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Rule ID(s): 6588
File Date: 8/23/17
Effective Date: 11/21/17

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:	Betsy Knotts, Executive Secretary
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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. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0600-12	Multiple-Use Subclassification
Rule Number	Rule Title
0600-12-.01	Purpose
0600-12-.02	Applicability
0600-12-.03	Definitions
0600-12-.04	Determining When Multiple-Use Subclassification is Appropriate
0600-12-.05	Apportioning Assessment Percentages Among Subclasses
0600-12-.06	Apportioning Value Among Multiple Subclasses
0600-12-.07	Examples of Apportioning Among Subclasses
0600-12-.08	Assessor's Records

Substance of proposed rules:

Chapter 0600-12
Multiple-Use Subclassification

0600-12-.01 PURPOSE

The purpose of these rules is to implement the provision of T.C.A. § 67-5-801(b) concerning the establishment of guidelines for apportionment among subclasses where a parcel of real property is used for more than one (1) purpose, which would result in different subclassifications and different assessment percentages.

Authority: T.C.A. §§ 4-3-5103, 67-1-305 and 67-5-801(b).

0600-12-.02 APPLICABILITY

These rules apply to those situations where a parcel of real property is used for more than one purpose and it is necessary to assign different subclassifications and assessment percentages to each use.

Authority: T.C.A. §§ 4-3-5103, 67-1-305 and 67-5-801(b).

0600-12-.03 DEFINITIONS

As used in these rules, unless the context otherwise requires:

- (1) "Assessment percentage" means the rate of assessment set forth in T.C.A. § 67-5-801(a) for 'public utility property,' 'industrial and commercial property,' 'residential property,' and 'farm property.'
- (2) "Farm property" is defined as in T.C.A. § 67-5-501(3).
- (3) "Industrial and commercial property" is defined as in T.C.A. § 67-5-501(4).
- (4) "Mobile home" is any movable structure and appurtenance that is attached to real property by virtue of being on a foundation, or being underpinned, or connected with any one (1) utility service, such as electricity, natural gas, water, or telephone.
- (5) "Multiple-use subclassification" means the apportionment of different assessment percentages among subclasses when a parcel of real property is used for more than one purpose which would result in different subclassifications.
- (6) "Public utility property" is defined as in T.C.A. § 67-5-501(8).
- (7) "Residential property" is defined as in T.C.A. § 67-5-501(10).
- (8) "Subclass" and "Subclassification" mean the classification of real property as public utility property, industrial and commercial property, residential property or farm property in accordance with T.C.A. §§ 67-5-501 and 67-5-801(a).

Authority: T.C.A. §§ 4-3-5103, 67-1-305 and 67-5-801(b).

0600-12-.04 DETERMINING WHEN MULTIPLE-USE SUBCLASSIFICATION IS APPROPRIATE

- (1) Many properties are used for more than one purpose simultaneously. Where the uses of a property fall into two (2) or more subclasses, the assessor shall determine the share of the market value of the property attributable to each subclass and assess the property according to the proportion each share constitutes of the total market value.
- (2) Multiple-use subclassification is appropriate only where each of the uses recognized for subclassification is distinct and ongoing. Where a parcel is used predominantly for one purpose and another use is sporadic and generates de minimis annual income, the parcel should be assessed in accordance with the predominant use. Where a parcel is used predominantly for one purpose and another use as described above is sporadic but generates regular annual income that is not de minimis, the parcel should be assessed using multiple-parcel subclassification.

