

# Fixed Load Vehicle Manual

## 2020



**Oregon Department of Revenue**

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# Introduction

This manual is intended as a guide for assessors and staff to correctly identify “Fixed Load Vehicles” for the purpose of taxation based upon Oregon Revised Statute (ORS) 801.285. Photographs, short descriptions, and court cases are included to give additional direction and clarification.

Personal property assessment depends upon taxpayers providing personal property data to county assessors. One type of personal property often overlooked by taxpayers is “Fixed Load Vehicles.” Many taxpayers wrongly assume, because this equipment is licensed, that it’s exempt from personal property taxation. Even though licensed under ORS 801.285, “Fixed Load Vehicles” are taxable.

If you have questions about this manual or the assessment of such property, call the Oregon Department of Revenue at (503) 945-8278. Ask for the Personal Property Analyst, or write to:

Oregon Department of Revenue  
Property Tax Division  
955 Center Street NE  
Salem OR 97301-2555



# **Fixed load vehicles that are taxable**

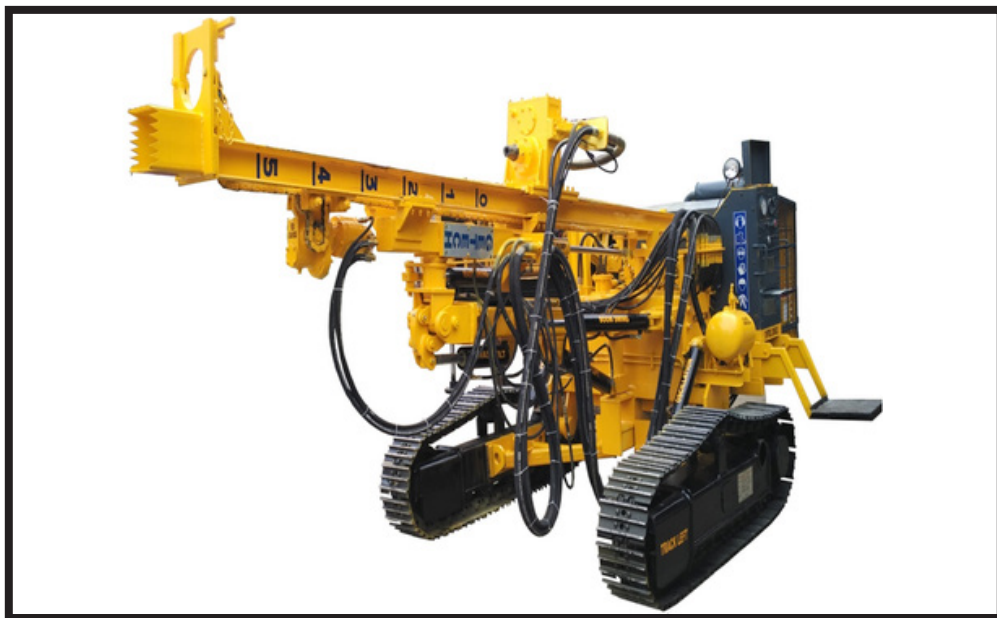
# Air compressor

This machine reduces air volume by compression and holds it in a container for future use. The air, when released, expands and forces machinery and tools to operate.



# Air drill

This machine uses compressed air to operate a drill that is mounted on wheels or track and is used in drilling rock or other hard surfaces.



# Asphalt plant

This is a machine with a series of containers in which different sizes of rock are stored. The rock is mixed with heated asphalt to form a substance that can be spread over a surface and compacted to make a road, parking lot, or other hard surface. **It's also known as a bituminous mixer or bituminous plant.**





# Asphalt spreader

This machinery stores, then evenly spreads, a mixture of hot asphalt and rock over a prepared surface. The mixture is compressed to form a solid surface. **It's also known as a bituminous spreader.**



# Athey wheel

This brand or company name includes mobile sweepers, forced feed loaders, and the maintenance master, as well as Kolman conveyors and certain refuse collecting vehicles. Isaac H. Athey invented a track-laying type of wheel called a "Truss Wheel," thus, the Athey Wheel.



## Athey wheel (continued)





# Backhoe/Loader

This power driven excavating machine has a loader bucket at the front and a hinged bucket at the end of a long jointed arm at the back. It digs by drawing the bucket towards the power unit.





# Bituminous mixer

This is a machine with a series of containers in which different sizes of rock are stored. The rock is mixed with heated asphalt to form a substance that can be spread over a surface and compacted to make a road, parking lot, or other hard surface. It's also known as an asphalt plant or bituminous plant.



# Bituminous pavement finisher

This machine, like the concrete pavement finisher, smooths and flattens asphalt used on highways, roads, or parking lots.





# Bituminous plant

This is a machine with a series of containers in which different sizes of rock are stored. The rock is mixed with heated asphalt to form a substance that can be spread over a surface and compacted to make a road, parking lot, or other hard surface. It's also known as an asphalt plant or bituminous mixer.



# Bituminous spreader

This machinery stores, then evenly spreads, a mixture of hot asphalt and rock over a prepared surface. The mixture is compressed to form a solid surface. It's also known as an asphalt spreader.



# Carryall

There are two types of carryall devices. One type is a large hopper on wheels, commonly called an earthmoving scraper, that carries or transfers material such as dirt or rocks. The other type is a cab mounted on wheels with four long arms that are placed under and moves a long load, such as lumber.





# Concrete spreader

This machine holds and distributes the concrete evenly over a prepared area. The concrete then must be finished.



# Concrete batch plant

This is a device in which cement, gravel, sand, and water are mixed to form concrete. It works like a concrete mixer but on a larger scale and isn't moved on a daily basis.





# Concrete mixer

This is a device in which cement, gravel, sand, and water are mixed in order to form concrete. This machine can be mounted on a trailer or have wheels.





# Concrete pavement finisher

This machine's purpose is to assist in consolidating the concrete and to leave the surface with a uniform texture and correct elevation. It's used to spread and smooth or level concrete for roadways, gutters, and curbs.



# Crawler crane

This machine lifts or moves heavy objects using cables on a movable projecting arm. It's mounted on tracks for operation on muddy or rough ground.



# Crawler tractor

This device is commonly known as “cat.” It’s made up of a center section or chassis that contains the engine, transmission, and steering unit with two track frames that supply traction and support. With attachments, it’s used for grading, pushing, or ripping.





# Crusher

This device is a container in which material to be crushed is placed.



# Crushing plant

This machine has conveyors, belts and a crusher in which rock and other material is placed and in turn crushed. This material is then separated, sized, and graded.





# Digger and ditcher

This machine digs, excavates, or makes a ditch.



# Dragline

This machine is the same as a crawler crane. It has a bucket attached to the cable that extends from the end of the arm.





# Earthmoving scraper

This machine has a highly mobile excavator with a centrally located bowl that digs, carries, and spreads loads. The elevating scraper is a self-loading machine. The elevator consists of roller chains carrying a number of crossbars called flights. In digging, the elevator is rotated.





# Electric generating equipment

This is a portable machine used for changing mechanical energy into electrical energy.



# Electric load bank/ Power unit and plant

These portable units are used to supply or generate large quantities of power delivered by generators or carried by circuits. These units serve as the source of power for a particular operation.



# Elevator equipment

This equipment includes an attached platform used to raise and lower people, material, or other equipment.





# Excavator

This machine is used to dig, hollow out, or expose earth by means of a bucket or scoop on the end of an extendable, hydraulic arm.



# Forklift

This self-propelled vehicle hoists, lifts, or stacks heavy objects by using steel fingers or projecting prongs that slide under the load, then are raised or lowered.



# Front-end loader/Bucket loader

Both of these terms refer to a vehicle with a front-end shovel. It digs and loads and may be used for rough grading or limited hauling. Sometimes a rear digger (backhoe) is attached and used to dig or level.





# Log loader

This machine is used to load logs onto trucks and is mounted on tracks or wheels, which make it more mobile on rough, muddy terrain. It has a boom with a grapple at the end and can reach 40 feet. Loaders may have rubber tires.



# Mobile kitchens/carts

This truck or trailer is a kitchen on wheels designed for food service and/or cooking in mobile areas. Includes kitchen carts not counted as real property.





# Motor grader/Leveling grader

Both of these terms refer to a machine used principally in shaping and finishing a surface. It's a rubber-tired vehicle with a wide, controllable blade mounted at the center of a long wheelbase.



# Portable bin

These devices appear in various forms as storage containers on wheels that may house spare parts, rocks, gravel, or any other items used in the construction industry.



# Portable part and storage bin

These devices appear as trailer-type storage containers on wheels that house spare parts or other items used in the construction industry.





# Portable shop

This is a trailer that contains tools and machinery used to repair construction equipment on site.



# Portable storage tank

This vehicle is a movable container used for storage of liquids, gases, grains, foods, or beverages. These tanks can be constructed of various materials.



# Power hoist

This apparatus or machine lifts or raises heavy objects generally by use of a hydraulic extendable arm.





# Power shovel

This machine is usually mounted on tracks with a long, hinged arm that has a digging bucket attached.



