



# County Technical Assistance Service

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## Assessment

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## Assessment

Reference Number: CTAS-1474

## County Assessor

Reference Number: CTAS-1475

The county assessor's duties include two basic functions: appraisal and assessment of taxable real and personal property in the county that is not appraised by the state.<sup>1</sup> For purposes of ad valorem taxation of property, the assessor of property places a value on commercial, industrial, residential, and farm land, including mineral rights and taxable leaseholds, but public utility property is valued by the state.<sup>2</sup> The assessor also appraises and assesses taxable tangible personal property.<sup>3</sup> The assessor must assess and place a value on all property in the county by May 20 of the tax year. The date of valuation is as of January 1 (with the exception of adjustments due to improvements or damage to property discussed later). The assessment of property within a municipality is to be completed not less than 40 days prior to the beginning tax due date of the municipality.<sup>4</sup> The validity of an assessment is generally not affected by any irregularity or omission unless the defect results in a denial of minimum constitutional guarantees.<sup>5</sup>

The county legislative body has the authority to enter into contracts with individuals, firms, or corporations to render advice or assistance to the local tax assessor and the local board of equalization in the assessment and equalization of taxes. However, the final decision as to the amount of an assessment or the equalization of assessments is to be made by the property assessor and the board of equalization. In addition, no such contract shall contain any provisions for payment for services on a percentage basis, or on any basis whereby the compensation under the contract is dependent or conditioned on increasing or reducing the aggregate assessment of property in the county.<sup>6</sup>

County assessors are responsible for city assessments except in cities lying in more than one county, which are entitled to retain a city assessor or to contract with the county assessor or State Board of Equalization for assessment services. Cities not using the county assessor are also required to establish a city board of equalization. Otherwise, review of city assessments is consolidated under the county board of equalization of the county in which the property is located.<sup>7</sup>

Assessors are required to keep current indexes of taxpayers, along with a description of the property on the tax books, and to maintain the property tax maps of the county.<sup>8</sup> The obligation to pay taxes is not avoided by the failure of an assessor to make an assessment.<sup>9</sup> The assessor is not required to search for an owner's address to send assessment notices; rather, the owner has a responsibility to register his or her name and address with the assessor.<sup>10</sup> Previously owners who were not in possession of the property were required to file an annual statement with the assessor between December 1 and December 31 of each year, and the trustee was required to publish a notice of this requirement. However, this provision was deleted by a 1996 amendment; neither the form nor the published notice is now required by current law.

The assessor has the power and duty to examine any person he or she believes has any information relating to the property assessment of any taxpayer. Pursuant to this power, the assessor may administer oaths and compel any witness to appear and to answer oral or written questions. Any witness refusing to appear or to take an oath or answer questions, when called upon by the assessor to do so, commits a Class C misdemeanor. The assessor also has the authority to go upon land to obtain information for the assessment of property. Specifically, the assessor may enter a building which is under construction and not yet occupied or secured without obtaining the consent of the owner. After the building is occupied or secured, the assessor may enter with the owner's consent, or if consent is unreasonably denied, under a court order.<sup>11</sup>

The assessor is to make a report of the assessor's assessments and make available to the local board of equalization all of the assessor's records pertaining to the area involved on or before the first day the board meets. Each assessor, when making the report of assessments to the local board of equalization shall accompany the report with the following oath:

*I, \_\_\_\_\_, assessor of the county (city) of \_\_\_\_\_, State of Tennessee, do solemnly swear (or affirm) that I have assessed all taxable property, in the county (city) of \_\_\_\_\_, as far as ascertainable, to the true owners thereof, and that I have determined the classification and assessed valuation of all taxable property as prescribed by law; and that I have faithfully discharged all my duties without fear, favor, or affection to the best of my knowledge and ability, so help me God.*

The oath shall be taken and subscribed to before the county mayor, or in the county mayor's absence, before a notary public.<sup>12</sup>

In addition to the report to the local board of equalization, the assessor has a duty to compile a report listing the total of all assessments prepared by the assessor's office and file the report with the State Board of Equalization.<sup>13</sup>

An assessor of property or deputy assessor who willfully fails, refuses, or neglects to perform, obey, and observe his/her statutory duties is subject to sanctions as set out in T.C.A. § 67-5-305.

It is unlawful for an assessor of property or deputy assessor to willfully or knowingly assess property in the wrong name, omit property from assessment, assess property at lower than the proper percentage of value, or to fail to perform other duties required by law. A district attorney general who receives evidence of such an offense has the duty to investigate and prosecute that offense.<sup>14</sup>

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<sup>1</sup>T.C.A. §§ 67-5-101, 67-5-102, 67-5-301 *et seq.*, 67-5-502(1), 67-5-601 *et seq.*, 67-5-1301. T.C.A. § 67-1-501 *et seq.* deals with the qualifications and office of the assessor.

<sup>2</sup>T.C.A. §§ 67-5-502(d), 67-5-801 *et seq.*, 67-5-1001 *et seq.*, 67-5-1301.

<sup>3</sup>T.C.A. § 67-5-901 *et seq.*

<sup>4</sup>T.C.A. § 67-5-504.

<sup>5</sup>T.C.A. § 67-5-509(b); *see also State v. Delinquent Taxpayers*, 785 S.W.2d 819, 821 (Tenn. Ct. App. 1989).

<sup>6</sup>T.C.A. § 67-5-507.

<sup>7</sup>T.C.A. § 67-1-513.

<sup>8</sup>T.C.A. §§ 67-5-804 through 67-5-806. *See also 23 Tenn. Juris. "Taxation" § 32 (1998) for a discussion regarding "adequate description."*

<sup>9</sup>*State v. Nashville C. & St. L. Ry.*, 137 S.W.2d 297, 299 (Tenn. 1940).

<sup>10</sup>*Cook v. McCullough*, 735 S.W.2d 464 (Tenn.Ct.App. 1987); T.C.A. § 67-5-2502(b).

<sup>11</sup>T.C.A. § 67-5-303.

<sup>12</sup>T.C.A. § 67-5-304.

<sup>13</sup>T.C.A. § 67-5-304(c)(1) and (2).

<sup>14</sup>T.C.A. 67-5-306; Op. Tenn. Atty Gen. 83-388 (November 11, 1983); *See also*: Op. Tenn. Atty Gen. 83-233 (June 27, 1983); Op. Tenn. Atty. Gen. 83-53 (February, 14 1983).

