

BEFORE THE TENNESSEE
STATE BOARD OF EQUALIZATION

IN RE: Putnam County Back Assessments/Reassessments) Putnam County
Appeals Represented by Evans & Petree, PC)
)
Tax Years 2009, 2010, 2011 and 2012)

INITIAL DECISION & ORDER PARTIALLY GRANTING TAXPAYERS' MOTION TO
VOID CERTAIN BACK ASSESSMENTS/REASSESSMENTS

Pursuant to a May 16, 2014 Order (the "Order"), the undersigned administrative judge determined that certain original assessments were not "grossly inadequate" within the meaning of Tenn. Code Ann. § 67-1-1002(a)(3) in relation to deemed actual cash value upon reassessment. Accordingly, the administrative judge opined the taxing officials bore the burden of establishing that the taxpayer's or the taxpayer's agent's bad acts or omissions justified each back assessment/reassessment.

The administrative judge further opined that due process requires that taxing officials have a specific, reasonable basis for a back assessment/reassessment *prior to* initiating it.¹ The administrative judge observed that if the original real property assessment was not "grossly inadequate" within the meaning of Tenn. Code Ann. § 67-1-1002(a)(3), "excessive depreciation," by itself, states a facially deficient basis for initiating a back assessment/reassessment.

¹ As the taxpayers later pointed out in their memorandum in support of their motion,

Allowing the Division and the Assessor to [initiate a back assessment/reassessment on a purportedly undervalued property in absence of any information suggesting wrongdoing on the part of the taxpayer] is in violation of the governing statutes... and would in effect give them unfettered authority that is not contemplated by the statutes... and would allow the Division and the Assessor to violate the Taxpayers' constitutional guarantees of due process."

Noting recent administrative precedent ordering the survival of an otherwise valid back assessment/reassessment where a technical notice deficiency resulted in no prejudice to the taxpayer's appeal rights,² the administrative judge opined that alone, the technical notice deficiencies in the present cases do not constitute grounds to void the back assessments/reassessments. Accordingly, the administrative judge ordered the taxing officials to plead with specificity the bases for the back assessments/reassessments as of the times they were initiated.

The administrative judge hereby incorporates by reference the reasoning and analysis of the May 16, 2014 order as well as the administrative judge's June 25, 2014 order denying the taxing officials' request to modify the May 16, 2014. The administrative judge also notes that despite the administrative judge's express invitation to do so, the taxing officials did not apply for interlocutory review of the May 16, 2014 and June 25, 2014 orders.

In response to the administrative judge's May 16, 2014 order, the Division of Property Assessments (the "Division") and Putnam County filed pleadings. On August 21, 2014, certain taxpayers filed a motion to void the back assessments/reassessments against them (the "Motion").³ The Division and Putnam County filed motions in opposition to the taxpayers' Motion. Finally, on September 25, 2014, the administrative judge heard oral argument on the

² *Janice M. Holder* (Final Decision & Order, Shelby County, Tax Year 2008, decided August 17, 2012).

³ Due to the peculiar procedural stance necessitated by the Order's demand for the taxing officials to file initial pleadings akin to complaints in order to explain the taxing officials' specific bases for the back assessments/reassessments at the times they were initiated, the taxpayers understandably styled their motion a "Motion to Dismiss." Accordingly, the taxpayers have argued their motion to void certain back assessments/reassessments under the standards of Tenn. R. Civ. P. 12.02(6). Even it were technically more appropriate to treat the taxpayers' motion as a motion for summary judgment, application of the standard for a motion to dismiss for failure to state a claim upon which relief can be granted results in no prejudice to the non-moving party, since all the comprehensive pleadings of the specific factual bases for the initiations of the back assessments/reassessments that the taxing officials were ordered to provide well in advance are presumed true for the purposes of disposing of the taxpayers' motion.

taxpayers' Motion in Nashville. Taxpayer counsel Andrea McKinnon, Esq.; Division counsel Robert T. Lee, Esq.; and Putnam County counsel Jeffrey G. Jones, Esq. participated.

