BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Assessment of . . .)D E T E R M I N A T I O N
)
No. 89-55
)
Registration No. . . .

[1] **RULE 130:** USE TAX -- REALTY -- FIXTURES -- TEST. The department follows the common law rules for determining whether an item is a fixture of the realty or tangible personal property. Department of Revenue v. Boeing Co., 85 Wn.2d 663, (1975) The three key factors are (1) actual annexation, (2) application to use or purpose, and (3) intention to make a permanent part of the realty.

[2] **MISCELLANEOUS:** WAC 458-12-010 -- USE TAX -- FIXTURES -- REAL PROPERTY -- PRINTING PRESSES. Real property tax regulations support a finding that printing presses attached to real property are fixtures.

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.

TAXPAYER REPRESENTED BY: . . .
. . .

DATE OF HEARING: May 7, 1987

NATURE OF ACTION:

A taxpayer who purchased a newspaper publishing business, including the real property and equipment used in the

business, protests the assessment of use tax on printing presses acquired in the transaction.

FACTS AND ISSUES:

Okimoto, A.L.J.(Successor to Rosenbloom, A.L.J.) -- The taxpayer purchased a newspaper publishing business, including real property and equipment used in the business from . . . . From that time forward the taxpayer has published and continues to publish a daily newspaper at the same location. In early 1987 a revenue officer of the Department sent a Notice of Use Tax Due assessing use tax upon the equipment and other tangible personal property acquired by the taxpayer during the acquisition of the business. The taxpayer has paid a portion of the assessment, but protests that portion of the assessment which asserts use tax upon the value of two lines of printing presses in the amount of $ . . . . The taxpayer contends that the printing presses are fixtures of the real property and not subject to use tax.

The printing presses at issue were originally installed in the building by the previous owner in . . . . At the time the previous owner held title to the entire business which consisted of the newspaper, the building and the land upon which the building was situated. In describing the printing presses, the taxpayer states:

> The printing press consists of two lines of seven units each. Each unit weighs approximately one ton, and is approximately five feet long, five feet tall and five feet wide. To support the two lines of printing presses, a heavy steel framework was constructed, which in turn is attached at its base to the specially reinforced concrete foundation at the basement level. The special foundations must be specially designed and built to support the press units and, when combined with the steel framework, to prevent excess vibration during press runs that would damage both the building and the press. On the main floor level, four units of each line are attached to the steel framework. Immediately above the four units, another three units per line are suspended from the steel framework. The main floor around the presses is a steel grating which permits viewing the basement area below. Above the main floor, a system of runways, ladders and catwalks surrounding the press units allows worker access to the units . Since installation, the press units have always been serviced and repaired in place.

The revenue officer took the position that the printing presses were tangible personal property, and not fixtures because:

> 1. The taxpayer could remove the presses without damage to the presses or the building,
> 2. The taxpayer and current owner of the presses has treated the equipment as personal property when claiming depreciation for federal income tax purposes and
> 3. The prior owner has listed the presses as personal property for state ad valorem property tax purposes.
> 4. The prior owner originally listed the presses as personal property on it's real estate excise tax (REET) affidavit which was filed at the time of sale.

The sole issue to be decided is whether the two lines of printing presses are fixtures of the real property and thus exempt from tax, or tangible personal property and subject to use tax.

DISCUSSION:

[1] The courts in Washington have adopted the following three common law tests for determining whether an item is a fixture or personal property, all of which must be satisfied:

> The true criterion of a fixture is the united application of these requisites: (1) Actual annexation to the realty, or something appurtenant thereto; (2) application to the use or purpose to which that part of the realty with which it is connected is appropriated; and (3) the intention of the party making the annexation to make a permanent accession to the freehold.

Department of Rev. v. Boeing Co., 85 Wn.2d 663,667 (1975)

The first test is actual annexation to the realty, or something appurtenant thereto. The Department has held annexation to be the actual attachment or affixation of personal property to realty in more than a temporary way. In describing the manner in which the presses are attached to the building, the revenue officer states:

> The four special foundations designed in the basement are raised concrete footings above the basement floor level approximately 18" high X 52" wide X 104" long. These portions of concrete are part of the building and not part of the presses. These portions of concrete are similar to those supporting large hydraulic punch presses in manufacturing assembly plants. The steel frame work as referenced in this paragraph are the constructed frames of the presses as molded and designed by the manufacturer. The bottom sections of the presses are bolted to the raised portion of the concrete in the basement. The additional seven units of the assembly are then bolted, stacked and bolted together.
> (Emphasis added)

In applying the above test, we feel that the presses have been affixed and annexed to the building which is appurtenant to the realty. This is because the top presses are stacked upon and securely bolted to the bottom presses, which in turn are bolted to the specially constructed concrete foundation which is part of the building. We feel that these factors are sufficient to constitute actual affixation of the presses to the realty in more than a temporary way.

The second test of application to the use or purpose to which that part of the realty with which it is connected is appropriated, is not in issue. The printing presses and the building have always been dedicated to the same purpose, i.e., to print and publish the . . . and we so hold.

