

Real vs. Personal Property

Taken from Assessment Administration

Real Property Tax Law

Real Property Tax Law Section 300

“All *real* property within this State is subject to real property taxation, special ad valorem levies and special assessments, unless exempt there from by law. Notwithstanding any provision or other general, special or local law to the contrary, *personal* property, whether tangible or intangible, shall not be liable to ad valorem taxation”

Definition

Real Property: sum of the tangible and intangible qualities of land and improvements (on and to). This refers to interest benefits and rights inherent in the ownership of physical real estate.

Principles of Classification

There are certain principles that will help you to classify property as real or personal. In brief, they are these:

1. Certain types of real property are listed in the Real Property Tax Law.
2. Real Property, other than land, is often erected on land, or under or above land, or affixed to it.
3. Real property in a building would ordinarily remain in the building if the property were sold.
4. Some real property could not be moved without damage to itself or to the building in which it is housed.
5. Some real property is designed for the building that houses it and would be of little use elsewhere.
6. Real property is usually permanently installed.

Please read in the appendix Section 102, subdivision 12 of the Real Property Tax Law. Now we are going to look at each of the principles in more detail.

Principle 1

The first step in determining real or personal is to review the list in Real property Tax Law section 102. If you cannot classify property as real or personal from the list in Real Property tax Law, section 102, you must look elsewhere.

Principle 2 The next question may be: “Is it a building, article or structure erected upon, under or above land, or affixed thereto?”

Buildings and structures are easy to identify. The troublesome item here is articles. Some examples of articles are a suitcase, above ground swimming pool, automobile and aqueduct. The part of the law that will eliminate some of the “buildings, articles and structures” listed above is the word “erected”. The next question to ask is whether or not these articles are erected. The suitcase is definitely not erected.

To review where we are, we have asked, “is this property a building, article or structure?” We then asked, “is this property erected?” The question now is whether the property is erected upon or above land or affixed thereto? With our examples of articles, it appears that the question of affixing eliminates the automobile. The above ground swimming pool brings up more questions. The courts have usually held that the question of permanence is important here. Thus, an owner who erects a large above ground pool and leaves it there year-round shows intent of permanent installation.

This issue has also been raised with regards to diners or lunch wagons. These structures are erected somewhere else and brought to the site where they are used. They may have very temporary foundations. They could be hauled away for use elsewhere. It is important to review each situation. For example, if the diner has been placed on a foundation, a paved parking lot, and utility connections made and it is open for business. Is permanency the intent of the owner? Yes, therefore the property is real property.

**Principle 3
and 5**

Another test by which you can distinguish between real and personal property is whether the property would remain in the event of a sale. Some classification questions can be answered by considering whether property would remain if the building were sold. If yes, it would be classified as real property.

Doors, radiators and furnaces could obviously be removed from a building and used elsewhere, but ordinarily they remain as part of the building if sold. Would you consider such items as personal property? These should not be considered personal property but should be considered real property because they would remain with the building. A good rule to follow is that some articles would usually be found in a building regardless of the use made of the building. Heating and air conditioning equipment installed by the owner are examples. They would be considered real property.

A similar rule is this. Articles used in connection with the only business that can be conducted on the property are considered real property. For example, the compressors and refrigeration equipment in a cold storage or locker plant are considered permanently installed and would probably remain if the property were sold. Compressors and refrigeration equipment in a cold storage plant are usually real property. However, consider a printer who leases space for a year in a store. His printing press is not considered real property because he will probably remove it when his lease expires, and this is not the only use for storefront.

Principle 4

Sometimes the question of whether an article is real or personal comes to this: Could the article be moved without material injury to itself or to the building housing it? If it could not be moved, then the article is real property.

We must consider more than physical damage. The costs involved in taking apart, moving, and putting together again must also be taken into account. If it is not worth the cost to dismantle, move and reassemble an article, then we consider that article as real property.

Principle 6 All of the rules previously discussed treat the same question: was this property installed or placed with permanent intention?

The word “permanent” is a hard one to work with, because no property is really permanent except land. A building may be finished this month and burn down next month. A house may stand for two centuries and then fall down.

So, when we say permanent in connection with real property, other than land, we really mean “for quite a long time”. How long is quite a long time?

A man does not build a concrete swimming pool in his yard “temporarily”. He expects to use it indefinitely. Perhaps he has in mind that it may last 20-30 years and then collapse. But he builds it and installs it for as long as it is good for. This is not “forever” but it is for a long time.

In the same way, an apartment owner installs an elevator with permanent intentions. It will not last forever and he knows it. He installs it for its useful life. He will most likely remove it only when it no longer works.

Manufactured Housing and Mobile Homes Nearly every assessing unit contains manufactured housing and mobile homes. These may be located individually or occasionally in small colonies, but most often in a mobile home park. Some are used only for travel and camping and are personal property.

There is great concern in some communities about the increased use of mobile homes as residences. Some feel that mobile homes do not carry their fair share of the tax burden. Assessors often find it difficult to assess mobile home parks correctly.

The bulk of revenue available from taxing mobile homes is to be found in mobile home parks. The reason for this is simple: That’s where most of the mobile homes are. As assessor, you can accomplish more by assessing mobile home parks accurately than by becoming overly concerned with a handful of individual trailers.

