**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

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| IN RE: | Samuel Bryant<br>Map 025-12-0, Parcel 46.00<br>Residential Property<br>Tax Year 2007 | )<br>)<br>)<br>) | Davidson County |

CORRECTED
INITIAL DECISION AND ORDER

Statement of the Case

An Appeal has been filed on behalf of the property owner with the State Board of Equalization. The appeal was timely filed on September 26, 2007. The subject property is presently valued as follows:

| LAND VALUE | IMPROVEMENT VALUE | TOTAL VALUE | ASSESSMENT |
|---|---|---|---|
| $33,300 | $143,000 | $176,300 | $70,520 |

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This hearing was conducted on March 3, 2008, at the Davidson County Property Assessor's Office. Present at the hearing were Samuel Bryant, the taxpayer, who represented himself, his sister, Teresa McCall; and Mr. Jason Poling, Residential Appraiser, Division of Assessments for the Metro. Property Assessor's Office.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a residential duplex located at 710 Cerro Vista Drive in Goodlettsville, Tennessee.

The issue before the administrative judge is one of classification of the property; is this residential or commercial property? The subject property was purchased in 2005 by the taxpayer as a home for his mother and sister. Mr. Bryant lives in Massachusetts. In May of 2007[1] he received an assessment change notice that the property would be classified as commercial and would have a new assessment ratio of 40% rather than the 25% it had previously been classified. Mr. Bryant states that had the county notified him prior to January 1, 2007, he would have made necessary changes to keep the property classified as residential[2] as it had been prior to his purchase.

Article II, § 28 of the Tennessee Constitution classifies real property into four categories: public utility, industrial and commercial, residential, and farm and states in relevant part:

(a) . . . . .

[1] For some unknown reason the difference/change was not picked up by the County for 2006.
[2] In July of 2007 Mr. Bryant Quit Claimed a portion of the subject property to his mother who resides in the home and will therefore necessitate another change notice back to residential.

(b) . . . .
(c) . . . . provided that residential property containing two (2) or more rental units is hereby defined as industrial and commercial property; and
(d) . . . .

The County's position is clear, pursuant to Tennessee Code Annotated (T.C.A.) § 67-5-501(4):

> . . . . All real property which is used, held for use, for dwelling purposes which contains two (2) or more rental units is hereby defined and shall classified as "industrial and commercial property".

The subject property, by statutory definition is without question a duplex, not a single family residence despite Mr. Bryant's argument that the county had an obligation to let him know prior to January 1st of the tax year in dispute. That is not the current status of the law.[3] Mr. Bryant also states that he was not aware of the law and that the county should have informed him. The traditional rule in American jurisprudence is that "ignorance of the law is no excuse".[4]

Since the taxpayer is appealing from the determination of the Davidson County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Control Board,* 620 S.W. 2d 515 (Tenn. App. 1981)

The administrative judge finds that based on the proof established at the hearing, the controlling statue and the testimony of the taxpayer, the subject property is a commercial duplex. The taxpayer has not sustained his burden in this cause.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2007:

| LAND VALUE | IMPROVEMENT VALUE | TOTAL VALUE | ASSESSMENT |
|---|---|---|---|
| $33,300 | $143,000 | $176,300 | $70,520 |

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code

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[3] See T.C.A. § 67-5-504(b).
[4] Bryan v. United States, 524 U.S. 184, 118 S.Ct.1939,1947 (1998) and Thomas Jefferson to Andrew Limozin, circa 1787.

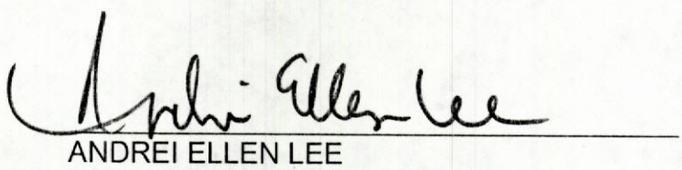
Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 9th day of April, 2008.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Samuel Bryant
Jo Ann North, Assessor of Property