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INTERACTIVE HANDBOOK INSTRUCTIONS

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PREFACE

The purpose of this handbook is to provide assessors' offices with guidance in the handling of appeals concerning locally assessed properties before county boards of equalization and the State Board of Equalization. Although the handbook deals primarily with real property appeals, many of the concepts are applicable to other types of appeals. The handbook includes interpretations of law by legal staff with the office of the Comptroller of the Treasury. This handbook has not been approved by the State Board of Equalization. These interpretations should be considered general advice regarding various legal issues that often arise in the appeals process. Also included in the handbook are discussions concerning valuation methodology prepared by both the Comptroller's legal staff and appraisers with the Division of Property Assessments. Since some issues will be unique, the appropriate legal authority and/or appraisal methodology may be different in a particular situation. In other words, this handbook is not intended to provide definitive answers to all legal and appraisal issues faced by assessors in the appeals process. Moreover, this handbook addresses just some of the many issues that arise in appeals. Assessors should always keep in mind that future rulings and legislation could require modification of the interpretations and advice contained in this handbook. Please feel free to contact the Office of General Counsel or Division of Property Assessments if you have any questions.

The following abbreviations are sometimes used in the handbook:

AAC	-	Assessment Appeals Commission
AJ	-	Administrative Judge
DPA	-	Division of Property Assessments
SBOE	-	State Board of Equalization
T.C.A. §	-	Tennessee Code Annotated Section
T.C.A. §§	-	Tennessee Code Annotated Sections
Uniform Rules	-	Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies

SECTION I – COUNTY BOARD OF EQUALIZATION

The county board of equalization is the first level of administrative appeal for all complaints regarding the assessment, classification, and valuation of property for tax purposes. Statutes concerning county boards of equalization can primarily be found at T.C.A. §§ 67-1-401 through 67-1-404, and 67-5-1401 through 67-5-1415.

The county board's duties include examining and equalizing the county assessments, assuring that all taxable properties are included on the assessment lists, eliminating exempt properties from taxation, hearing complaints of aggrieved taxpayers, decreasing over-assessed property, increasing under-assessed property, and correcting clerical mistakes. T.C.A. § 67-5-1402. The county board of equalization has the power to obtain evidence concerning the classification, value, or assessment of any property by examining witnesses, hearing proof, and sending for persons and papers. T.C.A. § 67-5-1404. The county board may also examine assessors in order to ascertain the manner in which the classification, value, or assessment of property was determined. T.C.A. § 67-5-1405.

Normally, county boards convene on June 1 each year (May 1 in Shelby County) and sit in regular session as necessity may require for the **maximum** number of days allowed under T.C.A. § 67-1-404(b)(1) (ranges from six (6) to thirty (30) days depending upon population). Thus, it is not unheard of for a county board to adjourn after a single day due to the lack of appeals. Where necessary, the session of the county board can be extended. T.C.A. § 67-1-404(b)(2).

An owner of property has the right to appear personally before the county board, to authorize, in writing, for an agent to appear, or to authorize an attorney to appear to contest erroneously classified property, over-assessed property, or under-assessment of property owned by others. T.C.A. § 67-5-1407(a). The requirement for written authorization is also found in T.C.A. § 67-5-1412(a)(2). Certain provisions are somewhat different for Shelby County. *See* T.C.A. § 67-5-1407(e). Whenever personal appearance at a hearing is required, the county board has discretion to conduct all or part of the hearing by telephone, television, software, or other electronic means, if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceedings while taking place. T.C.A. § 67-5-1407(f).

Any local governmental entity also has the right to complain to the county board about erroneously classified property, property not included on the assessment roll, and under-assessed property within the local governmental entity. After the local governmental entity has filed a complaint, the county board must give the property owner at least five (5) days' notice of a hearing by sending the notice via U.S. mail to the last known address of the owner. T.C.A. § 67-5-1407(b).

If an owner or the owner's duly authorized agent, upon request, fails or refuses to supply an assessor or the county board with information not available through public records, but which is necessary to make an accurate appraisal of the property, the owner forfeits the right to introduce this evidence upon appeal to the SBOE. T.C.A. § 67-5-1407(d). For example, if the property owner does not provide requested income and expense data, the owner cannot introduce this information into evidence in a hearing before the SBOE. Realistically, the owner will be unable to establish the market value of an income-producing property if it has forfeited its right to introduce such information into evidence. *See generally,* **Jerry W. Ogle – Riverside Mtr. Lodge**

(AJ, Sevier County, Tax Year 1989, Order on Motion to Prohibit Introduction of Evidence, February 9, 1990).

PRACTICE TIP: Assessors and/or the county board of equalization might want to consider requiring taxpayers or their representatives to complete a standardized request for information. For example, actual income and expenses for the prior three years might be wanted for properties being valued by the income approach. For recently constructed properties, actual construction costs might be useful. For recently purchased properties, copies of the closing statements are often useful. Care should be taken to document that the information was requested. This can be done in a variety of ways depending upon how the county board schedules hearings in a particular county. For example, if there is a delay between the time appeals are filed and heard, such requests can be sent by certified mail. Another possibility is to make the information request part of the "appeal form." Another alternative is to simply hand the request to the taxpayer or its representative at the hearing and leave the record open in order to allow for the filing of the information. Regardless of the option chosen, the taxpayer and/or taxpayer's representative must be allowed a reasonable length of time to compile the information.

The county board of equalization can delegate the hearing of appeals to one or more hearing officers who must be approved by the SBOE. The hearing officers prepare recommendations which the county board can adopt or reject. However, any property owner has the right to be heard directly by the county board. T.C.A. § 67-5-1406.

Hearings before the county board of equalization are informal in nature. Witnesses are normally sworn, but the county board typically dispenses with formalities found in court and other administrative proceedings. The taxpayer, assessor and board members are normally allowed to question witnesses. Usually, the taxpayer presents his or her proof first. The assessor will then ask questions and present his or her evidence. The taxpayer may be afforded a final rebuttal.

Upon consideration of any complaint, including any other information available, the county board of equalization may make changes, increasing or decreasing assessments and appraised values, or changing classifications or subclassifications. Property owners have a right to notice and a hearing if the county board decides to make a change. Notice must be sent by U.S. mail to the last known address of the taxpayer at least five (5) days prior to the adjournment of the county board. The notice must include the tax year for which the increase in assessment or change in classification is made. T.C.A. § 67-5-1408.

Failure of the taxpayer/owner to appear before the county board of equalization prior to its final adjournment acts as a waiver of any objection to the assessment that the taxpayer may have. The assessment as determined by the assessor is then conclusive. T.C.A. § 67-5-1401. The one possible exception (discussed below) concerns where "reasonable cause" is established pursuant to T.C.A. § 67-5-1412(e).

Unless the county board of equalization gives notice that appeals will not be accepted after a certain date, it must hear any complaint that is filed while the board is in regular session and that relates to the tax year under review. County boards of equalization are not obligated to hear appeals filed during special sessions. *See* **Jerry R. Caruthers and David Hollingsworth** (AAC, Final Decision & Order re Petition for Declaratory Order, June 29, 1995). The county board cannot

refuse to hear a complaint for the current tax year on the ground that an appeal was filed with the SBOE for a prior tax year. Op. Tenn. Atty. Gen. 92-60 (October 8, 1992).

Actions by the county board during its regular session, except for complaints pursuant to T.C.A. § 67-5-1407, are to be completed, and notice of a decision and appeal procedure sent, no later than five (5) days prior to the date taxes are due (in the case of counties, taxes are due on the first Monday of October). This deadline does not apply to special sessions, extraordinary actions or to years in which a county completes reappraisal. T.C.A. § 67-5-1409. The county board then prepares a certificate of completion to file with the county clerk. T.C.A. § 67-5-1410. Actions of the county board are final except for revisions or changes by the SBOE. T.C.A. § 67-5-1411. The assessor is required to maintain individual property record cards showing all actions taken by the county board of equalization which change the classification, value, or assessment of any parcel of property. In addition, upon completion of its session, the county board must turn its records and papers over to the assessor for preservation for a period of at least ten years. T.C.A. § 67-5-1414.

In the event there are a sufficient number of appeals from a county board of equalization, the SBOE has the authority to reconvene the county board and remand the appeals. The county board must certify its actions on remand in each case. T.C.A. § 67-5-1504.

Additional information concerning county boards of equalization is available on the SBOE website at the following link:

> https://comptroller.tn.gov/boards/state-board-of-equalization/sboe-resources/county-board-of-equalization.html

The Board's reference materials include a publication entitled "*Practice Manual for County Boards of Equalization*." The manual addresses matters such as the laws, process, function, and proceedings of county boards of equalization.

SECTION II – STATE BOARD OF EQUALIZATION

A. Background and general information

Statutes concerning the SBOE's authority regarding locally assessed property can be found primarily at T.C.A. §§ 4-3-5101 through 4-3-5106, 67-1-301 through 67-1-308, 67-5-1412, and 67-5-1501 through 67-5-1514.

The SBOE consists of the Governor, Secretary of State, Comptroller of the Treasury, State Treasurer, Commissioner of Revenue, and two members appointed by the Governor. T.C.A. § 4-3-5101. Presently, the two members appointed by the governor are Betty Burchett, the former Assessor of Property in Montgomery County and David Lenoir, the former Shelby County Trustee. The SBOE has jurisdiction over the valuation, classification, and assessment of all properties in Tennessee. T.C.A. § 67-5-1501(a). In addition to its responsibility to hear appeals from local property tax assessments, the SBOE directly reviews public utility and common carrier

assessments of the Comptroller. T.C.A. § 67-5-1328. As noted in the preface, this handbook deals with appeals of locally assessed properties.

The SBOE also has the power to equalize assessments by reducing or increasing appraised values of properties within any taxing jurisdiction. When such general equalization action is taken, notice must be published at least once in a newspaper of general circulation within the taxing jurisdiction. T.C.A. § 67-5-1509. When an individual assessment is subject to an increased assessment by the SBOE, the property owner is entitled to ten (10) days written notice of the right to appear before the Board concerning the amount of the assessment. The notice must be issued by September 1 of the year following the tax year. For example, for tax year 2019 the notice must be issued by September 1, 2020. T.C.A. § 67-5-1510.

Given the time constraints faced by members of the SBOE, the AAC was created to act on the Board's behalf in many areas such as hearing and acting upon complaints and appeals. The AAC consists of a minimum of three (3) and maximum of six (6) members appointed to one-year terms by the SBOE. Three members constitute a quorum. The AAC may certify a question to the SBOE if it believes the question is determinative or partially determinative of the proceeding and is a matter of policy to be determined by the SBOE. T.C.A. § 67-5-1502(i)(1). For all practical purposes, the SBOE delegates many of its duties to the AAC. The current members of the Commission are as follows:

1. J.B. Bennett – Hamilton County Circuit Court Judge
2. Ronda Clanton – Bedford County Property Assessor
3. Maribel Koella - Appraiser
4. Philip Russ - Appraiser
5. Rhett Turner - Appraiser
6. Michael H. Wills – Attorney (Chairman)

In addition to the six (6) members, the AAC also has alternate members who sit when needed.

B. Filing an appeal – forms, deadlines, and prerequisites

Appeals to the SBOE are normally made by filing an appeal form within the timeframe discussed below. Appeals to the SBOE must be filed in the format required by the Board's rules, and the Board may permit the use of electronic filing including electronic verification and signatures. T.C.A. § 67-5-1412(c). For additional information, *see* SBOE Rule 0600-01-.03.

Appeals to the SBOE from initial determinations in tax relief cases must be filed within ninety (90) days from the date notice of the determination was sent. T.C.A. § 67-5-1501(c).

Appeals to the SBOE from action of a local board must be filed by August 1 of the tax year or within forty-five (45) days of the date notice of the local board action was sent, whichever is later. T.C.A. § 67-5-1412(e). If notice of an assessment or classification change pursuant to T.C.A. § 67-5-508 was sent to the taxpayer's last known address later than ten (10) days before the adjournment of the local board, the taxpayer may appeal directly to the SBOE at any time within forty-five (45) days after the notice was sent. If notice was not sent, the taxpayer may appeal

directly to the SBOE at any time within forty-five (45) days after the tax billing date for assessment (normally October 1). T.C.A. § 67-5-1412(e).

In order to appeal to the SBOE, a taxpayer must first appeal to the county board of equalization unless the assessor fails to give notice of an increase in the assessment or change in classification. T.C.A. § 67-5-1412(b)(1). One important exception to this general rule is T.C.A. § 67-5-1412(b)(2) which allows a commercial and industrial taxpayer to file a direct appeal with the SBOE if certain conditions are met. First, the assessor must give written consent. If the assessor fails to respond to such a request at least ten (10) days before the adjournment of the county board, the statute requires the SBOE to accept the appeal. Second, the appeal must be filed by August 1 of the tax year. *See* **CBT Manufacturing Company, Inc. et al.** (AJ, Hamilton County, Tax Year 2010, Initial Decision & Order Dismissing Appeals, May 13, 2011) wherein the taxpayers' direct appeals were filed on August 9th and dismissed as untimely. Third, a taxpayer filing a direct appeal must attach to the appeal form a copy of either the assessor's written concurrence or a copy of the written request for the concurrence and a statement that the assessor failed to provide a timely response to the request.

Pursuant to T.C.A. § 67-5-1412(b)(2), the request for direct appeal must state, at a minimum, the following:

- The name in which the property is assessed;
- The parcel identification number;
- The value sought;
- The basis for the appeal; and
- The name, address, telephone number and fax number of the person requesting the direct appeal.

A filing deadline is a jurisdictional prerequisite to an appeal which cannot be waived by the parties. Op. Atty. Gen. 92-62 (October 8, 1992). As will be discussed below, T.C.A. § 67-5-1412(e) allows the SBOE to excuse the failure of a taxpayer **(but not an assessor)** (1) to appeal to the county board of equalization; or (2) miss the filing deadline, upon the taxpayer's demonstration of "reasonable cause."

SBOE Rule 0600-01-.04 provides that an appeal is deemed filed on the date it is received by the Board; or if transmitted through the United States mail, on the postmark date. The rule also provides that an appeal can be filed by electronic mail or facsimile ("fax").

