimmerman:

You have asked several questions concerning the tax status of hay smashers, which compress a standard size hay bale into a more compact unit; and hay cubers, which compress loose hay into a cube roughly the size of a cube of butter.

Inventory Exemption

The first question is whether hay smashers and cubers are "inventory," exempt from taxation by ORS 307.400:

(2) All inventory shall be exempt from ad valorem taxation.

(3) As used in subsection (2) of this section, "inventory" means the following tangible personal property:

(a) Farm machinery and equipment used primarily in the preparation of land, planting, raising, cultivating, irrigating, harvesting or placing in storage of farm crops; * * *.

(Emphasis added.)

Because only tangible personal property qualifies for the exemption under ORS 307.400, we must determine whether smashers and cubers are real or personal property. For property tax purposes, the definitions in ORS Chapter 307 control.

ORS 307.020 defines "tangible personal property" to include movable machinery and equipment:

(3) "Tangible personal property" means and includes all chattels and movables, such as boats and vessels, merchandise and stock in trade, furniture and personal effects, goods, livestock, vehicles, farming implements, movable machinery, movable tools and movable equipment.

(Emphasis added.)

On the other hand, ORS 307.010 defines "real property" to include machinery and equipment erected upon or affixed to land:

(3) "Land," "real estate" and "real property" include the land itself, above or under water; all buildings, structures, improvements, machinery, equipment or fixtures erected upon, under, above or affixed to the same; * * *.

The hay smasher you have described is a multi-sectional piece of machinery, consisting of an entry conveyor for the bale, an electronically controlled hydraulic ram which compresses the bale, the strapping machines which retie the bale and the exit conveyors. The smasher is located within a pre-engineered steel building. The machinery is bolted to the concrete floor and is further connected to the real property by electrical wiring.

The hay cuber is also multi-sectional and consists of entry bins for the loose hay, conveyors, compressors, the cubers and a cooling unit for the cubes. The cuber is not located within a building, but is bolted to an asphalt pad and is connected by electrical wiring to a concrete block building containing the electrical control equipment.

Since the smasher and cuber presumably can be unbolted and moved, it could be argued that they are "moveable equipment" and qualify as tangible personal property. However, the test is not whether a piece of machinery or equipment is designed to permit removal, the test is whether it is designed to be moved in the ordinary course of business:

Whatever the result might be if only ORS 307.020(3) were involved, the legislative history of ORS 307.400(3) shows that the legislature, in creating the exemption, intended to exempt described personal property that generally is moved or movable

in the ordinary course of business. In testimony before the House Committee on Agriculture and Natural Resources, Theodore W. de Looze referred to the types of machinery and equipment that would be exempt. These included tractors, combines, balers, farm implements, and portable grain tanks and bins * * *.

Saunders v. Dept. of Rev., 300 Or 384, 390, 711 P2d 961 (1985). See also, Seven-Up Bottling Co. of Salem v. Dept. of Rev., 10 OTR 400 (1987).

Although capable of being moved, the hay smashers and hay cubers in question are clearly not designed or intended to be moved about in the ordinary course of business. We conclude, therefore, that they are not tangible personal property, exempt from taxation by ORS 307.400.

We understand that smaller smashers and cubers are available which are designed for installation on a vehicle for movement from field to field. These would be classified as tangible personal property (farm implements) under ORS 307.020; and, in our opinion, would qualify for exemption under ORS 307.400(3)(a) or (c), as farm machinery and equipment used primarily in the "harvesting or placing in storage of farm crops" or in "any other agricultural or horticultural use."

Farm Use Assessment

The next question is whether the land under hay smasher and cuber facilities is entitled to special assessment under ORS 308.370, because it is devoted to a "farm use" as defined by ORS 215.203:

(2)(a) As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops * * * or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise * * *.

Hay smashers and cubers are relatively new to Oregon; and, to our knowledge, neither the tax court nor this office has been asked upon to determine whether land occupied by similar machinery is devoted to a farm use.

The tax court has held that land contiguous to an orchard and used for storage, packaging and processing of the taxpayer's pears and apples was devoted to farm use. Reter v. Commission, 3 OTR 477, aff'd 256 Or 294, 473 P2d 129 (1970). The court said that land being used to store hay, grain, fruit and other products on the farm is as much devoted to farm use as the land used for raising such crops.

In Sokol Blosser Winery v. Dept. of Rev., 8 OTR 196 (1979), the taxpayer contended that the crushing, stemming, fermenting, aging and packaging (bottling) of grapes was analogous to the "storage, packaging and processing" operation found to qualify for farm use assessment in the Reter case. The tax court disagreed, reasoning that the legislative intent was to protect natural products (grapes) and not new products resulting from processing (wine).

We believe that the use of land for hay smashers and cubers is more akin to the storage, packaging and processing operation in the Reter case than the operation of a winery. The purpose of hay smashing and cubing is to facilitate storage, handling and shipping. It is essentially a packaging operation. Although smashing compresses standard hay bales into smaller units and cubing compresses loose hay into even smaller units, the natural product is not substantially changed. It is still hay.

We conclude that land occupied by hay smashers and hay cubers is used for preparation and storage of hay prior to use or marketing and is entitled to special farm use assessment.

Our conclusion also applies to land under buildings used for storage of the hay, both before and after it is smashed and cubed. "Current employment" of land for farm use includes land under buildings supporting accepted farming practices. ORS 215.203(2)(b)(F). We are of the opinion that the storage of hay produced on the farm is an "accepted farming practice," i.e., "a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use." ORS 215.203(2)(c).

Our conclusion does not apply to land that is used for hay smashing and cubing that is not a part of the farm unit that produces the hay. Farm use by the preparation and storage of products is specifically limited to products raised on the land. ORS 215.203(2) provides:

"Farm use" includes the preparation and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise * * *.

(Emphasis added.)

This does not necessarily mean that the facility must be physically situated on the land where the hay is grown, so long as the land is part of the farm unit. OAR 150-308.380(5) defines "farm unit" to mean "a farming enterprise including all parcels being farmed by a single operator, whether the operator owns or leases the farm land." For example, if a rancher chose to install a hay smasher/cuber on grazing land separate from the rancher's hay fields, we believe the land occupied by the facility would still qualify for special assessment.

On the other hand, if one should install a smasher/cuber facility on land that is not a part of a farm unit and processes hay grown elsewhere, the land would not qualify for special farm assessment. The land would not be used for the primary purpose of obtaining a profit "by raising, harvesting and selling crops"; nor would it be used for the "preparation and storage of the products raised on such land." The land would be used in the business of providing a service for profit.

We also believe that tangible personal property, used on land that is not a part of a farm unit, would not qualify as "farm machinery and equipment" entitled to exemption under ORS 307.400.

Industrial Classification

You have asked whether smasher/cuber facilities should be classified as "industrial property" under ORS 306.126, which deals with the department's responsibility for the appraisal of principal and "secondary" industrial property. The statute defines "principal industrial property" to mean a unit of industrial property having a true cash value in excess of \$5 million. "Secondary industrial property" has a true cash value between \$1 million and \$5 million.

ORS 306.126 does not define "industrial property"; however ORS 308.408 defines "industrial plant" to include:

- (1) The land, buildings, structures and improvements, and the tangible personal property, including but not limited to machinery, equipment and office machines and equipment that make up the property or

complex of properties used for industrial or manufacturing purposes: and

(2) Any industrial real or personal property eligible for appraisal under ORS 306.126 and the rules of the Department of Revenue.

Industrial plants are valued at real market value.
ORS 308.411(1).

Since we have concluded that land occupied by smasher/cuber facilities that is part of a farm unit is devoted to farm use, it follows that it cannot also be industrial property. However, a different conclusion is possible with respect to smasher/cuber facilities located on land that is not a part of a farm unit.

Under the department's rules, OAR 150-306.126(1)-(A), industrial property is property engaged in manufacturing or processing a product, or property that is not engaged in manufacturing or processing, but is designated as industrial by the department, because it uses "substantial" machinery and equipment:

(1) A unit of industrial property means a single facility or an integrated complex engaged in manufacturing or processing a product or products. Examples include but are not limited to: sawmills, plywood plants, papermills, food processing facilities, bakeries, machine shops, chemical plants, refineries, and metal smelters.

(a) For ORS 306.126, certain property may be designated industrial when it utilizes substantial machinery and equipment. Examples include but are not limited to: Grain elevators, frozen storage facilities, automated warehouses, and petroleum storage facilities. For purposes of establishing the department's responsibility for appraisal of principal and secondary industrial property, the department shall make the final determination of a property's designation.


We find no satisfactory definition of "manufacturing or processing." The meaning depends upon the context and the eye of the beholder. For example, "manufacturing" was broadly construed in Bain v. Dept. of Rev., 293 Or 163, 646 P2d 12 (1982), where a salmon hatchery was held to be sufficiently "akin to a manufacturing facility" to qualify for exemption under

uce Zimmerman
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September 9, 1991

ORS 307.330(1). Inasmuch as smashing and especially cubing results in a change in the form of the hay, one could argue some manufacturing or processing has occurred. Nevertheless, do not believe that this minimal degree of manufacturing or processing requires that hay smashers and cubers be classified industrial property under ORS 306.126 or the department's rule.

