History of Equalization in Tennessee

Introduction

For purposes of this summary, the term "equalization" is typically understood to mean the reduction of the appraised value of a property to the prevailing level of assessment in the county by means of the appraisal ratio certified by the State Board of Equalization for the relevant tax year.

The modern-day concept of equalization began in earnest in the 1960s and 1970s. As will be detailed in the following pages, issues concerning equalization arose in three primary contexts: (1) public utilities and railroads; (2) tangible personal property; and (3) appeals.

As will be discussed in this summary, the term "equalization" is also sometimes used in the context of appeals when a party seeks to rely on comparative appraisals as the basis of valuation. In that context, the appraisal ratio is not normally relevant. Oftentimes, market value is also not relevant.

Prior to 1973, Article II, § 28 of the Tennessee Constitution included the following provisions concerning the taxation of property:

> All property, real, personal or mixed, shall be taxed according to its value, . . . No one species of property from which tax may be collected shall be taxed higher than any other species or property of the same value.

Based on this pre-1973 version of Article II, § 28, the Tennessee Supreme Court ruled in *Carroll v. Alsup,* 107 Tenn. 257, 64 S.W. 193 (1901). That case involved a taxpayer who conceded that his property was appraised at less than its market value. Nonetheless, the taxpayer sought a reduction in value contending that his property had been assessed at 90% of its value whereas other surrounding properties were assessed at 40% - 75% of their respective values. The Supreme Court rejected the taxpayer's argument ruling that he had no right to be under-appraised to the level of other taxpayers. The Court concluded that the taxpayer's remedy was to seek to have the assessments of those other taxpayers increased.

Effective January 1, 1973, Article II, § 28 of the Tennessee Constitution now provides in relevant part:

> The ratio of assessment to value of property in each class or subclass shall be equal and uniform throughout the State, the value and definition of property in each class or subclass to be ascertained in such manner as the Legislature shall direct.

Equalization of Centrally Assessed Property

Although the Court's ruling in *Carroll v. Alsup* remains the controlling precedent, exceptions have subsequently been recognized. For example, the federal courts have accepted the constitutional equal protection claim by public utilities that their assessments can be reduced to address local assessment practices which discriminate against them. Similarly, the General Assembly has since authorized equalization adjustments to reduce the effects of different assessment methods applicable to centrally assessed public utilities versus locally assessed properties. [*See* T.C.A. § 67-5-1302(b)(1)] or real property versus tangible personal property [*See* T.C.A. § 67-5-1509]. These exceptions are discussed in greater detail below.

A significant factor in some of the legislative enactments were a pair of federal court decisions. The first case was *Louisville & Nashville Railroad Co. v. Public Service Commission of Tennessee*, 249 F.Supp. 894

(M.D. Tenn. 1966), *aff'd* 389 F.2d 247 (6th Cir. 1968) ["*L & N #1*"]. In that case, the evidence established that the railroad's public utility property had been assessed in the various counties at 60% to 100% of its value whereas locally assessed industrial and commercial property had been assessed at 35% to 40% of its value. The court concluded that this disparity violated the railroad's right to equal protection under both the Tennessee and United States Constitutions. Citing *Carroll v. Alsup*, the court stated that the railroad was not entitled to relief under then current Tennessee law. However, the court went on to rule that the railroad was entitled to a reduced valuation under federal law stating:

> This Court holds that the right of the taxpayer whose property alone is taxed at 100% of its true value is *to have his assessment reduced to the percentage of that value at which others are taxed* even though this is a departure from the requirement of the statute. This conclusion is based on the principle that where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law (emphasis added) *L & N #1*, 249 F.Supp at 902.

