



# County Technical Assistance Service

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## Property Classification

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## Property Classification

**Reference Number:** CTAS-1469

Property is divided into three classes for taxation purposes: (1) real property; (2) tangible personal property; and (3) intangible personal property.<sup>1</sup>

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<sup>1</sup>Tenn. Const., art. II, § 28; T.C.A. § 67-5-503.

## Real Property

**Reference Number:** CTAS-1470

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

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

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

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

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

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

<sup>2</sup>T.C.A. § 67-5-801(c)(1).

<sup>3</sup>T.C.A. § 67-5-801(c)(2).

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

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

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

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

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

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

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

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

## Public Utility and Common Carrier Property

**Reference Number:** CTAS-1471

In a recent case, the Tennessee Court of Appeals held that pipelines shall be treated as personal property for the purposes of ad valorem taxation.<sup>1</sup> In response, the legislature amended T.C.A. § 67-5-501(9),<sup>2</sup> which now classifies certain property associated with utilities and railroads as real property for purposes of the property taxation. Examples include but are not limited to the following: surface, underground or elevated railroads, and railroad structures, substructures and superstructures, tracks and the metal thereon; telephone, broadcast, transmission and telegraph poles, supports, conduits, towers and enclosures for electrical conductors upon, above and underground and pipes and conduits used for wire, cables and lines buried underground; mains, pipes, pipelines and tanks permitted or authorized to be built, laid or placed in, upon, or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance there-in or that is protected thereby.

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

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

## Tangible Personal Property

**Reference Number:** CTAS-1472

Tangible personal property is classified according to its use and assessed as a percentage of its value as follows:

1. Public Utility—55 percent
2. Industrial and Commercial—30 percent
3. All Other Tangible Personal Property—5 percent

Tangible personal property not in use is classified according to its immediate most suitable economic use, which is determined after considering the following factors: immediate past use, if any; nature of the property; classification of the real property upon which it is located; normal use of the property; ownership; and any other factors relevant to a determination of the immediate most suitable economic use of the property.<sup>1</sup>

All property is subject to taxation.<sup>2</sup> However, the legislature has determined that non-business tangible personal property is assumed to have no value, and a tax is not imposed on this property.<sup>3</sup> The no-value presumption for non-business personal property has been upheld, based on the fact that the tax produces little revenue in relation to its administration costs, as well as the long-standing rule that the legislature may choose the method of valuation as well as whether the tax itself has any practical value.<sup>4</sup>

Most industrial and commercial tangible personal property is valued and assessed by the county taxing authorities in the counties where the owners of such property do business.<sup>5</sup> Pursuant to T.C.A. § 67-5-901, *et seq.*, industrial and commercial taxpayers must annually file a schedule on which they list the tangible personal property they use in their businesses. Section 67-5-903(f) contains a schedule of allowable rates of depreciation for commercial and industrial tangible personal property.<sup>6</sup> The constitutionality of § 67-5-903(f) has been upheld.<sup>7</sup> Pursuant to T.C.A. § 67-5-1509(a), the State Board of Equalization must, by order or rule, direct that commercial and industrial tangible personal property assessments be equalized using the appraisal ratios adopted by the state board for each county. However, such equalization is available only to taxpayers who have filed the reporting schedule required by law. The constitutionality of T.C.A. § 67-5-1509(a) has also been upheld.<sup>8</sup>

Public utility and common carrier property is centrally assessed annually by the Comptroller of the Treasury.<sup>9</sup> Pursuant to T.C.A. § 67-5-1302(b)(1), the assessments of public utility property shall be adjusted, where necessary, to equalize the values of public utility property to the prevailing level of value of property in each jurisdiction. The constitutionality of § 67-5-1302(b)(1) has been upheld.<sup>10</sup> “The authority to adjust the appraised values of public utility property to achieve equalization with industrial and commercial property is found in § 67-5-1509(b). This statute provides: (b) Equalization may be made by the board or commission, as the case may be, by reducing or increasing the appraised values of properties within any taxing jurisdiction, or any part thereof, in such manner as is determined by the state board of equalization will enable the board or commission to justly and equitably equalize assessments in accordance with law.”<sup>11</sup> Since 1997, the Board of Equalization has ordered a 15 percent reduction in the assessed value of centrally assessed tangible personal property in order to bring it to the same level of assessment as locally assessed tangible personal property.<sup>12</sup>

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<sup>1</sup>T.C.A. § 67-5-901(a).

<sup>2</sup>Tenn. Const., art. II, § 28.

<sup>3</sup>T.C.A. § 67-5-901(a)(3)(A).

<sup>4</sup>*Sherwood v. Clary*, 734 S.W.2d 318, 320-21 (Tenn. 1987); *citing, Lehnhausen v. Lake Shore Auto Parts*, 410 U.S. 356 (1973). For prior law, see Op. Tenn. Atty. Gen. 86-80 (April 3, 1986); Op. Tenn. Atty. Gen. 84-273 (September 27, 1984).

<sup>5</sup>T.C.A. §§ 67-5-102, 67-5-103.

<sup>6</sup>*In re All Assessments*, 58 S.W.3d 95, 96 (Tenn. 2000).

<sup>7</sup>*In re All Assessments*, 67 S.W.3d 805, 816-820 (Tenn.Ct.App. 2001), *perm. appeal denied*, (Tenn. 2002).

<sup>8</sup>*Williamson County v. Tennessee State Board of Equalization*, 86 S.W.3d 216 (Tenn.Ct.App. 2002).

<sup>9</sup>T.C.A. § 67-5-1301.

<sup>10</sup>*In re All Assessments*, 67 S.W.3d 805, 820-821 (Tenn.Ct.App. 2001), *perm. appeal denied*, (Tenn. 2002).

<sup>11</sup>*In re All Assessments*, 58 S.W.3d 95, 101 (Tenn. 2000). *See also Louisville & N.R.R. v. Public Serv. Comm'n*, 249 F.Supp. 894 (M.D. Tenn. 1966), *aff'd*, 389 F.2d 247 (6th Cir. 1968) (“L & N I”); *Louisville & N.R.R. v. Public Serv. Comm'n*, 493 F.Supp. 162 (M.D. Tenn. 1978), *aff'd*, 631 F.2d 426 (6th Cir. 1980), *cert. denied*, 450 U.S. 959, 101 S.Ct. 1418 (1981) (“L & N II”).

<sup>12</sup>*ANR Pipeline Co. v. Tennessee Board of Equalization*, 2002 WL 31840689, \*1 (Tenn.Ct.App. 2002) *perm. app. denied* (Tenn. 2003).

## Pollution Control

**Reference Number:** CTAS-1473

The value of qualified pollution control facilities, for the purpose of ad valorem property taxation, is deemed to be its salvage value (the estimated fair market value), if any, which could be realized upon the voluntary sale or other disposition of the property when it can no longer be used for the purpose for which it was designed. Salvage value should not exceed 0.5 percent of the acquisition value of such facilities.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-604. *But see* Op. Tenn. Atty. Gen. 86-142 (August 12, 1986).

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