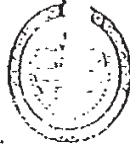
This does not mean that the department may not designate such property as industrial if it utilizes "substantial" machinery and equipment. You have asked what "substantial" means. We have no idea what the word means in the context of the rule. It could refer to the size, amount, complexity, value, or contribution of the machinery and equipment to the function of the facility. The department should decide what "substantial" means and define it by rule. The photographs and descriptions you have provided could reasonably lead one to believe that the machinery is substantial, as opposed to insubstantial.

Sincerely,


Ted E. Barbera
Assistant Attorney General
Tax Section

TEB:lmb/JGG010B8

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February 14, 1974

307.190

Mr. Gale Lebow
Chief Appraiser
Linn County Assessor
P.O. Box 100
Albany, Oregon 97321

Re: Taxation of Stored Personal Property
(150-16-059-74; 19266)

Dear Mr. Lebow

A taxpayer has been in the auto repair business for several years, and you have carried his equipment on the tax rolls as personal property. The taxpayer has now rented his building to a tenant who has his own repair equipment. Consequently, the taxpayer has placed his equipment in storage. You have asked whether the stored equipment is subject to personal property taxes now that it is not being used.

Movable machinery, tools and equipment are tangible personal property. ORS 307.020(3). All tangible personal property situated in this state is subject to assessment and taxation, except as provided by law. ORS 307.030. The only exception which may apply in this case is provided by ORS 307.190:

- "(1) All items of tangible personal property held by the owner, or for delivery by a vendor to him, for his personal use, benefit or enjoyment, are exempt from taxation.
- "(2) The exemption provided in subsection (1) of this section does not apply to any such property held by the owner, wholly or partially for use or sale in the ordinary course of a trade or business or for the production of income, or solely for investment or to personal property required to be licensed or registered under the laws of this state."

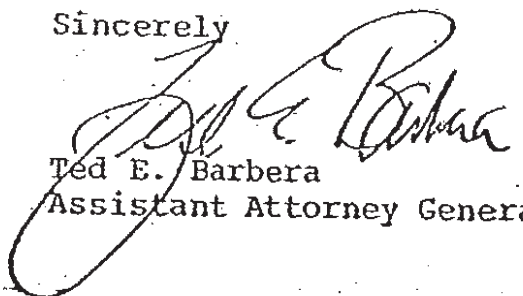
Mr. Gale Lebow
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The statute does not require that the property be in use, but only that it be held for use. In my opinion, whether the property is being held for the taxpayer's personal use, benefit or enjoyment; or whether it is being held for use or sale in the ordinary course of a trade or business or for the production of income, depends upon the intention of the taxpayer. For example, if he intends to use the equipment in a hobby, or to repair his own personal automobile, the equipment would be exempt. It is more likely, however, that he intends to sell the equipment, or to use it in the establishment of a new business, in which case it would not be exempt.

Since the burden is on the taxpayer to show that he is entitled to exemption, I would recommend that you continue to carry the property upon the tax rolls until such time as the taxpayer can establish to your satisfaction that the property is being held for his personal use, benefit or enjoyment.

By request of the Department of Revenue, the Tax Division of the Department of Justice issues informal opinions under ORS 305.110, as in the present instance. Necessarily, therefore, the foregoing is not to be considered a formal opinion of the Attorney General but is an informal and unofficial expression of view given with the desire to be helpful.

Sincerely



Ted E. Barbera
Assistant Attorney General

on

Section 7: Glossary

Glossary

Accrued depreciation. The amount of depreciation, from any and all sources, that affects the value of the property.

Ad valorem tax. A tax levied in proportion to the value of that which is being taxed. (This is exclusive of exemption, use-value assessment laws, etc.) The property tax is an ad valorem tax.

Age/life method. A method of estimating accrued depreciation based on the premise that, in the aggregate, a mathematical function can be used to compute accrued depreciation from the age of a property and its economic life.

Anticipation. The principle that value depends on the expectation of benefits to be derived in the future.

Appraisal. An estimate of value.

Appraisal date. The date when the assessments for a tax year are made. For example, if January 1 is the assessment date and property is vacant on that date, the property is appraised and assessed as vacant land even if a building is added in April and the assessment roll isn't final or public until September 25.

Appraisal principles. The economic concepts underlying appraisal: supply, demand, change, balance, conformity, competition, contribution, anticipation, substitution, highest and best use, surplus productivity, and variable proportions.

Assessed value. Portion of value on real or personal property which is taxable. It's the lesser of the property's RMV or the constitutional value limit [maximum assessed value (MAV)].

Assessment roll. Document prepared by assessor of current year data. The assessment roll for personal property contains the names, including assumed business names, of all persons, whether individuals, partnerships, or corporations owning or having possession of taxable personal property on the assessment date; the AV, MAV, and RMV of the personal property assessed by category; code area number assigned to the property situs; and total AV, MAV, and RMV for the property.

Assessment year. Calendar year.

Balance. The principle that markets tend to move toward equilibrium after a change in supply or demand.

Capitalization. The conversion of expected income and ratio of return into an estimated value in the income approach to value.

Change. The tendency of the social and economic forces affecting supply and demand to alter over time, thus influencing market value.

Chattels. Items of tangible personal property that are moveable, such as machinery & equipment (moveable), office furniture, and computers. Chattels don't include real estate or items permanently attached to real estate.

Competition. This principle states that competition will move in to dissipate profit when substantial profits are being made. If the profits become excessive, then the competition will become excessive. Excess profits invite ruinous competition.

Conformity. Value is created, strengthened, or sustained when reasonable homogeneity or similarity exists. This relates to the social and economic pressures of accepted, traditional fit. Pressure for property to conform may be exerted through zoning or through deed restrictions on architectural design or size. Conformity works with the principle of progression and regression, and is also tied to under-improvement and over-improvement concepts.

Contribution. The principle that the value of a particular feature is measured by its contribution to the value of the whole property, rather than by its cost.

Cost. The money expended in obtaining an object, generally used in appraisal to mean the expense, direct and indirect, of constructing an improvement or obtaining an item.

Cost approach. One of the three approaches to value, the cost approach is based on the principle of substitution—that a rational, informed purchaser would pay no more for a property than the cost of building an acceptable substitute with like utility. The cost approach seeks to determine the replacement cost of an improvement less depreciation plus land value.

Cost schedules. Charts, tables, factors, curves, equations, etc., intended to help estimate the cost of replacing a structure based on knowledge of quality, class, and number of square feet.

Cost trend factor. A factor derived from a cost index used to estimate the contemporary cost of an item based on its historical cost.

Curable depreciation. That part of depreciation that can be reversed by correcting deferred maintenance and remodeling to relieve functional obsolescence.

Data. Information expressed in any of a number of ways. Data is the general term for masses of numbers, codes, and symbols; and information is the term for meaningful data. Data is the plural of datum, one element of data.

Date of sale. The date on which the sale was agreed upon. The date of recording may be used as the "date of sale" if it isn't unduly delayed. (Also known as "date of transfer.")

Deferred maintenance. Repairs and similar improvements that normally would have been made to a property, but were not, and thus increased the amount of its depreciation.

Depreciation. Loss in value of an object, relative to its replacement cost, reproduction cost, or original cost. Depreciation is sometimes subdivided into three types: physical deterioration (wear and tear), functional obsolescence (substandard design in light of current technology or taste), and economic obsolescence (poor location or radically diminished demand for the product).

Discovery. The process by which the assessor identifies all taxable property in the jurisdiction and ensures that it's included on the assessment roll.

Economic obsolescence. Loss in value of a property (relative to the cost of replacing it with a property of equal utility) that stems from factors external to the property. For example, a buggy-whip factory, to the extent that it couldn't be used economically for anything else, suffered substantial economic obsolescence when automobiles replaced horse-drawn buggies.

Fixed assets. Fixed assets are permanent assets that are required for the normal operation of business and they usually aren't converted into cash after they are declared fixed assets. Fixed assets include some types of machinery and equipment, furniture and fixtures, boats, aircraft, motor vehicles, leased equipment, tools, dies, and jigs.

Functional obsolescence. Loss in value of a property resulting from changes in tastes, preferences, technical innovations, or market standards.

Income approach. One of three approaches to value, the income approach uses capitalization to convert anticipated benefits of property ownership into an estimate of present value.

Incurable depreciation. That part of depreciation that can't be reversed by correcting deferred maintenance and remodeling to relieve functional obsolescence.

Intangible assets. These are items of personal property that represent evidence of value, or the right to value, as defined by law or custom. Examples include bonds, notes, trusts, patents, annuities, mortgages, copyrights, money on hand, and shares of stock. Intangibles are exempt from taxation under ORS 307.030.

Intangible property. Evidence of ownership of value or the right to value. For example: notes, bonds, stocks, patents, mortgages, copyrights, insurance policies, and accounts receivable. A form of personal property that includes rights over tangible real and personal property, but not rights of use and possession.

Inventory. The quantity of goods and materials on hand as of a given date. Inventory includes goods held for sale

or resale, consigned goods, bill and hold goods, floor-planned goods, and in-transit goods.

Leasehold. The interests in a property that are associated with the lessee (the tenant) as opposed to the lessor (the property owner).