In 1978, the same court decided *Louisville & Nashville Railroad Company v. Public Service Commission of Tennessee*, 493 F.Supp. 162 (M.D. Tenn. 1978), *aff'd* 631 F.2d 426 (6th Cir. 1980), *cert. denied,* 450 U.S. 959, 101 S.Ct. 1418, 67 L.Ed.2d 384 (1981) ["*L & N #2*"]. Once again, the court held that the discrepancy between the valuation of the railroad's public utility property versus industrial and commercial property entitled it to equalization. As in the prior case, the court held that equalization was to be accomplished by reducing the 100% valuation of the railroad's property. In this case, the evidence established that the railroad's property had been valued at 100% of its market value whereas the statewide median for locally assessed properties was only 62.9% of market value. As in *L & N #1*, the court noted that relief was unavailable under *Carroll v. Alsup*, but the taxpayer was entitled to relief under federal law. At page 173 of its ruling the court stated:

> The Court, therefore, finds that all property must be valued under the Constitution of Tennessee at 100% of market value, and the failure of the taxing authorities to so value one or more sub-classes permits those sub-classes whose property is appraised at market value to seek and obtain equalization.

The court noted that since the appraisal levels varied county to county from 23% to 89%, it might be preferable to certify assessments based upon each county's average level of appraisal rather than using the statewide median for all counties.

In response to these federal court decisions, the General Assembly enacted Public Acts 1980, Chapter No. 827. The legislation included an amendment to a statute that is now codified at T.C.A. § 67-5-1302(b)(1) which presently provides as follows:

> The assessments of public utility property or property of modern market telecommunications providers, as set by the comptroller of the treasury in accordance with subsection (a), shall be adjusted, where necessary, on the basis of appropriate ratios, as are determined by the board of equalization for purposes of equalizing the values of such property to the prevailing level of value of property in each jurisdiction; provided, that no equalization factor for purposes of this section may exceed a factor of one (1.000).

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Public Acts 1980, Chapter No. 827, and Public Acts 1980, Chapter No. 820 also included provisions requiring the State Board of Equalization, with the assistance of the Division of Property Assessments, to conduct periodic reappraisals and appraisal ratio studies. These statutes are presently codified at T.C.A. § 67-5-1601, *et seq*.

Prior to this legislation, appraisal ratio studies were conducted pursuant to former T.C.A. § 67-243 which was enacted in 1967 as Public Chapter 307 and provided as follows:

> As often as may be practicable, the division shall make ratio studies reporting the same to the state board of equalization, and thereafter publishing the same. The assessments to be used in each study shall be those assessments made as of January 1 subsequent to the recording of the sales used in such study.

Public Chapter 307 also created the Division of Property Assessments.

At that time, the levels of assessment and resulting appraisal ratios were much lower than in current times. For example, in 1968, the Division of Property Assessments calculated appraisal ratios of 15% for numerous counties as that was the minimum assessment level required in that year.

In *Northwest Airlines, Inc. v. Tennessee State Board of* Equalization, 861 S.W.2d 232, 234 (Tenn. 1993), the Tennessee Supreme Court summarized the equalization process in the context of centrally assessed properties as follows:

> Pursuant to the provisions of T.C.A. § § 67-5-1302(b)(1) and 67-5-1606(c), the value of commercial air carriers' property that is [centrally assessed] is adjusted so that the value of such property within each local tax jurisdiction bears the same ratio to fair market value as does the property within such local jurisdiction that is appraised and assessed by local taxing authorities. This process is generally referred to as 'equalization.'

This matter was actually being heard in federal court, but the Sixth Circuit had certified certain questions to the Tennessee Supreme Court concerning the proper forum and procedure for review of *ad valorem* assessments.

On January 2, 1997, the United States District Court for the Middle District of Tennessee approved a settlement agreement submitted by the State Board of Equalization and the various centrally assessed taxpayers who had filed suit. Among other things, the agreement provided that (1) an equalization factor of 7.5% would be applied to the airlines' personal property tax assessment (after application of the appraisal ratio) for tax year 1990; (2) an equalization factor of 15% would be applied to the airlines' personal property tax assessment (after application of the appraisal ratio) for tax years 1991 – 1995; and (3) an equalization factor of 15% (after application of the appraisal ratio) would continue to be applied in 1996 and future tax years until the depreciation factors set forth in T.C.A. § 67-5-903(f) reflect market value; and (4) the airlines will be entitled to an additional 5% equalization reduction to their tangible personal property assessments (other than forced assessments) in the event a county does not have an appropriate audit program in place.

As a result of this litigation, the State Board of Equalization annually adopts a resolution providing that all centrally assessed taxpayers who file a timely *ad valorem* report receive the 15% equalization factor.

