



# County Technical Assistance Service

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## Revenue

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Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

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## Revenue

**Reference Number:** CTAS-199

The county legislative body does not have inherent power to tax or set fees. Instead, all revenue received by the county is derived from, or authorized by, statutory law, either general laws (public acts) or private acts. A county government's chief sources of revenue, property and local option sales taxes, are levied by the county legislative body, but are authorized by the state's general law, codified in the *Tennessee Code Annotated*. Counties receive substantial funds from state taxes on the sale of gasoline and diesel fuel, taxes that the counties do not levy but share in according to a formula in the general law. Counties may supplement these sources of revenue through private acts that levy additional taxes, such as a hotel/motel tax.

## Alcohol and Tobacco Taxes

**Reference Number:** CTAS-217

### Alcoholic Beverage Tax

**Reference Number:** CTAS-1626

*Authority.* T.C.A. §§ 57-3-301 through 57-3-308.

*Description.* This tax is on the sale or distribution by sale or gift of wine, beer and distilled spirits with an alcoholic content of more than 5 percent by weight. T.C.A. § 57-3-301.

*Rate:* \$1.21 per gallon (32 cents per liter) of wine and \$4.40 per gallon (\$1.17 per liter) of distilled spirits. T.C.A. § 57-3-302. Notwithstanding T.C.A. § 57-3-302, the state tax on intoxicating liquor or alcoholic beverages with an alcoholic content of seven percent (7%) or less shall be one dollar and ten cents (\$1.10) per gallon and no identification stamps shall be required to be fixed to the retail container of such alcoholic beverage. T.C.A. §§ 57-3-303(l) and 57-3-308.

*Distribution.* The tax is distributed as follows:

1. Any county where a distillery is located receives four cents (4¢) per liter of the tax imposed on the sale of distilled spirits.
2. Except for the distribution as provided in (1), eighty-two and one-half percent (82.5 %) of the proceeds of this tax to the state general fund.
3. Except for the distribution as provided in (1), seventeen and one-half percent (17.5%) of the proceeds of this tax to counties (general fund) as follows:
  - a. Seventy-five (75%) percent of this amount is apportioned according to county population.
  - b. Twenty-five percent (25%) of this amount is apportioned according to county area.
  - c. However, thirty percent (30%) of the amount distributed to counties with a population of more than 250,000 is distributed to cities in the county with population over 150,000. T.C.A. § 57-3-306.

### Mixed Drink Tax (Liquor-by-the-Drink Tax)

**Reference Number:** CTAS-1627

*Authority.* T.C.A. §§ 57-4-301 through 57-4-308.

*Description.* Two related taxes are considered together under this topic. Both taxes are on the privilege of selling alcoholic beverages at retail in this state for consumption on the premises. The first tax is an annual fixed amount based on the type and size of the business; the second tax is a percentage levy fifteen percent (15%) based on the sales price of alcoholic beverages sold for consumption on the premises. T.C.A. § 57-4-301.

*Distribution.* These two taxes are distributed as follows:

1. The fixed annual tax goes to the state general fund for state purposes. T.C.A. § 57-4-301.

2. The gross receipts tax is distributed in accordance with T.C.A. § 57-4-306 as follows:
- a. Fifty percent (50%) to the state general fund to be earmarked for educational purposes.
  - b. Fifty percent (50%) to local political subdivisions:
    - (1) Fifty percent (50%) for education, in accordance with the statutory formula.
    - (2) Fifty percent (50%) divided as follows:
      - (a) Collections in unincorporated areas, to the county general fund.
      - (b) Collections in municipalities, to those municipalities.
- Special provisions apply in Sevier, Hamilton, and Bradley counties.

## Beer Tax (Barrels Tax)

**Reference Number:** CTAS-1628

*Authority.* T.C.A. §§ 57-5-201 through 57-5-208.

*Description.* The beer tax is a privilege tax paid by every person, firm, corporation, joint stocks company, syndicate or association in this state storing, selling, distributing or manufacturing beer and alcoholic beverages of less than eight percent (8%) alcoholic content by weight. T.C.A. § 57-5-201. The beer tax is a state tax and no county or municipality may levy any like tax. Individuals or businesses that sell or distribute beer collect this tax and pay over the sums collected to the Department of Revenue on or before the 20th day of the month following the month in which the tax accrues. T.C.A. §§ 57-5-201, 57-5-202, 57-5-203.

*Rate.* \$4.29 per barrel. T.C.A. § 57-5-201.

*Distribution.* The beer tax is distributed as follows:

1. \$3.79 of the \$4.29 tax rate is distributed:
  - a. Up to 4 percent to the Department of Revenue to defray the expenses of administration of this tax. T.C.A. § 57-5-202.
  - b. Of the remainder
    - (1) 10.05 percent to the several counties equally for general purposes.
    - (2) 10.05 percent to the incorporated municipalities according to population for general purposes.
    - (3) 0.41 percent to the Department of Mental Health and Mental Retardation to assist municipalities and counties in carrying out the provisions of the Comprehensive Alcohol and Drug Treatment Acts of 1973.
    - (4) The remainder (or 79.49 percent) to the state general fund. T.C.A. § 57-5-205.
2. \$0.50 of the \$4.29 tax to the state highway fund to be used to fund programs for the prevention and collection of litter and trash. T.C.A. § 57- 5-201.

## Wholesale Beer Tax

**Reference Number:** CTAS-1629

*Authority.* T.C.A. §§ 57-6-101 through 57-6-118.

*Description.* This is a state-levied tax on the sale of beer and similar alcoholic beverages of not more than eight percent (8%) alcoholic content by weight, wine excepted, at wholesale. T.C.A. § 57-6-102.

*Rate.* Thirty-five dollars and sixty cents (\$35.60) per barrel of thirty-one gallons (31 gals.) of beer sold. Barrels containing more or less than thirty-one gallons (31 gals.) shall be taxed at a proportionate rate. T.C.A. § 57-6-103(a).

*Distribution.* The tax collected is distributed to the county or municipality of the retailer's place of business, less ninety-two cents (92¢) of the gross tax owed per barrel retained by the wholesaler or manufacturer operating as a retailer and seventeen cents (17¢) of the gross tax owed per barrel remitted to the

Department of Revenue for administration of the tax. The tax is remitted to the municipality if retailer's place of business is within the city's or town's boundary; otherwise, the tax is remitted to the county of the retailer's place of business. T.C.A. § 57-6-103.

In 1998, the General Assembly passed Public Chapter 1101, which was a major reform of the annexation and incorporation laws having a great impact upon the way the wholesale beer tax is distributed among cities and counties. T.C.A. § 6-51-115. It included a "hold harmless" provision to protect county revenue sources. When a city annexes territory or a new city incorporates, revenue amounts generated in that area by the wholesale beer tax that had been received by the county prior to the annexation or incorporation continue to go to the county for 15 years after the date of the annexation or incorporation. During that time, any increase in the situs based portion of the revenues generated in the area would be distributed to the annexing or incorporating municipality. If commercial activity in the annexed area decreases due to business closures or relocations, a city may petition the Department of Revenue to adjust the payments it makes to the county.

## Beer Permit Privilege Tax

**Reference Number:** CTAS-1630

*Authority.* T.C.A. § 57-5-104.

*Description.* This is an annual privilege tax in the amount of \$100 paid by any person, firm, corporation, joint-stock company, syndicate or association engaged in selling, distributing, storing or manufacturing beer. The tax is to be paid on January 1 to the county or city in which the business is located. For businesses located in the county outside any incorporated municipality the tax is collected by the county clerk, and for businesses located inside a municipality the tax is collected by the official designated by the city. The county or city may use these funds for any public purpose. T.C.A. § 57-5-104.

## Tobacco Tax

**Reference Number:** CTAS-1631

*Authority.* T.C.A. §§ 67-4-1001 through 67-4-1033.

*Description.* This is a special state-levied privilege tax imposed on every dealer or distributor of cigarettes and other tobacco products. T.C.A. § 67-4-1002. However, the tax is passed on to the consumer. T.C.A. § 67-4-1003. Most of the revenue from this tax is earmarked for public education, grades one through twelve. T.C.A. § 67-4-1025(b).

## Business Taxes

**Reference Number:** CTAS-218

## Business Tax

**Reference Number:** CTAS-1635

*Authority.* T.C.A. §§ 67-4-701 through 67-4-730.

*Description.* Engaging in any vocation, occupation, business, or business activity listed in T.C.A. § 67-4-708(1)-(5) is a taxable privilege subject to the business tax, a privilege tax levied by the state based on gross receipts in lieu of ad valorem taxes on inventory of merchandise held for sale or exchange. The rates of the tax are set out in T.C.A. § 67-4-709. Businesses described in T.C.A. § 67-4-708(1)-(4) may also be taxed by the municipalities in which they conduct business, in an amount not exceeding the rates established by law. T.C.A. § 67-4-705. The Department of Revenue collects the business tax. T.C.A. § 67-4-703. Business licenses are issued by the county clerk and by the appropriate city official for businesses located within a city, but cities and counties may contract with the commissioner to issue the licenses under T.C.A. § 67-4-723. Every affected business must register with the commissioner of revenue or the county clerk for businesses located within the county (and with the commissioner or the city official for businesses located within a city, or with the commissioner for businesses subject to tax but with no physical location in the state) prior to engaging in business. T.C.A. § 67-4-706. Upon receiving

the application and a fee of \$15.00, the county clerk (and city official in the case of a business located within a city) issues a business license. The license is renewed each year upon payment of the business tax for no additional fee. Minimal activity licenses are issued upon application and payment of a \$15.00 fee to businesses with gross receipts between \$3,000 and \$10,000 per year within the jurisdiction; businesses with sales of \$3,000 or less may, but are not required to, apply for a minimal activity license. T.C.A. § 67-4-723.

There are five classifications of businesses established by the business tax laws, each with different rates. Class Five includes industrial loan companies and is taxable only by the state. Foreign businesses filing within Class Four must file a bond or establish an escrow account with the county clerk (and city official for businesses located in the city) in an amount sufficient to pay the anticipated business tax liability for the balance of the tax period for which the license applies. T.C.A. § 67-4-707. Traveling photographers must file a \$100 deposit with the county clerk (and city official if within the city). T.C.A. § 67-4-729.

The rate of the business tax is a percentage of gross receipts, which varies among the classifications, and is adjusted for various credits and deductions. T.C.A. § 67-4-709.

*Distribution.* Of the amounts collected by the Department of Revenue, the county clerk receives \$7.00 per return filed by a taxpayer located within that county, and of that amount \$3.00 is earmarked for computer hardware purchases or replacement or other computer-related expenses. The city official receives a like amount for businesses located within the city. After these distributions, 5% of the remaining proceeds are paid to the county clerk in the case of taxes paid by taxpayers located or licensed within the county, and to the city official in the case of taxpayers within the city. Of the remaining proceeds, 43% is deposited in the state's general fund. The remaining proceeds, after deduction of an administrative fee of 1.125% to the department of revenue, are distributed to the county in which the taxpayer is located. Taxes levied by cities are distributed to cities in accordance with the formula set out by statute. Fees imposed by counties and cities on antique malls and transient vendors under T.C.A. § 67-4-710 are retained by the county or city, with a 5% fee to the county clerk or city officer. Notwithstanding the foregoing, 100% of any tax, interest, and penalties collected from taxpayer that does not have either a license or an established location in any county or city, and 100% of all taxes, penalties and interest assessed by the state as a result of an audit, are retained by the state. T.C.A. § 67-4-724.

For more information about the business tax, see the current edition of the *Business Tax Guide* available on the Tennessee Department of Revenue's [business tax website](#).

## Excise Tax Applied to Financial Institutions

**Reference Number:** CTAS-1636

*Authority.* T.C.A. §§ 67-4-2001 through 67-4-2023.

*Description.* This is a state tax on the net earnings of corporations doing business in Tennessee, but only the portion of this revenue received from financial institutions (banks, savings and loans, loan or trust companies, investment companies, and cemetery companies) is distributed to counties and municipalities under T.C.A. §§ 67-4-2017, 67-4-2020, 67-4-2021, and 67-4-2022. Net earnings is defined in T.C.A. § 67-4-2006. The tax rate is 6.5 percent of net earnings. T.C.A. § 67-4-2007.

*Distribution.* For excise taxes collected from a bank, loan or trust company, financial institution unitary business, investment company, or cemetery company, the amount distributed to cities and counties is 3 percent of the net earnings less 7 percent of the ad valorem taxes paid by the entity on its real and tangible personal property for the second fiscal year preceding the year in which the distribution is made. These revenues are allocated between the county and the municipal government where the office of the entity is located in the same proportion as the property tax rate of each taxing jurisdiction bears to the sum of the property tax rates. T.C.A. §§ 67-4-2017, 67-4-2020, 67-4-2021, and 67-4-2022.

## Development Taxes and Infrastructure Funding

**Reference Number:** CTAS-1637

In recent years local governments, especially those in counties experiencing heavy growth, have looked for ways by which those benefitting from the growth could also pay for the increased governmental costs resulting from it. There are three main methods by which a local government may make an assessment

against property that the owner wishes to develop: special assessments, impact fees, and privilege taxes.

Special Assessments. These are charges levied against specific parcels of property to recoup part or all of the costs of improvements that directly benefit that property: "The differences between a special assessment and a tax are (1) a special assessment can be levied only on land for special purposes; (2) a special assessment is based wholly on lands benefitted." *West Tennessee Flood Control & Soil Conservation Dist. v. Wyatt*, 247 S.W.2d 56 (Tenn. 1952). Counties are authorized to levy special assessments by the County Powers Act, T.C.A. § 5-1-118, and T.C.A. § 7-32-101 *et seq.*

Impact Fees and Adequate Facilities Taxes. Impact fees are a means of regulating new development in a local government. The intent of the fee is to place the financial burden of new growth on areas in which the growth has occurred. The level of the fee must be related to the needs of new development, and revenues generated by the fee should be earmarked for investment in the growth areas. There is no specific statutory authority under general law for counties to impose impact fees. Prior to 2006, impact fees could be imposed by private act. After June 20, 2006, no county is authorized to enact an impact fee on development or a local real estate transfer tax by private or public act. T.C.A. § 67-4-2913.

Adequate facilities taxes are privilege taxes levied on the privilege of construction or development of property. The primary difference between an impact fee and an adequate facilities tax is one of intent: It is a tax if the primary purpose is to raise revenue, but it is a fee if the purpose is regulation of some activity under the government's police power. *Memphis Retail Liquor Dealer's Ass'n Inc. v. City of Memphis*, 547 S.W.2d 244 (Tenn. 1977). The issue of whether a program is a tax or fee becomes significant in determining the level of scrutiny with which courts will look at the program. Since taxes are not regulatory actions, they do not have to meet the same standards as impact fees.

Before 2006, some counties had levied adequate facilities taxes on the privilege of development under authority granted by private act. In 2006, the General Assembly enacted the "County Powers Relief Act," T.C.A. § 67-4-2901 *et seq.*, which is now the exclusive authority for counties to levy adequate facilities taxes. This act authorizes counties qualifying as "growth counties" to levy a county school facilities tax on residential development. A county may meet the criteria to be a growth county by one of two ways: (1) the county experienced a 20 percent or greater increase in population between the last two federal decennial censuses (or the county experiences that level of growth between any subsequent federal censuses); or (2) the county experienced a 9 percent or greater increase in population over the period from 2000 to 2004 (or over any subsequent four year period).

Before the tax may be levied, the county is required to have adopted a capital improvement program. The tax can then be levied by a resolution adopted by a 2/3 vote of the entire membership of the county legislative body at two consecutive, regularly scheduled meetings. The tax may be levied initially at a rate not to exceed \$1.00 per square foot. Square footage is determined based on the total heated or air-conditioned residential living space. Once adopted, the rate of the tax cannot be increased for four years. Once the four year period has run, the county legislative body may increase the rate, but by no more than 10 percent. After any increase, the rate is again frozen for a four year period. Public buildings, places of worship, barns and agricultural buildings, replacement buildings for structures damaged by disaster, buildings owned by 501(c)(3) nonprofit corporations, and buildings constructed in an area designated by the federal government as a blighted, distressed, or urban renewal zone are exempt from the tax. All revenue from this tax is turned over to the county trustee for deposit. The revenue is required by law to be used exclusively for funding growth-related capital expenditures for education, including the retirement of bonded indebtedness.

The County Powers Relief Act is the exclusive authority for local governments to adopt any new or additional adequate facilities taxes on development after June 20, 2006. The act prohibits counties from enacting any impact fees or local real estate transfer taxes in the future by either public or private act. The act preserves existing development taxes and impact fees to the extent authorized by any private acts in effect prior to June 20, 2006. The act allows a city or county to revise the dedicated use and purpose of the tax levied by a pre-existing tax from public facilities to public school facilities. Counties that levy a development tax or impact fee by private act under prior law may not levy the school facilities tax authorized by the County Powers Relief Act so long as they are levying and collecting development taxes or impact fees under the authority of the private act. The act includes language that requires the General Assembly to review the provisions of the act to ascertain the effect on and the needs of those counties which did not qualify to levy the tax under the act.

At the date of this publication, Bedford, Jefferson, Loudon, and Trousdale counties have adopted the school facilities tax. Counties that adopted adequate facilities taxes before this legislation went into ef-

fect are not prevented from imposing the taxes that were granted by private act, nor are they prevented from using the proceeds of these taxes for use on public facilities other than school facilities.

## Fees of County Officers

**Reference Number:** CTAS-219

The county receives money through fees and commissions for services performed by county officials. The register, county clerk, trustee, sheriff, circuit and criminal court clerks, and clerk and master receive fees or commissions for their services. Excess fees are a source of county revenue for purposes other than the maintenance of these offices.

The statutory references for the fees of these offices are as follows:

Clerks of Court: T.C.A. §§ 8-21-401 through 8-21-409, 29-22-103, 29-22-105, 32-1- 112, 36-5-405, 38-6-103, 40-3-203, 40-3-204, 40-24-101, 40-24-107, 67-8-406. [Note that the clerk of courts' primary fee statute, T.C.A. § 8-21-401, was completely rewritten by 2005 Public Chapter 429.]

County Clerks: T.C.A. §§ 8-21-401 through 8-21-409 and 8-21-701 through 8-21-703, 8-16-106, 8-16-109, 7-81-108, 36-6-413, 45-6-207, 45-6-208, 55-4-105, 55-4-115, 55-4-117, 55-4-123, 55-4-201, 55-4-221, 55-4-223, 55-6-104, 55-50-331, 62-30-103, 67-4-723, 67-4-724, 69-9-208, 70-2-106.

Registers: T.C.A. §§ 8-21-1001, 47-9-525, 7-81-107, 10-7-114, 48-11-303(d), 48-51- 303, 48-247-103(e), 61-1-1208(d), 61-2-206, 67-4-409(d).

Sheriffs: T.C.A. §§ 8-21-901 through 8-21-903, 7-81-108, 40-9-127, 67-5-2410.

Jailers: T.C.A. §§ 8-26-105, 41-4-105, 41-4-115, 40-7-122, 41-4-142.

Trustees: T.C.A. §§ 8-11-110, 54-4-103, 54-12-111, 54-12-216, 69-5-802, 69-6-139, 69-6-145, 69- 5-835, 69-5-931, 54-12-111, 54-12-424, 54-12-425 and 38-5-119 through 38-5-121.

## Accounting for Fees

**Reference Number:** CTAS-1643

There are two basic methods of using and accounting for fees received. Under the oldest system, the officer remits to the trustee quarterly all fees, commissions, and charges collected in the preceding quarter in excess of deputies' and assistants' salaries, necessary office expenses, and the official's salary. T.C.A. § 8-22-104. Under this system the official may retain fees in an amount equal to three times the official's monthly salary and the deputies' and assistants' salaries. The sheriff is no longer under this first system.

In addition, the legislative body may adopt an alternative system for any of the fee officers or all of them, except for the sheriff, who is required to be under this second system. T.C.A. § 8-22-104. Under this system, the fee officer pays to the trustee monthly all fees, commissions, and charges collected by the office. In return, the legislative body appropriates the officer's salary, the salaries of the deputies and assistants, and authorized office expenses. The sheriff is always under this "alternative" system.

Under both systems, deputies' and assistants' salaries may be determined by court decree or by letter of agreement. Under the latter method, if the fee official and the county mayor agree on the number and salary of deputies and assistants for the office (and this is within the budget amount), a letter of agreement may be signed and entered into the courts' records; no salary suit is necessary. T.C.A. § 8-20-101. The legislative body under the old system does not appropriate funds for the officer's salaries or regular office expenses unless the office fees are inadequate. However, under the alternative system, the legislative body must appropriate funds for the officer's salary, deputies' and assistants' salaries, and other expenses of the office regardless of the office fees. Excess fees become part of the county general fund and may be appropriated for any proper county purpose.

## In Lieu of Tax Payments

**Reference Number:** CTAS-224

### TVA In Lieu of Tax Payments

**Reference Number:** CTAS-220

*Authority.* 16 U.S.C. § 831 *et seq.*, T.C.A. §§ 67-9-101 through 67-9-103.

*Description.* TVA in lieu of tax payments are payments made by the Tennessee Valley Authority to the state for the purpose of replacing tax revenue that TVA would otherwise pay if it were not a tax-exempt federal agency. The amount of the payments is determined by federal law. 16 U.S.C. § 831(L), the TVA Act.

*Distribution.* First \$55.2 million to the state general fund. Any amounts above \$55.2 million are distributed as follows:

1. 48.5 % - State
2. 48.5 % - Counties and municipalities to be allocated as follows:
  - a. 30 percent of the 48.5 percent to counties on the basis of their percentage of the state's total population.
  - b. 30 percent of the 48.5 percent to counties on the basis of the percentage that the total acreage of each county bears to the total acreage of the state.
  - c. 10 percent of the 48.5 percent to counties on the basis of the percentage of their land owned by TVA compared to all land owned by TVA in Tennessee.
  - d. 30 percent of the 48.5 percent to municipalities on the basis of the population that the municipality bears to the population of all municipalities in the state.
3. Three percent (3%) to local governments impacted by TVA construction activity on facilities to produce electric power. The impacted areas are designated by TVA and payments are made during the period of construction activity and for one full fiscal year after completion of such activity. The comptroller of the treasury allocates the impact funds among the counties and municipalities according to a weighted population formula. If, in any fiscal year, there are remaining impact funds after allocation, or if there are no impacted areas, CTAS may receive an amount not greater than 30 percent of the funds, with up to 20 percent of any remaining funds allocated to the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) for an annual inventory of statewide public infrastructure needs, and additional 20 percent, if available, to TACIR for study purposes. The remainder shall be allocated to any regional development authorities that have acquired a former nuclear site from the Tennessee Valley Authority. The funds shall be used to construct roads, install water and wastewater facilities and provide other public infrastructure needs to assist in the development of the sites and other land as regional industrial, business and job incubator facilities consistent with regional development plans. T.C.A. § 67-9-102.

### Municipal Electric and Gas System Tax Equivalent Payments

**Reference Number:** CTAS-1611

*Authority.* T.C.A. §§ 7-52-301 through 7-52-310, 7-39-401 through 7-39-406.

*Description.* Every municipality may pay from its electric system and gas system revenues, each fiscal year, an amount for payments in lieu of taxes ("tax equivalents") on its electric and gas system property and operations. The amount of the payment should represent the fair share of the cost of government as determined by the municipality's governing body, subject to the provisions of T.C.A. §§ 7-39-404 and 7-52-304 relative to the amounts of such payments.

*Distribution.* Contracts for distribution of municipal electric tax equivalent payments are authorized by T.C.A. § 7-52-306. In the absence of an agreement, a formula for apportionment of municipal electric system tax equivalent payments, wherein the county (or counties) receives 22.5 percent of the total tax equivalent payment, is provided in T.C.A. § 7-52-307.

## Local Option Transit Surcharges

**Reference Number:** CTAS-2462

As part of the IMPROVE Act adopted in 2017, local governments are now authorized to impose a local option transit surcharge on certain local privilege taxes. Counties must have a population over 112,000 and cities must have a population over 165,000 according to the 2010 census or any subsequent census in order to levy the surcharge.

The surcharge may be levied on the following local privilege taxes: local option sales tax, business tax, wheel tax, rental car tax, tourist accommodation tax or hotel/motel tax and the residential development tax.

The surcharge must be approved by a referendum and the city and county cannot both levy the surcharge. There are statutory maximum rates of the surcharge and the surcharge is to be collected in the same manner as the underlying privilege tax.

Revenue from the surcharge must be used for a public transit system.

T.C.A. § 67-4-3201 *et seq.*

## Motor Vehicle Taxes and Fees

**Reference Number:** CTAS-221

## Motor Vehicle Title and Registration Taxes

**Reference Number:** CTAS-1632

*Authority.* T.C.A., Title 55, Chapters 1 through 6.

*Description.* Before operating any motor vehicle upon the streets or highways of this state, the vehicle must be registered (subject to certain exceptions). The registration fee is a privilege tax upon operation. It is administered by the Commissioner of Revenue and collected by the county clerk of the county of the owner's residence or the county wherein the vehicle is based or to be operated. A nonresident may apply directly to the Department of Revenue for registration. T.C.A. §§ 55-4-101(c), 55-6-105. Terms used in administering titles and registrations are defined in T.C.A. §§ 55-1-101 through 55-1-126.

*Distribution.* These state registration fees and taxes are retained by the state, with ninety-eight percent (98%) going to the state highway fund and two percent (2%) going to the state general fund. Notwithstanding this section or any other law to the contrary, the proceeds derived under chapter 4 of this title from the increases in fees imposed by chapter 181 of the Public Acts of 2017 shall be distributed solely to the highway fund. T.C.A. § 55-6-107.

## Mobile Home Registration Fee

**Reference Number:** CTAS-1633

*Authority.* T.C.A. § 55-4-111.

*Description.* The county clerk collects a mobile home registration fee. The amount of the fee varies according to the length and width of the mobile home. T.C.A. § 55-4-111.

*Distribution.* The fees are distributed as follows:

1. The first \$1 to fund police pay supplement fund. T.C.A. § 55-4-111.
2. Five percent (5%) of remaining revenue to the state
3. 95 percent of remaining revenue to the county and city
  - a. One half (1/2) of which is distributed in the same manner as the property tax for school purposes.
  - b. One half (1/2) of which goes to the county or city general fund (depending on the location of the mobile home), or as such county and city by contract provide. T.C.A. § 55-6-107.

## County Motor Vehicle Privilege Tax (Wheel Tax)

**Reference Number:** CTAS-1634

*Authority.* T.C.A. § 5-8-102.

*Description.* Counties may levy a privilege tax on motor vehicles, commonly called a wheel tax. The tax may be levied by one of the following methods: (1) by passage of a resolution by a two-thirds vote of the county legislative body at two consecutive regular county legislative body meetings; (2) by passage of a resolution by the county legislative body by a regular majority with approval by referendum provided for in the resolution; and (3) by private act. Notwithstanding a population classification exception, the two-thirds majority resolution method is subject to a referendum if a petition signed by a number of registered voters equal to 10 percent of the number of voters in the last gubernatorial election is filed with the county election commission within 30 days of passage. T.C.A. § 5-8-102(c).

*Distribution.* Distribution of these tax revenues may be for any county purpose specified in the private act or resolution levying the tax.

## Other Taxes

**Reference Number:** CTAS-222

## Hall Income Tax

**Reference Number:** CTAS-1638

*Authority.* T.C.A. §§ 67-2-101 through 67-2-125.

*Description.* This is a tax on income derived from stocks and bonds, as defined in T.C.A. §§ 67-2-101 and 67-2-102. There are numerous exemptions, including a \$1,250 personal exemption on individual returns and \$2,500 on joint returns. T.C.A. § 67-2-104. The tax is collected by the Department of Revenue. The rate was previously five percent (5%) but is being phased out as follows:

- (1) For any tax year that begins on or after January 1, 2017, and prior to January 1, 2018, four percent (4%);
- (2) For any tax year that begins on or after January 1, 2018, and prior to January 1, 2019, three percent (3%);
- (3) For any tax year that begins on or after January 1, 2019, and prior to January 1, 2020, two percent (2%);
- (4) For any tax year that begins on or after January 1, 2020, and prior to January 1, 2021, one percent (1%); and
- (5) For any tax year that begins on or after January 1, 2021, and for subsequent tax years, zero percent (0%);

*Distribution.* The tax is distributed as follows:

1. Up to 10 percent of the first \$200,000 of taxes collected and 5 percent of amounts over \$200,000 go to the Department of Revenue for administration of the tax. T.C.A. § 67-2-117.
2. The taxes collected on income from stocks and bonds after deducting administration expenses are distributed as follows:
  - a. Five-eighths (5/8) to the state general fund;
  - b. Three-eighths (3/8) to the counties and municipalities of the state. If the taxpayer resides inside the corporate limits of a municipality, then to that municipality; but if the taxpayer resides outside any municipal limits, then to the county of the taxpayer's residence. T.C.A. § 67-2-119.

## Hotel/Motel Tax

**Reference Number:** CTAS-1639

A hotel/motel tax is a tax on the privilege of occupancy of hotel rooms. Under T.C.A. § 67-4-1401(2), the term hotel includes private, public, and government owned hotels, inns, tourist camps, tourist courts, tourist cabins, motels, short-term rental units, primitive and recreational vehicle campsites and campgrounds, or any place in which rooms, lodgings, or accommodations are furnished to transients for consideration. Prior to July 1, 2021, counties levied the hotel/motel tax by private act (with the exception of counties with a metropolitan form of government, which use a general law, T.C.A. § 7-4-101 *et seq.*)

Modifying, Levying, and Repealing Hotel/Motel Tax —Public Chapter 496 became effective on July 1, 2021. The law allows a county (except for those with a metropolitan form of government) to levy, modify, or repeal a privilege tax by resolution (rather than by private act) subject to the following restrictions: (i) the tax must not exceed 4% of consideration charged to the occupant of the hotel; (ii) subject to other provisions discussed below, a hotel/motel tax authorized before the effective date of this act that exceeds the limit remains in full force and effect; and (iii) this does not void or modify a private act, ordinance, or resolution authorizing the levy of the privilege tax. T.C.A. § 67-4-1402.

Under T.C.A. § 67-4-1403, revenue received by the county from the tax must be used for tourism purposes. However, revenue from a tax levied before July 1, 2021, may continue to be used in the same manner described in the private act or resolution. Counties are not authorized to change the use of revenue of a preexisting tax except for tourism purposes. See Title 67, Chapter 4, Part 14 of the Tennessee Code Annotated.

Short-Term Rentals —Short-term rentals are residential dwellings that are rented wholly or partially for a fee for less than 30 continuous days but do not include a hotel defined in T.C.A. § 68-14-302 or a bed and breakfast as defined in T.C.A. § 68-14-502. See T.C.A. § 67-4-1501(5).

Title 7, Chapter 4 and Title 67, Chapter 4 of the Tennessee Code Annotated define a short-term rental marketplace as a person or entity, (excluding vacation lodging services), that provides a platform for compensation, between a third-party who offers to rent a short-term rental to an occupant. Examples of short-term rental marketplaces are Airbnb and VRBO. Vacation lodging services are engaged in the business of providing management, marketing, booking, and rental or short-term rental units. One example of a vacation lodging service is a cabin rental company.

Hotel/motel taxes on short-term rental units secured through a short-term rental marketplace must be collected and remitted by the short-term rental marketplace to the department of revenue for distribution to the local government levying the tax, in accordance with Title 67, Chapter 4, Part 33, of the Tennessee Code Annotated. Vacation lodging services are not responsible for collecting and remitting hotel/motel taxes to the department of revenue but may be responsible for remitting such taxes to the county if required by private act or resolution.

## State Litigation Tax

**Reference Number:** CTAS-1640

*Authority.* T.C.A. §§ 67-4-601 through 67-4-606.

*Description.* The General Assembly has provided a privilege tax on litigation, collected upon the commencement of a civil action, a finding or plea of guilty or submission to a fine in a criminal action, the filing of an appeal or writ of error or certiorari, judgment against the defendant in any original civil action brought by a city, county or the state or upon judgment or final decree against the appellee when the appellant is a city, county or the state. Such tax is administered by the commissioner of revenue and collected by the clerks of Supreme Court, Court of Appeals, circuit courts, criminal courts, probate courts, county court, courts of law and equity, chancery courts, general sessions courts, city courts and any other inferior courts the General Assembly may create.

The following are the most common state privilege taxes upon litigation:

1. Criminal charges; T.C.A. § 67-4-602(a)	\$29.50
2. Civil suits in courts of record; T.C.A. § 67-4-602(b)	\$23.75
3. Civil cases in general sessions; T.C.A. § 67-4-602(c)	\$17.75

When a general sessions court is exercising state court jurisdiction, except with regard to juvenile court, there is levied an additional privilege tax of \$1 added to the \$23.75 listed above.

In all criminal charges in any state, county or municipal court for any violation of Title 55, Chapter 8, or for any violation of any ordinance governing the use of a public parking space there is levied an additional state litigation tax of \$1.

Additionally, T.C.A. § 67-4-602(h) imposes an additional privilege tax on litigation of \$3.00 on all criminal charges, upon conviction or by order, instituted in any state or general sessions court, to be deposited in a special account in the state treasury to be known as the "Statewide Automated Victim Information and Notification System Fund."

There is also an additional litigation tax of \$2.00 imposed on all criminal charges, upon conviction or by order, instituted in the general sessions court of any county served by a judicial commissioner. T.C.A. § 67-4-602(k).

*Collection.* State litigation taxes are collected by the various court clerks. For services in collecting and remitting these taxes, clerks are entitled to a 6.75 percent commission. T.C.A. § 8-21-401. As this commission is a change to a uniform percentage from prior law, which provided for different commissions in different courts and counties, the Department of Revenue provided that clerks shall be held harmless and shall not receive a commission that is less than the commission received by the clerk in the fiscal year ending June 30, 2005.

## County Litigation Taxes

**Reference Number:** CTAS-1641

*Authority.* TCA 67-4-601, 16-15-5006, and 16-20-106.

*Description.* Counties have authority to levy a local litigation tax up to the amount levied as state litigation tax. This local litigation tax may be levied by private act, by resolution of the county legislative body, or by a combination of private acts and county legislative body resolutions. Clerks of the various courts to which such tax applies as specified in the private act or resolution collect the local litigation tax. The private acts and local resolutions of each individual county must be consulted for that county's litigation tax rate.

