

**PROPERTY TAX RULES COMMITTEE MEETING MINUTES**

Tuesday May 22, 2018, at 9:00 AM

Idaho State Tax Commission / Room 1CR5 / Plaza IV / 800 Park Ave / Boise, Idaho

**ATTENDEES:**

<b>Committee Members:</b>	Alan Dornfest, Rick Anderson, Betty Dressen, Brian Stender, Chris Rich, Janet James, Kathlynn Ireland, Sharon Worley, Glenna Young
<b>Commissioners:</b>	Ken Roberts, Tom Katsilometes
<b>Rules Coordinator:</b>	Kimberlee Stratton
<b>State Tax Commission Staff:</b>	George Brown, Jerott Rudd, Pam Waters, Mat Cundiff, Robert Rios, Shauna Roeber
<b>Guests:</b>	Brad Vanderpool, Carlie Foster, Joe Cox, John Foster, June Fullmer, Justin Aman, Linda Jones, Miguel Legarreta, Ray Moore, Sabrina Young, Sally Finlayson, Seth Grigg, Sharon Wiley, Terry Accordinio

**Welcome & Introductions**

*Committee Chair Alan Dornfest*

**Minutes from last 2 meetings**

*Committee Chair Alan Dornfest*

- Minutes unavailable but will be ready for approval at the next meeting.

**Temporary Rules Report – 600, 802 & 803**

*Committee Chair Alan Dornfest*

- Rules will be presented at the open meeting on May 23.
- The chair gave a brief explanation of each rule and said the rule draft was the same as the proposed rule.

**Review of Rules Status Report (as attached to agenda)**

*Rick Anderson*

**Rules:** (Action items are underlined.)

**Rule 005** - Future change of address for the ISTC

- The chair stated this rule would not be negotiated. There was a question as to whether the fax number would be the same. Rule was tabled until July

**Rule 312** - Application of I.C. 63-602Y to property owned by the government transferred to private party

- Discussion about the wording “owner” and “non-exempt status”.
- Discussion about possibly removing subsection 02.
- The chair said we should send this to the assessors and solicit comments, for consideration, along with George Brown’s legal comments, by the end of May.

**Rule 408** - Assessor’s request to re-examine operating property value must be filed before July 15

- The chair stated we are only changing one word, “final” to “preliminary”. Jerott Rudd will contact Katrina (Idaho Power) to see if she has any comments.
- Will make decision on this rule in June.

**Rule 600** - Property tax exemption – Provisional exemption (HB459)

- This rules packet was sent to all assessors and they were asked to reply or call the Idaho State Tax Commission with comments.
- Will discuss the permanent version again in June.

**Rule 610 & Rule 709** - Clarification that HOE and Circuit Breaker partial ownership rules apply only when the deed does not contain specific allocation percentages

- The chair wants to be as explicit as possible that we will default to the exact words of a deed when there is partial ownership.
- George Brown is okay with this and noted one of the legislators brought this up.
- The draft will be discussed again in June.

**Rules 613, 614** - Speculation Value for Agricultural Land and Examples – Subcommittee report

- The sub-committee chairman, Kathlynn Ireland, gave a report. They met two times.
- **Rule 613**
  - Irrigation exemption – decided there needs to be a methodology for calculation that works.
  - Decided there needs to be definitions.
  - Discussed extending the expense timeframe to mirror the one used for income.
  - The chair asked if the Farm Bureau was involved, and they were not. Brian Stender will contact them.
  - The chair gave his timeline for doing this rule this year.
- **Rule 614**
  - They are introducing a third methodology by combining cash rent and crop sharing techniques in a new example.
  - The draft also addresses what crops should be used as typical when developing crop rotation information.
  - The sub-committee will bring a second draft to the June meeting.
  - Discussed adding an example and the sub-committee will look into it.
- **Discussion about both rules**
  - Discussed doing the rule now or waiting due to the revaluation of agricultural land which is happening this year. There was discussion of a temporary rule and the chair clarified that a temporary rule is only done for a limited circumstance and would not be appropriate in this case.
  - Discussed that the assessors are sending their notices next week and they are using the current rule.
  - Discussed if the new methodology will result in a major shift in agricultural values and the sub-committee chair said it would not.
  - Commissioner Roberts asked if we should do these rules for review by the 2020 Legislature. The chair agreed we needed more time. George Brown and Rick Anderson noted we have three months in which we could finish these rules. The group discussed that there are 12 new assessors and it would be good to have this in place.