In substance, the Division asserted that the Federal Bureau of Investigation ("FBI") requested the Division to review the tax appraisal values of properties owned by persons of interest in an ongoing FBI criminal investigation. The Division pled that during the course of its review, the Division observed assessment irregularities with respect to the subject properties. The Division asserted that the Division found "extreme amounts" of physical, functional, and/or economic obsolescence had been applied to the property record cards for the properties of certain taxpayers in a manner inconsistent with similarly-situated properties in Putnam County and that the Division could observe no signs of physical obsolescence on many of the subject properties.

The Division's pleadings included the understandable observation that the taxing officials had to limit their investigative efforts regarding specific actions of specific taxpayers in order to avoid interfering with the FBI criminal investigation. The Division also noted previously-acquired information regarding irregularities related to a taxpayer not subject to the taxpayers' current motion to void certain back assessments/reassessments.⁴

The Division's pleadings did point out specific previously-acquired information regarding taxpayer Shirley Gaw, the owner of several of the properties subject to the taxpayers' motion and whose name ostensibly suggests a familial relationship with or ownership interest in

⁴ According to the Division, former assessor Chaffin tendered property tax payment to the trustee on behalf of taxpayer Charles Soard. The Division noted "that it is very unusual for an assessor to handle money on behalf of a taxpayer and for the county." Additionally, the Division claimed that one of taxpayer Soard's properties was given a reduced assessment level via an incorrect residential subclassification, although the Division did not provide an explanation of how the back assessment/reassessment statutes apply to subclassification issues. Finally, the Division pled that an "override" function in the computer assessment system, "intended" for the purpose of implementing actual appeal results, was misused by former assessor Chaffin to accomplish value reductions in some cases. However, according to Exhibit C, this also appears to have occurred only with respect to Charles Soard. The administrative judge does not consider the taxing officials' information and belief that former assessor Chaffin misused the override function to be a reasonable circumstantial indication of wrongdoing by taxpayers or agents of taxpayers not alleged to have benefit from such purported misuse.

several other owners of properties subject to the taxpayers' motion. Item 13 of the Division's pleadings detailed the previously-acquired information⁵ regarding taxpayer Gaw as follows:

The Division also reviewed [former property assessor] Chaffin's home... and determined she had purchased the property on January 23, 2007 from Shirley Gaw... The sworn consideration on the warranty deed is \$150,000 and the property was appraised on the Putnam County assessment records for \$176,900. Gaw took a personal deed of trust on the property for \$85,000... Gaw released the deed of trust on February 9, 2009... The Division noted that properties owned by Gaw had been a part of the review and appeared to have been given favorable assessments.

Putnam County's pleadings reiterated the Division's points and stated that the assessor's office relied on information, instructions, and assistance from the Division at the time of the back assessments/reassessments. Putnam County also made a legal distinction between actual fraud and "connivance" in an effort to argue that Rule 9.02 of the Tennessee Rules of Civil Procedure should not apply. Finally, Putnam County urged that "the situation begs for a trial on the merits as opposed to a procedural dismissal."

Upon review of the file, the administrative judge concludes that the taxing officials have failed to plead sufficient specific bases for the initiations of the back assessments/reassessments against properties subject to the motion and owned by taxpayers whose names bear no obvious relationship to taxpayer Shirley Gaw. Assuming, for the purpose of disposing of the current motion, that all facts pled by the taxing officials are true and that the assessment irregularities pled for "an overwhelming number" of the appeals were present with respect to the original assessments of these particular properties, the taxing officials' pleadings reveal no specific

⁵ In item 26 of the Division's pleadings, the Division provided subsequently-acquired information related to meetings involving former property assessor Chaffin and certain taxpayers with the last name Gaw. The administrative judge does not consider this additional information about taxpayers with the last name Gaw to be part of the taxing officials' purported bases for the initiation of the back assessments/reassessments because the pleadings indicate it was acquired after the back assessments/reassessments were made.

factual basis to support wrongdoing by these particular taxpayers or their agents. Accordingly, these back assessments/reassessments must be voided as having been defectively initiated.