In addition to matching the state litigation tax, TCA 16-15-5006 authorizes counties to levy a litigation tax of up to \$6 per case for each case filed in general sessions court or in a court where the general sessions judge serves as judge, except juvenile court, by resolution passed by a two-thirds vote of the county legislative body, proclaimed by the presiding officer and certified to the secretary of state. This statute also contains a provision allowing the litigation tax to be raised above \$6 if in any fiscal year the proceeds of the tax do not raise sufficient revenue to fund the salary, under the circumstances specified in the statute. *See Op. Tenn. Att'y Gen. U94-130.* The county litigation tax authorized by TCA 16-15-5006 is earmarked for the salary of the general sessions judge.

Counties are authorized to levy an additional local privilege tax on litigation in all civil and criminal cases instituted in the county, not including those instituted in municipal court under subsection (b) of TCA 67-4-601. This additional tax may be levied by a resolution passed by a two-thirds vote of the county legislative body. Counties are authorized to levy the tax for jail or workhouse construction, reconstruction or upgrading, or to retire debt, including principal and interest and related expenses, on such construction, reconstruction or upgrading or for courthouse renovation.

Originally, the Attorney General issued opinions indicating that counties were limited to a maximum tax levy of \$50 under subsection (b) of TCA 67-4-601 (AG Op. Nos. 08-167 and 12-13). These opinions interpreted subdivisions (b)(1) and (b)(5) of subsection (b) not as separate taxes but linked. The opinions state that (b)(5) only authorizes an increase in

the (b)(1) tax to a maximum of \$25. However, in 2016 the Attorney General issued another opinion (Op. No. 16-10) that interprets subdivisions (b)(1) and (b)(5) as unrelated separate taxes. Thus, in the 2016 opinion, the Attorney General opines that counties can levy a maximum \$60 tax under subsection (b) of TCA 67-4-601 (\$10 under subdivision (b)(1), \$25 under (b)(5), and \$25 under (b)(6)). The 2016 opinion appears to supersede the 2008 and 2012 opinions.

In addition to the uses set forth above (i.e., jail/courthouse) as much as \$25 of this tax may be used for courthouse security. Also, up to \$50 of the tax may be used for the purpose of obtaining and maintaining software and hardware associated with collecting, receiving and maintaining records for law enforcement agencies. Finally, the entire amount may also be used for substance abuse prevention purposes.

The law contains a sunset provision that causes the tax levy to cease once the costs of the project have been paid or the debt for the project has been retired.

Finally, per TCA 16-20-106, counties by a two-thirds (2/3) vote may levy an additional \$2 litigation per case to be denominated as a part of the court costs for each petition, warrant and citation, including warrants and citations for traffic offenses, in matters before the local general sessions courts and juvenile courts to be used by the county for the exclusive purpose of supporting a local victim-offender mediation center or centers.

*Distribution.* Distribution of county litigation taxes that are to match the state levy may be used for any county purpose or purposes specified in the private acts or resolutions.

## Marriage License Taxes

**Reference Number:** CTAS-1642

*Authority.* T.C.A. §§ 67-4-411, 67-4-502, 67-4-505, 36-6-413.

*Description.* There are two state privilege taxes on marriage, and a local option privilege tax on marriage that may be levied in an amount up to \$5 by resolution of the county legislative body. The collector of both state and local marriage taxes is the county clerk. The \$5 state tax is retained locally and the \$15 state tax is forwarded to the commissioner of revenue for distribution. An additional "fee" was imposed on marriage licenses in a 2002 amendment to T.C.A. § 36-6-413, which fee is collected by the county clerk and forwarded to the state treasurer for distribution.

*Rate.* The rate of these taxes is as follows:

1. State privilege tax, T.C.A. § 67-4-411.....\$15
2. State privilege tax, T.C.A. § 67-4-505..... \$5
3. County privilege tax, T.C.A. § 67-4-502, up to..... \$5
4. Additional state "fee" (tax), T.C.A. § 36-6-413..... \*\$60

\*This \$60 "fee" (tax) is not collected in any county from couples who file a certificate showing they have taken a premarital preparation course, nor is it collected from out-of-state residents who obtain their license in Sevier County (the only county with this special exemption). T.C.A. § 36-6-413.

*Distribution.* These taxes are distributed as follows:

1. T.C.A. § 67-4-505 state tax (\$5) is used:
  - a. 5 percent to county clerk as commission for collecting and paying over the revenue, T.C.A. § 8-21-701(55); and
  - b. 95 percent used for county school purposes.
2. T.C.A. § 67-4-411 (\$15) tax is used:
  - a. 5 percent to county clerk as commission, and
  - b. The remainder is forwarded to the commissioner of revenue.

3. The county tax is distributed five percent (5%) to the county clerk as commission for collecting and paying over the revenue and the remainder according to county legislative body resolution.
4. T.C.A. § 36-6-413 additional \$60 state fee is forwarded to the state treasurer to be distributed as follows:
  - a. \$7 to the Administrative Office of the Courts for funding parenting plan requirements;
  - b. \$15 to the Department of Children's Services for child abuse prevention;
  - c. \$7.50 to Office of Criminal Justice programs for domestic violence services;
  - d. \$20.50 to the Tennessee Disability Coalition for families and children with disabilities;
  - e. \$3.00 to the Tennessee Court Appointed Special Advocates Association;
  - f. \$4 to the Department of Education for grants to Boys and Girls Clubs; and
  - g. \$3 to the Tennessee Chapter of the National Association of Social Workers to strengthen services to families and children.

## Petroleum Products Taxes

**Reference Number:** CTAS-223

## Gasoline Tax

**Reference Number:** CTAS-1619

*Description.* The gasoline tax is a privilege tax imposed on all gasoline, fuel alcohol (as defined in T.C.A. § 67-3-103) and substitutes therefor, imported into this state; the tax being levied when the product first comes to rest in this state, subject to certain exceptions that are found in *Tennessee Code Annotated*, Title 67, Chapter 3, Part 4. The tax is administered by the Department of Revenue.

*Rate:* Twenty-four cents (24¢) per gallon, effective July 1, 2017, twenty-five cents (25¢) per gallon, effective July 1, 2018 and twenty-six cents (26¢) per gallon, effective July 1, 2019 . T.C.A. § 67-3-201.

*Distribution.* The distribution formula for twenty cents (20¢) of the gasoline tax is as follows (some minor distributions have been omitted):

1. Amount necessary (if any) to fund state debt through sinking fund account. T.C.A. §§ 67-3-901, 9-9-105.
2. Nine cents (9¢) of the twenty cents (20¢) gasoline tax is distributed as follows:
  - a. 28.68 percent (less 2 percent of this amount for Department of Revenue administration expenses) to the county aid fund for county road purposes (prior to this distribution, the County Technical Assistance Service is allocated \$28,250 per month), which is divided as follows:
    - (1) 50 percent is divided equally among the 95 counties;
    - (2) 25 percent is divided among the counties on the basis of population; and
    - (3) 25 percent is divided among the counties on the basis of geographical area.
  - b. 14.38 percent (less one percent (1%) of this amount for Department of Revenue administration expenses) to the various municipalities and the municipal street aid fund according to population.
  - c. Remainder (less 2 percent (2%) of this amount for Department of Revenue administration expenses) to the state highway fund. T.C.A. §§ 67-3-901, 54-4-103.
3. Two cents (2¢) of the twenty cents (20¢) gasoline tax is distributed as stated in 2 above, except to receive its portion the county must appropriate funds for road purposes from local revenue sources in an amount not less than the average of the preceding five fiscal years (bond issues are excluded from calculation). If this amount is less than the five-year average, the state allocation will be decreased by the difference between the five-year average and the current amount appropriated from local sources. These funds must be used for resurfacing and upgrading county roads. T.C.A. § 67-3-901.

4. Three cents (3¢) of the twenty cents (20¢) gasoline tax is distributed as follows:
  - a. Sixty-Six percent (66%) to the counties as other county aid funds are distributed (less 1 percent of this amount to the Department of Revenue for administration expenses), to be used for resurfacing and upgrading county roads.
  - b. Thirty-three percent (33%) to the municipalities as other municipal aid funds are distributed (less 1 percent of this amount to the Department of Revenue for administration expenses). T.C.A. § 67-3-901.

However, one cent (1¢) of this three cents (3¢) is subject to the local contribution rule as specified in paragraph 3 above.
5. Six cents (6¢) is distributed to the state highway fund.

The revenue from the increases in gasoline tax passed in 2017 as part of the IMPROVE Act is distributed as follows:

1. 25.4 percent to counties per T.C.A. § 54-4-103;
2. 12.7 percent to cities per T.C.A. § 54-4-103; and
3. 61.9 percent to the state highway fund.

## Diesel Tax

**Reference Number:** CTAS-1620

*Description.* The diesel tax replaces the former motor vehicle fuel use tax. This tax is a privilege tax imposed on the users of diesel fuel (as defined in T.C.A. § 67-3-103) within this state, with certain exceptions such as fuel dyed in accordance with Internal Revenue Service regulations. T.C.A. § 67-3-202. The tax is administered by the Tennessee Department of Revenue.

*Rate:* Twenty-one cents (21 ¢) per gallon, effective July 1, 2017, twenty-four cents (24 ¢) per gallon, effective July 1, 2018 and twenty-seven cents (27 ¢) per gallon, effective July 1, 2019. T.C.A. § 67-3-202.

*Distribution.* Seventeen cents (17¢) of the tax is distributed as follows:

1. 1.62 percent to the state general fund.
2. 24.75 percent to the counties to become a part of the county highway fund in the following manner:
  - a. 50 percent equally among all counties;
  - b. 25 percent on the basis of population; and
  - c. 25 percent on the basis of area.
3. 12.38 percent to the municipalities on the basis of population, with minor exceptions.
4. 61.25 percent to the state highway fund. T.C.A. § 67-3-905.

Revenues from the increases in the tax passed in 2017 as part of the IMPROVE Act are distributed as follows:

1. 17.5 percent to counties per T.C.A. § 54-4-103;
2. 8.8 percent to cities per T.C.A. § 54-4-103; and
3. 73.7 percent to the state highway fund.

## Special Privilege Tax on Petroleum Products

**Reference Number:** CTAS-1621

*Description.* The special privilege tax on petroleum products is in addition to the gasoline and diesel taxes and is imposed on all petroleum products, subject to certain exceptions. T.C.A. § 67-3-203. This tax is administered by the Tennessee Department of Revenue.

*Rate:* One cent (1¢) per gallon. T.C.A. § 67-3-203.

*Distribution.* The special tax on petroleum products is distributed as follows:

1. Two percent (2%) to general fund for administrative purposes
2. \$12,017,000 per year to the local government fund
  - a. \$381,583 monthly to county highway departments on the basis of county population.

- b. \$619,833 monthly to cities on the basis of their population, less \$10,000 monthly to the Center for Government Training for in-service training of local government officials and employees.
3. Remainder to the state highway fund. T.C.A. § 67-3-906.

## Liquefied Gas Tax

**Reference Number:** CTAS-1622

*Description.* This tax is on liquefied gas used for the propulsion of motor vehicles on the public highways of this state. Governmental agencies are exempt. This tax is paid in advance annually by the owner of each motor vehicle licensed in Tennessee using liquefied gas as fuel. Out-of-state users pay upon delivery of the liquefied gas into the fuel supply tank of a motor vehicle. T.C.A. §§ 67-3-1102 through 67-3-1112.

*Rate:* Fourteen cents (14¢) per gallon T.C.A. § 67-3-1102.

*Distribution.* The distribution of the liquefied gas tax is as follows:

1. Nine cents (9¢) of the fourteen cents (14¢) distributed as follows:
  - a. 1.58 percent to the general fund.
  - b. 28.28 percent to the counties to become a part of the county highway fund as follows:
    - (1) Fifty percent (50%) equally among all counties;
    - (2) Twenty-five percent (25%) on the basis of population; and
    - (3) Twenty-five percent (25%) on the basis of area
  - c. 14.14 percent to the municipalities on a population basis, with minor exceptions.
  - d. 56 percent to the state highway fund.
2. Three cents (3¢) of fourteen cents (14¢) distributed to the state sinking and highway funds.
3. One cent (1¢) of fourteen cents (14¢) distributed as follows:
  - a. 66 percent to the counties as other county aid funds are distributed, less one percent (1%) to the Department of Revenue for administration expenses.
  - b. 33 percent to the municipalities as other municipal aid funds are distributed, less one percent (1%) to the Department of Revenue for administration expenses.
4. One cent (1¢) of fourteen cents (14¢) is distributed to the state highway fund. T.C.A. § 67-3-908.

As part of the IMPROVE Act, the tax will increase to seventeen cents (17¢) effective July 1, 2017, to nineteen cents (19¢) effective July 1, 2018 and to twenty-two cents (22¢) effective July 1, 2019. The revenue from this increase goes to the state highway fund.

## Compressed Natural Gas Tax

**Reference Number:** CTAS-1623

*Description.* A tax on the privilege of using compressed natural gas for the propulsion of motor vehicles on the public highways of this state. Governmental agencies are exempt. T.C.A. §§ 67-3-1113 through 67-3-1118.

*Rate.* 13 cents (13¢) per gallon. For the purpose of determining the tax, a gallon equivalent factor of 5.66 pounds per gallon is used. T.C.A. § 67-3-1113.

*Distribution.* The tax is distributed as follows:

1. 1.62 percent to the state general fund.
2. 24.75 percent to the counties to become a part of the county highway fund in the following manner:
  - a. 50 percent equally among all counties;
  - b. 25 percent on the basis of population; and
  - c. 25 percent on the basis of area.
3. 12.38 percent to the municipalities on the basis of population, with minor exceptions.
4. 61.25 percent to the state highway fund. T.C.A. § 67-3-905.

As part of the IMPROVE Act, the tax will increase to sixteen cents (16¢) effective July 1, 2017, to eighteen cents (18¢) effective July 1, 2018 and to twenty-one cents (21¢) effective July 1, 2019. The revenue from this increase goes to the state highway fund.

## Highway User Fuel Tax

**Reference Number:** CTAS-1624

*Description.* The highway user fuel tax is imposed on owners and operators of qualified motor vehicles engaged in interstate commerce in or through Tennessee. The amount of tax payable to the state is determined by dividing the total number of miles traveled in the state by the average number of miles traveled per gallon of gasoline or diesel fuel, or the per gallon equivalents of alternative fuels, and multiplying the result by the rates of the tax per gallon on the particular fuel used. T.C.A. §§ 67-3-1201 through 67-3-1210.

*Distribution.* Same as the taxes for the particular fuels that are used by the owner or operator.

## Property Taxes

**Reference Number:** CTAS-225

The primary source of revenue in most counties is the ad valorem property tax, an assessment based on the value of the property. Ad valorem taxes are imposed directly upon property, and the tax generally follows the property even if it is sold or transferred to a different owner.<sup>1</sup>

Article II, Section 28 of the Tennessee Constitution is the basic constitutional authorization to tax; it provides that counties and municipalities are authorized to levy a property tax on all property—real, personal or mixed—based on the value of the property. Pursuant to this constitutional authorization, the General Assembly enacted T.C.A. § 67-5-101, which provides that all property, real and personal, shall be assessed for taxation for state, county, and municipal purposes, except for the property declared exempt. In addition, the General Assembly has enacted legislation to enforce the power to tax, to declare certain property exempt from taxation, and to determine various methods of ascertaining "fair market value." Counties<sup>2</sup> and municipalities<sup>3</sup> are authorized by the General Assembly to levy real property,<sup>4</sup> tangible personal property,<sup>5</sup> intangible personal property,<sup>6</sup> and public utility property<sup>7</sup> taxes within their boundaries.<sup>8</sup> Taxing power is legislative and cannot be delegated except as the Constitution authorizes.<sup>9</sup>

It is essential that a valid assessment and levy of the tax occur in order to lawfully collect delinquent taxes. Assessment and levy are presumed to be properly completed even if the record does not reflect each step, unless an issue is raised as to the proper procedure.<sup>10</sup> Statutes imposing taxes are construed in favor of a taxpayer and strictly construed against the taxing authority; in other words, ambiguities in interpretation of taxing statutes are construed against the county.<sup>11</sup> Although a taxing statute is construed strictly against the taxing authority and in favor of the taxpayer, the court must give full scope to the legislative intent and apply a rule of construction that will not defeat the plain purpose of the statute.<sup>12</sup>

While the Tennessee Constitution mandates taxation according to value, the General Assembly determines the proper method for ascertaining value to insure uniform and equal taxation.<sup>13</sup> In order to further the constitutional mandate, the legislature has defined value, for property tax purposes, to be fair market value: basically, the price the property would bring if it were voluntarily sold by an informed buyer to an informed seller, each acting sensibly and without undue pressure.<sup>14</sup> The uniformity requirement means that the tax burden is to be applied equally to nonexempt property within a constitutional classification in order to achieve uniformity in rate, valuation, and assessment.<sup>15</sup> Furthermore, "[u]niformity of taxation refers, not only to a uniform valuation and rate, but also to uniformity in dates of maturity and the time when interest, penalties, and costs may be imposed upon the taxpayer."<sup>16</sup> Tax increment financing does not violate this uniformity provision.<sup>17</sup> Application of the uniformity provisions established by Article II, Section 28 of the Tennessee Constitution is subject to the Equal Protection Clause of the Fourteenth Amendment of the Federal Constitution.<sup>18</sup>

Article XI, Section 8 of the Tennessee Constitution prohibits the exemption of individual counties by population classification from the operation of a general law unless there is a rational basis for the exemption. Several provisions in the tax statutes provide exemptions or special rules for counties with certain population classifications. These provisions are included in this manual without any opinion as to their constitutionality.

"Taxes are distinguished from fees by the objectives for which they are imposed. If the imposition is primarily for the purpose of raising revenue it is a tax; if its [sic] purpose is for the regulation of some activity

under the police power of the governing authority it is a fee.”<sup>19</sup> Taxes are also different from special assessments. "There is a clear and manifest distinction between a tax and a special assessment. A tax is imposed for a general or public purpose. It is levied for the purpose of carrying on the government. It is a charge on lands and other property which lessens its value, and in the proportion in which the owner is required to pay is his pecuniary ability diminished. This is the sense in which the term 'taxation' is used and understood. On the other hand, a special assessment contains none of the distinctive features of a tax. It is assessed or levied for a special purpose, and not for a general purpose. It is not a charge on property which reduces its value. The assessment is made in the ratio of advantages accruing to the property in consequence of the improvement. In no case can the assessment exceed the advantages accruing to the property assessed. It is therefore regarded but an equivalent or compensation for the increased value the property will derive from the improvement the assessment is levied to discharge.”<sup>20</sup>

<sup>1</sup>T.C.A. § 67-5-2101. See also *State v. Nashville C. & St. L. Ry.*, 137 S.W.2d 297 (Tenn. 1938).

<sup>2</sup>T.C.A. § 67-5-102.

<sup>3</sup>T.C.A. § 67-5-103.

<sup>4</sup>T.C.A. §§ 67-5-801 *et seq.*

<sup>5</sup>T.C.A. §§ 67-5-901 *et seq.*

<sup>6</sup>T.C.A. §§ 67-5-1101 *et seq.*, 67-5-1201 *et seq.*

<sup>7</sup>T.C.A. §§ 67-5-1301 *et seq.*

<sup>8</sup>*Edmondson v. Walker*, 195 S.W. 168 (Tenn. 1917).

<sup>9</sup>*Gibson County Special School District v. Palmer*, 691 S.W.2d 544, 550 (Tenn. 1985); Op. Tenn. Atty. Gen. 01-172 (December 18, 2001).

<sup>10</sup>Griffith and Stokes, *Collection of Delinquent Real Property Ad Valorem Taxes in Tennessee*, Revised Edition (1979) at page 7 citing *East Tennessee, V. & G. Ry. Co. v. Morristown*, 35 S.W. 771 (Tenn. Ct. App. 1895); *Obion Valley Land and Investment Co. v. Southern Gen. Life Co.*, 125 S.W.2d 482 (Tenn. 1939); *Nance v. Hopkins*, 78 Tenn (10 Lea) 508 (1882); *Grant Bond & Mortgage Co. v. Ogle*, 65 S.W.2d 1091 (Tenn. Ct. App. 1933).

<sup>11</sup>See 23 *Tenn. Juris.* "Taxation" § 3 at page 345 (1998).

<sup>12</sup>*Knox v. Emerson*, 131 S.W. 972, 973 (Tenn. 1910).

<sup>13</sup>*Southern Express Co. v. Patterson*, 123 S.W. 353, 357 (Tenn. 1909).

<sup>14</sup>Tenn. Const., art. II, §§ 28 & 29; T.C.A. § 67-5-601. See *In Re All Assessments 1999 & 2000*, 67 S.W.3d 805, 820-821 (Tenn.Ct.App. 2001) ("the fair market value basis is not constitutionally mandated, and the legislature is free to determine the method and means of valuing property").

<sup>15</sup>Tenn. Const., art. II, § 28; T.C.A. § 67-5-503; *Treadwell Realty Co. v. Memphis*, 116 S.W.2d 997, 999 (Tenn. 1938).

<sup>16</sup>*Shipp v. Cummings*, 14 S.W.2d 747, 748 (Tenn. 1929).

<sup>17</sup>*Metropolitan Dev. & Hous. Agency v. Leech*, 591 S.W.2d 427, 429-430 (Tenn. 1979). Tax increment financing refers to the allocation of property taxes attributable to an increase in a property's value after development to retire the bond issue used to develop the property.

<sup>18</sup>*Louisville & N.R.R. v. Public Serv. Comm'n*, 631 F.2d 426, 432 (6th Cir. 1980), *cert. denied*, 450 U.S. 959, (1981). See also the Federal "Four R" Act and the Motor Carrier Act.

<sup>19</sup>*S & P Enters, Inc. v. City of Memphis*, 672 S.W.2d 213, 215 (Tenn. Ct. App. 1983), *citing*, *Memphis Retail Liquor Dealers' Ass'n, Inc. v. City of Memphis*, 547 S.W.2d 244 (Tenn. 1977). For a discussion of the difference between a fee and a tax, see Op. Tenn. Atty Gen. 93-57 (September 3, 1993).

<sup>20</sup>*Weakley Co. v. Odle*, 654 S.W.2d 402, 405 (Tenn. Ct. App. 1983), *quoting* Justice Chambliss in, *Obion County v. Massengill*, 151 S.W.2d 156, 159 (Tenn. 1941).

## Property Classification

**Reference Number:** CTAS-1469

Property is divided into three classes for taxation purposes: (1) real property; (2) tangible personal property; and (3) intangible personal property.<sup>1</sup>

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<sup>1</sup>Tenn. Const., art. II, § 28; T.C.A. § 67-5-503.

## Real Property

**Reference Number:** CTAS-1470

Real property, except vacant or unused property or property held for use, is classified according to use and assessed as a percentage of its value as follows:

1. Public Utility—55 percent
2. Industrial and Commercial—40 percent
3. Residential—25 percent
4. Farm Property—25 percent

If a parcel of real property is used for more than one purpose so that different assessment subclassifications and percentages apply, the tax is apportioned among the subclasses according to guidelines established by the State Board of Equalization.<sup>1</sup> If a parcel of real property is vacant, unused, or held for use, it is classified according to its immediate most suitable economic use, after considering several factors.<sup>2</sup> Real property not within any other definition and classification above is classified and assessed as farm or residential property.<sup>3</sup> For property tax purposes, value attaches to the property itself, not to the interest of the current party in possession.<sup>4</sup> A leasehold is considered real property and is taxable as such.<sup>5</sup> The interest of a lessee is distinct from the fee, and may, under certain circumstances, be taxed when the fee is exempt from taxation.<sup>6</sup>

Mobile homes used for commercial, industrial, or residential purposes are assessed as real property improvements to land.<sup>7</sup> If the mobile home is on a rented lot, the owner of the mobile home is responsible for the additional property tax imposed because of the improvement. The owner of the land actually pays the tax and has a first lien against the mobile home to secure payment of the property tax from the mobile home owner.<sup>8</sup> However, the county has a lien against the real property itself in case of delinquent taxes on the mobile home, and may include the real property in a tax sale to satisfy the delinquency.<sup>9</sup>

Perfection in the classification system for the ad valorem tax is rarely attainable. Indeed, taxing real property containing two or more rental units based on 40 percent of its value as industrial and commercial property while taxing real property containing one rental unit based on 25 percent of its value as residential property has been constitutionally upheld as a reasonable classification even though some discrimination exists.<sup>10</sup> Even though the legislature has discretion in classifying property, a reasonable basis must be established which may not be arbitrary or capricious.<sup>11</sup>

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<sup>1</sup>T.C.A. § 67-5-801(a), (b).

<sup>2</sup>T.C.A. § 67-5-801(c)(1).

<sup>3</sup>T.C.A. § 67-5-801(c)(2).

<sup>4</sup>*Hoover v. State Bd. of Equalization*, 579 S.W.2d 192, 195 (Tenn. Ct. App. 1978).

<sup>5</sup>*United States v. Metropolitan Gov't*, 808 F.2d 1205, 1208-1209 (6th Cir. 1987); T.C.A. § 67-5-502(d).

<sup>6</sup>*Jeston v. University of the South*, 208 U.S. 489, 500, 28 S.Ct. 375, 377 (1908); *University of the South v. Franklin Co.*, 506 S.W.2d 779, 784 (Tenn.Ct.App. 1973); T.C.A. § 67-5-605.

<sup>7</sup>Tenn. Const., art. II, § 28; T.C.A. § 67-5-802.

<sup>8</sup>*Belle-Aire Village, Inc. v. Ghorley*, 574 S.W.2d 723, 725 (Tenn. 1978); T.C.A. § 67-5-802.

<sup>9</sup>Op. Tenn. Atty Gen. 95-071 (July 5, 1995).

<sup>10</sup>*Snow v. City of Memphis*, 527 S.W.2d 55, 64-66 (Tenn. 1975), *appeal dismissed*, 423 U.S. 1083, *reh. den.*, 424 U. S. 979 (1976).

<sup>11</sup>*General Am. Transp. Corp. v. State Bd. of Equalization*, 536 S.W.2d 212, 214 (Tenn. 1976).

## Public Utility and Common Carrier Property

**Reference Number:** CTAS-1471

In a recent case, the Tennessee Court of Appeals held that pipelines shall be treated as personal property for the purposes of ad valorem taxation.<sup>1</sup> In response, the legislature amended T.C.A. § 67-5-501(9),<sup>2</sup> which now classifies certain property associated with utilities and railroads as real property for purposes of the property taxation. Examples include but are not limited to the following: surface, underground or elevated railroads, and railroad structures, substructures and superstructures, tracks and the metal thereon; telephone, broadcast, transmission and telegraph poles, supports, conduits, towers and enclosures for electrical conductors upon, above and underground and pipes and conduits used for wire, cables and lines buried underground; mains, pipes, pipelines and tanks permitted or authorized to be built, laid or placed in, upon, or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby.

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<sup>1</sup>*ANR Pipeline Co. v. Tennessee Board of Equalization*, 2002 WL 31840689, \*4 (Tenn.Ct.App. 2002) *perm. app. denied* (Tenn. 2003).

<sup>2</sup>See 2004 Public Chapter 719.

## Tangible Personal Property

**Reference Number:** CTAS-1472

Tangible personal property is classified according to its use and assessed as a percentage of its value as follows:

1. Public Utility—55 percent
2. Industrial and Commercial—30 percent
3. All Other Tangible Personal Property—5 percent

Tangible personal property not in use is classified according to its immediate most suitable economic use, which is determined after considering the following factors: immediate past use, if any; nature of the property; classification of the real property upon which it is located; normal use of the property; ownership; and any other factors relevant to a determination of the immediate most suitable economic use of the property.<sup>1</sup>

All property is subject to taxation.<sup>2</sup> However, the legislature has determined that non-business tangible personal property is assumed to have no value, and a tax is not imposed on this property.<sup>3</sup> The no-value presumption for non-business personal property has been upheld, based on the fact that the tax produces little revenue in relation to its administration costs, as well as the long-standing rule that the legislature may choose the method of valuation as well as whether the tax itself has any practical value.<sup>4</sup>

Most industrial and commercial tangible personal property is valued and assessed by the county taxing authorities in the counties where the owners of such property do business.<sup>5</sup> Pursuant to T.C.A. § 67-5-901, *et seq.*, industrial and commercial taxpayers must annually file a schedule on which they list the tangible personal property they use in their businesses. Section 67-5-903(f) contains a schedule of allowable rates of depreciation for commercial and industrial tangible personal property.<sup>6</sup> The constitutionality of § 67-5-903(f) has been upheld.<sup>7</sup> Pursuant to T.C.A. § 67-5-1509(a), the State Board of Equalization must, by order or rule, direct that commercial and industrial tangible personal property assessments be equalized using the appraisal ratios adopted by the state board for each county. However, such equalization is available only to taxpayers who have filed the reporting schedule required by law. The constitutionality of T.C.A. § 67-5-1509(a) has also been upheld.<sup>8</sup>

Public utility and common carrier property is centrally assessed annually by the Comptroller of the Treasury.<sup>9</sup> Pursuant to T.C.A. § 67-5-1302(b)(1), the assessments of public utility property shall be adjusted, where necessary, to equalize the values of public utility property to the prevailing level of value of property in each jurisdiction. The constitutionality of § 67-5-1302(b)(1) has been upheld.<sup>10</sup> The authority to adjust the appraised values of public utility property to achieve equalization with industrial and commercial property is found in § 67-5-1509(b). This statute provides: (b) Equalization may be made by the board or

commission, as the case may be, by reducing or increasing the appraised values of properties within any taxing jurisdiction, or any part thereof, in such manner as is determined by the state board of equalization will enable the board or commission to justly and equitably equalize assessments in accordance with law."<sup>11</sup> Since 1997, the Board of Equalization has ordered a 15 percent reduction in the assessed value of centrally assessed tangible personal property in order to bring it to the same level of assessment as locally assessed tangible personal property.<sup>12</sup>

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<sup>1</sup>T.C.A. § 67-5-901(a).

<sup>2</sup>Tenn. Const., art. II, § 28.

<sup>3</sup>T.C.A. § 67-5-901(a)(3)(A).

<sup>4</sup>*Sherwood v. Clary*, 734 S.W.2d 318, 320-21 (Tenn. 1987); *citing, Lehnhausen v. Lake Shore Auto Parts*, 410 U.S. 356 (1973). For prior law, see Op. Tenn. Atty. Gen. 86-80 (April 3, 1986); Op. Tenn. Atty. Gen. 84-273 (September 27, 1984).

<sup>5</sup>T.C.A. §§ 67-5-102, 67-5-103.

<sup>6</sup>*In re All Assessments*, 58 S.W.3d 95, 96 (Tenn. 2000).

<sup>7</sup>*In re All Assessments*, 67 S.W.3d 805, 816-820 (Tenn.Ct.App. 2001), *perm. appeal denied*, (Tenn. 2002).

<sup>8</sup>*Williamson County v. Tennessee State Board of Equalization*, 86 S.W.3d 216 (Tenn.Ct.App. 2002).

<sup>9</sup>T.C.A. § 67-5-1301.

<sup>10</sup>*In re All Assessments*, 67 S.W.3d 805, 820-821 (Tenn.Ct.App. 2001), *perm. appeal denied*, (Tenn. 2002).

<sup>11</sup>*In re All Assessments*, 58 S.W.3d 95, 101 (Tenn. 2000). See also *Louisville & N.R.R. v. Public Serv. Comm'n*, 249 F.Supp. 894 (M.D. Tenn. 1966), *aff'd*, 389 F.2d 247 (6th Cir. 1968) ("L & N I"); *Louisville & N.R.R. v. Public Serv. Comm'n*, 493 F.Supp. 162 (M.D. Tenn. 1978), *aff'd*, 631 F.2d 426 (6th Cir. 1980), *cert. denied*, 450 U.S. 959, 101 S.Ct. 1418 (1981) ("L & N II").

<sup>12</sup>*ANR Pipeline Co. v. Tennessee Board of Equalization*, 2002 WL 31840689, \*1 (Tenn.Ct.App. 2002) *perm. app. denied* (Tenn. 2003).

## Pollution Control

**Reference Number:** CTAS-1473

The value of qualified pollution control facilities, for the purpose of ad valorem property taxation, is deemed to be its salvage value (the estimated fair market value), if any, which could be realized upon the voluntary sale or other disposition of the property when it can no longer be used for the purpose for which it was designed. Salvage value should not exceed 0.5 percent of the acquisition value of such facilities.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-604. *But see* Op. Tenn. Atty. Gen. 86-142 (August 12, 1986).

## Assessment

**Reference Number:** CTAS-1474

## County Assessor

**Reference Number:** CTAS-1475

The county assessor's duties include two basic functions: appraisal and assessment of taxable real and personal property in the county that is not appraised by the state.<sup>1</sup> For purposes of ad valorem taxation of property, the assessor of property places a value on commercial, industrial, residential, and farm land, including mineral rights and taxable leaseholds, but public utility property is valued by the state.<sup>2</sup> The as-

essor also appraises and assesses taxable tangible personal property.<sup>3</sup>The assessor must assess and place a value on all property in the county by May 20 of the tax year. The date of valuation is as of January 1 (with the exception of adjustments due to improvements or damage to property discussed later). The assessment of property within a municipality is to be completed not less than 40 days prior to the beginning tax due date of the municipality.<sup>4</sup>The validity of an assessment is generally not affected by any irregularity or omission unless the defect results in a denial of minimum constitutional guarantees.<sup>5</sup>

The county legislative body has the authority to enter into contracts with individuals, firms, or corporations to render advice or assistance to the local tax assessor and the local board of equalization in the assessment and equalization of taxes. However, the final decision as to the amount of an assessment or the equalization of assessments is to be made by the property assessor and the board of equalization. In addition, no such contract shall contain any provisions for payment for services on a percentage basis, or on any basis whereby the compensation under the contract is dependent or conditioned on increasing or reducing the aggregate assessment of property in the county.<sup>6</sup>

County assessors are responsible for city assessments except in cities lying in more than one county, which are entitled to retain a city assessor or to contract with the county assessor or State Board of Equalization for assessment services. Cities not using the county assessor are also required to establish a city board of equalization. Otherwise, review of city assessments is consolidated under the county board of equalization of the county in which the property is located.<sup>7</sup>

Assessors are required to keep current indexes of taxpayers, along with a description of the property on the tax books, and to maintain the property tax maps of the county.<sup>8</sup>The obligation to pay taxes is not avoided by the failure of an assessor to make an assessment.<sup>9</sup> The assessor is not required to search for an owner's address to send assessment notices; rather, the owner has a responsibility to register his or her name and address with the assessor.<sup>10</sup>Previously owners who were not in possession of the property were required to file an annual statement with the assessor between December 1 and December 31 of each year, and the trustee was required to publish a notice of this requirement. However, this provision was deleted by a 1996 amendment; neither the form nor the published notice is now required by current law.

