

Fixtures

Social Service Tax Act

This bulletin provides guidelines to assist businesses in determining the application of social service tax to machinery, equipment and apparatus used directly in the manufacture, production, processing, storage, handling, packaging, display, transportation, transmission or distribution of tangible personal property, or in the provision of a service.

Under the *Social Service Tax Act*, the application of tax depends upon whether such machinery qualifies as tangible personal property, as a fixture, or as an improvement to real property. Given the diversity of machinery used in business processes, taxpayers may wish to contact the Consumer Taxation Branch if there is uncertainty as to the correct application of the tax to a particular item. Instructions for obtaining additional information are provided at the end of this bulletin.

The information in this bulletin is provided for your convenience and guidance and is not a replacement for the legislation. The *Social Service Tax Act* and Regulations can be found on the web at www.gov.bc.ca/sbr

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DEFINITIONS

Fixture

The Act defines **fixture** as “*machinery, equipment or apparatus that is*

- (a) *a fixture at common law, and*
- (b) *used directly in the manufacture, production, processing, storage, handling, packaging, display, transportation, transmission or distribution of tangible personal property or in the provision of a service”.*

Apparatus

The Act defines apparatus as a “*complex machine or device designed to accomplish a specific purpose and consisting of an integrated assembly of parts each having a definite function”.*

Fixtures at Common Law

In general terms, machinery, equipment and apparatus are **fixtures at common law** where

- they are substantially affixed to, or installed in, land or a building in such a way as to lose their separate identity, and
- the attachment or installation is for the better use of the building or land, rather than for the better use of the equipment as chattel.

Machinery

For the purposes of this bulletin, the term “machinery” includes any machinery, equipment or apparatus that is used for a business purpose.

IS IT A FIXTURE AT COMMON LAW?

The Common Law Test

As indicated in the definition of a fixture, the first step in determining the application of tax to particular machinery is establishing whether it is a fixture at common law. Common law is simply a body of commonly accepted legal principles that have arisen over time as a result of various court rulings.

The courts have indicated that the primary test for whether an item qualifies as a fixture at common law is the degree and object of attachment to, or

installation in, real property.

The degree of attachment or installation refers to the extent to which the machinery becomes a part of the realty. The greater the degree of attachment, the greater the indication that the item is a fixture at common law.

The object of attachment refers to the reason the machinery has been affixed to, or installed in, realty. As illustrated below, where the attachment is for the better use of the realty, rather than for the better use of the machinery, this indicates the machinery is a fixture at common law.

Machinery that is a fixture at common law falls within one of the following general categories.

Direct Attachment to Realty

Machinery that is a single unit (not part of an integrated system of machinery) and that is directly attached to realty qualifies as a fixture at common law if it meets the following criteria:

- the attachment to realty is substantial, such as being firmly bolted to the floor or ceiling, embedded in a concrete pad, or built into the walls of a building, and
- the attachment is for the purpose of improving and becoming part of the realty, rather than for the convenient or safe operation of the machinery, or the security of the machinery.

Examples of machinery and equipment **that qualify** as fixtures at common law include the following:

- automatic teller machines built into the wall of a bank building or shopping mall;
- ovens and barbecue chicken machines used in supermarkets or restaurants, provided they are bolted to the floor, walls, or countertops;
- pizza ovens bolted into place as permanent additions to buildings, and
- liquor/draught beer dispensers that are permanently affixed to a cabinet or counter in a bar.

With the exception of machinery that is part of a system of machinery or that is considered an improvement to realty (see below), machinery that rests on its own weight or that is lightly tacked into place does not qualify as a fixture under common law.

Examples of machinery used in a production or manufacturing process, in the storage or transportation of tangible personal property, or in the delivery of a service that **do not qualify** as

fixtures at common law include the following:

- automatic teller machines that are free standing or attached to the floor for security reasons only;
- free standing coolers and freezers, ice machines, and cigarette machines that are connected to realty by a utility and may be lightly tacked into place for stability;
- tower cranes used in real property construction that may be attached to the building during construction, but that are not intended to become part of the building and are designed to be removed once the building is completed, and
- semi-mobile in-pit stone crushing equipment.

