Cite as Det. No. 06-0245R, 36 WTD 072 (2017)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

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| In the Matter of the Petition For Refund of | ) | D E T E R M I N A T I O N |
| | ) | |
| | ) | No. 06-0245R |
| | ) | |
| . . . | ) | Registration No. . . . |
| | ) | |

WAC 458-61A-102; RCW 82.45.060: REET – FIXTURES – MACHINERY AND EQUIPMENT. A chattel becomes a fixture only when it is actually annexed. Loose parts are not actually attached to the realty and therefore are not fixtures. In addition, equipment held in place solely by gravity, that is only minimally connected to the realty and can be easily and quickly removed, is likewise not annexed.

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

Chartoff, A.L.J. – A company that sold a complete vegetable processing plant petitioned for reconsideration of Det. No. 06-0245, which denied the taxpayer's request for refund of Real Estate Excise Tax (REET) on the portion of the sales price attributable to machinery and equipment. In dispute is whether the items of machinery and equipment are real property fixtures or tangible personal property for purposes of REET. We grant in part, and deny in part.[1]

## ISSUE

Whether machinery and equipment in a vegetable processing plant are real property fixtures, subject to REET under RCW 82.45.060, or tangible personal property.

## FINDINGS OF FACT

[Taxpayer] owned and operated a vegetable processing and packing plant located in . . ., Washington. The taxpayer built the plant in 1990 and sold the complete plant including, but not limited to, all machinery, equipment, tangible personal property, intangibles, and inventory to -the buyer] on May 21, 2004, for approximately $ . . . . The taxpayer and the buyer did not agree on an allocation of purchase price among the assets.[2]

[1] Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.
[2] The taxpayer provided a copy of a filed IRS Form 8594 declaring that the parties could not agree on a purchase price allocation.

The taxpayer hired an appraisal firm, . . . , to prepare a purchase price allocation of the sale. The [appraisal firm] appraised the value of machinery and equipment for sale at $ . . . .

On May 21, 2004, the taxpayer filed two REET affidavits with the . . . County Treasurer on the sale of the plant. The first REET affidavit listed the land and structures, with a stated value of $ . . . . The . . . County Treasurer then required the taxpayer to file a second affidavit on the machinery and equipment at the plant because the county property tax records had always listed the machinery and equipment as real property. The taxpayer filed the second REET affidavit for the machinery and equipment with a stated value of $ . . . , based on county records. The stated value was $ . . . higher than the value determined by [the appraisal firm]. The taxpayer paid $ . . . in REET on the second affidavit.

The taxpayer filed a petition with the Special Programs Division (Special Programs) of the Department of Revenue (Department) for a refund of REET paid on machinery and equipment, claiming the machinery and equipment is tangible personal property, exempt from REET. The Special Programs Division denied the request, concluding the machinery and equipment were fixtures. The taxpayer petitioned the Appeals Division (Appeals) of the Department for review of Special Program's denial of their refund request.

Appeals issued Det. No. 06-0245, which denied the refund in most part, concluding the machinery and equipment were fixtures based on the evidence presented.[3] Det. No. 06-0245 reasoned that the equipment was affixed to land, and that this created a rebuttable presumption that the items were fixtures. Further, the taxpayer failed to provide evidence sufficient to rebut the presumption. The only objective evidence of intent provided by the taxpayer was that similar equipment from similar plants had been removed. On the other hand, the property had always been listed on the county's property tax roles as real property, and the parties did not agree to an allocation of the property upon sale. Accordingly, Det. No. 06-0245 concluded the taxpayer failed to rebut the presumption that the items were fixtures.

The taxpayer petitioned for reconsideration of Det. No. 06-0245, providing additional evidence intended to rebut the presumption that the machinery and equipment were fixtures. Special programs reviewed the taxpayer's reconsideration petition and concluded that approximately $ . . . of the property was personal property and not subject to REET. This un-affixed personal property consisted of lab equipment (18 items), mechanical tools (5 items), computer equipment (3 items), and large equipment that was not located at the plant at the time of sale (23 items). Special Programs determined that the remaining property (600 items) consisting of utility support equipment (97 items), packaging equipment (155 items), and the remaining machinery and equipment at the plant (348 items) were fixtures. This appeal concerns this remaining property. We next explore the additional evidence in detail.