The assessor has the power and duty to examine any person he or she believes has any information relating to the property assessment of any taxpayer. Pursuant to this power, the assessor may administer oaths and compel any witness to appear and to answer oral or written questions. Any witness refusing to appear or to take an oath or answer questions, when called upon by the assessor to do so, commits a Class C misdemeanor. The assessor also has the authority to go upon land to obtain information for the assessment of property. Specifically, the assessor may enter a building which is under construction and not yet occupied or secured without obtaining the consent of the owner. After the building is occupied or secured, the assessor may enter with the owner's consent, or if consent is unreasonably denied, under a court order.<sup>11</sup>

The assessor is to make a report of the assessor's assessments and make available to the local board of equalization all of the assessor's records pertaining to the area involved on or before the first day the board meets. Each assessor, when making the report of assessments to the local board of equalization shall accompany the report with the following oath:

*I, \_\_\_\_\_, assessor of the county (city) of \_\_\_\_\_, State of Tennessee, do solemnly swear (or affirm) that I have assessed all taxable property, in the county (city) of \_\_\_\_\_, as far as ascertainable, to the true owners thereof, and that I have determined the classification and assessed valuation of all taxable property as prescribed by law; and that I have faithfully discharged all my duties without fear, favor, or affection to the best of my knowledge and ability, so help me God.*

The oath shall be taken and subscribed to before the county mayor, or in the county mayor's absence, before a notary public.<sup>12</sup>

In addition to the report to the local board of equalization, the assessor has a duty to compile a report listing the total of all assessments prepared by the assessor's office and file the report with the State Board of Equalization.<sup>13</sup>

An assessor of property or deputy assessor who willfully fails, refuses, or neglects to perform, obey, and observe his/her statutory duties is subject to sanctions as set out in T.C.A. § 67-5-305.

It is unlawful for an assessor of property or deputy assessor to willfully or knowingly assess property in the wrong name, omit property from assessment, assess property at lower than the proper percentage of value, or to fail to perform other duties required by law. A district attorney general who receives evidence of such an offense has the duty to investigate and prosecute that offense.<sup>14</sup>

<sup>1</sup>T.C.A. §§ 67-5-101, 67-5-102, 67-5-301 *et seq.*, 67-5-502(1), 67-5-601 *et seq.*, 67-5-1301. T.C.A. § 67-1-501 *et seq.* deals with the qualifications and office of the assessor.

<sup>2</sup>T.C.A. §§ 67-5-502(d), 67-5-801 *et seq.*, 67-5-1001 *et seq.*, 67-5-1301.

<sup>3</sup>T.C.A. § 67-5-901 *et seq.*

<sup>4</sup>T.C.A. § 67-5-504.

<sup>5</sup>T.C.A. § 67-5-509(b); *see also State v. Delinquent Taxpayers*, 785 S.W.2d 819, 821 (Tenn. Ct. App. 1989).

<sup>6</sup>T.C.A. § 67-5-507.

<sup>7</sup>T.C.A. § 67-1-513.

<sup>8</sup>T.C.A. §§ 67-5-804 through 67-5-806. *See also 23 Tenn. Juris.* "Taxation" § 32 (1998) for a discussion regarding "adequate description."

<sup>9</sup>*State v. Nashville C. & St. L. Ry.*, 137 S.W.2d 297, 299 (Tenn. 1940).

<sup>10</sup>*Cook v. McCullough*, 735 S.W.2d 464 (Tenn.Ct.App. 1987); T.C.A. § 67-5-2502(b).

<sup>11</sup>T.C.A. § 67-5-303.

<sup>12</sup>T.C.A. § 67-5-304.

<sup>13</sup>T.C.A. § 67-5-304(c)(1) and (2).

<sup>14</sup>T.C.A. 67-5-306; Op. Tenn. Atty Gen. 83-388 (November 11, 1983); *See also*: Op. Tenn. Atty Gen. 83-233 (June 27, 1983); Op. Tenn. Atty. Gen. 83-53 (February, 14 1983).

## Records and Notice of Assessment

**Reference Number:** CTAS-1476

Prior to May 20th each year, the assessor is required to note upon his/her records the current classification and valuation of all taxable property in the county.<sup>1</sup> The assessor must hold these records open for public inspection at his/her office during normal business hours. In addition, the assessor is required to publish at least once in a newspaper of general circulation within the assessor's jurisdiction a notice of when and where these records may be inspected. The required notice must be published not later than 10 calendar days before the local board of equalization begins its annual session.<sup>2</sup> The notice must be set forth in the publication within distinct and prominent borders, and must have a width of not less than two regular columns of such newspaper and a depth of at least four inches. The notice is required to state the day the county board of equalization will convene and the last day appeals will be accepted by the county board and must contain a warning that failure to appeal the assessment to the county board of equalization may result in the assessment becoming final without further right of appeal.<sup>3</sup> In addition, at least 10 calendar days before the local board of equalization begins its annual session, the assessor or the assessor's deputy must notify each taxpayer of any change in the classification or assessed valuation of the taxpayer's property. The notification must be sent by United States mail to the last known address of the taxpayer. The notification must show the previous year's assessment and classification and the current year's assessment and classification. The notification is effective when mailed.<sup>4</sup> The assessor is required to retain a notation of the date of any notification of a change in classification or assessed valuation, or a dated copy of such notification, in the records of the assessor. These records must be preserved by the assessor for not less than two years.<sup>5</sup>

An alternative notice is permissible for the year in which a reappraisal program is completed and the values to be used as the basis for making assessments are approved by the State Division of Property Assessments. In this instance any notice showing the appraised value of property sent to a property owner by a company employed to conduct the reappraisal program satisfies the notice requirement discussed above, provided that the assessor of property uses the appraised value as specified on the notice from the company and does not change the classification of the property from its former classification.<sup>6</sup>

Upon a consolidation of the municipal and other assessment offices within any county with the office of the county assessor of property (as provided in T.C.A. § 67-1-513), the county assessor of property is not required to notify each taxpayer within the municipality unless a change has been made by the county assessor of property from the former classification and assessed valuation which existed on the county tax roll for the preceding year. However, the assessor is required to hold his/her records open for public inspection at his/her office during normal business hours and must cause to be published at least once, in a newspaper of general circulation within the assessor's jurisdiction, a notice where and when such records may be inspected. The required notice must be published not later than 10 calendar days before the local board of equalization begins its annual session.<sup>7</sup>

If an assessor fails to complete and note upon the assessor's records the assessment of a taxpayer's property prior to the 20th day of May, or fails to notify a taxpayer, or the taxpayer's agent, of any change in the classification or assessed valuation of the taxpayer's property, the taxpayer has no legal basis for complaint, provided that the assessment against the property was completed, and a notice of any new or changed classification or assessed valuation was sent by United States mail to the last known address of the taxpayer at least 10 calendar days before the local board of equalization ends its annual session.<sup>8</sup>

In the event an assessor fails to complete any assessment, or notify a taxpayer of a change in the classification or assessed valuation of his or her property, at least 10 calendar days before the local board of equalization ends its annual session, this failure does not affect in any way the validity of the assessment, classification, or assessed valuation; however, an aggrieved property owner has the right to appeal directly to the State Board of Equalization at its next regular session, and no proceedings may be undertaken to collect any taxes based upon the assessment, and no penalty added, until 30 calendar days after the state board has rendered a final decision on the appeal or complaint. Upon written request of any party, or upon its own motion, the State Board of Equalization may remand any complaint or appeal to the local board of equalization.<sup>9</sup>

Any other irregularity or omission in the assessment procedure does not affect the validity of the assessment unless the defect results in a denial of minimum constitutional guarantees.<sup>10</sup>

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<sup>1</sup>T.C.A. § 67-5-508(a)(1).

<sup>2</sup>T.C.A. § 67-5-508(a)(2).

<sup>3</sup>T.C.A. §§ 67-5-508(a)(2), 67-5-1401.

<sup>4</sup>T.C.A. § 67-5-508(a)(3).

<sup>5</sup>T.C.A. § 67-5-508(a)(4).

<sup>6</sup>T.C.A. § 67-5-508(a)(5).

<sup>7</sup>T.C.A. § 67-5-508(a)(6).

<sup>8</sup>T.C.A. § 67-5-508(b)(1).

<sup>9</sup>T.C.A. § 67-5-508(b)(2).

<sup>10</sup>*State v. Delinquent Taxpayers*, 785 S.W.2d 819 (Tenn.Ct.App. 1989); T.C.A. § 67-5-509(b).

## Assessing Improvements

Reference Number: CTAS-1477

### Damaged or Destroyed

In ascertaining the value of properties, assessors take into consideration the status of improvements to property. If, after January 1 and before September 1 of any year, a building or improvement is moved, demolished, or destroyed, or substantially damaged by fire, flood, wind, or any other disaster, and is not restored or replaced by another improvement before September 1 of that year, the assessor makes the assessment or corrects the assessment of such property on the basis of its value after the move, destruction, or substantial damage, notwithstanding the status of the property as of the assessment date of January 1. For the year in which the improvement is moved, demolished, destroyed, or damaged, the assessment of the improvement is prorated for the portion of the year prior to the date of the move, destruction or damage.<sup>1</sup> This provision is not applicable to the movement of a mobile home or other "movable

structure" as defined in T.C.A. § 67-5-501.<sup>2</sup> An improvement is deemed substantially damaged if it has been rendered unfit for use or occupancy, or if the damage has reduced the value of the improvement by more than 50 percent.<sup>3</sup>

### Proration

Improvements to the property are similarly assessed to reflect their change in value during the year. If, after January 1 and before September 1, an improvement or new building is completed and ready for use or occupancy, or the property has been sold or leased, the assessor of property must make or correct the assessment of that property, based on the value of the improvement at the time of its completion, notwithstanding the status of the property as of the assessment date of January 1. For the year in which the improvement or building is completed, the assessment (or increase in assessment) of the improvement is prorated for the portion of the year following the date of its completion.<sup>4</sup> An improvement or new building is deemed completed and ready for use or occupancy when the structural portion of the building or improvement is substantially completed, even though the interior finish or certain appointments may be left to the choice of a prospective buyer or tenant after consummation of a sale or lease.<sup>5</sup> Any improvement or new building is deemed completed and to have a value for assessment purposes when the real property upon which such improvement or new building is located is sold to a bona fide purchaser, or when the new building or improvement has been occupied, used, or is suitable for occupancy or use, whichever occurs first. No improvement or new building is considered incomplete for valuation or assessment purposes for more than one calendar year immediately following the date on which construction was commenced.<sup>6</sup> In the event an improvement or new building is considered incomplete for assessment purposes on January 1 of any year, the owner of the improvement or new building shall, not later than February 1 of that year, submit to the assessor, in writing, the total cost of all materials used in the incomplete structure as of January 1, and the assessor assesses the incomplete structure as real property, based on the fair market value of the materials used.<sup>7</sup>

Issuance of a building permit can alert the assessor to the fact that improvements to the property are being made. In counties where building permits are not issued, the state director of fire prevention is required to furnish the assessor of property with the names of property owners and the location of the property for which electrical inspections have been made. Similarly, in counties which do not require building permits, assessors are to receive copies of permits for subsurface sewage disposal systems.<sup>8</sup>

If the status of an improvement to a property has changed by September 1 of any year, an adjustment to the assessment of the property is mandatory.<sup>9</sup> The adjustment can be made until the trustee relinquishes control of the tax roll after making the annual settlement of the trustee's accounts on the first Monday of September each year. For property on which delinquent taxes are owing, adjustment can be made until suit has been filed to collect the delinquent taxes.<sup>10</sup> Provisions attempting to postpone inclusion of increased value in assessments by providing that no property shall be reassessed to include new improvements until such improvements have been completed or until 18 months have passed following commencement of construction violated the constitutional requirement that all property be taxed according to its value and that taxes be equal and uniform.<sup>11</sup>

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<sup>1</sup>T.C.A. § 67-5-603(a)(1).

<sup>2</sup>T.C.A. § 67-5-603(a)(1).

<sup>3</sup>T.C.A. § 67-5-603(a)(3).

<sup>4</sup>T.C.A. § 67-5-603(b)(1).

<sup>5</sup>T.C.A. § 67-5-603(b)(3).

<sup>6</sup>T.C.A. § 67-5-603(b)(4).

<sup>7</sup>T.C.A. § 67-5-603(b)(5).

<sup>8</sup>T.C.A. § 67-5-603(c).

<sup>9</sup>T.C.A. § 67-5-603(a)(1) and (b)(2).

<sup>10</sup>T.C.A. § 67-5-1902; Op. Tenn. Atty Gen. 88-46 (February 1988).

<sup>11</sup>*Metropolitan Government v. Hillsboro Land Co.*, 436 S.W.2d 850 (Tenn. 1968).

## Assessing Mobile Homes

**Reference Number:** CTAS-1478

Mobile homes used for commercial, industrial or residential purposes are assessed as real property improvements to land.<sup>1</sup> Any movable structure and appurtenance which is attached to real property by virtue of being on a foundation, or being underpinned, or connected with any one utility service, such as electricity, natural gas, water, or telephone, is assessed for tax purposes as real property as an improvement to the land where located.<sup>2</sup> Special provisions apply to mobile homes located in mobile home parks. In cases where the mobile home is attached to land occupied and used as trailer or mobile home parks where the owner of the land is renting spaces or lots for maintaining the mobile home, the owner of the mobile home is responsible for the additional tax imposed by reason of the improvement, and the owner of the land is granted a lien against the mobile home to secure the payment of municipal and county taxes.<sup>3</sup> Before March 1 of each year, the assessor of property is required to furnish each owner of land used as a mobile home park with a schedule on which the owner is required to list all mobile homes in the park as of the assessment date.<sup>4</sup> It is the duty of each owner of land upon which a mobile home is located to list each mobile home, its make, year, serial number, size, original cost, and such other pertinent information as may be required by the division of property assessments, sign the schedule and return it to the assessor of property on or before April 1 of each year.<sup>5</sup> The assessor of property is required to furnish to each owner of land used as a mobile home park a schedule of the assessed value of each moveable structure on or before July 1 of each year.<sup>6</sup> If taxes on a mobile home become delinquent, the land can be sold to satisfy the delinquency.<sup>7</sup>

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<sup>1</sup>Tenn. Const., art. II, § 28; T.C.A. § 67-5-802.

<sup>2</sup>T.C.A. § 67-5-802(a)(1). See also T.C.A. 67-5-502(a)(1).

<sup>3</sup>T.C.A. § 67-5-802(a)(1). See also *Belle-Aire Village, Inc. v. Ghorley*, 574 S.W.2d 723, 725 (Tenn. 1978).

<sup>4</sup>T.C.A. § 67-5-802(b)(1).

<sup>5</sup>T.C.A. § 67-5-802(b)(2).

<sup>6</sup>T.C.A. § 67-5-802(b)(2).

<sup>7</sup>T.C.A. § 67-5-802. See Op. Tenn. Atty. Gen 95-071 (July 5, 1995) for a discussion regarding the collection of delinquent property taxes due against mobile homes. See also *CMH Homes, Inc. V. Darrell Mceachron*, 2005 WL 2387153 (Tenn.Ct.App. 2005) (extent of property transferred at delinquent tax sale).

## Assessment of Leasehold

**Reference Number:** CTAS-1479

A leasehold is considered real property and is taxable as such<sup>1</sup> under certain circumstances. The interest of a lessee is distinct from the fee, and may be taxed under certain circumstances when the fee is exempt from taxation.<sup>2</sup> Leasehold interests assessable under T.C.A. § 67-5-502 are valued by discounting to present value the excess, if any, of fair market rent over actual and imputed rent for the leased premises, for the projected term of the lease including renewal options. As an alternative in valuing an interest in residential property, the interests assessable under T.C.A. § 67-5-502(d) may be valued by the sales comparison approach using sales or transfers of similar interests in residential property. By virtue of the speculative nature of valuation of options to purchase, any option which the lessee may be given to purchase the leased premises shall be deemed to have no value. The State Board of Equalization is authorized to promulgate rules governing the procedure for these valuations.<sup>3</sup>

Note: Although a county cannot tax an industrial development property owned by a city, county, or industrial development corporation organized under T.C.A. § 7-53-101 *et seq.*, if the private company lessee pays less in rent and in lieu of tax payments than the fair market value of the rent, the company has a leasehold interest that is taxable based upon the capitalized value of the difference between actual rent (and in lieu of tax payments) and fair market rent.<sup>4</sup>

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<sup>1</sup>*United States v. Metropolitan Gov't*, 808 F.2d 1205, 1208-1209 (6th Cir. 1987); T.C.A. § 67-5-502(d).

<sup>2</sup>*Jeston v. University of the South*, 208 U.S. 489, 500, 28 S.Ct. 375, 377 (1908); *University of the South v. Franklin Co.*, 506 S.W.2d 779, 784 (Tenn.Ct.App. 1973).

<sup>3</sup>T.C.A. § 67-5-605.

<sup>4</sup>See Op. Tenn. Atty. Gen. 88-154 (August 29, 1988), Op. Tenn. Atty. Gen. 79-375 (August 20, 1979), Op. Tenn. Atty. Gen. 79-61 (February 14, 1979) and Op. Tenn. Atty. Gen. 78-251 (June 19, 1978) explaining the taxation of this type of interest in real property.

## Mineral Interests

**Reference Number:** CTAS-1480

The owner of a mineral interest is required to register that interest with the assessor of property in the county in which the mineral interest is located by providing a deed reference number for the mineral interest and specifying where it lies, citing tax maps and parcel number of the surface owners. The State Board of Equalization provides assessors with forms for mineral interest owners to use. All property registered and identified sufficiently to the assessor on July 1, 1987, and on which taxes have been paid through that time, does not require a subsequent registration.<sup>1</sup>

### Back Assessment or Reassessment of Mineral Interests

Mineral interest owners are subject to back assessment if the property has previously escaped taxation. If the mineral interest is dormant, and the collector of taxes has not previously provided notice to the owner of the assessment of taxes, there shall be no back assessment of taxes, except that the owner of the mineral interest shall be liable for taxes accruing after July 1, 1987.

Failure to register a mineral interest with the property assessor by July 1, 1990, subjects the property to back assessment or reassessment and to a penalty of 25 percent of the assessment or back assessment of taxes. Failure to identify the location of a mineral interest pursuant to T.C.A. § 67-5-804 subjects the mineral interest owner who is currently paying taxes to penalty and interest. The penalty is 10 percent of the current assessment of the mineral interest. In addition, failure to identify the location of a mineral interest will render the owner unable to claim payment of taxes as use of a mineral interest against a surface owner's claim of abandonment under T.C.A. § 66-5-108.<sup>2</sup>

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<sup>1</sup>T.C.A. § 67-5-804(b).

<sup>2</sup>T.C.A. § 67-5-809.

## Greenbelt

**Reference Number:** CTAS-1481

Under the Agricultural, Forest, and Open Space Land Act of 1976, also known as the Greenbelt Law, owners of property qualifying as agricultural, forest, or open space property may have it specially valued. The act was promulgated to allow for assessment of the land based on current use, not its potential for conversion to another, higher value use.<sup>1</sup>

No person may place more than 1,500 acres of land within any one taxing jurisdiction under the provisions of the Act.<sup>2</sup>To be eligible as agricultural land, the property must meet minimum size requirements. The property must consist either of a single tract of at least 15 acres, including woodlands and wastelands, or two noncontiguous tracts within the same county, including woodlands and wastelands, one of which is at least 15 acres and the other being at least 10 acres and together constituting a farm unit, or two noncontiguous tracts within the same county totaling at least 15 acres, including woodlands and wastelands, that are separated only by a road, body of water, or public or private easement and together constituting a farm unit.<sup>3</sup>To be eligible as forest land, the property must constitute a forest unit engaged in the growing of trees under a sound program of sustained yield management that is at least fifteen (15) acres and that has tree growth in such quantity and quality and so managed as to constitute a for-

est.<sup>4</sup> Open space land is any area of land, of not less than three acres, characterized principally by open or natural conditions which is not currently in agricultural or forest use. Open space land includes greenbelt lands or lands primarily devoted to recreational use.<sup>5</sup> The Tennessee Court of Appeals has held that it is constitutionally permissible for the General Assembly to create sub-classes of real property, such as Greenbelt property, provided a constitutional valuation method is used for the sub-class.<sup>6</sup> The formula for determining the special value is set forth in T.C.A. § 67-5-1008.

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<sup>1</sup>T.C.A. § 67-5-1001 *et seq.*

<sup>2</sup>T.C.A. §§ 67-5-1003(3), 67-5-1008(g). *See also* Op. Tenn. Atty. Gen. 88-81 (April 7, 1988).

<sup>3</sup>T.C.A. § 67-5-1004(1)(B).

<sup>4</sup>T.C.A. § 67-5-1004(3).

<sup>5</sup>T.C.A. § 67-5-1004(7).

<sup>6</sup>*Marion County v. State Bd. of Equalization*, 710 S.W.2d 521 (Tenn.Ct.App. 1986).

## Classification of Agricultural Land

**Reference Number:** CTAS-1482

Any owner of land may apply for its classification as agricultural land by filing a written application with the assessor of property. The application must be filed by March 15. Reapplication thereafter is not required so long as the ownership as of the assessment date remains unchanged. Property that qualified as agricultural the year before under different ownership is disqualified if the new owner does not timely apply. The assessor must send a notice of disqualification to these owners, but must accept a late application if filed within 30 days of the notice of disqualification and accompanied by a late application fee of \$50.<sup>1</sup>

The assessor must determine whether the land is agricultural land, and if such a determination is made, the assessor will classify and include it as such on the county tax roll. In determining whether the land is agricultural land, the tax assessor must take into account, among other things, the acreage of the land, the productivity of the land, and the portion thereof in actual use for farming or held for farming or agricultural operation. The assessor may presume that a tract of land is used as agricultural land if the land produces gross agricultural income averaging at least \$1,500 per year over any three-year period in which the land is so classified. The presumption may be rebutted, notwithstanding the level of agricultural income by evidence indicating whether the property is used as "agricultural land" as defined in the statute.<sup>2</sup> The assessor must verify actual agricultural uses claimed for the property during the on-site review provided under T.C.A. § 67-5-1601. The assessor may at any time require other proof of use or ownership necessary to verify compliance with the statute.<sup>3</sup>

Any person aggrieved by the denial of any application for the classification of land as agricultural land has the same rights and remedies for appeal and relief as are provided in the general statutes for taxpayers claiming to be aggrieved by the actions of assessors of property or boards of equalization.<sup>4</sup>

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<sup>1</sup>T.C.A. § 67-5-1005(a)(1).

<sup>2</sup>T.C.A. § 67-5-1005(a)(2) and (3);

<sup>3</sup>T.C.A. § 67-5-1005(c).

<sup>4</sup>T.C.A. § 67-5-1005(d).

## Classification of Forest Land

**Reference Number:** CTAS-1483

Any owner of land may apply for its classification as forest land by filing a written application with the assessor of property. The application must be filed by March 15. Reapplication thereafter is not required so long as the ownership as of the assessment date remains unchanged. Property that qualified as forest

land the year before under different ownership is disqualified if the new owner does not timely apply. The assessor must send a notice of disqualification to these owners, but must accept a late application if filed within 30 days of the notice of disqualification and accompanied by a late application fee of \$50.<sup>1</sup>

The assessor shall determine whether the land is forest land, and if such a determination is made, the assessor shall classify and include it as such on the county tax roll.<sup>2</sup> In determining whether the land is forest land, the assessor must take into account, among other things, the acreage of the land, the amount and type of timber on the land, the actual and potential growth rate of the timber, and the management practices being applied to the land and to the timber on it. The assessor may request the advice of the state forester in determining whether the land should be classified as forest land.<sup>3</sup>

An application for classification of land as forest land shall be made upon a form prescribed by the state board of equalization, in consultation with the state forester, and shall include a description of the land, a general description of the uses to which it is being put, aerial photographs, if available, and such other information as the assessor of property or state forester may require to aid the assessor of property in determining whether the land qualifies for designation as forest land..<sup>4</sup>

Any person aggrieved by the denial of an application for the classification of land as forest land has the same rights and remedies for appeal and relief as are provided in the general statutes for taxpayers claiming to be aggrieved by the actions of assessors of property or boards of equalization..<sup>5</sup>

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<sup>1</sup>T.C.A. § 67-5-1006(a)(1).

<sup>2</sup>T.C.A. § 67-5-1006(a)(2).

<sup>3</sup>T.C.A. § 67-5-1006(b)(1) and (2).

<sup>4</sup>T.C.A. § 67-5-1006(c).

<sup>5</sup>T.C.A. § 67-5-1006(d)

## Classification of Open Space

**Reference Number:** CTAS-1484

The planning commission, in preparing a land use or comprehensive plan for the municipality or county, may designate in the plan areas which it recommends for preservation as areas of open space land, other than lands currently in agricultural and forestry uses. Land included in any area so designated in the plan, as finally adopted, may be classified as open space land for purposes of property taxation provided there has been no change in the use of the area which has adversely affected its essential character as an area of open space land between the date of the adoption of the plan and the date of classification.<sup>1</sup>

Any owner of land may apply for its classification as open space land by filing a written application with the assessor of property. The application must be filed by March 15. Reapplication thereafter is not required so long as the ownership as of the assessment date remains unchanged. Property that qualified as open space land the year before under different ownership is disqualified if the new owner does not timely apply. The assessor must send a notice of disqualification to these owners, but must accept a late application if filed within 30 days of the notice of disqualification and accompanied by a late application fee \$50.<sup>2</sup>

The assessor must determine whether there has been any change in the area designated as an area of open space land in the county (or municipality) plan and, if the assessor determines that there has been no change, the assessor will classify the land as open space land and include it as such upon the tax rolls of the county.<sup>3</sup>

Any person aggrieved by the denial by an assessor of any application for the classification of land as open space land shall have the same rights and remedies for appeal and relief as are provided in the general statutes for taxpayers claiming to be aggrieved by the actions of assessors or boards of equalization.<sup>4</sup>

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<sup>1</sup>T.C.A. § 67-5-1007(a)(1) and (2).

<sup>2</sup>T.C.A. § 67-5-1007(b)(1).

<sup>3</sup>T.C.A. § 67-5-1007(b)(2).

<sup>4</sup>T.C.A. § 67-5-1007(c).

## Present Use Valuation

**Reference Number:** CTAS-1485

When a parcel of land has been classified by the assessor of property as agricultural, forest, or open space land under the provisions of T.C.A. § 67-5-1001 *et seq.*, it shall be subsequently considered that its current use for agricultural or timber purposes or as open space is its immediate most suitable economic use, and assessment shall be based upon its value in that current use, rather than on value for some other use as may be determined in accordance with T.C.A. § 67-5-601 *et seq.* It is the responsibility of the applicant to promptly notify the assessor of any change in the use or ownership of the property which might affect its eligibility under the Greenbelt Law.<sup>1</sup>

After a parcel of land has been classified by the assessor of property as agricultural, forest, or open space land under the provisions of T.C.A. § 67-5-1001 *et seq.*, the assessor shall record it on a separate list for such classified property. The assessor may record with the register of deeds the application for the classification of the property. However, if the assessor does not record the application, then the property owner shall record with the register of deeds the application for the classification of the property. Any fees which may be required are paid by the property owner.<sup>2</sup>

The assessor must appraise the land and compute the taxes each year based upon both the 25 percent of appraised value applicable to property in the farm classification and present use value; and farm classification and value as determined pursuant to T.C.A. § 67-5-601 *et seq.*, but taxes shall be assessed and paid only on the basis of farm classification and present use value under the provisions of T.C.A. § 67-5-1001 *et seq.* The taxes computed pursuant to T.C.A. § 67-5-601 *et seq.* shall be used to compute the rollback taxes as defined in T.C.A. § 67-5-1004 and as provided for in T.C.A. § 67-5-1008(d).<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-5-1008(a).

<sup>2</sup>T.C.A. § 67-5-1008(b)(1).

<sup>3</sup>T.C.A. § 67-5-1008(b)(2) and (3).

## Rollback Taxes

**Reference Number:** CTAS-1486

The assessor of property will compute the amount of taxes saved by the difference in present use value assessment and value assessment pursuant to T.C.A. § 67-5-601 *et seq.*, for each of the preceding three years for agricultural and forest land, and for the preceding five years for open space land, and the assessor shall notify the trustee that such amount is payable, if (1) the land no longer qualifies as agricultural land, forest land, or open space land as defined in T.C.A. § 67-5-1004; (2) the owner of the land requests in writing that the classification as agricultural land, forest land, or open space land be withdrawn; (3) the land is covered by a duly recorded subdivision plat or an unrecorded plan of development and any portion is being developed; except that, where a recorded plat or an unrecorded plan of development contains phases or sections, only the phases or sections being developed are disqualified; (4) an owner fails to file an application as required by this part; (5) the land exceeds the acreage limitations of T.C.A. § 67-5-1003(3); or (6) the land is conveyed or transferred and the conveyance or transfer would render the status of the land exempt.<sup>1</sup>

If, under the provisions of T.C.A. § 67-5-1008(d)(1), only a portion of a parcel is subject to rollback taxes, the assessor must apportion the assessment of the parcel on the first tax roll prepared after the taxes become payable, and enter the apportioned amount attributable to that portion as a separately assessed parcel on the tax roll. Apportionment will be made for each of the years to which the rollback taxes apply.<sup>2</sup>

The rollback taxes due as the result of disqualification or withdrawal of the land from classification are the tax savings calculated under T.C.A. § 67-5-1008(d). Rollback taxes shall be payable from the date written notice is provided by the assessor, but shall not be delinquent until March 1 of the following year. When the assessor determines there is liability for rollback taxes, the assessor shall give written notice to the tax collecting official identifying the basis of the rollback taxes and the person the assessor finds to be responsible for payment, and the assessor shall provide a copy of the notice to the responsible person. Rollback taxes shall be a first lien on the disqualified property in the same manner as other property taxes, and shall also be a personal responsibility of the current owner or seller of the land as provided in this part. The assessor may void the rollback assessment, if it determined that the assessment was imposed in error. Liability for rollback taxes, but not property values, may be appealed to the state board of equalization by March 1 of the year following the notice by the assessor. Property values fixing the amount of rollback taxes may only be appealed as otherwise provided by law.<sup>3</sup>

If land that is classified under the Greenbelt Law as agricultural, forest, or open space land (or any portion thereof) is converted to a use other than those stipulated in the statute by virtue of a taking by eminent domain or other involuntary proceeding, except a tax sale, the land (or any portion thereof) involuntarily converted to another use is not subject to rollback taxes by the landowner, and the agency or body doing the taking will be liable for the rollback taxes. Property transferred and converted to an exempt or non-qualifying use shall be considered to have been converted involuntarily if the transferee or an agent for the transferee sought the transfer and had power of eminent domain.<sup>4</sup>

In the event that the land involuntarily converted to another use constitutes only a portion of a classified parcel on the assessment rolls, the assessor must apportion the assessment and enter the portion involuntarily converted as a separately assessed parcel on the appropriate portion of the assessment roll. Furthermore, for as long as the landowner continues to own the remaining portion of such parcel and for as long as the landowner's lineal descendants collectively own at least 50 percent of the remaining portion of such parcel, the remaining portion will not be disqualified from use value classification under the Green belt Law solely because it is made too small to qualify as the result of the involuntary proceeding.<sup>5</sup>

If the sale of agricultural, forest or open space land results in the property being disqualified due to conversion to an ineligible use or otherwise, the seller is liable for rollback taxes unless otherwise provided by in a written contract. If the buyer declares in writing at the time of sale an intention to continue the greenbelt classification but fails to file any form necessary to continue the classification within 90 days from the sale date, the rollback taxes become the sole responsibility of the buyer.<sup>6</sup>

Property passing to a lineal descendant of a deceased greenbelt owner, by reason of the death of the greenbelt owner, are not subject to rollback solely because the total greenbelt acreage of the new owner exceeds the maximum under T.C.A. § 67-5-1003, or will exceed the maximum following the transfer. Property exceeding the limit in these circumstances will be disqualified from greenbelt classification, but will not be assessable for rollback unless other disqualifying circumstances occur before the property has been assessed at market value three years.<sup>7</sup>

If an assessor fails to carry out his or her duties in accordance with the provisions of the Greenbelt Law, all compensation to the assessor will be discontinued pursuant to the provisions of T.C.A. § 67-5-305.<sup>8</sup>

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<sup>1</sup>T.C.A. § 67-5-1008(d)(1).

<sup>2</sup>T.C.A. § 67-5-1008(d)(4)(A) and (B).

<sup>3</sup>T.C.A. § 67-5-1008(d)(3). See also Op. Tenn. Atty. Gen. 79-517 (December 7, 1979).

<sup>4</sup>T.C.A. § 67-5-1008(e)(1). See also Op. Tenn. Atty. Gen. 85-035 (February 13, 1985).

<sup>5</sup>T.C.A. § 67-5-1008(e)(2).

<sup>6</sup>T.C.A. § 67-5-1008(f). See also Op. Tenn. Atty. Gen. 87-27 (February 19, 1987); Op. Tenn. Atty. Gen. 86-015 (January 23, 1986).

<sup>7</sup>T.C.A. § 67-5-1008(h).

<sup>8</sup>T.C.A. § 67-5-1010.

