
Back Assessment & Reassessment Handbook

for

Assessors of Property



October 2011

Back Assessment & Reassessment Handbook For Assessors of Property

October 2011 (Revised as of August 2012)

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Purpose

The purpose of this handbook is to provide the assessor's office a guide on the legal requirements for certifying a *back assessment* and *reassessment*. Its use can ensure that the assessor's office has met those requirements thereby providing uniformity for all 95 counties and the Office of State Assessed Properties.

Disclaimer

This handbook contains interpretations of law by legal staff with the office of the Comptroller of the Treasury on the most common issues concerning back assessments and reassessments. This handbook has not been approved by the State Board of Equalization. These interpretations should be considered general advice regarding assessment practices under the law, not binding rulings of the Comptroller of the Treasury, the Division of Property Assessments, or the State Board of Equalization. The specific facts and circumstances of a particular issue may, however, result in a different conclusion. Please feel free to contact the Division of Property Assessments if you have any questions.

Introduction

All property is to be assessed every year as of January 1.¹ Once the county board of equalization (county board) has adjourned, an assessor cannot make any changes to an assessment except as authorized by law (e.g., an assessment revised under T.C.A. § 67-5-509 because of clerical errors; proration of an assessment under T.C.A. §§ 67-5-603 and 606). But when property has been underassessed or escaped taxation in previous tax years for reasons stated in T.C.A. §§ 67-1-1001–1011, the assessor has the authority to make a back assessment or reassessment.

Although these assessments relate to a previous tax year or previous tax years, they are an addition to the *original assessment*. In other words, they do not change, alter, or revise a previous assessment.² In fact, the deadline date to appeal and pay taxes for these assessments are different. Depending on the circumstances, additional taxes can either be deemed delinquent 60 days after a tax notice is sent or from the original delinquency date for the original assessment. Also, a taxpayer must appeal directly to the State Board of Equalization (State Board) within 60 days after the assessments are certified to the collecting official—a copy must be sent to the taxpayer.

Although the terms back assessment and reassessment are often used synonymously, they do have different meanings.

¹ T.C.A. § 67-5-504(a)(1) (“All assessments of real property and of personal property shall be made annually and as of January 1 for the year to which the assessment applies . . .”).

² See, e.g., T.C.A. § 67-5-1401 (“If the taxpayer fails, neglects or refuses to appear before the county board of equalization prior to its final adjournment, the assessment as determined by the assessor shall be conclusive against the taxpayer, and such taxpayer shall be required to pay the taxes on such amount . . .”) and T.C.A. § 67-5-1327(b), last sentence (“All persons or entities authorized to file an exception under this section but failing to file an exception within the time permitted shall be deemed to have waived any objection to the assessments.”).

I. Back assessment and reassessment defined.

Back assessment and reassessment are statutorily defined and have different meanings. “‘Back assessment’ means the assessment of property, including land or improvements not identified or included in the valuation of the property, that has been omitted from or totally escaped taxation.”³ For real property, it is relatively easy to determine whether land has or improvements have escaped taxation. And it does not matter why they have not been assessed. If either has escaped taxation, then a back assessment must be made. A typical back assessment is when a house (improvement) is discovered to have been omitted from the assessment roll.

“‘Reassessment’ means the assessment of property that has been assessed at less than its actual cash value by reason of connivance, fraud, deception, misrepresentation, misstatement, or omission of the property owner or the owner’s agent.”⁴ A reassessment of personal property is likely to result when it is discovered that a forced assessment is lower than it should have been (an audit usually reveals this). A forced assessment is made, generally, when a taxpayer fails to file a tangible-personal-property schedule. (Assessors use tangible-personal-property schedules and the Office of State Assessed Properties uses ad valorem reports. For this handbook, both will simply be referred to as a *reporting schedule*.)

II. The deadline for certifying a back assessment or reassessment.

Generally speaking, a back assessment or reassessment must be certified to the collecting official “on or before September 1 of the year following the tax year for which the original assessment was made”⁵ Here’s how this works:

If the original assessment is made for tax year 2008, then the assessor must certify a back assessment or reassessment to the collecting official on or before September 1, 2009.