# Road roller/Sheepsfoot roller

The purpose of these machines is to compress material by dead weight. The road roller is a smooth drum; the sheepsfoot roller has knobs attached to the drum. Both rollers may have vibrators that shake soil particles as they compress.



# Sand classifier and drag

This machinery consists of a series of conveyor belts that transport sand across screens, and separate the sand into various sizes.





# Sawmill portable

This device, mounted on a trailer, contains a portable table that feeds small logs through a blade to produce lumber.



# Scarifier and roller

This device is an attachment pulled by a motor grader or crawler tractor that rips the ground by means of long “teeth.” A roller (or road roller) is a smooth drum that compresses material.





# Scoopmobile

This vehicle is a three-wheeled front-end loader.





# Scrap metal baler

This large machine contains hydraulic arms and a compartment into which metal is compressed and baled.



# Scrubber screen and plant feeder

This mobile machine takes raw materials such as sand and gravel onto a conveyor belt and transfers them to vibrating scrubber screens that separate the materials into various sizes.



# Special construction equipment

These devices include various types of mobile machinery used in the construction industry, such as generators, air drills, and power plants with attached lights, etc.





# Vactor trucks

This truck is equipped with a vacuum and water jetting system used to clean out sewer lines and catch basins.



# Welder

This is a machine that bonds pieces of metal by means of a heating process and a bonding material such as a rod or wire.



# Wheeled tractor

This vehicle has rubber tires so it can be driven on the road. It has multiple uses depending upon the attachments and has two- or four-wheel drive.





# Wiring equipment

These devices include portable equipment used in the electrical industry, such as wire spools, augers, transformers, etc., which are transported by means of trucks or trailers.



# **Fixed load vehicles that are not taxable**

# Bucket Trucks

This is a truck equipped with an extendable, hydraulic boom carrying a large bucket for raising workers to elevated, inaccessible areas.





# Concrete pumper truck

This vehicle contains a boom that pumps concrete from a centrally-located concrete mixer and transports it to various locations at a construction site within reach of the boom.



# Self-propelled mobile crane

The Department of Motor Vehicles defines a “self-propelled mobile crane” as a motor truck on which is mounted a rotating crane operated by an independent motor and used for general lifting purposes. The industry defines them as one-motor mobile cranes, such as, cranes using a single source of power for operation of the crane and for locomotion. These are exempt from ad valorem taxation.



# Tow vehicle

**including a tow vehicle with cranes, hoists, or dollies**

“Tow vehicle” means a motor vehicle that is:

1. Altered or designed for, equipped for, and used in the business of towing vehicles; and
2. Used to tow vehicles by means of a crane, hoist, tow bar, tow line, or dolly or otherwise used to render assistance to other vehicles.





# Travel trailer and Tiny Home

This vehicle is defined by the statutes as a trailer, 8½ feet wide or less, and not used for commercial or business purposes.



# Truck-mounted transit mixer

This is a vehicle with a concrete mixer mounted as part of the truck bed. A concrete mixer is a device in which cement, gravel, sand, and water are mixed in order to form concrete.



# Volumetric mixer

This mobile vehicle consists of a hopper that contains sand, gravel, cement, and water. A mixing machine is attached that blends these ingredients and pours the mixture to form concrete.





# **Oregon Revised Statutes**

The following statutes are arranged by the statute number. This list isn't inclusive.

**[www.oregonlegislature.gov/bills\\_laws](http://www.oregonlegislature.gov/bills_laws)**

**801.285 Fixed Load Vehicle**

**308.105 Personal Property**

**308.210 Assessing property**

**308.232 Property to be valued at 100 percent real market value**

**308.250 Valuation and assessment of personal property**

**2019 Senate Bill 527**

# Abstracts

This section provides additional direction and guidance to assessors and their staff on the classification and taxability of licensed vehicles known as “Fixed Load Vehicles.” The following abstracts (Property Tax Law Abstracts 1993 Cumulative Edition) are summaries of court findings on why a vehicle is taxable or exempt. By reading the titles, the reader may pick and choose which abstract applies to their given situation.

## CHAPTER 801

### GENERAL PROVISIONS AND DEFINITIONS FOR OREGON VEHICLE CODE

**801.285. FIXED LOAD VEHICLE. Truck-Mounted Cranes.** May a truck-mounted crane be included in the definition of a self-propelled crane for the purpose of licensing and exemption from ad valorem tax? ORS 481.270 (see Editor's Note 1) provides for the exemption from ad valorem taxation of motor vehicles which are registered and licensed, with the exception of "fixed-load vehicles" defined in ORS 481.272 (see Editor's Note 2). Subsection (4) of the latter, however, excludes, among others, "self-propelled mobile cranes" from this definition. The Department of Motor Vehicles includes in the definition of a "self-propelled mobile crane" a motor truck on which is mounted a rotating crane operated by an independent motor and used for general lifting purposes. The language used by the Department differs from the technical distinction made by the industry in this respect ("self-propelled mobile cranes," as referred to by the industry, are one-motor mobile cranes, i.e., cranes using a single source of power for operation of the crane and for locomotion). The language of the statute, however, seems to be broad enough to cover both definitions. Hence, it appears that a truck-mounted crane is subject to licensing as a self-propelled mobile crane and exempt from ad valorem taxation. With respect to mobile cranes used as log loaders, it appears from ORS 481.272(3) (see Editor's Note 1), which specifically includes "log loaders" in the definition of "fixed load vehicles," that they are subject to ad valorem taxation when used as such. [OF 476-V; Op Atty Gen No. 5917; 2-10-65.]

**Editor's Note 1:** The provisions have been renumbered and now appear under 801.285.

**Editor's Note 2:** The provisions have been renumbered and now appear under 801.275.

**Editor's Note 3:** Formerly abstracted under 481.270.

**801.285. FIXED LOAD VEHICLE. Licensed Lumber Carrier.** The plaintiff, M & S Construction Company, owns two van-type

trailers, both licensed as motor vehicles. It was stipulated by the parties that these van-type vehicles were originally designed primarily for transportation over public highways. The testimony showed that for at least part of the time during 1966, the vehicles were hauled over state highways and stationed at plaintiff's job sites where they were used for the storage of tools and supplies. ORS 481.272 (see Editor's Note 1) provides that "fixed load vehicles" are not exempt from ad valorem taxation if they are "neither designed nor used primarily" for the transportation of persons or property over public highways or streets. The Tax Court set aside an order of the Commission and held that since the legislature used the words "neither" and "nor," it must have intended that to exempt a "fixed load vehicle" from taxation, it would have to satisfy affirmatively only one provision (design or use). Since the vehicles are designed primarily for transportation, they are not fixed load vehicles regardless of their present use. [OF 922-V; *M & S Construction Co. v. Oregon State Tax Comm.*, 3 OTR 165; 1968.]

**Editor's Note 1:** The provisions have been renumbered and now appear under 801.275.

**Editor's Note 2:** Formerly abstracted under 481.272.

**801.285. FIXED LOAD VEHICLE. Mobile Log Loaders.** The issue is whether the vehicle is exempt under ORS 481.270 (see Editor's Note 1) as a licensed vehicle, or even though licensed, taxable within the provisions of ORS 481.272 (see Editor's Note 2). The parties stipulated that the primary use of the vehicle was as a log loader; however, it was used for other things and not exclusively as a log loader. In fact, the testimony showed that the equipment had been used to move scrap iron, barrels, and chip boxes, as well as to right upset vehicles and trailers. Pursuant to a citation by the State Police, petitioner was required to pay highway-use taxes pursuant to ORS Chapter 767. He has paid that tax to the



P.U.C. for 1975 and 1976. Also during these years the equipment has been licensed by the Department of Motor Vehicles. Based on a document which was allegedly a Field Office Bulletin No. 33 issued by the Department, petitioner argues that when the following three things coincide, a vehicle is exempt: (1) the vehicle is licensed as a truck; (2) the vehicle pays P.U.C. highway-use taxes and is P.U.C.-plated; and (3) the vehicle is not used exclusively as a log loader. These three things have occurred in the instant case; however, from a closer look at the statutes involved it appears that: (1) The fact that the vehicle in question pays P.U.C. highway-use taxes would not have a bearing on whether that vehicle was exempt from property tax. (2) As to the question of whether the licensing of the vehicle as a truck causes the exemption, a reading of ORS 481.270 (see Editor's Note 1) and 481.272 (see Editor's Note 2) fairly well disposes of that argument. ORS 481.272 (see Editor's Note 2) provides that fixed load vehicles, which include log loaders, are not exempted from property tax by 481.270 (see Editor's Note 1). (3) In addition, an administrative bulletin cannot create a property tax exemption. If it is to be construed as petitioner requests, it would be in direct conflict with the law as written by the Legislature, and would have to be ignored by the taxing officials. Since petitioner has failed to show that the property in question is subject to an exemption, the appeal was denied. [OF 2044-V; O & O No. VL 76-578; 10-8-76.]

