

**ADOPTED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R068-12

Effective September 14, 2012

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-4, NRS 360.090 and 360.250; §5, NRS 360.090, 360.250 and 361.227.

A REGULATION relating to taxation; providing that certain personal property which is installed or attached nonpermanently to real property is not assessed as real property for the purposes of taxation; revising certain guidelines for determining whether an item is a fixture for the purposes of taxation; authorizing a county assessor to use any nationally recognized valuation technique to determine the acquisition cost of certain personal property under certain circumstances; and providing other matters properly relating thereto.

Section 1. Chapter 361 of NAC is hereby amended by adding thereto a new section to read as follows:

“Trade fixture” means an item of personal property that:

- 1. Is installed or attached nonpermanently to real property by an owner or tenant for the purpose of conducting a business or trade and not for the enhancement of the real property to which it is installed or attached; and*
- 2. Has a unique identity and function which is related to the business or trade for which it is installed or attached and which is distinct from the real property to which it is installed or attached.*

Sec. 2. NAC 361.106 is hereby amended to read as follows:

361.106 As used in NAC 361.106 to 361.1315, inclusive, *and section 1 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 361.107 to 361.1176, inclusive, *and section 1 of this regulation* have the meanings ascribed to them in those sections.

Sec. 3. NAC 361.1127 is hereby amended to read as follows:

361.1127 “Fixture” means an item, *other than a trade fixture*, that was originally personal property which has been installed or attached to land or an improvement in a permanent manner. As used in this section, “installed or attached to land or an improvement in a permanent manner” means that:

1. Either:

(a) An item is attached to, imbedded in or permanently resting upon land or an improvement, or is attached by other means that are normally used for permanent installation, and cannot be removed without substantially damaging the item or the land or improvement with which it is being used; or

(b) The use or purpose of an item that is not otherwise physically annexed to land or an improvement is so adapted that it is:

(1) A necessary, integral or working part of the land or improvement;

(2) Designed or committed for use with the land or improvement; or

(3) So essential to the land or improvement that the land or improvement cannot perform its desired function without the nonattached item; and

2. A reasonable person would consider the item to be a permanent part of the land or improvement, taking into account annexation, adaptation and other objective manifestations of permanence ~~[]~~, *including, without limitation, whether:*

- (a) Removal of the item would destroy the item or cause significant damage to the real property to which it is installed or attached;*
- (b) The historic use of the item indicates an intention to leave the item in place;*
- (c) The terms of a written agreement between parties indicates the intention of a tenant or lessee to remove or transfer ownership of the item; or*
- (d) Ownership of the item would be conveyed with a transfer of the real property to which it is installed or attached.*

Sec. 4. NAC 361.11715 is hereby amended to read as follows:

361.11715 *1.* “Real property” has the meaning ascribed to it in NRS 361.035 and includes:

- ~~{1.}~~ *(a)* Land;
 - ~~{2.}~~ *(b)* Fixtures;
 - ~~{3.}~~ *(c)* Improvements;
 - ~~{4.}~~ *(d)* On-site enhancements; and
 - ~~{5.}~~ *(e)* Any rights, interests, benefits and privileges belonging or attached to the land.
- 2. The term does not include a trade fixture.*

Sec. 5. NAC 361.139 is hereby amended to read as follows:

361.139 *1.* In determining the taxable value of personal property which was acquired with real property for a lump sum, the assessor may refer to appropriate guides which list the cost of equipment to determine the value of the personal property in relation to the value of the real property. In addition, the assessor may estimate the age of the equipment by inspecting it or discussing the approximate value of the equipment with manufacturers, dealers or other persons

in the business who have knowledge of the value of the equipment. The serial number, if it exists, may enable a manufacturer to determine the date of manufacture and the original cost.

2. If sufficient data is not otherwise available to establish acquisition cost, *or if the assessor determines that a reported acquisition cost is not equal to the fair market value of the property at the time of acquisition plus any costs of transportation and costs of installation*, the assessor may use any nationally recognized valuation technique ~~§~~ *to determine the acquisition cost*, including, without limitation:

(a) Establishing the current cost of replacement of the property with new property by reference to current manufacturing costs. If the current cost of replacement is known, the assessor shall apply depreciation to that cost to determine the taxable value.

(b) Using a guide which lists the cost or a procedure recognized by businesses which use such equipment to determine the taxable value. Before such a guide or procedure may be used, an assessor must receive approval from the Executive Director.

(c) Using information based on current market data.

3. Upon request, the Division of ~~Assessment Standards~~ *Local Government Services* of the Department will provide information on various guides which may be used to determine original cost.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066**

**LCB FILE R068-12
Tests for Classification of Fixtures**

The following statement is submitted for amendments, additions and deletions, to Nevada Administrative Code (NAC) 361 adopted by the Nevada Tax Commission.

- 1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

The Department of Taxation, as staff to the Nevada Tax Commission, solicited comment from the public by sending notice of workshops and hearings by electronic or regular mail as follows:

<u>Date of Notice</u>	<u>Workshop/ Hearing</u>	<u>Date of Workshop</u>	<u>Number Notified</u>	<u>Representing Businesses</u>
1-30-12	Workshop	2-14-12	333	179
2-24-12	Workshop	3-12-12	333	179
5-18-12	Workshop	6-5-12	333	179
5-18-12	Hearing	6-25-12	333	179

The mailing list included the interested parties list maintained by the Department, as well as officials of local jurisdictions subject to these regulations.

Many oral and several written comments or documents were received at the workshops and hearings. A copy of the audio taped comments or the record of proceedings may be obtained by calling the Nevada Department of Taxation at (775) 684-2100 or by writing to the Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Department at sarains@tax.state.nv.us.