SBOE Rule 0600-01.03(3) provides that "[t]he submission of a written request for an appeal form may be considered an appeal to the Board for purposes of an appeal deadline if it reasonably identifies the property and taxpayer, provided any form required by these rules is completed and filed within 30 days or other deadline specified by the administrative judge."

To further complicate matters, the AAC has ruled that T.C.A. § 67-1-107 applies to appeals to the SBOE. *See* **CBM Ministries of East Tenn., Inc.** (AAC, Carter County, Claim of Exemption, Order of Remand, December 14, 1995). Among other things, the statute provides for transmitting appeals by both United States mail and alternative delivery services authorized under the Internal Revenue Code. The statute also allows a twenty-four (24) hour grace period for such filings. For

a good discussion of the statute, see **Mirimichi LLC** (AJ, Shelby County, Tax Year 2014, Order Denying Taxpayer's Motion to Dismiss, October 6, 2015).

PRACTICE TIP: Many assessors mistakenly assume that the date an appeal is received *always* constitutes the filing date. However, if the appeal was filed in writing the postmark date controls and there is a twenty-four (24) hour grace period. Additionally, if a written request was made for an appeal form, the taxpayer has thirty (30) days to transmit the actual form. Thus, an appeal form filed after August 1 or more than forty-five days after the local board issued its decision may be timely under the above rules and statute. Additionally, if the deadline falls on a weekend or holiday, it is deemed filed on the first working day after the weekend or holiday. *See* Rule 1360-04-01.04(1) of the Uniform Rules.

In order to maintain an appeal before the SBOE, the taxpayer must pay by the delinquency date at least the undisputed portion of the city and county taxes owing. In addition, no delinquent taxes can have accrued. In the event the undisputed taxes have not been paid or delinquent taxes have accrued, the SBOE will dismiss the appeal on motion of the city or county to whom the tax is owed. T.C.A. § 67-5-1512(b)(5). *See* **Leif/Hotel Pigeon Forge** *(*AAC, Sevier County, Tax Year 2013, Final Decision and Order, November 7, 2014); and **First Supreme Trust Company** (SBOE, Shelby County, Tax Year 2001, Final Decision and Order on Review, January 30, 2013). *See also* **Williamsburg Landing LP** (AJ, Weakley County, Tax Year 2018, Initial Decision and Order Dismissing Appeal, July 6, 2020) for a concise summary of the law and additional case citations; and **GT Columbia c/o Capital Recovery Group** (AJ, Maury County, Tax Year 2018, Initial Decision and Order, June 18, 2020) wherein the appeal was dismissed due to delinquent taxes having accrued for the tax year *following* the one in dispute.

The SBOE is required to assess the cost of hearing or processing a taxpayer appeal in an amount not exceeding $10.00 per filing. *See* T.C.A. § 67-5-1501(d) and SBOE Rule 0600-01.17.

C. Representation

Assessors and taxpayers are always free to represent themselves or utilize the services of a qualified agent or others in proceedings before the SBOE. T.C.A. § 67-5-1514 sets forth those persons permitted to represent assessors and taxpayers.

The following persons are permitted to represent assessors in any contested case before the SBOE:

1. Attorneys, including attorneys with the DPA;
2. Deputy assessors;
3. Employees of the DPA who hold any type of designation issued by the International Association of Assessing Officers or the Tennessee Certified Assessor's Program;
4. Where the primary issue of the proceeding pertains to the grounds set forth in T.C.A. § 67-5-1407, registered agents (commonly referred to as "tax reps"); and
5. Where the only issue on appeal concerns the valuation of tangible personal property, a certified public accountant, any person that has contracted with that particular county or assessor of property, or both, to review financial information relative to the subject taxpayer's personal property and the tax on the personal property, or any person with a

personal property designation from any nationally accredited appraisal organization or assessment organization, or both.

The following persons are permitted to represent taxpayers in any contested case before the SBOE:

1. Attorneys;
2. Registered agents (commonly referred to as "tax reps");
3. Members of the taxpayer's immediate family;
4. With respect to a corporation or other artificial entity, its regular officers, directors, or employees; and
5. Where the only issue on appeal concerns the valuation of tangible personal property, a certified public accountant.

NOTE: T.C.A. § 67-5-1514(j) specifically provides that its provisions are not applicable to representatives before county boards of equalization. As previously noted with respect to proceedings before county boards, taxpayers may authorize whomever they choose to represent them so long as that person obtains written authorization from the taxpayer prior to filing any appeal. T.C.A. §§ 67-5-1407(a)(1) and 67-5-1412(a)(2).

When a taxpayer utilizes the services of a representative in a contested case before the SBOE, the representative must obtain written authorization prior to filing any appeal. T.C.A. § 67-5-1412(a)(2). Historically, most issues concerning authorization involved the adequacy of a particular authorization or the failure to have a proper representative at the hearing. For example, in **Toddington Heights, Ltd.** (AJ, Rutherford County, Tax Year 1988, Interlocutory Decision and Order Denying Motion to Dismiss, June 25, 1990), the administrative judge denied a motion to dismiss for inadequate authorization. In **Nottingham, Ltd.** (AJ, Rutherford County, Tax Year 1987, Initial Decision and Order Denying Motion to Dismiss and Remanding Appeal to the Rutherford County Board of Equalization, October 20, 1987), the administrative judge found the authorization defective. Rather than dismiss the appeal, however, the administrative judge remanded it back to the county board of equalization. It should be noted that failure to have any written authorization at all will normally result in the issuance of a default order. What constitutes a proper authorization was addressed by the AAC's then Chairman in **Francis T. Tigrett/The Inn of Jackson**, (AAC, Madison County, Tax Year 1993, Order on Motion for Declaratory Judgment, April 4, 1995).

NOTE: In **Regions Bank** (AJ, Haywood County, Tax Year 2010, Order, March 30, 2012), the administrative judge ruled at page 2 "that an agent may do anything in representing a taxpayer that the taxpayer could do in his or her own name [footnote omitted]." It appears from the Order that the assessor must have questioned the right of a registered agent to propound discovery requests.

As will be discussed immediately below in the section entitled "Hearing of Appeals," the SBOE has promulgated rules concerning what must be included in a written authorization.

Unlike authorization issues, whether a representative can lawfully represent a taxpayer before the SBOE is typically more straightforward. For example, in **Taylor & Wood** (AJ, Obion County, Tax Year 1989, Initial Decision & Order Dismissing Appeal, July 20, 1990), the taxpayer's appeal was dismissed when the property owner disregarded a prior warning and had a realtor appear on

its behalf. Similarly, in **Cardinal Industries, et al.** (AJ, Knox County, Tax Year 1992, Initial Decision & Order, August 7, 1992), the administrative judge dismissed a group of appeals when the individual appearing on the taxpayers' behalf had allowed his registration to lapse and was no longer an approved registered agent by the SBOE.

D. Hearing of appeals

Appeals to the SBOE are technically governed by the Uniform Administrative Procedures Act (commonly referred to as the "UAPA") which is codified at T.C.A. § 4-5-101, *et seq.*, the Rules of the Tennessee Department of State Administrative Procedures Division (Chapter 1360-04-01) known as the "Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies," and the Rules of the State Board of Equalization (Chapter 0600-01) known as "Contested Case Procedures." The latter rules control whenever there is a conflict between the two sets of rules. Although the foregoing statutes and rules are similar to those governing court proceedings, hearings before the SBOE are actually much less formal than court, but more formal than proceedings before county boards of equalization. Indeed, T.C.A. § 67-5-1514(d) provides that conferences and hearings before the SBOE must typically be "conducted in an informal manner."

The parties in an appeal to the SBOE concerning the classification and/or valuation of property are as follows:

1. The appellant;
2. The taxpayer with respect to the property at issue (if not the appellant);
3. The assessing authority responsible for the assessment at issue (if not the appellant); and
4. Any other person admitted as a party.

SBOE Rule 0600-01-.06.

When a party is represented by an agent, the agent is required to make entry of an appearance by either (a) filing an appeal form or written complaint; (b) filing a notice of appearance; or (c) simply appearing as agent at a hearing or pre-prehearing conference. SBOE Rule 0600-01.07. An agent may not enter an appearance on behalf of a taxpayer in a contested case without valid written authorization. Such authorization must:

1. Identify the taxpayer;
2. Identify the property by street address, assessor's identification number, or otherwise;
3. Be signed and dated by the taxpayer or an individual with authority to act for the taxpayer;
4. Indicate the signatory's title (if the party represented is a corporation or other artificial entity); and
5. Specify the tax year to which the authorization applies.

SBOE Rule 0600-01-.07(2).

In order for an appeal to be docketed for a hearing or pre-hearing conference, the appropriate appeal form must have been completed in good faith. Moreover, if the valuation of the subject property is at issue, the appeal form must include both a bona fide estimate of the market value as of the relevant assessment date and a brief statement of the basis for that opinion. The SBOE's

executive secretary is empowered to waive the foregoing requirements. SBOE Rule 0600-01-.08(1). In many cases, deficiencies in appeal forms are handled by the administrative judge. In certain instances, the assessor will file a motion for a more definite statement or obtain the information through discovery.

Appeals to the SBOE are initially heard by administrative law judges employed by the Secretary of State's Administrative Procedures Division. Normally, the judges specialize in property tax and have had significant training in appraisal. The judges typically conduct the hearings in the counties where the property is located or in a centrally situated facility such as DPA's regional offices. The location of the hearings is a function of the volume of appeals in a given county. Assessors will sometimes be asked to reserve a conference room or the like if the hearings are to be held in that particular county. In most cases, a notice of hearing is issued at least thirty (30) days prior to the scheduled hearing date. The notice includes information such as the date, time, and location of the hearing.

In a limited number of cases, a hearing is preceded by a prehearing conference. Typically, prehearing conferences are requested by the assessor or DPA pursuant to T.C.A. § 4-5-306 and deal primarily with discovery. Essentially, the assessor and/or DPA use the prehearing conference to ensure that the information sought to be discovered will be provided within a certain timeframe. Following the conference, the judge normally issues a prehearing conference order setting forth the procedure to be followed prior to the hearing on the merits. On rare occasions, the administrative judge will unilaterally schedule a prehearing conference. Normally, this occurs in high dollar commercial appeals when it is unclear how much time will be needed to conduct the hearing, or it is unclear what issues are involved. Although taxpayers also have the right to request prehearing conferences, they do so far less often in practice.

On certain occasions, the administrative judge may issue his or her own scheduling order rather than simply setting the appeal for hearing. Typically, such an order will set forth the timetable for discovery and possibly the submission of evidence.

At the hearing, all parties (usually the taxpayer and assessor) are given an opportunity to introduce evidence and cross-examine any witnesses. A party wishing to make an opening statement or closing argument is allowed to do so, but this is not typically requested except in certain appeals involving high dollar commercial property or when an attorney is representing a party. Usually, the taxpayer presents its evidence first since it is the appealing party and has the burden of proof. When the assessor appeals a decision of the county board of equalization, the assessor puts his or her evidence on first. SBOE Rule 0600-01-.11(3) provides that a record of any hearing of any appeal before an administrative judge will be made by digital recording. Additionally, the rule provides that any party may, at its own expense, procure a court reporter to record the oral proceedings or a transcribe the digital recording.

SBOE Rule 0600-01-.07(3) provides that when a party is represented by an agent, only the agent is entitled to question witnesses and present argument at any stage of the case. In practice, the judges often do not enforce this rule if there is no objection from the other party and the "informality" expedites the hearing. This rule also provides that an agent may not participate in the hearing of an appeal if he or she represents another agent or person who is not a party in the proceeding.

Based upon the evidence introduced at the hearing, the administrative judge usually issues a written decision called an "initial decision and order" within ninety (90) days of the close of the record. Typically, the record is considered closed at the conclusion of the hearing that day. In a limited number of appeals, the record is held open for additional filings.

The administrative judge's decision normally consists of proposed findings of fact and conclusions of law and is sent to all parties. T.C.A. § 67-5-1505. Technically, administrative judges conduct preliminary hearings and make recommendations to the AAC. Although the AAC routinely adopts decisions of administrative judges that are not appealed, the Commission can choose not to do so. T.C.A. §§ 67-5-1505 and 67-5-1506.

Any party wishing to appeal the administrative judge's decision to the AAC must file the appeal within thirty (30) days of the entry of the initial decision and order. T.C.A. § 67-5-1501(c). In the absence of an appeal, the AAC will almost always adopt the administrative judge's decision as its own. Historically, the AAC conducted *de novo* hearings when hearing appeals of administrative judge's decisions. In a *de novo* hearing the parties are allowed to introduce new or additional evidence should they choose to do so. This procedure remains in effect for appeals filed with the State Board of Equalization prior to July 1, 2017.

On April 17, 2017, Governor Haslam signed into law Public Chapter No. 133 which significantly changed the procedure for appeals filed with the State Board of Equalization on or after July 1, 2017. The new law, codified at T.C.A. § 67-5-1506, provides that the AAC's review is normally confined to the record created before the administrative judge. The one exception is that additional proof may be presented to the AAC in cases involving alleged irregularities in procedure that are not shown in the record.

The new law provides that the AAC may affirm the decision of the administrative judge or remand the case for further proceedings. Additionally, the AAC may reverse or modify the administrative judge's decision if the rights of the appealing party have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) in violation of constitutional or statutory provisions; (2) made upon unlawful procedure; (3) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (4) unsupported by evidence that is both substantial and material in light of the entire record. The statute goes on to provide that, in determining the substantiality of evidence, the AAC shall take into account whatever in the record fairly detracts from its weight but shall not substitute its judgment for that of the administrative judge as to the weight of the evidence on questions of fact.

The practical significance of this change in the law is that parties will no longer have the opportunity to "start over" or refine their proof before the AAC as has historically been the case. It is now incumbent upon a party to put on its best case before the administrative judge. Typically, a party will no longer be able to introduce evidence before the AAC that was not part of the record created before the administrative judge.