Additionally, the administrative judge finds that even with respect to properties owned or ostensibly controlled by the Gaws, litigating whether malfeasance justifying back assessment/reassessment occurred in a case where the original assessment represents 95% or more of the deemed actual cash value of the real property would be futile. Countless prior State Board decisions emphasize that where contended real property values differ by 5% or less, the contentions are mutually supportive.⁶ Regardless of the *reason* for a purportedly improper real property assessment reduction, the administrative judge can imagine no plausible scenario in which the State Board would recognize an immaterial reduction to a mutually supportive contention of real property value to be the accomplishment of an *effect* intended to be remedied by the back assessment/reassessment statutes. As the State Board's precedents recognize, the subjectivity inherent to the art of the appraisal of real property prevents authoritative affirmative resolution of disagreements over minute differences in value.

On the other hand, the administrative judge finds that the taxing officials have pled sufficient bases for the initiations of most of the back assessments/reassessments against the remaining properties subject to the motion and ostensibly owned or controlled by the Gaws. The taxing officials have pled that former assessor Chaffin made unjustified and irregular assessment value reductions for the subject properties. The taxing officials have also identified taxpayer Shirley Gaw's release of his \$85,000 personal deed of trust against former assessor Chaffin's home two years after former assessor Chaffin purchased the home from taxpayer Shirley Gaw as reasonable support for a suspicion of a collusive and/or quid pro quo arrangement with former

⁶ See, e.g., *Calvin E. & Mildred G. Thompson* (Initial Decision & Order, Knox County, Tax Year 2013, issued March 7, 2014).

assessor Chaffin. The administrative judge cannot ignore the likelihood that a competent taxing official would have reasonably suspected family relationships between the Gaws who received purportedly irregular assessment reductions and reasonably suspected that such reductions were potential consequences of the purportedly improper arrangement between taxpayer Shirley Gaw and former assessor Chaffin.

Unless the taxpayers wish to challenge whether the taxing officials *believed* to be true the information regarding the assessment irregularities and the release of the personal deed of trust or whether the taxing officials *suspected* family relationships between the Gaws and potential receipt of benefits as a result of the purportedly improper arrangement between taxpayer Shirley Gaw and former assessor Chaffin, the administrative judge is satisfied that the back assessments/reassessments against properties ostensibly owned or controlled by the Gaws should not be voided solely based on due process defects in the initiations of the back assessments/reassessments.

Of course, it remains to be seen what actual findings properly introduced and admitted evidence may ultimately support regarding the legality of the back assessments/reassessments in the next stage of the proceedings. Discovery and a hearing will likely be needed to resolve one or more of the following factual issues:

- (1) Whether taxpayer Shirley Gaw's release of his \$85,000 personal deed of trust against former assessor Chaffin's home two years after former assessor Chaffin purchased the home from taxpayer Shirley Gaw was part of a collusive and/or quid pro quo arrangement with former assessor Chaffin;
- (2) Whether the ostensible relationships between taxpayer Shirley Gaw and similarly-named taxpayers are borne out in fact;
- (3) Whether owners related to or controlled by taxpayer Shirley Gaw benefited from the allegedly improper transaction between taxpayer Shirley Gaw and former assessor Chaffin; and

- (4) Whether other subsequently-obtained or discovered evidence supports findings that bad acts or omissions requisite to valid back assessments/reassessments against particular property owners occurred.

The administrative judge must again stress that *this order is not a determination of whether any particular taxpayer actually committed any wrongdoing*. It remains the taxing officials' burden to establish the truth of the assertions that the Gaws, entities ostensibly controlled by the Gaws, and/or their agents committed bad acts or omissions justifying the remaining back assessments/reassessments that have survived the taxpayers' motion.

It is therefore ORDERED:

- (1) The taxpayers' motion is partially granted, and the back assessments/reassessments associated with the appeals identified in attached Exhibit A are void.
- (2) With respect to the remaining appeals subject to the taxpayers' motion, the taxpayers' motion will be deemed denied unless the taxpayers, within thirty (30) days of the date of this order, request discovery and a hearing *limited to the sole issue of whether the taxing officials believed to be true the information regarding the assessment irregularities and the release of the personal deed of trust and whether the taxing officials suspected relationships between the Gaws and/or similarly named entities and receipt of benefits from the purportedly improper transaction*.

Waiver with respect to what the taxing officials might have actually believed or suspected would only apply in the context of this order and would in no way be deemed an admission of the accuracy of such beliefs or suspicions or the existence of such beliefs or suspicions in future proceedings.