- Regarding costs related to exempt irrigation equipment, Commissioner Moyle asked if the counties would need additional resources for tracking and if they would need to keep track of actual equipment costs. The sub-committee chair stated that they would only need to use typical benchmark values.
- The chair stated the sub-committee must have a final draft by early August to include these rules this year and this can't wait until after the County Assessors' Conference.
- The chair wants the sub-committee to think about including an example on the irrigation equipment issue.
- Rick Anderson suggested we continue discussion at the next meeting to give more people and the assessors time to review these rules. The chair agreed more comments are needed. It was decided discussion should be carried forward.

**Rule 630** - New Capital Investments – (adds operating property, HB591)

- Will relook at the wording. Will change the wording in 6b to clarify that this section addresses locally assessed property rather than “real or personal property”.
- The chair will contact Ken McClure, who presented the legislation, about the rule.
- The chair will redraft this and then send to Ken McClure for review. He will bring this back to the June meeting.

**Rule 802** – Budget Certification relating to new construction and annexation: 1) Based on HB559 the rule provides for a deduction of property granted a provisional exemption, but previously included on a new construction roll. 2) The rule also creates procedures for calculating the amount to be added to the new construction roll when there are new districts or districts newly annexed into RAAs

- This is not as clear as it needs to be. The chair will redraft for the June meeting.

**Rule 803** - Budget Certification: 1) HB559 – provisional exemption refunds and recapture 2) HB392 – change solar farms date 3) HB 567a- cemetery district consolidation

- Discussed whether taxing districts should know what they've been billed in addition to what they received.
- Discussed if we should add this (first bullet point) back in the permanent rule.
- Committee will readdress.
- Betty Dressen will contact the clerks and the four counties involved with the solar farm issue.

**Rule 804** – Tax levy Certification – Urban Renewal Districts. Definition of “base assessment roll” [(I.C. 50-2903(4))] in respect to exempt property becoming taxable

- The committee will read this over to see if this is consistent with practice.
- The committee will also look at the language.
- The chair will rewrite, as necessary, for the June meeting.

**Rule 962** - (HB462) Forest Land Taxation Rule – Re-classification process to be determined by the Committee on Forest Land Taxation Methodology (CFTM)

- It was noted that some industry representatives want a lot of detail in the rules.
- Discussed that some industry has requested more notice than just one assessment.
- Discussed the certification of the inspector.

- The chair will redraft and send to CFTM within 2 weeks. He will then bring to the committee to approve, pending additional input from the CFTM.

**Discussion Items:**

❖ **Veterans' benefit program – surviving spouse**

- Sub-committee chair gave report. They will design the application.
- The chair asked for a draft to be brought to the June meeting.
- The chair asked for the draft to be sent to some veteran's associations for their review and input.

❖ **Agricultural equipment exemption for Hops related equipment – HB594a**

- Rick Anderson has material from some Oregon cases to review.
- Commissioner Roberts wants:
  - Consistency between counties and clarity in the law
  - To clearly delineate in these industries where the line of production stops and processing begins.
- George Brown said the administering agency for each crop needs to define for each crop what that line is.
- Brian Stender said when the crop hits the road the exemption is done.
- George Brown asked when is it a product and not a crop and stated an agriculture expert needs to define that for each crop.
- Commissioner Roberts stated we need to define the words 'production' and 'process'. He and Brian Stender suggested to the committee that they tour the hops facility and palletizer.
- The chair asked the committee if he should submit a request to the Division of Financial Management to work on a rule. The group affirmed.

**The chair asked if Tuesday, June 12 would work for the next meeting and it was affirmed by the group.**

**The meeting was adjourned.**

*Alan Dornfest*  
*Committee Chair*

*Kimberlee Stratton*  
*Rules Coordinator*

Draft of May 17, 2018

**.03 Cash Rent Analysis Examples:**

Individual Crop Cash Rent Example.