## Records and Notice of Assessment

**Reference Number:** CTAS-1476

Prior to May 20th each year, the assessor is required to note upon his/her records the current classification and valuation of all taxable property in the county.<sup>1</sup> The assessor must hold these records open for public inspection at his/her office during normal business hours. In addition, the assessor is required to publish at least once in a newspaper of general circulation within the assessor's jurisdiction a notice of when and where these records may be inspected. The required notice must be published not later than 10 calendar days before the local board of equalization begins its annual session.<sup>2</sup> The notice must be set forth in the publication within distinct and prominent borders, and must have a width of not less than two regular columns of such newspaper and a depth of at least four inches. The notice is required to state the day the county board of equalization will convene and the last day appeals will be accepted by the county board and must contain a warning that failure to appeal the assessment to the county board of equalization may result in the assessment becoming final without further right of appeal.<sup>3</sup> In addition, at least 10 calendar days before the local board of equalization begins its annual session, the assessor

or the assessor's deputy must notify each taxpayer of any change in the classification or assessed valuation of the taxpayer's property. The notification must be sent by United States mail to the last known address of the taxpayer. The notification must show the previous year's assessment and classification and the current year's assessment and classification. The notification is effective when mailed.<sup>4</sup> The assessor is required to retain a notation of the date of any notification of a change in classification or assessed valuation, or a dated copy of such notification, in the records of the assessor. These records must be preserved by the assessor for not less than two years.<sup>5</sup>

An alternative notice is permissible for the year in which a reappraisal program is completed and the values to be used as the basis for making assessments are approved by the State Division of Property Assessments. In this instance any notice showing the appraised value of property sent to a property owner by a company employed to conduct the reappraisal program satisfies the notice requirement discussed above, provided that the assessor of property uses the appraised value as specified on the notice from the company and does not change the classification of the property from its former classification.<sup>6</sup>

Upon a consolidation of the municipal and other assessment offices within any county with the office of the county assessor of property (as provided in T.C.A. § 67-1-513), the county assessor of property is not required to notify each taxpayer within the municipality unless a change has been made by the county assessor of property from the former classification and assessed valuation which existed on the county tax roll for the preceding year. However, the assessor is required to hold his/her records open for public inspection at his/her office during normal business hours and must cause to be published at least once, in a newspaper of general circulation within the assessor's jurisdiction, a notice where and when such records may be inspected. The required notice must be published not later than 10 calendar days before the local board of equalization begins its annual session.<sup>7</sup>

If an assessor fails to complete and note upon the assessor's records the assessment of a taxpayer's property prior to the 20th day of May, or fails to notify a taxpayer, or the taxpayer's agent, of any change in the classification or assessed valuation of the taxpayer's property, the taxpayer has no legal basis for complaint, provided that the assessment against the property was completed, and a notice of any new or changed classification or assessed valuation was sent by United States mail to the last known address of the taxpayer at least 10 calendar days before the local board of equalization ends its annual session.<sup>8</sup>

In the event an assessor fails to complete any assessment, or notify a taxpayer of a change in the classification or assessed valuation of his or her property, at least 10 calendar days before the local board of equalization ends its annual session, this failure does not affect in any way the validity of the assessment, classification, or assessed valuation; however, an aggrieved property owner has the right to appeal directly to the State Board of Equalization at its next regular session, and no proceedings may be undertaken to collect any taxes based upon the assessment, and no penalty added, until 30 calendar days after the state board has rendered a final decision on the appeal or complaint. Upon written request of any party, or upon its own motion, the State Board of Equalization may remand any complaint or appeal to the local board of equalization.<sup>9</sup>

Any other irregularity or omission in the assessment procedure does not affect the validity of the assessment unless the defect results in a denial of minimum constitutional guarantees.<sup>10</sup>

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<sup>1</sup>T.C.A. § 67-5-508(a)(1).

<sup>2</sup>T.C.A. § 67-5-508(a)(2).

<sup>3</sup>T.C.A. §§ 67-5-508(a)(2), 67-5-1401.

<sup>4</sup>T.C.A. § 67-5-508(a)(3).

<sup>5</sup>T.C.A. § 67-5-508(a)(4).

<sup>6</sup>T.C.A. § 67-5-508(a)(5).

<sup>7</sup>T.C.A. § 67-5-508(a)(6).

<sup>8</sup>T.C.A. § 67-5-508(b)(1).

<sup>9</sup>T.C.A. § 67-5-508(b)(2).

<sup>10</sup>*State v. Delinquent Taxpayers*, 785 S.W.2d 819 (Tenn.Ct.App. 1989); T.C.A. § 67-5-509(b).

## Assessing Improvements

Reference Number: CTAS-1477

### Damaged or Destroyed

In ascertaining the value of properties, assessors take into consideration the status of improvements to property. If, after January 1 and before September 1 of any year, a building or improvement is moved, demolished, or destroyed, or substantially damaged by fire, flood, wind, or any other disaster, and is not restored or replaced by another improvement before September 1 of that year, the assessor makes the assessment or corrects the assessment of such property on the basis of its value after the move, destruction, or substantial damage, notwithstanding the status of the property as of the assessment date of January 1. For the year in which the improvement is moved, demolished, destroyed, or damaged, the assessment of the improvement is prorated for the portion of the year prior to the date of the move, destruction or damage.<sup>1</sup> This provision is not applicable to the movement of a mobile home or other "movable structure" as defined in T.C.A. § 67-5-501.<sup>2</sup> An improvement is deemed substantially damaged if it has been rendered unfit for use or occupancy, or if the damage has reduced the value of the improvement by more than 50 percent.<sup>3</sup>

### Proration

Improvements to the property are similarly assessed to reflect their change in value during the year. If, after January 1 and before September 1, an improvement or new building is completed and ready for use or occupancy, or the property has been sold or leased, the assessor of property must make or correct the assessment of that property, based on the value of the improvement at the time of its completion, notwithstanding the status of the property as of the assessment date of January 1. For the year in which the improvement or building is completed, the assessment (or increase in assessment) of the improvement is prorated for the portion of the year following the date of its completion.<sup>4</sup> An improvement or new building is deemed completed and ready for use or occupancy when the structural portion of the building or improvement is substantially completed, even though the interior finish or certain appointments may be left to the choice of a prospective buyer or tenant after consummation of a sale or lease.<sup>5</sup> Any improvement or new building is deemed completed and to have a value for assessment purposes when the real property upon which such improvement or new building is located is sold to a bona fide purchaser, or when the new building or improvement has been occupied, used, or is suitable for occupancy or use, whichever occurs first. No improvement or new building is considered incomplete for valuation or assessment purposes for more than one calendar year immediately following the date on which construction was commenced.<sup>6</sup> In the event an improvement or new building is considered incomplete for assessment purposes on January 1 of any year, the owner of the improvement or new building shall, not later than February 1 of that year, submit to the assessor, in writing, the total cost of all materials used in the incomplete structure as of January 1, and the assessor assesses the incomplete structure as real property, based on the fair market value of the materials used.<sup>7</sup>

Issuance of a building permit can alert the assessor to the fact that improvements to the property are being made. In counties where building permits are not issued, the state director of fire prevention is required to furnish the assessor of property with the names of property owners and the location of the property for which electrical inspections have been made. Similarly, in counties which do not require building permits, assessors are to receive copies of permits for subsurface sewage disposal systems.<sup>8</sup>

If the status of an improvement to a property has changed by September 1 of any year, an adjustment to the assessment of the property is mandatory.<sup>9</sup> The adjustment can be made until the trustee relinquishes control of the tax roll after making the annual settlement of the trustee's accounts on the first Monday of September each year. For property on which delinquent taxes are owing, adjustment can be made until suit has been filed to collect the delinquent taxes.<sup>10</sup> Provisions attempting to postpone inclusion of increased value in assessments by providing that no property shall be reassessed to include new improvements until such improvements have been completed or until 18 months have passed following commencement of construction violated the constitutional requirement that all property be taxed according to its value and that taxes be equal and uniform.<sup>11</sup>

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<sup>1</sup>T.C.A. § 67-5-603(a)(1).

<sup>2</sup>T.C.A. § 67-5-603(a)(1).

<sup>3</sup>T.C.A. § 67-5-603(a)(3).

<sup>4</sup>T.C.A. § 67-5-603(b)(1).

<sup>5</sup>T.C.A. § 67-5-603(b)(3).

<sup>6</sup>T.C.A. § 67-5-603(b)(4).

<sup>7</sup>T.C.A. § 67-5-603(b)(5).

<sup>8</sup>T.C.A. § 67-5-603(c).

