Fixed Load Vehicle Manual

1999

Oregon Department of Revenue

150-430-400 (Rev. 9-99)

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Introduction

This manual is intended as a guide for assessors and staff to correctly identify "Fixed Load Vehicles" for the purpose of taxation based upon Oregon Revised Statute (ORS) 801.285. Photographs, short descriptions, and court cases are included to give additional direction and clarification.

Personal property assessment depends upon taxpayers providing personal property data to county assessors. One type of personal property often overlooked by taxpayers is "Fixed Load Vehicles." Many taxpayers wrongly assume, because this equipment is licensed, that it is exempt from personal property taxation. Even though licensed under ORS 801.285, "Fixed Load Vehicles" are taxable.

If you have questions about this manual or the assessment of such property, please call the Oregon Department of Revenue at 503-945-8278. Ask for the Personal Property Analyst, or write to:

Oregon Department of Revenue
Property Tax Division
955 Center Street NE
Salem OR 97310

Fixed Load Vehicles that are Taxable

Air Compressor

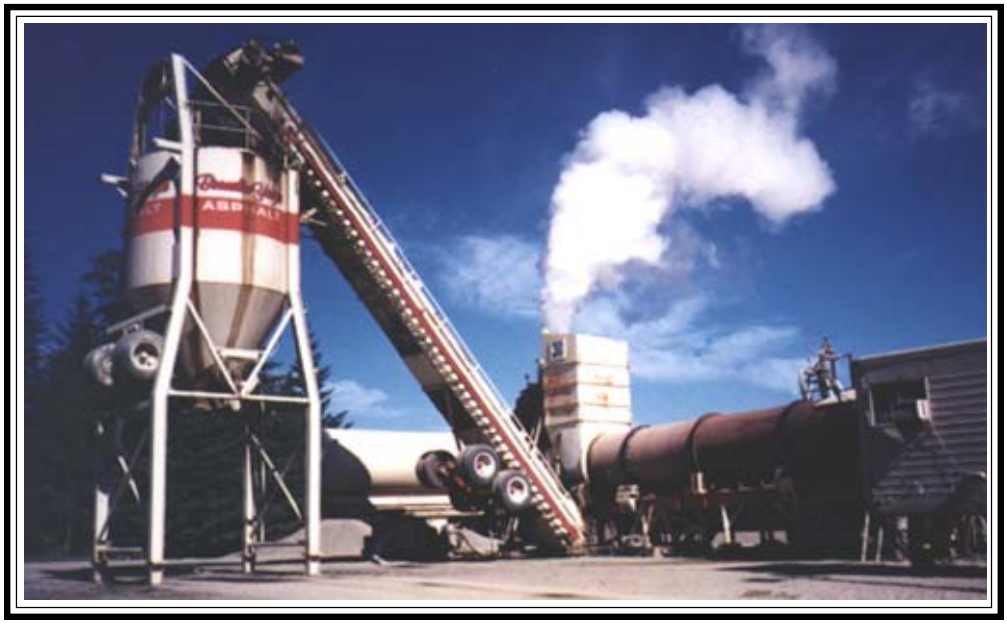
This machine reduces air volume by compression and holds it in a container for future use. The air, when released, expands and forces machinery and tools to operate.

Air Drill

This machine uses compressed air to operate a drill that is mounted on wheels or track and is used in drilling rock or other hard surfaces.

Asphalt Plant

This is a machine with a series of containers in which different sizes of rock are stored. The rock is mixed with heated asphalt to form a substance that can be spread over a surface and compacted to make a road, parking lot, or other hard surface. It is also known as a bituminous mixer or bituminous plant.



Asphalt Spreader

This machinery stores, then evenly spreads, a mixture of hot asphalt and rock over a prepared surface. The mixture is compressed to form a solid surface. It is also known as a bituminous spreader.

Athey Wheel

This brand or company name includes mobile sweepers, forced feed loaders, and the maintenance master, as well as Kolman conveyers and certain refuse collecting vehicles. Isaac H. Athey invented a track-laying type of wheel called a “Truss Wheel,” thus, the Athey Wheel.

Backhoe/Loader

This power driven excavating machine has a loader bucket at the front and a hinged bucket at the end of a long jointed arm at the back. It digs by drawing the bucket towards the power unit.

Bituminous Mixer

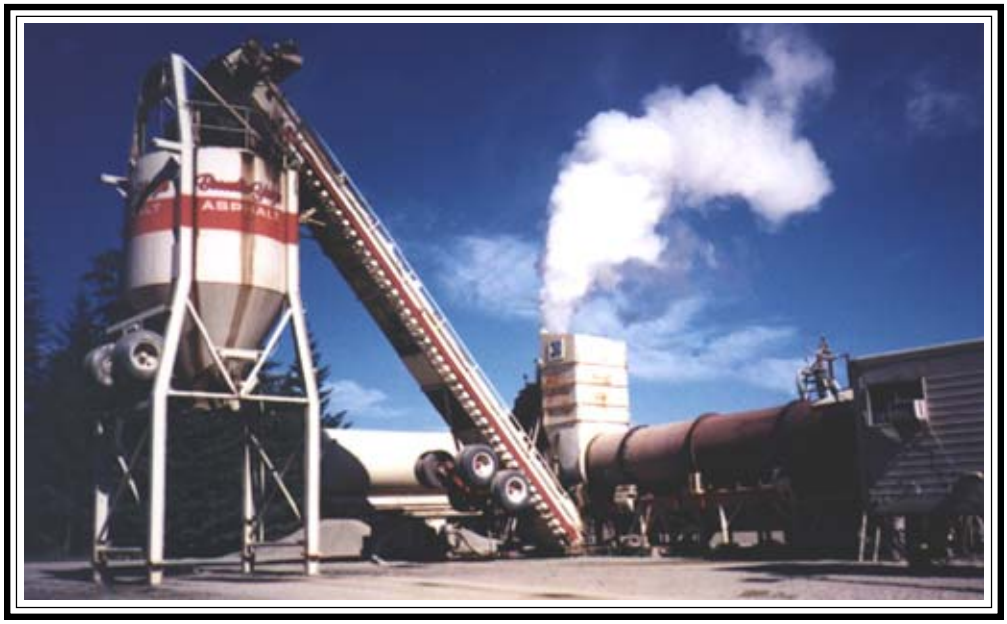
This is a machine with a series of containers in which different sizes of rock are stored. The rock is mixed with heated asphalt to form a substance that can be spread over a surface and compacted to make a road, parking lot, or other hard surface. It is also known as an asphalt plant or bituminous plant.

Bituminous Pavement Finisher

This machine, like the cement pavement finisher, smooths and flattens asphalt used on highways, roads, or parking lots.

Bituminous Plant

This is a machine with a series of containers in which different sizes of rock are stored. The rock is mixed with heated asphalt to form a substance that can be spread over a surface and compacted to make a road, parking lot, or other hard surface. It is also known as an asphalt plant or bituminous mixer.



Bituminous Spreader

This machinery stores, then evenly spreads, a mixture of hot asphalt and rock over a prepared surface. The mixture is compressed to form a solid surface. It is also known as an asphalt spreader.

Carryall

There are two types of carryall devices. One type is a large hopper on wheels, commonly called an earthmoving scraper, that carries or transfers material such as dirt or rocks. The other type is a cab mounted on wheels with four long arms that are placed under and moves a long load, such as lumber.

Cement Batch Plant

This is a device in which cement, gravel, sand, and water are mixed to form concrete. It works like a cement mixer but on a larger scale and is not moved on a daily basis.

Cement Mixer

This is a device in which cement, gravel, sand, and water are mixed in order to form concrete. This machine can be mounted on a trailer or have wheels.

Cement Pavement Finisher

This machine's purpose is to assist in consolidating the concrete and to leave the surface with a uniform texture and correct elevation. It is used to spread and smooth or level cement for roadways, gutters, and curbs.

Cement Spreader

This machine holds and distributes the concrete evenly over a prepared area. The concrete then must be finished.

Crawler Crane

This machine lifts or moves heavy objects using cables on a movable projecting arm. It is mounted on tracks for operation on muddy or rough ground.

Crawler Tractor

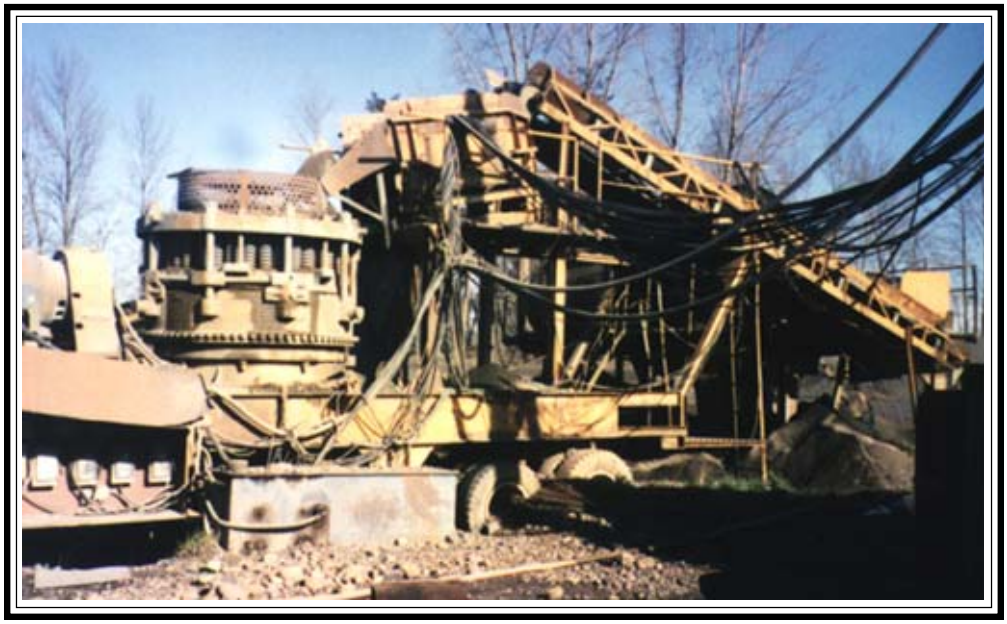
This device is commonly known as “cat.” It is made up of a center section or chassis that contains the engine, transmission, and steering unit with two track frames that supply traction and support. With attachments, it is used for grading, pushing, or ripping.

