

Cite as Det. No. 20-0241, 41 WTD 276 (2022)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for Correction of )	<u>D E T E R M I N A T I O N</u>
Assessment of )	
)	No. 20-0241
)	
... )	Registration No. . . .
)	

RCW 82.45.060; RCW 82.45.032(1): REAL ESTATE EXCISE TAX (REET) – REAL PROPERTY – MACHINERY AND EQUIPMENT – INDUSTRIAL FIXTURES – AFFIX TO LAND – ANNEX TO REAL PROPERTY. Machinery and equipment in a paper mill were real property fixtures because they were affixed to the real property.

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.

Fisher, T.R.O. – A company protests the assessment of real estate excise tax on machinery and equipment sold as part of a controlling interest transfer, arguing the machinery and equipment were not fixtures and therefore not subject to the real estate excise tax. We deny the petition.<sup>1</sup>

ISSUE

Whether machinery and equipment in a paper mill are real property fixtures and therefore subject to real estate excise tax under RCW 82.45.060, or tangible personal property.

FINDINGS OF FACT

On . . . (“Taxpayer”) transferred a 100% interest to . . . (“Transferee”) to become a wholly owned subsidiary. At the time of the transfer, Taxpayer owned property in four different counties and paid real estate excise tax (“REET”) on the transfers.

One of the transfers involved land in . . . County, Washington, which consisted of a facility used to manufacture paper (“Facility”). The REET affidavit filed with respect to the property listed a true and fair value of . . . [\$100,000<sup>2</sup>]. At the time, the county assessed value was . . . [\$550,000] [approximately five and one-half times the claimed true and fair market value]. The Department of Revenue (“Department”) investigated the transfer, and eventually came into contact with

<sup>1</sup> Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

<sup>2</sup> [The dollar figures used in this Washington Tax Decision are relative values added in the publication process to improve readability and to protect taxpayer confidentiality and are not the actual numbers at issue in this determination.]

Transferee. Transferee, now the parent company of Taxpayer, informed the Department that Taxpayer and Transferee calculated the property value using the county assessor's appraisal, which broke down the county assessed value into several categories: Yard, Building, M&E, C.I.P., Personal Property, Adjustment from Cost to Market Based on Income, . . . and Land. Taxpayer and Transferee added the Yard, Building, . . . and Land categories to determine the [claimed] true and fair value of \$ . . . [100,000].

The Department determined that the M&E, or machinery and equipment, should have been included in the true and fair value of the Facility.<sup>3</sup> The Department determined the true value of the real property was \$ . . . [\$550,000] [the county assessed value], and assessed \$ . . . in REET, \$ . . . in a delinquent payment penalty, \$ . . . in a substantial underpayment penalty, \$ . . . in interest, and a credit of \$ . . . for REET previously paid.

Taxpayer timely sought administrative review, asserting that the proper measure of REET does not include the machinery and equipment in the county assessor's appraisal. The machinery and equipment in question are machines used to produce paper ("paper machines"). Taxpayer asserts that the paper machines are not fixtures, and are therefore not subject to REET. At the hearing, Taxpayer explained that the paper machines can make many different types of paper, and there are . . . similar machines in different buildings around the Facility.

In support of its petition for administrative review, Taxpayer submitted several documents. Taxpayer submitted the full county assessor appraisal of the Facility. In the appraisal, in order to calculate depreciation, the assessor used a 7.5% depreciation factor for the machinery and equipment, and a 4% depreciation factor for the land. Taxpayer also submitted the Department's "Personal and Industrial Property Valuation Guidelines – Trended Investment Method for January 1, 2018," which provides that pulp and paper manufacturing businesses should use the 7.5% column in the depreciation factor schedules. Taxpayer asserts that because the assessor appraisal uses a different depreciation factor for the land versus the machinery and equipment, this means that the machinery and equipment are treated as personal property for property tax purposes.

Taxpayer also submitted various pictures of the Facility. The pictures show that the paper machines were placed in holes in the floor and were then bolted to the floor on a lower floor. Taxpayer also produced a contract between it and . . . ("Buyer") for the purchase of one of the machines. According to Taxpayer, Buyer resold the paper machine to a paper making company . . . [outside the U.S.]. According to the contract, Buyer [purchased] the machine in exchange for moving the machine out of the Facility. Additionally, removal required the use of a house crane, and was scheduled to occur [in 2017], and be completed . . . [within three months].

#### 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:

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<sup>3</sup> Neither the Department nor Taxpayer assert that REET should have been imposed on the amounts listed under the C.I.P, Personal Property, or Adjustment from Cost to Market Based on Income categories.

"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).

As noted in Det. No. 00-122, 20 WTD 461 (2001):

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 landowner. . . .

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.*

Taxpayer does not dispute that the first two elements are met but contests whether the intent element is met.

Intent is the most important element of the fixtures test. *Union Elevator*, 144 Wn. App. at 603. Evidence of intent comes from the circumstances at the time of installation. *Id.* Additionally, the determination of intent relies on objective evidence rather than a party's subjective belief. *Id.*

In *Dep't of Revenue v. Boeing Co.*, 85 Wn.2d 663, 538 P.2d 505 (1975), the Supreme Court explained:

[A]ll pertinent factors reasonably bearing on the intent of the annexor should be considered in assessing the intent at the time of annexation including, but not being limited to, the nature of the article affixed, the relation and situation to the freehold of the annexor, the manner of annexation, and the purpose for which the annexation is made.

*Id.* at 668.

