Tennessee Comptroller of the Treasury

Tangible Personal Property Handbook

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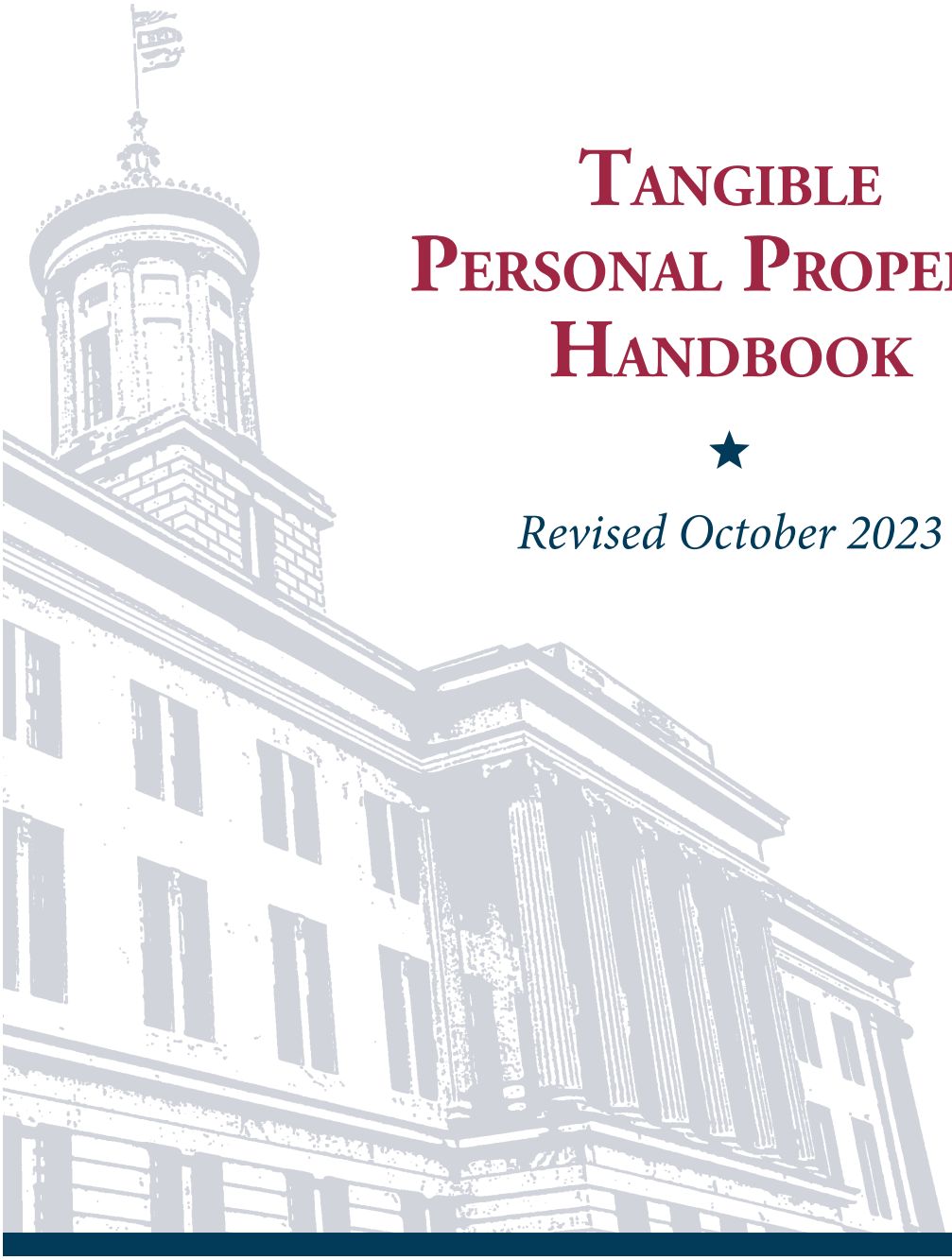

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INTERACTIVE HANDBOOK INSTRUCTIONS

This document is an interactive pdf. Within the handbook, you will be able to:

1. Click on each cited decision/opinion to go directly to that full, original decision/opinion. The links are in **bold** type.

2. On each of the original decisions/opinions, you will find in the top right corner some text saying “return to handbook.” Clicking that text will take you back to where you were in the handbook.

3. If a decision is cited more than once, clicking the “return to handbook” button will take you back to the first citation.

PREFACE

The purpose of this handbook is to provide assessors' offices with guidance concerning many issues often encountered in the assessment of commercial and industrial tangible personal property. This handbook has not been approved by the State Board of Equalization. The handbook includes interpretations of law by legal staff with the office of the Comptroller of the Treasury. These interpretations should be considered general advice regarding the assessment of tangible personal property as opposed to binding rulings of the Comptroller of the Treasury, the Division of Property Assessments, or the State Board of Equalization.

A significant limitation in preparation of this handbook concerns the fact that rulings of the State Board of Equalization were not posted online until 2006. Thus, there is no comprehensive database of rulings concerning tangible personal property. It is always possible that there are relevant rulings which might require modification of the advice given in the handbook.

Also included in the handbook are discussions concerning day-to-day issues faced by assessors involving the mechanics of assessing tangible personal property prepared by both the Comptroller's legal staff and appraisers with the Division of Property Assessments. Since some issues will be unique, the appropriate legal authority and/or recommended practices may be different in various situations.

In other words, this handbook is not intended to provide definitive answers to all issues faced by assessors in the assessment of tangible personal property. Please feel free to contact the Office of General Counsel or Division of Property Assessments if you have any questions.

The following abbreviations are sometimes used in the handbook:

AAC	-	Assessment Appeals Commission
AJ	-	Administrative Judge
BARA	-	Back Assessment/Reassessment
DPA	-	Division of Property Assessments
NSV	-	Nonstandard Value
SBOE	-	State Board of Equalization
TPP	-	Tangible Personal Property

T.C.A. §	-	Tennessee Code Annotated Section
T.C.A. §§	-	Tennessee Code Annotated Sections
TPP Rule(s)	-	State Board of Equalization Rules Concerning the Assessment of Commercial and Industrial Tangible Personal Property

I. Overview

The assessment of commercial and industrial tangible personal property ("TPP") is governed by both statutes and the TPP Rules. Statutes concerning the assessment of TPP can be found primarily at T.C.A. §§ 67-5-901 through 67-5-904. Additionally, statutes governing back assessments and reassessments are codified at T.C.A. §§ 67-1-1001 through 67-1-1011. Tennessee Code Ann. § 67-5-606 addresses prorating the assessment of commercial and industrial TPP damaged or destroyed by a natural disaster. The assessment of TPP is also governed in significant part by the TPP Rules found in Chapter 0600-05 of the rules of the SBOE. Many of the terms used in this handbook and the assessment of TPP generally are defined in TPP Rule 0600-05-.01. To view the TPP Rules, click on the link below:

https://publications.tnsosfiles.com/rules/0600/0600-05.20200810.pdf

As noted in the preface, this handbook addresses the assessment of commercial and industrial TPP by assessors. The assessment of public utility and transportation properties is handled by the Comptroller's Office of State Assessed Properties which is commonly referred to as "OSAP." Statutes concerning OSAP can be found primarily at T.C.A. §§ 67-5-1301 through 67-5-1334.

Tennessee Code Ann. § 67-5-501(2) defines the term "commercial and industrial tangible personal property" as follows:

> . . . personal property, such as goods, chattels and other articles of value that are capable of manual or physical possession, and machinery and equipment that are:
>
> (A) Used essentially and principally for the commercial or industrial purposes or processes for which they are intended; and
>
> (B) If affixed or attached to real property, can be detached without material injury to such real property[.]

Pursuant to T.C.A. § 67-5-901(a), inventories of merchandise held by merchants and businesses for sale and exchange by persons taxable under the Business Tax Act (codified at T.C.A. §§ 67-4-701 *et seq.*) are exempt from the TPP tax. This exclusion includes TPP held for lease or rental but does not include such property in the possession of a lessee. Leased TPP in the possession of a lessee is classified and assessed according to the use of the lessee. T.C.A. § 67-5-901(b)(1).

As mandated by T.C.A. § 67-5-903(a) and TPP Rule 0600-05-.04(1), the assessor is required to furnish all potential commercial and industrial TPP taxpayers with the reporting schedule on or before February 1 of each tax year. A copy of a blank schedule is set forth in Appendix A. The taxpayer must complete, sign, and file the schedule with the assessor on or before March 1. T.C.A. § 67-5-903(b); TPP Rule 0600-05-.04(2). Taxpayers have until September 1 following the tax year to amend timely filed schedules in certain situations. T.C.A. § 67-5-903(e). As noted in Section V, Part B and Section VII, a taxpayer cannot amend a schedule to submit an original claim for NSV. T.C.A. § 67-5-903(e). Pursuant to T.C.A. § 67-5-504(a), January 1 of the tax year constitutes the relevant assessment date.

Tennessee Code Ann. § 67-5-903(a) provides that neither the assessor's failure to send a schedule nor the taxpayer's failure to receive the schedule excuses the taxpayer from filing the reporting schedule by March 1. Additionally, neither of these situations prevent the assessor from issuing a forced assessment against the taxpayer.

In accordance with T.C.A. § 67-5-903(f) and TPP Rule 0600-05-.11, the schedule furnished to taxpayers sets forth different categories of TPP and the applicable depreciation rates. Absent evidence to the contrary, the fair market value of the taxpayer's TPP, excluding raw materials, supplies and scrap property, is presumed to be either the total acquisition cost less straight-line depreciation or the residual value, whichever is greater. The resulting value is called a "standard valuation." TPP Rule 0600-05-.06(1).

> **NOTE:** The State Board of Equalization adopted four primary clarifications to the TPP rules which took effect on August 10, 2020. First, TPP Rule 0600-05-.04(4) was amended to clarify the total acquisition cost the taxpayer should report. In particular, if the taxpayer purchased property new, the taxpayer should report the cost new. If

> the taxpayer purchased property used, the taxpayer should report the cost new as of the year the property was new if that cost is known, or the actual acquisition cost in the year the taxpayer acquired the property if the cost new is not known. Second, TPP Rule 0600-05-.04(4) was also amended to provide that for property previously reported as construction-in-process (CIP), the taxpayer should report the total acquisition cost as of the year the property was placed in service rather than the year of purchase, if those years differ. Third, TPP Rule 0600-05-.06 changed the reference to acquisition cost from "total acquisition cost to the taxpayer" to "total acquisition cost." Finally, TPP Rule 0600-05-.11 was amended by authorizing the new reporting schedule reproduced in Appendix A.

When using a standard valuation, the fair market value of raw materials and supplies is presumed to be the total acquisition cost using the "first-in-first-out" (FIFO) method of accounting. T.C.A. § 67-5-903(f); TPP Rule 0600-05-.06(2). Scrap property is valued at 2% of total acquisition cost. T.C.A. § 67-5-903(f); TPP Rule 0600-05-.06(4). The term "scrap value" is defined as ". . . the value of personal property no longer capable of use and for which there is no reasonable expectation of repair." TPP Rule 0600-05-.01(11).

As will be discussed in Section V, Part B, taxpayers may seek what is referred to as a "nonstandard value" ("NSV") if they are able to demonstrate that the fair market value of the personal property in question is less than the value generated by a standard valuation. T.C.A. § 67-5-902(a); TPP Rule 0600-05-.07.

As will be discussed in Section VI, taxpayers who fail to sign and file the reporting schedule receive a forced assessment pursuant to T.C.A. § 67-5-903(c). A forced assessment is essentially an estimate of value made by the assessor after considering evidence indicative of the fair market value of the property.

Below is a list of important dates for assessors insofar as the assessment of TPP is concerned:

- Jan. 1 - Situs date
- Jan. 31 - Audit plan due
- Feb. 1 - Deadline to mail schedules to each business owner
- Mar. 1 - Deadline for taxpayer to file schedule with assessor

- April 15 - Deadline for data entry to state CAMA system
- May 20 - Assessment change notices completed and mailed
- June 1 - County Board of Equalization (May 1 in Shelby Co.)
- Sept. 1 - Amended schedule deadline
- Oct. 1 - Tax billing
- Nov. to Dec. - Order schedules if on state CAMA system

II. Discovery & Control Records

In the context of TPP, the term "discovery" is commonly defined as "[t]he process whereby the assessor identifies all taxable property in the jurisdiction and ensures that it is included on the assessment roll." International Association of Assessing Officers, *Standard on Valuation of Personal Property* (Revision approved, November 2018). Discovery is specifically addressed in TPP Rule 0600-05-.02. The rule requires assessors, at a minimum, to review the following sources in order to discover potential taxpayers:

- Either a business license listing (which may be obtained from the county clerk) or a sales tax registrant listing (which may be obtained from the Sales and Use Tax Division of the Tennessee Department of Revenue);
- The commercial and industrial real property assessment roll (also known as the "mismatch list"); and
- Personal knowledge.

The rule also recommends utilizing the following sources whenever possible to discover businesses:

- Field visits;
- Internet;
- New construction;
- Media news and advertising;
- City directory;
- Local business directory;
- Chamber of commerce;
- Building permits and electrical inspections;
- Commercial vehicle license plates;
- Uniform commercial code filings; and
- Any other pertinent sources.

TPP Rule 0600-05-.03 requires a personal property control record for every TPP account. When a business ceases to exist, the control record for that business must be moved from the active file to the inactive file. The rule provides that, at a minimum, the control record for each account include the following:

- Business name;
- Property location;
- Mailing address;
- Type of business;
- Property identifier, to be linked to the property identifier of the real property where the personal property is located, when such can be determined;
- Tax year;
- Dates the schedule was furnished, returned, and desk audited;
- Date of any field audit;
- Assessment ratio (30% for commercial and industrial property);
- Assessment; and
- Type of assessment (such as R = regular, F = forced, A = adjusted).

As previously noted, TPP Rule 0600-05-.03 sets forth the minimum requirements for control records. That does not mean a CAMA system cannot provide additional assessment types. For example, control records must show at a minimum whether an assessment is "regular," "forced," or "adjusted." However, different CAMA systems also identify whether an assessment is "board forced", "audit forced" or "system forced". The various types of assessments are discussed in further detail in Section VI.

III. Reporting

As summarized in Section I, taxpayers are required to file a signed reporting schedule with the assessor by March 1 of the tax year. General information about the taxpayer is reported in Part I of the schedule.

Part II of the schedule concerns owned personal property and sets forth different categories of TPP and the applicable depreciation rates. The various categories are as follows:

Group	Type of Property
1	Furniture, fixtures, general equipment, and all other property not listed in another group
2	Computers, copiers, peripherals, fax machines, and tools
3	Molds, dies and jigs
4	Aircraft, towers, and boats
5	Manufacturing machinery
6	Billboards, tanks, and pipelines
7	Scrap property
8	Raw materials and supplies
9	Vehicles
10	Construction in process

The terms "construction-in-process tangible personal property," "raw material," and "supplies" are all defined in TPP Rule 0600-05-.01. This provision also defines several other terms utilized throughout the rules.

Part III of the schedule concerns leased TPP. It requires the taxpayer to report all items rented or leased for the conduct of its business. Pursuant to T.C.A. § 67-5-502(c), leased personal property is normally assessed to the lessee.

Part IV of the schedule is where taxpayers may request NSV for some, or all, of the assets being reported. NSV is discussed in Section V, Part B below.

Part V of the schedule is where pollution control equipment qualifying under T.C.A. § 67-5-604 is reported.

Immediately below Part V of the reporting schedule is where a taxpayer may check "small accounts certification" which must have a depreciated value of $1,000 or less.

In order to assist taxpayers in accurately completing their reporting schedules, the DPA, in conjunction with the Comptroller's Office of General Counsel, has prepared a detailed instruction sheet which is reproduced in Appendix B. The instruction sheet has not been adopted by the SBOE and is for informational purposes only.

> **NOTE:** As summarized in Section I, certain provisions of the TPP Rules were amended effective August 10, 2020 including the reporting schedule. The instruction sheet in Appendix B has been updated to reflect those changes.

IV. Classification

In general, T.C.A. § 67-5-901(a) provides that TPP shall be classified according to its use and assessed as follows:

Type of Property	Assessment Level
Public utility property	55%
Industrial and commercial property	30%
All other TPP	5%

In practice, "all other TPP" is not taxed because it is deemed to have no value pursuant to T.C.A. § 67-5-901(a)(3)(A).

The assessment levels set forth above do not apply to inventories of merchandise held by merchants and businesses for sale and exchange by persons taxable under the Business Tax Act. T.C.A. § 67-5-901(a). As noted in Section I, this category of TPP is exempt from the TPP tax. This exclusion includes TPP held for lease or rental but does not include such property in the possession of a lessee. Leased TPP in the possession of a lessee is classified and assessed according to the use of the lessee. T.C.A. § 67-5-901(b)(1). The issue of when prosthetic surgical kits, including reusable tools and containers, as well as prosthetics and supplies, should be considered "inventories of merchandise held by merchants and business for sale and exchange" is addressed in T.C.A. § 67-5-901(b)(2).

TPP not in use is classified according to its most suitable economic use after consideration of the following factors:

(i) Immediate past use, if any;
(ii) Nature of the property;
iii) Classification of the real property upon which it is located;
(iv) Normal use of the property;
(v) Ownership; and
(vi) Any other factors relevant to a determination of the immediate most suitable economic use of the property.

T.C.A. § 67-5-901(a)(3)(B).

One situation periodically encountered by assessors concerns TPP used for both business and personal purposes. As noted in Section I, the definition of "commercial and industrial tangible personal property" found in T.C.A. § 67-5-501(2) requires that the property be "[u]sed essentially and principally for the commercial or industrial processes for which they are intended." Administrative rulings have relied on this language in resolving disputes concerning the proper classification of TPP used for dual purposes. For example, in **BHT Aero, Inc.** (AAC, Davidson Co., Tax Years 2005-2007), the Commission ruled that the definition of "commercial" property requires the property be used "essentially and principally" for commercial purposes. The AAC accepted the taxpayer's contention that the plane was never used for business purposes despite the fact the charter permitted business use and the bylaws gave priority to business versus pleasure uses. *See also* **A + Enterprises** (AJ, Shelby Co., Tax Years 2003, 2004 & 2005, Initial Decision and Order, December 8, 2006).

Note on the AAC: On April 24, 2023, Governor Lee signed into law Public Chapter No. 184 ("PC 184"), which removed the authority of the SBOE to create an AAC to hear and act upon complaints and appeals regarding the assessment, classification, and value of property for the purposes of taxation. In simple terms, PC 184 effectively removed the AAC as a step in the SBOE appeals process going forward, except for appeals pending before and filed with the AAC before July 1, 2023. Additional information regarding PC 184 and appeals may be found in the Appeals Handbook, which is available online.

V. Valuation

A. Standard Valuation

Absent evidence to the contrary, the fair market value of the taxpayer's TPP, excluding raw materials, supplies, and scrap property, is presumed to be either the total acquisition cost less straight line depreciation or the residual value, whichever is greater. The resulting value is called a "standard valuation." TPP Rule 0600-05-.06(1).

When using a standard valuation, the fair market value of raw materials and supplies is presumed to be the total acquisition cost using the "first-in-first-out" (FIFO) method of accounting. T.C.A. § 67-5-903(f); TPP Rule 0600-05-.06(2). Scrap property is valued at 2% of total acquisition cost. T.C.A. § 67-5-903(f); TPP Rule 0600-05-.06(4).

Essentially, the foregoing means that the taxpayer's TPP is valued utilizing the total acquisition cost and the depreciation factors set forth in Part II of the reporting schedule. In most cases, TPP is valued using a standard valuation.

B. Nonstandard Valuation ("NSV")

Normally, Tennessee law presumes that a standard valuation reflects the fair market value of the taxpayer's TPP. However, T.C.A. § 67-5-902(a) and TPP Rule 0600-05-.07 create an exception when enough evidence exists to support the conclusion that a different valuation methodology results in a more accurate indication of fair market value.

TPP Rule 0600-05-.07 places several requirements on the assessor when the taxpayer requests an NSV. First, the assessor is required to place an NSV on the property if warranted by the evidence. Supporting documentation must be included in the file. Second, the assessor must consider the level of trade at which the property is found (*e.g.,* manufacturing level, wholesale level, or retail level). Third, the assessor must report in writing to the DPA all instances where NSV is placed on property or requested by a taxpayer. It should be noted that the rule also provides that the assessor may request the assistance of the DPA in determining NSV.

TPP Rule 0600-05-.07 lists the types of evidence that may support NSV, which include (1) recent appraisals by appraisers holding professional designations in the valuation of personal property from recognized appraisal organizations; and (2) authoritative price or valuation guides for subject property. This list is not exhaustive. Depending upon the circumstances, other types of evidence might be available to support NSV. For a thorough discussion of the issue of NSV, *see* **Memphis Publishing Co. v. SBOE** (Davidson Chancery, April 25, 2018), wherein the Court slashed the assessor's standard valuation appraisal of the taxpayer's TPP. The Court reasoned that the taxpayer had carried the burden of proof in support of a NSV as evidenced by (1) the expert testimony of a licensed appraiser; and (2) evidence concerning the decline in circulation and revenue of the newspaper and entire print industry. For a good summary of administrative rulings concerning NSV, *see* **Tennessee Farmers Cooperative** (AJ, Blount Co., Tax Years 2015 and 2016, Initial Decision and Order, June 20, 2017), wherein the AJ ruled that the taxpayer introduced insufficient evidence to support its contention that a NSV was warranted because the standard depreciation tables did not (1) adequately account for obsolescence associated with the economics of the feed mill industry; and (2) the unique type of equipment needed to operate the plant.

In order to obtain NSV, the taxpayer must request it in Part IV of the reporting schedule. Tennessee Code Ann. § 67-5-903(e) provides that ". . . under no circumstances shall a taxpayer be permitted to amend a personal property schedule to submit an original claim for nonstandard value for property that was not the subject of a properly documented claim of nonstandard value in the timely filed personal property schedule." **Dillard Tennessee Operating LP v. SBOE** (Davidson Chancery, November 21, 2018), wherein the Court ruled that the taxpayer did not make an original claim for NSV because it did not properly document its claim. The Court reasoned in relevant part that the taxpayer simply placed what appeared to be standard depreciated values in the schedule under the designated space for nonstandard values. It was not until the taxpayer attempted to amend the original schedule that it provided the assessor with an appraisal report in support of a reduction in value.

Tennessee Code Ann. § 67-5-902(b) provides that a NSV may be used to offset additional tax liability resulting from a BARA if a taxpayer is able to show that either (1) other property listed on the schedule was over reported; or (2) reassessed property or other property listed on the schedule are more accurately valued using a NSV. *See* **Tate & Lyle Ingredients Americas** (AJ, Loudon County, Tax Years 2011 and 2012, Initial Decision and Order, July 22, 2016), wherein the AJ adopted the taxpayer's claim of NSV prepared in response to a BARA. However, the AJ stated in footnote 1 that "[a]lthough the taxpayer claimed values even lower than the originally reported values, the maximum relief available in this case is offset of the additional liabilities resulting from back assessments/reassessments. Tenn. Code Ann. § 67-5-902(b). . ."

When faced with an NSV appeal, the assessor should keep several points in mind. The taxpayer has the burden of proof. Historically, the vast majority of NSV appeals were an "all or nothing" proposition. Either the taxpayer would have more than ample evidence to support the contended NSV or the proof was so deficient the taxpayer failed to carry the burden of proof. In the latter case, the assessor prevailed without having to offer any proof. The wisdom of such an approach has been thrown into question given the ruling cited above in **Memphis Publishing Co. v. SBOE**. In that case, the assessor offered no evidence, which is not unusual in these type appeals since the taxpayer has the burden of proof. The Court proceeded to reduce the values from an average of $10,437,900 to an average of $123,667 for the three tax years at issue. Among other things, in preparing for an NSV appeal, the assessor should first determine if he or she wants the current appraisal affirmed or is amenable to modifying it. The assessor should also realistically evaluate the strength of the taxpayer's proof. This will likely dictate the strategy to be employed after the taxpayer presents its evidence. Should the assessor believe the taxpayer's proof is

not adequate to carry the burden of proof, the assessor can move for a directed verdict. This basically means that the taxpayer's proof was insufficient as a matter of law to carry the burden of proof. Alternatively, the assessor can always introduce his or her own appraisal into evidence. Another possibility is to present limited proof and/or challenge portions of the taxpayer's evidence.

In order to prepare for the hearing, the assessor might find many of the following documents helpful:

1. Copies of any exhibits the taxpayer plans to introduce into evidence, such as appraisal reports and price or valuation guides;
2. Asset listing or depreciation schedule;
3. Federal income tax return;
4. Franchise and excise tax return;
5. Trial balance as of 12/31 immediately preceding the tax year; and
6. Expense accounts.

VI. Types of Assessments

A. Regular Assessment

TPP Rule 0600-05-.01(9) defines a "regular assessment" as ". . . an assessment made on personal property when the taxpayer has timely filed a personal property schedule with the assessor for the current year and the assessment is based on the information reported by the taxpayer."

B. Adjusted Assessment

On occasion, the taxpayer timely files the reporting schedule, but the assessor determines that certain adjustments are warranted. This situation is referred to as an "adjusted assessment," which TPP Rule 0600-05-.01(1) defines as ". . . any assessment made by the assessor on personal property at a value different from the value reported by the taxpayer or based on information different from the information reported by the taxpayer for the current year."

C. Forced Assessment

When a taxpayer fails, refuses or neglects to complete, sign and file the reporting schedule, the assessor must issue a forced assessment in accordance with T.C.A. § 67-5-903(c). Essentially, the assessor estimates the fair market value of the

taxpayer's TPP after considering the available evidence. For example, the assessor might review the schedules filed by other taxpayers in the same type of business. The assessor must give the taxpayer notice of the forced assessment at least five calendar days before the local board of equalization commences. The forced assessment becomes final unless the taxpayer appeals to the county board of equalization or seeks mitigation. Both remedies are discussed immediately below.

Tennessee Code Ann. § 67-5-903(d)(1) provides that a taxpayer may appeal a forced assessment to the county board of equalization, but the taxpayer shall present a completed schedule to the board. For a taxpayer, this is the most advantageous remedy because the forced assessment may be reduced to the value that would have resulted had the reporting schedule been timely filed.