Crusher

This device is a container in which material to be crushed is placed.

Crushing Plant

This machine has conveyors, belts and a crusher in which rock and other material is placed and in turn crushed. This material is then separated, sized, and graded.



Digger and Ditcher

This machine digs, excavates, or makes a ditch.

Dragline

This machine is the same as a crawler crane. It has a bucket attached to the cable that extends from the end of the arm.

Earthmoving Scraper

This machine has a highly mobile excavator with a centrally located bowl that digs, carries, and spreads loads. The elevating scraper is a self-loading machine. The elevator consists of roller chains carrying a number of crossbars called flights. In digging, the elevator is rotated.

Electric Generating Equipment

This is a portable machine used for changing mechanical energy into electrical energy.

Electric Load Bank/ Power Unit and Plant

These portable units are used to supply or generate large quantities of power delivered by generators or carried by circuits. These units serve as the source of power for a particular operation.

Elevator Equipment

This equipment includes an attached platform used to raise and lower people, material, or other equipment.

Excavator

This machine is used to dig, hollow out, or expose earth by means of a bucket or scoop on the end of an extendable, hydraulic arm.

Forklift

This self-propelled vehicle hoists, lifts, or stacks heavy objects by using steel fingers or projecting prongs that slide under the load, then are raised or lowered.

Front-end Loader/Bucket Loader

Both of these terms refer to a vehicle with a front-end shovel. It digs and loads and may be used for rough grading or limited hauling. Sometimes a rear digger (backhoe) is attached and used to dig or level.

Log Loader

This machine is used to load logs onto trucks and is mounted on tracks or wheels, which make it more mobile on rough, muddy terrain. It has a boom with a grapple at the end and can reach 40 feet. Loaders may have rubber tires.

Mixmobile

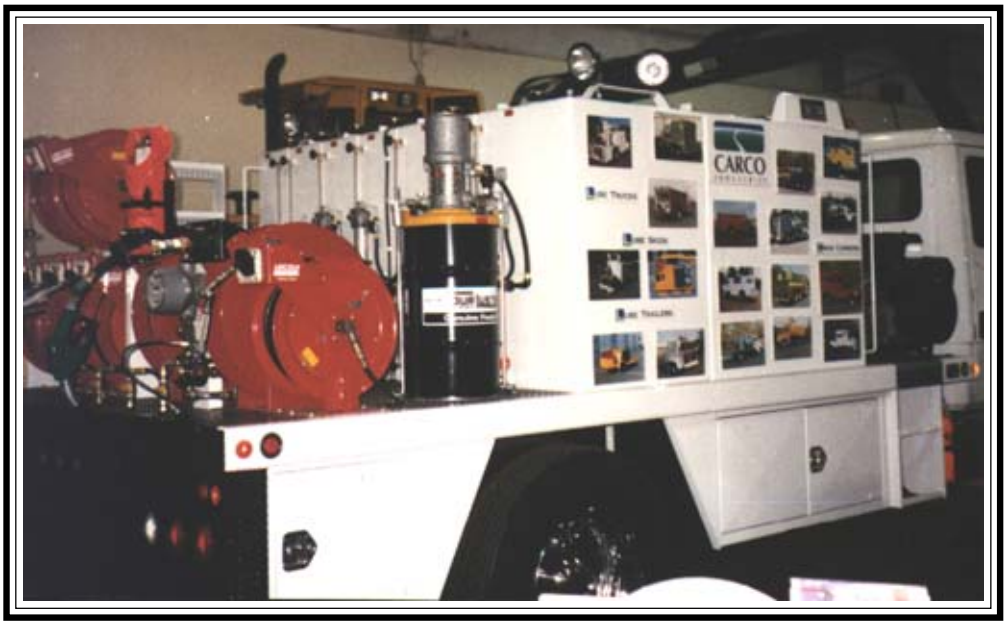
This mobile vehicle consists of a hopper that contains sand, gravel, cement, and water. A mixing machine is attached that blends these ingredients and pours the mixture to form concrete.

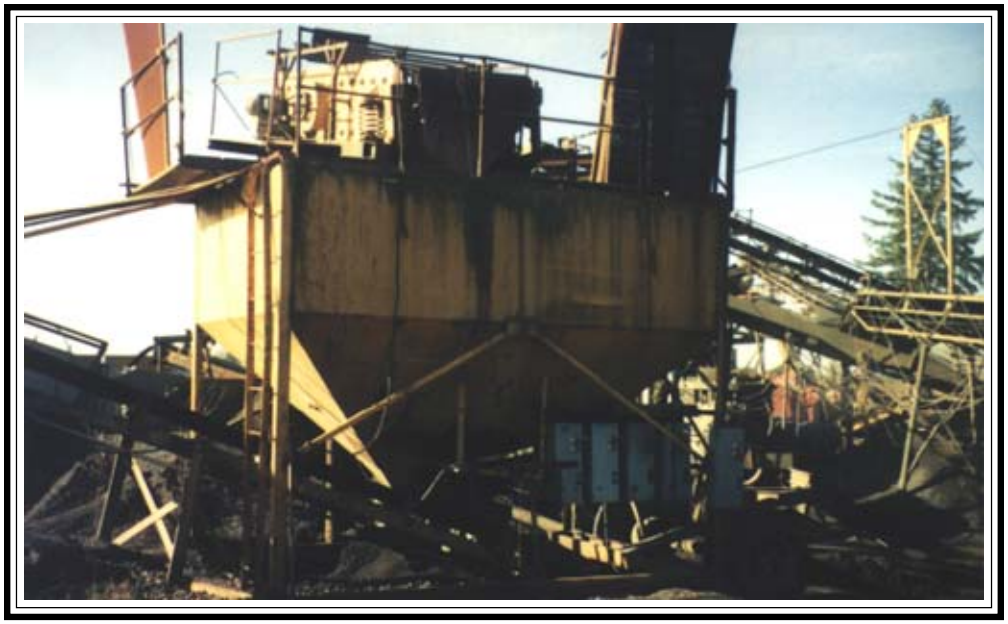
Motor Grader/Leveling Grader

Both of these terms refer to a machine used principally in shaping and finishing a surface. It is a rubber-tired vehicle with a wide, controllable blade mounted at the center of a long wheelbase.

Portable Bin

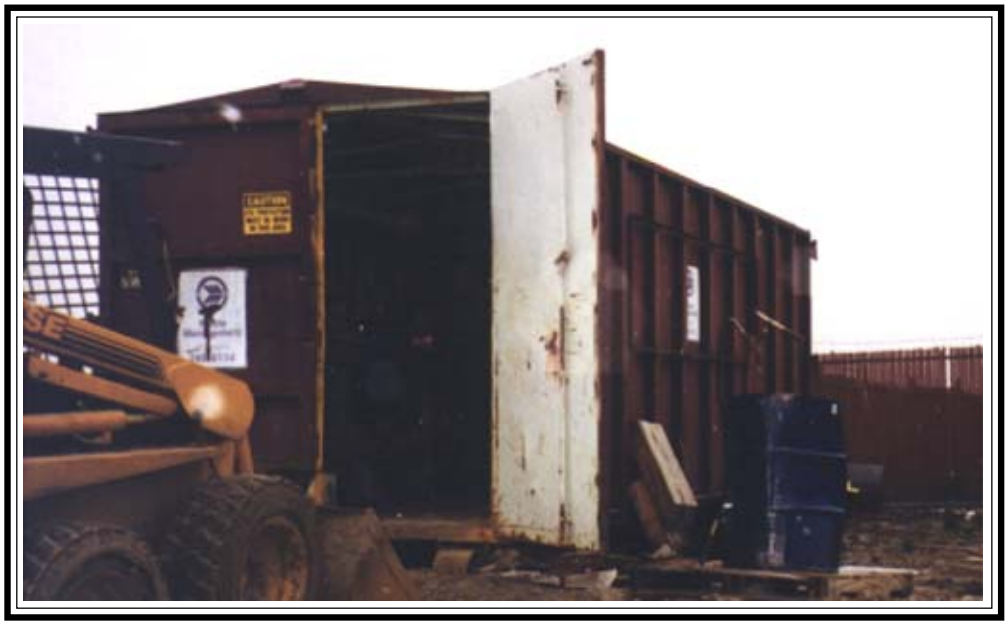
These devices appear in various forms as storage containers on wheels that may house spare parts, rocks, gravel, or any other items used in the construction industry.





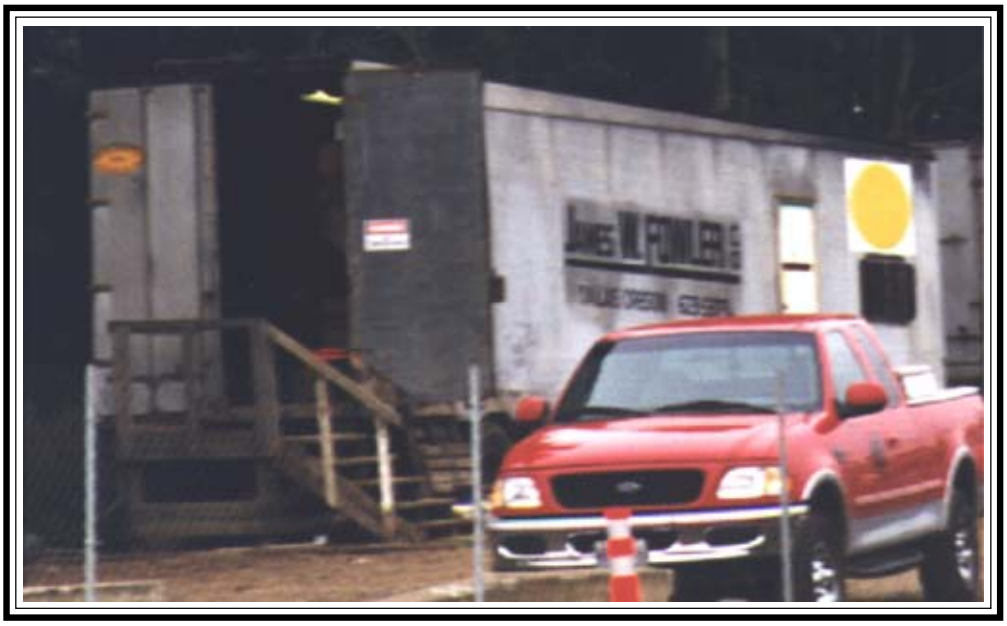
Portable Part & Storage Bin

These devices appear as trailer-type storage containers on wheels that house spare parts or other items used in the construction industry.



