

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

IN THE MATTER OF THE EQUALIZATION
APPEALS OF CONESTOGA ENERGY
PARTNERS, L.L.C. FOR THE YEARS 2009
AND 2010 IN FINNEY COUNTY, KANSAS

Docket Nos. 2009-3143-EQ
and 2010-3925-EQ

**ORDER GRANTING RECONSIDERATION
AND
ORDER ON RECONSIDERATION**

Now the above-captioned matters come on for consideration and decision by the Board of Tax Appeals of the State of Kansas. The Board has jurisdiction of the subject matter and the parties, as proper equalization appeals have been filed pursuant to K.S.A. 2014 Supp. 79-1609, and as timely *Petitions for Reconsideration* have been filed pursuant to K.S.A. 2014 Supp. 74-2426 and K.S.A. 2014 Supp. 77-529.

The subject matter is an ethanol manufacturing facility located in Garden City, Kansas. The Taxpayer claims that certain of its manufacturing assets have been improperly classified as real property by the County. In its *Full and Complete Decision* on these matters, the Board indicated its findings and holdings on the Taxpayer's classification and valuation challenges regarding the subject assets based on the record evidence. The Taxpayer requests reconsideration in regard to 10 of the 25 assets the Board held had "lost their original personal property characteristics and have become real property fixtures." *Full and Complete Decision*, p. 13. The County requests reconsideration of 20 assets deemed personal property by the Board due to alleged inconsistencies. The County further submits that it is tasked with the classification of personal property throughout the County and seeks guidance from the Board in classifying personal property for all Finney County commercial property owners. Both Taxpayer and County indicate that they are not requesting reconsideration of the assigned valuation of the subject property.

I.

Given the number of classification disputes regarding commercial property for purposes of ad valorem taxation statewide, we will first address the County's legitimate request for guidance in resolving property classification disputes among its citizenry. This tribunal has similarly yearned for one all-encompassing statement in the law defining fixtures in a manner capable of application in all

situations. We distinctly understand the practicality of a taxing administrator possessing such a template or mechanism wherein in all circumstances, in regard to a certain item, or under certain specific circumstances, a property item is without question properly classified as either real or personal property.

Both the Kansas Courts and most modern authorities, however, have indicated, in no uncertain terms, that there is no bright-line rule and the personal property/fixtures determination must be made through an analysis 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); *see also Kansas City Millwright Co. v. Kalb*, 221 Kan. 658, 562 P.2d 65 (1977), *modified* 221 Kan. 752, 564 P.2d 1280 (1977) (*citing* 35 Am. Jur. 2d, Fixtures, § 1). As our state's highest court observed long ago, it is "frequently a difficult and vexatious question to ascertain the dividing line between real property and personal property and to decide on which side of the line certain property belongs." *Atchison, Topeka & Santa Fe Ry. v. Morgan*, 42 Kan. 23, 27-28, 21 P. 809 (1889).

The Kansas Court of Appeals has recently indicated that the personal property/fixtures dispute was so fact driven that it could foresee situations wherein "[f]or example, a tank might, under the three-part test in *Total Petroleum*, classify as real property at one facility but personal property at another facility." *In re 2008 Equalization Appeal of Coffeyville Res. Nitro. Fertilizers, L.L.C.*, Case No. 107,705, 2013 WL 4046403 (Kan. App. 2013)(unpublished opinion, *rev. denied* 299 Kan. ___ (2014) at 7. Moreover, and in response to claims of non-uniformity and unequal tax treatment based on disparate classifications, the Kansas Appellate Court indicated that "evidence that similar property has been classified differently does not establish that the classifier actually treated one taxpayer differently." *Id.* As such, in terms of guidance, the Board can only instruct a taxing administrator to engage in a thorough examination of the attendant facts and circumstances based on the three-part fixtures test ((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) provided in *Total Petroleum*.

II.