But if the underassessment of property is the result of (1) the taxpayer’s failure to file a reporting schedule, (2) actual fraud or fraudulent misrepresentation by the taxpayer, or (3) collusion between the taxpayer and the assessor, then “a back assessment or reassessment must be [certified] on or before three (3) years from September 1 of the tax year for which the original assessment was made.”⁶ A taxpayer’s failure to file a reporting schedule is the most common reason that an assessor can make a back assessment or reassessment going back three years, as here:

A taxpayer fails to file a reporting schedule for tax year 2007. The assessor makes a forced assessment. It is later discovered through an audit, however, that the forced assessment is inadequate. In other words, the audit revealed that the forced assessment should have been higher. Because the taxpayer failed to file the reporting schedule, the assessor is able to reassess tax year 2007—three years from the September 1 deadline for tax year 2010. Therefore, the assessor would have to certify the reassessment to the collecting official on or before September 1, 2010.

³ T.C.A. § 67-1-1001(a)(1).

⁴ *Id.* 1001(a)(2).

⁵ *Id.* 1005(a).

⁶ *Id.*

But if the taxpayer had *filed* a reporting schedule and no audit notice was sent (this is discussed later) before September 1, 2008, then no reassessment could be made. This assumes, however, no fraud or collusion exists.

III. The delinquency dates for a back assessment and reassessment.

A. Additional taxes become delinquent 60 days after tax bill is sent.

Generally, there is no requirement to send a property owner a tax bill.⁷ But T.C.A. § 67-1-1005(a) requires that a tax bill be sent when property has been back assessed or reassessed. The reason: those additional taxes will not become delinquent until 60 days after a tax bill is sent.⁸

A back assessment or reassessment is certified to the collecting official on August 1, 2010. The collecting official sends a tax bill to the taxpayer on September 1, 2010. The additional taxes will not become delinquent until 60 days after September 1, 2010.

If a tax bill is never sent, the 60-day period will not start and the taxes will never become delinquent. (Appendix “A” on page 10 is an example of a letter an assessor can use when additional taxes will not become delinquent until 60 days after a tax bill is sent.)

But additional taxes can be deemed delinquent from the original delinquency date under specific circumstances provided in T.C.A. § 67-1-1005(a).

B. Additional taxes becoming delinquent from the original delinquency date.

Additional taxes will be deemed delinquent from the original assessment’s delinquency date if: (1) a taxpayer failed to file a reporting schedule; (2) there is actual fraud or fraudulent misrepresentation by the taxpayer; or (3) there is collusion between the taxpayer and the assessor.⁹ A taxpayer’s failure to file a reporting schedule is the most common circumstance where a taxpayer will pay penalty and interest on additional taxes from the original delinquency date. The following illustrates this:

A taxpayer receives a forced assessment for tax year 2007 for failing to file a reporting schedule. Taxes for 2007 became delinquent on March 1, 2008. Later, an audit finds that the forced assessment was too low. When the assessor certifies the reassessment—the additional assessment—and the collecting official sends a tax notice, additional taxes due are considered delinquent as of March 1, 2008. This means that delinquent penalty and interest of 1.5% are added each month beginning on March 1, 2008. This will continue to accrue until the taxes are paid.

⁷ *McCarrol v. Weeks*, 6 Tenn. 246, 254 (1814) (“The law requires that every individual owning lands within the State should pay the taxes on it; every proprietor is presumed to know the law, and that he should pay without demand or personal notice.”).

⁸ T.C.A. § 67-1-1005(a) (“Additional taxes due as the result of a back assessment or reassessment shall not be deemed delinquent until sixty (60) days after the date notice of taxes arising from the back assessment or reassessment is *sent* to the taxpayer . . .”) (emphasis added).

⁹ T.C.A. § 67-1-1005(a).

Failing to file a reporting schedule is the most common reason why additional taxes will be considered delinquent from the original delinquency date. (Appendix “B” on page 11 is an example of a letter that an assessor can use when this is the case.)