Leasehold improvements. Improvements or additions to leased property that have been made by the lessee. In assessing leasehold improvements, the appraiser must first determine whether an item is real or personal.

Lien date. The date on which an obligation, such as property tax (usually in an amount yet to be determined), attaches to a property and the property thus becomes security against its payment.

Market value. A hypothetical or estimated sale price which would result from careful consideration of all information by a prudent, responsible buyer and seller under conditions of a fair sale. Market value, value-in-exchange and market price are the same under the following assumptions:

1. No coercion or undue influence occurs over either the buyer or seller in an attempt to force the sale or purchase.
2. Well-informed buyers and sellers are acting in their own best interest.
3. A reasonable time is allowed for the transaction to occur.
4. Payment is made in terms of cash or financing that is typical for the property type for the area, i.e., neighborhood.

Obsolescence. A form of depreciation. See also economic obsolescence and functional obsolescence.

Open market. A freely competitive market in which any buyer or seller may trade and in which prices are determined by competition.

Percent good. An estimate of the value of a property, expressed as a percentage of its replacement cost, after depreciation of all kinds has been deducted.

Physical deterioration. Loss in value caused by wear and tear.

Property tax levy. Amount of ad valorem tax imposed on taxable property by a local government for the support of its activities.

Real market value. The amount in cash that could reasonably be expected to be paid by an informed buyer to an informed seller (both acting without compulsion), in an arm's-length transaction occurring as of the assessment date for the tax year.

Remaining economic life. The number of years remaining in the economic life of a building or other improvement as of the date of the appraisal. This period is

influenced by the attitudes of market participants and by market reactions to competitive properties on the market.

Situs. The actual or assumed location of a property for purposes of taxation.

Substitution. A principle stating that a property's value tends to be set by the cost of acquiring an equally desirable substitute.

Supply and demand. The utility of real property creates demand, which is desire for possession. Demand is effective when supported by purchasing power. Value is increased if supply of real property is reduced by effective demand resulting in scarcity. Therefore, the value of property depends upon the demand for that type of property and varies directly, but not necessarily proportionally, to the supply available within the limits of the available purchasing power.

Tangible assets. Property that can be perceived by the senses. It includes land, fixed improvements, furnishings, merchandise, cash, and other items of working capital used in an enterprise. Tangible personal property is defined by ORS 307.020(3). It includes all chattels and movables such as boats and vessels, merchandise and stock in trade, furniture and personal effects, goods,

livestock, vehicles, farming implements, movable machinery, movable tools, and movable equipment.

Tangible property. Actual physical property (real or personal) in contrast to intangible property.

Trade level. The concept that property increases in value as it progresses through production and distribution channels until it's marked up to its maximum value at the consumer level. Trade level values also consider incremental costs such as freight, overhead handling, and installation. The retail level is the appropriate level on which to report for assessment purposes. However, the consumer or user of the item of personal property may be reporting the cost at either the wholesale or retail level of trade.

Use value. The value of property for specific use. Embodies the premise that an object's value is related to its use. For example, an outmoded machine can still be used to produce a useful product.

Value-in-exchange. The amount an informed purchaser would offer in exchange for a property under given market conditions. The value an item will bring as determined by the market. The value of an item is based on comparison to other substitute goods or services as determined by an open-end competitive marketplace.

Value-in-use. See use value.

Section 8: Forms

Forms and publications

Visit our website for forms and publications that are available for printing at: www.oregon.gov/dor

The following is a list of some forms and publications that you may access:

150-310-087	Application for Real and Personal Property Tax Exemption: For Lease or Lease-Purchase Property Owned by a Taxable Owner and Leased to an Exempt Public Body, Institution, or Organization
150-310-085	Application for Real and Personal Property Tax Exemption: For Property Leased by an Exempt Body to another Exempt Body
150-310-063	Property Valuation Appeals Board Petition for Waiver of Late Filing Penalty
150-310-064	PVAB Appeals - Personal Property Petition
150-303-031	PVAB Authorization to Represent
150-303-055-17	PVAB Clerk Use—Amended Order—Personal Property
150-303-055-34	PVAB Clerk Use—Amended Order—Personal Property
150-303-055-12	PVAB Clerk Use—Defective Petition Notice—Personal Property
150-303-055-11	PVAB Clerk Use—Personal Property Order
150-303-055-33	PVAB Clerk Use—Personal Property Order
150-303-055-12	PVAB Clerk Use—Personal Property Order—Itemization
150-303-055-21-1	PVAB Clerk Use—Stipulated Agreement—Personal Property
150-310-065	PVAB Petitions for Waiver of Late Filing Penalty
150-303-005	County Disclosure Form Certificate of Confidentiality Certificate Required by ORS 308.413(3)
150-310-088	Form OR-AP-RPPTE, Application for Real and Personal Property Tax Exemption: Property Owned by Specified Institutions and Organizations
150-553-004	Form OR-CPPR, Confidential Personal Property Return
150-310-675	Form OR-E-310675, Surviving Spouse of a Public Safety Officer Claim for Real and Personal Property Tax Exemption
150-303-029	Form OR-EZ-AUTH, Oregon Enterprise Zone Authorization Application
150-310-075	Form OR-EZ-EXCLM, Oregon Enterprise Zone Exemption Claim
150-310-076	Form OR-EZ-PS, Oregon Enterprise Zone Property Schedule
150-303-055	How to Appeal the Decision of the Property Valuation Appeals Board
150-303-668	How to Appeal Your Property Value
150-303-450	Methods for Valuing Personal Property
150-303-661	Personal Property Assessment and Taxation
150-303-688	Request for Supervisory Review

Section 9:

Licensing and Registration

State agencies licensing and registration

Abandoned vehicle appraisers	Department of Motor Vehicles—(503) 945-5000	Beekeepers	Department of Agriculture—(503) 986-4620
Accountants	Secretary of State, Board of Accountancy—(503) 378-4181	Beauticians	Oregon Health Licensing Agency—(503) 378-8667
Acupuncturists	Board of Medical Examiners—(971) 673-2700	Bingo	Department of Justice—(971) 673-1880
Agents (liquor store)	Oregon Liquor Control Commission—(503) 872-5000	Boats (pleasure)	Marine Board—(503) 378-8587
Airplane dealer	Department of Aviation—(503) 378-4880	Boiler inspectors	Building Code Agency—(503) 378-4133
Airplanes	Department of Aviation—(503) 378-4880	Boiler makers	Building Code Agency—(503) 378-4133
Airports	Department of Aviation—(503) 378-4880	Bond brokers	Department of Consumer and Business Services—(503) 378-4100
Animal euthanasia	Veterinary Medical Examining Board—(971) 673-0224	Bond dealers	Department of Consumer and Business Services—(503) 378-4100
Animal shelters	Veterinary Medical Examining Board—(971) 673-0224	Bond salespersons	Department of Consumer and Business Services—(503) 378-4100
Antler dealers	Fish and Wildlife Commission—(503) 947-6000	Building inspectors	Building Code Agency—(503) 378-4133
Appraisers (land)	Appraiser Certification and Licensure Board—(503) 485-2555	Building officials	Building Code Agency—(503) 378-4133
Architects	Board of Architect Examiners—(503) 763-0662	Cabinetmakers	Construction Contractor's Board—(503) 378-4621
Attorneys	Oregon State Bar—(503) 620-0222	Canneries (fish)	Fish and Wildlife Commission—(503) 947-6000
Auctioneers	No license required	Captains (com'l fishing boats)	Fish and Wildlife Commission (503) 947-6000
Audiologists	Speech/Language Pathology and Audiology—(971) 673-0220	Carpenters	Construction Contractor's Board—(503) 378-4621
Bait dealers	Fish and Wildlife Commission—(503) 947-6000	Carpet installers	Construction Contractor's Board—(503) 378-4621
Bakeries	Department of Agriculture—(503) 986-4720	Cemeteries	Mortuary and Cemetery Board—(971) 673-1500
Banks	Department of Consumer and Business Services—(503) 378-4140	Certified public accountants	Secretary of State, Board of Accountancy—(503) 378-4181
Barbers	Oregon Health Licensing Agency—(503) 378-8667	Charter boats	Marine Board—(503) 378-8587
Bars	Oregon Liquor Control Commission—(503) 872-5000	Check sellers	Department of Consumer and Business Services—(503) 378-4140
Bartenders	Oregon Liquor Control Commission—(503) 872-5000		

