



Real Versus Personal Property

Defining the Terms

Why Classify Property?

Oregon law defines real property and personal property for property tax purposes in Oregon Revised

Statutes 307.010 and ORS 307.020. The Oregon Tax Court has also decreed that real property must be assessed as real property and personal property assessed as personal property (First National Bank v. Marion County—169 Oregon 595).

Classification Procedures

Classification of property as either real or personal is based on ORS 307.010 and 307.020. The Oregon Department of Revenue is responsible for clarifying those statutes, when necessary, with Oregon Administrative Rules (OAR). The rules that clarify the above-mentioned statutes are OAR 150-307.010 and OAR 150-307.020.

The Oregon Tax Court ruling in Seven-Up Bottling Co. of Salem Inc. v. Oregon Department of Revenue (case #2398, 3/87) provides a guide for determining real and personal property, as defined in ORS 307.010 and ORS 307.020. Based on this case, the test for real versus personal property for assessment purposes is actually a test of affixed or erected upon versus moveable.

The court stated that if the item of property is “affixed to” or “erected upon” land or buildings and is not “readily moveable,” it is real property. Conversely, if it is not “affixed to” or “erected upon” land or buildings and is “moveable,” it is personal property.

According to the Tax Court opinion in the Seven-Up Bottling Co. case, “...As a general rule, the Assessor is not required to consider the intention of the parties or the adaptability of the property.”

Affixed or Erected Upon

Items of machinery and equipment that are bolted to, screwed to, nailed to, or attached to the building or land in a permanent manner or are, by virtue of their weight, rendered immovable, are considered real property. A free-standing, walk-in cooler in a convenience store is not considered moveable because of its weight. A service counter or gondola in the same store may be screwed, glued, nailed, or otherwise attached to the land or building and, therefore, classed as real property. On the other hand, these items may be readily moveable and, therefore, classed as personal property.

Moveable

Items of property that can be and are readily moved are considered moveable. A desk, though heavy, is generally considered moveable. A chair with casters is obviously moveable. A 14” Delta Wood Cutting Bandsaw is moveable. A 36” Ferrari Double Band Resaw is not considered moveable because of its weight.

Assessment Process

In an 1891 Oregon Supreme Court case, Helm v. Gilroy (20 Oregon 517), the court stated that the line between real property and personal property is so fine that no rule can fit all cases. A century later, the statement is still accurate. For every clear-cut case there is an exception. Judgments between real and personal property must be made with cooperation between the real and personal property sections in the assessor’s office. This is so that assessable property is not overlooked or double assessed. Arriving at accurate assessments and providing equitable treatment is the primary goal.

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To Where and to Whom it is Assessed

Authority

Personal Property (ORS 308.105)

“Except as otherwise specifically provided, all personal property shall be assessed for taxation each year at its situs as of the day and hour of assessment prescribed by law. Personal property may be assessed in the name of the owner or of any person having possession or control thereof. Where two or more persons jointly are in possession or have control of any personal property, in trust or otherwise, it may be assessed to any one or all of such persons.”

Real Property (ORS 308.115)

“Whenever any building, structure, improvement, machinery, equipment, or fixture is owned separately and apart from the land or real property whereon it stands or to which it is affixed, such building, structure, improvement, machinery, equipment, or fixture shall be assessed and taxed in the name of the owner thereof.”

For more references about how property is assessed, **review ORS 308.105 and ORS 308.115.**

Oregon law directs that every person and the managing agent or officer of any firm corporation or association owning or having in possession or under control taxable **personal property** shall make a return of the property for ad valorem tax purposes to the assessor of the county in which such property is located.

Oregon law directs that every person and the managing agent or officer of any firm corporation or association owning or having in possession or under control taxable **real property** shall make a return of the property for ad valorem tax purposes when so requested by the assessor of the county in which such property is located.

Oregon law directs every person and the managing agent or officer of any firm corporation or association owning or having in possession or under control taxable real and personal property that is either principal or secondary industrial property as defined by ORS 306.126 and is appraised by the Department of Revenue shall file a combined return of the real and personal property for ad valorem tax purposes to the department.

The authority for the assessors and the Department of Revenue to require the filings of returns for real and personal property can be found in the following Oregon Revised Statutes and Administrative Laws:

- Taxpayer Required to Furnish Listing of all Taxable Real and Personal Property **308.285**
- Filing of Returns **308.290**
- Penalty for Failure to File **308.295 & 308.296**
- Penalty for Intent to Evade **308.300**
- Taxation, Refuses, or Neglects False Statement of a Material Fact **307.990**