When the deadline to appeal to the county board of equalization has expired, the taxpayer's only remedy is to seek mitigation pursuant to T.C.A.§ 67-5-903(d)(2). Under this procedure, the taxpayer may request the assessor to mitigate the forced assessment by reducing the appraisal to the standard depreciated value that would have resulted had a schedule been filed, **plus** 25%. For example, suppose the appraised value of the TPP would have been $100,000 had a schedule been timely filed. Suppose further that the assessor issued a forced assessment reflecting an appraisal of $150,000. Mitigation allows the assessor to reduce the appraisal to $100,000 plus 25% which results in a final value of $125,000. This remedy is only available so long as failure to file the schedule or failure to timely appeal to the county board of equalization was not the result of gross negligence or willful disregard of the law. Gross negligence is presumed if notice of the forced assessment was sent certified mail, return receipt requested to the taxpayer's last known address on file with the assessor. Additionally, the forced assessment must be sent in a form approved by the SBOE. Mitigation utilizes the same procedure as correcting an error pursuant to T.C.A. § 67-5-509 with one exception. Unlike a correction of error, mitigation must be requested by September 1 following the tax year. A correction of error, in contrast, may be requested until March 1 of the second year following the tax year for which the correction is to be made.

In many cases, a forced assessment results because the assessor was unaware that the taxpayer was no longer in business on the assessment date (January 1). Technically, taxpayers are supposed to notify the assessor and trustee and make payment within 15 days when the business ceases operations. T.C.A. § 67-5-513(a). Nonetheless, T.C.A. § 67-5-903(d)(3) allows an assessor to correct a forced assessment upon determining that (1) the taxpayer was not in business on the assessment date; and (2) the taxpayer did not own or lease TPP used or held for use

in a business as of the assessment date. This remedy uses the same procedure and deadlines as provided in T.C.A. § 67-5-509 for correcting errors generally.

By not filing the schedule timely, the taxpayer forfeits its right to amend the schedule and is not entitled to the appraisal ratio for that tax year. T.C.A. § 67-5-1509(a); Chapter 0600-07 of the SBOE Rules entitled "Equalization of Commercial and Industrial Tangible Personal Property."

D. Board Forced Assessment

A taxpayer who fails to timely file its schedule on or before the March 1 deadline may have its schedule presented to the county board of equalization, prior to its adjournment. With the approval of the county board to accept the late filed schedule, the account will be identified with an assessment type of BF = Board Forced. By not filing the schedule timely, the taxpayer forfeits its right to amend the schedule and is not entitled to the appraisal ratio for that tax year.

E. Audit Forced Assessment

If a taxpayer fails to file a schedule and has a value change resulting from a personal property audit, the account will be identified with an assessment type of AF = Audit Forced. Even though the account was audited, it will not receive the appraisal ratio for the tax year because the taxpayer did not timely file a schedule.

F. System Forced Assessment

The Assessment Type of SF = System Forced is used within the state's CAMA program at the end of year rollover process. The process rolls current year regular and adjusted accounts to "System Forced" for the future year as a way of tracking those accounts in the future year that do or do not report.

VII. Amending a Schedule

Pursuant to T.C.A. § 67-5-903(e), taxpayers may amend a **timely filed** schedule until September 1 following the tax year. The statute allows amending for the following reasons:

(1) Adding or deleting of property to correctly reflect the status of the property as of the assessment date;
(2) Correcting the reported cost or vintage year of property;

(3) Correcting the name or address of the taxpayer;
(4) Deleting property that has been reported more than once resulting in a duplicate assessment;
(5) Reporting property in the appropriate group; and
(6) Correcting other reporting clerical errors.

The statute also unequivocally states that the schedule cannot be amended to make an original claim for NSV.

The assessor may accept or reject the amended schedule in whole or in part. Regardless of what the assessor decides, the assessor shall notify the taxpayer in writing of that decision within 60 days. The taxpayer may appeal the assessor's adjustment of, or refusal to accept, the amended schedule to the county board of equalization and SBOE in accordance with the statutes governing such appeals. Amendment of a schedule is not permitted once suit has been filed to collect delinquent taxes related to the original assessment.

VIII. Notification

As a general matter, T.C.A. § 67-5-508 requires assessors to notify taxpayers of any change in the classification or assessed valuation of the taxpayer's property at least ten calendar days before the local board of equalization begins its annual session. TPP Rule 0600-05-.08 imposes the same general requirement. The rule goes on to state that notice must be provided when any of the following situations occur:

(1) An assessment is made on a new business;
(2) A change is made in an assessment; or
(3) A forced or adjusted assessment is made.

Like the statute, the rule requires the assessor to retain a record of any such notifications for a minimum of two years.

IX. Real vs. Personal Property

In some situations, it must be determined whether the property constitutes real or personal property. TPP Rule 0600-05-.09(1) offers assessors guidance when faced with such issues. The rule essentially summarizes the analysis historically utilized by the courts and provides as follows:

In determining whether property should be assessed as real or personal, the

following factors should be considered:

(a) The apparent movability or permanency of the item in its location or attachment to the land or structure. The cost of moving the item and the amount of damage that will be incurred to the item, the land, or the improvement if the item is removed should be weighed against the value of the item of property that is being considered. If the value of the item exceeds the moving cost and the amount of damage incurred, it is more likely to be considered personal property.

(b) The primary purpose which the item serves. This factor would most generally concern an item that forms a part, or segment, of a series of functions in a manufacturing and/or processing system. If the item is more or less special purpose in nature and its practical use would not enhance the total property if the present or a similar manufacturing processing system were not there, it is more likely to be considered personal property.

(c) The stated intent of the owner. This element will come into focus most frequently where leased premises are involved, although it must occasionally be considered where premises are owner-occupied. If the intent of the owner is to move the item upon relocation of the business, the item is more likely to be considered personal property, provided that such a move would be probable, practical, and cost-effective.

When dealing with the issue of real versus personal, assessors will likely find the following court rulings helpful. In **Harry J. Whelchel Co. v. King,** 610 S.W.2d 710 (Tenn. 1980), the Supreme Court ruled that grain bins used to store and preserve harvested grain constituted personal property. The Court noted several factors which it concluded were consistent with the taxpayer's stated intent not to make the bins a permanent part of the real property. In **Herman Holtkamp Greenhouses, Inc. v. Metropolitan Nashville and Davidson Cty.,** 2010 WL 366697 (Tenn. Ct. App. 2010), the Court of Appeals ruled that the greenhouses at issue were properly classified as real property given the taxpayer's intention to make them permanent. In **Magnavox Consumer Elecs. v. King,** 707 S.W.2d 504 (Tenn. 1986), the Supreme Court relied on its prior ruling in **Whelchel** in concluding that a 500,000 gallon fuel tank was properly classified as real property reasoning, in part, that the tank was not intended to be removable at the pleasure of the owner and therefore constituted a fixture.

X. Situs

In many situations, the taxpayer's TPP remains at a fixed location and its taxable situs is not at issue. There are occasions, however, when TPP moves from one location to another and the taxable location, or situs, of the property must be determined. The factors to consider when dealing with the issue of situs are set forth in TPP Rule 0600-05-.09(2) which provides as follows:

> In determining the proper taxable location, or situs, of personal property, the following factors are to be considered:
>
> (a) Physical location;
> (b) Permanency of the location;
> (c) Home base of the property;
> (d) Domicile of the owner;
> (e) Location as of January 1.
>
> The physical location is of prime importance in determining the taxable situs of property that is rarely or infrequently moved. For property that changes location from time to time, however, the property's physical location is sometimes of nominal importance. In those situations, the relative permanency of location in a particular place becomes important. If the property is moved with such frequency that it has no more or less permanent location, the home base of the property (such as where it is garaged, sent for repairs, or stored when not in use) constitutes the most significant factor. If the home base cannot be defined, then the domicile of the owner becomes the primary factor. Although the location as of January 1 is a factor to be considered, often it is of nominal importance in determining situs.

XI. Back Assessment/Reassessment ("BARA")

Many individuals use the terms "back assessment" and "reassessment" interchangeably. In fact, they are defined by statute and have different meanings. Tennessee Code Ann. § 67-1-1001(a) defines the terms as follows:

> (1) 'Back assessment' means the assessment of property, including land or improvements not identified or included in the valuation of the property, that has been omitted from or totally escaped taxation; and
> (2) 'Reassessment' means the assessment of property that has been assessed at less than its actual cash value by reason of connivance, fraud, deception,

misrepresentation, misstatement, or omission of the property owner or the owner's agent.

In the context of TPP, issues concerning a BARA are most likely to occur following an audit. In many cases, an audit may reveal that certain assets were not reported or reported incorrectly.

The many issues surrounding the topic of BARA have already been addressed for assessors by legal staff with the office of the Comptroller of the Treasury in the *Back Assessment & Reassessment Handbook for Assessors of Property*. To view this handbook, click on the link below:

https://www.comptroller.tn.gov/content/dam/cot/pa/documents/manualsandreports/back-assessment-reassessment-handbook/BackAssessmentaAndReassessmentHandbookForAssessorsOctober2018.pdf

For ease of reference, the relevant portion of the table of contents is reproduced below:

B. The basis for the back assessment or reassessment
C. List all the tax years that have an additional assessment
D. State the amount of the back assessment or reassessment
E. Additional information in the certification

This handbook should provide assessors with answers to many of the questions that commonly arise when issuing a BARA.

XII. Audits

Assessors should establish an audit program which ensures that all taxable TPP in the jurisdiction has been assessed. TPP Rule 0600-05-.05 summarizes the minimum requirements for auditing as follows:

(1) Desk audits shall be performed on all schedules returned. Items to be reviewed shall include:
   (a) Depreciation;
   (b) Math;
   (c) Any evidence provided by the taxpayer regarding value;
   (d) Comparable accounts;
   (e) Previous year's assessment.

(2) Systematic field audits of individual accounts shall be performed as deemed necessary by the assessor of property. In addition, random field audits shall be performed periodically. Nonreporting accounts, new accounts, major accounts, accounts with significant changes, and accounts suspected of improperly reporting may be emphasized. The purpose of the field audit shall be to determine if the taxpayer has reported properly or, if the taxpayer has not reported, to gather data for a forced assessment.

(3) Audits shall be conducted in accordance with a plan submitted by the assessor of property and approved by the State Board of Equalization.

(4) Assessors shall maintain confidentiality of taxpayer information in accordance with T.C.A. § 67-5-402.

XIII. Enforcement

TPP Rule 0600-05-.10 empowers the DPA to oversee that all jurisdictions are assessing TPP in compliance with the rules and provides as follows:

> (1) Should it be determined by the [DPA] that a jurisdiction is not in compliance with these rules, the Division shall make a report of such noncompliance in writing to the [SBOE] for the appropriate action.
>
> (2) In determining the degree of compliance with these rules, the [DPA] may review the records and procedures of the assessor and may perform any field audits of taxpayer returns deemed relevant to review.

In the event an assessor or deputy assessor willfully fails to perform his or her duties, T.C.A. § 67-5-305 sets forth the procedure for withholding compensation. Additionally, such failure may result in each violation being treated as a Class C misdemeanor resulting in a fine of $50.00 to $100.00. T.C.A. § 67-5-306.

Appendix A

Tangible Personal Property Schedule

Revised August 2020

DUE MARCH 1

COUNTY, TENNESSEE
TANGIBLE PERSONAL PROPERTY SCHEDULE

FOR REPORTING
COMMERCIAL AND INDUSTRIAL PERSONAL PROPERTY

TAX YEAR: **2021**

IN ACCORDANCE WITH T.C.A. 67-5-903, THIS SCHEDULE MUST BE COMPLETED, SIGNED ON THE REVERSE SIDE, AND FILED WITH THE ASSESSOR OF PROPERTY ON OR BEFORE **MARCH 1**. FAILURE TO DO SO WILL RESULT IN A FORCED ASSESSMENT, AND YOU WILL BE SUBJECT TO A PENALTY AS PROVIDED BY STATE LAW.

CO#	CONTROL MAP	GROUP	PARCEL	PI	SI

BUS NAME

ADDRESS
CITY, ST, ZIP

ASSESSOR'S USE ONLY

TOTAL THIS SIDE		**SCHEDULE**	____**OR** ____**AM**
TOTAL REVERSE SIDE		**TYPE**	____**AU** ____**AP**
TOTAL ATTACHMENTS			
TOTAL APPRAISAL		**ASMT TYPE**	
ASSESSMENT RATIO	x		
ASSESSMENT		**SCHEDULE**	
CITY		**FURNISHED**	
SSD1	**000**		
SSD2	**000**	**SCHEDULE**	
PROP TYPE	**08**	**RETURNED**	
ACCOUNT STATUS	**T**		
YR LAST APR		**DESK REVIEW**	
DEPR YEAR	**2021**	**DATE**	
ASSET LIST YR		**BY**	
UNITS: TYPE			
NUMBER		**AUDIT DATE**	
APPRAISED $ PER UNIT		**BY**	
DISTRICT	**01**	**SMALL ACCOUNT**	

PART I. GENERAL DATA (MAKE CHANGES AS NEEDED)

PROPERTY ADDRESS
REAL ESTATE OWNER
BUSINESS OWNER(S)
CONTACT PERSON
CONTACT PHONE
BUSINESS LICENSE #
YEAR BUS. STARTED
TYPE OF BUSINESS

D/B/A

BUSINESS LOCATED (please check one)
☐ OUTSIDE CITY ☐ INSIDE CITY (indicate city below)
CITY:

IF YOU WERE OUT OF BUSINESS IN THIS COUNTY ON JANUARY 1, PLEASE NOTIFY THE ASSESSOR OF PROPERTY OF THE DATE OUT OF BUSINESS IN ORDER TO AVOID A FORCED ASSESSMENT.

PART II. OWNED PERSONAL PROPERTY - STANDARD VALUE

Report all personal property owned by you and used or held for use in your business or profession as of January 1, including items fully depreciated on your accounting records. Do not report inventories of merchandise held for sale or exchange or finished goods in the hands of the manufacturer.
Personal property leased or rented and used in your business must be reported in PART III of this schedule and not in this section. Property on which you wish to report a nonstandard value must be reported in PART IV of this schedule and not in this section. Qualified pollution control equipment must be reported in PART V of this schedule.
A separate schedule should be filed for each business location.
List the total acquisition cost new for each group below by year the property was new (typically the year made) in the REVISED COST column. For property purchased as used, if the cost new or year the property was new is not known and cannot reasonably be determined, you may report the actual acquisition cost to you for the year you acquired the property. If COST ON FILE is printed on the schedule, you need only report new cost totals in the REVISED COST column resulting from acquisition or disposition of property.
ALTERNATIVE REPORTING FOR SMALL ACCOUNTS - If you believe the depreciated value of your property is $1,000 or less you may use the Small Accounts Certification (reverse side) as an alternative to reporting detailed costs below. With this certification, subject to audit, your assessment per this schedule will be set at $300.

REVERSE SIDE OF THIS FORM MUST BE COMPLETED IF APPLICABLE

GROUP 1 - FURNITURE, FIXTURES, GENERAL EQUIPMENT, AND ALL OTHER PROPERTY NOT LISTED IN ANOTHER GROUP

YEAR	COST ON FILE	REVISED COST	DEPR
2020			.88
2019			.75
2018			.63
2017			.50
2016			.38
2015			.25
PRIOR			.20
TOTAL			

GROUP 2 - COMPUTERS, COPIERS, PERIPHERALS, AND TOOLS

YEAR	COST ON FILE	REVISED COST	DEPR
2020			.67
2019			.33
PRIOR			.20
TOTAL			

GROUP 3 - MOLDS, DIES, AND JIGS

YEAR	COST ON FILE	REVISED COST	DEPR
2020			.75
2019			.50
2018			.25
PRIOR			.20
TOTAL			

GROUP 4 - AIRCRAFT, BOATS, AND TOWERS

YEAR	COST ON FILE	REVISED COST	DEPR
2020			.92
2019			.85
2018			.77
2017			.69
2016			.62
2015			.54
2014			.46
2013			.38
2012			.31
2011			.23
PRIOR			.20
TOTAL			

GROUP 5 - MANUFACTURING MACHINERY

YEAR	COST ON FILE	REVISED COST	DEPR
2020			.88
2019			.75
2018			.63
2017			.50
2016			.38
2015			.25
PRIOR			.20
TOTAL			

GROUP 6 - BILLBOARDS, TANKS, AND PIPELINES

YEAR	COST ON FILE	REVISED COST	DEPR
2020			.94
2019			.88
2018			.81
2017			.75
2016			.69
2015			.63
2014			.56
2013			.50
2012			.44
2011			.38
2010			.31
2009			.25
PRIOR			.20
TOTAL			

GROUP 9 - VEHICLES

YEAR	COST ON FILE	REVISED COST	DEPR
2020			.80
2019			.60
2018			.40
PRIOR			.20
TOTAL			

GROUP 7 - SCRAP PROPERTY

YEAR	COST ON FILE	REVISED COST	DEPR
ALL			.02

GROUP 8 - RAW MATERIALS AND SUPPLIES

YEAR	COST ON FILE	REVISED COST	DEPR
ALL			1.00

GROUP 10 - CONSTRUCTION IN PROCESS

YEAR	COST ON FILE	REVISED COST	DEPR
ALL			.15

RETURN THIS SCHEDULE AND ANY ACCOMPANYING DATA TO:

LEASED VALUE ON FILE

LAST APPRAISAL **$0**
LAST ASSESSMENT
LAST EQUALIZED ASSESSMENT

ONLINE ID:

SIGN THIS SCHEDULE ON THE REVERSE SIDE

CT-0025-9557
REV. AUGUST 2020

PART III. LEASED PERSONAL PROPERTY - Report all items leased or rented by you for the conduct of your business as of January 1. If additional space is needed, attach a separate sheet using the same format. Regardless of any contract between the lessor and lessee as to who shall pay the taxes, leased personal property is to be assessed to the lessee.

GRP	ITEM DESCRIPTION MAKE AND MODEL NUMBER SERIAL NUMBER	ITEM COST	LEASE TERM YEAR LEASE BEGAN	MONTHLY RENT	LEASE TYPE	LESSOR'S LEASE NUMBER	LESSOR NAME & ADDRESS
					Operating Capital Other		
					Operating Capital Other		
					Operating Capital Other		
					Operating Capital Other		
					Operating Capital Other		
					Operating Capital Other		
					Operating Capital Other		
					Operating Capital Other		
					Operating Capital Other		
					Operating Capital Other		
					Operating Capital Other		

PART IV. OWNED PERSONAL PROPERTY - NONSTANDARD VALUE - Report property on which you wish to report a value different from standard depreciated cost where such value more closely reflects fair market value. Include evidence to support the request for a non-standard value, such as a recent appraisal or a value from an authoritative price or valuation guide. Such evidence will be considered in any determination of a nonstandard value. If additional space is needed, attach a separate sheet using the same format.

GRP	ITEM DESCRIPTION	YEAR MADE	ACQUISITION COST	DEPR FACTOR	VALUE AS OF JANUARY 1	ASSESSOR USE ONLY	
						DEPR	VALUE

PART V. POLLUTION CONTROL - Report pollution control equipment qualified under T.C.A. 67-5-604 (enclose copy of certificate). Such equipment will be valued at one-half percent of cost.

ACQUISITION COST	CERTIFICATE YEAR	CERTIFICATE EXPIRES

NOTES

[ ] SMALL ACCOUNTS CERTIFICATION (OPTIONAL). By checking the box at left, I certify that the total depreciated value of my property (all groups) is $1,000 or less. I understand this certification is subject to penalties for perjury and I may be subject to statutory penalty and cost if this certification is proven false.

I certify that the information herein, including any accompanying schedules or data, is true, correct and complete, to the best of my knowledge and belief.

PRINT NAME _____ **PRINT TITLE** _____

SIGNED _____ **TITLE** _____ **DATE** _____

Appendix B

Instructions for Completing the Tangible Personal Property Schedule

Revised August 2020

INSTRUCTIONS FOR COMPLETING THE TANGIBLE PERSONAL PROPERTY SCHEDULE FOR REPORTING COMMERCIAL AND INDUSTRIAL PERSONAL PROPERTY

Tennessee law provides that a **TANGIBLE PERSONAL PROPERTY SCHEDULE** shall annually be completed by all partnerships, corporations, other business associations not issuing stock, and individuals operating for profit as a business or profession, including manufacturers, except those whose property is entirely assessable by the Office of State Assessed Properties. These instructions for completing the schedule are in accordance with the TENNESSEE CODE ANNOTATED (T.C.A.), Title 67, Chapter 5, Parts 6 and 9, and with rules for the assessment of commercial and industrial tangible personal property promulgated by the Tennessee State Board of Equalization, Tenn. Comp. R. & Regs. 0600-05-.01 - .12.

The completed **TANGIBLE PERSONAL PROPERTY SCHEDULE** is to be returned to the local assessor of property on or before **March 1** of each tax year. Failure to file the signed schedule by March 1 of the tax year will result in a forced assessment in accordance with T.C.A. § 67-5-903. **PLEASE NOTE: There is no authority for anyone to grant an extension of time to file this schedule.** In the event the assessor makes a forced assessment, the taxpayer cannot amend the schedule and the forced assessment will not be equalized to the prevailing level of property values for assessment purposes in the jurisdiction.

If the business was sold, relocated outside the county or terminated *prior to* January 1 of the tax year, please notify the assessor immediately to prevent the business from being assessed for the current tax year. If the business was sold, relocated outside the county or terminated *after* January 1 of the tax year, T.C.A. § 67-5-513 requires the taxpayer to notify the assessor and trustee and, within fifteen (15) days after the date of selling, relocating or terminating the business, make payment of any taxes, interest and penalties due and owing and the taxes of the current year in accordance with the assessment records, which shall be based on the last assessment and rate fixed, according to law.

The total acquisition cost reported on the schedule must include all tangible personal property used or held for use in the business or profession as of January 1 of the tax year, including, but not limited to, furniture, fixtures, machinery, equipment, raw materials, and supplies. **All assessable items must be included in this schedule whether or not fully depreciated on the taxpayer's income tax records.** The preprinted depreciation factors (percent good) as provided on the schedule are merely for the taxpayer's information. The taxpayer is not required to calculate depreciated cost as this will be calculated and recorded by the assessor.

Do not report growing crops, the direct product of the soil in the hands of the producer or their immediate vendee, finished goods in the hands of the manufacturer, inventories of merchandise held for sale or exchange, or goods in process. Also, property in transit through the state to a final destination outside the state is deemed not to have acquired a situs in Tennessee for the purpose of personal property taxation. Property imported from outside the United States, held in a foreign trade zone or subzone, and then exported directly to a location outside Tennessee is exempt from personal property taxation.

In lieu of detailing total acquisition cost, T.C.A. § 67-5-903(b) permits a taxpayer to certify that the **depreciated value** of tangible personal property otherwise reportable on the form is $1,000 or less. Therefore, if a taxpayer can substantiate that the **depreciated value** of the tangible personal property, including leased equipment and nonstandard equipment, is $1,000 or less, the taxpayer can indicate so by marking the **SMALL ACCOUNTS CERTIFICATION** box on the back of the schedule. If this certification is later determined to be false, then penalties for perjury and statutory penalty and costs may apply. All schedules are subject to audit and, as part of an audit, a taxpayer may be required to list and document total acquisition cost for equipment used or held for use in the business.

The following instructions for each section are intended as a general guide. If you have further questions regarding the schedule, please contact the local assessor's office for assistance.

PART I. GENERAL DATA

Provide the requested information regarding the identification and location of the business. Make any needed corrections to the business name or mailing address.

PART II. OWNED PERSONAL PROPERTY - STANDARD VALUE

For each group of property, list the total acquisition cost of the property being reported. Total acquisition cost is defined as the full acquisition cost new of personal property and includes freight, installation, set-up, and sales tax. This cost new should be reported for the year the property was new (typically the year made). For property purchased as used, if the cost new or year the property was new is not known and cannot reasonably be determined, you may report the actual acquisition cost to you for the year you acquired the property. The total acquisition cost reported should include the full invoiced cost without deduction for the value of certain inducements such as agreements and warranties when these inducements are regularly provided without additional charge. For property previously reported as construction-in-process tangible personal property (CIP), the total acquisition cost must be reported as acquired in the year the property was placed in service rather than the year of purchase, if those years differ.

A capitalized expenditure made with respect to property after the initial acquisition must be reported in the year the expenditure is booked as a fixed asset. Capitalized expenditures are those costs which are capitalized on the taxpayer's financial books and records as a fixed asset and either (1) add to the value, or substantially prolong the useful life, of such property or (2) adapt such property to a new or different use. The costs of the capitalized expenditure should be reported as they are shown on the taxpayer's financial books and records. Expenses, costs or amounts paid or incurred for incidental repairs and maintenance of property should not be reported.

If "Cost on File" is printed and has not changed, no entry is necessary under "Revised Cost."

GROUP 1 - FURNITURE, FIXTURES, GENERAL EQUIPMENT, AND ALL OTHER PROPERTY NOT LISTED IN ANOTHER GROUP – Include all personal property not specifically identified in one of the other groups. For many businesses, all or most of the personal property will fall into this category. A partial list of the types of equipment to be reported in this group includes:

Answering machines
Amusement devices (coin-operated)
Amusement park rides & equipment
Arcade machines
ATM machines
Auto & truck washes
Auto repair equipment (except tools: see Group 2)
Barber & beauty shop equipment
Broadcasting equipment (except towers: see Group 4)
Bulldozers
Cable television equipment
Cameras (including digital cameras)
Cash registers (except computer mainframe: see Group 2)
Digital converter boxes
Dictation (transcribing) equipment
Earth moving equipment
Forklifts
Golf carts
Grocery fixtures & equipment
Gym & exercise equipment
Hotel/motel/apartment furniture, fixtures & equipment
Laundry & dry cleaning equipment
Libraries (law, medical, professional, etc.)
Medical equipment (e.g. MRIs, CT scan, dialysis machines, etc.)
Mining & quarrying equipment
Mortuary equipment
Musical instruments & equipment
Office equipment (e.g. calculators, adding machines, etc.) furniture & fixtures
Postage meters
Photographic equipment
Recreational equipment (bowling lanes, billiard tables, etc.)
Repair & maintenance equipment
Restaurant fixtures and equipment
Retail fixtures and equipment
Satellite dishes
Signs (not billboards: see Group 6)
Sound reinforcement & recording equipment
Sound systems
Telephones
Telephone systems
Theater fixtures & equipment
Truck trailers (over-the-road equipment hauling)
Vending equipment
Warehousing equipment

(continued on reverse side)

The total acquisition cost must be reported for each item of property included in this group without any part of the cost being separated and placed in another group, even if the item of property contains computer components and software. If the property cannot function or operate for the purpose for which the property is designed without such computer components and software, then no part of the cost can be separated from the property.