The *Boeing* Court examined Boeing's fixed assembly jigs used to hold large sections of aircraft during construction of Boeing 747 aircraft. *Id.* at 664. The jigs were not built into the floor of the plant but were instead bolted to the floor, bolted to concrete foundations rising from the floor, or simply secured by their weight alone. *Id.* It was possible to disassemble the jigs and remove them from the plant without injuring the building itself, and Boeing was able to move similar, smaller jigs from plant to plant when making previous aircraft. *Id.*

The *Boeing* Court looked to several factors to determine that the jigs were not fixtures. The Court first noted that Boeing, as the owner of the freehold where the jigs were installed, was presumed to have intended to benefit the freehold and not to preserve the jigs as personal property. *Id.* at 669. The Court then determined that the jigs were needed to produce the Boeing 747 aircraft, and there were no plans in the record to cease production of the 747s. *Id.* Despite these two factors leaning towards a conclusion that Boeing intended the jigs to be fixtures, the Court noted 4 countervailing factors:

(1) the alleged permanency of the jigs was dependent upon Boeing's continued use of the building to manufacture the 747 (the future use of the building was disputed); (2) the jigs could be removed without damage to the building, thus evincing an intent that they could be easily moved upon any changes in the program; (3) the jigs were designed to be easily disassembled and smaller jigs had been moved from plant to plant in other programs; and (4) Boeing reported the jigs as personal property for tax purposes.

*Union Elevator*, 144 Wn. App. at 604 (citing *Boeing*, 85 Wn.2d at 669-70).

Taxpayer asserts that its paper machines are similar to the jigs in *Boeing* and should therefore be treated as personal property and not fixtures. We disagree.

As Taxpayer concedes, the first two factors of intent go against Taxpayer. Taxpayer owned the freehold upon which the paper machines were installed. This gives rise to a presumption that Taxpayer intended to benefit the freehold. *Boeing*, 85 Wn.2d at 669. Additionally, according to Taxpayer, there are no plans to stop producing paper.

With respect to the remaining *Boeing* factors, we disagree that all of the remaining *Boeing* factors favor concluding that the paper machines are not fixtures.

Here, unlike in *Boeing*, there is no dispute that the future use of the Facility at the time of installation was to make paper; indeed, for many decades after the installation of the paper machinery in the 1930s the building was used to make paper.

The next factor to consider is whether the paper machines can be removed without damage to the building. Pictures submitted by Taxpayer show giant holes in the floor of the building where the machinery was placed. The *Boeing* Court found significant that “the concrete floor was not poured so that the jigs would be sunken into it and thereby become part of the building.” 85 Wn.2d at 669. Unlike the jigs that merely rested on the floor, here the paper machines were sunk into the concrete floor, thereby becoming a part of the building. *See id.* Without the paper machines there are large holes in the floor, so removing the paper machines creates a gap in the floor.<sup>4</sup>

Regarding whether the paper machinery can be disassembled and moved around, Taxpayer asserts that there are [other] operational machines all over the Facility; it is not clear whether these may be easily moved around. Taxpayer explained that one machine was sold to Buyer in exchange for the broker removing the machine in question. According to the contract, removal required the use of the house crane, and was scheduled to [begin in] 2017, and be completed . . . nearly three months later. Unlike *Boeing*, where the jigs were able to be moved around from plant to plant, simply removing one paper machine takes three months and involves the use of a crane . . . .<sup>5</sup>

Furthermore, in *Boeing*, the Court found significant that Boeing reported the jigs as personal property for property tax purposes. 85 Wn.2d at 670. We note that, although Taxpayer asserts that it reported the paper machines as personal property for tax purposes, Taxpayer has not provided any evidence that Taxpayer reported the machinery as personal property for property tax purposes.<sup>6</sup>

Finally, we are mindful of *Boeing*'s guidance that another factor to be considered is “the purpose for which the annexation is made.” 85 Wn.2d at 668. At the time of installation of the paper machines in the Facility, the purpose was to make paper. According to Taxpayer, the paper machines can make many different types of paper. This is unlike the *Boeing* jigs, which could only be used to make 747 aircraft. *Id.* at 669 (noting it was not feasible to modify jigs to be used in production of aircraft other than 747s). The purpose of the annexation was to put in a machine that could make many different types of paper, without having to rotate in new specialty machines to make specific kinds of paper. This further weighs in favor of concluding that the paper machines are industrial fixtures.

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<sup>4</sup> [Without refilling the holes and leveling the floor, the continued presence of large holes impairs the use of the Facility.]

<sup>5</sup> [The use of the crane also suggests that the three months it took to move the machine was not because of convenience alone and that there was a significant cost/value associated with the machine, which is supported by the fact that no additional consideration was paid by the Buyer for the machine.]

<sup>6</sup> Taxpayer points to the County Assessor calculating the depreciation value of the paper machinery separately from the depreciation of the underlying land as evidence that Taxpayer reported the machinery as personal property. This is inconclusive; simply because the County Assessor calculates the depreciation of the machinery using a separate table from the value used to calculate depreciation of the land does not mean that the machinery is not a fixture. It simply means that the value of machinery depreciates differently from the underlying land where the machinery is located. We further note that although the findings of fact state that Boeing depreciated its jigs at a separate rate than the building equipment, the *Boeing* analysis of the property tax factor does not rely on or mention this fact. *See* 85 Wn.2d at 670.

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Based on these factors, we conclude that the paper machines are fixtures, and are therefore properly subject to REET.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 2nd day of September 2020.