## Present Use Valuation for Certain Residential Property

**Reference Number:** CTAS-1487

The concept of taxation based on present use valuation has been extended to certain residential property: property which is used solely for residential purposes, which is occupied by the owner for a period of at least 25 years, and which is zoned for commercial use shall be assessed based on its value for residential purposes. The owner must occupy the residence at least nine months out of the year. This protection also applies to a lineal descent of the original owner who resides on the property.<sup>1</sup>

An owner of a residential house may apply to the assessor of property of the county in which the property is located for its classification under T.C.A. § 67-5-601(c), as described above. Property which has been determined by the assessor of property to qualify under subsection (c) will be valued for ad valorem tax purposes at its market value for residential purposes. The assessment on the property shall include the entire year in which the land is classified under subsection (c). Any person who is denied such classification has the same rights and remedies for appeal and relief as are provided taxpayers for any action of assessors of property.<sup>2</sup>

When the use or ownership of the property changes so that it no longer qualifies under T.C.A. § 67-5-601(c), the property owner has the duty of informing the assessor of property. Upon discovering that a property no longer qualifies for classification under subsection (c), the assessor must reclassify the property and value it according to its current market value for subsequent tax years. In the event a change in the use or ownership does not timely come to the attention of the assessor, and upon the assessor discovering that the property no longer qualifies, reclassification will affect each year that the property has failed to qualify, and the taxpayer will be liable for the difference in taxes, including penalty and interest.<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-5-601(c)(1) - (3).

<sup>2</sup>T.C.A. § 67-5-601(c)(4).

<sup>3</sup>T.C.A. § 67-5-601(c)(5).

## Tangible Personal Property/Assessor

**Reference Number:** CTAS-1488

The assessor of property, not later than February 1 of each year, is to furnish a schedule on which business owners list in detail tangible personal property used or held for use in the business or profession of the taxpayer.<sup>1</sup> This schedule, the format of which is specified by statute, lists allowable depreciated costs for different categories of property, as well as general data of the particular taxpayer.<sup>2</sup> ([Sample Personal Property Depreciation Chart](#).) The taxpayer can use a value different from the standard depreciated cost if the different value more closely approximates fair market value; the assessor may request supportive information in such instances from the taxpayer.<sup>3</sup> The depreciation tables set out in the *Tennessee Code Annotated* have given rise to a great deal of litigation. Recent decisions by the Tennessee Supreme Court and Court of Appeals have upheld the constitutionality of the application of the depreciation schedules set forth in T.C.A. § 67-5-903(f) to locally assessed tangible personal property;<sup>4</sup> the constitutionality of the requirement to adjust the assessments of public utility property on the basis of ratio studies pursuant to T.C.A. § 67-5-1302(b)(1);<sup>5</sup> and the constitutionality of the requirement that locally assessed commercial and industrial tangible personal property be adjusted by the appraisal ratio adopted for each county pursuant to T.C.A. § 67-5-1509(a).<sup>6</sup> Due to these decisions, and other tax litigation cases, counties have experienced a significant reduction in the amount of revenue received from the taxation of tangible personal property.<sup>7</sup> Since 1997, the Board of Equalization has ordered a 15 percent reduction in the assessed value of centrally assessed tangible personal property in order to bring it to the same level of assessment as locally assessed tangible personal property.<sup>8</sup>

It is the duty of the taxpayer to list fully the tangible personal property used, or held for use, in the taxpayer's business or profession on the schedule, including other information required by the assessor, place the property's correct value on the schedule, and to sign and return the schedule to the assessor on or

before March 1 of each year. In lieu of detailing acquisition cost on the reporting schedule, the taxpayer may certify that the depreciated value of tangible personal property otherwise reportable on the schedule is \$1,000 or less. The assessor must accept the certification, subject to audit, and fix the value of tangible personal property assessable to the taxpayer pursuant to the schedule, at \$1000. This value is subject to equalization pursuant to T.C.A. § 67-5-1509. The certification stated on the schedule must warn the taxpayer that it is made subject to penalties for perjury and subject to statutory penalty and costs if proven false.<sup>9</sup>

A taxpayer who fails, refuses or neglects to complete, sign and file the schedule with the assessor, as provided in T.C.A. § 67-5-903(b), is deemed to have waived objections to the forced assessment determined by the assessor, subject only to the remedies provided in T.C.A. § 67-5-903(d). In determining a forced assessment, the assessor must consider available evidence indicative of the fair market value of property assessable to the taxpayer under T.C.A. § 67-5-903. After determining the assessable value of the property, the assessor must give the taxpayer notice of the assessment by United States mail, addressed to the last known address of the taxpayer or the taxpayer's agent at least five calendar days before the local board of equalization commences its annual session.<sup>10</sup>

The remedies of a taxpayer against whom a forced assessment is made are as follows:

1. The taxpayer may appeal to the county board of equalization pursuant to T.C.A. § 67-5-1407, but must present a completed schedule as otherwise provided in T.C.A. § 67-5-903;
2. If the deadline to appeal to the county board of equalization has expired, then the taxpayer may request the assessor to mitigate the forced assessment by reducing the forced assessment to the standard depreciated value of the taxpayer's assessable property plus twenty-five percent (25%), so long as the failure to file the schedule or failure to timely appeal to the county board of equalization was not the result of gross negligence or willful disregard of the law. Mitigation of the forced assessment shall follow the procedure, including appeal, prescribed for correction of error under T.C.A. § 67-5-509, but must be requested within the same deadline as provided for amendment of a schedule pursuant to subsection (e). Gross negligence shall be presumed if notice of the forced assessment, in a form approved by the State Board of Equalization, was sent certified mail, return receipt requested, to the taxpayer's last known address on file with the assessor.

Whether or not an assessor's error affected the original assessment, the assessor may correct a forced assessment using the procedure provided and subject to the deadlines provided in T.C.A. § 67-5-509, upon determining that the taxpayer was not in business as of the assessment date for the year at issue, and upon determining that the taxpayer did not own or lease tangible personal property used or held for use in a business as of the assessment date for the year at issue.<sup>11</sup>

A taxpayer may amend a personal property schedule timely filed with the assessor at any time on or before September 1 following the tax year. If the assessor agrees with the amended schedule, the assessor will revise the assessment and certify the revised assessment to the trustee. If the assessor believes the assessment should be otherwise than claimed in the amended schedule, the assessor will adjust the assessment and give written notice to the taxpayer of the adjusted assessment. The taxpayer may appeal the assessor's adjustment of or refusal to accept an amended assessment schedule to the local and state boards of equalization in the manner otherwise provided by law. Additional taxes due as the result of an amended schedule are not deemed delinquent on or before 60 days after the date notice of the amended assessment was sent to the taxpayer. Amendment of a personal property schedule is not be permitted once suit has been filed to collect delinquent taxes related to the original assessment. The assessor must, within 60 days from receipt of the taxpayer's amended schedule, review and accept or reject the schedule. In any event, the taxpayer must be notified in writing of the results of the review. If the assessor has not notified the taxpayer that the amended schedule has been accepted or rejected within 60 days, the taxpayer's amended schedule will be deemed not accepted by the assessor.<sup>12</sup>

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<sup>1</sup>T.C.A. § 67-5-903(a).

<sup>2</sup>T.C.A. § 67-5-903(f).

<sup>3</sup>T.C.A. § 67-5-902.

<sup>4</sup>*In Re All Assessments 1999 & 2000*, 67 S.W.3d 805, 816-820 (Tenn.Ct.App. 2001) (upholding the constitutionality of T.C.A. §§ 67-5-903(f) and 67-5-1302(b)(1)).

<sup>5</sup>*In Re All Assessments 1999 & 2000*, 67 S.W.3d 805, 820-821 (Tenn.Ct.App. 2001) (upholding the constitutionality of T.C.A. §§ 67-5-903(f) and 67-5-1302(b)(1)).

<sup>6</sup>*Williamson County v. Tennessee State Board of Equalization*, 86 S.W.3d 216 (Tenn.Ct.App. 2002) (upholding the constitutionality of T.C.A. §§ 67-5-903(f) and 67-5-1509(a)).

<sup>7</sup>See also *In Re All Assessments 1998*, 58 S.W.3d 95, 102 (Tenn. 2000) (holding: "The Tennessee Board of Equalization is authorized to reduce (or increase) the appraised (and therefore corresponding assessed) value of centrally-assessed public utility tangible personal property as part of the equalization process, the purpose of which is to equalize the ratio of the appraised value to fair market value of public utility property in any particular county with the corresponding ratio for industrial and commercial property in that county.").

<sup>8</sup>*ANR Pipeline Co. v. Tennessee Board of Equalization*, 2002 WL 31840689, \*1 (Tenn.Ct.App. 2002) *perm. app. denied* (Tenn. 2003).

<sup>9</sup>T.C.A. § 67-5-903(b).

<sup>10</sup>T.C.A. § 67-5-903(c).

<sup>11</sup>T.C.A. § 67-5-903(d).

<sup>12</sup>T.C.A. § 67-5-903(e).

## Leased Personal Property

**Reference Number:** CTAS-1489

Leased personal property is classified according to the lessee's use and assessed to the lessee, unless the property is the subject of a lawful agreement between the lessee and a local government for payments in lieu of taxes.<sup>1</sup> For the purpose of assessing leased property, it is the duty of the taxpayer to list fully on a schedule provided by the assessor all tangible personal property which is leased by the taxpayer for the conduct of the taxpayer's business.<sup>2</sup> Leased property shall include equipment, machinery and all tangible personal property used in the conduct of, or as a part of, the taxpayer's business.<sup>3</sup> The lessor, or owner of leased tangible personal property, must provide such information as the assessor may request regarding the location, valuation or use of such property.<sup>4</sup>

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<sup>1</sup>T.C.A. § 67-5-502(c).

<sup>2</sup>T.C.A. § 67-5-904(a)(1).

<sup>3</sup>T.C.A. § 67-5-904(a)(2).

<sup>4</sup>T.C.A. § 67-5-904(b).

## Pilot Program for Assessing Leased Tangible Personal Property

**Reference Number:** CTAS-1490

Notwithstanding contrary provisions of law, the Comptroller of the Treasury may establish a pilot program for assessing leased tangible personal property to the owner/lessor rather than the lessee. Participation in the program is voluntary, at the election of owner/lessors who are selected by the comptroller to participate based on criteria that optimize savings in the cost of assessment compliance and administration. The comptroller may impose a fee to defray the cost of administration. Participants will be permitted to report leased property centrally in lieu of the schedules otherwise required under T.C.A. § 67-5-903 or T.C.A. § 67-5-904, and the comptroller will be responsible for distributing centrally reported assessments based on situs. Participants may be permitted to claim the business tax credit provided in T.C.A. § 67-4-713 for property taxes paid pursuant to a central assessment, and the credit may be taken at the participant's option either on the return due in the jurisdiction of situs or the jurisdiction from which the lease originated.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-502(e). See 2004 Public Chapter 667.

## Correction of Erroneous Assessments

**Reference Number:** CTAS-1491

The assessor of property must certify in writing a corrected or revised assessment to the trustee, or city tax collector in the case of city taxes, whenever the assessor discovers, or it has been called to the assessor's attention, that there has been an error or omission in the listing, description, classification or assessed value of property or any other error or omission in the tax rolls held by the trustee or city tax collector.<sup>1</sup> The assessor must certify to the trustee or city tax collector the facts and the reasons for the change in the assessment, and the tax must be collected upon the revised assessment.<sup>2</sup> The State Board of Equalization may request a copy of the assessor's certification.<sup>3</sup> If the tax computed on an erroneous basis of valuation or assessment has been paid prior to the assessor's certification of the corrected assessment, the trustee or city tax collector must, within 60 days after receipt of the certification from the assessor, refund to the taxpayer that portion of such tax paid which resulted from the erroneous assessment. The refund is to be made without the necessity of payment under protest or such other requirements as usually pertain to refunds of taxes unjustly or illegally collected.<sup>4</sup>

Correction of assessments must be requested by the taxpayer, or initiated by the assessor, prior to March 1, no more than the second year following the tax year for which the correction is to be made.<sup>5</sup> For example, correction of an erroneous assessment for the 2010 tax year would have to be initiated before March 1 of 2012. If additional taxes are due as a result of the corrected assessment, they are not delinquent until 60 days after the date notice of the corrected assessment is sent to the taxpayer. Once a suit has been filed to collect delinquent taxes pursuant to T.C.A. § 67-5-2405, the assessment and levy are deemed valid and are not subject to correction.<sup>6</sup> If the assessor does not correct an error in an assessment within 30 days after the request, or if the correction results in an increase in an assessment, the aggrieved taxpayer may appeal directly to the State Board of Equalization;<sup>7</sup> alternatively, the taxpayer may go through the regular process by appealing to the county board of equalization.<sup>8</sup> A defect in assessment, levy, or tax procedure will not affect the validity of a decision unless it results in a denial of minimum constitutional guarantees.<sup>9</sup>

It is important to note that the only errors or omissions which may be corrected under this provision are those involving obvious clerical mistakes, ascertainable from the face of the official tax and assessment records and involving no judgment or discretion by the assessor. Examples of correctable mistakes include the name or address of an owner, the location or physical description of the property, misplacement of a decimal point or mathematical miscalculation, errors of classification, and duplicate assessments. Matters of opinion by the assessor and clerical mistakes in tax reports or schedules filed by a taxpayer are not correctable under this procedure.<sup>10</sup>

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<sup>1</sup>T.C.A. § 67-5-509(c)(1).

<sup>2</sup>T.C.A. § 67-5-509(c)(2).

<sup>3</sup>T.C.A. § 67-5-509(c)(3).

<sup>4</sup>T.C.A. § 67-5-509(a).

<sup>5</sup>T.C.A. § 67-5-509(d).

<sup>6</sup>T.C.A. § 67-5-509(d).

<sup>7</sup>T.C.A. § 67-5-509(e).

<sup>8</sup>Op. Tenn. Atty. Gen. 96-077 (April 24, 1996).

<sup>9</sup>*State v. Delinquent Taxpayers*, 785 S.W.2d 819 (Tenn.Ct.App. 1989); T.C.A. § 67-5-509(b).

<sup>10</sup>T.C.A. § 67-5-509(f). For prior law, see Op. Tenn. Atty. Gen. 76-07 (June 25, 1976) and Op. Tenn. Atty. Gen. 87-90 (May 14, 1987).

## Back Assessment or Reassessment

**Reference Number:** CTAS-1492

"Back assessment" means the assessment of property, including land or improvements not identified or included in the valuation of the property, which has been omitted from or totally escaped taxation.<sup>1</sup> "Re-assessment" means the assessment of property which has been assessed at less than its actual cash value by reason of connivance, fraud, deception, misrepresentation, misstatement, or omission of the property owner or his/her agent.<sup>2</sup>

"Connivance" means some conscious conduct by the taxpayer, similar to but short of actual fraud, which caused or induced the low assessment. However, where property has been assessed below its actual cash value by the regularly constituted assessing authorities, failure of the taxpayer to report the underassessment even though grossly underassessed does not constitute connivance nor afford a basis for reassessment. If the taxpayer simply acquiesces in the underassessment by paying the low amount and failing to report it, the taxpayer's actions do not constitute fraud.<sup>3</sup> Moreover, when property has been properly listed and has not been omitted from assessment, there can be no back assessment, unless frauds of the nature indicated in T.C.A. § 67-1-1002(a)(2) and (3) is shown. Furthermore, the presumption of fraud, declared by the statute to arise from a grossly inadequate assessment, is not conclusive, but rebuttable.<sup>4</sup> Failure of the property owner to obtain a required building permit or to file a required written report would be grounds for reassessment, if such failure caused the property to be underassessed.<sup>5</sup>

A back assessment or reassessment must be initiated on or before September 1 of the year following the tax year for which the original assessment was made.<sup>6</sup> However, if the omission or underassessment resulted from the failure of the taxpayer to file the reporting schedule required by law, from actual fraud or fraudulent misrepresentation of the property owner or the property owner's agent, or from collusion between the property owner or the property owner's agent and the assessor, a back assessment or reassessment must be initiated prior to three years from September 1 of the tax year for which the original assessment was made.<sup>7</sup>

With respect to tangible personal property, if a taxpayer would be liable for additional tax due to back assessment of property omitted from a reporting schedule, or due to reassessment of property included in the schedule, the taxpayer may offset this liability by showing that other property listed on the schedule was over reported, or by providing information that the reassessed property or other property listed on the schedule should be valued using a nonstandard method that more closely approximates fair market value.<sup>8</sup>

Additional taxes due as the result of a back assessment or reassessment shall not be deemed delinquent until 60 days after the date notice of taxes resulting from the back assessment or reassessment is sent to the taxpayer. However, if the back assessment or reassessment resulted from the failure of the taxpayer to file the reporting schedule required by law, from actual fraud or fraudulent misrepresentation of the property owner or the property owner's agent, or from collusion between the property owner or the property owner's agent and the assessor, the additional taxes shall become delinquent as of the date of delinquency of the original assessment.<sup>9</sup>

A back assessment or reassessment may be initiated by certification of the assessor of property to the appropriate collecting officials identifying the property and stating the basis of the back assessment or reassessment and the tax year(s) and amount of any additional assessment for which the owner or taxpayer is responsible. The assessor shall send a copy of the certification to the owner or taxpayer. The collecting official shall thereupon send a notice of taxes due based on the back assessment and reassessment. Any taxpayer aggrieved by a back assessment or reassessment may appeal directly to the State Board of Equalization within 60 days from the date that a copy of the certification is sent to the taxpayer, in the manner provided in T.C.A. § 67-5-1412, and such person may be assisted or represented in the appeal as provided in T.C.A. § 67-5-1514. The accrual of delinquency penalty and interest otherwise applicable is suspended while the appeal is pending, however, simple interest will accrue during the appeal period in the amount provided in T.C.A. § 67-5-1512.<sup>10</sup>

A back assessment or reassessment for merchants' taxes and delinquent privilege taxes may be initiated by a chief administrative officer of a tax jurisdiction to which the tax is payable, any citizen of such jurisdiction, or by the department of revenue. The back assessment or reassessment shall be initiated by the filing of a sworn, written complaint to the county clerk stating the basis of the complaint. The county clerk

may require a complainant, other than a public official acting in the official's capacity, to post a reasonable bond for payment of costs of the proceeding if the back assessment or reassessment is unsuccessful. An aggrieved party may appeal the clerk's disposition of the complaint to the department of revenue.<sup>11</sup>

Those officials having the power to back assess or reassess property are vested with full authority to administer oaths, send for and examine witnesses, and take such steps as may be deemed necessary or material to obtain information and evidence as to the value of the property.<sup>12</sup> Witnesses, when properly summoned, are subject to existing laws for non-attendance or failure to give evidence which is in their knowledge.<sup>13</sup>

If the back assessment or reassessment is upheld, the costs of the proceeding are added to the amount of taxes owed. If the back assessment or reassessment is set aside, the taxing jurisdiction must pay costs. However, if the board determines the complaint was filed or prosecuted by the complainant without good cause, then the complainant pays the cost. If the board finds connivance, fraud, deception, misrepresentation, or failure to file a personal property schedule, it may impose a penalty of up to 15 percent of the tax due.<sup>14</sup>

Innocent purchasers are protected from a reassessment of inadequately assessed real property by a bona fide sale, although this provision does not apply to a back assessment of property that has wholly escaped taxation. The taxes are a liability against the person owning the real property at the time of the inadequate assessment. The burden of proving a bona fide sale is on the person owning the real property at the time of back assessment or reassessment.<sup>15</sup>

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<sup>1</sup>T.C.A. § 67-1-1001(a)(1).

<sup>2</sup>T.C.A. § 67-1-1001(a)(2).

<sup>3</sup>*Garner v. Rhea Realty Corp.*, 494 S.W.2d 783, 787 (Tenn.Ct.App. 1971).

<sup>4</sup>*Eastland v. Sneed*, 185 S.W. 717, 718 (Tenn. 1916).

<sup>5</sup>Op. Tenn. Atty. Gen. 87-32 (Mar. 6, 1987).

<sup>6</sup>T.C.A. § 67-1-1005(a).

<sup>7</sup>T.C.A. § 67-1-1005(a).

<sup>8</sup>T.C.A. § 67-5-902(b).

<sup>9</sup>T.C.A. § 67-1-1005(a). For prior law, see Op. Tenn. Atty. Gen. 86-136 (August 8, 1986).

<sup>10</sup>T.C.A. § 67-1-1005(b).

<sup>11</sup>T.C.A. § 67-1-1005(c).

<sup>12</sup>T.C.A. §§ 67-1-1006(a), 67-5-1404.

<sup>13</sup>T.C.A. §§ 67-1-1006(b), 67-5-1404.

<sup>14</sup>T.C.A. § 67-1-1008.

<sup>15</sup>T.C.A. § 67-1-1004.

## State Division of Property Assessments

**Reference Number:** CTAS-1493

The State Division of Property Assessments has the duty to develop methods and procedures to assist local assessors and boards of equalization in administering the annual assessment process and in maintaining assessments through a process of updating valuations, property ownership records, and other information and records.<sup>1</sup> The Division of Property Assessments has developed manuals, rules, and regulations which relate to the duties of assessors of property and to reappraisal programs.<sup>2</sup> These manuals provide for consideration of the following factors in determining property values:

1. Location;
2. Current use;
3. Whether income bearing or non-income bearing;
4. Zoning restrictions on use;
5. Legal restrictions on use;
6. Availability of water, electricity, gas, sewers, street lighting, and other municipal services;

7. Inundated wetlands;
8. Natural productivity of the soil, except that the value of growing crops shall not be added to the value of the land ("crops" include trees); and
9. All other factors and evidences of values generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment.

For determining the value of industrial, commercial, farm machinery and other personal property, these manuals provide for consideration of the following factors:

1. Current use;
2. Depreciated value;
3. Actual value after allowance for obsolescence; and
4. All other factors and evidences of values generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment.

For determining the value of forestland, the State Division of Property Assessments consults with the U.S. Forest Service and the state forester to establish guidelines to be used in the manual.<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-1-205(a).

<sup>2</sup>T.C.A. §§ 67-1-205(a); 67-5-505; 67-5-602.

<sup>3</sup>T.C.A. § 67-5-602.

## Reappraisal

**Reference Number:** CTAS-1494

Pursuant to T.C.A. § 67-5-1601 *et seq.*, reappraisal must be completed either in four, five, or six year cycles. In counties on a six year cycle, the first five years are used for on-site review, followed by a revaluation in the sixth year. In the third year, there must be an updating of all real property values if the overall level of appraisal for the jurisdiction is less than 90 percent of fair market value. Even if the jurisdiction as a whole meets the 90 percent level, there must be an update of subgroups which do not fall within 10 percent of the jurisdictional appraisal level.

Instead of the six-year cycle, a county may opt for either a four or five-year reappraisal schedule. Although few counties have chosen the four-year option, it is available with the approval of the State Board of Equalization. Under this plan, on-site review is to be accomplished in the first three years, followed by a revaluation in the fourth year. A third option was passed in 1997, which allows the assessor, with approval of the county legislative body, to choose a continuous five-year cycle comprised of an on-site review of each parcel over a four-year period, followed by revaluation in the fifth year. Counties adopting either of these latter alternatives are not required to update or index values as must be done on the six-year cycle. These statutes also contain requirements for planning, public notice and hearings, and noncompliance sanctions.<sup>1</sup>

In a year of reappraisal, if the number of foreclosures is of a significant number in any area or neighborhood, the assessor of property may recognize the effects of the foreclosures on the values of other properties located within the affected area or neighborhood.<sup>2</sup>

In the event that in the year a reappraisal program is completed, the values established in such reappraisal program are turned over to the county after October 1 of such year, no penalty and interest shall be added until five (5) months following the tax roll completion date as evidenced by written notification from the assessor of property to the trustee, specifically stating the date the tax roll was delivered to the trustee.<sup>3</sup>

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<sup>1</sup>T.C.A. §§ 67-5-1601 *et seq.* See Op. Tenn. Atty. Gen. 92-61 (October 8, 1992) for a discussion of requirements for changing a reappraisal schedule.

<sup>2</sup>T.C.A. §§ 67-5-1603(d).

<sup>3</sup>T.C.A. § 67-5-1608.

## Appealing an Assessment

Reference Number: CTAS-1495

The County Board of Equalization and the State Board of Equalization deliberate complaints regarding property assessments.

## County Board of Equalization

Reference Number: CTAS-1496

The county board of equalization is the first level of administrative appeal for all complaints regarding the assessment, classification and valuation of property for tax purposes. Board duties include examining and equalizing county assessments, assuring that all taxable properties are included on the assessment lists, eliminating exempt properties from taxation, hearing complaints of aggrieved taxpayers, decreasing over-assessed property, increasing under-assessed property and correcting clerical mistakes. T.C.A. §§ 67-1-401 *et seq.*, 67-5-1401 *et seq.*

### Composition of the Board

At the April session in each even year, the county legislative body elects five “freeholders and taxpayers” from the different sections of the county to serve as the county board of equalization.<sup>1</sup> (Note: T.C.A. § 67-1-401 contains numerous exceptions for counties and cities specified through population class.) Members of the board of equalization serve two year terms. If the county legislative body fails to elect these members, then the county mayor makes the appointments and fills the vacancies as they occur.<sup>2</sup> Magistrates along with state, municipal or county legislative and executive officials, as well as their employees, are ineligible to serve, except in some circumstances in Shelby County.<sup>3</sup>

<sup>1</sup>T.C.A. § 67-1-401(a).

<sup>2</sup>T.C.A. § 67-1-401(b).

<sup>3</sup>T.C.A. § 67-1-401(c). See Op. Tenn. Atty. Gen. 90-106 (December 27, 1990) which states that it is a prohibited conflict of interest for a county trustee, a municipal tax collector, or an employee of either to sit on a county board of equalization. See also Op. Tenn. Atty. Gen. U92-82 (June 30, 1992) which opines that this provision regarding Shelby County is constitutionally suspect.

## Oath of Office

Reference Number: CTAS-1497

Before entering the office, each member of the county board of equalization must take and subscribe to the following oath before the county mayor:

State of Tennessee

County of \_\_\_\_\_

I, \_\_\_\_\_, member of the board of equalization of such county, do hereby solemnly swear (or affirm) that I will carefully examine, compare and equalize the assessments of such county in accordance with the Constitution and the laws of the state of Tennessee; and that to the best of my knowledge and ability I will faithfully, honestly and impartially perform all duties imposed upon me as a member of the board by the laws of the state of Tennessee.

Signed \_\_\_\_\_, .....Board member

Sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

This oath must be filed with the county clerk who, upon request, shall make a certified copy of the oath and forward it to the State Board of Equalization.<sup>1</sup>

<sup>1</sup>T.C.A. § 67-1-402.

## Officers and Compensation

**Reference Number:** CTAS-1498

Each county board of equalization elects one member to serve as chairperson and one member to serve as secretary. A majority of the county board constitutes a quorum for the transaction of business. The board must keep a daily record of its transactions, and sign the record. Board members are paid by the county for their services. The compensation of the chair and other members is established by a resolution of the county legislative body. The county mayor may require board members to complete training on duties and responsibilities of their office as a condition of appointment or continued service.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-1-403.

## Sessions

**Reference Number:** CTAS-1499

The county board of equalization meets on June 1 of each year and sits in regular session as necessity may require until the equalization has been completed (or for the maximum number of days as set out below). Note: In any county having a population of not less than 26,000 nor more than 26,100 according to the 1970 federal census or any subsequent federal census, the county legislative body may by resolution or ordinance set an earlier date for the board's initial meeting.<sup>1</sup> Any county board of equalization, having jurisdiction over a municipality with a beginning tax due date different from that of the county, shall meet as required by the county legislative body, but at least one month prior to the applicable beginning tax due date.<sup>2</sup>

The county board shall not sit longer than six days in counties having a population of 10,000 or under; 10 days in counties having a population of over 10,000 and under 20,000; and 15 days in counties having a population of over 20,000 and under 35,000. In counties having a population of over 35,000, the county legislative body may fix the number of meeting days not to exceed 30 days.<sup>3</sup> When the county legislative body cannot act, the county mayor may extend the time or may call the board in special session at any time if in the county mayor's judgment, the public welfare requires it.<sup>4</sup>

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<sup>1</sup>T.C.A. § 65-1-404(a).

<sup>2</sup>T.C.A. § 65-1-404(c).

<sup>3</sup>T.C.A. § 65-1-404(b)(1).

<sup>4</sup>T.C.A. § 67-1-404(b)(2).

## Duties and Powers

**Reference Number:** CTAS-1500

The county board of equalization is the first level of administrative appeal for all complaints regarding the assessment, classification, and valuation of property for tax purposes. The county board's duties include examining and equalizing the county assessments, assuring that all taxable properties are included on the assessment lists, eliminating exempt properties from taxation, hearing complaints of aggrieved taxpayers, decreasing over-assessed property, increasing under-assessed property, and correcting clerical mistakes.<sup>1</sup> The county board of equalization has the power to obtain evidence concerning the classification, value, or assessment of any property by examining witnesses, hearing proof, and sending for persons and papers.<sup>2</sup> Board members have the power to administer an oath, and any person who willfully or corruptly swears falsely to any material fact before the board commits perjury and is indictable for such offense.<sup>3</sup> The county board may also examine assessors in order to ascertain the manner in which the classification, value, or assessment of property was determined.<sup>4</sup> When a member of the county board knows or reasonably suspects that an assessor of property or deputy assessor has knowingly or willfully

classified, valued or assessed any property in violation of the requirements of law, that member has a duty to report the violation to the district attorney general or other proper officer of the state for further proceedings.<sup>5</sup>

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<sup>1</sup>T.C.A. § 67-5-1402. Note Op. Tenn. Atty. Gen. 85-083 (March 20, 1985) opining that T.C.A. § 5-5-124, providing authority for the county legislative body to correct errors in property assessments, is obsolete since other remedies are provided for pursuant to T.C.A. § 67-5-1401 *et seq.*

<sup>2</sup>T.C.A. § 67-5-1404(a) and (b).

<sup>3</sup>T.C.A. § 67-5-1404(c).

<sup>4</sup>T.C.A. § 67-5-1405.

<sup>5</sup>T.C.A. § 67-5-1415.

## Assessor of Property—Assistance and Recommendations to the Board

**Reference Number:** CTAS-1501

The assessor of property or deputy assessor is required to meet with the county board of equalization on the first day of its session and to sit with the board in an advisory capacity during each and every day of the board's session, and to render assistance to the board in the performance of its official duties in equalizing assessments. In addition to other assistance, the assessor of property or deputy assessor may recommend to the board that changes of assessment or classification be made from those certified in the report of assessments required under T.C.A. § 67-5-304, but such recommended changes may not be so numerous as to amount to the general reappraisal of a class or type of property.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-1403.

## Complaints to the County Board of Equalization

**Reference Number:** CTAS-1502

An owner of property or liable taxpayer has the right to appear personally before the county board, to authorize in writing an agent to appear, or to authorize an attorney to appear, in order to make a complaint on one or more of the following grounds: (1) property owned by the taxpayer was erroneously classified or subclassified; (2) property owned by the taxpayer was assessed on the basis of an appraised value that is more than the basis of value provided for in T.C.A. § 67-5-601 *et seq.*; and (3) property other than the taxpayer's was assessed on the basis of appraised values which are less than the basis of value provided for in T.C.A. § 67-5-601 *et seq.*<sup>1</sup> The county board must hear any complaint that is filed while the board is in session and that relates to the current year under review. The board may not refuse to hear a complaint for the current year on the grounds that an appeal was filed with the State Board of Equalization for a prior year.<sup>2</sup> When a complaint is made before the county board, it may hear any evidence or witness offered by the complainant, or may take such steps as it may deem material to the investigation of the complaint.<sup>3</sup> If an owner, or the owner's duly authorized agent, upon request, fails, refuses, or neglects to supply the assessor or the county board with information regarding the property not readily available through public records but which is necessary to make an accurate appraisal of the property, the owner forfeits the right to introduce the requested information upon appeal to the State Board of Equalization.<sup>4</sup>

Local governmental entities have the right to make a complaint before the assessor of property and the county board of equalization on the value of property within the local governmental entity on one or more of the following grounds: (1) the property has been erroneously classified or subclassified for purposes of taxation; (2) the property has not been included on the assessment lists; and (3) the property has been assessed on the basis of appraised values which are less than the basis of value provided for in T.C.A. § 67-5-601 *et seq.*<sup>5</sup> After the local governmental entity has filed a complaint, the county board must give the property owner at least five days notice of a hearing to be held before the board. The notice must be sent

by U.S. mail to the last known address of the property owner.<sup>6</sup>The county board may hear any evidence or witnesses offered by the local governmental entity or owner or may take such steps as it may deem material to the investigation of the complaint.<sup>7</sup>

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<sup>1</sup>T.C.A. § 67-5-1407(a)(1).

<sup>2</sup>Op. Tenn. Atty. Gen. 92-60 (October 8, 1992).

<sup>3</sup>T.C.A. § 67-5-1407(a)(2).

<sup>4</sup>T.C.A. § 67-5-1407(d).

<sup>5</sup>T.C.A. § 67-5-1407(b)(1).

<sup>6</sup>T.C.A. § 67-5-1407(b)(2).

<sup>7</sup>T.C.A. § 67-5-1407(c).

## Hearing Officers

**Reference Number:** CTAS-1503

In the event the county commission determines that the number of complaints made to any county board of equalization is sufficiently numerous to justify such action, the county board of equalization may appoint one or more hearing officers to conduct preliminary hearings and to make investigations regarding complaints before the board. Hearing officers must be approved by the county commission. The hearing officers assist the county board and prepare proposed findings of fact and conclusions for recommendation to the county board. The county board may adopt any recommendation of a hearing officer as its final decision, however, any property owner who desires to be heard directly by the county board must be given the opportunity to be heard by the board.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-1406.

## Disposition of Complaints

**Reference Number:** CTAS-1504

Upon consideration of any complaint, or any other information available, the county board of equalization may make changes, increasing or decreasing assessments, appraised values, or changes in classifications or subclassifications, as in its judgment are proper, just and equitable. The property owner or owners must be notified by the board of any increase of assessment or change in classification and given an opportunity to be heard. The notice must be sent by U.S. mail to the last known address of the taxpayer at least five days before the adjournment of the county board. The notice must include the tax year for which any increase of assessment or change in classification is made.<sup>1</sup>If the taxpayer fails, neglects or refuses to appear before the county board prior to its final adjournment, the assessment as determined by the assessor shall be conclusive against the taxpayer, and the taxpayer will be required to pay the taxes on such amount.<sup>2</sup>

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<sup>1</sup>T.C.A. § 67-5-1408.

<sup>2</sup>T.C.A. § 67-5-1401.

## Time for Completion of Board Action and Certificate of Completion

**Reference Number:** CTAS-1505

Actions by the county board during its regular sessions, except for complaints brought pursuant to T.C.A. § 67-5-1407 (the regular complaint procedure for property owners), are to be completed and the notice of

decision and appeal procedure sent no later than five days prior to the date taxes are due. This deadline does not apply to special sessions, extraordinary actions, or to years in which a county completes reappraisal.<sup>1</sup> Upon completion of its duties, the county board prepares a certificate signed by each member.