GROUP 2 - COMPUTERS, COPIERS, PERIPHERALS, AND TOOLS – Include all personal computers, laptops, desktop computers, personal digital assistants, cell phones, paging systems (including purchased pagers), mainframes, minicomputers, supercomputers, CPUs, input devices (such as scanners and keyboards), output devices (such as printers and plotters), monitors, networking equipment, global positioning system equipment, disk drives, tape drives, terminals, operational computer software, cables, modems, copiers, facsimile machines, and portable hand and power tools. Operational computer software must be reported, and includes embedded software so integral to the operation of a computer that the computer could not perform any valuable or useful function without the software. If computer software other than operational computer software is included in the sale or lease price of a computer without being separately stated, then the cost of such computer software must be included in the reported cost of the computer. DO NOT REPORT other machinery, equipment or other property in Group 2, even though such machinery, equipment or other property may contain computer components and software.

GROUP 3 - MOLDS, DIES, AND JIGS – Include all molds, dies, and jigs.

GROUP 4 - AIRCRAFT, BOATS, AND TOWERS (not classified as real property) – Include all aircraft; radio and TV broadcast towers unless classified as real property; and watercraft. **Include all aircraft, boats, radio and TV broadcast towers reported last year as personal property. All new towers, except those excluded in T.C.A. § 7-59-102(h), should be classified as real property.**

GROUP 5 - MANUFACTURING MACHINERY – Include all machinery used in manufacturing processes. The total acquisition cost must be reported for each item of property included in this group without any part of the cost being separated and placed in another group, even if the item of property contains computer components and software.

GROUP 6 - BILLBOARDS, TANKS, AND PIPELINES – All billboards are to be reported. Billboards are freestanding and commonly have a utility (such as electricity) attached. A sign attached to a building or which is easily movable must be reported in Group 1.

Above-ground storage tanks that can be moved without disassembly and are not affixed to the land are to be reported in this group; otherwise, above-ground storage tanks not meeting this exception to T.C.A. § 67-5-501(10)(B)(iii) must be classified as real property.

Pursuant to T.C.A. § 67-5-501(10)(B)(iii), mains, pipes, pipelines and tanks permitted or authorized to be built, laid or placed in, upon, or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, are properly classified as real property.

GROUP 7 - SCRAP PROPERTY – Include all property no longer capable of use and for which there is no reasonable expectation of repair but which is still owned by the business or located at the business site. If property is still being used, is capable of use, or is simply idle, then such property cannot be reported in this group and must be reported in its respective group on this schedule.

GROUP 8 - RAW MATERIALS AND SUPPLIES – Include all raw materials and supplies which are defined as follows:

Raw materials are defined as items of tangible personal property, crude or processed, which are held or maintained by a taxpayer for use through refining, combining, or any other process in the production or fabrication of another item or product. **Do not report goods in process**. The determination of whether tangible personal property should be classified as raw material depends on the taxpayer's use of the property and not on the nature or character of the taxpayer's business. Tangible personal property may be classified as raw material in the hands of the taxpayer even if the taxpayer is not considered to be a manufacturer under other Internal Revenue Code provisions.

Supplies are defined as expendable items of tangible personal property which are used or held for use in support of a business activity, including, but not limited to, office supply stocks, stocks of spare parts for maintenance of machinery and equipment, accessories used in manufacturing processes, printing supplies, and cleaning and maintenance supplies.

Report the total acquisition cost of all raw materials and supplies on hand as of **January 1**, as determined by the 'first-in-first-out" (FIFO) method of accounting.

GROUP 9 - VEHICLES – Include all automobiles, buses, tractors, trucks, and other vehicles designed for over-the-road use. If a vehicle carries commercial tags it should be reported. If it is registered to a business or an individual operating as a business, whether or not the vehicle carries commercial tags, the vehicle should be reported. (Truck trailers are reported in Group 1). Forklifts, golf carts, and other similar items that are not designed for over-the-road use are to be reported in Group 1.

GROUP 10 - CONSTRUCTION IN PROCESS (CIP) – Personal Property which is treated as CIP for federal income tax purposes (as of January 1) must be reported in this group. Report only those costs included on the taxpayer's federal income tax return as CIP.

PART III. LEASED PERSONAL PROPERTY – Report all personal property rented or leased by the taxpayer from others for use in the conduct of, or as part of, the business as of January 1. T.C.A. § 67-5-502(c) provides that personal property leased to a commercial or industrial user is to be assessed to the user. Leased personal property includes, but is not limited to: equipment that is leased only, not sold; equipment that is leased at nominal rent or loaned under certain circumstances; equipment that is leased and not permitted to be sold; leased coin-operated machines and devices; equipment that is placed on location; vehicles, automobiles, or trucks; furniture; electronic equipment; etc.

For "Year Lease Began", report the year of acquisition by the lessor if the lessor purchased the property being used. Otherwise, report the year the property was originally made, if known or able to be reasonably ascertained through investigation.

Report the total acquisition cost of the leased personal property as acquired by the lessor if the lessor purchased the property being used. If the total acquisition cost is unknown or cannot be ascertained through investigation, then report the advertised retail price of the property.

PART IV. OWNED PERSONAL PROPERTY - NONSTANDARD VALUE – If a taxpayer desires to report items of property at a value different from the value that would result from the valuation methodology in Part II, then the taxpayer must report such items of property in this Part IV. Values reported in this section may not be accepted unless sufficient written evidence of the value reported is provided for evaluation by the assessor's staff. The assessor's staff may request clarification or further documentation. Types of evidence that may support nonstandard value include: recent appraisals by appraisers holding professional designations in the valuation of personal property from recognized appraisal organizations and authoritative price or valuation guides for subject property.

PART V. POLLUTION CONTROL – Special statutory valuation of pollution control equipment must be reported under this part (see T.C.A. § 67-5-604). The taxpayer must enclose a copy of the pollution control certificate issued by the Tennessee Department of Environment and Conservation or its designee.

NOTES: Use this area for explanation. If necessary, attach additional pages.

SIGNATURE – The person completing this schedule must print and sign their name and state their title and the date of completion. For the convenience of the staff of the assessor's office, please also provide direct contact information (phone number(s) and email address(es)) of any person(s) with information and knowledge of what has been reported, in the event the assessor's office needs additional information.

Return the schedule, along with any accompanying data, to the local assessor of property on or before **March 1**. **PLEASE BE REMINDED: There is no authority for anyone to grant an extension of time to file this schedule.**

This schedule as completed is a public record, but any accompanying documents filed with the schedule or submitted as part of an audit will be treated as confidential pursuant to T.C.A. § 67-5-402 and any other applicable state or federal law.

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

In re:

BHT AERO, INC.

Acct. no. 137561

Tangible Personal Property

Tax years 2005-2007

Davidson County

FINAL DECISION AND ORDER

Statement of the Case

The taxpayer has appealed the initial decision and order of the administrative judge, who determined the tangible personal property was assessable as commercial property as follows:

Appraised value	Assessed value
$5,400	$1,620

The appeal was heard in Nashville on November 4, 2009 before Commission members Creecy (presiding), Dooley, Long and Wade.[1] The taxpayer was represented by one of its three members, Vice President and Secretary James Tate. Ms. Allyn Gibson appeared as attorney for the taxpayer. Appearing on behalf of the assessor was Assistant Metro Attorney Jenny Howard. Based on the evidence and arguments of record, a

[1] Mr. Creecy sat as an alternate for an absent member, per Tenn. Code Ann. §4-5-302.

majority of the Commission finds the property at issue is not assessable as commercial tangible personal property. Commission member Long dissents.

Findings of Fact and Conclusions of Law

Commercial and industrial tangible personal property is self-reported annually by taxpayers on schedules filed with local assessors.[2] BHT Aero, Inc. ("BHT") filed a schedule for 2008 listing its sole asset, a 1975 Cessna 182P aircraft, after being asked to do so by the assessor's office, but BHT asserted in its filing the property was not used for business purposes and should therefore not be assessable. Mr. Tate testified that although two of the three members practice law with a local firm, the plane has never been used on business of the firm or for other business, nor have clients been charged for use of the plane. He stated BHT was formed to address liability concerns of the members.

The assessor did not contradict this testimony but pointed out the BHT charter permits business use and the bylaws give priority to business versus pleasure uses, whether or not business uses actually occur. The Commission finds the definition of "commercial" property requires the property be used "essentially and principally" for commercial purposes, and these are not occurring in this instance. The initial decision and order should therefore be reversed.

Mr. Long dissents and notes the commercial class includes uses for nonprofit and for-profit purposes, as well as club and lodge uses.

ORDER

[2] Tenn. Code Ann. §67-5-903.

By reason of the foregoing, it is ORDERED that the initial decision and order of the administrative judge is reversed and the property is determined to be not assessable as commercial or industrial tangible personal property. This Order is subject to:

1. **Reconsideration by the Commission**, in the Commission's discretion.

   Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board of Equalization with fifteen (15) days from the date of this order.

2. **Review by the State Board of Equalization**, in the Board's discretion.

   This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

3. **Review by the Chancery Court** of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: Jan. 5, 2010

Presiding Member

ATTEST:

Executive Secretary

cc: Ms. Allyn Gibson, Esq.
Ms. Jenny Hayes, Metropolitan Legal Department
Mr. George Rooker, Assessor

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re:	A + Enterprises	)	
	Personal Property Account No. P-180036 T-A	)	Shelby County
	Tax years 2003, 2004, 2005	)	

INITIAL DECISION AND ORDER

Statement of the Case

These are direct appeals pursuant to Tenn. Code Ann. section 67-1-1005(b) from the following back assessments/reassessments of the subject property:

Tax Year	Original Assessment	Revised Assessment	Back Assessment/ Reassessment
2003	$ 0	$4,260	$4,260
2004	$300	$2,310	$2,010
2005	$420	$2,340	$1,920

The appeals were received by the State Board of Equalization ("State Board") on January 4, 2006.

The undersigned administrative judge conducted a hearing of this matter on October 18, 2006 in Memphis. The appellant, A+ Enterprises, was represented by Mike and Sherrelle Arnold. Director of Finance Gwendolyn Cranshaw, CPA and Audit Manager Eric Beaupre, CPA, appeared on behalf of the Shelby County Assessor of Property. Also in attendance at the hearing was Edna Smith, of the contract auditing firm Mendola & Associates.

Findings of Fact and Conclusions of Law

Mr. and Ms. Arnold reside at 3694 Battlefield Cove in Memphis. During the year 2003, they started a small, home-based business which involves the rental of sound equipment for birthday parties, church events, and the like. Occasionally, such equipment is transported via a truck that the Arnolds purchased in 2000. This truck has not been licensed as a "commercial" vehicle; and, due to the modest revenue from the business, Mr. and Ms. Arnold have not filed a return under the Business Tax Act.[1] Nor have they claimed any deduction on their federal income tax returns for the expense of owning and/or operating the vehicle. Nevertheless, the Assessor "picked up" the unreported vehicle in an audit of this new personal property account.

At the hearing, the Assessor's representatives conceded that the back assessment/reassessment for tax year 2003 should be canceled because Mr. and Ms. Arnold were not in business on the January 1 assessment date. The only issue in this proceeding is whether their truck was properly assessed in 2004 and 2005 as "commercial and industrial

[1]*See* Tenn. Code Ann. section 67-4-712(d).

tangible personal property." As defined in Tenn. Code Ann. section 67-5-501(2) and State Board Rule 0600-5-.01(2), such property includes "personal property such as goods, chattels, and other articles of value which are capable of manual or physical possession, and machinery and equipment which is...used **essentially and principally** for the commercial or industrial purposes or processes for which it is intended...." [Emphasis added.]

The parties stipulated that, if the taxpayer were to prevail in this dispute, the "revised assessments" for tax years 2004 and 2005 would be reduced to $420 and $360, respectively. As the party seeking to change the current assessments, the taxpayer has the burden of proof. State Board Rule 0600-1-.11(1).

In the opinion of the administrative judge, the evidence of record favors the taxpayer's position in this case. Admittedly, the vehicle in question does receive some business-related use. Nothing in the record suggests, however, that this truck – which Mr. and Ms. Arnold bought several years before such use even commenced – is used "essentially and principally" for commercial purposes. The tangible personal property reporting requirement in Tenn. Code Ann. section 67-5-903 cannot legitimately be extended to household items which are devoted mainly to personal use.

Order

It is, therefore, ORDERED that the subject property be valued as follows:

TAX YEAR	APPRAISAL	ASSESSMENT
2003	$ 0	$ 0
2004	$1,400	$420
2005	$1,200	$360

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is

requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 8th day of December, 2006.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Mike and Sherrelle Arnold, A + Enterprises
Tameaka Stanton-Riley, Appeals Manager, Shelby County Assessor's Office

ARNOLD.DOC

return to handbook

IN THE CHANCERY COURT PART I FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, NASHVILLE AND DAVIDSON COUNTY

MEMPHIS PUBLISHING COMPANY,	)	
Petitioner,	)	F07
v.	)	**CASE No. 15-1073-III(I)**
TENNESSEE STATE BOARD OF EQUALIZATION, SHELBY COUNTY TENNESSEE and SHELBY COUNTY ASSESSOR OF PROPERTY,	)	
Respondents.	)	

MEMORANDUM AND ORDER

Statement of the Case

During the time period at issue, Memphis Publishing Company (the Taxpayer) owned and operated its tangible personal property, a printing press and five inserters (the Property) as part of its newspaper printing business in Shelby County. The County Property Assessor, using standard valuation, valued the Taxpayer's Property for the three years at issue in this case, 2011, 2012, and 2013, at slightly over $11, $10 and $9 million, respectively. The assessed values were upheld by the State Board of Equalization. The Taxpayer appeals the appraised value, arguing that the Property should have been valued using a non-standard valuation resulting in a significantly lower assessed value.

Procedural History

The Taxpayer filed tangible personal property returns in 2011, 2012, and 2013 reporting the Property on the proper schedule with a request for nonstandard value. For each year, the Shelby County Assessor rejected the request for non-standard value and appraised the Property using the standard residual valuation method. The Taxpayer appealed the rejection of its request to use non-standard valuation for all three years to the Shelby County Board of Equalization, and each time the Taxpayer was denied relief.

The Taxpayer timely appealed all three tax years at issue to the State Board of Equalization: the appeal of tax year 2011 was filed October 13, 2011, the appeal of tax year 2012 was filed September 27, 2013, and the appeal of tax year 2013 was filed December 20, 2013. The appeals for the three tax years were consolidated, and an evidentiary hearing was conducted before an administrative judge on August 28, 2014. The Administrative Judge issued an Initial Decision and Order on November 25, 2014 upholding the assessed values after finding the Taxpayer failed to meet its burden of proving it was entitled to the lower values it suggested based on a non-standard valuation.

The Taxpayer appealed the Initial Decision to the Assessment Appeals Commission, which conducted its own evidentiary hearing on March 26, 2015. The Assessment Appeals Commission likewise noted that while the facts of the case seemingly supported the use of non-standard valuation, "unfortunately, the taxpayer failed to meet that burden at this hearing" and likewise upheld the County Assessor's appraisal based on standard valuation in its Final Order, issued May 26, 2015. The State Board of Equalization adopted the Assessment Appeals Commission's decision as its final action and issued Official Certificates of the Assessments for all three tax years on July 10, 2015. The Taxpayer timely filed a Petition for Judicial Review in Davidson County Chancery Court on September 4, 2015. An evidentiary hearing was

conducted before this Court on January 23, 2018, at which the parties submitted additional evidence to supplement the Administrative Record, as allowed by Tenn. Code Ann. § 67-5-1511.

Party Contentions and Issues

Petitioner's Contentions:

The Taxpayer contends that the Property may only be correctly valued pursuant to Tennessee law using non-standard valuation because the fair market value of the Property is much less than the value assigned by the County Assessor, which was derived using the standard residual valuation. Moreover, argues the Taxpayer, it met its burden before this Court by presenting evidence supporting the use of non-standard valuation and the correct fair market value of the Property, while Shelby County failed to present any evidence supporting the use of the presumed standard values as a method of reaching the correct fair market value.

To support this contention the Taxpayer first argues that the applicable law, when applied to the evidence presented to this Court, requires the use of non-standard valuation. While conceding that there is a statutory presumption for using the standard valuation, the Taxpayer notes that Tennessee law expressly states that the standard valuation is not to be used when another "value more closely approximates fair market value," citing Tenn. Code Ann. § 67-5-902(a). Further, argues the Taxpayer, the Board's own rules on the subject clarify that the standard residual value is to be applied only "in the absence of evidence to the contrary," citing to Tenn. R. & Reg. 0600-5-.06(3), and that when a taxpayer has demonstrated that the standard value does not reflect the true fair market value, the local assessor must "place the value on the property different from the value indicated by the standard valuation provisions," citing Tenn. R. & Reg. 0600-5-.07(1).

The Taxpayer argues it has met its burden of overcoming the presumption for standard valuation because of the age and condition of the Property, the limitations of the antiquated Property, the uncontroverted economic decline in the newspaper industry, and the lack of a secondary market for the Property. All these factors, argue the taxpayer, demonstrate that the true fair market value of the Property is different from, and indeed much lower, than the values reached using the standard valuation provisions. Further, argues the Taxpayer, both the Administrative Judge and the Assessment Appeals Commission seemingly agreed that the facts of the case should warrant non-standard valuation, though they ultimately concluded that the Taxpayer failed to submit sufficient evidence at the administrative level to meet its burden. The Taxpayer argues that it has presented ample evidence before this Court to demonstrate that non-standard valuation is required.

Second, the Taxpayer argues that Shelby County has failed to present any evidence supporting its conclusion that the standard valuation it relies on more closely resembles the true fair market value of the Property than the values proposed by the Taxpayer. Shelby County, argues the Taxpayer, again relies on the same argument and proof presented at the two administrative hearings below: the standard valuation is the presumed correct value and the Taxpayer has failed to meet its burden of proving otherwise. However, notes the Taxpayer, an agency's ruling must be supported by substantial and material evidence, and Shelby County cannot solely rely on an argument that the Taxpayer did not meet a burden without itself presenting any substantial and material evidence supporting its conclusions as to the fair market value.

The Taxpayer concludes that it has met its burden of overcoming the presumption for using standard valuation, that Tennessee statutory and regulatory law require the use of non-

standard valuation, and that the expert appraisal evidence it submitted more closely approximates the true fair market value than any evidence the County has put forward. Accordingly, the Taxpayer asserts that this Court should reverse the holding of the State Board of Equalization, which upheld the County Assessor's standard valuation, and determine a fair market value for the Property using non-standard valuation. The Taxpayer argues this Court must reverse the Agency's final order because it is: a) unsupported by substantial and material evidence, b) arbitrary and capricious, and c) in violation of statutory requirements, agency rules and lawful procedure.

Contentions of the Respondents:

The Respondent Shelby County primarily argues that the Taxpayer is procedurally barred from presenting any new evidence before this Court, and therefore, as in the two hearings at the agency level, the Taxpayer has again failed to meet its burden of overcoming the presumption of using the standard valuation. Shelby County argues that the Taxpayer failed to present the required documentation to the Shelby County Assessor when it first requested to have its property assessed using the non-standard valuation method. Thus, argues Shelby County, the Taxpayer's failure to meet its procedural requirements at the agency level prevents it from a second bite at the apple before this Court.

To support this contention, Shelby County argues that the Taxpayer failed to meet its statutory requirement to provide the local assessor with supporting documents when initially requested. Shelby County contends that a taxpayer must submit "specific data regarding the property" to the assessor in a "timely manner" or the taxpayer "forfeit[s] the right to introduce" such information on appeal, citing to Tenn. Code Ann. § 67-5-1407(d). Because the Taxpayer failed to submit the property appraisal report to the local assessor, argues Shelby County, the

State Board's decision that the Taxpayer failed to meet its burden was correct and should not be overturned. Additionally, Shelby County notes that as to tax years 2012 and 2013, the Taxpayer also failed to timely provide proper documents to support its claim for non-standard valuation as required by Tenn. Code Ann. § 67-5-903(E). This statute, argues Shelby County, mandates that a taxpayer submit a "properly documented claim of nonstandard value in the timely filed personal property schedule," and that failure to do so is fatal because the statute further states that "under no circumstances shall a taxpayer be permitted to amend a personal property schedule." *Id.* The Taxpayer, asserts Shelby County, failed to timely file a "properly documented" claim for nan-standard valuation and is therefore barred from raising such issues now.

Shelby County also contends that there is substantial and material evidence to support the local assessor's valuation while the values the Taxpayer asserts are contrary to law and logic, and are subject to challenge by the County. The Taxpayer's values are "surreal" argues Shelby County, in that they are so low they approximate or perhaps fall below scrap value even though during the tax years at issue the Property was being used to print newspapers and generate revenue for the Taxpayer. Additionally, argues Shelby County, the Taxpayer's evidence allegedly supporting non-standard valuation is rife with error and amounts to nothing more than broad speculation. Accordingly, argues Shelby County, the ruling of the State Board of Equalization should be upheld.

Issues for the Court:

The issues for the Court to decide are:

1. Given the procedural history of this case, is the Taxpayer allowed to present additional evidence here in the Chancery Court pursuant to its Petition for Judicial Review?

2. Upon applying the applicable law to all of the evidence properly presented before this Court, has the Taxpayer carried its burden to show that non-standard valuation must be used, or should this Court uphold the standard valuation used by the local assessor and the State Board? And,

3. Applying the correct standard for valuation of the Property at issue in this case, what is its fair market value for the three tax years at issue?

Findings of Fact

Based on the Administrative Record, the Court finds that the Taxpayer operates The Commercial Appeal, the primary print newspaper in Memphis. The Property is equipment and machinery used in the newspaper printing plant owned by the Taxpayer in Shelby County. Specifically, the equipment is a Goss Metroliner web-fed printing press with four lines, and five Muller inserters. The tax years at issue are 2011, 2012, and 2013.

For the tax years at issue, the Shelby County Assessor valued the Property at the printing plant using standard residual valuation as set forth in the statutes and Rules, which is twenty percent (20%) of original cost. The value amounts reached by the local assessor are as follows:[1]

Tax Year	Appraisal Value	Assessment Value
2011	$11,032,000	$3,309,600
2012	$10,396,900	$3,119,070
2013	$9,884,800	$2,965,440

The Taxpayer presented the opinions of appraiser Barry Savage before the Administrative Judge at the August 28, 2014 hearing. Mr. Savage argued that non-standard valuation was necessary because of the dramatic downturn in the newspaper business resulting in

[1] The amounts in this chart match the numbers listed in the Initial Order, which was upheld in the Final Order, and the amounts in the Official Certificates of assessment issued by the State Board of Equalization. They differ from the amounts listed in the Joint Stipulation.

the Property reaching obsolescence. Mr. Savage utilized a cost approach, and beginning with original cost he applied physical deterioration, functional obsolescence and economic obsolescence to arrive at the values of $398,000 for 2011, $358,000 for 2012, and 322,000 for 2013 – or about 2% of the original cost. The Administrative Judge rejected this valuation because it did not begin with the estimate of the current replacement or reproduction cost of the Property, and Mr. Savage had not performed any calculations such as "trending" to translate the original cost into "today's dollars." Accordingly, the Administrative Judge concluded that the Taxpayer did not meet its burden to prove non-standard valuation must apply. The Administrative Judge adopted the assessor's values.

The Taxpayer again presented the opinion of Mr. Savage at the March 26, 2015 hearing before the State Board of Equalization's Assessment Appeals Commission. Mr. Savage testified that "trending" was not appropriate, but based on the prior ruling of the Administrative Judge, he had completed additional calculations and presented "trended" cost basis values of $860,000 for 2011, $775,000 for 2012, and $700,000 for 2013. Shelby County critiqued Mr. Savage's appraisal, but presented no evidence of its own. The Commission did not find Mr. Savage's testimony convincing because he failed to trend original cost, failed to calculate replacement cost using current technology, did not substantiate the source of his obsolescence estimates, nor explain why his value amounted to about 2% or scrap value, while the Property remained in use. The Commission found that the Taxpayer failed to meet its burden of demonstrating that a non-standard value was required. The Commission also adopted the assessor's standard values.

Based on the Joint Stipulations filed with this Court by the parties, the Court finds that the Taxpayer timely filed a Tangible Personal Property Schedule with Shelby County for all three years at issue, and in all three years the Taxpayer claimed non-standard values for the

Property. In all three years the Taxpayer's accounting firm, Ernst & Young, filed a letter with the return setting forth the basis and method for the Taxpayer's claim for non-standard values. In all three years, Shelby County rejected the non-standard values, and assessed the property using standard valuation.

The parties stipulated the differing values and tax assessments as follows:

Tax Year	Taxpayer Reported Value (Non-standard value)	Assessor Assigned Value (Standard value 20%)	Tax paid attributable to Property at issue
2011	$1,260,000	$4,768,013	$103,116
2012	$1,260,000	$4,768,013[2]	$101,988
2013	$960,000	$4,786,176	$111,709

The parties did not explain why the amounts listed as the assessor's standard valuation in the Joint Stipulation are different from the amounts listed in the Petition for review, Initial Order, and Official Certificates of the State Board of Equalization.

The parties also stipulated to the original cost, or cost to acquire the Property, as listed by the Taxpayer in its tax returns for the three years as follows:

2011 $23,840,066
2012 $23,840,066[3]
2013 $23,930,881

These original cost amounts are significant in that they form the starting point for many of the valuation methodologies.

Based on the additional evidence submitted at the hearing before this Court, the Court finds that the printing press at issue was installed in 1979, and the five inserters were installed in the 1990's. The original cost of the Property was approximately $24 million. When the press

[2] In the Taxpayers Brief in Support of Appeal, filed October 31, 2016, this figure is twice listed at $4,823,543, *i.e.*, different from the figure listed in the Joint Stipulation.
[3] The original cost for 2012 was listed as $24,117,716 in the Taxpayer's appraisal (Exhibit 9) and in the 2012 Property Schedule (Exhibit 3).

was installed in 1979, the newspaper industry was strong. However, The Commercial Appeal circulation peaked in the mid 1980's and has been in steady decline since that time. Daily circulation in 1986 was 223,926 and Sunday circulation was 291,275. In 2017, daily circulation had fallen to 46,562 and the Sunday paper circulation dropped to 81,019. The Taxpayer's decline in circulation and revenue is consistent with the decline across the entire print newspaper industry because consumers prefer electronic media sources. During the tax years at issue the Taxpayer was using only one of the four lines the printing press was capable of running, and in April of 2017, the press and inserters in Memphis were completely shut down. The Commercial Appeal is currently being printed on newer and more efficient machines in Jackson. Accordingly, the Court finds that there was a substantial decline in the need and usefulness of the Property between when it was purchased and installed and the tax years at issue. [4]

The Property is now completely idle and has been so since 2017. The realty and building in Memphis where the Property is located is under contract to be sold. The sale is primarily for the underlying real estate and the buyer has no intention to use the Property. The Taxpayer was unable to sell the Property in 2017 because it was deemed worthless in the market.

