



# County Technical Assistance Service

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## Real Property

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Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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## Real Property

**Reference Number:** CTAS-1470

Real property, except vacant or unused property or property held for use, is classified according to use and assessed as a percentage of its value as follows:

1. Public Utility—55 percent
2. Industrial and Commercial—40 percent
3. Residential—25 percent
4. Farm Property—25 percent

If a parcel of real property is used for more than one purpose so that different assessment subclassifications and percentages apply, the tax is apportioned among the subclasses according to guidelines established by the State Board of Equalization.<sup>1</sup> If a parcel of real property is vacant, unused, or held for use, it is classified according to its immediate most suitable economic use, after considering several factors.<sup>2</sup> Real property not within any other definition and classification above is classified and assessed as farm or residential property.<sup>3</sup> For property tax purposes, value attaches to the property itself, not to the interest of the current party in possession.<sup>4</sup> A leasehold is considered real property and is taxable as such.<sup>5</sup> The interest of a lessee is distinct from the fee, and may, under certain circumstances, be taxed when the fee is exempt from taxation.<sup>6</sup>

Mobile homes used for commercial, industrial, or residential purposes are assessed as real property improvements to land.<sup>7</sup> If the mobile home is on a rented lot, the owner of the mobile home is responsible for the additional property tax imposed because of the improvement. The owner of the land actually pays the tax and has a first lien against the mobile home to secure payment of the property tax from the mobile home owner.<sup>8</sup> However, the county has a lien against the real property itself in case of delinquent taxes on the mobile home, and may include the real property in a tax sale to satisfy the delinquency.<sup>9</sup>

Perfection in the classification system for the ad valorem tax is rarely attainable. Indeed, taxing real property containing two or more rental units based on 40 percent of its value as industrial and commercial property while taxing real property containing one rental unit based on 25 percent of its value as residential property has been constitutionally upheld as a reasonable classification even though some discrimination exists.<sup>10</sup> Even though the legislature has discretion in classifying property, a reasonable basis must be established which may not be arbitrary or capricious.<sup>11</sup>

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<sup>1</sup>T.C.A. § 67-5-801(a), (b).

<sup>2</sup>T.C.A. § 67-5-801(c)(1).

<sup>3</sup>T.C.A. § 67-5-801(c)(2).

<sup>4</sup>*Hoover v. State Bd. of Equalization*, 579 S.W.2d 192, 195 (Tenn. Ct. App. 1978).

<sup>5</sup>*United States v. Metropolitan Gov't*, 808 F.2d 1205, 1208-1209 (6th Cir. 1987); T.C.A. § 67-5-502(d).

<sup>6</sup>*Jeston v. University of the South*, 208 U.S. 489, 500, 28 S.Ct. 375, 377 (1908); *University of the South v. Franklin Co.*, 506 S.W.2d 779, 784 (Tenn.Ct.App. 1973); T.C.A. § 67-5-605.

<sup>7</sup>Tenn. Const., art. II, § 28; T.C.A. § 67-5-802.

<sup>8</sup>*Belle-Aire Village, Inc. v. Ghorley*, 574 S.W.2d 723, 725 (Tenn. 1978); T.C.A. § 67-5-802.

<sup>9</sup>Op. Tenn. Atty Gen. 95-071 (July 5, 1995).

<sup>10</sup>*Snow v. City of Memphis*, 527 S.W.2d 55, 64-66 (Tenn. 1975), *appeal dismissed*, 423 U.S. 1083, *reh. den.*, 424 U. S. 979 (1976).

<sup>11</sup>*General Am. Transp. Corp. v. State Bd. of Equalization*, 536 S.W.2d 212, 214 (Tenn. 1976).

## Public Utility and Common Carrier Property

**Reference Number:** CTAS-1471

In a recent case, the Tennessee Court of Appeals held that pipelines shall be treated as personal property for the purposes of ad valorem taxation.<sup>1</sup> In response, the legislature amended T.C.A. § 67-5-501(9),<sup>2</sup> which now classifies certain property associated with utilities and railroads as real property for purposes of the property taxation. Examples include but are not limited to the following: surface, underground or elevated railroads, and railroad structures, substructures and superstructures, tracks and the metal thereon; telephone, broadcast, transmission and telegraph poles, supports, conduits, towers and enclosures for electrical conductors upon, above and underground and pipes and conduits used for wire, cables and lines buried underground; 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.

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<sup>1</sup>*ANR Pipeline Co. v. Tennessee Board of Equalization*, 2002 WL 31840689, \*4 (Tenn.Ct.App. 2002) *perm. app. denied* (Tenn. 2003).

<sup>2</sup>See 2004 Public Chapter 719.

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