

BEFORE THE BOARD OF TAX APPEALS
STATE OF KANSAS

IN THE MATTER OF THE
EQUALIZATION APPEALS OF
COFFEYVILLE RESOURCES
NITROGEN FERTILIZERS, L.L.C.
FOR THE YEAR 2008 IN
MONTGOMERY COUNTY, KANSAS

Docket Nos. 2008-7226-EQ
and 2008-7227-EQ

ORDER ON REMAND

Now the above-captioned matters come on for consideration and decision by the Board of Tax Appeals of the State of Kansas. An evidentiary hearing was conducted commencing January 31, 2011. After the Kansas Court of Appeals remanded these matters to the Board, oral arguments were conducted March 2, 2015. Lynn D. Preheim and Jarod C. Keiffer, Attorneys, appeared on behalf of Coffeyville Resources Nitrogen Fertilizers, L.L.C., Taxpayer. Montgomery County, Kansas (herein the "County") appeared by and through Jeffery A. Jordan and James M. Armstrong, Attorneys.

After considering all the arguments presented and the evidence in the record, the Board finds and concludes as follows:

Jurisdiction over the subject matter is proper pursuant to K.S.A. 2014 Supp. 79-1448, K.S.A. 2014 Supp. 79-1609, and an unpublished *Memorandum Opinion* from the Kansas Court of Appeals affirming in part and reversing in part the decision below, and remanding this matter to the Board with directions. *In re Tax Appeal of Coffeyville Res. Nitro. Fertilizers, L.L.C.*, No. 107,705, 2013 WL 4046403 (Kan. App. 2013) (unpublished opinion), *rev. denied* 299 Kan. ____ (2014). The tax year in issue is 2008 and the subject matter of these appeals is described as follows:

Real estate and improvements commonly known as E. Martin St., Montgomery County, Kansas, also known as Parcel IDs # 063-197-36-0-10-07-002.00-0 and 063-197-36-0-10-07-004.00-0.

Taxpayer Coffeyville Resources Nitrogen Fertilizers, L.L.C. (herein "CRNF") owns and operates a nitrogen fertilizer plant located on 15 acres of land in Coffeyville, Kansas. The plant includes various buildings; numerous concrete piers, pads, and foundations; a number of structural improvements; and hundreds

of other assets which the Taxpayer owns and uses in its fertilizer manufacturing operation. CRNF contends that 699 of its assets (herein "Assets in Dispute") have been improperly classified by the County as real property when these items are, pursuant to Kansas law, personal property. In a split decision, the Kansas Court of Tax Appeals [predecessor to this Board and herein "COTA"] held that the assets in dispute were properly classified as real property and the fair market value of the real property was \$303,066,838. *In re 2008 Tax Year Equalization Appeal of Coffeyville Resources Nitrogen Fertilizers, L.L.C.*, COTA Order certified January 13, 2012. CRNF appealed the COTA decision to the Kansas Court of Appeals.

The Court of Appeals found that the parties, at least initially, presented this dispute as an all or nothing proposition, which, in turn, required COTA render its classification decision regarding the plant assets "as a 'single, huge machine' instead of individual assets." *In re Tax Appeal of Coffeyville Res. Nitro. Fertilizers, L.L.C.*, No. 107,705 at 9. The Court of Appeals found that certain of the assets in dispute were "small and/or easily removable while other assets are very large and/or difficult to remove." *Id.* at 8. While the Court of Appeals did not rule on the classification issue, it clearly suggested that "if the assets are considered individually or in groups of similar assets, it is likely that some of the disputed assets are fixtures – or real property – while others are personal property." *Id.* at 8 - 9. Based thereon, the Court of Appeals remanded these matters with instructions that the fact-finding tribunal below "make specific findings and conclusions, based on the *Total Petroleum*¹ factors, as to whether each asset – or group of assets – should be classified as real property or personal property." *Id.* at 9. After review of the record evidence and the arguments presented, the Board makes the following findings of fact and conclusions of law.