**Editor's Note 1:** The provisions have been renumbered and now appear under 801.285.

**Editor's Note 2:** The provisions have been renumbered and now appear under 801.275.

**Editor's Note 3:** Formerly abstracted under 481.272.

**801.285. FIXED LOAD VEHICLE. Tank Truck and Trailer.** This appeal involves a truck with a permanently attached tank and a trailer. The tank truck issued to pump out septic tanks and haul the material to the disposal plant. The trailer is used to haul a backhoe and other heavy equipment from one jobsite to another. The vehicles in question

were taxed by the county. They are also registered with and licensed by the Motor Vehicles Division. Petitioner appealed. Registration and license fees imposed under ORS chapter 481 are with certain exceptions, in lieu of all taxes. ORS 481.270(1) (see Editor's Note 1) "Fixed load vehicles" fall under these exceptions. They are defined in ORS 481.272(2) (see Editor's Note 2) as vehicles that are neither designed nor used for the transportation of persons or property. Webster defines property as "something which is or may be owned or possessed." The list of vehicles which are not "fixed load vehicles" and therefore not taxed, includes "truck-mounted transit mixers." Such mixers are used primarily to transport concrete, which is "property." Petitioner's truck is used primarily to transport waste material. This is also "property" in the sense conveyed by the above statute. Since the instant trailer is used to haul "property" it should not be taxed. [OF 2145-V; O & O No. VL 77-461; 10-27-77.]

**Editor's Note 1:** The provisions have been renumbered and now appear under 803.585.

**Editor's Note 2:** The provisions have been renumbered and now appear under 801.285.

**Editor's Note 3:** Formerly abstracted under 481.272.

**801.285. FIXED LOAD VEHICLE. Licensing of Vehicle Not Determinative of Classification for Assessment Purposes.** FACTS: Petitioner purchased a crane, a licensed vehicle. He uses the crane to load logs when other jobs are not available. Petitioner contends that the subject property is exempt from ad valorem taxation because it is a mobile crane. A county assessor classified it as a log loader and assessed it accordingly.

**ISSUE:** Because the equipment is a licensed vehicle, is it exempt from ad valorem taxation?

**DISCUSSION:** No. Petitioner's contention of exemption from ad valorem taxation because the equipment is licensed as a motor vehicle is erroneous. First, the classification of motor vehicles for assessment purposes rests with the county assessor and not with the Department of Motor Vehicles. See *Moravek Concrete v. Dept. of Revenue*, 7 OTR 385 (1978). Second,

ORS 481.272(1) (see Editor's Note 1) commands that "fixed load vehicles are not exempt from ad valorem taxation by ORS 481.270." (See Editor's Note 2.) "Fixed load vehicles" include log loaders. ORS 481.272(3).

The characteristics and use of the item establish that it is a loader. Therefore, pursuant to ORS 481.272(1) (see Editor's Note 1) and (2) (see Editor's Note 2), it is not exempt from ad valorem taxation.

ORDER: Petition denied. [OF 2328-V; O & O No. VL 79-1029; 1-8-80.]

**Editor's Note 1:** The provisions have been renumbered and now appear under 803.585.

**Editor's Note 2:** The provisions have been renumbered and now appear under 801.285.

**Editor's Note 3:** Formerly abstracted under 481.272.

## CHAPTER 803

### VEHICLE TITLE AND REGISTRATION

**803.585. REGISTRATION FEES AS SUBSTITUTES FOR TAXES ON VEHICLES; EXEMPTIONS. Taxation of Equipment Mounted on Licensed Truck.** Taxpayer has an air compressor mounted on a licensed motor truck. The amount of load weight for which he is licensed covers also other items such as steel, jack hammers, etc. Is the nonattached equipment taxable? Oregon law provides in ORS 481.270 (see Editor's Note 1), that, except as provided in ORS 481.272 (see Editor's Note 2), the registration and license fees imposed upon vehicles are in lieu of all other taxes and licenses. ORS 481.272 (see Editor's Note 2) provides that "fixed load vehicles" are not exempt from ad valorem taxation, enumerating examples which include air compressors, air drills, portable parts and storage bins. From this it appears that, although fixed load vehicles may require a license under motor vehicle law, they will be subject to personal property taxes in addition. In the case of the taxpayer in question, however, the fact that his vehicle was licensed as a "motor truck" and not as "fixed load vehicle" indicates at the very least that his equipment is removable and not a permanent part of the vehicle. Hence, the equipment is taxable while the truck is exempt through licensing. [OF 524-V; 5-25-65.]

**Editor's Note 1:** The provisions have been renumbered and now appear under 801.285

**Editor's Note 2:** The provisions have been renumbered and now appear under 801.275

**Editor's Note 3:** Formerly abstracted under 481.270.

**803.585. REGISTRATION FEES AS SUBSTITUTE FOR TAXES ON VEHICLES; EXEMPTIONS. "Self Log Loaders."** The question was raised whether "Self Log Loaders" attached to log trucks are subject to ad

valorem taxation. The "Self Log Loader" is on a conventional logging truck which is used to carry logs from the woods to the mill, designed and used primarily for the transportation of property on the public highways. ORS 481.270 (see Editor's Note 1) provides that if vehicles are subject to registration under ORS chapter 481, they are exempt from ad valorem taxation. The only exception to this is fixed load vehicles which are subject to tax. ORS 481.272 (see Editor's Note 2) defines fixed load vehicles as vehicles "... that are neither designed nor used primarily for the transportation of persons or property over public highways. ..." The question here is whether the "Self Log Loader" is so attached to the logging truck that it could be considered as "permanently" attached. If it is "permanently" attached it is not subject to ad valorem taxation. This is a factual question which will have to be determined by observation. It may be that the "Self Log Loader" is as much a part of the logging truck as a refrigeration unit is on a refrigerated semitrailer, or it may be that the Loader is like a camper unit attached to a pickup. If it is like the former, it is exempt, if it is like the latter, it is taxable as personal property. The fact that these units are weighed with the log truck when the State of Oregon collects its weight-mile tax, means nothing because the weight-mile tax is imposed on the declared weight of a truck and contents, and the weight-mile tax would be paid on the "Self Log Loader" whether it were being carried or were attached. [OF 1599-V; 9-8-72.]

**Editor's Note 1:** The provisions have been renumbered and now appear under 801.285.

**Editor's Note 2:** The provisions have been renumbered and now appear under 801.275

**Editor's Note 3:** Formerly abstracted under 481.270.



# 92 6200 (1993) Roderick D. Stevens v. Department of Revenue

STATE OF OREGON

DEPARTMENT OF REVENUE

In the Matter of the Appeal

of

Roderick D. Stevens Concerning Certain )  
Douglas County Machinery and Equipment )  
Valuation Matters for Tax years 1990-91 )  
and 1991-92. )

OPINION AND ORDER

No. 92-6200

A telephone hearing was held before W. Glenn Cate, Hearings Officer for the Oregon Department of Revenue, at 11a.m. on April 30, 1993, originating from Room 354 of the Revenue Building, Salem, Oregon. Participating were :

1) Roderick D. Stevens, petitioner, representing himself, pro se, and  
2) Ali Vincent-Lough, appraiser, employed by the Douglas County Assessor.

## OPINION

The petitioner appealed to the department from an act of the Douglas County Assessor regarding an omitted property assessment issued against Account No. 50.2988 on the 1990-91 and 1991-92 tax rolls.

Jurisdiction of this matter is provided by ORS 311.211 (4).

Mr. Stevens is engaged in a tree farm and sawmill business located in Roseburg, Oregon. The business name is Humbug Tree Farms. The petitioner has been filing personal property returns for several years. The bulk of the equipment owned by this petitioner was acquired between January 1, 1981, and September 1, 1991.

On the petitioner's 1992-93 personal property return, the county assessor discovered at least three items which had been omitted from assessment for tax years 1990-91 and 1991-92. Those included an engine, a GMC log loader, and a loader rebuild. None of these items had been reported on either of the two tax years in issue.

On October 28, 1992, the county issued an omitted property assessment for both tax years under the authority of ORS 311.207 et seq.

The true cash value (TCV) assigned for 1990-91 was \$4,015. The real market value (RMV) assigned to the 1991-92 tax roll was \$9,815.

## Taxability

ORS 307.190 exempts personal property held for personal use. The exemption does not apply to "any tangible personal property held by the owner, wholly or partially for use or sale in the ordinary course of a trade or business, for the production of income, or solely for investment." Nor does it include "any tangible personal property required to be licensed or registered under the laws of this state." ORS 307.190(2)(a)(2)(b).

First, as noted, the exemption under ORS 307.190 extends only to personal property held for personal use. It is clear from these facts this petitioner intends to use the subject in the future for the production of income. Unless the petitioner either sells the property or converts it to personal use, it is taxable as a business asset. Or. Dept. of Rev. PTLA, ORS 307.190, OF 2475-V; O&O No. VL 82-1646, January 1, 1983.

Additionally, whether or not the truck loader is licensed or may be in the future does not render it exempt from taxation. ORS 801.285(2) specifically states that log loaders are taxable. It makes no distinction between self-loading loaders mounted on a truck and any other type of log loader. The parties agree that the 350-horsepower engine purchased on June 15, 1989, is not taxable.

#### Valuation

The first unit in issue is a 1976 GMC logging truck and Ramey loader. It is a self-loading log truck in "junked" condition. It was purchased in 1989. The taxpayer claims he has expended approximately \$6,500 in repairs with more to be done later as he can afford.

