

HOUSE BILL No. 2285

By Committee on Taxation

2-11

Proposed Balloon Amendment  
House Committee on Taxation  
Prepared by Scott Wells  
Office of Revisor of Statutes

1 AN ACT concerning property taxation; relating to definitions; commercial  
2 and industrial machinery and equipment; amending K.S.A. 79-102 and  
3 repealing the existing section.

4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. K.S.A. 79-102 is hereby amended to read as follows: 79-  
6 102. ~~That the terms as used in this act, unless the context clearly requires~~  
7 *otherwise, the following words and phrases shall have the meanings*  
8 *ascribed to them herein:*

9 (a) "Real property," "real estate," and "land," ~~when used in this act~~  
10 ~~except as otherwise specifically provided, shall include not only the land~~  
11 ~~itself, but all buildings, fixtures, improvements, mines, minerals, quarries,~~  
12 ~~mineral springs and wells, rights and privileges appertaining thereto.~~

13 (b) ~~The term "Personal property" shall include every~~  
14 ~~tangible thing which is the subject of ownership, not forming part or parcel~~  
15 ~~of real property; also the capital stock, undivided profits and all other~~  
16 ~~assets of every company, incorporated or unincorporated, and every share~~  
17 ~~or interest in such stock, profit, or assets, by whatever name the same may~~  
18 ~~be designated, provided the same is not included in other personal property~~  
19 ~~subject to taxation or listed as the property of individuals; and also every~~  
20 ~~share or interest in any vessel or boat used in navigating any of the waters~~  
21 ~~within or bordering on this state, whether such vessel or boat shall be~~  
22 ~~within the jurisdiction of the state or elsewhere; and also all "property"~~  
23 ~~owned, leased, used, occupied or employed by any railway or telegraph~~  
24 ~~company or corporation within this state, situate on the right-of-way of~~  
25 ~~any railway; and also commercial and industrial machinery and~~  
26 ~~equipment.~~

27 (c) ~~That the term "Property," when used alone in this act, shall mean~~  
28 ~~means and include includes every kind of property subject to ownership.~~

29 (d) ~~The term "Money" or "moneys" shall mean means and include~~  
30 ~~includes gold and silver coin, United States treasury notes, and bank notes.~~

31 (e) ~~The words "Personal property," when used in this act in their~~  
32 ~~general sense, shall include includes all taxable property other than real~~  
33 ~~property, as hereinbefore defined.~~

34 (f) ~~The words "Town" or "village," when used in this act, shall~~  
35 ~~include includes every place laid out in lots and blocks other than~~  
36

House Taxation

Date: 3/7/13

Attachment: 6

1 incorporated cities.

2 ~~(g) The word "Cities" shall include~~ includes only such places as are  
3 incorporated cities.

4 ~~(h) The words "He," "his," or "him,"~~ when so used as to refer to a  
5 female, shall be held to mean "she," "her," or "hers"; and when so used as  
6 to refer to more than one person, "they," "their," or "them," as the sense  
7 may require.

8 *(i) On and after January 1, 2013, "commercial and industrial*  
9 *machinery and equipment," as that term is used in article 11, section 1,*  
10 *class 2, subclass (5) of the Kansas constitution, means machinery or*  
11 *equipment used directly in commercial, manufacturing or processing*  
12 *activities to produce income. Commercial and industrial machinery and*  
13 *equipment items shall not become a fixture or improvement for property*  
14 *tax purposes if the item may be disassembled, detached or removed from*  
15 *real property without causing significant damage to the item.*  
16 *"Commercial and industrial machinery and equipment" does not include*  
17 *fixtures that are common to buildings and intended to primarily benefit*  
18 *real property rather than the trade or business conducted on the premises.*  
19 *The director of property valuation shall adopt rules and regulations or*  
20 *appraisal directives to administer this subsection.*

21 Sec. 2. K.S.A. 79-102 is hereby repealed.

22 Sec. 3. This act shall take effect and be in force from and after its  
23 publication in the Kansas register.

or the realty

## Real Property v. Personal Property

When valuing property for ad valorem taxation purposes, the appraiser must determine if it should be classified as personal property or real property. Depending on the circumstances and the type of property, the classification may not always be easy to determine. First, the appraiser should be aware of the definitions outlined in state law. K.S.A. 79-102 defines real property and personal property in the following manner:

“That the terms “real property,” “real estate,” and “land” ... shall include not only the land itself, but all buildings, fixtures, improvements, mines, minerals, quarries, mineral springs and wells, rights and privileges appertaining thereto.”

“The term “personal property” shall include every tangible thing which is the subject of ownership, not forming part or parcel of real property...”

The statute defines personal property by exception, and is not always helpful in making a precise determination. For practical purposes, the county appraiser can refer to the *Kansas Reappraisal Manual* for more precise information. The “Kansas Real and Personal Property Reference” section is a guideline for classifying property in the state of Kansas. If we all follow it in general, we will promote uniformity. It lists many types of properties and the classification for each one.

