

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

The Scoular Company,
Appellant,

v.

Chase County Board of Equalization,
Appellee.

Case Nos: 12P-001, 12P-002, 12P-003 &
12P-004

Decision Affirming County Board's
Determination for Tax Year 2009 &
Reversing Determinations for Tax Years
2010, 2011 & 2012

For the Appellant:

Sheila Lenagh, Director of Tax,
The Scoular Company,
Pro Se.

For the Appellee:

Arlan Wine,
Chase County Attorney.

Heard before Commissioners Thomas D. Freimuth and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property consists of tangible personal property located in Chase County, Nebraska. The legal description of the parcel where the Subject Property was located for tax years 2009 – 2012 is found at Exhibit 1 through Exhibit 4, respectively. The itemization of the Subject Property for tax years 2009 – 2012 is found at Exhibit 5.

II. PROCEDURAL HISTORY

The Chase County Assessor determined that the assessed value of the Subject Property was \$1,444,949 in Case No. 12P-001 (tax year 2012), \$466,147 in Case No. 12P-002 (tax year 2011), \$585,760 in Case No. 12P-003 (tax year 2010), and \$226,011 in Case No. 12P-004 (tax year 2009). The Scoular Company (herein referred to as the "Taxpayer") protested these assessments to the Chase County Board of Equalization (herein referred to as the "County Board") and requested an assessed valuation of \$669,413 in Case No. 12P-001, \$22,324 in Case No. 12P-002, \$77,665 in Case No. 12P-003 and \$0 in Case No. 12P-004. The County Board determined that the Subject Property was tangible personal property and determined the assessed

value of the Subject Property was \$1,444,949 in Case No. 12P-001, \$466,147 in Case No. 12P-002, \$585,760 in Case No. 12P-003, and \$226,011 in Case No. 12P-004.¹

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (herein referred to as the “Commission”). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The parties also stipulated to the receipt of exchanged exhibits. The Commission held consolidated hearings on June 4, 2013, and on June 5, 2013.

III. STANDARD OF REVIEW

The Commission’s review of the determination by a County Board of Equalization is de novo.² When the Commission considers an appeal of a decision of a County Board of Equalization, a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.”³

That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.⁴

The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁵ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

¹ E1 - E4.

² See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). “When an appeal is conducted as a ‘trial de novo,’ as opposed to a ‘trial de novo on the record,’ it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.” *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

A taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.⁷ The County Board need not put on any evidence to support its valuation of the property at issue unless the *taxpayer* establishes the Board's valuation was unreasonable or arbitrary.⁸

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”⁹ The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”¹⁰

IV. MOTION FOR RECONSIDERATION OF JURISDICTIONAL FINDING

At the hearing on the merits of the appeals the Taxpayer made a Motion to Reconsider the Commission’s Order Finding Jurisdiction issued March 1, 2013. The Commission took the Motion to Reconsider under advisement and proceeded with the hearing on the merits of the appeals.

Section 77-5013 of the Nebraska Statutes provides that the Commission obtains jurisdiction over an appeal when it is timely filed, the filing fee is timely received and thereafter paid, and a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from, is timely filed.¹¹ Any action of the county board of equalization pursuant to section 77-1233.06 may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the decision of the county board of equalization.¹² Parties cannot confer subject matter

⁷ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

⁸ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

⁹ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

¹⁰ Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

¹¹ See, Neb. Rev. Stat. §77-5013 (2012 Cum. Supp.).

¹² Neb. Rev. Stat. §77-1233.06 (Reissue 2009).

jurisdiction on a tribunal by acquiescence or consent, nor may it be created by waiver, estoppel, consent, or conduct of the parties.¹³

On August 21, 2012, the Commission received four appeals of four determinations of the Chase County Board of Equalization regarding personal property tax made pursuant to Neb. Rev. Stat. § 77-1233.06 (Reissue 2009).¹⁴ Each of the appeals received by the Commission contained a copy of a decision of the Chase County Board of Equalization signed and dated by the Chair of the Chase County Board of Equalization on July 24, 2012. Each of these decisions also indicated that the “date of decision” was July 17, 2012.¹⁵

The Commission held a Show Cause Hearing on December 20, 2012, to determine if the Commission had jurisdiction to hear the above captioned appeals. At this hearing Deborah Clark, the Chase County Clerk (herein sometimes referred to as the “County Clerk”), testified telephonically regarding the above captioned appeals. The Chase County Clerk is the clerk for the Chase County Board of Equalization and part of her duty is to attend the County Board of Equalization meetings. The County Clerk testified that a telephonic hearing was held by the County Board of Equalization regarding the Taxpayer’s appeals on July 11, 2012, where evidence was taken and argument presented. The County Clerk testified that the County Board of Equalization voted to deny the Taxpayer’s appeal at another Board of Equalization meeting held on July 17, 2012. Based on this vote, the County Clerk completed the section of the Form 422 used in these appeals, titled “Decision of the County Board of Equalization,” and she testified that these documents were reviewed by the County Board at a meeting held on July 24, 2012.¹⁶ Once these documents were reviewed and approved by the County Board, they were signed by the Chairperson of the County Board on that same day.¹⁷ The County Clerk testified that she placed these signed but uncertified determinations of the County Board in the United States mail, addressed for mailing to the Taxpayer, on July 24, 2012, but that she knew they would not be mailed out or postmarked until July 25, 2012, because of the time of day that they were placed in the mail. The County Clerk then certified copies of the final determination of the

¹³ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

¹⁴ Case File.

¹⁵ Exhibit 6:13-16.

¹⁶ Exhibits 1-4.

¹⁷ Exhibits 7-10.

County Board and dated this certification on July 25, 2012, indicating the notices of the final decision were mailed to the Taxpayer on July 25, 2012.¹⁸

The minutes of the Chase County Board of Equalization offered at the June 4, 2013, hearing support the testimony of the County Clerk. The minutes show that the County Board of Equalization took a vote on the protests on July 17, 2012, but met again on June 24, 2012, to review and sign the protest forms.¹⁹

Nebraska law requires that “[t]he county board of equalization shall make its determination on the appeal within thirty days after the date of hearing. The county clerk shall, within seven days after the determination of the county board, send notice to the *taxpayer* and the county assessor, on forms prescribed by the Tax Commissioner, of the action of the county board.”²⁰ While there is no case law that addresses the use of the proper forms prescribed by the Tax Commissioner, the Nebraska Supreme Court has held that where notice was not sent within the time frame required by statute the action of the County Board of Equalization is void.²¹ If the date of the determination of the Chase County Board of Equalization were July 17, 2012, as indicated on the Form 422, then the notice would not have been sent to the Taxpayer within seven days as required by statute. The Chase County Board of Equalization however again took up the Taxpayer’s appeals at a County Board meeting on July 24, 2012, to review the forms completed by the County Clerk to ensure that what was typed on them accurately reflected the determination of the County Board. By taking up and affirming the earlier vote, the County Board of Equalization took its final action on the Taxpayer’s appeal on July 24, 2012. The July 24, 2012, date is not less than seven days before the date the notice was sent to the Taxpayer and is also within thirty days of the date of the hearing, conforming to the statutory requirements placed on the County Board of Equalization and the County Clerk.²²

Based on the entire record before it, the Commission finds and determines that the date of the action of the Chase County Board of Equalization was July 24, 2012, and that therefore the appeals of the Taxpayer were filed within thirty days of the date of this decision as required by law. The Commission therefore has jurisdiction to hear the above captioned appeals.