It should be noted that the parties also have fifteen (15) days from the entry of the initial decision and order to file a petition for reconsideration. T.C.A. § 4-5-317(a). In practice, such petitions are rarely granted unless there was a material error in the judge's ruling.

PRACTICE TIP: Pursuant to T.C.A. § 67-5-1412(c), a taxpayer or owner has the right to withdraw any appeal before a decision has been entered on the primary issue of the complaint and appeal. What if the assessor believes the current appraised value is less than market value and should be increased? The assessor can always argue for a higher value, but if the taxpayer withdraws the appeal the matter is effectively concluded. However, the assessor can avoid this situation by filing a counterclaim in accordance with SBOE Rule 0600-01-.10(1). Basically, the assessor must file a written document with the SBOE or administrative judge no later than thirty (30) days prior to the date of the scheduled hearing stating that the assessor is seeking to have the appraised value increased. A copy of the notice filed with the SBOE must also be sent to all other parties to the appeal.

Although there is no required format for such a document, it should at a minimum set forth the assessor's contention of value and a brief summary of the basis for the contention of value. The significance of a counterclaim is that the withdrawal of the taxpayer's appeal does not extinguish the assessor's counterclaim. In other words, even if the taxpayer withdraws its appeal, the administrative judge (or AAC) will proceed with the assessor's counterclaim. One exception to the foregoing can occur if the taxpayer's appeal is dismissed for lack of jurisdiction. In that event, it has been held that the assessor's counterclaim must be dismissed even if timely filed. *See* **Meadows Jeffrey** (AJ, Henderson County, Tax Years 2016 - 2018, Initial Decision and Order, February 20, 2020). The administrative judge's decision has been appealed to the AAC. Just as the taxpayer has the burden of proof when initiating an appeal, the assessor has the burden of proof when proceeding as the counterclaimant. *See* **The Villas of Savannah LP** (Hardin County, Tax Years 2016 – 2018, Initial Decision and Order, February 20, 2020) at 2 wherein the administrative judge noted that pursuant to SBOE Rule 0600-1-.11(1) "[t]o the extent either party seeks to change the current assessment . . . that party has the burden of proof. . ." The administrative judge's decision has been appealed to the AAC.

Failure to provide the full 30 days' notice can result in the requested increase in value being denied. *See* **Chloe Lane LP** (AJ, Hamblen County, Tax Year 2020, Initial Decision and Order, August 16, 2021) at 6-8.

The procedure for hearings before the AAC is governed by SBOE Rule 0600-01-.13. Normally, parties receive at least thirty (30) days' notice prior to the scheduled hearing. The procedure followed by the AAC is similar to that used by the administrative judge except for seeming somewhat more formal. For example, the panel will consist of anywhere from three to six members. T.C.A. § 67-5-1502(a). Additionally, SBOE Rule 0600-01-.13(3) provides that in hearings before the AAC, various documents to be presented at the hearing such as briefs, documents, and exhibits, must be exchanged by the parties at least twenty-one days prior to the hearing. This rule does not apply to the extent it might conflict with the terms of a discovery order, pre-hearing conference order, or notice of hearing. The foregoing rule only applies to AAC hearings. Hearings before administrative judges are addressed in SBOE Rule 0600-01-.11 which does not have a similar provision. Of course, the administrative judge may have addressed the exchange of information in his or her discovery order, pre-hearing conference order, notice of hearing, etc.

SBOE Rule 0600-01-.13(4) provides that a record of any hearing of any appeal before the AAC will be made by digital recording. Additionally, the rule provides that any party may, at its own

expense, procure a court reporter to record the oral proceedings or transcribe the digital recording. For *de novo* appeals filed before July 1, 2017, the SBOE may still provide a court reporter. It is suggested that assessors contact the SBOE for additional information in such circumstances.

Like the administrative judge, the AAC usually issues a decision setting forth its findings within ninety (90) days of the close of the record. The AAC's decision is referred to as a "final decision and order." Parties have fifteen (15) days from the entry of the final decision and order to either appeal to the full SBOE or request reconsideration by the AAC. Although appeals from the administrative judge to the AAC are appeals as of right, appeals to the full SBOE are discretionary. The SBOE rarely exercises its right of review unless the AAC decision at issue involves a major policy matter or the like. Should the SBOE decline to review the AAC's ruling, it becomes final unless a party seeks judicial review. T.C.A. § 67-5-1502(k). It should also be noted that even if no party asks the full SBOE to review a ruling of the AAC, the SBOE may do so in its sole discretion within forty-five (45) days of any final action taken by the AAC. T.C.A. § 67-5-1502(j)(1).

It is not mandatory that a party ask the full SBOE to review a final ruling of the AAC before seeking judicial review. A party may forego that possible remedy and simply seek judicial review in accordance with T.C.A. § 67-5-1511. In other words, a party will have exhausted its administrative remedies regardless of whether it asks the full SBOE to review a final ruling of the AAC.

If the final action of the SBOE results in a determination that the taxpayer paid excess taxes, the city and county collecting officials must refund to the taxpayer any overpayment, plus interest at two points below the composite prime rate (as published by the Federal Reserve Board and posted on the SBOE's website) calculated from the date such taxes would have normally become delinquent. If the final action of the SBOE results in a determination that the taxpayer paid inadequate taxes, the taxpayer must pay the taxes owing plus interest. Interest is calculated the same for both underpayments and overpayments. Delinquent penalty and interest begin to accrue thirty (30) days after issuance of the final assessment certificate and until the tax is paid. In the case of a deferred refund, beginning sixty (60) days after the SBOE issues the final assessment certificate, the interest rate increases two (2) points until the refund is finally paid. *See* T.C.A. § 67-5-1512(d)(2).

E. Appealing a decision of the SBOE to court

The action of the SBOE is subject to judicial review in the chancery court in the county where the disputed assessment was made or in the Chancery Court of Davidson, Washington, Knox, Hamilton, Madison or Shelby Counties, whichever county is closest in mileage to the situs of the property. If the property is located in Knox, Hamilton or Shelby Counties, the petition for review may also be filed in Davidson County. The petition for review must be filed within sixty (60) days after entry of the SBOE's final order. The judicial review consists of a new hearing in the chancery court based upon the administrative record and any additional or supplemental evidence which either party wishes to introduce. In other words, the parties can introduce additional evidence and testimony before the court rather than having the court's decision based solely on the record developed before the SBOE. The filing of a petition for judicial review does not stay enforcement of the SBOE's decision. *See* T.C.A. §§ 67-5-1511 and 4-5-322. *See also* **Richardson v.**

Tennessee Assessment Appeals Commission, 828 S.W.2d 403 (Tenn. Ct. App. 1991); and **Williamson County v. SBOE, et al,** No. 47743 (Williamson Chancery, August 18, 2021, at 5-6).

F. Rulings of the SBOE

Since 2006, the SBOE has been publishing online substantive decisions issued by administrative judges, the AAC, the full SBOE, and chancery courts. A direct link to that section of the SBOE website is:

> https://comptroller.tn.gov/boards/state-board-of-equalization/sboe-services/judges-decisions.html

In addition, older decisions of possible interest are available by utilizing the "keyword searching" feature.

SECTION III – DISCOVERY

Once an appeal has been filed with the SBOE, the parties are entitled to engage in "discovery" which is the process of exchanging information about the evidence and witnesses they will present at the hearing. Discovery assists the parties in both pursuing settlement negotiations and preparing their cases for hearing. Discovery allows the parties to learn before the hearing what evidence the other party might present. The process is designed to prevent "trial by ambush." That occurs when one party does not learn of the other side's evidence or witnesses until the hearing and therefore lacks adequate time to prepare. The discovery process is governed by SBOE Rule 0600-01-.11(4); the Tennessee Rules of Civil Procedure; and Rule 1360-04-01.11 of the Uniform Rules.

Suppose, for instance, a taxpayer appeals an apartment complex and maintains the income approach supports a reduction in value. The assessor will typically want certain information before deciding whether to settle the appeal or go to hearing. For example, the assessor will presumably want copies of any recent appraisal reports, a list of potential witnesses, and a summary of the components of the taxpayer's income approach.

Discovery allows the parties a variety of ways to obtain the information both informally and formally. An informal means of obtaining the desired information is to simply call the taxpayer and tell them what you are seeking. Examples of formal discovery include interrogatories, depositions, requests for admission, and requests for production. Sample discovery requests for individuals, attorneys and agents are included in Appendix A and Appendix B respectively.

Seemingly, interrogatories constitute the most common type of formal discovery utilized in hearings before the SBOE. These are essentially written questions that the other party must respond to in writing within thirty (30) days after being served. The answers to the questions must be signed under oath by the person answering them.

Requests for production are utilized to obtain documents (such as appraisal reports) and can include electronic as well as paper versions. Requests for admission are written statements that a party asks the other party either to admit or deny. This procedure is generally used to get the other party to stipulate to a basic set of facts or admit that a document is genuine. Depositions are basically in-person examinations wherein one party asks questions the other side must answer

under oath. In most cases, there is no need to file copies of discovery materials with either the SBOE or Administrative Procedures Division. See Rule 1360-04-01.11(5) of the Uniform Rules. In fact, administrative judges have been known to chastise the parties for unnecessarily filing copies of routine discovery requests due to the problem of processing and storing the documents.

Usually, the administrative judge and AAC have no involvement in discovery unless a problem arises, and a party asks the judge or AAC to resolve the impasse. In most cases, the administrative judge becomes involved when one of the parties is not responding to discovery requests. Typically, the party seeking the information will file a "Motion to Compel" which is essentially a written request asking the administrative judge to order the other party to supply the requested information.

On occasion, an assessor seeks to inspect the property under appeal and is denied access. In such instances, the situation is often resolved by the administrative judge or AAC issuing an order directing the taxpayer to allow the inspection. *See, e.g.,* **James T. & Carol A. Moran** (AAC, Dickson County, Tax Year 2001, Order Permitting Inspection of Property, March 25, 2003). *See also* T.C.A. § 67-5-303(e), which provides in pertinent part that "[t]he assessor and agents or employees of the assessor have the authority to go upon land in order to obtain information for the assessment of property." The statute also provides that ". . . the assessor may petition the circuit or chancery court for an order allowing entry at a specified time for purposes of appraising the land and improvements for assessment purposes." The DPA has similar powers pursuant to T.C.A. § 67-1-202(b).

SECTION IV – COMMON PITFALLS TO AVOID

Unlike hearings before the SBOE, hearings before county boards of equalization are not governed by any set of uniform rules. Although many of the concepts discussed below are equally applicable to hearings at both levels of appeal, certain procedural statutes and rules technically apply only to SBOE hearings. It should be clear from the cited authority and context whether the rule or statute applies only to the SBOE.

A. Basis of valuation – appraisals of other properties & property record cards

T.C.A. § 6-5-601(a) provides that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ." In other words, market value constitutes the basis of value for property tax purposes. The SBOE has issued countless decisions to the effect that assessors' appraisals of other taxpayers' properties are simply irrelevant to the issue of fair market value. *See, e.g.,* **Delano J. and Valerie Woods Carroll** (AJ, Washington County, Tax Year 2006, Initial Decision and Order, November 3, 2006) for a summary of the relevant decisions underlying this concept.

The value set forth on the property record card is entitled to a presumption of correctness. However, once the taxpayer introduces the minimum evidence necessary to establish a *prima facie* case, the property record card has no probative value insofar as the issue of market value is concerned. *See, e.g.,* the oft-cited ruling of the AAC in **Devere M. Foxworth** (AAC, Polk County,

Tax Year 2001, Final Decision & Order, March 18, 2003) wherein the AAC ruled in pertinent part as follows:

> The problem with evaluating a property tax assessment on the basis of the pieces of the assessor's record is at least two-fold. First, the pieces may not compare one to another, i.e., the value attributed by the CAAS system to a typical component may not represent the true contribution of the component as represented in the subject property. Second, the pieces are part of a whole that is merely a computer-generated approximation of the legal standard of fair market value. The result for a particular property in the assessor's system may or may not yield fair market value. The appeal process therefore looks to more traditional methods of individual property valuation in order to be sure the legal standard has been met.

Final Decision and Order at 1.

B. Assessment date

January 1 of the tax year constitutes the relevant assessment date. T.C.A. § 67-5-504(a). Thus, events occurring after the assessment date are technically irrelevant. This includes appraisal reports which value property after the assessment date. Typically, administrative judge rulings to this effect cite the decision of the AAC in **Acme Boot Co. & Ashland City Industrial Corp.** (AAC, Cheatham County, Tax Year 1989, Final Decision & Order, August 7, 1990). However, this is not an ironclad rule. The AAC has also issued several decisions allowing post-assessment date events into evidence to confirm a trend or what could have reasonably been assumed on the assessment date. *See* **Edgar E. Ward III** (AJ, Wilson County, Tax Year 2014, Initial Decision & Order, January 8, 2015) at 4 wherein the administrative judge cites several AAC rulings to that effect. *See also* **Brownsville Elderly Housing LP** (AJ, Haywood County, Tax Year 2017, Initial Decision and Order, February 20, 2020) wherein the AJ ruled in the Assessor's favor stating at page 4 that:

> The appellant based [its] contention of value on a settlement from a different tax year. It is axiomatic that each tax year stands on its own, and settlements from other years are certainly not binding in this matter.

The administrative judge's decision has been appealed to the AAC.

PRACTICE TIP: Many times, issues concerning the relevancy of a post-assessment date appraisal can be cured by having the appraiser (through testimony or by affidavit) indicate which, if any, conclusions would have been different had the appraisal been made as of January 1 of the tax year. For example, the appraiser might have valued the property as of February 15 but utilized sales predating January 1. Assuming market conditions were the same on January 1 and February 15, it stands to reason that the appraiser would have reached the same conclusion of value had he or she appraised the property as of January 1 rather than February 15. On the other hand, if the market had changed after January 1, it stands to reason that the appraiser would have reached

different conclusions of value on January 1 and February 15. In such a case, the appraiser would presumably have to update his or her report to account for whatever factor caused the market to change. *See, e.g.,* **Robert Daniel and Mary Lou Booth** (AJ, Fayette County, Tax Year 2009, Initial Decision and Order, September 17, 2009) wherein the administrative judge declined to give the taxpayer's post-assessment date appraisal report any weight, reasoning in relevant part at page 3 that ". . . the appraisal was made as of May 21, 2009, whereas January 1, 2009, constitutes the relevant assessment date. Given the declining real estate market, it cannot be assumed the appraiser would have reached the same conclusions of value on both dates."