The taxpayer provided a list of equipment, classified by how attached and where acquired. The list states the equipment is attached to the building by one of the following means: bolted, bolted and grouted, lagged, gravity, loose parts, or cement/grout/glue. Of the 600 items under review,

[3] Det. No. 06-0245 remanded the petition to Special Programs for a partial refund. Special Programs accepted the [appraisal firm's] valuation of the machinery and equipment at $ . . . . Since the taxpayer paid REET on $ . . . , Special Programs agreed to refund the tax paid on the excess amount.

the taxpayer represents that approximately 56 items are held in place by gravity, and another 80 items are loose parts. Nearly all of the items were acquired new, with only 13 items previously used from other plants.

The taxpayer provided a list labeled "M&E Not at . . . " listing machinery and equipment that had been removed from the plant by the taxpayer. The list includes 53 items.[4]

The taxpayer provided a diagram of the plant labeled " . . . Site Plan Changes from '02 to '07" showing 11 changes made during this time period.

| | . . . Site Plan Changes from 2002 to 2007 |
|---|---|
| 1 | Line 1 baggers removed |
| 2 | Heat Shrink COB Line removed |
| 3 | Conveyor belts removed from pit and replaced by pump. Scalping reels added |
| 4 | Conveyor belts removed after washers and replaced by pump |
| 5 | Sorting and washing relocated |
| 6 | Conveyors removed and replaced by pump |
| 7 | Flumes and dewater shakers replaced or revamped |
| 8 | New color sorter installed |
| 9 | Fill station 4 area moved/modified |
| 10 | Corn silage press added 2006 |
| 11 | New unload belt added |

Only some of the equipment in the diagram is labeled and it is difficult to judge from the diagram how extensive the site plan changes were during this period. It appears the vast majority of the plant's equipment remained unchanged during this period. The diagram does not state which of the changes were made prior to sale of the plant in 2004.

The taxpayer provided 37 photos of equipment. Most of the equipment in the photos appears bolted to the floor or otherwise securely affixed, and securely connected to utilities and surrounding equipment. However, the photo labeled "knife sharpener (426117)" shows a piece of equipment on wheels.[5] And, the photo labeled "former tubes (426771-426778)" shows loose machine parts lying on the floor.

The taxpayer provided auction brochures of vegetable processing plants to show that there is a market for used equipment. The taxpayer provided a brochure for Bosch packaging equipment to show that some similar equipment is sold as freestanding units, and that the equipment is not specially constructed for the taxpayer.

Finally, the taxpayer provided two sworn statements from former [Taxpayer] employees at the site. The first statement is from . . . , a plant maintenance manager for [Taxpayer] from 1990 through 2004, and current plant maintenance manager for buyer. The document states in relevant part:

[4] The list also includes another 17 items of field equipment.
[5] This item is not included on the . . . Asset List.

> The plant has been used for vegetable processing since it opened. It has also and is currently being used for certain vegetable packing operations. The vegetables being processed and/or packed have changed slightly from the time of the plant's opening to its sale to [the buyer] and from the date of sale until today and will continue to change over time based on customer demand and sales.
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> . . .
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> 4. The list correctly identifies the machinery and equipment, which is no longer present at the plant. Such equipment was removed from the plant because the plant stopped processing asparagus, potatoes to the same volume, the equipment came to the end of its useful life, and for other good business reasons. The equipment needed at the plant changes from time to time, depending on the type of vegetables being processed and/or packed as well as the type of processing that may occur. This fact is the principle reason for the listed equipment not being at the plant.
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> 5. It was foreseen by me at the time all the machinery and equipment was placed into the plant that the machinery would need to be removed because of the ever-evolving use(s) of the facility. The facility is capable of being used for several purposes including a vegetable processing plant, a vegetable packing plant, both such purposes, a storage facility, a manufacturing facility and additional alternative uses. It was never the intent of anyone that the machinery and equipment would be permanently located at the plant. I expect that all the machinery and equipment listed on Exhibit A will someday be removed from the plant.
>
> 7. None of the machinery and equipment was specially fabricated or designed for [the plant].
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> 10. The removal of any or all of the machinery and equipment would not damage the physical structure of the plant. The removal would also not damage the machinery and equipment. In every case, the plant and the equipment are designed to be severed from one another without damage.