- (3) Below are examples of when multiple-use subclassification is appropriate:
- (a) Home businesses run from a residential property to carry on a trade or business such as a beauty salon, small day care, or car repair service (portion used in business to be subclassified commercial);
 - (b) A building with a retail store on the first floor and an owner-occupied residence on the second floor (portion used in business to be subclassified commercial);
 - (c) A manufacturing facility with excess land used for farming (portion farmed to be subclassified farm);
 - (d) Mobile home parks with on-site privately owned mobile homes (portions rented to be subclassified commercial, owner-occupied mobile home to be subclassified residential);
 - (e) Properties used in the commercial production of farm products and nursery stock but which also have uses not within the definition of "agriculture" otherwise provided by law. As used in the rules, "commercial production of farm products and nursery stock" means the production is consistent with a farm operating for profit for federal income tax purposes. Examples requiring a split subclassification of agricultural property would include portions of a farm that generate regular annual income (as opposed to sporadic and de minimis income) from regular rental of space set aside for parking or camping, or portions of a horse farm devoted to uses such as a shop engaged in the retail sale of tack. Boarding of animals integral to breeding, raising and development of horses and other livestock at the property is not considered a commercial use for purposes of these rules;
 - (f) Portions of farms with commercial activities unrelated to production of farm products or livestock, except commercial activities constituting "agriculture" as defined by law. Improvements and structures on, and land that is part of, a farm engaged in the commercial production of farm products or nursery stock that are used for "agriculture" may be classified as farm property, provided the land improvement or structure in question is used for one or more of the following: (1) recreational or educational activities; (2) retail sales of products produced on the farm, but only if a majority of the products sold are produced on the farm; or (3) entertainment activities conducted in conjunction with, but secondary to, the commercial production of farm products or nursery stock. Commercial subclassification of those portions of a farm used for events unrelated to agriculture shall be limited to the actual land and structures dedicated to the unrelated uses.

The foregoing are only examples and do not represent all situations where multiple-use subclassification is appropriate.

Authority: T.C.A. §§ 4-3-5103, 67-1-305 and 67-5-801(b).

0600-12-.05 APPORTIONING ASSESSMENT PERCENTAGES AMONG SUBCLASSES

Where the uses of a property include two (2) or more subclasses, the assessor shall apply the appropriate assessment percentage to each subclass. In order to determine the appropriate assessment percentage for each subclass, the assessor shall first determine the share of the total market value attributable to each subclass.

Authority: T.C.A. §§ 4-3-5103, 67-1-305 and 67-5-801(b).

0600-12-.06 APPORTIONING VALUE AMONG MULTIPLE SUBCLASSES

- (1) Where the uses of a property include two (2) or more subclasses, the assessor shall determine the share of the market value of the property attributable to each subclass and value the property according to the proportion each share constitutes of the total market value.
- (2) In determining the market value of the property, the assessor shall determine the highest and best use of the property.
 - (a) In certain instances, the predominant use of the property constitutes the highest and best use and the assessor must apportion the total value of the property among the subclasses based upon the predominant use. An example of such a situation is a residence with a home business that does not increase the overall market value of the property, such as a small hair salon. In this example, the assessor should value the property as a single family residence and apportion the total value between the residential and commercial uses.
 - (b) In certain instances, the highest and best use of the property is for multiple purposes. An example of such a situation is a manufacturing facility with excess acreage utilized for farming. In this example, the highest and best use of the acreage is for two distinct purposes: farming and manufacturing. The assessor must value the acreage and buildings used for farming separately from the acreage and buildings utilized in conjunction with manufacturing. The two resulting values would then be added together to determine the total value of the property.
- (3) The assessor shall apportion the total market value of the property by assigning separate values to each subclass. The apportionment shall reflect the land and improvement values assigned to each subclass. In those instances where the land or improvements has insignificant value for one of the uses, the assessor may properly assign a separate value to only the component having a measurable value.
- (4) The assessor may utilize whatever appraisal methodology appears most appropriate in a particular situation so long as it is reasonably designed to arrive at the market value of the respective subclasses and/or total value of the parcel.

Authority: T.C.A. §§ 4-3-5103, 67-1-305 and 67-5-801(b).

0600-12-.07 EXAMPLES OF APPORTIONING AMONG SUBCLASSES

EXAMPLE A

The Taxpayer owns a 2,000-square-foot single residence situated on a one (1) acre lot with a total market value of \$110,000. The assessor has appraised the home at \$100,000 and the land at \$10,000. The Taxpayer utilizes 500 square feet of her home as a hair salon. Customers park in her gravel driveway. The market value of the Taxpayer's parcel is \$110,000 with or without the hair salon. The assessor should value the property at \$110,000 since the predominant use of the property as a residence constitutes the highest and best use and the hair salon does not increase the overall value of the property. The assessor should subclassify the 500 square feet used for the hair salon as "industrial and commercial property." The assessor would subclassify the remaining 1,500 square feet as "residential property." Since there is no dedicated parking area and the use of the driveway by customers is insignificant, there is no need to assess any of the land as "industrial and commercial property."

