

STATE OF KANSAS

David C. Cunningham, Director
Robert B. Docking State Office Building
915 S.W. Harrison St.
Topeka, Kansas 66612-1585



(913) 296-2365
FAX (913) 296-2320

Department of Revenue
Division of Property Valuation

DIRECTIVE #92-011

TO: County Appraisers

SUBJECT: Leasehold Improvements

This directive is adopted pursuant to the provisions of L. 1992, ch. 249, § 1, and shall be in force and effect from and after the Director's approval date.

County appraisers shall follow the law of fixtures in determining whether leasehold improvements constitute real or personal property for taxation purposes.

K.S.A. 79-102 provides in relevant part:

... 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. (Emphasis added).

The term "personal property" shall include every tangible thing which is the subject of ownership, not forming part and parcel of real property ... (Emphasis added).

To determine whether an item constitutes a fixture, three factors are considered: (1) annexation to the realty; (2) adaptation to the use or purpose of that part of the realty to which it is connected; and (3) the intention of the party making the annexation to make the item a permanent annexation to the freehold [Dodge City Water & Light Co. v Alfalfa Land & Irr. Co., 64 Kan. 247, 67 P. 462 (1902)].

In considering annexation when determining whether an item is a fixture, some courts have looked at whether removal of the item shall injure the realty or shall injure the item itself [Stem Brothers, Inc. v Alexandria Township, 6 N.J. Tax 537

(1984)]. For example, an indication that the leasehold improvement is a fixture, thus real property, is if removal of the leasehold improvement from the realty causes a change in the market value of the realty or requires a significant amount of time or cost to restore the realty or leasehold improvement to its original use. An indication that the leasehold improvement is personal property is if removal of the leasehold improvement from the realty is easily accomplished with minimal damage to the realty or leasehold improvement.

Adaptation to the use or purpose of that part of the realty to which the item is connected focuses on the relationship between the item and the use which is made of the realty to which the item has been attached. If the leasehold improvement is a necessary or useful adjunct to the realty and makes the realty more valuable, then it may be said to have been adapted to the use or purpose of the realty to which it was attached. If the leasehold improvement is attached for a use or purpose which does not enhance the value of the land, it is generally deemed not to become a part of the land [Atchison, T. & S.F. R. Co. v. Morgan, 42 Kan. 23, 21 P. 809, 4 L.R.A. 284, 16 Am.St.Rep. 471 (1889)].

The intention to make the item a permanent annexation to the freehold is the controlling factor in determining the character of the item. Intention 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 for which the annexation has been made [Eaves v. Estes, 10 Kan. 314, 15 Am.Rep. 345 (1872)].

While no current statute requires improvements on leased land to be listed for the purpose of valuation as personal property (K.S.A. 79-328; Repealed, L. 1981, ch. 371, § 1; April 25, 1981), statutory exemptions exist specifically requiring certain mobile homes (K.S.A. 79-340) and oil and gas property (K.S.A. 79-329) to be listed as personal property for the purpose of valuation.

The law of fixtures applies in determining whether leasehold improvements constitute real or personal property. Once such a determination has been made, the property shall be carried on either the real property roll or the personal property roll.

Approved: _____
(Date)

David C. Cunningham
Director of Property Valuation