




FCIAAO 2009 Fall Conference
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TPP LEGAL UPDATE



Status of Winn Dixie Case

- Trial in Okaloosa/Escambia disputes held in Jacksonville federal bankruptcy court in March 2009.
 - Post-trial memoranda submitted in early June.
 - No decision yet.
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Major Issues

- Validity of the DOR's Economic Life Guide and Depreciation Tables
- Use of used equipment dealer listings to establish value
- Necessity of "market" data
- Accuracy of 20% residual values



DOR Tables: Historical Background

- Tables based on data from Marshall Valuation Service.
- MVS based their data on information from IRS.
- In prior Wal-Mart disputes, MVS could not produce a witness to defend their data in court, as main participants were deceased.



The Barreca Study

- Following the Wal-Mart situation, the DOR commissioned appraiser Steve Barreca to develop new tables.
- Mr. Barreca recommended a different depreciation schedule.
- Also, his economic lives were different for some categories of property, and some categories were broken down or otherwise changed.


Status of DOR Tables

- The DOR distributed the Barreca study and tables to the county Property Appraisers for their use.
- However, the DOR never adopted Mr. Barreca's study, so the DOR's official recommended economic life and depreciation tables have not changed.



The Big Question:


Do the DOR's tables account for any or all forms of obsolescence, or do they only capture physical deterioration?





Testimony of Mike Zeigler (DOR's Designated Representative):

Q: When used properly by the property appraisers, what forms of depreciation are the DOR's tables intended to account for?




A: They're intended to account for physical obsolescence and anticipated functional and economic obsolescence.




Testimony of Steve Barreca:

“The depreciation and life analysis that we did would include our analysis of everything that was impacting the value of that asset that was intrinsic to the asset itself. In other words, we would not include economic obsolescence that was specific to an individual taxpayer [such as if a company loses customers due to poor service].”



Residual Values

- When an item reaches the end of its economic life, the DOR tables generally recommend that it continue to be assessed at 20% of its historical cost.
- Jack West's proposed tables used residual values of 11% for store fixtures, 17% for POS equipment, and 25% for computers.



Residual Values in Barreca Study

POS Equipment (6 yr life)

- 29% after 6.5 years
- 16.5% after 10 years
- 5.7% after 15 years
- 2.5% after 20 years
- .49% after 100 years

Retail Fixtures (9 yr life)


- 30% after 9.5 years
- 15.8% after 15 years
- 7.9% after 20 years
- .49% after 100 years

Use of “Market” Data

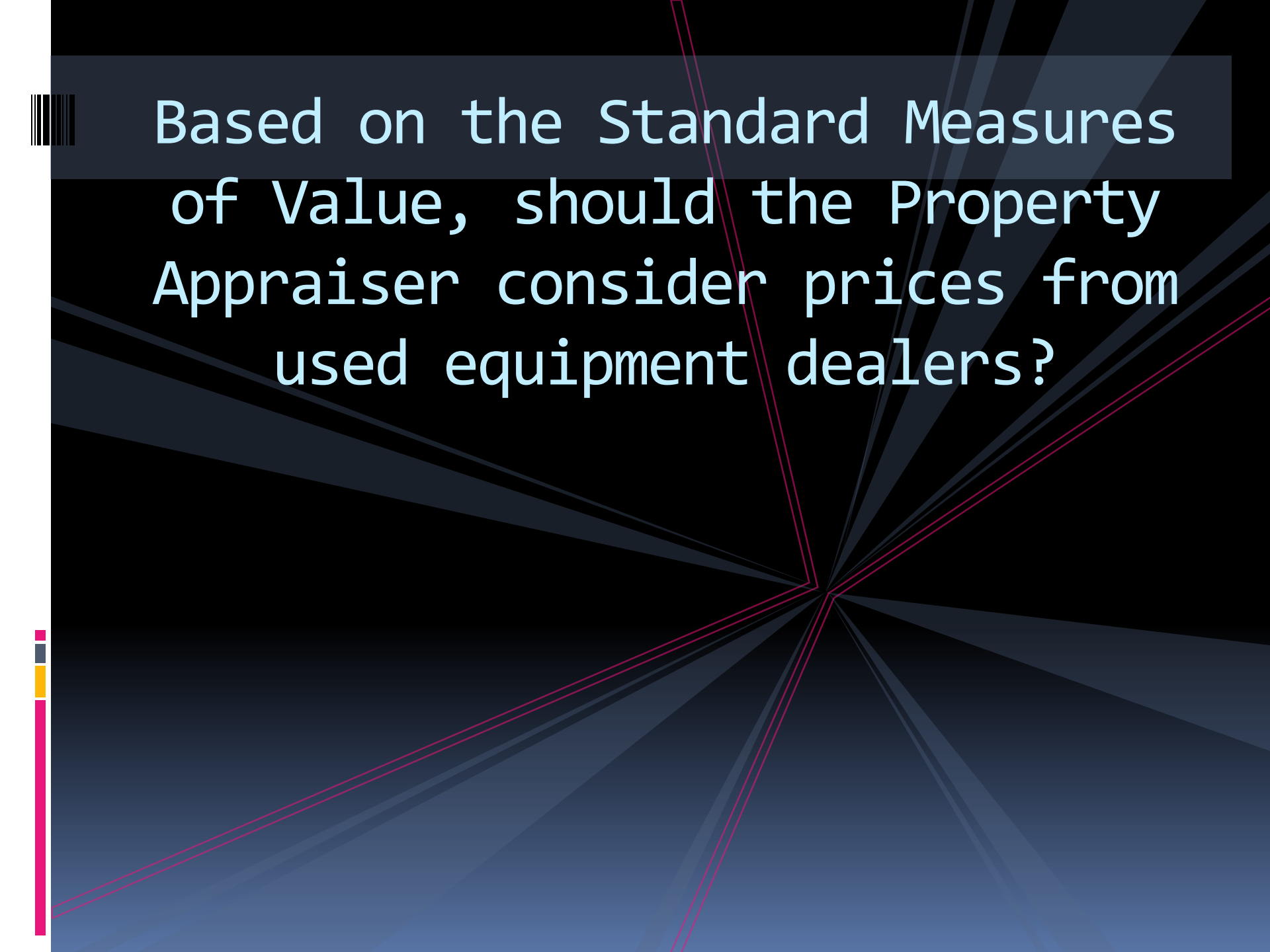
- The DOR’s Standard Measures of Value state that:

Market data relating to personal property may be obtained from:

- Leasing companies
- Commercial bankers
- New and used equipment dealers
- Trade and sales journals
- Newspaper advertisements
- Auction sales




Based on the Standard Measures of Value, should the Property Appraiser consider prices from used equipment dealers?

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Testimony of Mike Zeigler

- Summary: Equipment in the used market is at the end of its economic life. Property appraisers should instead consider the primary equipment market, which they do by considering the cost new.
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Mike Zeigler's testimony:

Q: Market data relating to TPP can be can be obtained from new and used equipment dealers, trade and sales journals, newspaper advertisements and auction sales, isn't that true?

A: Those things are always information that help a PA in his job. But you've got to look at what you're appraising. If you are appraising a shelf that Joe's Transmissions buys from Al's Furniture Barn for use in his shop, you would look to the salvage market.

Q: Do you agree that appraisers should look to the market for any evidence in change of value when considering the cost approach?

A: Absolutely. I fully and completely agree with that. But you have to look at the proper market.

Steve Barreca's testimony:


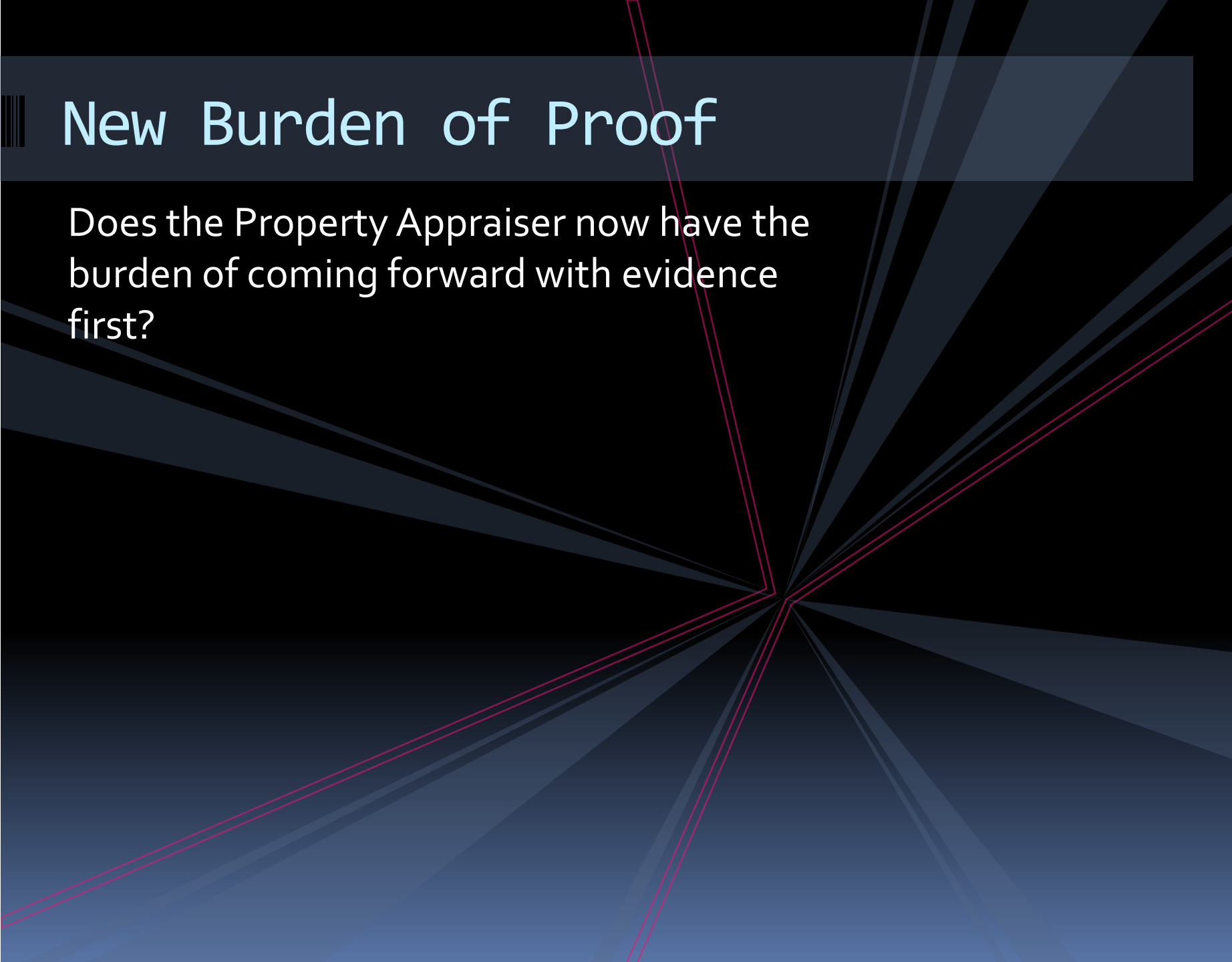
- Summary: Dealer listings reflect “marked up salvage value,” which is not the same as fair market value.

“Marked up salvage value is not going to give you the highest and best use. It’s going to be something less than value in use, which is what you would get when you utilize a mass appraisal cost approach.”



New Burden of Proof

Does the Property Appraiser now have the burden of coming forward with evidence first?




Who has the burden of proof?

- Section 194.301(2) provides that “in an administrative or judicial action in which an ad valorem tax assessment is challenged, the burden of proof is on the party initiating the challenge.”