Systems of Machinery

Some machinery may not be directly or substantially attached to realty, but may be part of a system of machinery that operates as a unit. Where this occurs, the machine must be evaluated in terms of its indirect connection to realty through its connection to the other machinery.

Where the system as a whole meets the criteria of substantial attachment or installation, as outlined above and below, then the parts to that system are fixtures at common law.

For example, a system of mobile cranes that runs on rails meets these criteria. That is, the rails are bolted to the ceiling or walls of the building. The cranes may be attached to the rails by flanged wheels, or may rest on the rails by their own weight. When considered individually, the cranes do not have sufficient attachment to realty to qualify as a fixture at common law. However, they are an integral part of a system of machinery. That is, the rails have no purpose other than to enable the cranes to be moved to various locations in the plant.

When considered as part of a system, the attachment by means of the rails is substantial. The system as a whole is attached to the building to enable the building to be used as a manufacturing facility and is, therefore, for the better use of the building as a building. As such, the system of mobile cranes qualifies as a fixture at common law.

Other examples include:

- stacker-reclaimers used in shipyards and coal terminals and that run on rails also qualify as fixtures at common law following the same principles as the mobile cranes that run along rails to which the cranes are attached by flanged wheels.
- skid mounted compressors used in the oil

and natural gas industry that are anchored to the ground and attached to the pipeline become part of the pipeline system and are integral to the operation of that pipeline. As such, they qualify as fixtures at common law.

Substantial Installation – Little or No Attachment

Some large machinery may qualify as a fixture at common law even though it is not directly affixed to realty. This occurs where the installation of the machinery results in its becoming a part of that realty, and where its installation is necessary for the realty to be used for its intended purpose.

Machinery that meets all of the following criteria fall within this category. The machinery:

- is of such a size that it must be constructed on the site where it is to be used,
- by its nature or design would normally be expected to remain on the site at which it is constructed for the useful life of the machinery, equipment or apparatus, and
- cannot be moved from the site at which it is constructed without being dismantled, or dismantling or causing substantial damage to the building or structure in which it is installed or to which it is attached.

The following types of machinery fall within this category:

- walk-in freezers and coolers that are built into a structure and used to store food products;
- lumber kilns;
- pulp dryers (system of machinery that also meets criteria for an improvement to realty);
- radio transmission towers;
- black liquor evaporating or oxidizing plants, and black liquor storage tanks used in the pulp industry;
- concrete batching plants that are permanently affixed to realty, and
- rotary car dumpers.

HOW DOES TAX APPLY?

Once it is determined whether or not machinery qualifies as a fixture at common law, the machinery will fall within one of the following tax categories.

Tangible Personal Property

Machinery that is **not** a fixture at common law is tangible personal property.

- The purchaser or lessee of such machinery is required to pay tax on the purchase or lease price at the time the machinery is acquired.
- Tax applies when the machinery is resold, even if it is resold as part of the sale of the business.
- Tax is payable on most charges for services performed in relation to the machinery (see “Taxable Services” section).

Fixtures that Remain Tangible Personal Property on Installation

The statutory definition of tangible personal property includes fixtures, other than prescribed fixtures. Therefore, machinery that is a fixture at common law, that meets the statutory definition of a fixture, and that is not prescribed by regulation as excluded from the definition of tangible personal property, is treated as tangible personal property on purchase, resale, and lease.

- The purchaser or lessee of such machinery is required to pay tax on the purchase or lease price at the time the machinery is acquired.
- Tax applies when the machinery is resold, even if it is resold as part of the sale of the business.
- Unless the machinery is a crane system where the crane runs on rails that are attached to the ceiling and/or walls of a building, tax is not payable on charges for services performed on the machinery (see “Taxable Services” section).

