



**STATE OF TENNESSEE
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Comptroller**

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**Stephanie S. Maxwell
General Counsel**

Memorandum

To: State Board of Equalization

From: Stephanie Maxwell, General Counsel, Comptroller of the Treasury

Date: December 6, 2016

Subject: **Response to comments regarding Proposed Amendments to rules at Chapter 0600-02 regarding Contested Case Procedures**

Background of the proposed amendments to the rules:

The proposed amendments to the rules arise out of a decision issued by the Assessment Appeals Commission on February 11, 2016 in the matter of *Anderson & Anderson LLC* (Tipton County, Tax Years 2013, 2014 and 2015) (<http://www.comptroller.tn.gov/repository/SB/aac-sb-2006/2016.02.11-Anderson&AndersonLLC.pdf>), in which the AAC allowed and gave weight to the testimony of a witness who was a registered agent employed by the law firm representing the taxpayer in that matter since there was no objection to it.

The decision is clearly in conflict with a long line of decisions and could serve to increase greatly the volume of appeals going forward by lowering the standards of what is required for an appeal (it will be much more cost-effective for a law firm to pursue an appeal if the client doesn't have to hire an appraiser). The decision also appears to be in conflict with several ethical rules applicable to attorneys licensed to practice in Tennessee.

Relevant case law prior to *Anderson*:

Many cases decided prior to the *Anderson* decision recognized the ethical problems for appraisers and practitioners of offering testimony where the result of the case will affect the witness' compensation. See, for example, decisions in the following cases:

- <http://www.comptroller.tn.gov/repository/SB/judgeminsky/2014.10.10-ZambelisAspasia.pdf>
- <http://www.comptroller.tn.gov/repository/SB/judgeminsky/2008.04.29-NashwoodParkLimitedPartnership.pdf>
- <http://www.comptroller.tn.gov/repository/SB/judgeminsky/2014.10.10-SYTrainingCenterInc&California.pdf>

Relevant ethical rules:

Ethical issues are also implicated by a law firm presenting expert testimony by its witness employees without the disclosure of that relationship. See Tenn. Sup. Ct. R. 8, RPC 3.7(a), 5.3, and 5.4(a) at <http://www.tsc.state.tn.us/rules/supreme-court/8>.

Summary of proposed amendments:

Because some language in the *Anderson* decision seemed to indicate that the AAC found it significant that the taxpayer relied on a Member of the Appraisal Institute (MAI) who prepared an appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP), whereas the assessor's representative was not an appraiser and his appraisal was not in accordance with USPAP, one portion of the proposed amendments attempts to clarify that assessing authorities and agents do not have to be licensed appraisers in order to testify concerning valuation in proceedings before the Board. Additionally, the proposed amendments to the rules clarify that valuation analyses prepared by assessing authorities and agents do not have to conform to USPAP. With respect to individuals appearing at hearings as real estate appraisers, the rules make clear that such witnesses must comply with all provisions of the State Licensing and Certified Real Estate Appraisers Law.

Also as a result of the *Anderson* decision (as discussed above), the proposed rules address the situation when an agent is an employee of a person representing a party to an appeal and the agent serves as a witness for the party. In such situations, the agent must disclose the employment relationship and the disclosure gives rise to a presumption of bias which may be rebutted by a preponderance of the evidence. Note that the proposed amendments do not in any way limit the ability of a registered agent both to appear as an advocate on behalf of a taxpayer and testify as a witness on behalf of a taxpayer. Under current Tennessee law, registered agents are in the unique situation of having the ability to be both advocates and witnesses. The proposed amendments do not alter that in any way. The only situation the proposed amendments address is that situation where an advocate for a taxpayer (attorney or non-attorney) offers its employee up as a witness. In that limited situation, the witness must disclose his employment by the advocate. If the witness is both the advocate and witness, such disclosure is not necessary.

Finally, the rules address the refunding of hearing fees and an additional processing fee of \$10.00 per parcel when an appeal is settled. This change is simply proposed to conform the rules to Public Chapter 938, which was signed into law on April 27, 2016.

This proposed amendment to the rule affects a registered agent witness only if he is employed by a law firm and testifying to value. The proposed amendment addresses a legitimate concern as to the reliability of such testimony. It does not presume bias for registered agents generally, only those who are testifying as the employee of a lawyer or other appeals representative. A registered agent who testifies as part of his own representation of a client would not be subject to the presumption. The purpose of the proposed amendments to the rules is to recognize the boundary between advocating for a party to an appeal, and offering impartial expert testimony on behalf of a party. Lawyer and non-lawyer agents are expected to advocate and may be compensated on a contingent basis. Witnesses engaged by those agents as expert appraisers may not receive a contingent fee or, if they do, must disclose it.

Response to written and verbal comments by Evans & Petree:

- *That Proposed Rule 0600-01-.07 is illegal because it is inconsistent with Tenn. Code Ann. § 67-5-1514 and/or the Uniform Administrative Procedures Act, and the UAPA already has rules regarding evidence:*
 - Tenn. Code Ann. § 67-5-1514(f)(2) provides that “[t]he board [of equalization] may adopt additional standards of conduct, if any, regarding all agents when appearing at any conference or hearing pursuant to this section.” The proposed amendments to the rules address the limited situation where the agent is an employee of the person actually representing the assessor or taxpayer. The rule doesn’t prohibit the testimony, but simply creates a presumption of bias when an agent testifies on behalf of a party represented by the agent’s employer.
 - It is appropriate for the SBOE to require registered agents to state whether they are employed by the law firm representing the taxpayer. The rebuttable presumption does add an evidentiary rule not found in the U.A.P.A. or the contested case rules, arguably, but the proposed amendments to the rules do not conflict with either. The rule does not *require* the administrative judge to reject the registered agent’s testimony. The judge still may find the agent to be credible. The rule just requires the judge to take into account the employment relationship between the agent and the law firm that is acting as advocate. (If the agent is the advocate, that will be clear, and it will not be necessary for the agent to make any further disclosure.)
 - In the U.A.P.A., the only substantive provision regarding the rules of evidence is found at Tenn. Code Ann. § 4-5-313, which does not address the same matters as this proposed rule.
- *That this proposed rule imposes limitations on witnesses:*
 - The proposed amendment does not limit or prohibit a party from having its representative call the representative’s employee/agent as a witness. It simply creates a presumption of bias when the witness is employed by the representative.
- *That, by statute, a registered agent is allowed to give testimony:*

- The agent is still allowed to give testimony. The proposed rule simply creates a presumption of bias in the limited instance where the registered agent is simply testifying as a witness and is employed by the law firm who is representing the taxpayer.
- *That it is properly up to the trier of fact to weigh credibility:*
 - Even under the proposed amendment, it is still up to the trier of fact to weigh credibility. The trier of fact ultimately determines whether the presumption has been rebutted.
- *That Proposed Rule 0600-01-.07 is illogical and discriminatory because it establishes “classes” of registered agents and treats them differently:*
 - Under the proposed rule, all registered agents are treated the same. The rule simply addresses the situation where an agent is the employee of the representative and gives testimony.
 - As far as the “equal protection” concern, we need only show a rational basis for treating these registered agents differently from registered agents who are not employed by law firms. The concern we have is that the advocate and the expert witness should not be employed by the same company, which has a financial interest in the outcome of the litigation and may be perceived as influencing the agent’s testimony.
 - A registered company would not be presenting the testimony of its own registered agent; in that situation, the agent would be the advocate.
- *That this proposed rule complicates the appeals process by, for example, requiring the witness to bring in tax returns to prove amounts and sources of his income:*
 - The proposed rule puts the onus on the agent to disclose the relationship, and it assumes the agent will be truthful in doing so. This shouldn’t be a problem – the law firm knows who its employees are.
 - Presumably, the ALJ or AAC would determine the necessary evidence to resolve the issue. That evidence could include tax returns which could be inspected *in camera* or subject to a protective order.
- *That, according to the Tennessee Supreme Court in Petition of Burson, 909 S.W.2d 768 (Tenn. 1995), the services performed by non-attorneys on behalf of either taxpayers or taxing authorities do not constitute the practice of law and B.P.R. Rules regarding testimony of attorneys or their employees do not apply.*
 - The proposed amendments to these rules do not conflict with the Supreme Court’s holding in *Petition of Burson* and do not attempt to classify any services performed by non-attorneys as the practice of law – they simply apply in a situation where a registered agent who is employed by a law firm representing a taxpayer is testifying as a witness (not serving as an advocate himself). The Rules of Professional Conduct do apply to the attorneys representing and advocating for the taxpayer by virtue of the fact that they hold a license to practice law. Attorneys are bound by

those rules whether they are appearing in a formal proceeding or a more informal property tax appeal hearing before an administrative judge and they must comply with RPC 5.3 and 5.4 in particular.

- *That, under Tenn. Code Ann. § 67-5-1514(a), registered agents and attorneys can provide information about property value.*
 - Registered agents and attorneys can still provide information about property value. Under the proposed amendments to the rules, both registered agents can testify as to property value. The proposed rule simply creates a presumption of bias if the agent testifying is an employee of the attorney representing the taxpayer.
- *That the proposed amendments are in direct contravention to Tenn. Code Ann. § 67-5-1514(a) and (b) which provide that, at any hearing, taxpayers may appear by qualified agent and shall be entitled to their assistance.*
 - Even under the proposed rule amendments, taxpayers may still be represented by qualified agent and assisted by them. In the unique situation where the taxpayer is represented by an attorney who puts on testimony of a registered agent (who is his employee) as a witness, there will simply be a presumption of bias in the testimony of the registered agent.
- *That the proposed amendments violate Tenn. Code Ann. § 67-5-1514(d) which provides that these hearings “shall be conducted in an informal manner”.*
 - Nothing in the proposed amendments to the rules changes the informality of these proceedings. The taxpayer will only be required to offer proof rebutting a presumption of bias in a limited situation where he is represented by an attorney who offers up the testimony of a registered agent (who is his employee).

Response to comments by Randy Button, on behalf of the Appraisal Institute and real estate appraisers:

- *That the word “evaluation” in Proposed Rule 0600-01-.07(6)(b) should be replaced by the word “valuation” instead? Button says “evaluation” is defined in appraisal law and has to do with financial institutions.*
 - The proposed amendments use the term “evaluation” because that is the term used in the code section referenced in the rules (T. C. A. § 67-5-1514(c)(5)).
- *That there is already an exclusion in appraisal law for registered agents testifying before the SBOE – and that law states that they don’t have to adhere to USPAP:*
 - The rule isn’t unnecessary just because some provisions of state law already address this. It’s important to clarify the standards that apply to registered agents and to assessor employees, and this rule addresses those standards.
 - T.C.A. § 62-39-104(c) basically means that the State Licensing and Certified Real Estate Appraisers Law [“Appraisers Law”] does not apply to agents handling appeals before boards of equalization and the like. The Appraisers Law doesn’t affirmatively exclude agents from

adhering to USPAP. The requirement doesn't apply to agents because they are not subject to the Appraisers Law.

- *Who will determine in rule 0600-01-.07(6)(a) whether half of the agent's income comes from a certain firm?*
 - The proposed rule puts the onus on the agent to disclose the relationship, and it assumes the agent will be truthful in doing so. This shouldn't be a problem – the law firm knows who its employees are. The trier of fact can then make the ultimate determination.
- *“Bias” is already defined in the uniform standards which are part of state law. What does that mean here?*
 - The definition of “bias” in USPAP on the Appraisal Foundation website isn't relevant to these proposed rules.
 - Black's Law Dictionary defines “presumed bias” as “[b]ias, as of a juror, that the law conclusively presumes because of kinship or some other incurably close relationship; prejudice that is inferred from the experiences or relationships of a judge, juror, witness, or other person.”

Response to written comments by Frank Buettner:

- *That the proposed rules suggest that registered agents are biased or bringing frivolous cases:*
 - The proposed rules make no mention of frivolous cases.
 - With regard to a suggestion of bias, it is appropriate for the SBOE to require registered agent witnesses to state whether they are employed by the law firm representing the taxpayer. The rule does not require the administrative judge to reject the registered agent's testimony. The judge still may find the agent to be credible. The rule just requires the judge to take into account the employment relationship between the agent and the law firm that is acting as advocate. (If the agent is the advocate, that will be clear, and it will not be necessary for the agent to make any further disclosure.)