EXAMPLE B

Suppose the facts are the same as in Example A except that the Taxpayer has gone ahead and created a designated parking area by paving and setting aside a 0.1 acre portion of the driveway. In this example, the assessor would subclassify the 0.1 acre portion of the driveway designated for customer parking as "industrial and commercial property" because the predominant use of that portion of the driveway is for customer parking.

EXAMPLE C

A Corporation purchased a 100-acre parcel of land and constructed a manufacturing facility. Although the manufacturing operation only requires 25 acres of land, the corporation purchased 100 acres in the event it ever decides to expand. Presently, the corporation has no use for 75 acres and leases it to a farmer who raises soybeans. In this example, the assessor should subclassify 25 acres and the associated buildings and improvements as "industrial and commercial property." The remaining 75 acres is properly subclassified as "farm property."

EXAMPLE D

A farmer has been operating a 100-acre horse farm which the assessor has historically subclassified as "farm property." The farmer decides to open a tack shop and utilizes two (2) acres for a retail store and associated parking. In addition, the farmer accepted the local public utility's offer to lease five (5) acres for its operations. In this example, the assessor should subclassify the 93 acres and associated buildings and improvements used for the horse farm as "farm property." The two (2) acres and building used for the tack shop should be subclassified as "industrial and commercial property." The five (5) acres leased to the public utility should be subclassified as "public utility property."

EXAMPLE E

A mobile home park owner owns the land and multiple homes located on the land within the mobile home park, and he leases out the mobile homes to tenants. All of the property (land, improvements, and mobile homes) should be subclassified as "industrial and commercial property". On the other hand, if a mobile home park owner owns the land within the mobile home park but leases the land out to multiple tenants who own their own mobile homes situated on the land, then the land and any improvements rented with the land should be subclassified as "industrial and commercial property" but each mobile home that is used for residential purposes by the mobile home owner or owner's lessee should be subclassified as "residential property" unless it is part of multiple rental units under common ownership.

Authority: Tennessee Constitution, Article II, § 28; T.C.A. §§ 4-3-5103, 67-1-305, 67-5-502(a)(1), 67-5-501, 67-5-502(a)(1), 67-5-801(b), and 67-5-802(a)(1).

0600-12-.08 ASSESSOR'S RECORDS

The assessor shall note on the property record card all instances wherein multiple-use subclassification has been used. Although no particular format must be utilized due to the various assessment systems employed throughout Tennessee, two acceptable formats are the creation of special interest cards or listing the multiple subclasses on different pages of the property record cards. Regardless of the format used, the property record card shall reflect both the value and assessment percentage assigned to each subclass.

Authority: T.C.A. §§ 4-3-5103, 67-1-305, 67 5 801(b) and 67 5 804.

* 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				
Gerregano	X				
Tarwater	X				
Wilson	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the State Board of Equalization on 06/22/2017 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: 08/22/2016

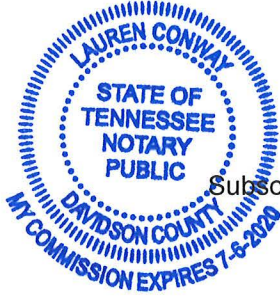
Rulemaking Hearing(s) Conducted on: (add more dates). 10/17/2016

Date: 8-2-2017

Signature: [Handwritten Signature]

Name of Officer: Betsy Knotts

Title of Officer: Executive Secretary, SBOE



Subscribed and sworn to before me on: 8-2-2017

Notary Public Signature: [Handwritten Signature: Lauren Conway]

My commission expires on: 7-6-2020

Agency/Board/Commission: State Board of Equalization

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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.