¹⁸ Exhibits 2-5.

¹⁹ Exhibit 5:55-60

²⁰ Neb. Rev. Stat. §77-1233.06 (Reissue 2009).

²¹ *Falotico v. Grant County Bd. of Equalization*, 631 N.W.2d 492, 262 Neb. 292 (Neb. 2001).

²² See, Neb. Rev. Stat. §77-1233.06 (Reissue 2009).

V. PERSONAL V. REAL PROPERTY

A. Law

Under Nebraska law, real property is defined as:

- (1) All land;
- (2) All buildings, improvements, and fixtures, except trade fixtures;
- (3) Mobile homes, cabin trailers, and similar property, not registered for highway use, which are used, or designed to be used, for residential, office, commercial, agricultural, or other similar purposes, but not including mobile homes, cabin trailers, and similar property when unoccupied and held for sale by persons engaged in the business of selling such property when such property is at the location of the business;
- (4) Mines, minerals, quarries, mineral springs and wells, oil and gas wells, overriding royalty interests, and production payments with respect to oil or gas leases; and
- (5) All privileges pertaining to real property described in subdivisions (1) through (4) of this section.²³

All real property in Nebraska subject to taxation shall be assessed as of January 1.²⁴ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²⁵

[a]ctual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.²⁶

"Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach."²⁷ "Actual value, market value, and fair market value mean exactly the same thing."²⁸ Taxable value is the percentage of actual value

²³ Neb. Rev. Stat. § 77-103 (Reissue 2009).

²⁴ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

²⁵ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²⁶ Neb. Rev. Stat. §77-112 (Reissue 2009).

²⁷ Neb. Rev. Stat. §77-112 (Reissue 2009).

²⁸ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb. App. 171, 180, 645 N.W.2d 821, 829 (2002).

subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.²⁹

Tangible personal property is a distinct class of property that shall be valued at its net book value.³⁰ The test for determining whether property qualifies as tangible personal property for ad valorem tax purposes is contained in Nebraska Statute §77-105 and is not the three-part *Northern Natural* test.³¹

The term tangible personal property includes all personal property possessing a physical existence, excluding money. The term tangible personal property also includes trade fixtures, which means machinery and equipment, regardless of the degree of attachment to real property, used directly in commercial, manufacturing, or processing activities conducted on real property, regardless of whether the real property is owned or leased, and all depreciable tangible personal property described in subsection (9) of section 77-202 used in the generation of electricity using wind as the fuel source. The term intangible personal property includes all other personal property, including money.³²

B. Summary of the Evidence

The Subject Property at issue in the above-captioned appeals for tax years 2009 – 2012 is located at the Taxpayer’s facility in Lamar, Nebraska. The Taxpayer provided an itemization of the property in question for each tax year that includes a side-by-side comparison of the net book taxable value calculations by the Taxpayer and the County.³³

Sheila Lenagh, the Taxpayer’s Director of Tax, testified at the hearing before the Commission. Mark Mossman, the Taxpayer’s Northern Facilities Group Manager, also testified. Based on their testimony and the documentary evidence received at the hearing, the Taxpayer asserts that the County overvalued its personal property for tax years 2009 – 2012 for the following reasons: (1) the County failed to use the correct recovery period for purposes of calculating net book value due to mischaracterization of the Taxpayer’s business as an agricultural service rather than a wholesaler or distributor; (2) the County failed to adjust for property that becomes depreciable in a year other than the year it is acquired; (3) the County failed to address the distinction between repair expense and capital expense; (4) the County erroneously treated some items of real property as personal property, including a logo,

²⁹ Neb. Rev. Stat. §77-131 (Reissue 2009).

³⁰ Neb. Rev. Stat. §77-201(5) (Reissue 2009).

³¹ *Vandenberg v. Butler County Board of Equalization*, 796 N.W.2d 580, 584, 281 Neb. 437, 442 (2011).

³² Neb. Rev. Stat. 77-105 (Reissue 2009).

³³ E6:28 (2009); E6:39 (2010); E6:51 (2011); and E6:63 (2012).

conveyors, and Dust Systems; and (5) the County failed to allow a credit for property previously taxed as real property.³⁴

Following is a summary for tax years 2009 – 2012 regarding the disposition of each case at the County Board level, together with the Taxpayer’s revised opinion of value at the hearing before the Commission:

- 1. Tax Year 2012:** The County Assessor recommended that the 12P-001 property be assessed at \$1,444,949 for tax year 2012, and the County Board accepted this valuation, reasoning that it fell within the guidelines set by the Department of Revenue (Taxpayer requested \$669,413 valuation on Protest Form 422).³⁵ At the hearing before the Commission, the Taxpayer requests that the assessed value be reduced to \$767,733.³⁶
- 2. Tax Year 2011:** The County Assessor recommended that the 12P-002 property be assessed at \$466,147 for tax year 2011, and the County Board accepted this valuation, reasoning that it fell within the guidelines set by the Department of Revenue (Taxpayer requested \$22,324 valuation before the County Board on Protest Form 422).³⁷ At the hearing before the Commission, the Taxpayer requests that the assessed value be reduced to \$167,830.³⁸
- 3. Tax Year 2010:** The County Assessor recommended that the 12P-003 property be assessed at \$585,760 for tax year 2010, and the County Board accepted this valuation, reasoning that it fell within the guidelines set by the Department of Revenue (Taxpayer requested \$77,665 before the County Board valuation on Protest Form 422).³⁹ At the hearing before the Commission, the Taxpayer requests that the assessed value be reduced to \$231,077.⁴⁰
- 4. Tax Year 2009:** The County Assessor recommended that the 12P-004 property be assessed at \$226,011 for tax year 2009, and the County Board accepted this valuation,

³⁴ E6:23 & E6:26 (illustrate the taxation of certain items of personal property as real property by the County); E6:26 (illustrates that the Taxpayer did not include certain items on personal property returns for tax years 2009 – 2012 due to taxation as real property); E6:31 (2009); E6:43 (2010); E6:55 (2011); E6:67 (when read together with E6:26, these Exhibits illustrate the penalty imposed by County for each respective tax year is based in part on assets that were not included on personal property tax returns by Taxpayer because the same assets were subject to tax as real property).

³⁵ E5:42.

³⁶ E6:63.

³⁷ E5:32.

³⁸ E6:51.

³⁹ E5:24.