Portable Shop

This is a trailer that contains tools and machinery used to repair construction equipment on site.



Portable Storage Tank

This vehicle is a movable container used for storage of liquids, gases, grains, foods, or beverages. These tanks can be constructed of various materials.

Power Hoist

This apparatus or machine lifts or raises heavy objects generally by use of a hydraulic extendable arm.

Power Shovel

This machine is usually mounted on tracks with a long, hinged arm that has a digging bucket attached.

Road Roller/Sheepsfoot Roller

The purpose of these machines is to compress material by dead weight. The road roller is a smooth drum; the sheepsfoot roller has knobs attached to the drum. Both rollers may have vibrators that shake soil particles as they compress.

Sand Classifier & Drag

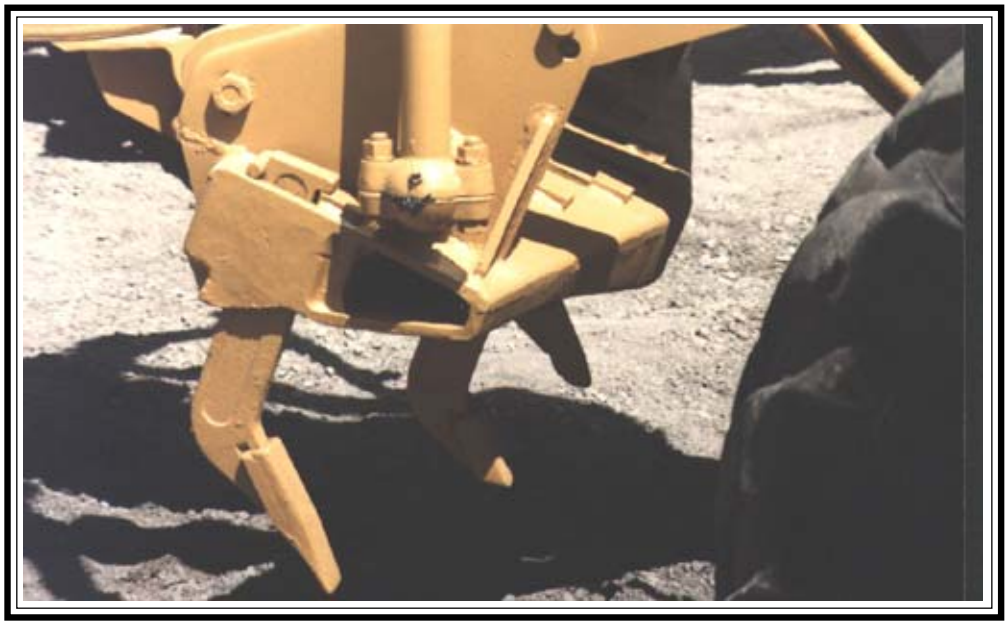
This machinery consists of a series of conveyer belts that transport sand across screens, and separate the sand into various sizes.

Sawmill Portable

This device, mounted on a trailer, contains a portable table that feeds small logs through a blade to produce lumber.

Scarifier & Roller

This device is an attachment pulled by a motor grader or crawler tractor that rips the ground by means of long “teeth.” A roller (or road roller) is a smooth drum that compresses material.



Scoopmobile

This vehicle is a three-wheeled front-end loader.

Scrap Metal Baler

This large machine contains hydraulic arms and a compartment into which metal is compressed and baled.

Scrubber Screen & Plant Feeder

This mobile machine takes raw materials such as sand and gravel onto a conveyor belt and transfers them to vibrating scrubber screens that separate the materials into various sizes.

Special Construction Equipment

These devices include various types of mobile machinery used in the construction industry, such as generators, air drills, and power plants with attached lights, etc.

Welder

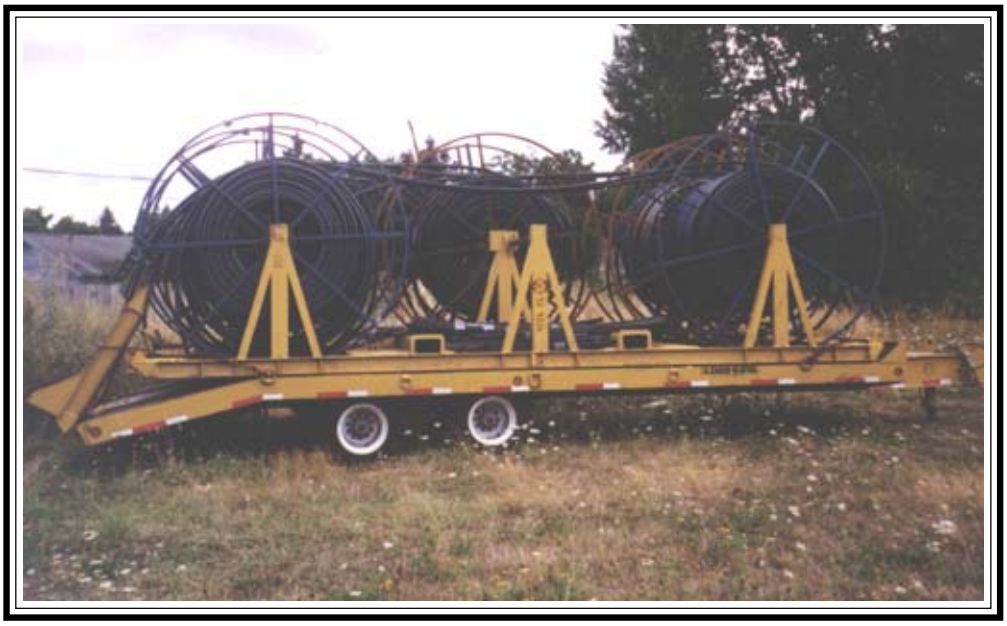
This is a machine that bonds pieces of metal by means of a heating process and a bonding material such as a rod or wire.

Wheeled Tractor

This vehicle has rubber tires so it can be driven on the road. It has multiple uses depending upon the attachments and has two- or four-wheel drive.

Wiring Equipment

These devices include portable equipment used in the electrical industry, such as wire spools, augers, transformers, etc, which are transported by means of trucks or trailers.



Fixed Load Vehicles that are not Taxable

Concrete Pumper Truck

This vehicle contains a boom that pumps concrete from a centrally-located cement mixer and transports it to various locations at a construction site within reach of the boom.

Self-Propelled Mobile Crane

The Department of Motor Vehicles defines a “self-propelled mobile crane” as a motor truck on which is mounted a rotating crane operated by an independent motor and used for general lifting purposes. The industry defines them as one-motor mobile cranes, i.e., cranes using a single source of power for operation of the crane and for locomotion. These are exempt from ad valorem taxation.

Tow Vehicle

including a tow vehicle with cranes, hoists, or dollies

"Tow vehicle" means a motor vehicle that is:

1. Altered or designed for, equipped for, and used in the business of towing vehicles; and
2. Used to tow vehicles by means of a crane, hoist, tow bar, tow line, or dolly or otherwise used to render assistance to other vehicles.

Travel Trailer

This vehicle is defined by the statutes as a trailer, 8½ feet wide or less, and not used for commercial or business purposes.

Truck-mounted Transit Mixer

This is a vehicle with a cement mixer mounted as part of the truck bed. A cement mixer is a device in which cement, gravel, sand, and water are mixed in order to form concrete.

1997 Oregon Revised Statutes

The following statutes address the taxability of "Fixed Load Vehicles" as taxable personal property and provide definitions.

801.285 "Fixed load vehicle."

"Fixed load vehicle" means all of the following apply to the vehicle:

(1) It is a vehicle with or without motive power that is designed and used primarily:

(a) To support and move a permanent load in the form of equipment or appliances constructed as part of or permanently attached to the body of the vehicle;

(b) For transportation of equipment or appliances that are ordinarily kept on or in the vehicle in order that the vehicle may be used for its primary purpose; and

(c) Except for the transportation of permanent load, appliances and equipment described in paragraphs (a) and (b) of this subsection, for purposes other than for the transportation of persons or property over public highways or streets.

(2) It is a vehicle other than the following:

(a) A manufactured structure.

(b) A travel trailer.

(c) A tow vehicle, including a tow vehicle with cranes, hoists or dollies.

(d) A truck-mounted transit mixer.

(e) A self-propelled mobile crane.

(3) It is a vehicle that may include, but is not limited to, the following vehicles:

(a) Air compressors, air drills, asphalt plants, asphalt spreaders, bituminous plants, bituminous mixers, bituminous spreaders and bucket loaders;

(b) Cement batch plants, cement mixers other than transit mix, cement spreaders, carryalls, crawler cranes, crushers and crushing plants, diggers and ditchers, power units and plants;

(c) Earthmoving scrapers, electric generating equipment, electric load-bank and wiring equipment, front-end loaders, leveling graders, lighting plants and portable wiring, motor graders, payloaders, power hoists, road graders, scoopmobiles, skip hoists, stackers and hoists;

(d) Athey wheels, back hoes, bituminous and cement pavement finishers, drag lines, fork lift trucks, log loaders, mixmobiles, portable bins, portable parts and storage bins, portable shops, portable storage tanks, power shovels, road rollers, sheepsfoot rollers and paving mixers, towermobiles, welders, yarders;

(e) Bituminous and cement finishing machines, elevator equipment, scarifiers and rooters, traction engines, vibro screens and rotary screens, wheeled and crawler tractors other than truck tractors; and

(f) Apron feeders, grain grinders, grain rollers, sand classifiers and drags, sawmills and special construction equipment, scrap metal bailers, scrubber screens and plate feeders. [1983 c.338 s.47; 1985 c.71 s.1; 1995 c.79 s.367]

308.105 Personal property. (1) Except as otherwise specifically provided, all personal property shall be assessed for taxation each year at its situs as of the day and hour of assessment prescribed by law.

