

# TENNESSEE PROPERTY TAX\*

Dwayne W. Barrett

Richard A. Johnson

Brett R. Carter

---

**§ 43-000. INTRODUCTION.** The Tennessee Constitution and common law authorize counties and cities to tax property. T.C.A. § 67-5-101. Although the law includes references to a state property tax, no state tax has been imposed since 1949. T.C.A. § 67-1-602. The Tennessee property tax is imposed on most privately-held real property, tangible property other than household goods, personal effects, and foreign property. The Tennessee property tax is also imposed on certain intangible property of insurance, loan, investment and cemetery companies. The tax is administered by the State Board of Equalization, which has jurisdiction over the evaluation, classification, and assessment of all property in the state. Finally, the Tennessee property tax year is a calendar year. T.C.A. § 67-5-504.

## **§ 43-100. DEFINITIONS AND CITATIONS.**

### **§ 43-110. Definitions and Key Terms.**

**§ 43-111. Personal Property.** T.C.A. § 67-5-501(7). “Personal property” is defined as “every species and character of property which is not classified as real property.”

**§ 43-112. Real Property.** T.C.A. § 67-5-501(9). “Real property” is broadly defined to include “lands, tenements, hereditaments, structures, improvements, moveable property assessable under § 67-5-802 (taxing mobile homes), or machinery and equipment affixed to realty . . . and all rights thereto and interest therein, equitable as well as legal.”

**§ 43-113. Public Utility Property.** T.C.A. § 67-5-501(8). “Public utility property” is defined as “all property of every kind, whether owned or leased, and used, or held for use, directly or indirectly, in the operation of a public utility.” Public utility property includes business entities such as railroad companies, telephone companies (which encompasses cellular telephone ser-

vice, radio service, and long distance service), freight and private car companies, express companies, gas and electric companies, motor bus and truck companies, taxi cab and limousine companies, and commercial air carrier companies holding a certificate of convenience and necessity from the public service commission. Cellular phone companies, companies providing “radio common carrier service as defined in T.C.A. § 65-30-103” and companies providing long distance telephone service are excluded from the definition of “Public Utility Property” and are assessed at the lower assessment rate for commercial and industrial property. (See § 43-211.1). Public utility property using wind to generate energy is valued at 1/3 of its total installed costs. T.C.A. § 67-5-601.

### **§ 43-120. Citations to Statutes, Regulations and Cases Cited.**

**§ 43-121. Tennessee Code Annotated (T.C.A. § 67-5-101 et. seq.).**

**§ 43-122. Rules and Regulations of the State of Tennessee (Tenn. Comp. R. & Reg. 0600-1 et. seq. - Rules of State Board of Equalization).**

**§ 43-123. Southwestern Reports, Second Series (S.W.2d).**

**§ 43-124. State of Tennessee Assessment Manual, Division of Property Assessments, 1972 (Manual).**

## **§ 43-200. CLASSIFICATION AND VALUATION OF PROPERTY.**

**§ 43-210. Classification of Property.** T.C.A. § 67-5-503. For purposes of taxation, Tennessee categorizes all property into three distinct classes: real property, tangible personal property, and intangible personal property. Within each classification, property may be further divided into subclasses according to certain specified criteria. “The ratio of assessment to value of property in each class or subclass shall be equal and uniform throughout the state.” T.C.A. 67-5-503(b); TENN.

---

\*The authors wish to acknowledge the past contributions of Samuel F. Miller

CONST., art. II, § 28 (setting out rates of assessment for classes of property).

### § 43-211. Real Property.

**§ 43-211.1. Real Property in Use.** T.C.A. § 67-5-801. All real property is classified according to its use. The exceptions to this classification system are vacant or unused property, or property held for use (See § 43-211.2 below). Real property is separated into the following subclasses and assessed at the corresponding percentage of its value: (1) public utility property is assessed at 55% of its value; (2) industrial and commercial real property is assessed at 40% of its value; (3) residential property is assessed at 25% of its value; and (4) farm property is assessed at 25% of its value.

In 2004, the definition of real property was clarified to explicitly include railroad structures; telephone and broadcast transmission poles, towers and conduits; property used for conduction utilities such as steam, heat and electricity; marinas; and structures attached to real property with a utility service or by anchors or a foundation. T.C.A. § 67-5-501(9)(B)(i), (ii), (iii), and (iv). Real property does not include propane tanks for residential use or above-ground storage tanks that are not affixed to the land and that cannot be removed without disassembly. 2006 Tenn. Pub. Acts Ch. 521.

**§ 43-211.2. Vacant or Unused Real Property.** T.C.A. § 67-5-801. “All real property which is vacant, or unused, or held for use, shall be classified according to its immediate most suitable economic use, which shall be determined” after considering the following: (1) immediate prior use; (2) location; (3) availability of water, electricity, gas, sewers, and public services; (4) size, etc. If the use of the real property does not fit within one of the foregoing classes, such property is classified as farm or residential property. The State Board of Equalization issued a decision holding that 44 single family cottages owned by a nonprofit corporation and occupied by individuals under contracts providing for the right to reside in either the cottages or other buildings on the property (such as assisted living or nursing home facilities) in exchange for a one-time purchase payment were properly classified as commercial property. The State Board of Equalization opinion overturned the holding by the Assessment Appeals Commission that the cottages should be classified as residential property. Appeal of: McKendree Village, Inc. (Davidson County, Jan. 6. 2009).

**§ 43-211.3. Real v. Tangible Personal Property.** A common legal issue in property tax

matters is whether property qualifies as real or tangible personal property. See *Hermann Holtkamp Greenhouses, Inc. v. Metro. Nashville and Davidson Cty.*, No. M2009-00345-COA-R3-CV, 2010 WL 366697 (Tenn. Ct. App. Feb. 2, 2010). In *Hermann Holtkamp*, the Tennessee Court of appeals concluded that greenhouses were tangible personal property. See also *ANR Pipeline Co. v. Tenn. Bd. of Equalization*, No. M2001-01098-COA-R12-CV, 2002 WL 31840689 (Tenn. Ct. App. Dec. 19, 2002) (concluding that subterranean petroleum pipelines were tangible personal property).

In 2004, the definition of real property was clarified to explicitly include railroad structures; telephone and broadcast transmission poles, towers and conduits; property used for conduction utilities such as steam, heat and electricity; marinas; and structures attached to real property with a utility service or by anchors or a foundation. T.C.A. § 67-5-501(9)(B)(i), (ii), (iii), and (iv). Real property does not include propane tanks for residential use or above-ground storage tanks that are not affixed to the land and that cannot be removed without disassembly. 2006 Tenn. Pub. Acts Ch. 521.

Mobile homes are considered to be improvements to the land where located. Owners of mobile home parks are responsible for the additional improvements to the land, but the owners may impose a lien against the owners of mobile homes to collect taxes for the improvements. By enacting this statute, the state legislature intended “that mobile homes are to be taxed and the taxable value of mobile homes is to be determined by treating them as if they are real estate and improvements to the underlying land.” *CMH Homes, Inc. v. McEachron*, 2005 Tenn. App. LEXIS 627 (Sept. 29, 2005). In *CMH Homes* the Court of Appeals held that even when a mobile home has been moved off the land after assessment, the land owner remains liable for the tax on the assessed value of the improvement to the land. *Id.* A delinquent tax sale of the land owner’s property does not include title to mobile homes thereon owned by a third party because tax liens only attach to property upon which the tax has been *imposed. Id.*

### § 43-212. Commercial and Industrial Property.

**§ 43-212.1. Industrial and Commercial Property.** T.C.A. § 67-5-501. “Industrial and commercial property” is all property of every kind used, directly or indirectly, or held for use, for any commercial, mining, industrial, manufacturing, trade, professional, club (whether public or private), non-exempt lodge, business, or similar purpose, whether conducted for profit or not. All real

property which is used, or held for use, for dwelling purposes, which also contains two or more rental units, is classified as “industrial and commercial property.” See § 43-211.1 above with respect to the assessment ratio of industrial and commercial real property.” See § 43-211.1 above with respect to the assessment ratio of industrial and commercial real property.

**§ 43-212.2. Commercial and Industrial Tangible Personal Property.** T.C.A. § 67-5-501. “Commercial and industrial tangible personal property” includes personal property and particular machinery and equipment. Personal property includes things capable of manual or physical possession, such as goods, chattels and other articles of value. The machinery and equipment in this category are confined to those used essentially and principally for the commercial or industrial purposes for which they are intended, and if affixed or attached to real property, can be detached without material injury to such real property. See § 43-214 below with respect to the assessment ratio of commercial and industrial tangible personal property.

**§ 43-213. Inventory.**

**§ 43-213.1. Inventories Excluded from Tax.** T.C.A. § 67-5-901. The term “inventories held for sale or exchange,” means tangible personal property held for lease or rental, unless such property is in the possession of a lessee. T.C.A. § 67-5-901(b). Tangible personal property is generally subject to property taxes. However, inventories of merchandise for sale by persons subject to the business and occupation tax are specifically exempt from property taxes. See T.C.A. § 67-4-701, *et seq.* with regard to the business and occupation tax.

**§ 43-213.2. Property Held for Lease.** The exclusion for inventories specifically encompasses tangible personal property held for lease or rental not in the possession of a lessee. T.C.A. § 67-5-901(b). Whether property is held for lease is a fact determination. Appeal of Premier Global Prod. (Davidson County, Aug. 26, 2009) (concluding that stage and lighting equipment was held for lease).

**§ 43-213.3. Compliments Business Tax Statute.** Because the business tax applies to virtually all entities selling tangible personal property, the exclusion in T.C.A. § 67-5-901 for inventory effectively excludes all inventories from property tax. This exclusion should be read *in pari materia* with the business tax statute. *Art Pancake’s United Rent-All v. Ferguson*, 601 S.W.2d 926 (Tenn. Ct. App. 1979). Thus, where a lessor of personal

property had paid business tax on its rental inventory, the Tennessee Court of Appeals held that it could not be further held liable for the equivalent property tax. *Id.*

**§ 43-213.4. Exclusion Favors Taxpayer.** Unlike exemptions, the exclusion in T.C.A. § 67-5-901 for inventories is not an exemption but a portion of a taxing statute. As such, it arguably must be “liberally construed in favor of the taxpayer and strictly construed against the taxing authority.” *Sky Transp., Inc. v. Knoxville*, 703 S.W.2d 126 (Tenn. 1985).