Findings of Fact

The subject property consists of land, a concrete block control building, three large final product storage tanks (20,000 gallon to 30,000 gallon in size) and various machinery and equipment used in the Taxpayer's fertilizer manufacturing operation. The parties agree that the real property valuation of the land and the control building is \$420,000.

In regard to the classification issue, the parties stipulated that the classification of the land, control building and the three large storage tanks located at the plant are real property. The parties, further, agree that certain machinery and equipment used by CRNF to support its manufacturing process are personal property. The 699 assets in dispute – items such as valves, pumps, filters, coolers,

¹*In re Equalization Appeal of Total Petroleum, Inc.* 28 Kan. App. 2d 295, 16 P.3d 981 (2000).

condensers, tanks, drums, motor hoists, cranes, generators, conveyors, gasifiers, and rod mills – constitute the remaining machinery and equipment used in CRNF's manufacturing process of producing nitrogen-based fertilizer.

The Fertilizer plant consists of six primary, independent units including: a gasification unit, a selexol unit, an ammonia plant, a urea plant, a nitric acid plant, and an UAN (urea ammonium nitrate) plant. The plant was originally designed and constructed between 1997 and 2000 by its prior owner, Farmland Industries, Inc., from a combination of new parts and used parts that were relocated from other sites to Coffeyville. Of the entire list of 699 assets, only one has a use specific to a fertilizer plant – a converter internal installed in one of the pressure vessels that can only be used for making ammonia. Every other asset has other applications, and almost all of the assets were generic off-the-shelf purchases.

Approximately 134 of the assets originated from an electrical power plant constructed in 1982 in Daggett, California known as the Coolwater plant. The Coolwater plant produced electricity from a petroleum coke to gasification process and had nothing to do with the manufacture of fertilizer. After Farmland purchased the Coolwater plant assets, they were disassembled, relocated to Coffeyville, and re-tasked to fit the Taxpayer's manufacturing requirements. The vast majority of the Coolwater assets were not specifically designed for the subject plant and could be used elsewhere in other manufacturing applications, but were purchased because they had the capacity and specifications that met CRNF's needs. A main gasifier (also referred to as the 2B structure) from the Coolwater plant had to be shortened in height for use at the subject facility.

Farmland also purchased assets off the used equipment market. Only a few of the used assets had to be modified for use in the plant. Farmland filed for bankruptcy in 2002 and CRNF purchased the plant out of Farmland's bankruptcy estate in March 2004 for \$7,000,000. The subject facility was exempt from ad valorem property taxes for the ten-year period beginning January 1, 1998 and ending December 31, 2007. The subject facility was placed on the County tax rolls for the first time in 2008.

Significant concrete foundations and underground piers were constructed to support the plant's processing equipment. Approximately 600 piers were installed and extended to bedrock for stability. The piers range in diameter from 1.5 feet to 3 feet, and were from 20 to 40 feet tall. Concrete slabs several feet thick were poured on top of the piers as needed. For the main and spare gasifiers, more than six million pounds of concrete and steel were placed into the ground for support. Over 29,000 cubic yards of soil was excavated to install the foundations for the plant.

The geotechnical design of the plant required that the above-ground structures withstand 80 mile per hour winds, with a 100 mile per hour wind maximum, though the UAN plant was designed for an 85 mile per hour wind maximum. Kansas climate and average rainfall were also considered in the plant's design.

Neal Barkley, CRNF Plant Manager, appeared as a witness for the Taxpayer. Barkley is a registered professional chemical engineer and has employment experience in the industrial manufacture of fertilizer beginning in 1980. Barkley was employed first as the project manager and then plant manager at the plant since its construction in 1999. Barkley discussed the annexation and adaptation of the assets in dispute as well as the operation of the plant in general.