(2) Personal property may be assessed in the name of the owner or of any person having possession or control thereof. Where two or more persons jointly are in possession or have control of any personal property, in trust or otherwise, it may be assessed to any one or all of such persons. [Amended by 1955 c.720 s.1; 1961 c.683 s.1]

308.210 Assessing property; record as assessment roll; changes in ownership or description of real property and manufactured structures assessed as personal property. (1) The assessor shall proceed each year to assess the value of all taxable property within the county, except property that by law is to be otherwise assessed. The assessor shall maintain a full and complete record of the assessment of the taxable property for each year as of January 1, at 1:00 a.m. of the assessment year, in the manner set forth in ORS 308.215. Such record shall constitute the assessment roll of the county for the year.

(2) Except as provided in subsections (3) and (4) of this section, the ownership and description of all real property and manufactured structures assessed as personal property shall be shown on the assessment roll as of January 1 of such year or as it may subsequently be changed by divisions, transfers or other recorded changes. This subsection is intended to permit the assessor to reflect on the assessment roll the divisions of property or the combining of properties after January 1 so as to reflect the changes in the ownership of that property and to keep current the descriptions of property. The assessor shall also have authority to change the ownership of record after January 1 of a given year so that the assessment roll will reflect as nearly as possible the current ownership of that property.

(3) The assessor shall not indicate any changes, divisions or transfers of properties which occurred before, on or after January 1 as a result of the division of a larger parcel of land until all ad valorem taxes, fees and other charges placed upon the tax roll on the entire parcel of property that have been certified for collection under ORS 311.105 and 311.110 have been paid. However, if the owner of one of the portions of the larger property is a public body only the change, division or transfer of that portion shall be recognized.

(4) The assessor shall not reflect on the assessment roll any combining of properties unless all ad valorem taxes, fees or other charges charged to the tax accounts to be combined that have been certified for collection under ORS 311.105 and 311.110 have been paid. However, if the owner of the affected property is a public body, this subsection shall not apply.

(5) The assessor shall notify the planning director of a city of all divisions of land within the corporate limits of the city and the planning director of a county of all divisions of land outside the corporate limits of all cities and within the county, including, but not limited to, divisions of land by lien foreclosure, divisions of land pursuant to court order and subdivisions within 30 days after the date the change in the tax lot lines was processed by the assessor. The requirements of this subsection do not apply to divisions for assessment purposes only.

(6) As used in this section, "public body" means the United States, its agencies and instrumentalities, the state, a county, city, school district, irrigation or drainage district, a port, a water district and all other public or municipal corporations in the state exempt from tax under ORS 307.040 or 307.090. [Amended by 1957 c.324 s.1; 1969 c.454 s.1; 1977 c.718 s.1; 1981 c.632 s.2; 1983 c.473 s.1; 1983 c.718 s.1; 1991 c.459 s.90; 1991 c.763 s.27; 1993 c.6 s.4; 1995 c.610 s.1; 1997 c.541 s.154]

Note: Section 4, chapter 541, Oregon Laws 1997, provides:

Sec. 4. Notwithstanding any other law, for the tax year beginning July 1, 1997:

(1) Property shall be assessed for ad valorem property tax purposes as of July 1, 1997, at 1:00 a.m.; and

(2) The dates fixed by statute and applicable to ad valorem property taxation shall be as provided in the 1995 Edition of the Oregon Revised Statutes or as amended thereafter other than as amended by this 1997 Act, unless specifically provided otherwise. [1997 c.541 s.4]

308.232 Property to be valued at 100 percent real market value and assessed at assessed value. All real or personal property within each county not exempt from ad valorem property taxation or subject to special assessment shall be valued at 100 percent of its real market value. Unless the property is subject to maximum assessed value adjustment under ORS 308.149 to 308.166, the property shall be assessed at the property's assessed value determined under ORS 308.146. [1953 c.701 s.2; 1959 c.519 s.1; 1961 c.243 s.1; 1967 c.293 s.6; 1979 c.241 s.33; 1981 c.804 s.39; 1985 c.613 s.8; 1991 c.459 s.97; 1997 c.541 s.159]

308.250 Valuation and assessment of personal property; cancellation of assessment and short form return in certain cases; verified statements. (1) All personal property not exempt from ad valorem taxation or subject to special assessment shall be valued at 100 percent of its real market value, as of January 1, at 1:00 a.m. and shall be assessed at its assessed value determined as provided in ORS 308.146.

(2) If the total assessed value of all taxable personal property required to be reported under ORS 308.290 in any county of any taxpayer is less than $10,000 in any assessment year, the county assessor shall cancel the ad valorem tax assessment for that year.

(3) In any assessment year or years following an assessment year for which taxes are canceled under subsection (2) of this section, the taxpayer may meet the requirements of ORS 308.290 by filing, within the time required under ORS 308.290, a verified statement with the county assessor indicating that the total assessed value of all taxable personal property of the taxpayer required to be reported under ORS 308.290 in the county is less than $10,000. The statement shall contain the name and address of the taxpayer, the information needed to identify the account and other pertinent information, but shall not be required to contain a listing or value of property or property additions or retirements. [Amended by 1953 c.349 s.3; 1959 c.553 s.1; 1965 c.429 s.3; 1971 c.529 s.34; 1971 c.610 s.1; 1973 c.62 s.1; 1979 c.529 s.3; 1979 c.692 s.4; 1981 c.804 s.41; 1985 c.422 s.1; 1985 c.613 s.9; 1991 c.459 s.101; 1993 c.813 s.1; 1995 c.513 s.4; 1997 c.541 s.163; 1997 c.819 s.1]

Court/Department Decisions

This section provides additional direction and guidance to assessors and their staff on the classification and taxability of licensed vehicles known as "Fixed Load Vehicles." The following court/department decisions include specific examples where the court has made distinctions on why a vehicle is taxable or exempt. By reading the titles, the reader may pick and choose which decision applies to their given situation.

STATE OF OREGON

DEPARTMENT OF REVENUE

In the Matter of the Appeal of Roderick D. Stevens Concerning Certain Douglas County Machinery and Equipment Valuation Matters for Tax years 1990-91 and 1991-92.

OPINION AND ORDER

No. 92-6200

A telephone hearing was held before W. Glenn Cate, Hearings Officer for the Oregon Department of Revenue, at 11a.m. on April 30, 1993, originating from Room 354 of the Revenue Building, Salem, Oregon. Participating were :

1) Roderick D. Stevens, petitioner, representing himself, pro se, and
2) Ali Vincent-lough, appraiser, employed by t.he Dougl as County Assessor.

OPINION

The petitioner appealed to the department from an act of the Douglas County Assessor regarding an omi tted property assessment issued against. Account No. 50.2988 on the 1990-91 and 1991-92 tax rolls.

Jurisdict ion of this matter is provided by ORS 311.211 (4).

Mr. Stevens is engaged in a tree farm and sawmill business located in Roseburg, Oregon. The business name is Humbug Tree Farms. The petitioner has been filing personal property returns for several years. The bulk of the equipment owned by this petitioner was acquired between January1,1981, and Sept ember 1, 1991.

On the petitioner's 1992-93 personal property return, the county assessor discovered at least. three it ems which had been omitted from assessment for tax years 1990-91 and 1991-92. Those included an engine, a GMC log loader, and a loader rebuild. None of these it ems bad been reported on either of the two tax years in issue.

On October 28, 1992, the county issued an omitted property assessment for both tax years under the authorit y of ORS 311 .207 et seq.

The true cash value (TCV) assigned for 1990-91 was $4,015. The real market value (RMV) assigned to the 1991-92 tax roll was $9,815.

Taxability

ORS 307.190 exempts personal property held for personal use. The exempt ion does not apply to "any tangible personal propert y held by the owner, wholly or partially for use or sale in the ordinary course of a trade or business, for the production of income, or solely for investment ." Nor does it include "any tangible personal property required to be licensed or registered under the laws of this state." ORS 307.190(2) (a) (2)(b).

First, as noted, the exemption under ORS 307.190 extends only to personal property held for personal use. It is clear from these facts this petitioner intends to use the subject in the future for the production of income. Unless the petitioner either sells the property or converts it to personal use, it is taxable as a business asset. Or. Dept. of Rev. PTLA, ORS 307.190, OF 2475-V; O&O No. VL 82-1646, January 1, 1983.

Additionally, whether or not the truck loader is licensed or may be in the future does not render it exempt from taxation. ORS 801.285(2) specifically states that log loaders are taxable. It makes no distinction between self-loading loaders mounted on a truck and any other type of log loader. The parties agree that the 350-horsepower engine purchased on June 15, 1989, is not taxable.

Valuation

The first unit in issue is a 1976 GMC logging truck and Ramey loader. It is a self-loading log truck in "junked" condition. It was purchased in 1989. The taxpayer claims he has expended approximately $6,500 in repairs with more to be done later as he can afford.

The petitioner claims he purchased the loader in December 1989 for $2,500. The county has assigned a value of $2,375 (95 percent good) for tax year 1990-91 and $2,125 (85 percent good) for tax year 1991-92. The taxpayer argues that the assessed value is twice what the unit would sell for because of its inoperative condition.

The record, however, is clear that the taxpayer has at least $9,000 invested in the loader.

The county offered evidence that a 1977 Peterbilt log truck with Prentice self-loader sold at a PacWest auction on March 10, 1993, in Eugene, for $13,000. It is acknowledged that the Peter-hilt was a much larger unit.

The second item in issue is a "loader rebuild" which was acquired in June 1990 for $8,935. The county first applied a "70 percent good" depreciation factor to reach a real market value (RMV) on the 1990-91 tax roll of $6,255.

CONCLUSION OF THE DEPARTMENT

To prevail in a valuation controversy, the one appealing must not only show error in the record assessment, but must also provide the department with sufficient probative evidence to support a lower value. OAR 150-305.115-(B)(9).

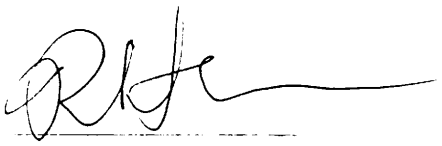
The department has very carefully considered both the issues of taxability and the valuation issue of this omitted property action. The department hereby finds the best evidence of the appropriate action in this matter is that offered by the county assessor.

Therefore, with the exception of the removal of the "engine" from the two tax rolls, the taxpayer's request for relief is denied. If, after such correction, it is discovered that any excess taxes have been paid, they shall be refunded with interest pursuant to ORS 311.806 and 311.812.