**§ 43-214. Tangible Personal Property.** T.C.A. § 67-5-501. “Tangible personal property” includes personal property such as goods, chattels, and other articles of value that are capable of manual or physical possession, and certain machinery and equipment whose value is intrinsic to the article itself. In addition, storage tanks that are not permanently attached to the realty but stand freely on specially prepared beds of sand and gravel are personal property for property tax assessment purposes. All tangible personal property, except inventories discussed in § 43-213 above, is classified into three categories of use. T.C.A. § 67-5-901(a). The classification and assessment ratios for tangible personal property are as follows: (1) public utility property is assessed at 55% of its value; (2) industrial and commercial property is assessed at 30% of its value; and (3) all other tangible personal property is assessed at five percent of its value. In actuality, any “other tangible personal property” in category three above is not taxed under the law because it is deemed to have no value. See T.C.A. § 67-5-901(a)(3)(A); *Sherwood Co. v. Clary*, 734 S.W.2d 318 (Tenn. 1987).

**§ 43-215. Intangible Property.**

**§ 43-215.1. Intangible Property: In General.** T.C.A. § 67-5-501. “Intangible personal property” is defined as property whose value is established by what the property represents rather than its intrinsic worth. This includes personal property such as money, debts, and shares of stock and all personal property not defined as tangible personal property.

**§ 43-215.2. Intangible Property: Other.** The Tennessee Legislature has not provided a statutory procedure for taxing intangible personal property, with the exception of the stock of loan, investment, insurance, and cemetery companies. See T.C.A. § 67-5-1201 regarding insurance companies; T.C.A. § 67-5-1101 regarding loan, investment, and cemetery companies. Until the legislature directs otherwise, the assessment ratio for stock of the

above companies is 40% of the stock's value, less the value of the property owned by such companies upon which the property tax has previously been paid.

#### § 43-216. Other Property.

**§ 43-216.1. Farm Property.** T.C.A. § 67-5-501(3). "Farm property" includes all real property which is used, or held for use, in agriculture, which includes, but is not limited to, "growing crops, pastures, orchards, nurseries, plants, trees, timber, raising livestock or poultry, or the production of raw dairy products, and acreage used for recreational purposes by clubs." See § 43-211.1 with respect to the assessment ratio of farm property. Applications for such application must be filed with the county assessor by March 1 of the year in which the classification is sought.

**§ 43-216.2. Residential Property.** T.C.A. § 67-5-501 (10). "Residential property" is defined as "all real property which is used, or held for use, for dwelling purposes and which contains not more than one (1) rental unit." Real property which is used for dwelling purposes but contains two or more rental units is classified as "industrial and commercial property." See § 43-211 for the definition of industrial and commercial and § 43-21 1. 1 with respect to the assessment ratio of residential property.

#### § 43-220. Valuation of Property.

**§ 43-221. Valuation: In General.** Real property is appraised for assessment purposes by county property assessors, except for property of public utilities, which is appraised statewide by the Comptroller of the Treasury. The appraised value of real property is determined from "the evidences of its sound, intrinsic and immediate value for purposes of sale between a willing seller and a willing buyer without consideration of speculative values." T.C.A. § 67-5-601(a). Property classified as agricultural, forest or open space land is an exception to the principle of valuing property at its highest and best use, which is normally the property's present use. See § 43-224 below for a discussion of agricultural, forest and open space land. Generally, other than with greenbelt properties, property values for property tax purposes will be updated before the regularly scheduled update where the property tax appraisals are less than 90% of the market value of all properties within the county or within a property subclass in the county or within a group of properties within a subclass in the county. Updating is accomplished pursuant to appraisal ratio studies conducted by the Division of Property Assessment. See T.C.A. § 67-5-1604.

**§ 43-222. Valuation Methods: Real Property.** There are three general methods of appraisal of real property in Tennessee: (1) the market data approach; (2) the income approach; and (3) the cost approach. *Manual*.

**§ 43-222.1. Market Data Approach.** The market data approach to appraising property results in the most reliable indication of value. The market data approach is a direct method of estimating the value by comparing similar properties that have recently sold in the open market (referred to as "comparables").

**§ 43-222.2. Income Approach.** The income approach is essential in appraising properties, such as rental apartments, that are normally bought and sold on the basis of their ability to produce net income. The income approach uses capitalization rates reflecting the demands of the market in relation to investment returns, converting net rental income that the property may be expected to produce during its remaining economic life into the property's present value.

**§ 43-222.3. Cost Approach.** The cost approach uses two basic concepts to estimate the cost of the property: (1) reproduction cost new; and (2) replacement cost new. The cost approach establishes the value of the property as a summation of depreciated cost of new like property and of improvements of new like property in the value of land.

**§ 43-223. Factors Used in Valuation.** T.C.A. § 67-5-602. The following factors are to be considered in determining the value of real property: (1) location; (2) current use; (3) income-bearing or non-income-bearing nature of property; (4) zoning restrictions on use; (5) legal restrictions on use; (6) availability of water, electricity, gas, sewers, street lighting, and other municipal services; (7) natural productivity of the land; and (8) all other factors and evidences of value generally recognized by appraisers.

**§ 43.223.1. Low-Income Housing Tax Credits.** Including low-income housing tax credits as a factor in the valuation of real property is consistent with T.C.A. §§ 67-5-601 and 602. Although the Tennessee Legislature has not statutorily included federal low-income housing tax credits as a factor in valuation, the courts have deemed such credits to be included despite the assertion that the credits meet the definition of intangible personal property under the default construction of the Property Tax Act. *Spring Hill, L.P. v. Tenn. State Bd. of Equalization*, No. M2001-02683-COA-R3-CV, 2003 Tenn. App. LEXIS 952 (Tenn. App. Ct. Dec. 31,

2003). In *Spring Hill*, the court held that low-income housing credits are properly included in the valuation of property for tax assessment purposes because both value enhancing and value decreasing intangible factors should be considered in the valuation of property. The result of this decision indicates that when a rental property has attached low-income housing tax credits, the present value of these credits will be added to the net income produced by the properties when calculating valuation for the property.

**§ 43-224. Valuation: Other Real Property.** T.C.A. § 67-5-1002. In order to preserve certain types of property, the legislature implemented provisions that allow certain properties to be classified as agricultural land, forest land, and open space land which is commonly referred to as the “Greenbelt Law.” Even though that law provides that these lands are taxed according to their value in unimproved condition, rather than at fair market value, it has been declared a constitutional expansion of the Legislature’s power to set methods of valuation. *Marion County v. State Bd. of Equalization*, 710 S.W.2d 521 (Tenn. Ct. App. 1986).

**§ 43-224.1. Open Space Land.** T.C.A. § 67-5-1004(7). “Open space land” is any area of land of at least three (3) acres, characterized by open or natural condition, whose preservation provides the public with such benefits as the study and enjoyment of natural areas and the conservation of natural re-sources, water, and wildlife. The value of open space land is deemed to be equal to its most suitable economic use and assessment must be based on its value in that current use.

**§ 43-224.2. Forest Land.** T.C.A. § 67-5-1004(4). “Forest land” is land constituting a forest unit engaged in the growing of trees under a sound program of sustained yield management or any tract of 15 or more acres having tree growth in such quantity and quality and so managed as to constitute a forest.

**§ 43-224.3. Agricultural Land.** T.C.A. § 67-5-1004(1). “Agricultural land” is defined as a tract of land of at least 15 acres, including woodlands and wastelands, or “two noncontiguous tracts, including woodlands and wastelands, one of which is at least 15 acres and the other being at least ten acres and together constituting a farm unit.” Additionally, in order to qualify as “agricultural land,” the land must be used to produce or grow “agricultural products,” or, alternatively, the land must have been farmed by the owner’s parent or spouse for at least 25 years, be used as the residence of the owner, and not be used “for any purpose inconsistent with an

agricultural use.” Owners of land must apply by April 1 of the first year in which the classification is sought. No application is required for subsequent years until the property is acquired by a new owner, who must reapply. T.C.A. § 67-5-1005. For a detailed analysis of the valuation of timber land, see *In re New Forrestry, LLC*, Initial Decision and Order (State Board of Equalization Feb. 11, 2011).

**§ 43-224.4. Fifteen Hundred (1,500) Acre Limit.** No person can own more than 1,500 acres of land in a single taxing jurisdiction assessed as agricultural, forest, or open space land. T.C.A. § 67-5-1003. Where property has more than one owner, ownership is apportioned based on percentage of ownership in order to come up with the acreage figures that determine the availability and extent of this tax treatment. *Id.*

**§ 43-224.5. Written Application.** Anyone wanting to take advantage of the tax break for agricultural, open space, or forest land must file an application with the county assessor by March 1st of the year in which the classification is sought. Subsequent reapplication is not required during the period that the ownership of the land remains unchanged. New owners must reapply by March 1st to maintain their eligibility without having to appeal a notice of assessment change. T.C.A. § 67-5-1005.

**§ 43-224.6. Assessment Ratio of Other Real Property.** T.C.A. § 67-5-1008. Once a parcel of land has been classified as open space, forest, or agricultural land, the assessor must compute the taxes due on such land each year, based on both (1) farm classification, 25% of appraised value and present use value and (2) farm classification value as determined under the general assessment and evaluation procedures. However, taxes are paid only on the farm classification and present use value.

**§ 43-224.7. Rollback Taxes.** T.C.A. § 67-5-1008. Upon the real property’s termination of the classification of open space land, forest land, or agricultural land, the property will be subject to rollback taxes. The rollback tax is the difference in the amount of property tax had the property not been subject to Greenbelt relief and the actual property taxes paid under the Greenbelt Law. For agricultural and forest land the rollback tax is computed for the preceding three years and for open space land, the preceding five years. Where the Greenbelt property is sold and the rollback tax is not otherwise provided for in the sales contract, the seller is liable for the roll-back taxes. T.C.A. § 67-5-1005 provides that upon the sale of land that was previously certified as “agricultural land,”

the rollback assessment generally applicable to disqualified property for lack of certification will not apply for a period of up to three years provided the property continues to be used as agricultural land and continues to qualify under the mini-mum size or maximum acreage requirements. Generally speaking, this allows the purchaser of agricultural land an extension of time to satisfy the certification requirements. To ensure the classification as agricultural land after this period, however, the new owners must still apply for certification in the manner prescribed by the State Board of Equalization. An assessor's improper re-classification of land from agricultural to commercial was neither a clerical error nor an "error of classification" "apparent from the face of the official tax and assessment records" and could not be corrected pursuant to T.C.A. § 67-6-509. *Nashville v. Delinquent Taxpayers*, No. M2004-00040-COA-R3-CV, 2005 Tenn. App. LEXIS 195 (March 2, 2005).