Chiropractors	Board of Chiropractic Examiners—(503) 378-5816	Employment agencies (private)	Bureau of Labor and Industries—(971) 673-0761
Christmas tree growers	Department of Agriculture (503) 986-4550	Engineers	Board of Engineering Examiners—(503) 362-2666
Clinical social workers	Board of Clinical Social Workers—(503) 378-5735	Escrow agents	Real Estate Agency—(503) 378-4170
Collection agencies	Department of Consumer and Business Services—(503) 378-4140	Euthanasia	Veterinary Medical Examining Board—(971) 673-0224
Commercial fishers	Fish and Wildlife Commission—(503) 947-6000	Excavators	Construction Contractor's Board—(503) 378-4621
Commercial fishing boats	Fish and Wildlife Commission (503) 947-6000	Exotic animal dealers	Department of Agriculture—(503) 986-4550
Cosmetologists	Oregon Health Licensing Agency—(503) 378-8667	Falconers	Fish and Wildlife Commission—(503) 947-6000
Dentists	Oregon Board of Dentistry—(971) 673-3200	Farm labor contractors	Bureau of Labor and Industries—(503) 373-1463
Denturists	Oregon Health Licensing Agency—(503) 378-8667	Feed producers	Department of Agriculture—(503) 986-4550
Dietitians	Oregon Health Licensing Agency—(503) 378-8667	Fertilizer producers	Department of Agriculture—(503) 986-4550
Doctors	Board of Medical Examiners—(971) 673-2700	Finance companies	Department of Consumer and Business Services—(503) 378-4140
Drillers	Water Resources Department—(503) 986-0900	Financial institutions	Department of Consumer and Business Services—(503) 378-4140
Drug exporters	Board of Pharmacy—(971) 673-0001	Fish canneries	Fish and Wildlife Commission—(503) 947-6000
Drug manufacturers	Board of Pharmacy—(971) 673-0001	Fish dealers (wholesale)	Fish and Wildlife Commission—(503) 947-6000
Drywallers	Construction Contractor's Board—(503) 378-4621	Fishing boats	Fish and Wildlife Commission—(503) 947-6000
Egg dealers	Department of Agriculture—(503) 986-4720	Fishing licenses	Fish and Wildlife Commission—(503) 947-6000
Electrical contractors	Construction Contractor's Board—(503) 378-4621 and Building Code Agency—(503) 378-4133	Food services	Human Services Department—Public Health Division—(971) 673-1222
Electricians	Construction Contractors Board—(503) 378-4621 and Building Code Agency—(503) 378-4133	Food stands (wholesale and retail)	Department of Agriculture—(503) 986-4620
Electrologist	Oregon Health Licensing Agency—(503) 378-8667	Framers	Construction Contractor's Board—(503) 378-4621
Elevator inspectors	Building Code Agency—(503) 378-4133	Funeral homes	Mortuary and Cemetery Board—(971) 673-1500
Embalmers	Mortuary and Cemetery Board—(971) 673-1500	Gas manufacturers and sellers (ether, acetylene, etc.)	Board of Pharmacy—(971) 673-0001

Gas well drilling	Department of Geology and Mineral Industries—(971) 673-1555	Insurance agents	Department of Consumer and Business Services—(503) 947-7980
General contractors	Construction Contractor's Board—(503) 378-4621	Insurance consultants	Department of Consumer and Business Services—(503) 947-7980
Geologists	Board of Geologist Examiners—(503) 566-2837	Investment advisors	Department of Consumer and Business Services—(503) 378-4140
Geothermal drilling	Department of Geology and Mineral Industries—(971) 673-1555	Jockeys	Racing Commission—(971) 673-0207
Grain warehouses	Department of Agriculture—(503) 986-4550	Land surveyors	Board of Engineering Examiners—(503) 362-2666
Greyhound owners	Racing Commission—(971) 673-0207	Landscape architects	Board of Architects Examiners—(503) 763-0662
Greyhound trainers	Racing Commission—(971) 673-0207	Landscapers	Landscape Contractors' Board—(503) 967-6291
Grocery stores (which sell over-the-counter drugs)	Board of Pharmacy—(971) 673-0001	Licensing agents (hunting and fishing)	Fish and Wildlife Commission—(503) 947-6000
Grocery stores (which sell liquor)	Oregon Liquor Control Commission—(503) 872-5000	Legal assistants	No license required
Grooms	Racing Commission—(971) 673-0207	Livestock	Department of Agriculture—(503) 986-4680
Guides	Marine Board—(503) 378-8587	Log brands	Forestry Department—(503) 945-7200
Hairdressers	Oregon Health Licensing Agency—(503) 378-8667	Manufacturers of drugs	Board of Pharmacy—(971) 673-0001
Hay dealers	Department of Agriculture—(503) 986-4550	Maritime pilots	Board of Maritime Pilots—(971) 673-1530
Hearing aid dealers	Oregon Health Licensing Agency—(503) 378-8667	Masons	Construction Contractors' Board—(503) 378-4621
Hide dealers	Fish and Wildlife Commission—(503) 947-6000	Mechanics	No license required
Hotels	Bureau of Labor and Industries—(971) 673-0761	Mining operations	Department of Geology and Mineral Industries—(971) 673-1555
Hunting licenses	Fish and Wildlife Commission—(503) 947-6000	Mortgage brokers	Department of Consumer and Business Services—(503) 378-4140
Hygienists (dental)	Oregon Board of Dentistry—(971) 673-3200	Mortgage salespersons	Department of Consumer and Business Services—(503) 378-4140
Insulators	Construction Contractor's Board—(503) 378-4621	Morticians	Mortuary and Cemetery Board—(971) 673-1500
Insurance adjusters	Department of Consumer and Business Services—(503) 947-7980	Motels	Bureau of Labor and Industries—(971) 673-0761
Insurance agencies	Department of Consumer and Business Services—(503) 947-7980	Naturopaths	Board of Naturopathic Examiners—(971) 673-0193

Nonprofit organizations	Department of Justice— (971) 673-1880	Plumbers	Construction Contractor's Board—(503) 378-4621 and Building Code Agency— (503) 378-4133
Nurses	Board of Nursing— (971) 673-0685	Plumbing contractors	Construction Contractor's Board—(503) 378-4621 and Building Code Agency— (503) 378-4133
Nursing homes	Oregon Health Licensing Agency—(503) 378-8667	Plumbing inspectors	Building Code Agency— (503) 378-4133
Oil well drilling	Department of Geology and Mineral Industries— (541) 967-2039	Private employment agencies	Bureau of Labor and Industries—(971) 673-0761
Ophthalmologists	Board of Medical Examiners— (971) 673-2700	Psychiatrists	Board of Medical Examiners— (971) 673-2700
Optometrists	Board of Optometry— (503) 393-0662	Psychologists	Board of Psychologist Examiners—(503) 378-4154
Osteopaths	Board of Medical Examiners— (971) 673-2700	Pullers	Fish and Wildlife Commission—(503) 947-6000
Outfitters	Marine Board—(503) 378-8587	Race horse owners	Racing Commission— (971) 673-0207
Painters	Construction Contractors' Board—(503) 378-4621	Race horse trainers	Racing Commission— (971) 673-0207
Pathologists (speech)	Speech/Language Pathology and Audiology— (971) 673-0220	Race track concessions	Racing Commission— (971) 673-0207
Pawnbrokers	Department of Consumer and Business Services— (503) 378-4140	Race track employees	Racing Commission— (971) 673-0207
Pesticide applicators	Department of Agriculture— (503) 986-4635	Race track owners	Racing Commission— (971) 673-0207
Pesticide dealers	Department of Agriculture— (503) 986-4635	Race track security	Racing Commission— (971) 673-0207
Pesticide operators	Department of Agriculture— (503) 986-4635	Radiologists (diagnostic and therapeutic)	Board of Radiologic Technology—(971) 673-0215
Pharmacists	Board of Pharmacy— (971) 673-0001	Raffles	Department of Justice— (503) 378-4320
Physicians	Board of Medical Examiners— (971) 673-2700	Rain gutter installers	Construction Contractors' Board—(503) 378-4621
Pilots	Department of Aviation— (503) 378-4880	Real estate agents	Real Estate Agency— (503) 378-4170
Pipefitters	Construction Contractor's Board—(503) 378-4621 and Building Code Agency— (503) 378-4133	Real estate appraisers	Real Estate Agency— (503) 378-4170
Plan examiners	Building Code Agency— (503) 378-4133	Real estate brokers	Real Estate Agency— (503) 378-4170
Pleasure boats	Marine Board—(503) 378-8587	Reforesters	Bureau of Labor and Industries—(971) 673-0761
		Rendering plants	Department of Agriculture— (503) 986-4636

Repossessors	Department of Consumer and Business Services— (503) 378-4140	Stock dealers	Department of Consumer and Business Services— (503) 378-4140
Restaurants (which serve liquor)	Oregon Liquor Control Commission—(503) 872-5000	Stock salespersons	Department of Consumer and Business Services— (503) 378-4140
Restaurants	Department of Consumer and Business Services— (503) 378-4100	Surgeons	Board of Medical Examiners— (971) 673-2700
Retail sellers of drugs	Board of Pharmacy— (503) 673-0001	Surveyors (land)	Board of Engineering Examiners—(503) 362-2666
Roofers	Construction Contractors' Board—(503) 378-4621	Swimming pools	Department of Consumer and Business Services— (503) 378-4100
Sanitarians	Oregon Health Licensing Agency—(503) 378-8667	Taverns	Oregon Liquor Control Commission—(503) 872-5000
Savings and loans	Department of Consumer and Business Services— (503) 378-4140	Tax return preparers	Board of Accountancy— (503) 378-4181
Seed dealers	Department of Agriculture— (503) 872-6600	Taxidermists	Fish and Wildlife Commission—(503) 947-6000
Seismic work	Department of Geology and Mineral Industries— (971) 673-1555	Telemarketer	Department of Justice— (503) 378-4320
Shellfish distributors	Department of Human Services—(503) 945-5733	Telephone solicitors	Department of Justice— (503) 378-4320
Shellfish growers	Department of Human Services—(503) 945-5733	Therapists	Occupational Therapy Licensing Board— (971) 673-0198 or Physical Therapist Licensing Board— (971) 673-0200
Shellfish shuckers/ packers	Department of Human Services—(503) 945-5733	Title agents	Department of Consumer and Business Services— (503) 378-4140
Shorthand reporters	Bureau of Labor and Industries—(971) 673-0761	Title insurance companies	Department of Consumer and Business Services— (503) 378-4140
Siding installers	Construction Contractors' Board—(503) 378-4621	Tow truck owners	Department of Motor Vehicles—(503) 945-5000
Slaughtering establishments	Department of Agriculture—Animal Health and Identification—(503) 986-4680	Trainers	Racing Commission— (971) 673-0207
Social workers (clinical)	Board of Licensed Social Workers—(503) 378-5735	Transporters	Department of Motor Vehicles—(503) 945-5000
Speech pathologists	Speech/Language Pathology and Audiology— (971) 673-0220	Trappers	Fish and Wildlife Commission—(503) 947-6000
Steamfitters	Construction Contractor's Board—(503) 378-4621 and Building Code Agency— (503) 378-4133	Trucking companies	Public Utility Commissioner— (800) 522-2404
Stockbrokers	Department of Consumer and Business Services— (503) 378-4140	Trusses	Construction Contractors' Board—(503) 378-4621