⁴⁰ E6:39.

reasoning that it fell within the guidelines set by the Department of Revenue (Taxpayer requested \$0 valuation before the County Board on Protest Form 422).⁴¹ At the hearing before the Commission, the Taxpayer requests that the assessed value be reduced to \$211,458.⁴²

C. Analysis – Recovery Period

Nebraska taxes the net book value of personal property.⁴³ Under Nebraska Statutes section 77-120(1), net book value is defined as "that portion of the Nebraska adjusted basis of the property as of the assessment date for the applicable recovery period." For purposes of Nebraska Statutes section 77-120(1), the term "Nebraska adjusted basis" is defined as "the adjusted basis of property as determined under the Internal Revenue Code increased by the total amount allowed under the code for depreciation and amortization or pursuant to an election to expense depreciable property under section 179 of the code."⁴⁴

In order to arrive at net book value, Nebraska Statutes section 77-120(1) through (3) requires the assignment of a class life to the property, together with a recovery period and a Nebraska book depreciation factor. The class life is based on the "anticipated useful life" as determined under the Internal Revenue Code ("IRC").⁴⁵

Under Nebraska Statutes section 77-120 (2), five-year recovery period property includes property with a class life of more than four years and less than ten years; seven-year recovery period property includes property with a class life of ten or more but less than sixteen years; and ten-year recovery period property includes property with a class life of sixteen years or more but less than twenty years.

The Internal Revenue Service ("IRS") has issued guidance concerning class lives and recovery periods in Publication 946. The Commission received in evidence an excerpt of IRS Publication 946 for tax year 2012, including "Appendix B – Table of Class Lives and Recovery Periods."⁴⁶

⁴¹ E5:18.

⁴² E6:28.

⁴³ Neb. Rev. Stat. §77-120(1) (Reissue 2009).

⁴⁴ Neb. Rev. Stat. §77-118 (Reissue 2009).

⁴⁵ Neb. Rev. Stat. §77-120(3) (Reissue 2009).

⁴⁶ E6:76 – E6:80.

For purposes of determining class lives and recovery periods for tangible personal property, IRS Publication 946 establishes two categories of depreciable assets: (1) asset classes 00.11 – 00.4, which consist of specific assets used in all business activities (Table B-1 - “asset categories”); and (2) asset classes 01.1 through 80.0, which consist of assets used in specific business activities (Table B-2 - “activity categories”).⁴⁷

Table B-1 of IRS Publication 946 received in evidence by the Commission does not include guidance concerning the Taxpayer’s depreciable assets.⁴⁸ Table B-2, however, references “Agriculture” under classification 01.1 (10-year class life, which equates to a 7-year recovery period under Nebraska Statutes section 77-120(2)(c)), and “Distributive Trades and Services” under classification 57 (9-year class life, which equates to a 5-year recovery period under Nebraska Statutes section 77-120(2)(b)).⁴⁹

The Taxpayer and the County Board agree that the Compuweigh System is subject to a five-year recovery period for tax years 2009 - 2012. The County Board, however, asserts that the Taxpayer’s primary business activity involves agriculture, thereby subjecting most of its other depreciable assets to a seven-year recovery period under asset class 01.1 of IRS Publication 946 Table B-2.

In contrast, the Taxpayer asserts that all of its depreciable assets qualify under the five-year recovery period set forth by asset class 57 of Table B-2 because it is engaged in the primary activity of wholesaling agricultural commodities.⁵⁰ In support of this assertion, the Taxpayer submitted documentation issued by the U.S. Census Bureau entitled “North American Industry Classification System.”⁵¹

For purposes of determining proper asset classification under Table B-2, the pertinent IRC regulation that governs Publication 946 focuses on the “primary activity” in which the property is used.⁵² In this regard, the regulation states as follows: “[p]roperty shall be classified according to primary use even though the activity in which such property is primarily used is insubstantial in relation to all the Taxpayer's activities.”⁵³

⁴⁷ E6:77.

⁴⁸ E6:78.

⁴⁹ E6:79 – E80.

⁵⁰ E6:80.

⁵¹ E6:81 – E85.

⁵² 26 CFR 1.167(a)-11(b) (4) (iii) (b).

⁵³ 26 CFR 1.167(a)-11(b) (4) (iii) (b).

The United States Tax Court addressed the appropriate class life for depreciable assets associated with a grain elevator operation in *Illinois Cereal Mills, Inc. v. Commissioner of Internal Revenue*.⁵⁴ *Cereal Mills* involved the acquisition and subsequent operation of a country grain elevator by a large corn milling company.⁵⁵ The grain elevator, like Scoular, stored grain, dried grain and sold grain on the market for producers.⁵⁶ The Tax Court held that the grain storage tanks associated with the elevator operation were used in the production of crops or to provide an agricultural service and were therefore properly included in asset class 01.1.⁵⁷

Significantly, despite the fact that *Cereal Mills* purchased a large percentage of the grain for use in its manufacturing processes, the Tax Court looked only to the activity associated with the use of the grain storage tanks.⁵⁸ Because the storing and drying of grain involved an activity that a farmer could duplicate in the case where the farm included the necessary assets to perform such services, the Tax Court reasoned that the activity associated with the grain storage tanks was necessarily connected to the production of crops or the agricultural services within the meaning of asset class 01.1.⁵⁹

With the exception of the Compuweigh System, the evidence indicates that the Taxpayer utilized all of the personal property identified in its asset schedules for tax years 2009 - 2012 for purposes of providing agricultural services to farmers. Thus, consistent with the reasoning in *Cereal Mills*, because Scoular's primary use of the personal property subject to appeal herein is to provide agricultural services, the Commission finds that the Subject Property other than the Compuweigh System has a ten-year class life under asset class 01.1 of IRS Publication 946 Table B-2.

Under Nebraska Statutes section 77-120(2)(c), seven-year recovery period property includes property with a class life of ten or more but less than sixteen years. Thus, with exception of the Compuweigh System, the Commission finds that all of the Taxpayer's personal property is subject to a seven-year recovery period for tax years 2009 – 2012.

⁵⁴ 46 T.C.M. (CCH) 1001 (United States Tax Court 1983).

⁵⁵ *Id.* at 1017.

⁵⁶ *Id.*

⁵⁷ *Id.* at 1031.

⁵⁸ *Id.* at 1030 – 1031.

⁵⁹ *Id.*

D. Analysis – Repair vs. Capitalized Expenses

The Taxpayer asserts that the “Replace Auger/Gear Box” with a cost basis of 6,864 should be expensed rather than capitalized.⁶⁰ In effect, the Taxpayer asserts that the repair does not constitute a capital expense.

The Nebraska Administrative Code’s Personal Property Regulations (herein referred to as the “Nebraska Personal Property Regulations”) provide as follows in pertinent part: “depreciable tangible personal property shall also include **capital expenses** incurred **because of major repairs, parts, labor** and installation costs **that prolong the useful life and increase the value** of an asset or adapt the asset for a different use.”⁶¹ The regulations do not define the preceding highlighted terms. Thus, it is instructive to review the treatment of these terms under the IRC, for the reason that the Nebraska Statutes rely thereon in substantial part.