#### § 43-225. Valuation: Personal Property.

**§ 43-225.1. Valuation Methods.** As in the valuation of real property, there are three basic approaches to the value of tangible personal property: (1) market data approach value inferred from market analysis of comparable properties; (2) income approach - value derived from the capitalization of net earnings; and (3) cost approach - value equivalent to the replacement cost new less depreciation from all causes. *Manual*. Although all three approaches to value should be used in the valuation process, generally one approach is most suitable to the valuation of a particular type of property. Rule 0600-5-.06. Due to the general lack of adequate market and income data for personal property, the principal approach used for most personal property is the cost approach. Rule 0600-5-.07.

**§ 43.225.2. Reporting.** Assessors must furnish commercial and industrial personal property taxpayers a Tangible Personal Property Schedule on or before February 1 of a tax year. Rule 0600-5-.04(1). The taxpayer must complete, sign, and file the schedule before March 1. *Id.* Assessors need not provide such schedules to residential owners of tangible personal property because, as noted in Section I, tangible personal property owned by non-utility and non-commercial taxpayers is deemed to have no value for property tax purposes. T.C.A. § 67-5-901. Taxpayers may file amended personal property tax returns no later than September 1 following the tax year. There is no deadline for an Assessor to accept or reject an amended property tax return. Att'y Gen. Op. 07-27 (2007). The Assessment Appeals Commission issued a decision in 2009 holding that a company

that acquired personal property from a taxpayer who previously filed a personal property schedule with the local assessor of property was entitled to amend the scheduled filed by the predecessor company pursuant to Tenn. Code Ann. § 67-5-903. *In re: Interstate Blood Bank, Inc.* (Shelby County, Jan. 6, 2009).

**§ 43-225.3. Standard Valuation—Part II.** Part II of the Tangible Personal Property Schedule sets out the different categories of tangible personal property and depreciation rates. "In the absence of evidence to the contrary, the fair market value of commercial and industrial tangible personal property, except for raw materials, supplies, and scrap property, shall be presumed to be the original cost to the taxpayer, less straight-line depreciation or the residual value, whichever is greater." Rule 0600-5-.06(1). The residual value of all tangible personal property is deemed to be 20% of original cost, in the absence of evidence to the contrary. Rule 0600-5-.06(3). In other words, absent evidence to the contrary, a taxpayer must, to value a given item of tangible personal property, look to the standard depreciation tables in Part II of the Tangible Personal Property Schedule, multiply the item's original cost by the appropriate depreciation factor dictated by the age of the property, and add up the sum of the depreciated values to determine the aggregate value of its property.

**§ 43-225.4. Statutory Depreciation Tables.** These tables were developed by the General Assembly in 1990. T.C.A. § 67-5-903. They differ distinctly from tables used by most states, such as North Carolina, Arkansas, Alabama, and Mississippi, in that the Tennessee tables divide property into far fewer categories than those states' tables. Indeed, most states divide manufacturing machinery alone into numerous detailed categories based largely on depreciation lives developed by the U.S. Treasury in the late 1970's and early 1980's. By lumping all manufacturing machinery, which is by far the most significant group, accounting for over 40% of all tangible personal property by value, into one group with an eight year life and a 20% residual, the Legislature essentially promulgated a broad-based "average" depreciation schedule which is presumably not reflective of the depreciation of most individual items of tangible personal property, but is deemed to be a reasonable approximation of value in the aggregate. The groups into which items of tangible personal property are divided for depreciation purposes are:

Statutory Group	Type of Property	Depreciable Life
1A.	Vehicles	5 years
1.	Furniture, Fixtures, General Equipment and other	8 years
2.	Computers, Copiers, Peripherals, Fax Machines, and Tools	3 years
3.	Molds, Dies and Jigs	4 years
4.	Aircraft, Towers and Boats	13 years
5.	Manufacturing Machinery	8 years
6.	Billboards, Tanks and Pipelines	16 years
7.	Scrap Property	0.2% of value regardless of age
8.	Raw Materials and Supplies Construction in Process	100% of original cost Fifteen percent of cost as reported for federal income tax purposes

**§ 43-225.5. Scrap Property.** Scrap property is “personal property no longer capable of use and for which there is no expectation of repair.” Rule 0600-5-.01(11) (defining “scrap value”). A taxpayer should aggressively move any such property into Group 7 on Part II of its Tangible Personal Property Schedule because it is depreciated to two percent of its value—a significant savings even over the residual value of 20%.

**§ 43.225.6. Raw Materials and Supplies.** T.C.A. § 67-5-903 specifically provides that “all raw materials [and] supplies” are to be taxed. “Raw materials” are specifically defined as:

items of tangible personal property, crude or processed, which are held or maintained by a manufacturer for use through refining, combining, or any other process in the production or fabrication of another item or product.

Rule 0600-5-.01(8). “Supplies” are defined as:

expendable items of tangible personal property which are used or held for use in support of a business activity, including but not limited to office supply stocks, stocks

of spare parts for maintenance of machinery and equipment, accessories used in manufacturing processes, printing supplies, and cleaning and maintenance supplies.

Rule 0600-5-.01 (13). The statutory depreciation schedule provides no depreciation rate for such property, reflecting the fact that such materials, not generally held over time, are not deemed to depreciate and are taxed at full value. The State Board’s regulations specifically provide that the fair market value of raw materials and supplies shall be presumed to be original cost as determined by the “first-in-first-out” (FIFO) method of accounting. Rule 0600-5-.06 (2).

**§ 43-225.7. Construction in Process.** All intangible personal property which the taxpayer treats as construction in process (“CIP”) for federal income purposes falls within Group 10 on the statutory schedule. T.C.A. 67-5-903(g)(1). CIP property is defined as “tangible personal property which as of the assessment date is undergoing construction, assembly or installation prior to being committed to use.” Rule 0600-5-.01(3). As set out on the statutory schedule, CIP property may be reported at 15% of cost as reported for federal income tax purposes. *Id.*

**§ 43-225.8. Leased Property—Part III.** Part III of the Tangible Personal Property Schedule requires a listing of leased property. Assessors and their representatives may conduct Uniform Commercial Code (“UCC”) searches with the Tennessee Secretary of State’s office and local authorities to determine whether or not any lessors have filed liens on property leased to commercial and industrial lessees. Tangible personal property is not often valued through an analysis of income because income is often not easily assigned to tangible personal property. The exception is leased property, the income of which is shown by rent over the life of the property.

Tennessee Code Annotated § 67-5-904 requires that taxpayers list on schedules provided by the assessor all leased property used in the taxpayers’ businesses. Lessors of tangible personal property who pay business tax on the income derived from said leases are exempt from ad valorem property taxes on the value of the leased goods. *Nissan North Am., Inc. v. Haislip*, 155 S.W.3d 104, 105 (Tenn. Ct. App. 2004)(citing *IBM Credit Corp. v. County of Hamilton*, 830 S.W.2d 77, 79 (Tenn. Ct. App. 1992)). This general rule does not apply to tools and dies owned by a manufacturer but used at a supplier’s manufacturing plant. Such tools are not considered leased property but are deemed a bailment for mutual benefit. *Nissan*, 155 S.W.3d at 106. Accordingly, a manufacturer is liable

for property tax on personal property held by a supplier for use in making parts or equipment to benefit the manufacturer/owner.

**§ 43-225.9. Nonstandard Valuation - Part IV.** Any taxpayer who can demonstrate that a given item of tangible personal property depreciates more rapidly than permitted by the statutory depreciation schedules must report such property in Part IV of its return as “OWNED ITEMS WITH NONSTANDARD VALUE.” Rule 0600-5-.11 (setting out reporting schedule); Rule 0600-5-.07 (setting out requirements for non-standard valuation). The State Board’s regulations require that assessors “shall place a value on ... property different from the value indicated by the standard valuation provisions if there is sufficient evidence to warrant a different value.” Rule 0600-5-.07. This reflects the statutory requirement that all property be assessed at its “sound, intrinsic and immediate value.” T.C.A. § 67-5-601.

**§ 43-225.10. Supporting Documentation Necessary.** Any taxpayer reporting property on Part IV should expect to provide substantial supporting documentation to back up all non-standard values. While the Tangible Personal Property Schedule warns taxpayers that “the assessor may request supportive information,” the State Board’s rules require that “documentation of such evidence [be] included in the file.” Rule 0600-5-.07. Assessors must report all nonstandard valuations to the Division of Property Assessments. *Id.*

**§ 43-225.11. Factors Used in Valuation.** An assessor must use certain prescribed guidelines in the valuation of tangible personal property. *Manual*. The guidelines stipulate that the following factors are to be utilized in the valuation of industrial, commercial, farm machinery and other personal property: (1) “current use”; (2) “depreciated value”; (3) “actual value after allowance for obsolescence”; and (4) “all other factors and evidence and values generally recognized by appraisers as having a bearing on its sound, intrinsic and immediate economic value at the time of assessment.” T.C.A. § 67-5-602(c). The basis for assessment of tangible personal property is an approximation of market value. Sales or exchanges of property is of a type that is bought and sold in the market regularly.

**§ 43-225.12. “Value in Use” vs. “Value in Exchange.”** The Division of Property Assessments takes the position that the statutory standard for tangible personal property means “value in use”—the value the property has in its current application as part of a going industrial concern. This “value” may be different from strict “market value

in exchange”—the value that a given piece of property will sell for, by itself, to a “willing buyer” on the open market.

While taxpayers should assume that Tennessee taxing authorities will *always* demand “value in use” analysis to support nonstandard valuation of tangible personal property, they should be aware that the Division’s “value in use” position is not supported by any reported decision by a Tennessee court. Moreover, the statutory definition of tangible personal property talks of “machinery and equipment, separate and apart from any real property, and the value of which is intrinsic to the article itself.” T.C.A. § 67-5-501(12). Consistent with this definition, the Standard on Valuation of Personal Property promulgated by the International Association of Assessing Officers provides that the “sales comparison approach [to valuation] should receive primary consideration when adequate data is available.” So taxpayers may present evidence of equipment sales in the open market, where useful, to establish value and not simply accept taxing authorities’ “in use” valuations.

It should be noted that the State Board of Equalization’s regulations define original cost, from which depreciated cost is calculated, as gross capitalized cost, which includes freight and installation charges. This *is* consistent with an “in use” approach, at least for property subject to *standard valuation* according to the statutory tables. Assessors may also point to a State Board decision in which an administrative judge referred to “fair market value in use in place” in adjudicating a property tax appeal. *Bridgestone Firestone, Inc.*, No. 03-888-387-00P, *Personal Property Appeal for the Tax Years 1995 and 1996 in Rutherford County, Tennessee*.