- The new statute goes on to state that if the challenge is to the assessed value of the property, the party initiating the challenge has the burden of proving by a preponderance of the evidence that the assessed value:
 1. Does not represent the just value of the property after taking into account any applicable limits on annual increases in the value of the property;
 2. Does not represent the classified use value or fractional value of the property if the property is required to be assessed based on its character or use; or
 3. Is arbitrarily based on appraisal practices that are different from the appraisal practices generally applied by the property appraiser to comparable property within the same county.



But . . .

- The new statute also provides that the property appraiser's assessment is presumed correct if the appraiser proves by a preponderance of the evidence that the assessment was arrived at by complying with s. [193.011](#), any other applicable statutory requirements relating to classified use values or assessment caps, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate.
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So what happens if the Property Appraiser does not retain the presumption of correctness?

- Under the old statute, if the Property Appraiser lost the presumption, the taxpayer still had the burden of proving that the assessment exceeded just value, albeit by a preponderance of the evidence, rather than clear and convincing evidence.
- As of Sept. 1st, the DOR's training materials indicated that, regardless of whether the PA retained the presumption, the taxpayer still had the ultimate burden of proof.

DOR's Revised VAB Training

- However, on Sept. 18th, in response to feedback, the DOR revised its training materials to reflect that, if the Property Appraiser does not retain the presumption of correctness, the VAB should go ahead and either set the value or remand for a new assessment.
- Essentially, the DOR has interpreted the statute such that if the Property Appraiser loses the presumption, the taxpayer does not even have to present a case.
- Is this the correct interpretation? Only time (and the courts) will tell.



Questions & Answers