C. Standing

T.C.A. § 67-5-502(a)(1) provides that, except for property assessed by the Comptroller, all property shall be assessed to the person or persons owning or claiming to own the property as of January 1 of the tax year. As discussed above, January 1 constitutes the relevant assessment date. Hence, the owner as of January 1 has standing to appeal a disputed assessment. In addition, T.C.A. § 67-5-1412(a)(1) authorizes both the owner and any "taxpayer" aggrieved by any action taken by a local board of equalization to appeal to the SBOE. Subsection (f) of the statute defines the term "taxpayer" as follows:

> . . . the owner of the property under appeal or any lessee legally obligated to pay ad valorem taxes for which the property is liable. A lessee obligated to pay some but not all of the taxes for which the property is liable, may appeal the assessment only if the owner consents to the appeal in writing. A property manager, attorney, or other authorized agent may authorize an appeal if the taxpayer has authorized in writing the property manager, attorney, or other authorized agent to do so.

Pursuant to this statutory provision, lessees have standing to bring appeals in certain circumstances.

One question that often arises concerns post-assessment date buyers. *See* **Barry A. Wilson & Michelle Delfino-Wilson** (SBOE, Davidson County, Tax Year 2000, Order on Review, May 6, 2004), wherein the SBOE affirmed the ruling of the AAC in **Barry A. Wilson & Michelle Delfino-Wilson** (AAC, Davidson County, Tax Year 2000, Order on Reconsideration, October 3, 2003) that the taxpayers had standing despite purchasing the property after the assessment date. Essentially, the AAC found that the taxpayers were responsible for the payment of the taxes by the time of the county board of equalization hearing. *See also* **Metropolitan Government of Nashville and Davidson County v. Ragsdale,** No. 04-1811-IV (Davidson Chancery, April 18, 2006) at 3, in which the court affirmed the ruling of the AAC that the post-assessment date buyer established reasonable cause for not appealing to the county board of equalization by virtue of the fact the buyer ". . . did not receive notice of the reassessment and, consequently, could not have known of the necessity to appeal." Clearly, the AAC and court implicitly assumed that the post-assessment buyer had standing to challenge the disputed assessment.

In certain instances, the owner of record as of January 1 of the tax year files an appeal and subsequently sells the property. The SBOE has allowed the buyer to "complete" such appeals if

that is the desire of the owner of record. Should the owner of record wish to continue with his or her appeal, the buyer would need to file a petition to intervene.

It should be noted that the DPA has the necessary standing to initiate and participate in administrative appeals. *See* **American Health Care Centers, Inc.** (AJ, Haywood County, Tax Year 1987, Initial Decision and Order Finding Standing and Awarding Expenses, August 18, 1988). The DPA also has an unconditional right to intervene in an appeal and is deemed to have standing as a party. T.C.A. § 67-1-202(c).

One other situation that occasionally arises concerns appeals filed by a property owner seeking to have the appraised value of another property owner's parcel increased. Such appeals are allowed under T.C.A. § 67-5-1407(a)(1)(C). *See also* **Lorraine Frazier** (AJ, White County, Tax Years 1981-1984, Untitled Order, December 5, 1984); and **Bobby Joe & Viola H. Adams** (AJ, Greene County, Tax Year 1994, Initial Decision and Order, December 6, 1994).

D. Jurisdiction

For purposes of appeals, the SBOE's jurisdiction is primarily governed by T.C.A. § 67-5-1412. The most thorough discussion and analysis of the SBOE's jurisdiction can be found in Op. Tenn. Atty. Gen. 92-62 (October 8, 1992). Essentially, the disputed assessment must first be appealed to the county board of equalization unless a direct appeal to the SBOE exists due to improper notice. Additionally, as discussed in Section II, Part B, T.C.A. § 67-5-1412(b)(2) permits commercial and industrial taxpayers to file direct appeals in certain circumstances. Assuming proper notice was given, appeals to the SBOE must be filed by August 1 or within forty-five (45) days of the issuance of the county board's decision, whichever is later. T.C.A. § 67-5-1412(e).

The most frequently encountered exception to the general rule that a taxpayer must appeal to the county board of equalization and file a timely appeal with the SBOE is the "reasonable cause" provision found in T.C.A. § 67-5-1412(e). In essence, a party can be excused from failing to follow the proper procedures by demonstrating "reasonable cause" for failing to do so. The statute allows the taxpayer until "March 1 of the year subsequent to the year in which the time for appeal to the state board began to run." For example, a properly noticed taxpayer who neglected to appeal to the county board for tax year 2019 has until March 1, 2020, to file such an appeal.

NOTE: The reasonable cause provision does not apply to assessors. *See* **Mirimichi LLC** (AJ, Shelby County, Tax Year 2014, Order Denying Taxpayer's Motion to Dismiss, October 6, 2015) at 1.

The SBOE has rendered more rulings on this issue than any other topic since its enactment in 1991. The decisions of the administrative judges and AAC typically contain language similar to that used by the AAC in **Associated Pipeline Contractors, Inc.** (Williamson County, Tax Year 1992, Final Decision and Order, August 11, 1994) at 2-3:

> The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the "reasonable cause" provisions to waive these requirements except where failure to meet them is due to

> illness or other **circumstance beyond the taxpayer's control . . .** [emphasis added].

In the early years, the AAC and administrative judges took a narrow view of what constituted reasonable cause. The rulings routinely cited illness as an example of what constituted a circumstance beyond the taxpayer's control. Over the years, the rulings have demonstrated a more expansive view of the concept.

In the oft-cited case of **Memphis Mall Holdings, LLC** (AAC, Shelby County, Tax Year 2003, Final Decision and Order, December 22, 2004) at 3, the AAC ruled in pertinent part as follows:

> The administrative judge ruled that the reasonable cause statute is to be narrowly construed to include only family emergency, unavoidable conflict, or physical impediment such as disability or illness. However, in *Appeal of Mary M. Headerick and Detlef R. Matt,* the Commission held that the State Board has "broad authority to find reasonable cause for not first appealing to the county board." Order Recognizing Jurisdiction and Remanding the Appeal for a Hearing, p. 5 (Knox Co., Tax Year 1993, Nov. 5, 1996). Further, the Commission has shown great sensitivity in situations where a taxpayer has been misled, whether intentionally or unintentionally, by government officials [case citations omitted].

PRACTICE TIP: Typically, when administrative judges docket appeals with obvious jurisdictional issues, they will either set the matter for a hearing limited to jurisdiction or set a hearing on both jurisdiction and value. In the latter event, the issue of jurisdiction is heard as a preliminary matter. The judges often prefer to hear both issues in one proceeding when it appears there is a strong likelihood of the taxpayer establishing reasonable cause. Similarly, the judges do not want to schedule a second hearing if it appears more efficient to have the assessor prepare a case on value even though the appeal might ultimately be dismissed on jurisdictional grounds. When the assessor strongly believes the appeal should be dismissed on jurisdictional grounds, he or she can always request that the hearing be limited to jurisdiction. Another possibility is to request a prehearing conference along with a jurisdictional hearing. By limiting the hearing to jurisdiction or having a prehearing conference and jurisdictional hearing together, the assessor will not have to prepare a presentation that may prove unnecessary. The assessor must balance his or her desire not to prepare a possibly unnecessary presentation with the needs and desires of both the judge and taxpayer. This is especially true in smaller counties with few appeals. The judges are trying to move the appeals through the system and minimize travel and inconvenience for all parties. Realistically, a second hearing will often result in significant delay as the judge may not return to the area for an extended period of time.

E. Burden of proof

Decisions of the SBOE routinely cite **Big Fork Mining Co. v. Tennessee Water Quality Control Board,** 620 S.W.2d 515 (Tenn. Ct. App. 1981) and/or SBOE Rule 0600-01-.11(1) for the proposition that the burden of proof is on the party appealing to the SBOE. Having the burden of proof essentially means that the appealing party must introduce the minimum evidence necessary

to overcome the presumption of correctness which attaches to the ruling or action precipitating the appeal. For example, if a taxpayer appeals the valuation of his or her home, relevant proof such as comparable sales must be offered into evidence in order to carry the burden of proof. Lawyers refer to this as establishing a *prima facie* case. If the taxpayer offers proof pertaining to irrelevant matters such as the tax rate, the taxpayer will not have carried the burden of proof and the current value is presumed correct even if the assessor offers no evidence. *See, e.g.,* **Mac A. & Judy S. Keith** (AAC, Washington County, Tax Years 2014-2015, Final Decision and Order, November 25, 2015) wherein the AAC concluded with respect to one of the parcels under appeal at page 2 that "[w]ithout relevant evidence, this Commission could find no basis to rule in favor of the taxpayer." Similarly, in **Delano Carroll** (AJ, Washington County, Tax Year 2014, Initial Decision and Order, September 17, 2015) it was noted at page 3 that "[n]ormally, when the appealing party fails to carry the burden of proof the administrative judge simply affirms the ruling of the county board of equalization based upon a presumption of correctness." On the other hand, if the taxpayer introduces relevant proof such as comparable sales, the assessor will have to offer evidence to rebut the taxpayer's *prima facie* case. *See, e.g.,* **Edward Blount** (AJ, Wilson County, Tax Year 2015, Initial Decision and Order, January 15, 2016).

Two rulings which expressly address the minimum evidence the appealing party must introduce to establish a *prima facie* case are **Wells Real Estate Fund I** (AJ, Knox County, Tax Year 2005, Initial Decision and Order, February 21, 2006); and **Sherwood Apartments, et al.** (AJ, Madison County, Tax Year 2005, Initial Decision and Order, January 26, 2006).

PRACTICE TIP: In the vast majority of cases, the burden of proof will be on the taxpayer since most appeals are brought by taxpayers rather than assessors. Should the assessor believe the taxpayer failed to carry the burden of proof, the assessor can move for what is commonly referred to as a Motion for Directed Verdict/Involuntary Dismissal. Realistically, the administrative judges and AAC will be reluctant to grant such motions in small appeals involving individuals. On the other hand, such motions are occasionally granted in appeals involving registered agents and lawyers when the proof is simply deficient. *See, e.g.,* **Olympia Construction Inc.** (AJ, Hardin County, Tax Years 2016 – 2018, Initial Decision and Order, February 20, 2020) [presently pending before the AAC]; **William M. Welch, et al.** (AJ, Shelby County, Tax Year 2013, Initial Decision and Order Granting Motion for Directed Verdict, January 8, 2015); and **Kimberly-Clark Corporation** (AJ, Loudon County, Tax Years 2011-2013, Initial Decision and Order, December 2, 2013). Given that the judges and AAC often use modifications to the assessor's proof to justify reductions in value, a Motion for Directed Verdict/Involuntary Dismissal can eliminate that risk. Of course, the judge or AAC might simply deny the motion or take it under advisement. In that case, the assessor must decide whether or not to offer any evidence.

F. Hearsay and affidavits

T.C.A. § 4-5-313(1) specifically authorizes the introduction of hearsay evidence when necessary. Both the administrative judges and AAC tend to allow virtually any proof into the record (other than affidavits) and focus on the weight it should receive rather than its admissibility. For example, appraisal reports are almost always allowed into evidence whether or not the appraiser who prepared the report is present. *See, e.g.,* **Terri Wayne and Sheri Bracey** (AJ, Davidson County, Tax Year 2004, Initial Decision and Order, April 27, 2005). However, the reports are typically accorded little, if any, weight if the other side offers legitimate questions about the report and the

appraiser is not present to respond. *See generally* the oft-cited ruling of the AAC in **TRW Koyo** (AAC, Monroe County, Tax Years 1992-1994, Final Decision and Order, January 13, 1995).

The introduction of affidavits can be more problematic. T.C.A. § 4-5-313(2) requires that any party proposing to introduce an affidavit into evidence provide the other party with a copy at least ten (10) days prior to the hearing. The other party then has seven (7) days to request an opportunity to cross-examine the affiant. The statute specifically provides that the affidavit shall not be admitted into evidence if an opportunity to cross-examine the affiant is not afforded. However, subdivision (3) states that "[t]he officer assigned to conduct the hearing may admit affidavits not submitted in accordance with this section where necessary to prevent injustice[.]"

G. Expertise and credibility of witnesses

It cannot be stressed strongly enough that a witness must be credible if his or her testimony is to receive any weight. Indeed, in many cases the expertise and credibility (or lack thereof) of a particular witness will dictate the outcome of the appeal. *See, e.g.,* **Adair Manor No. 2, et al.** (AJ, Knox County, Tax Year 1994, Initial Decision and Order, May 5, 1995); **Biller-Walker Associates #3** (AJ, Shelby County, Tax Year 1995, Initial Decision and Order, August 18, 1997); and **The Industrial Board of Rutherford County** (AJ, Rutherford County, Tax Years 2010 and 2011, Initial Decision and Order, June 22, 2012).

NOTE: In **Wayne Hurst** (AAC, Union County, Tax Year 1990, Final Decision and Order, November 19, 1991), the AAC stated at page 2 of its ruling that "[i]t is usually acceptable for an owner of [unimproved] land to express an opinion of its value whether or not he is qualified as an appraiser . . ." Presumably, the property owner must substantiate his or her opinion like any expert by referencing comparable sales or the like.

It should also be kept in mind that the SBOE is often aware of facts that the parties may not realize. For example, in **T & W Enterprises, Inc.** (AJ, Bedford County, Tax Year 1995, Initial Decision and Order Dismissing Appeal, October 16, 1995), the taxpayer was unaware of the fact that at that time the SBOE kept records of when appeal forms were requested and sent. Similarly, the administrative judge and/or AAC may be familiar with a comparable sale, or even the subject property, from another appeal.