<sup>9</sup>T.C.A. § 67-5-603(a)(1) and (b)(2).

<sup>10</sup>T.C.A. § 67-5-1902; Op. Tenn. Atty Gen. 88-46 (February 1988).

<sup>11</sup>*Metropolitan Government v. Hillsboro Land Co.*, 436 S.W.2d 850 (Tenn. 1968).

## Assessing Mobile Homes

**Reference Number:** CTAS-1478

Mobile homes used for commercial, industrial or residential purposes are assessed as real property improvements to land.<sup>1</sup> Any movable structure and appurtenance which is attached to real property by virtue of being on a foundation, or being underpinned, or connected with any one utility service, such as electricity, natural gas, water, or telephone, is assessed for tax purposes as real property as an improvement to the land where located.<sup>2</sup> Special provisions apply to mobile homes located in mobile home parks. In cases where the mobile home is attached to land occupied and used as trailer or mobile home parks where the owner of the land is renting spaces or lots for maintaining the mobile home, the owner of the mobile home is responsible for the additional tax imposed by reason of the improvement, and the owner of the land is granted a lien against the mobile home to secure the payment of municipal and county taxes.<sup>3</sup> Before March 1 of each year, the assessor of property is required to furnish each owner of land used as a mobile home park with a schedule on which the owner is required to list all mobile homes in the park as of the assessment date.<sup>4</sup> It is the duty of each owner of land upon which a mobile home is located to list each mobile home, its make, year, serial number, size, original cost, and such other pertinent information as may be required by the division of property assessments, sign the schedule and return it to the assessor of property on or before April 1 of each year.<sup>5</sup> The assessor of property is required to furnish to each owner of land used as a mobile home park a schedule of the assessed value of each moveable structure on or before July 1 of each year.<sup>6</sup> If taxes on a mobile home become delinquent, the land can be sold to satisfy the delinquency.<sup>7</sup>

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<sup>1</sup>Tenn. Const., art. II, § 28; T.C.A. § 67-5-802.

<sup>2</sup>T.C.A. § 67-5-802(a)(1). See also T.C.A. 67-5-502(a)(1).

<sup>3</sup>T.C.A. § 67-5-802(a)(1). See also *Belle-Aire Village, Inc. v. Ghorley*, 574 S.W.2d 723, 725 (Tenn. 1978).

<sup>4</sup>T.C.A. § 67-5-802(b)(1).

<sup>5</sup>T.C.A. § 67-5-802(b)(2).

<sup>6</sup>T.C.A. § 67-5-802(b)(2).

<sup>7</sup>T.C.A. § 67-5-802. See Op. Tenn. Atty. Gen 95-071 (July 5, 1995) for a discussion regarding the collection of delinquent property taxes due against mobile homes. See also *CMH Homes, Inc. V. Darrell Mceachron*, 2005 WL 2387153 (Tenn.Ct.App. 2005) (extent of property transferred at delinquent tax sale).

## Assessment of Leasehold

**Reference Number:** CTAS-1479

A leasehold is considered real property and is taxable as such<sup>1</sup> under certain circumstances. The interest of a lessee is distinct from the fee, and may be taxed under certain circumstances when the fee is exempt from taxation.<sup>2</sup> Leasehold interests assessable under T.C.A. § 67-5-502 are valued by discounting to present value the excess, if any, of fair market rent over actual and imputed rent for the leased premises, for the projected term of the lease including renewal options. As an alternative in valuing an interest in residential property, the interests assessable under T.C.A. § 67-5-502(d) may be valued by the sales comparison approach using sales or transfers of similar interests in residential property. By virtue of the speculative nature of valuation of options to purchase, any option which the lessee may be given to purchase the leased premises shall be deemed to have no value. The State Board of Equalization is authorized to promulgate rules governing the procedure for these valuations.<sup>3</sup>

Note: Although a county cannot tax an industrial development property owned by a city, county, or industrial development corporation organized under T.C.A. § 7-53-101 *et seq.*, if the private company lessee pays less in rent and in lieu of tax payments than the fair market value of the rent, the company has a leasehold interest that is taxable based upon the capitalized value of the difference between actual rent (and in lieu of tax payments) and fair market rent.<sup>4</sup>

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<sup>1</sup>*United States v. Metropolitan Gov't*, 808 F.2d 1205, 1208-1209 (6th Cir. 1987); T.C.A. § 67-5-502(d).

<sup>2</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).

<sup>3</sup>T.C.A. § 67-5-605.

<sup>4</sup>See Op. Tenn. Atty. Gen. 88-154 (August 29, 1988), Op. Tenn. Atty. Gen. 79-375 (August 20, 1979), Op. Tenn. Atty. Gen. 79-61 (February 14, 1979) and Op. Tenn. Atty. Gen. 78-251 (June 19, 1978) explaining the taxation of this type of interest in real property.

## Mineral Interests

**Reference Number:** CTAS-1480

The owner of a mineral interest is required to register that interest with the assessor of property in the county in which the mineral interest is located by providing a deed reference number for the mineral interest and specifying where it lies, citing tax maps and parcel number of the surface owners. The State Board of Equalization provides assessors with forms for mineral interest owners to use. All property registered and identified sufficiently to the assessor on July 1, 1987, and on which taxes have been paid through that time, does not require a subsequent registration.<sup>1</sup>

### Back Assessment or Reassessment of Mineral Interests

Mineral interest owners are subject to back assessment if the property has previously escaped taxation. If the mineral interest is dormant, and the collector of taxes has not previously provided notice to the owner of the assessment of taxes, there shall be no back assessment of taxes, except that the owner of the mineral interest shall be liable for taxes accruing after July 1, 1987.

Failure to register a mineral interest with the property assessor by July 1, 1990, subjects the property to back assessment or reassessment and to a penalty of 25 percent of the assessment or back assessment of taxes. Failure to identify the location of a mineral interest pursuant to T.C.A. § 67-5-804 subjects the mineral interest owner who is currently paying taxes to penalty and interest. The penalty is 10 percent of the current assessment of the mineral interest. In addition, failure to identify the location of a mineral interest will render the owner unable to claim payment of taxes as use of a mineral interest against a surface owner's claim of abandonment under T.C.A. § 66-5-108.<sup>2</sup>

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<sup>1</sup>T.C.A. § 67-5-804(b).

<sup>2</sup>T.C.A. § 67-5-809.

## Greenbelt

**Reference Number:** CTAS-1481

Under the Agricultural, Forest, and Open Space Land Act of 1976, also known as the Greenbelt Law, owners of property qualifying as agricultural, forest, or open space property may have it specially valued. The act was promulgated to allow for assessment of the land based on current use, not its potential for conversion to another, higher value use.<sup>1</sup>

No person may place more than 1,500 acres of land within any one taxing jurisdiction under the provisions of the Act.<sup>2</sup>To be eligible as agricultural land, the property must meet minimum size requirements. The property must consist either of a single tract of at least 15 acres, including woodlands and wastelands, or two noncontiguous tracts within the same county, including woodlands and wastelands, one of which is at least 15 acres and the other being at least 10 acres and together constituting a farm unit.<sup>3</sup>To be eligible as forest land, the property must constitute a forest unit engaged in the growing of trees under a sound program of sustained yield management that is at least fifteen (15) acres and that has tree growth in such quantity and quality and so managed as to constitute a forest.<sup>4</sup>Open space land is any area of land, of not less than three acres, characterized principally by open or natural conditions which is not currently in agricultural or forest use. Open space land includes greenbelt lands or lands primarily devoted to recreational use.<sup>5</sup>The Tennessee Court of Appeals has held that it is constitutionally permissible for the General Assembly to create sub-classes of real property, such as Greenbelt property, provided a constitutional valuation method is used for the sub-class.<sup>6</sup>The formula for determining the special value is set forth in T.C.A. § 67-5-1008.