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The equalization process for centrally assessed properties was also summarized by the United States Court of Appeals for the Sixth Circuit in *CSX Transportation, Inc. v. Tennessee State Board of Equalization*, 964 F.2d 548 (6th Cir. 1992) at pages 551 - 552 as follows:

> The State Board of Equalization is part of an elaborate statutory process in Tennessee to ensure that centrally valued railroad property is assessed at the same level as locally valued property. Tenn. Code Ann. § 67-5-1603, et seq. The local assessment of property values is usually below 100% of fair market value because most counties do not value all real property annually. Railroad property, on the other hand, is appraised annually at full value. . . More frequent assessment generally results in higher relative taxation, since more of the current market value is captured in the assessed value to which the statutory assessment ratios are then applied. In Tennessee, a statutory process known as equalization is meant to ensure that centrally valued railroad property is assessed at the same level as local, county assessed property.

The concept of equalization set forth by the federal courts is also seen in a series of Tennessee court cases, some of which are summarized below.

In *In Re All Assessments 1998*, 58 S.W.3d 95 (Tenn. 2000), county taxing authorities sought judicial review of the decision of the State Board of Equalization to uphold reductions in the assessed value of certain centrally assessed public utility tangible personal property. The pertinent facts were concisely summarized by the Court at page 96 of its opinion as follows:

> . . . The public utility companies involved in this case do not use the depreciation schedule set forth in [T.C.A.] § 67-5-903(f). These utilities contend that the rates of depreciation in the § 67-5-903(f) schedule systematically cause locally assessed industrial and commercial tangible personal property to be valued significantly below the fair market value of such industrial and commercial property, and below the appraised value of comparable public utility tangible personal property.
>
> For [tax year 1998], the Comptroller . . . accredited the factual assertions made by the public utility companies regarding the relative appraisals of public utility tangible personal property versus industrial and commercial tangible personal property. On August 3, 1998, the Comptroller notified public utility companies doing business in this state that their 1998 tangible personal property assessments would reflect a 15% reduction in evaluation. This adjustment was made in an effort to equalize the ratio of appraised value to fair market value of public utility tangible personal property to the comparable ratio for industrial and commercial tangible personal property.

In its analysis, the Court discussed the previously summarized rulings, the amendment to Article II, § 28 of the Tennessee Constitution, and Public Acts 1980, Chapter No. 827. In addition, the Court cited its previous decision in *Sherwood Co. v. Clary*, 734 S.W.2d 318 (Tenn. 1987). In that case, the Court ruled that the provision in T.C.A. § 67-5-901(a) providing that tangible personal property other than public utility property, industrial property, and commercial property shall be deemed to have no value did not violate equal protection principles.

Based upon the foregoing, the Court concluded at page 102 of its opinion as follows:

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> The Tennessee Board of Equalization is authorized to reduce (or increase) the appraised (and therefore corresponding assessed) value of centrally-assessed public utility tangible personal property as part of the equalization process, the purpose of which is to equalize the ratio of the appraised value to fair market value of public utility property in any particular county with the corresponding ratio for industrial and commercial property in that county. . . .

The Court subsequently denied a petition for rehearing, but modified its order by remanding the matter to the court of appeals "to determine whether the Board's action in reducing the appraised value of public utility tangible personal property for tax year 1998 caused the ratio of such property's appraised value to its fair market value to be equal to such ratio for tangible personal property within each local jurisdiction that is appraised and assessed by local taxing authorities." *Id.* at 103.

The final case in this series of sister cases was *Williamson County v. Tennessee State Board of Equalization*, 86 S.W.3d 216 (Tenn. Ct. App. 2001), *perm. app denied* (Tenn. May 6, 2002). At issue was the constitutionality of T.C.A. § 67-5-1509(a) (1998) which provided as follows:

> The board shall by order or rule direct that commercial and industrial tangible personal property assessments be equalized using the appraisal ratios adopted by the board in each jurisdiction. Such equalization shall be available only to taxpayers who have filed the reporting schedule required by law.