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:

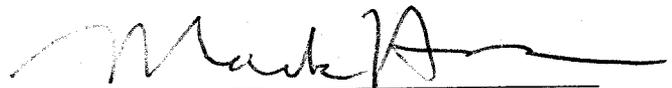
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of

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 5th day of December 2014.



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:

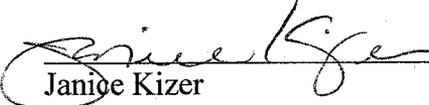
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This the 5th day of December 2014.



Janice Kizer

Department of State
Administrative Procedures Division

EXHIBIT A

<u>Parcel</u>	<u>Taxpayer</u>	<u>Street Address</u>	<u>Tax Year</u>	<u>Appeal No.</u>
053O E 007.04	Gaw Jerry C Etux Brenda J	St James West 214	2012	82592
053O E 007.05	Gaw Jerry C Etux Brenda J	St James West 212	2012	82593
052 012.00	Gaw Shirley Etux Vera Ann	Buck Mountain Road	2009	81073
052 012.00	Gaw Shirley Etux Vera Ann	Buck Mountain Road	2010	81074
053O E 008.04	Gaw Jerry C Etux Brenda J	St James West 208	2012	82598
053O E 008.05	Gaw Jerry C Etux Brenda J	St James West 210	2012	82599
041C G 005.00	Huskins Jerry Etux Pat	Main Street West 426	2010	85760
040G B 007.01	Gentry Brent	Willow Avenue North 1500	2011	85769
040G B 007.01	Gentry Brent	Willow Avenue North 1500	2012	85782
040G B 007.01	Gentry Brent	Willow Avenue North 1500	2010	85753
040G B 010.00	Gentry Brent	Carolina Avenue 1301	2011	85770
040G B 010.00	Gentry Brent	Carolina Avenue 1301	2012	85781
040G B 010.00	Gentry Brent	Carolina Avenue 1301	2010	85754
053K L 024.08	Market Square Inc	Lowe Avenue South 420	2009	80598
053K L 024.08	Market Square Inc	Lowe Avenue South 420	2010	80599
053K L 024.08	Market Square Inc	Lowe Avenue South 420	2011	80600
053K L 024.08	Market Square Inc	Lowe Avenue South 420	2012	82549
066J B 002.00	G and H Partnership	Interstate Drive 1424	2009	80385
066J B 002.00	G and H Partnership	Interstate Drive 1424	2010	80386
039M A 001.00	Bernhardt Aaron L Etux Jill K	Ellis Avenue 350 360 370	2012	85796
039M A 001.00	Bernhardt LLC	Ellis Avenue 350 360 370	2011	85767
066J B 002.00	G and H Partnership	Interstate Drive 1424	2011	80387
066J B 002.00	G and H Partnership	Interstate Drive 1424	2012	82628
040G B 028.00	Fountain Court Inc	Willow Avenue North 1895	2009	80572
040G B 028.00	Fountain Court Inc	Willow Avenue North 1895	2010	80573
053B N 003.00	Fountain Court Inc	Willow Avenue North 303	2011	80571
053B N 003.00	Fountain Court Inc	Willow Avenue North 303	2012	82616
040G B 028.00	Fountain Court Inc	Willow Avenue North 1895	2011	80574
040G C 028.00	Fountain Court Inc	Willow Avenue North 1895	2012	82633
039M A 002.00	Bernhardt Aaron L Etux Jill K	Ellis Avenue 402	2012	85795
039M A 002.00	Bernhardt LLC	Ellis Avenue 402	2011	85768
066C A 035.00	McNabb Garry	Jefferson Avenue South 600	2009	80622
066C A 035.00	McNabb Garry	Jefferson Avenue South 600	2010	80623
066J B 001.01	G and H Partnership	Interstate Drive 1430	2009	80349
066J B 001.01	G and H Partnership	Interstate Drive 1430	2010	80350
039M A 002.00	Bernhardt LLC	Ellis Avenue 402	2010	85752
053B N 003.00	Fountain Court Inc	Willow Avenue North 303	2009	80569
053B N 003.00	Fountain Court Inc	Willow Avenue North 303	2010	80570
066J B 001.01	G and H Partnership	Interstate Drive 1430	2011	80351
066J B 001.01	G and H Partnership	Interstate Drive 1430	2012	82632
041C G 005.00	Huskins Jerry Etux Pat	Main Street West 426	2011	85775
041C G 005.00	Huskins Jerry Etux Pat	Main Street West 426	2012	85791
040G A 008.01	G and H Partnership	Carolina Avenue 1358	2009	80341