Crop	Contract Rents per Acre (Land Only)	Rotation in Percent	Weighted Income per Acre
Barley	\$150.00	14.00%	\$21.00
Beans	\$150.00	22.00%	\$33.00
Beets	\$300.00	11.00 %	\$33.00
G/Corn			
S/Corn			
Hay	\$150.00	23.00%	\$34.50
Potatoes	\$350.00	9.00%	\$31.50
Wheat	\$150.00	21.00%	\$31.50
Peas			
Oats			

Total Gross Income Per Acre	\$184.50
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Total Gross Income Per Acre	\$184.50
Less Water Cost	\$26.00
Less Electricity Cost	\$20.00
Less Management (@ 5%)	\$9.22
Less Income Attributable to Exempt Equipment	\$3.54
Total Net Income Per Acre	\$125.74

Total Net Income Per Acre	\$125.74
Cap Rate	7.00%
Individual Crop Cash Rent Value Per Acre	\$1796.28

Whole Farm Cash Rent Analysis Example.

Total Gross Income Per Acre from Whole Farm Cash Rent Data	\$200.00
Less Water Cost	\$26.00
Less Electricity Cost	\$20.00
Less Management (@ 5%)	\$10.00
Less Income Attributable to Exempt Equipment	\$3.54
Total Whole Farm Cash Rent Net Income	\$140.46
Cap Rate	7.00%
Whole Farm Cash Rent Value Per Acre	\$2006.57

**.04 Crop Share Analysis Example:**

Crop	Yield	Price	Gross Income	Landlord Share	Landlord Share Gross Income to Land	Rotation Percent	Per Acre Share of Gross inc. to Land
Barley	130.00	\$3.00	\$390.00	50.00%	\$195.00	14.00%	\$27.30
Beans	25.00	\$27.00	\$675.00	50.00%	\$337.50	22.00%	\$74.25
Beets	38.00	\$45.00	\$1710.00	33.33%	\$569.94	11.00%	\$62.69
G/Corn							
S/Corn							
Hay	6.00	\$120.00	\$720.00	50.00%	\$360.00	23.00%	\$82.80
Potatoes	450.00	\$5.00	\$2250.00	33.33%	\$749.92	9.00%	\$67.49
Wheat	120.00	\$4.50	\$540.00	50.00%	\$270.00	21.00%	\$56.70
Peas							
Oats							

Total Gross Income Per Acre	\$371.23
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Total Gross Income Per Acre	\$371.23
Less Water Cost	\$26.00
Less Electricity Cost	\$20.00
Less Management (@ 5%)	\$18.56
Less Landlord Share of Fertilizer Cost	\$60.00
Less Landlord Share of Chemicals Cost	\$32.00
Less Landlord Share of Seed Cost	\$27.00
Less Landlord Share of Harvest Cost	\$69.00
Less Income Attributable to Exempt Equipment	\$3.54
Total Net Income Per Acre	\$115.13

Total Net Income Per Acre	\$115.13
Cap Rate	7.00%
Crop Share Value Per Acre	\$1644.71

**05. Combination of Cash Rent and Crop Share Analysis Example:**

Crops in the Rotation for which Cash Rent agreement data is available.

Crop	Contract Rents per Acre (Land Only)	Rotation in Percent	Weighted Income per Acre
Beets	\$300.00	11.00 %	\$33.00
Potatoes	\$350.00	9.00%	\$31.50
	Total	20.00%	\$64.50

Total Gross Income for Cash Rent Portion	\$64.50
Less Cash Rent Rotation % of Water Cost (20%)	\$5.20
Less Cash Rent Rotation % of Electricity Cost (20%)	\$4.00
Less Management (@ 5%)	\$3.23
Less Income Attributable to Exempt Equipment (20%)	\$0.71
Total Net Income for Cash Rent Portion	\$51.36

Crops in the Rotation with Accurate Data for a Crop Share Agreement Analysis.

Crop	Yield	Price	Gross Income	Landlord Share	Landlord Share Gross Income to Land	Rotation Percent	Per Acre Share of Gross inc. to Land
Barley	130.00	\$3.00	\$390.00	50.00%	\$195.00	14.00%	\$27.30
Beans	25.00	\$27.00	\$675.00	50.00%	\$337.50	22.00%	\$74.25
Hay	6.00	\$120.00	\$720.00	50.00%	\$360.00	23.00%	\$82.80
Wheat	120.00	\$4.50	\$540.00	50.00%	\$270.00	21.00%	\$56.70
					Total	80.00%	\$241.05