The plant is constructed in an erector-set fashion whereby all of the assets in dispute are bolted onto concrete foundations or bolted to structural steel that itself is bolted to foundations. The gasifier units are an exception as they are fastened to their foundations with bolts and cemented into concrete. Barkley testified that the attachment mechanisms are not intended to make the assets permanent annexation to the land, but to keep equipment from blowing over or, in the case of assets with moving parts, to stabilize the asset for proper operation.

Many of the assets have lifting mechanisms incorporated into their design (lifting lugs, lifting brackets, and other structural supports) as it is known that they will have to be moved in and out of the plants. Certain of the assets are skid mounted by design, which involves mounting multiple equipment items onto a skid for ease of transport or installation.

Pumps, compressors, heat exchangers and other assets are regularly removed and replaced for maintenance and repair. CRNF has capital spares on hand for replacement of those assets it moves in and out of operation often. For example, CRNF maintains six feed injectors, even though only one is needed to operate a gasifier. CRNF also maintains multiple hot gas expanders and transformers that it moves in and out of the plant, as necessary. Many of these assets are removed and replaced routinely on a "turnaround basis", which is normal, scheduled replacement. Removing and replacing assets at the facility typically can be accomplished without causing physical damage to the land, foundation structures, or other equipment. CRNF owns a variety of forklifts, small carrydeck cranes, larger cranes, and even has hoists integrated into the plants structure to be available to move certain assets.

In addition to maintenance and repair, assets are at times replaced with assets that are larger, more efficient, or more technologically advanced. Several large assets had actually been removed from the plant such as the spare gasifier,

an expander gas heater, and an 80 foot tall secondary reactor weighing 360,000 pounds. The secondary reactor ruptured in 2010 and had to be moved out of the plant for repair off-site. While this reactor was being repaired, CRNF purchased, installed, and operated a used reactor obtained from Louisiana. At the time of the original hearing, CRNF was in negotiations with a fertilizer manufacturer in Oklahoma to sell the replacement reactor.

Only a very few of the assets are especially large and the vast majority of the assets can be moved in a single piece. Of the assets in dispute, 50 assets are small enough to be moved by hand, 272 assets could be hauled in the bed of a pickup, 275 assets could be hauled by semi-trailer truck, and 29 assets would need to be moved by rail.

Fourteen of the 699 assets cannot be moved in a single piece and were assembled on-site to some degree. These assets must be disassembled for removal and transport. These assets are the Coke Silo (this asset has two asset numbers), five intermediate process tanks (two slurry run tanks, two shift tanks, and one solvent tank), five equipment covers, the cooling tower and the cold lime softener. Two intermediate process tanks were purchased and relocated to the plant from the Coolwater facility in California. "Equipment covers" are listed as personal property by the State of Kansas, Division of Property Valuation ("PVD") 2008 *Personal Property Valuation Guide* and Barkley testified that the subject covers would go with the underlying assets, if they were sold.

A substantial and active market exists for the sale and relocation of used industrial equipment such as the assets in dispute. Fertilizer plant assets are sold and relocated as entire plants, as sub-units within the plant, and as individual items. Relocations of entire plants occur in some instances, yet are relatively rare.

Kevan Vick, Executive Vice President and Fertilizer General Manager for CVR Energy, the parent company of CRNF, appeared as a witness for the Taxpayer. Vick is a registered professional chemical engineer and since 1976 has had employment experience as process engineer, administrative engineer, technical superintendent, plant manager, general manager of nitrogen manufacturing and at his current position with CVR Energy. Vick testified that CRNF actively and regularly monitors the used equipment market for acquisition of used industrial equipment. Vick submitted that many fertilizer plants have ceased operations for various economic reasons and plant assets are relocated to areas where they can profitably operate. Vick regularly receives publications and correspondence concerning industrial equipment available for sale and he maintains ongoing dialogue with used equipment dealers and persons in the business of brokering and managing used assets. Vick testified that CRNF was actively evaluating a potential purchase of used gasifiers, and an air separation

plant and associated equipment. Further CRNF had recently evaluated purchasing other fertilizer plant locations.