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<sup>1</sup>T.C.A. § 67-5-1001 *et seq.*

<sup>2</sup>T.C.A. §§ 67-5-1003(3), 67-5-1008(g). See *also* Op. Tenn. Atty. Gen. 88-81 (April 7, 1988).

<sup>3</sup>T.C.A. § 67-5-1004(1)(B).

<sup>4</sup>T.C.A. § 67-5-1004(3).

<sup>5</sup>T.C.A. § 67-5-1004(7).

<sup>6</sup>*Marion County v. State Bd. of Equalization*, 710 S.W.2d 521 (Tenn.Ct.App. 1986).

## Classification of Agricultural Land

**Reference Number:** CTAS-1482

Any owner of land may apply for its classification as agricultural land by filing a written application with the assessor of property. The application must be filed by March 1. Reapplication thereafter is not required so long as the ownership as of the assessment date remains unchanged. Property that qualified as agricultural the year before under different ownership is disqualified if the new owner does not timely apply. The assessor must send a notice of disqualification to these owners, but must accept a late application if filed within 30 days of the notice of disqualification and accompanied by a late application fee of \$50.<sup>1</sup>

The assessor must determine whether the land is agricultural land, and if such a determination is made, the assessor will classify and include it as such on the county tax roll. In determining whether the land is agricultural land, the tax assessor must take into account, among other things, the acreage of the land, the productivity of the land, and the portion thereof in actual use for farming or held for farming or agricultural operation. The assessor may presume that a tract of land is used as agricultural land if the land produces gross agricultural income averaging at least \$1,500 per year over any three-year period in which the land is so classified. The presumption may be rebutted, notwithstanding the level of agricultural income by evidence indicating whether the property is used as "agricultural land" as defined in the statute.<sup>2</sup>The assessor must verify actual agricultural uses claimed for the property during the on-site review provided under T.C.A. § 67-5-1601. The assessor may at any time require other proof of use or ownership necessary to verify compliance with the statute.<sup>3</sup>

Any person aggrieved by the denial of any application for the classification of land as agricultural land has the same rights and remedies for appeal and relief as are provided in the general statutes for taxpayers claiming to be aggrieved by the actions of assessors of property or boards of equalization.<sup>4</sup>

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<sup>1</sup>T.C.A. § 67-5-1005(a)(1).

<sup>2</sup>T.C.A. § 67-5-1005(a)(2) and (3);

<sup>3</sup>T.C.A. § 67-5-1005(c).

<sup>4</sup>T.C.A. § 67-5-1005(d).

## Classification of Forest Land

**Reference Number:** CTAS-1483

Any owner of land may apply for its classification as forest land by filing a written application with the assessor of property. The application must be filed by March 1. Reapplication thereafter is not required so long as the ownership as of the assessment date remains unchanged. Property that qualified as forest land the year before under different ownership is disqualified if the new owner does not timely apply. The assessor must send a notice of disqualification to these owners, but must accept a late application if filed within 30 days of the notice of disqualification and accompanied by a late application fee of \$50.<sup>1</sup>

The assessor shall determine whether the land is forest land, and if such a determination is made, the assessor shall classify and include it as such on the county tax roll.<sup>2</sup> In determining whether the land is forest land, the assessor must take into account, among other things, the acreage of the land, the amount and type of timber on the land, the actual and potential growth rate of the timber, and the management practices being applied to the land and to the timber on it. The assessor may request the advice of the state forester in determining whether the land should be classified as forest land.<sup>3</sup>

An application for classification of land as forest land shall be made upon a form prescribed by the state board of equalization, in consultation with the state forester, and shall include a description of the land, a general description of the uses to which it is being put, aerial photographs, if available, and such other information as the assessor of property or state forester may require to aid the assessor of property in determining whether the land qualifies for designation as forest land..<sup>4</sup>

Any person aggrieved by the denial of an application for the classification of land as forest land has the same rights and remedies for appeal and relief as are provided in the general statutes for taxpayers claiming to be aggrieved by the actions of assessors of property or boards of equalization..<sup>5</sup>

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<sup>1</sup>T.C.A. § 67-5-1006(a)(1).

<sup>2</sup>T.C.A. § 67-5-1006(a)(2).

<sup>3</sup>T.C.A. § 67-5-1006(b)(1) and (2).

<sup>4</sup>T.C.A. § 67-5-1006(c).

<sup>5</sup>T.C.A. § 67-5-1006(d)

## Classification of Open Space

**Reference Number:** CTAS-1484

The planning commission, in preparing a land use or comprehensive plan for the municipality or county, may designate in the plan areas which it recommends for preservation as areas of open space land, other than lands currently in agricultural and forestry uses. Land included in any area so designated in the plan, as finally adopted, may be classified as open space land for purposes of property taxation provided there has been no change in the use of the area which has adversely affected its essential character as an area of open space land between the date of the adoption of the plan and the date of classification.<sup>1</sup>

Any owner of land may apply for its classification as open space land by filing a written application with the assessor of property. The application must be filed by March 1. Reapplication thereafter is not required so long as the ownership as of the assessment date remains unchanged. Property that qualified as open space land the year before under different ownership is disqualified if the new owner does not timely apply. The assessor must send a notice of disqualification to these owners, but must accept a late application if filed within 30 days of the notice of disqualification and accompanied by a late application fee \$50.<sup>2</sup>

The assessor must determine whether there has been any change in the area designated as an area of open space land in the county (or municipality) plan and, if the assessor determines that there has been no change, the assessor will classify the land as open space land and include it as such upon the tax rolls of the county.<sup>3</sup>

Any person aggrieved by the denial by an assessor of any application for the classification of land as open space land shall have the same rights and remedies for appeal and relief as are provided in the general statutes for taxpayers claiming to be aggrieved by the actions of assessors or boards of equalization.<sup>4</sup>

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<sup>1</sup>T.C.A. § 67-5-1007(a)(1) and (2).

<sup>2</sup>T.C.A. § 67-5-1007(b)(1).

<sup>3</sup>T.C.A. § 67-5-1007(b)(2).

<sup>4</sup>T.C.A. § 67-5-1007(c).

## Present Use Valuation

**Reference Number:** CTAS-1485

When a parcel of land has been classified by the assessor of property as agricultural, forest, or open space land under the provisions of T.C.A. § 67-5-1001 *et seq.*, it shall be subsequently considered that its current use for agricultural or timber purposes or as open space is its immediate most suitable economic use, and assessment shall be based upon its value in that current use, rather than on value for some other use as may be determined in accordance with T.C.A. § 67-5-601 *et seq.* It is the responsibility of the applicant to promptly notify the assessor of any change in the use or ownership of the property which might affect its eligibility under the Greenbelt Law.<sup>1</sup>

After a parcel of land has been classified by the assessor of property as agricultural, forest, or open space land under the provisions of T.C.A. § 67-5-1001 *et seq.*, the assessor shall record it on a separate list for such classified property, and the assessor shall record with the register of deeds the application for such classification of the property. Any fees which may be required are paid by the property owner.<sup>2</sup>

The assessor must appraise the land and compute the taxes each year based upon both the 25 percent of appraised value applicable to property in the farm classification and present use value; and farm classification and value as determined pursuant to T.C.A. § 67-5-601 *et seq.*, but taxes shall be assessed and paid only on the basis of farm classification and present use value under the provisions of T.C.A. § 67-5-1001 *et seq.* The taxes computed pursuant to T.C.A. § 67-5-601 *et seq.* shall be used to compute the rollback taxes as defined in T.C.A. § 67-5-1004 and as provided for in T.C.A. § 67-5-1008(d).<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-5-1008(a).