C. Additional taxes due during the current tax year.

There may be situations where a back assessment or reassessment is certified during the current tax year. Although the statute provides 60 days to pay the additional taxes without penalty and interest, the 60 days may end before the March 1 delinquency date for the original assessment. Therefore, you should permit the taxpayer to pay the additional taxes without penalty or interest from the later of (1) the sixty days or (2) March 1 when—and only when—the back assessment or reassessment is for the current tax year. Here is an example of this potential problem:

On November 1, 2010, a back assessment is issued for property that escaped taxation for tax year 2010. If the collecting official sent a tax bill on November 1, the taxpayer would have 60 days to pay the additional taxes without penalty and interest. But that would make the taxes become delinquent on January 3, 2011. This is almost 60 days before the March 1 delinquency date for tax year 2010. Therefore, because the additional taxes are for the current tax year (2010), the delinquency date should be March 1 instead of January 3.

IV. Counting days from one date to the next.

When counting days, do not include the first day (e.g., the date a notice is sent to a taxpayer) but count the last day unless it is a Saturday, Sunday, or legal holiday.¹⁰ This means to count calendar days, not business days. For example:

Assume an assessor must certify a back assessment within 30 days from Thursday, June 16, 2011. Start counting on Friday, June 17 (exclude Thursday, June 16—the first day) and count 30 days. The 30th day is Saturday, July 16. This day is excluded because it falls on a Saturday. Therefore, Monday, July 18 is the last day the assessor has to certify the back assessment.

V. Tolling the September 1 deadline when an audit notice is sent.

When an audit notice is sent to a taxpayer, the September 1 deadline for initiating a back assessment or reassessment is *tolled*.¹¹ That is, the days remaining before a back assessment or reassessment must be certified are stopped. One administrative judge has analogized this to a “time out” at a game: “The tolling period contemplated by Tenn. Code Ann. [§] 67-1-1005[(d)] is more plausibly conceptualized as a ‘time out’ that stops the clock – with the same amount of time remaining in the

¹⁰ Administrative Procedures Rule 1360-04-01.04(1) (“In computing any period of time . . . the date of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday.”).

¹¹ T.C.A. § 67-1-1005(d) (“[T]he issuance of a notice of tangible personal property audit by the assessor *tolls* the running of the deadline during the period of the audit from the issuance of the notice until issuance of the audit findings.”) (emphasis added).

‘game’ when the clock is restarted. By definition, to ‘toll’ a statute of limitations means to interrupt the running of it.”¹² Therefore, when an assessor sends notification that a taxpayer’s business is going to be audited, the date the notice is sent tolls the September 1 deadline. Or to analogize as a “time out,” the notification stops the running of the remaining days before the September 1 deadline. This is an example of what it means to toll:

Let’s assume that an audit notice for tax year 2008 is sent to a taxpayer on August 1, 2009. The deadline to certify a back assessment or reassessment for tax year 2008 is September 1, 2009 (this assumes that a reporting schedule was filed). There are 31 days from August 1 to September 1. These 31 days are tolled—or the running of the 31 days is stopped—until the audit findings are issued to the taxpayer. Once issued, the assessor has 31 days to certify a back assessment or reassessment to the collecting official. In other words, the “time out” is over and the “clock” starts running again. If the audit findings are issued on March 1, 2010, the assessor must certify the back assessment or reassessment on or before April 1, 2010.

VI. Counting the days being tolled.

The days tolled are counted the same way as described in IV. on page 4—do not count the first day tolled but count the September 1 deadline. Again, you are counting calendar, not business, days.

An audit notice is sent on August 1, 2009—this begins the tolling period. The deadline to certify a back assessment or reassessment is September 1, 2009. Start counting on August 2. When you count to September 1, you will have counted 31 days. These 31 days are tolled until the audit findings are issued to the taxpayer.

VII. Counting the days after audit findings are issued to the taxpayer.

The days tolled during the audit period are not tolled indefinitely—they are only tolled during the duration of the audit.¹³ So when audit findings are *issued* to the taxpayer, the tolling period ends.¹⁴ Now the “clock” starts running for the assessor to certify a back assessment or reassessment. If 31 days were tolled and the audit findings were issued on March 1, 2010, you would start counting on March 2. The last day to certify is April 1, 2010. After this date, the assessor loses the right to back assess or reassess.