We, the undersigned members of the board of equalization of \_\_\_\_\_ County, do hereby certify that we have examined the assessments and classifications of taxable property within the county; we have heard and considered all appeals of such taxpayers as have duly made complaint to the county board of equalization; we have made only such changes in assessments and classifications as in our judgment are proper, just and equitable and are prescribed by law; and we have faithfully discharged all our duties without fear, favor, or affection to the best of our knowledge and ability in accordance with the laws of the state of Tennessee.

Witness our hand this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

The certificate of completion is filed in the office of the county clerk.<sup>2</sup>

<sup>1</sup>T.C.A. § 67-5-1409.

<sup>2</sup>T.C.A. § 67-5-1410.

## Final Action and Notice to Taxpayer

**Reference Number:** CTAS-1506

Actions of the county board are final except for revisions or changes by the State Board of Equalization. The county board of equalization must give notice to each property owner heard of its final decision and the procedure of appeal to the State Board of Equalization.<sup>1</sup>

<sup>1</sup>T.C.A. § 67-5-1411.

## Appeal to the State Board of Equalization

**Reference Number:** CTAS-1507

Any taxpayer or property owner who is aggrieved by any action taken by the county board of equalization has the right to a hearing and determination by the State Board of Equalization of any complaint made on any of the grounds set forth in T.C.A. § 67-5-1407.<sup>1</sup> The assessor of property or taxing jurisdiction also has the right to appeal from any action of the local board of equalization to the State Board of Equalization.<sup>2</sup>

Before filing an appeal with the State Board of Equalization, the taxpayer or owner must first make a complaint and appeal to the local board of equalization unless the taxpayer or owner has not been duly notified by the assessor of property of an increase in the taxpayer's or owner's assessment or change in classification as provided for in T.C.A. § 67-5-508.<sup>3</sup>

In all but 35 counties,<sup>4</sup> a taxpayer or owner of industrial and commercial real and tangible personal property may, with the written consent of the assessor, appeal the valuation of industrial and commercial real and tangible personal property to the local board of equalization, or directly to the State Board of Equalization. A direct appeal to the State Board of Equalization must be filed before August 1 of the tax year. The taxpayer or owner must request, in writing via certified mail, return receipt requested, such concurrence from the assessor within 10 days after the date the assessment notice for the property is sent, or by June 1 of the tax year, or such other date as may be prescribed by the assessor, but no later than the adjournment date for the regular annual session of the county board of equalization. The request must state, at a minimum, the name in which the property is assessed, the parcel identification number, the value sought, the basis for the appeal and the name, address, telephone number and fax number of the person requesting the direct appeal. The assessor must provide such concurrence at least 10 days before the adjournment of the county board. If the assessor does not concur with a direct appeal to the state board, and so states in writing at least 10 days before the adjournment of the county board of equaliza-

tion, then the taxpayer or owner must appeal first to the local board of equalization. If the assessor fails to act upon the taxpayer's or owner's request at least 10 days before the adjournment of the county board, then the State Board of Equalization must accept the direct appeal of the taxpayer or owner. A taxpayer or owner filing a direct appeal must attach a copy of the assessor's concurrence to the appeal form filed with the state board, or, if the assessor failed to act timely on a request for a direct appeal, a taxpayer or owner filing a direct appeal shall attach a copy of the written request for the concurrence and a statement that the assessor failed to provide a timely response to the request.<sup>5</sup>

Complaints and appeals to the state board of equalization shall be filed in such format as the board may require by rule, and the board may permit the use of electronic filing including electronic verification and signatures. The taxpayer or owner has the right to withdraw any complaint and appeal at any time before the final order has been entered on the primary issue of the complaint and appeal.<sup>6</sup>

Appeals to the State Board of Equalization from action of a local board of equalization must be filed on or before August 1 of the tax year, or within 45 days of the date notice of the local board action was sent, whichever is later. If notice of an assessment or classification change pursuant to T.C.A. § 67-5-508 was sent to the taxpayer's last known address later than 10 days before the adjournment of the local board of equalization, the taxpayer may appeal directly to the state board at any time within 45 days after the notice was sent. If notice was not sent, the taxpayer may appeal directly to the state board at any time within 45 days after the tax billing date for the assessment. The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in T.C.A. § 67-5-1412 and, upon demonstrating reasonable cause, the board must accept the appeal from the taxpayer up to March 1 of the year subsequent to the year in which the time for appeal to the state board began to run.<sup>7</sup>

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<sup>1</sup>T.C.A. § 67-5-1412(a)(1).

<sup>2</sup>T.C.A. § 67-5-1412(d).

<sup>3</sup>T.C.A. § 67-5-1412(b)(1).

<sup>4</sup>T.C.A. § 67-5-1412(b)(3).

<sup>5</sup>T.C.A. § 67-5-1412(b)(2).

<sup>6</sup>T.C.A. § 67-5-1412(c).

<sup>7</sup>T.C.A. § 67-5-1412(e).

## Record of Board's Action and Report to State Board

**Reference Number:** CTAS-1508

Upon the completion of the duties of the board, the records and papers of the board are turned over to the assessor of property for preservation for a period of at least 10 years. The individual property records maintained in the office of each assessor of property must show all actions taken by the county board which change the classification, value or assessment of any parcel of property.<sup>1</sup> It is the duty of the assessor of property to make a complete record of each and every change made in the assessment by the county board of equalization and forward a report to the State Board of Equalization, showing the increase or decrease made in each assessment and the reason or reasons for the change.<sup>2</sup>

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<sup>1</sup>T.C.A. § 67-5-1414.

<sup>2</sup>T.C.A. § 67-5-1413.

## Remand of Complaints to the County Board of Equalization

**Reference Number:** CTAS-1509

In the event the complaints filed with the State Board of Equalization from any county are sufficiently numerous to justify such action, the state board may reconvene the county board of equalization and

remand the complaints to the county board with directions that the county board reconvene on a certain date and hear and act upon the complaints and certify its action in each case to the State Board of Equalization.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-1504.

## State Board of Equalization

**Reference Number:** CTAS-1510

### Jurisdiction and Duties

The State Board of Equalization has jurisdiction over the valuation, classification and assessment of all properties in the state. The state board is responsible for performing the following duties: (1) receive, hear, consider and act upon complaints and appeals made to the board; (2) hear and determine complaints and appeals made to the board concerning exemption of property from taxation; (3) take whatever steps it deems are necessary to effect the equalization of assessments, in any taxing jurisdiction within the state in accordance with the laws of the state; (4) carry out such other duties as are required by law; and (5) provide assistance and information on request to members and committees of the General Assembly relative to the taxation, classification and evaluation of property.<sup>1</sup> In addition to its responsibility to hear complaints and appeals from actions of local boards of equalization, the state board reviews public utility and common carrier assessments made by the Comptroller of the Treasury.<sup>2</sup>

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<sup>1</sup>T.C.A. § 67-5-1501(a) and (b).

<sup>2</sup>T.C.A. § 67-5-1328.

## Appeal to the State Board of Equalization

**Reference Number:** CTAS-1511

Any taxpayer or property owner who is aggrieved by any action taken by the county board of equalization has the right to a hearing and determination by the State Board of Equalization of any complaint made on any of the grounds set forth in T.C.A. § 67-5-1407.<sup>1</sup> It is a condition for appeal that before the delinquency date the taxpayer either pays the full tax due or the amount the taxpayer would owe based on the taxpayer's good faith claim for relief. On motion of the city or county to whom the tax is owed, the State Board of Equalization will dismiss the appeal of any taxpayer who fails to pay delinquent taxes that have accrued on property that is the subject of the appeal, or who fails to pay at least the undisputed tax related to a properly appealed assessment.<sup>2</sup>

The Division of Property Assessments has the unconditional right to intervene in any contested case before the State Board of Equalization. This unconditional right to intervene is to be liberally construed in favor of the Division of Property Assessments and the intervention and participation in any contested case before the State Board of Equalization will not be limited in any manner except as otherwise agreed to by the Division of Property Assessments.<sup>3</sup>

Complaints and appeals to the state board of equalization shall be filed in such format as the board may require by rule, and the board may permit the use of electronic filing including electronic verification and signatures. The taxpayer or owner has the right to withdraw any complaint and appeal at any time before the final order has been entered on the primary issue of the complaint and appeal.<sup>4</sup> The assessor of property or taxing jurisdiction also has the right to appeal from any action of the local board of equalization to the State Board of Equalization.<sup>5</sup>

Appeals to the State Board of Equalization from action of a local board of equalization must be filed before August 1 of the tax year, or within 45 days of the date notice of the local board action was sent, whichever is later. If notice of an assessment or classification change pursuant to T.C.A. § 67-5-508 was sent to the taxpayer's last known address later than 10 days before the adjournment of the local board of equalization, the taxpayer may appeal directly to the state board at any time within 45 days after the

notice was sent. If notice was not sent, the taxpayer may appeal directly to the state board at any time within 45 days after the tax billing date for the assessment. The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in T.C.A. § 67-5-1412 and, upon demonstrating reasonable cause, the state board must accept the appeal from the taxpayer up to March 1 of the year following the year in which the assessment was made.<sup>6</sup>

Appeals to the State Board of Equalization from initial determinations in exemption and tax relief cases must be filed within 90 days from the date notice of the determination was sent. Appeals from initial decisions of administrative judges or hearing examiners for the State Board of Equalization must be filed within 30 days from the date the initial decision is sent.<sup>7</sup>

Any taxpayer aggrieved by a back assessment or reassessment may appeal directly to the State Board of Equalization within 60 days from the date that a copy of the certification is sent to the taxpayer, in the manner provided in T.C.A. § 67-5-1412, and such person may be assisted or represented in the appeal as provided in T.C.A. § 67-5-1514. The accrual of delinquency penalty and interest otherwise applicable is suspended while the appeal is pending, however, simple interest will accrue during the appeal period in the amount provided in T.C.A. § 67-5-1512.<sup>8</sup>

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<sup>1</sup>T.C.A. § 67-5-1412(a)(1).

<sup>2</sup>T.C.A. § 67-5-1512(b). See T.C.A. § 67-5-1512(b)(1)(C) for the special rule for Shelby County.

<sup>3</sup>T.C.A. § 67-1-202(c).

<sup>4</sup>T.C.A. § 67-5-1412(c).

<sup>5</sup>T.C.A. § 67-5-1412(d).

<sup>6</sup>T.C.A. § 67-5-1412(e). See *also* Op. Tenn. Atty. Gen. 92-62 (October 8, 1992); Op. Tenn. Atty. Gen. 92-59 (October 8, 1992).

<sup>7</sup>T.C.A. § 67-5-1501(c).

<sup>8</sup>T.C.A. § 67-1-1005(b).

## Assistance of Agents

**Reference Number:** CTAS-1512

Taxpayers and assessors of property are entitled to the assistance of a qualified agent at any conference or hearing held pursuant to T.C.A. § 67-5-1501 *et seq.*, or § 67-5-1401 *et seq.* 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.<sup>1</sup> All conferences or hearings will be conducted in an informal manner where the primary issue of the complaint, protest or appeal pertains to the grounds set forth in T.C.A. § 67-5-1407.<sup>2</sup>

The agent must register with the State Board of Equalization, pay a biennial fee of \$200, and qualify on the basis of the following criteria: (1) four years of experience in real property appraisal and/or assessment valuation; (2) successful completion of at least 120 classroom hours of academic instruction in subjects related to property appraisal or assessment of property from a college or university, or from a nationally recognized appraisal or assessment organization approved by the board; and (3) passed the examination for Tennessee certified assessor as administered by the board. No person will be required to meet the additional registration qualifications required by T.C.A. § 67-5-1514 if the person registered or applied for registration prior to June 30, 2002. The board may, in lieu of the evidence required in T.C.A. § 67-5-1514(c)(2), recognize and accept certain professional designations which are awarded by appraisal and/or assessment organizations on the basis of qualifications at least equal to those set forth in the statute.<sup>3</sup> Additional registration requirements are set forth in T.C.A. § 67-5-1514(k). Agent disciplinary rules, renewal procedures and advertising disclaimers are set forth in T.C.A. §§ 67-5-1514(f) and (g).

The following persons are permitted to act, appear and participate as an agent for the taxpayer: (1) attorneys; (2) the regular officers, directors or employees of a corporation or other artificial entity; (3) a certified public accountant where the only issue of an appeal is the valuation of tangible personal property; and (4) any person who holds a valid registration issued by the board of equalization where the primary issue of the complaint, protest or appeal pertains to the grounds set forth in T.C.A. § 67-5-1407.<sup>4</sup> The

provisions of T.C.A. § 67-5-1514 regarding registered agents do not apply in any manner to the representation of a taxpayer by an attorney. Furthermore, no provision in T.C.A. § 67-5-1514 is intended to require that a person must be an attorney, certified public accountant, registered agent with the state board, or otherwise in order to act as an agent for a taxpayer before a county board of equalization.<sup>5</sup>

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<sup>1</sup>T.C.A. § 67-5-1514(a) and (b). See T.C.A. § 67-5-1514(e) for list of persons who are permitted to represent the assessor of property before the State Board of Equalization.

<sup>2</sup>T.C.A. § 67-5-1514(d).

<sup>3</sup>T.C.A. § 67-5-1514(c)(2) and (3).

<sup>4</sup>T.C.A. § 67-5-1514(c)(1).

<sup>5</sup>T.C.A. § 67-5-1514(i) and (j).

## Assessment Appeals Commission

**Reference Number:** CTAS-1513

In addition to the powers and duties conferred upon the State Board of Equalization by T.C.A. § 67-5-1501, the State Board of Equalization may by resolution create an Assessment Appeals Commission consisting of not less than three nor more than six members, three members of which shall constitute a quorum for the transaction of business. The State Board of Equalization may delegate to the Assessment Appeals Commission the jurisdiction and duties conferred by law upon the State Board of Equalization to hear and act upon all complaints and appeals regarding the assessment, classification and value of property for purposes of taxation, including, but not limited to, complaints and appeals from assessments made by the Comptroller of the Treasury, complaints and appeals from actions of local boards of equalization, complaints and appeals concerning exemption of property from taxation, complaints and appeals from assessments made by the Division of Property Assessments, and complaints in inheritance tax cases that concern only the valuation of property in the estate.<sup>1</sup>

Actions taken by the Assessment Appeals Commission are final. However, within 45 days of any final action taken by the Assessment Appeals Commission, the State Board of Equalization may enter an order upon its own motion requiring a review of the action. In such an instance, the action taken by the Assessment Appeals Commission does not become final until the State Board of Equalization has rendered its final decision in the matter. A party desiring the State Board of Equalization to review an action of the Assessment Appeals Commission must file a written petition with the Executive Secretary to the state board within 15 days of the action of the Assessment Appeals Commission. In the event that the State Board of Equalization exercises its discretion to review any action of the Assessment Appeals Commission, review may be upon the record before the Assessment Appeals Commission or in such manner as the state board shall direct.<sup>2</sup> If the State Board of Equalization does not exercise its discretion to review a matter heard by the Assessment Appeals Commission, the Assessment Appeals Commission will issue a certificate of assessment or other final certificate of its actions. The certificate is subject to judicial review in the same manner as are final actions of the State Board of Equalization.<sup>3</sup>

The Assessment Appeals Commission must prepare and maintain records of its proceedings in the form of minutes. The minutes, together with all other papers and records of the Assessment Appeals Commission, are kept and maintained in the office of the Executive Secretary to the State Board of Equalization.<sup>4</sup>

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<sup>1</sup>T.C.A. § 67-5-1502(a).

<sup>2</sup>T.C.A. § 67-5-1502(j).

<sup>3</sup>T.C.A. § 67-5-1502(k). See also T.C.A. § 67-5-1511.

<sup>4</sup>T.C.A. § 67-5-1502(l).

## Hearing Examiners

**Reference Number:** CTAS-1514

The State Board of Equalization is authorized to appoint members of the staff of the Division of Property Assessments to serve as hearing examiners. Hearing examiners conduct preliminary hearings and investigations for the board or the Assessment Appeals Commission regarding complaints and appeals from assessments and classifications, or regarding any other matter for which the board has responsibility by law. Based upon the evidence presented in a preliminary hearing or facts gained in an investigation, the hearing examiner prepares proposed findings of fact and conclusions for the state board or the Assessment Appeals Commission and notifies each property owner who may be affected by the hearing examiner's recommendation. Unless a party to the appeal objects in writing, the hearing examiner may render a proposed decision. The proposed decision is limited to words and/or figures reflecting conclusions as to the proper classification or valuation of the subject property.<sup>1</sup> Appeals from initial decisions of hearing examiners for the state board must be filed within 30 days from the date the initial decision is sent.<sup>2</sup> In the absence of an exception to the recommendation of the hearing examiner by either the property owner or the property owner's agent, the county assessor of property or the taxing jurisdiction, the State Board of Equalization or the Assessment Appeals Commission may adopt the recommendation of its hearing examiner as its final decision without the necessity of a hearing before the board or commission. If an exception to the recommendation of the hearing examiner is taken by any of the parties or the State Board of Equalization or the Assessment Appeals Commission does not adopt the recommendation of the hearing examiner, a hearing shall be scheduled before the state board or commission before final action is taken.<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-5-1505.

<sup>2</sup>T.C.A. § 67-5-1501(c).

<sup>3</sup>T.C.A. § 67-5-1506.

## Collection of Evidence and Information

**Reference Number:** CTAS-1515

The State Board of Equalization and the Assessment Appeals Commission have the power to send any of its members or such other person as it may designate to any portion of the state to obtain information and evidence deemed material to the duties of equalization, and to hear questions, and report to the board or commission as the case may be.<sup>1</sup> The board and the commission also have the power to require the Director of Property Assessments and any member of the Director's staff to submit such facts and reports as may be deemed necessary to enable the board or commission to equalize assessments of property of the various classes and in the different localities of the state.<sup>2</sup>

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<sup>1</sup>T.C.A. § 67-5-1507.

<sup>2</sup>T.C.A. § 67-5-1508.

## Equalization Action by the State Board of Equalization

**Reference Number:** CTAS-1516

The State Board of Equalization or the Assessment Appeals Commission, on the basis of reports, evidence, or other available information, takes whatever steps it deems are necessary to effect the assessment of property in accordance with the constitution of Tennessee and the laws of this state. The state board by order or rule must direct that commercial and industrial tangible personal property assessments be equalized using the appraisal ratios adopted by the board in each jurisdiction. However, such equalization is available only to taxpayers who have timely filed the reporting schedule required by law.<sup>1</sup>

Equalization may be made by the State Board of Equalization or the Assessment Appeals Commission, as the case may be, by reducing or increasing the appraised values of properties within any taxing jurisdiction, or any part thereof. In the event that the state board or the commission deems it necessary to increase or decrease appraised values of properties of any taxing jurisdiction, or any part thereof, in any manner whereby its action affects properties in general rather than individual properties, it is not necessary that the state board or commission notify each individual property owner as provided for in T.C.A. § 67-5-1510. However, notice of the action of the state board or the commission must be published at least once in a newspaper of general circulation within the affected taxing jurisdiction.<sup>2</sup>

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<sup>1</sup>T.C.A. § 67-5-1509(a). Note: The constitutionality of T.C.A. § 67-5-1509(a) has been upheld; see *Williamson County v. Tennessee State Board of Equalization*, 86 S.W.3d 216 (Tenn.Ct.App. 2002).

<sup>2</sup>T.C.A. § 67-5-1509(b) and (c).

## Changes of Individual Classification or Assessment

**Reference Number:** CTAS-1517

Whenever the State Board of Equalization or the Assessment Appeals Commission, after a county or local board has acted, has reason to believe that an individual assessment of real property or personal property is inadequate, or the classification of such property is erroneous, it has the authority to command the person to whom the property is assessed to appear before the board or commission to show cause why the assessment should not be increased or the classification should not be changed. The taxpayer is entitled to 10 days written notice of the right to appear before the board.<sup>1</sup> The taxpayer is entitled to be heard either personally or by counsel and has the privilege of introducing any competent evidence touching upon the question of the adequacy of the assessment or change of the classification.<sup>2</sup> Thereafter, the board or commission will determine the amount, if any, that the assessment will be increased or determine the proper classification of the property. The board or commission will reduce its judgment to writing and certify its findings to the proper county officials.<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-5-1510(a).

<sup>2</sup>T.C.A. § 67-5-1510(b).

<sup>3</sup>T.C.A. § 67-5-1510(c).

## Certification of Board Action

**Reference Number:** CTAS-1518

After the State Board of Equalization or the Assessment Appeals Commission has made its determination of the assessment of the property that was the subject of the appeal and complaint, the Executive Secretary to the state board will sign and keep the original copy of the official certificate on file in the Executive Secretary's office. The official certificate will show the description of the property and the assessment as determined by the state board or the commission, as the case may be. The board shall provide written notice of its final actions on appeals and complaints to the parties and to others upon request. Written notice includes notification by electronic means, and the record of actions or notice may be preserved in digital or electronic format.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-1512(a)(1) - (3).

## Record of Board Actions

**Reference Number:** CTAS-1519

The records of all actions of the State Board of Equalization and the Assessment Appeals Commission are maintained for at least 10 years in the office of the Executive Secretary of the board. The records are open to public inspection during regular business hours and any state citizen may request copies. Requested copies of records or documents are sent by first class mail or, upon request, by telecopier. The person requesting the records or documents is required to pay the board the reasonable costs of reproducing and transmitting the copies.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-1513.

## Finality of Board Action—Collection of Taxes

**Reference Number:** CTAS-1520

The action of the State Board of Equalization is final and conclusive as to all matters passed upon by the board, subject to judicial review, and taxes will be collected upon the assessments determined and fixed by the board. Judicial review is not available as to exemptions requiring application to the State Board of Equalization under Chapter 5, Part 2, or as to the proper value, assessment or classification of property, unless the petitioner has first obtained a ruling on the merits from the board or an administrative judge sitting for the board concerning the exempt status, proper value, assessment or classification of the property.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-1511(a).

## Penalties and Interest

**Reference Number:** CTAS-1521

Penalty and interest otherwise due on delinquent property taxes shall not accrue while an appeal of the assessment is pending before the county or state boards of equalization; provided, that the taxpayer, before the delinquency date, either pays the full tax due or the amount the taxpayer would owe based on the taxpayer's good faith claim for relief. The city or county collecting official may decline to accept the disputed portion of tax. Any tax later found to be refundable, or any additional tax due following the appeal, will accrue interest from the delinquency date at the composite prime rate published by the federal reserve board as of the delinquency date, minus two (2) points. On motion of the city or county to whom the tax is owed, the state board of equalization will dismiss the appeal of any taxpayer who fails to pay delinquent taxes that have accrued on property that is the subject of the appeal, or who fails to pay at least the undisputed tax related to a properly appealed assessment. Taxes related to a properly appealed assessment before the county and state boards of equalization, shall not be deemed delinquent if the taxpayer has paid at least the undisputed portion of tax while the appeal is pending. Delinquency penalty and interest postponed under this section shall begin to accrue thirty (30) days after issuance of the final assessment certificate of the state board of equalization and until the tax is paid. T.C.A. § 67-5-1512(b).

## Refund of Property Taxes after Final Action

**Reference Number:** CTAS-1522

When a county has been ordered to make a refund of property taxes pursuant to the final action of a court or the State Board of Equalization or Assessment Appeals Commission, no specific appropriation is required to authorize the county trustee to make the refund. The trustee may make the ordered refund and any interest owing the taxpayer as otherwise provided from any taxes collected for the year or years to which the refund relates prior to the allocation to the various county funds. If the trustee does not have funds collected from the year to which the refund relates, the trustee may make the refund and pay any

interest owing the taxpayer from current collections prior to the allocation of revenue to the various county funds. Where a refund plus accrued interest exceeds 1 percent of all property taxes levied for the year in which the refund is due, the trustee may defer the refund for a period of up to three years in equal annual installments, and the deferred amounts shall accrue interest in the manner set forth in T.C.A. § 67-5-1512(c).<sup>1</sup> Pursuant to T.C.A. § 67-5-1512(c), the interest rate on a deferred refund shall increase two points from the date of the deferral 60 days after the board of equalization decision is rendered until the refund is finally paid.

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<sup>1</sup>T.C.A. § 67-5-1809.

## Judicial Review

**Reference Number:** CTAS-1523

The judicial review provided in T.C.A. § 67-5-1511(a) from final actions of the State Board of Equalization or Assessment Appeals Commission consists of a new hearing in the chancery court based upon the administrative record and any additional or supplemental evidence which either party wishes to adduce relevant to any issue. The petition for review may be filed in the chancery court of the county where the disputed assessment was made or in the chancery court of Davidson, Washington, Knox, Hamilton, Madison or Shelby county, whichever county is closest in mileage to the situs of such property. If the situs of the property is in Knox, Hamilton or Shelby county, then the petition for review may alternatively be filed in Davidson County at the election of the petitioner.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-1511(b).

## Exemptions and Tax Relief

**Reference Number:** CTAS-1524

### Exemptions

**Reference Number:** CTAS-1525

“It is a fundamental rule that all property shall be taxed and bear its just share of the cost of government, and no property shall escape this common burden, unless it has been duly exempted by organic or statute law; and that one claiming such exemption has the burden of showing his right to it.”<sup>1</sup> Pursuant to Article II, Section 28 of the Tennessee Constitution, the legislature may exempt certain types of property from taxation.

In accordance with the following provisions, all property real, personal or mixed shall be subject to taxation, but the Legislature may except such as may be held by the State, by Counties, Cities or Towns, and used exclusively for public or corporation purposes, and such as may be held and used for purposes purely religious, charitable, scientific, literary or educational, and shall except the direct product of the soil in the hands of the producer, and his immediate vendee, and the entire amount of money deposited in an individual's personal or family checking or savings accounts.<sup>2</sup>

Tennessee case law states that “this provision of our Constitution does not grant any tax exemption, does not establish any public policy of exemption, but merely authorizes, permits, the Legislature to grant exemption in the cases specified.”<sup>3</sup> Exemptions not meeting the specific requirements set out in Article II, Section 28 are not constitutionally permissible.<sup>4</sup>

Property does not become exempt from taxation because it may be difficult to assess it at its actual worth.<sup>5</sup> Moreover, exemptions in tax statutes are construed strictly against the taxpayer and in favor of the state; and, the burden is on the taxpayer to establish the exemption.<sup>6</sup> “The presumption is against

the exemption, and exemption from taxation will not be read into a taxing statute by implication.”<sup>7</sup> However, once property has been exempted from taxation, it takes a showing of actual use for a nonexempt purpose to remove the exemption.<sup>8</sup>

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<sup>1</sup>*City of Nashville v. State Board of Equalization*, 360 S.W.2d 458, 594-595 (Tenn. 1962).

<sup>2</sup>Tenn. Const., art. II, §§ 28

<sup>3</sup>*City of Nashville*, 360 S.W.2d at 595-596; *Book Agents of the Methodist Episcopal Church, South v. State Board of Equalization*, 513 S.W.2d 514, 521 (Tenn. 1974).

<sup>4</sup>See *University of the South v. Franklin Co.*, 506 S.W.2d 779, 788-789 (Tenn.Ct.App. 1973). See also Op. Tenn. Atty. Gen. 86-142 (August 12, 1986), Op. Tenn. Atty. Gen. 83-418 (December 16, 1983).

<sup>5</sup>*Pryor v. Marion County*, 204 S.W. 1152, 1154 (Tenn. 1918). However, the legislature has determined that non-business tangible personal property is assumed to have no value and a tax is not imposed on this property. T.C.A. § 67-5-901(a)(3)(A). The no-value presumption for non-business personal property has been upheld, based on the fact that the tax produces little revenue in relation to its administration costs, as well as the long-standing rule that the legislature may choose the method of valuation as well as whether the tax itself has any practical value. *Sherwood v. Clary*, 734 S.W.2d 318, 320-321 (Tenn. 1987).

<sup>6</sup>*Feldman v. Huddleston*, 912 S.W.2d 161, 163 (Tenn.Ct.App. 1995); *Hearthstone, Inc. v. Moyers*, 809 S.W.2d 888, 890 (Tenn. 1991); *United Cannery, Inc. v. King*, 696 S.W.2d 525, 527 (Tenn. 1985).

<sup>7</sup>*Tennessee Farmers' Coop. v. State ex rel. Jackson*, 736 S.W.2d 87, 90 (Tenn. 1987).

<sup>8</sup>*Kopsombut-Myint Buddhist Center v. State Board of Equalization*, 728 S.W.2d 327, 335 (Tenn.Ct.App. 1986).

## Real Property Transferred between Exempt and Nonexempt Persons

**Reference Number:** CTAS-1526

When exempt real property is conveyed or transferred by sale, lease or otherwise to a person, firm or corporation, rendering the property nonexempt by reason of the transfer, the nonexempt grantee, lessor or other nonexempt taxpayer will be liable for the property taxes on the property from the date of the transfer to the end of the taxable year. The state, county or municipal collector of taxes will collect the property taxes due from the date of the transfer, on a pro rata basis for the current taxable year, notwithstanding the status of the property as of the assessment date of January 1 of each year. A tax lien attaches on the date of the transfer as otherwise provided by law. The nonexempt grantee remains personally liable for taxes resulting from the transfer of the property regardless of any subsequent transfer that may occur during that tax year.<sup>1</sup>

An owner of tax-exempt property who sells or leases the property must promptly notify the assessor of property if the sale or lease renders the property as nonexempt.<sup>2</sup> This requirement applies to governmental entity owners and lessors as well as any other owners or lessors of the property.<sup>3</sup> The person or entity buying or leasing tax-exempt property must also promptly notify the assessor of property of the change in the use or ownership of such property. The buyer or lessee of the real property is personally liable for all taxes, and penalties and interest, from the date of the transfer to the date the assessor is notified of the change in the use or ownership of property, and the collection of taxes against the buyer or lessee with respect to the property will not be barred. However, no tax lien arises against real property conveyed to a bona fide purchaser who records the deed for the property or notifies the assessor of the change in the use or ownership of the property. The burden of proving a bona fide sale is upon the owner of the property at the time of the recording or notification.<sup>4</sup>

In the event the ownership of real property that has heretofore been subject to assessment and taxation is conveyed or transferred to a person, firm or corporation that is exempt from property assessment and taxation and the real property is used for purposes that would render the status of the property as exempt from assessment and taxation under §§ 67-5-203, 67-5-204, 67-5-207, 67-5-208, and 67-5-211 — 67-5-217, the new owner of the property shall not be liable for the real property taxes thereon, from the

date of transfer and change of use from a nonexempt ownership and use to an exempt ownership and use to the end of the taxable year, notwithstanding the status of the property as of the assessment date of January 1 of that year. The assessor of property will make an assessment of the property on the basis of its value and use to which it is put following its transfer; provided, that for the year in which the transfer of property occurred, the assessment will be prorated and the owner shall be liable only for the taxes for the portion of the year that the property was subject to assessment. The state, county and municipal tax collector will collect taxes on the basis of the assessment as prorated by the assessor of property.<sup>5</sup>

The grantor or lessor of nonexempt property must notify the assessor of any change in the use or ownership of the property that may affect its nonexempt status. This notice is required when the property is conveyed or transferred by sale, lease or otherwise to a person, firm, or corporation. The grantor or lessor of nonexempt property includes any person, firm, or corporation who is not otherwise exempt from property taxes. The nonexempt grantor's or lessor's notice of the change in ownership or use to the assessor is a prerequisite to the grantor or lessor seeking a refund of taxes paid related to exempt ownership or use of the property occurring after the date of transfer to the tax exempt grantee or lessee by sale or lease.<sup>6</sup>

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<sup>1</sup>T.C.A. § 67-5-201(a)(1) and (2).

<sup>2</sup>T.C.A. § 67-5-201(a)(3)(A).

<sup>3</sup>T.C.A. § 67-5-201(a)(3)(B).

<sup>4</sup>T.C.A. § 67-5-201(a)(3)(C).

<sup>5</sup>T.C.A. § 67-5-201(b)(1), (2) and (3). See *Senter School Foundation, Inc. v. Nobles*, 1990 WL 3983 (Tenn.Ct.App. 1990).

<sup>6</sup>T.C.A. § 67-5-201(b)(4)(A) and (B).

## Trust Estates

**Reference Number:** CTAS-1527

Every trust estate is entitled to the same exemption as if owned by a single taxpayer.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-202.

## Government Property

**Reference Number:** CTAS-1528

All property of the United States, the state of Tennessee, any county, or any incorporated town, city or taxing district in the state that is used exclusively for public, county or municipal purposes is exempt from taxation. All property of an educational institution owned, operated or otherwise controlled by the state of Tennessee as trustee, or otherwise, is exempt from taxation. However, real property purchased for investment purposes by the Tennessee consolidated retirement system is subject to property taxation.<sup>1</sup>

When the United States government, the state of Tennessee, or any agency or political subdivision thereof acquires property assessed as a single unit by the assessor of property of any political subdivision, any lien for property taxes assessed by the political subdivision for the year in which the property is acquired will be released on the approval of the assessor of property of the political subdivision assessing the taxes with respect to that portion of the taxes representing the remainder of the calendar year after the date of the instrument or conveyance by the property owner, or after the date of the entry of an order of possession if the property is acquired by condemnation. The property owner will be relieved of all personal liability for that portion of the taxes. Either the condemnor or the property owner may request the assessor to provide proration. Proration is based on the last assessment made and rate fixed and the trustee must accept tender of the amount determined to be owing.<sup>2</sup>

If real property owned by the state or any political subdivision of the state is leased to a person, corporation, or other business entity for the purpose of operating a golf course or for the purpose of developing

and operating a golf course, the person, corporation, or business entity makes payments in lieu of ad valorem taxes. The payments will be in an amount equal to the ad valorem taxes otherwise due and payable by the taxpayer upon the current fair market value of the leased real property.<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-5-203(a)(1) and (2). See also Op. Tenn. Atty. Gen. 86-64 (March 17, 1986). For a nonexclusive list of governmental property exemptions, see T.C.A. §§ 7-57-307 (Metropolitan Hospital Authority Act); 7-66-110, 111 (Tennessee Homestead Act); 7-82-105 (Utility District Law of 1937); 7-86-117 (Emergency Communications District Law); 13-22-107 (Tennessee Housing Development Agency); 13-23-127 (Tennessee Housing Development Agency Act); 13-27-108 (Tennessee Export Development Act of 1983).