John Jenkins, Engineering Consultant, appeared as a witness for the Taxpayer. Jenkins is a registered professional chemical engineer and is employed by Jacob Consultancy to provide services for front end design for technical and economic evaluation of projects, primarily petrochemical or chemical plants. Jenkins testified regarding his involvement with the relocation of an ammonia fertilizer plant from Mississippi to Australia, the relocation of a refinery from Italy to Pakistan, the relocation of a fertilizer plant from Europe to Oman, and the relocation of a small refinery-type unit from Bakersfield, California to Thailand. Jenkins testified that the relocation of fertilizer plants and other large industrial assets is so common that an entire industry exists to broker sales and assist in the relocation of industrial equipment.

James L. Watson, Engineering Consultant, appeared as a witness for the County and is employed by Pearson Watsons Millican & Company where he provides engineering and financial consulting services to a variety of clients from banks to major oil companies. Watson is a registered professional mechanical engineer and has employment experience in the oil production and oil products manufacturing industries. Watson discussed the assets in dispute and provided his determinations, based on applicable law, as to whether these assets were real or personal property.

Kamyar Manesh, Trust Administrator Program Manager for the Farmland assets at Shah Environmental Liability Solutions, appeared as a witness for the Taxpayer and testified regarding Farmland's handling of its assets at Farmland's fertilizer plant in Lawrence, Kansas. After Farmland's Lawrence plant ceased operations, Farmland determined that several of the operating units had value and could be sold off as whole operating units for relocation. The Lawrence plant further had assets that were subsets of operating units – such as a refrigeration system, steam generation system and water treatment system – that had value. Farmland further determined that individual pieces of equipment – such as pumps, turbines, or compressors – also had value on the used equipment market. Farmland's ammonia and urea plants were purchased by Oman Chemical, dismantled, and moved to Oman. Further, two of Farmland's nitric acid plants were sold and relocated to Columbia, South America. Other miscellaneous equipment such as pumps, compressors, and cooling tower fans were sold to private bidders.

On or about July 31, 1997, the Montgomery County Action Council prepared a tax abatement cost/benefit analysis for the subject facility, as required by the Kansas industrial revenue bond statutes. That analysis allocated \$252,270,000 of

the estimated cost of the project to personal property. Approximately five months later, Farmland entered into an easement agreement and a head lease with the City of Coffeyville and the Wilmington Trust Company for purposes of constructing the subject facility. Those documents describe the production assets of the plant as "personal property."

Farmland began the Industrial Revenue Bond tax exemption process before commencing construction of the subject facility. The company filed its tax exemption application with the County on October 23, 2003. In its application, Farmland provided a list of property denominated "personal property." That list comprised all of the facility's production assets, including the assets in dispute.

On November 14, 2003, the Kansas Board of Tax Appeals (BOTA) issued an *Order* granting Farmland's Industrial Revenue Bond tax exemption application. The BOTA order identified the subject plant's production assets as "machinery and equipment."

For tax year 2004, the Montgomery County Appraiser's office prepared an annual claim of exemption for Farmland's approval. That document incorporated the list of assets contained in the BOTA Industrial Revenue Bond tax exemption *Order* and identified the subject facility's production assets, including the assets in dispute, as "personal property." Farmland and its successors in interest, including Taxpayer, filed annual claims of exemption as well as annual personal property renditions describing the assets in dispute as "personal property." The Montgomery County Appraiser's office accepted those annual claims and renditions without modification or objection.

Applicable Law and Court Conclusions

Classification

In its remand decision on these matters, *In re 2008 Equalization Appeal of Coffeyville Resources Nitrogen Fertilizers, L.L.C.*, No. 107,705 at 7, the Court of Appeals instructed that the disputed assets be examined either individually or in groups of similar assets pursuant to the three-part test set forth in *In re Equalization Appeal of Total Petroleum, Inc.*, 28 Kan. App. 2d 295, 16 P.3d 981 (2000). *Total Petroleum* held that "the test for determining whether personal property becomes a fixture is: (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." *Id.* at 299 (quoting *Stalcup v. Detrich*, 27 Kan.App.2d 880, 10 P.3d 3 (2000)).

