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Sequence
 Number: 02-17-17
 Rule ID(s): 6453
 File Date: 2/21/17
 Effective Date: 5/22/17

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	State Board of Equalization
Division:	
Contact Person:	Kelsie Jones, Executive Secretary
Address:	312 Rosa L. Parks Avenue, Suite 900 Nashville, TN
Zip:	37243-1402
Phone:	615-401-5379
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0600-05	Assessment of Commercial and Industrial Tangible Personal Property
Rule Number	Rule Title
0600-05-.01	Definitions
0600-05-.02	Discovery
0600-05-.04	Reporting
0600-05-.05	Audit
0600-05-.06	Standard Valuation
0600-05-.07	Nonstandard Valuation
0600-05-.11	Reporting Schedule

Substance of Rule Amendments:

Rule 0600-05-.01 is amended by adding the following language as new paragraphs:

() “Capitalized repair” means costs that are capitalized on the taxpayer’s financial books and records as a fixed asset and either:

- (a) add to the value or substantially prolong the useful life of property; or
- (b) adapt the property to a new or different use.

() “Total acquisition cost” means the full acquisition cost new of personal property and includes freight, installation, set-up, and sales tax.

Authority: T.C.A. §§ 67-1-305 and 67-5-902.

Rule 0600-05-.01 is amended by deleting paragraph (4) in its entirety and substituting instead the following:

(4) “Fair market value” of personal property shall be ascertained in accordance with T.C.A. §§ 67-5-601 and 602.

Authority: T.C.A. §§ 67-1-305 and 67-5-902.

Rule 0600-05-.01 is amended by deleting paragraph (6) in its entirety.

Authority: T.C.A. §§ 67-1-305 and 67-5-902.

Rule 0600-05-.01(8) is amended by deleting “manufacturer” and substituting in its place “taxpayer”.

Authority: T.C.A. §§ 67-1-305 and 67-5-902.

Rule 0600-05-.01(8) is further amended by adding the following language as new sentences:

The determination of whether tangible personal property should be classified as raw material depends on the taxpayer’s use of the property and not on the nature or character of the taxpayer’s business. Tangible personal property may be classified as raw material in the hands of the taxpayer even if the taxpayer is not considered to be a manufacturer under other Revenue code provisions.

Authority: T.C.A. §§ 67-1-305 and 67-5-902.

Rule 0600-05-.01(11) is amended by adding “reasonable” between “no” and “expectation”.

Authority: T.C.A. §§ 67-1-305 and 67-5-902.

Rule 0600-05-.02(2)(b) is amended by deleting “telephone book” and substituting in its place “internet”.

Authority: T.C.A. §§ 67-1-305 and 67-5-902.

Rule 0600-05-.04 is amended by adding the following language as new paragraphs:

(4) The taxpayer must report the total acquisition cost new of property. The total acquisition cost of all property must be reported as acquired in the year the property was placed in service rather than the year of purchase, if those years differ. The total acquisition cost reported should include the full invoiced cost without deduction for the value of certain inducements such as agreements and warranties when these inducements are regularly provided without additional charge.

(5) A capitalized expenditure made with respect to property after the initial acquisition must

be reported in the year the expenditure is booked as a fixed asset. The costs of the capitalized expenditure should be reported as they are shown on the taxpayer's financial accounting fixed asset records. Any expensed furniture, computer equipment, or other expensed items with a life of one year or longer should also be reported in the appropriate groups as assets. Expenses, costs or amounts paid or incurred for incidental repairs and maintenance of property should not be reported.

Authority: T.C.A. §§ 67-1-305 and 67-5-902.

Rule 0600-05-.05 is amended by adding the following language as new paragraphs:

- (3) Audits shall be conducted in accordance with a plan submitted by the assessor of property and approved by the State Board of Equalization.
- (4) Assessors shall maintain confidentiality of taxpayer information in accordance with T.C.A. § 67-5-402.

Authority: T.C.A. §§ 67-1-305 and 67-5-902.

Rules 0600-05-.06(1), (2), (3), and (4) are amended by deleting "original cost" and substituting in its place "total acquisition cost" in each paragraph.

Authority: T.C.A. §§ 67-1-305, 67-5-902 and 67-5-903.

Rule 0600-05-.06(2) is further amended by deleting the period between "accounting" and "in" and substituting in its place a comma.

Authority: T.C.A. §§ 67-1-305, 67-5-902 and 67-5-903.