IT IS SO ORDERED.

Dated and mailed at. Salem, Oregon, this 22nd day of October, 1993.

DEPARTMENT OF REVENUE



RICHARD A. MUNN, DIRECTOR

Notice: If you want to appeal this decision, file a complaint in the Oregon Tax Court, 520 Justice Building, Salem, Oregon 97310. YOUR COMPLAINT MUST BE FILED WITHIN 60 DAYS AFTER THE MAILING DATE SHOWN ABOVE, OR THIS DECISION WILL BECOME FINAL AND CANNOT BE CHANGED.

MORAVEK'S CONCRETE, INC.
v.
DEPARTMENT OF REVENUE

L. P. COMPANY
v.
DEPARTMENT OF REVENUE

Appeal from defendant's determination that plaintiffs' concrete pump/boom trucks were fixed load vehicles subject to ad valorem tax by ORS 481272. Plaintiffs sought a determination that the trucks were self-propelled mobile cranes, which are excluded from the definition of fixed load vehicles by ORS 481.272(4) and therefore exempt from ad valorem tax pursuant to ORS 481.270. The court held that the concrete pump/boom trucks are one type of self-propelled mobile crane and are entitled to exemption as such. Based on the testimony of a representative of the Motor Vehicles Division, the court determined that the licensing classification made by the Motor Vehicles Division is not controlling when classifying vehicles for ad valor-em tax purposes.

Statutes-Construction and operation-Meaning of language—Particular words and phrases

1. The difficulty in ascertaining the range or compass of the statutory language, "self-propelled mobile cranes," grows out of the fact that these words have a fairly wide application in the world of heavy, special-duty motor vehicles and, further, because no reason for this exception has been suggested by the legislature (or counsel) which will aid in rationalizing which, of several types of mobile cranes, are entitled to tax advantage.

Statutes-Construction and operation-Meaning of language—Particular words and phrases

2. Concrete pump/boom trucks are closely related to self-propelled mobile cranes hitherto approved for exemption; the same physical and mechanical principles are basic to their design.

Statutes-Construction and operation-Meaning of language—Particular words and phrases

3. A crane, by definition, is a machine which raises, swings and lowers heavy objects by means of a mechanical arm or boom. A concrete pump/boom truck fits precisely within the definition because it raises, swings and lowers concrete by means of a mechanical arm or boom. The only difference between conventional self-propelled mobile cranes and concrete pump/boom trucks is that conventional mobile cranes use a winch/cable crane boom system to lift while concrete pump/boom trucks use a pump/hose crane boom system to lift.

Taxation-Exemptions-Statutory provisions in general

4. The property which is the subject of these suits readily fits within the concept of "self-propelled mobile cranes." While the legislative policy for exempting any of them is not clear, the court concludes that it is the legislative intent that they be given the benefits of ORS 481.270.

Taxation-Exemptions-Statutory provisions in general

5. In the present state of the art, the court understands the words "self-propelled mobile cranes" to have a generic connotation, rather than being limited in some fashion which the defendant presumably conceives but which has not been conveyed to the court.

Taxation-Levy and assessment—Determination as to property taxable

6. The work of classification of motor vehicles for purposes of ad valorem taxation under ORS 481.272 must rest with the county assessor, with initial appeal to the Department of Revenue. To the degree that language in *Paullus v. Dept. of Rev.*, 7 OTR 181 (1977), contradicts this conclusion, it is deemed to be superseded.

Trial held December 5, 1977, in the courtroom of Oregon Tax Court, Salem. Two cases consolidated for trial.

Robert J. Saalfeld, Harland & Bitter, Salem, represented plaintiff Moravek's Concrete.

Robert B. McConville, Salem, represented plaintiff L. P. Company.

Ted E. Barbera, Assistant Attorney General, Salem, represented defendant.

Decision for plaintiffs rendered March 21, 1978.

Affirmed — Or ——, — P2d —— (1979).

CARLISLE B. ROBERTS, Judge.

Plaintiffs have separately appealed from orders of the Department of Revenue (from defendant's Order No. VL 77-15 in Tax Court case No. 1133 and from defendant's Order No. VL 76-594 in Tax Court case No. 1134, both orders dated January 21, 1977). Both appeals to the defendant were from the act of the Marion County Assessor in assessing and adding the plaintiffs' concrete-pumping trucks to the personal property tax rolls for the current tax year and four or five preceding years, as omitted property, pursuant to ORS 311.207 et seq. The issue presented for consideration is whether "concrete pump/boom trucks" are exempt from the personal property tax. The suits were consolidated for purposes of trial.

The pertinent statutes are ORS 481.270 and 481.272. The problems of interpretation presented by these statutes are set out in some detail in *Paullus v. Dept. of Rev.*, 7 OTR 181 (1977).

Upon examination of the statutes, it can be concluded, generally speaking, that the original legislative intent was to stimulate the purchase of motor vehicles and the building of roads suitable for motor vehicles by exempting such property from the usual personal property taxes, substituting registration and license fees in lieu thereof and depending upon fuel taxes for the building of highways. ORS 481.270 is a significant part of this legislative scheme.

However, ORS 481.272 provides for an exception to the principle of ORS 481.270, possibly resulting from the proliferation of special-use vehicles for use chiefly as "off-the-road" vehicles. Many of them represent substantial capital investments. The statute offers no relief from ad valorem taxation as to those vehicles which "are neither designed nor used primarily for the transportation of persons or property [other than the special equipment or machinery which distinguishes the vehicle] over public highways or streets. * * *" ORS 481.272(2). But the legislature made an exception to the foregoing exception which is set out in subsection (4) of ORS 481.272 as to certain vehicles which otherwise would come within the definition of "fixed load vehicles." The pertinent part reads:

> "As used in this section, 'fixed load vehicles' do not include * * * truck-mounted transit mixers, or self-propelled mobile cranes."

[1.] The difficulty in ascertaining the range or compass of the statutory language, "self-propelled mobile cranes," grows out of the fact that these words have a fairly wide application in the world of heavy, specialduty motor vehicles and, further, because no reason for this exception has been suggested by the legislature (or counsel) which will aid an administrator or the court in rationalizing which, of several

types of mobile cranes, are entitled to the tax advantage. *See* 32 Op Att'y Gen 123 (1965).

[2, 3.] Pictures presented to the court in conjunction with the testimony of the plaintiffs show that the concrete pump/boom trucks are closely related to self-propelled mobile cranes hitherto approved for exemption; the same physical and mechanical principles are basic to their design. As stated by plaintiffs in their brief (Pl Memo, 1-2):

> "A crane, by definition, is a machine which raises, swings and lowers heavy objects by means of a mechanical arm or boom. A concrete pump/boom truck fits precisely within the definition of a crane because it is a machine which raises, swings and lowers concrete by means of a mechanical arm or boom. The concrete pump/boom truck is merely a specialized type of crane. The only difference between conventional self-propelled mobile cranes and concrete pump/boom trucks is that conventional mobile cranes use a winch/cable crane boom system to lift while concrete pump/boom trucks use a pump/hose crane boom system to lift.
>
> The evidence establishes that conventional self-propelled mobile cranes and concrete pump/boom trucks are both used for the lifting and placing of concrete; in fact, when conventional cranes are already available on the job site sometimes both conventional cranes and pump/boom trucks are used to lift and place concrete simultaneously. Before pump/boom trucks were introduced conventional cranes were used to lift and place concrete. Now, pump/boom trucks are used more often to perform this function because they are simply faster and more efficient than conventional cranes. Both conventional self-propelled mobile cranes and concrete pump/boom trucks are designed and operate as vehicles for highway use. In fact, concrete pump/boom trucks are generally on the highway even more than conventional cranes because pump/boom trucks are more efficient at the job site and can therefore travel to more jobs during a given period of time."

An examination of ORS 481.272(3) shows that it takes notice of several vehicles used in the cement business: cement batch plants, cement mixers ("other

than transit mix"), cement spreaders, pavement finishers, paving mixers and cement finishing machines, all of which are particularly included in the list of "[f]ixed load vehicles" "not exempted from ad valorem taxation by ORS 481.270."

[4, 5.] The property which is the subject of these suits readily fits within the concept of "self-propelled mobile cranes," rather than in the fixed load vehicles enumerated above. While the legislative policy for exempting any of them is not clear, the court concludes that it is the legislative intent that they be given the benefits of ORS 481.270. Any other decision involves a weighing of subtle distinctions which, as likely as not, would be discriminatory and in no way would aid in the settlement of future questions. In the present state of the art, the court understands the words "self-propelled mobile cranes" to have a generic connotation, rather than being limited in some fashion which the defendant presumably conceives but which has not been conveyed to the court. ORS 481.272(4) does distinguish subspecies in some instances (e.g., "mobile homes" and "travel trailers") but not with respect to self-propelled mobile cranes. The matter quoted above from the plaintiffs' memorandum serves as a guide.

The court takes note of 38 Op Att'y Gen 87 (1976), which concludes that a concrete pump/boom truck is a fixed load vehicle. The writer either overlooked the "self-propelled mobile crane" exception or concluded that a "self-propelled mobile crane" is a description so specific as to exclude the concrete pump/boom truck. The court respectfully disagrees with the writer of that opinion as to the degree of specificity.

The court deems the decision in *Paullus v. Dept. of Rev., supra,* to be correct in result but, in light of testimony received (without dissent or contradiction) in the present suits, it must recognize that its apparent reliance in the *Paullus case* upon the classification made by the Motor Vehicles Division of the motor vehicle which was the subject of that case was in error.

Mr. Malcolm Page, a veteran employee of the Motor Vehicles Division, testifying in this suit, made clear that his division depends upon purely mechanical tests for purposes of classifying fixed load vehicles and generally does not inspect the vehicles to determine their design, function or highway use. Mr. Page further testified that many individuals with fixed load vehicles merely list their vehicles on the application form as "trucks," without disclosing further information, and, in many instances, they will be issued a truck license and escape ad valorem taxation since reliance is placed by the division upon the classification given by the applicant.

[6.] The court agrees with the plaintiffs (and the defendant in the *Paullus* case, *supra*) that the work of classification of motor vehicles for purposes of ad valorem taxation under ORS 481.272 must rest with the county assessor, with initial appeal to the Department of Revenue. To the degree that language in *Paullus* contradicts this conclusion, the prior decision is deemed to be superseded. ('Pride of opinion should never deter a court from confession of error. * * *" *City of Portland v. Welch,* 154 Or 286, 294, 59 P2d 228, 231, 106 ALR 1188, 1195 (1936).)