¹² *Republic Plastics, LP* (Knox County, Tax Years 2004–06, Initial Decision and Order, December 31, 2008) at 4 (citation omitted).

¹³ See *Alcoa, Inc.* (Blount County, Tax Years 2001–03, Initial Decision and Order, February 17, 2006) at 4 (“The ‘tolling’ of a statute of limitations does not mean that it is suspended indefinitely. Rather, section 67-1-1005(d) merely stops the ‘clock’ from running for the duration of the audit.”). The Assessment Appeals Commission affirmed the Initial Decision and Order on June 4, 2008.

¹⁴ See *Hardin’s Sysco Food Service, Inc.* (Shelby County, Tax Year 2006, Initial Decision and Order, January 28, 2009) at 2–3 (“[I]t was not until the Assessor’s office . . . communicated the ‘results of our audit’ to the taxpayer . . . that the remaining 19-day period began. . . . [T]he administrative judge must deem the ‘audit findings’ contemplated by Tenn. Code Ann. section 67-1-1005(d) to be those actually submitted to the taxpayer by the Assessor or her designee.”) (emphasis in original); see also *Pittco, Inc.* (Shelby County, Tax Years 2002–04, Initial Decision and Order, February 17, 2006) at 4 (“[T]he mailing of the ‘audit findings’ to the taxpayer . . . undoubtedly marked the end of the tolling period [S]ection 67-1-1005(d) was surely not intended to give the Assessor an indefinite period within which to ponder audit findings and decide whether to initiate a back assessment or reassessment.”).

VIII. Audit findings are not a back assessment or reassessment.

Audit findings inform the taxpayer and assessor what the auditor has discovered. They are used by the assessor to determine whether a back assessment or reassessment should be certified. Audit findings will result in additional taxes when—and only when—the assessor certifies a back assessment or reassessment to the collecting official.¹⁵ Once certified and a copy is sent to the taxpayer,¹⁶ the taxpayer has 60 days to appeal to the State Board.¹⁷ But if it is never certified, then there is nothing to appeal and no taxes will be due.

It does not matter whether the taxpayer agrees with the audit findings. Even if the taxpayer “signs off” on them, the right to appeal a back assessment or reassessment still exists. There is a distinction between audit findings and a back assessment or reassessment under T.C.A. § 67-1-1005(b).¹⁸ Otherwise, “[t]reatment of the notice of audit findings as the equivalent of a back assessment/reassessment would obliterate that distinction and render the notification of ‘any additional assessment for which the owner or taxpayer is responsible’ under Tenn. Code Ann. section 67-1-1005(b) superfluous.”¹⁹ So when audit findings are issued, the taxpayer may want to talk to the auditor or the assessor. But the assessor must always keep in mind the deadline to certify. Otherwise, an assessor will lose the right to back assess or reassess.

IX. Appealing a back assessment or reassessment.

Limited remedies exist to challenge or revise an assessment once the county board adjourns. So when a taxpayer appeals a back assessment or reassessment, the original assessment cannot be challenged unless another provision of law permits it (e.g., challenges may be made for correcting clerical errors²⁰ or prorating assessments.²¹).

Although back assessments and reassessments are made against real property, most are against personal property. When taxpayers appeal a back assessment or reassessment of personal property, they may want to appeal the entire assessment (i.e., the original and additional assessment). But only the additional assessment can be appealed. Any challenge to the original assessment must be made under another provision of law. For example, an original assessment for personal property may be revised if the time to amend a reporting schedule under T.C.A. § 67-5-903(e)—September 1 following the tax year—has not expired. If the time has expired, then the original assessment cannot be amended or revised.

¹⁵ T.C.A. § 67-1-1005(b) (“A back assessment or reassessment may be initiated by certification of the assessor of property to the appropriate collecting officials . . .”).

¹⁶ T.C.A. § 67-1-1005(b) (“The assessor shall send a copy of the certification to the owner or taxpayer.”).

¹⁷ *Id.* 1005(b) (“Any person aggrieved by a back assessment or reassessment may appeal directly to the state board of equalization within sixty (60) days from the date that a copy of the certification is sent to the taxpayer . . .”).