The Taxpayer entered the testimony of Mr. Brad Venisnik, an Accredited Senior Appraiser specializing in industry, including the printing and publishing industry. Mr. Venisnik was deemed an expert by this Court. After conducting research, obtaining records, visiting the printing location, interviewing the Operations Manager, and conducting fixed record and asset reviews, Mr. Venisnik prepared an extensive Appraisal report dated October 31, 2016. In this report, Mr. Venisnik provides two different opinions on value of the Property for each of the three tax years: the first value is termed "Exchange/Statutory" and is described as the value of an

[4] In 1979 when the press was installed, the daily circulation of The Commercial Appeal was 206,878. In the tax years of 2011, 2012 and 2013, the circulation had fallen to 97,128, 89,386, and 82,717, or roughly one fourth of what it was in 1979.

exchange between a willing seller and a willing buyer; the second value is termed "Continued Use" and is described as the value of the property based on an on-going, continued use model. Mr. Venisnik explained that his interpretation of "fair market value" based on Tenn. Code Ann. § 67-5-601(a) mandated the exchange value methodology he provided. He only calculated a second value opinion using the continued use model at the express request of the Taxpayer.[5]

Mr. Venisnik described the research and methodology he used in reaching his conclusions on value. As to the Property, Mr. Venisnik described the printing press as a sixty inch Webb press that prints product that is too large[6], and is "old" by industry standards, and therefore is not desirable in the market. He determined the press was obsolete in function because it prints product too large for today's standards, and obsolete as to economy, because the newspaper industry is dying.

As to appraisal methodology, Mr. Venisnik testified that he considered the three requisite valuation approaches: income, market and cost. He determined income was not viable in this case, but applied the market and cost approach. Under the Market approach he determined that the press was old, was an odd size (not modern), was nearly impossible to sell, there were limited parts available, the market was already flooded with similar old presses no one wants, and there were no recorded sales of such presses in recent history. Accordingly, the market approach resulted in a fair market value of zero. Under the Cost approach, He determined a replacement value adjusted downward for three detrimental factors: 1) deterioration, 2) financial obsolescence, and 3) economic obsolescence. Starting with the original cost plus the inflation

[5] Mr. Venisnik testified that he was asked to calculate the value in the alternative "continued use" method because this was a methodology mentioned by the Assessment Appeals Commission in its Final Order. However, he adamantly stated that while this methodology may be used in some states, it is not the correct method under his understanding of Tennessee law.

[6] Mr. Venisnik testified that producing smaller magazine size newsprint is now the popular trend, and the old, large newspaper format like that printed on the 60" Webb press, is antiquated.

rate he determined a reproduction would cost $28 Million. A replacement of the nearest equivalent utility would cost $7 Million. Following the principle of substitution, he adopted the replacement cost.[7] Accounting for the detrimental factor of physical deterioration he estimated a remaining life of nine years. Applying the factors of functional obsolescence and economic obsolescence, he determined the fair market value to be replacement cost less deterioration. As for the inserters, the market approach recognized the possibility of a sale, and based upon several market quotes on similar inserters a value was established at $30,000 less soft costs. The Cost approach was not used for the inserters because there was good data available for a market approach.

When Mr. Venisnik completed his report in 2016, he estimated the press had a useful life of nine more years. However, the testimony at the hearing before this Court was that the press was shut down in 2017, less than a year after his report was issued. Mr. Venisnik stated that while this new fact had no effect on his preferred Exchange/Statutory value, it would change the value under the Continued Use methodology. Accordingly, Mr. Venisnik updated his fair market value opinion to reflect the new 2017 end of life factor, resulting in the following final values:

Year	Reported Cost	Original 2020 End of Life Continued Use	Revised 2017 End of Life Continued Use	Exchange/Statutory
2011	$23,840,066	$1,847,000	$1,347,000	$134,000
2012	$24,117,716	$1,637,000	$1,137,000	$124,000
2013	$23,930,881	$1,426,000	$926,000	$113,000

[7] Mr. Venisnik stated that he used "trending" in the reproduction cost estimate he prepared (and ultimately rejected), but that "trending" is not used when calculating a replacement cost.

On cross examination Mr. Venisnik testified that there are no collectors of "vintage" presses such as the one at issue in this case, the press was not particularly unique, and he did not consider the cost of moving the equipment in his appraised values.

Shelby County introduced the testimony of Mr. Eric Beaupree, the Audit Manager for the Shelby County Assessor's Office. Mr. Beaupree testified that Tenn. Comp. R. & Regs. 0600-5-.7(1)[8] requires a taxpayer to provide "sufficient documentation" to justify a non-standard value, such as an appraisal. Mr. Beaupree testified that in all three of the Taxpayer's returns in this case the non-standard values were rejected because *no* evidence was provided to support the claims. Mr. Beaupree stated that the Shelby County Assessor's Office asked for additional information, but there was no response from the Taxpayer. He further testified that the Taxpayer never submitted any appraisal of the property until after an appeal was filed.

Mr. Beaupree also testified that the best evidence for property value is a professional appraisal, and none was submitted by the Taxpayer to his office in a timely manner. He also conceded that the Shelby County Assessor's Office had not hired a licensed appraiser to value the property. Mr. Beaupree further stated that his Office's 2014 tax year valuations of the property were lower than the three prior years, the years at issue in this case, because a "partial non-standard" value methodology was used in 2014 at the direction of his superiors.

Principles of Law

Standard of Review:

As for the standard of review, judicial review of State Board of Equalization cases is governed by Tenn. Code Ann. § 67-5-1511. It provides in pertinent part:

[8] On cross-examination Mr. Beaupree admitted that a version of Tenn. Comp. R. & Regs. 0600-5-.7(1) purported to be in effect in 2011 did not contain the "such as appraisals" language elaborating on supporting documents, but that he understood this to be the standard from the "Republic Plastics case."

> b) The judicial review provided in subsection (a) shall consist of a new hearing in the chancery court based upon the administrative record and any additional or supplemental evidence which either party wishes to adduce relevant to any issue.

Tenn. Code Ann. § 67-5-1511(b). Accordingly, the applicable statute presents a hybrid of a "new hearing" with "additional" evidence coupled with the traditional judicial review of a lower agency decision. The Court of Appeals has noted that "[a]lthough the possibility of presenting additional evidence in the trial court differentiates this type of case from most reviews of administrative decisions, judicial review of a Board of Equalization decision clearly falls under the Uniform Administrative Procedures Act ("UAPA")." *Spring Hill, L.P. v. Tennessee State Bd. of Equalization*, 2003 WL 23099679, at *4 (Tenn. Ct. App. Dec. 31, 2003) (*citing Willamette Industries, Inc. v. Tenn. Assessment Appeals Comm'n,* 11 S.W.3d 142, 147 (Tenn.Ct.App.1999)). Accordingly, "judicial review of such determinations is governed by the narrow, statutorily defined standard contained in [Tenn. Code Ann.] § 4–5–322(h) rather than the broad standard of review used in other civil appeals." *Id.*

The Uniform Administrative Procedures Act states:

> (h) The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
>
> (1) In violation of constitutional or statutory provisions;
>
> (2) In excess of the statutory authority of the agency;
>
> (3) Made upon unlawful procedure;
>
> (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
>
> (5)(A) Unsupported by evidence that is both substantial and material in the light of the entire record.

> (B) In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

Tenn. Code Ann. § 4-5-322(h).

In Tennessee, "[g]enerally speaking, courts will 'defer to decisions of administrative agencies when they are acting within their area of specialized knowledge, experience, and expertise.'" *Willamette Indus., Inc.,* 11 S.W.3d at 147 (citing *Wayne County v. Tennessee Solid Waste Disposal Control Board*, 756 S.W.2d 274, 279 (Tenn.App.1988)). However, the statute providing for judicial review of Board of Equalization rulings expressly allows for "a new hearing" in Chancery Court with "additional or supplemental evidence." The Court of Appeals has noted that "[a]s generally understood from common usage, the term *de novo* as applied to judicial review and as contemplated by T.C.A. § 67–5–1511 'means a new hearing in the chancery court based upon the administrative record and *any additional or supplemental evidence which either party wishes to adduce* relevant to any issue.'" *Richardson v. Tennessee Assessment Appeals Comm'n*, 828 S.W.2d 403, 405 (Tenn. Ct. App. 1991) (*citing Frye v. Memphis State University,* 671 S.W.2d 467, (Tenn. 1984)). Accordingly, the Tennessee Court of Appeals has held that "appeals to the chancery court from the Tennessee Assessment Appeals Commission are reviewable *de novo* and that T.C.A. § 67–5–1511 is the statute which prescribes the proper standard." *Id.* at 406.

De novo judicial review has been described as requiring a "case to be tried as if it had originated" in the reviewing court, and as requiring "the trial court to reconsider and redetermine both the facts and the law from all the evidence as if no such determination had been previously made." *Tennessee Waste Movers, Inc. v. Loudon Cty.*, 160 S.W.3d 517, 519–20 (Tenn. 2005) (internal citations removed). The scope of Chancery court's de novo review is "not confined to a

determination of whether the evidence preponderates in favor of the determination of the administrative board and no presumption of correctness attaches to the decision," and it is error to "limit[] the proof to the issue of whether the administrative proceedings were illegal, arbitrary, or capricious." *Id.* Accordingly, this Court's review of whether there is substantial and material evidence to support the agency ruling is *de novo* based upon all the evidence presented to this Court.

As to questions of law, the standard is quite clear. The *Spring Hill* Court has stated that:

> An allegation under Tenn. Code Ann. § 4–5–322(h)(l) that an agency decision was made in violation of a constitutional or statutory provision includes an allegation that the agency interpreted or applied a statute incorrectly. Where the resolution of an issue presented in a judicial review of an administrative decision under the UAPA hinges upon the interpretation and application of a statute, courts will review the question de novo. *King v. Pope,* 91 S.W.3d 314, 318 (Tenn. 2002). That is because construction and application of a statute present questions of law, and review of questions of law is de novo, with no presumption afforded to the conclusions of the court below. *Id.*

Spring Hill, L.P. v. Tennessee State Bd. of Equalization, 2003 WL 23099679, at *5 (Tenn. Ct. App. Dec. 31, 2003).

This Court must review factual issues upon the statutorily prescribed standard of substantial and material evidence. Tennessee appellate courts have held that substantial and material evidence, is "such relevant evidence as a reasonable mind might accept to support a rational conclusion and such as to furnish a reasonably sound basis for the action under consideration," and the burden of showing such evidence "requires something less than a preponderance of the evidence, but more than a scintilla or glimmer." *Wayne County v. Tennessee Solid Waste Disposal Control Bd.,* 756 S.W.2d 274, 279-80 (Tenn. Ct. App. 1988) (internal citations removed).

This Court must also reverse an agency decision found to be arbitrary or capricious. An agency decision is considered arbitrary and capricious if it is not supported by substantial and material evidence, or if the decision rendered was "caused by a clear error in judgment." *Jackson Mobilphone Co., Inc. v. Tennessee Public Service Comm'n*, 876 S.W.2d 106, 110 (Tenn. Ct. App. 1993). Furthermore, "[a]n arbitrary decision is one that is not based on any course of reasoning or exercise of judgment, or one that disregards the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion." *Id.* at 111.

Tax assessments are presumed valid, and the taxpayer has the burden of proving they are erroneous. *Edmundson Management Service Inc. v. Woods*, 603 S.W.2d 716, 717 (Tenn. 1980). Moreover, "[t]axpayers have the burden to show that the valuation does not conform to legal requirements." *Spring Hill, L.P. v. Tennessee State Bd. of Equalization*, 2003 WL 23099679, at *14 (Tenn. Ct. App. Dec. 31, 2003). While the burden of proof is on the Taxpayer, the County may not simply argue that the taxpayer failed to meet its burden without itself putting on at least more than "a scintilla or glimmer" of evidence. *See Westvaco Corp. v. Tennessee Assessment Appeals Comm'n*, 1999 WL 1072586, at *6 (Tenn. Ct. App. Nov. 30, 1999) (holding: "[o]f particular import at this juncture in our analysis is the fact that no proof was put on by Benton County before the commission. Considering the presumption that attaches as well as the augmented record, we must affirm the trial court's finding that the commission's approval of Mr. Farmer's method was not supported by substantial and material evidence.").

The construction and application of a statute is a question of law in which no presumption is given to the conclusions of the lower tribunal. Where the resolution of an issue presented in a judicial review of an administrative decision under the UAPA hinges upon the

interpretation and application of a statute, courts will review the question de novo. *King v. Pope*, 91 S.W.3d 314, 318 (Tenn. 2002).

Statutory Interpretation:

When conducting statutory interpretation, "the legislative intent must be determined from the plain language it contains, read in the context of the entire statute, without any forced or subtle construction which would extend or limit its meaning." *National Gas Distributors, Inc. v. Taylor*, 804 S.W.2d 66, 67 (Tenn. 1991). Specific to interpreting tax statutes, Tennessee case law mandates that the "[w]ords employed by the General Assembly in the enactment of tax statutes are to be taken in their natural and ordinary sense" and "liberally construed in favor of the taxpayer and against the taxing authority." *Covington Pike Toyota, Inc. v. Cardwell*, 829 S.W.2d 132, 135 (Tenn.1992).

Tangible Personal Property Assessment Procedure:

A taxpayer is required to self-report tangible personal property subject to tax to the local assessor: "(a) Unless otherwise provided for, those owners and lessees of taxable tangible personal property who are required by rules and regulations of the state board of equalization to report to the assessor shall report on such schedule as the state board of equalization may require." Tenn. Code Ann. § 67-5-902(a).

For the tax year 2011, the version of Tenn. Code Ann. § 67-5-1407(d) in effect stated:

> (d) **When the assessor of property** or the county board of equalization **requests** from the owner, or the owner's duly authorized agent, **specific data regarding the property that** is not readily available through public records and **is necessary to make an accurate appraisal of the property in question, and such owner** or duly authorized agent **fails**, refuses or neglects **to supply this data in a timely manner** for the assessor of property or county board of equalization to study and consider, **the owner shall thereby forfeit the owner's right to introduce information** concerning the property requested by the assessor of property or any local board of equalization, but denied by the lawful owner or the owner's duly authorized agent **on appeal to the state board of equalization**.

Tenn. Code Ann. § 67-5-1407(d) (2011) (emphasis added).

For the tax years 2012 and 2013, Tenn. Code Ann. § 67-5-903(e) required as follows:

> (e) **The taxpayer may amend a timely filed personal property schedule** at any time on or before September 1 following the tax year. A personal property schedule may be amended for the following reasons only: adding or deleting of property to correctly reflect the status of the property as of the assessment date; correcting the reported cost or vintage year of property; correcting the name or address of the taxpayer; deleting property that has been reported more than once resulting in a duplicate assessment; reporting property in the appropriate group; and correcting other reporting clerical errors. **However, under no circumstances shall a taxpayer be permitted to amend a personal property schedule to submit an original claim for nonstandard value for property that was not the subject of a properly documented claim of nonstandard value in the timely filed personal property schedule.** If the assessor agrees with the amended schedule, the assessor shall thereupon revise the assessment and certify the revised assessment to the trustee. If the assessor believes the assessment should be otherwise than claimed in the amended schedule, the assessor shall adjust the assessment and give written notice to the taxpayer of the adjusted assessment. The taxpayer may appeal the assessor's adjustment of or refusal to accept an amended assessment schedule to the local and state boards of equalization in the manner otherwise provided by law.

Tenn. Code Ann. § 67-5-903(e) (emphasis added).

Fair Market Value and Methods of Valuation:

For Tennessee tax purposes, the "value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values." Tenn. Code Ann. § 67-5-601(a). Such a value determination is often termed "Fair Market Value," although this term is not as important as consistently following the standard outlined in the statute. *See Marion Cty. v. State Bd. of Equalization,* 710 S.W.2d 521, 523 (Tenn. Ct. App. 1986) (*holding* "[t]he State in its brief in this case contends that the definition in T.C.A. § 67–5–601 is of "fair market value." We are of the opinion that the correct name for this value which the legislature has described is irrelevant; what is important is the same standards be used in all cases in arriving at the value to be used for assessment purposes.). This Court will use the term "Fair Market Value" to refer to

the standard set forth in Tenn. Code Ann. § 67-5-601(a). *See also*, Tenn. Comp. R. & Regs. 0600-05-.01(5) ("Fair market value" of personal property shall be ascertained in accordance with T.C.A. §§ 67-5-601 and 602.").

Fair Market Value "shall [not] be influenced by inflated values resulting from speculative purchases in particular areas in anticipation of uncertain future real estate markets; but all property of every kind shall be appraised according to its sound, intrinsic and immediate economic value, which shall be ascertained in accordance with such official assessment manuals as may be promulgated and issued by the state division of property assessments and approved by the state board of equalization pursuant to law." Tenn. Code Ann. § 67-5-601(b).

With respect to tangible personal property, Fair Market Value is presumed in accordance with legislatively adopted standard depreciation factors, however, "a value different from standard depreciated cost may be used where such value more closely approximates fair market value." Tenn. Code Ann. § 67-5-902(a). To determine the Fair Market Value of property under the standard valuation provisions, the taxpayer is required to multiply the property's original costs by the appropriate depreciation factor dictated by statute. Tenn. Code Ann. § 67-5-903(f). Consistent with these statutory factors, Tenn. Comp. R. & Reg. 0600-05-.06(3), a rule of the State Board of Equalization, provides that "[t]he residual value of personal property shall be presumed to be twenty percent (20%) of total acquisition cost, in the absence of evidence to the contrary." Tenn. Comp. R. & Reg. 0600-05-.06(4) provides that the "scrap value of personal property shall be presumed to be two percent (2%) of total acquisition cost, in the absence of evidence to the contrary."[9]

[9] The 1999 version of Tenn. Comp. R. & Reg. 0600-5-.06 used the words "original cost," while the revised version quoted above used the words "total acquisition cost." This change does not affect the issues to be decided in this case.

When evidence warrants a value different from the one derived by the standard valuation provisions, the Board of Equalization Rules require the utilization of non-standard valuation: "the assessor **shall place a value on property different from the value indicated by the standard valuation** provisions **if** there is sufficient evidence to warrant a different value and **documentation of such evidence is included in the file.**" Tenn. Comp. R. & Regs. 0600-5-.7(1) (emphasis added). The Rule gives further guidance on the evidence to consider when determining if non-standard value is required:

> [t]he assessor shall consider the level of trade at which the property is found and all other relevant and available evidence in determining a nonstandard value. Types of evidence that may support nonstandard value include: recent appraisals by appraisers holding professional designations in the valuation of personal property from recognized appraisal organizations and authoritative price or valuation guides for subject property.

Id.

Analysis

1. Can the Court Consider Additional Evidence?

The first issue is whether the Taxpayer should have been allowed to present additional evidence in Chancery Court pursuant to its Petition for Judicial Review. This issue was argued following opening statements on January 23, 2018, and taken under advisement until the following day. On January 24, 2018, the Court orally ruled from the bench that Tenn. Code Ann. § 67-5-1511 permitted the Taxpayer to present new and additional evidence before this Court and the evidentiary proceedings continued. For the reasons outlined below, the Court now confirms this oral ruling.

Shelby County argues that the Taxpayer should have been procedurally barred from presenting any new evidence before this Court because it failed to present the required documentation to the Shelby County Assessor when it originally requested to have the Property

assessed using the non-standard valuation method. These evidentiary and procedural errors at the administrative level, argues Shelby County, bar the Taxpayer from presenting any new or additional evidence on appeal, including here in Chancery Court. Shelby County bases this legal conclusion on its interpretation of two statutory provisions. The first, Tenn. Code Ann. § 67-5-1407(d), states a taxpayer must submit "specific data regarding the property" to the assessor in a "timely manner" or the taxpayer "forfeit[s] the right to introduce" such information "on appeal to the state board of equalization." Shelby Count argues that the "specific data" required was the appraisal, and that it was never presented to the local assessor in a timely manner thereby barring its use in all future appeals.

Shelby County makes a similar argument pertaining to Tenn. Code Ann. § 67-5-903(e), which mandates a taxpayer submit a "properly documented claim of nonstandard value in the timely filed personal property schedule," and that failure to do so is fatal because the statute further states that "under no circumstances shall a taxpayer be permitted to amend a personal property schedule to submit an original claim for nonstandard value for property that was not the subject of a properly documented claim." Shelby County argues that both procedural statutes require a taxpayer to provide "specific data" or a "properly documented claim" for non-standard valuation directly to the local assessor or forfeit the right to present such evidence later on appeal. Shelby County recognizes its interpretation of these statutes sets up a seeming conflict with the "any additional or supplemental evidence" language in Tenn. Code Ann. § 67-5-1511(b) governing judicial review in Chancery Court, but argues this Court must interpret the conflicting statutes in harmony by not negating the two procedural statutes requiring proper documentation be first given to the local assessor.

The Taxpayer argues that its appraisals first provided on appeal are expert opinion testimony, and not "specific data" required to make an accurate appraisal and therefore should not be barred by Tenn. Code Ann. § 67-5-1407(d). The Taxpayer also argues that Tenn. Code Ann. § 67-5-903(e) applies only to amended property schedules, while in this case it asked for non-standard valuation in its original schedule in all three years. The Taxpayer also points out that the Shelby County interpretation would bar the submission of any appraisal not first produced when the property schedule was initially filed, resulting in a conflict with the "any additional or supplemental evidence" language in Tenn. Code Ann. § 67-5-1511(b), that statute's contemplated standard of *de novo* review, and taxpayer due process rights generally.

Tenn. Code Ann. § 67-5-1407 is in Part 14 of the Chapter of code on Property Taxes, which addresses Assessment Review at the County Board of Equalization level, and Tenn. Code Ann. § 67-5-903 deals with schedules filed with the local assessor's office. The Section -1407 provision stating a taxpayer forfeits the right to present documentation not provided to the assessor on appeal is limited, by the express language of the statute, to an "appeal to the state board of equalization." The prohibition in Section -903 applies only to an attempt to amend a schedule to later argue for non-standard valuation. Neither situation applies to the Taxpayer in this case, which presented new supporting evidence before this Court and did ask for non-standard valuation in its original property schedule filings submitted to the local assessor.

More significantly, new evidence can be presented before this Court in Board of Equalization cases. Tenn. Code Ann. § 67-5-1511(b), which specifically addresses judicial review, provides:

> b) The judicial review provided in subsection (a) shall consist of a new hearing in the chancery court based upon the administrative record and any additional or supplemental evidence which either party wishes to adduce relevant to any issue.

The Tennessee Court of Appeals has held that "appeals to the chancery court from the Tennessee Assessment Appeals Commission are reviewable *de novo* and that T.C.A. § 67–5–1511 is the statute which prescribes the proper standard." *Richardson v. Tennessee Assessment Appeals Comm'n*, 828 S.W.2d 403, 406 (Tenn. Ct. App. 1991). *Richardson* further stated that the scope of Chancery court's de novo review is "not confined to a determination of whether the evidence preponderates in favor of the determination of the administrative board and no presumption of correctness attaches to the decision," and it is error to "limit[] the proof to the issue of whether the administrative proceedings were illegal, arbitrary, or capricious." *Id.*

Accordingly, the Court finds that the Taxpayer was not barred from presenting this Court with "any additional or supplemental evidence," including expert appraisal opinions. Because the Court has found that the Taxpayer can present any new evidence it desires, and the Court must consider this new evidence and not be limited to the record, the Court need not decide whether the first appraisal filed before the Assessment Appeals Commission was "specific data" that should have been barred from that administrative proceeding.

2. Is Non Standard Valuation Required in this Case?

Having determined that the Taxpayer can introduce new evidence, the Court must now decide whether the law, applied to the unique facts of this case, supports the use of non-standard valuation. The Taxpayer was required to "report on such schedule as the state board of equalization may require" the value of its tangible personal property. Tenn. Code Ann. § 67-5-902(a). This same statute also states that the "schedule adopted by the board shall provide **that a value different from standard depreciated cost may be used where such value more closely approximates fair market value**." *Id.* (emphasis added). The Board of Equalization, in interpreting this statute, has promulgated its own rules that further explain that the standard

depreciation tables are used as the presumptive value unless there is "evidence to the contrary." Specifically, the rule applicable to the decades-old Property at issue in this case provides that "[t]he residual value of personal property **shall be presumed to be** twenty percent (20%) of total acquisition cost, **in the absence of evidence to the contrary**." Tenn. Comp. R. & Reg. 0600-05-.06(3) (emphasis added). Moreover, the Board's rules also state that "the assessor **shall** place a value on property different from the value indicated by the standard valuation provisions if there is sufficient evidence to warrant a different value and documentation of such evidence is included in the file."[10] Tenn. Comp. R. & Regs. 0600-5-.7(1)

The Administrative Judge noted in the Initial Order that, due to the unquestionable downturn in the newspaper business, "if there was ever an instance where economic obsolescence supported non-standard valuation, this might be it." However, the Initial Order ultimately adopted the standard values because the Taxpayer failed to prove the values it requested. In similar fashion, the Assessment Appeals Commission in the Final Decision and Order declared that "in light of the downturn in the newspaper industry, the facts in this case support the use of a non-standard valuation." Nevertheless, the Commission concluded the Taxpayer again failed to "meet its burden of proof in establishing credible value by which non-standard value could be determined," and also adopted the standard values by default. In contrast with what the agency considered to be unconvincing evidence submitted at the administrative level, this Court finds that the Taxpayer has provided substantial and material evidence before this Court demonstrating that non-standard valuation would more closely approximate true fair market value.

[10] The rules are arguably more favorable towards a taxpayer claiming non-standard values than the statutes, in that Rule 0600-5-.7(1) uses the mandatory "shall" in directing the assessor to us non-standard valuation ("if there is sufficient evidence"), while Tenn. Code Ann. § 67-5-902(a) uses the discretionary "may" when stating non-standard values "*may* be used where such value more closely approximates fair market value."

Before this Court the Taxpayer presented the expert testimony of licensed appraiser Mr. Venisnik, including his detailed report and supporting documents.[11] The Taxpayer also presented via other credible sources substantial and unrefuted evidence of the decline in circulation and revenue of both the Commercial Appeal and the entire print newspaper industry as a whole. In a 2014 report attached to the Venisnik Appraisal, the Newspaper Association of America found that newspaper ad revenue dropped by 65% and newsprint circulation dropped by 57% since 2005, newspapers are transitioning to digital and mobile platforms, there has been substantial consolidation and closure in the printing operations, and printing press manufacturers have downsized dramatically due to low demand and therefore the secondary market for used printing presses is depressed "with values close to zero or in many cases negative due to the high cost of removal."

