

**BEFORE THE BOARD OF TAX APPEALS  
STATE OF KANSAS**

IN THE MATTER OF THE  
EQUALIZATION APPEALS OF DODGE  
CITY COOPERATIVE EXCHANGE FOR  
THE YEARS 2013 & 2014 IN GRAY  
COUNTY, KANSAS

Docket Numbers 2013-2335-EQ  
and 2014-2560-EQ

**ORDER**

Now the above-captioned matters come on for consideration and decision by the Board of Tax Appeals of the State of Kansas. The Board conducted a hearing in these matters on April 17, 2015. The Taxpayer, Dodge City Cooperative Exchange, appeared by Marc Kliever, Attorney; Jerald Kemmerer, Witness; and, Fred Norwood, Witness. The County of Gray appeared by Michael Giardine, Attorney; and, Jerry Denney, Gray County Appraiser. County Exhibits A and B, and Taxpayer Exhibits 1 through 18 were admitted into evidence. The tax years at issue are 2013 and 2014.

The subject matters of these tax appeals are located at 706 Bent Street, Ensign, Gray County, Kansas, also known as Parcel Identification Number # 035-167-36-0-30-02-001.00-0 and, per the Taxpayer's proposed findings of fact and conclusions of law, are described as follows:

One 80' 45,000 bushels per hour Essmueller drag conveyor.

One 107' 45,000 bushels per hour Essmueller drag conveyor.

One 235' 40,000 bushels per hour Hi Roller belt conveyor.

Two 18" bin unloading screw conveyors, 57' long.

Two 18" by 35' belt feeder square spouts.

Two 18" square transitions.

Two 24" by 15' square unloading spouts including side draw slide gates.

Two overhead connecting bridges.

Aeration system components for Bin R-5 and Bin R-6.

Temperature monitoring system components for Bin R-5 and Bin R-6.

Compuweigh Train Loadout remote communications module components.

The Board rules that the evidentiary burden is on the Taxpayer as these matters are essentially tax exemption requests. The Taxpayer requests that the subject of these appeals be considered commercial and industrial personal property and therefore, exempt from ad valorem taxation pursuant to K.S.A. 2014 Supp. 79-223 (b) *First*. The County considers the subject property as fixtures to real estate.

The subject properties in these matters are the same properties that the Board considered for the 2011 tax year. *See* Docket Number 2012-726-PR. In that matter, the Board found that after applying the three-part fixture test that the subject property should be considered real estate with the except of the temperature monitoring system components for Bin R-5 and Bin R-6.

All of the items were purchased and installed after June 30, 2006. At the hearing the parties indicated that they would stipulate to the appropriate appraised values of the subject properties; however, no stipulation has been filed.

Unlike the 2011 tax year matter, Mr. Fred Norwood testified concerning the construction of the elevator and installation of the subject property. Mr. Norwood is a fourth generation elevator builder who builds, refurbishes, and removes grain storage elevators and flour mills and has done this for over 20 years. Mr. Norwood's firm purchased the subject property and installed on the grain bins referred to as R4, R5 and R6. This equipment was bolted to the concrete slab and could be removed easily without damaging the bins or other pieces of the subject property. Removal would take as long as three days to complete. However, removal of some items would leave an open hole in the side of the elevator.

Mr. Norwood noted that the items were assembled on-site but not constructed on-site.

Under cross-examination, Mr. Norwood testified that without the subject property, the elevator would not be able to operate as the subject property loads the grain into the storage facility and unloads it into train cars or semi-trailer trucks.

The general manager of the facility, Mr. Jerald Kemmerer, testified that items like the subject property have been moved between facilities as needed and have been upgraded for faster loading and unloading speeds. The bins have remained the same but the conveyance mechanisms have changed.

The County relied on the three-part test to determine whether the subject property is personal property or real estate. The three parts are: 1. Annexation to the realty, 2. Adaptation to the realty, and 3. Intention of the annexing party.

There is no bright-line rule for determining under what conditions a chattel loses its character as personal property and becomes a fixture of the freehold. That “determination can only be made from a consideration of all the individual facts and circumstances attending the particular case.” *In re Equalization Appeals of Total Petroleum, Inc.*, 28 Kan. App. 2d 295, 300, 16 P.3d 981 (2000) (citing *Kansas City Millwright Co., Inc. v. Kalb*, 221 Kan. 658, 664, 562 P.2d 65 *modified* 221 Kan. 752, 564 P.2d 1280 (1977)).

