STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

July 26, 2017

Opinion No. 17-34

Reappraisal of Nonoperating Properties of Modern Market Telecommunications Providers

Question 1

After Public Chapter 490 becomes effective, who will be responsible for reappraising modern market telecommunications providers?

Opinion 1

The Comptroller of the Treasury will continue to be responsible for reappraising the properties of these telecommunications providers.

Question 2

When must the reappraisal of modern market telecommunications providers be done?

Opinion 2

The reappraisal schedule for the telecommunications providers' properties will remain the same. Their localized and nonoperating real property will be updated in each county during that county's reappraisal year. Their operating properties will be assessed and updated annually.

ANALYSIS

Public Chapter 490 creates a new sub-classification of taxpayers known as "modern market telecommunications providers." 2017 Tenn. Pub. Acts ch. 490, § 1. The sub-classification includes incumbent local exchange telephone companies that elect market regulation pursuant to Tenn. Code Ann. § 65-5-109, telephone cooperatives organized pursuant to Tenn. Code Ann. § 65-29-102, and nongovernmental entities whose business activities are limited to providing competitive local exchange telephone services or interconnected voice over internet protocol services. Id. Many if not all of these companies previously were classified as public utilities, and their operating property was assessed at the applicable 55% rate. Tenn. Code Ann. § 67-5-1302(a)(1). Public Chapter 490, which is now in effect, provides that the operating property of the modern market telecommunications providers will be assessed "at the rate applicable to commercial and industrial property of the same type." 2017 Tenn. Pub. Acts ch. 490, § 5. Industrial and commercial real property is assessed at 40% of its value, Tenn. Code Ann. § 67-5-801(a)(2), while industrial and commercial tangible personal property is assessed at 30% of its value, Tenn. Code Ann. § 67-5-901(a)(2). See also Tenn. Const. art. II, § 28.

Although the operating property used by modern market telecommunications providers is no longer classified as public utility property, the responsibility for appraising and assessing this property remains with the Comptroller of the Treasury. Public Chapter 490 contemplates that the assessments of property of modern market telecommunications providers will be "set by the comptroller of the treasury in accordance with" Tenn. Code Ann. § 67-5-1302(a). 2017 Tenn. Pub. Acts ch. 490, § 6. And it specifically requires that "[a]ll assessing and updating of operating properties of . . . modern market telecommunications providers must be done by the comptroller of the treasury in accordance with" Tenn. Code Ann. §§ 67-5-1301 to -1334. 2017 Tenn. Pub. Acts ch. 490, § 8. The Comptroller is responsible for assessing both the operating property and the nonoperating property of these companies. Tenn. Code Ann. §§ 67-5-1301(a) & 67-5-1302(a), (c).

Public Chapter 490 did not change the reappraisal schedule for these companies. Under both the previous law and Public Chapter 490, the localized and nonoperating real property of these telecommunications providers should be updated in each county during that county's reappraisal year. 2017 Tenn. Pub. Acts ch. 490, § 8. Their operating properties, on the other hand, should be assessed and updated annually. *Id.* This same reappraisal schedule is described in the most recent version of Tenn. Code Ann. § 67-5-1601(h). Public Chapter 490's amendment to that statute merely inserted the term "modern market telecommunications providers" where appropriate. It did not change the usual schedule by which the Comptroller reappraises the telecommunications providers' property.

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