PRACTICE TIP: In many commercial appeals, the taxpayer utilizes the services of a registered agent who is often compensated via a contingent fee arrangement. As the administrative judge explained in **Nashville Park Limited Partnership, et al.** (Davidson County, Tax Year 2007, Initial Decision and Order Granting Assessor's Motion for Directed Verdict, April 29, 2008) at page 2, ". . . although contingent fee arrangements do not per se require rejection of an agent's analysis, such an arrangement adversely impacts the agent's credibility." Thus, the assessor may want to use discovery (discussed in Section III) to determine the representative's fee arrangement. In the event the agent does have a contingent fee arrangement, it is certainly appropriate to raise the issue on cross-examination. *See* **Regions Bank** (AJ, Haywood County, Tax Year 2010, Order, March 30, 2012), wherein the administrative judge addressed this issue in the context of a discovery dispute at page 2 of the Order as follows:

> Obviously, the nature of the payment structure between the appellant and the agent might have some bearing on the credibility of the agent. Thus, while the contract need not be produced, the agent is obliged to answer any questions related to the fee structures (i.e., straight fee vs. contingency contract).

SBOE Rule 0600-01-.07 was amended in 2018 to address this issue and provides in pertinent part as follows:

> (5) All witnesses who testify shall disclose their employment or other financial relationship with either party or a person or entity representing a party in an appeal to the opposing party and the Board, Commission, or administrative judge. All witnesses receiving any compensation from either party or a person or entity representing a party in an appeal shall be subject to examination or cross-examination regarding such employment and the issue of possible bias, which may be addressed in a specific finding by the Board, Commission, or administrative judge.

This rule essentially requires witnesses to disclose certain financial arrangements and mandates that the opposing party be allowed to cross-examine witnesses concerning such compensation.

H. Counterclaims and increased assessments

In certain instances, the assessor can make a good faith argument that the current appraisal of the property under appeal is less than market value. In such cases, the assessor can simply present evidence in support of a higher value. However, as discussed in Section II, Part D, the taxpayer has the right to withdraw its appeal before a decision has been entered unless the assessor has filed a counterclaim. Thus, the assessor must decide whether he or she wants to proceed with a hearing to seek a higher value even though the taxpayer has decided to withdraw its appeal. *See, e.g.,* **A.H. Johnson Co., LP** (AJ, Davidson County, Tax Year 2011, Initial Decision and Order, July 10, 2013). In such instances, the assessor must file the counterclaim before the taxpayer withdraws its appeal. *See also,* **Green Hills Market** (AJ, Davidson County, Tax Year 2009, Corrected Initial Decision and Order, July 27, 2010) wherein the assessor's counterclaim was dismissed as untimely, but the assessor was able to prove a higher value at the hearing since the taxpayer had not withdrawn its appeal. SBOE Rule 0600-01-.10(1) now governs the filing of counterclaims and provides as follows:

> In a contested case, a party intending to make a Change of Contended Value must file with the State Board of Equalization and send to all other parties a written notice of the change no later than thirty (30) days before the date of a scheduled hearing. It is acceptable to file and send a notice under this rule by email. This rule does not preclude any party at the hearing of the appeal from introducing relevant evidence of a higher or lower value for the property in question than that determined by the county board of

equalization, or the assessor in the case of a direct appeal. Failure to file a notice of a Change to Contended Value as required in this rule may limit the relief a party may request to upholding the county board of equalization value, reverting to the original assessment value, or adopting the contended value included on the initial appeal filing, within the discretion of the administrative law judge.

Please refer to the **Practice Tip** in Section II, Part D for additional information concerning counterclaims and increased assessments.

I. Fee simple vs. leased fee and leasehold assessments

In **First American National Bank Building Partnership** (AAC, Davidson County, Tax Years 1984-1987, Final Decision and Order, May 27, 1988), the AAC ruled at page 3 that it "is the entire fee simple unencumbered value and not any lesser or partial interests" which is normally subject to taxation. Thus, an appraisal of the leased fee estate is irrelevant if market rents exceed contract rents. *See, e.g.,* **D & O Management Co.** (AJ, McNairy County, Tax Year 2013, Initial Decision and Order, March 13, 2014). *See also* **Williamson County v. SBOE, et al,** No. 47743 (Williamson Chancery, August 18, 2021) wherein the court ruled at page 22 that ". . . Tennessee law requires valuation of the fee simple estate available to be leased at market rate and not as a 'leased fee estate.'" The assessor has appealed this ruling to the Court of Appeals.

The one exception to the foregoing discussion is mandated by T.C.A. § 67-5-502(d) which provides that the lessee's interest is separately assessable when the fee owner is exempt from taxation and leases real property to a taxable entity. Such a situation most often occurs when a governmental entity leases real property to a private company. The proper method for calculating a leasehold assessment is discussed in Section V, Part I.

J. Complying with orders and requests for data

It is essential to comply with orders, discovery requests and similar matters. Failure to do so can result in the issuance of a default order. *See, e.g.,* **Arbors of Hendersonville/Tramwell Crow, et al.** (AJ, Sumner & Gibson Counties, Tax Year 1993, Notice and Order of Default, October 22, 1993); **RW Ford-Mercury Real Estate Partner** (AJ, Cocke County, Tax Year 2014, Initial Decision and Order Dismissing Appeal, January 22, 2015); and **Appeals Represented by L. Marshall Albritton** (AJ, Davidson County, Tax Year 2012, Order Concerning Motion to Set Aside Notice and Order of Default, June 28, 2013). Should a problem arise in complying with such matters, file an appropriate motion with the administrative judge or AAC and request modification of the provision or request at issue. Typically, the SBOE does not require a "formal" motion. Indeed, the administrative judges often utilize email for such matters. Unless arrangements have been made for a conference call or the like, such requests should be in writing with a copy sent to the opposing party's representative.

K. Requesting continuances, extensions etc.

Requests for continuances and extensions should be made in good faith and as early as practicable. Otherwise, the request will likely be denied and could adversely affect the party's credibility. *See, e.g.,* **Lillie Mae Cain, et al.** (AJ, Knox County, Tax Year 1992, Order, January 15, 1993); **Shelby**

County Real & Personal Property Appeals Pending for 1990 and Prior Tax Years Involving Taxpayers Represented by Caruthers & Associates, Inc. (AJ, Shelby County, Various Tax Years, Order, August 1, 1991). In more extreme cases, dismissal of the appeal can result as in **Jai Ganesha LLC** (AJ, Davidson County, Tax Year 2013, Initial Decision and Order Dismissing Appeals, April 30, 2015); and **Herman C. Chitwood, et ux** (AAC, Scott County, Tax Year 1990, Final Decision and Order, November 19, 1991).

L. Petitions for reconsideration

Such petitions are governed by T.C.A. § 4-5-317 and Rule 1360-4-01-.18 of the Uniform Rules. A party has fifteen (15) days from the entry of the administrative judge's initial decision and order or the AAC's final decision and order to file a petition for reconsideration. Realistically, petitions which simply ask the administrative judge or AAC to reconsider the evidence presented at the hearing will typically be denied. Petitions are most likely to be granted where the original decision was based upon a mistake of fact or law which would result in a different outcome if corrected. Petitions must state "the specific grounds upon which relief is requested" as required by both T.C.A. § 4-5-317(a) and Rule 1360-04-01-.18(1)(a) of the Uniform Rules. *See, e.g.,* **Maxwell Communications Corporation** (AJ, Hamblen County, Tax Year 1989, Order Denying Petition for Reconsideration, October 26, 1989). Another mistake commonly made by practitioners is to request the opportunity to present new or additional evidence without providing the explanation and documents required under Rule 1360-04-01-.18(1)(a) of the Uniform Rules. Of course, the administrative judge and AAC have the discretion to excuse such failures "in the interest of justice" pursuant to Rule 1360-04-01.01(2) of the Uniform Rules.

Once a petition for reconsideration has been filed, the administrative judge/AAC has twenty (20) days to enter a written order granting or denying the petition. When a petition for reconsideration is granted, the administrative judge/AAC may issue a new order or set the matter for further proceedings. If no action has been taken on the petition within twenty (20) days, the petition shall be deemed denied as a matter of law.

It should be kept in mind that the filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review. T.C.A. § 4-5-317(a). However, the filing of a timely petition for reconsideration effectively tolls the deadline to seek further administrative review. *See* T.C.A. §4-5-315(b). The time for seeking administrative review begins anew after disposition of the petition for reconsideration.

In those cases when an initial decision and order is subject to both a timely petition for reconsideration and an appeal to the AAC, the petition for reconsideration is normally disposed of first in accordance with T.C.A. § 4-5-315(b).

M. Settlement negotiations

Parties often want to testify concerning their settlement negotiations. However, settlement negotiations are simply inadmissible under Rule 408 of the Tennessee Rules of Evidence. *See, e.g.,* **James H. and Barbara B. Nixon** (AJ, Knox County, Tax Years 2013 and 2014, Initial Decision and Order, June 4, 2014). The commonly accepted rationale for this rule is the policy of promoting the settling of disputes, which would be discouraged if settlement offers were admitted

into evidence. It is not unusual for a party to withdraw its offer of settlement and argue for a higher or lower value if the matter goes to hearing.

N. Equalization

In recent years, the SBOE has taken the strict view that equalization is achieved by determining the subject property's market value and reducing that value by the county's appraisal ratio for the tax year at issue. The basis for this concept is **Laurel Hills Apartments, et al.** (SBOE, Davidson County, Tax Years 1981 and 1982, Findings of Fact and Conclusions of Law, April 10, 1984). In that case, the AAC certified to the full SBOE the issue of the appropriate means for equalizing assessments under Tennessee law. The AAC split evenly as to whether equalization is achieved by appraising property annually at full market value and applying the county's appraisal ratio ("Market Value Theory"), or by appraising property at full market value during the year of reappraisal and retaining those values until the next reappraisal absent a showing that the subject property has fluctuated in value differently than similar properties in the county ("Base Year Theory"). The SBOE ruled "that as a matter of law property in Tennessee is required to be valued and equalized according to the 'Market Value Theory.'" Consequently, the SBOE concluded that "the fair market value of the subject properties are affirmed as set by the Assessment Appeals Commission, and the appraisal ratio of .4480 is to be applied to equalize these values with the prevailing level of value in Davidson County for the years in question." In other words, when an assessment has been appealed, equalization is achieved by reducing the established fair market value by the appraisal ratio for the county for the tax year at issue. *See* **Garden Plaza Hotel** (AJ, Madison County, Tax Year 2020, July 27, 2021). *See also*, *History of Equalization in Tennessee, Prepared by State of Tennessee, Comptroller of the Treasury, Office of General Counsel (November 2020)* for a comprehensive review of how the law has evolved over the years.

O. Appraisal reports

In many appeals, a party (typically the taxpayer) seeks to rely on an appraisal report, but the appraiser is not present to testify and undergo cross-examination. Normally, the appraisal reports are allowed into evidence. However, if the appraiser is not present and the other party raises legitimate questions about the appraisal report, it typically does not receive any weight. The administrative judges have issued numerous rulings to this effect and typically cite **TRW Koyo** (AAC, Monroe County, Tax Years 1992, 1993 and 1994, Final Decision and Order, January 13, 1995) as the governing precedent. *See, e.g.,* **Michael L. Shular** (AJ, Cocke County, Tax Year 2014, Initial Decision and Order, May 21, 2015); and **Robert Daniel and Mary Lou Booth** (AJ, Fayette County, Tax Year 2009, Initial Decision and Order, September 17, 2009).

P. Agreements violating public policy

An agreement to value property contrary to law violates public policy and cannot be enforced. *See* **Jersey Miniere Zinc Co.** (AJ, Smith County, Tax Year 1984, Initial Decision and Order, July 22, 1985). For example, if a manufacturing facility has a market value of $1,000,000, the assessor cannot agree to value it at $700,000 because the property owner has experienced financial difficulties.

Q. Post-hearing filings

Many representatives erroneously assume that additional materials can be filed as a matter of right following the hearing. In actuality, the record is normally closed at the conclusion of the hearing unless the administrative judge or AAC leaves it open for additional filings. *See* **John W. and Barbara B. McDowell** (AJ, Shelby County, Tax Year 1987, Initial Decision and Order, September 23, 1988).

PRACTICE TIP: If you want an opportunity to supplement the record, ask permission to do so prior to the conclusion of the hearing. If you do not realize until after the hearing that you want to supplement the record, file a written request with the administrative judge/AAC (along with a copy to the other party) setting forth what you want to file and how much time you need. Be aware that post-hearing filings can create a number of problems. For example, the AAC often renders a decision immediately after the hearing or later in the day. Moreover, since the other party will typically be afforded an opportunity to respond, further delay ensues. Additionally, depending upon the contents of a post-hearing filing, the other party may legitimately want to cross-examine the person who prepared the document(s) in question. Typically, post-hearing filings are much more common in appeals involving lawyers and deal with legal issues that do not require additional testimony or cross-examination.

R. Serve/copy other party when filing written documents

Once an appeal has been filed with the SBOE, the parties must copy one another when filing any documents with the SBOE and/or Administrative Procedures Division. *See* Rule 1360-04-01-.03(4) of the Uniform Rules. When a party is represented by an agent or attorney, the copies should be sent to the agent or attorney. The filings must contain a statement (including the date) that copies have been served upon all parties. Typically, a certificate of service or less formal indication such as "cc" will suffice.

The possible ramifications for failing to copy the other side was made painfully aware to the assessor in **MBL Life Assurance Corporation** (AAC, Shelby County, Tax Years 1994 and 1995, Order Setting Aside Dismissal and Approving Settlement, July 8, 1997). In that case, the assessor withdrew her appeal before the administrative judge without copying counsel for the taxpayer. The administrative judge dismissed the appeal pursuant to the assessor's letter of withdrawal. The taxpayer appealed to the AAC seeking to have the dismissal set aside and preserve its right to file a counterclaim in support of a reduced value. The AAC granted the taxpayer's request reasoning in pertinent part at page 2 of its ruling that "[b]ecause the taxpayer was given no notice of the assessor's request to dismiss, we find that the dismissal was entered prematurely and should be set aside."