Mr. Venisnik's report and testimony credibly demonstrated that the Property is severely affected by physical deterioration, functional obsolescence and economic obsolescence. In addition to the general downturn in the newsprint industry as a whole depressing the demand for used printing equipment, the press in this case is even less desirable than many others in the flooded used press market because it prints sizes of newsprint too large for current preferences and was old by industry standards.

Shelby County put on no additional proof before this Court as to the fair market value of the equipment. Shelby County argued that the equipment must have had some value in that during the three tax years at issue the equipment was used to print newspapers.

[11] This report and its supporting documents meet the description of the type of evidence expressly stated to support a claim for non-standard value in the Board's rules. *See* Tenn. Comp. R. & Regs. 0600-5-.7(1) (examples of supporting evidence include "recent appraisals by appraisers holding professional designations in the valuation of personal property from recognized appraisal organizations and authoritative price or valuation guides for subject property").

This Court cannot find that the Administrative Judge or Assessment Appeals Commission erred as a matter of law by failing to apply non-standard values based on the information before them. Both the Initial and Final Order contained conditional comments to the effect that such facts "might" support a non-standard value, or "strongly support" such a finding. However, neither agency conclusively found that non-standard valuation was required, but rather found the Taxpayer failed to provide sufficient proof before them to make such a finding. Likewise, there was no error in either agency tribunal defaulting to the standard valuation given the evidence – or lack of evidence – presented before them. Tenn. Code Ann. § 67-5-902(a) states only that non-standard value "*may* be used" when appropriate, and Tenn. Comp. R. & Regs. 0600-5-.7(1) states "the assessor shall" use non-standard value only "if there is sufficient evidence to warrant a different value and documentation of such evidence is included in the file." This Court cannot find that the evidence contained in the administrative record, as presented to the two agency tribunals below, mandated the use of non-standard value.

Nevertheless, the substantial and material additional evidence presented before this Court, most if not all of which was not refuted or challenged, does demonstrate that a non-standard valuation of the property at issue would "more closely approximates fair market value." Tenn. Code Ann. § 67-5-902(a). There was minimal evidence in the record, and no additional evidence presented to this Court, to support Shelby County's position that the standard valuation more closely approximated the true fair market value of the property. In contrast, the Taxpayer did present significant and persuasive evidence to this Court, and has met its burden, of demonstrating that the facts of this case require the use of non-standard valuation to meet the statutory requirements of finding the true fair market value.

3. What is the Fair Market Value of the Property?

Having found that non-standard valuation must be applied, the Court must now determine what appraisal or value determination is most accurate and, ultimately, determine the fair market value of the property. Shelby County did not provide any appraisal or value determination for the property; rather it relied on its legal argument that the Taxpayer failed to meet its burden of proving non-standard value and that therefore the agency rulings applying the standard value by default was correct and should be upheld. The Taxpayer put on detailed appraisal evidence resulting in two different value opinions for the property based on two appraisal methods, and presented legal argument as to its preferred "exchange/statutory" value conclusion.

The Taxpayer argues that the correct appraisal method is what its expert, Mr. Venisnik, termed the "Exchange /Statutory" method, which he described as the value based on an exchange between a willing seller and a willing buyer. Tenn. Code Ann. § 67-5-601 states that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, **for purposes of sale between a willing seller and a willing buyer** without consideration of speculative values" (emphasis added).

The second appraisal methodology employed by Mr. Venisnik was termed "Continued Use" and was described as the value of the property based on an on-going, continued use model. This second value opinion based on continued use was provided at the request of the Taxpayer because of language contained in the Initial and Final Orders from the agency. The Initial Order noted that the appraisal before it did not contain an "estimate of the current replacement or reproduction cost" of the property and contained "no calculations such as 'trending' to translate the original cost to today's dollars." The Final Order by the Assessment Appeals Commission likewise faulted the Taxpayer's evidence by noting it "failed to trend original cost or better,

calculate replacement cost using current technology." These remarks suggest that both of the agency tribunals reviewing the assessment on administrative appeal preferred or perhaps required an appraisal using a value in continued use model. However, neither lower agency decision cited to a statute or reported case requiring the continued use model be used, and Shelby County made no argument as to the necessity of proving non-standard value exclusively through a continued use model.

The "value in continued use" vs. "value in exchange" appraisal issue seems to be a topic of considerable debate in the world of Tennessee personal property assessment, and one which has not yet been definitively settled according to one leading property tax treatise. Chapter 43 of the Property Tax Deskbook notes that the Tennessee Division of Property Assessments takes the position that "value in use" is required by Tennessee statutes, but this "position is not supported by any reported decision by a Tennessee court" and is contrary to accepted appraisal standards. Prop. Tax Deskbook, Ch. 43 Tennessee, § 43-225.13.[12] The treatise also notes that while the

[12] The Treatise reads in relevant part:

> As discussed at § 43-221 above, "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values...." T.C.A. § 67-5-601(a). With regard to tangible personal property, however, the Division of Property Assessments takes the position that this statutory standard means "value in use"--i.e., the value the property has in its current application as part of a going industrial concern. The "value in use" methodology takes into account additional costs in valuing property--such as those incurred to transport, configure, and install tangible personal property as well as the buyer's payment of sales and use taxes--and differs from "market value in exchange," which constitutes the value that a given piece of property will sell for, by itself, to a "willing buyer" on the open market. The adoption of a "value in use" standard appears to be based upon the definition of "original cost" in Rule 0600-5-.01(6) as "gross capitalized cost before depreciation, which has been interpreted by the Division as requiring the inclusion of freight, installation and tax charges incurred to acquire an item of tangible personal property. "Original cost" constitutes the beginning value which is depreciated on the Tangible Personal Property Schedule to determine the value of tangible personal property pursuant to standard valuation.
>
> While Tennessee assessors seek to use "value in use" by requiring taxpayers to include installation, shipping, tax, etc., costs in the "original cost" of property reported on the Tangible Personal Property Schedule and may further demand a value in use determination to support

Division prefers a "value in use" method, the Assessment Appeals Commission has affirmed non-standard values based on a fair market value in exchange standard "thus affirming that taxpayers have the right to seek nonstandard valuations of tangible personal property based upon fair market value in exchange appraisals." *Id.*

Tenn. Code Ann. § 67-5-601 mandates that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values." This Court finds credible the testimony Mr. Venisnik, a licensed appraiser and expert, that the best appraisal model for determining the value of property as between and willing seller and buyer is the exchange value model he employed. No evidence or argument was presented that persuasively suggested a non-standard valuation of the property at issue in this case may only be supported by a value in continued use appraisal. More significantly, no evidence supports the values assigned by the Shelby County Assessor and upheld by the State Board of Equalization. Accordingly, the Court adopts the Exchange/Statutory fair market value opinion of the Taxpayer for the three years at issue as stated below:

Year	Reported Cost	Exchange/Statutory Value
2011	$23,840,066	**$134,000**
2012	$24,117,716	**$124,000**
2013	$23,930,881	**$113,000**

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nonstandard values, the Division's "value in use" position is not supported by any reported decision by a Tennessee court. Moreover, the statutory definition of tangible personal property talks of "machinery and equipment, separate and apart from any real property, and the value of which is intrinsic to the article itself." T.C.A. § 67-5-501(12); Rule 0600-5-.01(14). Consistent with this definition, the Standard on Valuation of Personal Property promulgated by the International Association of Assessing Officers provides that the "sales comparison approach [to valuation] should receive primary consideration when adequate data is available."

Prop. Tax Deskbook Ch. 43 Tennessee, § 43-225.13.

Decree

For the reasons stated above, the Court finds that the Taxpayer has met its burden of demonstrating that the Board of Equalization's valuation of its personal property is unsupported by substantial and material evidence, given the new evidence submitted to this Court pursuant to the Petition for Judicial Review. While this Court cannot conclude the Board erred in reaching its conclusions upon the evidence before it, the Final Decision and Order must nevertheless be reversed based upon the new evidence presented before this Court.

The Taxpayer, through additional and supplemental evidence, was able to demonstrate that it was entitled to non-standard valuation, and that the values it presented to this Court based on a value in exchange appraisal model most closely approximates fair market value. Accordingly, the State Board of Equalization's Final Order upholding standard valuation of the property is reversed. Shelby County is instructed to reassess the Taxpayer's personal property for the tax years at issue consistent with this ruling and issue any refunds as may be required by law.

Court costs are taxed to the Respondent, Shelby County.

CLAUDIA C. BONNYMAN, CHANCELLOR
CHANCERY COURT, PART I

RULE 58 CERTIFICATION
CERTIFICATE OF THE CLERK

A copy of this order has been served by U. S. Mail upon all parties or their counsel named below.

BERWELL 4/25/18

Deputy Clerk and Master — Date

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Tennessee Farmers Cooperative**	)	**Blount County**
	Personal Property ID: 009 021.00	)	**Appeal No. 98390**
	Tax Year 2014	)	
	Personal Property ID: 009 021.00 001	)	
	Tax Years 2015 and 2016	)	**Appeal Nos. 104202 and 106735**

INITIAL DECISION AND ORDER

Statement of the Case

The Blount County Assessor of Property ("Assessor") has valued the subject property for tax purposes as follows:

	Appraisal	Assessment
2014	$2,914,090	$874,227
2015	$6,153,416	$1,846,025
2016	$5,077,894	$1,523,368

On August 26, 2014, August 19, 2015, and June 29, 2016, the taxpayer filed appeals for tax years 2014, 2015, and 2016 respectfully with the State Board of Equalization ("State Board").

The undersigned administrative judge conducted a hearing of this matter on January 27, 2016, in Nashville. The appellant, Tennessee Farmers Cooperative, was represented by Chief Risk Officer and General Counsel David Moss, Esq. Also in attendance for the appellant were: Barry Stacy, the owner of Industrial Tech Services, Larry Hyatt, CPA, Michael Hamann, ASA, Senior Manager, Gordon Brothers, Randy Henley, Director of Feed Mill Operations, Tennessee Farmers Cooperative, Jason White, Assistant Department Manager,

Tennessee Farmers Cooperative and Shannon Huff, Chief Financial Officer, Tennessee Farmers Cooperative. Blount County Assessor of Property Robert Helton appeared on his own behalf. Also appearing for the County was Deputy Assessor Gabe Looney. Attorney John Sharpe of the Comptroller's Division of Property Assessments represented the Division, who properly Intervened in this matter.

Findings of Fact and Conclusions of Law

The subject property of this appeal consists of typical equipment and machinery used in the feed mill and fertilizer industry and located at the appellant's plant at 4814 Co Op Road in Rockford.

In this State, all business and professional entities must report annually to the Assessor "all tangible personal property owned by the taxpayer and used or held for use in such business or profession including, but not limited to, furniture, fixtures, machinery and equipment, all raw materials, supplies, but excluding all finished goods in the hands of the manufacturer and the inventories of merchandise held for sale or exchange." Tenn. Code Ann. § 67-5-903(a).

At the hearing, the Assessor[1] questioned whether or not the State Board had jurisdiction to hear the appeal for tax year 2014. Generally, except in the event of insufficient notice of an increased assessment, a timely appeal to the county board of equalization is a jurisdictional prerequisite for an appeal to the State Board. See Tenn. Code Ann. § 67-5-1412(b)(1) and Tenn. Atty. Gen. Op. 92-62 (October 8, 1992). However, in this matter, the appellant timely filed a personal property schedule and, subsequently, appears to have timely filed an amended personal property schedule on June 25, 2014.

[1] Unless otherwise noted, "Assessor" means both the Blount County Assessor of Property and the Division of Property Assessments.

There is no record that any response was made by the Assessor to this filing. Upon the passage of sixty (60) days, the appellant presumed that the Assessor had declined to accept the amended schedule and filed an appeal with the State Board pursuant to Tenn. Code Ann. § 67-5-903(e). Subsequent to that, it appears that the appellant filed *another* amended appeal for tax year 2014 on June 22, 2015. On June 23, 2015, the Assessor sent the appellant a certification accepting the amended schedule.

Given the sequence of events, it does not appear that the appellant had a duty to file with the local board. The appeal to the State Board after the first amended schedule was filed was timely. Before a hearing on that matter could commence, the appellant filed the second amended schedule, which was adopted by the local board. Because of this, any outstanding issues related to tax year 2014 are properly before the State Board.

The basis of valuation set out in Tenn. Code Ann. § 67-5-601(a) is that [t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ."

As the party seeking to change the current assessment of the subject property, the appellant has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(1).

Tennessee has legislatively adopted standard depreciation tables. Tenn. Code Ann. § 67-5-903(f). Accordingly, to determine the fair market value of tangible property, the taxpayer must multiply the item's original cost by the appropriate depreciation factor dictated by statute to determine the value for purposes of Tennessee's property tax.

State Board Rule 0600-5-.06(1) provides that "the fair market value of commercial and industrial tangible personal property, except raw materials, supplies, and scrap property, shall be presumed to be either the original cost to the taxpayer less straight line depreciation or the residual value, whichever is greater." However, it is appropriate for the Assessor to adopt a nonstandard valuation for the property if sufficient evidence exists to warrant such a claim. Tenn. Code Ann. § 67-5-902(a) and State Board Rule 0600-5-.07.

At the hearing, the appellant argued that the economics of the feed mill industry, coupled with the unique type of equipment needed to operate the plant, created obsolescence that was not adequately reflected in the standard depreciation tables found in Tenn. Code Ann. § 67-5-903. Thus, the appellant felt a "non-standard" value was warranted and introduced several witnesses to support this contention.

In Kimberly-Clark Corporation (Shelby County, Tax Years 1990 & 1991, Initial Decision and Order, August 5, 1994), Administrative Judge Pete Loesch said, "Surely the most persuasive documentation in support of a 'nonstandard' valuation of personal property is a full-fledged appraisal thereof by a qualified, experienced, and independent practitioner."

The appellant did just that in offering an appraisal performed by Michael Hamann. Mr. Hamann testified that he primarily utilized the comparable sales approach to determine a fair market value – removed of $1,185,950 for the subject property as of June 20, 2016. In the appraisal report submitted at the hearing, Mr. Hamann listed all of the property items he considered in his analysis. Although he attached a value to certain items individually, others were lumped into categories with a total value assigned.

On cross-examination Mr. Hamann estimated that he used the sales comparison approach 99% of the time in this appraisal. He only used the cost approach – replacement cost new minus

obsolescence – when there were no sales available. He also testified that he typically did not include leased assets or computers on an appraisal of this type.

The Assessor took exception to the appraisal for several reasons. First, the effective date of the appraisal is June 20, 2016. Because January 1, 2014, 2015, and 2016, constitute the relevant assessment dates pursuant to Tenn. Code Ann. § 67-5-504(a), the appraisal would seem to be irrelevant. Indeed, the Assessment Appeals Commission has said: "[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose of showing that assumptions reasonably made on or before the assessment date have been borne out by subsequent events." Acme Boot Company and Ashland City Industrial Corporation (Cheatham County, Tax Year 1989, Final Decision and Order) p. 3.

Secondly, the Assessor pointed out that the appraisal did not include all of the subject property. Specifically, the Assessor believes that approximately $100,000 worth of property was not included in the appraisal. Additionally, the assessable Group 8 raw materials were not accounted for in the appraisal.

Finally, the Assessor pointed out that the statute providing for the adoption of a non-standard valuation allows the Assessor to request "supportive information." Tenn. Code Ann. § 67-5-902(a). Despite Mr. Hamann's obvious competence as a witness, his appraisal did not include any information or data related to the comparable sales he utilized in arriving at a value for the subject property. Further, although he testified that the cost approach was a minor part of his appraisal, no data concerning replacement cost new or obsolescence was provided.

Respectfully, the remainder of the proof offered by the appellant was of little value. Barry Stacey testified about a "report" he had prepared. He originally calculated that all of the equipment was worth about 20% of the cost to buy new. However, at the hearing, he testified

that the equipment had little or no value. Both of these estimates, however, were simply his opinion based on his experience, with no supporting documentation of any kind.

Larry Hyatt testified that a portion of the Stacey report contained a listing of the subject assets depreciated to 5% good. While this was apparently the appellant's offer of a nonstandard valuation, it proves nothing in and of itself. Again, the 5% value has no basis.

Jason White offered a report that valued assets under 10 years old with the State's standard depreciation tables. Assets more than 10 years old were all valued at 5%. When asked where this 5% figure came from, he testified that it was the value from the original nonstandard claim.

This approach suffers from at least two problems. First, the 5% figure is again cited as reasonable value, but there was never any relevant proof offered to substantiate this claim. Secondly, the Assessment Appeals Commission has frowned upon attempts to only partially utilize the standard depreciation. In Young Broadcasting – WKRN (Davidson County, Tax Year 2007, Final Decision and Order, July 22, 2008). The Assessment Appeals commission said:

> The taxpayer's methodology begins with the faulty premise that the straight-line depreciation under the standard method is only meant to capture physical wear and tear. **The standard method covers all forms of depreciation, and it is presumed to be a correct indication of fair market value unless a party shows otherwise through evidence.** [Emphasis added.] P.3.

The Commission went on to note that "no ambiguity in the law" existed on this point, saying that:

> Simple observance of the three year life assigned to computers under the statute clarifies that it includes a default approximation of all forms of depreciation, including but not limited to physical wear and tear.

Ibid.

And, in Breed Technologies (Blount County, Tax Years 2002 & 2003, Final Decision and Order, June 13, 2006), the Assessment Appeals Commission said:

> The standard value represented in the assessor's valuation of the subject property, reflects straight line depreciation that purportedly includes all forms of depreciation, **and deducting additional depreciation in the form of economic obsolescence may well be double counting.** [Emphasis added.] P.2.

The subject property of this appeal may indeed suffer from some economic obsolescence and be entitled to a nonstandard valuation. The appellant, however, still must meet the burden of proof in affirmatively establishing a market value for the subject property. Regrettably, for the reasons set out above, the evidence offered at the hearing does not establish a prima facie case for the adoption of a nonstandard valuation.

Typically, the administrative judge would simply affirm the values established by the local board. However, the Assessor ultimately accepted the amended schedule for tax year 2014, which resulted in a reduction in value for that tax year.

Order

It is, therefore, ORDERED that the following values be adopted for tax years 2014 - 2016:

	Appraisal	Assessment
2014	$2,100,108	$630,032
2015	$6,153,416	$1,846,025
2016	$5,077,894	$1,523,368

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State

Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

Entered this 20th day of June 2017.

Brook Thompson, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Shannon Huff
Chief Risk Officer
Tennessee Farmers Cooperative
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Robert T. Helton
Blount Co. Assessor of Property
Blount County Courthouse
351 Court Street
Maryville, Tennessee 37804-5906

This the 20th day of June 2017.

Janice Kizer
Department of State
Administrative Procedures Division

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART II

DILLARD TENNESSEE OPERATING LIMITED PARTNERSHIP (DILLARD'S 427),	)	
Petitioner,	)	
v.	)	**Case No. 17-1326-II**
TENNESSEE STATE BOARD OF EQUALIZATION; RUTHERFORD COUNTY TENNESSEE; and THE RUTHERFORD COUNTY ASSESSOR OF PROPERTY,	)	
Respondents.	)	

MEMORANDUM AND ORDER

This matter came to be heard on October 30, 2018 on an appeal by Dillard Tennessee Operating Limited Partnership (Dillard's 427) ("Dillard's" or "Petitioner") of a decision of the Assessment Appeals Commission (the "Commission") dismissing Dillard's property tax appeal for the 2015 tax year, as adopted by the State Board of Equalization (the "Board"). Upon consideration of the pleadings, argument of counsel at the hearing and the entire record, this Court affirms the Commission's dismissal of the Petitioner's 2015 property tax appeal.

BACKGROUND

Dillard's is a limited partnership with its principal headquarters at 1600 Cantrell Road, Little Rock, Arkansas. Dillard's operates a chain of retail department stores, including the store at issue, located in Murfreesboro, Tennessee (Personal Property Identification Number P 11799896000) (the "Store"). The Store carries retail goods comprising men's, women's, and children's apparel as well as housewares, cosmetics and jewelry. Miscellaneous areas at the Store also include, but are not limited to, dressing rooms, stock rooms, and shipping and

receiving areas. The personal property at issue consists of wood laminate office furnishings, monitors and personal computers, a variety of other electronic equipment, stockroom/warehouse equipment and retail equipment including clothing racks, floor display fixtures, wall mount accessories, wood and laminate table displays, laminate display cases, mannequins, etc. ("the Property").

In Tennessee, all business and professional entities must report annually to their respective property assessor "all tangible personal property owned by the taxpayer and used or held for use in such business or profession, including, but not limited to, furniture, fixtures, machinery and equipment, all raw materials, supplies, but excluding all finished goods in the hands of the manufacturer and the inventories of merchandise held for sale or exchange." Tenn. Code Ann. § 67-5-903(a). Additionally,

> [i]t is the duty of the taxpayer to list fully such tangible personal property used, or held for use, in the taxpayer's business or profession on such schedule, including such other information relating thereto as may be required by the assessor, place its correct value thereon, sign the schedule, and return it to the assessor on or before March 1 of each year.

Tenn. Code Ann. § 67-5-903(b).

The legislature has enumerated the circumstances under which a taxpayer may amend a timely-filed, personal property tax schedule as follows:

> [t]he taxpayer may amend a timely filed personal property schedule at any time on or before September 1 following the tax year. A personal property schedule may be amended for the following reasons *only*: adding or deleting of property to correctly reflect the status of the property as of the assessment date; correcting the reported cost or vintage year of property; correcting the name or address of the taxpayer; deleting property that has been reported more than once resulting in a duplicate assessment; reporting property in the appropriate group; and correcting other reporting clerical errors.

Tenn. Code Ann. § 67-5-903(e) (emphasis added).

SUMMARY OF FACTS

Dillard's submitted a purported request for nonstandard valuation ("Schedule B") on the Property at issue sometime on or before March 1, 2015. The Schedule B was signed and dated February 25, 2015 by Dillard's property tax manager, Matt Banks. In this request, under Group 1 and Group 2 schedules, Dillard's handwrote "0" in the revised cost column. Additionally, in Part IV of the schedule, titled "owned items with nonstandard value," Dillard's handwrote "see attached." Attached to the schedule was a document, prepared by Dillard's, which was clearly meant to be the attachment to Part IV of the schedule. However, instead of denoting any nonstandard valuations, Dillard's submitted amounts based on factors identical to the standard depreciation factors prescribed under Tenn. Code Ann. § 67-5-903. Dillard's did not supplement the attachment with an appraisal or other documentation to substantiate its request for nonstandard valuation.

On August 26, 2015, Dillard's filed an amended Schedule B with the Rutherford County Assessor's Office ("Property Assessor"). This amended schedule also listed the Property in Part IV of the originally-filed schedule under "owned items with nonstandard value." In its amended Schedule B, Dillard's submitted an independent, third-party appraisal of the Property. On September 23, 2015, the Property Assessor notified Dillard's that the amended return had been rejected because the taxing authority concluded that a nonstandard valuation was being asserted for the first time as part of the amended return.

Dillard's appealed this determination to the Board by letter dated October 16, 2015. A hearing was conducted before the ALJ on January 6, 2016 in Murfreesboro, Tennessee. Mark Baer, Assistant Tax Director for Dillard's and Mitchell Rolnick, an appraiser with Landmapp Valuation and Asset Services, Inc., appeared at the hearing and submitted testimony on behalf of

Dillard's with regard to the tax filing and proof related to the valuation of the Property, respectively. Following the hearing, on April 7, 2016, the ALJ issued an Initial Decision and Order Dismissing the Appeal based on the finding that Dillard's "did not make any claim of nonstandard value" on its originally-filed return and was, therefore, not allowed to raise a nonstandard valuation for the first time on its amended return. Accordingly, the ALJ found the appraisal value of the Property to be $828,781, rendering an assessment of $248,634.

On May 2, 2016, Dillard's filed an appeal of the ALJ's Initial Decision and Order. The Assessment Appeals Commission held a hearing by a three-member panel on July 18, 2017 on Dillard's appeal. At the hearing, Mr. Rolnick of Landmapp Valuation appeared again to offer testimony with respect to Dillard's appraisal of the Property, and Matt Banks, Dillard's Property Tax Manager, appeared to offer testimony with regard to the tax return at issue. In its Final Decision and Order, the Commission affirmed the findings of the ALJ and held that Dillard's originally-filed 2015 personal property tax return "contained no documentation of a claim of nonstandard value."

STANDARD OF REVIEW

Tenn. Code Ann. § 67-5-1511(b) affords taxpayers challenging a final action of the Board "a new hearing in the chancery court based upon the administrative record and any additional or supplemental evidence which either party wishes to adduce relevant to the issue." Under this *de novo* review of the Board's decision, the court may

> reverse or modify the decision [of the Board] if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
>
> (1) In violation of constitutional or statutory provisions;
>
> (2) In excess of the statutory authority of the agency;
>
> (3) Made upon unlawful procedure;

> (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
>
> (5)(A) Unsupported by evidence that is both substantial and material in the light of the entire record.

Tenn. Code Ann. § 4-5-322(h); *Richardson v. Assessment Appeals Comm'n.*, 828 S.W.2d 403, 405 (Tenn. Ct. App. 1991).

The Tennessee Court of Appeals has characterized "substantial and material evidence" as relevant evidence that a reasonable person might accept to support a rational conclusion and such as to furnish a reasonably sound basis for the action being considered. *Madison County v. Tennessee State Bd. Of Equalization*, No. W2007-01121-COA-R3-CV, 2008 WL 2200050, at *4 (Tenn. Ct. App. May 27, 2008) (citing *Jackson Mobilphone Co., Inc. v. Tennessee Public Service Comm'n,* 876 S.W.2d 106, 110 (Tenn.Ct.App.1993)). In determining the 'substantiality' of evidence, the reviewing court is required to 'take into account whatever in the record fairly detracts from its weight.' Tenn. Code Ann. § 4–5–322(h)(5). The amount of evidence recognized to support an administrative decision, although less than a preponderance, must amount to more than a scintilla or glimmer. *Westvaco Corp. v. Tennessee Assessment Appeals Comm'n,* No. M1999-01226 COA R3CV, 1999 WL 1072586, at *6 (Tenn. Ct. App. Nov. 30, 1999) (citing *Estate of Street v. State Bd. of Equal.,* 812 S.W.2d 583, 586 (Tenn. Ct. App. 1990)).