¹⁸ *Visteon Corporation* (Davidson County, Tax Years 2002–03, Initial Decision and Order Granting Motion for Summary Judgment, May 8, 2007) at 5 (“The aforementioned subsection (d) of [T.C.A. § 67-1-1005] clearly recognizes a distinction between a notice of audit findings and a certification of back assessment/reassessment.”).

¹⁹ *Id.* at 5.

²⁰ T.C.A. § 67-5-509.

²¹ T.C.A. §§ 67-5-201, 203, 603, and 606.

But if a reporting schedule cannot be amended, a taxpayer may *offset* the additional tax due from a back assessment or reassessment by using a nonstandard method for property originally *reported* and assessed.²² If the original assessment was a forced assessment, however, then no offset can be allowed. The law only permits an offset for property that was previously reported.

A back assessment or reassessment must be appealed within 60 days from the date a copy of the certification is sent to the taxpayer.²³ An appeal is made directly to the state board—county boards do not have any authority to rule upon a back assessment or reassessment.²⁴ To determine the 60-day deadline date, start counting the day after the date a copy of the certification is sent to the taxpayer.

An assessor sends a copy of the certification to the taxpayer on April 1, 2009. Start counting on April 2. The 60th day would be Sunday, May 31. Under Administrative Procedures Rule 1360-04-.01-.04(1) Sundays are excluded. Therefore, the last day for a taxpayer to file an appeal is Monday, June 1, 2009.

With regard to the appeal deadline, it is only legally necessary to inform taxpayers that they have 60 days to appeal to the State Board. The following is an acceptable notice to the taxpayer:

Any person aggrieved by this back assessment or reassessment must appeal to the State Board of Equalization within sixty (60) days from the date of this certification. You may be assisted or represented in the appeal as provided in T.C.A. § 67-5-1514.

But the more clarity you can provide the taxpayer the better. Therefore, if you can provide the last day the taxpayer has to appeal by, then there can be no misunderstanding:

Any person aggrieved by this back assessment or reassessment must appeal to the State Board of Equalization on or before Tuesday, March 20, 2011. You may be assisted or represented in the appeal as provided in T.C.A. § 67-5-1514.

X. Certifying a back assessment or reassessment.

To certify a back assessment or reassessment to the collecting official, the certification must provide the following: (1) the identification of the property; (2) the basis for the back assessment or reassessment; (3) the tax year or years involved; and (4) the additional assessment—the back assessment or reassessment—for each tax year.²⁵

²² T.C.A. § 67-5-902(b).

²³ *Id.* 67-1-1005(b).

²⁴ See T.C.A. § 67-5-1005(b) (“Any person aggrieved by a back assessment or reassessment may appeal directly to the state board of equalization . . .”).

²⁵ T.C.A. § 67-1-1005(b) (“A back assessment or reassessment may be initiated by certification . . . to the . . . collecting officials identifying the property and stating the basis . . . and the taxes years and amounts of any additional assessment . . .”).

A. Identifying the property.

For a back assessment or reassessment of real property the assessor should include the property address and parcel identification number. For personal property the assessor should include the location of the business and the property identification number.

B. The basis for the back assessment or reassessment.

The basis for the back assessment or reassessment must be stated in the certification. For real property that has been omitted from or totally escaped taxation, this is relatively easy, as shown here:

The house (improvement) located at 123 Resident Road, Nashville, TN 37777 (parcel id # 011-001.01) has been omitted from or totally escaped taxation.

If you have recently discovered a business operating in your jurisdiction, then it's likely its personal property has escaped taxation. You could simply state that the taxpayer failed to file a reporting schedule as required by law. A business that has reported, though, could be reassessed because costs or items of property were incorrectly reported (e.g., the taxpayer reported an MRI in group 2 instead of group 1). The important thing to remember is this: be sure to state the basis for the back assessment or reassessment.

C. List all the tax years that have an additional assessment.

Always identify the tax year being back assessed or reassessed. If multiple tax years are involved, make sure you state the additional assessment for each tax year. (See Appendix "B" on page 11 for an example of additional assessments for more than one tax year.)