<sup>2</sup>T.C.A. § 67-5-1008(b)(1).

<sup>3</sup>T.C.A. § 67-5-1008(b)(2) and (3).

## Rollback Taxes

**Reference Number:** CTAS-1486

The assessor of property will compute the amount of taxes saved by the difference in present use value assessment and value assessment pursuant to T.C.A. § 67-5-601 *et seq.*, for each of the preceding three years for agricultural and forest land, and for the preceding five years for open space land, and the assessor shall notify the trustee that such amount is payable, if (1) the land no longer qualifies as agricultural land, forest land, or open space land as defined in T.C.A. § 67-5-1004; (2) the owner of the land requests in writing that the classification as agricultural land, forest land, or open space land be withdrawn; (3) the land is covered by a duly recorded subdivision plat or an unrecorded plan of development and any portion is being developed; except that, where a recorded plat or an unrecorded plan of development contains phases or sections, only the phases or sections being developed are disqualified; (4) an owner fails to file an application as required by this part; (5) the land exceeds the acreage limitations of T.C.A. § 67-5-1003(3); or (6) the land is conveyed or transferred and the conveyance or transfer would render the status of the land exempt.<sup>1</sup>

If, under the provisions of T.C.A. § 67-5-1008(d)(1), only a portion of a parcel is subject to rollback taxes, the assessor must apportion the assessment of the parcel on the first tax roll prepared after the taxes become payable, and enter the apportioned amount attributable to that portion as a separately assessed parcel on the tax roll. Apportionment will be made for each of the years to which the rollback taxes apply.<sup>2</sup>

The rollback taxes due as the result of disqualification or withdrawal of the land from classification are the tax savings calculated under T.C.A. § 67-5-1008(d). When the assessor determines that there is liability for rollback taxes, the assessor gives written notice to the county trustee identifying the basis of the rollback taxes and the person the assessor finds to be responsible for payment. The assessor must also provide a copy of the notice to the responsible person. Rollback taxes are payable from the date written notice is provided by the assessor, but are not delinquent until March 1 of the following year. Rollback taxes are a first lien on the disqualified property in the same manner as other property taxes, and are also a personal responsibility of the current owner or seller of the land. Liability for rollback taxes may be appealed to the state board of equalization by March 1 of the year following the notice by the assessor. Property values fixing the amount of rollback taxes may only be appealed as otherwise provided by law.<sup>3</sup>

If land that is classified under the Greenbelt Law as agricultural, forest, or open space land (or any portion thereof) is converted to a use other than those stipulated in the statute by virtue of a taking by eminent domain or other involuntary proceeding, except a tax sale, the land (or any portion thereof) involuntarily converted to another use is not subject to rollback taxes by the landowner, and the agency or body doing the taking will be liable for the rollback taxes. Property transferred and converted to an exempt or non-qualifying use shall be considered to have been converted involuntarily if the transferee or an agent for the transferee sought the transfer and had power of eminent domain.<sup>4</sup>

In the event that the land involuntarily converted to another use constitutes only a portion of a classified parcel on the assessment rolls, the assessor must apportion the assessment and enter the portion involuntarily converted as a separately assessed parcel on the appropriate portion of the assessment roll. Furthermore, for as long as the landowner continues to own the remaining portion of such parcel and for as long as the landowner's lineal descendants collectively own at least 50 percent of the remaining portion of such parcel, the remaining portion will not be disqualified from use value classification under the Green belt Law solely because it is made too small to qualify as the result of the involuntary proceeding.<sup>5</sup>

If the sale of agricultural, forest or open space land results in the property being disqualified due to conversion to an ineligible use or otherwise, the seller is liable for rollback taxes unless otherwise provided by in a written contract. If the buyer declares in writing at the time of sale an intention to continue the greenbelt classification but fails to file any form necessary to continue the classification within 90 days from the sale date, the rollback taxes become the sole responsibility of the buyer.<sup>6</sup>

Property passing to a lineal descendant of a deceased greenbelt owner, by reason of the death of the greenbelt owner, are not subject to rollback solely because the total greenbelt acreage of the new owner exceeds the maximum under T.C.A. § 67-5-1003, or will exceed the maximum following the transfer. Property exceeding the limit in these circumstances will be disqualified from greenbelt classification, but will not be assessable for rollback unless other disqualifying circumstances occur before the property has been assessed at market value three years.<sup>7</sup>

If an assessor fails to carry out his or her duties in accordance with the provisions of the Greenbelt Law, all compensation to the assessor will be discontinued pursuant to the provisions of T.C.A. § 67-5-305.<sup>8</sup>

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<sup>1</sup>T.C.A. § 67-5-1008(d)(1).

<sup>2</sup>T.C.A. § 67-5-1008(d)(4)(A) and (B).

<sup>3</sup>T.C.A. § 67-5-1008(d)(3). See also Op. Tenn. Atty. Gen. 79-517 (December 7, 1979).

<sup>4</sup>T.C.A. § 67-5-1008(e)(1). See also Op. Tenn. Atty. Gen. 85-035 (February 13, 1985).

<sup>5</sup>T.C.A. § 67-5-1008(e)(2).

<sup>6</sup>T.C.A. § 67-5-1008(f). See also Op. Tenn. Atty. Gen. 87-27 (February 19, 1987); Op. Tenn. Atty. Gen. 86-015 (January 23, 1986).

<sup>7</sup>T.C.A. § 67-5-1008(h).

<sup>8</sup>T.C.A. § 67-5-1010.

## Present Use Valuation for Certain Residential Property

**Reference Number:** CTAS-1487

The concept of taxation based on present use valuation has been extended to certain residential property: property which is used solely for residential purposes, which is occupied by the owner for a period of at least 25 years, and which is zoned for commercial use shall be assessed based on its value for residential purposes. The owner must occupy the residence at least nine months out of the year. This protection also applies to a lineal descent of the original owner who resides on the property.<sup>1</sup>

An owner of a residential house may apply to the assessor of property of the county in which the property is located for its classification under T.C.A. § 67-5-601(c), as described above. Property which has been determined by the assessor of property to qualify under subsection (c) will be valued for ad valorem tax purposes at its market value for residential purposes. The assessment on the property shall include the entire year in which the land is classified under subsection (c). Any person who is denied such classification has the same rights and remedies for appeal and relief as are provided taxpayers for any action of assessors of property.<sup>2</sup>

When the use or ownership of the property changes so that it no longer qualifies under T.C.A. § 67-5-601(c), the property owner has the duty of informing the assessor of property. Upon discovering that a property no longer qualifies for classification under subsection (c), the assessor must reclassify the property and value it according to its current market value for subsequent tax years. In the event a change in the use or ownership does not timely come to the attention of the assessor, and upon the assessor discovering that the property no longer qualifies, reclassification will affect each year that the property has failed to qualify, and the taxpayer will be liable for the difference in taxes, including penalty and interest.<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-5-601(c)(1) - (3).

<sup>2</sup>T.C.A. § 67-5-601(c)(4).

<sup>3</sup>T.C.A. § 67-5-601(c)(5).