CAUTION: Administrative judges detest receiving filings and not knowing whether the other party was copied. The administrative judge will either have to contact the parties or simply forward copies to expedite matters. In an extreme case, the administrative judge might find the failure to copy the other party prejudicial and not allow the documents into the record.

S. Confidential tax records and evidence

Tennessee law allows assessors to obtain certain otherwise confidential tax records and evidence for use in appraising properties. Disclosure of such information can constitute a misdemeanor unless the statute permits disclosure in the context of a hearing or the like. *See* T.C.A. §§ 67-5-303, 67-5-401, and 67-5-402.

T. Equity

In **Trustees of Church of Christ** (AAC, Obion County, Claim of Exemption, Final Decision and Order, January 13, 1995), the AAC ruled that it lacks equitable powers and cannot simply waive statutory requirements. Of course, the AAC (and administrative judges) have equitable powers when expressly granted by statute such as the "reasonable cause" provision in T.C.A. § 67-5-1412(e). *See also* **Tazewell Properties, LLC** (AAC, Sullivan County, Tax Year 1995, Final Decision and Order, December 19, 1997).

U. *Ex parte* communications – T.C.A. § 4-5-304

An *ex parte* communication occurs when only one of the parties to a proceeding participates and no notice is given to the other party. Such communications are considered *ex parte* regardless of whether they are in writing or oral. Thus, it is inappropriate to contact the administrative judge (or an agency member) to discuss matters, directly or indirectly, at issue in the appeal. It is only appropriate to contact the administrative judge to discuss "routine" procedural matters. For example, a party might contact the administrative judge to inquire how hearings are scheduled in general terms. The statute requires that any improper *ex parte* communications be placed on the record and any party wishing to rebut the communication must be allowed to do so. The person receiving the communication may be disqualified from the case in more extreme situations. The person making the *ex parte* communication is subject to sanctions which includes being held in default.

V. Amending real property appeals to include subsequent tax years

In certain instances, the SBOE will not hear an appeal before the deadline to appeal a subsequent tax year. For example, due to the volume of appeals an appeal for tax year 2021 might not be docketed for hearing until September of 2022. In most counties, the county board will have already completed its session for tax year 2021. SBOE Rule 0600-.01-.10(2) governs such situations and basically addresses three situations. First, if the original appeal was timely filed, it may be amended as of right to include a subsequent tax year (or years) until the next reappraisal. A new appeal must be filed for a reappraisal year. Second, if the original appeal was filed untimely, it may be amended to include a subsequent tax year (or years) until the next reappraisal if (a) the late appeal was eligible for a "reasonable cause" determination under T.C.A. § 67-5-1412(e); and (b) the written order disposing of the original appeal was entered later than ten (10) days before the appeal deadline. Third, all other requests to amend are within the discretion of the administrative judge. The rule provides that "[t]here is a presumption of reasonable cause when an original real property appeal has not been heard by the time the appellant is due to file an appeal for any subsequent assessment year."

In most cases, the parties will consolidate the tax years for hearing and the same determination of market value will apply to each tax year under appeal. The rule provides that the value determined for the original tax year under appeal may be carried forward for ". . . subsequent tax years within the same reappraisal cycle, but only if there has been no material change to the property, market conditions, or other circumstances or factors substantially impacting value."

In certain situations, however, a party will seek different market value determinations for the various tax years. When that occurs, different proof can be offered for different tax years. In some cases, separate hearings will be conducted. In other cases, a single hearing will be conducted, but the proof will be different for the tax years under appeal. Whatever procedure is most efficient in a particular case will dictate whether the various tax years are consolidated for a single hearing.

NOTE: This rule applies to real property appeals. Since personal property returns are filed annually, the resulting assessments will normally change from the prior tax years. Hence, the new personal property assessment must be appealed just like a new real property assessment resulting from reappraisal.

W. Property leased by a public utility

Such property, whether real or personal, is assessed as public utility property pursuant to T.C.A. §§ 67-5-501(9) and 67-5-502(c). *See also,* **Crown Enterprises, Inc. v. SBOE,** 543 S.W.2d 583 (Tenn. 1976) (property leased by trucking company and used as a truck terminal and repair facility classified as public utility property); and **John D. Whalley & M.L. Zeitlin** (AJ, Davidson County, Tax Years 1989 & 1990, Initial Decision and Order, November 2, 1990) (portion of office building leased to telephone company assessed as public utility property).

X. Effectively presenting your case

In order to present a case effectively, assessors and appraisers must be credible. That means settling appeals when the property has been overvalued and defending your estimate of value when you believe your contended value represents market value. If the administrative judge or AAC perceives you as defending an appraisal that is clearly excessive, you lose your credibility. In other words, settle the appeals you should settle and fight the appeals you should fight. Surprisingly, many assessors and appraisers are under the misapprehension that it is their job to defend the assessor's and/or county board's value no matter what. In fact, your job is to value the property at its market value (prior to application of the appraisal ratio).

As discussed in Section IV, Part A, the property record card does not prove your case. Errors on the property record card should be corrected, but the cost, income and/or sales comparison approaches must be used to establish market value.

In the vast majority of appeals, assessors and agents do not introduce into evidence full-blown appraisal reports that are compliant with the Uniform Standards of Professional Appraisal Practice ("USPAP"). To avoid any confusion concerning what the document is, most practitioners avoid labeling the document as an "appraisal" and utilize terms such as "hearing exhibit" or "valuation analysis." It should be noted that the State Licensing and Certified Real Estate Appraisers Law specifically provides in T.C.A. § 62-39-104(c) that it does not apply to agents (i.e., tax reps) registered with the SBOE in accordance with T.C.A. § 67-5-1514. Thus, agents are effectively

exempted from the need to comply with USPAP when presenting a valuation analysis in hearings before the SBOE or county boards of equalization. Additionally, fee appraisers will sometimes provide "specialized services" as defined in T.C.A. § 62-39-102(14). Such services do not constitute an "appraisal assignment" as defined in T.C.A. § 62-39-102(4).

SBOE Rule 0600-01-.05 specifically addresses these issues as follows:

> (1) The Board, Commission, or administrative judge shall not require an assessing authority or an agent to be compliant with the Uniform Standards of Professional Appraisal Practice ("USPAP") or the State Licensing and Certified Real Estate Appraisers Law when the assessing authority or the agent prepares a valuation analysis.
>
> (2) Any individual appearing as a real estate appraiser before the Board, Commission, or administrative judge shall comply with all provisions of the State Licensing and Certified Real Estate Appraisers Law. An assessing authority or an agent is not required to be a licensed real estate appraiser to testify as to valuation before the Board, Commission, or administrative judge.

It should be kept in mind that although the SBOE has historically allowed valuation analyses into evidence, that does not mean they will receive the same weight as full-blown appraisal reports that are USPAP compliant. *See, e.g.,* **Anderson & Anderson LLC** (Tipton County, Tax Years 2013-2015, Final Decision and Order, February 11, 2016) wherein the Assessment Appeals Commission gave greater weight to the taxpayer's proof noting two factors. First, the taxpayer's primary witness was a licensed appraiser with considerable experience whereas the deputy assessor was not an appraiser. Second, the taxpayer's appraisal report was USPAP compliant whereas the assessor's analysis was not.

Make your arguments to the administrative judge/AAC, not the taxpayer. Obviously, there would be no need for a hearing if the taxpayer agreed with you. The administrative judge/AAC, not the taxpayer, will be deciding the case.

Remember that the administrative judge/AAC are conducting a hearing and listening to both parties' evidence and/or arguments. Although the administrative judge/AAC will sometimes explain a concept such as the relevant assessment date to a taxpayer, that is not the purpose of the hearing. Indeed, in certain instances the administrative judge/AAC do not appreciate being put on the spot. For example, they recognize that January 1 of the tax year constitutes the relevant assessment date and will make that finding in the written order. Do not ask them to tell the taxpayer that is the law. Similarly, taxpayers often have elaborate presentations summarizing irrelevant data such as their neighbors' appraisals for the last ten (10) years. The administrative judge/AAC recognize that those appraised values are not relevant. Typically, it serves no useful purpose to try to explain to the taxpayer that his or her proof is not relevant.

Be consistent from one appeal to the next. For example, do not criticize a taxpayer in one appeal for averaging comparable sales (rather than adjusting them) and then turn around in the next appeal

and do the same exact thing. This situation often occurs in the context of post-assessment date sales. You cannot challenge them when they are to your detriment but try to use them when they support your position.

Surprisingly, many representatives introduce voluminous documents into evidence with no page numbers. In such situations, the individual(s) hearing the case cannot even find the page being referenced. If necessary, write the page numbers in longhand.

In more complex appeals, consider preparing a single sheet which summarizes the key components of your analysis. For example, the summary could simply outline the pertinent characteristics of the land and building(s) and your conclusions of value utilizing the cost, income and/or sales comparison approaches. Sometimes it is useful to provide a summary of the components of your approaches to value. For example, a summary of the cost approach might include your estimates of reproduction/replacement cost and depreciation. Similarly, a summary of the income approach might include the assumed market rent, potential gross income, vacancy and collection loss, expenses, and capitalization rate. Another effective technique is to have tabs that allow one to turn directly to the supporting documentation. For instance, the summary might indicate that a 7% capitalization rate was assumed. The tab would allow one to see the surveys and calculations constituting the support for the contended capitalization rate.

Be respectful to everybody at the hearing no matter how you actually feel. Do not become argumentative or condescending. You want to appear professional.

Remember, you may find yourself before the same individual(s) in the future. They will often remember you and the job you did the last time. Obviously, it is advantageous to be viewed in the best possible light. It is exceedingly difficult to regain lost credibility. Ideally, the administrative judge/AAC will view you as a reasonable person and assume there must be merit to your position.

It is imperative that all parties to an appeal believe that the hearing is being conducted by truly impartial administrative judges and AAC members. On occasion, assessors and agents know the administrative judges and/or AAC members and will address them by their first name rather than as "Judge, Mr., Ms." or the like. This results in the appearance of undue familiarity with the judge or tribunal, especially when dealing with individual taxpayers representing themselves. Thus, simply avoid calling the administrative judges and AAC members by their first names and do not act in a way suggesting that you are unduly familiar with the individual(s) hearing the appeal.

SECTION V – VALUATION

A. General information

T.C.A. § 67-5-601(a) provides that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ." The SBOE routinely assumes that the foregoing requires property to be appraised at its fair market value (prior to application of the appraisal ratio).

T.C.A. § 67-5-602 requires that assessors utilize manuals prepared by the DPA and approved by the SBOE when valuing real property. The statute requires that such manuals provide for consideration of the following factors:

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

The SBOE website has a section devoted to manuals approved by the Board. At present, the SBOE has approved the following manuals:

- County Board of Equalization Manual
- Procedures for Sales Data Collection and Verification Manual
- Greenbelt Manual
- Exemption Manual
- Commercial Listing Manual

NOTE: The State of Tennessee Assessment Manual approved by the Board in 1972 is no longer the "official" manual for assessing property in Tennessee. In practical terms, the only possible significance to this concerns the valuation of special-purpose and limited-market properties discussed below.

For a good overview of the law and principles governing the valuation of property in Tennessee, see **Aluminum Company of America** (Blount County, Tax Year 1991, Initial Decision and Order Adopting Proposed Findings of Fact and Conclusions of Law, January 8, 1993). For good discussions of the need at least to consider all three approaches to value and substantiate those approaches ultimately relied upon, see **Stokely Hospitality Properties** (AJ, Sevier County, Tax Year 1991, Initial Decision and Order, March 13, 1992); and **William S. Paley d/b/a J.C. Penney Co., Inc.** (AJ, Hamilton County, Tax year 1989, Initial Decision and Order, April 3, 1992). Examples of factors which are simply irrelevant to the issue of market value include the increase in value resulting from reappraisal, **E.B. Kissell, Jr.** (AAC, Shelby County, Tax Years 1991 & 1992, Final Decision and Order, June 29, 1993); and taxes. **John C. and Patricia A. Hume** (AAC, Shelby County, Tax year 1991, Final Decision and Order, November 12, 1993).

Typically, values established on appeal before the SBOE are carried forward until the next reappraisal or current value update program. It should be noted, however, that an assessor need not continue to utilize a value adjudicated by the SBOE for a prior tax year when values in the jurisdiction have been generally recalculated. *See* **Harry & Linda England** (AAC, Dickson County, Tax Years 1991 & 1992, Final Decision and Order, January 6, 1995).

In most cases where the appealing party has carried the burden of proof, the administrative judge and/or AAC (when the hearing is not confined to the record) weighs the evidence presented by the parties and reaches a conclusion of value. In some cases, one party's proof may be adopted in its entirety. For example, it might be decided that Appraiser Smith's appraisal report constituted the best evidence of value and should be adopted as the basis of valuation. On the other hand, it might be decided that Appraiser Smith's income approach and Appraiser Miller's sales comparison approach have greatest probative value and should be correlated in the middle of the range established by the two approaches. In certain cases, components of both parties' approaches to value will be adopted. For example, it might be concluded that the income approach should be accorded greatest weight using Appraiser Smith's capitalization rate and Appraiser Miller's estimates of potential gross income, vacancy and collection loss and expenses. Every case is different and ultimately a function of the evidence.

Since most decisions involve the weighing of evidence and utilize generally accepted appraisal principles, methodology is often not at issue. Nevertheless, many decisions have been issued by the SBOE over the years addressing particular aspects of the cost, sales comparison, and income approaches. Moreover, Tennessee law may require the use of a particular methodology when appraising certain types of property.

B. Greenbelt and conservation easements

The Comptroller has recently revised the Greenbelt Handbook available online. It now includes numerous administrative rulings along with the statutes and other legal authority governing the administration of the greenbelt program. The handbook also includes information on conservation easements that might be helpful when such appeals are filed. The SBOE's Greenbelt Manual referenced above also addresses this issue so assessors will want to review that document for possible guidance.

C. Single family residences

In virtually all appeals involving single family residences, it will be necessary to introduce comparable sales. The SBOE has issued countless rulings explaining the need to adjust those sales. Typically, the administrative judges cite the ruling of the AAC in **E.B. Kissell, Jr.** (AAC, Shelby County, Tax Years 1991 & 1992, Final Decision and Order, June 29, 1993) wherein the Commission stated in relevant part at page 2 as follows:

> The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value.