It is possible that the county appraiser will be faced with a unique situation or property that is not addressed in the *Kansas Reappraisal Manual*. In that case, the county appraiser shall utilize the 3-pronged fixture law test set forth in Directive 92-011 to determine whether the property is real or personal. However, if the property is a mobile home or a manufactured home, then the special 2-pronged test set forth in K.S.A. 79-340 must be used to determine whether the property is real or personal. See Section I in this guide for information on the 2-pronged test used to determine whether a mobile home is real or personal.

The Kansas Court of Appeals has applied the 3-pronged fixture law test in a case pertaining to the value of property for ad valorem taxation purposes. *In re: Equalization Appeals of Total Petroleum, Inc.*, 28 Kan. App. 2d 295, 16 P.3d 981 (2000). This case also illustrates a unique situation where the 3-pronged fixture law test was applied to determine that massive oil tanks and oil refinery towers were real property (contrast the *Kansas Reappraisal Manual*). In *Total Petroleum*, the court concluded that the tanks and refinery towers were real property after reviewing (1) annexation, (2) adaptability and (3) intent.

The key factors influencing the *Total Petroleum* court decision included:

- 1.. The massive size of the tanks and towers, and how they were affixed to the land:
  - ◆ The tanks were built on-site by transporting huge pieces of sheet metal by semi-trucks and welding the metal into place until 3” thick.

- ◆ The towers were 120' tall and weighed 175,000 lbs. empty, without trays. They were installed 20' below ground in concrete and rebar with 1 ½" anchor pedestals, and were built to withstand 100 mph winds.
2. The tanks and towers were not portable and were never moved.
  3. The land on which the tanks and towers were affixed was devoted to the placement of an oil refinery. Some of the property associated therewith, including the towers and tanks at issue, were specifically constructed for placement on that particular piece of land.
  4. Much of the property (including the tanks and towers) would have to be cut into pieces in order to be removed from the land. Furthermore, the removal would result in environmental contamination of the land, which would have to be treated.

### Three-Pronged Fixture Law Test

The determination of whether property is real or personal must be made on a case-by-case basis. The three tests that comprise the three-pronged fixture law test are: (1) annexation; (2) adaptability; and (3) intent. All three tests must be considered.

**Annexation to the realty:** How is the item under consideration physically annexed to the real property? Would removing the item cause a reduction in the fair market value of the realty? If so, the item may tend to be viewed as part of the real property. Would the item, once removed, require a significant amount of time or cost to restore the realty to its original condition? If so, the item may tend to be viewed as part of the real property.

**Adaptation to the realty:** In the adaptability test, the focus is on whether the property at issue serves the real estate or a production process. For example, a boiler that heats a building is considered real property, but a boiler that is used in the manufacturing process is considered personal property.

**Intent of owner:** Intent is not determined simply by what a person verbally expresses. Rather, the courts have stated that *it is inferred from the nature of the item affixed; the relation and situation of the party making the annexation; the structure and mode of annexation; and the purpose or use for which the annexation was made.* In other words, the courts will look back at the objective data garnered from the first two tests, or from independent documents (documents prepared for purposes other than for a hearing on the issue of whether the property is real or personal). For example, a lease agreement may reveal intent. The courts look for objective data to determine whether the owner of the property at issue intended for it to become part of the real property.

When classifying property for assessment purposes, the appraiser should examine all relevant factors and criteria. The information source, its applicability to the Kansas property tax laws and whether it can be used as a credible authority on appeal are all relevant factors to consider.

## **EXCERPT FROM THE KANSAS REAPPRAISAL MANUAL**

### **KANSAS REAL AND PERSONAL PROPERTY REFERENCE**

The basic factor for classifying items as real or personal property, are their designed use and purpose. Normally, the land and all permanent structures on the land, all mechanical and other features within the structure with a designed use for the safety and comfort of the occupants, and all permanent land improvements added for the utilization of the land are considered real estate.

Items directly used for and whose primary purpose is for a, manufacturing process are normally considered personal property. Personal property, by definition, includes all machinery and equipment, furniture, and inventory.

Other factors which must be given consideration in classifying items as real or personal property are the manner in which they are affixed and the intention of the party who affixed them.

The following is a standard reference for the State of Kansas. It should be recognized that this is a general guideline and that specific listed items may vary under certain condition. When questions or uncertainties arise, contact the Division of Property Valuation for clarification.

#### **IMPROVEMENTS TO LAND NORMALLY CONSIDERED REAL PROPERTY**

Ordinarily include:

Retaining walls, piling and mats for general improvement of the site, private roads, paved areas, culverts, bridges, viaducts, subways, tunnels, fencing, reservoirs, dikes, dams, ditches, canals, private storm and sanitary sewers, private water lines for drinking, sanitary and fire protection, fixed wharves and docks, permanent standard gauge railroad tracks, and yard lighting.

#### **BULDING COMPONENTS NORMALLY CONSIDERED REAL PROPERTY**

Structural and other improvements to buildings, including:

Foundation, walls, floors, roof, insulation, stairways, catwalks, partitions, loading and unloading platforms and canopies, systems designed for occupant comfort such as heating, lighting, air conditioning, ventilating, sanitation, fixed fire protection, plumbing and drinking water, elevators and escalators.