RULE AMENDMENTS CHAPTER 0600-01 -CONTESTED CASE PROCEDURES

SUMMARY OF COMMENTS/STAFF RESPONSE

Summary of proposed amendments:

Existing contested case rules would be amended in three respects:

1. The proposed amendments clarify that neither taxpayer agents nor assessors are required to comply with appraisal practice standards (USPAP) in the course of presenting a valuation analysis in a property tax appeal. This is the effect of amendments to rule 0600-01-.05 along with new definitions added to Rule 0600-010-.01.
2. The amendment to Rule 0600-01-.17 conforms Board refund of appeal hearing fees to legislation enacted in 2016 (Public Chapter 938).
3. Most significantly, the amendments require the parties to an appeal to disclose when an appeal representative offers a witness who is employed by the representative. Under the amendment, the disclosure would give rise to a rebuttable presumption of bias which must be addressed in a specific finding of the judge or agency based on evidence that the witness does or does not have a financial stake in the outcome of the appeal.

Summary of submitted comments on the rule

The amendments drew comment almost exclusively on the third aspect (disclosure). These comments are summarized below with response:

COMMENT: “The amendment would favor assessors, who are no less biased but not subject to the presumption. The rule would create a tactical advantage to assessors.” (4 comments)

STAFF RESPONSE: The amendment applies whether the employer represents the assessor or taxpayer. Further, ‘bias’ as used in the rule is more properly considered ‘disqualifying interest’ in the sense of a personal proprietary or pecuniary interest in the outcome of the appeal proceeding. The ‘interest’ of the Assessor of Property in the appeal proceedings is at least nominally to achieve a result (fair assessment) that is consistent with the assessor’s legal responsibilities. There is no pecuniary interest.

The amendment reflects the reality that most appeal representatives, attorney or non-attorney, are compensated by a fee that is contingent on the outcome of the appeal. The Board is not seeking to regulate this practice, however applicable rules of evidence recognize that a witness may be biased in having a financial stake in the outcome of a proceeding (*Tennessee Law of Evidence* (6th Ed.) LexisNexis Mathew Bender, §6.16 [4][d]). The amendment proactively requires a

witness employed by those who appear before the Board as representative, to disclose the employment relationship so opposing parties and the tribunal may question whether the witness has a financial stake in the outcome of the appeal.

Disclosure gives rise to a rebuttable presumption the witness is biased as sharing the employer's financial stake in the outcome of the appeal. The presumption may be rebutted by evidence the witness is not in fact compensated by a fee contingent on appeal outcome. The evidence standard is customary (preponderance) and the rule requires the judge or agency to address the issue in a specific finding.

COMMENT: "The amendment would violate state law by disqualifying agents from testifying, by rendering the proceeding unduly formal, and by interfering with the agency responsibility to consider admissible evidence." (3 comments)

STAFF RESPONSE: None of the above are true. Agents would be unaffected in their role as appeal representative, nor would an agent be disqualified from testifying. The rule merely creates a means to address a common issue bearing on the weight and credibility of evidence affected by possible bias. The goal of informality in the conduct of property tax appeal hearings is not contradicted by application of the normal rules regulating the admissibility or weighing of evidence.

COMMENT: "Exempting registered agent firms discriminates among agents, or 'picks winners and losers'." (3 comments)

STAFF RESPONSE: The proposed amendment differentiates only on a permissible basis necessary to the integrity of the agency's fact-finding function, to wit, addressing the possibility of witness bias based on contingent compensation. The amendment recognizes that Board-registered agents are permitted by law to act both as representative and witness, and the amendment as filed therefore exempted agent firms registered per Tenn. Code Ann. §67-5-1514. As a practical matter, however, few agent firms have registered in the years since enactment of the agent law, and therefore staff is considering a revision that merely acknowledges that witnesses who are also appearing as a party's authorized agent in the same proceeding, would not be subject to the disclosure requirement.

COMMENT: "The test of 'employment' is analytically less rigorous than other laws regulating the employer-employee relationship".

STAFF RESPONSE: The tests are being applied in different contexts and there is no legal requirement they be analytically comparable.

COMMENT: "The test of 'employment' will unduly complicate and add to the cost of appeals.

STAFF RESPONSE: The basis of a witness' compensation is already the subject of reasonable inquiry and yet has thus far not unduly burdened the parties to these appeals.

Nancy Hunt

From: Nancy Hunt
Sent: Monday, October 03, 2016 4:28 PM
To: 'Justin.Wilson@cot.tn.gov'
Subject: Proposed Rule Change

Below you will find my comments regarding the proposed rule change targeting Tennessee Registered Agents who are employed by law firms. Please consider this information below and oppose this rule change.

The proposed Rules are Illegal, Illogical and Discriminatory

1. The proposed rules are Illegal

There exists no limitation on evidence presented under the laws pertaining to the State Board of Equalization and Representation by Registered Agents (TCA 67-5-1501 et seq)

The UAPA states "The agency shall admit and give probative effect to evidence admissible in a court, and when necessary to ascertain facts not reasonably susceptible to proof under the rules of court, evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs." TCA 4-5-313

A rule cannot be promulgated to limit evidence inconsistent with statutory authority for unlimited evidence.

2. The proposed rules are Illogical.

"Taxpayers and assessors of property are entitled to the assistance of a qualified agent at any conference or hearing held ... Furthermore, taxpayers and assessors of property may appear in person, by qualified agent, or, in the case of taxpayers, by a member of the taxpayer's immediate family (T.C.A. § 67-5-1501 and 1514(a),(b) and (e))

Contrary to statute the proposed rule establishes classes of registered agents-- and diminishes the testimony rights of certain classes of registered agents.

The rule arbitrarily and illogically establishes a "rebuttable presumption of bias" for registered agents who testify who are employees of a person representing a party. Illogically and illegally this presumption does not apply to self-employed registered agents and registered agents "of a corporation engaged in the business of evaluation of property which has registered with the Board".

This is an illogical illegal distinction among registered agents.

All witnesses take an oath of truth and to establish a presumption of bias by regulation, requiring rebuttal evidence of the arbitrary presumption, requiring a specific finding by the tribunal concerning the arbitrary presumption, are unconscionable interferences in the property tax appeal process and illogical after being sworn.

3. The proposed rules are discriminatory

As discussed above these rules apply to only one class of registered agents being Registered agents who testify who are employees of a person representing a party which is not "a corporation engaged in the business of evaluation of property which has registered with the Board".

This proposed rule discriminates among registered agents in regard to their ability to assist taxpayers at any conference or hearing as provided by law.

Summary

Limiting evidence, establishing a presumption of bias by regulation, requiring rebuttal evidence of the arbitrary presumption, requiring a specific finding by the tribunal concerning the arbitrary presumption, are unconscionable interferences in the property tax appeal process and impairs our ability to represent taxpayers and ensure they are provided a fair hearing in accordance with Tennessee law.

Nancy Hunt

Director of Operations
Property Tax Group
Tennessee Registered Agent

Evans | Petree PC

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GIBBS TAX CONSULTING, INC.

NATIONAL PROPERTY TAX APPEALS & CONSULTING

October 24, 2016

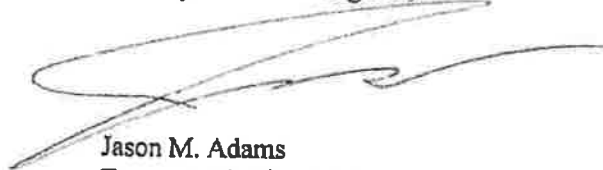
Mr. Justin P. Wilson
Comptroller of the Treasury
State Capitol
Nashville, TN 37243-9034
Justin.Wilson@cot.tn.gov

Dear Mr. Wilson:

I would like to sincerely thank you for taking the time to read my comments on the proposed changes to the State Board of Equalization contested case procedure. The current environment that allows Registered Agents to present cases to the State Board of Equalization without the presumption of bias is a pro-taxpayer and pro-business environment. Tennessee has a record of accomplishment for being pro-business and attracting significant business investment to the state, but this proposed change is a step in the wrong direction.

As a Registered Agent, I think that the current system works and provides a fair system for taxpayers and the local governments to operate. The presumption of bias on part of the taxpayer's representative would unfairly tip the balance in favor of the Assessor. The Administrative Judge, Board, or Commission is best equipped to be the finder of fact, and this presumption of bias would unfairly disadvantage the taxpayer.

Thank you and best regards,



Jason M. Adams
Tennessee Registered Agent

October 24, 2016 (electronic)

Honorable Justin P. Wilson and Mr. Kelsie Jones,

Please accept this as our opposition to the proposed rules for Contested Cases-Registered Agents, specifically the proposed addition of paragraphs (5) and (6) to Rule 0600-01-.07, which states that an agent will automatically be considered to be biased before any testimony or evidence is even presented to the Administrative Law Judge assigned to hear any property tax appeal case. This rule could have severe ramifications towards the taxpayers of the State of Tennessee and imposes even more regulations for the taxpayer in their attempt to achieve a fair and equitable taxation for their property. We would also suggest that should an agent be biased, then the County Assessor would be equally biased as they are defending the valuation imposed by their assessing jurisdiction. The Administrative Law Judges that serve to hear cases for the State Board of Equalization are very capable of determining these matters for themselves during the hearing and no rule is necessary for a Judge to make such a determination if it is so needed. Thank you for your consideration in this matter. If you have any questions or further discussions, please do not hesitate to contact us.

L. Stephen Nelson, Registered Agent 0053
Deborah K. Smith, Registered Agent 00272

Debbie Smith
Criterion Property Resources, Inc.
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The Honorable Justin P Wilson
Tennessee Comptroller

Your office has proposed the attached Rules. From reading your biographical material you practiced law for 26 years and received the honor of being nominated for a judicial seat on the United States Sixth Circuit Court of Appeals. With that extensive legal background and experience we find it difficult to comprehend that you are proposing these rules which usurp the duty and obligation of the administrative judge, Assessment Appeals Commission and the State Board to determine the truthfulness and accuracy of the testimony of a witness.

Without hearing the testimony presented, without knowing the witness's education, training or experience, without knowing if the testimony offered is plausible and likely to be true, your proposed rule (if the registered agent is "an employee of a person representing a party") would "give rise to a rebuttable presumption of bias." This is a total perversion and distortion of our judicial process which relies on a judge, the Commission, or the State Board to determine quality, truthfulness and accuracy of the testimony of a witness. Credibility and bias should not be determined by government regulation and to do so would be a denial of due process of law.

This rule is in direct contravention of TCA 67-5-1514 (a) and (b) which provides at any hearing taxpayers may appear by qualified agent and shall be entitled to their assistance. As an attorney, you are aware that a regulation cannot restrict what a statute provides. Your proposed rule emasculates the Registered Agent Laws by providing "This rule shall apply to any individual who holds a valid registration issued by the State board of Equalization...who participates, assists or acts on behalf of a party before the Board, Commission, or administrative judge". The rule further extends to all registered agents stating "this rule shall apply whether the agent appears individually, in conjunction with counsel, or in conjunction with another agent."

Your regulation further violates the provisions of TCA 67-5-1514(d) which states a "hearing shall be conducted in an informal manner". Your regulation requires the taxpayer to offer rebuttal evidence by a preponderance of the evidence to rebut the arbitrary and capricious presumption of bias. Your rule further requires a specific finding by the Board, Commission, or administrative judge concerning the arbitrary presumption. This is a significant departure from the legislative mandate prescribing the informal conduct of hearings and misdirects the hearing from the issue of the market value of the taxpayer's property.

These are unconscionable interferences in the property tax appeal process, the role of registered agents to represent and assist taxpayers and deprives the judge, commission or State Board of their duty to determine the quality, truthfulness and accuracy of the testimony of a witness. This rule also ignores the bias of the Assessor who is defending their valuation and appears to be an attempt to give the assessor an advantage in the hearing by declaring the taxpayer witness biased by regulation.

This is an example of a burdensome, unnecessary, arbitrary and capricious, unlawful government regulation which attempts to influence the Judge, Commission or State Board by declaring by regulation - bias of the taxpayer's witness.

A witness's credibility is always a legitimate subject of cross examination. The trier of fact - the judge, Commission or State Board - must assess the credibility of the witnesses and determine the weight of the evidence. It is unbelievable that your proposed rule seeks to make that determination of bias not based on reason or evidence.

As a Constitutional Officer of Tennessee, outstanding lawyer and Republican leader we are perplexed that you would propose such a rule.

I hope you will review your staff's proposal for this rule reminds us of Brandeis warning:

"Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. ... The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning but without understanding." Louis Brandeis
Feel free to call me on my mobile phone to discuss this matter at 901-493-4820.

I appreciate your reconsideration of this onerous arbitrary rule and let me thank you for your service to our state and it's citizens.