<sup>2</sup>T.C.A. § 67-5-203(b)(1) and (2).

<sup>3</sup>T.C.A. § 67-5-203(c).

## Public Ways

**Reference Number:** CTAS-1529

All roads, streets, alleys, and promenades intended for public use are exempt from taxation.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-204.

## Government Bonds and Notes

**Reference Number:** CTAS-1530

The principal and interest on bonds or notes issued by the state of Tennessee for any public purpose are exempt from taxation, except for inheritance, transfer and estate taxes.<sup>1</sup> The principal and interest on bonds or notes issued by any county, incorporated town or city, for any public purpose are exempt from taxation by the state or by any county or municipality in this state.<sup>2</sup> United States bonds are exempt from property taxation.<sup>3</sup> A nonexclusive list of exempt governmental bonds and notes includes the following:

1. bonds and notes issued pursuant to the Tennessee Local Development Authority Act, T.C.A. § 4-31-101 *et seq.*, and the income therefrom are exempt from taxation by the state or any local governmental unit, except inheritance, transfer and estate taxes;
2. bonds issued pursuant to the Revenue Bond Law, T.C.A. § 7-34-101 *et seq.*, and the income therefrom are exempt from all state, county and municipal taxation except inheritance, transfer and estate taxes;<sup>4</sup>
3. bonds issued pursuant to the provisions of the Industrial Building Revenue Bond Act of 1951, T.C.A. § 7-37-101 *et seq.*, and the income therefrom are exempt from all state, county and municipal taxation except inheritance, transfer and estate taxes, except as otherwise provided by law;<sup>5</sup>
4. bonds issued by any municipality to provide sufficient funds to carry out energy production pursuant to the provisions of T.C.A. § 7-54-101 *et seq.*, and the income therefrom are exempt from all state, county and municipal taxation except inheritance, transfer and estate taxes;<sup>6</sup>
5. bonds and notes issued by a county pursuant to the Tennessee Home Mortgage Act, T.C.A. § 7-60-101 *et seq.*, and the income therefrom are exempt from taxation, except for inheritance, transfer and estate taxes;<sup>7</sup>
6. bonds issued by an authority pursuant to the Port Authority Act, T.C.A. § 7-87-101 *et seq.*, and the income therefrom are exempt from all state, county and municipal taxation, except for inheritance, transfer and estate taxes, and except as otherwise provided by law;<sup>8</sup>
7. bonds or notes issued by a local government pursuant to the Local Government Public Obligations Act of 1986, T.C.A. § 9-21-101 *et seq.*, and the income therefrom are exempt from all state, county and municipal taxation except for inheritance, transfer and estate taxes, and except as otherwise provided by law;<sup>9</sup>
8. bonds issued by an authority pursuant to the Airport Authorities Act, T.C.A. § 42-3-101 *et seq.*, and the income therefrom are exempt from all taxes;<sup>10</sup>

9. bonds issued by an authority pursuant to the Metropolitan Airport Authority Act, T.C.A. § 42-4-101 et seq., and the income therefrom are exempt from all state, county and municipal taxation except for inheritance, transfer and estate taxes, and except as otherwise provided by law;<sup>11</sup> and
10. school bonds issued pursuant to the provisions of T.C.A. § 49-3-1002 and the income therefrom are exempt from all state, county and municipal taxation except for inheritance, transfer and estate taxes and except as otherwise provided by law.<sup>12</sup>

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<sup>1</sup>T.C.A. § 67-5-205(a)(1).

<sup>2</sup>T.C.A. § 67-5-205(a)(2) and (3).

<sup>3</sup>31 U.S.C. § 3124.

<sup>4</sup>T.C.A. § 7-34-116(b).

<sup>5</sup>T.C.A. § 7-37-114.

<sup>6</sup>T.C.A. § 7-54-106.

<sup>7</sup>T.C.A. § 7-60-211.

<sup>8</sup>T.C.A. § 7-87-109(d).

<sup>9</sup>T.C.A. § 9-21-117.

<sup>10</sup>T.C.A. § 42-3-111(d).

<sup>11</sup>T.C.A. § 42-4-109(d).

<sup>12</sup>T.C.A. § 49-3-1002(c).

## Housing Authorities

**Reference Number:** CTAS-1531

The property of housing authorities is exempt from all taxes and special assessments of the state or any county, city, town, or metropolitan government. In lieu of such taxes or special assessments, a housing authority must agree to make payments to the county, city, town, or metropolitan government for services, improvements or facilities furnished by the county, city, town, or metropolitan government for the benefit of a housing project owned by the housing authority. In no event may these payments exceed the estimated cost to the county, city, town, or metropolitan government of the services, improvements or facilities furnished.<sup>1</sup>

The bonds or notes issued by a housing authority, together with the interest thereon and the income therefrom, are exempt from all taxes.<sup>2</sup>

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<sup>1</sup>T.C.A. § 67-5-206(a).

<sup>2</sup>T.C.A. § 67-5-206(b).

## Low Cost Housing for Elderly Persons

**Reference Number:** CTAS-1532

Property of Tennessee nonprofit corporations which is used for the permanent housing of low income persons with disabilities, or low income elderly or handicapped persons, is exempt in accordance with T.C.A. § 67-5-207. The property must be financed by a grant under § 811 or § 211 of the National Affordable Housing Act (42 U.S.C. §§ 8013, 12741) or the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11301 et seq.), or be financed or refinanced by a loan made, insured, or guaranteed by a branch, department or agency of the United States government under § 515(b) or § 521 of the Housing Act of 1949 (42 U.S.C. §§ 1485(b) or 1490a), § 202 of the Housing Act of 1959 (12 U.S.C. § 1701q), §§ 221, 223, 231 or 236 of the National Housing Act (12 U.S.C. §§ 1715l, 1715v, or 1715z-1), or § 8 of the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974 (42 U.S.C. § 1437f). For the purposes of this section, a loan is considered to be guaranteed if the federal housing

agency has consented to assignment of a housing assistance program contract as security for the loan. Eligibility for the exemption under these programs continues so long as there is an unpaid balance on the loan. Following payment of the loan in full, a property shall continue to be exempt from taxation so long as the project is restricted to use for elderly persons or persons with disabilities as defined in the programs. In the case of a property financed by a grant, eligibility for the exemption under these programs continues so long as the project is restricted to use for elderly persons or persons with disabilities as defined in the programs. The property must be used as below-cost housing for elderly or handicapped persons or persons with disabilities within the program definitions, who have incomes not in excess of limits established for the enumerated program by the department of housing and urban development (HUD). If a property was approved by HUD for participation in the program without specific low income guidelines, the property may nevertheless qualify for exemption on a pro rata basis if at least 50 percent of the residents (low income residents) have incomes which would qualify under HUD guidelines for any of the enumerated programs. In such cases the property shall be exempt in the same percentage which low income residents represent of the total occupancy of the property at full capacity, determined as of January 1 each year, on the basis of information supplied to the assessor on or before April 20.<sup>1</sup>

Also exempted under T.C.A. § 67-5-207 is the property of not-for-profit organizations funded under the HOME Investment Partnerships Program (42 U.S.C. § 12701 *et seq.*) or the state-funded Housing Opportunities Using State Encouragement (HOUSE) Program, and used as permanent housing for low income and very low income elderly, disabled or handicapped persons.<sup>2</sup> To qualify for an exemption, a not-for-profit corporation must first be exempt from federal income taxation by virtue of qualifying as an exempt charitable organization or as an exempt social welfare organization under the provisions of the Internal Revenue Code.<sup>3</sup> Additional requirements are set forth in T.C.A. § 67-5-207(b)(1) - (5). Furthermore, all claims for exemption under T.C.A. § 67-5-207 are subject to the provisions of T.C.A. § 67-5-212(b) regarding exemptions for charitable institutions.<sup>4</sup>

Certain facilities permitted by federal statute in such housing projects are not exempt from property taxation. For example, under Department of Housing and Urban Development regulations, these housing projects may contain such facilities such as snack bars, craft shops, grocery stores, restaurants, and beauty shops, which are not considered charitable and therefore not exempt from taxation.<sup>5</sup>

In lieu of any taxes for which a property is granted exemption under T.C.A. § 67-5-207, the owners of projects which exceed 12 units must agree to make payments to any county, municipality, metropolitan government, or district for improvements, facilities or services rendered by the county, municipality, metropolitan government or district, but if no amount is agreed the payments shall be not less than twenty-five percent (25%) of the amount of tax that would be due if the project were not exempt. In no event may such payments be required from public housing authorities operating under *Tennessee Code Annotated* Title 13, Chapter 20.<sup>6</sup>

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<sup>1</sup>T.C.A. § 67-5-207(a)(1).

<sup>2</sup>T.C.A. § 67-5-207(d).

<sup>3</sup>T.C.A. § 67-5-207(b).

<sup>4</sup>T.C.A. § 67-5-207(c).

<sup>5</sup>Op. Tenn. Atty. Gen. 79-140 (February 22, 1979).

<sup>6</sup>T.C.A. § 67-5-207(a)(2).

## Property Used to Recycle Waste Products

**Reference Number:** CTAS-1533

Property owned by a non-profit corporation whose purpose is to convert waste products for heating or cooling public buildings or facilities is exempt from taxation if the reversionary interest is in the governmental entity. Some by-products of this recycling process can be furnished to private entities without changing the tax-exempt status.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-208.

## Private Act Hospital Authorities

**Reference Number:** CTAS-1534

In addition to all the rights and powers granted to a private act hospital authority under the provisions of T.C.A. § 7-57-601 *et seq.*, beginning with the 2001 tax year, and thereafter, a private act hospital authority will be exempt from the payment of any taxes or fees to the state or any subdivisions thereof, or to any officer or employee of the state or any subdivision thereof, except as provided in T.C.A. § 67-5-209. This exemption does not include fees paid by private act hospital authorities as required by T.C.A. § 68-11-216. The property of an authority is exempt from all county and municipal taxes; however, the authority must pay all county and municipal fees. An authority may agree to the payment of tax equivalents to the creating or participating governing authority or entity. Authorities shall be required to apply to the state board of equalization for claims for exemption of property residing outside the boundaries of their creating or participating governing authorities or entities. Exemptions will be (1) limited to property of the authority which would be exempt if owned and operated by a charitable hospital under T.C.A. § 67-5-212; and (2) granted in accordance with the same criteria used by the board of equalization in granting exemptions to property owned and operated by a charitable hospital under T.C.A. § 67-5-212.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-209. See also T.C.A. § 67-9-201.

## Charter or Contract Exemptions

**Reference Number:** CTAS-1535

All property protected by a valid charter or contract exemption is exempt from taxation.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-211.

## Religious, Charitable, Scientific, Educational Institutions

**Reference Number:** CTAS-1536

There shall be exempt from property taxation the real and personal property, or any part of the real and personal property, owned by any religious, charitable, scientific or nonprofit educational institution that is occupied and actually used by the institution or its officers purely and exclusively for carrying out one or more of the exempt purposes for which the institution was created or exists. There shall further be exempt from property taxation the property, or any part of the property, owned by an exempt institution that is occupied and actually used by another exempt institution for one or more of the exempt purposes for which it was created or exists under an arrangement in which the owning institution receives no more rent than a reasonably allocated share of the cost of use, excluding the cost of capital improvements, debt service, depreciation and interest, as determined by the board of equalization or which is solely between exempt institutions that originated as part of a single exempt institution and that continue to use the property for the same religious, charitable, scientific, or nonprofit educational purposes, whether by charter, contract, or other agreement or arrangement.<sup>1</sup>

"The tax exemption statutes in Tennessee are construed liberally in favor of religious, charitable and educational institutions."<sup>2</sup>The basis for a liberal construction is a 'benefit conferred on the public by such institutions, and a consequent relief, to some extent, of the burden upon the state to care for and advance the interests of its citizens.'"<sup>3</sup>However, the mere "fact that an organization is chartered for the general welfare, or not for profit, is not sufficient to entitle its property to tax exempt status."<sup>4</sup>In order to be tax exempt, the property must be used "purely and exclusively" for one or more of the purposes for which the institution seeking a tax exemption was created. In a series of cases, the Tennessee Supreme Court has held "that the use requirement for property to be tax exempt is met where the use is 'directly incidental to

or an integral part of one of the recognized purposes of an exempt institution."<sup>5</sup> Pursuant to the application of the use requirement, employee parking lots owned by non-profit hospitals, employee lunch rooms owned by non-profit corporations, and off-campus housing facilities owned by non-profit educational institutions have been found to be exempt from property taxation.<sup>6</sup> However, property that is owned by a charitable institution but not used for any purpose but held for future development does not qualify as tax exempt property.<sup>7</sup>

The property of the institution will not be exempt from taxation if the owner, or any stockholder, officer, member or employee of the institution receives or may be lawfully entitled to receive any pecuniary profit from the operations of the property in competition with like property owned by others that is not exempt, except reasonable compensation for services in effecting one or more of such purposes, or as proper beneficiaries of its strictly religious, charitable, scientific or educational purposes.<sup>8</sup> The property of the institution will not be exempt if the organization of the institution for any avowed purpose is merely a guise or pretense for directly or indirectly making a pecuniary profit for the institution, or for any of its members or employees, or if it is not in good faith organized or conducted exclusively for one or more of the avowed purposes.<sup>9</sup> If the real property of an institution is not used exclusively for carrying out one or more of the stated purposes, but is leased or otherwise used for other purposes, it will not be exempt regardless of whether the income received is used for one or more of the avowed purposes. If a portion of any lot or building of an institution is used purely and exclusively for carrying out one or more of the stated purposes of the institution, then that lot or building will be exempt only to the extent of the value of the portion so used, and the remaining or other portion will be subject to taxation.<sup>10</sup>

No church will be granted an exemption on more than one parsonage, which may include up to three acres of land.<sup>11</sup>

Land not necessary to support exempt structures or site improvements associated with exempt structures, including land used for recreation, retreats or sanctuaries, is not eligible for exemption beyond a maximum of 100 acres per county for each religious, charitable, scientific or nonprofit educational institution qualified for exemption pursuant to T.C.A. § 67-5-212. For purposes of applying this limit, land owned by an exempt institution is aggregated with land owned by related exempt institutions having common ownership or control. Qualifying land in excess of the limit must be classified as forest land upon application submitted pursuant to T.C.A. § 67-5-1006, or as open space land upon application submitted pursuant to T.C.A. § 67-5-1007, and the effective date of the classification will be the date the property might otherwise have qualified for exemption.<sup>12</sup>

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<sup>1</sup>T.C.A. § 67-5-212(a)(1). See *Memphis Development Foundation v. State Board of Equalization*, 653 S.W.2d 266 (Tenn.Ct.App. 1983). See 2004 Public Chapter 635 for exception for institution which owns and operates parking garage which leases spaces to a metropolitan government hospital authority.

<sup>2</sup>*Book Agents of the Methodist Episcopal Church, South v. State Board of Equalization*, 513 S.W.2d 514, 521 (Tenn. 1974) citing *Peabody College v. State Board of Equalization*, 407 S.W.2d 443 (Tenn. 1966); *Mid-State Baptist Hospital, Inc. v. Nashville*, 366 S.W.2d 769 (Tenn. 1963). See also *Kopsombut-Myint Buddhist Center v. State Board of Equalization*, 728 S.W.2d 327, 332 (Tenn.Ct.App. 1986).

<sup>3</sup>*Id.*, citing *M. E. Church, South v. Hinton*, 21 S.W. 321, 322 (Tenn. 1893).

<sup>4</sup>*LaManna v. Electrical Workers Local Union No. 474*, 518 S.W.2d 348, 352 (Tenn. 1974) citing *Memphis Chamber of Commerce v. City of Memphis*, 232 S.W. 73, 74 (1921); *North Gates Elks Club v. Garner*, 496 S.W.2d 887, 889 (Tenn. 1973).

<sup>5</sup>*Methodist Hospitals of Memphis v. Assessment Appeals Comm'n*, 669 S.W.2d 305, 307 (Tenn. 1984). See also *Metropolitan Government of Nashville & Davidson County v. State Board of Equalization*, 817 S.W.2d 953, 955 (Tenn. 1991).

<sup>6</sup>*Metropolitan Government of Nashville & Davidson County v. State Board of Equalization*, 817 S.W.2d 953, 955 (Tenn. 1991) citing *Vanderbilt University v. Ferguson*, 554 S.W.2d 128 (Tenn.Ct.App. 1976); *Shared Hospital Services Corporation v. Ferguson*, 673 S.W.2d 135 (Tenn. 1974); *George Peabody College for Teachers v. State Board of Equalization*, 407 S.W.2d 443 (Tenn. 1966).

<sup>7</sup>*Oak Ridge Hospital of the Methodist Church, Inc. v. City of Oak Ridge*, 420 S.W.2d 583, 586 (Tenn.Ct.App. 1967) (the occupation and use of the property must be such as to contribute presently or in the very immediate future to the operation of the charitable institution if the institution is going to enjoy a tax exempt status of the property). See also *Memphis Development Foundation v. State Board of Equalization*, 653 S.W.2d 266 (Tenn.Ct.App. 1983) (Neither the Constitution nor the statute allows the

ownership of unused property by a tax exempt organization to confer exemption upon the property. It is the *use* and *not* the non-use which confers exemption.).

<sup>8</sup>T.C.A. § 67-5-212(a)(3)(A)(i). See *Book Agents of the Methodist Episcopal Church, South v. State Board of Equalization*, 513 S.W.2d 514, 523 (Tenn. 1974).

<sup>9</sup>T.C.A. § 67-5-212(a)(3)(A)(ii). See *Summers v. Cherokee Children & Family Services, Inc.*, 112 S.W.3d 486, 502 (Tenn.Ct.App. 2002).

<sup>10</sup>T.C.A. § 67-5-212(a)(3)(B).

<sup>11</sup>T.C.A. § 67-5-212(a)(4). See *Metropolitan Government of Nashville & Davidson County v. State Board of Equalization*, 817 S.W.2d 953 (Tenn. 1991); *Blackwood Brothers Evangelistic Ass'n v. State Board of Equalization*, 614 S.W.2d 364, 366 (Tenn.Ct.App. 1980) (Parsonages, per se, are not given exemption under the statute; only those pieces of property that are used purely and exclusively for religious, charitable, scientific or educational purposes are exempt.). See also *First Presbyterian Church of Chattanooga v. State Board of Equalization*, 2003 WL 21994804 (Tenn.Ct.App. 2003).

<sup>12</sup>T.C.A. § 67-5-212(o).

## Application for Exemption

**Reference Number:** CTAS-1537

Any owner of real or personal property claiming exemption under T.C.A. § 67-5-212 or T.C.A. § 67-5-207, § 67-5-213 or § 67-5-219 must file an application for the exemption with the State Board of Equalization on a form prescribed by the board, and supply any further information as the board may require to determine whether the property qualifies for exemption. No property will be exempted from property taxes under these sections, unless the application has been approved in writing by the board. A separate application is required for each parcel of property for which an exemption is claimed. An application is deemed filed on the date it is received by the board or, if mailed, on the postmark date. The applicant must provide a copy of the application with any supporting materials to the assessor of property of the county in which the property is located. An application for exemption pursuant to T.C.A. § 67-5-212 or any other section referring to these procedures is treated as an appeal for purposes of T.C.A. § 67-5-1512.<sup>1</sup>

The board makes an initial determination granting or denying an exemption through its staff designee, who sends written notice of the initial determination to the applicant and the assessor of property. Either the assessor of property or the applicant may appeal the initial determination to the board and is entitled to a hearing prior to any final determination of exemption. The assessor maintains on file copies of all approved applications. After an exemption has been approved, it is not necessary to reapply each year, but the exemption is not transferable or assignable and the applicant is required to promptly report to the assessor any change in the use or ownership of the property which might affect its exempt status.<sup>2</sup>

The board may by rule impose a fee for processing exemption applications. The fee cannot exceed \$120 and must be proportionate to the value of the property at issue. The total fees collected in any fiscal year cannot exceed the cost of processing exemption applications in that fiscal year.<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-5-212(b)(1).

<sup>2</sup>T.C.A. § 67-5-212(b)(2).

<sup>3</sup>T.C.A. § 67-5-212(b)(2). 2010 Public Chapter 1074

## Deadlines for Filing Application

**Reference Number:** CTAS-1538

An institution claiming an exemption under T.C.A. § 67-5-212 which has not previously filed an application for and been granted an exemption for a parcel must file an application for exemption with the State Board of Equalization by May 20 of the year for which the exemption is sought. If the application is approved, the exemption will be effective as of January 1 of the year of application or as of the date the exempt use of such parcel began, whichever is later. If application is made after May 20 of the year for which the exemption is sought, but prior to the end of the year, the application may be approved but will

be effective for only a portion of the year determined as follows: (1) if the application is filed within 30 days after the exempt use of the property began, the exemption will be effective as of the date the exempt use began or May 20, whichever is later; or (2) if the application is filed more than 30 days after the exempt use began, the exemption will be effective as of the date of application.<sup>1</sup>

If a religious institution acquires property that was duly exempt at the time of transfer from a transferor who had previously been approved for a religious use exemption of the property, or if a religious institution acquires property to replace its own exempt property, then the effective date of exemption shall be 3 years prior to the date of application, or the date the acquiring institution began to use the property for religious purposes, whichever is later.<sup>2</sup>

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<sup>1</sup>T.C.A. § 67-5-212(b)(3)(A). See *Metropolitan Government of Nashville & Davidson County v. Delinquent Taxpayers*, 1992 WL 124434 (Tenn.Ct.App. 1992).

<sup>2</sup>T.C.A. § 67-5-212(b)(3)(B).

## Administrative and Judicial Review

**Reference Number:** CTAS-1539

All questions of exemption under T.C.A. § 67-5-212 are subject to review and final determination by the State Board of Equalization. However, any determination by the state board is subject to judicial review by petition of certiorari to the appropriate chancery court. All other provisions of law notwithstanding, no property is entitled to judicial review of its status under T.C.A. § 67-5-201 *et seq.*, except as provided by the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5 of the Code, and only after the exhaustion of administrative remedies as provided in T.C.A. § 67-5-212.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-212(b)(4). See *State ex rel. County of Hamblen v. Knoxville College*, 60 S.W.3d 93 (Tenn.Ct.App. 2001)(college's failure to pursue its statutory remedies during the requisite time periods rendered the Board's decision final, and the Chancery Court was without jurisdiction to entertain the appeal).

## Revocation of Exemption

**Reference Number:** CTAS-1540

The State Board of Equalization may revoke any exemption approved under T.C.A. § 67-5-212 if it determines that the exemption was approved on the basis of fraud, misrepresentation or erroneous information, or that the current owner or use of the property does not qualify for exemption. The Executive Secretary of the board may initiate proceedings for revocation on the Executive Secretary's own motion or upon the written complaint of any person upon a determination of probable cause. Revocation will not be retroactive unless the order of revocation incorporates a finding of fraud or misrepresentation on the part of the applicant or failure of the applicant to give notice of a change in the use or ownership of the property as required by T.C.A. § 67-5-212.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-212(b)(5).

## Charitable Institution Defined

**Reference Number:** CTAS-1541

As used in T.C.A. 67-5-212, "charitable institution" includes any nonprofit organization or association devoting its efforts and property, or any portion thereof, exclusively to the improvement of human rights and/or conditions in the community.<sup>1</sup>

A long, nonexclusive statutory list of organizations and institutions which may qualify for property tax exemption include nonprofit organizations chartered by the United States Congress;<sup>2</sup> labor organiza-

tions;<sup>3</sup> nonprofit artificial breeding associations;<sup>4</sup> fraternal organizations exempted from the payment of federal income taxes;<sup>5</sup> nonprofit county fair associations;<sup>6</sup> property containing a residential dwelling located in a community park that meets certain conditions;<sup>7</sup> property upon which a caretaker's residence is located that meets certain conditions;<sup>8</sup> property owned by a public radio station meeting certain conditions;<sup>9</sup> property owned by a public television station;<sup>10</sup> and property owned by a religious or charitable institution that is used by the institution for a thrift shop, provided certain conditions are met.<sup>11</sup>

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<sup>1</sup>T.C.A. § 67-5-212(c). See *Downtown Hosp. Ass'n v. State Board of Equalization*, 760 S.W.2d 954 (Tenn.Ct.App. 1988) (under T.C.A. § 67-5-212, any nonprofit organization or association which devotes its efforts to improvement of conditions in the community is a charitable institution and exempted from property taxation).

<sup>2</sup>T.C.A. § 67-5-212(d).

<sup>3</sup>T.C.A. § 67-5-212(e).

<sup>4</sup>T.C.A. § 67-5-212(f).

<sup>5</sup>T.C.A. § 67-5-212(h).

<sup>6</sup>T.C.A. § 67-5-212(i).

<sup>7</sup>T.C.A. § 67-5-212(j).

<sup>8</sup>T.C.A. § 67-5-212(k).

<sup>9</sup>T.C.A. § 67-5-212(l).

<sup>10</sup>T.C.A. § 67-5-212(m).

<sup>11</sup>T.C.A. § 67-5-212(n).

## Property of Certain Educational Institutions

**Reference Number:** CTAS-1542

The real estate owned by an educational institution that is used primarily for dormitory purposes for its students is exempt from taxation, even though other student activities are incidentally conducted there, and even though the student's spouse or children may reside there.<sup>1</sup> The residence of the chief executive officer of a college or university, and no more than three acres of its surrounding grounds, owned by a college or university, is exempt from taxation, if the chief executive officer of the institution is required to reside there as a condition of employment.<sup>2</sup> The residential units owned by a nonprofit college or university or nonprofit secondary school that boards all or some of its students and located on or immediately adjoining its campus are exempt from taxation if the residential units meet all of the following criteria: (1) the unit is occupied by a member of the faculty or staff of the institution; (2) occupancy is required as a condition of that person's employment as a convenience for the institution or to attend to plant or equipment; (3) the institution which owns the unit receives no income from the unit except a reasonable service and maintenance fee; (4) the employee occupying the unit receives no equity of ownership or any other thing of permanent or transferable value from occupancy of the unit; (5) the right of the employee to occupy the unit ends with the employee's tenure on the faculty or staff of that institution; and (6) the unit is occupied wholly by the employee and the employee's immediate family.<sup>3</sup> A bookstore owned by a college or university which is located on the campus and is operated on a not-for-profit basis to furnish students at that institution with textbooks and other ancillary required materials is exempt from taxation, even though the bookstore may sell other items of a souvenir nature, such as wearing apparel, glassware, and china embossed with the name, seal or logo of the institution, or items such as toiletries or stationery supplies for the convenience of students.<sup>4</sup>

University bookstores and residential units owned by any nonprofit college or university or secondary school located in Hamilton County are not eligible for the exemption provided in T.C.A. § 67-5-213(c) and (d).<sup>5</sup>

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<sup>1</sup>T.C.A. § 67-5-213(a).

<sup>2</sup>T.C.A. § 67-5-213(b).

<sup>3</sup>T.C.A. § 67-5-213(c).

<sup>4</sup>T.C.A. § 67-5-213(d).

<sup>5</sup>T.C.A. § 67-5-213(c)(3) and (d)(2).

## Cemeteries and Monuments

**Reference Number:** CTAS-1543

Places of burial, all nonprofit cemeteries, and monuments of the dead are exempt from taxation. Real property owned by cemeteries operated on a for-profit basis which has been prepared and is being held for burial purposes is exempt from taxation; provided, that the amount of such property does not exceed the reasonable expectation of public needs. Cemeteries are required to apply for exemption and obtain approval of exemption by the State Board of Equalization if charges are imposed for use of burial plots.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-214.

## Personal Bank Accounts and Other Personal Property

**Reference Number:** CTAS-1544

The entire amount of money deposited in an individual's personal or family checking or savings account and \$7,500 worth of personal household goods and furnishings, wearing apparel and other such tangible personal property in the hands of a taxpayer is exempt from taxation. Where the property is owned jointly by a husband and wife, the exemption is \$15,000 and any exemption applying to any minor child of the family living at home and not used by the minor child personally may be applied to the total family household goods and furnishings, wearing apparel, and other such tangible personal property used by the family in common.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-215.

## Growing Crops

**Reference Number:** CTAS-1545

All growing crops of whatever kind, including, but not limited to, timber, nursery stock, shrubs, flowers, and ornamental trees, the direct product of the soil of this state or any other state of the union, in the hands of the producer or the producer's immediate vendee, and articles manufactured from the produce of this state, or any other state of the union, in the hands of the manufacturer, is exempt from taxation. All livestock and poultry of whatever kind in the hands of the producer or the producer's immediate vendee is exempt from taxation.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-216.

## Property in Transit

**Reference Number:** CTAS-1546

Tangible personal property which is moving in interstate commerce through or over the territory of the state of Tennessee or was consigned to a warehouse within the state of Tennessee from outside the state of Tennessee, for storage, in transit, to a final destination outside the state of Tennessee, is deemed not to have acquired a situs in the state of Tennessee for purposes of ad valorem taxation. Tangible personal property transported to a plant, warehouse or establishment within the state of Tennessee, from outside the state of Tennessee, for storage or repackaging, and held for eventual sale or other disposition, other

than at retail, to a destination outside this state, is deemed not to have acquired a situs within the state of Tennessee for purposes of ad valorem taxation.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-217.

## Historic Properties

**Reference Number:** CTAS-1547

The value of any improvement made to or restoration of any structure included within the provisions of T.C.A. § 4-11-201 *et seq.*, or which is certified by a historic properties review board, as provided for in T.C.A. § 67-5-218(a)(2), is exempt from property taxation when the improvement or restoration is necessitated by (1) any comprehensive plan for the development of a district or zone authorized in T.C.A. § 13-7-401; (2) the official preservation plan of the state of Tennessee as required by the provisions of United States Public Law 89-665; (3) any other federal or state plan of development or redevelopment which includes the preservation and restoration of structures covered by T.C.A. § 67-5-218; or (4) the agreement of the owner of an individual structure to restore the structure in accordance with guidelines specified by a historic properties review board, as provided for in T.C.A. § 67-5-218, and to refrain from significantly altering or demolishing the structure during the period of exemption.<sup>1</sup>

The provisions of T.C.A. § 67-5-218 only apply to counties having a population of 200,000 or more according to the 1970 federal census, or any subsequent federal census; and, which, by a majority vote of the governing body of the county, choose to come under its provisions.<sup>2</sup> The chief administrative officer of each county appoints a historic properties review board for that jurisdiction, to be approved by a majority vote of the county governing body. The review board consists of at least five members. One member of the review board must be an architect, if resident in the county, who is a member of the American Institute of Architects or meets the membership qualifications of that body. One member of the review board must be a member of the local planning commission. And, one member must be the county historian, a member of the county historical commission, or a member of the county historical society. The review board is required to formulate criteria for certification of historic properties with the assistance of the Tennessee Historical Commission, subject to review and comment by the state preservation officer.<sup>3</sup>

All structures (except those on the Tennessee or National Register of Historic Properties) whose owners seek to benefit from the provisions of T.C.A. § 67-5-218, must be certified in accordance with the criteria established by the local historic properties review board. The exemption of any structure certified in accordance with T.C.A. § 67-5-218, wherever located, will also include any structure or residence used in the management or care of the historical structure. Any structure 175 years of age or older is presumed to meet the criteria on the basis of age alone, any structure 125 years of age or older is presumed to meet the criteria unless established otherwise, and any structure 75 years of age or older is assumed to meet the criteria subject to individual review.<sup>4</sup> Exemptions continue in effect for 10 years in the case of a partial or exterior restoration or improvement, as determined by the review board, and 15 years in the case of a total restoration, as determined by the review board. At the end of the applicable period, the structure is assessed and taxed on the basis of its full market value. If any structure receiving an exemption under T.C.A. § 67-5-218 is demolished or significantly altered, as determined by the review board, during the period of exemption, the exemption of the improved value will immediately end and the owner will be liable at that time for any difference between the tax paid and the tax which would have been due on the improved value. The exemptions and restrictions provided for in T.C.A. § 67-5-218 apply to the structure itself and pass with its title.<sup>5</sup>

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<sup>1</sup>T.C.A. § 67-5-218(a)(1).

<sup>2</sup>T.C.A. § 67-5-218(b) and (c)(1).

<sup>3</sup>T.C.A. § 67-5-218(a)(2).

<sup>4</sup>T.C.A. § 67-5-218(a)(3).

<sup>5</sup>T.C.A. § 67-5-218(a)(4).

## Airport Runways and Aprons

**Reference Number:** CTAS-1548

The real property of private public use airports that is used for airport runways and aprons is exempt from property tax.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-219.

## Property Held in Foreign Trade Zone

**Reference Number:** CTAS-1549

Tangible personal property imported from outside of the United States and held in a foreign trade zone or foreign trade subzone, as defined in *Tennessee Code Annotated* Title 7, Chapter 85, for the purpose of sale, manufacture, processing, assembly, grading, cleaning, mixing or display is exempt from Tennessee ad valorem taxation while held in the foreign trade zone or subzone and thereafter, if the property is then exported from the foreign trade zone or subzone directly to a location outside of Tennessee.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-220.

## Property Owned by a Charitable Organization for Low-Income Housing

**Reference Number:** CTAS-1550

Under T.C.A. § 67-5-221, certain property owned by a charitable organization and held for the housing of persons with low income may be exempt from taxation upon the adoption of a resolution by two-thirds vote of the county legislative body.<sup>1</sup> If the provisions of T.C.A. § 67-5-221 are adopted and subject to the application requirements of T.C.A. § 67-5-212, land, including buildings on the land, owned by a charitable institution and held for the purpose of constructing one or more single family dwellings to be conveyed for use as the residence of a low-income household as defined in T.C.A. § 13-23-103(12), is exempt during the period of its ownership by the charitable institution until the date it is conveyed to the adult head of the low-income household, but not to exceed the periods established in T.C.A. § 67-5-221(b) and (c).<sup>2</sup> The effective date of exemption is determined under T.C.A. § 67-5-212. If a dwelling is not constructed and conveyed as provided in T.C.A. § 67-5-221 within the allotted periods, the property will be encumbered by the full amount of taxes together with penalties and interest which would otherwise have been due.<sup>3</sup>

If the property purchased is a single lot on which only a single family home may be constructed, the property is exempt for a period not to exceed 18 months.<sup>4</sup> If the property is planned for subdivision into multiple single family lots according to plans filed by the organization, the period of exemption is 18 months plus six months for each additional lot planned beyond the first. If a lot is not developed as planned, a proportionate share of taxes which would have been due upon the lot, including delinquency penalties and interest, will accrue from the date of acquisition of the property by the organization. Taxes will accrue on individual lots within a multi-lot development at the time each lot is conveyed as provided in T.C.A. § 67-5-221.<sup>5</sup>

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<sup>1</sup>T.C.A. § 67-5-221(a) and (d).

