



**“BACK TO THE FUTURE”**

*State of Tennessee to once again consider revisions to its personal property tax structure.*

By Paul D. Krivacka

The Tennessee State Board of Equalization currently is considering revising the entire way in which tangible personal property is valued, reported and assessed in Tennessee. Undoubtedly, the recent economic downturn has acted as a catalyst for these potential revisions. The next fifteen months are important. As with any major revision to tax rules, the devil is in the details and these details may lead to higher taxes for some Tennessee businesses and an opportunity for more fair tax treatment and savings for other Tennessee businesses.

The challenge for designing rules that assess tangible personal property is equal to the challenge of designing a “one size that fits all” model. Not all taxpayers are alike. For example, durable manufacturing taxpayers are different than taxpayers in high technology industries because their respective equipment has different useful lives and rates of depreciation.

To accomplish a revision of the way in which tangible personal property is reported and assessed, the statutory provisions dealing with tangible personal property will need to be repealed during this next legislative session and replaced with statutory provisions that grant the Tennessee State Board of Equalization with rule-making authority concerning the promulgation of new rules regarding reporting, depreciation and assessment. The last time this was attempted was the late 1980s early 1990s and it spawned nearly 10 years of litigation between the public utilities, the State of Tennessee, local businesses and local government.

The potential revisions will likely involve different property classes, useful lives or different depreciation curves. All of this begs the following questions:

- Will Tennessee adopt indexing of original cost before depreciation?
- Will the original cost include intangible costs (e.g., warranty contracts, indirect allocable costs, etc.) in addition to the cost of the item, installation and sales tax?

- Will public utilities continue to receive the additional 15% equalization relief on tangible personal property?
- Will the new system result in taxpayers paying taxes on the same value of the same equipment irrespective of the taxpayer's accounting methods?
- Will heavily computerized manufacturing equipment be treated differently than less computerized manufacturing equipment?
- Will there be a "one size fits all" depreciation curve?

All of these are details that potentially could result in substantial increases in tangible personal property assessments for some Tennessee business taxpayers. However, on the positive side, such revisions potentially could lead to more fair treatment and substantial tax savings.

Over the next year, you should expect that the potential changes in law will be proposed during the next Tennessee General Assembly and will be followed by rule-making notices and hearings in 2009. I would expect that any final revision would be effective January 1, 2010, but it is the next fifteen months where focus is needed to ensure a tax treatment that is fair to your given industry.

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*Out in front.*



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