The court rejected the argument of the cities and counties which it summarized at page 218 of its opinion as follows:

> It is asserted by the appellants that what the sales appraisal ratio does is undervalue personal property by a percentage derived from real estate values on top of the undervaluation already resulting from the application of the depreciation schedules set forth in Tennessee Code Annotated section 67-5-903(f).

Essentially, the court cited the previously referenced ruling in *In Re All Assessments 1998*, 58 S.W.3d 95 (Tenn. 2000) and quoted from its prior ruling in *In Re All Assessments 1999 and 2000*, 67 S.W.3d 805 (Tenn. Ct. App. 2001) which provided at page 821 as follows:

> Use of such sales ratios may provide the least unsatisfactory method of appraising tangible personal property, but such is a legislative decision unshackled by constitutional prohibition. Section 67-5-1509(a) of the Code mandates that locally assessed industrial and commercial property be adjusted by the sales ratio in each county. It necessarily follows that, to achieve equalization, public utility personal property must likewise be adjusted under section 67-5-1302(b)(1). It is not the prerogative of this Court, or of the State Board of Equalization, to question the reasonableness of a statute or second guess the policy judgments of the legislature. *BellSouth Telecomm., Inc. v. Greer*, 972 S.W.2d 663, 673 (Tenn. Ct. App. 1997).

The court concluded in the present case at page 218 that:

> Once it is established that 'one hundred percent of actual value' is no longer constitutionally mandated by Article II, section 28 of the Tennessee Constitution, the legislative prerogative evidenced by Title 67, Chapter 5, part 15 of Tennessee Code Annotated is, wisely or unwisely, free

> of constitutional infirmity. The constitutional challenge to Tennessee Code Annotated section 67-5-1509(a) must fail.

The court's prior decision in *In Re All Assessments 1999 and 2000*, 67 S.W.3d 805 (Tenn. Ct. App. 2001), arose from a challenge brought by a consortium of cities and counties challenging the order of the State Board of Equalization to reduce the assessments of public utilities by 15%. In particular, the appellants challenged the constitutionality of the statutory depreciation schedules applicable to the assessment of public utilities' personal property [T.C.A. § 67-5-903(f)]; and the statutory requirement that the State Board of Equalization adjust the appraisals of public utilities' personal property based on ratio studies [T.C.A. §67-5-1302(b)(1)]. The court ruled that both statutes were constitutional, and the decision of the State Board of Equalization was affirmed. In a very thorough opinion summarizing several rulings over the years, the court found that the 1973 amendments to the Tennessee Constitution discussed above, abrogated the full market value requirement and "... the legislature is free to determine the method and means of valuing property." *Id.* at 820.

Tennessee's present system for equalizing property tax assessments was also influenced by congressional legislation that followed the federal railroad litigation summarized above. In 1976, Congress passed what is commonly known as the 4-R Act (Railroad Revitalization and Regulatory Reform Act). This law prohibits states from assessing railroad property at a higher percentage of market value than the ratio applicable to industrial and commercial property in the same jurisdiction. *See* 49 U.S.C. § 11501(b)(1). Similar legislation was passed by Congress in 1980 prohibiting states from discriminating against motor carrier and airline properties. *See* 49 U.S.C. §§ 14502(b)(1) and 440116(d)(2)(A)(i) respectively. Consequently, in order to comply with federal law appraisal ratios must be applied to the appraisals of railroads, motor carriers and airlines in each county.

In addition to the federal and Tennessee court cases, a noteworthy ruling of the State Board of Equalization was issued during this period. A declaratory proceeding was convened by the Board to determine whether application of the depreciation schedules found in T.C.A. § 67-5-903 resulted in the undervaluation of personal property for *ad valorem* tax purposes. In *In Re All Assessments 1998*, the administrative judge issued an initial order on November 3, 1999, finding that property reportable in Group 1 was undervalued by 11.6%, and property reportable in Group 5 was undervalued by 16.6%. The State Board of Equalization adopted the administrative judge's findings in *Metropolitan Government of Nashville & Davidson County and Williamson County, Tennessee* (Proceedings for Declaratory Order, Final Decision and Order, February 10, 2000).