The third test, the intention of the party making the annexation to make a permanent accession to the freehold, is the most important, and also the most difficult test to determine.

Intention must be determined:

> from the circumstances surrounding the annexation, including the nature of the article affixed, the annexor's situation in relation to the freehold, the manner of annexation, and the purpose for which it was made. The test is objective rather than subjective intent.

Liberty Lk. Sewer Dist.1 v. Liberty Lk. Utilities. Co., 37 Wn.App. 809, 813 (1984)

However,

> When a property owner attaches the article to the land he is rebuttably presumed to have annexed it with the intention of enriching the freehold.

Western Ag Land Partners, v. Department of Rev., 43 Wn. App. 167 (1986).

Since the previous owner of the business also owned the building and the land at the time the printing presses were installed, the owner is presumed to have intended to enrich the freehold.

To rebut this presumption, the revenue officer relies on the previously mentioned facts which we will now discuss.

Whether the taxpayer could remove the presses without damage to the presses or the building is not a significant factor as to the intent of the owner to permanently affix machinery to the freehold, unless the equipment was specially designed to be removable. We do not find such facts in the current case.

The fact that the taxpayer has listed the presses as personal property for federal income tax depreciation purposes, is simply not relevant, because the common law test in determining whether an item is a fixture, is to determine the intent of the affixor at the time the property is affixed and not the intent of a subsequent purchaser.
Even assuming that the previous owner treated the presses as personal property for federal income tax purposes, we still feel this to be insignificant. The definition for tangible personal property for federal income tax purposes is very different from the common law standards that the Department of Revenue has adopted. In particular, tangible personal property for purposes of investment tax credit, specifically includes fixtures even though they may be considered real property under local law.

The Internal Revenue Service rules and regulations state in part:

> ...Local law shall not be controlling for purposes of determining whether property is or is not 'tangible' or 'personal'. Thus, the fact that under local law property is held to be personal property or tangible property shall not be controlling.

> Conversely, property may be personal property for purposes of the investment credit even though under local law the property is considered to be a fixture and therefore real property. Reg. Section 1.48-1(c)[1]

In applying the test of intent, it should be noted that the test is not to determine whether the annexor intended to treat the property in question as personal property or real property for tax purposes, but whether he intended to make what was originally tangible personal property, a permanent accession to the freehold.
Similarly, we find the fact that the prior owner may have listed the presses as personal property for state ad valorem property tax purposes, not a significant factor.

We do consider the fact that the seller originally omitted the presses from the REET affidavit filed at the time of the original sale to be significant because we consider the REET and the use tax to be mutually exclusive. In this case, the seller has filed an amended affidavit which includes the value of the presses as real property, and has paid the appropriate taxes thereon. Therefore, we find a consistency in the manner that the seller and the buyer have handled their REET and use tax obligations.

Not only do we feel the department fails to rebut this presumption, but find that the following facts support just the opposite conclusion.

> (1) The building was specially designed to house the newspaper's printing presses, has always housed the printing presses and has never been used for any purpose other than newspaper publication either before or after the acquisition of the building by the taxpayer.
> (2) Since installation, the presses have always been serviced and repaired in place.
> (3) When the presses were originally installed in . . . , the installation process took approximately six weeks. (4) The presses are permanently connected to the plumbing system of the building by special acid resistant pipes; and

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[1] The quoted regulation was in effect in 1985, and is no longer applicable since Congress repealed the investment tax credit in 1986. It was in effect, however, when the prior owner purchased the presses in 1962, and does illustrate the desired point.

> (5) When the previous owner sold the building, it did not retain the presses nor sell them piecemeal to another purchaser. Instead, it sold the land, the building and the machinery as one complete printing plant to the same purchaser, the taxpayer in this appeal.

[2] In addition to the results of the common law tests, a look at the relevant property tax rules and regulations promulgated by the Department suggest a similar result. Because the use tax statute, Chapter 82.12 RCW does not contain a definition of either 'personal property' or 'fixtures', the appellate courts of our state have looked for guidance in the real property tax statute's definition of real property at RCW 84.04.090 and its accompanying regulations. Western Ag Land Partners v. Department of Rev., supra.

WAC 458-12-010(3) defines real property as follows:

> (3) Machinery, equipment or fixtures affixed to land or to building, structure, or improvement on land.
> (a) Such items shall be considered as affixed when they are owned by the owner of the real property and
> (i) They are securely attached to the real property; or
> (ii) Although not so attached, the item appears to be permanently situated in one location on real property and is adapted to use in the place it is located; for example a heavy piece of machinery or equipment set upon a foundation without being bolted thereto.(emphasis added)

In applying the above regulation, we find that the presses are owned by the owner of the real property and securely attached to the real property. We therefore find the printing presses to be fixtures, and/or real property.

DECISION AND DISPOSITION:

The taxpayer's petition is granted. The Notice of Use Tax Due issued on January 26, 1987 shall be adjusted accordingly.

DATED this 27th day of January 1989.