

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R068-12

May 18, 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 temporarily 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 temporarily 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;*
- (d) A building permit has been issued by a local government; or*
- (e) 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.

Sec. 6. 1. This section and sections 1, 2 and 5 of this regulation become effective upon filing with the secretary of state.

2. Sections 3 and 4 of this regulation become effective on July 1, 2012, or upon filing with the secretary of state, whichever occurs later.