

### 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.

Clarification on how this applies to state appraised public utilities.

K.S.A. 2012 Supp. 79-223 is limited to property in subclass (5) of class 2 of section 1 of article 11 of the constitution of the State of Kansas. Public utility property is in another subclass, *i.e.* public utility real property is in subclass (5) of class 1, and public utility personal property is in subclass (3) of class 2; therefore, they **do not qualify for the "machinery and equipment" exemption.** Railroad and telecommunications companies have their own "machinery and equipment" exemption in K.S.A. 2012 Supp. 79-224. Therefore, properties such as the Jeffrey Energy Center and Wolf Creek would not qualify for the "machinery and equipment" exemption because they are public utilities.

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