<sup>2</sup>T.C.A. § 67-5-221(a).

<sup>3</sup>T.C.A. § 67-5-221(a).

<sup>4</sup>T.C.A. § 67-5-221(b).

<sup>5</sup>T.C.A. § 67-5-221(c).

## Historic Properties Owned by Charitable Institutions

**Reference Number:** CTAS-1551

Under T.C.A. § 67-5-222, certain historical properties owned by charitable institutions are exempt from property taxation if the provisions of T.C.A. § 67-5-222 are adopted in a resolution by a two-thirds vote of the county legislative body.<sup>1</sup> Upon local approval and subject to the application requirements of T.C.A. § 67-5-212, property owned by a charitable institution receives a 100 percent exemption from property taxation if the property is (1) on the National Register of Historical Places; (2) used for occasional rentals which last for no more than two days at a time per event; (3) not rented out more than one hundred eighty days per year, and the proceeds received from rental periods are used solely for the purposes of defraying the maintenance and upkeep of the property; and (4) has been owned and maintained by the charitable institution for at least 10 years prior to the application for the exemption.<sup>2</sup>

The owner of the qualified property must submit a comprehensive preservation and maintenance plan to the historic properties review board that demonstrates how the property tax savings will be applied to the preservation and maintenance of the property. The plans must meet the guidelines established by the historic properties review board. The tax exemption is valid for a 10 year period; however, the owner of the property may apply for additional exemption periods; provided, that an updated preservation and maintenance plan is filed with the historic properties review board in accordance with its guidelines.<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-5-222(d).

<sup>2</sup>T.C.A. § 67-5-222(a).

<sup>3</sup>T.C.A. § 67-5-222(b) and (c).

## Nonprofit Community and Performing Arts Organizations

**Reference Number:** CTAS-1552

Under T.C.A. § 67-5-223, upon approval of a resolution by a two-thirds vote of the county legislative body, certain property owned by a non—profit community arts organization is exempt from property taxation. Upon adoption of the provision of T.C.A. § 67-5-223 and subject to the application requirements of T.C.A. § 67-5-212, property owned by nonprofit community and performing arts organizations and used by them or other nonprofit community and performing arts organizations is eligible for property tax exemption as a charitable or educational use of property upon compliance with the provisions of T.C.A. § 67-5-223. Real property owned by these organizations is eligible for exemption to the extent that it is used for public museums, art galleries, performing arts auditoriums and theaters, and any uses necessary and incidental to the foregoing. Personal property owned by these organizations is eligible for exemption to the extent it is used by the organization to equip and operate real property as set out above. Other personal property, regardless of its location, is eligible for exemption to the extent it is used for business or office operations of the organization or used in shows, exhibits or productions of the organization.<sup>1</sup>

The organization seeking exemption shall meet the following requirements: (1) the property must be owned and used by a public benefit nonprofit organization established as either a nonprofit corporation or an unincorporated entity operating as an association, a trust or a foundation pursuant to written articles of governance; (2) the organization must be operated and governed by a board of directors of not less than 10 members, all of whom are natural persons, and all powers and affairs of the organization must be exercised under the authority of the board of directors; (3) not more than three members of the organization or its board of directors may be employees of the organization; (4) other than as an employee, no member, officer or director can be compensated for service as such; (5) other than for services as an employee, no member, director or officer of the organization, directly or indirectly,<sup>2</sup> may sell or provide, for monetary remuneration, any goods or services to the organization; (6) no member, director or officer of the organization may lend money to the organization if the loan is secured by the organization's property; (7) other than for services as an employee, no member, director or officer of the organization may profit from shows, exhibits or productions of the organization or have any monetary interest in shows, exhibits

or productions of the organization; (8) in the event the organization sells any of its property which has been exempt from taxation, it must notify the attorney general and reporter of its intent to sell the property at least 21 but not more than 60 days before the date of sale; (9) the articles of governance of any unincorporated organization must include the provisions set out in T.C.A. § 67-5-223(b) or be specifically incorporated by reference; (10) the articles of governance of the organization, whether incorporated or not, and all amendments thereto must be filed with the assessor of property in the county in which the organization owns exempt property;<sup>3</sup> and (11) the organization must supply the assessor of property with an annual report which includes a listing of activities and uses of the property, current statements of financial condition, and any further information the assessor may require.<sup>4</sup>

The county governing body may impose a requirement of periodic local review or renewal of the exemption. The assessor of property must maintain with the records for the property an estimate of the market value of the property as of the date of the last county-wide reappraisal.<sup>5</sup>

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<sup>1</sup>T.C.A. § 67-5-223(a).

<sup>2</sup>"Indirectly" means through a business organization of which the employee, member, director or officer of the organization or a spouse, child or parent owns more than a three percent (3%) interest in the business.

<sup>3</sup>This requirement is not to be construed to override any other existing law as to filing of organizational documents.

<sup>4</sup>T.C.A. § 67-5-223(b).

<sup>5</sup>T.C.A. § 67-5-223(c).

## Economic Development

**Reference Number:** CTAS-1553

Under T.C.A. § 67-5-224, an exemption for certain economic development activities applies to certain property in counties containing a national laboratory facility and counties immediately adjacent to such counties. In these counties and subject to the general requirements of T.C.A. § 67-5-212, real and tangible personal property owned and used by a nonprofit economic and/or charitable development organization is eligible for property tax exemption as a charitable use of property when the provisions of T.C.A. § 67-5-224 are met. The real and tangible personal property owned by a nonprofit entity, whether charitable or otherwise, that is recognized as tax exempt by the internal revenue service and is engaged in economic development, is eligible for property tax exemption to the extent the property is used to provide small business counseling and/or shared office and information systems infrastructure for small business development. The tangible personal property owned by a nonprofit charitable organization is likewise eligible for property tax exemption to the extent it is used to provide counseling, informational and technical assistance to other charitable organizations in applying for grants. Any owner of real or personal property claiming an exemption under T.C.A. § 67-5-224 must file an application for exemption with the State Board of Equalization on the same form and in the same manner prescribed in T.C.A. § 67-5-212(b).<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-224.

## Family Wellness Centers

**Reference Number:** CTAS-1554

Real and personal property used as a nonprofit family wellness center is exempt from property taxes as a charitable use of property if the center is owned and operated as provided in T.C.A. § 67-5-225. "Family wellness center" means real and personal property used to provide physical exercise opportunities for children and adults. The property must be owned by a nonprofit corporation that is a charitable institution which (1) has as its historic sole purpose the provision of programs promoting physical, mental, and spiritual health, on a holistic basis without emphasizing one over another; (2) provides at least five of the

following eight programs dedicated to the improvement of conditions in the community and support for families:

- (A) day care programs for preschool and school-aged children;
- (B) team sports opportunities for youth and teens;
- (C) leadership development for youth, teens, and adults;
- (D) services for at-risk youth and teens;
- (E) summer programs for at-risk and non-at-risk youth and teens;
- (F) outreach and exercise programs for seniors;
- (G) aquatic programs for all ages and skill levels; and
- (H) services for disabled children and adults; and

(3) provides all programs and services to those of all ages, incomes and abilities under a fee structure which reasonably accommodates persons of limited means and, therefore, ensures that ability to pay is not a consideration. The corporation must further meet the requirements of T.C.A. § 67-5-225(b).<sup>1</sup>

In order to qualify for exemption, the nonprofit corporation must first be exempt from federal income taxation as an exempt charitable organization under the provisions of § 501(c)(3) of the Internal Revenue Code and any amendments thereto. In addition, the nonprofit corporation must provide that (1) the directors and officers will serve without compensation beyond reasonable compensation for services performed; (2) the corporation is dedicated to and operated exclusively for nonprofit purposes; (3) no part of the income or the assets of the corporation will be distributed to inure to the benefit of any individual; and (4) upon liquidation or dissolution, all assets remaining after payment of the corporation's debts will be conveyed or distributed only in accordance with the requirements applicable to a § 501(c)(3) corporation.<sup>2</sup> Furthermore, all claims for exemptions under T.C.A. § 67-5-225 are subject to the provisions of T.C.A. § 67-5-212(b).<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-5-225(a). See Op. Tenn. Atty. Gen. 00-106 (June 9, 2000).

<sup>2</sup>T.C.A. § 67-5-225(b).

<sup>3</sup>T.C.A. § 67-5-225(c).

## Museums

**Reference Number:** CTAS-1555

Subject to the applicable requirements of T.C.A. § 67-5-212, the real and tangible personal property owned and used by an organization as a museum receives a 100 percent exemption from property taxation if (1) the organization owns the real property for which the exemption is sought; (2) the organization owning the property is exempted from the payment of federal income taxes by § 501(c)(3) of the Internal Revenue Code; (3) the property is located within the limits of an incorporated municipality; (4) the exempt organization actually operates the museum; (5) the museum displays local, regional and state crafts and items of historical interest; and (6) the board members of the organization receive no compensation for their services.<sup>1</sup>

Any owner of real or personal property claiming exemption under T.C.A. 67-5-226 is required to file an application for exemption with the State Board of Equalization on the same form and in the same manner prescribed in T.C.A. § 67-5-212(b).<sup>2</sup>

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<sup>1</sup>T.C.A. § 67-5-226(a).

<sup>2</sup>T.C.A. § 67-5-226(b).

## Educational Museums

**Reference Number:** CTAS-1556

The real property and tangible personal property, owned or possessed by an organization and used exclusively by that organization for an educational museum, shall have a 100 percent exemption from property taxation, if: (1) the educational museum is located upon land owned by state, county or municipal government, or an agency or entity thereof, including any municipal or regional airport authority; (2) the educational museum exhibits historic artifacts and other items of historical significance and instruction; (3) the educational museum is designated, by Tennessee law, as an official state repository and archive; (4) the organization is exempt from payment of federal income taxes pursuant to § 501(c)(3) of the Internal Revenue Code; (5) the organization's board members receive no compensation for serving on the board; and (6) the organization's employees and volunteers actually manage and perform the daily operations and programs of the educational museum.<sup>1</sup>

Any organization claiming such exemption must file an application for exemption with the State Board of Equalization, on the same form and in the same manner as prescribed in T.C.A. § 67-5-212(b).<sup>2</sup>

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<sup>1</sup>T.C.A. § 67-5-226(c)(1).

<sup>2</sup>T.C.A. § 67-5-226(c)(2).

## Leased Tangible Personal Property

**Reference Number:** CTAS-1557

Inventories of merchandise held by merchants and businesses for sale and exchange by persons taxable under the business tax (*Tennessee Code Annotated*, Title 67, Chapter 4, Part 7) are exempt from property taxation. This exemption includes tangible personal property held for lease or rental, but does not include such property in the possession of a lessee. Leased personal property in the possession of the lessee is subject to property taxation and is classified and assessed according to the lessee's use.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-901. See also Op. Tenn. Atty. Gen. 89-89 (May 30, 1989) (finding that the statute excepting categories of leased personal property from the property tax exemption for leased property is constitutional); Op. Tenn. Atty. Gen. 91-94 (November 27, 1991) (finding that the ultimate user of the tangible personal property in a business or profession is liable for the property tax, whether the user is a lessee or sublessee, and the owner, lessee, or sublessee from whom the ultimate user, lessee or sublessee obtained the property is not liable for the property tax assessment).

## In Lieu of Tax or Tax Equivalent Payments

**Reference Number:** CTAS-1558

In lieu of tax or tax equivalent payments are not taxes. Payments in lieu of taxes are intended to replace lost property tax revenues. A governmental entity may not require payments in lieu of taxes without specific statutory authorization.

Municipal Gas System Tax Equivalent Law of 1987. Pursuant to the Municipal Gas System Tax Equivalent Law of 1987, T.C.A. § 7-39-401 *et seq.*, every municipality (county, city, town, or metropolitan government) may pay or cause to be paid from its gas system revenues for each fiscal year an amount for payments in lieu of taxes on its gas system and gas operations which, in the judgment of the municipality's governing body, represents the fair share cost of government properly to be borne thereby, subject to the conditions set forth in the statute.<sup>1</sup>

Municipal Electric System Tax Equivalent Law of 1987. Pursuant to the Municipal Electric System Tax Equivalent Law of 1987, T.C.A. § 7-52-301 *et seq.*, every municipality (county, city, town, or metropolitan government) may pay or cause to be paid from its electric system revenues for each fiscal year an amount for payments in lieu of taxes on its electric system and electric operations which, in the judgment of the municipality's governing body after consultation with the supervisory body, represents the fair share of the cost of government properly to be borne thereby, subject to the conditions set forth in the statute.<sup>2</sup> Contracts for the distribution of tax equivalent payments are authorized.<sup>3</sup> In the absence of an

agreement, a formula has been established for apportionment and payment to the taxing jurisdictions in which its electric plant in service is located.<sup>4</sup>

Telecommunications Services. A municipality providing any of the services authorized by T.C.A. § 7-52-401 is required to make tax equivalent payments with respect to those services in the manner established for electric systems under T.C.A. § 7-52-301 *et seq.*<sup>5</sup>

Cable Television, Internet, and Related Services. A municipal electric system providing any of the services authorized by T.C.A. § 7-52-601 *et seq.*, is required to make tax equivalent payments with respect to those services in the manner established for electric systems under T.C.A. § 7-52-301 *et seq.*, provided, that the payments shall not include amounts based on net system revenues as provided in T.C.A. § 7-52-304(1)(B).<sup>6</sup> In addition to the aforementioned tax equivalent payments, a municipal electric system providing cable or internet services must pay an amount in lieu of the following taxes to the same extent as if it were a private provider of those services: (1) excise and franchise taxes; (2) sales taxes; and (3) local privilege taxes.<sup>7</sup>

Industrial Development Corporations. Pursuant to T.C.A. § 7-53-305, an industrial development corporation and all properties owned by it, and the income and revenues therefrom, and all bonds issued by it, and the income therefrom, is exempt from all taxation in the state of Tennessee.<sup>8</sup> A municipality (county, city, town, or metropolitan government) has the power to delegate to an industrial development corporation the authority to negotiate and accept from the corporation's lessees, payments in lieu of ad valorem taxes; provided, that any such authorization will be granted only upon a finding that such payments are deemed to be in furtherance of the corporation's public purposes as defined in the statute. Municipalities that do not levy a property tax are prohibited from negotiating PILOT agreements unless the county signs off on the agreement or the municipality or the IDB agree to pay the county the property taxes that would otherwise be due.<sup>9</sup> PILOT agreements for retail projects may only be negotiated if certain criteria are met. T.C.A. § 7-53-305, Pursuant to T.C.A. § 7-53-305, PILOT payments can be waived for 23 years without the approval of ECD and the comptroller. Under T.C.A. § 48-101-312(b), Health, Educational and Housing Facility Corporations are authorized to negotiate PILOT agreements with respect to tax-credit housing projects without any delegation from the municipality unless the municipality adopts an ordinance or resolution requiring the agreements to be approved by the municipality. Housing authorities have been granted this same authority in counties without such corporations. Industrial development Corporations have been granted this same authority with respect to tax-credit housing projects. T.C.A. § 7-53-305.

Housing Authorities. Housing authority property and its bonds and notes, together with the interest and income are exempt. In lieu of taxes, the housing authority must agree to make payments to the taxing jurisdiction for services, improvements or facilities furnished for the benefit of a housing project owned by the housing authority. Payments in lieu of taxes for services must not exceed the estimated cost of providing the services, improvements or facilities.<sup>10</sup>

Tennessee Valley Authority. In lieu of tax payments made by the Tennessee Valley Authority to the state replace tax revenue which the Tennessee Valley Authority would otherwise pay if it were not a tax exempt federal agency. The amount of the payments is determined by federal law.<sup>11</sup> Pursuant to the Tennessee State Revenue Sharing Act, T.C.A. § 67-9-101 *et seq.*, in lieu of tax payments received by the state from the Tennessee Valley Authority are apportioned between the state and local governments based on a formula determined by law.<sup>12</sup>

Local Hospital Authorities—Leased Commercial Real Property. A hospital authority, created by a county or municipality pursuant to private act, which owns real property leased for commercial purposes, must agree to the payment of tax equivalents to any municipality and county where the leased commercial property is located. The amount of the tax equivalent payments is fixed at the amount of ad valorem taxes otherwise due and payable by a tax paying entity upon the assessed value of the leased commercial property. If the leased commercial property is located within the boundaries of a municipality, pro rata shares of the total amount collected from the local hospital authority is distributed to the county and municipality based on the tax rates of each.<sup>13</sup>

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<sup>1</sup>T.C.A. § 7-39-404.

<sup>2</sup>T.C.A. § 7-52-304. *See also Knox County v. City of Lenoir*, 837 S.W.2d 382 (Tenn. 1992)

<sup>3</sup>T.C.A. § 7-52-306.

<sup>4</sup>T.C.A. § 7-52-307. See also *Knox Co. ex rel. Kessel v. Lenoir City*, 837 S.W.2d 382, 385 (Tenn. 1992) (holding that the 1987 Act specifically permits the allocation of payments among taxing jurisdictions to be established by means of a private act).

<sup>5</sup>T.C.A. § 7-52-404.

<sup>6</sup>T.C.A. § 7-52-606(a).

<sup>7</sup>T.C.A. § 7-52-606(b).

<sup>8</sup>T.C.A. § 7-53-305(a).

<sup>9</sup>T.C.A. § 7-53-305(b). See also Op. Tenn. Atty. Gen. 85-264 (October 22, 1985)(discussing the apportionment of in lieu of tax payments between various governmental entities).

<sup>10</sup>T.C.A. § 67-5-206.

<sup>11</sup>16 U.S.C. § 831 *et seq.*

<sup>12</sup>T.C.A. § 67-9-101(a).

<sup>13</sup>T.C.A. § 67-9-201.

## Tax Relief

**Reference Number:** CTAS-1559

The legislature has provided authority for tax relief programs in which the state pays a portion of the county property taxes due on residences of qualified taxpayers. The program authorizes payment, or reimbursement of taxes already paid, to the following taxpayers: (1) elderly low-income homeowners, (2) disabled homeowners, and (3) disabled veterans.<sup>1</sup>

Counties may not provide tax relief by setting a lower tax rate, or by reducing penalty and interest, for particular classes of residents. Such provisions violate the uniformity provisions of Tenn. Const. art. II, § 28.<sup>2</sup> However, in 2006, the legislature amended T.C.A. § 67-5-701(j) to allow all counties to appropriate funds for tax relief for elderly low income homeowners, disabled homeowners and disabled veterans. 2006 Public Chapter 739. The total tax relief from the state and local appropriations cannot exceed the total taxes actually paid. Only the taxpayers eligible for the state program are eligible for tax relief from a county appropriation.<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-5-701 *et seq.*

<sup>2</sup>Ops. Tenn. Atty. Gen. 96-044 (March 13, 1996) and 89-111 (September 5, 1989).

<sup>3</sup>T.C.A. § 67-5-701(j)

## Administrative Provisions

**Reference Number:** CTAS-1560

The State Board of Equalization, through the Division of Property Assessments, is charged with the implementation of T.C.A. §§ 67-5-702 - 67-5-704, and promulgates all the necessary rules, regulations and procedures for their implementation.<sup>1</sup>

Property tax relief is obtainable by submitting an application to the collecting official (i.e., county trustee) using a form approved by the State Board of Equalization. The collecting official will make a preliminary determination of eligibility and forwards the application to the state for final approval. The collecting official may allow the applicant a credit for the projected amount of property tax relief if the applicant appears from the application to be eligible and submits the balance of the property taxes due at the time the credit is given. The collecting official may present evidence of the credit to the director of the Division of Property Assessments, who then authorizes the payment to the tax jurisdiction of the amount for which the applicant was credited in taxes. If later processing of the application indicates that the applicant was ineligible or the credit was otherwise issued in error, the state notifies the applicant and the collecting official and may recover the erroneous payment from the tax jurisdiction. The amount represented by the

erroneous payment then becomes due and payable by the applicant as property taxes, but the taxes do not accrue delinquency penalty or interest until 60 days from the date of the notification to the applicant.<sup>2</sup>

A county trustee may enter into a contract with a city collecting official to process tax relief applications received by the city collecting official.<sup>3</sup>

Any person who received tax relief payments in error for any tax year or years must repay the state the amount received in error. There is a bar against collection of repayments unless demand is made within two years following the due date for the tax year to which the erroneous payments relate. Any person who received tax relief payments in error may reapply and may obtain tax relief for a subsequent tax year; provided that eligibility is established and the person either pays the full amount of repayment due or applies one half of the tax relief amount for which the person may be eligible to repay the state for amounts received in error until no further repayment is due. The limited liability and right to reapply afforded under the statute is not be available to persons who willfully provide false information concerning eligibility. Any taxpayer who willfully provides false information concerning the taxpayer's income or other information relative to eligibility for tax relief will be required to immediately repay to the state the full amount of any tax relief received as a result of such false information, plus an amount equal to the penalty and interest calculated according to the rates specified in former T.C.A. § 67-1-801(b).<sup>4</sup>

All taxpayers otherwise eligible for tax relief under T.C.A. §§ 67-5-702 - 67-5-704, but who fail to apply for a refund or present a credit voucher for credit on their taxes within 35 days from the date taxes in the jurisdiction become delinquent for that year, are deemed ineligible for tax relief for that tax year. The payment of the full amount of taxes by the delinquency date is not a condition of eligibility for tax relief.<sup>5</sup>

Tax relief will be provided to only one recipient for a given property for any tax year and under no condition will any taxpayer receive tax relief for property taxes paid on more than one place of residence for any tax year.<sup>6</sup>

If a taxpayer eligible for tax relief pursuant to T.C.A. § 67-5-702 (elderly low-income homeowners) or T.C.A. § 67-5-703 (disabled homeowners) dies after applying for tax relief or after receiving a voucher, the surviving spouse, and only the surviving spouse, is qualified to present to the collecting official the tax relief voucher selected for the deceased and to receive a final payment for the tax year for which the voucher was selected, unless the taxes were paid prior to the taxpayer's death. If the taxes were paid at the time application was made and prior to the taxpayer's death, either the surviving spouse or any duly appointed personal representative of the decedent may receive the payment.<sup>7</sup>

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<sup>1</sup>T.C.A. § 67-5-701(a).

<sup>2</sup>T.C.A. § 67-5-701(c).

<sup>3</sup>T.C.A. § 67-5-701(l). 2010 Public Chapter 932.

<sup>4</sup>T.C.A. § 67-5-701(g).

<sup>5</sup>T.C.A. § 67-5-701(d)(1).

<sup>6</sup>T.C.A. § 67-5-701(f).

<sup>7</sup>T.C.A. § 67-5-701(h).

## Elderly Low-Income Homeowners

**Reference Number:** CTAS-1561

Low-income taxpayers 65 years of age or older who owned and used a principal residence may qualify for tax relief for all or part of the local property taxes paid for a given year on that property.<sup>1</sup> Such reimbursement shall be paid on the first twenty-seven thousand dollars (\$27,000), or such other amount as set forth in the general appropriations act or as adjusted pursuant to subdivision (a)(3)(B), of the full market value of such property. Beginning for tax year 2018, and each subsequent tax year, the amount on which reimbursement shall be paid under subdivision T.C.A. § 67-5-702(a)(3)(A) shall be increased annually to reflect inflation, as measured by the United States bureau of labor statistics consumer price index for all urban consumers and shall be rounded to the nearest one hundred dollars (\$100). The comptroller of the treasury shall notify taxpayers of any change in dollar amounts made pursuant to this subdivision (a)(3)(B) and post the information in a readily identifiable location on the comptroller's website. The an-

nual percentage changes used in this calculation shall be no less than zero percent (0%) and no more than three percent (3%).<sup>2</sup>

For tax year 2007 and thereafter, the taxpayer's annual income from all sources can not exceed \$24,000, or such other amount as set forth in the general appropriations act. For subsequent years, the annual income limit is adjusted to reflect the cost of living adjustment for social security recipients as determined by the social security administration and is rounded to the nearest \$10. The income attributable to the applicant for tax relief shall be the income of all owners of the property, the income of applicant's spouse and the income of any owner of a remainder or reversion in the property if the property constituted the person's legal residence at any time during the year for which tax relief is claimed.<sup>3</sup> Any portion of social security income, social security equivalent railroad retirement benefits, and veterans entitlements required to be paid to a nursing home for nursing home care by federal regulations is not considered income to an owner who relocates to a nursing home.<sup>4</sup>

Taxpayers who become 65 years of age on or before December 31 of the year for which an application for property tax relief is made and are otherwise eligible will be qualified as elderly low-income homeowners.<sup>5</sup>

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<sup>1</sup>T.C.A. § 67-5-702(a)(1).

<sup>2</sup>T.C.A. § 67-5-702(a)(3).

<sup>3</sup>T.C.A. § 67-5-702(a)(2).

<sup>4</sup>T.C.A. § 67-5-702(a)(2).

<sup>5</sup>T.C.A. § 67-5-702(c).

## Disabled Homeowners

**Reference Number:** CTAS-1562

Taxpayers who are totally and permanently disabled who owned and used a principal residence may qualify for tax relief for all or part of the local property taxes paid for a given year on that property. Disability is determined by rules and regulations of the State Board of Equalization.<sup>1</sup> Such reimbursement shall be paid on the first twenty seven thousand dollars (\$27,000), or such other amount as set forth in the general appropriations act or as adjusted pursuant to subdivision (a)(3)(B), of the full market value of such property. Beginning for tax year 2018, and each subsequent tax year, the amount on which reimbursement shall be paid shall be increased annually to reflect inflation, as measured by the United States bureau of labor statistics consumer price index for all urban consumers and shall be rounded to the nearest one hundred dollars (\$100). The comptroller of the treasury shall notify taxpayers of any change in dollar amounts made pursuant to this subdivision T.C.A. § 67-5-703 (a)(3)(B) and post the information in a readily identifiable location on the comptroller's website. The annual percentage changes used in this calculation shall be no less than zero percent (0%) and no more than three percent (3%).<sup>2</sup>

For tax year 2007 and thereafter, the taxpayer's annual income from all sources shall not exceed \$24,000, or such other amount as set in the general appropriations act. For subsequent years, the annual income limit is adjusted to reflect the cost of living adjustment for social security recipients as determined by the social security administration and is rounded to the nearest \$10. The income attributable to the applicant for tax relief shall be the income of all owners of the property, the income of applicant's spouse and the income of any owner of a remainder or reversion in the property if the property constituted the person's legal residence at any time during the year for which tax relief is claimed.<sup>3</sup> Any portion of social security income, social security equivalent railroad retirement benefits, and veterans entitlements required to be paid to a nursing home for nursing home care by federal regulations is not considered income to an owner who relocates to a nursing home.<sup>4</sup>

Taxpayers who become totally and permanently disabled on or before December 31 of the year for which application is made for property tax relief and are otherwise eligible will be qualified as disabled homeowners.<sup>5</sup>

<sup>1</sup>T.C.A. § 67-5-703(a)(1).<sup>2</sup>T.C.A. § 67-5-703(a)(3).<sup>3</sup>T.C.A. § 67-5-703(a)(2).<sup>4</sup>T.C.A. § 67-5-703(a)(2).<sup>5</sup>T.C.A. § 67-5-703(c).

## Disabled Veterans

**Reference Number:** CTAS-1563

Disabled veterans who owned and used a principal residence may qualify for tax relief for all or part of the local property taxes paid for a given tax year on that property.<sup>1</sup> Reimbursement is paid on the first \$175,000 of the full market value of the property.<sup>2</sup> Property tax relief will not be extended to any person who was dishonorably discharged from any branch of the armed services.<sup>3</sup>

For the purposes of T.C.A. § 67-5-704, a "disabled veteran" means a person who has served in the armed forces of the United States, and who has

1. acquired in connection with his or her military service a disability from paraplegia or permanent paralysis of both legs and lower part of the body resulting from traumatic injury or disease to the spinal cord or brain, or from legal blindness, or from loss or loss of use of two or more limbs from any service-connected cause;
2. acquired 100 percent permanent total disability, as determined by the United States Veterans' Administration, and the disability resulted from having served as a prisoner of war; or
3. acquired service-connected permanent and total disability or disabilities, as determined by the United States Department of Veterans' Affairs.<sup>4</sup>

The determination of the United States Veterans' Administration concerning the disability status of a veteran is conclusive for purposes of this statute.<sup>5</sup>

Property tax relief will also be extended to the surviving spouse of a disabled veteran who at the time of the disabled veteran's death was eligible for disabled veterans' property tax relief. If a subsequent amendment to the law concerning eligibility as a disabled veteran would have made the deceased veteran eligible for disabled veterans' property tax relief, then property tax relief shall also be extended to the surviving spouse. A surviving spouse shall continue to qualify for disabled veterans' property tax relief as long as the surviving spouse does not remarry, solely or jointly owns the property for which tax relief is claimed, and uses the property for which tax relief is claimed exclusively as a home.<sup>6</sup>

Property tax relief will also be extended to the surviving spouse of a veteran whose death results from a service-connected, combat-related cause, as determined by the United States Veterans' Administration; provided that the surviving spouse does not remarry and the property for which tax relief is claimed is owned by and used exclusively by the surviving spouse as a home.<sup>7</sup>

Property tax relief will also be extended to the surviving spouse of a soldier whose death results from being deployed, away from any home base of training and in support of combat or peace operations; provided, that the surviving spouse does not remarry, solely or jointly owns the property for which tax relief is claimed, and uses the property for which tax relief is claimed exclusively as a home. T.C.A. § 67-5-704(g).

<sup>1</sup>T.C.A. § 67-5-704(a)(1).<sup>2</sup>T.C.A. § 67-5-704(3).<sup>3</sup>T.C.A. § 67-5-704(c).<sup>4</sup>T.C.A. § 67-5-704(b). See also Op. Tenn. Atty. Gen. 86-66 (March 17, 1986) (addressing the issue of combat-related injury).<sup>5</sup>T.C.A. § 67-5-704(d).<sup>6</sup>T.C.A. § 67-5-704(e).<sup>7</sup>T.C.A. § 67-5-704(f).

## Additional Tax Relief

**Reference Number:** CTAS-1564

The county legislative body may provide for the appropriation of funds for tax relief for elderly low-income homeowners as described in T.C.A. § 67-5-702, for disabled homeowners as described in T.C.A. § 67-5-703, and for disabled veterans as described in T.C.A. § 67-5-704. However, in no event may the total relief allowed by the state and county exceed the total taxes actually paid.<sup>1</sup> Only those taxpayers who qualify under T.C.A. §§ 67-5-702 - 67-5-704 are eligible for this additional tax relief, and the eligible taxpayers must have previously applied for and obtained the relief authorized by T.C.A. § 67-5-702, T.C.A. § 67-5-703 or T.C.A. § 67-5-704.<sup>2</sup>

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<sup>1</sup>T.C.A. § 67-5-701(j)(1).

<sup>2</sup>T.C.A. § 67-5-701(j)(2).

## Property Tax Freeze Act

**Reference Number:** CTAS-1565

In 2007, the General Assembly enacted the Property Tax Freeze Act, T.C.A. § 67-5-705. The act authorizes the county legislative body, by resolution, to adopt the property tax freeze program according to the statute. The county legislative body is also authorized to terminate the tax freeze program by resolution, but the resolution terminating the program cannot have the effect of terminating the program until the following tax year.

In counties that have adopted the property tax freeze, taxpayers apply annually to the collecting official (county trustee) by the deadline established in the program rules, and applicants must qualify on the basis of age, income and ownership of eligible property. The trustee determines whether requirements for eligibility have been met, and the trustee's determination is final, subject to audit and recovery of taxes, including penalty and interest at the rates provided for delinquent taxes under T.C.A. § 67-5-2010, if the applicant is later determined to have not been eligible. Any taxpayer who knowingly provides false information concerning the taxpayer's income or other information relative to eligibility for such program commits a Class A misdemeanor.

Once the trustee approves the application, property taxes due upon the applicant's principal residence shall be the lesser of: (1) the actual tax due; or (2) the base tax, provided the base tax shall be adjusted to reflect any percentage increase in the value of the property determined by the assessor to be attributed to improvements made or discovered after the time the base tax was established. The base tax shall be recalculated in any year in which the actual tax due is less than the previously established base tax for the property, and the recalculated base tax shall apply until further recalculated. "Base tax" is defined as the property tax due on the principal residence of a qualifying taxpayer at the time the jurisdiction levying the tax adopts a resolution approving the property tax freeze; provided, however, if the taxpayer did not qualify or did not own an eligible residence when the freeze was adopted, "base tax" means the maximum property tax due on the taxpayer's eligible residence for the year in which the taxpayer became eligible on the basis of an approved application. If a taxpayer reapplies after acquiring a new residence or after a period of ineligibility, the base tax shall be recalculated for the year of reapplication and reestablishment of eligibility.

To qualify for the property tax freeze, the applicant must be sixty-five (65) years of age by the end of the year in which the application is filed. The applicant must own and use the property as the applicant's principal residence for which the tax freeze is sought in the year of application or reapplication and through the deadline date for application or reapplication. The tax freeze only applies to the principal residence and no more than the maximum limit for land established by state rules. The state rules establish the maximum size limits for land which may qualify as a taxpayer's principal residence. The rules are to take into consideration lot size requirements under applicable zoning as well as property actually used to support residential structures; provided, however, the size limit cannot exceed five acres.

In addition to the qualifications stated in above, the applicant's income, combined with the income of any other owners of the property, the income of the applicant's spouse, and the income of any owners of a remainder or reversion in the property who used the property as their principal place of residence at any time during the year may not exceed the income limit set forth in the act. Income for purposes of

qualification means income from all sources as defined by the program rules. The act provides that the income limit for the property tax freeze program shall be the greater of weighted average of the median household income for age groups sixty-five to seventy-four, and seventy-five or over, who resided within the county as determined in the most recent federal decennial census, or the applicable state tax relief income limit established under T.C.A. § 67-5-702. This limit is to be adjusted by the comptroller to reflect the cost of living adjustment for social security recipients as determined by the social security administration and shall be rounded to the nearest ten dollars. The adjusted weighted average median household income level for each county shall be published annually by the comptroller. The comptroller is authorized to perform income verification or other related services or assistance at the request of a county or municipality if the county or municipality agrees to pay fees sufficient to reimburse the actual costs of the comptroller in providing such services or assistance, unless or to the extent not appropriated by the General Assembly. Financial records filed for purposes of income verification are declared to be confidential and not subject to inspection under the Tennessee public records act, but are to be made available to local or state officials who administer or enforce the provisions of the law.