Rule 0600-05-.06(6) is amended by deleting the period between "equipment" and "whether" in the last sentence and substituting in its place a comma. Rule 0600-05-.06(6) is further amended by adding the number "6" between the dash and "04" in the last sentence, so that the statutory reference shall be to T.C.A. § 67-5-604.

Authority: T.C.A. §§ 67-1-305, 67-5-902 and 67-5-903.

Rule 0600-05-.07(1) is amended by adding the following language after the first sentence:

Types of evidence that may support nonstandard value include: recent appraisals by appraisers holding professional designations in the valuation of personal property from recognized appraisal organizations and authoritative price or valuation guides for subject property.

Authority: T.C.A. §§ 67-1-305 and 67-5-902.

Rule 0600-05-.11 is amended by deleting "he" in the first sentence and substituting in its place "be".

Authority: T.C.A. §§ 67-1-305, 67-5-902 and 67-5-903.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Bennett	X				
Burchett	X				
Hargett	X				
Lillard	X				
Roberts	X				
Tarwater	X				
Wilson	X				

I certify that this is an accurate and complete copy of rulemaking hearing rule amendments lawfully promulgated and adopted by the State Board of Equalization on November 16, 2016 and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/09/16

Rulemaking Hearing(s) Conducted on: (add more dates). 09/26/16

Date: 1-24-17

Signature: Kelsie Jones

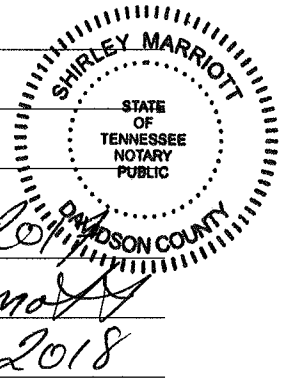
Name of Officer: Kelsie Jones

Title of Officer: Executive Secretary SBOE

Subscribed and sworn to before me on: 24 January 2017

Notary Public Signature: Shirley Marriott

My commission expires on: 08 MAY 2018



- 0600-05 Assessment of Commercial and Industrial Tangible Personal Property
- 0600-05-.01 Definitions
- 0600-05-.02 Discovery
- 0600-05-.04 Reporting
- 0600-05-.05 Audit
- 0600-05-.06 Standard Valuation
- 0600-05-.07 Nonstandard Valuation
- 0600-05-.11 Reporting Schedule

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

2/10/2017

Date

Department of State Use Only

Filed with the Department of State on: 2/21/17

Effective on: 5/22/17

Tre Hargett

Tre Hargett
Secretary of State

RECEIVED
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SECRETARY OF STATE
PUBLIC AFFAIRS

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Attached

Regulatory Flexibility Addendum

The following information is provided pursuant to T.C.A. §§ 4-5-401 through 4-5-404.

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

Response: The law and rules for assessment of business tangible personal property apply to every Tennessee business, large or small, however businesses having total personalty value of \$1,000 or less may file a summary report subject to audit. The amendments are not believed to entail additional cost of compliance for businesses generally because the requested information is already maintained by the property owner for federal income tax accounting.

(2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

Response: No additional cost expected, see answer to no. 1, above.

(3) A statement of the probable effect on impacted small businesses and consumers.

Response: No cost to consumers. To reporting businesses, no additional cost expected generally. A 2013 decision of the TN Assessment Appeals Commission *In re: Central Woodwork* (9-12-13), decided adversely to a taxpayer on the issue of 'inventory versus raw materials', entailed additional local tax liability of about \$20,000. The result in this case owing to uncommon facts, it is presumed to be anecdotal rather than predictive of regular fiscal consequences either for taxpayers or local governments.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

Response: None identified.

(5) A comparison of the proposed rule with any federal or state counterparts.