Equalization in Appeals

Much of the foregoing discussion was summarized in Attorney General Opinion No. 20-10 issued on May 20, 2020. That opinion concerned the constitutionality of a proposed amendment to T.C.A. § 67-5-1509(a) which would have provided as follows:

> Except as provided in § 67-5-1302, real property assessments that are under appeal are not eligible for equalization.

The Attorney General opined that the proposed amendment was "constitutionally problematic because of its effect on appeals for non-reappraisal years." The Attorney General reasoned that the proposed

legislation could violate the uniformity requirement of Article II, § 28 of the Tennessee Constitution. In particular, the opinion concluded that "[s]ince the value of property under appeal will be determined as of the year being appealed, the appraisal ratio for that county must be applied to values determined for non-reappraisal years to bring them in line with other real property in the county." Otherwise, real properties with the same classification would be assessed for the same tax year using different bases.

Although the authority summarized to this point was primarily concerned with centrally assessed properties, the issue also arose in the context of appeals to the State Board of Equalization involving locally assessed properties. In many of these appeals, the taxpayers' contentions of value had nothing to do with market value. Instead, taxpayers asserted that the appraisal of their property should be reduced based upon appraisals of comparable properties. For example, suppose an apartment complex was appraised at $30,000 per unit. A taxpayer might offer proof showing that comparable apartment complexes were appraised at only $20,000 - $25,000 per unit. Based upon those lower per unit values, the taxpayer would argue that the property under appeal should be valued at $20,000 - $25,000 per unit. In this situation, the market value of the subject and comparable properties was not necessarily the relevant issue.

Such arguments were seemingly accepted on a regular basis by the State Board of Equalization into the 1980's. For example, in *Equitable Life Assurance Society* (Shelby County, Tax Years 1985 & 1986, Final Decision and Order, January 13, 1987), the Assessment Appeals Commission ruled in relevant part at page 3 as follows:

> With respect to the improvement values for parcels 213 and 214, the Commission finds that the appellant's evidence that similar properties, particularly the property across the street from the subject property which would suffer from the same neighborhood conditions as the subject, are valued at less per square foot is the best indication of value. The county failed to rebut the prima facie established by the taxpayer on this issue. The county did not produce evidence of sales or comparability which substantiated its valuation, thus the Commission cannot find that the county's value reflects fair market value or achieves equalization. The Commission finds that based on equalization the warehouse facilities should be valued at $7.75 per square foot.

Similarly, in *John W. & Barbara B. McDowell*, (Shelby County, Tax Year 1987, Initial Decision and Order, September 23, 1988), the administrative judge rejected the taxpayer's "equalization" argument reasoning in relevant part at pages 2-3 of his opinion as follows:

> The administrative judge finds that appellant's equalization argument cannot be given significant weight. Subject property consists of four (4) of the nine (9) office condominiums in subject building. Subject units range in size from 1,654 square feet to 8,834 square feet. Appellant's "comparables" consist of eleven (11) office buildings ranging in size from 42,668 square feet to 167,603 square feet. The administrative judge finds that a comparison of those office buildings with subject units on a per square foot basis is not meaningful due to a lack of comparability. Furthermore, the administrative judge finds that even if it is proper to compare the appraisal of subject building as a whole with the appraisals of other buildings, appellant introduced insufficient evidence to establish comparability or functional obsolescence. . . .

What is noteworthy is that the administrative judge did not reject comparable appraisals as a basis of valuation. The administrative judge simply found that the evidence was insufficient to establish a meaningful comparison.

It should also be noted that although numerous such decisions were issued over the years, especially by the administrative judges who heard the vast majority of the appeals, the State Board of Equalization does not typically have copies of most decisions issued during this time period. Curiously, some of these rulings occurred after the 1984 ruling of the State Board of Equalization discussed immediately below.

The modern-day concept of equalization in the context of locally assessed properties began when the State Board of Equalization issued its landmark ruling in *Laurel Hills Apartments, et al.* (Davidson County, Tax Years 1981 and 1982, Findings of Fact and Conclusions of Law, April 10, 1984) ["*Laurel Hills*"]. As summarized at page 24 of the Comptroller's publication entitled *Appeals Handbook for Assessors of Property* (August 2020):

> 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.