David Scruggs
Attorney at Law

Nancy Hunt

From: David Scruggs
Sent: Monday, October 31, 2016 12:48 PM
To: Nancy Hunt; Andy Raines
Subject: Fwd: Proposed rules for Contested Cases-Registered Agents
Attachments: image001.jpg; image002.png; image003.png
Categories: Red Category

Fyi

Begin forwarded message:

From: Mark Bedford <mark.bedford@altusgroup.com>
Date: October 31, 2016 at 11:20:01 AM CDT
To: "Kelsie Jones@col.tn.gov" <Kelsie.Jones@col.tn.gov>, "Justin.Wilson@col.tn.gov." <Justin.Wilson@col.tn.gov>
Cc: David Scruggs <dscruggs@evanspetree.com>, Nancy Hunt <nhunt@evanspetree.com>, "BUETT500@AOL.COM" <BUETT500@AOL.COM>, "Marshall Albritton" <malbritton@picslaw.com>, Will Clark <will.clark@altusgroup.com>, Ralph Mainland <ralph.mainland@altusgroup.com>, Coleburn Michelle <Michelle.Coleburn@hcahealthcare.com>, "Nicholas.Ruiz@hcahealthcare.com" <Nicholas.Ruiz@hcahealthcare.com>
Subject: RE: Proposed rules for Contested Cases-Registered Agents

Dear Sirs,

I seems an agent is legally no different than the property owner, who gives the agent authorization to represent them at the hearing. The agent, employee, wife, neighbor or whoever is given authorization by the owner should have their evidence/testimony weighed in the same light as the Assessor's. Both parties in the case have a financial stake in it outcome, regardless of how direct or indirect it may be. So both parties have a bias and that is why we have a hearings, so an "unbiased person" can determine who puts forth the best case in support of their position.

Neither side should be presumed to be a liar before they even open their mouth!

Mark Bedford, CMI

Vice President, Real Property Tax, State & Local Tax and Advisory, Altus Group US Inc.
D: 817.251.3265 T: 817.251.6666 ext 3107 M: 817.991.7578 F: 817.251.4833
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David Scruggs
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From: David Scruggs [<mailto:dscruggs@evanspetree.com>]
Sent: Monday, October 31, 2016 10:06 AM
To: Nancy Hunt; BUETT500@AOL.COM
Cc: Jason@theqibbsfirm.com; stephen.arredondo@ryan.com; GREG.BARNES@COMCAST.NET; DCBARNHILL@GMAIL.COM; TBARRON@BARRONTAX.COM; Mbeauchamp@keatax.com; Mark Bedford; KEVIN.BEGNAUD@RYAN.COM; ILEYBEHR@COMCAST.NET; BBENEDICT@FSSRATL.COM; cbenton@valbridge.com; TBERRY@EASLEYMCCALEB.COM; BBISHOP@AEGISTAX.COM; MBLOINK@RBMELLANDER.COM; STEVEBOOTS@COMCAST.COM; ROBYN.BOWEN@RYAN.COM; CHRIS.BOYER@RYAN.COM; WILL.BROWN@COMPLEXPTS.COM; ben.buckles@crowehorwath.com; LARRY@PROPERTYASSESSMENT.COM; rrbenterprise@bellsouth.net; RANBUTTON@AOL.COM; LCAT325@BELLSOUTH.NET; lbbycatignani@yahoo.com; chamness@comcast.net; cchester@aegistax.com; Will Clark; JERRY@MID-SOUTHREALTY.COM; bdearien@badentax.com; b.depotter@first-pointe.com; BRIGIT.DUBOIS@GMAIL.COM; CD@DUGGAN.CC; CHRIS.ELION@GMAIL.COM; RJFLETCH@BELLSOUTH.NET; JEGARZA@INDVAL.COM; RYAN@THEGIBBSFIRM.COM; henry@glascockco.com; DAD2KKP@COMCAST.NET; Bill@Grahamsts.com; GRAVELYPT@HOTMAIL.COM; MGUENTHER@PROPERTYVALUATIONSERVICES.NET; SUZANNEHARDEMAN@YAHOO.COM; kevin.higgins@ryan.com; KHILEMAN@PROPERTYVALUATIONSERVICES.NET; Richard Hunt; ringle@alliantcommercial.com; ljanata@janatalaw.com; SJOHNSON@ICPGTAX.COM; KAHNASSOC@AOL.COM; skatz@ptag.com; GKIMBRO@EARTHLINK.NET; JEFF.KING@RYAN.COM; Dknox@easleymccaleb.com; SKOPITAS@FBTAX.COM; Ikosowsky@cmi-tax.com; HEATHER.HORACEK@RYAN.COM; RLITTLE@NATIONALREALTY.COM; Ralph Mainland; JOSHUA@JMTAXADVOCATES.COM; BMALLORY@COMCAST.NET; BMASENTHIN@PROPERTYTAXCOUNSELORS.COM; TRAVIS@PROPTAXSERV.COM; RMCRAE@AEGISTAX.COM; JMERCER@DMAINC.COM; joseph.minott@duffandphelps.com; SHANE.MONCRIEF@RYAN.COM; CMOORE@PARADIGMTAX.COM; pmusgrave@proptaxhelp.com; STEVENELSON@CRITERIONLINE.COM; RUSSELL@PARRISHAPPRAISALS.COM; MARK@REVENUESOURCEGROUP.COM; DAVIDP@DMAINC.COM; ORLANDO@FBTAX.COM; BOB.PERNAT@FBTAX.COM; CPHARR@ENNESTAX.COM; PPRICE@DMAINC.COM; TIFFANY.ROBERTS78@YAHOO.COM; Naren Ravinootala; CSAAM@PROPERTYVALUATIONSERVICES.NET; Jerry Sanders; TAMSCK@AOL.COM; ED.SCHREIBER@WHIHOTELS.COM; CSCHROEDER@NATIONALBUREAU.COM; BSSELLERS@EASLEYMCCALEB.COM; jshamma@bdo.com; DANIEL@PTAX.BIZ; LEE@PROPERTYTAXSERVICE.COM; debbiesmith@criterionline.com; rjspence@bellsouth.net; TAXAPPEALEXPERT@GMAIL.COM; ROBERTWAITES@YAHOO.COM; LEEWHARTON@MFPOER.COM; DAN@GRAHAMSTS.COM; MAW@AVTI.COM; GLENN.WILLIAMS@SILVEROAKADVISORS.COM; MWW@AVTI.COM; EZUMAR@CTMI.COM; Andy Raines
Subject: Re: Proposed rules for Contested Cases-Registered Agents

Nancy Hunt

From: David Scruggs
Sent: Monday, October 31, 2016 10:53 AM
To: Andy Raines; Nancy Hunt
Subject: Fwd:

Categories: Red Category

FYI

Begin forwarded message:

From: Lee Simmons <Lee@propertytaxservice.com>
Date: October 31, 2016 at 10:49:47 AM CDT
To: "Kelsie.Jones@cot.tn.gov" <Kelsie.Jones@cot.tn.gov>, "Justin.Wilson@cot.tn.gov" <Justin.Wilson@cot.tn.gov>
Cc: "dscruggs@evanspetree.com" <dscruggs@evanspetree.com>, Jackle Dean <Jackie@propertytaxservice.com>

Dear Ms. Jones and Mr. Wilson,

I would like to voice my opposition to the proposed rule that would presume bias in the testimony of a Registered Agent before the Tennessee State Board of Equalization and require a rebuttal of that presumed bias be presented during hearings. Not only does presuming bias push these hearings to a much more formal setting; which is in direct conflict with current TN law requiring the hearings be informal; but it detracts from the focus of the hearing - determining Fair Market Value. This rule would irrevocably disrupt Registered Agents ability to represent taxpayers and threatens our very livelihood while calling our integrity into question.

P/T/S

Lee M. Simmons, Property Tax Service Co.

P.O. Box 543185 Dallas, Tx. 75354

12005 Ford Rd., Suite 540, Dallas, TX. 75234 Voice 214-358-1234, Fax

214-358-1043

www.propertytaxservice.com

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David Scruggs
Attorney at Law

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Phone: 901.525.6781 | Direct: 901.521.4578
Fax: 901.526.0336 | Direct Fax: 901.374.7502
Email: dscruggs@evanspetree.com
evanspetree.com

Nancy Hunt

From: David Scruggs
Sent: Monday, October 31, 2016 10:44 AM
To: Andy Raines; Nancy Hunt
Subject: Fwd: Proposed rules for Contested Cases-Registered Agents

Categories: Red Category

FYI

Begin forwarded message:

From: "C. Duggan" <cd@duggan.cc>
Date: October 31, 2016 at 10:39:49 AM CDT
To: "Justin Wilson@cot.tn.gov" <Justin.Wilson@cot.tn.gov>
Cc: "Kelsie Jones@cot.tn.gov" <Kelsie.Jones@cot.tn.gov>
Subject: Proposed rules for Contested Cases-Registered Agents

The Honorable Justin P Wilson
Tennessee Comptroller

Recently, attorney David Scruggs of the Evans Petree Law firm wrote a very detailed and informative letter to you objecting to your proposed rules for contested property tax appeal cases. I wholeheartedly concur with each and every point made in his letter (transcript below).

Additionally, it has been my (extensive) experience before Tennessee county boards of equalization that assessment officers rarely have good foundation for property values which are being contested. As agents, we routinely bring extensive evidence of income, cost and/or and market value to rebut what is typically an obsolete and irrelevant approach offered by the county assessor. A presumption of bias on the part of the registered agent simply creates another artificial hurdle for the Taxpayer. Good assessors in Tennessee encourage additional information, to which they might otherwise have no access. To arbitrarily taint this process through rules such as those in your proposal would be very unfortunate and counterproductive to the process of determining fair market value.

Too often of late, assessors seem to be angling to "win" protests, rather than working together to determine fair market value of property. I hope you will reconsider your position and rescind your proposal.

Sincerely,

Charley Duggan
Duggan Property Services
Registered Agent 0187

[David Scruggs letter of October 3, 2016:](#)

The Honorable Justin P Wilson

Tennessee Comptroller

Your office has proposed the attached Rules. From reading your biographical material you practiced law for 26 years and received the honor of being nominated for a judicial seat on the United States Sixth Circuit Court of Appeals. With that extensive legal background and experience we find it difficult to comprehend that you are proposing these rules which usurp the duty and obligation of the administrative judge, Assessment Appeals Commission and the State Board to determine the truthfulness and accuracy of the testimony of a witness.

Without hearing the testimony presented, without knowing the witness's education, training or experience, without knowing if the testimony offered is plausible and likely to be true, your proposed rule (if the registered agent is "an employee of a person representing a party") would "give rise to a rebuttable presumption of bias." This is a total perversion and distortion of our judicial process which relies on a judge, the Commission, or the State Board to determine quality, truthfulness and accuracy of the testimony of a witness. Credibility and bias should not be determined by government regulation and to do so would be a denial of due process of law.

This rule is in direct contravention of TCA 67-5-1514 (a) and (b) which provides at any hearing taxpayers may appear by qualified agent and shall be entitled to their assistance. As an attorney, you are aware that a regulation cannot restrict what a statute provides. Your proposed rule emasculates the Registered Agent Laws by providing "This rule shall apply to any individual who holds a valid registration issued by the State board of Equalization...who participates, assists or acts on behalf of a party before the Board, Commission, or administrative judge". The rule further extends to all registered agents stating "this rule shall apply whether the agent appears individually, in conjunction with counsel, or in conjunction with another agent."

Your regulation further violates the provisions of TCA 67-5-1514(d) which states a "hearing shall be conducted in an informal manner". Your regulation requires the taxpayer to offer rebuttal evidence by a preponderance of the evidence to rebut the arbitrary and capricious presumption of bias. Your rule further requires a specific finding by the Board, Commission, or administrative judge concerning the arbitrary presumption. This is a significant departure from the legislative mandate prescribing the informal conduct of hearings and misdirects the hearing from the issue of the market value of the taxpayer's property.

These are unconscionable interferences in the property tax appeal process, the role of registered agents to represent and assist taxpayers and deprives the judge, commission or State Board of their duty to determine the quality, truthfulness and accuracy of the testimony of a witness. This rule also ignores the bias of the Assessor who is defending their valuation and appears to be an attempt to give the assessor an advantage in the hearing by declaring the taxpayer witness biased by regulation.

This is an example of a burdensome, unnecessary, arbitrary and capricious, unlawful government regulation which attempts to influence the Judge, Commission or State Board by declaring by regulation -bias of the taxpayer's witness.

A witness's credibility is always a legitimate subject of cross examination. The trier of fact - the judge, Commission or State Board - must assess the credibility of the witnesses and determine the weight of the evidence. It is unbelievable that your proposed rule seeks to make that determination of bias not based on reason or evidence.