## Tangible Personal Property/Assessor

**Reference Number:** CTAS-1488

The assessor of property, not later than February 1 of each year, is to furnish a schedule on which business owners list in detail tangible personal property used or held for use in the business or profession of the taxpayer.<sup>1</sup> This schedule, the format of which is specified by statute, lists allowable depreciated costs for different categories of property, as well as general data of the particular taxpayer.<sup>2</sup> ([Sample Personal Property Depreciation Chart](#).) The taxpayer can use a value different from the standard depreciated cost if the different value more closely approximates fair market value; the assessor may request supportive

information in such instances from the taxpayer.<sup>3</sup> The depreciation tables set out in the *Tennessee Code Annotated* have given rise to a great deal of litigation. Recent decisions by the Tennessee Supreme Court and Court of Appeals have upheld the constitutionality of the application of the depreciation schedules set forth in T.C.A. § 67-5-903(f) to locally assessed tangible personal property;<sup>4</sup> the constitutionality of the requirement to adjust the assessments of public utility property on the basis of ratio studies pursuant to T.C.A. § 67-5-1302(b)(1);<sup>5</sup> and the constitutionality of the requirement that locally assessed commercial and industrial tangible personal property be adjusted by the appraisal ratio adopted for each county pursuant to T.C.A. § 67-5-1509(a).<sup>6</sup> Due to these decisions, and other tax litigation cases, counties have experienced a significant reduction in the amount of revenue received from the taxation of tangible personal property.<sup>7</sup> Since 1997, the Board of Equalization has ordered a 15 percent reduction in the assessed value of centrally assessed tangible personal property in order to bring it to the same level of assessment as locally assessed tangible personal property.<sup>8</sup>

It is the duty of the taxpayer to list fully the tangible personal property used, or held for use, in the taxpayer's business or profession on the schedule, including other information required by the assessor, place the property's correct value on the schedule, and to sign and return the schedule to the assessor on or before March 1 of each year. In lieu of detailing acquisition cost on the reporting schedule, the taxpayer may certify that the depreciated value of tangible personal property otherwise reportable on the schedule is \$1,000 or less. The assessor must accept the certification, subject to audit, and fix the value of tangible personal property assessable to the taxpayer pursuant to the schedule, at \$1000. This value is subject to equalization pursuant to T.C.A. § 67-5-1509. The certification stated on the schedule must warn the taxpayer that it is made subject to penalties for perjury and subject to statutory penalty and costs if proven false.<sup>9</sup>

A taxpayer who fails, refuses or neglects to complete, sign and file the schedule with the assessor, as provided in T.C.A. § 67-5-903(b), is deemed to have waived objections to the forced assessment determined by the assessor, subject only to the remedies provided in T.C.A. § 67-5-903(d). In determining a forced assessment, the assessor must consider available evidence indicative of the fair market value of property assessable to the taxpayer under T.C.A. § 67-5-903. After determining the assessable value of the property, the assessor must give the taxpayer notice of the assessment by United States mail, addressed to the last known address of the taxpayer or the taxpayer's agent at least five calendar days before the local board of equalization commences its annual session.<sup>10</sup>

The remedies of a taxpayer against whom a forced assessment is made are as follows:

1. The taxpayer may appeal to the county board of equalization pursuant to T.C.A. § 67-5-1407, but must present a completed schedule as otherwise provided in T.C.A. § 67-5-903;
2. If the deadline to appeal to the county board of equalization has expired, then the taxpayer may request the assessor to mitigate the forced assessment by reducing the forced assessment to the standard depreciated value of the taxpayer's assessable property plus twenty-five percent (25%), so long as the 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. Mitigation of the forced assessment shall follow the procedure, including appeal, prescribed for correction of error under T.C.A. § 67-5-509, but must be requested within the same deadline as provided for amendment of a schedule pursuant to subsection (e). Gross negligence shall be presumed if notice of the forced assessment, in a form approved by the State Board of Equalization, was sent certified mail, return receipt requested, to the taxpayer's last known address on file with the assessor.

Whether or not an assessor's error affected the original assessment, the assessor may correct a forced assessment using the procedure provided and subject to the deadlines provided in T.C.A. § 67-5-509, upon determining that the taxpayer was not in business as of the assessment date for the year at issue, and upon determining that the taxpayer did not own or lease tangible personal property used or held for use in a business as of the assessment date for the year at issue.<sup>11</sup>

A taxpayer may amend a personal property schedule timely filed with the assessor at any time on or before September 1 following the tax year. If the assessor agrees with the amended schedule, the assessor will 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 will 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. Additional taxes due as the

result of an amended schedule are not deemed delinquent on or before 60 days after the date notice of the amended assessment was sent to the taxpayer. Amendment of a personal property schedule is not be permitted once suit has been filed to collect delinquent taxes related to the original assessment. The assessor must, within 60 days from receipt of the taxpayer's amended schedule, review and accept or reject the schedule. In any event, the taxpayer must be notified in writing of the results of the review. If the assessor has not notified the taxpayer that the amended schedule has been accepted or rejected within 60 days, the taxpayer's amended schedule will be deemed not accepted by the assessor.<sup>12</sup>

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<sup>1</sup>T.C.A. § 67-5-903(a).

<sup>2</sup>T.C.A. § 67-5-903(f).

<sup>3</sup>T.C.A. § 67-5-902.

<sup>4</sup>*In Re All Assessments 1999 & 2000*, 67 S.W.3d 805, 816-820 (Tenn.Ct.App. 2001) (upholding the constitutionality of T.C.A. §§ 67-5-903(f) and 67-5-1302(b)(1)).

<sup>5</sup>*In Re All Assessments 1999 & 2000*, 67 S.W.3d 805, 820-821 (Tenn.Ct.App. 2001) (upholding the constitutionality of T.C.A. §§ 67-5-903(f) and 67-5-1302(b)(1)).

<sup>6</sup>*Williamson County v. Tennessee State Board of Equalization*, 86 S.W.3d 216 (Tenn.Ct.App. 2002) (upholding the constitutionality of T.C.A. §§ 67-5-903(f) and 67-5-1509(a)).

<sup>7</sup>*See also In Re All Assessments 1998*, 58 S.W.3d 95, 102 (Tenn. 2000) (holding: "The Tennessee Board of Equalization is authorized to reduce (or increase) the appraised (and therefore corresponding assessed) value of centrally-assessed public utility tangible personal property as part of the equalization process, the purpose of which is to equalize the ratio of the appraised value to fair market value of public utility property in any particular county with the corresponding ratio for industrial and commercial property in that county.").

<sup>8</sup>*ANR Pipeline Co. v. Tennessee Board of Equalization*, 2002 WL 31840689, \*1 (Tenn.Ct.App. 2002) *perm. app. denied* (Tenn. 2003).

<sup>9</sup>T.C.A. § 67-5-903(b).

<sup>10</sup>T.C.A. § 67-5-903(c).

<sup>11</sup>T.C.A. § 67-5-903(d).

<sup>12</sup>T.C.A. § 67-5-903(e).

## Leased Personal Property

**Reference Number:** CTAS-1489

Leased personal property is classified according to the lessee's use and assessed to the lessee, unless the property is the subject of a lawful agreement between the lessee and a local government for payments in lieu of taxes.<sup>1</sup> For the purpose of assessing leased property, it is the duty of the taxpayer to list fully on a schedule provided by the assessor all tangible personal property which is leased by the taxpayer for the conduct of the taxpayer's business.<sup>2</sup> Leased property shall include equipment, machinery and all tangible personal property used in the conduct of, or as a part of, the taxpayer's business.<sup>3</sup> The lessor, or owner of leased tangible personal property, must provide such information as the assessor may request regarding the location, valuation or use of such property.<sup>4</sup>

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<sup>1</sup>T.C.A. § 67-5-502(c).