For reasons that are unclear, the administrative judges and Assessment Appeals Commission continued to recognize for several years the concept of equalization based upon comparative appraisals as evidenced by the rulings summarized above. For reasons that are also unclear, the administrative judges and Assessment Appeals Commission began to routinely follow *Laurel Hills* in subsequent years as evidenced by the decisions summarized below. By the 1990's, comparative appraisals were routinely rejected as a means of equalizing assessments except in a handful of cases involving unique factual situations where a taxpayer was effectively singled out for disparate treatment. Once again, most of these decisions cannot be located unless someone happened to retain a paper copy in their files.

An example of a typical ruling in the post *Laurel Hills* era is *Robert W. Trotter, Tr.* (McMinn County, Tax Years 1998 & 1999, Initial Decision and Order, October 11, 1999). The administrative judge concisely summarized the crux of the appeal at page 1 of his opinion as follows:

> The taxpayer contended that subject property should be valued at $195,000. In support of this position, the taxpayer argued that the current appraisal of subject property does not achieve equalization given the appraisals of other homes in the neighborhood. The taxpayer did not contest that subject property had a fair market value of $260,000 on the relevant assessment dates.

The administrative judge rejected the taxpayer's argument reasoning in pertinent part at page 2 of his ruling as follows:

> The administrative judge finds that the taxpayer's equalization argument must be rejected. The administrative judge finds that the April 10, 1984, decision of the State Board of Equalization in [*Laurel Hills*] holds that 'as a matter of law property in Tennessee is required to be valued and equalized according to the 'Market Value Theory.' As stated by the Board, the Market Value Theory requires that property 'be appraised at full market value and equalized by application of the appropriate ratio. . .' *Id.*at 1.
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> The Assessment Appeals Commission elaborated upon the concept of equalization in *Franklin D. & Mildred J. Herndon* (Montgomery County, Tax Years 1989 and 1990) (June 24, 1991), when it rejected the taxpayer's equalization argument reasoning in pertinent part as follows:
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> > In contending the entire property should be appraised at no more than $60,000 for 1989 and 1990, the taxpayer is attempting to compare his appraisal with others. There are two flaws in this approach. First, while the taxpayer is certainly entitled to be appraised at no greater percentage of value than other taxpayers in Montgomery County on the basis of equalization, the assessor's proof establishes that this property is not appraised at any higher percentage of value than the level prevailing in Montgomery County for 1989 and 1990. That the taxpayer can find other properties which are more under-appraised than average does not entitle him to similar treatment. Secondly, as was the case before the administrative judge, the taxpayer has produced an impressive number of 'comparables' but has not adequately indicated how the properties compare to his own in all relevant respects. . . .
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> Final Decision and Order at 2.
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> See also *Earl and Edith LaFollette*, (Sevier County, Tax Years 1989 and 1990 (June 26, 1991), wherein the Commission rejected the taxpayer's equalization argument reasoning that '[t]he evidence of other tax-appraised values might be relevant if it indicated that properties throughout the county were under-appraised. . .' Final Decision and Order at 3.

The administrative judge then went on to discuss *Carroll v. Alsup* and various state and federal court rulings summarized above.

Another useful example of a ruling during this period is *William A. Suggs, Jr. & Betty Suggs*, (Shelby County, Tax Year 1998, Initial Decision and Order, February 8, 1999). The taxpayer's argument was summarized by the administrative judge in pertinent part at page 1 of his ruling as follows:

> At the hearing, the taxpayer expressed no opinion as to the market value of the subject property [footnote omitted]. Mr. Suggs lamented, however, that his house was appraised at a higher amount than a [nearby home] built by the same contractor in the same year (1964). . . .