#### **§ 43-300. ASSESSMENT PROCEDURE BY LOCAL ASSESSING AGENCY.**

##### **§ 43-310. Assessment of Property.**

**§ 43-311. Equality and Uniformity in Taxation.** All property must be taxed according to its value. TENN. CONST. art. 2, § 29; T.C.A. § 67-5-102. The ratio of assessment to value of property in each class or subclass must be equal and uniform throughout the state. T.C.A. § 67-5-503.

**§ 43-312. Assessment Date.** T.C.A. § 67-5-504. For each year, all assessments of real and personal property are made annually by January 1. The assessment of all property in the county must be made no later than May 20 of each year.



After May 20, the assessor has no authority to change an assessment other than to correct obvious clerical mistakes. Att’y Gen. Op. 07-37 (2007). An assessor can, after May 20, recommend substantive changes to assessments to the county board of equalization. *Id.*

### § 43-313. Assessment Authority.

**§ 43-313.1. The Assessment Process.** The county assessor makes the assessment of property by May 20 of each year. T.C.A. § 67-5-504(b). Within any municipality, assessment must be completed at least forty (40) days prior to the initial tax due date in the municipality. T.C.A. § 67-5-303 provides the authority of property tax assessors and their deputies to gather information useful in the assessment of property. Specifically, the assessor and its agents or employees have the authority to enter buildings still under construction for purposes of making a correct assessment of the property despite the absence of an owner’s specific consent. Once the tenants occupy the building, the assessor and its agents may furthermore enter as invitees, or with the consent of the owner, to gather such information. If the owner refuses unreasonably to permit such inspection, the assessor or its agents may seek the aid of the appropriate court to gain access to the premises. Property identified as construction-in-progress cannot be properly assessed earlier than the time it was completed and placed in service until the legislative enactment of T.C.A. § 67-5-903(g). *Kellogg Co. v. Tennessee Assessment Appeals Comm’n*, 978 S.W.2d 946 (Tenn. Ct. App. 1998).

No Tennessee property tax owed by a person serving in the U.S. armed forces, including reservists and members of the national guard called to active service, will be due until 180 days after the person is transferred from the theater of operations of hostilities or the hostilities conclude, whichever is sooner. T.C.A. § 67-2-112.

Business taxpayers are required to complete and submit tangible personal property schedules to their local assessors prior to March 1 of each year. T.C.A. § 67-5-903(b). A taxpayer may amend a timely-filed tangible personal property schedule by filing an amended schedule with the assessor at any time until September 1 of the year following the tax year for which the original schedule was submitted. T.C.A. § 67-5-903(e). The assessor has sixty (60) days from receipt of the taxpayer’s amended schedule to review, and accept or reject the schedule. T.C.A. § 67-5-903(e). If the assessor does not notify the taxpayer that the amended schedule has been accepted or rejected, the amended schedule is deemed not accepted. *Id.*

Failure to file a schedule will result in a forced assessment. T.C.A. § 67-5-903(c).

Taxpayers should take great care in challenging forced assessments through the appeal procedures outlined below. Failure to properly appeal a forced assessment will result in the assessment becoming final. Once a forced assessment becomes final, it may only be reopened if the taxpayer appeals the forced assessment prior to March 1 of the following year and is able to establish “reasonable cause” for the failure to properly appeal the assessment. In *VN Hotel Investor v. Tenn. State Bd. of Equalization*, No. 06-2664-III, slip op. at 4 (Davidson County Chancery Court Sept. 4, 2007), the court concluded that the Board properly refused to accept an appeal after March 1 because no statutory authority exists for the Board to accept an appeal after March 1 for any reason, irrespective of whether reasonable cause exists. Reasonable cause has been found when a taxing authority misleads a taxpayer, whether intentionally or otherwise. *Industrial Chem. & Equip. Co.*, Tenn. State. Bd. of Equalization Order and Decision (Oct. 12, 2007).

### § 43-313.2. Description of Property for Tax Purposes.

In describing property, tax records must state:

- (a) The number of town lots (and blocks) of a given piece of property.
- (b) The name of the street on which the property fronts and the front feet thereof unless the property is more easily described in acres.
- (c) If the property is part of a known subdivision, its size, dimensions, quantity, and front feet or acres.
- (d) Where possible the surveyor’s district, range, townships, section, and sectional subdivision.
- (e) All lands by which the described tract is bounded.

T.C.A. § 67-5-805(b). Failure by the assessor to use the appropriate descriptive terms to describe land does not itself defeat the assessment. However, a truly vague description which does not follow the statute and does not sufficiently describe the given property will bar collection of tax. *See e.g., City of Bristol v. Delinquent Taxpayers*, 168 S.W.2d 782 (Tenn. 1943).

**§ 43-313.3. Tax Books.** T.C.A. § 67-5-807. Assessors must prepare either a bound or loose-leaf tax book or books or unit tax ledger cards, one for each parcel of property, and deliver said records to the trustee on or before the first Monday of October of each year. T.C.A.

§ 67-5-807. Tax assessors must, in making out the tax books, place all property within the limits of municipalities such that it is separate from other property so as to enable one inspecting the books to see the aggregate valuation of all property within each incorporated town, city, or taxing district. *Id.*

**§ 43-313.4. Aggregate Tax Statement.** T.C.A. § 67-5-807. The county clerk or tax assessor must make an aggregate statement showing the value of all town lots, the number of acres, and the value of all tracts of land, and the value of all personal property and forward this statement to the Commissioner of Revenue on or before the first Monday in November of each year. The statement must also be forwarded to the mayor of each municipality by that date. T.C.A. § 67-5-807.

**§ 43-313.5. Property Damage.** T.C.A. § 67-5-603. If between January 1 and September 1 a building or other improvement is moved, demolished, destroyed, or substantially damaged by fire, flood, wind, or other disaster and is not restored, an assessor must correct the assessment of said property to reflect the diminution in value caused by the damage. T.C.A. § 67-5-603. The assessment of the improvement must then be prorated for the portion of the year when it stood on the property undamaged. *Id.*

**§ 43-313.6. Improvements.** T.C.A. § 67-5-603. The rule for improvements is essentially the same as that for damages. To the extent a new building or other improvement is *completed* and ready for use, or the property has been sold or leased, the assessor must value the improvement at the time of its completion and then prorate that value for the portion of the year thereafter. The key term here, of course, is complete. An owner should be careful to ensure that it is not assessed prior to the true date of completion. T.C.A. § 67-5-603.

**§ 43-313.7. Leases.** T.C.A. § 67-5-605. Leased property is 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.” T.C.A. § 67-5-605. Options to purchase are deemed to have no value when coupled with lease arrangements. *Id.*

**§ 43-313.8. Pollution Control Facilities.** T.C.A. § 67-5-604. Pollution control facilities are valued at scrap value which, for purposes of valuation, shall never exceed one-half percent (1/2%) of the acquisition value of the equipment. T.C.A. § 67-5-604. A business seeking to have machinery taxed as a pollution control

facility must obtain a certificate from the Tennessee Department of Environment and Conservation. T.C.A. § 67-5-604.

**§ 43-314. Notice Requirement.**

**§ 43-314.1. Notification of Taxpayer.** T.C.A. § 67-5-508. At least ten days before the local or county board of equalization commences its annual session, which begins each June 1 and continues until all complaints are heard (but not more than 30 days), the assessor must notify each taxpayer by mail of any change in the classification or assessed valuation of his or her property. Such notification must show the previous year’s assessment and classification as well as the current year’s assessment and classification. The notification date must be included in the assessor’s records.

**§ 43-314.2. Failure of Notice.** When an assessor fails to note on his or her records the assessment prior to May 20, or fails to notify a taxpayer of any change in the classification or assessed valuation of his or her property, the taxpayer has no legal basis for complaint provided the assessment is completed and a notice of any new or changed classification or assessed valuation is sent to the taxpayer at least ten days before the board of equalization ends its annual session. T.C.A. § 67-5-508(b)(1). If the assessor fails to follow this procedure, the validity of the assessment, classification or assessed valuation may still be effective. However, an aggrieved property owner may appeal directly to the State Board of Equalization at its next regular session, as opposed to filing initially with the local board of equalization, and proceedings may be undertaken to collect any taxes based on such assessment or penalty added, until 30 days after the Board has rendered a final decision on the appeal or complaint.

**§ 43-315. Request for Hearing.** If a taxpayer wishes to dispute the assessment of his property, he must start with the county board of equalization, then appeal to the State Board of Equalization (starting with a hearing examiner, followed by the Assessment Appeals Commission, and then the board itself) and finally, to the courts (i.e., Chancery Court). If the taxpayer fails to protest the assessment to the county board of equalization while it is in session, the assessment becomes final and the taxpayer loses his opportunity to challenge it, but taxpayers who were not notified of an increase in valuation by the county assessor can appeal directly to the State Board of Equalization. *See* T.C.A. § 67-5-1412; § 43-314.2 above. Appeals to the State Board of Equalization must be made before August 1 of the tax year, or within 45

days from the date of the decision of the county board of equalization, whichever is later. T.C.A. § 67-5-1005. *See also* T.C.A. § 67-5-1412.

**§ 43-315.1. Complaints by Taxing Authorities.** T.C.A. § 67-5-1407. Any local government or county can make a complaint before the county board of equalization on one or more of the following grounds:

- a. The property has been erroneously classified or subclassified.
- b. Certain property has not been included on the assessment lists.
- c. A given property has been assessed on the basis of appraised values less than fair market value.

**§ 43-315.2. Notice to Taxpayer.** When a local governmental entity complains, the county board must give the taxpayer five (5) days notice via United States mail to the property owner's last known address. The local governmental entity can offer evidence and witnesses which the county board "may" hear. T.C.A. § 67-5-1407(c).

**§ 43-315.3. Documents.** When the county board or the local taxing authorities request data and documents not otherwise available through public records from the taxpayer, and the taxpayer neglects to supply such information, the taxpayer forfeits his right "to introduce information concerning the property requested by the assessor of property or any local board of equalization." T.C.A. § 67-5-1407(d). Note that the taxpayer forfeits his right, per this provision, to introduce *any* information about the property in question. A county assessor's power to compel witnesses to appear and answer questions pursuant to T.C.A. § 67-5-303 and a county board of equalization's power to compel witnesses to appear to answer questions are the functional equivalent of subpoena powers. Refusal to comply with the request by an assessor is a misdemeanor. Att'y Gen. Op. No. 06-059 (April 3, 2006).