Under the IRC, when new section 1245 or 1250 property is added to existing property capitalization is required. For example, in *Smith v Commissioner of Internal Revenue*, the Ninth Circuit Court of Appeals concluded that the replacement of aluminum smelting cell lining was a replacement of an essential component of the cell, extending the life of the cell and requiring capitalization.⁶² Courts have also found that adding new building components that improve utility are capital.⁶³

Compare the above-noted cases with the types of repairs that typically qualify as currently deductible expenses rather than capital expenses. In *Ingram, Inc v. Commissioner of Internal Revenue*, the Tax Court looked at the condition of a tug boat engine prior to maintenance.⁶⁴ The Tax Court differentiated between the scheduled work performed to keep the engine operating with the work that was performed on the inoperable engine, which was required to restore the engine to working order. Because the evidence presented indicated that the work performed was routine maintenance, the Court allowed the deduction as a repair.

⁶⁰ See E6:28.

⁶¹ Title 350 Neb. Admin. Code, ch. 20, § 001.02C (2009).

⁶² *Smith v Commissioner*, 300 F. 3d 1023 (9th Cir. 2002).

⁶³ See, *R.K.O. Theatres, Inc. v. United States*, 163 F. Supp. 598 (United States Court of Claims 1958) (Court opined that new fire doors and escapes added to a theater increased the value of the property for use in Taxpayer’s theatre business and thus were capital improvements); *Hotel Sulgrave, Inc. v. Commissioner*, 21 T.C. 619 (United States Tax Court 1954) (Court found that an expenditure for a new fire sprinkler system to comply with a city order was capital because it gave an apartment building additional protection resulting in an improvement or betterment with a life extending beyond the year in which it was made, reasoning that even though neither the value of the property nor its useful life increased, the property became more valuable for use in the taxpayer’s business by reason of compliance with the city’s order).

⁶⁴ *Ingram, Inc v. Commissioner of Internal Revenue*, T.C. Memo 2000-323 (United States Tax Court 2000).

The Auger/Gear Box repair in this case did not involve routine maintenance. The Taxpayer replaced an essential part of the machinery/equipment. Without the replacement, the machinery could not operate. Therefore, based on the reasoning in the above cited cases, the Commission finds that the Auger/Gear Box must be capitalized and taxed as personal property.

The Taxpayer also asserts that the “Replacement Chain” with a cost basis of \$4,494, which was acquired and placed in service in 2011 and therefore taxable in tax year 2012, should be expensed rather than capitalized.⁶⁵ The testimony of Ms. Lenagh and Mr. Mossman indicates that the Replacement Chain was used in connection with restoring a “Replace Bin Conveyor” to working order.

Similar to the analysis above regarding Auger/Gear Box, the Commission does not find clear and convincing evidence that the work associated with the Replacement Chain involved routine maintenance. Thus, the Commission finds that the Replacement Chain must be capitalized and taxed as personal property.

E. Analysis –Depreciation Factor for Assets Placed in Service After Acquisition Year

The Taxpayer placed several assets in service in the tax year after the date of acquisition.⁶⁶ The Taxpayer asserts that these assets are subject to the year-two depreciation factor contained in the Nebraska Statutes and Personal Property Regulations for the first taxable year rather than the higher year-one depreciation factor.⁶⁷

Section 001.06A of the Nebraska Personal Property Regulations provides that “[w]hen property becomes depreciable in a year other than the year it is acquired, it shall be subject to taxation on the first assessment date following the date it became depreciable. The net book depreciation factor for such property shall be based on the year acquired.”⁶⁸ The Nebraska Personal Property Regulations further provide that property becomes depreciable in the year placed in service.⁶⁹ Thus, under the Nebraska Personal Property Regulations, the assets that the

⁶⁵ See, E6:63.

⁶⁶ The Cover All was acquired in 2008 and placed in service in 2009, thereby becoming subject to personal property tax in tax year 2010 under Title 350 Neb. Admin. Code, ch. 20, § 001.06A. The Aeration Fan/Tubing and several Conveyors were acquired in 2010 and placed in service in 2011, thereby becoming subject to personal property tax in tax year 2012. The Taxpayer provided receipts regarding the acquisition dates for these assets.

⁶⁷ See, Neb. Rev. Stat. §77-118 (Reissue 2009), Title 350 Neb. Admin. Code, ch. 20, § 001.06A (2009).

⁶⁸ Title 350 Neb. Admin. Code, ch. 20, § 001.06A (2009).

⁶⁹ See, Neb. Rev. Stat. §77-119 (Reissue 2009); Title 350 Neb. Admin. Code, ch. 20, § 001.02 (2009); IRC 167(a)(1)-(2); 26 CFR 1.167(a)-10(b) (“The period for depreciation of an asset shall begin when the asset is placed in service”); 26 CFR 1.167(a)-

Taxpayer acquired in 2010 and placed in service in 2011 were subject to taxation on January 1, 2012.

The Taxpayer asserts that the phrase “the net book depreciation factor for such property shall be based on the year acquired” means that the year-two depreciation factor for property acquired in 2010 but not subject to tax until tax year 2012 is applicable, thereby effectively voiding application of the year-one depreciation factor.⁷⁰ The County, on the other hand, asserts that the year-one depreciation factor should apply in order to prevent the Taxpayer from avoiding a year of taxation.

The Commission is mindful that avoidance of the use of the year-one depreciation factor effectively converts the seven-year property at issue to six-year property and thereby enables the Taxpayer to avoid a year of taxation. Under the plain reading of Section 001.06A of the Nebraska Personal Property Regulations, however, the yearly depreciation factors set forth in Nebraska Statutes section 77-120 and Section 001.06 relate back to the year of acquisition rather than the year placed in service.

Language contained in a rule or regulation is to be given its plain and ordinary meaning. An appellate court will not resort to interpretation to ascertain the meaning of words in a rule or regulation which is plain, direct, and unambiguous.⁷¹

Based on the above analysis, the Commission finds that the depreciation factor for the Taxpayer’s assets placed in service in a year after the date of acquisition is determined by reference to the year of acquisition rather than the year of service. Thus, the Commission further finds as follows: (1) with respect to the Cover All asset purchased in 2008 and placed in service in 2009, the 70.16 year-two depreciation factor is applicable for tax year 2010, and the year-three (55.13) and year-four (42.88) factors are applicable to tax years 2011 and 2012, respectively; and (2) with respect to the Taxpayer’s assets purchased in 2010 and placed in service in 2011, the 70.16 year-two depreciation factor is applicable for tax year 2012.