As a Constitutional Officer of Tennessee, outstanding lawyer and Republican leader we are perplexed that you would propose such a rule.

I hope you will review your staff's proposal for this rule reminds us of Brandeis warning:
"Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. ...The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning but without understanding." Louls Brandeis
Feel free to call me on my mobile phone to discuss this matter at 901-493-4820.

I appreciate your reconsideration of this onerous arbitrary rule and let me thank you for your service to our state and it's citizens

Duggan Property Services, Inc.
3731 5th Av S.
P.O. Box 530292
Birmingham, AL 35253-0292

205-933-5000

The message and information transmitted herewith is privileged and confidential, and is intended only for the person or entity to which it is addressed. Any transmission or dissemination of this information to persons or entities other than the intended recipient is prohibited.

David Scruggs
Attorney at Law

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Phone: 901.525.6781 | Direct: 901.521.4578
Fax: 901.528.0336 | Direct Fax: 901.374.7502
Email: dscruggs@evanspetree.com
evanspetree.com

Nancy Hunt

From: David Scruggs
Sent: Tuesday, November 01, 2016 4:03 PM
To: Nancy Hunt; Andy Raines
Subject: Fwd: Proposed Rules For Contested Cases - Registered Agents
Attachments: image001.jpg; image002.png; image003.png
Categories: Red Category

Fyi

Begin forwarded message:

From: Ralph Mainland <ralph.mainland@altusgroup.com>
Date: November 1, 2016 at 3:54:45 PM CDT
To: "Kelsie Jones@cot.tn.gov" <Kelsie.Jones@cot.tn.gov>, "Justin.Wilson@cot.tn.gov" <Justin.Wilson@cot.tn.gov>
Cc: Mark Bedford <mark.bedford@altusgroup.com>, "dscruggs@evanspetree.com" <dscruggs@evanspetree.com>
Subject: Proposed Rules For Contested Cases - Registered Agents

Mr. Jones and Mr. Wilson,

I would respectfully object to the proposed rule changes that effect the representation of property owners by Registered Agents. As Mr. Scruggs has pointed out, the proposed rule contradicts numerous statutes related to the Registration of Agents in the state of Tennessee and their ability to effectively represent tax payers.

The BOE has an application and review process for all registered agents. Therefore, the knowledge and expertise of each registered agent has been reviewed, vetted and approved by the BOE prior to an agent appearing before the BOE or an Administrative Law Judge. Based on the reviews by the BOE, the agent's knowledge and ability to represent taxpayers should not come into question by the same Board that approved their qualifications.

The *presumption of bias* is insulting to say the least. The landowner's case, whether they represented by an agent, represented by an employee or represent themselves should have their evidence and testimony weighed equally to the information presented by the Assessor's office. The Assessor's representatives have as much interest in the outcome of the cases as the landowner and are probably more biased than the agent representing the landowner. As the system stands now, the landowner presents their case and the assessor presents theirs. The Administrative Law Judge is the independent arbiter of the evidence at the first stage of the BOE process for decades and they have been able to sift through all of the evidence, cut through any bias in testimony and come to an independent judgment. This system has worked for years and there is no reason to change it now.

Assigning a preconceived bias to the taxpayer's representative is not fair to the taxpayers. Agents are no more biased than an assessor's representative. There is already more than enough bias assigned to the agent at the County BOE level. The State BOE is our first hope for a fair and honest judgment of our case. This proposed rule change only goes to extend the bias that we face at the county level and makes the appeal option for a landowner out of reach on many cases. Agents are the most cost effective options for taxpayers and are, in many cases, far more qualified than the Assessor representatives.

Please keep the playing field even.

For the record, I have been a registered agent since 1996. In that time, I have had to present evidence to an Administrative Law Judge maybe a ½ dozen times. The vast majority of my cases have settled before any hearings were held with a few at the courthouse steps. While I do not make a habit of testifying to value before the AJ, I think this is a very important taxpayer right to be able to have their representative appear before the BOE and present testimony without any undue disadvantage.

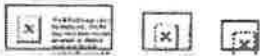
Thanks you for your time and consideration.

Ralph D. Mainland

Senior Manager, State & Local Tax and Advisory, Altus Group US Inc.

D: 615.986.1775 T: 615.742.8056 ext 3175 M: 615.804.0639 F: 615.742.3276

310 25th Avenue N, Suite 305, Nashville, Tennessee, 37203 USA



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evanspetree.com

Nancy Hunt

From: David Scruggs
Sent: Tuesday, November 01, 2016 8:12 AM
To: Andy Raines; Nancy Hunt
Subject: Fwd: Proposed Amendment to Rule 0600-01-.01 (Agent Testimony giving rise to Rebuttable Presumption of Bias)

Categories: Red Category

FYI

Begin forwarded message:

From: "Price, Patrick" <pprice@dmainc.com>
Date: October 31, 2016 at 11:57:34 PM CDT
To: "dscruggs@evanspetree.com" <dscruggs@evanspetree.com>
Subject: FW: Proposed Amendment to Rule 0600-01-.01 (Agent Testimony giving rise to Rebuttable Presumption of Bias)

Just FYI -

David Scruggs
Attorney at Law

Evans | Petree PC
1000 Ridgeway Loop Road, Suite 200
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Phone: 901.525.6781 | Direct: 901.521.4578
Fax: 901.526.0336 | Direct Fax: 901.374.7502
Email: dscruggs@evanspetree.com
evanspetree.com

From: "Patrick Price, CCIM" <pprice@dmainc.com>
Date: Tuesday, November 1, 2016 at 12:56 AM
To: "Justin.Wilson@cot.tn.gov" <Justin.Wilson@cot.tn.gov>
Cc: "Kelsie.Jones@cot.tn.gov" <Kelsie.Jones@cot.tn.gov>
Subject: Proposed Amendment to Rule 0600-01-.01 (Agent Testimony giving rise to Rebuttable Presumption of Bias)

Your Honor,

Thank you in advance for your consideration of this individual concern regarding the above-referenced proposed rule amendment. As a preface to my thoughts on this topic, let me "introduce" myself briefly. I began my career as an employee in an Assessor's Office, then became an independent certified real estate appraiser (working for an MAI) where I provided professional appraisals for financing &

litigation purposes for approximately 9 years.. Now, for the last 16 years, I have represented taxpayers across the country in the review, management & appeals of their tax assessments. All this is to say that I have been involved in ad valorem taxation, valuation and appeals in hundreds (literally) of jurisdictions for more than 25 years – which, perhaps, gives me more or broader insight into this process than many practitioners. With that, may I respectfully convey my concerns with the proposed amendment. I am writing today because I believe the result of the proposed changes may serve to diminish **Taxpayer Rights** and may preclude them from optimal representation in assessment disputes or property tax appeal hearings. Tennessee already imposes more stringent rules governing this process than many other states in the region – thus, great caution should be exercised in “further restrictions” or punitive rules. Let me summarize as succinctly as possible:

Property taxes are levied against the owners of real property, and are often one of the largest annual operating expenses incurred – and payment is mandatory, with the potential of liens being placed against such property for non-payment. Because this is a government collection, mandated of property owners, their right to challenge unreasonable valuations should be closely guarded; and they should be allowed to challenge the extremely subjective valuations in **the most lenient, informal and inexpensive manner** possible. Those who believe their assessments are excessive are indeed allowed the right to appeal to an “independent” panel (the Board of Equalization). Unfortunately, however, these local county boards can be found to be less independent or impartial than intended. First, there is the challenge of finding members who are realistically armed with the sophisticated knowledge of valuation necessary; secondly, there is the familiarity and trust that is established between the Board and the Assessor (whether intentional or not) versus the credibility afforded a taxpayer whom they may see only once. Finally, and again even without intent, you may find local members who inadvertently consider the implications of “revenues” instead of proper valuation. *Even if none of this proves to be true, certainly the perception can be jaded at the local level.* With good cause and to commendable effect, Tennessee affords taxpayers a means of elevating the appeal beyond the local level, to the State (initially before an ALJ). This is a system which I have publicly championed often in comparison to other states. But I fear the direction is to make this less amenable to taxpayers. And indeed, taxpayers may already feel the deck is somewhat stacked against them. To wit; they aren’t as familiar with property values, they don’t know the internal workings of an assessor’s office (the mass-model techniques or methodologies used), they aren’t familiar with regulations governing the assessment itself or the hearing process, and again, they may feel that the level of familiarity between the BOE members (or state participants in the process) and the Assessor inherently creates an immediate (though unintentional) bias towards their position. And of course, the assessor automatically has the presumption of correctness in the current system.

For almost as long as the property-tax has existed, so have consultants who specialize in this unique profession. On a more formal note, The Institute for Professionals in Taxation (IPT) was initially formed in 1976 as the Institute for Property Taxation, and has 4,400 members. These are individuals who specialize in property tax consulting – some internally for their companies, and many as external consultants (like the Big-4 accounting firms or many other national companies). While taxpayers can certainly be represented in property tax appeals by attorneys (some are), the attorney may or may not be familiar with property valuation or the specifics of tax assessments. Typically, the attorney would then employ the use of an appraiser as an expert witness. As you might imagine this is a very costly endeavor and prohibitive to many taxpayers. Or the amount of the dispute may be less than these expenses, which could be thousands of dollars for commercial property. Other taxpayers may engage an appraiser directly to assist them in the appeal process – again, a significant expense upfront, without knowing if your appeal will even be successful. Not only this, but not all appraisers – even very good ones – are knowledgeable about the unique nuances of ad valorem taxation. And the appraiser, acting as an independent appraiser and expert witness, cannot act as “an advocate” for the taxpayer – guarding their interest or making certain arguments (equity in taxation is often just as important as market value). And why should a taxpayer have to incur such huge expenses just to “attempt” to

correct a perceived error? Over many decades, tax consultants have overwhelmingly filled this role for taxpayers across the country. **It is a very specific and skilled profession** of individuals familiar with multiple concepts – property valuation methodologies, assessment techniques & procedures, state-specific regulations and requirements, and representation of taxpayers.

I find it very misguided that being represented by an “advocate” would in any way be discouraged. And why is that somehow a dirty word? To the contrary, the rulemaking authorities should be motivated to ensure that taxpayers have all the advocacy to which they are entitled in the most economical manner – they are the definitive underdog in this process, and deserve to be assisted by those most well-suited to the task (again, a small pool of practitioners with experience in valuation, assessment methodologies, etc). They have the burden from the onset, and they are contesting the valuation of someone much more accustomed to not only the assessment world, but the appeal process/system. The only alternative should “not” be that you must invest thousands of dollars to engage attorneys and appraisers, simply to protest an assessment found to be excessive. The only reasoning that could be given is for one to (falsely) assume that such advocates file an overwhelming amount of frivolous appeals. This is a patently erroneous presumption – to the contrary, most representatives (tax agents) work on a contingency basis. Again, “contingency” is somehow maligned by assessors...when, in fact, it promotes control in the system and affordable checks & balances to the taxpayers. The “reality” is that those handling appeals on a contingency basis are inherently motivated to only protest those assessments found to be in error. Why would one spend their time & resources on appeals that lack validity...only to have wasted their time on protests without merit? That doesn’t even make sense, when one objectively considers it from an unbiased perspective. Rather, such agents are inclined to never waste time or file frivolous appeals, and instead focus their investment of expertise on cases deserving of adjustment. I should state here that I realize there have been imprudent tax agents out there that violated this basic logic – but I believe you would find that those are the exceptions. Indeed, if a study was performed, I am highly confident that you would find the greatest percentage of appeals “without merit” are filed by those not being represented by professional agents. Thus, it would seem representation should be encouraged – both for the benefit of the taxpayer and that of the appeals system.

What I have found after witnessing various iterations of law changes related to property tax appeals is this – most such attempts are promoted by assessors or other government entities. But what I would really ask is this – **why would a tax assessor (or any governing authority) want to prohibit taxpayers from being represented by those deemed the most well-suited for the task, in the most efficient and economical fashion?** Or why would they want to preclude them from having anyone at all there, regardless of their profession, licensing or role for that matter (although I’m not suggesting eliminating registration)? Perhaps it is incorrect, but the answer often arrived at by taxpayers is that many assessors are eager to impede the taxpayer in this process; and particularly those means or methods in which appeals are most successful. **Too often we find taxpayer rights are being attacked, rather than protected (much less being enhanced).** And without serious caution, this often leads down a slippery slope to the point where only those who can afford to invest thousands of dollars in attorney & appraisal fees can even contemplate appeals of their assessments. This should be resisted at all costs.

