TENNESSEE COMPTROLLER OF THE TREASURY

JUSTIN P. WILSON
Comptroller

JASON E. MUMPOWER
Chief of Staff

BULLETIN NUMBER 2018-01

TO: Assessors of Property

FROM: Stephanie Maxwell, General Counsel

DATE: July 24, 2018

RE: BACK ASSESSMENT AND REASSESSMENT OF PERSONAL PROPERTY

Under Tenn. Code Ann. § 67-1-1001(a), a "back assessment" is appropriate where property is omitted from taxation, e.g. property for which cost was not reported in the schedule, and which was not included in a claim of nonstandard value. A "reassessment" is appropriate where an assessment is inadequate due to "connivance, fraud, deception, misrepresentation, misstatement, or omission of the property owner or the owner's agent". In a personal property reporting context, a reassessment would be in order where less than full cost was reported (a misstatement), or where a claim for nonstandard value was supported by a false appraisal (fraud or misrepresentation) or by patently inadequate documentation which was accepted by the assessor to achieve a predetermined result (connivance or collusion). Connivance will not simply be presumed from evidence of the gross inadequacy of an assessment of which an owner "should have" been aware. Garner v. Rhea Realty Corp., 494 S.W.2d 783, 786 (Tenn. App. 1971).

Tenn. Code Ann. § 67-1-1005(b) outlines the method of accomplishing back assessments and reassessments. Back assessments or reassessments will be initiated by certification of the assessor of property to the appropriate collecting officials. The certification must identify the property, state the basis of the back assessment or reassessment, state the tax year(s), and provide the amount of the additional assessment for which the owner or taxpayer is responsible. The assessor must also send a copy of the certification to the taxpayer. The taxpayer may appeal the back assessment or reassessment directly to the State Board of Equalization within 60 days from the date the assessor sent the copy of the certification.

Tenn. Code Ann. § 67-1-1005(a) provides that a back assessment or reassessment must be initiated prior to September 1 of the year following the tax year for which the original assessment was made. There are three exceptions to the timing requirement, where the back assessment or reassessment results from: (1) failure of the taxpayer to file a personal property reporting schedule as required by law; (2) actual fraud or fraudulent misrepresentation by the property owner or the owner's agent, or (3) collusion between the owner or owner's agent and the assessor. In these cases, the complaint must be filed on or before 3 years from September 1 of the tax year for which the original assessment was made.

Tenn. Code Ann. § 67-1-1005(d) suspends the deadline for initiating a back assessment or reassessment once a notice of tangible personal property audit has been issued by the assessor. This section allows the personal property audit to be completed before the time to initiate the back assessment or reassessment expires. However, assessors should not issue blanket audit notices with the intent to toll the running of the deadline.

Several assessors have asked if the decision to initiate a back assessment or reassessment is discretionary. If the assessor has reason to believe property has been underassessed or unassessed, the assessor must initiate the appropriate proceedings to assess the property correctly. **Tenn. Code Ann. § 67-5-306(b) makes it a Class C misdemeanor for an assessor or deputy assessor to willfully or knowingly permit or allow any property subject to taxation to be or remain unassessed or omitted from assessment, or to willfully or knowingly assess any property at less than the percentage of value required by law. The assessor has no discretion in deciding whether to initiate a back assessment or reassessment once the additional liability has been established. If an audit yields a material finding of additional tax liability, neither the assessor nor the trustee may ignore it.**

The Division of Property Assessments is responsible to monitor assessors to make sure all property is assessed properly. Upon a determination that an assessor or deputy assessor has willfully failed, refused or neglected to perform, obey and observe any duties or requirements of the assessor's office, the Division is required to notify the assessor or deputy assessor of the specific instances the assessor or deputy assessor has failed to perform the duties or requirements of the office. If the Director of the Division of Property Assessments believes that the assessor or deputy assessor has not made a satisfactory effort to perform the duties or requirements of the office 15 days after sending such notice, the Director shall request the State Board of Equalization to conduct a hearing on the issue under Tenn. Code Ann. § 67-5-305. The Board has the authority to order the salary of the assessor or deputy assessor be withheld until it is determined that a satisfactory effort to perform the duties has been made by the assessor or deputy assessor.