Herein, and as indicated in the *Full and Complete Decision*, the Board found the extensive and compelling testimony and other documentary evidence presented by the Taxpayer's witnesses – most specifically, Dusty Turner, COO for Conestoga Energy Partners, L.L.C. – regarding each asset's respective annexation to the realty, adaptation to the use of that part of the realty with which it is attached, and

the intention of the party making the annexation. As previously stated, the Taxpayer's witnesses demonstrated specific and detailed knowledge of the use and function, site preparation, and mode of annexation/ attachment for each asset. In addition, expert testimony was presented indicating whether the removal of each asset would damage either the asset or the underlying land and evidence regarding whether the asset was designed, constructed and installed with the intent that it could be removed and transported to another site for installation if business conditions warrant. Taxpayer's witnesses, further, presented compelling evidence regarding whether each asset, if it were to break down, could be repaired or replaced; whether the asset was unique to the subject facility and whether the asset was similar to those found in numerous other comparable facilities throughout the country. Moreover, as the County's expert witness' testimony and evidence regarding the plant assets was not presented as to each individual item, but instead as parts of a unit or integral process, the Board found the Taxpayer's detailed testimony regarding each property item to be mostly uncontroverted.

The Board notes that certain assertions made in the County's *Petition for Reconsideration* are at odds with the record evidence: In regard to the Evaporators # 1 through # 8, the County indicates that these assets did require out of the ordinary site preparation and that these assets needed to be broken down into pieces to be removed. County *Petition for Reconsideration*, p. 10. The Board finds testimony from Turner indicating the contrary. Tr. Vol. I, pp. 150, 151, and 156. In addition, in regard to the Side Stripper, the County indicates that this asset did require out of the ordinary site preparation. County *Petition for Reconsideration*, p. 29. The Board finds testimony from Turner indicating the contrary. Tr. Vol. II, p. 413.

The Board finds that the parties have presented arguments and evidence that cause the Board to revise certain of its original holdings. The County presented detailed, labeled aerial photographs of the subject plant and assets – evidence not previously a part of the record – that, when examined with other hearing evidence, persuade the Board that the Cook water tank, Denaturant tank, Methanator tank, and Syrup tank are properly classified as real, and not personal property. While Taxpayer witness Turner presented substantial credible testimony indicating these assets had characteristics akin to personal property, this newly presented evidence persuades the Board to the contrary.

Further, the Board finds that re-examination of evidence regarding the annexation, adaptation, and the Taxpayer's intention regarding Yeast Tank #1 and Yeast Tank #2 persuade the Board that these items are, as testified by Turner, readily removable from the property without damage to either the asset or the

realty and intended by the applicant to be personal property. As such, the Board finds these items are properly classified as personal, and not real property.

In regard to each asset herein determined to be personal property, the Board finds and concludes that the substantial credible evidence indicates that none of these assets are attached to the land in a permanent manner. Movement of assets can be performed without damaging or removing the foundations, or damaging the land and other equipment. In regard to adaptation, the substantial credible 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. There is evidence in the record indicating that the personal property assets were not designed to fit the subject land and testimony from the Taxpayer's witness that the personal property assets could be re-tasked in another location. For the personal property assets, the Board further finds substantial credible evidence that none of these assets were placed in service to become a permanent fixture to the land.

The Board further finds 27 (the original 25 assets less the Yeast Tank #1 and Yeast Tank #2; and now including the Cook water, Denaturant, Methanator and Syrup tanks) of the assets in dispute have lost their original personal property characteristics and have become real property fixtures. The Board finds the size, character, nature, and design/construction of these assets all have indicia of real property fixtures. Noting the Taxpayer has the burden of proof on issues of classification, the Board finds and concludes these assets are hereby classified as real property.

In regard to the other assets presented for reconsideration and noting each party did not raise issues in their *Petitions for Reconsideration* regarding the assigned valuation, the Board finds that no evidence or arguments has been offered that would persuade the Board that the original decision should be further modified or altered. Therefore, in regard to these other assets, the decision as originally issued is hereby sustained.

IT IS THEREFORE ORDERED BY THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS that, for the reasons set forth herein, the above findings and conclusions are hereby made orders of the Board.

This is a final order of the Board of Tax Appeals. Any aggrieved person has the right to appeal this order 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. 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.

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

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. 2009-3143-EQ and 2010-3925-EQ, and any attachments thereto, was placed in the United States Mail, on this 5th day of June, 2015, addressed to:

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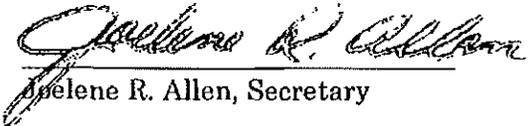
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IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka,
Kansas.


Joeline R. Allen, Secretary