<sup>2</sup>T.C.A. § 67-5-904(a)(1).

<sup>3</sup>T.C.A. § 67-5-904(a)(2).

<sup>4</sup>T.C.A. § 67-5-904(b).

## Pilot Program for Assessing Leased Tangible Personal Property

**Reference Number:** CTAS-1490

Notwithstanding contrary provisions of law, the Comptroller of the Treasury may establish a pilot program for assessing leased tangible personal property to the owner/lessor rather than the lessee. Participation in the program is voluntary, at the election of owner/lessors who are selected by the comptroller to participate based on criteria that optimize savings in the cost of assessment compliance and administration. The comptroller may impose a fee to defray the cost of administration. Participants will be permitted to report leased property centrally in lieu of the schedules otherwise required under T.C.A. § 67-5-903 or T.C.A. § 67-5-904, and the comptroller will be responsible for distributing centrally reported assessments based on situs. Participants may be permitted to claim the business tax credit provided in T.C.A. § 67-4-713 for property taxes paid pursuant to a central assessment, and the credit may be taken at the participant's option either on the return due in the jurisdiction of situs or the jurisdiction from which the lease originated.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-502(e). See 2004 Public Chapter 667.

## Correction of Erroneous Assessments

**Reference Number:** CTAS-1491

The assessor of property must certify in writing a corrected or revised assessment to the trustee, or city tax collector in the case of city taxes, whenever the assessor discovers, or it has been called to the assessor's attention, that there has been an error or omission in the listing, description, classification or assessed value of property or any other error or omission in the tax rolls held by the trustee or city tax collector.<sup>1</sup> The assessor must certify to the trustee or city tax collector the facts and the reasons for the change in the assessment, and the tax must be collected upon the revised assessment.<sup>2</sup> The State Board of Equalization may request a copy of the assessor's certification.<sup>3</sup> If the tax computed on an erroneous basis of valuation or assessment has been paid prior to the assessor's certification of the corrected assessment, the trustee or city tax collector must, within 60 days after receipt of the certification from the assessor, refund to the taxpayer that portion of such tax paid which resulted from the erroneous assessment. The refund is to be made without the necessity of payment under protest or such other requirements as usually pertain to refunds of taxes unjustly or illegally collected.<sup>4</sup>

Correction of assessments must be requested by the taxpayer, or initiated by the assessor, prior to March 1, no more than the second year following the tax year for which the correction is to be made.<sup>5</sup> For example, correction of an erroneous assessment for the 2010 tax year would have to be initiated before March 1 of 2012. If additional taxes are due as a result of the corrected assessment, they are not delinquent until 60 days after the date notice of the corrected assessment is sent to the taxpayer. Once a suit has been filed to collect delinquent taxes pursuant to T.C.A. § 67-5-2405, the assessment and levy are deemed valid and are not subject to correction.<sup>6</sup> If the assessor does not correct an error in an assessment within 30 days after the request, or if the correction results in an increase in an assessment, the aggrieved taxpayer may appeal directly to the State Board of Equalization;<sup>7</sup> alternatively, the taxpayer may go through the regular process by appealing to the county board of equalization.<sup>8</sup> A defect in assessment, levy, or tax procedure will not affect the validity of a decision unless it results in a denial of minimum constitutional guarantees.<sup>9</sup>

It is important to note that the only errors or omissions which may be corrected under this provision are those involving obvious clerical mistakes, ascertainable from the face of the official tax and assessment records and involving no judgment or discretion by the assessor. Examples of correctable mistakes include the name or address of an owner, the location or physical description of the property, misplacement of a decimal point or mathematical miscalculation, errors of classification, and duplicate assessments. Matters of opinion by the assessor and clerical mistakes in tax reports or schedules filed by a taxpayer are not correctable under this procedure.<sup>10</sup>

<sup>1</sup>T.C.A. § 67-5-509(c)(1).

<sup>2</sup>T.C.A. § 67-5-509(c)(2).

<sup>3</sup>T.C.A. § 67-5-509(c)(3).

<sup>4</sup>T.C.A. § 67-5-509(a).

<sup>5</sup>T.C.A. § 67-5-509(d).

<sup>6</sup>T.C.A. § 67-5-509(d).

<sup>7</sup>T.C.A. § 67-5-509(e).

<sup>8</sup>Op. Tenn. Atty. Gen. 96-077 (April 24, 1996).

<sup>9</sup>*State v. Delinquent Taxpayers*, 785 S.W.2d 819 (Tenn.Ct.App. 1989); T.C.A. § 67-5-509(b).

<sup>10</sup>T.C.A. § 67-5-509(f). For prior law, see Op. Tenn. Atty. Gen. 76-07 (June 25, 1976) and Op. Tenn. Atty. Gen. 87-90 (May 14, 1987).

## Back Assessment or Reassessment

**Reference Number:** CTAS-1492

"Back assessment" means the assessment of property, including land or improvements not identified or included in the valuation of the property, which has been omitted from or totally escaped taxation.<sup>1</sup> "Re-assessment" means the assessment of property which 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 his/her agent.<sup>2</sup>

"Connivance" means some conscious conduct by the taxpayer, similar to but short of actual fraud, which caused or induced the low assessment. However, where property has been assessed below its actual cash value by the regularly constituted assessing authorities, failure of the taxpayer to report the underassessment even though grossly underassessed does not constitute connivance nor afford a basis for reassessment. If the taxpayer simply acquiesces in the underassessment by paying the low amount and failing to report it, the taxpayer's actions do not constitute fraud.<sup>3</sup> Moreover, when property has been properly listed and has not been omitted from assessment, there can be no back assessment, unless frauds of the nature indicated in T.C.A. § 67-1-1002(a)(2) and (3) is shown. Furthermore, the presumption of fraud, declared by the statute to arise from a grossly inadequate assessment, is not conclusive, but rebuttable.<sup>4</sup> Failure of the property owner to obtain a required building permit or to file a required written report would be grounds for reassessment, if such failure caused the property to be underassessed.<sup>5</sup>

A back assessment or reassessment must be initiated on or before September 1 of the year following the tax year for which the original assessment was made.<sup>6</sup> However, if the omission or underassessment resulted from the failure of the taxpayer to file the reporting schedule required by law, from actual fraud or fraudulent misrepresentation of the property owner or the property owner's agent, or from collusion between the property owner or the property owner's agent and the assessor, a back assessment or reassessment must be initiated prior to three years from September 1 of the tax year for which the original assessment was made.<sup>7</sup>

With respect to tangible personal property, if a taxpayer would be liable for additional tax due to back assessment of property omitted from a reporting schedule, or due to reassessment of property included in the schedule, the taxpayer may offset this liability by showing that other property listed on the schedule was over reported, or by providing information that the reassessed property or other property listed on the schedule should be valued using a nonstandard method that more closely approximates fair market value.<sup>8</sup>

Additional taxes due as the result of a back assessment or reassessment shall not be deemed delinquent until 60 days after the date notice of taxes resulting from the back assessment or reassessment is sent to the taxpayer. However, if the back assessment or reassessment resulted from the failure of the taxpayer to file the reporting schedule required by law, from actual fraud or fraudulent misrepresentation of the property owner or the property owner's agent, or from collusion between the property owner or the property owner's agent and the assessor, the additional taxes shall become delinquent as of the date of delinquency of the original assessment.<sup>9</sup>

