

August 16, 2011

**FIXTURES AND TRADE FIXTURES  
CLASSIFICATION AS REAL OR PERSONAL PROPERTY**

**Purpose.** To advise county assessors of the duty to classify property as real or personal property and the analysis to use in determining the classification. An analysis of the item of property must be made to determine whether it is a fixture (real property) or a trade fixture (personal property).

**Definitions.**

**Fixture.** A fixture is real property. Real property includes all buildings, improvements, and fixtures, except trade fixtures. [Neb. Rev. Stat. § 77-103\(2\)](#). A fixture includes an item of property that is annexed, physically attached to, or incorporated into the real property. The item supports, enhances, or adds to the use of the real property to which it is annexed. Once annexed, the item loses the characteristic of being personal property and should be classified as real property. Fixtures are items used in the maintenance and operation of structures such as capital improvements (for example, central air conditioning, heating system, common lighting, and plumbing) and which add to the value of a structure, or appreciably prolong the useful life of the structure.

**Trade Fixture.** A trade fixture is tangible personal property. Trade fixtures include machinery and equipment, regardless of the degree of attachment to real property, used directly in commercial, manufacturing, or processing activities conducted on real property. [Neb. Rev. Stat. § 77-105](#). This is true whether the trade fixture (personal property) is owned or leased. A trade fixture includes any item of property that is placed upon or affixed to real property for the sole purpose of carrying on a trade or business. An example of trade fixtures are irrigation pumps. Trade fixtures do not become part of, or constitute capital improvements to the real property.

**Procedure and Implementation.** In *Vandenberg v. Butler County*, 281 Neb. 437 (2011), the Nebraska Supreme Court held that an irrigation pump was a trade fixture within the meaning of [§ 77-105](#). The application of the three-part test found in *Northern Natural Gas Co. v. State Bd. of Equal.*, 232 Neb. 806 (1989), was expressly overruled for taxation purposes. The Court stated that "...[§ 77-105](#) clearly controls the issue of classifications of fixtures for taxation purposes." There are three considerations in determining whether an item of property is a trade fixture.

**Machinery or Equipment.** The first consideration is whether the item is "machinery or equipment." "Machinery" has moving parts that transmit power or force. "Equipment" is a tool used for the performance of some operation. An example would be underground pipe used to irrigate agricultural or horticultural land. Since this underground pipe is used to deliver water from one location to

another, it can be considered machinery and/or equipment.

**Used in Commercial, Manufacturing, or Processing Activities.** The second consideration is whether the item is used in commercial, manufacturing, or processing activities. The county assessor will inspect the item to determine the specific purpose for which the item is used. Using the underground pipe in the prior paragraph as an example, the pipe is being used to move water inputs or water outputs for a commercial activity.

**Used Directly.** The final consideration is whether the item is being used *directly* in the commercial, manufacturing, or processing activities. “Directly” means that the machinery or equipment item is in immediate use for the commercial, manufacturing, or processing activities, without any intervening application. The example of the underground pipe used to irrigate agricultural or horticultural land is a trade fixture and is tangible personal property for property assessment purposes. Underground pipe used in a lawn sprinkler system is considered real property since it is not being used directly in a commercial, manufacturing, or processing activity. An exception would be if the lawn sprinkler system was being used by a sod farm, or for demonstration purposes by a sprinkler system installer.

Center pivots, pumps, and motors are tangible personal property. See, *Vandenberg v. Butler County*. The well and the well casing are attached to real property, are not trade fixtures, and are real property.

**Conclusion.** The analysis of whether an item of property is a fixture (real property), or a trade fixture (personal property), begins with an analysis under [§ 77-105](#). If an item of property is neither a trade fixture nor a fixture, the analysis reverts to whether the property fits within the definition of real property as defined by [§ 77-103](#) or personal property as defined by [§ 77-105](#).

APPROVED:

/s

Ruth A. Sorensen  
Property Tax Administrator  
August 16, 2011

APPROVED:

/s

Douglas A. Ewald  
Tax Commissioner  
August 16, 2011