Response: None identified.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Response: Businesses having total personalty value of \$1,000 or less may file a summary report subject to audit.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

A 2013 decision of the TN Assessment Appeals Commission *In re: Central Woodwork* (9-12-13), decided adversely to a taxpayer on the issue of 'inventory versus raw materials', entailed additional local tax liability of about \$20,000. The result in this case owing to uncommon facts, it is presumed to be anecdotal rather than predictive of regular fiscal consequences either for taxpayers or local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These proposed amendments: 1) provide taxpayer guidance on reporting 'capitalized repairs' and 'total acquisition cost'; 2) provide a workable distinction between 'raw materials' and 'inventory' for taxpayers not otherwise considered a 'manufacturer' for tax purposes; 3) describe acceptable types of evidence to support a claim of non-standard value; and 4) correct typographic errors and update internal references.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

TCA Title 67, Chapter 5, Part 9 prescribes general requirements for reporting and assessment of business tangible personal property.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Local governments and taxpayer organizations such as the TN Chamber of Commerce. No comments received.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

None. OAG 84-273 describes the constitutional basis of the tax.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

A 2013 decision of the TN Assessment Appeals Commission *In re: Central Woodwork* (9-12-13), decided adversely to a taxpayer on the issue of 'inventory versus raw materials', entailed additional local tax liability of about \$20,000. The result in this case owing to uncommon facts, it is presumed to be anecdotal rather than predictive of regular fiscal consequences either for taxpayers or local governments.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Stephanie Maxwell, Comptroller General Counsel; Kelsie Jones, SBOE Executive Secretary

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Stephanie Maxwell, Comptroller General Counsel; Kelsie Jones, SBOE Executive Secretary

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Stephanie Maxwell, Comptroller General Counsel, 505 Deaderick St., Ste 1700, Nashville, TN 37243-1402, (615) 401-7964; stephanie.maxwell@cot.tn.gov; Kelsie Jones, SBOE Executive Secretary, 312

Rosa L Parks Ave, Ste 900, Nashville, TN 37243-1102; (615) 747-5379; kelsie.jones@cot.tn.gov

- (l) Any additional information relevant to the rule proposed for continuation that the committee requests.

Available on request.

Comments and Response—SBOE Rule Amendments: Chapter 0600-5 Assessment of Commercial & Industrial Tangible Personal Property (Notice filed 8/19/16)

Summary of proposed amendments

These proposed amendments: 1) provide taxpayer guidance on reporting 'capitalized repairs' and 'total acquisition cost'; 2) provide a workable distinction between 'raw materials' and 'inventory' for taxpayers not otherwise considered a 'manufacturer' for tax purposes; 3) describe acceptable types of evidence to support a claim of non-standard value; and 4) correct typographic errors and update internal references.

Written comments received with agency response

CPA Neill Murphy of State & Local Tax Advisors, LLC, expressed support for the proposal while suggesting clarification in reporting requirements for capitalized expenditures. Mr. Murphy's requested clarifications have been addressed in the final draft.

Rule Amendments – Chapter 0600-5 Assessment of Commercial and Industrial Tangible Personal Property

Rule 0600-05-.01 is amended by adding the following language as new paragraphs:

() “Capitalized repair” means costs that are capitalized on the taxpayer’s financial books and records as a fixed asset and either:

- (a) add to the value or substantially prolong the useful life of property; or
- (b) adapt the property to a new or different use.

() “Total acquisition cost” means the full acquisition cost new of personal property and includes freight, installation, set-up, and sales tax.

Rule 0600-05-.01 is amended by deleting paragraph (4) in its entirety and substituting instead the following:

~~(4) “Fair market value” shall be defined in accordance with T.C.A. §67-5-601.~~

(4) “Fair market value” of personal property shall be ascertained in accordance with T.C.A. §§67-5-601 and 602.

Rule 0600-05-.01 is amended by deleting paragraph (6) in its entirety.

~~(6) “Original cost” shall be defined as the gross capitalized cost before depreciation.~~

Rule 0600-05-.01(8) is amended by deleting “manufacturer” and substituting in its place “taxpayer”.

(8) “Raw material” shall be defined as items of tangible personal property, crude or processed, which are held or maintained by a ~~manufacturer~~ taxpayer for use through refining, combining, or any other process in the production or fabrication of another item or product.

Rule 0600-05-.01(8) is further amended by adding the following language as new sentences:

The determination of whether tangible personal property should be classified as raw material depends on the taxpayer’s use of the property and not on the nature or character of the taxpayer’s business. Tangible personal property may be classified as raw material in the hands of the taxpayer even if the taxpayer is not considered to be a manufacturer under other Revenue code provisions.

Rule 0600-05-.01(11) is amended by adding “reasonable” between “no” and “expectation”.

(11) “Scrap value” shall be defined as the value of personal property no longer capable of use and for which there is no reasonable expectation of repair.

Rule 0600-05-.02(2)(b) is amended by deleting “telephone book” and substituting in its place “internet”.