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[Handwritten Signature]

[Handwritten Signature: Herbert H. Slatery III]

Herbert H. Slatery III
Attorney General and Reporter

8/16/2017

Date

Department of State Use Only

Filed with the Department of State on: 8/23/17

Effective on: 11/21/17



Tre Hargett
Secretary of State

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

We did receive comments from several individuals at the Public Hearing on the first version of these proposed rules, on October 17, 2016. Don Collier (on behalf of the Tennessee Farm Winegrowers Alliance) testified about slim profit margins in the winery industry and the growth of that industry. Al Ganier, a farm owner, read written comments and urged consideration of the Right to Farm Act's definition of agriculture in the proposed rules. Jay Catignani, a tax representative, testified that the proposed rules would generate many appeals, that farm uses would be the most impacted, and that he was concerned about uniform implementation. Stephanie Hazeltine, a farm owner, testified that Tennessee needs more, not fewer, farmers. Amy Ladd, a farm owner and officer of the Tennessee Agritourism Association, read written comments in support of the agritourism industry and its supplementation of farm income. Dan Elrod, on behalf of the Tennessee Farm Bureau Federation, discussed the evolution of farming and encouraged revisions of the proposed rules to incorporate the definitions of agriculture from the Tennessee Code Annotated. Marshall Albritton, an attorney who represents a farm owner in an appeal, testified that he believed the proposed rules conflicted with statutes and would result in arbitrary implementation. Brandon Witt, a farm owner, testified that he already has a slim profit margin and he expected arbitrary implementation under the proposed rules. Cindy Delvin, a farm owner and officer in the Tennessee Organic Growers Association, testified regarding the growing popularity of farmers markets, the food movement bringing people back to the farm, and the legal expenses of property tax appeals. Will Denami, on behalf of the Tennessee Association of Assessing Officers, testified that his organization would submit written comments. Stan Butt, on behalf of the Tennessee Dairy Producers Association, testified that rural assessors would resist these proposed rules. Chas Pullen, a vineyard manager, testified that his vineyard is presently taxed at a commercial rate. (The SBOE looked into this statement and the vineyard in question is presently only partially classified commercial.)

Based on many of the comments received at the Rulemaking Hearing, we revised the proposed rules. At the SBOE meeting on June 22, 2017, Dan Elrod, on behalf of the Tennessee Farm Bureau Federation, spoke in support of the current version.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

(Insert statement here)

These rules could affect small businesses if those small businesses are part of a property used for multiple purposes. These rules are generally meant to codify existing practice, and so they should have only a minimal effect.

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)

(Insert statement here)

These rules could impact local governments in that the rules offer guidance to local assessors as to how to assess real properties with more than one use. Though these rules are meant to codify existing practice, it is possible that different counties across the state have been assessing multiple-use properties in somewhat different manners, and so there could be some changes in assessment classifications for certain properties and therefore some changes in tax amounts collected by counties.

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 rules represent an attempt by the State Board of Equalization to comply with the language of Tenn. Code Ann. § 67-5-801(b) which requires the State Board of Equalization to establish guidelines by rules and regulations as to how to apportion subclassifications and assessment percentages when a parcel of real property is used for more than one purpose. Because there are no rules currently in place, split use classifications are not always handled uniformly. These rules will help ensure that assessors across the state are handling these classifications fairly and uniformly and will provide both taxpayers and assessors with guidance. The proposed rules also provide multiple examples to help assessors and taxpayers.

- (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;

Tenn. Code. Ann. § 67-5-801(b) requires the State Board of Equalization to establish guidelines by rules and regulations as to how to apportion subclassifications and assessment percentages when a parcel of real property is used for more than one purpose.

- (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;

Assessors; taxpayers who own real property used for more than one purpose; Comptroller of the Treasury, Division of Property Assessments. Those entities urge adoption of these rules as most recently amended.

- (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

- (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;

Minimal fiscal impact anticipated. These rules are meant to codify existing practice.

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

Stephanie Maxwell, General Counsel to the Comptroller

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

Stephanie Maxwell, General Counsel to the Comptroller

- (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, General Counsel to the Comptroller, 505 Deaderick Street, Suite 1700, Nashville, TN 37243; (615) 401-7964; stephanie.maxwell@cot.tn.gov

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