Total gross Income for Crop Share Portion	\$241.05
Less Crop Share Rotation % of Water Cost (80%)	\$20.80
Less Cash Rent Rotation % of Electricity Cost (80%)	\$16.00
Less Management (@ 5%)	\$12.05
Less Fertilizer Cost for Crop Share Portion	\$38.00
Less Chemicals Cost for Crop Share Portion	\$14.00
Less Seed Cost for Crop Share Portion	\$13.00
Less Harvest Cost for Crop Share Portion	\$49.00
Less Income Attributable to Exempt Equipment (80%)	\$2.83
Total Net Income for Crop Share Portion	\$75.37

Total Combined Cash Rent + Crop Share Net Income	\$126.73
Cap Rate	7.00%
Value Per Acre	\$1810.42

## ORS 307.394 FARM MACHINERY AND EQUIPMENT

### SYNOPSIS

Certain farm machinery and equipment are exempt from taxation.

### FILING REQUIREMENT

None.

### ADDITIONAL CONSIDERATIONS

#### ORS

**307.394 Farm machinery and equipment; personal property used in farm operations; limitation.** (1) The following tangible personal property is exempt from ad valorem property taxation:

(a) Farm machinery and equipment used primarily in the preparation of land, planting, raising, cultivating, irrigating, harvesting or placing in storage of farm crops;

(b) Farm machinery and equipment used primarily for the purpose of feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or bees or for dairying and the sale of dairy products;

(c) Machinery and equipment used primarily to implement a remediation plan as defined in ORS 308A.053 for the period of time for which the remediation plan is certified; or

(d) Farm machinery and equipment used primarily in any other agricultural or horticultural use or animal husbandry or

any combination of these activities.

(2)(a) Items of tangible personal property, including but not limited to tools, machinery and equipment that are used predominantly in the construction, reconstruction, maintenance, repair, support or operation of farm machinery, and equipment and other real or personal farm improvements that are used primarily in animal husbandry, agricultural or horticultural activities, or any combination of these activities, are exempt from ad valorem property taxation.

(b) An item of tangible personal property described in paragraph (a) of this subsection is exempt from ad valorem property taxation only if the person that owns, possesses or controls the item also:

(A) Owns, possesses or controls the farm machinery, equipment and other real and personal farm improvements for which the item is used; and

(B) Carries on the animal husbandry, agricultural or horticultural activity, or

combination of activities, in which the farm machinery, equipment or other real and

personal farm improvements are used.  
[2001 c.753 §15; 2009 c.776 §8]

**308A.053** (5) "Remediation plan" means a plan certified by an extension agent of the Oregon State University Extension

Service to remediate or mitigate severe adverse conditions on farmland.

**OAR**

**150-307.394**

**Personal Property Used for Placing Farm Crops in Storage**

(1) Definitions:

(a) "Storage of farm crops" refers to the holding area in which a product is placed before processing begins.

(b) "Processing" is altering the crop in any way such as: washing, icing, sorting, grading, waxing, boxing, slicing, or cutting.

(c) "Primary" is the leading use or the use involving the highest percentage of time relative to all the various uses.

Example: If an unlicensed farm vehicle is used 45 percent of the time to move cleaned, sorted, washed and bagged carrots ready for market (PRODUCT); 30 percent of the time to move freshly-picked carrots from the field to the warehouse or cold storage facility; and 25 percent of the time sitting idle, then the vehicle is used primarily in a nonexempt status and is

fully assessable, even though that use is not 50 percent or more of the time available.

(2) Machinery and equipment used to place a farm crop in storage are exempt from taxation. However, once processing of the crop is begun, it is no longer a crop, but a product. When the same machinery and equipment are used for both placing in storage and processing the primary use is what determines its assessment status.

Example: Apples are picked and go directly into cold storage. This would be considered "placing in storage of farm crops." When these same apples are sorted, washed or boxed it becomes a product and placing back into cold storage until sold is not considered "placing in storage of a farm crops." At this point apples change from a crop to a product.