The second statement is from . . . , Director of Engineering for [Taxpayer] from 1997 through the present. The document states in relevant part:

> 4. When installing machinery and equipment into any [Taxpayer] plant, I take into account that the machinery and equipment is not to become a permanent part of any plant. That is, we specifically design and engineer the installation so that the machinery and equipment may be later removed. I make sure that neither the building nor the machinery and equipment will be damaged when removed.
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> 5. The removal of machinery and equipment is from a vegetable processing and/or packaging plant is not unique to the [Taxpayer]. Rather, within the vegetable processing industry, it is well known that machinery and equipment is frequently removed from facilities. The reason removal is frequent, always considered and ultimately intended is

that the crops being processed in any locale change and the equipment's capabilities change.

6. The frequency with which machinery and equipment is removed from vegetable processing plants is one reason an active market for used vegetable machinery and processing equipment exits. Virtually all of the machinery and equipment listed on Exhibit A may be purchased and sold as pre-owned machinery and equipment.

ANALYSIS

RCW 82.45.060 imposes the REET "upon each sale of real property," measured by the selling price. The term "real property" is defined in RCW 82.45.032(1) as follows:

> "Real estate" or "real property" means any interest, estate, or beneficial interest in land or anything *affixed* to land, including the ownership interest or beneficial interest in any entity which itself owns land or anything *affixed* to land. The term includes used mobile homes, used park model trailers, used floating homes, and improvements constructed upon leased land.

(Emphasis added).

In Det. No. 00-122, 20 WTD 461 (2001), we explained:

> Chapter 82.45 does not define the term "affixed," nor is the term defined in the REET administrative rules, Chapter 458-61 WAC.
>
> The term "affixed" connotes the common law concept of "fixture," and we believe RCW 82.45.032(1) intends by its use, to classify as real property for REET purposes, anything that would be a fixture at common law if affixed to land by the land owner. …
>
> The courts in Washington have adopted a three-part common law test for determining whether an item is a fixture or personal property.

The determination of whether an item is a fixture is a mixed question of law and fact. *Western Ag Land Partners v. Dep't of Revenue*, 43 Wn. App. 167, 170, 716 P.2d 310 (1986). Whether an item constitutes a fixture or personal property depends on the particular facts of each case. *Union Elevator & Warehouse Co., Inc. v. State ex rel. Dep't of Transp.*, 144 Wn. App. 593, 603 183 P 3d 1097 (2008).

The common law test for determining whether an item is a fixture of personal property is as follows:

> A chattel becomes a fixture if: (1) it is actually annexed to the realty, (2) its use or purpose is applied to or integrated with the use of the realty it is attached to, and (3) the annexing party intended a permanent addition to the freehold.

*Glen Park Associates, LLC, v. Dep't of Revenue*, 119 Wn. App. 481, 487, 82 P.3d 664 (2003), *review denied*, 152 Wn.2d 1016, 101 P.3d 107 (2004) (citations omitted). Each element of the test must be met before an item may be properly considered a fixture. *Id*.

With regard to the first element, annexation, the taxpayer does not dispute that most of the machinery and equipment is annexed to the realty. However, the taxpayer asserts that approximately 80 items are loose parts and 56 items are held in place solely by gravity, and that these items are not actually annexed to the realty. The taxpayer contends Det. No. 06-0245 erred when it concluded that replacement parts could be "constructively annexed if they are a necessary functioning part of or an accessory to an object which is a fixture."

We note that the *Glen Park* court rejected the argument that use could be considered in deciding annexation, reasoning it would blur the lines between the first and second elements of the fixture test. Therefore, we agree that Det. No. 06-0245 erred when it concluded constructive annexation was sufficient, and we conclude that a chattel becomes a fixture only when it is actually annexed. Loose parts are not actually attached to the realty and, therefore, are not fixtures. In addition, [the taxpayer's] equipment [that is] held in place solely by gravity, [and] that is only minimally connected to the realty and can be easily and quickly removed, is likewise not annexed. *Glen Park*, 119 Wn. App 489.[6] Special Programs is instructed to allow a refund for tax assessed on loose parts and equipment [that are not actually attached to the realty].[7]

The second element of the fixture test looks to whether the machinery and equipment has application to the use or purpose of the realty. The taxpayer does not dispute Det. No. 06-0245's conclusion that this element is satisfied because the machinery and equipment are essential parts of a vegetable processing plant.