**§ 43-316. Assessment Review.**

**§ 43-316.1. Local Board.** The county assessor reports all assessments to a county board of equalization and makes available to the board all records pertaining to assessments on or before the first day of the board's annual session. T.C.A. § 67-5-304. The county assessor is required to be present at the session of a county board of equalization in an advisory capacity and assist the board in equalizing assessments. T.C.A. § 67-5-1403. Finally, the county assessor sends the complete record

of all assessment changes made by the county board of equalization to the State Board of Equalization on forms furnished by the Board. T.C.A. § 67-5-1513.

**§ 43-316.2. Appeal of Assessments.** The State Board of Equalization has jurisdiction over the valuation, classification, and assessment of all property in the state. T.C.A. § 67-5-1501. Appeals to the Board from initial determinations and exemption in tax relief cases must be filed within 90 days from the date notice of the determination is sent or before August 1 of the tax year, whichever is later. Appeals from initial decisions of administrative judges or hearing examiners must be filed within 30 days from the date the initial decision is sent. No hearing will be held on any appeal until the undisputed portion of the tax has been paid, and in some instances, failure to pay the undisputed amount will result in a dismissal without any further right to appeal. T.C.A. § 67-5-1512. In accordance with T.C.A. § 67-5-1512(b)(2), interest rates on refunds or payments at two percentage points below composite prime rate should be applied to payments or refunds of property taxes accruing after April 22, 1996. *Northwest Airlines, Inc. v. Tennessee State Bd. of Equalization*, 969 S.W.2d 911 (Tenn. 1998).

**§ 43-320. Hearing Procedure at Local Level.** A taxpayer must first appeal his assessment to the county board of equalization unless the assessor fails to send the taxpayer notice of a change in his assessment. T.C.A. § 67-5-1412. Upon such complaint before the county board, the board may hear any evidence or witnesses offered by the complainant, or take such steps to investigate the grounds of the complaint. T.C.A. § 67-5-1407. Any action by the county board of equalization must be completed and the notice of decision and appeal procedure sent to the taxpayer no later than five days prior to the date the taxes are due, which in the case of counties, taxes are due on the first Monday of October of a tax year. T.C.A. § 67-5-1409. This procedure does not apply to extraordinary actions or in any year in which the county completes a reappraisal pursuant to T.C.A. § 67-5-1601, *et seq.* A taxpayer may appeal the valuation of industrial and commercial real and tangible personal property directly to the state board of equalization if the assessor consents in writing. T.C.A. § 67-5-1412.

**§ 43-330. Practice and Procedure at Local Level.**

**§ 43-331. Right to Representation.** T.C.A. § 67-5-1407. Any property owner liable for taxation in Tennessee shall have the right to make a complaint before the county board of equalization via personal appearance,

representation by attorney, or by written authorization permitting an agent to so appear. T.C.A. § 67-5-1407 allows any property owner or taxpayer liable for taxation in Tennessee to file a complaint with the given county board of equalization. For this purpose, “taxpayer” is defined as the owner of the property subject to the appeal or the lessee who is liable to pay the ad valorem taxes on the property. If the lessee is obligated only to pay a portion of such taxes, the lessee must obtain the property owner’s consent in writing. For purposes of this section, a property manager, attorney, or other authorized agent may make the complaint to the county board of equalization so long as such authorization is set forth in writing.

**§ 43-332. Grounds for Relief.** The taxpayer has several grounds upon which relief may be requested: first, that the property had been erroneously classified for purposes of taxation, second, that the property has been assessed on the basis of an appraised value which exceeds the value provided in T.C.A. § 67-5-601, *et seq.*, and finally, that property other than property owned by the taxpayer has been assessed on the basis of appraised values which are less than the value provided in T.C.A. § 67-5-601, *et seq.*

**§ 43-333. Taxpayer Compliance Requirements.** The owner, upon request of the assessor of property or the county board of equalization, must provide any specific data regarding the property that is not readily available through public records and is necessary to making an accurate appraisal of the property. If the owner fails, refuses, or neglects to supply this data in a timely manner, the owner forfeits his right to introduce information concerning the property requested by the assessor of property or any local board of equalization. Assessors’ requests for information “constitutes the functional equivalent of a subpoena.” Tennessee Op. Att’y Gen. 06-059.

#### **§ 43-400. ASSESSMENT PRACTICE BY TAX-PAYERS.**

**§ 43-410. The Property Tax Case Summarized.** The suggestions listed below are often helpful when contesting an assessment.

**§ 43-411. Outline Points of Concern.** In preparation for the appeal, the taxpayer should make a list of the points that the taxpayer wishes to have considered and provide copies of these concerns for the assessor and the administrative judge.

**§ 43-412. Demonstrative Evidence.** If beneficial to the taxpayer’s appeal, the taxpayer should bring a recent photograph of the property to help demonstrate the points of concern outlined in § 43-411 above.

**§ 43-413. Comparables.** The taxpayer should bring all information about sales of comparable properties in the neighborhood, if such sales occurred on or about the assessment date. If no comparables are available, alternative approaches to valuation (i.e. income approach) should be explored.

**§ 43-414. Assessor’s Records.** It is a good idea for the taxpayer to check the assessor’s records for errors. The taxpayer should make sure that such information as house dimensions and lot size are correct. This activity could be done when the taxpayer is checking the comparable properties in the neighborhood.

**§ 43-420. Representation of Parties.** There is no requirement that an attorney, certified public accountant, or registered agent represent a taxpayer before a county board of equalization. Additionally, members of county boards of equalization are prohibited from representing taxpayers in assessment appeals. T.C.A. § 67-1-401.

**§ 43-430. Other Persons.** The following persons may serve as agents for the taxpayer: (1) attorneys; (2) officers, directors or employees of the corporation or other official entity; (3) certified public accountants, when the only issue on appeal is the proper completion of a tangible personal property schedule or the determination of its value; and (4) in the case of a complaint, protest or appeal primarily pertaining to the classification or assessment of property, persons who meet professional and academic qualifications relating to property appraisal or assessment. All agents authorized to appear before the State Board of Equalization must register with the Board and pay the biennial registration fee of \$200. T.C.A. § 67-5-1514.

#### **§ 43-500. APPEAL OF TAX ASSESSMENT.**

**§ 43-510. Hearing on County Level.** T.C.A. § 67-5-1412. Generally, a taxpayer must first appeal his assessment to the county board of equalization. However, with the permission of the county board, taxpayers may in some instances file an appeal directly with the State Board of Equalization. T.C.A. § 67-5-1412(b)(2)

Each county board of equalization consists of five members elected by the legislative body of each county. Each member serves for a term of two years. T.C.A.

§ 67-1-401. The Board meets on June 1 of each year and generally remains in session until the equalization process has been completed. The hearing is very informal and brief. The taxpayer may present any evidence deemed appropriate. The assessment becomes final if the tax payer fails to protest the assessment to the county board of equalization while it was in session. A hearing will not be held on any appeal until the undisputed portion of the tax has been paid. The executive director of a county board of equalization can not compromise a contested assessment once the assessment has been appealed and docketed for review by the board. Att'y Gen. Op. No. 05-102 (July 6, 2005).

**§ 43-520. Appeal to State Level.**

**§ 43-521. State Board of Equalization.** The State Board of Equalization is a seven-member body consisting of five ex officio members and two members appointed by the Governor. One gubernatorial appointee must have knowledge and experience in tax assessments at the city level and the other appointee must be experienced in tax assessments at the county level. Each appointed member serves terms for four years each. The remaining five members are the Governor, the Treasurer, the Secretary of State, the Comptroller of the Treasury and the Commissioner of Revenue. T.C.A. § 4-3-5101.

**§ 43-522. Informal Administrative Hearing.** The state administrative remedy operates on three separate levels. First, a recorded preliminary hearing is held before an administrative judge, usually in a court room in the county where the property is located. Hearings normally begin about September 1. The hearing examiner, who serves as the trier-of-fact and conducts the hearing, adjusts the formality of the proceedings to the situation. If an attorney or other agent is handling the case for the taxpayer or if the taxpayer requested that the hearing be conducted in strict accordance with the Administrative Procedures Act, the case will be presented as a formal evidentiary hearing. Otherwise, the hearing examiner may simply ask questions of the taxpayer to obtain the necessary information. A staff appraiser from the State Division of Property Assessments may assist the hearing examiner on appraisal questions. The hearing examiner issues an initial decision and order, which is mailed to the taxpayer and to the assessor within approximately ninety (90) days.

**§ 43-523. Assessment Appeals Commission.** The State Board of Equalization is authorized to create an Assessment Appeals Commission to hear complaints and appeals. The Commission is made up of not less

than three nor more than six members appointed by the Board. T.C.A. § 67-5-1502. An action taken by the Commission is final. However, the State Board of Equalization may, under certain circumstances, elect to review any action by the Commission.

**§ 43-523.1. Appeal to Assessment Appeals Commission.** If the taxpayer, assessor, or any other interested party in the county takes exception to the initial decision, he may make a written request within 15 days for a hearing before the Assessment Appeals Commission. The Assessment Appeals Commission is the second level of state administrative review. The Commission is composed of attorneys and knowledgeable laymen. Although the hearing examiner's report and the technical record from the prior hearing will be offered as evidence before the Commission, the parties are not prevented from bringing in new evidence. The Commission hearings are formal as reflected by the fact that about half of the taxpayers are represented by attorneys or agents, and a court reporter is always present. At the conclusion of the hearing, the Commission issues findings of fact and conclusions of law which are mailed to the tax-payer and the assessor. The parties may file written exceptions to the Commission's decision with the State Board of Equalization within 15 days.

**§ 43-524. Review by State Board of Equalization.** Within 45 days, the State Board of Equalization may decide to review the case. *See* § 43.521 for the composition of the Board. If the Board decides not to take the case, the Commission's decision becomes final (subject to judicial review - *See* § 43-530 below). The Board's procedures are nearly identical to those before the Commission.

The failure to timely file property tax appeals under established procedures will typically be dispositive. The Tennessee Court of Appeals has held that the failure to timely appeal an administrative law judge's default judgment prohibits a taxpayer from obtaining relief on appeal. *See Madison County v. Tenn. State Bd. of Equalization*, No. W2007-01121-COA-R3-CV, 2008 WL 2200050 (Tenn. Ct. App. 2008).