Trust companies	Department of Consumer and Business Services—(503) 378-4140	Welders (working on real property)	Construction Contractor's Board—(503) 378-4621
Vending machine operators	Department of Human Services—(503) 945-5944	Welders (in general)	No license required
Veterinarians	Veterinary Medical Examining Board—(971) 673-0244	Well drillers	Water Resources Department—(503) 986-0900
Veterinary technicians	Veterinary Medical Examining Board—(971) 673-0244	Well drillers (gas and oil)	Department of Geology and Mineral Industries—(971) 673-1555
Waiters and waitresses (who serve liquor)	Oregon Liquor Control Commission—(503) 872-5000	Wholesale sellers of drugs	Board of Pharmacy—(971) 673-0001
Warehouse commissaries	Department of Human Services—(503) 945-5944	Wineries	Oregon Liquor Control Commission—(503) 872-5000
Water rights examiners	Examiners for Engineering and Land Surveying Board—(503) 362-2666		

Video lottery terminals

The following companies furnish lottery equipment to the State of Oregon.

GTECH—Gtech Corporation

3925 Fairview Industrial Dr Suite #100
Salem OR 97302

IGT—International Game Technology

9295 Prototype Dr
Reno NV 89521

VLC—Video Lottery Consultants

2311 S 7th Avenue
Bozeman MT 59715

WMS—WMS Gaming, Inc.

3401 North California Avenue
Chicago IL 60618

Section 10: Information Circulars

Personal Property Assessment and Taxation



www.oregon.gov/dor

All personal property is valued at 100 percent of its real market value unless exempt by statutes. Personal property is taxable in the county where it is located as of the assessment date, January 1 at 1 a.m.

Taxable personal property

Taxable personal property includes machinery, equipment, furniture, etc., used previously or presently in a business, including any property not currently used, placed in storage, or held for sale.

Statutes state that if the item of property is “affixed to” or “erected upon” land or buildings and isn’t “moveable,” it’s real property. Conversely, if it’s not “affixed to” or “erected upon” land or buildings and is “moveable,” it’s personal property. (ORS 307.010, 307.020, OAR 150-307-0010).

Moveable. Items of property that can be and are readily moved are personal property. A desk, though heavy, is generally considered moveable. A chair with casters is obviously moveable. Freestanding appliances may be heavy but are generally classed as personal property. (OAR 150-307-0010).

Tax-exempt personal property

These items are exempt from property tax:

- **Intangible personal property.** Money at interest, bonds, notes, shares of stock, business records, computer software, surveys and designs, and the materials on which the data are recorded (paper, tape, film, etc.) (ORS 307.020).
- **All items held exclusively for personal use.** Household goods, furniture, clothing, tools, and equipment used exclusively for personal use in and around your home (ORS 307.190).
- **Farm animals.** Livestock, poultry, fur-bearing animals, and bees (ORS 307.394).
- **Inventory.** Items of tangible personal property which are or will be sold in the ordinary course of business (materials, containers, goods in process, and finished goods) (ORS 307.400).
- **Farm machinery and equipment** (ORS 307.394).
- **Environmentally sensitive logging equipment** (ORS 307.827).
- **Licensed vehicles other than fixed load/mobile equipment** (ORS 801.285).

Filing your personal property tax return

Each individual, partnership, firm, or corporation that has taxable personal property must file a return by March 15.

Major industrial properties appraised by the Oregon Department of Revenue will report on an industrial property return furnished by the department.

For all other accounts appraised by the county assessor, a return form may be mailed to you by the county assessor before January 1 if you were assessed the previous year. You must report property you own or had in your possession as of January 1 at 1 a.m. If you don’t receive a form from the assessor, you’re still obligated to obtain and file a personal property tax return. There is a penalty for late filing. If you need help completing the form, contact your county assessor’s office.

If you sell your business, notify the county assessor to avoid future liability on the personal property.

Penalty for late filing

If you report taxable personal property on a Confidential Personal Property Return, the penalty charge increases periodically. If your return is filed after March 15 but on or before June 1, a penalty of 5 percent of the tax will be charged. If the return is filed after June 1 but on or before August 1, the penalty increases to 25 percent of the tax. After August 1, the penalty increases to 50 percent of the tax.

If you report taxable personal property along with real property on an industrial property return sent to us and your return is filed late, a penalty for late filing will be \$10 for each \$1,000 (or fraction) of total assessed value. This penalty won’t be less than \$10 or more than \$5,000 (ORS 308.295).

Paying your tax

Property tax statements are mailed to taxpayers in late October. You must pay at least one-third of your tax bill by November 15 to avoid interest charges. You receive a 3 percent discount if you pay the full amount due by November 15. If you pay two-thirds of the full amount by November 15, you receive a 2 percent discount. If you choose to pay in thirds, the second payment is due by February 15 and the third by May 15.

Personal property taxes become a lien on July 1 against any and all of the assessed property, as well as on personal property assessed in the same category. The taxes may become a lien against all personal property owned or in the possession of the person in whose name the property is assessed. The taxes are a debt due and owing from the owner of the personal property.

Appeals

If you feel the county assessor has estimated the value of your property incorrectly, you have the right to appeal, but your appeal must be based on the property's value, not on the amount of taxes owed. To receive a change in your assessment, you must convince your county property valuation appeals board that your property is incorrectly valued. You must support your belief with evidence such as appraisal

reports and comparable sales. You also have the right to appeal if you believe you were charged a late filing penalty in error.

If you report your personal property on a combined industrial property return to us, you must appeal to the Magistrate Division of the Oregon Tax Court instead of your county property valuation appeals board.

For more information on property value appeals, see *How to Appeal Your Property Value*, 150-303-668.

Do you have questions or need help?

www.oregon.gov/dor
questions.dor@dor.oregon.gov

Contact us for ADA accommodations or assistance in other languages.

How to Appeal Your Property Value



www.oregon.gov/dor

General information

In Oregon, property taxes are assessed for real property, machinery and equipment, manufactured structures, business personal property, and floating structures. Oregon has an ad valorem property tax system, which means the property taxes you pay are based on the value the county assessor establishes for your property.

The assessor determines the value of most taxable property on January 1, prior to the beginning of the tax year. The tax year runs from July 1 through June 30. January 1 is called the "assessment date." The assessor's determination of value will appear on the tax statement mailed to you in October.

The following terms and definitions are provided to help you understand how your property is valued and assessed.

- **Real market value (RMV)** is the value the assessor has determined your property would sell for on the open market as of the assessment date. RMV appears on most property tax statements.
- **Maximum assessed value (MAV)** is the greater of 103 percent of the prior year's assessed value or 100 percent of the prior year's MAV. **MAV isn't limited to an increase of 3 percent** if certain changes are made to your property. These changes are called exceptions. MAV doesn't appear on most tax statements.
- **Assessed value (AV)** is the value used to calculate your tax. It is the **lesser** of RMV or MAV. Assessed value appears on your tax statement.
- **Exception** means a change to property, not including general ongoing maintenance and repair or minor construction. Changes that could affect maximum assessed value include new construction or additions, major remodeling or reconstruction, rezoning with use consistent with the change in zoning, a partition or subdivision, or a disqualification from special assessment or exemption. Minor construction is defined as additions of real property improvements with a real market value that doesn't exceed \$10,000 in one assessment year or \$25,000 over a period of five assessment years. Exception value doesn't appear on your tax statement.
- **Specially assessed value (SAV)** is a value established by statute. The legislature has created several

programs that set lower assessed value levels for certain types of property. Each program has specific applications and use requirements. Examples of property that may qualify for special assessment are farmland, forestland, historic property, government-restricted low income multi-unit housing, and property that qualifies as "open space." SAV appears on most tax statements for property that is specially assessed.

Properties appraised by Department of Revenue

If you wish to appeal the value of **industrial property** appraised by the Department of Revenue (DOR), you must file your appeal with the Magistrate Division of the Tax Court. The deadline to file an appeal is December 31. If December 31 falls on a Saturday, Sunday, or legal holiday, the filing deadline moves to the next business day.