Application of the three-part test prescribed in *Total Petroleum* has culminated in the Board's findings and conclusions regarding those assets the record evidence indicates retained their personal property characteristics, hereinafter referred to as "the personal property assets", and those assets the record evidence indicates lost their identity or character as separate items of personal property and became a part of the realty, hereinafter referred to as "the real property" or "the real property fixtures."

In regard to all of our findings and conclusions, the Board finds the Taxpayer's witnesses – specifically, Neal Barkley, CRNF Plant Manager; Kevan Vick, CRNF Executive Vice President and Fertilizer General Manager; and Kamaya Manesh, Farmland Asset Trust Administrator – provided testimony demonstrating detailed knowledge of the day-to-day operation of the subject plant, as well as the acquisition, operation, and market for industrial equipment such as the assets in dispute that was collectively superior to that of the witnesses who appeared for the County.

Annexation

The first part of the fixtures test is annexation. 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, Miller & Co. v. Simpson*, 16 Kan. 43, 44, 1876 WL 993, 16 Kan. at 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). However, where removal 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).

Nonetheless, 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."

Atchison, Topeka & Santa Fe Ry. v. Morgan, 42 Kan. 23, 29, 21 P. 809 (1889).

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). 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 regard to the personal property assets, the Board finds the substantial credible evidence indicates that none of these assets are attached to the land in a permanent manner. Instead, the personal property assets are bolted into place and readily movable. Each personal property asset has design features that make it readily movable. Further, the subject plant itself has various hoists and small cranes incorporated into its structure to allow ready removal of certain assets.

The personal property assets are actually and routinely moved by the Taxpayer who maintains a fleet of equipment to facilitate this task. Movement of assets in and out of the plant is a normal business practice of the Taxpayer and is done without damaging or removing the foundations, underlying the land, or other equipment. There exists an active industry of brokers and sellers specializing in

the acquisition, sale, and relocation of used industrial assets such as those assets determined herein to be personal property.

Adaptation

The second prong of the fixtures test is adaptation. As discussed in the original Court of Tax Appeals [predecessor to this Board] decision on these matters:

The focus of the adaptation prong is the use to which the item in question is put relative to its surroundings. See generally, *Morgan*, 42 Kan. 23, 21 P. 809 (1889). 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." *Id.* at 29. If the property is an integral or essential part of the use that is 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 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 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 [v. Detrich]*, 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.” 2008 *PVD Personal Property Valuation Guide* at p. ii.

Original COTA Order, January 13, 2012, pp. 11-12

In regard to adaptation, the uncontroverted evidence indicates that the personal property assets, when examined individually, are used to serve and support the Taxpayer’s manufacturing operation and are, in no way, adapted to the land. The personal property assets were acquired, whether they were new or used, generic and “off-the-shelf”, and can be used in a variety of manufacturing applications. One asset, a converter internal installed in one of the pressure vessels, can only be used for making ammonia. It is noted that this asset’s specific manufacturing use is not limited to the Taxpayer’s manufacturing operation.

The personal property assets can be removed from the plant without removing or damaging the assets, foundations or the underlying land. There is no evidence in the record indicating that any of the personal property assets were designed to fit the subject land nor is there any rational reason to believe these assets could not easily be re-tasked in another location. A significant number of the subject assets, the Coolwater Project assets, were, before acquisition and relocation to the subject facility, utilized at a California facility having different construction requirements to account for the property being in an earthquake zone.

Those Coolwater assets herein deemed personal property, when examined individually, were relocated and installed at the subject plant in Coffeyville with little design change or modification. One asset, a main gasifier (also referred to as the 2B structure) from the Coolwater plant, had to be shortened for use at the plant. The Board notes that this adaptation was to comply with the requirements of the manufacturing operation and was not done for adaptation to the subject land.

