FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-465 / 91-380

M.G.V., INC., An Iowa Corporation, d/b/a **SUNDOWN SKI AREA,**

Plaintiff-Appellee,

988

vs.

DUBUQUE COUNTY BOARD OF REVIEW and **ANDREW FROMMELT,** Chairman,

Defendants-Appellants.

Appeal from the Iowa District Court for Dubuque County, Robert J. Curnan, Judge.

Defendant appeals a judgment of the district court holding plaintiff's ski lifts were to be treated as personal property for purposes of taxation, rather than real property. **AFFIRMED.**

Fred H. McCaw, County Attorney, for appellants.

Alfred E. Hughes of Hughes & Trannel, P.C., for appellee.

Considered by Oxberger, C.J., and Schlegel and Sackett, JJ.

SACKETT, J.

The question is whether chair lifts at a downhill ski area should be assessed as an improvement to the real estate for property tax purposes. The trial court found they were not. We agree and affirm.

Appellee M.G.V., Inc. does business as the Sundown Ski Area on real estate it owns in Dubuque County, Iowa. The business has four chair lifts used to move skiers to the tops of hills.

The tax assessment in question is the 1990 assessment. It represented an attempt by the Dubuque County Assessor to change the classification of the lifts.

In the 1980 and 1981 tax years, the assessor had attempted to tax the chair lifts as improvements to the real estate. Appellee sought relief in district court. The district court determined the chair lifts should be excluded from the valuation of the real estate. The assessor treated the chair lifts as personal property from 1980 to 1990. In 1990, the assessor notified appellee the chair lifts would be assessed as real property. The assessor relied on a law change he contended supported his position.

The appellee sought relief from appellant Board of Review who affirmed the assessor. The appellee then filed this action with the district court. The issue was presented to the district court by way of motion for summary judgment on stipulated facts. The district court found the chair lifts were not assessable as real estate

and ordered the assessed value of the real estate decreased by the amount the assessor apportioned to the chair lifts.

The decision finding the chair lifts should be excluded from the value of the real estate has no preclusive effect on subsequent tax assessments. Cott v. Board of Review, 442 N.W.2d 78, 81 (Iowa 1989). A judicial decision on one year's tax is not res judicata for subsequent years because each tax year is an individual assessment which does not grow out of the same transaction. Id. at 81. A classification in one year is competent and persuasive evidence of the proper classification in a subsequent year. Id. We have, however, found it unnecessary to consider the prior classification in our consideration.

In deciding the issue, we look to Iowa Code section 427A.1(1)(c) and (d), 2(a), (b), and (c), and (3) (1989), which provide in applicable part:

> (1) . . . For the purpose of property taxation only, the following shall be assessed and taxed, . . ., as real property:
>
> * * *
>
> (c) Buildings, structures or improvements, any of which are constructed on or in the land, attached to the land, or placed upon a foundation whether or not attached to the foundation . . . .
>
> (d) Buildings, structures, equipment, machinery or improvements, any of which are attached to the buildings, structures or improvements defined in paragraph "c" of this subsection.
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> * * *
>
> (2) As used in subsection 1, "attached" means any of the following:

(a) Connected by an adhesive preparation.

(b) Connected in a manner so that disconnecting requires the removal of one or more fastening devises, other than electric plugs.

(c) Connected in a manner so that removal requires substantial modification or alteration of the property removed or the property from which it is removed.

(3) Notwithstanding the definition of "attached" in subsection 2, property is not "attached" if it is a kind of property which would ordinarily be removed when the owner of the property moves to another location. In making this determination the assessing authority shall not take into account the intent of the particular owner.

This appeal came to us on the following undisputed facts: (1) The chair lifts are placed on steel posts and set in the ground; (2) the four chair lifts would be removed if the ski operation was moved to another location; (3) that chair lifts are removable and are regularly moved from one ski area to another; and (4) there is a ready market for chair lifts.

Appellant argues the chair lifts are constructed on the land because they are placed on steel poles and set in the ground. The appellant contends this means they are constructed in the land and are on a foundation. They contend under the dictates of Western Outdoor Advertising Co. v. Board of Review, 364 N.W.2d 256 (Iowa 1985), they should be taxed as real estate. Western Outdoor Advertising is factually distinguishable because when the outdoor billboards were moved, the materials were salvaged and recycled. Western Outdoor Advertising, 364 N.W.2d at 257.

We look to section 427A.1(3). The undisputed facts that chair lifts are removable and are regularly moved and there is a ready market for them dictate a holding the chair lifts are not "attached" under this section. Our holding is in accord with Rose Acre Farms, Inc. v. Board of Review, 479 N.W.2d 260 (Iowa 1991) (Factors to be looked at in such a determination are whether the property ordinarily is removed and whether there is a ready market for that type of property.) We affirm.

AFFIRMED.