When a home has recently been constructed, the cost approach should also be utilized in the analysis of value. It is often useful to obtain actual construction costs from the taxpayer. However,

unlike a cost approach prepared using Marshall Valuation Service, the taxpayer's costs often do not include all hard and soft costs normally considered by an appraiser.

D. Income-producing properties

Not surprisingly, the SBOE will normally give the income approach significant, if not exclusive, weight when valuing income-producing properties such as apartment complexes and hotels. Depending upon the age of the property and the availability of comparable sales, the cost and sales comparison approaches might also be relevant in a given appeal.

The SBOE has consistently ruled that market rent rather than contract rent must be used in the income approach. *See* **Hoover v. SBOE,** 579 S.W.2d 192 (Tenn. Ct. App. 1978). *See also,* **First American National Bank Building Partnership** (AAC, Davidson County, Tax Years 1984-1987, Final Decision and Order, May 27, 1988) which holds that real property is valued in fee simple for property tax purposes. In many cases, contract rent is less than market rent, and a valuation based upon contract rent would therefore constitute a leased fee valuation.

E. Special-purpose and limited-market properties

In appeals involving special-purpose properties reference was historically made to page AP-8 of the Tennessee Assessment Manual which discussed the concepts of value in use versus value in exchange. In a nutshell, the Tennessee Assessment Manual provided that special purpose properties are valued in use and the cost approach generally constitutes the appropriate methodology. As previously noted in Section V, Part A, that manual is no longer one of the manuals approved by the Board. At this point in time, it is simply unclear whether special-purpose and limited-market properties will continue to be valued in use.

Notwithstanding the foregoing, assessors should be aware of two rulings often cited in appeals involving these type properties. First, an administrative judge held that limited-market properties, like special-purpose properties, must be valued in use. *See* **UCAR Carbon Co., Inc.** (AJ, Montgomery County, Tax year 1994, Initial Decision and Order, April 12, 1995). That decision also discusses the difference between special-purpose and limited-market properties. Second, in **Teledyne Telemetry** (AJ, Marshall County, Tax Year 2007, Initial Decision and Order, December 13, 2007), the administrative judge concluded that an industrial facility used to manufacture circuit boards did not constitute a special-purpose property.

F. Going concern vs. market value

In certain cases, taxpayers will assert that the sale of a business should be used to value the real property which is what the assessor is actually appraising for property tax purposes. It has been held that "market value" and "going concern value" are distinct concepts and a sale of the going concern is not necessarily indicative of the market value of the real property. *See, e.g.,* **Dico Tire, Inc.** (AJ, Anderson County, Tax Year 1989, Initial Decision and Order, July 27, 1990). *See also* **Morristown Medical Investors, et al.** (AAC, Hamblen County, Tax Year 1994, Final Decision and Order, May 20, 1997), wherein the AAC found one of the appraisal reports deficient because, among other things, no adjustment was made for going concern value.

G. Subsidized apartments

For many years, the issue of how to value federally subsidized apartment complexes for property tax purposes was unsettled in Tennessee. In recent years, however, the SBOE and Tennessee Court of Appeals have consistently ruled that the present value of the subsidies should be included in the valuation of the real property. The various rulings by the AAC and Court of Appeals are summarized in **Sevierville Senior Apartments, L.P., et al.** (AJ, Sevier, Davidson & Knox Counties, Tax Years 2011-2013, Consolidated Initial Decision and Order, October 25, 2013) which was affirmed by the AAC in **Sevierville Senior Apartments, LP, et al.** (AAC, Sevier, Davidson & Knox Counties, Tax Years 2011-2013, Final Decision and Order, December 5, 2014). The ruling of the AAC was, in turn, affirmed in a lengthy opinion in **Hickory Ridge Apartments, L.P. et al. v. SBOE**, No. 15-0261-I (Davidson Chancery, August 17, 2016). At each level of appeal, it was concluded that Tennessee statutes and case law require the inclusion of Section 1602 funds in valuing property for *ad valorem* tax purposes.

Significantly, the SBOE has since adopted rules (Chapter 0600-10 entitled "Subsidized Affordable Housing") which basically affirm the methodology used to value federally subsidized apartment complexes summarized in the above-referenced administrative judge ruling. The rules establish acceptable methods for property tax valuation of affordable housing in three categories: (1) IRC § 42 LIHTC (tax credit) housing; (2) loan subsidized rural renting housing (§ 515 Housing Act of 1949); and (3) loan-for-credit housing (§ 1602 American Reinvestment and Recovery Act of 2009). In each instance, the adopted methodology measures the property value contribution of the subsidy as a source of income or avoided expense supplementing restricted (below market) property rents.

H. Proration of new buildings and improvements

Pursuant to Tenn. Code Ann. § 67-5-504(a), assessments of real property are normally made as of January 1 of the tax year. However, Tenn. Code Ann. § 67-5-603(b)(1) requires the assessor to make a prorated assessment if, after January 1 and before September 1 of any tax year, an improvement or new building is completed and ready for use or occupancy, or the property has been sold or leased. In other words, the assessor must value the new construction as of the date of its completion. That value, however, is normally based upon the cost approach used to appraise similar buildings and improvements during the last countywide reappraisal, subject to any current value updates. This procedure is mandated by T.C.A. § 67-5-1601(a)(3) which provides that "[d]uring the review cycle between revaluations, new improvements discovered by on-site review or photo or otherwise shall be valued on the same basis as similar improvements were valued during the last revaluation or otherwise as necessary to achieve equalization of such values, subject to application of periodic value indexes established by the board."

Tennessee Code Ann. § 67-5-603(a)(1) also requires the assessor to make a prorated assessment if after January 1 and before September 1 of any tax year, an improvement or building is "moved, demolished or destroyed, or substantially damaged by fire, flood, wind or any other disaster, *and is not restored and no other improvement is constructed in its place before September 1 of that year. . .*" [Emphasis supplied]

See **John and Kimberly Roberts** (AJ, Knox County, Tax Year 2014, Initial Decision and Order, April 10, 2015); **Lakes of Columbia** (AAC, Maury County, Tax Years 2005-2007, Final Decision and Order, October 9, 2008); and **Lakes of Columbia** (AJ, Maury County, Tax Year 2005, Initial Decision and Order, June 27, 2006) for examples of how this issue is typically dealt with on appeal.

I. Leasehold assessments

Tennessee Code Ann. § 67-5-502(d) provides in substance that assessors must make leasehold assessments when (1) the fee owner is exempt; (2) the lessee is not exempt; and (3) contract rent (including imputed rent) is less than market rent. Typically, a leasehold assessment is basically made by calculating the present worth of the lessee's savings for the remaining term of the lease. *See* T.C.A. § 67-5-605 which sets forth the methodology for computing the value of a taxable leasehold interest. The statute also provides as "an alternative in valuing an interest in *residential* property . . . [the assessor may utilize] the sales comparison approach using sales or transfers of similar interests in residential property." [Emphasis supplied]

The statute essentially codifies two rulings of the Tennessee Supreme Court concerning leasehold assessments. First, in **State v. Grosvenor,** 149 Tenn. 158, 258 S.W. 140, 142 (1924), the Court held that "[t]he value of a leasehold is to be based on the difference between the rent paid and the value of the use of property." Second, in **Metropolitan Government of Nashville and Davidson County v. Schatten Cypress Co.,** 530 S.W.2d 277, 281 (Tenn. 1975), the Court explained that "[t]he valuation of a leasehold for tax purposes . . . is normally accomplished by determining whether there is an excess in fair rental value over the rent reserved in the lease."

When faced with a leasehold valuation, assessors might want to review the following two articles written by David Cypress, a former SBOE administrative judge: (1) **Assessing Leasehold Interests Part I** (Local Issues, November 1988); and (2) **Leasehold Assessments Part II** (Local Issues, January 1989). Rulings assessors might find helpful include the following: **Airport Inns, Inc. v. LaManna** (Tenn. Ct. App., Western Section, November 14, 1975) (not for publication); **Nashville Flying Service** (SBOE, Davidson County, Tax Year 1973, Unstyled Order, February 14, 1975); **Federal Express Corp.** (AAC, Shelby County, Tax Years 1987-1989, Final Decision and Order, November 6, 1991); **Wilton Corporation** (Franklin County, Tax Years 1990 & 1991, Final Decision and Order, January 22, 1993); and **Herbert A. Johnson, Jr.** (AAC, Shelby County, Tax Year 1984, Final Decision and Order, September 18, 1987).

J. Mineral interests

T.C.A. § 67-5-502(d) provides for the assessment of all mineral interests and all other interests of whatever character which are owned separately from the general freehold, such as severed mineral rights. Historically, assessors and DPA relied on the Mineral Appraisal Section of the State of Tennessee Assessment Manual ["*Assessment Manual*"] approved by the SBOE in 1972 for guidance in valuing mineral interests. The *Assessment Manual* was replaced in 2017 by Chapter 0600-11 of the rules of the SBOE entitled "*Appraisal of Parcels with Mineral Reserves*." The purpose of the rules is to outline policies and procedures for the appraisal of mineral interests subject to property taxation. The rules apply to properties having what are classified as active mineral reserves, depleted mineral reserves, inactive measured mineral reserves, and inactive indicated mineral reserves. The rules do not apply to severed mineral rights or parcels classified

as having minerals not subject to appraisal. Severed mineral rights are typically valued utilizing comparable sales. In certain instances, the income approach could also be relevant.

APPENDIX A
SAMPLE DISCOVERY REQUEST FOR APPEALS FILED BY INDIVIDUALS

Blank County Assessor of Property
123 Main Street, Courthouse
Hometown, TN 37777
(615) 555-5555

August 2, 2016

John Smith
123 Rural Road
Hometown, TN 37777

Re: Appeal to State Board of Equalization

Dear Mr. Smith:

This office has recently become aware of your appeal to the State Board of Equalization concerning the property located at 123 Rural Road in Hometown. In order to determine whether the appeal can be settled, or a hearing will be necessary, this office needs certain information specific to your property. Our request is not intended to be burdensome. We simply need specific information about your property to formulate our position concerning its fair market value on the relevant assessment date of January 1, __________.

As you may know, once an assessment has been appealed to the State Board of Equalization, both the assessor and taxpayer are authorized to obtain information from one another in accordance with Rule 1360-04-01-.11 of the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. For your convenience, below is a link to the rules:

1360-4 Department of State Administrative Procedures (tnsosfiles.com)

Pursuant to the rules, this office requests that you provide the following information concerning the property under appeal within thirty (30) days from the date of this letter. Should you need additional time, please contact me so we can agree on a mutually acceptable date.

I. If the property has been under contract to sell or actually sold between January 1, __________ and January 1, __________, please submit a copy of one or more of the following:
   i. Listing Agreement; and/or
   ii. Closing Statement.

II. If the property has sold between January 1, __________ and January 1, __________, were any items of personal property included in the sale price? If so, please provide a list of each item of personal property and its estimated market value.

III. If the property or any structures on the property were constructed between January 1, __________ and January 1, __________, please provide a detailed list itemizing the cost of construction.

IV. Please provide the amount and type of insurance coverage on the property or any structures located on the property.

V. Please provide copies of any appraisals which value the property, or any portion of the property, between January 1, __________ and January 1, __________.

VI. If your contention of value is based upon comparable sales, please provide the following information for each sale you are utilizing:

    i. Address of the Property;
    ii. Sale date; and
    iii. Sale price.

VII. If the property, or any portion of the property, is leased or available for lease, please provide the following information:

    i. Rent roll as of January 1, __________; and
    ii. Annual profit and loss statements for the most recent three years.

VIII. If the property, or any portion of the property, is leased or available for lease, please provide the responsible party for the following expenses:

    i. Property Taxes: Owner ____ Tenant ____ Shared ____;
    ii. Property Insurance: Owner ____ Tenant ____ Shared ____; and
    iii. Property Maintenance: Owner ____ Tenant ____ Shared ____.

IX. Please provide any additional information you would like this office to consider.

Your appeal form indicates that you will be representing yourself. In the event you choose to have a representative, please let me know and I will direct any further communications to that person. As you may or may not know, Tennessee Code Annotated Section 67-5-1514(c)(1) allows the following persons to represent taxpayers before the State Board of Equalization: (a) a member of the taxpayer's immediate family; (b) attorneys; (c) if the taxpayer is a corporation or the like, its regular officers, directors or employees; (d) agents approved by the State Board of Equalization (commonly known as "tax reps"); and (e) a certified public accountant if the only issue concerns the valuation of tangible personal property.

Thank you for your anticipated cooperation and please do not hesitate to contact this office should you have any questions.

Sincerely,

____________________________,

County Assessor of Property

APPENDIX B

SAMPLE DISCOVERY REQUEST FOR APPEALS FILED BY ATTORNEYS AND AGENTS

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE: ____________________)
____________________) ______________ County
____________________)

FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO _______________, TAXPAYER, FROM _______________ COUNTY ASSESSOR OF PROPERTY

TO: ________________________
____
____

FROM: ________________________
____
____

Pursuant to the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies and Tennessee Rules of Civil Procedure 26, 33, and 34, ______________, _____________ County Assessor of Property propounds this first set of interrogatories and requests for documents and things on __________________________ ("Taxpayer"), to be answered under oath by the Taxpayer within thirty (30) days after service.

INSTRUCTIONS

1. These interrogatories and requests for production of documents are addressed to the Taxpayer, but are intended to include, if applicable, predecessor or successor entities, subsidiaries,

partnerships, joint ventures, or other entities that are responsible for the property taxes on the subject property.

2. These interrogatories and requests for production of documents and things are to be answered within thirty (30) days after service unless the Administrative Judge has entered an Order setting forth a different timeframe. Unless otherwise agreed by the Assessor and Taxpayer, all responses to interrogatories, and all documents and things produced in response to these discovery requests, shall be received by the Assessor's office within thirty (30) days after service.