The petitioner claims he purchased the loader in December 1989 for \$2,500. The county has assigned a value of \$2,375 (95 percent good) for tax year 1990-91 and \$2,125 (85 percent good) for tax year 1991-92. The taxpayer argues that the assessed value is twice what the unit would sell for because of its inoperative condition.

The record, however, is clear that the taxpayer has at least \$9,000 invested in the loader.

The county offered evidence that a 1977 Peterbilt log truck with Prentice self-loader sold at a PacWest auction on March 10, 1993, in Eugene, for \$13,000. It is acknowledged that the Peterbilt was a much larger unit.

The second item in issue is a "loader rebuild" which was acquired in June 1990 for \$8,935. The county first applied a "70 percent good" depreciation factor to reach a real market value (RMV) on the 1990-91 tax roll of \$6,255.

#### CONCLUSION OF THE DEPARTMENT

To prevail in a valuation controversy, the one appealing must not only show error in the record assessment, but must also provide the department with sufficient probative evidence to support a lower value. OAR 150-305.115-(B)(9).

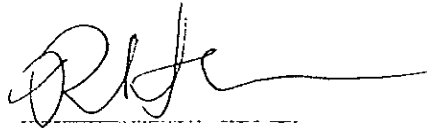
The department has very carefully considered both the issues of taxability and the valuation issue of this omitted property action. The department hereby finds the best evidence of the appropriate action in this matter is that offered by the county assessor.

Therefore, with the exception of the removal of the "engine" from the two tax rolls, the taxpayer's request for relief is denied. If, after such correction, it is discovered that any excess taxes have been paid, they shall be refunded with interest pursuant to ORS 311.806 and 311.812.

IT IS SO ORDERED.

Dated and mailed at, Salem, Oregon, this 22<sup>nd</sup> day of October, 1993.

DEPARTMENT OF REVENUE

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

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.



## 7 OTR 385 (1978) Moravrk's Concrete v. Department of Revenue

MORAVEK'S CONCRETE, INC.

v.

DEPARTMENT OF REVENUE

L. P. COMPANY

v.

DEPARTMENT OF REVENUE

Appeal from defendant's determination that plaintiffs concrete pump/boom trucks were fixed load vehicles subject to ad valorem tax by ORS 481.272. Plaintiffs sought a determination that the trucks were self-propelled mobile cranes, which are excluded from the definition of fixed load vehicles by ORS 481.272(4) and therefore exempt from avalorem tax pursuant to ORS 481.270. The court held that the concrete pump/boom trucks are one type of self-propelled mobile crane and are entitled to exemption as such. Based on the testimony of a representative of the Motor Vehicles Division, the court determined that the licensing classification made by the Motor Vehicles Division is not controlling when classifying vehicles for ad valor-em tax purposes.

### Statutes-Construction and operation-Meaning of language— Particular words and phrases

1. The difficulty in ascertaining the range or compass of the statutory language, "self-propelled mobile cranes," grows out of the fact that these words have a fairly wide application in the world of heavy, special-duty motor vehicles and, further, because no reason for this exception has been suggested by the legislature (or counsel) which will aid in rationalizing which, of several types of mobile cranes, are entitled to tax advantage.

### Statutes-Construction and operation-Meaning of language— Particular words and phrases

2. Concrete pump/boom trucks are closely related to self-propelled mobile cranes hitherto approved for exemption; the same physical and mechanical principles are basic to their design.

### Statutes-Construction and operation-Meaning of language— Particular words and phrases

3. A crane, by definition, is a machine which raises, swings and lowers heavy objects by means of a mechanical arm or boom. A concrete pump/boom truck fits precisely within the definition because it raises, swings and lowers concrete by means of a mechanical arm or boom. The only difference between conventional self-propelled mobile cranes and concrete pump/boom trucks is that conventional mobile cranes use a winch/cable crane boom system to lift while concrete pump/boom trucks use a pump/hose crane boom system to lift.

### Taxation-Exemptions-Statutory provisions in general

4. The property which is the subject of these suits readily fits within the concept of "self-propelled mobile cranes." While the legislative policy for exempting any of them is not clear, the court concludes that it is the legislative intent that they be given the benefits of ORS 481.270.

**Taxation-Exemptions-Statutory provisions in general**

5. In the present state of the art, the court understands the words "self-propelled mobile cranes" to have a generic connotation, rather than being limited in some fashion which the defendant presumably conceives but which has not been conveyed to the court.

**Taxation-Levy and assessment—Determination as to property taxable**

6. The work of classification of motor vehicles for purposes of ad valorem taxation under ORS 481.272 must rest with the county assessor, with initial appeal to the Department of Revenue. To the degree that language in *Paullus v. Dept. of Rev.*, 7 OTR 181 (1977), contradicts this conclusion, it is deemed to be superseded.

Trial held December 5, 1977, in the courtroom of Oregon Tax Court, Salem. Two cases consolidated for trial.

Robert J. Saalfeld, Harland & Bitter, Salem, represented plaintiff Moravek's Concrete.

Robert B. McConville, Salem, represented plaintiff L. P. Company.

Ted E. Barbera, Assistant Attorney General, Salem, represented defendant.

Decision for plaintiffs rendered March 21, 1978.

Affirmed — Or —, — P2d — (1979).

CARLISLE B. ROBERTS, Judge.

Plaintiffs have separately appealed from orders of the Department of Revenue (from defendant's Order No. VL 77-15 in Tax Court case No. 1133 and from defendant's Order No. VL 76-594 in Tax Court case No. 1134, both orders dated January 21, 1977). Both appeals to the defendant were from the act of the Marion County Assessor in assessing and adding the plaintiffs' concrete-pumping trucks to the personal property tax rolls for the current tax year and four or five preceding years, as omitted property, pursuant to ORS 311.207 et seq. The issue presented for consideration is whether "concrete pump/boom trucks" are exempt from the personal property tax. The suits were consolidated for purposes of trial.

The pertinent statutes are ORS 481.270 and 481.272. The problems of interpretation presented by these statutes are set out in some detail in *Paullus v. Dept. of Rev.*, 7 OTR 181 (1977).

Upon examination of the statutes, it can be concluded, generally speaking, that the original legislative intent was to stimulate the purchase of motor vehicles and the building of roads suitable for motor vehicles by exempting such property from the usual personal property taxes, substituting registration and license fees in lieu thereof and depending upon fuel taxes for the building of highways. ORS 481.270 is a significant part of this legislative scheme.

However, ORS 481.272 provides for an exception to the principle of ORS 481.270, possibly resulting from the proliferation of special-use vehicles for use chiefly as "off-the-road" vehicles. Many of them represent substantial capital investments. The statute offers no relief from ad *valorem* taxation as to those vehicles which "are neither designed nor used primarily for the transportation of persons or property [other than the special equipment or machinery which distinguishes the vehicle] over public highways or streets. \*\*\*" ORS 481.272(2). But the legislature made an exception to the foregoing exception which is set out in subsection (4) of ORS 481.272 as to certain vehicles which otherwise would come within the definition of "fixed load vehicles." The pertinent part reads:

"As used in this section, 'fixed load vehicles' do not include \*\*\* truck-mounted transit mixers, or self-propelled mobile cranes."

[1.] The difficulty in ascertaining the range or compass of the statutory language, "self-propelled mobile cranes," grows out of the fact that these words have a fairly wide application in the world of heavy, specialduty motor vehicles and, further, because no reason for this exception has been suggested by the legislature (or counsel) which will aid an administrator or the court in rationalizing which, of several



types of mobile cranes, are entitled to the tax advantage. *See* 32 Op Att'y Gen 123 (1965).

[2,3.] Pictures presented to the court in conjunction with the testimony of the plaintiffs show that the concrete pump/ boom trucks are closely related to self-propelled mobile cranes hitherto approved for exemption; the same physical and mechanical principles are basic to their design. As stated by plaintiffs in their brief (Pl Memo, 1-2):

"A crane, by definition, is a machine which raises, swings and lowers heavy objects by means of a mechanical arm or boom. A concrete pump/boom truck fits precisely within the definition of a crane because it is a machine which raises, swings and lowers concrete by means of a mechanical arm or boom. The concrete pump/boom truck is merely a specialized type of crane. The only difference between conventional self-propelled mobile cranes and concrete pump/boom trucks is that conventional mobile cranes use a winch/cable crane boom system to lift while concrete pump/boom trucks use a pump/hose crane boom system to lift.

The evidence establishes that conventional self-propelled mobile cranes and concrete pump/boom trucks are both used for the lifting and placing of concrete; in fact, when conventional cranes are already available on the job site sometimes both conventional cranes and pump/boom trucks are used to lift and place concrete simultaneously. Before pump/boom trucks were introduced conventional cranes were used to lift and place concrete. Now, pump/boom trucks are used more often to perform this function because they are simply faster and more efficient than conventional cranes. Both conventional self-propelled mobile cranes and concrete pump/boom trucks are designed and operate as vehicles for highway use. In fact, concrete pump/boom trucks are generally on the highway even more than conventional cranes because pump/boom trucks are more efficient at the job site and can therefore travel to more jobs during a given period of time."