11(e)(1)(i) (an asset has been placed in service when it is in a “condition or state of readiness and availability for a specifically assigned function”); *Brown v. Commissioner of Internal Revenue*, T.C. Summary Opinion 2009-171, (United States Tax Court 2009).

⁷⁰ In support of this assertion, the Taxpayer offered a document that was received by the Commission (E6:102) entitled “NE Dept. of Property Assessment & Taxation Personal Property Taxation Summary as of 6-28-2010.” This document states that in the case were “a taxpayer acquires an item (title and possession) in one year but the item does not become “depreciable” (and thus taxable) until a year later, we still use the year acquired for determining the personal property tax value.”

⁷¹ *Vinci v. Nebraska Dept. of Correctional Services*, 253 Neb. 423, 434-435, 571 N.W.2d 53, 61 (1997) (Citations omitted).

F. Analysis – Real vs. Personal Property

The Taxpayer asserts that its Bin Conveyors and Dust Systems are real property. The Taxpayer also asserts that the logo on the building situated on the Taxpayer's land is real property.

The definition of real property is controlled by Nebraska Statutes section 77-103.⁷² Personal property and trade fixtures are defined at Nebraska Statutes section 77-105.⁷³ Nebraska Statutes section 77-103(2) specifically states that trade fixtures are not real property. While the degree of attachment to the real property is a generally accepted factor in determining whether an item is personal property in other jurisdictions, Nebraska Statutes define trade fixtures as items of personal property regardless of the degree of attachment of the item.⁷⁴

Nebraska Statutes section 77-105 includes trade fixtures within the definition of personal property. Nebraska Statutes section 77-105 also defines a trade fixture as follows: “machinery and equipment, regardless of the degree of attachment to real property, used directly in commercial, manufacturing, or processing activities conducted on real property, regardless of whether real property is owned or leased.” Whether property is real or personal, therefore, will depend on whether it is: (1) machinery or equipment; and (2) used directly in commercial, manufacturing or processing activities.⁷⁵

Machinery means “[a]n assemblage of parts that are usu. solid bodies but include in some cases fluid bodies or electricity in conductors and that transmit forces, motion, and energy on to another in some predetermined manner and to some desired end.”⁷⁶ The Nebraska Department of Revenue's Property Assessment Division issued Directive 11-5 (herein referred to as “NDR Directive 11-5”) on August 16, 2011, which states that “[e]quipment is a tool used for the performance of some operation.” NDR Directive 11-5 illustrates this definition of the word “equipment” by explaining that a pipe could be considered machinery or equipment because it is used to transport water from one location to another. Thus, the commonly accepted definitions of machinery or equipment involve (1) the transmission of motion, energy or forces in some

⁷² Neb. Rev. Stat. §77-103 (Reissue 2009).

⁷³ See, Neb. Rev. Stat. §77-105 (Cum. Supp. 2012); *Vandenberg v. Butler County Board of Equalization*, 281 Neb. 437, 796 N.W.2d 580 (2011).

⁷⁴ Neb. Rev. Stat. §77-105 (Cum. Supp. 2012); See, *Vandenberg v. Butler County Board of Equalization*, 281 Neb. 437, 796 N.W.2d 580 (2011).

⁷⁵ See, Nebraska Department of Revenue Directive 11-5 (issued August 16, 2011).

⁷⁶ *Webster's Third New International Dictionary*, Merriam-Webster, Inc., (2002) p. 1353. See, Department of Revenue Directive 11-5 (August 16, 2011).

predetermined manner; (2) the modification of the application of force, power, or motion; and (3) implements or objects used to conduct processing work.

The term “commercial activity” is not defined by the Nebraska Statutes for purposes of determining whether property is a trade fixture under Nebraska Statutes section 77-105. In *Vandenberg v. Butler County Board of Equalization*, however, the Nebraska Supreme Court determined that a for-profit activity met the “commercial activity” requirement under Nebraska Statutes section 77-105.⁷⁷

Use “directly” in a commercial activity is the final requirement for purposes of determining whether an asset meets the definition of a trade fixture under Nebraska Statutes section 77-105. NDR Directive 11-5 issued in 2011 states as follows with respect to this requirement:

The final consideration is whether the item is being used directly in the commercial, manufacturing, or processing activities. “Directly” means that the machinery or equipment item is in immediate use for the commercial, manufacturing, or processing activities, without any intervening application. The example of the underground pipe used to irrigate agricultural or horticultural land is a trade fixture and is tangible personal property for property assessment purposes. Underground pipe used in a lawn sprinkler system is considered real property since it is not being used directly in a commercial, manufacturing, or processing activity. An exception would be if the lawn sprinkler system was being used by a sod farm, or for demonstration purposes by a sprinkler system installer.⁷⁸

1. Bin Conveyors

The evidence shows that the Taxpayer uses the Bin Conveyors to transfer grain to and from grain bins. The Commission finds that the Bin Conveyors are “machinery” within the meaning of Nebraska Statutes section 77-105 because they are an amalgam of parts that work to move grain to and from grain bins.

With respect to whether the Bin Conveyors were used “directly” in a “commercial activity” within the meaning of Nebraska Statutes section 77-105, the Commission notes that the Taxpayer engages in the business of grain storage and the transfer of grain to available transportation for shipment to purchasers. Thus, for the reason that this is a for-profit business within the meaning of the *Vandenberg* case noted above, the Commission finds that the Bin

⁷⁷ *Vandenberg v. Butler County Board of Equalization*, 281 Neb. 437, 796 N.W.2d 580 (2011) (citing Title 350 Neb. Admin. Code, ch. 14, § 002.58 (2009)).

⁷⁸ Nebraska Department of Revenue Property Assessment Division Directive 11-5 (August 16, 2011).

Conveyors are items of machinery directly used in a commercial activity and are therefore trade fixtures taxable as personal property under Nebraska Statutes section 77-105.

2. Dust Systems

The Taxpayer asserts that the Dust Systems are real property. In support of this assertion, the Taxpayer offered evidence that the Dust Systems are attached to heating, ventilating and air conditioning (“HVAC”) duct work.

The definition of real property is controlled by Nebraska Statutes section 77-103.⁷⁹ Nebraska’s Real Property Regulations found in chapter 10 of Title 350 of the Nebraska Administrative Code (herein referred to as Nebraska’s Real Property Regulations) summarize Nebraska Statutes section 77-103 as follows in pertinent part: “Real property shall mean all land, buildings, **fixtures other than trade fixtures**, improvements, certain mobile homes, cabin trailers and similar property, mineral interests, and all privileges pertaining to real property.”⁸⁰ For real property tax purposes, a fixture other than “trade fixtures” includes property that is “annexed or physically attached to or incorporated into the real property.”⁸¹

Nebraska’s Real Property Regulations further state as follows regarding the distinction between a “fixture” (real property) and a “trade fixture” (personal property):

Examples of fixtures are items which are common to maintenance and operation of structures such as central air conditioning, heating system, common lighting and plumbing.” central air conditioning, heating system, common lighting and plumbing. All of which add to the value of a structure or appreciably prolong the useful life of the structure and basically are considered a capital improvement since they would meet the criteria required in REGS 10-001.01A(1) through 10-001.01A(3).⁸²

As discussed previously, a trade fixture is defined in Nebraska Statutes section 77-105 as machinery or equipment that is directly used in a commercial activity. Nebraska’s Real Property Regulations provide further guidance regarding the distinction between fixtures and trade fixtures:

Trade fixture shall mean an item of machinery or equipment, **used in commercial, manufacturing, or processing activities**. The degree of

⁷⁹ Neb. Rev. Stat. §77-103 (Reissue 2009).