An administrative board's decision is considered arbitrary or capricious if it is unsupported by substantial and material evidence or if the Board's findings were caused by a plain error in judgment. *Madison County,* 2008 WL 2200050, at *4 (citing *Jackson Mobilphone Co., Inc. v. Tennessee Public Service Comm'n,* 876 S.W.2d 106, 110 (Tenn.Ct.App.1993)). Additionally, a decision is considered arbitrary if it "is one that is not based on any course of reasoning or exercise of judgment, or one that disregards the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion." *Id.*

A state agency's interpretation of a statute that the agency is charged with enforcing is entitled to great weight in determining legislative intent. *Consumer Advocate Div. v. Greer,* 967 S.W.2d 759, 761 (Tenn. 1998) (citing *Nashville Mobilphone Co. v Atkins,* 536 S.W.2d 335, 340 (Tenn. 1976)). However, even in cases involving scientific or technical evidence, the reviewing court must engage in a "careful inquiry that subjects the agency's decision to close scrutiny." *Wayne County v. Tennessee Solid Waste Disposal Control Board,* 756 S.W.2d 274, 280. An administrative agency's decision that a taxpayer has not met its burden of proof must be supported by substantial and material evidence. *Westvaco Corp. Tennessee Assessment Appeals Comm'n.*, No. M1999-01226-COA-R3-CV, 1999 WL 1072586, at 86 (Tenn. Ct. App. Nov. 30, 1999).

LEGAL ANALYSIS

To determine the current fair market value of tangible personal property, taxpayers are tasked with multiplying the original cost of tangible personal property by the statutorily provided deprecation factor[1] and placing the adjusted values in the designated spaces on the tax schedule. However, "the taxpayer may offset this liability by *providing information* that the . . . property listed on the schedule should be valued using a nonstandard method that more closely approximates fair market value." Tenn. Code Ann. § 67-5-902(b) (emphasis added). The "value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purpose of sale between a willing seller and a willing buyer without consideration of speculative values." Tenn. Code Ann. 67-5-601(a).

Dillard's asserts that it filed a properly documented Schedule B with its originally-filed February 25, 2015 return as required by Tenn. Code Ann. § 67-5-903(e). In this filing, Dillard's attached an itemized schedule wherein standard depreciation factors were used to calculate the

[1] The Legislature has set forth standard depreciation factors in Tenn. Code Ann. § 67-5-903(f).

adjusted values of the Property. Under Part IV of the Schedule B, where nonstandard values are to be listed, Dillard's handwrote "see attached." Dillard's takes the position that its August 26, 2015 amendment to the February 25, 2015 filing, which contained a detailed appraisal of the Property, did not constitute an original claim for nonstandard values. Instead, it contends that its original filing was intended to serve as a "placeholder" to allow time for it to complete an appraisal to adequately substantiate its claim for nonstandard values before amending its original filing. It further contends that at no point did it intend to claim standard values. Dillard's argues that its amendment complies with Tenn. Code Ann. § 67-5-903, because its correction was premised on the need to report its Property in the appropriate group, i.e., removing the Property from the standard depreciation schedule and replacing it under Part IV, "owned items with nonstandard value." Essentially, Dillard's contends that the above-referenced process was adequate to satisfy the "properly documented claim" requirements under Tenn. Code Ann. § 67-5-903(e).

While Tennessee law clearly affords a taxpayer the opportunity to amend a schedule, the relevant statute provides that "under no circumstances shall a taxpayer be permitted to amend a personal property schedule to submit an original claim for nonstandard value for property that was not the subject of a properly documented claim of nonstandard value in the timely filed personal property schedule." Tenn. Code Ann. § 67-5-903(e). Furthermore, the legislature has provided that a taxpayer may only amend a timely-filed personal property tax schedule for very specific reasons. As set forth above, those reasons are (1) adding or deleting property to accurately reflect ownership status as of the assessment date; (2) correcting the reported cost or vintage year of the property; (3) correcting the name or address of the taxpayer; (4) deleting property that has been reported more than once to avoid a duplicate assessment; (5) reporting

property in the appropriate group, (i.e., raw materials, supplies, equipment, machinery); and (6) correcting or reporting other clerical errors. *Id.*

The Board argues that Dillard's originally-filed February 25, 2015 Schedule B did not comprise a properly documented claim for nonstandard value, because there was no documentation in its filing to support such a claim. The Board further asserts that the depreciation factors used in Dillard's purportedly nonstandard claim comport with the standard depreciation tables set forth in Tenn. Code Ann. § 67-5-903(f). The Board contends that since Dillard's did not make an original filing for nonstandard values, it cannot amend its original filing to include nonstandard values irrespective of whether the amendment was timely filed. Finally, the Board argues that Dillard's reasoning for its amendment—that it was supplementing a "placeholder" valuation—is not an action contemplated under the statute and is therefore impermissible. Tenn. Code Ann. § 67-5-903(e).

This Court finds that Dillard's did not make an original claim for nonstandard value in its originally-filed 2015 Schedule B because it did not properly document its claim. Accordingly, the August 26, 2015 amendment purportedly supplementing the filing with an appraisal was actually the first attempt by Dillard's to properly document its nonstandard valuation of the property. The Tennessee General Assembly has unequivocally stated that "under no circumstances shall a taxpayer be permitted to amend a personal property schedule to submit an original claim for nonstandard value for property *that was not the subject of a properly documented claim of nonstandard value.*" Tenn. Code Ann. § 67-5-903(e) (emphasis added). The Court is unconvinced that Dillard's satisfied this clear statutory requirement in its original filing by placing what appear to be standard depreciation values in the schedule under the designated space for nonstandard values. In any event, Dillard's amendment was improper

because it was not premised on any of the permissible reasons for amending pursuant to Tenn. Code Ann. § 67-5-903(e). Dillard's assertion that it amended its schedule to report the Property in the appropriate "group" is a misconstruction of the statute. Schedule B clearly accounts for different forms of personal assets under different "groups" in Parts I and II of the form. Tenn. Code Ann. § 67-5-903(e) does not contemplate allowing a taxpayer to correct a tax schedule by removing assets from Parts I or II and placing them in Part IV.

Dillard's strenuously argues that Tenn. Code Ann. § 67-5-903(e) is ambiguous because it does not provide the taxpayer sufficient guidance with respect to what constitutes a "properly documented claim," and that it should therefore be construed liberally in Dillard's favor and construed strictly against the taxing authority. While the Court agrees that this standard could be considered somewhat amorphous, it is not persuaded by Dillard's argument. In light of the foregoing statutory analysis, the Court finds that "properly documented" must mean something more than inputting standard depreciation values on the schedule in the designated space for nonstandard values. Further, this Court can infer that Dillard's attempt to amend its filing by supplementing an appraisal of the Property indicates it knew that some form of supporting documentation, in addition to its timely filed Schedule B, was required to support a claim for nonstandard valuation.

The Tennessee Supreme Court has held that it is the courts' duty "to ascertain and give effect to the intention and purpose of the legislature." *Eastman Chemical Co v. Johnson*, 151 S.W.3d 503, 507 (2004) (citations omitted). Legistlative intent is to be ascertained whenever possible from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language." *Id* (quoting *Hawks v. City*

of Westmoreland, 960 S.W.2d 10, 16 (Tenn. 1997)). An unforced interpretation of the statute conforms with the Commission's ruling in this matter.

CONCLUSION

Dillard's did not make an original claim for nonstandard valuation when it submitted its February 25, 2015 Schedule B, and therefore, its August 26, 2016 amendment supplementing an appraisal of the Property was not proper pursuant to Tenn. Code Ann. § 67-5-903(e). [2] This Court finds there is no ambiguity with regard to what constitutes a "properly documented claim" under Tenn. Code Ann. § 67-5-903(e), and, under the circumstances, Dillard's did not comply with its statutory obligation. The Court holds that the Commission's decision in this matter is supported by substantial and material evidence in the record. The decision conforms with applicable law and is neither arbitrary nor capricious. Accordingly, the decision of the Commission is hereby affirmed. Costs are taxed to the Petitioner.

It is so ORDERED.

ANNE C. MARTIN
CHANCELLOR, PART II

cc: Josh A, McCreary
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[2] Having concluded that a claim for nonstandard valuation was not timely filed, the Court need not address the accuracy of the appraisal values submitted by Dillard's in its amended filing.

Mary Ellen Knack
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MAILED
11/21/18

return to handbook

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Tate & Lyle Ingredients Americas** **Property ID: 041 037.00 P 003**	))	**Loudon County**
	Tax Years 2011-2012	)	**Appeal No. 100848-100849**

INITIAL DECISION AND ORDER

Statement of the Case

On November 12, 2014, the Loudon County Property Assessor issued a back assessment/reassessment for tax year 2011, resulting in $15,374,593 of additional value and an additional assessment of $4,612,378. The assessor's office also issued a back assessment/reassessment for tax year 2012, resulting in $11,378,340 of additional value and an additional assessment of $3,413,502.

The taxpayer timely appealed to the State Board of Equalization ("State Board"). The undersigned administrative judge conducted the hearing on May 10, 2016 in Knoxville. Andrea McKinnon, Esq., Tim Landolt, and Arnold Herzing appeared on behalf of the taxpayer. John Sharpe, Esq., Dean Lewis, Dale Baker, and Loudon County Property Assessor Mike Campbell appeared on behalf of the assessor's office.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The subject property consisted of tangible personal property located at the taxpayer's corn wet milling plant in Loudon. The taxpayer contended that the fair market value of the subject property was $72,700,000 for tax year 2011 and $84,200,000 for tax year 2012, which

would result in total offsets of the back assessments/reassessments.[1] To support this position, the taxpayer offered the testimony of Arnold Herzing, a construction engineer who discussed the challenges and problems of the plant, and the appraisal report and testimony of appraiser Tim Landolt. Relying on witness Dean Lewis' testimony regarding his review of the taxpayer's appraisal report and witness Dale Baker's testimony regarding the audit, the assessor's office contended that the back assessments/reassessments should be affirmed.

As the party challenging the status quo, the taxpayer has the burden of proof to establish a more credible value.[2] "Value" is ascertained from evidence of the property's "sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values..."[3]

The taxpayer derived its cost approach value contention from reproduction cost new less depreciation and replacement cost new less depreciation. The taxpayer estimated reproduction cost new from historic trended costs. Due to excess capital costs, the taxpayer placed primary emphasis on replacement cost new. The taxpayer based replacement cost new on the trended and capacity-adjusted construction costs of a partially completed facility in Ft. Dodge, Iowa, plus an engineering study estimate of the cost to complete the Ft. Dodge facility as a traditional corn wet mill with sweetener production capabilities similar to the subject.

The taxpayer determined cost approach depreciation floors using Marshall Valuation Service depreciation tables by asset type and then tested for additional functional obsolescence

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[1] Although the taxpayer claimed values even lower than the originally reported values, the maximum relief available in this case is offset of the additional liabilities resulting from the back assessments/reassessments. Tenn. Code Ann. § 67-5-902(b); *Dillard's # 411* (Initial Decision & Order, Shelby County, Tax Years 2010 & 2011, issued December 23, 2014) at 5.

[2] *See* State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. Ct. App. 1981). Disproving assumptions underlying the current valuation or pointing out "the likelihood that a more accurate value is possible" - without more – neither invalidates the levy or judgment under appeal nor constitutes a prima facie case for a change. *Coal Creek Company* (Final Decision & Order; Anderson, Campbell, and Morgan counties; Tax Years 2009-2013; issued June 25, 2015).

[3] Tenn. Code Ann. § 67-5-601(a).

as well as economic obsolescence. The taxpayer calculated additional functional obsolescence by discounting an operating obsolescence penalty (annual excess operating expense reduced by taxes on incremental income) over the remaining economic life of the subject property. The taxpayer justified a 35% economic obsolescence penalty with the March 2011 sale price of the Ft. Dodge facility, which was well below the Ft. Dodge facility's replacement cost new less physical deterioration, and an analysis of the subject property plant's historic gross margins.

The taxpayer's sales comparison approach relied primarily on the March 2011 sale of the Ft. Dodge facility. Secondary emphasis was placed on a 2008 sale of a facility in Dimmit, Texas. The taxpayer accorded little weight to its income approach, which produced a negative value for tax year 2011 and an overall plant value of only $10,500,000 for tax year 2012.

Through cross-examination and the testimony of Dean Lewis, the assessor's office pointed out the following potential deficiencies in the taxpayer's appraisal:

- Exclusion of leased property, pollution control equipment, and licensed vehicles;
- Heavy reliance on the Ft. Dodge sale;
- Industrial development board involvement in the Ft. Dodge sale;
- Tax year 2011 post-assessment date occurrence of Ft. Dodge sale;
- Lack of support for figure used to allocate sale prices to real property and tangible personal property;
- Failure to meet Tennessee standards for valuation of limited use property;
- Lack of support for the functional obsolescence calculations derived from a comparison of the efficiency of the subject property to the efficiency of the Lafayette, IN plant; and
- Lack of competitor data.

Upon review of the record, the administrative judge finds that the taxpayer carried its burden of proof. The administrative judge finds that the assessor's efforts to rebut the taxpayer's prima facie case were unsuccessful.

With respect to the potential exclusion of certain types of property, the administrative judge finds that the taxpayer convincingly demonstrated that pollution control equipment was included in the taxpayer's appraisal by showing that the taxpayer's replacement cost new figures for pollution control equipment were substantially the same as the audit report figures. The administrative judge finds insufficient evidence to assume that a material amount of licensed vehicle value was excluded from the taxpayer's appraisal. The administrative judge finds that while leased property was incorrectly excluded from the taxpayer's appraisal, the taxpayer has cured the problem by furnishing sufficient data to include the leased property under the standard valuation model. The resulting additions are $214,111 for tax year 2011 and $368,428 for tax year 2012.

Given that there are only 27 similar facilities in the country, the administrative judge finds that the taxpayer quite reasonably worked with the recent sales that were available. The administrative judge finds that industrial development board involvement in the Ft. Dodge sale does not necessarily preclude its use in the appraisal. The administrative judge finds that the taxpayer reasonably supported its contention that the Ft. Dodge sale was an arms-length transaction with testimony to the effect that the facility was widely marketed for an adequate time period prior to the sale. The administrative judge further finds that while the Ft. Dodge transaction closed shortly after the January 1, 2011 assessment date for tax year 2011, the taxpayer's assumption that the property was under contract as of the January 1, 2011 assessment

date is reasonable.[4] Finally, even if the Ft. Dodge sale were excluded from the analysis, the administrative judge finds that the taxpayer's sales comparison approach analysis would still be supported by the Dimmitt sale and that the taxpayer's cost approach economic obsolescence calculations would still be supported by the taxpayer's gross margin analysis.

The administrative judge finds that the taxpayer reasonably supported its figure for allocating sale prices between real and personal property with testimony to the effect that the figure fell within the typical range for facilities of this nature.

The administrative judge finds that the taxpayer's appraisal meets the Tennessee standards for valuing limited purpose property. As pointed out in *UCAR Carbon Co., Inc.*, "it is not mandatory that a depreciated replacement cost always be used" when valuing a special or limited purpose property.[5] And in any event, the taxpayer assigned primary weight to its depreciated replacement cost analysis in this case.

The administrative judge finds that the taxpayer cured the lack of support for the functional obsolescence calculations with an affidavit and back-up documentation from the appraisal work papers. The administrative judge also finds that due to the confidential nature of the information, the taxpayer's contention that competitor data was unavailable is reasonable.

Accordingly, the administrative judge finds that the values of the subject property were $72,914,111 for tax year 2011 and $84,568,428 for tax year 2012.

ORDER

It is therefore ORDERED that the back assessments/reassessments are rescinded.

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[4] See *J.E. Fey Rogers a/k/a John K. & Ann W. Gillenwater* (Initial Decision & Order, Sullivan County, Tax Year 2013, issued May 9, 2014).

[5] *UCAR Carbon Co., Inc.* (Initial Decision & Order, Montgomery County, Tax Year 1994, issued April 12, 1995).

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 22nd day of July 2016.

Mark Aaron, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Andrea M. McKinnon, Esq.
Evans Petree PC
1000 Ridgeway Loop, Suite 200
Memphis, Tennessee 38120

Mike Campbell
Loudon Co. Assessor of Property
101 Mulberry Street, Suite 201
Loudon, Tennessee 37774

John Sharpe, Esq.
Comptroller of the Treasury
Office of General Counsel
James K. Polk Building
505 Deaderick Street, 17th Floor
Nashville, Tennessee 37243

This the 22nd day of July 2016.

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

610 S.W.2d 710
Supreme Court of Tennessee.

HARRY J. WHELCHEL COMPANY
v.
John K. KING, Commissioner of Department of Revenue for the State of Tennessee.

Dec. 29, 1980.
|
Rehearing Denied Jan. 26, 1981.

Taxpayer brought suit to recover sum taxpayer asserted was erroneously assessed and collected for sales tax on grain bins sold by taxpayer to farmers. The Equity Court, Hamilton County, Howell N. Peoples, Chancellor, entered judgment in favor of taxpayer, and Commissioner of Department of Revenue appealed. The Supreme Court, Fones, J., held that: (1) grain bins which are directly and primarily used to produce grain for sale, qualify as farm equipment and machinery as defined in sales tax statute, and (2) grain bins do not become real property when erected on farm and therefore qualify for sales tax rate applicable to farm equipment and machinery as defined in sales tax statute.

Affirmed.

West Headnotes (6)

[1] **Taxation**
Purpose of Use or Consumption as Affecting Taxability

Where auditor employed by Commissioner of Department of Revenue testified that "accessories" such as fans, blowers, dryers, and ladders, used in conjunction with grain bin, which were useless to farmer without grain bin structure, were taxed at farm rate, Commissioner implicitly conceded that two-fold purpose of having grain bin was process used directly and principally in production of agricultural products for sale; thus, grain bin qualified as "farm equipment and machinery" as defined in sales tax statute. T.C.A. § 67–3002(p).

4 Cases that cite this headnote

[2] **Taxation**
Purpose of Use or Consumption as Affecting Taxability

Grain bin, which serves two functions of reducing moisture content of harvested crop and providing a safe storage until market price is more favorable than it traditionally is at harvest time, is used directly and principally for purposes of producing grain for sale, and is "farm equipment and machinery" as defined in sales tax statute. T.C.A. § 67–3002(p).

5 Cases that cite this headnote

[3] **Fixtures**
Nature and Requisites of Conversion Into Realty in General

Only those chattels are fixtures which are so attached to freehold that, from intention of parties and uses to which they are put, they are presumed to be permanently annexed, or removal thereof would cause serious injury to freehold.

7 Cases that cite this headnote

[4] **Fixtures**
Intent in Making Annexation

Usual test in determining whether object is chattel or fixture is intention with which chattel is connected with realty; if it is intended to be removed at pleasure of owner, it is not fixture.

4 Cases that cite this headnote

[5] **Fixtures**
Nature and Requisites of Conversion Into Realty in General

Rights of parties to fixtures in buildings depend not on manner in which they are affixed to freehold, but upon character of parties, intention in erecting improvements, and uses to which they are put.

4 Cases that cite this headnote

[6] **Taxation**

Purpose of Use or Consumption as Affecting Taxability

Where grain bins used to produce grain for sale could be disassembled and hauled away at less expense and in less time than was required to erect in first instance, without serious injury to freehold, it was more economical to disassemble and move and reassemble used bin than to buy new one, and farmers who purchased bin affirmatively stated, pursuant to regulation promulgated by Commissioner of Revenue, that intention of farmers was that grain bin or bins not become real property when erected on their respective farms, grain bins did not become real property when erected on farm, and qualified for sales tax rate applicable to farm equipment and machinery. T.C.A. §§ 67–3002(p), 67–3003(h).

8 Cases that cite this headnote

Attorneys and Law Firms

*710 Raymond R. Murphy, Jr., A. Alexander Taylor, II, Miller & Martin, Chattanooga, for plaintiff-appellee.

*711 William M. Leech, Jr., Atty. Gen., Jimmy G. Creecy, Senior Asst. Atty. Gen., Nashville, for defendant-appellant.

OPINION

FONES, Justice.

The question in this State revenue case is whether the grain bins that plaintiff sells to farmers qualify for the one percent sales tax rate applicable to "farm equipment and machinery" as defined in T.C.A. s 67-3002(p).

The trial judge found in favor of taxpayer and the Commissioner's appeal presents two issues, to wit: (1) whether the grain bins are used "directly and primarily" to produce agricultural products for sale, and (2) whether the grain bins become real property when erected or installed.

The statutory definition in effect for the taxable periods involved in this litigation reads as follows: [1]

> " 'Farm equipment and machinery' shall mean any appliance used directly and principally for the purpose of producing agricultural products for sale and use or consumption off the premises, the retail price of which, for any such single article, exceeds two hundred and fifty dollars ($250), but shall not include an automobile, truck, household appliances or property which becomes real property when erected or installed."

During the period of the audit, April 1, 1975, through March 31, 1978, plaintiff sold approximately eighty grain bins to Tennessee farmers. Plaintiff collected from the farmers and remitted to the State a one percent sales tax on each of those sales, relying upon the reduced rate provided in T.C.A. s 67-3003(h) for equipment and machinery used in the production of agricultural products for sale. As a result of the audit, plaintiff was required to pay sales tax at the full rate. The additional tax was paid under protest, and this suit was brought to recover the sum taxpayer asserts was erroneously assessed and collected.

I.

The only proof offered by the Commissioner was the testimony of the employee who was in charge of the audit. He did not attempt to contradict any of the facts herein recited and they are therefore undisputed.

After erection on a purchaser's farm, a grain bin resembles a silo in outward appearance. The undisputed proof, however, was that the two are different in many respects. The agricultural products that a farmer puts in a silo are planted and harvested specifically for the purpose of making silage. The crop is harvested while still green, chopped up into small pieces by a silage harvesting machine, and stored in the silo for the purpose of fermentation. That process produces gases and juices that are highly corrosive to metal. Silos may be constructed of concrete, brick or metal, but if the outer structure is metal it is lined with a material that prevents the wet silage from having any contact with the metal. Silos are usually larger in diameter and height than grain bins and are

usually permanently affixed to a concrete base. Because of the function it performs and the materials used, a silo is constructed on a farm with the intent and purpose that it be a permanent structure.

A grain bin is assembled on a farm like an erector set. The cylindrical body is formed by corrugated metal body sheets, and the roof is formed by pie shaped metal panels. The record contains a narrative description and movie of the procedure followed in the erection of an actual, typical grain bin, twenty-four feet in diameter and sixteen feet in height, to the eave, with a capacity of six thousand bushels. The evidence indicates that in the present case the body sheets and roof panels were loaded on *712 a truck at the plaintiff's establishment in the reverse order of assembly and delivered to the farm. A simple concrete pad with six anchor bolts had been poured and cured by the farmer. The first eight body sheets were bolted together to form the first ring, and the roof panels were assembled on that ring; that ring and roof were jacked up by four hand-wound jacks and a second ring of eight sheets assembled under them. A total of six rings were assembled in like manner and a caulking compound was applied at each ring juncture to provide weather sealing. The metal ring body sheets were graduated in gauge from light at the top to heavy at the bottom. The typical installation was accomplished by one employee of the plaintiff and five persons who had no experience whatever in assembling a grain bin, employed by the farmer who purchased the materials from plaintiff. They began the installation at 8:30 a. m. and finished at 5:00 p. m., with a one hour break for lunch. The nuts and bolts operation was accomplished with electrically operated impact wrenches that fit over the hex head of the bolt on the outside of the ring, with a man on the inside holding the nut with pliers or a hand wrench.

Grain bins may be disassembled in reverse order at approximately sixty percent of the time and cost of the original assembly.

The basic and necessary materials are the metal sheets that are bolted together to form the rings and the metal panels that are bolted together to form the roof. Plaintiff also sells the other equipment, some of which is necessary to the proper operation of the grain bin and some of which is optional. Those "accessories," as they are referred to in the record, include fans, dryers, heaters, ladders and perforated metal flooring. The proof is not clear, but the implication is that a bin may rest upon the concrete base, or a perforated metal floor may be assembled and attached to the bottom ring, at the farmer's option.

The typical grain bin, erection of which was described in the record, was attached to the concrete base by the six anchor bolts. Mr. Whelchel testified that the only reason for using the anchor bolts was to prevent the bin from being blown over in a high wind if it was empty; that when filled with grain there would be no necessity for the use of the anchor bolts.

Mr. Whelchel further testified that his company offered for sale, and sold, both smaller and larger bins than the twenty-four by eight foot bin described. A bin, small enough to be moved without disassembling, was allowed by the Commissioner to be taxed at the farm rate. It was anchored to a concrete base by a few nuts and bolts in the same manner as larger bins.

One of the witnesses who testified in the case was a grain farmer, who had leased land, purchased a grain bin from plaintiff, and erected the bin on the leasehold estate. He testified that upon the expiration of his lease he would definitely remove the grain bin from the leased land.

There was testimony that the agricultural stabilization and conservation service of the United States Department of Agriculture made loans on grain bins assembled on leased or owned farms; that it regarded them as personal removable property, and secured the loans on them by a promissory note and a UCC financing statement. There was also evidence of a number of foreclosure sales of grain bins following default on the loans made by the USDA.

Grain bins serve two functions for the farmer: to reduce the moisture content of the harvested crop and to provide safe storage until the market price is more favorable than it traditionally is at harvest time. The market price is based upon a specific moisture content. The price of soy beans, for example, is based upon thirteen percent moisture and the price declines one percent of the base price for each one-half percent of moisture in excess of thirteen percent. Soy beans are normally harvested at about eighteen percent moisture, which is an unsafe level for storage, and if sold at that time the farmer would be docked ten percent for its moisture content; in addition, the market price is historically at its lowest during the harvest season. Also, soy beans *713 would begin to rot in a few days if the moisture content was not reduced.

II.

[1] The Commissioner says a grain bin is not used directly and principally for the purpose of producing agricultural products for sale. The auditor testified, however, that the "accessories," fans, blowers, dryers, ladders, etc., were taxed at the farm rate. No explanation has been advanced below or in this Court by the Commissioner for making a distinction between the accessories attached to the grain bin and the metal sheets, roof panels, and nuts and bolts that, once assembled, constitute a grain bin. It is axiomatic that the "accessories" are absolutely useless to the farmer without the grain bin structure. The fans, blowers, dryers and ladders, etc., will not function effectively in the open air. Having conceded that the accessories are entitled to the farm rate, we think the Commissioner has conceded that the two-fold purpose of having a grain bin is a process used directly and principally in the production of agricultural products for sale. Unquestionably, the grain bin structure provides the necessary operating environment for the drying of the grain to make the crop marketable at an acceptable price and provides safe storage until such time as the farmer is not "at the mercy" of the grain buyers. One of the farmers testified that it would be economically impossible for him to raise corn and soy beans without grain bins.