The value and late filing penalties of utilities and other centrally assessed property must be appealed to DOR on or before June 15 of the assessment year.

Appealing to your county property value appeals board

Appealing to the county property value appeals board (PVAB) is generally the first step in the appeal process. Most appeals start at this level.

You may appeal the current year real market, maximum assessed, specially assessed, or assessed value of your property. However, the authority of PVAB to reduce the MAV and AV of your property is **limited to the calculation allowed by law** and an appeal may not result in a reduction of tax.

The majority of appeals will be based on a difference of opinion between you and the assessor about RMV. In such cases, you will need to present evidence about the market value of your property as it existed on the assessment date. Evidence might include an appraisal report of your property done by an independent appraiser or a comparison of your property with similar properties that have **sold** in your area close to January 1 of the assessment year.

Comparing the value on the tax roll of your house to the value on the tax roll of your neighbor's house, or comparing the taxes you pay to the taxes your neighbor pays is generally not considered satisfactory evidence.

The following are examples in which an appeal of RMV may result in a tax benefit:

- The board reduces the RMV below the assessed value currently on the roll.
- Your property was improved in the previous assessment year and the board reduces the value of the new construction.
- The board reduces the RMV of your property, and the reduction requires property taxes to be reduced to meet constitutional limits on the education and general government categories of your taxes. See Tax Limitation (Compression) at www.oregon.gov/dor/property for more information.

Penalties charged for late filing of a current year's real or personal property return with the county assessor, or combined industrial property return with the Department of Revenue, may also be appealed to the board. The board may waive all or a portion of a penalty imposed for the late filing of a return if:

- You can prove there was good and sufficient cause for the late filing, or
- The year for which the return was filed was **both** the first year that a return was required to be filed and the first year you filed a return.

How to file your petition

You must file appeals between the date the tax statements are mailed and December 31. If December 31 falls on a Saturday, Sunday, or legal holiday, the filing deadline moves to the next business day. File your petition with the county clerk's office in the county where the property is located. You can get the forms you need from your county clerk or county assessor's office. You may also download forms from www.oregon.gov/dor/property.

If you aren't the owner of the property, carefully read the petition instructions to learn if you are qualified to file the appeal.

The board will consider your appeal between the first Monday in February and April 15. If you choose to appear at the hearing, PVAB will send you written notice of the time and location. If you choose not to appear, the board will make a decision based on the evidence you submit with the petition.

The board will notify you in writing of its decision. If you aren't satisfied with the decision, you have the right to appeal as follows:

Appealing county board decisions

You may appeal a decision of PVAB to the Magistrate Division of the Oregon Tax Court by filing a written complaint. The assessor may also appeal the board's decision.

Complaints must be filed with the Magistrate Division **within 30 days (not one month)**, after the board's order is mailed or personally delivered to you. You can download appeal forms at www.courts.oregon.gov; or write to: Clerk, Oregon Tax Court, Magistrate Division, 1163 State Street, Salem OR 97301. You can also order forms by calling 503-986-5650 or by calling your county assessor.

Appealing magistrate decisions

You may appeal magistrate decisions to the Regular Division of the Oregon Tax Court. To appeal, file your complaint with the court clerk **within 60 days (not two months) after the date of the magistrate's decision**. The tax court clerk will notify you of the trial date and time.

A trial in the Regular Division of the Oregon Tax Court is a formal proceeding. Although you may represent yourself, most people prefer to be represented by a lawyer. If you aren't satisfied with the tax court decision, you can appeal to the Oregon Supreme Court.

Failure to appeal to PVAB

Under **very limited** circumstances, the Magistrate Division **may** be able to hear your appeal if you miss the deadline for filing with PVAB. In addition, we may consider a request to address an error on the roll, if certain conditions are met. For more information about filing a petition with the department, see the publication *Request for Supervisory Review*, 150-303-688. You may obtain a copy from the website listed below.

Do you have questions or need help?

www.oregon.gov/dor
503-378-4988 or 800-356-4222
questions.dor@oregon.gov

Contact us for ADA accommodations or assistance in other languages.

Americans with Disabilities Act (ADA): Call one of the help numbers for information in alternative formats.

Request for Supervisory Review



www.oregon.gov/dor

The Department of Revenue may consider a request for supervisory review if certain criteria are met. We may be able to correct assessment errors for the current and two prior tax years.

When do I request supervisory review?

We can correct assessment errors under our supervisory authority if you didn't appeal in time to the county property value appeals board (PVAB) or to the court. We may correct a value when the assessor requests a reduction, when you and the assessor agree in writing to a change, or when one of the following certain standards are met. It's your responsibility to show that you meet at least one of these standards:

1. You and the county assessor agree to facts indicating an error is likely.

Discuss your concern with the county assessor. There may be facts about your property that indicate an assessment error. For example, the assessor may have used the wrong square footage or there may be excessive deterioration that the assessor didn't consider. To meet this standard, the assessor must agree with a fact that you are asserting and the fact must indicate a likely error on the tax roll to our department.

2. An error caused by an extraordinary circumstance resulted in the incorrect valuation of your property. Extraordinary circumstances include:
 - a. The county assessor taxed nonexistent property, exempt property, or property outside the taxing jurisdiction.
 - b. You made a computational or clerical error in reporting the value of personal property.
 - c. A property buyer didn't know about a tax liability due to an error correction that wasn't recorded on the tax roll at the time of purchase. This doesn't include a new owner who disagrees with the value on the tax roll.
 - d. You, the assessor, the tax collector, or the county clerk finds a clerical or jurisdictional error in an order issued by PVAB. We won't consider issues of valuation judgment under this standard.

- e. There has been an increase, of more than the 3 percent limitation, in the maximum assessed value (MAV) of your property but there has been no change to the property that qualifies as an exception [Oregon Revised Statutes (ORS) 308.146(3)]. This doesn't involve the value of the property placed on the tax roll but only whether a change was made to the property. This also doesn't involve the identification of activity as general on-going maintenance and repair, or an account modification (ORS 308.162). The increase in MAV must have occurred when we had supervisory jurisdiction.
- f. When a question exists that is of interest to the Department of Revenue and doesn't involve valuation judgment.

You may ask for a correction for the current tax year, if your time to appeal normally has passed, or either of the two prior tax years. You must meet at least one of the prior listed standards for each tax year. The current tax year is the tax year in which you file the petition. Each tax year begins on July 1 and ends on June 30.

If you still have another statutory right of appeal remaining, we don't have jurisdiction to review a petition for the current year. For example, if the issue in the petition concerns the value of the property, a taxpayer has a statutory right of appeal to the local PVAB or in certain cases the Magistrate Division of the Oregon Tax Court until December 31. We can't accept the petition for the current tax year until after that date.

How do I ask the Department of Revenue to correct an assessment error?

File a petition for supervisory review with us. You can obtain a petition form from the county assessor's office or at www.oregon.gov/dor/forms. For more information, contact the Property Tax Conference Unit at: supervisory.conference@dor.oregon.gov.

What will the Department of Revenue do?

We may schedule a conference to determine if any of the standards have been met. The conference is typically over the phone and you'll receive written notice of the date and time. You may choose someone to represent you, which may include: Oregon attorneys; certified public accountants; real estate brokers; appraisers; employees regularly employed in tax matters; or a spouse, child, or parent. We will send you a written decision after the conference. If we find that any of the standards have been met, we may schedule a second conference to determine whether the requested correction should be made.

Is there any other possibility for a late appeal?

The Magistrate Division of the Oregon Tax Court may consider your appeal for the current and two prior tax years if either of these situations apply:

1. You didn't appeal on time for a good and sufficient cause. Good and sufficient cause is an extraordinary circumstance beyond your control that caused the late appeal.
2. Your property is residential, and the difference between the real market value you are asserting and the real market value shown on the assessment roll is 20 percent or greater.

Do you have questions or need help?

www.oregon.gov/dor
503-378-4988 or 800-356-4222
questions.dor@dor.oregon.gov

Contact us for ADA accommodations or assistance in other languages.