Fixtures that Do Not Remain Tangible Personal Property on Installation

Machinery that meets either of the following criteria is considered to become part of the realty on installation:

- meets only part (a) of the statutory definition of fixture (is a fixture at common law), or
- meets part (a) and part (b) of the definition of fixture but is prescribed as excluded from being treated as tangible personal property.

The following types of machinery have been prescribed as excluded from being treated as tangible personal property upon installation:

- is of such a size that it must be constructed on the site where it is to be used,
- by its nature or design, would normally be expected to remain on the site at which it is constructed for the useful life of the

machinery, equipment or apparatus,

- does not run on rails or tracks, or does not otherwise move around on or from the site at which it was constructed, and
- cannot be moved from the site at which it is constructed without dismantling the machinery, equipment or apparatus, or dismantling or causing substantial damage to the building.

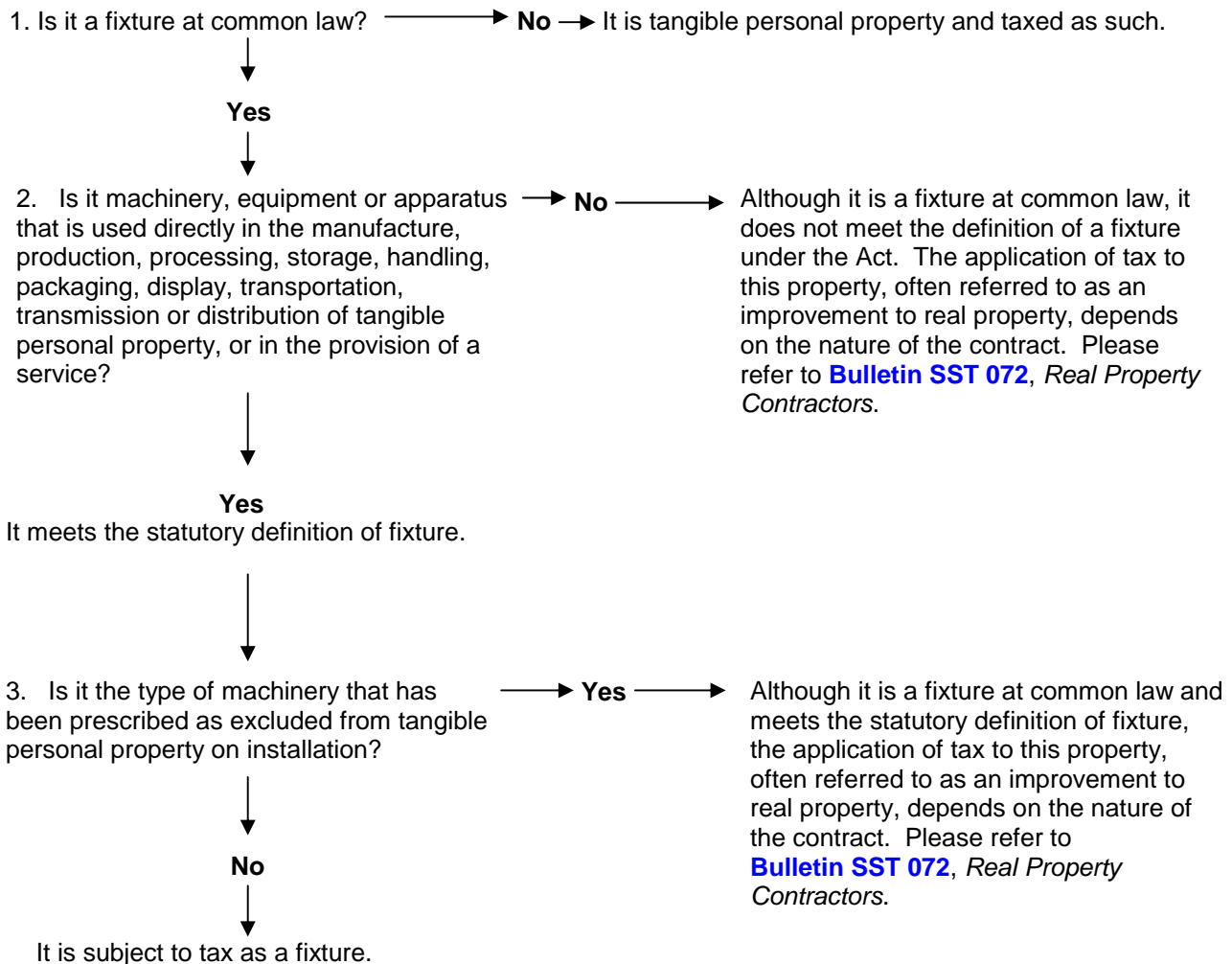
Also excluded from being treated as tangible personal property are machinery, equipment or apparatus that is installed in or attached to a building, structure or land for the purpose of:

- heating, air conditioning or lighting a building or structure,
- sewage disposal for a building or structure, or
- lifting persons or freight within a building or structure by elevator or escalator.

The tax application on the initial purchase and installation of such machinery, generally referred to as improvements to realty, depends on the nature of the contract, as outlined in [Bulletin SST 072, Real Property Contractors](#). However, such machinery is not subject to tax when resold or leased, and services provided to the machinery are not subject to tax (see "Taxable Services" section).

HOW DO I DETERMINE THE CORRECT TAX APPLICATION?

As indicated above, the critical issue in establishing the correct tax application to machinery is the determination of whether or not it is a fixture at common law. Once this determination is made, the tax application can be established based on the following guidelines.



TAXABLE SERVICES

Definition

The Act defines taxable services as any service provided to install, assemble, dismantle, repair, adjust, restore, recondition, refinish or maintain tangible personal property, but does not include a service

- (a) provided to install tangible personal property that will become real property on installation,
- (b) provided to install, assemble, dismantle, repair, adjust, restore, recondition, refinish or maintain prescribed tangible personal property, or
- (c) provided by a person to that person's employer in the course of employment.

For detailed information on taxable services, please refer to [Bulletin SST 018](#), *Taxable Services*.

Taxable Services Provided to Tangible Personal Property

Unless the item is specifically exempted from tax under the Act, charges for taxable services provided to tangible personal property are subject to tax.

Taxable Services Provided to Fixtures

Taxable services provided to machinery, equipment and apparatus that qualify as fixtures under the *Social Service Tax Act* are exempt from tax. The only exception is a crane system where the crane runs on rails that are attached to the ceiling and/or walls of a building.

To be eligible for this exemption, taxable services

must be performed on-site. This means that the service must be performed on the item while it is attached to real property.

If the item to be repaired is detached from the real property to facilitate the repair, it must be kept within the immediate area. For the purposes of this exemption, a repairer's van parked on the customer's property or on the street in front of the property is considered an on-site location.

Where a fixture is removed from the real property and transported to an off-site location for repair (e.g., to the repair shop), tax applies to the charge for the repair. Charges for removal and re-installation are not subject to the tax, if such charges are separately stated on the sales invoice.

An "off-site" location means the repairer's place of business or other location away from the normal location of the item being repaired. Where a service company has set up a "repair shop" at an industrial site to repair equipment for that site, that repair shop is considered to be "off-site".

NEED MORE INFO?

This bulletin is provided for convenience and guidance. If you still have questions call us at 604 660-4524 in Vancouver or toll-free at 1 877 388-4440 elsewhere in Canada or refer to the legislation.

Information is also on the web at www.gov.bc.ca/sbr While there, you can subscribe to our free electronic update service.

References: *Social Service Tax Act*, Sections 1, 5, 6, 20, 40, 42, 131 and Regulations 2.45, 2.46, 2.52