The Legislative Counsel Bureau (LCB) completed its review and revisions on May 18, 2012. As a result of the workshop on June 5, 2012, additions to the LCB language were proposed and submitted to LCB. LCB issued a revised version on June 19, 2012. The June 19, 2012 revised version of the regulation was adopted by the Tax Commission at the hearing held on June 25, 2012.

- 2. The number persons who:**
(a) Attended and testified at each workshop:

<u>Date of Workshop</u>	<u>Attended</u>	<u>Testified</u>
2-14-12	28	8
3-12-12	32	8
6-5-12	24	7

(b) Attended and testified at each hearing:

<u>Date of Hearing</u>	<u>Commission/ Public Attended</u>	<u>Public Testified</u>
6-25-12	138	2

(c) Submitted to the agency written comments:

<u>Date of Workshop / Hearing</u>	<u>Number Received</u>
2-14-12 / Workshop	3
3-12-12 / Workshop	2
6-25-12 / Hearing	1

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected and interested businesses and persons, by notices posted at the Nevada State Library; various Department of Taxation locations throughout the state; and at the Main Public Libraries in counties where an office of the Department of Taxation is not located. Comments were also solicited by direct email to county assessors and other interested parties list maintained by the Department. Approximately 54% of the approximately 333 direct notices were sent to individuals or associations representing business.

Members of the Nevada Tax Commission, officials of the Nevada Department of Taxation, Nevada Taxpayers Association, Nevada Retailers Association, Nevada Mining Association, local government officials, and members of the general public commented on some or all of the proposed language changes during the workshop process and during the Adoption Hearing of the Nevada Tax Commission.

A copy of the audio taped comments or the record of proceedings may be obtained by calling the Nevada Department of Taxation at (775) 684-2100 or by writing to the Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Department at **trubald@tax.state.nv.us**.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulation was adopted with changes reflecting the verbal and written comments submitted to, or received by, the Department of Taxation primarily from attorneys and tax professionals representing private industry during the workshops and hearings listed above. The Nevada Tax Commission adopted the permanent regulation as revised in workshops and at the adoption hearing; and believed no changes other than those made were necessary.

5. **The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:**
- (a) Both adverse and beneficial effects; and**
 - (b) Both immediate and long-term effects.**

The regulation provides providing for a definition of trade fixtures and criteria for determining whether an item of property should be classified as a trade fixture, which is personal property; additional criteria to be used to determine whether property is intended to be a fixture, which is real property; and provides for the assessor to use any nationally recognized valuation technique to establish the value of personal property when the reported acquisition cost is determined by the assessor to not equal the fair market value of the property at the time of acquisition.

The adopted permanent regulation is intended to have a neutral effect by providing tests to determine whether fixtures should be classified as real or personal property. The expectation is that most fixtures are currently properly classified. However, to the extent that real property is mis-classified as personal property, and the property is re-classified from personal to real on the basis of the tests in these regulations, there will be an adverse economic effect. This is so because the rate of depreciation for real property is much slower than the rate of depreciation for personal property. For example, the rate of depreciation for real property is 1-1/2% per year for fifty years, resulting in a residual of 25% at the end of the life, compared to personal property which has a double-declining rate of depreciation with a 5% residual. Personal property may be depreciated over 3, 5, 7, 10, 15, 20, and 30 years at a double-declining rate, depending on the type of personal property, whereas real property is depreciated over 50 years. For example, computers generally have a 3 three year life, while personal property of water and sewage systems has a 30 year life.

Similarly, to the extent that personal property is mis-classified as real property, and the property is re-classified from real to personal property on the basis of the tests in these regulations, there will be a beneficial effect to taxpayers for the same reasons noted above. The taxable value of real and personal property, except land, is based on replacement cost new less depreciation and therefore the rate of depreciation affects the total taxable value.

The immediate effect is to provide assessors and taxpayers with better criteria to use in determining whether property is real or personal. The long-term effect is better uniformity of treatment of property among different jurisdictions.

6. **The estimated cost to the agency for enforcement of the adopted regulation.**

The Department anticipates some incremental cost to auditing procedures to ensure proper application of the regulation. The actual cost cannot be estimated at this time.

7. **A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the**

duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed amendments duplicate.

- 8. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

The Commission is not aware of any provision in this regulation which is also governed by federal regulation.

- 9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

The Nevada Tax Commission is not aware of any provision in this regulation that provides for a new fee, or increases an existing fee.

- 10. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restricted the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?**

The Department conducted a generic study to determine the effects of the classification of fixtures. The Department compared the total taxes that would be collected on a fixture if treated as real property versus being treated as personal property, with the principal difference being the rate of depreciation. The study assumed two identical fixtures were built in the same year under the same construction and financing conditions with no additional economic obsolescence applied. The study used 2011-2012 tax rates from each county. A fixture having an initial taxable value of \$1,000,000 which meets the criteria for classification as real property and which might be mis-classified as personal property will lose revenue of \$350,000 to \$450,000 in total tax dollars over 50 years depending on the tax rate; and conversely, the same investment if mis-classified as real property would cost a taxpayer the same amount in excess taxes over 50 years.

To the extent a fixture is currently mis-classified, any single business may experience a direct economic burden or benefit. However, as previously stated, the regulation is expected to have a generally neutral effect because most fixtures are properly classified.

In addition to the study, the Department invited written and verbal testimony from industry and other interested parties at three workshops to determine the impact. The testimony indicated concurrence that the regulation is expected to have a neutral effect.