After summarizing how and when appraisal ratios are established, the administrative judge rejected the taxpayer's argument stating in relevant part at page 2 of the ruling as follows:

> For over a decade, the State Board has recognized that an owner of taxable property is entitled to 'equalization' of its **market value** by application of the overall ratio. *See* Appeal of Laurel Hills Apartments et al. (Davidson County, Tax Years 1981 and 1982). But the State Board, through its Assessment Appeals Commission, has repeatedly held that the **market** value of a property cannot reliably be inferred from the **appraised** values of other properties. Those appraised values, after all, could be as erroneous as the disputed value is claimed to be.
>
> Thus, for example, in the Appeal of Green Hills Associates (Davidson County, Tax Years 1991 and 1992), the Assessment Appeals Commission responded to a 'comparative appraisal' argument as follows:
>
> > . . .[W]e reject the taxpayer's claim that his appraisal should be reduced solely on the basis of how other properties are appraised. . . [T]here is no basis for equalizing the assessment of subject property using the appraisal ratio because the taxpayer offered no proof of the **value** of the subject, but only comparisons of appraisals.
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> *Id.* at 2. The Commission's decision was affirmed in Green Hills Associates v. State Board of Equalization (Davidson County Chancery Court, Part Three, July 21, 1995). *See also* In re Franklin D. and Mildred J. Herndon (Assessment Appeals Commission, Montgomery County, Tax Years 1989 and 1990); and In re Earl and Edith LaFollette (Assessment Appeals Commission, Sevier County, Tax Years 1989 and 1990). [Emphasis in original]

Another commonly cited ruling is *Stella L. Swope*, (Davidson County, Tax Years 1993 and 1994, Final Decision and Order, December 7, 1995) wherein the Commission refused to accept the appraised values of purportedly comparable properties as sufficient proof of the market value of the property under appeal reasoning at page 2 of its ruling as follows:

> > The assessor's recorded values for other properties may suffer from errors just as Ms. Swope has alleged for her assessment, and therefore the recorded values cannot be assumed to prove market value.

The common theme in the numerous appeals involving comparative appraisals is the citation to *Laurel Hills* and the federal court rulings summarized.

Although the rulings during this period almost uniformly rejected appeals based upon comparative appraisals, a handful of exceptions occurred when a taxpayer established a compelling set of circumstances resulting in disparate treatment. The most well-known ruling to this effect is *Payton & Melissa Goldsmith*, (Shelby County, Tax Year 2001, Final Decision and Order, February 27, 2002). In that case, the Shelby County Board of Equalization rejected the taxpayer's contended value of $108,000 and increased his appraisal from $119,000 to $132,600. Before the administrative judge, the taxpayer offered

proof concerning three other homes on his street valued by the assessor at amounts ranging from $104,300 to $112,700. The assessor's office presented four comparable sales which it maintained supported a market value range of $138,000 - $152,000. The assessor's witness testified that properties in the neighborhood had been under-appraised in the countywide reappraisal. Relying on prior decisions of the Commission, the administrative judge declined to grant relief based on comparative appraised values.

On appeal, the Commission cited some of the decisions summarized above and stated that *Carroll v. Alsup* remains the controlling precedent. Nonetheless, the Commission also stated at page 2 of its opinion that ". . . we find this matter to be distinguishable from our earlier decisions rejecting the use of comparable appraisals as a basis for relief in property tax appeals, and conclude that the county board of equalization should not have increased the assessment." The Commission elaborated at pages 3 and 4 of its opinion as follows:

> Our decisions have, of course, generally followed *Carroll v. Alsup* [citations and footnotes omitted]. None of these cases, however, presents the compelling circumstances we find here: practically identical properties, literally next door to the subject, uniformly underassessed in the original reappraisal. At this hearing . . . Mr. Goldsmith graphically illustrated the disparity in his assessment compared to others throughout his neighborhood. . . The county board increased [Mr. Goldsmith's assessment] based on recent sales information provided by the assessor.
>
> Without suggesting in any sense that Mr. Goldsmith was targeted for disparate treatment, the result is indistinguishable. Not only did the county board decision fix his assessment at its fair market value when all others were under-appraised, but the board had earlier *reduced* assessments of two of his neighbors who had appealed [footnote omitted]. The board had the power to order a revaluation of all the properties in the neighborhood which the available information revealed to be under-appraised, but it did not do so, choosing instead to increase the assessment of the one who brought the problem to their attention. The court in *Carroll v. Alsup* left open a possible exception to its ruling for cases of fraud, conspiracy, or collusion 'to fix upon one species of property an over or under valuation.' 64 S.W. at 200. While there is certainly no indication of those factors here, **we will presume the court would likewise have recognized an exception for the unusual circumstances presented in this case.**
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> * * *
>
> Until the assessor has appropriately adjusted all assessments in the neighborhood which appear to suffer from systematic undervaluation, Mr. Goldsmith's assessment should remain comparable to his neighbors'. . . . [Italics in original, bolding supplied]

Although anecdotal information indicates a handful of similar decisions by administrative judges over the years, those decisions cannot be located. Once again, it appears only paper copies may exist in someone's files.