Stat. Auth.: ORS 305.100  
Stats. Implemented: ORS 307.400  
Hist.: RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; REV 4-2002, f. & cert. ef. 7-29-02, Renumbered from 150-370.400

**CASE NOTES**

Inventory exemption applies only to items that will become physical part of taxpayer's stock in trade and not to items merely used in process of producing merchandise. *Ore. Portland Cement Co. v. Dept. of Rev.*, 4 OTR 545 (1971), aff'd 262 Or 617, 500 P2d 1044 (1972), SC-5

Stores of nuclear fuel and fuel oil held for use in generating electricity were not inventory within meaning of this section. *Portland Gen. Elec. Co. v. Dept. of Rev.*, 7 OTR 33 (1977), TC-19

Farm Machinery and Equipment

Center pivot sprinkler systems, devices for farm irrigation, were “inventory” within subsection (3) of this section and entitled to partial exemption. *Eastern Ore. Farming Co. v. Dept. of Rev.*, 7 OTR 74 (1977), TC-20

Property used in oyster raising operation was not “farm machinery used in the planting, cultivating, or harvesting of farm crops” eligible for partial exemption of this section. *Oregon Oyster Co. v. Dept. of Rev.*, 7 OTR 308 (1978), TC-24

Taxpayer was not eligible for inventory exemption from personal property taxation where he proved only that he was engaged in casual sales conducted sporadically for profit and not sale of equipment in ordinary course of business. *Simpson v. Dept. of Rev.*, 299 Or 282, 702 P2d 399 (1985), SC-18

Are mushroom plant’s growing beds eligible for exemption. Real v. Personal Property. *West Foods v. Dept. of Rev.*, 10 OTR 7 (1985), TC-35

Legislature intended that exemption from ad valorem taxes now codified in this section apply only to category of tangible personal property defined in ORS 307.020 (3). *Saunders v. Dept. of Rev.*, 300 Or 384, 711 P2d 961 (1985), SC-22

Is machinery “moveable.” Real v. Personal Property. *Seven-Up Bottling v. Dept. of Rev.*, 10 OTR 400 (1987), TC-41

Tangible personal property used in plaintiff’s fish farming and ranching operations qualifies for exemption under this section. *Anadromous, Inc. v. Dept of Rev.*, 11 OTR 272 (1989), TC-45

Tax exemption for inventory applies only to inventory of business that purchases, sells and replenishes its stock in ordinary course of business. Tax exemption for inventory does not apply to business that sells its operating equipment or fixtures. *Douglas County Assessor v. Dept. of Rev.*, 12 OTR 248 (1992), TC-50

Videos for rental are not exempt as “inventory.” *H-P Ventures (Adventures Video) v. Dept. of Rev.*, 13 OTR 330 (1995), TC-68

Machinery and equipment utilized in winery are not “farm machinery and equipment.” *King Estate Winery, Inc. v. Dept. of Rev.*, 14 OTR 169 (1997), TC-74

FILED

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CLERK OF COURT

*Kanary Peterson*

IN THE OREGON TAX COURT

Property Tax

No. 2398

SEVEN-UP BOTTLING CO. OF SALEM, INC., )  
an Oregon corporation, )

Plaintiff, )

v. )

DEPARTMENT OF REVENUE, )  
State of Oregon, )

Defendant.)

OPINION

Plaintiff is the owner of certain machinery and equipment used in its business of bottling and distributing soft drinks. Plaintiff's property was assessed for the 1984-85 tax year as real property by the Marion County Assessor. Defendant upheld the assessor's characterization of the machinery and equipment and plaintiff appeals to this court seeking a determination that the property is personal property, not real property.<sup>1</sup>

The property in question consists of the machinery and equipment one would expect to find in a soft drink bottling plant. Numerous conveyors connect the machines used for washing, filling, capping, labeling and packaging the bottles. There are fluid tanks, air compressors, heaters, water treatment and a palletizing machine. All of these are

integrated and interrelated by pipes, wiring and conveyors as is necessary to process and produce plaintiff's product. The court viewed the premises to enable it to better understand the evidence submitted in this case.

Much of the testimony related to how the equipment was attached to the buildings or to other equipment. Some of the equipment, such as the large bottle washer, the palletizer and some conveyors are not attached to the building but merely rest in place by virtue of their weight. However, these items are attached to other equipment such as conveyors, pipes or wiring. Some equipment is attached to the building by bolts or screws, but, as plaintiff points out, it could be removed without significant damage to the building. In some areas the building has been modified to accommodate the conveyors, pipes and heating ducts which pass through the walls or the roof.

The single issue before the court is whether plaintiff's machinery and equipment is "movable" within the meaning of ORS 307.020(3).

Plaintiff makes much of the fact that the building in which the equipment is housed is not owned by plaintiff and is readily adaptable to other light industrial or commercial uses. For the reasons set forth below, ownership of the building by another party has little bearing on the determination of the issue at hand.<sup>2</sup>

Resolution of the issue in this case is aided by the fact that the Court can look to two statutes rather than just one. ORS 307.010(1) defines real property while ORS 307.020(3) defines personal property. The issue posed in this case requires the court to draw the line between the two definitions for purposes of administering the tax statutes.