To ascertain whether personal property has become a fixture, Kansas has adopted a long standing common law test known as the “fixtures test.” The three-part test requires consideration of the following: “(1) annexation to the realty; (2) adaptation to the use of that part of the realty with which it is attached; and (3) the intention of the party making the annexation.” *Total Petroleum*, 28 Kan. App. 2d at 299-300 (citing *Stalcup v. Detrich*, 27 Kan. App. 2d 880, 10 P.3d 3 [2000]). The three-part fixtures test is not conducive to rigid application and must be applied within the context of the legal problem and the individual facts presented. “[T]here appears to be no single statement in our law defining fixtures which is capable of application in all situations.” *Kansas City Millwright*, 221 Kan. at 664.

The 2013 and 2014 Personal Property Valuation Guides (“Guide”) promulgated by the Division of Property Valuation (PVD) discuss classification as personal property or real property and provides a list of many types of properties and the classification for each one in order to promote uniformity. The Guides instruct that if a county appraiser is faced with a unique situation or property not addressed by the list, the county shall utilize the three-pronged fixtures test.

The first part of the test is annexation to the realty. Annexation is “[t]he act of attaching, adding, joining, or uniting one thing to another; generally spoken of the connection of a smaller or subordinate thing with a larger or principal thing.” Black’s Law Dictionary, Sixth Ed (1990). “Annexation” is the union of property with a freehold. *Webster’s Third New Int’l Dictionary* 87 (1981). Whether an item is sufficiently annexed to the freehold under the fixtures test is a matter of degree and is driven by the attendant circumstances. *See Shoemaker v. Simpson*, 16 Kan. 43, 44 (1876).

In determining whether an item is annexed to real estate, the nature and extent of its physical attachment are relevant considerations. *See Dodge City Water and Light Co. v. Alfalfa Land and Irrigation Co.*, 64 Kan. 247, 252, 67 P. 462 (1902) (declaring that an item is permanently attached to the real estate if “its removal would interfere with the practical use of the land, or in any way injure” the land for its usual use). Annexation is not necessarily indicated where removal of the property in question requires that it be disassembled. *See Stalcup*, 27 Kan. App. 2d at 886 (finding metal farm building not annexed to realty where removal required the unfastening of bolts anchoring it to a concrete pad). Where removal, however, requires a more complex and costly disassembling process in order to preserve the property’s future usefulness, annexation may obtain. *See Farmland Indus., Inc.*, 298 B.R. 382, 388-89 (Bankr.W.D.Mo. 2003) (applying Kansas law to find oil refinery equipment annexed to realty where its removal required a costly process, including match-marking components for reassembly).

Still, an item's physical attachment and ease of removal are not determinative factors under the fixtures test. As explained by the Kansas Supreme Court,

"There is scarcely any kind of machinery, however complex in its character, or no matter how firmly held in its place, which may not with care be taken from its fastenings, and moved without any serious injury to the structure where it may have been operated, and to which it may have been attached. . . . On the other hand, there are very many things although not attached to the realty, which become real property by their use, —keys to a house, blinds and shutters to the windows, fences and fence-rails, etc."

*Morgan*, 42 Kan. at 29.

It has long been held that certain unattached items may become part of the real property by means of "constructive annexation." See, generally, *Green v. Chicago R.I. & P.R. Co.*, 8 Kan. App. 611, 56 P. 136 (1899) (in *replevin* action, finding heavy lathe not fastened to ground to be a fixture because it was an essential part of the machinery of a manufactory as originally planned and operated). Constructive annexation may be found where items specially fabricated for installation in a particular structure are introduced upon the land, even though not through physical attachment. See 35A Am. Jur. 2d *Fixtures* § 4. The doctrine also may apply in cases where an item, although not attached to the real estate, "comprises a necessary, integral or working part of some other object which is attached" to the real estate. 35A Am. Jur. 2d *Fixtures* § 10 (observing that constructive annexation occurs "when removal leaves the personal property unfit for use so that it would not of itself and standing alone be well adapted for general use elsewhere.")

In the instant case, the conveyors, spouts, transitions, overhead connecting bridges, and aeration system components are attached directly to the massive grain elevator bins, which the parties agree are realty. Although they are bolted together and could be removed or replaced, we find that this does not preclude annexation to the realty because they have become part of the whole of the structure. By analogy, a window in a house does not remain personal property once installed merely because it can be replaced to increase energy efficiency and can be easily removed by removing casing and nails. The casing and nails in this example are sufficient for annexation just as the bolts are sufficient in the present case because, once installed, the conveyors, spouts, transitions, overhead connecting bridges, and aeration system components have become part of the elevator structure. These assets are more analogous to the window example, as building materials becoming part of a whole improvement, than the building example of *Stalcup* where the entire structure itself was at issue. The annexation prong of the test is satisfied.