The defendant's Order No. VL 77-15 (giving jurisdiction for appeal in Tax Court case No. 1133, relating to tax years 1971-1972 through 1976-1977), and defendant's Order No. VL 76-594 (the basis of jurisdiction for the appeal in Tax Court case No. 1134, respecting tax years 1972-1973 through 1976-1977), shall be set aside and held for naught and the County Assessor and the Tax Collector of Marion County shall correct the assessment and tax rolls for the indicated years as required by this decision, abating any taxes which may be shown upon the rolls in connection with the subject property. If taxes have been paid by the plaintiffs, the excess, with statutory interest thereon, shall be remitted to the plaintiffs by the Board of County Commissioners of Marion County, Oregon, pursuant to ORS 311.806 and 311.812.

Plaintiffs are entitled to their statutory costs and disbursements.

IN THE OREGON TAX COURT

Property Tax

No. 1228

KENNETH J. BYLUND, Director of Assessment and Taxation for Lane County, Oregon,

Plaintiff,

v.

DEPARTMENT OF REVENUE, State of Oregon,

Defendant.

DECISION

Pursuant to ORS 305.560 and 305.570, the plaintiff, Director of Assessment and Taxation for Lane County, **Oregon**, charged with the assessment and collection of taxes in Lane County, has appealed from the defendant's Order No. VL **77-740,** dated December 30, 1977. The question is whether an item of personal property, described as a Model C100 Savage Hydraulic Loader (Serial No. **1143),** owned by Joseph D. Martin of Cottage Grove, used by Mr. **Martin** in the business of hauling logs, is subject to **the** personal property tax for the tax year **1976-1977,** pursuant to ORS 307.190

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and ORS 308.105, or is exempt from such tax within the provisions of ORS 481.270.[1/]

The subject property (Assessor's Account No. 5340441) is a hydraulically operated crane which has been mounted on a 1970 White truck, Model 4562 TD (Serial No. BJ021HA-735642), also owned and operated by Mr. Martin during the year in question. Such cranes are commonly called "self-loaders," are manufactured and sold by a numb& of manufacturers, and have come into general use during the last few years. A loader weighs from 3,000 to 6,000 pounds; it must be constructed of high grade materials and is sold new for $14,000 to $16,000.

Self-loaders are most often bought and sold separately from the truck and, in fact, may be leased. They may be financed separately and insured separately. There is a market for used units. The plaintiff testified that there are now more than 100 self-loaders in use in Lane County.

The unit includes a vertical mast which can be firmly seated and secured at the rear end or in the middle

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1/ Plaintiff raised a second issue relating to the power of the defendant to utilize its supervisory power (ORS 305.090 and ORS 306.111) when issuing Order No. VL 77-740, but this issue was withdrawn at the time of trial.

DECISION

of a truck frame or close to the cab. The mast supports a boom (constructed in three components for easy articulation) to which is attached a "bucket cross" from which is suspended a grapple or other equipment, depending upon the work to be done. The boom can swing in a complete arc of 360 degrees. The unit is operated by one man, using hydraulic controls, occupying a seat on a small platform located at the top of the mast. The power is obtained from the truck' engine through a takeoff which operates a hydraulic pump. Hoses carry the hydraulic fluid to the several hydraulic cylinders which can be individually activated by the operator to control the position of the boom and the grapple. Hydraulically operated outriggers can be lowered on each side of the truck to add stability during operation.

The self-loader is clamped to the truck with bolts and steel angles and the truck is modified by steel reinforcement of the frame and provision for the power takeoff and a manual control knob for the engine- 'Testimony showed that it could take two men several days to install a self-loader but removal of the basic unit can be done much more quickly.

DECISION

Plaintiff admits that the cost of installing a self-loader upon a truck is approximately $1,500 but contends that, because of simplicity of removal, its identity as a separate unit should be deemed to continue and to render it taxable under ORS 307.190(2) as personal property used for the production of income. The defendant contends (1) that, permanency of attachment is not controlling, because there is no statutory requirement that the self-loader be permanently attached to the vehicle in order to share its exemption from personal property taxation under ORS 481.270; but (2), if such a requirement exists outside the statutes, the self-loader was permanently attached to the vehicle.

ORS 307.190 establishes a general rule that items of tangible personal property held by the owner for the production of income are subject to taxation (unlike personal property held by the owner for his personal use). ORS 481.270(1) provides that "vehicles" shall be subject to registration and license fees, imposed by the State of Oregon "in lieu of all other taxes and licenses, except municipal license fees under regulatory ordinances, to which

DECISION

such vehicles, or the owners thereof by reason of such ownership, may be subject."

As stated in Roy L. Houck & Sons v. Tax Com., 229 Or 21, 31, 366 P2d 166, 170 (1961):

> "For approximately 38 years prior to 1959 the exemption established by ORS 481.270 remained unchanged and unchallenged so far as it applied to equipment of the character owned by Houck [construction equipment described as scrapers, graders, and a Tournadozer]. * * *"

The court held that, prior to a 1959 amendment, these "vehicles" were exempt from ad valorem taxation because they had been registered and licensed by the state's Motor Vehicle Department (now Motor Vehicles Division). The court construed the pre-1959 statute, pointing out that neither frequency of the vehicle's use of the highways, nor whether it was principally used on the highways, was a criterion or condition precedent for determining whether the vehicle could be registered and licensed by the Motor Vehicle Department. It further stated that the fact that the vehicle failed to comply with vehicular safety requirements did not prevent the owner from securing a motor vehicle license (although such failure prevented him from operating the vehicle upon the highways until he had complied with the safety requirements or obtained a "single continuous trip

DECISION

permit" for moving the vehicle from point to point over the highways).

ORS 481.272 was substantially enacted by Or Laws 1959, ch. 417, § 3, effective January 1, 1960, to resolve the question which gave rise to the Roy L. Houck & Sons case, supra; i.e., whether costly off-the-road vehicles (which are exempt from motor vehicle fuel taxes per ORS 319.010(11) and 319.280) should be licensed at a modest fee or should be subjected to ad valorem taxation. A classification of "special mobile equipment" was established and described in *the* new statute *in* some detail, preceded by the statement:

> "(1) Special mobile equipment is not exempted from ad valorem taxation by ORS 481.270."

In Or Laws 1961, ch 539, § 2, ORS 481.272 was amended to substitute the words "[f]ixed load vehicles are" in lieu of "[s]pecial mobile equipment is."

Subsection (2) of ORS 481.272, with some assistance from subsections (3) and (4), is deemed by the court to be the key to the solution of the present question. It seeks to distinguish between those vehicles that are designed and used primarily for the transportation of persons or property over public highways *or* streets *from* those vehicles which are designed and used primarily for non-transportation purposes, off the highway. The first

DECISION

category is exempt from the-ad valorem taxation of the personal property by being licensed by the Motor Vehicles Division; units in the second category, "fixed load vehicles," are subject to ad valorem taxation, whether 'licensed or not. Many examples of the second category are listed in subsection (3) of ORS 481.272[2/] and include such

2/ ORS 481.272(3) provides:

> "(3) For the purposes of thissection, 'fixed load vehicles' include air compressors, air drills, asphalt plants, asphalt spreaders, bituminous plants, bituminous mixers, bituminous spreaders, bucket loaders, cement batch plants, cement mixers (other than transit mix), cement spreaders, carry-alls, crawler cranes, crushers and crushing plants, diggers and ditchers, power units and plants, earth-moving scrapers, electric generating equipment, electric load-bank and wiring equipment, lighting plants and portable wiring, front-end loaders, scoop--mobiles, payloaders, skip hoists, power hoists, road graders, motor graders, leveling graders, stackers, hoists, towermobiles, pavement finishers (bituminous and cement), power shovels, back hoes, drag lines, mixmobiles, portable shops, portable parts and storage bins, portable bins, portable storage tanks, fork lift trucks, athey wheels, log loaders, yarders, welders, road rollers, sheepsfoot rollers, paving mixers, elevator equipment, tractors other than truck tractors (wheeled and crawler), traction engines, bituminous and cement finishing machines, scarifiers and rooters, vibro screens, rotary screens, scrubber screens, sand classifiers and drags, plate feeders, apron feeders, scrap metal bailers, grain grinders, grain rollers, sawmills and special construction equipment. The enumeration in this subsection merely illustrates some of the vehicles that are included within the term 'fixed load vehicles' and shall not operate to exclude other vehicles that are within the purview of the term 'fixed load vehicles' as defined in subsection (2) of this section."

DECISION

disparate items as air compressors, cement batch plants, crushers and crushing plants, diggers and ditchers, mix-mobiles, athey wheels, log loaders, road rollers, tractors (wheeled and crawler) other than truck tractors, special construction equipment and the like, having one factor in common; viz., they are not designed or used to haul persons or property over the public roads. 3/

In its attack in the present suit, the plaintiff has given consideration to the personal property law of accession and to the law of fixtures; however, the court's view is that the use of these concepts, developed for the purpose of solving questions of title and priority, are not appropriate here for purposes of statutory construction. Questions of accession deal with rights of ownership in tangible personal property where the property belonging to one person has been attached to or incorporated in or intermingled with the property of another person and a dispute

3/ Recognizing the proliferation of special equipment which is a notable aspect of the present era, the legislature has ended subsection (3) with a caveat: "The enumeration in this subsection merely illustrates some of the vehicles that are included within the term 'fixed load vehicles' and shall not operate to exclude other vehicles that are within the purview of the term *."

DECISION

arises as to ownership. The law of fixtures is chiefly concerned with the definition of a "fixture" and the right to possession of specific fixtures as between particular persons. But in this suit we are dealing with a peculiar statute, ORS 481.272, and the legislative intent must be determined from the language used therein, if at all possible.

