

Differentiate Real vs Personal Property

Learning Objectives

- Define real property and personal property.
- Describe the laws that provide guidance on identifying property as real vs personal.
- Determine whether farm buildings in your jurisdiction are real or personal property.

Key Terms to Define / Concepts to Cover

- Real property
- Personal property
- Building

Real vs. personal property (and the law)

Definitions

In order to accurately identify property as real property or personal property, there are some definitions that you need to know first.

- Real Property: “Consists of the interests, benefits, and rights inherent in the ownership of land plus anything permanently attached to the land or legally defined as immovable.”¹
- Personal Property: “Consists of every kind of property that is not real property; movable without damage to itself or the real estate.”²
- Building: a fabric, structure, or edifice, such as a house, church, shop, or the like designed for the habitation of men or animals or for the shelter of property.³ (This is cited in several of the PTAB cases.)

Statutory prohibition on taxation of personal property

Prior to the 1970 Constitution, assessors were charged with valuing both real property and personal property. The 1970 Constitution mandated that the personal property tax be abolished, but this proved easier said than done, because in Illinois’s 102 counties, there were 102 different standards for determining whether property was real or personal.

Prior to 1970, the decision was largely academic, as there was no difference in the amount of tax paid; tax rates were the same whether property was real or personal. For example, a communications tower might be classified as real property in one county but personal property in another. Simply phasing out the taxation of personal property without addressing this issue would cause chaos around the state.

January 1979 saw the 81st General Assembly seated without a solution. The first act signed into law that year addressed the issue:

Notwithstanding the provisions of this or any other Act, an ad valorem personal property tax shall not be levied after January 1, 1979, on any personal property having tax situs in this State ****. **No property lawfully assessed and taxed as personal property under this Act prior to January 1, 1979 shall be classified as real property** subject to

¹ *Glossary for Property Appraisal and Assessment*, 2nd ed. (Kansas City: International Association of Assessing Officers, 2013), p. 129.

² *Glossary for Property Appraisal and Assessment*, p. 129.

³ *Ayrshire Coal Co. v. Property Tax Appeal Board*, 19 Ill.App.3d 41, 45, 310 N.E. 2d 667, 671 (3rd Dist. 1974)

assessment and taxation under this Act after January 1, 1979. **No property lawfully assessed and taxed as real property under this Act prior to January 1, 1979 shall be classified as personal property** subject to assessment and taxation under this Act after January 1, 1979.⁴

In 1983, the General Assembly expanded this to include “property of a like kind acquired or placed in use after January 1, 1979” in both definitions.⁵ This meant that if a property type that was valued as real property prior to 1979 was replaced with another component, the new component would continue to be valued as real property.

This act was commonly called the Freeze Act⁶, as it “froze” the determination of what was real property and what was personal property as of December 31, 1978.

Example 1: A manufacturing facility in Harrison County had a water tower on the property that was assessed as personal property prior to 1979. It must be considered non-taxable personal property after January 1, 1979, and any replacement water tower must also be considered non-taxable personal property.

A new manufacturing facility is built in Harrison County in 2006, and it includes a water tower for process water and fire suppression. Since water towers prior to 1979 were valued as personal property, the water tower built in 2006 must also be considered non-taxable personal property.

Example 2: A bowling alley located in Van Buren County had its lanes and pinsetters assessed as real property prior to 1979. It must be valued and taxed as part of the real property after January 1, 1979, and any replacement lanes and pinsetters must also be considered taxable real property.

A new bowling alley is being built in Van Buren County; residents were pleased, as the last bowling alley had been destroyed by a fire in 1982. Since the county had assessed lanes and pinsetters as real property prior to 1979, they must be valued and taxed as part of the real property.

As a result of the Freeze Act, the determination of whether a component can be assessed and taxed as real property must be made on a county-by-county basis; the determination in one county cannot be applied to another county.⁷

⁴ Public Act 81-1, effective August 14, 1979; emphasis added.

⁵ Public Act 82-935, effective January 1, 1983.

⁶ This should not be confused with the Senior Citizen Assessment Freeze Homestead Exemption.

⁷ *Cherry Bowl v. Property Tax Appeal Board*, 100 Ill.App.3d 326, 331 (2nd Dist. 1981)

Illinois Appellate Court

After the Freeze Act, the Illinois Appellate Court provided some guidance in *In re Application of Beeler* for determining real versus personal property.⁸

In re Application of Beeler was about two grain dryers with wheels that could be moved by a pickup truck with an estimated life of five to eight years. Although the grain dryers were attached to a concrete foundation, it was a “floating” foundation (i.e., no footers), and the grain dryers were not only moveable, but were also specifically designed *to be moved*. The court thus had to adopt measures for determining whether the grain dryers were real property.