A back assessment or reassessment may be initiated by certification of the assessor of property to the appropriate collecting officials identifying the property and stating the basis of the back assessment or reassessment and the tax year(s) and amount of any additional assessment for which the owner or taxpayer is responsible. The assessor shall send a copy of the certification to the owner or taxpayer. The collecting official shall thereupon send a notice of taxes due based on the back assessment and reassessment. Any taxpayer aggrieved by a back assessment or reassessment may appeal directly to the State Board of Equalization within 60 days from the date that a copy of the certification is sent to the taxpayer, in the manner provided in T.C.A. § 67-5-1412, and such person may be assisted or represented in the appeal as provided in T.C.A. § 67-5-1514. The accrual of delinquency penalty and interest otherwise applicable is suspended while the appeal is pending, however, simple interest will accrue during the appeal period in the amount provided in T.C.A. § 67-5-1512.<sup>10</sup>

A back assessment or reassessment for merchants' taxes and delinquent privilege taxes may be initiated by a chief administrative officer of a tax jurisdiction to which the tax is payable, any citizen of such jurisdiction, or by the department of revenue. The back assessment or reassessment shall be initiated by the filing of a sworn, written complaint to the county clerk stating the basis of the complaint. The county clerk may require a complainant, other than a public official acting in the official's capacity, to post a reasonable bond for payment of costs of the proceeding if the back assessment or reassessment is unsuccessful. An aggrieved party may appeal the clerk's disposition of the complaint to the department of revenue.<sup>11</sup>

Those officials having the power to back assess or reassess property are vested with full authority to administer oaths, send for and examine witnesses, and take such steps as may be deemed necessary or material to obtain information and evidence as to the value of the property.<sup>12</sup> Witnesses, when properly summoned, are subject to existing laws for non-attendance or failure to give evidence which is in their knowledge.<sup>13</sup>

If the back assessment or reassessment is upheld, the costs of the proceeding are added to the amount of taxes owed. If the back assessment or reassessment is set aside, the taxing jurisdiction must pay costs. However, if the board determines the complaint was filed or prosecuted by the complainant without good cause, then the complainant pays the cost. If the board finds connivance, fraud, deception, misrepresentation, or failure to file a personal property schedule, it may impose a penalty of up to 15 percent of the tax due.<sup>14</sup>

Innocent purchasers are protected from a reassessment of inadequately assessed real property by a bona fide sale, although this provision does not apply to a back assessment of property that has wholly escaped taxation. The taxes are a liability against the person owning the real property at the time of the inadequate assessment. The burden of proving a bona fide sale is on the person owning the real property at the time of back assessment or reassessment.<sup>15</sup>

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<sup>1</sup>T.C.A. § 67-1-1001(a)(1).

<sup>2</sup>T.C.A. § 67-1-1001(a)(2).

<sup>3</sup>*Garner v. Rhea Realty Corp.*, 494 S.W.2d 783, 787 (Tenn.Ct.App. 1971).

<sup>4</sup>*Eastland v. Sneed*, 185 S.W. 717, 718 (Tenn. 1916).

<sup>5</sup>Op. Tenn. Atty. Gen. 87-32 (Mar. 6, 1987).

<sup>6</sup>T.C.A. § 67-1-1005(a).

<sup>7</sup>T.C.A. § 67-1-1005(a).

<sup>8</sup>T.C.A. § 67-5-902(b).

<sup>9</sup>T.C.A. § 67-1-1005(a). For prior law, see Op. Tenn. Atty. Gen. 86-136 (August 8, 1986).

<sup>10</sup>T.C.A. § 67-1-1005(b).

<sup>11</sup>T.C.A. § 67-1-1005(c).

<sup>12</sup>T.C.A. §§ 67-1-1006(a), 67-5-1404.

<sup>13</sup>T.C.A. §§ 67-1-1006(b), 67-5-1404.

<sup>14</sup>T.C.A. § 67-1-1008.

<sup>15</sup>T.C.A. § 67-1-1004.

## State Division of Property Assessments

**Reference Number:** CTAS-1493

The State Division of Property Assessments has the duty to develop methods and procedures to assist local assessors and boards of equalization in administering the annual assessment process and in maintaining assessments through a process of updating valuations, property ownership records, and other information and records.<sup>1</sup> The Division of Property Assessments has developed manuals, rules, and regulations which relate to the duties of assessors of property and to reappraisal programs.<sup>2</sup> These manuals provide for consideration of the following factors in determining property values:

1. Location;
2. Current use;
3. Whether income bearing or non-income bearing;
4. Zoning restrictions on use;
5. Legal restrictions on use;
6. Availability of water, electricity, gas, sewers, street lighting, and other municipal services;
7. Inundated wetlands;
8. Natural productivity of the soil, except that the value of growing crops shall not be added to the value of the land ("crops" include trees); and
9. All other factors and evidences of values generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment.

For determining the value of industrial, commercial, farm machinery and other personal property, these manuals provide for consideration of the following factors:

1. Current use;
2. Depreciated value;
3. Actual value after allowance for obsolescence; and
4. All other factors and evidences of values generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment.

For determining the value of forestland, the State Division of Property Assessments consults with the U.S. Forest Service and the state forester to establish guidelines to be used in the manual.<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-1-205(a).

<sup>2</sup>T.C.A. §§ 67-1-205(a); 67-5-505; 67-5-602.

<sup>3</sup>T.C.A. § 67-5-602.

## Reappraisal

**Reference Number:** CTAS-1494

Pursuant to T.C.A. § 67-5-1601 *et seq.*, reappraisal must be completed either in four, five, or six year cycles. In counties on a six year cycle, the first five years are used for on-site review, followed by a revaluation in the sixth year. In the third year, there must be an updating of all real property values if the overall level of appraisal for the jurisdiction is less than 90 percent of fair market value. Even if the jurisdiction as a whole meets the 90 percent level, there must be an update of subgroups which do not fall within 10 percent of the jurisdictional appraisal level.

Instead of the six—year cycle, a county may opt for either a four or five—year reappraisal schedule. Although few counties have chosen the four—year option, it is available with the approval of the State Board of Equalization. Under this plan, on-site review is to be accomplished in the first three years, followed by a revaluation in the fourth year. A third option was passed in 1997, which allows the assessor, with approval of the county legislative body, to choose a continuous five—year cycle comprised of an on-site review of each parcel over a four—year period, followed by revaluation in the fifth year. Counties adopting either of these latter alternatives are not required to update or index values as must be done on the six—year cycle. These statutes also contain requirements for planning, public notice and hearings, and noncompliance sanctions.<sup>1</sup>

In a year of reappraisal, if the number of foreclosures is of a significant number in any area or neighborhood, the assessor of property may recognize the effects of the foreclosures on the values of other properties located within the affected area or neighborhood.<sup>2</sup>

In the event that in the year a reappraisal program is completed, the values established in such reappraisal program are turned over to the county after October 1 of such year, no penalty and interest shall be added until five (5) months following the tax roll completion date as evidenced by written notification from the assessor of property to the trustee, specifically stating the date the tax roll was delivered to the trustee.<sup>3</sup>

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<sup>1</sup>T.C.A. §§ 67-5-1601 *et seq.* See Op. Tenn. Atty. Gen. 92-61 (October 8, 1992) for a discussion of requirements for changing a reappraisal schedule.

<sup>2</sup>T.C.A. §§ 67-5-1603(d).

<sup>3</sup>T.C.A. § 67-5-1608.

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