The concrete foundations that many of the assets in dispute are situated upon were specifically designed, constructed, and installed pursuant to the topography of the subject land and, thus, are clearly adapted to the land. For proper stability and support, the concrete piers are designed to connect with the underlying bedrock. In its remand decision, the Court of Appeals, however, specifically rejected the "single machine" concept for the subject assets and directed the Board to apply the three-part fixtures test to each asset on an individual basis. *In re Tax Appeal of Coffeyville Res. Nitro. Fertilizers, L.L.C., No. 107,705* at 9. The subject foundations are properly not included in the assets in dispute and are not part of any asset herein determined by this Board to be personal property.

Summarily, the Board finds no evidence that the personal property assets were designed with the subject site in mind, and the Board is persuaded that the assets herein deemed personal property assets are generic, off-the-shelf, and can be utilized in a variety of manufacturing applications. Further, the personal property assets can be readily removed from the subject plant and re-erected at other sites if needed. Taxpayer's witnesses presented numerous examples of plants, similar to the subject in their manufacturing process, equipment utilized, and construction, wherein plant assets comparable to those deemed personal property herein were sold after initial utilization and then relocated to other areas of the U.S. or the world. The Board notes, however, the sale and subsequent relocation of an entire plant as one operating units is rare.

Intent

The third prong of the fixtures 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. 2d at 301. "Permanent" should not be taken to mean in perpetuity. *See id.*; *see, also, Kansas City Millwright Co., Inc. v. Kalb*, 221 Kan. 658, 562 P.2d 65, 70 (1977) (stating that permanency is a matter of degree based on facts and circumstances of 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*, 96 Mich. App. at 554.

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. Estes*, 10 Kan. 314, 316 (1872). The 2008 PVD Personal Property Valuation Guide (herein "PVD Guide") describes the factors that may affect the analysis of intent:

Intent is not determined simply by what a person verbally expresses. Rather, the courts have stated that *it is inferred from the nature of the item affixed; the relation and situation of the party making the annexation; the structure and mode of annexation; and the purpose or use for which the annexation was made.* In other words, the court will look back at the objective data garnered from the first two tests, or from independent documents (documents prepared for purposes other than for a hearing on the issue of whether the property is real or personal). For example, a lease agreement may reveal intent. The courts look for objective data to determine whether the owner of the property at issue intended for it to become a part of the real property.

2008 *PVD Guide* at p. ii (emphasis original).

For those assets herein found to be personal property, the Board finds nothing in the annexation or adaptation analyses performed above that indicates that any individual asset was placed in service with the intent to become a permanent fixture to the land. All of these assets are movable, the overall design of both the plant and the individual assets allow for ready removal, many assets were relocated from other locations to the subject plant, and many assets have since been moved in or out of the plant for various reasons.

In addition to the objective analysis of the annexation and adaptation tests, there were numerous documents created at the time of the plant's construction establishing that the assets in dispute were intended to be personal property. Documents created for lease purposes, for Industrial Revenue Bond tax exemption purposes, and for ad valorem property tax purposes consistently indicate that the prior and current owners of the assets consistently and exclusively characterized the assets in dispute as personal property.

All three parts of the test — annexation, adaptation, and intention — must be considered when determining whether an item has become a fixture of the real estate to which it is attached. *See PVD Guide* at p. ii. 35A Am. Jur. 2d Fixtures §

4 instructs that “[g]enerally all three criteria in the three-part test must exist for an item to be deemed a fixture”. The Board finds the personal property assets do not satisfy this three-part analysis. For the items herein found to be personal property, the Board finds the equipment was not annexed to the land in a permanent fashion; the equipment was not adapted to the land; and there is substantial credible evidence from the equipment owners that the assets be treated as personal property at the time of installation.

For the foregoing reasons, and after a thorough application of the three-part fixture test prescribed in *Total Petroleum*, the Board finds and concludes that all of the assets in dispute, except the 17 assets specifically set forth below have retained their identity as personal property and, therefore, shall be classified as personal property for the tax year in issue.