⁸⁰ Title 350 Neb. Admin. Code, ch. 10, § 001.01 (2009) (emphasis added).

⁸¹ Title 350 Neb. Admin. Code, ch. 10, § 001.01A & 001.01A(1) (2009).

⁸² Title 350 Neb. Admin. Code, ch. 10, § 001.01A & 001.01A(4) (2009).

attachment shall have no influence towards classifying the machinery or equipment as real property. Trade fixtures are items of personal property **which are placed upon or affixed to real property for the sole purpose of carrying on a trade or business.** Since having failed to meet the criteria outlined in REGS 10-001.01A(1) through 10-001.01A(3), trade **fixtures are not considered to become part of the real property nor do they constitute capital improvements** to the real property.⁸³

For purposes of meeting the requirements as a trade fixture under Nebraska Statutes section 77-105, the Commission finds that a Dust System is machinery because it “transmits forces, motion, and energy” through its parts “in a predetermined manner” by eliminating dangerous gases and dust build-up. Additionally, by preventing explosions and enhancing safety, the Commission finds that the Dust Systems are used directly in connection with the operation of the Taxpayer’s grain business, thereby meeting the for-profit “commercial activity” requirement of Nebraska Statutes section 77-105. Thus, even though the Dust Systems are connected to an HVAC system in the form referenced under the term “fixture” in Nebraska’s Real Property Regulations, the Commission finds that the Dust Systems are “trade fixtures” taxable as personal property within the meaning of Nebraska Statutes section 77-105.

3. Building Logo

The County determined that the logo on the Taxpayer’s facility is personal property. The Taxpayer asserts that the logo is real property.

Nebraska’s Real Property Regulations noted above provide as follows in summarizing Nebraska Statutes section 77-103, which controls the definition of real property: “Real property shall mean all land, buildings, **fixtures other than trade fixtures**, improvements, certain mobile homes, cabin trailers and similar property, mineral interests, and all privileges pertaining to real property.”⁸⁴ For real property tax purposes, “fixtures” other than “trade fixtures” include property that is “annexed or physically attached to or incorporated into the real property.”⁸⁵ Additionally, Nebraska Statutes section 77-105 defines “trade fixtures” as machinery or equipment directly used in a commercial activity.

A logo affixed to the exterior of a building is not machinery or equipment and is therefore not a trade fixture under Nebraska Statutes section 77-105. As a result, the categorization of the

⁸³ Title 350 Neb. Admin. Code, ch. 10, § 001.01A & 001.29 (2009) (emphasis added).

⁸⁴ Title 350 Neb. Admin. Code, ch. 10, § 001.01 (2009) (emphasis added).

⁸⁵ Title 350 Neb. Admin. Code, ch. 10, § 001.01A(1) (2009) (emphasis added).

logo as real property depends on whether the property is a fixture within the meaning of Nebraska Statutes section 77-103.

In *Northern Natural Gas Co.*, the Nebraska Supreme Court announced the test for determining whether an item is a fixture for the purposes of classifying property as real property. The court looked at three factors: (1) actual annexation to the realty, or something appurtenant thereto, (2) appropriation to the use or purpose of that part of the realty with which it is connected, and (3) the intention of the party making the annexation to make the article a permanent accession to the freehold.⁸⁶

The evidence is unclear regarding the extent to which the logo is attached to the Taxpayer's building. The evidence is also unclear regarding application of the other two prongs of the three-part *Northern Natural Gas Co.* test. Thus, the Commission finds that the Taxpayer has not provided sufficient evidence to reverse the County's determination that the logo is personal property subject to a seven-year recovery period.

G. Analysis – Double Taxation & Penalties

The Taxpayer asserts that it should receive credit for real property taxes paid during tax years 2009 – 2012 on assets that are also subject to personal property tax hereunder. According to the Taxpayer, because some items of personal property were erroneously included on the real property roles by the County during tax years 2009 - 2012, a credit should be allowed against the personal property tax due for the tax year in which any such double tax occurred. The Taxpayer also asserts that penalties for tax years 2009 – 2012 should not be imposed on assets subject to double tax.

The evidence indicates that the County included the value of some assets deemed personal property hereunder on the Taxpayer's real property returns for tax years 2009 - 2012.⁸⁷ The

⁸⁶ *Northern Natural Gas Co. v. State Bd. of Equal.*, 232 Neb. 806, 817, 443 N.W.2d 249, 257 (1989); See, *Vandenberg v. Butler County Bd. of Equalization*, 281 Neb. 437, 796 N.W.2d 580 (Neb. 2011) [The *Northern Natural Gas Co.* three-factor test was expressly deemed inapplicable for the purposes of determining whether property constitutes a trade fixture under Nebraska Statutes section 77-105. In that case, however, the Court did acknowledge that the test may still be appropriate where 77-105 is inapplicable.]

⁸⁷ See, E6:63, E6:51, E6:39, E6:28; E6:23 & E6:26 (**2009**: Grain Legs \$147,400, Flow Dryer \$18,000, Truck Scales \$53,805. **2010**: Grain Legs \$147,400, Flow Dryer \$18,000, Scales \$53,805. **2011**: Grain Legs \$147,400, Flow Dryer \$18,000, Scales \$53,805; **2012**: Flow Dryer \$18,000, Scales \$53,805).

evidence also shows that the Taxpayer paid the assessed personal property tax deficiencies in full for those tax years.⁸⁸

The Commission notes that the double tax problem raised by the Taxpayer has been at least partially addressed pursuant to its real property appeals for tax years 2010 and 2011 and by County Assessor actions for tax year 2012. In this regard, the Commission redressed the double tax issue at least in part for that tax year 2010 by Order issued in December 2011.⁸⁹ With respect to its tax year 2011 real property appeals, the Taxpayer and the County settled these matters pursuant to a Settlement Agreement on June 25, 2012, so it is assumed that the double tax issue was redressed at least in part by that action.⁹⁰ The evidence also shows that at least a part of the double tax issue has been redressed for tax year 2012 pursuant to actions by the County Assessor.⁹¹ At least with respect to tax year 2009, however, some of the Taxpayer's assets subject to personal property tax hereunder were already taxed as real property by the County, thereby resulting in double tax and penalties.