The statutory definitions with which we are concerned are as follows:

"'Land,' 'real estate' and 'real property' include the land itself, above or under water, all buildings, structures, improvements, machinery, equipment or fixtures erected upon, under, above or affixed to the same; \* \* \*." (ORS 307.010(1).)

"'Tangible personal property'" means and includes all chattels and movables, such as boats and vessels, merchandise and stock in trade, furniture and personal effects, goods, livestock, vehicles, farming implements, movable machinery, movable tools and movable equipment." (ORS 307.020(3).)<sup>3</sup>

The first rule of the search in statutory construction is to focus on the statute itself. Whipple v. Howser, 291 Or 475, 632 P2d 782 (1981). The court is expressly admonished by the legislature in ORS 174.010 not to add to or subtract from a statute but "simply to ascertain and declare what is, in terms or in substance, contained therein." In interpreting this statutory direction, the Oregon Supreme Court has said:

"We ought never to import into a statute words which are not to be found there, unless from a careful consideration of the entire statute it be ascertained that to import such words is necessary to give effect to the obvious and plain intention and meaning of the

legislature. Under the directions of the statute last referred to [ORS 174.010] we are not at liberty to give effect to any supposed intention or meaning in the legislature, unless the words to be imported into the statute are, in substance at least, contained in it." Barrett et al. v. Union Bridge Co., 117 Or 566, 570, 245 P 308, 45 ALR 527 (1926), quoted in Whipple v. Howser, supra, at 480.

Having thus established a line of sight, one final admonition with regard to statutory construction is appropriate.

"In construing a statute, words of common use are to be taken in their natural and obvious meaning and significance. That sense of the word is to be adopted which best harmonizes with the context and promotes the policy and objectives of the legislation." State ex rel Nilsen v. Ore. Motor Ass'n, 248 Or 133, 137, 432 P2d 512 (1967). See also Canteen Company of Oregon v. Dept. of Rev., 8 OTR 450 (1980).

In beginning its search, the court recognizes that the term "movable" is broad enough in the ordinary sense to cover a wide area. Somewhere in that vast semantic plain between the immovable mountain and the constantly moving ocean is to be found the line between real and personal property. The purpose of the legislature in crafting its definitions was to distinguish the two types of property for purposes of administering the laws of property taxation. This suggests that a simple rule, one easy to understand and to apply, is desirable and intended by the legislature.

Defendant, in the course of administering the property tax laws, has promulgated a rule which more specifically

defines real property with regard to machinery and equipment. OAR 150-307.010(1) 2. b. (1) and (2) defines "erected upon" and "affixed" as follows:

"'Erected upon' means being permanently situated in one location on real property and adapted to use in the place. For example, a heavy piece of machinery or equipment is set upon a foundation without being fastened thereto, but is an integral part of the function or design of the facility.

"'Affixed' means being securely annexed to the real property. For example, items attached by bolts, screws, nails or built into the structure are securely annexed; items attached by electrical connections are not securely annexed."

Plaintiff contends that this rule is "an unconstitutional expansion" of the statute. (Plaintiff's Memorandum, at 18.) Plaintiff asserts that "erected" is synonymous with "built" and that if the subject property falls within the definition of ORS 307.010 it is because it is "annexed,"<sup>4</sup> not "erected upon."

Upon examination, the court agrees that the administrative rule goes beyond the statute, but not necessarily in the direction plaintiff claims. Plaintiff claims that the rule is too broad, whereas in the court's view it may be too narrow.

Defendant's administrative rule appears to have adopted to some extent the common law "three-prong test" of annexation, adaptation and intention. Waldorf v. Elliott, 214 Or 437, 442, 330 P2d 355 (1958). It should be noted that the

test is usually applied in the "law of fixtures." Highway Com. v. Feves et al, 228 Or 273, 365 P2d 97 (1961). That context is to be distinguished from the determination of real and personal property for ad valorem tax purposes.

ORS 307.010(1) uses the terms "affixed to," and "erected upon." As can be seen from the regulations quoted above, defendant has interpreted the word "affixed" to mean "securely annexed." While the term affixed in and of itself connotes an element of permanence, the court is not sure that it also connotes "securely." In fact, large items may be found constructively "affixed" to the land or buildings merely by virtue of their weight and size. Waldorf v. Elliott, 214 Or 437, 330 P2d 355 (1958).