An examination of ORS 481.272(3) shows that it takes notice of several vehicles used in the cement business: cement batch plants, cement mixers ("other

than transit mix"), cement spreaders, pavement finishers, paving mixers and cement finishing machines, all of which are particularly included in the list of "[f]ixed load vehicles" "not exempted from ad valorem taxation by ORS 481.270."

[4, 5.] The property which is the subject of these suits readily fits within the concept of "self-propelled mobile cranes," rather than in the fixed load vehicles enumerated above. While the legislative policy for exempting any of them is not clear, the court concludes that it is the legislative intent that they be given the benefits of ORS 481.270. Any other decision involves a weighing of subtle distinctions which, as likely as not, would be discriminatory and in no way would aid in the settlement of future questions. In the present state of the art, the court understands the words "self-propelled mobile cranes" to have a generic connotation, rather than being limited in some fashion which the defendant presumably conceives but which has not been conveyed to the court. ORS 481.272(4) does distinguish subspecies in some instances (e.g., "mobile homes" and "travel trailers") but not with respect to self-propelled mobile cranes. The matter quoted above from the plaintiffs' memorandum serves as a guide.

The court takes note of 38 Op Att'y Gen 87 (1976), which concludes that a concrete pump/boom truck is a fixed load vehicle. The writer either overlooked the "self-propelled mobile crane" exception or concluded that a "self-propelled mobile crane" is a description so specific as to exclude the concrete pump/boom truck. The court respectfully disagrees with the writer of that opinion as to the degree of specificity.

The court deems the decision in *Paullus v. Dept. of Rev.*, *supra*, to be correct in result but, in light of testimony received (without dissent or contradiction) in the present suits, it must recognize that its apparent reliance in the *Paullus* case upon the classification made by the Motor Vehicles Division of the motor vehicle which was the subject of that case was in error.

Mr. Malcolm Page, a veteran employee of the Motor Vehicles Division, testifying in this suit, made clear that his division depends upon purely mechanical tests for purposes of classifying fixed load vehicles and generally does not inspect the vehicles to determine their design, function or highway use. Mr. Page further testified that many individuals with fixed load vehicles merely list their vehicles on the application form as “trucks,” without disclosing further information, and, in many instances, they will be issued a truck license and escape ad *valorem* taxation since reliance is placed by the division upon the classification given by the applicant.

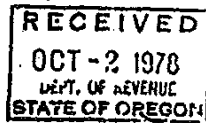
[6.] The court agrees with the plaintiffs (and the defendant in the *Paullus case, supra*) that the work of classification of motor vehicles for purposes of ad *valorem* taxation under ORS 481.272 must rest with the county assessor, with initial appeal to the Department of Revenue. To the degree that language in *Paullus* contradicts this conclusion, the prior decision is deemed to be superseded. (Pride of opinion should never deter a court from confession of error. \*\*\*” *City of Portland v. Welch*, 154 Or 286, 294, 59 P2d 228, 231, 106 ALR 1188, 1195 (1936).)

The defendant’s Order No. VL 77-15 (giving jurisdiction for appeal in Tax Court case No. 1133, relating to tax years 1971-1972 through 1976-1977), and defendant’s Order No. VL 76-594 (the basis of jurisdiction for the appeal in Tax Court case No. 1134, respecting tax years 1972-1973 through 1976-1977), shall be set aside and held for naught and the County Assessor and the Tax Collector of Marion County shall correct the assessment and tax rolls for the indicated years as required by this decision, abating any taxes which may be shown upon the rolls in connection with the subject property. If taxes have been paid by the plaintiffs, the excess, with statutory interest thereon, shall be remitted to the plaintiffs by the Board of County Commissioners of Marion County, Oregon, pursuant to ORS 311.806 and 311.812.

Plaintiffs are entitled to their statutory costs and disbursements.



**No 1228 (1978) Kenneth J. Bylund v. Department of Revenue**



**FILED**

OCT 29 1978

IN THE OREGON TAX COURT

Property Tax

No. 1228

LILLIAN M. DONKIN, CLERK

*Lillian M. Donkin*  
CLERK

KENNETH J. BYLUND, Director )  
of Assessment and Taxation )  
for Lane County, Oregon, )

Plaintiff, )

v. )

DEPARTMENT OF REVENUE, )  
State of Oregon, )

Defendant. )



**DECISION**

Pursuant to ORS 305.560 and 305.570, the plaintiff, Director of Assessment and Taxation for Lane County, Oregon, charged with the assessment and collection of taxes in Lane County, has appealed from the defendant's Order No. VL 77-740, dated December 30, 1977. The question is whether an item of personal property, described as a Model C100 Savage Hydraulic Loader (Serial No. 1143), owned by Joseph D. Martin of Cottage Grove, used by Mr. Martin in the business of hauling logs, is subject to the personal property tax for the tax year 1976-1977, pursuant to ORS 307.190

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for *info.*  
Copy for information to *Garry*

DECISION

*Knoble*  
*Michael*  
*Laddell & Boswin*

and ORS 308.105, or is exempt from such tax within the provisions of ORS 481.270.<sup>1/</sup>

The subject property (Assessor's Account No. 5340441) is a hydraulically operated crane which has been mounted on a 1970 White truck, Model **4562** TD (Serial **No. BJ021HA-735642**), also owned and operated by Mr. Martin during the year in question. Such cranes are **commonly** called "self-loaders," are manufactured and sold by a number of manufacturers, and have come into general use during the last few years. A loader weighs from 3,000 to 6,000 pounds; it must be constructed of high grade materials and is sold new for \$14,000 to \$16,000.

Self-loaders are most often bought and sold separately from the truck and, in fact, may be leased. They may be financed separately and insured separately. There is a market for used units. The plaintiff testified that there are now more than 100 self-loaders in use in Lane **County**.

The unit includes a vertical mast which can be firmly seated and secured at the rear end or in the middle

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<sup>1/</sup>

Plaintiff raised a second issue relating to the power of the defendant to utilize its supervisory power (ORS 305.090 and ORS 306.111) when issuing Order No. **VL 77-740**, but this issue was withdrawn at the time of trial.

DECISION

of a truck frame or close to the cab. The **mast** supports a boom (constructed in three components for easy articulation) to which is attached a **"bucket cross"** from which is suspended a grapple or other equipment, depending upon the work to be done. The boom can swing in a complete arc of 360 degrees. The unit is operated by one man, using hydraulic controls, occupying a seat on a **small** platform located **at** the top of the mast. The power is obtained from the truck engine through a takeoff which operates a hydraulic pump. Hoses carry the hydraulic fluid to the several hydraulic cylinders which can be individually activated by the operator to control the position of the boom and the grapple. Hydraulically operated outriggers can be lowered on each side **of** the truck to add stability during operation.

The self-loader is clamped to the truck with bolts and steel angles and the truck is modified by steel reinforcement of the frame and provision for the power takeoff and a **manual** control knob for the engine. Testimony showed that it could take two **men** several days to install a **self-loader** but removal of the basic unit can **be** done much **more** quickly.

#### **DECISION**



Plaintiff admits that the cost of installing a self-loader upon a truck is approximately \$1,500 but contends that, because of simplicity of removal, its identity as a separate unit should be deemed to continue and to render it taxable under ORS 307.190(2) as personal property used for the production of income. The defendant contends (1) that, permanency of attachment is not controlling, because there is no statutory requirement that the self-loader be permanently attached to the vehicle in order to share its exemption from personal property taxation under ORS 481.270; but (2), if such a requirement exists outside the statutes, the self-loader was permanently attached to the vehicle.

ORS 307.190 establishes a general rule that items of tangible personal property held by the owner for the production of income are subject to taxation (unlike personal property held by the owner for his personal use). ORS 481.270(1) provides that "vehicles" shall be subject to registration and license fees, imposed by the State of Oregon "in lieu of all other taxes and licenses, except municipal license fees under regulatory ordinances, to which

#### DECISION

such vehicles, or the owners thereof by reason of such ownership, may be **subject.**"

As stated in Roy L. Houck & Sons v. Tax Com.,  
229 Or 21, 31, 366 P2d 166, 170 (1961):

"For approximately 38 years prior to  
1959 the exemption established by ORS  
481.270 remained unchanged and unchallenged  
so far as it applied to equipment of the  
character owned by Houck [construction  
equipment described as scrapers, graders,  
and a Tournadozer]. \* \* \*"

The court held that, prior to a 1959 amendment, these  
"vehicles" were exempt from ad valorem taxation because  
they had been registered and licensed by the state's Motor  
Vehicle Department (now Motor Vehicles Division). The court  
construed the pre-1959 statute, pointing out that neither  
frequency of the vehicle's use of the highways, nor whether  
it was principally used on the highways, was a criterion or  
condition precedent for determining whether the vehicle  
could be registered and licensed by the Motor Vehicle  
Department. It further stated that the fact that the  
vehicle failed to comply with vehicular safety requirements  
did not prevent the owner from securing a motor vehicle  
license (although such failure prevented him from operating  
the vehicle upon the highways until he had complied with the  
safety requirements or obtained a "single continuous trip

DECISION

permit" for moving the vehicle ~~from~~ point to point over the highways).