Section 11:

Miscellaneous Information

Cities and ZIP codes

Town	County	Number	ZIP code
A			
Adair Village	Benton	2	97330
Adams	Umatilla	30	810
Adel	Lake	19	620
Adrian	Malheur	23	901
Agness	Curry	8	406
Albany	Linn	22	321, 322
Allegany	Coos	6	407
Aloha	Washington	34	005-007
Alpine	Benton	2	408
Alsea	Benton	2	324
Alsea	Lincoln	21	324
Alvadore	Lane	20	409
Amity	Yamhill	36	101
Antelope	Wasco	33	001
Applegate	Jackson	15	530
Arch Cape	Clatsop	4	102
Arlington	Gilliam	11	812
Arock	Malheur	23	902
Ashland	Jackson	15	520
Ashwood	Jefferson	16	711
Astoria	Clatsop	4	103
Athena	Umatilla	30	813
Aumsville	Marion	24	325
Aurora	Marion	24	002
Azalea	Douglas	10	410
B			
Baker City	Baker	1	97814
Ballston	Polk	27	379
Bandon	Coos	6	411
Banks	Washington	34	106, 109, 125
Bates	Grant	12	817
Bay City	Tillamook	29	107
Beatty	Klamath	18	621
Beaver	Tillamook	29	108, 112
Beavercreek	Clackamas	3	004
Beaverton	Washington	34	005-08, 075-077
Bend	Deschutes	9	701, 702, 707-709
Biggs	Sherman	28	065
Birkenfeld	Columbia	5	016
Blachly	Lane	20	412
Blalock	Gilliam	11	812
Blodgett	Benton	2	326
Blodgett	Lincoln	21	326
Blue River	Lane	20	413
Bly	Klamath	18	622
Boardman	Morrow	25	818
Bonanza	Klamath	18	623

Bonneville	Multnomah	26	014
Boring	Clackamas	3	009, 089
Bradwood	Clatsop	4	016
Bridal Veil	Multnomah	26	010
Bridgeport	Baker	1	819
Brightwood	Clackamas	3	011
Broadbent	Coos	6	414
Brogan	Malheur	23	903
Brookings	Curry	3	415
Brooks	Marion	24	305
Brothers	Deschutes	9	712
Brownsmead	Clatsop	4	103
Brownsville	Linn	22	327
Burns	Harney	13	720
Butte Falls	Jackson	15	522
Buxton	Washington	34	109

C

Camas Valley	Douglas	10	97416, 496
Camp Sherman	Jefferson	16	730
Canby	Clackamas	3	013
Cannon Beach	Clatsop	4	110
Canyon City	Grant	12	820
Canyonville	Douglas	10	417
Carlton	Yamhill	36	111
Cascade Locks	Hood River	14	014
Cascadia	Linn	22	329
Cave Junction	Josephine	17	523, 531
Cayuse	Umatilla	30	821
Central Point	Jackson	15	502
Charleston	Coos	6	420
Chemult	Klamath	18	731
Cheshire	Lane	20	419
Chiloquin	Klamath	18	624, 639
Christmas Valley	Lake	19	641
Clackamas	Clackamas	3	015, 086
Clatskanie	Columbia	5	016
Clifton	Clatsop	4	016
Cloverdale	Tillamook	29	112
Coburg	Lane	20	408
Colton	Clackamas	3	017
Columbia City	Columbia	5	018
Condon	Gilliam	11	823
Coos Bay	Coos	6	420
Coquille	Coos	6	423
Corbett	Multnomah	26	019
Cornelius	Washington	34	113, 123
Corvallis	Benton	2	330, 331
Corvallis	Linn	22	333, 339
Cottage Grove	Lane	20	424
Cove	Union	31	824
Crabtree	Linn	22	335
Crane	Harney	13	732
Crater Lake	Klamath	18	604
Crawfordsville	Linn	22	336
Crescent	Klamath	18	733

Crescent Lake	Klamath	18	425
Creswell	Lane	20	426
Culp Creek	Lane	20	427
Culver	Jefferson	16	734
Curtin	Douglas	10	428

D

Dairy	Klamath	18	97625
Dale	Grant	12	880
Dallas	Polk	27	338
Days Creek	Douglas	10	429
Dayton	Yamhill	36	114
Dayville	Grant	12	825
Deadwood	Lane	20	430
Deer Island	Columbia	5	054
Denio	Harney	13	89404
Denmark	Curry	8	450
Depoe Bay	Lincoln	21	341
Detroit	Marion	24	342
Dexter	Lane	20	431
Diamond	Harney	13	722
Diamond Lake	Douglas	10	731
Dillard	Douglas	10	432
Donald	Marion	24	020
Dorena	Lane	20	434
Drain	Douglas	10	435
Drewsey	Harney	13	904
Dufur	Wasco	33	021
Dundee	Yamhill	36	115
Durkee	Baker	1	905

E

Eagle Creek	Clackamas	3	97022
Eagle Point	Jackson	15	524
Echo	Umatilla	30	826
Eddyville	Lincoln	21	343
Elgin	Union	31	827
Elkton	Douglas	10	436
Elmira	Lane	20	437
Enterprise	Wallowa	32	828
Estacada	Clackamas	3	023
Eugene	Lane	20	401, 405, 408 412, 440, 455

F

Fairview	Multnomah	26	97024
Fall Creek	Lane	20	438
Falls City	Polk	27	344
Fields	Harney	13	710
Flora	Wallowa	32	828
Florence	Lane	20	439
Forest Grove	Washington	34	116
Fort Klamath	Klamath	18	626
Fort Rock	Lake	19	735
Fort Stevens	Clatsop	4	121

Fossil	Wheeler	35	830
Foster	Linn	22	345
Fox	Grant	12	831
Frenchglen	Harney	13	736

G

Gales Creek	Washington	34	97117
Gardiner	Douglas	10	441
Garibaldi	Tillamook	29	118
Gaston	Washington	34	119
Gates	Linn	22	346
Gates	Marion	24	346
Gateway	Jefferson	16	741
Gearhart	Clatsop	4	138
Gervais	Marion	24	026
Gilchrist	Klamath	18	737
Gladstone	Clackamas	3	027
Glendale	Douglas	10	442
Gleneden Beach	Lincoln	21	388
Glenwood	Washington	34	116
Glide	Douglas	10	443
Goble	Columbia	5	048
Gold Beach	Curry	8	444
Gold Hill	Jackson	15	525
Government Camp	Clackamas	3	028
Grande Ronde	Polk	27	347
Grants Pass	Josephine	17	526-528, 543
Grass Valley	Sherman	28	029
Greenleaf	Lane	20	430
Gresham	Multnomah	26	030, 080
Grizzly	Jefferson	16	741

H

Haines	Baker	1	97833
Halfway	Baker	1	834
Halsey	Linn	22	348
Hamlet	Clatsop	4	138
Hammond	Clatsop	4	121
Harbor	Curry	8	415
Harper	Malheur	23	906
Harrisburg	Linn	22	446
Hebo	Tillamook	29	122
Helix	Umatilla	30	835
Heppner	Morrow	25	836
Hereford	Baker	1	837
Hermiston	Umatilla	30	838
Hillsboro	Washington	34	006, 123, 124
Hines	Harney	13	738
Hood River	Hood River	14	031
Hubbard	Marion	24	032
Huntington	Baker	1	907

I

Idanha	Linn	22	97350
Idanha	Marion	24	350

Idleyld Park	Douglas	10	447
Imbler	Union	31	841
Imnaha	Wallowa	32	842
Independence	Polk	27	351
Ione	Morrow	25	843
Ironside	Malheur	23	908
Irrigon	Morrow	25	844
Island City	Union	31	850

J

Jacksonville	Jackson	15	97530
Jamieson	Malheur	23	909
Jasper	Lane	20	438
Jefferson	Linn	22	352
Jefferson	Marion	24	352
Jewell	Clatsop	4	138
John Day	Grant	12	845
Jordan Valley	Malheur	23	910
Joseph	Wallowa	32	846
Junction City	Lane	20	448
Juntura	Malheur	23	911

K

Keno	Klamath	18	97627
Kent	Sherman	28	033
Kerby	Josephine	17	531
Kernville	Lincoln	21	367
Kimberly	Grant	12	848
Kirk	Klamath	18	624
Klamath Falls	Klamath	18	601-603, 625

L

Lafayette	Yamhill	36	97127
LaGrande	Union	31	850
Lake Grove	Clackamas	3	034, 035
Lake Oswego	Clackamas	3	034, 035
Lake Oswego	Washington	34	034, 035
Lakeside	Coos	6	449
Lakeview	Lake	19	630
Langlois	Curry	8	450
Lapine	Deschutes	9	739
Lawen	Harney	13	740
Leaburg	Lane	20	489
Lebanon	Linn	22	355
Lexington	Morrow	25	839
Lincoln City	Lincoln	21	367
Logsden	Lincoln	21	357
Lonerock	Gilliam	11	823
Long Creek	Grant	12	856
Lorane	Lane	20	451
Lostine	Wallowa	32	857
Lowell	Lane	20	452
Lyons	Linn	22	358
Lyons	Marion	24	358

M

Madras	Jefferson	16	97741
Malin	Klamath	18	632
Manning	Washington	34	125
Manzanita	Tillamook	29	130
Mapleton	Lane	20	453
Marcola	Lane	20	454
Marion	Marion	24	359
Marylhurst	Clackamas	3	036
Maupin	Wasco	33	037
Mayville	Gilliam	11	830
McCoy	Polk	27	339
McDermitt	Malheur	23	89425
McKenzie Bridge	Lane	20	413
McMinnville	Yamhill	36	128
Meacham	Umatilla	30	859
Medford	Jackson	15	501-504
Medical Springs	Union	31	814
Mehama	Marion	24	384
Merlin	Josephine	17	532
Merrill	Klamath	18	633
Metolius	Jefferson	16	741
Midland	Klamath	18	634
Mikkalo	Gilliam	11	861
Mill City	Linn	22	360
Mill City	Marion	24	360
Miller	Sherman	28	058
Milton-Freewater	Umatilla	30	862
Milwaukie	Clackamas	3	222, 267, 269
Mist	Columbia	5	016
Mitchell	Wheeler	35	750
Molalla	Clackamas	3	038
Monmouth	Polk	27	361
Monroe	Benton	2	456
Monument	Grant	12	864
Moro	Sherman	28	039
Mosier	Wasco	33	040
Mount Angel	Marion	24	362
Mount Hood	Hood River	14	041
Mount Vernon	Grant	12	865
Mulino	Clackamas	3	042
Multnomah	Multnomah	26	219
Murphy	Josephine	17	533
Myrtle Creek	Douglas	10	457
Myrtle Point	Coos	6	458