The chief thrust of the plaintiff's argument is that ORS 481.270 specifically exempts licensed vehicles but "[a] self log loader is not a vehicle? (Pl Trial Br at 5.) However, the excellent description of a self-loader presented by the plaintiff shows clearly that, while the loader is not a vehicle in and of itself, it is so designed as to be used effectively only when attached to and powered by a mobile unit.[4/]

4/ Plaintiff has consistently used the words "self log loader" in connection with the subject property and it is admitted that in the present situation the loader is used for loading logs on the taxpayer's log truck and trailer, but the loader and its standard attachments can be used for many purposes other than loading logs. The important fact is that the unit is attached to and made a part of a vehicle designed and used primarily for transportation of property over public highways and streets. If the unit were attached to a crawler tractor (as many self-loaders are), for use in the forest area and other off-road sites, the court would be presented with a different question, since "log loader" is specifically listed as a "fixed load vehicle" in ORS 481.272(3).

DECISION

The defendant's argument rebuts plaintiff% accession theory as not controlling but asserts that it can be argued that the self-loader was permanently attached to the logging truck. Defendant then presents an ingenious argument: since Oregon% annual license fees for motor trucks and truck tractors are based upon "combined weight" (ORS 481.210(2)(a)) and since "combined weight" is the "light weight" of the vehicle (the weight of a vehicle when fully equipped for moving over the highways) plus the weight of the maximum load which the 'vehicle may carry (ORS 481.010(2)(a) and 481.025(1)), the weight of the special equipment, the "log loader," is necessarily included in the maximum load for which the license fee is paid and therefore such added equipment is likewise exempt from ad valorem taxation (citing two cases from other states with somewhat similar laws). The court does not believe this is a useful argument. 'The defendant would certainly admit that any logs loaded on the log truck here involved, within the maximum load licensed for the truck, would not be exempt from other taxes and fees because of the truck's license. As the statute is written, it is not possible to conclude from defendant's argument that the self-loader is thus exempt from taxation.

DECISION

More to the point is ORS 481.272(2) which stresses that the licensed vehicle must be one "used primarily for . the transportation of persons or property over public highways or streets" and that "property" which is in the form of a permanent load of equipment or appliances or which is "ordinarily kept on or in the vehicle in order that the vehicle may be used for its primary purpose" is exempt from personal property taxation by virtue of licensing. Once it has been established that the taxpayer's 1970 White truck, Model 4562 TD, is used primarily for transporting logs over the highways (after picking them up in the yarded area near the timber-cutting site) and carrying them over the public highways to mill owners and operators, other processors or shippers, then it does not matter whether the essential special equipment is permanently attached or kept on or in the vehicle as long as it aids in the principal mission of the truck. However, the court finds that, in the present case, the equipment is "permanently attached," utilizing the same method (suitable bolts and nuts) used with respect to other components of the truck, including the engine. "Permanently attached" cannot be read too strictly in a paragraph which allows the exemption of property "ordinarily

DECISION

kept on or in the vehicle in order that the vehicle may be used for its primary purpose.7

And, in construing the statute, the court cannot overlook the exception made in ORS 481.272(4) in the case of "self-propelled mobile cranes? The subject property in the present suit, including the use of the White truck, comes so clearly within the description of a self-propelledmobile crane that the decision in Moravek's Concrete et al v. Dept. of Rev., 7 OTR Adv Sh 385, 7 OTR . (1978) (presently on appeal to the Oregon Supreme Court), may be applicable thereto. (Counsel presented no argument in this suit, based on this concept.)

Order No. VL 77-740, dated December 30, 1977, is affirmed and plaintiff's appeal is dismissed. Each party shall bear its own costs and disbursements.

Dated this 29th day of September, 1978.

Carlisle B. Roberts
JUDGE

DECISION

Argued January 5, affirmed March 20, 1979

MORAVEK'S CONCRETE, INC., *Respondent,*

DEPARTMENT OF &VENUE, *Appellant.*
(No. 1134)

L. P. COMPANY, *Respondent,*

DEPARTMENT OF &VENUE, *Appellant.*
(No. 1133)
(SC 25710)
591 P2d 1379

Appeal was taken from decision of the Tax Court, Carlisle B. Roberts, J., holding that concrete pump/boom trucks were exempt from ad valorem personal property taxation. The Supreme Court, Holman, J., held that such trucks were within the statutory exemption for "self-propelled mobile cranes."

Affirmed.

Taxation—Ad valorem personal property tax valuation— Self-propelled mobile cranes

Words "self-propelled mobile cranes," as used in statute providing that such cranes are not within the meaning of "fixed load vehicles" and thus are not subject to ad valorem personal property taxation applicable to such vehicles, were intended as a generic term rather than a term referring particularly to those mobile cranes in existence at the time of the passage of the statutory exception, and thus since a concrete pump/boom truck employs the same methods and activities, for similar purposes, as those which distinguish a mobile crane, such a truck is within the exemption, notwithstanding that such trucks did not exist in Oregon at the time the exemption was enacted. ORS 481.005 *et seq.*, 481.270, 481.272(4).

CJS, Taxation § 232.

Department 1

Appeal **from** Oregon Tax Court.*

Carlisle B. Roberts, Judge.

Ted E. **Barbera,** Assistant Attorney General, Salem, argued the cause for appellant. With him on **the briefs** was James A. Redden, **Attorney** General, Salem.

Robert **J.** Saalfeld of Harland, **Ritter,** Saalfeld **& Griggs,** Salem, argued the cause for respondent **Moravek's** Concrete, Inc. With him on the brief **was Robert B. McConville,** Salem, for respondent **L.** P. Company.

Before Denecke, Chief Justice, and Holman, **Howell,** and Lent, Justices.

HOLMAN, **J.**

Affirmed.

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* 7 OTR 385 (1978).

HOLMAN, **J.**

This is an appeal by the Department of Revenue from a decision of the Oregon Tax Court, 7 OTR 385 (1978), in two. consolidated cases holding that plaintiffs' concrete pump/boom trucks are exempt from ad valorem personal property taxation pursuant to ORS 481.272(4).

ORS 481.270 generally provides that vehicle registration and license fees imposed by ORS ch 481 are in lieu of all other taxes and licenses. However, ORS 481.272 provides that "fixed load vehicles" are not so exempt, resulting in their subjection to ad valorem taxation, and defines "fixed load vehicles" to mean vehicles with or without motive power, that are neither designed nor used primarily for the transportation of persons or property over public highways or streets. Plaintiffs acknowledge that their concrete pump/boom trucks fit the statutory definition of a "fixed load vehicle." They contend, however, and the tax court held, that concrete pump/boom trucks are exempt from ad valorem taxation by subsection (4) of ORS 481.272 which provides

> "As used in this section, 'fixed load vehicles' do not include mobile homes, travel trailers, tow cars (including tow cars with cranes, hoists or dollies), truck-ted transit mixers, or *self-propelled mobile cranes.*" (Emphasis added.)

The Department of Revenue summarizes its argument brought upon appeal as follows:

> "Statutes are to be construed in the light of conditions existing at the time of their enactment, and the words of the statute taken in the sense in which they were understood at that time. Concrete pump/boom trucks did not exist in Oregon in 1963, when ORS 481.272(4) was last amended to exempt 'self-propelled mobile cranes' from taxation. Therefore, the Tax Court erred in construing 'self-propelled mobile cranes' to include concrete pump/boom trucks."

Ordinary self-propelled mobile cranes and concrete pump/boom trucks are both used in the lifting and placing of wet concrete. However, ordinary self-propelled mobile cranes are used for many other lifting purposes, whereas concrete pump/boom trucks are usually not so used. The conventional mobile crane uses a winch that winds in and lets out a cable running through a boom and attached to a bucket in which the concrete is raised, lowered and swung about to the place where the concrete is desired. A concrete pump/boom truck accomplishes the same purpose by pumping the concrete through a pipe or hose attached to a boom.

Defendants contend that

> "the differences and similarities between self-propelled mobile cranes and concrete pump/boom trucks would be significant only if concrete pump/boom trucks had been in existence in Oregon at the time the statute was last amended in 1963 to exempt self-propelled mobile cranes. This is not the case."

The department also says:

> "It is submitted that to extend the meaning of 'self-propelled mobile cranes,' to include concrete pump/boom trucks is to attach a strained and unusual meaning to the term, and should not be done simply because it may seem that a similar policy applies, or upon the speculation that had the legislature known about concrete pump/boom trucks, broader words would have been used to include them in the exemption."

We agree with the tax court in the conclusion that the words "self-propelled mobile cranes" as used by the legislature were intended as a generic term rather than as a term referring particularly to those mobile cranes in existence at the time of the passage of the statutory exemption. Therefore, the issue is whether a concrete pump/boom truck is a self-propelled mobile crane. We conclude that by its use of a movable boom mounted upon a self-propelled vehicle to raise, lower and swing its load to the desired place, a concrete pump/boom truck employs the same methods and activities which distinguish a mobile crane. It is not reasonable that two vehicles should be distinguished for the purpose of exemption from taxation solely on the basis that one performs the lifting process by an engine that drives a winch while the other does so by an engine that drives a pump. Both are similar instruments, used for similar purposes, which fit within a common description of a mobile crane. We can see no reasonable basis for a distinction, despite the rule which requires that an exemption from taxation be construed strictly.

The decision of the Oregon Tax Court is affirmed.

Abstracts

This section provides additional direction and guidance to assessors and their staff on the classification and taxability of licensed vehicles known as "Fixed Load Vehicles." The following abstracts (Property Tax Law Abstracts 1993 Cumulative Edition) are summaries of court findings on why a vehicle is taxable or exempt. By reading the titles, the reader may pick and choose which abstract applies to their given situation.

CHAPTER 801

GENERAL PROVISIONS AND DEFINITIONS FOR OREGON VEHICLE CODE

801.285. FIXED LOAD VEHICLE. Truck-Mounted Cranes. May a truck-mounted crane be included in the definition of a self-propelled crane for the purpose of licensing and exemption from ad valorem tax? ORS 481.270 (see Editor's Note 1) provides for the exemption from ad valorem taxation of motor vehicles which are registered and licensed, with the exception of "fixed-load vehicles" defined in ORS 481.272 (see Editor's Note 2). Subsection (4) of the latter, however, excludes, among others, "self-propelled mobile cranes" from this definition. The Department of Motor Vehicles includes in the definition of a "self-propelled mobile crane" a motor truck on which is mounted a rotating crane operated by an independent motor and used for general lifting purposes. The language used by the Department differs from the technical distinction made by the industry in this respect ("self-propelled mobile cranes," as referred to by the industry, are one-motor mobile cranes, i.e., cranes using a single source of power for operation of the crane and for locomotion). The language of the statute, however, seems to be broad enough to cover both definitions. Hence, it appears that a truck-mounted crane is subject to licensing as a self-propelled mobile crane and exempt from ad valorem taxation. With respect to mobile cranes used as log loaders, it appears from ORS 481.272(3) (see Editor's Note 1), which specifically includes "log loaders" in the definition of "fixed load vehicles," that they are subject to ad valorem taxation when used as such. [OF 476-V; Op Atty Gen No. 5917; 2-10-65.]