Likewise, the term "erected upon" does indeed, as plaintiff contends, connote the idea of assembling, building or constructing. The regulation's definition of erected upon contains two elements: (1) That the item be "permanently situated in one location," and (2) that it be "adapted to use in the place." While these elements may be consistent with the concept of being built or constructed upon, they do not constitute a complete definition. Many large machines are brought on site in pieces and assembled or "erected." Even large machines which are brought on site as a unit often require special foundations, modification of the building's

electrical panels and switches, special wiring, plumbing, venting, access ramps, openings and other forms of construction. In this sense, then, such machines are "erected upon" the real property.

To the extent that the regulation requires more than what the common ordinary words convey, it goes beyond the statute. For example, in subparagraph (4) of OAR 150-307.010(1) 2, the regulation indicates that if, after applying the tests of "annexation and adaptability" there is still doubt, then it is appropriate to look to the "intention of the parties." Again, these are the common law tests relating to law of fixtures. The statute does not use these terms. The statute does not say "affixed with intent" or "affixed and adapted." It simply says "affixed." There is no indication in the statute itself that the legislature intended application of the common law test.

Not only is the common law test not required by the statute, it is generally inconsistent with the statute. Ad valorem tax laws are intended to promote uniformity of taxation and reasonable ease of administration. These objectives cannot be met if the assessor must rely upon the common law test.

"[U]niformity of taxation cannot be attained unless a uniform classification of real and personal property is established. Just as assessors are not bound by private agreements, they should not be frustrated or

hindered in performing their vital function by the necessity of ferreting out the often undisclosed and secret intentions of lessors and lessees relative to the terms of a lease. For the most part, assessors must be allowed to act on the basis of outward appearances." Trabue Pittman Corp. v. Los Angeles County, 29 Cal 2d 385, 175 P2d 512, 517 (1946).

This view is consistent with the holding in Warm Springs Lbr. Co. v. Tax Com., 217 Or 219, 225, 342 P2d 143 (1959), where the court held that an agreement between parties "can not control the action of the state when exercising its taxing power." Citing Trabue Pittman Corp. v. County of Los Angeles, supra. If the intent of the parties cannot control for tax purposes, how can the common law test be properly applied?

The court recognizes that defendant's administrative rule has been in effect for many years and is entitled to great weight.

"[T]he interpretation of an ambiguous statute by an agency charged with its administration is entitled to great weight, although it is not binding on the courts." Curly's Dairy v. Dept. of Agriculture, 244 Or 15, 21, 415 P2d 740 (1966).

The court also recognizes that it has previously applied the common law test in construing ORS 307.020(3). Bylund v. Dept. of Rev., 9 OTR 76 (1981).<sup>5</sup> Nevertheless, the court now recognizes that the statute is not as narrow as might be interpreted under the common law test. For example, a machine "affixed to" a building is real property regardless of

the intent of the parties or its "adaptability." To the extent that the regulation attempts to narrow the statute, it is invalid.

Returning to the issue in this case, having considered the field of meaning from the perspective of real property, it is now appropriate to view the field facing from the ocean and consider the definition of personal property. It is apparent that ORS 307.020(3) emphasizes the notion of movement or movability. Defendant correctly argues that the structure of the statute invites application of the statutory rule of construction ejusdem generis.

"Where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words. Where the opposite sequence is found, i.e., specific words following general ones, the doctrine is equally applicable, and restricts application of the general term to things that are similar to those enumerated.

"\* \* \* If the general words are given their full and natural meaning, they would include the objects designated by the specific words, making the latter superfluous. If on the other hand, the series of specific words is given its full and natural meaning, the general words are partially redundant. The rule 'accomplishes the purpose of giving effect to both the particular and the general words, by treating the particular words as indicating the class, and the general words as extending the provisions of the statute to everything embraced in that class, though not specifically named by the particular words.'

"The resolution of this conflict by allowing the specific words to identify the class and by restricting the meaning of general words to things within the class is justified on the ground that had

the legislature intended the general words to be used in their unrestricted sense, it would have made no mention of the particular words." 2A Sutherland Statutory Construction § 47.17 (4th ed).