As noted in the quoted material above, the ruling of the Assessment Appeals Commission in *Green Hills Associates*, (Davidson County, Tax Years 1991 and 1992, Final Decision and Order, June 6, 1994) was

affirmed in *Green Hills Associates v. State Board of Equalization*, Slip Op. No. 94-3013-III (Davidson County Chancery, 1995). However, the court also stated at page 5 of its ruling as follows:

> The evidence of other malls' tax-appraised land values might be relevant if it indicated that other properties in the county were under-appraised, but from the proof presented the Court cannot reach this conclusion.

Thus, the court seemingly left open the possibility that in certain circumstances comparative appraisals could support a reduced assessment to achieve equalization.

In summary, since the 1990's the State Board of Equalization has routinely accomplished equalization by means of applying the appraisal ratio to the established fair market value of the property. During this period, comparative appraisals have typically been rejected as a means of achieving equalization. However, it appears that an exception may be recognized in extreme cases involving disparate treatment, whether intentional or unintentional.

Equalization of Locally Assessed Tangible Personal Property

The issue of equalization also arises in the context of locally assessed tangible personal property assessments. Like centrally assessed properties, these taxpayers are reappraised annually. Locally assessed real property taxpayers, in contrast, are typically only reappraised during the year of a countywide reappraisal or current value update program. Thus, when appraisal ratios indicate that real property taxpayers are appraised at less than 100% of market value, a lack of equalization results vis-à-vis commercial and industrial tangible personal property taxpayers. Tennessee Code Ann. § 67-5-1509(a) resolves this problem as it provides in pertinent part as follows:

> The board shall by order or rule direct that commercial and industrial tangible personal property assessments be equalized using the appraisal ratios adopted by the board in each jurisdiction; provided, that no equalization factor for purposes of this section may exceed a factor of one (1.000). Such equalization shall be available only to taxpayers who have timely filed the reporting schedule required by law.

This statutory mandate is carried out pursuant to State Board of Equalization Rule 0600-7-.05 which provides in relevant part as follows:

(1) On or before July 1, the State Board of Equalization will meet and consider a resolution and order to local property tax collecting officials and to other officials in the preparation of property tax bills, directing that assessments of commercial and industrial tangible personal property be equalized on the basis of the appraisal ratio established for the jurisdiction in which the property is located, such equalization to be reflected in the property tax bill sent to the taxpayer.
(2) The resolution and order shall reflect that equalization of any particular property assessment shall be conditioned upon the taxpayer having filed the reporting schedule required by law, and the equalization shall be applied to the assessment as finally accepted or determined by the assessor or the local or state boards of equalization.

History of Equalization in Tennessee

County Boards of Equalization

Although this summary of the history of equalization has focused on the State Board of Equalization, the same concepts are applicable to county boards of equalization. Indeed, the State Board of Equalization has approved the Comptroller's publication entitled *PRACTICE MANUAL for County Boards of Equalization* (October 2018) which provides in relevant part at page 3 as follows:

> What Does "Equalization" Mean?
>
> 'Equalization' is the process by which an appropriate governmental body, in this case, the county board of equalization, attempts to ensure that all properties in a jurisdiction have been assessed fairly by appraising the properties at fair market value, including the application of the correct assessment percentage based on classification, as required by law.

The publication goes on to note at page 8 that one of the duties of the county board of equalization pursuant to T.C.A. § 67-5-1402 is to:

> Take necessary steps to assure that the assessments of all properties within its jurisdiction conform to the laws of the state, along with the rules and regulations of the State Board of Equalization[.]

Presumably, the county board of equalization can properly reduce a determination of fair market value as of the assessment date by the applicable appraisal ratio. Of course, the appealing party must establish the fair market value of the property as of the assessment date in order to have that determination reduced by the appraisal ratio.

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