Editor's Note 1: The provisions have been renumbered and now appear under 801.285.

Editor's Note 2: The provisions have been renumbered and now appear under 801.275.

Editor's Note 3: Formerly abstracted under 481.270.

801.285. FIXED LOAD VEHICLE. Licensed Lumber Carrier. The plaintiff, M & S Construction Company, owns two van-type trailers, both licensed as motor vehicles. It was stipulated by the parties that these van-type vehicles were originally designed primarily for transportation over public highways. The testimony showed that for at least part of the time during 1966, the vehicles were hauled over state highways and stationed at plaintiff's job sites where they were used for the storage of tools and supplies. ORS 481.272 (see Editor's Note 1) provides that "fixed load vehicles" are not exempt from ad valorem taxation if they are "neither designed nor used primarily" for the transportation of persons or property over public highways or streets. The Tax Court set aside an order of the Commission and held that since the legislature used the words "neither" and "nor," it must have intended that to exempt a "fixed load vehicle" from taxation, it would have to satisfy affirmatively only one provision (design or use). Since the vehicles are designed primarily for transportation, they are not fixed load vehicles regardless of their present use. [OF 922-V; *M & S Construction Co. v. Oregon State Tax Comm.*; 3 OTR 165; 1968.]

Editor's Note 1: The provisions have been renumbered and now appear under 801.275.

Editor's Note 2: Formerly abstracted under 481.272.

801.285. FIXED LOAD VEHICLE. Mobile Log Loaders. The issue is whether the vehicle is exempt under ORS 481.270 (see Editor's Note 1) as a licensed vehicle, or even though licensed, taxable within the provisions of ORS 481.272 (see Editor's Note 2). The parties stipulated that the primary use of the vehicle was as a log loader; however, it was used for other things and not exclusively as a log loader. In fact, the testimony showed that the equipment had been used to move scrap iron, barrels, and chip boxes, as well as to right upset vehicles and trailers. Pursuant to a citation by the State Mice, petitioner was required to pay highway-use taxes pursuant to ORS Chapter 767. He has paid that tax to the

P.U.C. for 1975 and 1976. Also during these years the equipment has been licensed by the Department of Motor Vehicles. Based on a document which was allegedly a Field Office Bulletin No. 33 issued by the Department, petitioner argues that when the following three things coincide, a vehicle is exempt: (1) the vehicle is licensed as a truck; (2) the vehicle pays P.U.C. highway-use taxes and is P.U.C.-plated; and (3) the vehicle is not used exclusively as a log loader. These three things have occurred in the instant case; however, from a closer look at the statutes involved it appears that: (1) The fact that the vehicle in question pays P.U.C. highway-use taxes would not have a bearing on whether that vehicle was exempt from property tax. (2) As to the question of whether the licensing of the vehicle as a truck causes the exemption, a reading of ORS 481.270 (see Editor's Note 1) and 481.272 (see Editor's Note 2) fairly well disposes of that argument. ORS 481.272 (see Editor's Note 2) provides that fixed load vehicles, which include log loaders, are not exempted from property tax by 481.270 (see Editor's Note 1). (3) In addition, an administrative bulletin cannot create a property tax exemption. If it is to be construed as petitioner requests, it would be in direct conflict with the law as written by the Legislature, and would have to be ignored by the taxing officials. Since petitioner has failed to show that the property in question is subject to an exemption, the appeal was denied. [OF 2044-V; 0 & 0 No. VL 76-578; 10-8-76.]

Editor's Note 1: The provisions have been renumbered and now appear under 801285.

Editor's Note 2: The provisions have been renumbered and now appear under 801.275.

Editor's Note 3: Formerly abstracted under 481.272.

801.285. FIXED LOAD VEHICLE. Tank Truck and Trailer. This appeal involves a truck with a permanently attached tank and a trailer. The tank truck issued to pump out septic tanks and haul the material to the disposal plant. The trailer is used to haul a backhoe and other heavy equipment from one jobsite to another. The vehicles in question were taxed by the county. They are also registered with and licensed by the Motor Vehicles Division. Petitioner appealed. Registration and license fees imposed under ORS chapter 481 are with certain exceptions, in lieu of all taxes. ORS 481.270(1) (see Editor's Note 1) "Fixed load vehicles" fall under these exceptions. They are defined in ORS 481.272(2) (see Editor's Note 2) as vehicles that are neither designed nor used for the transportation of persons or property. Webster defines property a8 "something which is or may be owned or possessed." The list of vehicles which are not "fixed load vehicles" and therefore not taxed, includes "truck-mounted transit mixers." such mixers are used primarily to transport concrete, which is "property." Petitioner's truck is used primarily to transport waste material. This is also "property" in the sense conveyed by the above. statute. Since the instant trailer is used to haul "property" it should not be taxed. [OF 2145-V; 0 & 0 No. VL 77-461; 10-27-77.]

Editor's Note 1: The provisions have been renumbered and now appear under 803.585.

Editor's Note 2: The provisions have been renumbered and now appear under 801.285.

Editor's Note 3: Formerly abstracted under 481.272.

801.285. FIXED LOAD VEHICLE. Licensing of Vehicle Not Determinative of Classification for Assessment Purposes. FACTS: Petitioner purchased a crane, a licensed vehicle. He uses the crane to load logs when other jobs are not available. Petitioner contends that the subject property is exempt from ad valorem taxation because it is a mobile crane. A county assessor classified it as a log loader and assessed it accordingly.

ISSUE: Because the equipment is a licensed vehicle, is it exempt from ad valorem taxation?

DISCUSSION: No. Petitioner's contention of exemption from ad valorem taxation because the equipment is licensed as a motor vehicle is erroneous. First, the classification of motor vehicles for assessment purposes rests with the county assessor and not with the Department of Motor Vehicles. See *Moravek Concrete* v. *Dept. of Revenue,* 7 OTB 385 (1978). Second,

ORS 481.272(1) (see Editor's Note 1) commands that "fixed load vehicles are not exempt from ad valorem taxation by ORS 481.270." (See Editor's Note 2.) "Fixed load vehicles" include log loaders. ORS 481.272(3).

The characteristics and use of the item establish that it is a loader. Therefore, pursuant to ORS 481.272(1) (see Editor's Note 1) and (2) (see Editor's Note 2), it is not exempt from ad valorem taxation.

ORDER: Petition denied. [OF 2328-V; O & O No. VL 79-1029; 1-8-80.]

Editor's Note 1: The provisions have been renumbered and now appear under 803.585.

Editor's Note 2: The provisions have been renumbered and now appear under 801.285.

Editor's Note 3: Formerly abstracted under 481.272.

CHAPTER 803

VEHICLE TITLE AND REGISTRATION

803.585. REGISTRATION FEES AS SUBSTITUTES FOR TAXES ON VEHICLES; EXEMPTIONS. Taxation of Equipment Mounted on Licensed Truck. Taxpayer has an air compressor mounted on a licensed motor truck. The amount of load weight for which he is licensed covers also other items such as steel, jack hammers, etc. Is the nonattached equipment taxable? Oregon law provides in ORS 491.270 (see Editor's Note 1), that, except as provided in ORS 491.272 (see Editor's Note 2), the registration and license fees imposed upon vehicles are in lieu of all other taxes and licenses. ORS 491.272 (see Editor% Note 2) provides that "fixed load vehicles" are not exempt from ad valorem taxation, enumerating examples which include air compressors, air drills, portable parts and storage bins. From this it appears that, although fixed load vehicles may require a license under motor vehicle law, they will be subject to personal property taxes in addition. In the case of the taxpayer in question, however, the fact that his vehicle was licensed as a "motor truck" and not as "fixed load vehicle" indicates at the very least that his equipment is removable and not a permanent part of the vehicle. Hence, the equipment is taxable while the truck is exempt through licensing. [OF 524-V; 5-25-65.]

Editor's Note 1: The provisions have been renumbered and now appear under 801.285

Editor% Note 2: The provisions have been renumbered and now appear under 801.275

Editor's Note 3: Formerly abstracted under 491.270.

803.585. REGISTRATION FEES AS SUBSTITUTE FOR TAXES ON VEHICLES; EXEMPTIONS. "Self Log Loaders." The question was raised whether "Self Log Loaders" attached to log trucks are subject to ad valorem taxation. The "Self Log Loader'@ is on a conventional logging truck which is used to carry logs from the woods to the mill, designed and used primarily for the transportation of property on the public highways. ORS 491.270 (see Editor's Note 1) provides that if vehicles are subject to registration under ORS chapter 481, they are exempt from ad valorem taxation. The only exception to this is fixed load vehicles which are subject to tax. ORS 491.272 (see Editor's Note 2) defines fixed load vehicles as vehicles "... that are neither designed nor used primarily for the transportation of persons or property over public highways. ..." The question here is whether the "Self Log Loader" is so attached to the logging truck that it could be considered as "permanently" attached. If it is "permanently" attached it is not subject to ad valorem taxation. This is a factual question which will have to be determined by observation. It may be that the "Self Log Loader" is as much a part of the logging truck as a refrigeration unit is on a refrigerated semitrailer, or it may be that the Loader is like a camper unit attached to a pickup. If it is like the former, it is exempt, if it is like the latter, it is taxable as personal property. The fact that these units are weighed with the log truck when the State of Oregon collects its weight-mile tax, means nothing because the weight-mile taxis imposed on the declared weight of a truck and contents, and the weight-mile tax would be paid on the "Self Log Loader" whether it were being carried or were attached. [OF 1599-V; 9-8-72.]

Editor's Note 1: The provisions have been renumbered and now appear under 801.285.

Editor's Note 2: The provisions have been renumbered and now appear under 801.275

Editor's Note 3: Formerly abstracted under 481.270.