

# PUBLICATION

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## Spotlight on Tennessee: Personal Property Schedule Required to be Filed -- Even If You Don't Have It!

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Tennessee law has been amended just recently regarding the duty of business taxpayers to timely file tangible personal property schedules for property tax purposes. Unfortunately, such statutory amendment will have the effect of creating hardship on some businesses. That new law, 2011 Public Chapter 93 (PC 93), became effective April 21, 2011 as an amendment to tangible personal property tax laws as well as certain other tax laws in this State.

Background. With respect to the process of taxing tangible personal property, and pursuant to Tennessee Code Annotated Section 67-5-903, historically each county assessor has been required to furnish the business taxpayers in that county with a schedule by February 1 each year. The schedule as furnished by the assessor contains historical information regarding the valuation of the taxpayer's tangible personal property in prior years. The taxpayer then lists all tangible personal property owned and used or held for use in the taxpayer's business as of January 1 in that county including such other information as may be required by the assessor; places the correct valuation on the schedule for such property; signs and returns the schedule to the assessor on or before March 1 of each year.

A taxpayer who fails, refuses or neglects to complete, sign and file the schedule with the assessor by March 1 is deemed by statute to waive objections to a forced assessment by the assessor. A forced assessment is based upon information that the assessor considers indicative of the fair market value of the property without necessarily considering the taxpayer's information that otherwise would have been included on a timely filed schedule. Although a taxpayer has certain appeal rights from a forced assessment, those rights from a practical standpoint are not as effective as the rights of a taxpayer who has timely filed with the assessor.

Thus, a business taxpayer must timely file its tangible personal property schedule with the assessor on or before March 1 of each year in order to have a better chance, if challenged, of supporting the valuation figures which the taxpayer considers to be appropriate.

New Law Eliminates Assessor's Responsibility. Under PC 93, the taxpayer continues to have the responsibility to complete and file the schedule with the assessor by March 1 of each year. However, consequences to the assessor for not providing the schedule have been eliminated by the following addition made by PC 93 to Section 67-5-903:

"Failure of the assessor to send a schedule or failure of the taxpayer to receive a schedule shall not relieve or excuse any taxpayer from filing such schedule by March 1 nor shall it prevent the assessor from issuing a forced assessment against the taxpayer."

From a fairness standpoint, an assessor's "failure...to send a schedule" to a business taxpayer by February 1 should protect the taxpayer from an unwanted forced assessment. In that regard, a 1984 Tennessee Court of Appeals decision held that if schedules are not furnished as required by the statute, then "...obviously a forced or arbitrary assessment emanating from the tax assessor is not proper." PC 93 may very well reverse that 1984 decision and thereby create even more inequities that a business taxpayer must face in dealing with an assessor for tangible personal property purposes.

In addition to impacting the schedule required for tangible personal property purposes, PC 93 enacts similar language under another statutory provision (that is, schedules required by insurance companies) where the assessor has failed to send the schedule to a taxpayer.

New Law's Other Adverse Changes. Under Section 67-5-903, business taxpayers have historically had the right to amend a timely filed personal property schedule at any time on or before September 1 following the tax year. Under PC 93, business taxpayers continue to have the right to amend a timely filed schedule on or before that September 1, but the amendment may only be for the following reasons:

"... adding or deleting of property to correctly reflect the status of the property as of the assessment date; correcting the reported cost or vintage year of property; correcting the name or address of the taxpayer; deleting property that has been reported more than once resulting in a duplicate assessment; reporting property in the appropriate group; and correcting other reporting clerical errors."

This new law further states that "...under no circumstances shall a taxpayer be permitted to amend a personal property schedule to submit an original claim for nonstandard value for property that was not the subject of a properly documented claim of nonstandard value in the timely filed personal property schedule." Nonstandard valuations are important to business taxpayers that own or use in their operations certain equipment or other tangible personal property which depreciates faster than normal due to market conditions, obsolescence, or otherwise.

Each of these other changes will have the effect of placing even more burdens on taxpayers to definitively set forth arguments for the correct valuation in timely filed schedules. The business taxpayer has essentially one month from February 1 to March 1 each year to complete and file this definitive schedule so as to protect the valuations considered appropriate--and that time frame assumes that the assessor even *furnishes* the schedule to the taxpayer on a timely basis by February 1.

Summary. The changes made by PC 93 will place more burdens upon business taxpayers at a time when the State of Tennessee is trying to convince businesses to locate or expand in this State so as to create new jobs. Many of these changes are not only inequitable, but also will adversely impact economic development. Until the Legislature can hopefully reconsider some of the burdens imposed by PC 93, business taxpayers must nevertheless be ready to quickly address, complete and file these schedules on a timely basis.

Should you have any questions regarding this new Tennessee law, or should you wish to discuss any other aspects of tangible personal property taxation, please contact any one of the attorneys within the Firm's Tax Department.