(2) The following additional sources are recommended for use whenever possible for the discovery of businesses:

- (a) field visits;
- (b) ~~telephone book~~ internet;
- (c) new construction;
- (d) media news and advertising;
- (e) city directory;
- (f) local business directory;
- (g) chamber of commerce;
- (h) building permits and electrical inspections;

- (i) commercial vehicle license plates;
- (j) uniform commercial code filings;
- (k) any other pertinent sources.

Rule 0600-05-.04 is amended by adding the following language as new paragraphs:

- (4) The taxpayer must report the total acquisition cost new of property. The total acquisition cost of all property must be reported as acquired in the year the property was placed in service rather than the year of purchase, if those years differ. The total acquisition cost reported should include the full invoiced cost without deduction for the value of certain inducements such as agreements and warranties when these inducements are regularly provided without additional charge.
- (5) A capitalized expenditure made with respect to property after the initial acquisition must be reported in the year the expenditure is booked as a fixed asset. The costs of the capitalized expenditure should be reported as they are shown on the taxpayer's financial accounting fixed asset records. Any expensed furniture, computer equipment, or other expensed items with a life of one year or longer should also be reported in the appropriate groups as assets. Expenses, costs or amounts paid or incurred for incidental repairs and maintenance of property should not be reported.

Rule 0600-05-.05 is amended by adding the following language as new paragraphs:

- (3) Audits shall be conducted in accordance with a plan submitted by the assessor of property and approved by the State Board of Equalization.
- (4) Assessors shall maintain confidentiality of taxpayer information in accordance with T.C.A. § 67-5-402.

Rules 0600-05-.06(1), (2), (3), and (4) are amended by deleting "original cost" and substituting in its place "total acquisition cost" in each section.

(1) In the absence of evidence to the contrary, the fair market value of commercial and industrial tangible personal property, except raw materials, supplies, and scrap property, shall be presumed to be either the total acquisition cost ~~original cost~~ to the taxpayer less straight line depreciation or the residual value, whichever is greater. The grouping of personal property and the depreciation allowed for each group shall be consistent with the schedule prescribed in Rule 0600-5-.11 below, and shall be based on a reasonable economic life for that group of items.

(2) The fair market value of raw materials and supplies shall be presumed to be their total acquisition cost ~~original cost~~ as determined by the "first-in-first-out" (FIFO) method of accounting, in the absence of evidence to the contrary.

(3) The residual value of personal property shall be presumed to be twenty percent (20%) of total acquisition cost ~~original cost~~, in the absence of evidence to the contrary.

(4) The scrap value of personal property shall be presumed to be two percent (2%) of total acquisition cost ~~original cost~~, in the absence of evidence to the contrary.

Rule 0600-05-.06(2) is further amended by deleting the period between "accounting" and "in" and substituting in its place a comma.

(2) The fair market value of raw materials and supplies shall be presumed to be their total acquisition cost ~~original cost~~ as determined by the "first-in-first-out" (FIFO) method of accounting, in the absence of evidence to the contrary.

Rule 0600-05-.06(6) is amended by deleting the period between "equipment" and "whether" in the last sentence and substituting in its place a comma. Rule 0600-05-.06(6) is further amended by adding the number "6" between the dash and "04" in the last sentence, so that the statutory reference shall be to T.C.A. § 67-5-604.

(6) Any tangible personal property which the taxpayer claims or will claim as CIP for federal income tax purposes based on the status of the property on the assessment date for property taxes may be reported by the taxpayer as CIP for property tax purposes. The value of CIP shall be presumed to be fifteen percent (15%) of all direct and indirect costs incurred and claimed by the taxpayer for federal income tax purposes as of the assessment date. The value of qualified pollution control equipment, whether or not reportable as CIP, shall be governed by T.C.A. §67-5-604.

Rule 0600-05-.07(1) is amended by adding the following language after the first sentence:

Types of evidence that may support nonstandard value include: recent appraisals by appraisers holding professional designations in the valuation of personal property from recognized appraisal organizations and authoritative price or valuation guides for subject property.

Rule 0600-05-.11 is amended by deleting "he" in the first sentence and substituting in its place "be".

The following schedule or a facsimile shall ~~he~~ be used by owners of commercial and industrial tangible personal property to report ownership of such property to the assessor pursuant to T.C.A. §67-5-903. A substantially equivalent form may be used with prior approval of the director of the state Division of Property Assessments.