

Cite as Det. No. 92-201, 13 WTD 215 (1994).

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

In the Matter of the Petition)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
For Correction of Assessment)	
of)	No. 92-201
)	
. . .)	Registration No. . . .
)	FY . . . /Audit No. . . .
)	

[1] RULE 118, RULE 130: SALES TAX -- USE TAX -- REALTY --
FIXTURES -- TEST -- CONCOMITANCE OF SALE WITH LAND.
The three key factors in determining whether an item is
a fixture of the realty or tangible personal property
are (1) actual annexation, (2) application to use or
purpose, and (3) intention to make a permanent part of
the realty. The fact that fixtures are sold while the
land to which they are attached is leased is not
determinative of their status as real or personal.

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.

. . .

NATURE OF ACTION:

Protest of the use taxation of the lease and sale of lumber mill
equipment alleged to be real property fixtures.

FACTS AND ISSUES:

Dressel, A.L.J. -- [The taxpayer] was a manufacturer of lumber
products. Its books and records were examined by the Department
of Revenue (Department) for the period January 1, 1986 through
June 30, 1990. As a result, a tax assessment . . . was issued .
. . . The taxpayer appeals a portion of the assessment.

[In July 1985] the taxpayer and [Lumber Co.] entered into a "lease with option to sell agreement" under which the former leased from the latter a lumber mill [In December 1986], the taxpayer exercised its option to purchase the equipment in the mill¹ and renewed its lease of the land on which the mill sat. The Department's auditor assessed deferred sales tax/use tax on the taxpayer's purchase of the mill equipment, as well as on that fraction of the prior lease payments attributable to the equipment. The taxpayer objects, saying that the equipment is exempt as real property fixtures.

The original lease with option to sell (purchase) provided for monthly payments of [\$XY] for the equipment and the land. Of that figure [\$X] was for the equipment and [\$Y] was for land. The auditor believes that because the equipment was purchased separately from the land, the transaction constituted the sale of tangible personal property and was subject to sales tax.

With respect to the equipment in the mill, the taxpayer provides the following description:

The property leased subject to the "equipment term" and ultimately purchased by exercise of the option, with the exception . . . of admitted personal property on which sales tax was paid, was an operating sawmill, consisting of a number of integrated machine centers which are affixed to the land and building through a combination of heavy structural steel and concrete. A log to be processed enters the system at the log yard and from there moves to the debarker, at which point the bark is removed from the log. Through a system of heavy duty conveyors, chains, and other components integral to the system, the log begins its uninterrupted journey through the assets in question, which essentially constitute a lumber-making facility. The log and its parts are sawed, resawed, edged, planed, and trimmed as they proceed through the system. In order to maintain the accurate tolerances required for grading standards, to maximize recovery, and to deal with the weight, vibration, and other forces resulting from the array of debarker, saws, edgers, etc., and their associated motors and power sources, the whole system is constructed of heavy steel. Each item has a heavy steel support system which itself is imbedded in or otherwise permanently attached to a heavy concrete

¹The taxpayer has stated that it has paid the real estate excise tax (REET) on the mill machinery fixtures it purchased. REET is usually paid by the seller. The taxpayer was the purchaser in this transaction.

foundation. The interplay of the various operating systems and the forces upon them allows no other less permanent installation system. These assets were acquired in a lump sum purchase as part of an operating sawmill. They were not acquired piecemeal and installed to complete an assemblage of personal property which became a sawmill. This equipment as purchased forms an operating unit with each asset being interdependent upon others in the integral operating system.

The issue in this case is whether tangible personal property, if attached to land, can constitute a fixture if sold separate from the land itself.

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, 538 P.2d 505 (1975). See also Lipsett Steel Products, Inc. v. King County, 67 Wn.2d 650, 409 P.2d 475 (1965); Determination No. 88-342, 6 WTD 361 (1988); and Determination No. 89-541, 8 WTD 439 (1989).

Vis-a-vis requisite number one, the above-quoted paragraph graphically describes the attachment of the lumber mill machinery to the realty on which it sits. Regarding requisite number two, we have no information that the site under consideration has ever been used for anything other than a lumber mill. With respect to number three, we observe that the machinery was in place prior to purchase or lease by the taxpayer. We have no information that the taxpayer's predecessor, [Lumber Co.], or whoever attached the machinery to the realty, intended the annexation to be anything other than permanent. Given the size and weight of the machinery and the fact that the site had been used for many years as a lumber mill, we assume that the party who annexed intended to attach the machinery permanently to the freehold. We find that all three requisites for fixture status have been met and that the lumber mill machinery in question are, indeed, real property fixtures.

Of property classifications, sales and use tax apply only to tangible personal property. RCW 82.04.050 and RCW 82.12.020. Sales and use tax do not apply to the sale of real property fixtures. See also WAC 458-20-130.

The test for fixtures is the one quoted above from the Boeing case. The selling of land and fixtures separately or the allocation of rental amounts between land and fixtures in a lease is relevant only as it may affect those three requirements. In this case we find that it does not. Neither the sale nor the lease of the lumber mill machinery is subject to sales or use tax.

DECISION AND DISPOSITION:

The taxpayer's petition is granted. The Audit Division will verify that REET has been paid on the subject transfer. It will then issue an amended assessment consistent with this Determination. How much of said assessment the taxpayer is actually required to pay, and when, will be determined by the Bankruptcy Court. Regardless, because the Department's due date on this tax assessment has been extended for the sole convenience of the Department pending the issuance of this Determination, interest will be waived from the date of the bankruptcy filing.

DATED this 29th day of July 1992.