The third element of the fixture test is whether the annexor intended a permanent accession to the freehold.

> Intent is the most important element of the fixtures test. *Glen Park Assocs. v. Dep't of Revenue*, 119 Wash.App. 481, 490, 82 P.3d 664 (2003). Evidence of intent is gathered from the circumstances at the time of installation. *Boeing, 85 Wash.2d at 668, 538 P.2d 505*. The court determines the party's intent to affix items through objective evidence rather than through the party's subjective belief. *Id.* Factors pertinent to intent include "the nature of the article affixed, the *604 relation and situation to the freehold of the annexor, the manner of annexation, and the purpose for which annexation is made." *Id.*

Union Elevator & Warehouse Co., Inc. v. State ex rel. Dept. of Transp. 144 Wn. App. 593, 603-604, 183 P.3d 1097, 1102 (2008).

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[6] [If equipment is very heavy and, therefore, difficult to move or remove, it may be considered actually attached to the realty even if not bolted to a structure. However, in the present case, there was no evidence that the equipment was of sufficient weight to make it effectively immobile or immovable.]

[7] Special Programs may, in its discretion, require additional information in order to verify that the listed items are in fact loose parts, and/or attached to the realty solely by gravity, and with minimal additional connection to the realty.

Det. No. 06-0245 concluded that the taxpayer failed to rebut the presumption that a landowner annexes chattel to the land is presumed to have annexed it with the intention of enriching the freehold.

Additional factors support the Department's position that the items are fixtures. The machinery and equipment has always been listed as real property for property tax purposes. Nearly all of the equipment was purchased new, with only 13 of the 600 items [being] previously used at another facility. The owner sold the property as a complete operating plant, which evidences the facility's higher value as a complete plant.

The equipment is necessary for the processing and packaging of vegetables and the record does not disclose any plans to end that activity. The taxpayer represents it anticipated that the type of vegetables and the processing methods would change over time. However, over the 14 years the taxpayer operated the plant, the taxpayer represents the vegetables processed changed only "slightly."[8] The taxpayer represents it removed 53 pieces or less than 10% of the equipment from the facility and that changes in the vegetables processed was the principal reason for removal.

Next we list the factors that support the taxpayer's position that the items are tangible personal property. None of the equipment was custom or specially designed for the taxpayer. The equipment is designed to be disassembled and moved without harm to the equipment or the plant. However, no evidence was presented as to the ease in which the equipment could be disconnected and removed. There is an active secondary market for used vegetable processing and packaging equipment. The taxpayer represents that the building could be used for several different purposes, such as vegetable processing, vegetable packing, storage and/or manufacturing. However, no objective evidence has been presented that these uses are realistic given the location of the freehold, or were actually considered.[9]

After weighing the evidence presented, we conclude the evidence more strongly supports the conclusion that the taxpayer intended to permanently affix its equipment to the real property. The taxpayer's argument that vegetable processing and packing plants must be built to adapt to changing vegetables and processing methods is certainly plausible and persuasive. But we are unable to conclude that every piece of machinery and equipment in the plant must therefore be tangible personal property, especially since nearly all of the installed equipment remained in place.

In sum, we grant the reconsideration petition in part. We conclude Det. No. 06-0245 erred when it held that machinery and equipment could be constructively annexed to the freehold. Accordingly, loose parts and equipment held in place solely by gravity, that is only minimally connected to the realty and can be easily and quickly removed, are not fixtures. We remand this matter to Special Programs to grant a refund of tax paid with respect to loose parts and

[8] Affidavit of [the plant maintenance manager for Taxpayer]

[9] For example, in Union Elevator, the taxpayer provided an example of a grain elevator that was converted to a fertilizer plant, and testified it had been approached by potential buyers contemplating using the facility as a vodka distillery.

equipment which is held in place solely by gravity. We sustain Det. No. 06-0245's conclusion that the remaining items of property are fixtures and subject to REET.

## DECISION AND DISPOSITION

We grant the refund petition in part and deny in part. Special Programs will issue the taxpayer a refund of REET paid with respect to loose parts and items attached to the realty solely by gravity, and with minimal additional connection to the realty. The taxpayer's petition is otherwise denied.

Dated this 30th day of November, 2010.