To this end, I think that Tennessee would be prudent – and would be doing your citizens a great service – by specifically and explicitly allowing taxpayers to be represented by anyone of their choice in both local & state administrative hearings, without any arbitrary or punitive treatment being prematurely imposed. Clearly, this rule amendment seems to have the intent of making the process more difficult on appellants. There should be no immediate presumption made based on the relationship – rather, the “independent” board of Judge should hear both sides of the case, **award merit & weight based on the quality and credibility of the evidence presented**, and then render a decision. If there is sincere interest in affording taxpayers a right to protest their assessment, one might reasonably wonder why that is not the primary goal to be pursued in the rulemaking process?

Patrick G. Price, CCIM | Director, Property Tax

DMA – DuCharme, McMillen & Associates, Inc. | 3200 Windy Hill Road, Suite 300 West, Atlanta, GA 30339

Phone: 800-309-2110 ext. 1221 | Cell: 256-714-4444

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Nancy Hunt

From: Pat Musgrave <pmusgrave@proptaxhelp.com>
Sent: Wednesday, November 02, 2016 10:59 AM
To: Justin.Wilson@cot.tn.gov; Kelsie Jones
Cc: David Scruggs; Nancy Hunt
Subject: Rule 0600-01.07 Comments

Categories: Red Category

Mr. Wilson and Mr. Jones,

I hope it is not too late to comment on this proposed rule to create a presumption of bias for registered agents as witnesses, based on their employment status.

The sole Intent appears to be to restrict a taxpayer's ability to present his case by placing an unnecessary burden – a presumption of bias – on an agent testifying as a witness. The test for bias under the rule is employment status. If that is true, then any Assessor's employee or employee of the state testifying in a contested case should also have an assumed bias.

These hearings are stated to be informal in nature, but have slowly been becoming more and more formal. This rule is just an unnecessary addition. The judge or board or opposing party can inquire as to the employment status of the agent already, as they wish. I believe the judges and boards to be competent to make decisions based on the testimony and credibility of witnesses without a bureaucratic rule to guide them.

Keep things simple and let the presiding judge or board rule based on the best evidence presented. Broaden the allowable proof rather than restrict it. Prejudging any aspect of the hearing by rule adds complexity and is simply not necessary.

I hope you pull this rule from consideration or it is defeated in due course.

Thanks.

Pat Musgrave
Tennessee Registered Agent No. 0127
Texas Senior Property Tax Consultant
pmusgrave@proptaxhelp.com
www.PropTaxHelp.com
Mobile 901.489.2460

611 Commerce Street, Suite 2920, Nashville, TN 37203
44 North Second Street, Suite 1200, Memphis, TN 38103
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PARKER | LAWRENCE

November 9, 2016

VIA ELECTRONIC MAIL

Mr. Kelsie Jones, Executive Secretary
Tennessee State Board of Equalization
W.R. Snodgrass TN Tower, 9th Floor
312 Rosa L. Parks Avenue
Nashville, TN 37243-1102

Re: Proposed Amendment to Rule 0600-01 Contested Case Procedures
Presumption of Bias of Agents Representing Taxpayers

Dear Secretary Jones:

We are writing to provide comment in opposition to the proposed amendments to State Board of Equalization Rule 0600-01 Contested Case Procedures.

We object to this proposed rule which mandates a presumption of bias on the part of certain agents employed to represent and testifying on behalf of taxpayers before the State Board of Equalization.

General Objection

In general, we object to the proposed rule because it is contrary to the statutory design for tax appeals in Tennessee. It destroys the taxpayer's chance to appeal on an equal playing field that the statutory provisions provide.

Proposed Rule

Proposed Rule 0600-01.07 (5), in pertinent part, reads:

If an agent is an employee of a person representing a party to an appeal and the agent serves as a witness for the party, then the agent shall disclose such employment to the opposing party and to the Board, Commission, or administrative judge. *Such disclosure shall give rise to a rebuttable presumption of bias*, which shall be addressed in a specific finding in a decision by the Board, Commission or administrative judge. The presumption of bias may be rebutted by a preponderance of the evidence.

Enumerated Concerns

In addition to, and in support of, our general objection stated above, we respectfully present the following specific concerns.

1. The proposed rule is contrary to the provisions and purpose of Tennessee statutory law relating to tax agents and their role in tax appeals.

Tax agents are authorized to assist taxpayers by statute, T.C.A. § 67-5-1514. The legislature adopted, and the governor signed into law, statutory provisions creating agents that aid taxpayers in the prosecution of property tax appeals. Agents are required to be qualified by experience and/or education, and they must be registered. The law created and regulates agents for the benefit of taxpayers.

The proposed State Board rule damages this statutory intent. The rule declares the identified tax agents to be biased, and thus, blunts their effectiveness. Taxpayers are less likely to seek the assistance of someone who is going to be formally declared biased solely by virtue of his/her employment and agency status.

If those who support this proposed rule do not like the presence of tax agents in the appeal process, they should ask the legislature to rescind the provisions of Tennessee law permitting participation by tax agents, instead of attacking agents through the adoption of an administrative rule that will neuter the effectiveness of agents.

2. The proposed rule minimizes the merits of the appeal.

In a tax appeal, the questions to be decided involve the merits of the case. Questions involving value, classification, and related matters.

The proposed rule focuses on the identity of and relationships between parties and witnesses, and not the merits of the appeal. Formally declaring bias in a witnesses before the merits of a case are even considered diverts the attention of the fact finder away from the merits of the case.

Taxpayers must present substantive evidence to be successful in tax appeal cases. The focus of an appeal should be the evidence and whether it is persuasive.

3. A formal finding of bias on the part of the agent in agency proceedings is inconsistent with practice in the courts of Tennessee which are designed to promote fair and impartial hearings.

Appraisers, real estate agents, and other persons offering opinions on value in the courts of Tennessee are not subject to formal findings of a presumption of bias just because of employment. A court or a jury may take the employment arrangement into account, but there is no requirement of a formal finding of presumption of bias that must be rebutted or overcome.

4. The opportunity to "rebut" the presumption of bias is ineffective and confusing.

According to the rule, the presumption of bias attaches because of the agent's employment relationship. The proposed rule offers an opportunity to rebut the finding of bias, but to rebut bias based on the sole premise of employment, the agent or party would have to present evidence showing that notwithstanding employment, the agent has an appropriate degree of neutrality or independence.

When bias is presumed as presented, disproving the presumption is impossible.

The authors of the proposed rule may have intended for the taxpayer to rebut the presumption of bias by showing that the agent's testimony on the merits of the case is accurate and persuasive.

If that is the intent, there is no need for the proposed rule. The agent's testimony is either accurate and persuasive, or it is not. Why not judge the testimony on that basis? The presumption of bias is superfluous.

5. The presumption of bias stacks the deck against taxpayers.

Taxpayers already have the burden of proof when appealing the determinations of taxing authorities. See State Board of Equalization Rule 0600-10.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. Ct. App. 1981).

The proposed rule will declare many agents testifying on behalf of taxpayers as biased before the agent even gets to present his/her opinions.

Inasmuch as taxpayers rely heavily on tax agents to assist in the presence of appeals, this proposed rule erects a further barrier to taxpayers obtaining relief. Taxpayers already have an uphill climb. Is it necessary or right to disqualify a class of taxpayer advocates that are often the only person in the taxpayer's corner?

6. The rule is not fair because it declares only witnesses for the taxpayer as biased.

There are two sides in a tax appeal. The taxpayer, and the Assessor. The taxpayer receives assistance from the agent. The Assessor receives assistance from staff and often from the Tennessee Division of Property Assessments.

The Assessor's staff and the Division's staff usually appear as valuation experts in tax appeal cases. These witnesses support the Assessor's position and they testify against the taxpayer's position.

Are these witnesses employed? Yes. By whom? The Assessor or the Division.

These witnesses are every bit as subject to possible influence in the formation of their opinions, if not more so, by virtue of their employment as the agents are claimed to be. They are just as energized to please their employers as are tax agents.

As a personal observation, we have never seen an employee of the Assessor or the Division offer an opinion in any tax appeal that was not supportive of the Assessor's position.

If the State Board is going to have a rule finding bias by virtue of employment, then that rule should apply to all of the witnesses in a tax appeal case, and not just the taxpayer's witnesses.

Conclusion

In light of the foregoing, we respectfully object to the adoption of the proposed rule.

We respectfully advocate that tax appeals in Tennessee continue to be based on the merits of the testimony of witnesses testifying in hearings before the State Board, not their employment status.

We do not believe that declaring tax agents as biased by virtue of their employment arrangements is consistent with Tennessee statutory law. We also believe such a practice will create a hearing

process that is fundamentally flawed and unfair to taxpayers who seek nothing more than a fair playing field before the State Board of Equalization.

Very Truly Yours,

A handwritten signature in cursive script that reads "Marshall Albritton".

L. Marshall Albritton

cc: Justin P. Wilson
Tennessee Comptroller of the Treasury (via electronic mail)

Comptroller Wilson

We previously wrote you concerning the Appearance of Impropriety, Conflict of Interest, and Self Dealing by the Office of the Comptroller in proposing Rules that advantage your office and disadvantage Taxpayers in a contested case hearing. These proposed rules declare registered agents to be presumed untruthful even before they have an opportunity to be sworn or testify. Our communication of December 1, 2016 below discusses that proposed aberration of American jurisprudence.

However, other provisions of your proposed rules are in conflict with Federal and Tennessee Law, and Court decisions and inexplicably selects winners and losers among registered agents.

Your proposed rules state:

(6) (a) an "agent" is deemed employed by the person representing a party to an appeal, even if the agent is otherwise an independent contractor, if the agent receives half or more of the agent's annual wages, salaries or business income for federal tax purposes from the firm or person's firm, or affiliated group that included the person...

This rule contradicts the provisions of Federal Law (Fair Labor Standards Act), Tennessee Law (Tenn. Ann. Code 50-7-207 Unemployment Insurance and 50-6-102 Workers' Compensation) and the decisions of Tennessee Courts interpreting those statutes. All require a much more detailed and analytical tests than just "receives half or more of annual wages, salaries..." to be considered an employee.

With all due respect, the Comptroller nor the State Board is empowered to establish a different test and should not attempt to do so. By this rule, the contested case hearing is diverted into the morass of a determination of sources of income of the agent rather than hearing evidence to determine the fair market value of the property. This is unrestrained governmental excessive regulation for no reasonable purpose and sabotages the objective of the hearing. One is left to surmise the purpose is to harm the taxpayer and impose further obstacles to hurdle in a taxpayer appeal.

Your proposed rules also state:

6(b) "person" shall not apply to a corporation engaged in the business of evaluation of property which has registered with the Board in accordance with T.C.A. 67-5-1514(c)(5).

This rule, in a discriminatory manner, determines an exception to the application of the rule based on the registration of a corporation.

Registered agents who are employed by sole proprietors, partnerships, unincorporated businesses and unregistered evaluation firms are subject to these rules, but employees of registered evaluation firms are not. Therefore the application of the presumption of bias to a testifying agent is not determined by the content and quality of their testimony but rather whether the firm they work for is a registered corporation.

This defies common sense and manipulates governmental regulations to pick winners and losers among registered agents based on the structure of a business and whether the registered agent is employed by a registered corporation. One would think an analysis of the testimony would be a more appropriate determinant.

Again we contend all of the proposed rules are unfair, over burdensome to taxpayers, and are an unwarranted bureaucratic interference in due process. Your proposed rules usurp the duty of the administrative judge and commission (the fact finders) to hear and weigh the evidence presented and determine fair market value. They prejudice the fairness of the appeal process by creating an impediment for taxpayers and an advantage to the government. In addition the two provisions cited above contradict Federal and State laws and court decisions and arbitrarily discriminate among Registered agents based on their employer.

Comptroller Wilson, we respectfully request that you reconsider your proposal of these rules to the State Board after considering ours and other's correspondence directed to you. We realize you told me you did not know of these proposed rules until they were filed, and therefore we ask you to now thoughtfully consider our input and observations. These proposed rules are arbitrary, illegal and discriminatory and unfairly create additional obstacles and impediments for taxpayers to overcome in seeking equitable fair taxation.

We are obligated to oppose such rules on behalf of the taxpayers we represent.

Respectfully

On Dec 1, 2016, at 11:41 AM, David Scruggs

Controller Wilson

Your office has proposed Rules which require a burdensome punitive procedure when Registered Agents give testimony on behalf of taxpayers. Numerous Registered Agents have written you to express their opposition to these rules and point out that your office is gaining an advantage in contested case hearings, while taxpayers are incurring a detriment .

