Tangible Personal Property Tax Reporting Traps for the Unwary

By J. Leigh Griffith, JD, CPA & Christopher Wilson, JD

Tennessee counties and municipalities impose ad valorem tax on tangible personal property ("TPP") used for commercial and industrial purposes in Tennessee (See T.C.A. § 67-5-903). Such tax is imposed upon a percentage of an item of TPP’s "fair market value" as determined from reports submitted by Taxpayers. As illustrated in recent State Board of Equalization rulings, however, various reporting and valuation traps exist which, if not avoided, may result in substantially larger ad valorem tax liabilities.

Assessors are required to furnish taxpayers with TPP Schedules on or before Feb. 1, on which the taxpayers must list all TPP used or held for use in such taxpayers’ business along with acquisition costs for such items, and return the schedule to the assessor before March 1. (T.C.A. §67-5-903; Tenn. Comp. R. & Regs. ch. 0600-5-04(1)). The failure to receive such a schedule, however, does not relieve the taxpayer from the duty to file, and if no return is filed, assessors will issue a forced assessment based upon available information.

Taxpayers may report either standard values or non-standard values on schedules. For standard valuation purposes, items of TPP are classified into one of 10 groups, to which different depreciation rates apply to such property’s reported “original cost,” which constitutes the beginning value which is depreciated on the schedule to determine the standard value of TPP. Tennessee law requires all property to be valued based upon the value it would bring in an arms-length sale between a willing buyer and seller on the open market. The Assessment Appeals Commission in In re: Signal Mountain Cement Company. Final Decision and Order (Hamilton County, Tax Years 2008-2011), opined that an item of TPP’s value for purposes of standard valuation should be determined utilizing a “value in use” approach, whereby the property is valued as part of a going industrial concern. This approach takes into account additional costs such as those incurred to transport, configure and install TPP as well as the buyer’s payment of sales and use taxes, and differs from “fair market value in exchange,” which constitutes the value that a given piece of property will sell for, by itself, to a “willing buyer” on the open market.

Taxpayers may also assert non-standard values for items of TPP where they can demonstrate that the actual value of such property differs from that determined pursuant to standard valuation. Non-standard values are reported on Part IV of schedules and, in order to comply with applicable regulations, taxpayers should provide substantial back up documentation to substantiate their proposed non-standard value. As recently affirmed by the Assessment Appeals Commission in Signal Mountain, taxpayers have the right to submit non-standard values determined utilizing a “fair market value in exchange” valuation methodology as opposed to the “value in use” methodology imposed for standard valuation purposes! In the absence of a proposed non-standard value, the standard value of TPP, except for raw materials, supplies and scrap property, is presumed to constitute the fair market value for ad valorem purposes (See Tenn. Comp. R. & Regs. ch. 0600-5-06(1)).

The preparation and submission of the schedules is often done with less thought than may be appropriate, often times due to the fact that the timing does not correspond with the general cycle times for tax reporting. Preparers are also likely to rely upon the fact that, pursuant to T.C.A. § 67-5-903(e), timely filed schedules may be amended until Sept. 1 following the tax year for purposes of (1) “adding or deleting of property to correctly reflect the status of the property as of the assessment date,” (2) “correcting the reported cost or vintage year of the property,” (3) “correcting the name or address of the taxpayer,” (4) “deleting property that has been reported more than once,” (5) “reporting property in the appropriate group,” and (6) “correcting other reporting clerical errors.”

However, T.C.A. §Section 67-5-903(e) was amended effective April 21, 2011, to prohibit amendments to schedules in order to submit an original claim for non-standard value for property that was not the subject of a properly documented claim of non-standard value in the timely filed schedule. In light of this amendment, the failure to properly assert a claim for non-standard value in the timely filed original schedule can be costly. This point was recently driven home in In re: Georgia Pacific Corrugated II LLC, Initial Decision and Order (Shelby County, Tax Year 2011). In this case, Georgia Pacific had a plant in Shelby County, Tenn., that manufactured corrugated boxes. In December 2010 the taxpayer announced it was closing the facility in the near future, and by February 2011, had in fact wound down the business and leased the real and personal property at the location. The taxpayer believed that the “standard” depreciated value of the equipment initially reported on its schedule did not represent the actual value of the property in light of the plant closing. However, because the taxpayer failed to assert a non-standard value in its original schedule, the assessor opposed the taxpayer on the procedural ground that it was barred from asserting a non-standard value pursuant to an amended return.

The Administrative Law Judge agreed, concluding that the assessor’s position was supported by statute and, thus, non-standard value claims must be asserted as part of a timely filed schedule.

Taxpayers wishing to assert non-standard values and/or follow the ruling in Signal Mountain must assert the non-standard valuation on the originally filed schedule. A common trap for the unwary, this presents an opportunity for CPAs or other tax advisers to serve their clients by informing them of this procedural hurdle. In instances where a taxpayer has significant business equipment or other TPP, such as in the case of manufacturers or health care providers, the savings can be significant.

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