ORS 481.272 was substantially enacted by Or Laws 1959, **ch. 417, § 3**, effective January 1, 1960, to resolve the question which gave rise to the Roy L. Houck & Sons case, supra; i.e., whether costly off-the-road vehicles (which are exempt from motor vehicle fuel taxes **per ORS 319.010(11)** and 319.280) should be licensed at a modest fee or should be subjected to ad **valorem** taxation. A classification of "special mobile equipment" was established ~~and~~ described in the ~~new~~ statute in ~~some~~ detail, preceded by the statement:

"(1) Special mobile equipment is not exempted from ad **valorem** taxation by ORS 481.270."

In Or Laws 1961, **ch 539, § 2**, ORS 481.272 was amended to substitute the words "~~[f]ixed~~ load vehicles ~~are~~" in lieu of "~~[s]pecial~~ mobile equipment ~~is~~."

Subsection (2) of ORS 481.272, with some assistance from subsections (3) and (4), is ~~deemed~~ by the court to be the **key** to the solution of the present question. **It** seeks to distinguish between those vehicles that are designed and used primarily for the transportation of persons or property over public highways or streets from those vehicles which are designed and **used primarily for non-transportation purposes, off the highway.** The first

#### **DECISION**

category is exempt from the-ad **valorem** taxation of the personal property by being licensed by the Motor Vehicles Division; units in the second category, "**fixed load vehicles,**" are subject to ad **valorem** taxation, whether licensed or not. Many examples of the second category are listed in subsection (3) of ORS 481.272<sup>2/</sup> and include such

2/ **ORS 481.272(3)** provides:

"(3) For the purposes of this section, '**fixed load vehicles**' include air compressors, air drills, asphalt plants, asphalt spreaders, bituminous plants, bituminous mixers, bituminous spreaders, bucket loaders, cement batch **plants,** cement mixers (other than transit mix), cement spreaders, carry-alls, crawler cranes, crushers and crushing plants, diggers and **ditchers,** power units and plants, earth-moving scrapers, electric generating equipment, electric load-bank and wiring equipment, lighting plants and portable **wiring,** front-end loaders, scoop--mobiles, payloaders, skip **hoists,** **power** hoists, road graders, motor graders, leveling graders, stackers, hoists, towermobiles, pavement finishers (bituminous and cement), power shovels, back hoes, drag lines, mixmobiles, portable shops, portable parts and storage bins, portable bins, portable storage tanks, fork **lift** trucks, **athey** wheels, log loaders, yarders, welders, road rollers, sheepsfoot rollers, paving mixers, elevator equipment, tractors other than truck tractors (wheeled and crawler), traction engines, bituminous and cement finishing machines, **scarifiers** and rooters, vibro **screens,** rotary **screens,** **scrubber** screens, sand classifiers and drags, plate **feeders,** **apron** feeders, scrap metal bailers, grain grinders, grain rollers, sawmills and special construction equipment. The enumeration in this subsection merely illustrates some of the vehicles that are included within the term '**fixed load vehicles**' and shall not operate to exclude other vehicles that are within the purview of the term '**fixed load vehicles**' as defined in subsection (2) of this section."

#### DECISION



disparate items as air compressors, cement batch plants, crushers and crushing plants, diggers and **ditchers**, mix-mobiles, **athay** wheels, log loaders, road rollers, tractors (wheeled and crawler) other than truck tractors, special construction equipment and the like, having **one** factor in common; viz., they are not designed or used to haul persons or property over the public roads. <sup>3/</sup>

In its attack in the present suit, the plaintiff has given consideration to the personal **property** law of accession and to the law of fixtures; however, the **court's** view is that the use of these concepts, developed for the purpose of solving questions of title and priority, **are not** appropriate here for purposes of statutory construction. Questions of accession deal with rights of ownership in tangible personal property where the property belonging to one person has been attached to or incorporated in **or** intermingled with the property of another **person** and a dispute

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<sup>3/</sup> Recognizing the proliferation of special equipment which is a notable aspect of the present era, the legislature has ended subsection (3) with a caveat: "The enumeration in **this subsection merely illustrates some of** the vehicles that are included within the term '**fixed** load vehicles' and shall not operate to exclude other vehicles that are within the purview of the **term \*.\*.**"

#### DECISION

arises as to ownership. The law of fixtures is chiefly concerned with the definition of a "fixture" and the right to possession of specific fixtures as between particular persons. But in this suit we are dealing with a peculiar statute, ORS 481.272, and the legislative intent must be determined from the language used therein, if at all possible.

The chief thrust of the plaintiff's argument is that ORS 481.270 specifically exempts licensed vehicles but "[a] self log loader is not a vehicle? (Pl Trial Br at 5.) However, the excellent description of a self-loader presented by the plaintiff shows clearly that, while the loader is not a vehicle in and of itself, it is so designed as to be used effectively only when attached to and powered by a mobile unit.<sup>4/</sup>

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<sup>4/</sup> Plaintiff has consistently used the words "self log loader" in connection with the subject property and it is admitted that in the present situation the loader is used for loading logs on the taxpayer's log truck and trailer, but the loader and its standard attachments can be used for many purposes other than loading logs. The important fact is that the unit is attached to and made a part of a vehicle designed and used primarily for transportation of property over public highways and streets. If the unit were attached to a crawler tractor (as many self-loaders are), for use in the forest area and other off-road sites, the court would be presented with a different question, since "log loader" is specifically listed as a "fixed load vehicle" in ORS 481.272(3).

#### DECISION

The defendant's argument rebuts plaintiff's accession theory as not controlling but asserts that it can be argued that the self-loader was permanently attached to the logging truck. Defendant then presents an ingenious argument: since Oregon's annual license fees for motor trucks and truck tractors are based upon "combined weight" (ORS 481.210(2) (a)) and since "combined weight" is the "light weight" of the vehicle (the weight of a vehicle when fully equipped for moving over the highways) plus the weight of the maximum load which the vehicle may carry (ORS 481.010(2) (a) and 481.025(1)), the weight of the special equipment, the "log loader," is necessarily included in the maximum load for which the license fee is paid and therefore such added equipment is likewise exempt from ad valorem taxation (citing two cases from other states with somewhat similar laws). The court does not believe this is a useful argument. The defendant would certainly admit that any logs loaded on the log truck here involved, within the maximum load licensed for the truck, would not be exempt from other taxes and fees because of the truck's license. As the statute is written, it is not possible to conclude from defendant's argument that the self-loader is thus exempt from taxation.

DECISION

**More** to the point is ORS **491.272(2)** which stresses that the licensed vehicle must be one "used primarily for the transportation of persons or property over public highways or **streets**" and that "**property**" which is in the form of a permanent load of equipment or appliances or which is "ordinarily kept on or in the vehicle in order that the **vehicle may** be used for its primary purpose" is exempt from personal property taxation by virtue of licensing. Once it ~~has~~ been established that the taxpayer's 1970 White truck, Model 4562 **TD**, is used primarily for transporting logs over the highways (after picking them up in the yarded area near the timber-cutting site) and carrying them ~~over the~~ public highways to mill owners and operators, other processors or shippers, then it does not matter whether the essential special equipment is permanently attached or kept on or in the vehicle **as long as** it aids in the principal mission of the truck. However, the court finds that, in the present case, the equipment is "permanently attached," utilizing the same method (suitable bolts and nuts) used with respect to other components of the truck, including ~~the engine~~. "**Permanently attached**" cannot be read too strictly in a paragraph which allows the exemption of property "ordinarily

DECISION




kept on or in the vehicle **in order** that the vehicle may be used for its primary purpose.7

And, in construing the **statute**, the court cannot overlook the exception made in ORS **481.272(4)** in the case of "self-propelled mobile cranes? The subject property in the present **suit**, including the use of the White truck, comes so clearly within the description of a self-propelled mobile crane that the decision in Moravek's Concrete et al v. Dept. of Rev., 7 OTR Adv Sh 385, 7 OTR. (1978) (presently on appeal to the Oregon Supreme Court), may be applicable thereto. (Counsel presented no argument in this suit, based on this **concept**.)

Order No. **VL 77-740**, dated December **30**, 1977, is affirmed and plaintiff's appeal is dismissed. Each party shall bear its own costs and disbursements.

Dated **this 29<sup>th</sup>** day of September, 1978.

  
JUDGE

**DECISION**

# 285 Or 495 (1979) Moravrk's Concrete v. Department of Revenue

Argued January 5, affirmed March 20, 1979

MORAVEK'S CONCRETE, INC., *Respondent*,

DEPARTMENT OF &VENUE, *Appellant*.  
(No. 1134)

L. P. COMPANY, *Respondent*,

DEPARTMENT OF &VENUE, *Appellant*.  
(No. 1133)  
(SC 25710)  
591 P2d 1379

Appeal was taken from decision of the Tax Court, Carlisle B. Roberts, J., holding that concrete pump/boom trucks were exempt from ad valorem personal property taxation. The Supreme Court, Holman, J., held that such trucks were within the statutory exemption for "self-propelled mobile cranes."

Affirmed.

