

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R068-12

April 20, 2012

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

AUTHORITY: §§1-12, NRS 360.090 and 360.250

A REGULATION relating to taxation; clarifying the meaning of “fixture,” and “trade fixture;” and providing other matters properly relating thereto.

Section 1. Chapter 361 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this regulation.

Sec. 2. *As used in NAC 361.106 through 361.155 and sections 2 to 10, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 5, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Trade fixture” defined. “Trade fixture” means personal property used in conducting a business or trade which does not meet the criteria for fixtures pursuant to NAC 361.1127 and is not otherwise real property. A trade fixture may be distinguished from a fixture if:*

- 1. The item of property has its own identity and function separate from real property;
and*
- 2. The purpose of affixation is for the better use of the item, rather than to enhance the real property to which it is affixed. For example, an office telephone system includes a main processor housed in a cabinet affixed to a wall for the better use of the telephone system rather than the building. On the other hand, a suspended*

ceiling is affixed by only a few wires but is a fixture because the installation is for the better use of the building.

Sec. 4 NAC 361.1127 is hereby amended as follows:

NAC 361.1127 “Fixture” defined. [Effective July 1, 2012.] (NRS 360.090, 360.250)

“Fixture” means an item 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 property would either destroy the item or cause major damage to the real property to which it is attached;

b. Historic use of the property indicates an intention to leave the item in place;

c. Terms of a written agreement between parties, such as a lease, indicate an intention to remove or transfer ownership of the property by the lessee or tenant;

d. A building permit has been issued by a local government; or

e. The item would be conveyed with the real property when ownership is transferred.

Sec. 5. NAC 361.11715 is hereby amended as follows:

NAC 361.11715 “Real property” defined. [Effective July 1, 2012.] (NRS 360.090, 360.250)

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

1. Land;
2. Fixtures, *except trade fixtures*;
3. Improvements;
4. On-site enhancements; and
5. Any rights, interests, benefits and privileges belonging or attached to the land.

(Added to NAC by Tax Comm’n by R039-10, 8-13-2010, eff. 7-1-2012)

Sec. 10. NAC 361.11715 is hereby amended as follows:

NAC 361.139 Personal property acquired with real property for lump sum; use of other valuation techniques. (NRS 360.090, 360.250, 361.227)

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 the reported acquisition cost is deemed by the assessor to be contrary to principles of an arm's length transaction*, the assessor may use any nationally recognized valuation technique, 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 of the Department will provide information on various guides which may be used to determine original cost.

(Added to NAC by Tax Comm'n, eff. 10-10-83; A 6-29-84; R034-03, 12-4-2003)