**§ 43-530. Judicial Review and Appeal.** T.C.A. § 67-5-1511. The action of the State Board of Equalization shall be final and conclusive subject to judicial review, and taxes shall be collected according to the assessments determined and fixed by the Board. After the decision of the Board or Commission becomes final, it may be appealed to Chancery Court in the county where the property lies or Davidson County. The state attorney

general's office defends the Board of Equalization's position. The judicial review consists of a new hearing in the Chancery Court based on the administrative record and any additional or supplemental evidence which either party wishes to introduce relevant to any issue. Courts generally will defer to an agency's administrative decision "when those agencies are acting within their area of specialized knowledge, experience, and expertise. *See Am. Heritage Apartments, Inc. v. Bennett*, 2005 Tenn. App. LEXIS 509 (Aug. 18, 2005). The court reviewing an agency's administrative decision is governed by a narrow standard of judicial review, set forth in T.C.A. § 4-5-322. *Id.* As in other civil cases, the Chancellor's decision may be appealed by right to the appropriate appellate court and its decision can be appealed to the Supreme Court. In 2003, the Board of Equalization was authorized by statute to assess costs against any non-prevailing party up to \$100 per hearing. T.C.A. § 67-5-1501.

**§ 43-540. Practice and Procedure.** The procedural rules for hearings established by the Office of the Secretary of State govern proceedings before the State Board, Assessment Appeals Commission, and hearing examiners appointed by the Board. Rule 0600-2 (adopting rules); Rule 1360-1-7 (rules of the Secretary of State). A detailed analysis of these rules are beyond the scope of this chapter, but generally provide for the orderly presentation of evidence by all parties.

**§ 43-541. Use of Appraisals.** The use of appraisals is very helpful to establish the value of the assessed property. For this purpose, certified public accountants are often employed to render opinions as to the value of the property.

**§ 43-542. Forms and Pleadings.** The forms necessary to appeal an assessment may be obtained from the staff of the Assessment Appeals Commission and Board of Equalization at the following phone number, (615) 401-7883.

**§ 43-543. Appearances for Taxpayer.** At any appeal from the county board of equalization or hearing held before the State Board of Equalization, taxpayers and assessors of property may appear in person, by qualified agent (with prior written authorization to appear on behalf of the taxpayer) or in the case of taxpayers, by a member of the taxpayer's immediate family. *See* § 43-430 regarding those persons who may serve as agents for taxpayers. A qualified agent for a taxpayer need not have written authorization to appear at a conference or hearing on the taxpayer's behalf. T.C.A. § 67-5-1514.

*See* § 43-331 (written authorization still needed to file an appeal with county board of equalization).

### § 43-550. Jurisdictional Requirements.

**§ 43-561. Exhaustion of Remedies.** Generally, the administrative remedies set forth above must be exhausted before an appeal can be heard in state courts on a pure valuation question. Nonetheless, when a taxpayer challenges his assessment on legal grounds—such as the availability of an exemption other than those requiring the approval of the state board of equalization—he may pay under protest and sue in Chancery Court without pursuing administrative relief. The Tennessee Supreme Court held that where the statute did not require an exhaustion of administrative remedies, the taxpayer did not have to exhaust her administrative remedies before filing an action in Chancery Court. *Thomas v. State Bd. of Equalization*, 940 S.W.2d 563 (Tenn. 1997). A taxpayer who takes no action on a purely legal property tax issue until a delinquent tax suit is initiated by the taxing authority may not, despite the rule in *Thomas*, then initiate an action to challenge the legal basis of the delinquent tax at issue. *Nashville v. Cain*, No. M2004-00040-COA-R3-CV, 2005 Tenn. App. LEXIS 195 (March 2, 2005)). A taxpayer seeking to have property tax statutes declared unconstitutional need not exhaust administrative remedies before pursuing a declaratory judgment action in chancery court. *Colonial Pipeline Co. v. Morgan*, No. M2006-00591-COA-R3-CD (Tenn. Ct. App., Nashville, July 2, 2007).

**§ 43-562. Payment Under Protest.** As set forth above, if the property tax issue is purely a legal question rather than a valuation issue, a taxpayer may pay the tax under protest pursuant to T.C.A. § 67-1-901 as an alternative to challenging an assessment through the administrative process outlined above. If the matter is a valuation issue, the case must be appealed through the administrative procedures set forth herein.

### § 43-563. Review in Chancery Court.

**§ 43-563.1. New Evidence Permitted.** All matters passed on by the State Board are subject to judicial review. T.C.A. § 67-5-1511(a). This review for locally-assessed taxpayers is "based upon the administrative record and any additional or supplemental evidence which either party wishes to adduce relevant to any issue," T.C.A. § 67-5-1511(b). *See also Am. Heritage Apartments, Inc. v. Bennett*, 2005 Tenn. App. LEXIS 509 (Aug. 18, 2005) (discussing the unique nature of prop-

erty tax appeals of administrative decisions, which permit admission of additional or supplemental evidence). The Tennessee Court of Appeals has held that this provision allows for genuine *de novo* review—that is, a full rehearing of a dispute with full presentations of evidence not restricted to the record before the State Board. *Richardson v. Tennessee Assessment Appeals Comm'n*, 828 S.W.2d 403 (Tenn. Ct. App. 1991).

**§ 43-563.2. Initiating Judicial Review.** Judicial review is initiated with the filing of a petition for review within 60 days after the entry of the State Board's final order thereon. T.C.A. § 4-5-322(a)(2).

**§ 43-563.3. Centrally Assessed Taxpayers.** Taxpayers aggrieved by a final decision of the Tennessee regulatory authority or a final decision of the State Board involving centrally assessed utility property can obtain judicial review by filing a petition for review with the Middle Division of the Court of Appeals. This is a highly significant distinction. Because centrally assessed utility property taxpayers file with the Court of Appeals, their judicial review is not *de novo*, but on the record developed before the State Board. T.C.A. § 4-5-322(g). Proof can only be taken by the court where irregularities in procedure by the agency not shown in the record are alleged. *Id.*

The Court of Appeals may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) arbitrary or capricious or characterized by abusive discretion or clearly unwarranted exercise of discretion; or (5) unsupported by evidence which is both substantial and material in light of the entire record. T.C.A. § 4-5-322(h). In determining the substantiality of the evidence, the Court of Appeals shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. *Id.*

In *Colonial Pipeline Co. v. Morgan*, 231 F.R.D. 518 (M.D. Tenn. 2005), the court held that Tennessee's property tax appeal process did not violate Colonial's due process rights. Colonial appealed the constitutionality of a recently enacted Tennessee law in federal court. The state moved to dismiss, arguing that Colonial has a "plain, speedy and efficient remedy" before the Board

of Equalization. The district court dismissed the case, holding that Colonial has adequate state administrative remedies at its disposal. *Id.*

**§ 43-564. Appeals.** Either the taxpayer or a taxing authority can appeal the decision of the Chancery Court to the Tennessee Court of Appeals. T.C.A. § 4-5-323. Appeals are initialed by filing a Notice of Appeal within 30 days of order of Chancery Court.

**§ 43-600. EXEMPTIONS FROM TAXATION.** Exemptions from the property tax are found in Article 2, § 28 and § 30 of the Tennessee Constitution and T.C.A. §§ 67-5-201 through 67-5-223.

**§ 43-610. Examples of Exempt Property.**

**§ 43-610.1. Government-Owned Property.** Government-owned property used exclusively for public, county or municipal purposes is exempt from taxation. County or municipality-owned property may be tax exempt even if located in a different county or municipality so long as the use of the property is incidental to and consistent with the public purpose of the property. *Maury Reg'l Hosp. v. Tenn. State Bd. Of Equalization*, 117 S.W.3d 779 (Tenn. Ct. App. 2003). Persons or entities leasing real property owned by a government for the purpose of operating a golf course or the developing and operating of a golf course do not pay property taxes, but do make payments in lieu of property taxes in an amount equal to the amount of taxes that would have been due and otherwise payable.

**§ 43-610.2. Non-Profit and Performing Arts Property.** Real and tangible personal property owned and used by certain non-profit community and performing arts organizations as charitable or educational use property is tax exempt. T.C.A. § 67-5-223. Particular guidelines and requirements are set forth in the statute that describe which community and performing arts organizations are entitled to exemption. Section is applicable to applications or appeals pending before the State Board of Equalization on May 1, 1998.

**§ 43-610.3. Public Ways.** T.C.A. § 67-5-204. All roads, streets and alleys legally dedicated and open for public travel and used free of charge are exempt from taxation.

**§ 43-610.4. Government Bonds.** T.C.A. § 67-5-205. Government bonds and notes are not subject to the property tax.

**§ 43-610.5. Property Used For Recycling Waste Products.** T.C.A. § 67-5-208. Property owned by a nonprofit corporation and in which the state has a reversionary interest and is operated for the purpose of recycling or disposing of waste products and converting it to heat or cooling for public buildings in the state is exempt from taxes.

**§ 43-610.6. Charter or Contract Exemptions.** T.C.A. § 67-5-211. All property protected by valid charter or contract exemptions is exempt from taxation.

**§ 43-610.7. Religious, Charitable, Scientific, and Educational Institutions.** TENN. CONST. art. 2, § 28; T.C.A. § 67-5-212. Real and personal property owned by religious, charitable, scientific or non-profit educational institutions which is occupied and used by such institutions purely and exclusively to carry out one or more of its purposes is exempt. Contiguous property owned by a religious institution that is used to carry out one or more of its purposes is also exempt. This exemption provision specifically mentions a variety of institutions eligible for the exemption, including non-profit artificial breeding associations, fraternal organizations and labor organizations exempt from federal income taxes, or non-profit county fair associations. T.C.A. § 67-5-212(e), (f), (h), and (i). The courts have been willing to extend this exemption to facilities that might to some taxpayers not appear obviously within its scope. Thus, for example, parking facilities provided for personnel at Vanderbilt University Hospital in Nashville were deemed necessary to the operation of the hospital and, as such, exempt. *Vanderbilt Univ. v. Ferguson*, 554 S.W.2d 128 (Tenn. Ct. App. 1976) (noting that exemptions in favor of educational institutions are liberally construed); see also *Methodist Hosps. v. Assessment Appeals Comm'n*, 669 S.W.2d 305 (Tenn. 1984) (exempting a hospital parking lot from *ad valorem* taxation). Similarly, a corporation created by non-profit hospitals to do hospital laundry was deemed a charitable institution exempt from tax. *Shared Hosp. Servs. Corp. v. Ferguson*, 673 S.W.2d 135 (Tenn. 1984). Conversely, use of a house as a temporary residence for visiting missionaries was considered only an incidental benefit and not reasonably necessary to accomplish religious purposes, and thereby placed it outside the statutory exemption. *First Presbyterian Church of Chattanooga v. Tenn. Bd. Of Equalization*, 127 S.W.3d 742 (Tenn. Ct. App. 2003). In 2003, the Legislature authorized the Board of Equalization to charge fees up to \$100 for processing exemption applications. T.C.A. § 67-5-212(b)(2). Exempt entities are now permitted to claim an exemption for a period up to five years prior to obtaining approval of their

exemption applications where the exemption relates to relocation of an applicant previously approved. T.C.A. § 67-5-212(b)(3).