The Nebraska Statutes and Personal Property Regulations contain correction procedures for personal property tax assessments.⁹² In pertinent part, Nebraska Statutes section 77-1233.04 provides that in the case where omitted property is added to the personal property return, the "county assessor shall change the reported valuation of any item of taxable tangible personal property listed on the return to conform the valuation to net book value."⁹³ Nebraska Statutes section 77-1233.04 also provides that the assessor shall file a return on the taxpayer's behalf in the case of failure to file.⁹⁴

Appeal rights relating to the above-noted correction procedures are specific and limited.⁹⁵ The Taxpayer's appeal may only challenge the "valuation of the property or the penalties imposed."⁹⁶ Thus, under the Nebraska Statutes and Personal Property Regulations, the Taxpayer does not have the right to assert that its personal property valuations for tax years 2009 – 2012 are incorrect based on an error committed by the County with respect to real property assessments for those same tax years. Rather, in the case where the Taxpayer is challenging the

⁸⁸ E6:38, E6:50, E6:62, E6:75.

⁸⁹ E7:18 – 26.

⁹⁰ E7:30 – 31.

⁹¹ E7:41 – 54.

⁹² Neb. Rev. Stat. §77-1233.04 (Reissue 2009); Title 350 Neb. Admin. Code, ch. 20, § 003 (2009).

⁹³ Neb. Rev. Stat. §77-1233.04 (Reissue 2009); See also, Title 350 Neb. Admin. Code, ch. 20, §§ 003.02 – 003.02A (2009).

⁹⁴ Neb. Rev. Stat. §77-1233.04 (Reissue 2009); See also, Title 350 Neb. Admin. Code, ch. 20, § 003.02C (2009).

⁹⁵ See, Neb. Rev. Stat. §77-1233.06 (Reissue 2009); Title 350 Neb. Admin. Code, ch. 20, § 003.04 (2009).

⁹⁶ Neb. Rev. Stat. §77-1233.06 (Reissue 2009); See also, Title 350 Neb. Admin. Code, ch. 20, § 003.04A (2009).

assessment of real property valuations and associated taxes, the Taxpayer must do so by protesting its real property valuations under Nebraska Statutes section 77-1502.⁹⁷

The appeals before the Commission in this case involve the Taxpayer's assertion that it paid real property taxes in tax years 2009 – 2012 on assets that are included in its personal property valuations hereunder for those same tax years. The Commission finds that the Taxpayer's assertion does not challenge the valuation of its personal property for purposes of maintaining appeals for tax years 2009 – 2012 under the correction procedures set forth in Nebraska Statutes section 77-1233.06. Rather, the Taxpayer's assertion is based on incorrect real property valuations for tax years 2009 - 2012, which the Commission is unable to address in this personal property case.

The Taxpayer also asserts that it should not be subject to penalties on assets subject to both real property tax and personal property tax for tax years 2009 – 2012. Under Nebraska Statutes section 77-1233.04(3), any personal property valuation added to a personal property return between May 1 and July 31 of the year in which filing is required is subject to a 10% penalty based on the tax due. Under Nebraska Statutes section 77-1233.04(4), any valuation added to a personal property return after August 1 of the year in which filing is required is subject to a 25% penalty based on the tax due

Nebraska Statutes section 77-1233.06(2) permits appeals of penalties imposed under Nebraska Statutes sections 77-1233.04(3) and 77-1233.04(4). Under Nebraska Statutes section 77-1233.06(3), however, appeal rights are limited as follows: “[t]he county board of equalization shall have no authority to waive or reduce any penalty which was correctly imposed and calculated.”

The Taxpayer does not assert that the penalties assessed by the County for tax years 2009 – 2012 were incorrectly imposed or calculated. Rather, the Taxpayer asserts that penalties for tax years 2009 – 2012 should not be imposed on assets for which real property tax liability has been assessed and paid (resulting in double taxation).

The Taxpayer's request for relief from double tax and the penalties associated therewith sounds in equity. The Nebraska Supreme Court has held that the Commission does not have equity powers.⁹⁸

⁹⁷ Neb. Rev. Stat. § 77-1502 (2012 Cum. Supp.); See also, Title 350 Neb. Admin. Code, ch. 10, § 002.03 (2009).

⁹⁸ *Creighton St. Joseph Regional Hosp. v. Nebraska Tax Equalization and Review Com'n*, 260 Neb. 905, 921, 620 N.W.2d 90,102 (2000).

VI. CONCLUSION

The Commission finds that the Taxpayer has provided competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. The Commission also finds that the Taxpayer has provided clear and convincing evidence that the County Board’s determinations were arbitrary or unreasonable for tax years 2010 - 2012.

For all of the reasons set forth above, the 2009 tax year appeal of the Taxpayer is denied, and the 2010 – 2012 tax year decisions of the County Board are Vacated and Reversed. Based on this conclusion, following are the findings of the Commission with respect to the valuation of each item of personal property for tax years 2009 – 2012:

TAX YEAR 2009

Property	Year Acquired/Service Year	Nebraska Adjusted Basis	Recovery Period	Depreciation Factor	Net Book Value
Conveyor Under Building	2005/2005	\$6,692.00	7	42.8800%	\$2,869.53
Replace Auger/Gear Box	2005/2005	\$6,864.00	7	42.8800%	\$2,943.28
Compuweigh System	2006/2006	\$8,373.00	5	41.6500%	\$3,487.35
25 Bu/Hr Truck Receiving Drag	2008/2008	\$47,673.00	7	89.2900%	\$42,567.22
Aeration	2008/2008	\$113,897.00	7	89.2900%	\$101,698.63
10KBu/Hr Reclaim Conveyor	2008/2008	\$37,015.00	7	89.2900%	\$33,050.69
25KBu/Hr Leg Tower	2008/2008	\$35,447.00	7	89.2900%	\$31,650.63
Aeration Tube	2008/2008	\$8,673.00	7	89.2900%	\$7,744.12
TOTAL					\$226,011.46

TAX YEAR 2010

Property	Year Acquired/Service Year	Nebraska Adjusted Basis	Recovery Period	Depreciation Factor	Net Book Value
Conveyor Under Building	2005/2005	\$6,692.00	7	30.6300%	\$2,049.76
Replace Auger/Gear Box	2005/2005	\$6,864.00	7	30.6300%	\$2,102.44
Compuweigh System	2006/2006	\$8,373.00	5	24.9900%	\$2,092.41
25 Bu/Hr Truck Receiving Drag	2008/2008	\$47,673.00	7	70.1600%	\$33,447.38
Aeration	2008/2008	\$113,897.00	7	70.1600%	\$79,910.14
10KBu/Hr Reclaim Conveyor	2008/2008	\$37,015.00	7	70.1600%	\$25,969.72
25KBu/Hr Leg Tower	2008/2008	\$35,447.00	7	70.1600%	\$24,869.62
Aeration Tube	2008/2008	\$8,673.00	7	70.1600%	\$6,084.98
Truck Probe	2009/2009	\$8,716.00	7	89.2900%	\$7,782.52
Fairbanks Truck Scale	2009/2009	\$8,165.00	7	89.2900%	\$7,290.53
Replace Bin Conveyors	2009/2009	\$326,905.00	7	89.2900%	\$291,893.47
Replace Unload Auger	2009/2009	\$15,651.00	7	89.2900%	\$13,974.78
Logo on Building	2009/2009	\$4,148.00	7	89.2900%	\$3,703.75
25KBu/Hr incl in Cover All	2008/2009	\$94,735.00	7	70.1600%	\$66,466.08
TOTAL					\$567,637.57