An assessor does not have discretion in initiating a back assessment or reassessment if the assessor or deputy assessor has reason to believe that personal property has been unreported or underreported. The assessor should remember back assessments or reassessments involving fraud, connivance, deception, misrepresentation, misstatement, omission of the property owner or owner's agent or failure to file a reporting schedule accrue interest and penalty back to the original delinquency date and are subject to an additional penalty not to exceed 15% if imposed by the state board.

Attached to this Bulletin is a copy of Bulletin 2018-02 on the same topic, which is being distributed to County Trustees and Municipal Tax Collectors.

Enclosure

TENNESSEE COMPTROLLER OF THE TREASURY

JUSTIN P. WILSON
Comptroller

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BULLETIN NUMBER 2018-02

TO: County Trustees
Municipal Tax Collectors

FROM: Stephanie Maxwell, General Counsel

DATE: July 24, 2018

RE: BACK ASSESSMENT AND REASSESSMENT OF PERSONAL PROPERTY

Attached is a copy of Bulletin 2018-01 concerning the back assessment and reassessment of personal property, which was sent to assessors on July 24, 2018. This bulletin discusses the duties of collecting officials regarding back assessments and reassessments.

Methods for assessing and collecting

Tenn. Code Ann. § 67-1-1005(b) outlines the method of accomplishing back assessments and reassessments. Back assessments or reassessments will be initiated by certification of the assessor of property to the appropriate collecting officials. The certification must identify the property, state the basis of the back assessment or reassessment, state the tax year(s), and provide the amount of the additional assessment for which the owner or taxpayer is responsible. The assessor must also send a copy of the certification to the taxpayer. The taxpayer may appeal the back assessment or reassessment directly to the State Board of Equalization within 60 days from the date the assessor sent the copy of the certification.

Under Tenn. Code Ann. § 67-1-1005(b), upon receipt of the certification of back assessment or reassessment, the collecting official is **required** to send a notice of taxes due to the taxpayer. Under Tenn. Code Ann. § 67-1-1005(a), additional taxes due as the result of the back assessment or reassessment are not considered delinquent until sixty days after the date of notice of the taxes. However, the taxes shall be considered delinquent as of the date of delinquency of the original assessment if the back assessment or reassessment is the result of the following bad acts:

- failure of the taxpayer to file the reporting schedule required by law;
- actual fraud or fraudulent misrepresentation of the property owner or the property owner's agent; or
- collusion between the property owner or the property owner's agent and the assessor.

For instance, if the assessor back assesses a personal property account for the tax years 2015, 2016, and 2017 due to the fact the taxpayer failed to file the personal property reporting schedule, county taxes would be considered delinquent as of each respective tax year's delinquency date. The delinquency date for tax year 2015 would have been March 1, 2016, the delinquency date for tax year 2016 would have been March 1, 2017 and for tax year 2017 the delinquency date would have been March 1, 2018.

Discretion in back assessments and reassessments

The assessor has no discretion in deciding whether to initiate a back assessment or reassessment once the additional liability has been established. If an audit yields a material finding of additional tax liability, **neither the assessor nor the trustee may ignore it.** In 2017, the General Assembly passed Public Chapter 321, which became effective on May 5, 2017, and provides:

> (a) With respect to a de minimus property tax totaling less than five dollars ($5.00) as calculated for a duly assessed parcel of real property, if authorized by a private act, resolution, or ordinance levying the tax, the county trustee or other property tax collecting official may:
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> (1) Decline to bill the tax;
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> (2) Decline to refer the tax for further collection; or
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> (3) Abate any penalty or interest otherwise due for late payment of the tax.
>
> (b) The tax collecting official shall maintain a list of de minimus taxes by parcel and by year, and the tax may be collected when a tax related to the same parcel is tendered for a later year; provided, that such collection is not barred by any applicable statute of limitations.

Tenn. Code. Ann. § 67-5-2013. Although the statute is codified in the portion of the Code dealing primarily with delinquent taxes, it also applies to other situations wherein a duly assessed parcel results in a property tax bill of less than five dollars ($5.00). Please note that the trustee or other property tax collecting official only have the enumerated authority if authorized by a private act, resolution, or ordinance levying the tax.

If a trustee fails in his or her duty to bill the back assessment or reassessment, Tenn. Code Ann. § 67-1-1010 imposes liability on the trustee's bond for the amount of taxes that might have been recovered had the trustee properly performed his or her duty, plus a 15% penalty.

Enclosure