**STATE OF TENNESSEE**
# OFFICE OF THE ATTORNEY GENERAL

**April 21, 2017**

**Opinion No. 17-32**

**Legality of Proposed Legislation Related to the Property Tax Classification of Mobile Homes**

## Question 1

Does House Bill 768/Senate Bill 907, 110th Tenn. Gen. Assem. (2017), as amended, conform to the provision of article II, section 28, of the Tennessee Constitution that "residential property containing two (2) or more rental units is hereby defined as industrial and commercial property"?

## Opinion 1

House Bill 768/Senate Bill 907 conforms to article II, section 28, insofar as the proposed legislation would apply to property with no more than one rental unit. The proposed legislation would violate article II, section 28, if it were applied to residential property containing two or more rental units.

## Question 2

Does House Bill 768/Senate Bill 907, 110th Tenn. Gen. Assem. (2017), as amended, conform to Tennessee case law, such as *Snow v. Memphis*, 527 S.W.2d 55 (Tenn. 1975), *Castlewood, Inc. v. Anderson County*, 969 S.W.2d 908 (Tenn. 1998), and *Spring Hill, L.P. v. Tennessee State Board of Equalization*, No. M2001-02683-COA-R3-CV, 2003 WL 23099679 (Tenn. Ct. App. Dec. 31, 2003)?

## Opinion 2

As long as assessors of property apply the presumption that would be created by the proposed legislation only to property with no more than one rental unit, HB 768/SB 907 conforms to existing case law.

## ANALYSIS

Article II, section 28, of the Tennessee Constitution provides, in part, that "Residential Property" is "to be assessed at twenty-five (25%) percent of its value, provided that residential property containing two (2) or more rental units is hereby defined as industrial and commercial property." Article II, section 28, also requires "the value and definition of property in each class or subclass to be ascertained in such a manner as the Legislature shall direct."

Tennessee Code Annotated § 67-5-801 contains the Legislature's directives regarding the classification and rate of assessment for real property. House Bill 768/Senate Bill 907, 110th Tenn. Gen. Assem. (2017), would amend § 67-5-801(c)(2), which sets the rate for industrial and commercial property, to add: "When a mobile home attached to real property as described in [Tenn. Code Ann.] § 67-5-802 is used as a residence, the assessor of property may presume the classification is residential."

The Constitution requires that residential property containing two or more rental units be treated as industrial and commercial property for tax purposes. The proposed legislation classifies as residential a mobile home that is used as a residence and is attached to real property. There is, thus, a potential for conflict between the Constitution and the proposed legislation, depending on the particular facts in a given instance. For example, if the mobile home that is being used as a residence is one of two or more rental units attached to the real property, the Constitution would require it to be classified as industrial and commercial, while HB 768/SB 907 would appear to allow it to be treated as residential. On the other hand, if the mobile home that is being used as a residence is not one of two or more rental units, then no such conflict arises.

To the extent that there is a conflict between the Legislature's definition of property within a class or subclass and the Constitution's delineation of property classes and subclasses, the Constitution's requirements must prevail. *See Williams v. Carr*, 218 Tenn. 564, 404 S.W.2d 522, 529 (1966). Therefore, the presumption of "residential" classification created by the proposed legislation could not be applied when the Constitution would require a given mobile home to be classified as "industrial and commercial."

Tennessee case law likewise indicates that, to be consistent with article II, section 28, the presumption created by HB 768/SB 907 could be applied only to property with no more than one rental unit. Cases analyzing article II, section 28, affirm that a property containing two or more rental units must be classified as industrial and commercial. *Snow v. Memphis* involved an equal-protection challenge to the language in article II, section 28, that addresses residential property containing two or more rental units. *Snow v. Memphis*, 527 S.W.2d 55, 64 (Tenn. 1975). The Supreme Court upheld the classification, opining: "The purpose and objective of [the classification] is to tax income-producing property at a higher rate than owner-occupied residences and farms. That such classification is constitutionally permissible is beyond question." *Id.* at 66. Relying on *Snow*, the Court made clear that 80 condominium rental units were income-producing property and thus properly classified as commercial under the Tennessee Constitution. *Castlewood, Inc. v. Anderson County*, 969 S.W.2d 908, 909–10 (Tenn. 1998). More recently, the Court of Appeals dealt with a taxpayer challenge to the commercial classification of 44 single-family residences in one multi-unit subdivision. *Spring Hill, L.P. v. Tennessee State Board of Equalization*, M2001-02683-COA-R2-CV, 2003 WL 23099679 (Tenn. Ct. App. Dec. 31, 2003). Because the residences were not "separate residential property" but "instead commercial rental units," the Court of Appeals—relying upon both *Snow* and *Castlewood*—ruled that the residences were properly classified as commercial. *Id.* at *17–*18.

Thus, as long as assessors of property apply the presumption that would be created by the proposed legislation only to property with no more than one rental unit, HB 768/SB 907 will conform to existing case law.

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