TAX YEAR 2011

Property	Year Acquired/Service Year	Nebraska Adjusted Basis	Recovery Period	Depreciation Factor	Net Book Value
Conveyor Under Building	2005/2005	\$6,692.00	7	18.3800%	\$1,229.99
Replace Auger/Gear Box	2005/2005	\$6,864.00	7	18.3800%	\$1,261.60
Compuweigh System	2006/2006	\$8,373.00	5	8.3300%	\$697.47
25 Bu/Hr Truck Receiving Drag	2008/2008	\$47,673.00	7	55.1300%	\$26,282.12
Aeration	2008/2008	\$113,897.00	7	55.1300%	\$62,791.42
10KBu/Hr Reclaim Conveyor	2008/2008	\$37,015.00	7	55.1300%	\$20,406.37
25KBu/Hr Leg Tower	2008/2008	\$35,447.00	7	55.1300%	\$19,541.93
Aeration Tube	2008/2008	\$8,673.00	7	55.1300%	\$4,781.42
Truck Probe	2009/2009	\$8,716.00	7	70.1600%	\$6,115.15
Fairbanks Truck Scale	2009/2009	\$8,165.00	7	70.1600%	\$5,728.56
Replace Bin Conveyors	2009/2009	\$326,905.00	7	70.1600%	\$229,356.55
Replace Unload Auger	2009/2009	\$15,651.00	7	70.1600%	\$10,980.74
Logo on Building	2009/2009	\$4,148.00	7	70.1600%	\$2,910.24
25KBu/Hr incl in Cover All	2008/2009	\$94,735.00	7	55.1300%	\$52,227.41
Carter Day Dockage Machine	2010/2010	\$8,509.00	7	89.2900%	\$7,597.69
TOTAL					\$451,908.66

TAX YEAR 2012

Property	Year Acquired/Service Year	Nebraska Adjusted Basis	Recovery Period	Depreciation Factor	Net Book Value
Conveyor Under Building	2005/2005	\$6,692.00	7	6.1300%	\$410.22
Replace Auger/Gear Box	2005/2005	\$6,864.00	7	6.1300%	\$420.76
Compuweigh System	2006/2006	\$8,373.00	5	0.0000%	\$0.00
25 Bu/Hr Truck Receiving Drag	2008/2008	\$47,673.00	7	42.8800%	\$20,442.18
Aeration	2008/2008	\$113,897.00	7	42.8800%	\$48,839.03
10KBu/Hr Reclaim Conveyor	2008/2008	\$37,015.00	7	42.8800%	\$15,872.03
25KBu/Hr Leg Tower	2008/2008	\$35,447.00	7	42.8800%	\$15,199.67
Aeration Tube	2008/2008	\$8,673.00	7	42.8800%	\$3,718.98
Truck Probe	2009/2009	\$8,716.00	7	55.1300%	\$4,805.13
Fairbanks Truck Scale	2009/2009	\$8,165.00	7	55.1300%	\$4,501.36
Replace Bin Conveyors	2009/2009	\$326,905.00	7	55.1300%	\$180,222.73
Replace Unload Auger	2009/2009	\$15,651.00	7	55.1300%	\$8,628.40
Logo on Building	2009/2009	\$4,148.00	7	55.1300%	\$2,286.79
25KBu/Hr incl in Cover All	2008/2009	\$94,735.00	7	42.8800%	\$40,622.37
Carter Day Dockage Machine	2010/2010	\$8,509.00	7	70.1600%	\$5,969.91
Aeration Fans/Tubing	2010/2011	\$81,137.00	7	70.1600%	\$56,925.72
25Bu/Hr Conveyor	2010/2011	\$543,753.00	7	70.1600%	\$381,497.10
15Bu/Hr Reclaim Conveyor	2011/2011	\$7,738.00	7	89.2900%	\$6,909.26
15KBu/Hr Reclaim Conveyor	2010/2011	\$173,176.00	7	70.1600%	\$121,500.28
15KBu/Hr Reclaim Conveyor	2010/2011	\$154,282.00	7	70.1600%	\$108,244.25
15KBu/Hr Drag Tsf Reclaim Conveyor	2011/2011	\$16,939.00	7	89.2900%	\$15,124.83
15KBu/Hr Drag Tsf Reclaim Conveyor	2010/2011	\$80,833.00	7	70.1600%	\$56,712.43
25KBu/Hr Drag Conveyor Addition	2010/2011	\$33,306.00	7	70.1600%	\$23,367.49
Dust System	2011/2011	\$46,623.00	7	89.2900%	\$41,629.68
Dust System	2010/2011				
Dust System	2011/2011	\$16,805.00	7	89.2900%	\$15,005.18
Replacement Chain	2011/2011	\$4,494.00	7	89.2900%	\$4,012.69
Unload Auger	2010/2011	\$15,561.00	7	70.16%	\$10,917.60
TOTAL					\$1,193,786.10

VII. ORDER

IT IS ORDERED THAT:

1. The Decision of the Chase County Board of Equalization determining the value of the Subject Property for tax year 2009 is Affirmed.⁹⁹
2. The Decision of the Chase County Board of Equalization determining the value of the Subject Property for tax years 2010, 2011, and 2012 are Vacated and Reversed.
3. That the Subject Property is Tangible Personal Property.
4. That the Assessed value of the Subject Property for tax year 2009 is: \$226,011.
5. That the Assessed value of the Subject Property for tax year 2010 is: \$567,638.
6. That the Assessed value of the Subject Property for tax year 2011 is: \$451,909.
7. That the Assessed value of the Subject Property for tax year 2012 is: \$1,193,786.
8. This decision and order, if no appeal is timely filed, shall be certified to the Chase County Treasurer and the Chase County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.)
9. Any request for relief, by any party, which is not specifically provided for by this order is denied.
10. Each Party is to bear its own costs in this proceeding.
11. This decision shall only be applicable to tax years 2009 - 2012.
12. This order is effective for purposes of appeal on May 30, 2014.

Signed and Sealed: May 30, 2014.

Thomas D. Freimuth, Commissioner

SEAL

Nancy J. Salmon, Commissioner

⁹⁹ Assessed value, as determined by the County Board of Equalization, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2012 Cum. Supp.), other provisions of Nebraska Statute and Court Rules.