**§ 43-610.8. Dormitories.** T.C.A. § 67-5-213. Real estate owned by educational institutions used primarily for dormitory purposes for its students is exempt from taxation.

**§ 43-610.9. Cemeteries.** T.C.A. § 67-5-214. Non-profit cemeteries are exempt from taxation. Real property owned by for-profit cemeteries that has been prepared and is being held for burial purposes is exempt from taxation.

**§ 43-610.10. Personal Bank Accounts and Other Personal Property.** T.C.A. § 67-5-215. The entire amount of money deposited in an individual's personal family checking or savings accounts as well as \$7,500 worth of personal household goods and furnishings, wearing apparel and such other tangible personal property, in the hands of the taxpayer is exempt from taxation. In effect, this statute negates all personal property of this type from being taxed.

**§ 43-610.11. Growing Crops.** TENN. CONST. art. 2, § 30; T.C.A. § 67-5-216. Crops and livestock are exempt from taxation. "All growing crops . . . including . . . timber, nursery stock, shrubs, flowers, and ornamental trees, [and] the direct products of the soil of this state or any other state of the union" are exempt if in the hands of the producer or the producers' immediate vendee. In addition, articles which are manufactured from such products, in the hands of the manufacturer, are exempt. T.C.A. § 67-5-216. Livestock and poultry in the hands of the producer or producer's immediate vendee are also included within this exemption. T.C.A. § 67-5-216(b) (superseding by statute *Neuhoff Packing Co. v. Sharpe*, 240 S.W. 1101 (Tenn. 1921)). Coal, iron, marble, and similar products of the soil also fall within the "agricultural goods" exemption. *Benedict v. Davidson County*, 67 S.W. 806 (Tenn. 1901). However, once raw materials are refined, those products are no longer considered "direct products of the soil." See *Alcoa, Inc. v. State Board of Equalization*, No. E2010-00001-COA-R3-CV, 2011 WL 598435 (Tenn. Ct. App. Feb. 18, 2011) (concluding that alumina, coke, pitch and fluoride were no longer exempt because those materials went "through a more extensive man-initiated and controlled refinement process").

The inclusion of other states' products within this exemption is designed to avoid imposition of an uncon-



stitutional burden on interstate commerce. *Nashville Tobacco Works v. City of Nashville*, 260 S.W. 449 (Tenn. 1923). It should be noted that when a manufacturer who is not an “immediate vendee” obtains exempt materials, such as logs or tobacco, it cannot take advantage of this exemption until the process of conversion of, or manufacturing with, the materials has actually begun. *Moran & Hamilton Co. v. Nashville*, 270 S.W. 75 (Tenn. 1924).

**§ 43-610.12. Property in Transit.** T.C.A. § 67-5-217. Tangible personal property that is in transit through the State of Tennessee is exempt from taxation. Property which is brought to Tennessee from out of state, stored in Tennessee, with or without repackaging, and then forwarded to an out of state destination is “deemed not to have acquired a situs within the State of Tennessee for purposes of ad valorem taxation.” T.C.A. § 67-5-217(b) (1). To the extent that this property is stored in Tennessee and then distributed to locations in and outside the state, only that property distributed in state is subject to property tax. T.C.A. § 67-5-217(b)(2). While this statute has never been cited in a reported decision, it in many ways parallels the import for export sales and use tax exemption set out at T.C.A. § 67-6-313. Cases interpreting that provision may therefore provide some insight into the scope of this exemption. *See e.g. Beecham Labs. v. Woods*, 569 SW2d 456 (Tenn. 1978) (holding that drug samples stored in a Kingsport, Tennessee, warehouse for free distribution to physicians in and outside of Tennessee were only taxable to the extent they were distributed in Tennessee).

**§ 43-610.13. Historic Properties.** T.C.A. § 67-5-218. Improvements made to or restoration of any structure of historic property is exempt from property taxation. There are particular guidelines and requirements within the statute. Real property owned by a charitable institution (as determined under T.C.A. § 67-5-212) is exempt from property tax provided it is listed on the National Register of Historic Places the property is used for occasional rentals lasting no more than two days at a time; the property is not rented out more than 180 days per year with the proceeds derived therefrom used solely for maintenance of the property, and the charitable institution has owned the property for the preceding ten years prior to application for exemption. The owner must demonstrate the property tax savings will be used to preserve and maintain the property. The exemption is valid for ten years. T.C.A. § 67-5-222.

**§ 43-610.14. Airport Runways and Aprons.** T.C.A. § 67-5-219. Real property on private or public use airports is exempt from tax.

**§ 43-610.15. Property on Foreign Trade Zone.** T.C.A. § 67-5-220. Tangible personal property imported from outside the United States held in a foreign trade zone or subzone for the purposes of sale, manufacturing, or processing is exempt from ad valorem taxation while held in such zone or subzone if the property is then exported to a location outside of Tennessee.

**§ 43-610.16. Foreign Trade Zones.** “Tangible personal property imported from outside the United States and held in a foreign trade zone or foreign trade subzone, as defined in Title 7, Chapter 85, for the purpose of sale, manufacture, processing, assembly, grading, cleaning, mixing, or display shall be exempt from Tennessee *ad valorem* taxation while held in the foreign trade zone or subzone and thereafter, if the property is then exported from the foreign trade zone or subzone directly to the location outside of Tennessee.” T.C.A. § 67-5-220. Tennessee law defines foreign trade zones to include those zones established by federal statutes. T.C.A. § 7-8-102.

**§ 43-610.17. Foreign Trade Subzones.** A “foreign trade subzone” is “a foreign trade zone established in an area separate from an existing foreign trade zone for one . . . or more of the specified purposes of storing, manipulating, manufacturing, or exhibiting goods.” T.C.A. § 7-85-102. Such foreign trade subzones are established pursuant to T.C.A. § 7-5-107 by Metropolitan Port Authorities. T.C.A. § 7-5-107(7). Port authorities can authorize the maintenance of foreign trade subzones “upon the request of any party and the approval of a majority of the legislative body in the county or municipality in which such requesting party is located.” *Id.* Therefore, practitioners faced with firms importing goods on a regular basis from foreign countries for subsequent export may want to bring this exemption to the attention of their clients even if the clients are not already taking advantage of opportunities presented by foreign trade zones and foreign trade subzones.

**§ 43-610.18. Family Wellness Centers.** Property owned by a charitable institution, which is a nonprofit corporation, that is used to provide “physical exercise opportunities for children and adults,” is exempt from taxation. T.C.A. § 67-5-225. To qualify for exemption, the charitable institution must promote physical, mental, and spiritual health. The institution also must provide

programs for improving the community. The fact that a property is used for physical exercise, without more, is insufficient to support an exemption. *Club Sys. of Tennessee, Inc. v. YMCA of Middle Tennessee*, 2005 Tenn. App. LEXIS 793 (Dec. 19, 2005). To qualify for the exemption under T.C.A. § 67-5-225, the property must be a family wellness center and its operation must have a charitable nature. *Id.*

**§ 43-620. Exempt Taxpayers.**

**§ 43-621. Tennessee Educational Institution.** All property of an educational institution owned, operated or otherwise controlled by the State of Tennessee as trustee or otherwise is exempt from taxation.

**§ 43-622. Trust Estates.** Every trust estate is entitled to the same exemption as if the property was owned by single taxpayer.

**§ 43-623. Housing Authorities.** Property of housing authorities is exempt from property taxes. However, in lieu of such taxes, the housing authority must make payments to the municipality for services, improvements of facilities furnished by such county or municipality for the benefit of the housing project owned by the housing authority. Such payment is not to exceed the estimated cost of such county or municipality for the services, improvements or facilities provided. This exemption also applies to bonds and notes of the housing authority.

**§ 43-624. Low Cost Housing Generally.** T.C.A. § 67-5-207. Property of not-for-profit organizations used as housing for low income and very low income persons and funded as a special needs project under the HOME and HOUSE Programs are exempt from taxation. T.C.A. § 67-5-207 was amended in 2002 to state that it did not preclude § 67-5-212—the charitable exemption—to transitional or temporary housing qualifying as a charitable use.

**§ 43-625. Low Cost Housing for Elderly.** All Tennessee non-profit corporations who provide low cost elderly housing which are financed by a grant or a loan, made, insured or guaranteed by the United States Government are exempt from tax. There are other technical requirements that must be met. (Any such project that exceeds twelve units must make payments to the county and municipality in lieu of taxes). The non-profit corporation must also be a tax-exempt charitable organization with certain requirements with regard to directors and officers serving without compensation.

**§ 43-626. Tax Relief for Certain Taxpayers.** T.C.A. §§ 67-5-701 to -704. Elderly low income homeowners, disabled homeowners, and disabled veteran homeowners may receive vouchers to be used as credit for payment of property taxes imposed upon their residence (including a mobile home) provided such person meets certain eligibility requirements.

**§ 43-627. Senior Citizens' Tax Deferral.** T.C.A. § 67-5-702 (effective July 1, 1998). Senior citizens (defined as persons 65 years of age or older) with household income for the year no greater than \$25,000 may defer all of or part of their property tax for a period not to exceed one year from the date of death of the taxpayer. The current year deferral and all prior year deferrals may not exceed 80% of the taxpayer's equity interest in the property. The deferred taxes are a lien on the property until paid.

An amendment to the Tennessee constitution was ratified in November 2006, authorizing cities and counties to set maximum property taxes for senior citizens. This amendment overturned case law that had found such maximum property tax rates unconstitutional. Accordingly, in 2007, the Tennessee Legislature adopted the Property Tax Freeze Act. This Act authorizes counties and municipalities to set maximum property tax levels. T.C.A. § 67-5-705. Thus, effective for tax years January 1, 2008 and after, local jurisdictions, including municipalities and counties can set maximum property tax levels for senior citizens who meet certain income limitations. T.C.A. § 67-5-705. The effect of this law may vary depending on the local jurisdiction. Special school districts may not adopt a property tax freeze. Tennessee Op. Att'y Gen. 07-109. In addition to applying to senior citizens, the property tax freeze also applies to homeowners who are totally and permanently disabled, irrespective of age. Tennessee Op. Att'y Gen. 07-156.