[2] In short, a farmer uses a grain bin to "produce" low moisture content grain for sale at the top market price and at a time selected by the farmer, as distinguished from producing a high moisture content grain that must be sold at harvest time, at a sacrificial price. We think a grain bin is directly and primarily used to produce grain for sale.

The Commissioner insists that Woods v. General Oils, Inc., 558 S.W.2d 433 (Tenn.1977) supports his position in this case. We disagree. General Oils blended oil of different weights and sulfur content to produce the industrial and heating oils that it marketed. The blending was accomplished by means of an "in-line proportioner" that drew oil from two or more storage tanks in the proper quantities to discharge into delivery trucks the weight and sulfur content required by the customer.

The Commissioner conceded that the "in-line proportioner" and its appurtenances were utilized directly and primarily in the processing of oil for resale, but denied that three larger tanks were entitled to the reduced tax rate. This Court found as a fact that the three tanks in controversy were used primarily for storage of oil prior to the beginning of processing it for delivery and, therefore, taxable at the full rate.

We think the "drying" process accomplished in a grain bin serves a comparable purpose for the farmer that the "in-line proportioner" served General Oils. The fact that the grain bin provides a simultaneous storage function does not negate its drying function, which qualifies as a process directly and principally involved in the production of agricultural products for sale. As we pointed out heretofore, the drying function cannot be accomplished without the grain bin structure.

III.

The Commissioner insists that a grain bin becomes real property when erected or installed.

[3] [4] [5] The applicable legal principles were collated by Justice McCanless in Memphis Housing Authority v. Memphis Steam Laundry-Cleaner, Inc., 225 Tenn. 46, 463 S.W.2d 677 (1971), as follows:

> "In Hickman v. Booth, 131 Tenn. 32, 173 S.W. 438, Mr. Justice Green said:
>
> > 'In Tennessee only those chattels are fixtures which are so attached to the freehold that, from the intention of the parties and the uses to which they are put, they are presumed to be permanently annexed, or a removal thereof would cause serious injury to the freehold. Johnson v. Patterson, 13 Lea (81 Tenn.), 626; De Graffenreid v. Scruggs, 4 Humph. (23 Tenn.), 451, 40 Am.Dec. 658; Union Bank & Trust Co. v. (Fred W.) Wolfe, 114 Tenn. 255, 86 S.W., 310, 108 Am.St.Rep., 903, 4 Ann.Cas. 1070. The usual test is said to be the intention ***714** with which a chattel is connected with realty. If it is intended to be removable at the pleasure of the owner, it is not a fixture. Johnson v. Patterson, 13 Lea (81 Tenn.), 626; Cannon v. Hare, 1 Tenn.Ch., (22) 23.'
>
> Chancellor Cooper in Cannon v. Hare, 1 Tenn.Ch. 22, which he decided in 1872, said:

'Accordingly the tendency of modern decisions is to make the rights of the parties to fixtures and buildings depend not on the manner in which they are affixed to the freehold, but upon the character of the parties, the intention in erecting the improvements, and the uses to which they are put.' " Id. at 679.

[6] The undisputed proof is that a grain bin can be disassembled and hauled away at less expense and in less time than was required to erect it in the first instance, and without "serious injury to the freehold." Only the concrete base would be left, and one of the witnesses testified that if a farmer desired the removal of the base it could be broken up by a bulldozer and hauled away in a matter of hours. It is clear that the metal sheets and panels from which a grain bin is assembled are not injured by assembly or disassembly and re-erection, and that it is more economical to disassemble and move and reassemble a used grain bin than to buy a new one.

The applicable regulation promulgated by the Commissioner of Revenue provides as follows:

"1320-5-1-1.11 FARM EQUIPMENT AND MACHINERY.

(4)(a) A farmer who buys farm equipment and machinery for the purpose of producing agricultural products for sale and who is entitled to the benefits of this rule shall establish his right to the reduced tax rate by submitting to the dealer a signed statement to the effect that the implement or appliance to be purchased will be used directly and principally for the purpose of producing agricultural products and that it will not become attached to realty."

Plaintiff had furnished the Commissioner with statements from all of the farmers to whom sales were made during the audit period, fully complying with that regulation and affirmatively stating that it was the intention of the farmers that the grain bin or bins would not become real property when erected on their respective farms.

The Commissioner asks this Court to disregard the stated intent of the farmers, which the regulation infers is sufficient to obtain the reduced rate, apply an objective test, and find a contrary intent from the type of structure, the mode of attachment, and the use and purpose of the farmer in purchasing the materials for a grain bin. We reach a result consistent with the farmers' stated intent upon applying those objective tests. We think all of those factors support the stated intention of the farmers that are involved here, that grain bins do not become real property when erected on a farm. These bins merely rest upon a concrete base, attached by a half dozen or less nuts and bolts that can be removed in minutes. The attachment is solely for the purpose of keeping the large cylindrical structures from blowing over in a high wind when empty and is not for the purpose of affixing them to the realty. Further, the proof that they are financed as personal property, sold at foreclosure for removal as personal property by the USDA, and installed by lessees on leased farms is convincing evidence that grain bins are universally regarded as removable personal property.

The judgment of the Chancery Court of Hamilton County is affirmed. Costs are adjudged against the Commissioner of Revenue.

BROCK, C. J., and COOPER, HARBISON and DROWOTA, JJ., concur.

OPINION ON PETITION TO REHEAR

FONES, Justice.

The petition to rehear is respectfully denied. See City of Mason v. Banks, 581 S.W.2d 621, 627-28 (Tenn.1979).

BROCK, C. J., and COOPER, HARBISON and DROWOTA, JJ.

All Citations

610 S.W.2d 710

Footnotes

1 The Legislature added the following sentence to T.C.A. s 67-3002(p) by 1979 Public Acts, ch. 352, effective July 1, 1979: "Notwithstanding the foregoing provisions, grain bins and attachments thereto which are sold to or used by a farmer shall be considered 'farm equipment and machinery'."

End of Document

return to handbook

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 15, 2009 Session

HERMANN HOLTKAMP GREENHOUSES, INC.
v.
METROPOLITAN NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, JO ANN NORTH, Assessor of Property for Davidson County, and TENNESSEE STATE BOARD OF EQUALIZATION

Appeal from the Chancery Court for Davidson County
No. 06-1742-III Ellen Hobbs Lyle, Chancellor

No. M2009-00345-COA-R3-CV

This appeal concerns the classification of property for taxation purposes. The petitioner commercial business grows plants in large greenhouses erected on its land. The county assessor of property classified the greenhouses as real property, to be taxed as such. The petitioner taxpayer appealed the assessor's classification, contending that the greenhouses are personal property. An administrative law judge concluded that the greenhouses are personal property, taxed at a lower rate than real property. The assessor appealed to the state board of equalization. The state board of equalization reversed the ALJ's decision and concluded that the greenhouses are real property. The petitioner taxpayer then filed a petition for judicial review of the state board's decision. On cross motions for summary judgment, the trial court concluded that the greenhouses are real property and dismissed the taxpayer's petition. The petitioner taxpayer now appeals. Utilizing the common law of fixtures, we find that the greenhouses are properly classified as real property. Thus, we affirm the decision of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

HOLLY M. KIRBY, J., delivered the opinion of the Court, in which ALAN E. HIGHERS, P.J., W.S., and DAVID R. FARMER, J., joined.

Larry D. Crabtree and Jo Ann Rosenblum, Nashville, Tennessee, for the appellant, Hermann Holtkamp Greenhouses, Inc.

Sue B. Cain, Director of Law, J. Brooks Fox, and Christopher M. Lackey, Nashville, Tennessee, for the appellees, Metropolitan Government of Nashville and Davidson County and Jo Ann North, Assessor of Property for Davidson County

Robert E. Cooper, Jr., Attorney General and Reporter, Michael E. Moore, Solicitor General, and Gregory O. Nies, Nashville, Tennessee for the appellee, Tennessee State Board of Equalization

OPINION

FACTS AND PROCEEDINGS BELOW

Background

The facts in this case are undisputed. Petitioner/Appellant Hermann Holtkamp Greenhouses, Inc. ("Holtkamp") owns and operates a wholesale botanical nursery business on thirty-one acres of land in Davidson County, Tennessee, that it purchased in 1977. Holtkamp's business consists of growing African violets, begonias, and other plants for distribution to retail nurseries. Holtkamp grows the plants in seven greenhouses, most of which were erected on its property between 1986 and 1989. The greenhouses enclose some 436,000 square feet of space, covering almost a third of the 31-acre tract of land.

The ultimate issue in this case is whether the greenhouses should be classified as real property for tax purposes. As resolution of the issue requires an understanding of how the greenhouses are erected on the property and how easily they can be removed, we will outline the facts pertinent to these factors.

Typically, a greenhouse is assembled on-site. For greenhouses the size of Holtkamp's, the frame consists of a series of metal poles, measuring four inches wide and two inches deep, connected with bolts and screws and spaced about ten feet apart. To assemble the frame, each metal pole is bolted to a concrete post that is placed about two feet deep into the earth. The concrete posts are approximately two and a half feet long; they protrude about six inches above the ground, to allow the metal poles to be bolted to them.[1] About fifteen feet above the ground, the roof angles upwards from the wall, and the two sides of the roof meet

[1]In this case, Holtkamp poured additional concrete on a portion of some of the metal poles to protect them from machinery in the greenhouses that could accidentally collide with the poles.

about twenty feet above the ground. After the metal frame is assembled, glass panels are inserted into grooves set in the frame. The exteriors of the greenhouses are then sprayed with foam as insulation, to serve as a heat shield.

To dismantle the greenhouses, one need only reverse the assembly process. The glass panels are removed first, and the metal frame is then unbolted from the concrete posts and taken apart. The concrete posts can be broken up and removed.

On Holtkamp's property, the terrain is uneven. In order to level the surface underneath the greenhouses, Holtkamp poured additional concrete footings and laid concrete blocks. These additional concrete sections are generally about one to two feet in height and approximately ten inches wide. If the greenhouses were dismantled and relocated, this additional concrete would have to be removed as well.

Within the greenhouses, Holtkamp laid concrete walkways approximately three and a half inches thick. The walkways are about two feet wide and run the length of the tables that support the growing plants. The majority of the floor space inside the greenhouses is natural earth covered with gravel; however, in some areas, Holtkamp laid concrete slab flooring, varying from four to ten inches in thickness. If the greenhouses were dismantled and relocated, the concrete walkways and slab flooring would also have to be broken up and removed.

In order to control the climate within the greenhouses and to water the plants, Holtkamp installed five boilers, a sprinkler system, and heating and cooling apparatus. The greenhouses are also connected to electricity, gas and water utilities. Most of the utilities run in conduits above the ground, either attached to the sides of the greenhouses or hanging from the ceilings.[2] In addition, Holtkamp built a subterranean concrete tunnel to connect at least two of the greenhouses. Under the cover of the greenhouses, Holtkamp built restrooms complete with plumbing fixtures and sewer connections, an employee locker room, and a cafeteria, all by using concrete blocks.

Administrative Proceedings

Prior to 2001, the Assessor of Property for Davidson County ("Assessor") had classified Holtkamp's greenhouses as real property. For the tax year 2001, the Assessor classified the greenhouses in the same manner, and the resulting assessed use value of

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[2]About one percent of the pipes transporting water, two hundred feet of electrical wiring, and two hundred feet of gas pipeline are below the ground.

Holtkamp's property was $812,192.[3] When Holtkamp learned that greenhouses in another county had been classified as personal, rather than real, property, Holtkamp appealed the Assessor's 2001 classification of the greenhouses and its assessment of the property to the Davidson County Board of Equalization ("County Board"). The County Board upheld the Assessor's assessment.

Finding no success with the County, Holtkamp appealed the matter to the Tennessee State Board of Equalization ("State Board") in September 2001. Meanwhile, as Holtkamp's appeal to the State Board on its 2001 assessment was pending, the Assessor adopted the values of the 2001 assessment for the 2002 assessment of Holtkamp's property. As with the 2001 assessment, Holtkamp appealed the 2002 assessment first to the County Board, which upheld the assessment, and then to the State Board. Holtkamp's appeals of the 2001 and 2002 assessments were then consolidated, and an amendment was allowed to include the 2003 tax year.

Holtkamp's consolidated appeal to the State Board was heard by Administrative Law Judge ("ALJ") Forest M. Norville in April 2004. ALJ Norville later issued an initial decision and order finding that the greenhouses should be classified as personal property. In his decision, ALJ Norville emphasized the portability of the greenhouses, noting that they were easily disassembled, and that the cost of relocating the greenhouses was only twelve percent of the cost of purchasing new greenhouses. Classifying the greenhouses as personal property, the ALJ ordered the assessed use value of Holtkamp's property for tax years 2001, 2002, and 2003 to be $237,192.[4]

The Assessor appealed the ALJ's order to the Assessment Appeals Commission of the State Board ("Appeals Commission").[5] The Appeals Commission conducted a hearing on the Assessor's appeal, at which Holtkamp Vice President Reinhold Holtkamp, Jr. ("Mr. Holtkamp") testified and several photographs of the greenhouses were entered into evidence. At the close of the hearing, the Appeals Commission voted unanimously to classify

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[3]The Assessor valued Holtkamp's land at $43,668 and buildings, including the greenhouses, at $3,205,100 for a total value of $3,248,768. Holtkamp's property was assessed at the farm rate of 25% to arrive at an assessed use value of $812,192.

[4]ALJ Norville concurred in the Assessor's valuation of Holtkamp's land at $43,668; however, the reclassification of the greenhouses decreased the building value from $3,205,100 to $905,100, for a new total property value of $948,768. Assessing the property at the farm rate of 25% resulted in an assessed use value of $237,192.

[5]At this point, the Tennessee State Division of Property Assessment filed a motion to intervene in the matter. The motion was granted.

Holtkamp's greenhouses as real property. The Appeals Commission later issued a written order to this effect, in which it focused on factors indicating that the greenhouses were intended to be permanent. In particular, the Appeals Commission emphasized the size of the greenhouses, the many years that the greenhouses had been on the property, and the fact that the greenhouses included restrooms and a cafeteria. The Appeals Commission stated that "[a]lthough clearly these greenhouses were intended to be moveable, perhaps to be reconfigured more efficiently to the operator's purposes, it is equally clear they were not intended to be moved." While relocating the greenhouses would be less costly than purchasing new ones, the Appeals Commission noted that "[t]aking down these significant structures and removing their extensive concrete foundations is a significant business displacement, not merely a matter of a few minutes unbolting." Accordingly, the Appeals Commission reversed the ALJ's decision and reinstated the Assessor's classification and assessment, resulting in an assessed use value of $812,192 for Holtkamp's property.[6]

Judicial Proceedings

Holtkamp then filed a petition for judicial review of the decision of the Appeals Commission, pursuant to Tennessee Code Annotated § 67-5-1511,[7] in the Davidson County Chancery Court ("trial court"). The petition named as respondents the Respondent/Appellees

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[6]Holtkamp filed a petition for review of the Appeals Commission decision by the full State Board. When the State Board failed to enter an order to review within the forty-five day period provided by Tennessee Code Annotated § 67-5-1502(j)(1), the decision of the Appeals Commission became the final action of the State Board.

[7]From 1998 to 2008, the statute provided:

> (a) The action of the state board of equalization shall be final and conclusive as to all matters passed upon by the board, subject to judicial review, and taxes shall be collected upon the assessments determined and fixed by the board.
>
> (b) The judicial review provided in subsection (a) shall consist of a new hearing in the chancery court based-upon the administrative record and any additional or supplemental evidence which either party wishes to adduce relevant to any issue. The petition for review may be filed in the chancery court of the county where the disputed assessment was made or in the chancery court of Davidson, Washington, Knox, Hamilton, Madison or Shelby County, whichever county is closest in mileage to the situs of such property. If the situs of the property is in Knox, Hamilton or Shelby County, then the petition for review may alternatively be filed in Davidson County at the election of the petitioner.

T.C.A. § 67-5-1511 (2006). The statute was subsequently amended, effective April 1, 2008; however, the amendment is not applicable to this appeal.

Metropolitan Government of Nashville and Davidson County ("Metro") and Jo Ann North, the Assessor of Property for Davidson County. In the petition, Holtkamp argued that the Appeals Commission "did not properly consider Tennessee jurisprudence" in classifying the greenhouses as real property under Tennessee Code Annotated § 67-5-501. Holtkamp asserted that the decision of the Appeals Commission was not supported by material evidence, was arbitrary and capricious, and constituted an abuse of discretion.

In its answer to Holtkamp's petition, Metro asserted that the State Board was an indispensable and necessary party. After some dispute, the State Board was made a party to the lawsuit by order of the trial court. The administrative record was filed, and discovery ensued. Thereafter, based on the undisputed facts, the parties filed cross-motions for summary judgment.

The trial court issued its memorandum opinion and order on the parties' cross-motions on October 24, 2008. The trial court observed that the criss-cross of administrative decisions on the classification of the greenhouses resulted from differing emphasis on undisputed facts indicating either the permanence or the movability of the greenhouses. The trial court observed that the greenhouses have characteristics of being both permanent and portable, and concisely summarized the facts indicating both. The trial court then stated: "In the face of facts supporting both sides, the Court studied the law for a legal principle to break the tie." To "break the tie," the trial court turned to the common law of fixtures. In particular, the trial court relied upon the common ownership presumption, *i.e.*, when the owner of a chattel also owns the real property to which the chattel is attached, a presumption arises that the owner intended the chattel to be a part of the realty.[8]

Reviewing the evidence in light of this principle, the trial court concluded that the evidence was not sufficient to rebut the presumption under the common law that Holtkamp, as the owner of both the greenhouses and the land on which they stood, intended that the greenhouses become part of the real property. The trial court acknowledged that Mr. Holtkamp had testified that he was investigating whether to relocate the business to lower expenses, and that he would move the greenhouses if relocation occurred. The trial court described this testimony as "hypothetical." Thus, the trial court denied Holtkamp's motion for summary judgment, granted the Respondents' cross-motion, and dismissed Holtkamp's petition.[9]

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[8]The trial court cited 35A AM. JUR. 2D *Fixtures* § 31 (2006) in support of this statement of the common law.

[9]In the order, the trial court also concluded that one of Holtkamp's proffered witnesses, Dirk Herens
(continued...)

Following the entry of the trial court's October memorandum opinion, Holtkamp filed a motion to alter or amend the judgment under Rule 59.04 of the Tennessee Rules of Civil Procedure. In the motion, Holtkamp asserted that the trial court, after characterizing the evidence as a "tie," erred in dismissing the petition because tax statutes are to be construed liberally in favor of the taxpayer. Additionally, Holtkamp proffered newly discovered evidence showing that Holtkamp did not intend to permanently attach the greenhouses to the underlying realty. The newly discovered evidence apparently consisted of the affidavit of Mr. Holtkamp, in which he stated that Holtkamp was considering a sale of the underlying realty and was actively investigating specific sites for relocation of the greenhouses.

In an order entered January 16, 2009, the trial court denied Holtkamp's motion to alter or amend but modified the prior October order. Stating that "it is unclear whether Tennessee has adopted" the common ownership presumption, the trial court struck "all mention and application of the presumption" from the prior order. The trial court then reviewed the applicable caselaw and reconsidered the evidence in light of it. From the caselaw, the trial court determined that Holtkamp's intent remained the key question, and discussed the evidence indicating intent:

> The following facts establish that petitioner intended to make the greenhouses permanent: 1) the greenhouses were erected about 20 years ago; 2) the greenhouses cover 436,000 square feet of space; 3) the greenhouses are connected to the real property through utility connections; 3) [sic] the greenhouses include numerous amenities, including bathrooms and lunchrooms for the employees; 4) the greenhouses are bolted down to concrete posts, footings, and slabs; 7) [sic] cinder blocks are used in some places to create a level surface above ground upon which certain greenhouses panels have been attached; 8) a concrete tunnel connects the greenhouses; 9) moving the greenhouses would not be easy; and 10) petitioner owns both the land on which the greenhouses are located and the greenhouses.

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[9](...continued)
("Herens"), was an expert witness. Herens is engaged in the business of buying and selling greenhouse components, and had sold such components to Holtkamp in the past. He claimed personal knowledge of the market for such components in the United States, Canada and Europe. Because Holtkamp did not disclose Herens until after the deadline for the disclosure of expert witnesses in the agreed scheduling order, Metro had objected to the admissibility of the testimony in Herens's affidavit. The trial court overruled Metro's objection and noted that it would have extended additional time under Rule 56 of the Tennessee Rules of Civil Procedure for Metro and the State Board to conduct discovery on the matters addressed in Herens's affidavit.

> In determining an owner's intent, courts must look at not just the subjective intent of the owner but the objective intent as well. . . . Looking at petitioner's intent using the objective standard, it is clear that petitioner intended to make the greenhouses permanent and part of the real property. It is unlikely that a reasonable person who intends for the greenhouses to be merely temporary would add the amenities and designs to the greenhouses that petitioner has. Similarly, it is unlikely that "temporary" greenhouses would sit at the same location for decades. Although some evidence in the record may indicate an intention to make the greenhouses temporary, they simply do not outweigh the other evidence in the record. Having looked at the evidence applying the correct standard, the Court concludes it previously erred when it concluded there was a tie in the evidence. The evidence is clear that petitioner intended to make the greenhouses permanent.

Thus, the trial court found that Holtkamp intended to make the greenhouses permanent, and consequently concluded that the greenhouses should be classified as real property. Holtkamp now appeals.

ISSUES ON APPEAL AND STANDARD OF REVIEW

On appeal, Holtkamp raises the following issues:

1) Whether the trial court erred in failing to find that the undisputed facts showed that Holtkamp's greenhouses satisfied the definitions of either or both "tangible personal property" and/or "commercial and industrial tangible personal property" under a strict construction of the statutes;

2) Whether the trial court erred in looking beyond the clear and unambiguous statutory definitions of "tangible personal property" and/or "commercial and industrial tangible personal property" to certain common law rules in order to classify Holtkamp's greenhouses for property tax purposes;

3) Whether the trial court erred in finding, as controlling, the "objective" intent instead of the "stated" intent of Holtkamp in attaching the greenhouses to the realty, when the taxing statutes themselves make no reference to "intent" and the rules of the State Board of Equalization refer only to the "stated" intent of the owner;

4) Whether the trial court erred in failing to construe the tax statutes liberally in favor of the taxpayer and strictly against the taxing authority, when it found that the evidence presented a "tie" between the facts that showed Holtkamp's

greenhouses are moveable and those that show the greenhouses are permanently attached;

5) Whether the trial court erred and/or abused its discretion when it changed its conclusions as to the relative weight of and ultimate proof shown by the undisputed facts, that is, from there being a "tie" to being no tie as to the movability or permanent attachment of Holtkamp's greenhouses, when on motion for reconsideration Holtkamp pointed out that a "tie" should result in the taxing statutes being construed in favor of the taxpayer;

6) Whether the trial court erred in failing to view the undisputed facts in the light most favorable to Holtkamp in granting summary judgment against it; and

7) Whether the trial court erred in holding that one of Holtkamp's witnesses was an expert witness rather than a fact witness, when the proffered testimony related specifically to the proffered witness's occupation or line of business and day-to-day activities, the facts of which are within the common understanding of lay persons.

"[J]udicial review of a Board of Equalization decision clearly falls under the Uniform Administrative Procedures Act." ***Spring Hill, L.P. v. Tenn. State Bd. of Equalization***, No. M2001-02683-COA-R3-CV, 2003 WL 23099679, at *4 (Tenn. Ct. App. Dec. 31, 2003), *no perm. app.* (citing ***Willamette Indus., Inc. v. Tenn. Assessment Appeals Comm'n***, 11 S.W.3d 142, 147 (Tenn. Ct. App. 1999)). Accordingly, a reviewing court must apply the narrow standard of review contained in the Act. ***Id.*** (citing ***Wayne County v. Tenn. Solid Waste Disposal Control Bd.***, 756 S.W.2d 274, 279 (Tenn. Ct. App. 1988)). Under this standard, as codified in Tennessee Code Annotated § 4-5-322(h), a reviewing court may reverse or modify an administrative decision if the rights of the petitioner have been prejudiced due to administrative findings, inferences, conclusions or decisions that are:

(1) In violation of constitutional or statutory provisions;
(2) In excess of the statutory authority of the agency;
(3) Made upon unlawful procedure;
(4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
(5)(A) Unsupported by evidence that is both substantial and material in the light of the entire record.

T.C.A. § 4-5-322(h) (2005). The statute admonishes that, "[i]n determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its

weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." T.C.A. § 4-5-322(h)(5)(B) (2005).

This standard of review applies to the appellate court as well as the trial court. ***Spring Hill, L.P.***, 2003 WL 23099679, at *5 (citing ***Terminix Int'l Co., L.P. v. Tenn. Dept. of Labor***, 77 S.W.3d 185, 191 (Tenn. Ct. App. 2001)). The "substantial and material evidence" standard "requires something less than a preponderance of the evidence but more than a scintilla or glimmer." ***Id.*** (quoting ***Wayne County***, 756 S.W.2d at 280). When resolution of an issue calls for the interpretation and application of a statute, this constitutes a legal conclusion, which is reviewed *de novo* with no presumption of correctness. ***Id.*** (citing ***King v. Pope***, 91 S.W.3d 314, 318 (Tenn. 2002)).

ANALYSIS

Ambiguity of Statutory Language

Holtkamp first argues that the trial court erred in looking beyond the language of the applicable taxation statute, Tennessee Code Annotated § 67-5-501, to the common law of fixtures, because the statutory language at issue is clear and unambiguous. Holtkamp insists that the application of the statutory language to the facts at bar can lead to only one conclusion - that the greenhouses are personal property.

Tennessee Code Annotated § 67-5-801 provides that "[f]or the purposes of taxation, all real property, . . ., shall be classified according to use and assessed," and then lists the four categories of real property with the respective assessment percentages.[10] T.C.A. § 67-5-801 (2006). In order to classify and assess the property, Tennessee Code Annotated § 67-5-501 sets forth the following definitions:

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[10]The categories of real property are:

> (1) PUBLIC UTILITY PROPERTY. Public utility property shall be assessed at fifty-five percent (55%) of its value;
> (2) INDUSTRIAL AND COMMERCIAL PROPERTY. Industrial and commercial property shall be assessed at forty percent (40%) of its value;
> (3) RESIDENTIAL PROPERTY. Residential property shall be assessed at twenty-five percent (25%) of its value; and
> (4) FARM PROPERTY. Farm property shall be assessed at twenty-five percent (25%) of its value.

T.C.A. § 67-5-801(a) (2006).