The second part of the test is adaptation to the use of that part of the realty to which it is attached. The focus of the adaptation test is the use to which the item in question is put relative to its surroundings. If an item of property is "placed on the land for the purpose of improving it

and to make it more valuable, that is evidence that it is a fixture.” *Morgan*, 42 Kan. at 29. If the property is an integral or essential part of the use that it being made of the realty, that too is evidence that the property is a fixture. *See Total Petroleum*, 28 Kan. App. 2d at 301; 35A Am. Jur. 2d Fixtures § 11 (observing that “[a]n article loses its status as simple unrelated personalty and becomes a fixture when it becomes so integrated into the efficient use of the particular parcel of real estate that it has become logically considered more a part of the real estate than not”).

Property attached for purposes unrelated to the use to which the real estate is devoted, however, fails the adaptation test. *See, e.g., Dodge City Water & Light Co.*, 64 Kan. at 248 (finding pipe installed on land platted for development but later returned to farmland was part of water works and not adapted for farm use). Adaptation also may be lacking where the property in question has no special connection with the real estate to which it is attached and can be put to a similar use at other locations. *See Stalcup*, 27 Kan. App. 2d at 886 (finding metal farm building of a type found across the state not adapted to use of realty).

The Kansas Supreme Court highlighted the distinction between adapted property and general use property in *Board of Education, Unified Sch. Dist. No. 464 v. Porter*, 234 Kan. 690 (1984). In *Porter*, a condemnation case, the court found an above-ground storage tank was not a fixture of the freehold based in part on the adaptation prong. The court noted that the storage tank was not the kind of machinery that when severed “commands only the prices of second-hand articles,” but when attached to an operating plant “may produce an enhancement of value as great as it did when new.” *Id.* at 695. The storage tank, the court said, “had none of those characteristics and [was] as usable at another location as on the land in question.” *Id.*

The Kansas Department of Revenue, Property Valuation Division, has provided illustrative guidance on the adaptation prong of the fixtures test:

“In the adaptability test, the focus is on whether the property at issue serves the real estate or a production process. For example, a boiler that heats a building is considered real property, but a boiler that is used in the manufacturing process is considered personal property.”

2014 PVD Guide at p. iv.

In this case, we are not presented with a general storage building like *Stalcup* which could be similarly used for general storage on an adjacent vacant parcel. Nor are we presented with a system of production assets housed in, or supported by, a general purpose building or structure. Instead, the particular assets at issue herein are interdependent upon and have become part of the large storage elevators or bins which are a part of realty. The elevators were designed to hold or incorporate these assets as part of the whole. The assets at issue are components integrated into the efficient use of the elevators and are logically considered part of the realty. The items at issue cannot be removed and simply placed on an adjacent vacant parcel and have any comparable utility. They do not perform a function or operate independent of the elevator. We conclude that the assets at issue were installed to carry out the particular purpose to which

the real estate, including the elevator, has been devoted, and each asset is important to the effective utilization of the real estate for this purpose. The conveyors, spouts, transitions, overhead connecting bridges, and aeration system components are adapted to the property as they make the facility more valuable and usable and are an integral part to the grain facility use.

The third part of the test is intention: that is, whether the annexing party intended to make the personal property in question a permanent part of the real estate. See *Total Petroleum*, 28 Kan. App. at 299-300. "Permanent" should not be taken to mean in perpetuity. See *Kansas City Millwright*, 221 Kan. at 664 (stating that permanency is a matter of degree based on facts and circumstances of the particular case). Permanency may be found if the property in question was intended to remain in place until it wore out or became functionally or economically obsolete. See *Michigan Nat'l Bank v. City of Lansing*, 96 Mich. App. 551, 554, 293 N.W.2d 626 (1980). Intention is determined as of the time of annexation and may be inferred from the nature of the annexed article, the purpose or use for which the annexation is made, and the structure and mode of the annexation. *Eaves v. Eaves*, 10 Kan. 314, 316 (1872).

The Taxpayer's witnesses contend that the assets at issue were designed, constructed and installed with the intention that they could be removed and transported to another site for installation if business conditions warranted. The fact that Taxpayer may decide to replace the assets at issue over time does not equate to a finding that the assets remained personal property. Often certain components of a building or structure wear out faster than others, such as the roof of a house, or are upgraded for more efficient operation, such as a furnace. These components, which start out as personal property, do not remain personal property once they become part of the permanent improvement. The weight of the evidence suggests that Taxpayer intended for the assets at issue to remain in place until they wore out, became obsolete, or needed to be upgraded. Nearly all improvements to real property may be salvaged to a certain extent, but that does not make salvagable parts of an improvement personal property as long as they remain and function as part of the whole improvement. Based upon the facts and circumstances of this case, we find the intention prong of the fixtures test is satisfied.

One item at issue has a slightly different consideration. We find that the temperature monitoring system components for Bins Nos. R-5 and R-6 are not sufficiently annexed and adapted to the realty to be considered a fixture. The temperature monitoring system components include a box situated outside the bins and cables running inside the bins to monitor the temperature and moisture of the grain. The removal of the system would not incapacitate the function of the elevator or leave large holes in the structure. The temperature monitoring system /\*110only0 to the grain, not to the physical structure which is part of the realty. For these reasons, we conclude that the temperature monitoring system is personal property.

