



State and Local Tax Alert

Tennessee Edition



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Tennessee Personal Property Tax Schedules Due in March Recent Decision Holds that "Acquisition Cost" Does Not Include Intangible Costs

By Brett R. Carter and Patricia Head Moskal

With Tennessee personal property tax filings due in March, Tennessee taxpayers should take note of a recent administrative judge decision holding that intangible costs (such as freight, installation, engineering and transactional taxes) incurred by a manufacturer to place equipment and machinery into service—costs traditionally capitalized for federal depreciation purposes—should be excluded from the tax base in determining fair market value for Tennessee personal property tax purposes. See *In re Signal Mountain Cement Company*, Hamilton County, Appeal Nos. 62119, 62120, 64218, 7114 (Oct. 7, 2011), appeal pending.

The taxpayer in this case is a cement manufacturer located in Tennessee. The local assessor audited the taxpayer's tangible personal property schedules and issued a back assessment that increased the "fair market value" of the taxpayer's equipment and machinery by intangible costs such as freight, installation, engineering and transactional taxes. The assessor's valuations were based on the taxpayer's depreciation schedules from its federal income tax returns.

The taxpayer challenged the back assessment contending that no Tennessee statute imposes *ad valorem* taxes on these intangible items and that Tennessee has not adopted a "value in use" standard for valuing tangible personal property. Rather, the tax base for tangible personal property in Tennessee is based on "fair market value," typically formulated as acquisition cost less statutory depreciation.

The administrative judge agreed with the taxpayer and rejected the assessor's interpretation of the regulations and his reliance on federal depreciation schedules as the base for calculating "gross capitalized cost." The administrative judge concluded that "construing the term 'capitalized cost' as adopting federal capitalization principles to value tangible personal property overreaches the requirement in Tenn. Code Ann. § 67-5-601(a) that property be valued at fair market value." Accordingly, "tangible personal property must be valued separately from intangible costs incurred to ship, configure or install [the property]."

Practice Pointer:

Although this case currently is on appeal to the Assessment Appeals Commission of the Tennessee State Board of Equalization, taxpayers should review their tangible personal

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property schedules to determine whether federal tax depreciation schedules have been used as the source of "acquisition cost" for property tax filings and whether the tax base includes intangible costs that should be separated from the actual purchase price of the tangible property.

Practice Pointer:

For taxpayers that have been overstating the cost of their tangible personal property on timely-filed property tax schedules, tax schedules for 2011 and 2012 may be amended to report the correct acquisition price. As an alternative, taxpayers concerned about the status of the appeal before the Assessment Appeals Commission can pay their property tax under protest for 2012, and preserve their challenge pending the outcome of the Signal Mountain Cement Company appeal.

If you would like to discuss this issue further, please contact Brett Carter (615-252-2383) at bcarter@babbc.com or Patricia Head Moskal (615-252-2369) at pmoskal@babbc.com.



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