**Taxation—Ad valorem personal property tax valuation— Self-propelled mobile cranes**

Words "self-propelled mobile cranes," as used in statute providing that such cranes are not within the meaning of "fixed load vehicles" and thus are not subject to ad valorem personal property taxation applicable to such vehicles, were intended as a generic term rather than a term referring particularly to those mobile cranes in existence at the time of the passage of the statutory exception, and thus since a concrete pump/boom truck employs the same methods and activities, for similar purposes, as those which distinguish a mobile crane, such a truck is within the exemption, notwithstanding that such trucks did not exist in Oregon at the time the exemption was enacted. ORS 481.005 *et seq.*, 481.270, 481.272(4).

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CJS, Taxation § 232.

Department 1

Appeal from Oregon Tax Court.\*

Carlisle B. Roberts, Judge.

Ted E. Barbera, Assistant Attorney General, Salem, argued the cause for appellant. With him on the briefs was James A. Redden, Attorney General, Salem.

Robert J. Saalfeld of Harland, Ritter, Saalfeld & Griggs, Salem, argued the cause for respondent

Moravek's Concrete, Inc. With him on the brief was Robert B. McConville, Salem, for respondent L. P. Company.

Before Denecke, Chief Justice, and Holman, Howell, and Lent, Justices.

HOLMAN, J.

Affirmed.

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\* 7 OTR 385 (1978).

HOLMAN, J.

This is an appeal by the Department of Revenue from a decision of the Oregon Tax Court, 7 OTR 385 (1978), in two consolidated cases holding that plaintiffs' concrete pump/boom trucks are exempt from ad valorem personal property taxation pursuant to ORS 481.272(4).

ORS 481.270 generally provides that vehicle registration and license fees imposed by ORS ch 481 are in lieu of all other taxes and licenses. However, ORS 481.272 provides that "fixed load vehicles" are not so exempt, resulting in their subjection to ad valorem taxation, and defines "fixed load vehicles" to mean vehicles with or without motive power, that are neither designed nor used primarily for the transportation of persons or property over public highways or streets. Plaintiffs acknowledge that their concrete pump/boom trucks fit the statutory definition of a "fixed load vehicle." They contend, however, and the tax court held, that concrete pump/boom trucks are exempt from ad valorem taxation by subsection (4) of ORS 481.272 which provides

"As used in this section, 'fixed load vehicles' do not include mobile homes, travel trailers, tow cars (including tow cars with cranes, hoists or dollies), truck-ted transit mixers, or *self-propelled mobile cranes*." (Emphasis added.)

The Department of Revenue summarizes its argument brought upon appeal as follows:

"Statutes are to be construed in the light of conditions existing at the time of their enactment, and the words of the statute taken in the sense in which they were understood at that time. Concrete pump/boom trucks did not exist in Oregon in 1963, when ORS 481.272(4) was last amended to exempt 'self-propelled mobile cranes' from taxation. Therefore, the Tax Court erred in construing 'self-propelled mobile cranes' to include concrete pump/boom trucks."

Ordinary self-propelled mobile cranes and concrete pump/boom trucks are both used in the lifting and placing of wet concrete. However, ordinary self-propelled mobile cranes are used for many other lifting purposes, whereas concrete pump/boom trucks are usually not so used. The conventional mobile crane uses a winch that winds in and lets out a cable running through a boom and attached to a bucket in which the concrete is raised, lowered and swung about to the place where the concrete is desired. A concrete pump/boom truck accomplishes the same purpose by pumping the concrete through a pipe or hose attached to a boom.

Defendants contend that

"the differences and similarities between self-propelled mobile cranes and concrete pump/boom trucks would be significant only if concrete pump/boom trucks had been in existence in Oregon at the time the statute was last amended in 1963 to exempt self-propelled mobile cranes. This is not the case."

The department also says:

"It is submitted that to extend the meaning of 'self-propelled mobile cranes,' to include concrete pump/boom trucks is to attach a strained and unusual meaning to the term, and should not be done simply because it may seem that a similar policy applies, or upon the speculation that had the legislature known about concrete pump/boom trucks, broader words would have been used to include them in the exemption."

We agree with the tax court in the conclusion that the words "self-propelled mobile cranes" as used by the legislature were intended as a generic term rather than as a term referring particularly to those mobile cranes in existence at the time of the passage of the statutory exemption. Therefore, the issue is whether a concrete pump/boom truck is a self-propelled mobile crane. We conclude that by its use of a movable boom mounted upon a self-propelled vehicle to raise, lower and swing its load to the desired place, a concrete pump/boom truck employs the same methods and activities which distinguish a mobile crane. It is not reasonable that two vehicles should be distinguished for the purpose of exemption from taxation solely on the basis that one performs the lifting process by an engine that drives a winch while the other does so by an engine that drives a pump. Both are similar instruments, used for similar purposes, which fit within a common description of a mobile crane. We can see no reasonable basis for a distinction, despite the rule which requires that an exemption from taxation be construed strictly.

The decision of the Oregon Tax Court is affirmed.



**TC MD 0890938B (2009) Sure Flow, Inc. v. Linn County Assessor and  
Department of Revenue**

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

FILED  
MAGISTRATE DIVISION  
OREGON TAX COURT  
09 NOV 25 AM 10:25

SURE FLOW, INC.,

Plaintiff,

v.

LINN COUNTY ASSESSOR  
and DEPARTMENT OF REVENUE,  
State of Oregon,

Defendant.

TC-MD 080938B

PRELIMINARY RULING

The parties have requested the court issue a preliminary ruling as to whether certain vehicles are subject to personal property tax assessments. If they are, further proceedings will be scheduled to establish their appropriate real market values.

A trial was held February 11, 2009 in Salem, Oregon. Joel D. Kalberer, Attorney at Law, represented Plaintiff. Gene Karandy, Assistant County Counsel, represented Defendant Linn County Assessor (Defendant). Defendant Department of Revenue did not participate in the trial. Testifying as witnesses were Debra Emerson (Emerson), Plaintiff's president; Gene Johnston, county appraiser; and Russ Williams, Linn County director of general services.

Subsequently, post-trial written submissions were filed. The record closed March 10, 2009.

**I. STATEMENT OF FACTS**

Defendant issued omitted property notices on June 25, 2008, adding the subject vehicles to the Linn County assessment rolls for the five tax years 2002-03 through 2006-07. The property is identified as Account 562815. Plaintiff has timely appealed those additions to this court.

PRELIMINARY RULING TC-MD 080938B

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The subject property consists of four trucks contained within a certain classification of vehicles. They are termed “Vactor trucks” and are unique due to their capacity to clean and pump sewer lines and drains. Plaintiff uses the vehicles in its commercial operations.

The issue at this preliminary stage is whether the trucks fit within the fixed load vehicle definition set out at ORS 801.285.<sup>1</sup> Fixed load vehicles are taxable personal property; other types of vehicles are exempt from taxation. ORS 801.285(1) identifies three certain elements that a Vactor truck must satisfy to be considered a fixed load vehicle.

The Vactor marketing brochure states that these trucks are designed to carry hydraulic booms, hose reels, Jet Rodders, pumps, and other permanently attached equipment. (Def Ex H at 3.) Although the specific brochure examined at trial refers to a newer truck than Plaintiff’s models, Emerson testified that the four Vactor trucks at issue are “almost identical” to the trucks pictured in the brochure. Photographs of Plaintiff’s Vactor trucks show the trucks are outfitted with the same permanently attached equipment as the trucks in the brochure. (Ptf’s Ex 1 at 1, 2.) Vactor trucks contain platforms for the equipment that is attached to the vehicle. The parties agree that Vactor trucks are designed and used to transport a load of permanent equipment. (Closing arguments.)

The Vactor manufacturer states the equipment attached to Vactor trucks is part of a “proprietary system of integrated components, *specifically designed for sewer cleaning applications.*” (Def Ex H at 3 (emphasis added).) Emerson testified that the subject trucks were

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 2007.

used “to clean all kinds of lines,” including “large diameter drains.” Emerson gave another example where the Vactor hose was used to pump in water to “stir and mix \* \* \* extremely solid” waste.

The Vactor brochure details specific line cleaning applications of Vactor equipment. Emerson testified that Plaintiff often uses the trucks for similar line cleaning applications detailed in the brochure. The most important purpose intended for Plaintiff’s Vactor trucks is to clean sewers and lines.

Evidence produced at trial showed that the Vactor trucks’ assorted specialized equipment is designed and used for cleaning sewers and lines. That equipment includes a Jet Rodder water pump, “[e]xclusively designed for sewer cleaning actions,” and a high pressure water pump, “specifically designed for line cleaning.” (Def Ex I at 4; Ex J at 1.) Emerson testified that Plaintiff’s Vactor truck uses the “Jet Rodder \* \* \* to clean all kinds of lines.” Plaintiff’s Vactor trucks use permanently attached equipment to clean sewers and lines.

Plaintiff’s Vactor trucks are used for a number of jobs that do not include hauling property at all. Vactor trucks have the capacity to pulverize obstructions into small enough pieces that the pieces can be flushed down the line, and not hauled up. Additionally, due to certain restrictions, Vactor trucks dispose some waste hauled up from lines on the jobsite itself because the waste cannot be dumped anywhere else.