Based on the evidence presented at the hearing, duly weighing such evidence, the Board finds that the subject properties, as described above, except for the temperature monitoring system components for Bin R-5 and Bin R-6, for tax years 2013 and 2014, are determined to be real estate. The temperature monitoring system components for Bin R-5 and Bin R-6 shall be considered personal property and would be exempt pursuant to K.S.A. 2014 Supp. 79-223.

IT IS THEREFORE ORDERED that the finding made hereinabove, shall be, and is hereby, adopted by this Board.

IT IS FURTHER ORDERED that the appropriate officials shall correct the county's records to comply with this Order, re-compute the taxes owed by the taxpayer and issue a refund for any overpayment.

This order is a full and complete opinion pursuant to K.S.A. 74-2426(a), and amendments thereto.

Any party who is aggrieved by this order may file a written petition for reconsideration with this Board as provided in K.S.A. 77-529, and amendments thereto. *See* K.S.A. 74-2426(b), and amendments thereto. The written petition for reconsideration shall set forth specifically and in adequate detail the particular and specific respects in which it is alleged that the Board's order is unlawful, unreasonable, capricious, improper or unfair. Any petition for reconsideration shall be mailed to the Secretary of the Board of Tax Appeals. The written petition must be received by the Board within 15 days of the certification date of this order (allowing an additional three days for mailing pursuant to statute).

Rather than filing a petition for reconsideration, any aggrieved person has the right to appeal this order of the Board by filing a petition with the court of appeals or the district court pursuant to K.S.A. 74-2426(c)(4)(A), and amendments thereto. Any person choosing to petition for judicial review of this order must file the petition with the appropriate court within 30 days from the date of certification of this order. *See* K.S.A. 77-613(b) and (c) and K.S.A. 74-2426(c), and amendments thereto. Pursuant to K.S.A. 77-529(d), and amendments thereto, any party choosing to petition for judicial review of this order is hereby notified that the Secretary of the Board of Tax Appeals is to receive service of a copy of the petition for judicial review. Please note, however, that the Board would not be a party to any judicial review because the Board does not have the capacity or power to sue or be sued. *See* K.S.A. 74-2433(f), and amendments thereto.

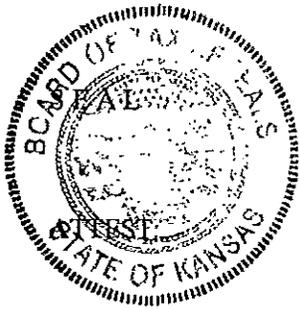
If both parties are aggrieved by this order, and one party timely appeals this order to the district court (which necessitates a trial de novo pursuant to K.S.A. 74-2426(c)(4)(A)), then this order will be deemed final and will render moot any pending petition for reconsideration or request for a full and complete opinion filed by the other party. If both parties are aggrieved by this order, one party timely appeals this order to the court of appeals (which would involve appellate review under the Kansas judicial review act), and the other party timely files a petition for reconsideration, then this order will be deemed non-final and the Board will proceed to render an order regarding reconsideration.

Unless an aggrieved party files a timely petition for reconsideration as set forth herein, this order will be appealable by that party only by timely appeal to the district court or the court of appeals as set forth above.

The address for the Secretary of the Board of Tax Appeals is Board of Tax Appeals, Eisenhower State Office Building, 700 SW Harrison St., Suite 1022, Topeka, KS 66603. A party filing any written request or petition shall also serve a complete copy of any written request or petition on all other parties. Please be advised that the administrative appeal process is governed by statutes enacted by the legislature and no further appeal will be available beyond the statutory time frames.

IT IS SO ORDERED

THE KANSAS BOARD OF TAX APPEALS



*Ronald C. Mason*  
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RONALD C. MASON, BOARD MEMBER

*James D. Cooper*  
\_\_\_\_\_  
JAMES D. COOPER, BOARD MEMBER

*Arlen Siegfried*  
\_\_\_\_\_  
ARLEN SIEGFREID, MEMBER PRO TEM

*Joelene R. Allen*  
\_\_\_\_\_  
JOELENE R. ALLEN, SECRETARY

**CERTIFICATION**

I, Joeline R. Allen, Secretary of the Board of Tax Appeals of the State of Kansas, do hereby certify that a true and correct copy of this order in Docket Nos. 2013-2335-EQ & 2014-2560-EQ and any attachments thereto, was placed in the United States Mail, on this 23rd day of September, 2015, addressed to:

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IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.

  
\_\_\_\_\_  
Joeline R. Allen, Secretary