<u>Parcel</u>	<u>Taxpayer</u>	<u>Street Address</u>	<u>Tax Year</u>	<u>Appeal No.</u>
040G A 008.01	G and H Partnership	Carolina Avenue 1358	2010	80342
040H C 001.00	Lowhorn Daniel J Etux Rachael	Blake Circle 409	2011	85773
040H C 001.00	Lowhorn Daniel J Etux Rachael	Blake Circle 409	2012	85787
027 131.00 001	Family Tree Properties	Dodson Branch Rd 2505	2009	80575
040G A 008.01	G and H Partnership	Carolina Avenue 1358	2011	80343
040G A 008.01	G and H Partnership	Carolina Avenue 1358	2012	82630
040F J 019.00	G and H Partnership	Sixteenth Street East 240	2009	80336
040F J 019.00	G and H Partnership	Sixteenth Street East 240	2010	80337
040H C 001.00	Lowhorn Daniel J Etux Rachael	Blake Circle 409	2010	85759
053H B 017.09	Huskins Jerry	Broad Street West 370	2011	85777
053H B 017.09	Huskins Jerry	Broad Street West 370	2012	85793
053B G 008.00	G and H Partnership	First Street East 40	2009	80333
053B G 008.00	G and H Partnership	First Street East 40	2010	80334
053B G 008.00	G and H Partnership	First Street East 40	2011	80335
053B G 008.00	G and H Partnership	First Street East 40	2012	82629
053H B 017.09	Huskins Jerry	Broad Street West 370	2010	85762
053K L 024.11	Market Square Inc	Lowe Avenue South 370	2009	80601
053K L 024.11	Market Square Inc	Lowe Avenue South 370	2010	80602
053I E 041.00	Huskins Jerry Etux Pat	Stevens Street West 640	2011	85778
053I E 041.00	Huskins Jerry Etux Pat	Stevens Street West 640	2012	85794
039 038.23	Stubblefield Mike	Benton Young Road 1641	2011	85766
039 038.23	Stubblefield Mike	Benton Young Road 1641	2012	85785
053F E 008.00	Liberty Square Inc	Broad Street East 410-417	2009	80595
053F E 008.00	Liberty Square Inc	Broad Street East 410-417	2010	80596
027 131.00 001	Family Tree Properties	Dodson Branch Rd 2505	2010	80576
053K L 024.11	Market Square Inc	Lowe Avenue South 370	2011	80605
053K L 024.11	Market Square Inc	Lowe Avenue South 370	2012	82550
053L C 017.00	McNabb Garry	Spring Street East 800	2009	80616
053L C 017.00	McNabb Garry	Spring Street East 800	2010	80617
053L C 017.03	McNabb Garry	Spring Street East 800	2009	80619
053L C 017.03	McNabb Garry	Spring Street East 800	2010	80621
027 131.00 001	Family Tree Properties	Dodson Branch Rd 2505	2011	80577
027 131.00 001	Family Tree Properties	Dodson Branch Rd 2505	2012	82544
053F E 008.00	Liberty Square Inc	Broad Street East 410-417	2011	80597
053F E 008.00	Liberty Square Inc	Broad Street East 410 417	2012	82634
053L C 017.00	McNabb Garry	Spring Street East 800	2011	80618
053L C 017.00	McNabb Garry	Spring Street East 800	2012	82543
040E B 017.09	G and H Partnership	Bradley Drive 769	2009	80338
040E B 017.09	G and H Partnership	Bradley Drive 769	2010	80339
039 038.23	Stubblefield Mike	Benton Young Road 1641	2010	85751
040E B 017.09	G and H Partnership	Bradley Drive 769	2011	80340
040E B 017.09	G and H Partnership	Bradley Drive 769	2012	82631