



STATE TAX COMMISSION OF MISSOURI ASSESSOR MANUAL

CHAPTER:

ASSESSMENT OF WIND ENERGY FACILITIES

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7.7 ASSESSMENT OF WIND ENERGY FACILITIES

The assessment of these facilities falls upon the county assessor. Generating facilities owned by companies that also own the transmission system to the ultimate customers are centrally assessed, but generating plants (such as gas, peak generation facilities) that distribute the electricity on the transmission network of another company are locally assessed. Consequently, wind generating plants or farms should be locally assessed.

I. Classification

The classification of wind generators, though not specifically mentioned in the statutes, could be determined under a common law fixture analysis, as a structure, or in a similar fashion to installed poles as defined in section 137.010(3), RSMo. As the discussion below indicates, it is the Commission's recommendation that they be classified as real property.

A. Fixture Analysis

Under Missouri case law, what would otherwise be personal property can be considered real property, i.e., a fixture, under certain circumstances. The court decisions have been somewhat unpredictable in this area, but the basic test for determining whether or not something is a fixture has been fairly consistent and, according to the Missouri Supreme Court, is:

1. Whether the property has been annexed to the real property;
2. Whether the property has been adapted to fit its location; and
3. Whether the intent of the owner, as evidenced by acts and conduct, is that the property should remain permanently, in other words, more than just a temporary presence. *Daly v. State Tax Commission*, 120 S.W. 3d 262 (Mo. App. 2002).

If these three elements are satisfied, the property in question should be assessed as real rather than personal property. While the adaptation of wind generators to fit the location may be minor, the equipment definitely is annexed to the property and not intended to be removed in the short term—especially the foundations or bases. So, under this analysis, they would be real estate—whether on leased land or land owned by the owner of the generators, and would be analogous to the classification of billboards. *State ex rel. Thompson v. Osage Outdoor Advertising*, 674 S.W. 2d 81 (Mo. App. W.D. 1984).

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Intent is an objective rather than subjective test. If the fixture is apparently part of the realty, the assessor is justified in relying on its appearance regardless of the existence of secret agreements for retention of title or a right of removal under the doctrine of trade fixtures. Although the parties may disclose the existence of separate ownership, the assessor is not compelled to make a laborious inquiry into the possible real or personal nature of annexations. Simple expedience requires that assessors be allowed to rely on the apparent character of assessed land or chattels. *Oberjuerge Rubber Co. v. State Tax Com'n of Missouri*, 674 S.W. 2d 186 (Mo. App. E.D. 1984).

B. Section 137.010 Analysis

Section 137.010(3), RSMo. defines real property (emphasis added) as including:

. . . land itself, whether laid out in town lots or otherwise, **and all** growing crops, buildings, **structures**, improvements and fixtures of whatever kind thereon . . .

In *State ex rel. Thompson v. Osage Outdoor Advertising*, 674 S.W. 2d 81 (Mo. App. W.D. 1984) the Court of Appeals, after reviewing numerous cases, determined that billboards were not only fixtures, but were also structures within the meaning of Section 137.010(3), RSMo, indicating that the word “structure” should be given a broad interpretation to include a thing built, erected or fabricated.

Wind generation facilities are real property under Missouri law.

II. Commercial Real Property Subclassification

It is the Commission’s position that wind generating systems are properly classified as commercial property. Section 137.016.1(3) RSMo. defines “utility, industrial, commercial, railroad and other real property” as:

[A]ll real property used directly or indirectly, for any commercial, mining, industrial, manufacturing, trade, professional, business, or similar purpose, including all property centrally assessed by the state tax commission but shall not include floating docks, portions of which are separately owned and the remainder of which is designated for common ownership and in which no one person or business entity owns more than five individual units. All other real property not included in the property listed in subclasses (1) and (2) of section 4(b) of article X of the Missouri Constitution, as such property is defined in this section, shall be deemed to be included in the term “utility, industrial, commercial, railroad and other real property”.

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Both the cited statute and Article X, Section 4(b) of Missouri's Constitution clearly indicate that "utility" property falls into a commercial classification. A "utility" is business enterprise that performs essential public service and is subject to governmental regulation. A public utility is a company that provides necessary services to the public, such as telephones, electricity and water. *Black's Law Dictionary*, Seventh Edition, 1999. Property used to provide electricity is best characterized as "utility" property.

Using wind to produce electricity is analogous to using water to produce electricity (dams) or removing natural resources from the soil (mining), both of which are commercial pursuits.

III. Valuation

It is difficult to find information on valuing this type of equipment. Marshall-Swift makes no mention of wind generation power plants, and the systems do not fall neatly under the rural electric guidelines. Until sales are available for a comparable sales approach and to determine market capitalization rates under an income approach, the assessor most probably will be forced to rely on the companies involved for cost information, and depreciate the costs provided in a manner similar to other commercial or industrial property.

The initial commissioning and testing issues wind generation facilities encounter when first in operation and repairs that are often necessary due to the 10 year life of some of the essential parts of the generator make assessment of wind generation facilities difficult. It is the Commission's understanding that the first Missouri counties to assess such facilities jointly chose to assess the property during the first two-year assessment cycle at 40% good, the second two-year cycle at 37% good, and the third two-year cycle and beyond at 35% good. To ensure an accurate original cost information, the assessor may wish to require the owners to submit invoices of the towers and associated equipment as well as the wiring connecting it to a system.

The International Association of Assessing Officers (IAAO) provides a "Wind Energy Guide" on its website at: <http://www.iaao.org/sitePages.cfm?Page=425>, which provides information on wind generation. The Guide is accessible by non-members of IAAO and has valuable cites to other resources as well.