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## II. ANALYSIS

The issue in this case is whether Plaintiff's Vactor trucks fit the "fixed load vehicle" definition set out at ORS 801.285(1).<sup>2</sup> Under ORS 801.285(1), a vehicle must satisfy three elements to be defined as a fixed load vehicle.

"Fixed load vehicle" means all of the following apply to the vehicle:

"(1) It is a vehicle with or without motive power that is designed and used primarily:

"(a) To support and move a permanent load in the form of equipment or appliances constructed as part of or permanently attached to the body of the vehicle;

"(b) For transportation of equipment or appliances that are ordinarily kept on or in the vehicle in order that the vehicle may be used for its primary purpose; and

"(c) Except for the transportation of permanent load, appliances and equipment described in paragraphs (a) and (b) of this subsection, for purposes other than for the transportation of persons or property over public highways or streets."

### ORS 801.285(1)

A vehicle must satisfy each element to qualify as a fixed load vehicle. Under ORS 801.285(1)(a), a vehicle must be designed and used primarily to support and move a load of permanent equipment. Under ORS 801.285(1)(b), the vehicle must be designed and used primarily to transport attached equipment in order for the vehicle to be able to achieve its primary purpose. Lastly, under ORS 801.285(1)(c), a vehicle must be designed and used primarily for a purpose other than transporting property over public highways and streets.

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<sup>2</sup> Fixed load vehicles are defined in ORS 801.285. Specific vehicles are identified by ORS 801.285(3) as fixed load vehicles, and ORS 801.285(2), as "other than [listed vehicles]." Vactor trucks are not included in either section. Therefore, the question of whether plaintiff's Vactor trucks are fixed load vehicles will be determined by ORS 801.285(1).



“In interpreting a statute, the court’s task is to discern the intent of the legislature. To do that the court examines both the text and the context of the statute.” *PGE v. Bureau of Labor & Industries*, 317 Or 606, 610, 859 P2d 1143 (1993) (citations omitted). Because the legislature used the word “primarily” to qualify each element of ORS 801.285(1), it is important to give this term the meaning the legislature intended. In defining terms, “words of common usage typically should be given their plain, natural and ordinary meaning.” *PGE*, 317 Or at 611 (citing *State v. Langley*, 314 Or 247, 256, 839 P2d 692 (1992)). Oregon courts often rely on dictionaries to establish the ordinary meaning of words. See *Zidell Marine Corp. v. West Painting, Inc.*, 322 Or 347, 355, 906 P2d 809 (1995). Primarily is defined as “fundamentally, principally.” *Webster’s Third New Int’l Dictionary* 1800 (unabridged ed 2002) (*Webster’s*). That definition will guide the court’s analysis of the ORS 801.285(1) elements.

*A. Vactor Trucks Support and Move a Permanent Equipment Load*

The first issue is whether Vactor trucks are designed and used primarily to support and move a permanent equipment load. Under ORS 801.285(1)(a), a fixed load vehicle is “designed and used primarily: [t]o support and move a permanent load in the form of equipment or appliances constructed as part of or permanently attached to the body of the vehicle[.]”

Based on this evidence, the court concludes that Vactor trucks are principally designed and used to transport a load of permanently attached equipment.

*B. Vactor Trucks Carry Equipment to Achieve Their Primary Purpose*

The second issue is whether the equipment attached to Plaintiff’s Vactor trucks enable the trucks to perform their primary purpose. Under ORS 801.285(1)(b), fixed load vehicles are “designed and used primarily: \* \* \* [f]or transportation of equipment or appliances that are ordinarily kept on or in the vehicle in order that the vehicle may be used for its primary

purpose[.]” By definition, fixed load vehicles are primarily designed and used to transport equipment in order to achieve their primary purpose. In order to determine whether Plaintiff’s Vactor trucks satisfy this element, the court must first determine the primary purpose of Vactor trucks. After making this determination, the court can then decide whether the equipment attached to the Vactor trucks enable the vehicles to achieve this primary purpose. This is a two step process. The first step is to determine the primary purpose of Vactor trucks.

1. *Primary Purpose*

“Primary” is defined as “first in rank or importance.” *Webster’s* at 1800. “Purpose” is defined as “an object, effect, or result aimed at.” *Id.* at 1847. The Vactor manufacturer’s design objectives and Plaintiff’s use of Vactor trucks guide the court’s determination of the primary purpose. Based on this evidence, the court concludes the primary purpose of these Vactor trucks is to clean sewers, lines, and drains.

2. *Purpose for Transport*

The second step of the ORS 801.285(1)(b) analysis requires a determination of whether Vactor trucks transport equipment “in order that the vehicle be used for its primary purpose.” The issue here is whether Vactor trucks transport equipment in order to clean sewers and lines. Considering the manufacturer’s stated objectives, and the taxpayer’s use of Vactor vehicles, the court concludes that Vactor trucks transport equipment so that the vehicles can principally be used for sewer and drain cleaning. The subject Vactor trucks satisfy the second element of ORS 801.285(1).

C. *Vactor Trucks Are Not Designed or Used Primarily to Transport Property*

The third issue is whether Plaintiff’s Vactor trucks are primarily designed and used to transport property over public highways and streets, or for another purpose. Under

ORS 801.285(1)(c), fixed load vehicles are “designed and used primarily \* \* \* for purposes other than for the transportation of persons or property over public highways or streets.” In order to be defined as a fixed load vehicle, the vehicle must be designed and used primarily for a purpose other than transporting property over public roads. If a vehicle is primarily designed and used to transport property, then it is not a fixed load vehicle. In interpreting the legislature’s intent in including this element, the court considers the context of this statutory provision, which includes other provisions of the same statute. *PGE*, 317 Or at 611.

ORS 801.285(3) identifies a number of vehicles specifically defined as fixed load vehicles. Some vehicles included in this list have the capacity to transport property, but are still defined as fixed load vehicles. Those include “portable shops [and] portable storage tanks, \* \* \*,” ORS 801.285(3). Like Vactor trucks, those vehicles are able to transport property, but the legislature determined that the vehicles are not *primarily* designed or used to transport property. Despite the language of ORS 801.285(1)(c), the legislature specifically included vehicles with the capacity to transport property in the list of vehicles identified as fixed load vehicles. Mere capacity to transport property cannot disqualify a vehicle from being defined as a fixed load vehicle. Rather, the legislature intended to distinguish between fixed load, and non fixed load vehicles based on what the vehicles are *primarily* designed and used for.

ORS 801.285(2) identifies specific vehicles as “other than [fixed load vehicles].” Those are vehicles the legislature specifically excluded from the definition of fixed load vehicles. The majority of these “other than” fixed load vehicles charge fees based on volume of property delivered, or distance traveled, rather than by an hourly rate. Vehicles in this category include “a tow vehicle[,]” which typically charge per mile towed, and “a truck mounted transit mixer,”

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which typically charge per yard of concrete delivered. ORS 801.285(2)(b), (2)(c). (Def Ex P at 3.) In contrast, Emerson testified that customers using Vactor service are not charged by the amount of waste hauled away from the site. Vactor jobs are charged out by the hour. (*Id.*) In that regard, Vactor trucks are distinguished from the vehicles defined as “other than” fixed load vehicles under ORS 801.285(2).

Because Plaintiff charges customers for Vactor use by the hour, a Vactor truck can generate revenue without ever leaving the site or hauling property. The ability to charge for services not related to transportation of property is a marked contrast from non fixed load vehicles, including septic pump trucks. Plaintiff’s pump trucks charge by the gallon of waste removed. Transporting property is the only fee generating job a septic truck that charges per gallon of waste can perform. Because septic trucks only generate revenue when they transport property, it is logical to conclude the trucks are primarily designed and used to transport property.

Truck mounted transit mixers, defined as “other than” a fixed load vehicle provide another example of the distinction between the services provided by a fixed load vehicle and a non fixed load vehicle. A transit mixer’s only value is in the product load it delivers. Aside from delivering its cargo, the transit mixer can provide no valuable services to its customers. Unlike these non fixed load vehicles, Vactor trucks perform a number of tasks that do not include hauling property. Vactor trucks are not closely analogous to the vehicles specifically identified by the legislature as non fixed load vehicles.

The court concludes that Vactor trucks are fixed load vehicles within the definition set out at ORS 801.285(1). Further proceedings shall be held to determine the real market value of the property for the 2008-09 tax year.

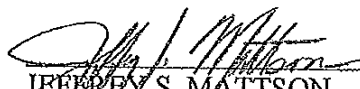


### III. CONCLUSION

Now, therefore,

IT IS THE PRELIMINARY RULING OF THIS COURT that the omitted property additions included property that was properly assessable by Linn County. Further proceedings shall be scheduled to discuss the appropriate real market value.

Dated this 25<sup>th</sup> day of November 2009.

  
JEFFREY S. MATTSON  
MAGISTRATE

***This preliminary ruling may not be appealed. Any claim of error in regard to this preliminary ruling should be raised in an appeal of the Magistrate's final written decision when all issues have been resolved. ORS 305.501.***