> (2) "Commercial and industrial tangible personal property" includes personal property, such as goods, chattels and other articles of value that are capable of manual or physical possession, and machinery and equipment that are:
>
> > (A) Used essentially and principally for the commercial or industrial purposes or processes for which they are intended; and
> > (B) If affixed or attached to real property, can be detached without material injury to such real property;
>
> . . . .
> (7) "Personal property" includes every species and character of property that is not classified as real property;
>
> . . . .
> (9)(A) "Real property" includes lands, tenements, hereditaments, structures, improvements, movable property assessable under § 67-5-802, or machinery and equipment affixed to realty, except as otherwise provided for in this section, and all rights thereto and interests therein, equitable as well as legal;
>
> . . . .
> (12) "Tangible personal property" includes personal property such as goods, chattels, and other articles of value that are capable of manual or physical possession, and certain machinery and equipment, separate and apart from any real property, and the value of which is intrinsic to the article itself.

T.C.A. § 67-5-501 (2006).

Holtkamp characterizes these statutory definitions as unambiguous, leading inexorably to the conclusion that the greenhouses are personal property. It cites the Supreme Court's statement in ***Carson Creek Vacation Resorts, Inc. v. Department of Revenue***: "Where the language contained within the four corners of a statute is plain, clear, and unambiguous . . . , 'the duty of the courts is simple and obvious, namely, to say *sic lex scripta,* and obey it.' " ***Carson Creek Vac. Resorts, Inc. v. Dept. of Rev.***, 865 S.W.2d 1, 2 (Tenn. 1993) (quoting ***Miller v. Childress***, 21 Tenn. (2 Hum.) 319, 321-22 (1841)). Pointing to the above definitions of "personal property" and "tangible personal property," Holtkamp argues:

> The undisputed facts show that Holtkamp's greenhouses are chattels, articles of value, and/or equipment capable of physical possession separate and apart (by removal and use or sale separate) from the real property and that the value of each greenhouse is "intrinsic" to itself (for re-use or re-sale). . . . The greenhouses are used essentially and principally for the commercial purpose of greenhouse operations for which they are intended and, although attached to real property (the greenhouse site), can be detached without material injury

to such real property. Thus, the greenhouses satisfy the definition of "tangible personal property" under Tenn. Code Ann. § 67-5-501(12).

If the greenhouses are commercial, Holtkamp contends, "they are undeniably 'commercial tangible personal property' within the meaning of the statute." Holtkamp insists that this Court need not consider the statutory definition of "real property," set forth above, because the greenhouses clearly and unambiguously are excepted out of the definition of real property. ***See*** T.C.A. § 67-5-501(9)(A) (2006) ("except as otherwise provided for in this section"). Holtkamp asserts: "No other conclusion is possible."[11]

We must respectfully disagree. From our review of the statutory language and the facts in this case, as well as the zig-zagging results of the administrative decisions below, we must conclude that the statutes as applied to these facts are far from "unambiguous." In particular, we decline to consider only the definitions of "personal property," "tangible personal property" and "commercial and industrial tangible personal property," codified in subsections (7), (12) and (2), respectively, without also considering whether the greenhouses fit within the definition of "real property" contained in the same statute. Therefore, we find no error in the trial court's conclusion that it was necessary to go beyond the "four corners of the statute." ***Carson Creek***, 865 S.W.2d at 2.

Common Law of Fixtures

The State Board submits that the common law of fixtures controls whether the greenhouses should be considered real or personal property. In support, it cites ***ANR Pipeline Co. v. Tenn. Bd. of Equalization***, No. M2001-01098-COA-R12-CV, 2002 WL 31840689 (Tenn. Ct. App. Dec. 19, 2002), *perm. app. denied* June 30, 2003, in which this Court applied the common law of fixtures to the property classification issue presented in this case. In ***ANR Pipeline Co.***, the Office of State Assessed Properties classified the petitioner taxpayers' subterranean petroleum pipelines as real property for taxation purposes. ***ANR Pipeline Co.***, 2002 WL 31840689, at *1. Ultimately, the taxpayers appealed the classification to this Court. On appeal, the Court noted that the resolution of the classification issue turned on the interpretation of the definitions of "real property" and "tangible personal property" in Tennessee Code Annotated § 67-5-501. ***Id.*** at *2-3. The Court then stated: "In this jurisdiction, the law of fixtures is controlling of the issue at Bar,"

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[11]In support of its argument, Holtkamp cites ***Gen. Oils Co. v. Ramsey***, No. 01A01-9504-CH-00153, 1996 WL 11201 (Tenn. Ct. App. Jan. 12, 1996). However, in denying permission to appeal in ***Gen. Oils***, the Supreme Court noted that it concurred "in results only" (DCRO). Under Rule 4(E)(3) of the Supreme Court Rules, an opinion with the "DCRO" designation is deemed to have "no precedential value." Thus, we decline to consider it on appeal.

and utilized the common law definitions and principles to interpret the statutory terms.[12] ***Id.*** at *3-4. In light of ***ANR Pipeline Co.***, then, we look to the common law of fixtures to determine whether Holtkamp's greenhouses are "affixed or attached to real property" or "separate and apart from any real property" under Tennessee Code Annotated § 67-5-501.

Attached or Affixed

In applying the common law of fixtures to the facts at bar, both parties cite two cases from our Supreme Court, ***Harry J. Whelchel Co. v. King***, 610 S.W.2d 710 (Tenn. 1980), and ***Magnavox Consumer Elecs. v. King***, 707 S.W.2d 504 (Tenn. 1986). The trial court also relied in part on these cases. As such, our analysis begins with them.

In ***Harry J. Whelchel Co. v. King***, 610 S.W.2d 710 (Tenn. 1980), the issue before the Court was whether grain bins used by farmers to store and preserve harvested grain were considered to be personal or real property for tax purposes. ***See id.*** at 713. At the outset of its analysis, the Court noted that the grain bins were assembled on the farm "like an erector set." First, a cylindrical shell body was formed from bolted metal sheets. The cylindrical shell was then attached to a "simple concrete pad" with six anchor bolts. Typically, installation of a grain bin required the efforts of six persons working for a full day. Disassembly of the grain bin for removal took about sixty percent of the time needed for assembly. ***Id.*** at 711-12.

> The ***Whelchel*** court summarized the applicable common law as follows:
> In Tennessee only those chattels are fixtures which are so attached to the freehold that, from the intention of the parties and the uses to which they are put, they are presumed to be permanently annexed, or a removal thereof would cause serious injury to the freehold. The usual test is said to be the intention with which a chattel is connected with realty. If it is intended to be removable at the pleasure of the owner, it is not a fixture.

Id. at 713-714 (quoting ***Memphis Housing Auth. v. Memphis Steam Laundry-Cleaner, Inc.***, 463 S.W.2d 677 (Tenn. 1971)) (citations omitted).

Applying this legal principle to the particular characteristics of the grain bins, the Court noted that an individual bin could "be disassembled and hauled away at less expense

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[12] ***ANR Pipeline Co.*** held that the pipelines at issue were personal property under Tennessee Code Annotated § 67-5-501. ***ANR Pipeline Co.***, 2002 WL 31840689, at *4. This holding was effectively nullified when § 67-5-501 was amended in 2004 to expressly include "pipelines" in the definition of "real property." ***Colonial Pipeline Co. v. Morgan***, 474 F.3d 211, 214-15 (6th Cir. 2007).

and in less time than was required to erect it in the first instance, and without 'serious injury to the freehold.'" ***Id.*** at 714. Once relocated, it observed, the bin would leave only the concrete base, which evidence showed "could be broken up by a bulldozer and hauled away in a matter of hours." ***Id.***

The ***Whelchel*** Court found that these circumstances were consistent with the farmers' stated intent not to make the bins a permanent part of the real property. Applying "objective tests," the Court found that the grain bins remained personal property.[13] ***Id.***

In ***Magnavox Consumer Elecs. v. King***, 707 S.W.2d 504 (Tenn. 1986), at issue was whether a fuel tank was considered to be real or personal property. ***Id.*** at 506. The 500,000 gallon tank was mounted on a concrete pad, secured by four metal rods, and then connected to a building by a steel pipe. The tank could be moved, but to do so, "it would have to be moved as if it were a building." ***Id.*** at 507.

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[13]Holtkamp asserts that if the owner's intent is to be taken into account, then only the stated intent is relevant under the State Board's Rules. The pertinent Rule provides:

> (1) In determining whether property should be assessed as real or personal, the following factors should be considered:
>
> (a) The apparent movability or permanency of the item in its location or attachment to the land or structure. The cost of moving the item and the amount of damage that will be incurred to the item, the land, or the improvement if the item is removed should be weighed against the value of the item of property that is being considered. If the value of the item exceeds the moving cost and the amount of damage incurred, it is more likely to be considered personal property.
>
> (b) The primary purpose which the item serves. This factor would most generally concern an item that forms a part, or segment, of a series of functions in a manufacturing and/or processing system. If the item is more or less special purpose in nature and its practical use would not enhance the total property if the present or a similar manufacturing processing system were not there, it is more likely to be considered personal property.
>
> (c) *The stated intent of the owner.* This element will come into focus most frequently where leased premises are involved, although it must occasionally be considered where premises are owner-occupied. If the intent of the owner is to move the item upon relocation of the business, the item is more likely to be considered personal property, provided that such a move would be probable, practical, and cost-effective.

TENN. COMP. R. & REGS. 0600-5-.09 (1999) (emphasis added). Thus, the Rule lists the owner's stated intent as a factor, but does not indicate that stated intent is determinative. The Rule directs the assessor to consider objective facts such as whether a move "would be probable, practical, and cost-effective."

The ***Magnavox*** Court relied upon the recitation of fixture law in ***Harry J. Whelchel Co.***, quoted above, and looked at the owner's intent objectively. ***Id.*** The Court observed: "The tank is attached to a permanent structure and securely anchored to the freehold. Its sheer size . . . indicates it was not intended to be 'removable at the pleasure of the owner.'" Thus, the ***Magnavox*** Court looked at the circumstances objectively and found that the fuel tank was a fixture. ***Id.***

Applying these principles to the facts in the case at bar, the trial court found that numerous facts indicated that Holtkamp intended for the greenhouses to be permanent. These included the enormous amount of square footage covered by the greenhouses, the utilities that connected the greenhouses to the real property, the amenities in the greenhouses such as restrooms and lunchrooms for employees, the concrete tunnel connecting the greenhouses, and the fact that Holtkamp owned both the greenhouses and the land on which they were located.[14] The trial court found that it was "unlikely" that an owner who intended for the greenhouses to be temporary would put in such amenities and would have the greenhouses in place "for decades." Acknowledging that there was some evidence of movability, the trial court found that it was outweighed by evidence that Holtkamp intended for the greenhouses to be permanent.

We agree with the trial court's analysis and conclude that the greenhouses are "affixed" to the real property. Thus, the greenhouses fit into the statutory definition of "real property," as "machinery and equipment affixed to realty. . .." T.C.A. § 67-5-501(9)(A) (2006).

Detachment From Land

Tennessee Code Annotated § 67-5-501(9)(A) states that the term "real property" includes "machinery and equipment affixed to realty, *except as otherwise provided for in this section*, ..." T.C.A. § 67-5-501(9)(A) (2006) (emphasis added). Thus, we must consider whether the greenhouses fit within one of the statutory exceptions. Holtkamp argues on appeal that the greenhouses fit within the exception for "commercial and industrial tangible personal property":

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[14]In ***ANR Pipeline Co.***, the owner of the pipeline had an easement to install it, but did not own the land in which the pipeline was buried. The Court found that the pipeline company retained ownership of the pipe and that the landowner could not claim ownership of the pipe because it was buried in his land. It observed that the pipe was treated as the property of the pipeline company "which they can remove at their pleasure," and described this fact as determinative to prove the intent of the parties. ***ANR Pipeline Co.***, 2002 WL 31840689, at *4. Thus, the Court found that the pipe was personal property. ***Id.***

(2) "Commercial and industrial tangible personal property" includes personal property, such as goods, chattels and other articles of value that are capable of manual or physical possession, and machinery and equipment that are:

(A) Used essentially and principally for the commercial or industrial purposes or processes for which they are intended; and

(B) If affixed or attached to real property, can be detached without material injury to such real property;

T.C.A. § 67-5-501(2) (2006). Thus, even if the greenhouses are "affixed or attached" to the underlying real property, they are nevertheless classified as personal property under this provision if they can be detached without material injury to the real property. Holtkamp asserts that detachment of the greenhouses in this case is less likely to materially injure the underlying real property than detachment of the pipelines found to be personal property in ***ANR Pipeline Co.***[15]

We must respectfully disagree. The seven greenhouses encompass enormous square footage, 436,000 square feet or almost a third of the acreage of Holtkamp's entire 31-acre tract.[16] The frame of the greenhouses consists of metal poles, with each bolted to a concrete post that extends two feet into the ground. The ground underneath the greenhouses is honeycombed with concrete of varying thickness and configuration, with footings, concrete slab flooring and walkways throughout. A subterranean concrete tunnel connects the greenhouses to each other and various utilities connect the greenhouses to the realty. The trial court observed that "moving the greenhouses would not be easy," and we agree. Under these facts and circumstances, we must conclude that the greenhouses do not fit within the exception for "commercial and industrial tangible personal property," and thus should be classified as "real property."

Alteration of Trial Court Order

Holtkamp argues that the trial court erred or abused its discretion in modifying its final order in response to Holtkamp's motion to alter or amend the judgment. Holtkamp asserts that the trial court should have simply granted a judgment in favor of Holtkamp, because Holtkamp argued persuasively in its motion that a "tie" in the evidence should result in a judgment for the taxpayer.

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[15]The ***ANR Pipeline Co.*** court did not consider the issue of whether the pipeline fit within the exception for "commercial and industrial tangible personal property."

[16]Photographs of the greenhouses in the appellate record confirm their considerable size.

"The courts have almost universally recognized that a judgment remains within the control of the trial judge until it has been on file for thirty days." ***Arendale v. Arendale***, No. W2005-02755-COA-R3-CV, 2008 WL 481943, at *1 (Tenn. Ct. App. Feb. 22, 2008), *perm. app. denied* May 19, 2008. Moreover, Rule 59.05 permits a trial court to alter or amend a judgment on its own initiative within thirty days of entry. TENN. R. CIV. P. 59.05. When a trial court alters or amends a prior order, the subsequent order supercedes the prior. ***See Edwards v. Blanco Lumber Co., Inc.***, 101 S.W.3d 69, 75 (Tenn. Ct. App. 2002). We find that Holtkamp's argument is without merit, and any issues predicated on the language stricken from the trial court's initial order are misplaced.

This holding pretermits all other issues raised on appeal.

CONCLUSION

The decision of the trial court is affirmed. The costs of this appeal are taxed to the Appellant Hermann Holtkamp Greenhouses, Inc., and its surety, for which execution may issue if necessary.

HOLLY M. KIRBY, JUDGE

707 S.W.2d 504
Supreme Court of Tennessee,
at Knoxville.

MAGNAVOX CONSUMER ELECTRONICS, Plaintiff-Appellee,
v.
John K. KING, Commissioner of Revenue for the State of Tennessee, et al., Defendants-Appellants.

Feb. 24, 1986.

Corporation leasing trucks from lessor outside of state sued to contest Department of Revenue's assessment of use tax against lease payments. The Circuit Court, Greene County, John K. Wilson, J., affirmed that payments were subject to use tax but reduced tax by amount representing fuel expenditure, which is exempt from use tax. Commissioner of Revenue appealed. The Supreme Court, Herschel P. Franks, Special Justice, held that: (1) lease payments for trucks were subject to use tax; (2) portion of lease payments representing fuel expenditure was also subject to use tax; and (3) 500,000 gallon fuel tank imported into state and installed on lessee's property was not subject to use tax on tangible personal property.

Affirmed as modified.

West Headnotes (3)

[1] **Taxation**
Place of Transfer or Use

Payments for trucks leased outside state, based and serviced within state and operated by in-state lessee's employees were subject to use tax as "tangible personal property" imported and "used" by dealer. T.C.A. §§ 67–6–102(4)(F), (14)(A), (18), 67–6–201, 67–6–210.

5 Cases that cite this headnote

[2] **Taxation**
Rate and Amount of Tax

Entire lease payment by in-state lessee of trucks to out-of-state lessor was subject to use tax despite argument that portion of lease charges represented fuel costs and T.C.A. § 67–6–329(a)(1) exempts motor vehicle fuel from use taxation, where no double taxation resulted in that out-of-state a lessor paid gas tax. T.C.A. § 67–6–210.

5 Cases that cite this headnote

[3] **Taxation**
Goods or Property Involved

Five hundred thousand gallon fuel tank mounted on concrete pad and secured by metal rods not secured to tank was fixture, not "tangible personal property" subject to use tax under T.C.A. § 67–6–210.

5 Cases that cite this headnote

Attorneys and Law Firms

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OPINION

HERSCHEL P. FRANKS, Special Justice.

The principal issue presented by this appeal is whether payments made by plaintiff-lessee pursuant to a vehicle lease entered between plaintiff and the lessor in the State of Indiana are subject to use tax pursuant to T.C.A., § 67–6–210. [1]

On August 8, 1969, plaintiff entered an agreement with Fort Wayne Leasing Company, an Indiana corporation, leasing a fleet of trucks. The lease was executed in Indiana and plaintiff took possession of the ***505** trucks in that state. The agreement provided plaintiff would pay a fixed rental for each truck plus a fixed rate per mile for the mileage the trucks were operated by the lessee. The lessor,

under the terms of the lease, was required to furnish all fuel for the operation of the trucks. The trucks were based in Greeneville, Tennessee and bore the Magnavox logo and were utilized to transport plaintiff's products throughout the United States. The parties stipulated that the trucks were actually operated in states other than the State of Tennessee 82.7 per cent of the time.

Following an audit for the period of June 1, 1976 through May 31, 1978, the Department of Revenue assessed a tax deficiency against the plaintiff of $128,913.11 plus $32,229.51 in penalties and $13,484.06 in interest, for a total of $174,626.68.[2] The amount was paid under protest and the instant suit was filed to recover the payment of taxes.

The trial court determined the payments under the lease were subject to the use tax but reduced the amount of tax owing since 34 per cent of the payments represented fuel consumption and T.C.A., § 67–6–329 exempts fuel from the use tax.[3]

Plaintiff contends no part of the lease payments is subject to use tax and bases its argument primarily on T.C.A., § 67–6–201,[4] which it insists limits taxation of leases to those entered within this state. While T.C.A., §§ 67–6–201 and 67–6–204[5], read together, evidence the legislature's intent to tax proceeds of leases entered or executed within this state, and since the leases involved were executed in Indiana, these sections are not controlling.

[1] The commissioner, however, imposed the tax deficiency on the authority of T.C.A., § 67–6–210. This section sets forth three elements necessary to the imposition of the use tax: (1) an "importation" of "tangible personal property", (2) by a dealer and (3) use of the property. The leasing of the trucks and bringing them into this state constituted an importation from another state. Moreover, plaintiff is a "dealer" under this section, since T.C.A., § 67–6–102(4)(F) expressly defines a "dealer" as every person who "[i]s the lessee or renter of tangible personal property ... and who pays to the owner of such property a consideration for the use or possession of such property without acquiring title thereto...." The issue thus becomes whether the plaintiff "used" the property within the meaning of T.C.A., § 67–6–210(a).

T.C.A., § 67–6–102(18) defines "use" as "the exercise of any right or power over tangible personal property incident to the ownership thereof...."

Tennessee's statutory taxation scheme indicates a legislative intent to impose the use tax on lessees, including those who lease property outside of this state for use in Tennessee. T.C.A., § 67–6–201 declares as a "taxable privilege" the use or consumption "in this state [of] any item of tangible personal property as defined in this chapter ..." and "sale" is defined as ***506** "any transfer of title or possession ... lease or rental". T.C.A., § 67–6–102(14)(A).

As this court observed in *Woods v. M.J. Kelley Co.*, 592 S.W.2d 567 (Tenn.1980), "[t]he taxable privilege of use extends to the 'utilization of property for profit-making purposes.' " *Id.*, at 571. The statutory definition of "use" provides, however, that only those uses "incident to the ownership" of the tangible personalty will be taxable. In construing substantially the same language, the Rhode Island Supreme Court in *Great Lakes Dredge and Dock Co. v. Norberg*, 117 R.I. 600, 369 A.2d 1101 (1977), said the phrase "does not require total or even substantial control; the exercise of any 'right or power' over tangible property constitutes a taxable 'use' of that property." 369 A.2d at 1104. *But cf. Chrysler Corp. v. City of New Orleans*, 238 La. 123, 114 So.2d 579 (1959) ("The rights of use and possession which Chrysler had were derived from its contract of lease ... and were not incident to ownership....") 114 So.2d 586.

In the instant case, the trucks were based and serviced at Greeneville, Tennessee and operated by plaintiff's employees. The lease agreement provides "customer shall have the right to operate and control said vehicles in such manner as though ownership and title in said vehicles was vested exclusively with said customer." Plaintiff exercised rights in the leased vehicles normally "incident to ownership" save the acquisition of title. Plaintiff's use of the trucks under the lease falls within the ambit of T.C.A., § 67–6–210.

[2] The commissioner contends the "entire lease payment is subject to the use tax", and the trial court improperly ordered a refund of that portion of the use tax attributable to the cost of fuel for the operation of the trucks.

The lease agreement provides the owner of the trucks pays the fuel cost but plaintiff argues an estimated 34 per cent of the total lease charges per mile represents fuel costs and under the "exemptions" section of the sale and use tax statutes, the use or consumption of "motor vehicle fuel" "upon which a privilege tax per gallon is paid, and not refunded," is exempt from the sales or use tax. T.C.A., § 67–6–329(1).

T.C.A., § 67–6–210 states, for purposes of use and sales tax, the use of imported tangible personal property "shall ... be equivalent to a sale at retail, and the tax shall thereupon immediately levy...." In *Central Transport Co. v. Atkins,* 202 Tenn. 512, 305 S.W.2d 940 (1957), involving a similarly structured lease where the sales rather than the use tax was held applicable, the court stated the agreed rental price constituted the base for tax purposes. In *Saverio v. Carson,* 186 Tenn. 166, 208 S.W.2d 1018 (1948), this court, applying the sales tax to the gross rental, held the tax must be paid on the final rental price and any attempted separation of charge for services included in the gross rental price would result in confusion in administration of the tax Act. Those cases are relevant and applicable to the issue since T.C.A., § 67–6–210 equates "use" with "sale at retail". Moreover, there is no double taxation since the gas tax was paid by the lessor who, under the terms of the lease, was required to furnish the fuel and the use tax imposed by the commissioner is upon the plaintiff-lessee. We modify the judgment of the trial court to the extent that it allowed a credit for the fuel consumption against the gross proceeds of the lease, by disallowing credit.

[3] Finally, the commissioner contends, contrary to the trial court's determination, the fuel tank imported into this state by the plaintiff was tangible personal property subject to the use tax under T.C.A., § 67–6–210. The tank, with a capacity of 500,000 gallons, was installed on plaintiff's property by Bethlehem Steel in 1977.

The evidence establishes the fuel tank is mounted on a concrete pad and secured by four metal rods which "protrude out of the concrete up the side of the tank to keep it from shifting." The tank is not secured to the metal standards because expansion or contraction of the tank "would literally rip ***507** the bolts out of the concrete." A witness conceded that while the tank could be moved, "it would have to be moved as if it were a building", and he further explained that the tank was connected to a building by a steel pipe.

The commissioner relies heavily upon *Harry J. Whelchel Co. v. King,* 610 S.W.2d 710 (Tenn.1980), for the proposition that the tank in the instant case constitutes "tangible personal property". *Whelchel* held grain bins erected on a farm did not become real property. However, the grain bins were easily disassembled and of far less capacity than the fuel tank involved here. Moreover, there was no indication that the bins were attached to any other structure or that they were intended to be permanent, which are factors not present with respect to plaintiff's fuel tank.

The test for determining whether a chattel is a fixture was stated in *Hickman v. Booth,* 131 Tenn. 32, 173 S.W. 438 (1914):

> In Tennessee only those chattels are fixtures which are so attached to the freehold that, from the intention of the parties and the uses to which they are put, they are presumed to be permanently annexed, or a removal thereof would cause serious injury to the freehold. [Citations omitted.] The usual test is said to be the intention with which a chattel is connected with realty. If it is intended to be removable at the pleasure of the owner, it is not a fixture.
>
> *Id.,* at 34.

The evidence does not preponderate against the trial judge's determination that the tank was a fixture and thus not a taxable item. The tank is attached to a permanent structure and securely anchored to the freehold. Its sheer size, as evidenced from the exhibits, indicates that it was not intended to be "removable at the pleasure of the owner."

We affirm the judgment of the trial court as modified herein and remand for entry of judgment. The cost incident to the appeal is assessed one-half to each party.

BROCK, C.J., and COOPER, FONES and HARBISON, JJ., concur.

All Citations

707 S.W.2d 504

Footnotes

1 The applicable statutory provision at the time of assessment by the state provided:

> T.C.A., § 67–6–210. *Use of property imported by dealer—Exemptions.* (a) On all tangible personal property imported, or caused to be imported from other states or foreign country, and used by him, the "dealer" as defined in § 67–6–102(4), shall pay the tax imposed by this chapter on all articles of tangible personal property so imported and used, the same as if the articles had been sold at retail for use or consumption in this state. For the purposes of this chapter, the use, or consumption, or distribution, or storage to be used or consumed in this state of tangible personal property shall each be equivalent to a sale at retail, and the tax shall thereupon immediately levy and be collected in the manner provided herein, provided there shall be no duplication of the tax in any event.

2 A part of the tax liability arose from another transaction, which involved the plaintiff's purchase in 1977 of an oil storage tank from Buffalo Tank Division of Bethlehem Steel Corporation.

3 § 67–6–329. *Miscellaneous exemptions.*—The sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in this state of the following tangible personal property is specifically exempted from the tax imposed by this chapter:

> (1) Gasoline as defined by statute in Tennessee, upon which a privilege tax per gallon is paid, and not refunded, ...
> (2) Motor vehicle fuel now taxed per gallon by part 8, chapter 3 of this title;

4 The section provides, in pertinent part:

> It is declared to be the legislative intent that every person is exercising a taxable privilege ... who uses or consumes in this state any item or article of tangible personal property as defined in this chapter, ... or who leases or rents such property, either as lessor or lessee, within the state of Tennessee.

5 T.C.A., § 67–6–204. *Lease or rental of property.*—It is declared to be the intention of this chapter to impose a tax on the gross proceeds of all leases and rentals of tangible personal property in this state where the lease or rental is a part of the regularly established business, or the same is incidental or germane thereto....

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