

Tangible personal property distinguished from real property

Businesses often purchase tangible personal property that is, or becomes, affixed to the ground and/or a structure. In some cases, these items become part of the real property. For example, a liquid storage tank may be purchased, delivered to a business site, and affixed in such a way as to be functional.

When a business is sold, the portion of the sale attributed to the value of the items included in the sale are subject to either retail sales tax or real estate excise tax.

- If the items are personal property, the portion of the sale attributed to their value is subject to sales or use tax.
- If the items are real property, the portion of the sale attributed to their value is subject to real estate excise tax.

Determining if an item has become part of the real property (a fixture) depends on three factors:

- Actual annexation (attachment or affixing in more than a temporary way).
- Application to the use or purpose for which the realty is purchased.
- The intent of the party to make the item a permanent part of the realty.

The intent of the person attaching the item or items is best determined from the facts and circumstances surrounding the attachment.



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