**§ 43-628. Active Duty Armed Forces.** T.C.A. § 67-5-2011. Any armed forces member, whether active duty, reserve duty, or national guard, who is called up to active military service in an area outside the United States, may apply to the commissioner of revenue for a tax deferral. No tax will be due for any property until 180 days after the end of the hostilities or 180 days after such person transfers from the theater of operations, whichever is sooner. This statute does not dismiss the tax, but rather, only defers the tax to a later date free of interest. The armed forces member must present copies of original orders or other satisfactory proof of deployment to the county trustee to be eligible for the deferral.

**§ 43-630. Constitutional Issues.** All exemptions from the property tax are provided in the Tennessee Constitution. The Attorney General for the State of Tennessee has historically questioned the constitutionality of any statute that provides a property tax exemption that is outside the scope of the exemptions provided in the Tennessee Constitution.

**§ 43-640. Practice and Procedure [in exemption cases].** The local property assessor provides forms for purposes of a taxpayer requesting property to be determined exempt. The State Board of Equalization reviews the applications. Applications for exemption should be filed by May 20 or within 30 days after an exempt use begins in order to maximize the exemption. The Chancery Court for Davidson County or the Chancery Court where the property is located reviews the board's decision. Once an exemption is obtained, such exemption applies for future years without the necessity of applying again; provided, however, that property owners are responsible for reporting any changes in the use of the exempt property to the local property assessor.

**§ 43-700. MISCELLANEOUS ITEMS.**

**§ 43-710. Jurisdiction of State and Local Agencies.** Inquiries to any state or local agencies should be addressed as follows: State Board of Equalization, 505 Deaderick Street, Suite 1700, James K. Polk State Office Building, Nashville, Tennessee 37243-0280, Telephone: (615) 401-7883; Telecopier: (615) 253-4847

**§ 43-720. List of Forms.** The forms needed for filing an appeal are: (1) appeal form; (2) instruction sheet; and (3) publication. You can get these forms by writing or calling the State Board of Equalization at the number and address listed above in § 43-710.

**§ 43-800. DELINQUENT TAXES AND PENALTIES.**

**§ 43-801. County Remedies in General.** T.C.A. § 67-5-2003. In order to recover delinquent taxes, the county trustee may collect the taxes by distraint (distress warrant) and sale of any personal property liable therefore, by suit at law against the taxpayer, and/or by garnishment.

**§ 43-802. Notice Requirement.** T.C.A. § 67-5-2401. As a preliminary step toward enforcing the lien, the trustee shall insert in one or more newspapers of the county once a week for two consecutive weeks a notice of the intent to file suit. Newspapers that qualify for publication of property tax sale notices are news-

papers that contain matters of general interest and are intended for circulation among the general public. The newspaper must also be published at least weekly. Tennessee Op. Att'y Gen. 07-71. In *Smith v. Gregory*, the Tennessee Court of Appeals held that a process server's numerous attempts to serve the owner at his address and then publication of notice in local newspapers amounted to sufficient due diligence to defeat a challenge of a tax sale. *Smith v. Gregory*, 2007 Tenn. App. LEXIS 676 (Tenn. Ct. App. August 17, 2007).

**§ 43-803. Tax Sale.** T.C.A. § 67-5-2501. At a sale of the land, the clerk of the court shall bid the debt ascertained to be due for taxes, interests, penalties, and costs.

**§ 43-804. Notice of Sale.** T.C.A. § 67-5-2502. Notice to parties is governed by the Tennessee Rules of Civil Procedure. The property shall be advertised in a sales notice, which provides a description. The delinquent tax attorney is required to make "a reasonable search of the public records in the offices of the assessor of property, trustee, local office where wills are recorded, and register of deeds and give notice to persons identified by the search as having an interest in the property to be sold. The court shall set a reasonable fee for this service." T.C.A. § 67-5-2502(c). Notice of a tax sale by regular mail, as opposed to certified mail, is not required by the Due Process Clause of the United States Constitution. *Beneficial Tennessee, Inc. v. Metropolitan Gov't*, No. M2004-0171-COA-R3-CV, 2006 Tenn. App. LEXIS 164 (March 8, 2006).

**§ 43-805. Personal Liability.** "In addition to the lien on property, property taxes are a personal debt of the property owner or property owners as of January 1, and, when delinquent, may be collected by suit as any other personal debt." T.C.A. § 67-5-2101(b). This debt encompasses the tax due, penalties, interest, and attorneys' fees. *Id.* Claims to satisfy this debt can be joined with claims for enforcement of the accompanying lien in the same complaint. *See e.g., White v. Kelly*, 387 S.W.2d 821 (1969) (emphasizing that both the property and the owner become liable for taxes owed).

**§ 43-806. Tax Liens.** A tax lien is imposed on all personal and real property for the full amount of tax due on said property on January 1 of the year of assessment. In other words, every taxpayer has a lien on its property up until the date it pays its taxes. T.C.A. § 67-5-2101. The lien is for the amount of any tax owed plus "all penalties, interest, and costs accruing thereon." *Id.* The lien extends to every part of a given tract of land or item of personal property, notwithstanding any divi-

sion or alienation thereof. T.C.A. § 67-5-2102. The only exception to this rule is that no lien is imposed on leased personal property assessed to a lessee. *Id.* Subject to that exception, the lien is a lien upon the fee—the property itself—and not just the assessed owner’s interest. Thus, the interests of lienors and remaindermen are subjugated to the lien. T.C.A. § 67-5-2102. A tax lien under T.C.A. § 67-5-2101 will not attach to a mobile home because the land underlying the mobile home “has the ultimate liability for the taxation of the mobile home’s assessed value.” *CMH Homes, Inc. v. McEachron*, No. E2004-02189-COA-R3-CV, 2005 Tenn. App. LEXIS 627 (July 12, 2005). A redemptioner need only pay for repairs made to preserve property in its condition at the time of a tax sale; additional improvements need not be paid for. *State v. Delinquent Taxpayers*, No. M2004-00951-COA-R3-CV (November 2, 2006).

**§ 43-807. Collectable Judgment.** All delinquent personal property taxes can be immediately collected by the county trustee, with the assistance of the delinquent tax attorney where required, and the deputy trustees appointed for the purpose. The delinquent lists provided by the trustee to deputy trustees, sheriffs, and constables in any county where a taxpayer or any property liable for tax have “the force and effect of a judgment and execution from a court of record” and thus provide authority for such officers to seize and sell sufficient personal property to satisfy the delinquent taxes, interest, penalties, costs, and attorneys’ fees. T.C.A. § 67-5-2003. Leased personal property assessed to a lessee and delinquent cannot be distrained and sold to satisfy delinquent tax obligations, however. *Id.* Prior to seizure of personal property, the trustee or his deputy must provide ten days notice to the taxpayer by delivering the notice in person, leaving the notice at the taxpayer’s dwelling place, or usual place of business, or mailing such notice to the taxpayer’s last known address. T.C.A. § 67-5-2003. Ten days notice must also be posted in three public places, including the courthouse door. *Id.*

**§ 43-808. Superiority of Tax Lien Over Security Interests.** Where a party owning a security interest in personal property sells the personal property to satisfy a debt, the selling party must withhold sufficient funds from the proceeds of the sale to satisfy personal property taxes assessed on the property being sold, but not collected. T.C.A. § 67-5-2003(h). If the party forecloses on personal property and sells it without withholding such taxes owed, the selling party becomes personally liable to the trustee or other taxing authority to which the property taxes are due. *Id.*

**§ 43-809. Suits for Unpaid Taxes.** The attorney who receives the list of delinquent real property taxpayers must file suits to collect the delinquent taxes on April 1, as well as interest, penalties, and costs. T.C.A. § 67-5-2405(a). Suit can be filed in either Circuit or Chancery Court. *Id.* The attorney can file a single lawsuit containing the names of all delinquent taxpayers in a county without regard to joinder issues that might be raised pursuant to the Tennessee Rules of Civil Procedure. T.C.A. § 67-5-2405(b). The attorney can add additional defendants as a matter of right. *Id.* Courts must by statute accord priority to suits for the collection of delinquent taxes. T.C.A. § 67-5-2405(c). The Tennessee Attorney General has opined that courts may not amend or alter the statutory scheme for enforcement of tax liens through use of equitable remedies. Tenn. Op. Att’y. Gen. No. 86-130. Any party who seeks to challenge a tax sale on this or any other basis must first pay the amount bid for property and all taxes accrued since the date of sale before filing suit. *Ewell v. Hill*, No. 02A01-9608-CH-00178, 1998 WL 18142 (Tenn. Ct. App., Jan. 21, 1998). Tennessee Code Annotated § 67-5-2504(d) creates a three year statute of limitations for all actions to invalidate any tax title to land. A purchaser at a tax sale cannot circumvent this three year limitations period by initiating a suit to quiet title prior to the expiration of the three year period. *Inman v. Raymer*, No. E2003-01964-COA-R3-CV, 2004 Tenn. App. LEXIS 304 (February 26, 2004).

A purchaser at a tax sale owns the property purchased subject to the statutory right of redemption. Therefore, the only notice that a purchaser need be provided to satisfy his right to due process is the statutory notice of redemption provided for in T.C.A. § 67-5-2704. A purchaser at a tax sale who does not, upon receipt of said notice, file a motion seeking additional compensation for “moneys expended to preserve the value of the property or otherwise protest the redemption” has no other remedy to recover such costs. *State v. Ferger*, No. M2001-00531-COA-R3-CV, 2004 Tenn. App. LEXIS 327 (May 20, 2004). An attempt to transfer the right to redemption must be at fair market value because such an assignment for nominal consideration would amount to fraud. *State of Tennessee v. Delinquent Taxpayers*, 2007 Tenn. App. LEXIS 370 (Tenn. Ct. App. June 11, 2007).

**§ 43-810. Statute of Limitations.** Property taxes are uncollectible after ten years from the April 1 following the October date the taxes were due. T.C.A. § 67-5-1806. Sale of the property or purchase by a county or municipality tolls the statute of limitations.

Mere filing suit does not toll the statute of limitations.  
Tenn. Op. Atty. Gen. No. 94-122.

**§ 44-100. Effective Date.** This material is current through December 31, 2010.