Under this rule, the general terms "machinery," "tools" and "equipment" are more narrowly viewed in light of the specific types of property listed in the statute. As a general rule, the specific types of items listed in the statute are not "affixed" to anything. Consequently, they are "readily movable as opposed to apparently stationary or fixed items." OAR 150-307.020(3). In this light, machinery, tools and equipment which are nailed, bolted, screwed or glued to real property are not "movable" within the meaning of the statute.

The "bright line" sought by plaintiff distinguishing real from personal property may be substantially dimmer and less distinct than hoped for. However, the court believes that the above conclusions provide a view which facilitates administration of the tax laws. As a general rule, the assessor is not required to consider the intention of the parties or the adaptability of the property. He merely has to determine whether the property is "affixed to" or "erected upon" land or buildings. The court recognizes that under this rule there may still be some cases in which there is a question as to whether an item is real or personal property. It is difficult to conceive of a general rule which would aptly fit all the possible types of property. The one principle that abides is that the statute must be the standard.

Applying the above to the subject property, the court finds that most of the subject property is "affixed" or "erected upon" real property. Most of the equipment is bolted or screwed to the walls, ceilings or floor and attached by pipes, ducts and conduits. This equipment is not moved except when modifying the operational layout. In fact, movement of the equipment would be inconsistent with the operation and function it performs. Movement would usually result in misalignment, leaks and faulty application of the products. The very purpose of the small bolts and screws plaintiff refers to is to prevent movement.

It seems likewise clear that the equipment in question is not "freely movable" as asserted by plaintiff. (Plaintiff's Memorandum, at 8.) "Freely movable" suggests something that, if not designed to be moved on its own wheels, rails or pontoons, could easily be placed on such means of movement and moved. What actually would be required in this case would be the disassembly of a complex arrangement of equipment. Numerous pipe fittings and connections would have to be undone, machinery, pipes and valves would have to be detached from walls, floors and ceilings and a number of holes would have to be patched or plugged in the building. By plaintiffs' own evidence, it would take approximately 20 days to remove the subject property from the building. It would not reasonably

take anywhere near the time to remove a like amount of "boats and vessels, merchandise and stock in trade, furniture and personal effects, goods, livestock, vehicles" or "farming implements" from the building. The difference between the latter types of property and the subject property is that the subject is "affixed to" or "erected upon" real estate while the latter is "readily movable."

In finding that "most" of the subject property is not personal property but real property, the court recognizes that there may be some items which are not real property. Specifically, some of the smaller tanks in the syrup room, which are not attached to the building but are free-standing, and which are not connected with plumbing connections but drained through flexible rubber hoses, are personal property. Such items are readily movable from one part of the room or plant to another. On the other hand, the large stainless steel tank, pictured in Exhibit 5, is attached by solid plumbing connections. Its weight and bulk, as well as the plumbing attachments, render it not "movable." There may be other specific property which is an exception to the court's general finding that the subject machinery and equipment is real property, not personal property. If the parties are unable to agree on such items, they may submit a list of such items to

the court for specific determination before judgment is entered. Costs to neither party.

Dated this 13<sup>th</sup> day of March, 1987.

  
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JUDGE

## FOOTNOTES

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<sup>1</sup> Plaintiff's counsel explained that while both real and personal property are taxable, real property values are generally trended up with inflation while personal property values are decreased in accordance with certain set depreciation schedules. If this is true, it certainly raises questions as to the accuracy of the assessment in one of the two directions.

<sup>2</sup> Even if it did in this case it is questionable whether it should be given much weight since the shareholders of plaintiff are the owners of the building.

<sup>3</sup> Both parties have alluded to the legislative history of the statute defining tangible personal property, pointing out that the 1939 amendment which added "all machinery and equipment used in the manufacture of raw or partially manufactured products" was deleted 20 years later. While this history was interesting, it is, as plaintiff points out, not very helpful.

<sup>4</sup> The statute uses the term "affixed," not "annexed." While there may be some overlapping in meaning and general usage, it would appear that the term "affixed" connotes being physically attached while "annexed" is a broader term which implies an addition to something without the particular means by which it is added. See Webster's Third New International Dictionary 87 (1961).

<sup>5</sup> In Bylund v. Dept. of Rev., 9 OTR 76 (1981), this court did apply the common law "three-prong test" to determine whether TV cable drops were real or personal property. The court in that case may have been unduly influenced by the fact that the parties all agreed that the three-prong test may be used.