As a result, the court formulated what is now known as the “intention test” for determining real property.

1. As the first measure of the test, the court stated, “the property must be annexed to the realty or to something appurtenant thereto,” meaning that the property in question must be attached to the land or something attached to the land.
2. The court then stated, “second, the property must be applied to the use or purpose to which that part of the realty, with which it is connected, is appropriated,” meaning the property in question must also be applied to the use of the land (in this instance, a farm).
3. Finally, the court stated, “the party making the annexation must intend to make a permanent accession to the freehold,” meaning that the property in question must also be a permanent and valuable improvement to the land.⁹

If these three criteria are met, the property in question would be considered real property.

The court also examined the “Integrated Industrial Plant Doctrine” in this case, which constituted “An extension of the second and third elements of the intention test.” The court stated that “the higher degree of a relationship between the contested property and the uses of the realty, the more assuredly it can be said that the property is a part of the realty.”¹⁰ In short, this means that the more indispensable property structure in question is to the farm operation, the better argument can be made for the structure to be real property.

The court ultimately found that the grain dryers failed part three of the intention test, as they were not intended to be a permanent and valuable improvement. The court also found that the grain dryers failed the integrated industrial plant doctrine, as “the grain dryers were not indispensable to petitioner’s farming operations, but merely one of several means to handle harvested grain.”

Keep in mind that the court’s guidance doesn’t override the Freeze Act, but instead provides some principle applicable to the topic when there is no prior like-kind property.

⁸ *In re Application of Beeler*, 106 Ill. App. 3d 667, 435 N.E.2d 1357 (Ill. App. Ct. 1982)

⁹ *Beeler* at 670.

¹⁰ *Beeler* at 672.

Determine whether farm buildings in your jurisdiction are real or personal property

Now that we have defined real and personal property and some of the laws surrounding what to value, you will need to apply this knowledge to determine whether farm buildings in your jurisdiction are real or personal property.

The first step is to figure out how your county handled real and personal property prior to the law. Remember, all counties determined real and personal property differently prior to the Freeze Act. For example, some counties assessed greenhouses as real property, while others assessed them as personal property. [Activity: Greenhouse PTAB case discussion](#)

Similarly, different counties assessed hog confinements as real or personal property depending on the equipment and gating of the confinement. [Hog Confinement PTAB case discussion](#)

In order to determine how your county handled real and personal property prior to the law, you may want to start by talking with the CCAO or some other assessor who may have prior knowledge.

It can also be helpful to review old documentation, such as signed affidavits from property owners declaring certain property real property, or old PRCs. You should be able to check for like-kind buildings on old PRCs prior to 1979.

However, if neither of those options are available to you, you may simply have to sit down and analyze what makes something real versus personal property. Consider the definitions and statutes listed in previous section and ask the following key questions about the property:

- **Is it moveable?**
- **Is it designed to be moved?** Most buildings are “moveable,” but unless a building is *designed to be moved*, it’s likely real property.
- **If it is designed to be moved, is it needed for a structure bolted to the ground to function?** Consider grain elevator legs, for example: if you are using the Marshall and Swift cost manual, legs are included in the cost of the elevator. However, you could make the argument that, while the legs are technically able to be removed, they may be needed for the grain elevator to function. Importantly, there are also some types of moveable property that you may not assess, such as ladders around grain bins.
- **Does it meet the definition of a building/structure?** Consider, for example, sheds or other types of portable buildings. [Activity: Utility Shed PTAB case discussion; Portable Buildings PTAB case discussion](#). Or, consider hoop buildings, which have become more sophisticated and, arguably, more permanent; while the vinyl tarp in older hoop buildings had a two- to three-year lifespan and may have therefore originally been seen as personal, nowadays hoop buildings have metal siderails, and the vinyl on the buildings is much stronger, making them last much longer. [Activity: Hoop building PTAB case discussion](#)
- **Does it meet the like-kind argument?** Consider the greenhouse PTAB case that we already discussed. While the greenhouses built and assessed as real property prior to 1979 weren’t identical to the subject, the PTAB found that those greenhouses sufficiently established “like-kind” in this instance, as they all performed the same basic tasks such as growing flowers.

Ultimately, **the most important thing is to be consistent across your county**, regardless of how your county handled real versus personal property prior to the law and however you end up determining what constitutes real and personal property.

Culminating Activity—photos, discuss if real or personal in your jurisdiction.

DRAFT