The process regarding the assessment of trailers is as follows:

- Locate them.
- Determine whether real or personal property on taxable status day.
- If they are real property you must assess them correctly and within the provisions of the law.

How do you tell whether a given trailer or mobile home is real or personal property?

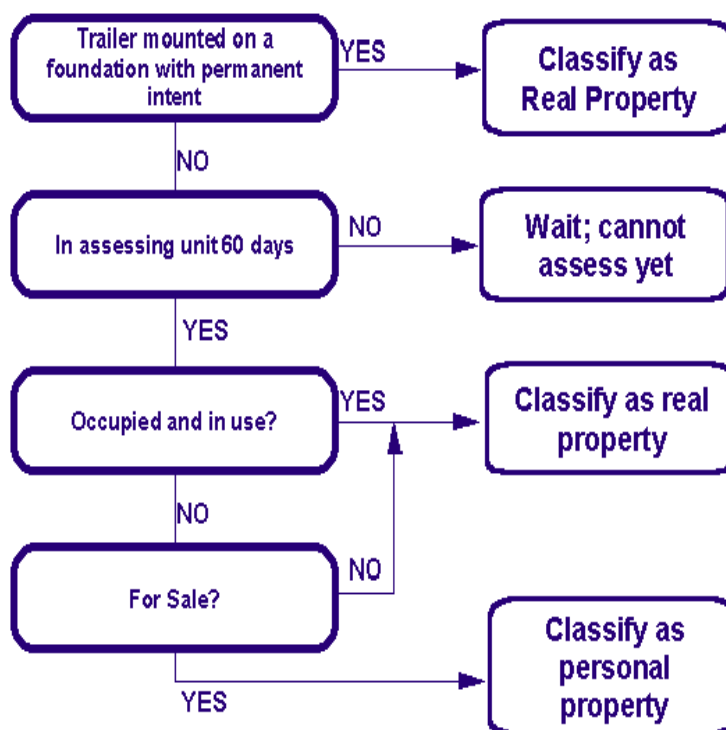
The most important fact about a trailer or mobile home is the way it is installed. If it is disconnected from its power source, and is mounted on a foundation with permanent intent, it is real property.

What shows permanent intent?

Some key areas to investigate are:

- Foundation - if a mobile home has an excavated, poured concrete, mortared / un-mortared block foundation, most likely this is an indication of permanency. If, however, the home is on railroad ties or on wheels, then further investigation is required.
- Utilities - if a mobile home has gas, water, septic, telephone or cable television hook-ups, most likely an intent for permanency exists.
- Ownership of land - signs of permanent intent would include: a mobile home located on owners / relative's land or in a mobile home park. Whereas, if the home is located on other land such as a campground, etc., permanent intent is questionable.

Mobile Homes and Trailers



9A Corporations

This requires a different kind of classification approach. In this instance we recognize that real property of certain corporations is exempt from taxation. Having identified it as real property, and not personal, we must then decide whether it is taxable or exempt.

This means that we must be able to identify a “9-A Corporation” we and we must also be able to recognize exempt real property of such corporations.

In legal terms, exemptions are “constructed against the taxpayer”. What this means to you is that if there is doubt, no exemption is granted. The taxpayer must clearly be entitled to exemption.

9-A refers to article 9A of the Tax Law (not the Real Property Tax Law). This article lists the types of corporations that are subject to the state franchise tax imposed by article 9-A.

Those corporations required to pay the franchise tax, nearly all of them, are referred to in real property taxation as “9-A corporations”. Since most corporations are 9-A, the easiest thing to do is to learn the exceptions.

Exceptions

- Financial Corporations
- Insurance Corporations
- Public Utilities
- Transportation or Transmission Corporations

Which of the following are 9A Corporations?

- New York Telephone Companies
- International Business Machines Corporation
- Chase Manhattan Bank
- Equitable Life Assurance Society
- General Electric Company

If you thought General Electric Company and International Business Machines Company are the 9A corporations then you are correct. To review, all corporations that pay the franchise tax are referred to as 9-A corporations. The exceptions are financial, insurance, public utilities and transportation or transmission companies. The two companies above do not fit into any of the exceptions so therefore they are 9A corporations.

**Machinery
and
Equipment**

Now that we have determined what a 9A corporation is we need to identify which machinery and equipment owned by 9A corporations is taxable and what is exempt. There are certain items of machinery and equipment which are taxable even when owned by 9A corporations. They are:

- Boilers
- Ventilating apparatus
- Elevators
- Plumbing apparatus
- Heating apparatus
- Lighting apparatus
- Power generating apparatus
- Shafting other than counter shafting (counter-shafting is the shafting which connects particular pieces of machinery to the main shaft)
- Equipment for the distribution of heat, light, power, gases and liquids
- Equipment consisting of structures or erections to the operation of which machinery is not essential

Other items of machinery and equipment are exempt if they are:

- Movable machinery or equipment
- Owned by a corporation taxable under Article 9-A of the Tax law
- Used for trade or manufacture and not essential for the support of the building, structure or superstructure and removable without material injury thereto.

The list above is usually all you need to determine whether the article in question is excluded by statute and thus made taxable. If you are not sure, seek the advice of your county director of real property tax or your ORPTS customer relationship manager (CRM).