## MISCELLANEOUS

### Category

### Item

#### Building Components

Air Conditioning-Central .....	Real
Air Conditioning-Package with Duct Work .....	Real
Air Conditioning-Wall/Window Unit .....	Personal
Cold Storage-Built-In .....	Real
(where they are the primary function of the structure)	
Cold Storage-Movable (knock down type) .....	Personal
Cold Storage-Display Type .....	Personal
Cold Storage-Free Standing .....	Personal
Refrigeration Equipment .....	Personal
Door-Automatic (Magic Carpet) .....	Real
Elevator .....	Real
Escalator .....	Real
Dumbwaiter .....	Real
Man Lift .....	Real
Sidewalk Lift .....	Real
Franklin Stove .....	Personal
Free Standing Fireplace .....	Personal
Sprinkler System .....	Real
Boiler (used primarily to supply heat for bldg.) .....	Real
Boiler (used primarily to supply power for mfg.) .....	Personal
Machinery and Equipment Covers .....	Personal
Generator .....	Personal
Hopper Scales .....	Personal
Loading-Unloading Systems .....	Personal

#### Yard Items

Parking Lot Lighting .....	Real
Scale-Platform .....	Personal
Scale-Houses .....	Real
Scale-Axle Drive-On .....	Real
Sign-Business (attached to building) .....	Personal
Sign (free standing) .....	Personal
Sign-Advertising (billboard) .....	Personal
Tower-Radio Station .....	Personal
Tower-Television Station .....	Personal
Tower-Communication (citizens band) .....	Personal
Tower-Cable TV .....	Personal
Docks and Bulkheads .....	Real
Fencing (security or privacy) .....	Real
Trackage .....	Real
Tunnel (pedestrian) .....	Real

Category

Item

Building Components (continued)

Incinerator .....	Personal
Overhead Walkway .....	Real
Utility Shed (affixed to slab or foundation) .....	Real
Satellite Dish .....	Personal

Special Items

Batch Plant-Structure .....	Real
Batch Plant-Equipment .....	Personal
Portable Standing Building & Yard Item .....	Personal
Silo .....	Real
Tank-Storage .....	Personal
Tank-Used in Processing .....	Personal
Grain Elevator .....	Real
Wind Generator .....	Personal
Solar Energy Panel .....	Real
Windmill .....	Personal

Automotive Services

Pump .....	Personal
Tank-Above Ground, Vertical .....	Personal
Tank-Above Ground, Horizontal .....	Personal
Tank-Underground .....	Personal
Lift .....	Personal
Compressor .....	Personal
Service Station Yard Lighting .....	Real

Banks

Vault .....	Real
Vault Door .....	Real
Safe Deposit Box .....	Personal
Counter .....	Personal
Night Depository .....	Real
Window-Drive-In .....	Real
Window-Walk-Up .....	Real
Window-Tellervue .....	Personal
Surveillance System .....	Personal
Safe-Built-In .....	Real
Safe-Moveable .....	Personal
Money Machine or Mini Bank .....	Personal

Category	Item	
Beauty & Barber Shops		
	Basins & Sinks (used in conjunction w/ business) ...	Real
	Toilet Room Facility .....	Real
Bowling Lanes		
	Lane and Return .....	Personal
	Pinspotter .....	Personal
Car Washes		
	Equipment .....	Personal
	Related Plumbing, Piping & Wiring .....	Real
Dry Cleaners		
	Permanent Type Heating .....	Real
Restaurants and Bars		
	Sink (used in conjunction w/ business) .....	Real
	Equipment .....	Personal
Indoor Theatres		
	Equipment .....	Personal
	Seats .....	Personal
Outdoor Theaters		
	Screen .....	Real
	Speaker, Post, Underground Wiring .....	Personal
	Concession Stand & Other Permanent Bldgs. ....	Real
Trailers		
	Recreational Vehicle .....	Personal
	Mobile Home .....	Personal
	(in mobile home park or on leased or rented land)	
	Mobile Home .....	Real
	(on permanent foundation on private lot)	
Trailer Parks		
	Laundry Building, Bath House, Swimming Pool ....	Real
	Sewer Systems, Water Piping .....	Real
	Poles and Lighting .....	Real
	Walk, Driveway and Parking Areas .....	Real
Swimming Pools		
	Inground .....	Real
	Above Ground, Prefabricated .....	Personal



Category	Item	
Commercial Greenhouses		
	Plastic on Framing .....	Real
	Heating System .....	Real
Apartments		
	Carpeting (installed and attached) .....	Real
	Built-Ins (ranges, dishwashers, garbage disposals) ..	Real
Photo Booths		
	Photomat, Shutterbug, etc. (portable kiosk) .....	Personal
Docks		
	Leveler .....	Real
Oil Bulk & Refining Plants		
	Oil Storage Tanks .....	Personal
	Piping (above ground) .....	Personal
	Loading Rack (frame and canopy).....	Real
Craneways		
	Integrated with Building Structure .....	Real
	Independent of Building Structure .....	Personal
	Crane Motor and Mechanism .....	Personal