D. State the amount of the back assessment or reassessment.

A back assessment or reassessment is a separate assessment from the original assessment (i.e., it is a new or an additional assessment). You are not changing or revising the original assessment. So when certifying a back assessment or reassessment to the collecting official, you are only certifying the additional assessment for each tax year you have a discovery or finding (i.e., do not combine the back assessment or reassessment with the original assessment).

E. Additional information in the certification.

It is advisable for the assessor to state in the certification when additional taxes become delinquent because it is the assessor that knows the basis for the back assessment or reassessment. This will help the collecting official to know when penalty and interest start accruing. Generally, additional taxes do not become delinquent until 60 days after the collecting official sends a tax bill to the taxpayer.²⁶ This usually applies to real property—land, improvement, structures—and to personal property when a taxpayer timely filed a reporting schedule. But if additional taxes are the result of (1) a taxpayer failing to file a reporting schedule, (2) actual fraud or fraudulent misrepresentation by the

²⁶ T.C.A. § 67-1-1005(a).

taxpayer, or (3) collusion between the taxpayer and the assessor, then the taxes are delinquent as of original delinquency date.²⁷

²⁷ *Id.*

Appendix “A”

Example of a Back Assessment–Reassessment Letter When Taxes are not Deemed Delinquent Until 60 Days after Tax Bill is Sent.

August 1, 2012

Mary E. Smith, Collecting Official
Tax County
123 Courthouse Square
Taxville, TN 10101

**Re: Back Assessment for 123 Main Street (Parcel Id# 011-001.01)
Owners: John & Jane Smith**

This is not a tax bill.

Dear Ms. Smith:

In accordance with Tenn. Code Ann. §§ 67-1-1001–1011, we have back assessed the residential house (improvement) located at 123 Main Street for tax year 2011. The basis for this back assessment is that the house (improvement) was omitted from or totally escaped taxation. The back assessment for 2011 is:

<u>Tax Year</u>	<u>Back Assessment</u>	<u>Classification Rate</u>	<u>Assessed Value</u>
2011	\$125,000	25%	\$31,250

Under T.C.A. § 67-1-1005(b), you are required to send a tax notice to the taxpayers upon receiving this letter. Taxes due from this back assessment do not become delinquent until 60 days after you send a tax notice to the taxpayers.

Any person aggrieved by this back assessment must appeal directly to the State Board of Equalization within 60 days from the date of this letter. The last day to file an appeal is Monday, October 1, 2012. You may be assisted or represented in the appeal as provided in T.C.A. § 67-5-1514.

Please call this office at (222) 555-0001 if you have questions.

Sincerely,

John Q. Assessor

c: John & Jane Smith

Appendix “B”

Example of a Back Assessment–Reassessment Letter When Taxes are Deemed as of the Original Delinquency Date.

August 1, 2012

Mary E. Smith, Collecting Official
Tax County
123 Courthouse Square
Taxville, TN 10101

**Re: Reassessment for Personal Property Account# 011-001.01 P
Owner: Global Manufacturing, Inc.**

This is not a tax bill.

Dear Ms. Smith:

In accordance with T.C.A. § 67-1-1001–1011, we have reassessed Global Manufacturing, Inc.’s (Global) personal property for tax years 2010 and 2011. Global is being reassessed because it failed to file its tangible-personal-property schedule as required by law for both tax years. This letter is to certify Global’s reassessments to you:

<u>Tax Year</u>	<u>Back Assessment</u>	<u>Classification Rate</u>	<u>Assessed Value</u>
2010	\$500,000	30%	\$150,000
2011	\$425,000	30%	\$127,500

Under T. C.A. § 67-1-1005(b), you are required to send Global a tax notice upon receiving this letter. Because of Global’s failure to file the schedules as required by law, these taxes are delinquent as follows: (1) for tax year 2010, the taxes are deemed delinquent as of March 1, 2011 and (2) for tax 2011, the taxes are deemed delinquent as of March 1, 2012.

Any person aggrieved by this reassessment must appeal directly to the State Board of Equalization within 60 days from the date of this letter. The last day to file an appeal is Monday, October 1, 2012. You may be assisted or represented in the appeal as provided in T.C.A. § 67-5-1514.

Please call this office at (222) 555-0001 if you have any questions.

Sincerely,

John Q. Assessor

c: Global Manufacturing, Inc.