As stated above, the Board finds 17 of the assets in dispute have lost their original personal property characteristics and have become real property fixtures. These items, deemed herein real property fixtures, consists of the 14 assets deemed “close calls” by the Taxpayer as well as three (3) other assets to wit: The Coke Silo (Asset Nos. 100146 & 100604), the five Intermediate Process Tanks (Asset Nos. 100606, 100607, 100663, 100743, & 100740), the five Equipment Covers (Asset Nos. 100139, 100145, 100141, 100138, & 100140), the Cooling Tower (Asset No. 100733), the Cold Lime Softener (Asset No. 100709), the Gasifier Elevator (Asset No. 100334), Change House (Asset No. 100142), and Oil Storage Building (Asset No. 100143).

The Board finds these assets are all each too large to be moved as a single unit and must be disassembled to be moved. Although the Taxpayer asserts these items are readily movable, the Board finds the character, nature, and design/construction of these assets all have indicia of real property fixtures. The Board has not been persuaded that these assets can be taken apart and reassembled without significant damage to the equipment itself and, further, the Board has not been persuaded that it is economically feasible to remove and resale these items. Noting the Taxpayer has the burden of proof on issues of classification, *see COTA Order on Evidentiary Burden* (January 11, 2011), the Board finds and concludes the present real property classification of these 17 items is hereby sustained.

Valuation

The County bears the evidentiary burden herein with regard to issues of valuation. *Id.* and K.S.A. 2014 Supp. 79-1609. In its original *Order*, the COTA majority held that the fee appraisal compiled by Hadco International (Hadco) and

relied upon by the County was in substantial compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) and, with other indicia of value in the record, provided a valid basis for estimating the fair market value of the subject facility. *Original COTA Order* at 25. The Hadco Appraisal, however, was prepared pursuant to the appraisal determination that all of the assets in dispute were real property. *Taxpayer Ex.* 210, pp. 49-86. As such, the Board's above findings and conclusions on classification have effectively rendered this appraisal – the sole competent valuation evidence in the record – of little, if any, probative value.

In its remand decision, the Court of Appeals prudently anticipated that new appraisals may be required to enable this Board to properly adjudicate the valuation challenge. *In re Tax Appeal of Coffeyville Res. Nitro. Fertilizers, L.L.C. No. 107,705* at 12. Therefore, the Board will withhold its valuation decision to afford the parties the opportunity to prepare and submit valuation evidence pursuant to the Board's classification determinations. In compiling this evidence, the parties should be continuously cognizant of the appraisal concerns found by dissenting COTA Judge Kubik, which were both noted and shared by the Kansas Court of Appeals. *Id.* at 13. After receipt of the Parties' valuation evidence, these matters will be fully submitted and the Board will issue its final decision on remand.

IT IS THEREFORE ORDERED BY THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS that the above findings and conclusions shall be made orders of the Board.

IT IS FURTHER ORDERED that, for the reasons set forth herein, these matters will be set for further proceedings.

IT IS SO ORDERED

THE KANSAS BOARD OF TAX APPEALS



Ronald C. Mason
RONALD C. MASON, BOARD MEMBER

James D. Cooper
JAMES D. COOPER, BOARD MEMBER

Arden Siegfried
ARLEN SIEGFREID, MEMBER *PRO TEM*

Joelene R. Allen
JOELENE R. ALLEN, SECRETARY

CERTIFICATION

I, Joelene 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. 2008-7226-EQ and 2008-7227-EQ, and any attachments thereto, was placed in the United States Mail, on this 30th day of March, 2015, addressed to:

Edmund Gross, Vice President
Coffeyville Resources Nitrogen Fertilizers L L C
10 E Cambridge Cir DrSte 250
Kansas City, KS 66103

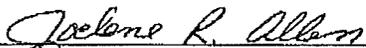
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Nancy Clubine, Montgomery County Treasurer
Montgomery County Courthouse
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IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.



Joelene R. Allen, Secretary