We believe this result (benefit to your office ,detriment to taxpayers) raises questions concerning the appearance of impropriety , a conflict of interest and self dealing by the office of the Comptroller .As a matter of fairness , you told me you did not know of these proposed rules until they were filed, and therefore our observations are not directed at you personally ,but rather at your office. However, even if this was unintentional ,the result remains the same , your office gains an advantage and taxpayers are harmed.

Your office is often a party to contested cases as an adversary against the taxpayer. Members of your Office of General Counsel appear as adversarial counsel to the taxpayer. Your Division of Property Assessments appears as witnesses against the taxpayer and in some instances have even made the valuations the taxpayer is challenging. You are a member of the State Board of Equalization and could hear contested case appeals in which your office is participating, and you in that capacity with other Board members can adopt rules concerning contested cases.

Now your office proposes rules for adoption by the State Board that presumes registered agents have a preconceived bias, while also subtly calling into question the agent's integrity and honesty and thus thwarting their ability to represent taxpayers. Frankly, by these rules, registered agents are presumed to be untruthful even before they have an opportunity to testify. We believe this is a blatant contradiction of American concepts of justice , fairness and due process.

Under the proposed rules , if a Registered Agent testifies, a rebuttable presumption arises that the agent is biased. The agent then is unduly burdened to rebut the presumption with a preponderance of the evidence, and the administrative judge, Commission or State Board is unduly burdened and directed to make a finding in their decision as to whether the presumption was rebutted. The objective of the hearing to determine fair market value is derailed. The proposed rules create a direct and distinct advantage for your office in contested cases by disparaging the testimony of the Registered Agent. Although your Office of General Counsel and the Division of Property Assessments also have a bias they are conspicuously not included in these rules, thus creating a uneven hearing procedure. These proposed rules elevates the testimony of the government and denigrates the testimony of the taxpayer.

The scenario described above gives rise to an appearance of impropriety by the Office of the Comptroller. The fact that you are a Member of the State Board of Equalization and your office has proposed these rules , gives rise to a conflict of interest and self dealing. Again, we realize you were not aware of these rules until they were filed and therefore this was not your intent, but with all due respect the result is the same. We believe an appearance of Impropriety arises when your office proposes rules which will give them an advantage over taxpayers in contested case hearings.

Your proposed rules are unfair, over burdensome to taxpayers, and are an unwarranted bureaucratic interference in due process. Your proposed rules usurp the duty of the administrative judge and commission(the fact finders) to hear and weigh the evidence presented and determine fair market value. They prejudice the fairness of the appeal process by creating an impediment for taxpayers and an advantage to the government.

We believe in order to avoid the Appearance of Impropriety, a Conflict of Interest, and Self Dealing , you as Comptroller should direct these proposed rules be withdrawn. These proposed rules are contrary to your purpose to serve the people of Tennessee ,because

the people of Tennessee are also Taxpayers and are severely disadvantaged by these rules. We believe it to be unconscionable for the government to propose rules to gain an advantage in a hearing to determine the tax obligation of real and personal property owners.

We intend no disrespect to you or your office. However, we must meet our responsibility to zealously represent taxpayers and protect their rights from inappropriate Governmental interference and attempts by rules to gain an advantage over taxpayers in the appeal process. These proposed rules unfairly create additional obstacles and impediments for taxpayers to overcome in seeking equitable fair taxation.

We respectfully request you reconsider the detrimental ramifications to taxpayers of these proposed rules and request for the reasons stated above that you withdraw them.

Respectfully

David Scruggs
Attorney at Law

All parties to an informal SBOE contested case hearing have bias of different types ,except the fact finders(administrative judge , assessment appeals commission). To be specific, parties opposing the taxpayer also have bias. Assessors, their employees ,representatives ,counsel and the Division of Property Assessments ,all have bias , however this rule conspicuously does not address them.

Bias of both the taxpayer and assessor representatives and assistants does not mean they are not credible. That is why this presumption is unnecessary ,burdensome and only results in a protracted bias discussion rather than the determination of the primary issue,the fair market value of the property.

We can only assume it is designed to give the Assessors and the Division of Property Assessment an advantage by usurping the role of the fact finder (administrative judge or commission) in determining credibility and inferring that a bias results in testimony that is not credible . The presumption infers bias testimony is inaccurate ,deceitful or misleading.

The issue is not bias , the issue is credibility. Credibility is based on whether the opinion of value is well reasoned and properly documented ,and is there a satisfactory foundation for that opinion. Under Tennessee Law agents are qualified to offer opinions of value.

There are presently two rules of the the State Board that are instructive. One prohibits agents from providing inaccurate, deceitful, or misleading information to a public agency. The other prohibits agents from asserting a claim which is false or without reasonable foundation.

0600-06-.06 STANDARDS OF CONDUCT. Registrants shall certify that they have read and submit to the following standards of conduct:

(10) An agent shall not knowingly furnish inaccurate, deceitful, or misleading information to a client or employer, prospective client or employer or to a public agency or representative of a public agency.

15) An agent shall not assert or maintain a claim he/she knows or discovers to be false or without a reasonable foundation in law and fact.

These two existing rules make the proposed bias rule totally unnecessary and exposes the attempt to obtain advantage by proposing a presumption of bias.

The proposed bias rule attempts to unfairly treat taxpayer's agents differently from Assessors and their agents and employees. The presumption of bias rule is designed to inflict tactical abuse on the taxpayer and is a ploy to cripple the Taxpayer's case and gain advantage for the taxing entities including the Division of Property Assessment and the Comptroller's Office of General Counsel.

This is unnecessary, abusive governmental over regulation and interference in Due Process ,which is intended to inflict substantial hardship on taxpayers and gain an advantage for the government.

Frankly , to propose a presumption of bias by rule is contrary to American principles of justice and governmental fair dealing with taxpayers.

Please withdraw these rules that presume bias of agents and therefore oppress taxpayers.

David Scruggs
Attorney at Law

Dear Mr. Jones and Mr. Wilson,

As a property owner and registered tax agent in Tennessee, I am opposed to additional rules which makes the process of challenging assessments any more difficult or costly to taxpayers than it already is under the existing laws.

Property tax appeals are primarily matters of opinions of value, rather than facts of law. A taxpayer or agent who appeals the assessed value of their, or their client's, property should not be required to also rebut a presumption of bias in an appeal that has been filed on the value of their property; a value which is often derived from mass appraisal techniques. There is no beneficial reason for applying an additional burden to taxpayers above and beyond the burdens they already face when filing appeals.

The proposed rule does nothing positive for the taxpayer and, instead, merely adds another layer of cost to the process of appealing the opinion of value established by the assessor or his or her representative appraiser.

On behalf of the taxpayers and registered agents in Tennessee, please do not add further rules that serve only to restrict the appeal process.

Kind regards,

Brigit DuBois, CMI
TN Registered Agent #214
3104 S Day St. Apt. 309
Seattle, WA 98144
206-218-2357

Dear Gentlemen:

I am a Registered Tax Agent in the State of Tennessee and have been for a very long time. I am currently a private outside consultant currently practicing in Tennessee for various clients. Before that I was employed by General Financial And Tax Consulting, DuCharme McMillen and Associates, TRW Inc., BP Oil Company and Republic Steel – all having clients and or properties in Tennessee. I have represented these clients and or properties as an Independent consultant and as a company representative and or agent. I have dealt with the State Administration, LBOE's, SBOE, etc. for the past 40 years without ever – a problem or a challenge to my veracity or integrity when representing a company.

I resent the suggestion that either I or other Registered Agents are biased or bringing frivolous cases before Tennessee courts, boards, etc. I am not aware of anyone engaged in this activity. Please review and rescind the new rules and allow us to practice without unreasonable restraints for the benefit of the State of Tennessee, the local counties and our clients.

Sincerely,

Frank L. Buettner, CMI
Tax Consultant

Nancy Hunt

From: David Scruggs
Sent: Wednesday, November 30, 2016 12:12 PM
To: Andy Raines; Nancy Hunt
Subject: Fwd: Proposed Rules for Contested Cases-Registered Agents

Categories: Red Category

Fyi

Begin forwarded message:

From: Lee Wharton <LeeWharton@mfpoer.com>
Date: November 30, 2016 at 10:57:44 AM MST
To: "kelsie.jones@cot.tn.gov" <kelsie.jones@cot.tn.gov>, "justin.wilson@cot.tn.gov" <justin.wilson@cot.tn.gov>
Cc: David Scruggs <dscruggs@evanspetree.com>
Subject: Proposed Rules for Contested Cases-Registered Agents

Mr. Jones and Mr. Wilson,

As you know, Mr. David Scruggs submitted a detailed letter to your office opposing the proposed rule changes for contested cases of registered agents. That said, I feel all points Mr. Scruggs expressed in his letter are valid. Furthermore, the proposed changes contradicts statues which relate to Registered Agents ability to represent taxpayers.

The proposed rule change presumes registered agents have a preconceived bias, which questions agents integrity and expertise in representing taxpayers. Under the proposed rule change, if a Registered Agent testifies, a rebuttable presumption that the agent is biased, the agent must rebut the presumption with a preponderance of the evidence, and the administrative judge, Commission or State Board must make a finding in their decision to whether the presumption was rebutted. The proposed rule change creates one more advantage, in a list of many that Assessor's already have over taxpayers in the current appeal process.

I hope you will reconsider and ultimately repeal the proposed rule, as the changes pollute the ultimate goal in the appeal process of determining FAIR MARKET VALUE.

Best Regards,

Lee Wharton | Senior Consultant
Marvin F. Poer and Company
3520 Piedmont Road NE, Suite 410
Atlanta, GA 30305
Office 404-334-9442
Cell 678-251-5166
Fax 404-982-9968

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David Scruggs
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October 24, 2016 (electronic)

Honorable Justin P. Wilson and Mr. Kelsie Jones,

Please accept this as our opposition to the proposed rules for Contested Cases-Registered Agents, specifically the proposed addition of paragraphs (5) and (6) to Rule 0600-01-.07, which states that an agent will automatically be considered to be biased before any testimony or evidence is even presented to the Administrative Law Judge assigned to hear any property tax appeal case. This rule could have severe ramifications towards the taxpayers of the State of Tennessee and imposes even more regulations for the taxpayer in their attempt to achieve a fair and equitable taxation for their property. We would also suggest that should an agent be biased, then the County Assessor would be equally biased as they are defending the valuation imposed by their assessing jurisdiction. The Administrative Law Judges that serve to hear cases for the State Board of Equalization are very capable of determining these matters for themselves during the hearing and no rule is necessary for a Judge to make such a determination if it is so needed. Thank you for your consideration in this matter. If you have any questions or further discussions, please do not hesitate to contact us.

L. Stephen Nelson, Registered Agent 0053
Deborah K. Smith, Registered Agent 00272

Debbie Smith
Criterion Property Resources, Inc.
5556 Franklin Pk, Ste 100
Nashville, TN 37220
Phone – (615) 370-1212
Fax – (615) 370-1216

Betsy Knotts

From: Justin Wilson
Sent: Monday, January 9, 2017 9:25 AM
To: Kelsie Jones; Betsy Knotts; Stephanie Maxwell
Subject: Fwd: Proposed Rule of the Comptroller concerning testimony of Registered Agents

Follow Up Flag: Follow up
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----- Forwarded message -----

From: "David Scruggs" <dscruggs@evanspetree.com>
Date: Mon, Jan 9, 2017 at 9:04 AM -0600
Subject: Proposed Rule of the Comptroller concerning testimony of Registered Agents
To: "Justin Wilson" <Justin.Wilson@cot.tn.gov>
Cc: "Betsy Knotts" <Betsy.Knotts@cot.tn.gov>, "Stephanie Maxwell" <Stephanie.Maxwell@cot.tn.gov>, "Nancy Hunt" <nhunt@evanspetree.com>, "Andy Raines" <araines@evanspetree.com>, "Tre Hargett" <Tre.Hargett@tn.gov>, "David Lillard" <David.Lillard@tn.gov>, "Dwight Tarwater" <Dwight.Tarwater@tn.gov>, "Richard Roberts" <Richard.Roberts@tn.gov>, "Senator Mark Norris" <sen.mark.norris@capitol.tn.gov>, "Mike Bell" <sen.mike.bell@capitol.tn.gov>, "Dwayne Thompson" <rep.dwayne.thompson@capitol.tn.gov>, "lt.gov.ron.ramsey@capitol.tn.gov" <lt.gov.ron.ramsey@capitol.tn.gov>, "speaker.beth.harwell@capitol.tn.gov" <speaker.beth.harwell@capitol.tn.gov>, "sen.brian.kelsey@capitol.tn.gov" <sen.brian.kelsey@capitol.tn.gov>

Comptroller Wilson

As you are aware I have asked your Office to supply us with all records regarding your proposed rule concerning testimony of Registered Agents in Contested Cases. We have asked you to be transparent and to fully disclose to us, and all taxpayers and citizens the motivation and purpose of the Comptroller's Office in proposing this rule which is harmful to taxpayers in contested case hearings. Your proposed rule is beneficial to and advantages the opponents of taxpayers, being Assessors and defending governmental officials, including the Comptroller's Office of General Counsel and the Division of Property Assessment.