N

Nehalem	Tillamook	29	97131
Neotsu	Lincoln	21	364
Neskowin	Tillamook	29	149
Netarts	Tillamook	29	143
New Pine Creek	Lake	19	635
Newberg	Yamhill	36	132
Newport	Lincoln	21	365
North Bend	Coos	6	459
North Plains	Washington	34	133

North Powder	Union	31	867
Norway	Coos	6	460
Noti	Lane	20	461
Nyssa	Malheur	23	913

O

Oak Grove	Clackamas	3	97222, 267, 268
Oakland	Douglas	10	462
Oakridge	Lane	20	463
O'Brien	Josephine	17	534
Oceanside	Tillamook	30	134
Odell	Hood River	14	044
Olex	Gilliam	11	812
Olney	Clatsop	4	103
Ontario	Malheur	23	914
Ophir	Curry	8	464
Oregon City	Clackamas	3	045
Oretech	Klamath	18	601
Otis	Lincoln	21	368
Otter Rock	Lincoln	21	369
Oxbow	Baker	1	840

P

Pacific City	Tillamook	29	97135
Paisley	Lake	19	636
Parkdale	Hood River	14	041
Paulina	Crook	7	751
Pendleton	Umatilla	30	801
Perrydale	Polk	27	101
Philomath	Benton	2	370
Phoenix	Jackson	15	535
Pilot Rock	Umatilla	30	868
Pistol River	Curry	8	444
Pleasant Hill	Lane	20	405, 455
Plush	Lake	19	637
Port Orford	Curry	8	465
Portland	Multnomah	26	*
Portland	Washington	34	219, 225, 229
Post	Crook	7	752
Powell Butte	Crook	7	753
Powers	Coos	6	466
Prairie City	Grant	12	869
Princeton	Harney	13	721
Prineville	Crook	7	754
Prospect	Jackson	15	536

R

Rainier	Columbia	5	97048
Redmond	Deschutes	9	756
Reedsport	Douglas	10	467
Remote	Coos	6	468
Rhododendron	Clackamas	3	049
Richland	Baker	1	870
Rickreall	Polk	27	371
Riddle	Douglas	10	469

*Multiple ZIP codes

Riley	Harney	13	758
Ritter	Grant	12	872
Riverside	Malheur	23	917
Rockaway	Tillamook	29	136
Rogue River	Jackson	15	537
Rose Lodge	Lincoln	21	372
Roseburg	Douglas	10	470, 471
Rufus	Sherman	28	050

S

Saginaw	Lane	20	97472
Saint Helens	Columbia	5	051
Salem	Marion	24	301-312, 314, 317
Sandy	Clackamas	3	055
Scappoose	Columbia	5	056
Scio	Linn	22	374
Scotts Mills	Marion	24	375
Scottsburg	Douglas	10	473
Seal Rock	Lincoln	21	376
Seaside	Clatsop	4	138
Selma	Josephine	17	538
Seneca	Grant	12	873
Shady Cove	Jackson	15	539
Shaniko	Wasco	33	057
Shedd	Linn	22	377
Sheridan	Yamhill	36	378
Sherwood	Washington	34	140
Siletz	Lincoln	21	380
Silver Lake	Lake	19	638
Silverton	Marion	24	381
Sisters	Deschutes	9	759
Sixes	Curry	8	476
South Beach	Lincoln	21	366
Sprague River	Klamath	18	639
Spray	Wheeler	35	874
Springfield	Lane	20	475, 477, 478
St. Benedict	Marion	24	373
St. Paul	Marion	24	137
Stanfield	Umatilla	30	875
Stayton	Linn	22	383
Stayton	Marion	24	383
Sublimity	Marion	24	385
Summer Lake	Lake	19	640
Summerville	Union	31	876
Sumpter	Baker	1	877
Sunny Valley	Josephine	17	497
Sutherlin	Douglas	10	479
Sweet Home	Linn	22	386
Swishhome	Lane	20	480

T

Taft	Lincoln	21	97367
Talent	Jackson	15	540
Tangent	Linn	22	389

Tenmile	Douglas	10	481
Terrebonne	Deschutes	9	760
The Dalles	Wasco	33	058
Thurston	Lane	20	482
Tidewater	Lincoln	21	390
Tigard	Washington	34	223, 224, 281
Tillamook	Tillamook	29	141
Tiller	Douglas	10	484
Timber	Washington	34	144
Toledo	Lincoln	21	391
Tolovana Park	Clatsop	4	145
Trail	Jackson	15	541
Tri-City	Douglas	10	457
Troutdale	Multnomah	26	060
Troy	Wallowa	32	828
Tualatin	Washington	34	062
Turner	Marion	24	392
Tygh Valley	Wasco	33	063

U

Ukiah	Umatilla	30	97880
Umatilla	Umatilla	30	882
Umpqua	Douglas	10	486
Union	Union	31	883
Unity	Baker	1	884

V

Vale	Malheur	23	97918
Veneta	Lane	20	487
Vernonia	Columbia	5	064
Vida	Lane	20	488

W

Waldport	Lincoln	21	97394
Wallowa	Wallowa	32	885
Walterville	Lane	20	489
Walton	Lane	20	490
Wamic	Wasco	33	063
Warm Springs	Jefferson	16	761
Warren	Columbia	5	053
Warrenton	Clatsop	4	146
Wasco	Sherman	28	065
Waterloo	Linn	22	355
Wauna	Clatsop	4	016
Wedderburn	Curry	8	491
Welches	Clackamas	3	067
West Linn	Clackamas	3	068
West Salem	Polk	27	304
Westfall	Malheur	23	920
Westfir	Lane	20	492
Westlake	Lane	20	493
Weston	Umatilla	30	886
Westport	Clatsop	4	016
Wheeler	Tillamook	29	147
White City	Jackson	15	503

Wilbur	Douglas	10	494
Wilderville	Josephine	17	543
Willamina	Polk	27	396
Willamina	Yamhill	36	396
Williams	Josephine	17	544
Willowcreek	Malheur	23	918
Wilsonville	Clackamas	3	070
Wilsonville	Washington	34	070
Winchester	Douglas	10	495
Winchester Bay	Douglas	10	467
Winston	Douglas	10	496
Wolf Creek	Josephine	17	497
Woodburn	Marion	24	071

Y

Yachats	Lincoln	21	97498
Yamhill	Yamhill	36	148
Yoncalla	Douglas	10	499

Records retention

Personal property records should be retained according to information from the most recent version of OAR 166-150-0015, Archives Division.

County assessor records

According to the OAR, the applicable retention schedules are as follows:

- Assessment roll/personal property—6 years. Destruction authorized only upon the condition that the tax collector is keeping a permanent copy of the Assessment and Tax Roll.
- Personal property returns—6 years. Individual filings of the personal property tax return are confidential.

These schedules apply only to the program records of county assessors. These specific retention periods don't apply to records of Assessment and Appraisal Section, Department of Revenue, or any other state agency. Programs involving federal funds may be subject to additional requirements.

Refer to OAR 166-150-0015 County Assessment and Tax Records.

Reference list for personal property

Title: *Appraising Machinery and Equipment*
Sponsored by The American Society of Appraisers
Authors: Various: John Alico, Editor
ISBN 0-07-0011475-2
Published by: McGraw-Hill Book Company

Pricing guides for computer equipment **Mainframe**

Title: *Computer Price Watch*
Author/Publisher: Computer Information Resources
22144 Clarendon Street, Suit 214
Woodland Hills CA 91367
Phone: (818) 883-4614
www.computerpricewatch.com

Title: *End User Market Value Report*
Author/Publisher: DMC Valuations
P.O. Box 2130
Costa Mesa CA 92628
Phone: (714) 241-4220
www.dmcvaluations.com

A company that produces a computer bluebook is:
Orion Research Corporation
14555 N Scottsdale Rd., Suite 330
Scottsdale AZ 85254
Phone: (480) 951-1114
www.orionbluebook.com

Heavy equipment

Title: *My Little Salesman*
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www.mylittlesalesman.com

Title: *Top Bid*
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www.topbid.com

Title: *1993 Hot Line*
Published by: Heartland Communications Group, Inc.
1003 Central Avenue
PO Box 1052
Fort Dodge IA 50501
Phone: 1 (800) 247-2000
www.hlipublishing.com

Enterprise zone

Several types of benefits accrue to eligible business firms that invest, qualify, and operate in an Oregon enterprise zone, besides those with statewide applicability. The benefits for a tax exemption fall into one of three areas, which are:

- Construction-in-progress.
- Strategic investment.
- Tax credit.

Under the program of **construction-in-progress**, those items that are personal property are taxable. All other

property can receive exemption from taxation. As a business qualifies for an exemption under the **strategic investment in urban areas**, everything is exempt from taxation for the first \$100 million and in rural areas everything is exempt from taxation for the first \$25 million. In order for personal property to receive an exemption under the **tax credit** program, a personal property item must have a value of \$1,000 or more and be used in tangible production or be a personal property item of \$50,000 or more.