3. These interrogatories and requests for production of documents and things are continuing in nature and shall be promptly supplemented when new or additional information becomes available to the Taxpayer. Pursuant to Rule 26.05 of the Tennessee Rules of Civil Procedure, you are required to amend your Responses to these Interrogatories if in the future you determine either that:

(a) one of your responses was incorrect when made; or

(b) one of your responses to these interrogatories, although correct when made, is no longer correct.

4. These interrogatories and requests for production of documents and things are to be construed as broadly as any reasonable construction may allow. If there is any ambiguity in any interrogatory or request for documents and things, the ambiguity shall be resolved in the manner that provides for the broadest possible scope of the discovery request. The use of the singular form of any word shall include the plural and vice versa. The specificity of the scope of any discovery request shall not be construed as limiting or affecting the generality of the scope of any other discovery request.

5. If you decline to answer any interrogatory, or part thereof, please describe the nature of the information withheld, the source of the information, the grounds for withholding the information, and any other information necessary to enable the Assessor and Administrative Judge to assess the applicability of the privilege or protection claimed with respect to such information.

6. If any document or thing is withheld from production, please describe the nature and title (if any) of the document or thing withheld, the length or size of such document or thing, the location of such document or thing, the grounds for withholding the document or thing, and any other information necessary to enable the Assessor and Administrative Judge to assess the applicability of the privilege or protection claimed with respect to such document or thing.

7. If any document or thing requested herein was at one time in existence, but has been lost, discarded, or destroyed (including the deletion from any computer of any responsive document), then such

document or thing shall be identified (within the meaning of the term "identify" as defined below) and the circumstances resulting in the loss, discarding, or destruction of such document or thing shall be explained.

8. If an interrogatory cannot be answered in full, then please answer to the extent possible and state the reason or reasons for your inability to provide a complete answer. If you are objecting to only a portion of an interrogatory, please answer the portion that is not objectionable.

DEFINITIONS

A. The terms "document" or "documents" include, but are not limited to, all paper material of any kind, whether written, typed, printed, punched, filmed, or marked in any way; recording tape or wires; film, photographs, movies or any graphic matter however produced or reproduced; all mechanical or electronic sound recordings or transcripts of such recordings; and all electronic and/or computerized information in any form or medium whatsoever, including, but not limited to, tapes, disks, printouts, and email messages.

B. The term "subject property" means the property being appealed by the Taxpayer.

C. The term "Taxpayer" means the owner of subject property and/or any other person or entity responsible for property taxes for the tax year(s) under appeal.

D. The term "relevant assessment date" means January 1 of each tax year under appeal.

E. The term "appraisal" means any oral report, written report, or other document prepared in connection with any feasibility, financial, economic, regulatory or other study or report which relates to, concerns or contains any conclusions or opinions as to the value of all or any portion of subject property, whether prepared for purposes of or in connection with this appeal, or for purposes of or in connection with the purchase, feasibility, construction, sale, lease, financing or insurance of subject property, or the regulation of the owner of the subject property, or in connection with any other purpose.

F. The terms "relating to," "relate to," "regarding," "concern," or "concerning," mean referring to, describing, evidencing, pertaining to, consisting of, constituting, reflecting, or in any way logically connected with, in whole or in part, the matter described in the interrogatory.

G. The term "describe" means to provide a comprehensive, full, fair, frank, complete, accurate, and detailed description of the matter that is the subject of the inquiry.

H. The terms "person" or "persons" mean any natural person, firm, proprietorship, partnership, joint venture, corporation, association, limited liability company, or other business entity, and all present and former officers, directors, agents, employees, and others acting for or purporting to act on behalf of such natural person, firm, proprietorship, partnership, joint venture, corporation, association, limited liability company, or other business entity, with respect to the matter referred to in the interrogatory and/or your response.

I. The term "identify" when used with respect to a document or documents, means: (1) to specify the nature of the document (e.g. letter, memorandum etc.); (2) to state the date appearing on the document, or if no date appears, the date on which such document was prepared; (3) to describe in general the subject matter of the document; (4) to identify each person who wrote, signed, dictated, or otherwise participated in the preparation of the document; (5) to identify each person who was an addressee thereof and all other persons receiving copies thereof; (6) to identify the present location of the document; and (7) to identify each person who presently has the care, custody or control of the document or record and each copy thereof. If such document was, but is no longer, in your possession or subject to your control, state what disposition was made of it and the facts or reasons for such disposition.

J. The term "identify" when used in reference to an individual person, means to state his or her full name, employer, job title, present home address and telephone number, and present business address and telephone number. If the present home address and telephone number and/or present business address and telephone number are unknown, please provide the last known address(es) and/or telephone number(s).

K. The terms "you" or "your" mean the Taxpayer and/or the individual answering the interrogatory as the context of the particular interrogatory or request for production requires.

L. The term "income and expense statement" means any and all financial reports that list any and all sources of income, and any and all fixed and variable expenses generated by subject property over a specific period of time. The time period is typically twelve (12) months.

M. The term "income' means all sources of money or other consideration paid to the property owner or the owner's representative (e.g. property manager) for the purpose of use, occupancy, rights of access, and other reasons for possession of the premises in the past, present or future. Income may also include additional sources not directly attributable to the rental of space (e.g., common area maintenance charges, income from laundry facilities for tenants, etc.).

N. The term "expenses" means fixed and variable costs paid, or to be paid, that are relevant to ownership or occupancy of the subject property, excluding mortgage debt service, book depreciation, depletion allowances or other special tax considerations, income taxes, special corporation costs, and additions to capital.

INTERROGATORIES

1. Please identify all persons who participated in preparing the responses to these written discovery requests. Please state the name, address, telephone number and official capacity of each person. For each person so identified, please describe in detail that person's role.

RESPONSE:

2. Please identify all documents relied on by the Taxpayer in responding to these interrogatories.

RESPONSE:

3. Please state your opinion concerning the fair market value of subject property on the relevant assessment date.

RESPONSE:

4. Please state the basis for your opinion concerning the fair market value of subject property on the relevant assessment date. In lieu of stating the basis for the fair market value of subject property on the relevant assessment date, you may provide a copy of the appraisal(s) or other analyses that you will rely upon at the hearing of this appeal to support your opinion of value(s).

RESPONSE:

5. For each expert witness the Taxpayer expects to call at hearing, please state:
   a. the name, address, and telephone number of the expert;
   b. the qualifications of the expert;
   c. the subject matter on which the expert is expected to testify;
   d. the substance of the facts and opinions to which the expert is expected to testify; and
   e. a summary of the grounds for each opinion.

RESPONSE:

6. Please identify any party who assisted the expert in preparing any documents he or she may reference in the hearing of this matter.

RESPONSE:

7. Please identify all documents and describe all information each expert witness you intend to call to testify in this matter considered and/or reviewed in formulating his or her opinion(s), to substantiate his or her opinion(s), and to prepare to testify in this matter. In the case of an article, manual, treatise, book, or other written document, please identify, by chapter, page number, or other appropriate designation, the portion of said publication. In lieu of identifying all documents, you may provide a copy of all documents considered and/or reviewed.

RESPONSE:

8. For each non-expert valuation or appraisal witness that the Taxpayer expects to call at hearing, please state:

a. the name, address, and telephone number of the witness;
b. the qualifications of the witness;
c. the value or appraisal conclusion(s) to which the witness is expected to testify; and
d. a summary of the grounds for the valuation or appraisal opinion.

RESPONSE:

9. Please state the name, address, place of employment and business telephone number for each lay witness you intend to call in this matter.

RESPONSE:

10. Please identify the nature of and briefly summarize the anticipated testimony of each lay witness.

RESPONSE:

11. Please identify any and all appraisal(s), oral or reduced to writing, made for any purpose, which value subject property, or any portion thereof, between _______________ and _______________.

RESPONSE:

12. Please state the amount and type of insurance coverage on the property or any structures located on the property as of the relevant assessment date. Please provide the insurance carrier, policy number and renewal date for each insurance policy. Alternatively, you may provide a copy of the insurance policy.

RESPONSE:

13. If you are of the opinion that there existed as of the relevant assessment date any special facts, conditions or circumstances which materially and adversely affected the fair market value of subject property, please identify each such circumstance or condition, describing with particularity the manner in which each is believed to have affected the fair market value, and the degree to which fair market value is believed to have been affected. Please identify all documents which contain facts upon which such opinion is based and state whether such facts, circumstances or conditions continue to exist as of the date of your answer hereto.

RESPONSE:

14. If your contention of value is based upon comparable sales, please provide the following information for each sale you are utilizing:

a. address of the property;
b. sale date;
c. sale price; and
d. the names and addresses of the sellers and buyers.

RESPONSE:

15. If subject property, or any portion of subject property, is leased or available for lease, please state whether the property owner or tenant is responsible for the following expenses:

a. property taxes;
b. property insurance;
c. building repairs and maintenance;
d. parking lot and common area maintenance; and
e. utilities.

RESPONSE:

16. If your contention of value is based upon the income approach, please state the figures being assumed for the following components of your analysis:

a. market rent;
b. net leasable area;
c. potential gross rental income;
d. other income;
e. vacancy and collection loss allowance
f. operating expenses excluding reserves for replacement;
g. reserves for replacement;
h. base capitalization rate; and
i. if applicable, effective tax rate.

RESPONSE:

17. If your contention of value is based upon the cost approach, please state the applicable figures being assumed for the following components of your analysis:

a. replacement cost;
b. reproduction cost;
c. historical cost;

d. physical deterioration;

e. functional obsolescence;

f. external obsolescence;

g. depreciated cost of site improvements; and

h. estimated land value.

RESPONSE:

18. If subject property, or any portion thereof, was constructed since January 1, _________, please state:

a. total cost of construction;

b. type of construction;

c. contact information for contractor;

d. date(s) of construction; and

e. total square footage constructed and/or added.

RESPONSE:

19. If you acquired subject property between ____________ and ____________, please state:

a. the date of acquisition;

b. the consideration paid;

c. the amount and terms of any financing;

d. the name and address of the listing broker and the amount of time the property was listed;

e. the relationship, if any, between the buyer and seller; and

f. if you contend your acquisition was not an arms-length purchase at fair market value, set forth in detail the factual basis for such contention.

RESPONSE:

20. Please list the name and address of any person who either now holds or has held, at any time since January 1, ____________, an option to purchase subject property, the date said option expires or expired, the amount paid for the option, the price at which said option can be exercised and the terms for payment of that amount.

RESPONSE:

21. Please state whether the property has been offered for sale since January 1, ____________. If so, state: (a) when the property has been offered for sale; (b) the name and address of any brokers with whom the property has been listed; (c) the terms of any offers, either written or oral, that were received; and (d) how the property was advertised.

RESPONSE:

22. Please state whether any offers to lease subject property have been received since January 1, ____________. If so, set forth the date and terms of each offer.

RESPONSE:

23. Please state whether any contract of sale has been executed since January 1, ____________ for any interest in subject property. If so, please state the names and addresses of the parties to each contract, describe the interest being sold, state the amount of consideration to be paid for the property and the terms for payment of that amount.

RESPONSE:

24. Please state the name and address of each person known to you who has knowledge of facts bearing upon or relating to this appeal or the subject property, and summarize the facts known to each such person and the basis for their knowledge.

RESPONSE:

25. Please identify all mortgages, deeds of trust, or other financial encumbrances of record on the subject property as of the relevant assessment date, and for each such encumbrance state the original principal amount, the term, and the interest rate.

RESPONSE:

26. Please state the name, address and job title of the person signing the Verification of Responses below.

RESPONSE:

27. Please state the name, address, and telephone number of the person to contact in order to arrange an inspection of subject property.

RESPONSE:

VERIFICATION OF RESPONSES

STATE OF TENNESSEE)

COUNTY OF_______________)

I swear, or affirm, that the foregoing answers to the Interrogatories as set forth above are true and correct.

____

By: _____________________________

Capacity: _________________________

Sworn to and subscribed before me on this the _____ day of _____________, 20_______.

____

Notary Public

My commission expires: ___________________________

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

Request Number 1

Produce copies of all documents used in the preparation of the responses to the foregoing interrogatories, all documents identified or referred to in any of the responses to the foregoing interrogatories, and all documents containing or referring to any of the information set forth in the responses to the foregoing interrogatories.

RESPONSE:

Request Number 2

Produce copies of all appraisals or valuation analyses made with respect to the subject property since January 1, ________________, including but not limited to the pending property tax appeal.

RESPONSE:

Request Number 3

Produce copies of the rent rolls for subject property for the years ___________________.

RESPONSE:

Request Number 4

Produce copies of property management's annualized income and expense statements for subject property for the years _______________. Reconstructed income and expense statements of historical performance in place of management reports or the like are **not** acceptable.

RESPONSE:

Request Number 5

Produce copies of all leases for subject property, or any portion thereof, in effect on the relevant assessment date. Alternatively, you may provide lease summaries which identify the individual tenant spaces; whether occupied or vacant; the tenants leasing each space; the net leasable space; the beginning and ending dates of each lease's primary term together with any renewals; the base rent together with rent

escalations or reductions and the timing thereof; any additional rentals per tenant space such as expense stops and/or pass-throughs, percentage rents; parking rents and any other rentals specified by each lease.

RESPONSE:

Request Number 6

If subject property has sold since January 1, _______________, produce copies of the sales contract and closing statement.

RESPONSE:

Request Number 7

If subject property has been listed for sale at any time since January 1, ____________, produce copies of any and all listing agreements.

RESPONSE:

Request Number 8

If subject property or any buildings or improvements on subject property have been constructed since January 1, _____________, produce copies of any and all construction contracts.

RESPONSE:

Request Number 9

Produce copies of all documents that the Taxpayer contends support any of its positions with respect to the appraisal and/or valuation of subject property.

RESPONSE:

The Taxpayer's responses to these First Set of Interrogatories and Requests for Production of Documents and Things should be mailed by first class mail, postage prepaid, to ______________________________
____ .

This _________________ day of _______________, 20______.

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been served via the following method(s) upon the following individual(s) on this the ____day of _______, 20___.

__________________________ ( ) Electronic Mail

__________________________ ( ) U.S. Mail

__________________________ ( ) Facsimile

__________________________ ( ) Hand Delivery