Since you have stated to us that you had NO knowledge of this proposed rule until filed by your staff, then the intention of your staff becomes important. This is problematic in that your staff has a motivation to gain an advantage over taxpayers in a contested case as they are an opponent of the taxpayer and are assisting Assessors. Also, your staff may be retaliating against our firm and other registered agents by proposing this rule.

Since we have asked you to be transparent, we believe we should also adhere to that principle. We have copied you on our past correspondence and we want you to know that over the last three days business days, we have sent the below correspondence to every Tennessee Senator and Representative.

We regret this was necessary, however you and your office have failed to meaningfully discuss the matter, provide requested information, or attempt to find common ground.

We consider your proposed rule an existential threat to our Property Tax Group and its ability to represent taxpayers in the most economical and effective manner. You are interfering in our representation of our clients and in the contested case hearing process to the detriment of our clients and all Tennessee Taxpayers. We do and did not want to become involved in your duties, office or reappointment, but you have left us no other choice.

The Registered Agent Statute has existed since 1988 to 2017 without the necessity for this rule and we can only surmise that perhaps recently employed staff of your Office of General Counsel is the proponent of this overreaching, overbearing, unnecessary, governmental intrusion in the taxpayer appeal process.

We ask you to consider these points:

*TCA 67-5-1514 states "taxpayers are entitled to the assistance of a qualified agent... and taxpayers may appear in person...or by qualified agent"

This is a clear statutory directive that agents can appear, represent and assist—which includes testifying. Your proposed rule cannot override the provisions or intent of this statute.

**There are qualification, education and experience requirements in the statute. Your proposed rule diminishes an agent's status, inferring a lack of credibility to the trier of fact, contrary to the Statute.

***Agents who testify are sworn to tell the truth and the State Board has disciplinary rules to punish agents who give false information to the trier of fact—therefore this rule is totally unnecessary.

****The trier of fact should determine credibility—not a rule. Can a rule see, listen, discern, think or evaluate?

*****Assessors and employees of the Comptroller are just as biased (perhaps differently) as taxpayers and agents but are conspicuously omitted from this rule.

*****This rule labels a taxpayer's agent witness a presumed liar before the agent opens his /her mouth.

***** To have a rule which presumes bias is as UNAMERICAN as presuming guilt.

We respectfully request you withdraw your staff's proposed rule and let us return to zealously representing taxpayers, let Registered Agents return to assisting, representing and appearing on behalf of taxpayers including testifying, and you return to Comptrolling on behalf of the State.

Thank You

Begin forwarded message:

To

From: <dscruggs@evanspetree.com>

Date: January 4, 2017 at 4:36:59 PM MST

To: <sen.paul.bailey@capitol.tn.gov>

Subject: Vote No on Reappointment of the Comptroller

Senator Bailey

As a member of the Legislature, you will soon be asked to vote on the reappointment of the Comptroller. We ask that you VOTE NO unless or until the Comptroller terminates his direct bureaucratic unnecessary regulatory assault on taxpayers and their rights.

The Comptroller has proposed Rules for Contested Case hearings (attached below) concerning the

determination of value for purposes of property taxation that are harmful to taxpayers and are an advantage to Assessors and the Division of Property Assessment (a division of the Comptroller). We also contend that the Comptroller in proposing these rules that advantages his office and is harmful to taxpayers and their representatives, is a conflict of interest, self-dealing by the Office of the Comptroller, creates an appearance of impropriety, and constitutes regulatory abuse of power.

The Comptroller, through the Division of Property Assessment, is often a party to contested cases as an adversary against the taxpayer. Members of the Office of General Counsel of the Comptroller often appear as adversarial counsel to the taxpayer. The Comptroller's Division of Property Assessments appears as witnesses against the taxpayer and in some instances have even made the valuations the taxpayer is challenging. The Comptroller is a member of the State Board of Equalization and could hear contested case appeals in which the Comptroller's office is participating, and the Comptroller in that capacity with other Board members can adopt rules concerning contested cases.

The Comptroller is proposing rules for adoption by the State Board that presume registered agents have a preconceived bias, while also subtly calling into question the agent's integrity and honesty and thus thwarting their ability to represent taxpayers. Frankly, by these rules, registered agents are presumed to be untruthful even before they have an opportunity to testify. We believe this is a blatant contradiction of American concepts of justice, fairness and due process.

This rule creates an uneven playing field favoring tax collectors and astonishingly creates a presumption that a taxpayer's witness is a liar despite taking an oath to tell the truth, whole truth and nothing but the truth. Board-registered agents are permitted by law to act both as representative and witness, and these proposed rules of the Comptroller violate Tenn. Code Ann. §67-5-1514. As a practical matter, the Comptroller, who is appointed by the Legislature, is proposing rules that emasculate a statute passed by the legislature to provide taxpayers with an inexpensive but competent method of challenging their property taxes by utilization of registered agents as representatives and/or witnesses.

A witness's credibility is always a legitimate subject of cross examination. The trier of fact - the judge, Commission or State Board - must assess the credibility of the witnesses and determine the weight of the evidence. It is unbelievable that the Comptroller's proposed rule seeks to make that determination of bias not based on reason or evidence by the trier of fact, but rather by a bureaucratic overreaching governmental rule.

As a matter of fairness, the Comptroller stated to us that he did not know of these proposed rules until they were filed, which, however, raises a question of proper management and oversight of his office and employees.

The Office of General Counsel of the Comptroller, in response to numerous comments of taxpayers and their representatives opposing these unfair rules, has stated that an objective of these proposed rules is to make the cost of a taxpayer appeal more expensive by requiring the testimony of a certified real estate appraiser rather than a less expensive registered agent. The intent is to require a taxpayer to hire a certified real estate appraiser, obtain an appraisal, and require testimony of the appraiser to challenge a

tax assessment. Presently a less expensive alternative for taxpayer appeals authorized by statute is an evaluation and testimony of a registered agent. The Office of General Counsel also stated that an additional objective of the Comptroller is to decrease the volume of taxpayer appeals by increasing the cost of appeal by requiring the appraisal and testimony of a certified real estate appraiser rather than an evaluation and testimony of a registered agent.

Taxpayers fund the Office of the Comptroller through taxation, and ironically the Comptroller expends those funds to provide witnesses and lawyers to oppose the very taxpayers that fund his office. It is unconscionable and an abuse of power to now propose rules that further harm taxpayers and advantage the office of the Comptroller.

The Comptroller states on his website that his purpose is to serve the people of Tennessee. His actions speak louder than his words, and his action of proposing these rules to gain advantage for the government and simultaneously harm the taxpayers is a far cry from service to the people.

We ask that you VOTE NO in regard to reappointment of Comptroller Wilson, unless or until the Comptroller terminates his direct bureaucratic unnecessary regulatory assault on taxpayers and their rights.

If you have Questions or wish to discuss the above, please call me at 9014934820(cell number).

Thank you.

The essence of Government is power, and power, lodged as it must be in human hands, will ever be liable to abuse. James Madison

Proposed Rule of the Comptroller

Rule 0600-01-.07 would be amended by adding the following language as new paragraphs (5):

If an agent is an employee of a person representing a party to an appeal and the agent serves as a witness for the party, then the agent shall disclose such employment to the opposing party and to the Board, Commission, or administrative judge. Such disclosure shall give rise to a rebuttable presumption of bias, which shall be addressed in a specific finding in a decision by the Board, Commission, or administrative judge. The presumption of bias may be rebutted by a preponderance of the evidence. This rule shall apply to any individual who holds a valid registration issued by the State Board of Equalization pursuant to T.C.A. § ~~67-5-1514~~(c)(2) who otherwise participates, assists, or acts on behalf of a party in any capacity before the Board, Commission, or administrative judge. This rule shall apply whether the agent appears individually, in conjunction with counsel or in conjunction with another agent.

David Scruggs
Attorney at Law

Evans | Petree PC

1000 Ridgeway Loop Road, Suite 200
Memphis, Tennessee 38120
Phone: 901.525.6781 | Direct: 901.521.4578
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Email: dscruggs@evanspetree.com
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Betsy Knotts

From: David Scruggs <dscruggs@evanspetree.com>
Sent: Monday, January 9, 2017 10:39 AM
To: Betsy Knotts
Subject: Fwd: Proposed rules for Contested Cases-Registered Agents
Attachments: image001.gif; image001.gif

Follow Up Flag: Follow up
Flag Status: Flagged

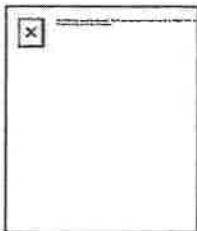
Betsy -- you failed to post this comment.
Please post
Thank you

From: Don Barnhill <Don.Barnhill@donbarnhillassociates.com>
Date: October 31, 2016 at 11:59:16 AM CDT
To: "dscruggs@evanspetree.com" <dscruggs@evanspetree.com>
Subject: **FW: Proposed rules for Contested Cases-Registered Agents**

David,

I had you down for a carbon copy on the email but there was an issue with the way I had entered your email address. Below is what I have sent to Kelsie Jones and Justin Wilson.

*Donald M. Barnhill, CMI
Don Barnhill Associates, LLC
P O Box 383276
Birmingham, AL 35238-3276
TEL (205) 408-4994
FAX (866) 829-6939*



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From: Don Barnhill
Sent: Monday, October 31, 2016 11:57 AM
To: 'Kelsie.Jones@cot.tn.gov' <Kelsie.Jones@cot.tn.gov>; 'Justin.Wilson@cot.tn.gov' <Justin.Wilson@cot.tn.gov>
Cc: 'dscruggs@evanspetree.com.' <dscruggs@evanspetree.com>
Subject: Proposed rules for Contested Cases-Registered Agents

The Honorable Justin P Wilson
Tennessee Comptroller

Recently, attorney David Scruggs of the Evans Petree Law firm wrote a very detailed and informative letter to you objecting to your proposed rules for contested property tax appeal cases. I wholeheartedly concur with each and every point made in his letter (transcript below).

As a property tax professional with over 36 years of experience, I believe that the proposed new rule only serves to prevent or discourage taxpayers from availing themselves to qualified experts in the property tax area. My experience over many years has been that with each new year the appraisers and assessment officials have more and more data available to them to prepare assessments that take into account all factors influencing the value of a property. The appraisers present this information in a manner supportive of their assessment sometimes disregarding information that would contradict the accuracy of the assessment. My role as a property tax representative is to present the whole picture and to advocate for my client. What this proposed rule would do is to give automatic validity to the assessors presentation while automatically challenging the credibility of the taxpayers representative solely based on the fact that the representative is not the actual taxpayer.

The credibility of a witness should always be based upon the credibility of the evidence being presented and the education and training of the person presenting that evidence.

Personally, I am a member of the Institute for Professional in Taxation, IPT, and I hold a certification as a CMI. The education requirements for this certification are extensive, far more extensive than the requirements of many assessing officials. In addition to the extensive training and testing to obtain the CMI certification, each CMI is required to meet continuing education requirements to maintain that certification. Finally the IPT has a strict code of ethics that as members we must adhere to. I have added this Code of Ethics below. It was taken from the IPT website at www.IPT.org

IPT Code of Ethics

The Institute for Professionals in Taxation® has established a Code of Ethics to set forth ethical and professional guidelines for all IPT members.

Each member of IPT agrees to subscribe to this Code of Ethics and to report to the IPT Committee on Professional Ethics any unethical practices or actions by any IPT member. Non-members of IPT may also report any alleged unethical activity of IPT members to the Ethics Committee.

Twenty Canons of The IPT Code of Ethics

PREAMBLE

The Institute for Professionals in Taxation® has established this Code of Ethics to govern the conduct of members in connection with the performance of their professional duties as tax professionals and as members of IPT.

As tax professionals, the members of IPT have an obligation for the competence and integrity of their work and conduct.

Each member of IPT is bound by this Code of Ethics and agrees to report to the Committee on Professional Ethics any violation of the Code known to such member.

An IPT member having supervisory responsibility for other tax professionals should make those subordinates aware of this Code of Ethics and instruct them to adhere to its provisions.

The Committee on Professional Ethics, and in the event of an appeal, the Board of Governors, interprets the provisions of this Code in rendering opinions and in conducting investigations and hearings pursuant to regulations and procedures established by the Board.

CANONS

1. IT IS UNETHICAL to engage in any conduct that discredits IPT, its membership, or the tax profession.
2. IT IS UNETHICAL to engage in any activity that results in a conviction of any crime committed in connection with the member's involvement in a tax matter.
3. IT IS UNETHICAL to operate beyond the boundaries of an agreed relationship with an employer or client.
4. IT IS UNETHICAL for a member of IPT to state or imply that such member represents a person that the member does not represent, or to file any document on behalf of such person without authorization.

5. IT IS UNETHICAL to disclose confidential employer or client documents or information except with the consent of the employer or client or as required by law.
6. IT IS UNETHICAL to offer or give anything of value to a public official to induce that official to take any action with respect to a tax matter.
7. IT IS UNETHICAL to offer or give anything of material value to an individual in an employment, advisory or representative relationship with a business to induce that individual to recommend the purchase of goods or services by the business, and IT IS UNETHICAL for such individuals to receive such value.
8. IT IS UNETHICAL to pay, retain, or accept a share of a fee or other monetary compensation for the referral of a person to another for the provision of tax services in which the recipient of such compensation does not participate, unless advance notice is given to the person for whom such services are to be performed. The amount of the compensation for the referral need not be disclosed unless requested by the person for whom the services are to be performed.
9. IT IS UNETHICAL to solicit a tax assignment by assuring a specific result or to solicit, assign, accept or perform a tax assignment that is conditioned upon producing a preconceived opinion or conclusion.
10. IT IS UNETHICAL to initiate or pursue an appeal, protest, refund claim or other action on behalf of a taxpayer for which there is known to be no basis in fact or law. When the basis is unknown, the determination of whether a basis in fact or law exists must be made as soon as reasonably possible.
11. IT IS UNETHICAL for a member, in the performance of a tax assignment, to fail to exercise independent judgment in advising and representing a client.
12. IT IS UNETHICAL in the performance of a tax assignment to knowingly furnish or knowingly rely upon inaccurate, deceitful or misleading information, or to knowingly withhold information which lawfully should be revealed.
13. IT IS UNETHICAL to prepare or use in any manner, for any purpose, a resume or statement of professional qualifications that is misleading or false.
14. IT IS UNETHICAL in promoting a tax practice or soliciting tax assignments to make misleading or false representations.

15. IT IS UNETHICAL to use client listings or references without specific authorization.
16. IT IS UNETHICAL to state or imply IPT authorization, endorsement or approval of any business, product or service.
17. IT IS UNETHICAL in any representation of fact to IPT, in a membership application, renewal form, or otherwise, to knowingly furnish inaccurate, deceitful, or misleading information, or to knowingly withhold material information.
18. IT IS UNETHICAL for a member having supervisory responsibility for another tax professional to knowingly authorize, direct, permit or ratify any subordinate's act or omission that is declared unethical by this Code, regardless whether the subordinate is a member of IPT.
19. IT IS UNETHICAL to represent a client if such representation would be, or would risk being, adverse to the interests of another client unless each affected client gives informed written consent to such representation.
20. IT IS UNETHICAL to have, acquire, or seek a personal interest in a matter that is adverse to the interests of a client or employer.

I hope that you will reconsider your staff's proposed rule changes and make the necessary adjustments.

Thank you for your reconsideration.

*Donald M. Barnhill, CMI
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P O Box 383276
Birmingham, AL 35238-3276
TEL (205) 408-4994
FAX (866) 829-6939*



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David Scruggs letter of October 3, 2016:

The Honorable Justin P Wilson
Tennessee Comptroller

Your office has proposed the attached Rules. From reading your biographical material you practiced law for 26 years and received the honor of being nominated for a judicial seat on the United States Sixth Circuit Court of Appeals. With that extensive legal background and experience we find it difficult to comprehend that you are proposing these rules which usurp the duty and obligation of the administrative judge , Assessment Appeals Commission and the State Board to determine the truthfulness and accuracy of the testimony of a witness.

Without hearing the testimony presented, without knowing the witness's education, training or experience , without knowing if the testimony offered is plausible and likely to be true, your proposed rule (if the registered agent is "an employee of a person representing a party ") would "give rise to a rebuttable presumption of bias." This is a total perversion and distortion of our judicial process which relies on a judge , the Commission ,or the State Board to determine quality ,truthfulness and accuracy of the testimony of a witness. Credibility and bias should not be determined by government regulation and to do so would be a denial of due process of law.

This rule is in direct contravention of TCA 67-5-1514 (a) and (b) which provides at any hearing taxpayers may appear by qualified agent and shall be entitled to their assistance. As an attorney ,you are aware that a regulation cannot restrict what a statute provides. Your proposed rule emasculates the Registered Agent Laws by providing "This rule shall apply to any individual who holds a valid registration issued by the State board of Equalization...who participates, assists or acts on behalf of a party before the Board , Commission, or administrative judge". The rule further extends to all registered agents stating "this rule shall apply whether the agent appears individually, in conjunction with counsel ,or in conjunction with another agent."

Your regulation further violates the provisions of TCA 67-5-1514(d) which states a "hearing shall be conducted in an informal manner" . Your regulation requires the taxpayer to offer rebuttal evidence by a preponderance of the evidence to rebutt the arbitrary and capricious presumption of bias . Your rule further requires a specific finding by the Board, Commission , or administrative judge concerning the arbitrary presumption . This is a significant departure from the legislative mandate prescribing the informal conduct of hearings and misdirects the hearing from the issue of the market value of the taxpayer's property.

These are unconscionable interferences in the property tax appeal process , the role of registered agents to represent and assist taxpayers and deprives the judge ,commission or State Board of their duty to determine the quality ,truthfulness and accuracy of the testimony of a witness. This rule also ignores the bias of the Assessor who is defending their valuation and appears to be an attempt to give the assessor an advantage in the hearing by declaring the taxpayer witness biased by regulation.

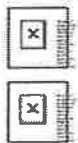
This is an example of a burdensome, unnecessary,arbitrary and capricious ,unlawful government regulation which attempts to influence the Judge , Commission or State Board by declaring by regulation –bias of the taxpayer's witness.

A witness's credibility is always a legitimate subject of cross examination. The trier of fact - the judge ,Commission or State Board - must assess the credibility of the witnesses and determine the weight of the evidence. It is unbelievable that your proposed rule seeks to make that determination of bias not based on reason or evidence.

As a Constitutional Officer of Tennessee , outstanding lawyer and Republican leader we are perplexed that you would propose such a rule.

I hope you will review your staff's proposal for this rule reminds us of Brandeis warning: *"Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. ...The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning but without understanding."* Louis Brandeis
Feel free to call me on my mobile phone to discuss this matter at 901-493-4820.

I appreciate your reconsideration of this onerous arbitrary rule and let me thank you for your service to our state and it's citizens.



David Scruggs
Attorney at Law

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Betsy Knotts

From: David Scruggs <dscruggs@evanspetree.com>
Sent: Tuesday, January 31, 2017 10:42 AM
To: Betsy Knotts
Cc: Stephanie Maxwell; Andy Raines; Nancy Hunt
Subject: Fwd: Motivations for Comptroller's Proposed Rules

Betsy
Please post this comment
Thanks

Begin forwarded message:

From: <dscruggs@evanspetree.com>
Date: January 31, 2017 at 9:33:08 AM MST
To: Tre Hargett <tre.hargett@tn.gov>, "David H. Lillard Jr." <david.lillard@tn.gov>, "Dwight E. Tarwater" <Dwight.Tarwater@tn.gov>, <David.Gerregano@tn.gov>
Cc: Betsy Knotts <betsy.knotts@cot.tn.gov>, Andy Raines <araines@evanspetree.com>, Nancy Hunt <nhunt@evanspetree.com>
Subject: Motivations for Comptroller's Proposed Rules

We believe the Comptroller's motivations for the proposed rules are

- *for the Comptroller/assessors to gain an advantage over taxpayers in a contested case
- *retaliation against our firm and other registered agents
- *increase the taxpayer's cost of a contested case
- *decrease the volume of taxpayer appeals by increasing the cost for a taxpayer appeal

Our basis for these conclusions are as follows:

We filed a Inspection/Duplication of Records Request with the Comptroller to ascertain the motivation for the Comptroller's Proposed Rule. We were supplied some documents but we believe important documents have been withheld illegally and in violation of the Tennessee Public Records Act.

The Comptroller stated in a letter of January 19,2017,"your request is denied ,in part, in that we are not producing documents that are privileged as attorney-client communications or attorney work product under Rule 26."

Our research indicates that such privilege is not available as that privilege only applies to documents prepared by an attorney "in preparation for trial or anticipation of litigation". In addition there can be no claim of "confidential information" as this involves public rule making.

The Tennessee Supreme Court in Coats v. Smyrna/Rutherford County Airport Authority held "However , the privilege does not extend to communications from an attorney to a client when they contain advice solely based upon public information rather than confidential information." The Comptroller is proposing a rule in a public form that will detrimentally affect taxpayers and is not confidential information. The Court further declared "the work product doctrine protects documents of an attorney prepared by an attorney,or another on his behalf, in preparation for trial or anticipation of litigation. "

There is no litigation and the Comptroller is withholding documents pertaining to the Comptroller's proposed rule.

The reason we requested these documents was to ascertain the motives of Comptroller's staff since the Comptroller has stated to us that he had NO knowledge of this proposed rule until filed by Comptroller's

staff . We were informed that the proposed rules were drawn by the staff of the Comptroller's office of General Counsel, specifically Senior Counsel Mark Minsky and Clayton Byrd , who is no longer in your office but was previously an Assistant General Counsel.

The denial of these records deprives us of the ability to ascertain the motivations of the Comptroller's staff for proposing this rule.

The Comptroller's proposed rule presumes a agent witness is biased even before they open their mouth and places the burden of rebutting the presumption on the agent.

We will borrow the "presumed guilty until proven innocent" concept of the Comptroller's proposed rule, and we will presume that Comptroller's staff has a motivation to gain an advantage over taxpayers in a contested case as they are an opponent of the taxpayer and are assisting Assessors. Also ,we will presume Comptroller's staff is retaliating against our firm and other registered agents by proposing this rule. Our presumption is in fact justified because of our past experience with Comptroller's staff and the Comptroller's denial of public records.

We suspected and the Comptroller confirmed that the source of these rules is Mark Minsky, Senior Counsel in the Comptroller's office. Mr Minsky ,in his previous employment with the Secretary of State ,was an administrative Judge .We believed , while he was acting as an administrative Judge,his words and actions manifested prejudice against and hostility toward our firm. He was disrespectful, overbearing, punitive, and his conduct approached harassment.

On behalf of the Property Tax Attorneys and Tennessee Registered Agents in our firm, we regretfully had to request that Judge Minsky be disqualified from hearing appeals represented by Evans Petree based on prejudice against us. Judge Minsky did not hear any more of our cases ,and immediately retired as an Administrative Judge ,and took his present position in the Comptroller's office.

Because of his past conduct ,we believe Mr Minsky is subtly using his position in the Comptroller's office to propose these rules as a means to retaliate against our firm for our previous complaint concerning his display of prejudice against us based on his words and actions. The Comptroller's denial of all records involving Mr Minsky only supports our contention that these Proposed Rules are retaliatory for our complaint against him .

The General Counsel to the Comptroller,in response to numerous comments of taxpayers and their representatives opposing these unfair rules, stated that an objective of these proposed rules is to make the cost of a taxpayer appeal more expensive by requiring the testimony of a certified real estate appraiser rather than a less expensive registered agent. The intent is to require a taxpayer to hire a certified real estate appraiser, obtain an appraisal, and require testimony of the appraiser to challenge a tax assessment. Presently a less expensive alternative for taxpayer appeals authorized by statute is an evaluation and testimony of a registered agent.

General Counsel of the Comptroller also stated that an additional objective of the Comptroller is to decrease the volume of taxpayer appeals by increasing the cost of appeal by requiring the appraisal and testimony of a certified real estate appraiser rather than an evaluation and testimony of a registered agent.

In summary ,we believe the Comptroller's motivations for the proposed rule are
*for the Comptroller to gain an advantage over taxpayers in a contested case
*retaliation against our firm and other registered agents
*increase the taxpayer's cost of a contested case
*decrease the volume of taxpayer appeals by increasing the cost for a taxpayer appeal

We believe all of the above are improper objectives for the Office of the Comptroller to pursue and in direct conflict with it's stated purpose "Our purpose is to serve the people of Tennessee ".

David Scruggs

David Scruggs
Attorney at Law

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