The property tax freeze program is subject to any uniform definitions, application forms and requirements, income verification procedures and other necessary or desirable rules, regulations, policies and procedures, not in conflict with the terms of the act, as may be adopted by the State Board of Equalization through the Division of Property Assessments.

## Real Property Tax Deferral

**Reference Number:** CTAS-1566

### Chapter 831 Deferral

**Reference Number:** CTAS-1567

Eligibility for Deferral. Pursuant to T.C.A. § 7-64-101, the legislative body of any county or municipality may provide by resolution that any single person age 65 years of age or older, or any married couple of which both are 65 years of age or older, or any person who is totally and permanently disabled, who owns real property, and who uses and occupies the property as a place of residence, may apply to the county trustee of the county where the residence is located for a deferral of payment of all real property taxes on that residence. The deferral of property taxes is not available to single persons age 65 years of age or older, or to married couples of which both are 65 years of age or older or to any family group which has more than one person residing permanently in the principal residence, whose combined gross income, as defined by the Internal Revenue Code, is greater than \$12,000 a year.<sup>1</sup>

Limitations. The tax deferral provided for in T.C.A. § 7-64-101 applies to no more than \$60,000 of the appraised fair market value, as determined from the records of the county tax assessor. In addition, the tax deferral applies only to the principal residence and no more than one acre of land.<sup>2</sup>

Application Process. Applications for the deferral of real property taxes is made annually, on or before March 1 of each year, unless a later date for applications is provided for by resolution of the legislative body of the county or municipality authorizing the program. Applications received by the county trustee after this date will be considered for deferral of real property taxes for the following tax year. Application forms are prepared by the state Division of Property Assessments. Pursuant to the statute, a \$5.00 application fee is imposed to defray the expenses of processing of the application. The fee must be paid when the application is submitted. The county trustee or appropriate municipal official furnishes the county assessor of property a copy of each application for the deferral of property taxes. Whenever an application for the deferral of real property taxes is made, the county assessor of the county where the residence is located must, within 90 days, reassess the property claimed for deferral and notify the county trustee or the appropriate municipal official of the amount of the reassessment and value for tax purposes. After the trustee determines that the applicant qualifies for deferral, the trustee will approve the application only after receiving written approval from the holder of a note secured by any mortgage or deed of trust on the residence. The trustee must provide the register of deeds notice of each approved application for the deferral of taxes.<sup>3</sup>

Lien for Unpaid Taxes. Whenever a deferral of real property taxes is granted, the assessment of taxes will continue on an annual basis; however, the taxes will not become due and payable until the deferral

is terminated. The unpaid balance of assessed real property taxes constitutes a lien against the property, and is subject to interest at the rate of 10 percent a year. The accrued taxes and interest will be a lien of the first priority on the property in the particular local government. The lien will remain in effect until the taxes and interest are paid. The tax deferrals created pursuant to T.C.A. § 7-64-101 *et seq.* are not subject to the statutory penalties imposed on delinquent taxes, and the lien created in the local government is not subject to any applicable statute of limitation.<sup>4</sup>

Termination of Deferral. Deferrals on the payment of real property taxes, granted pursuant to T.C.A. § 7-64-101 *et seq.*, will be terminated (1) upon the death of the person to whom the deferral was granted and that person's surviving spouse if the spouse qualifies; or (2) when the residence is sold. When the termination is by death, the taxes and interest become due and payable within 18 months of the termination or the settlement of the estate, whichever occurs first. When the termination occurs as a result of the sale of the property, all unpaid taxes and interest thereon become due and payable within 60 days. A deed for the sale of the property will not be accepted for recordation in the office of the county register of deeds until all taxes and interest have been paid.<sup>5</sup>

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<sup>1</sup>T.C.A. § 7-64-101.

<sup>2</sup>T.C.A. § 7-64-102.

<sup>3</sup>T.C.A. § 7-64-103.

<sup>4</sup>T.C.A. § 7-64-104.

<sup>5</sup>T.C.A. § 7-64-105.

## Chapter 659 Deferral

**Reference Number:** CTAS-1568

Eligibility for Deferral. Pursuant to T.C.A. § 7-64-201, the legislative body of any county or municipality may provide by resolution that

1. any taxpayer or spouse who is 65 years of age or older who owns residential property that is the person's principal place of residence will pay taxes on that property as any other taxpayer, but taxes on the property in the amount that exceeds the person's property tax for the year 1979 may be deferred at the interest rate set forth in T.C.A. § 7-64-209, with the deferred taxes to remain a lien upon the property as provided by T.C.A. § 7-64-209;
2. any taxpayer who reaches 65 years of age on or before March 27, 1980, who owns residential property that is the person's principal place of residence will thereafter pay taxes on the property in the same amount as other taxpayers, but that any taxes in excess of the 1979 taxes may be deferred until the date of sale of the property or the date of death of the taxpayer, or the death of the surviving spouse, and that any taxpayer who reaches 65 years of age after March 27, 1980, may defer any taxes in excess of the amount in effect in the year the person becomes 65 years of age subject to the other provisions of T.C.A. § 7-64-201 *et seq.*; and
3. any taxpayer who is 65 years of age or older who purchases residential property as the person's principal place of residence after the person's 65th birthday may defer taxes in excess of the amount of tax in the year the person purchased the property subject to the provisions of T.C.A. § 7-64-201 *et seq.*<sup>1</sup>

The deferral benefits provided by T.C.A. § 7-64-201 *et seq.* also apply to totally and permanently disabled taxpayers, as defined by T.C.A. § 67-5-703, and disabled veterans as defined in T.C.A. § 67-5-704.<sup>2</sup>

Whenever the fair market value of the property is increased as the result of improvements to the property after March 27, 1980, the assessed value of the property will be adjusted to include the increased value, and the taxes will also be increased proportionally with the increased value. The increased value will not be subject to the benefits of the tax deferral.<sup>3</sup>

Claim by Surviving Spouse. In the event of the death of one spouse of a married couple who has qualified for deferral pursuant to the statute, if the surviving spouse is over 50 years of age, that spouse can continue to claim the deferral benefits subject to the tax lien already accumulated against the property.<sup>4</sup>

Limitation on Eligibility—Taxpayer Income. No taxpayer or taxpayers whose income exceeds \$12,000 annually is eligible for the tax deferral.<sup>5</sup> The limitation of \$12,000 on income from all sources applies to the combined income of both the husband and wife and/or all family members residing in the residence.<sup>6</sup>

Limitation on Value of Principal Residence. The limitation on the value of the principal place of residence is under \$50,000 and shall be determined by the appraised fair market value as it appears on the records of the county assessor and not the reduced assessment.<sup>7</sup> In addition, the tax deferral applies only to the principal residence and no more than one acre of land.<sup>8</sup>

Application Process. Applications for the deferral of real property taxes is made annually, on or before March 1 of each year, unless a later date for applications is provided for by resolution of the legislative body of the county or municipality authorizing the program. Applications received by the county trustee or collector of municipal taxes after the appropriate date will be considered for deferral of real property taxes for the following tax year.<sup>9</sup> Application forms are prepared by the state Division of Property Assessments. Pursuant to the statute, a \$6.00 application fee is imposed to defray the expenses of processing of the application. The fee must be paid when the application is submitted. The county trustee or municipal collector of taxes makes the final determination of eligibility of the applicant.<sup>10</sup>

Lien for Unpaid Taxes—Interest. In the event of a sale of the property, the deferred taxes are not subject to penalty as provided for delinquent taxes but are subject to interest at the rate of 10 percent per annum. The accrued taxes and interest at 10 percent per annum remain a first lien on the property in favor of the local government involved until paid and are not subject to the statutes of limitations.<sup>11</sup> The tax deferrals created pursuant to T.C.A. § 7-64-201 *et seq.* are not subject to penalties as provided in Tennessee statutes for delinquent taxes.<sup>12</sup>

Termination of Deferral. The deferred payments become due and payable at the time of sale of the residence and at the time of the death of the beneficiary. In addition, the deferred payments become due and payable in the event of a change of use of the property from the principal place of residence of the beneficiary or beneficiaries.<sup>13</sup>

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<sup>1</sup>T.C.A. § 7-64-201(a).

<sup>2</sup>T.C.A. § 7-64-211.

<sup>3</sup>T.C.A. § 7-64-201(b).

<sup>4</sup>T.C.A. § 7-64-205.

<sup>5</sup>T.C.A. § 7-64-202.

<sup>6</sup>T.C.A. § 7-64-203.

<sup>7</sup>T.C.A. § 7-64-206.

<sup>8</sup>T.C.A. § 7-64-201(c).

<sup>9</sup>T.C.A. § 7-64-212.

<sup>10</sup>T.C.A. § 7-64-207(a) - (c).

<sup>11</sup>T.C.A. § 7-64-209.

<sup>12</sup>T.C.A. § 7-64-204.

<sup>13</sup>T.C.A. § 7-64-210.

## The Tax Levy

**Reference Number:** CTAS-1569

For county general purposes, counties may levy an ad valorem tax on all property subject to this form of taxation.<sup>1</sup> “County general purpose levy” means a levy for all county purposes except roads, bridges, schools, debt service, sinking funds and levies pursuant to special tax laws.<sup>2</sup> In addition to the levy for general purposes, the county may levy taxes to (1) build, extend or repair, any courthouse, jail or public office for county purposes;<sup>3</sup>(2)

provide funds for the purpose of securing humane treatment of animals;<sup>4</sup>(3) pay a judgment against the county;<sup>5</sup>(4) provide funds for the operation of a county fire department;<sup>6</sup>(5) provide funds for the collection and disposal of garbage;<sup>7</sup>(6) provide funds for a public library;<sup>8</sup>(7) provide funds for the operation and maintenance of county schools;<sup>9</sup>(8) repay loans for capital projects;<sup>10</sup>(9) repay loans for the purchase of fire equipment;<sup>11</sup>(10) repay loans made to an airport authority or municipal airport which are guaranteed by the county;<sup>12</sup> and (11) repay loans for capital projects for kindergarten through grade twelve educational purposes.<sup>13</sup> This list is not exhaustive, for example, some counties have been granted the authority by private act to levy property taxes for highway, road or bridge purposes.

The county legislative body sets the rate of the tax, which under general law should be done by the first Monday in July, or shortly thereafter.<sup>14</sup> Changes made in 2015 to the County Financial Management System of 1981 and the County Budgeting Law of 1957 removed specific deadlines in July for approving the budget. Now, under both of those laws, if a county fails to adopt a budget by July 1 the current budget continues through August or until the new budget is adopted. If a county is unable to approve a budget beyond August, it is required to obtain the comptroller's approval to continue the budget through the end of September. T.C.A. § 5-21-111, 5-12-109. Those revisions were not made to the Local Option Budgeting Law of 1993, which still requires adoption of a tax rate and budget by July 31, or the date required by any other budget law applicable in the county.<sup>15</sup> Under this 1993 Act, if the county legislative body fails to adopt a budget, a property tax rate resolution and appropriation resolution by August 15 of any year, then the portion of the budget, tax levy and appropriation for education proposed by the board of education becomes effective by operation of law; and, the balance of the budget, tax levies and appropriations proposed by the budget committee or county mayor/executive likewise takes effect. Counties not under the 1993 Act that do not set a tax rate and adopt a budget by the applicable statutory deadline may continue operations by the adoption of a continuation budget, which remains in effect until a budget is passed. However, the county legislative body must adopt a budget by October 1 in order to continue receiving state school funds.<sup>16</sup> For more information on County Budget Laws, see [Financial Management under General Laws with Local Option Application](#) under [Financial Structure of County Government](#) of the [Accounting/Budgeting/Finance](#) topic.

The rate applies annually as of January 1, and is assessed to the owner of record and becomes a lien on the property as of this date (excepting leased personal property in the hands of the lessee). In addition to the lien, property taxes are a personal debt of the owner or owners as of January 1 and, when delinquent, may be collected by suit as any other personal debt. In any lawsuit for collection of property taxes, the same penalties and attorney fees apply as set forth in T.C.A. § 67-5-2410 for suits to enforce liens for property taxes. The claim for the debt and the claim for enforcement of the lien may be joined in the same complaint. The owner of record as of January 1 has the sole responsibility for paying the property tax assessed for the year even if the property is sold during the year, as the seller is the record owner.<sup>17</sup> However, the tax lien runs with the land and failure by the seller to pay does not limit enforcement actions against the land to recover any delinquent taxes.

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<sup>1</sup>T.C.A. § 67-5-102(a)(1).

<sup>2</sup>T.C.A. § 67-5-102(a)(3).

<sup>3</sup>T.C.A. §§ 5-5-122, 5-7-106

<sup>4</sup>T.C.A. § 5-9-110.

<sup>5</sup>T.C.A. § 5-9-312. *See also* T.C.A. § 29-20-402.

<sup>6</sup>T.C.A. §§ 5-17-101, 5-17-105, 5-17-106, 5-17-107.

<sup>7</sup>T.C.A. § 5-19-108.

<sup>8</sup>T.C.A. § 10-3-102.

<sup>9</sup>T.C.A. § 49-2-101.

<sup>10</sup>T.C.A. § 4-31-410.

<sup>11</sup>T.C.A. § 4-31-510.

<sup>12</sup>T.C.A. § 4-31-607.

<sup>13</sup>T.C.A. § 4-31-1006.

<sup>14</sup>T.C.A. § 67-5-510. *See also* T.C.A. §§ 5-5-123, 67-1-601.

<sup>15</sup>T.C.A. § 5-12-210.

<sup>16</sup>T.C.A. § 49-3-316(d)(3).

<sup>17</sup>T.C.A. § 67-5-2101; *see also* Op. Tenn. Atty. Gen. 86-39 (February 21, 1986).

## Certified Tax Rate

**Reference Number:** CTAS-1570

Upon a general reappraisal of property as determined by the State Board of Equalization, the county assessor of property shall certify to the governing bodies of the county and of each municipality within the county the total assessed value of taxable property within the jurisdiction of each governing body. The assessor shall also furnish each governing body an estimate of the total assessed value of all new construction and improvements not included on the previous assessment roll and the assessed value of deletions from the previous assessment roll. Exclusive of such new construction, improvements and deletions, each governing body, in the event of a general reappraisal as determined by the state board, shall determine and certify a tax rate which will provide the same ad valorem revenue for that jurisdiction as was levied during the previous year.<sup>1</sup>

For the purpose of calculating the certified rate, the governing body shall use the taxable value appearing on the roll exclusive of taxable value of properties appearing for the first time on the assessment roll. In calculating the certified tax rate, the governing body of the county or municipality may adjust the calculation, according to a method approved by the State Board of Equalization, to reflect extraordinary assessment changes anticipated from appeals to the state or local boards of equalization. The State Board of Equalization shall order recapture of an excessive adjustment in the following year if the certified tax rate is found to have been overstated due to overestimation of the appeals adjustment, and in these cases the jurisdiction may exceed the recapture rate only after public hearing..<sup>2</sup>

The State Board of Equalization is authorized to establish policies providing a procedure or formula for calculating the certified tax rate. Prior to final determination of the certified tax rate by the county legislative body, a proposed certified tax rate, including supporting calculations, must be submitted to the executive secretary of the State Board of Equalization for review. The executive secretary has fifteen days to report on the rate, and after this period passes, the county legislative body must determine the certified tax rate, which may be adjusted in accordance with the executive secretary's report, if one has been provided.<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-5-1701(a)(1) - (3).

<sup>2</sup>T.C.A. § 67-5-1701(a)(4) - (5).

<sup>3</sup>T.C.A. § 67-5-1701(b)(1) - (5); Op. Tenn. Atty. Gen. 83-006 (January 7, 1983).

## Levy in Excess of the Certified Rate

**Reference Number:** CTAS-1571

No tax rate in excess of the certified tax rate may be levied by the county legislative body until a resolution or ordinance has been approved by county legislative body according to the following procedure: (1) the county legislative body must advertise its intent to exceed the certified tax rate in a newspaper of general circulation in the county (See [Sample newspaper advertisement of Notice of Intent to Exceed Certified Tax Rate](#)), (2) the county mayor must, within 30 days after publication, furnish to the State Board of Equalization an affidavit of publication; (3) a public hearing must be held on the issue, and (4) the county legislative body, after the public hearing, may adopt a resolution or ordinance levying a tax rate in excess of the certified tax rate.<sup>1</sup>

If the resolution or ordinance is approved it must be forwarded to the county board of equalization and the State Board of Equalization. The county board or the state board, as appropriate, must notify each taxing authority of any change in the assessment roll which results from action by either board. An increase in the tax rate above that certified or adopted by resolution or ordinance of the county legislative body, which is required solely by a reduction of the assessment roll by the state or county boards, may be adopted without further notice. A levy of tax found to be based on an erroneous calculation may be revised prior to tax billing on certification of a revised calculation by the state board of equalization accepted by act or resolution of the governing body of the affected taxing authority without further notice. If the error is certified after tax billing, the revised rate will take effect as of the next general ad valorem levy by the governing body of the affected taxing authority.<sup>2</sup>

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<sup>1</sup>T.C.A. § 67-5-1702; Op. Tenn. Atty. Gen. U87-43 (April 13, 1987).

<sup>2</sup>T.C.A. § 67-5-1703.

## Special School Districts

**Reference Number:** CTAS-1572

Notwithstanding the provisions of the general law or a private act to the contrary which creates a special school district, upon a general reappraisal of property as determined by the State Board of Equalization, the tax rate as established in any general law or private act must be adjusted to provide the same ad valorem revenue for the special school district as was levied during the previous year prior to the general reappraisal. The county assessor of property must certify to the appropriate county trustee the total assessed value of taxable property within the jurisdiction of the special school district. The assessor must also furnish the county trustee an estimate of the total assessed value of all new construction and improvements not included on the previous assessment roll and the assessed value of deletions from the previous assessment roll.<sup>1</sup>

In the event of a general reappraisal as determined by the State Board of Equalization, the county trustee must determine and certify the adjusted tax rate exclusive of such new construction, improvements and deletions. For the purpose of calculating the adjusted rate, the county trustee must use the taxable value appearing on the roll exclusive of taxable value of properties appearing for the first time on the assessment roll. The procedure or formula for calculating the certified adjusted tax rate must be in accordance with policies as established by the state board of equalization pursuant to T.C.A. § 67-5-1701(b). A levy of tax found to be based on an erroneous calculation may be revised prior to tax billing on certification of a revised calculation by the state board of equalization accepted by act or resolution of the board of education of the special school district without further notice. If the error is certified after tax billing, the revised rate shall take effect as of the next general ad valorem levy for the special school district.<sup>2</sup>

The county trustee must certify the adjusted tax rate to the school board of the special school district within a reasonable time following the general reappraisal, and in addition, must post the adjusted tax rate at each school within the special school district, at the appropriate courthouse, and at one other public building within the appropriate county.<sup>3</sup> If additional revenue is required in a special school district following the general reappraisal and the adjustment to the tax rate, the General Assembly must by general law or private act set the tax rate for the special school district at a level to generate the ad valorem revenue necessary for the special school district. Before the board of education of the special school dis-

tract requests legislation to exceed the certified rate, it shall first publish notice of its intent to exceed the certified rate in the manner required of cities and counties pursuant to 67-5-1702.<sup>4</sup>

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<sup>1</sup>T.C.A. § 67-5-1704(a)(1) - (3).

<sup>2</sup>T.C.A. § 67-5-1704(a)(4) - (6).

<sup>3</sup>T.C.A. § 67-5-1704(b).

<sup>4</sup>T.C.A. § 67-5-1704(c).

## Collection of Property Taxes

**Reference Number:** CTAS-1573

The trustee collects all property taxes levied by the county and the municipalities within the county, unless a municipality collects its own taxes.<sup>1</sup> However, owners of land are presumed to know taxes are due without demand or personal notice,<sup>2</sup> and assessed taxes become a personal debt of the person whose property is assessed.<sup>3</sup> The whole proceeding for collection of taxes, from the assessment to the sale for delinquency, is a proceeding in rem; even if the land were listed or assessed for taxation to the wrong owner or to an unknown owner, the process is not invalidated. All interested persons are made parties to the proceedings by virtue of the seizure of the parcel occurring upon the filing of a complaint for the purpose of enforcement of the first lien provided for in T.C.A. § 67-5-2101. The filing of a complaint for the purpose of enforcement of the first lien provided for in T.C.A. § 67-5-2101, creates a lien lis pendens as to each parcel which is included in the proceeding, during the pendency of the proceeding, affecting all subsequent owners, without the recording of any copy or abstract thereof in the office of the register of deeds.<sup>4</sup>

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<sup>1</sup>T.C.A. § 67-5-1801. See T.C.A. § 67-5-1901 for the trustee's bond and oath.

<sup>2</sup>*M'Carrol's Lessee v. Weeks*, 6 Tenn. (5 Hayw.) 246 (1814).

<sup>3</sup>*White v. Kelly*, 387 S.W.2d 821 (Tenn. 1965).

<sup>4</sup>T.C.A. § 67-5-2103.

## Timetable of Significant Dates and Activities in the Assessment and Collection of Ad Valorem Real Property Taxes\*

**Reference Number:** CTAS-2193

*\*Note: Specific years are included for illustrative purposes and to clearly indicate chronological sequence; the example shows one complete tax cycle, using the 2010 tax year as an example.*

January 1, 2010	Assessor makes assessments as of this date T.C.A. § 67-5-504; assessed taxes become a first lien on property. T.C.A. § 67-5-2101.
Not later than February 1, 2010	Tax assessor should furnish owners and lessees of business personal property with a tangible personal property schedule. T.C.A. §§ 67-5-902, 67-5-903.
Before March 1, 2010	Assessor furnishes schedule to owners of mobile home parks. T.C.A. § 67-5-802. Personal property schedules due in assessor's office. T.C.A. § 67-5-903. Corrections of assessments for 2008 must be requested by the taxpayer or initiated by assessor prior to this date. T.C.A. § 67-5-509. Greenbelt applications due. T.C.A. §§ 67-5-1005 through 67-5-1007

April 1, 2010	Mobile home park forms due in assessor's office. T.C.A. § 67-5-802
May 20, 2010	Assessor must note all assessments on his or her books on or before this date, T.C.A. §§ 67-5-504, 67-5-508; taxpayers must be notified of any change in their assessments by this date. T.C.A. § 67-5-508
June 1, 2010	Assessor turns over books to the county board of equalization, T.C.A. § 67-5-304; county board of equalization commences its session. T.C.A. § 67-1-404.
July 2010	County legislative body sets tax rate. T.C.A. § 67-5-510. Trustee reports on all delinquent taxpayers and double assessments in the county. T.C.A. § 67-5-1903.
1st Monday in October 2010	On or before this date, county tax rolls must be delivered to trustee T.C.A. § 67-5-807; taxes become due and payable. T.C.A. §§ 67-1-701, 67-1-702.
On or before 1st Monday in November 2010	County clerk or the tax assessor prepares an aggregate of real and personal property to forward to the commissioner of revenue and the mayor of each municipality. T.C.A. § 67-5-807.
March 1, 2011	2010 taxes become delinquent. 0.5 percent per month penalty and 1 percent interest begin to accrue. T.C.A. § 67-5-2010.
September 1, 2011	Back assessments and reassessments must be initiated prior to this date. T.C.A. § 67-1-1005.
1st Monday in September 2011	Trustee makes a full and complete financial report of the condition of the trustee's office. T.C.A. § 67-5-1902.
January 1, 2012	Tax collectors must make final settlements and return delinquent tax lists to trustee. T.C.A. § 67-5-2006.
January 1 — 31, 2012	During this period the trustee must cause to be published notice that suits will be filed to enforce tax liens. T.C.A. § 67-5-2401.
January 2 — 31, 2012	The delinquent tax list may be given to newspapers for publication. T.C.A. § 67-5-2002. This must be done at least 20 days prior to turning the tax list over to the tax attorney.
February 2 — April 1, 2012	Tax attorney must during this period file suit for enforcement of tax liens, T.C.A. § 67-5-2405; an additional 10 percent penalty and the additional costs accrue with the filing of such suit. T.C.A. § 67-5-2410.
April 1, 2012	Delinquent municipal real property taxes must be certified to trustee on or before this date. T.C.A. § 67-5-2005.

June 1 — July 1, 2012	Clerks collecting delinquent taxes are required to provide the trustee with a list of tax suits. T.C.A. § 67-5-2403.
April 1, 2022	All 2010 property taxes assessed but not collected by counties are barred and discharged because of the statute of limitations. T.C.A. § 67-5-1806.

## Tax Roll

**Reference Number:** CTAS-1574

The trustee collects the taxes in the amount set out in the tax roll or tax book prepared by the county clerk or assessor and delivered to the trustee on or before the first Monday in October of each year. The assessor identifies all taxable property in the assessment records so that tax rolls can be provided for each taxing entity within the county. The county legislative body may assign the duty of making the tax roll or book to the county clerk or the assessor.<sup>1</sup> There are statutory requirements for the tax roll or tax book.

1. It is either a bound or loose-leaf book or unit tax ledger cards, one for each parcel of property;
2. It is arranged by districts or subdivision of districts;
3. It is ruled to show names of owners in alphabetical order or in the order in which the parcels of property are identified by a parcel number;
4. It shows the number of lots and blocks;
5. It states the number of acres;
6. It contains a description of the property; and
7. It states the value of each lot, tract, or parcel.

A "description" of the property includes the name of the owner, if known, a description of each lot, tract, or parcel, and its value. Under the appropriate headings, the value of personal property is also listed. From the valuation placed on real and personal property, taxes are calculated and placed in an appropriate column according to the rate set by the county legislative body (or other appropriate authority). Dollar marks should be placed to clearly delineate the dollar amounts.<sup>2</sup> The property located within municipalities should be separated from other property of the county.<sup>3</sup>

The entries contained in the tax roll may be altered to reflect changes in the status of the property: the acquisition of the property by an entity which is exempt from taxation,<sup>4</sup> revisions due to damaged or incomplete improvements,<sup>5</sup> the roll back of taxes on land previously classified as agricultural, forest, or open space lands,<sup>6</sup> or actions of the State Board of Equalization.<sup>7</sup> The assessor must notify owners of any change in the classification or assessed valuation, usually by mail.<sup>8</sup> Decisions of the State Board of Equalization or the assessment appeals commission are evidenced by a certificate, a copy of which is sent to the owner, chief executive officer, trustee, and assessor.<sup>9</sup>

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<sup>1</sup>T.C.A. § 67-5-807.

<sup>2</sup>*Hunter Glover Co. v. Harvey Steel Prods. Corp.*, 3 F.2d 634 (W.D. Tenn. 1924).

<sup>3</sup>T.C.A. § 67-5-807. Note T.C.A. § 67-5-808 which refers to the tax rolls for metropolitan governments.

<sup>4</sup>T.C.A. § 67-5-201.

<sup>5</sup>T.C.A. § 67-5-603.

<sup>6</sup>T.C.A. § 67-5-1008.

<sup>7</sup>T.C.A. § 67-5-1510.

<sup>8</sup>T.C.A. § 67-5-508.

<sup>9</sup>T.C.A. § 67-5-1512.

## Tax Due Date

**Reference Number:** CTAS-1575

State, county and municipal property taxes are payable on the first Monday in October in each year, except that certain municipalities may have a different date fixed by law when they collect their own property taxes. However, all municipal taxes collectible by the county trustee are due and delinquent at the same time as county taxes. T.C.A. § 67-1-701. The county legislative body, by resolution, may allow the trustee to collect taxes after the tax rates are finally set, the tax rolls are received by the trustee, and the tax receipts have been prepared, but not earlier than July 11. T.C.A. § 67-1-702(b). The county trustee may (but is not required to) adopt a policy of not accepting current county real property taxes due when delinquent property taxes are owing, except when the obligor is in bankruptcy or a dispute exists over responsibility for these taxes. T.C.A. § 67-5-1801(b). A person in the armed forces of the United States, or called into active military service of the United States from a Reserve or National Guard unit has an 180-day extension on the time that property taxes are due. T.C.A. § 67-5-2011.

## Payment of Taxes

**Reference Number:** CTAS-1576

The county trustee acts as collector of all county property taxes and of all municipal property taxes when the municipality does not collect its own.<sup>1</sup> These taxes are paid to the trustee at the trustee's office at the county seat. Additionally, the trustee has authority to designate other collection sites, including a bank.<sup>2</sup> Procedures for such a designation require the trustee to establish an account with the bank for the deposit of property taxes. In order to pay at the bank, the taxpayer must show evidence of the amount owed. The bank may not accept delinquent taxes and must provide a deposit form to the taxpayer which states that the bank is acting as agent for the trustee. The bank then furnishes a daily accounting to the trustee, who must check amount deposited and owed before issuing a tax receipt.<sup>3</sup> Tax payments may also be mailed to the trustee.<sup>4</sup>

Tax Statements. The trustee's use of tax bills or mailed statements indicating the amount of currently payable taxes is not required or even specifically authorized, except in counties with consolidated forms of government.<sup>5</sup> Owners of land are presumed to know taxes are due without demand or personal notice.<sup>6</sup> Nevertheless, tax statements are almost uniformly used as a very effective way to remind taxpayers of their obligations to pay property taxes. This widespread use of mailed tax statements has been recognized in legislation dealing with notices of delinquent taxes, which are required to be part of mailed tax bills, and also with time limits for appealing to the State Board of Equalization.<sup>7</sup> A county cannot include other charges on the property tax bill unless there is specific statutory authority, as is the case, for example, with solid waste special assessments.<sup>8</sup>

Currency and Partial Payments. The trustee is required to accept constitutional and lawful U.S. currency or warrants on the state treasury legally outstanding in the hands of a person to whom they were issued and unpaid, U.S. coins, U.S. legal tender notes, and federal reserve notes.<sup>9</sup> Prior to any county trustee accepting partial payment of property taxes, the county trustee must file a plan with the Comptroller of the Treasury. The plan must indicate that the county trustee's office has the accounting system technology to implement a program for partial payment of property taxes. The plan must also indicate whether such a program will be implemented within the existing operating resources of the office or indicate prior approval of the county legislative body if additional operating resources are needed.<sup>10</sup> If a trustee does accept a partial payment of taxes, this action does not release the tax lien, except to the extent of the partial payment; the trustee has the duty to accept the balance as if no partial payment has been made.<sup>11</sup>

Checks. The trustee is not authorized to "hold" a check for a taxpayer until sufficient funds are in the account upon which it is drawn. All public funds received by the trustee are to be deposited into that official's bank account within three days after receipt.<sup>12</sup> Trustees accepting checks may encounter problems with nonpayment. If these checks are not paid, the taxpayer is still liable for the tax as well as all legal penalties and interest.<sup>13</sup> A "bad" check may be pursued under the civil provisions<sup>14</sup> or the criminal provisions<sup>15</sup> of the Code but not under both provisions. An official who receives a "bad" check may contact the office of the district attorney. If a check is not duly paid, most trustees void the receipt and proceed as if no check were tendered.

Credit Cards. County officials or entities may receive payment by credit card or debit card for any public taxes collected. Any municipal or county entity or officer collecting payment by credit card or debit card shall set and collect a processing fee in an amount that is equal to the amount paid the third party processor for processing the payment. Such processing fee may be waived by approval of the governing body. If payment is not honored by the credit card company or the entity upon which a debit card payment is drawn, the county entity or official may collect a service charge in the same amount charged for the collection of a check drawn on an account with insufficient funds.<sup>16</sup>

Date of Receipt. Any tax payment which is transmitted by U.S. mail to the trustee is deemed filed and received on the date on the postmark, or if the postmark is illegible, erroneous, or omitted, on the date the payment was mailed, as established by the sender by competent evidence. Also, if the payment is postmarked no more than 24 hours subsequent to the last date for timely payment of taxes, it shall be accepted as if timely filed.<sup>17</sup>

Part Ownership. Whenever a property owner has an undivided interest in any property or a specific portion of any property assessed to another, that part owner may pay the taxes on his or her portion and receive a receipt for payment in full for that share of the taxes. Prior to accepting such a payment, the trustee must be satisfied that the value placed on each portion is a correct relative valuation, either by agreement of the owners or by a certificate from the assessor that the assessor has fixed the valuation of that portion.<sup>18</sup> Then, any necessary tax sale would involve a sale of the delinquent tenant in common's undivided interest. A life tenant in possession is deemed the owner and is liable to pay the assessed taxes which accrue during that tenancy; taxes are not prorated between a life tenant and the remainder interest.<sup>19</sup>

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<sup>1</sup>T.C.A. § 67-5-1801(a); § 67-1-702.

<sup>2</sup>T.C.A. § 67-5-1801(b); Op. Tenn. Atty. Gen. 83-392 (November 18, 1983).

<sup>3</sup>T.C.A. § 67-5-1801(c).

<sup>4</sup>T.C.A. § 67-1-107.

<sup>5</sup>T.C.A. § 7-3-203.

<sup>6</sup>*M'Carrol's Lessee v. Weeks*, 6 Tenn. (5 Hayw.) 246 (1814).

<sup>7</sup>T.C.A. §§ 67-5-1412; 67-5-2402.

<sup>8</sup>T.C.A. § 67-5-103.

<sup>9</sup>T.C.A. § 67-1-704(a).

<sup>10</sup>T.C.A. § 67-5-1801(e)(2). See also T.C.A. § 67-5-1808.

<sup>11</sup>*White v. Kelly*, 387 S.W.2d 821 (Tenn. 1965); *Salts v. Salts*, 190 S.W.2d 188 (Tenn. 1945).

<sup>12</sup>T.C.A. § 5-8-207.

<sup>13</sup>T.C.A. §§ 9-1-108, 9-1-109.

<sup>14</sup>T.C.A. § 47-29-101.

<sup>15</sup>T.C.A. § 39-14-121.

<sup>16</sup>T.C.A. § 9-1-108(c); Op. Tenn. Atty. Gen. 01-015 (January 31, 2001) (processing fees for use of credit card).

<sup>17</sup>T.C.A. § 67-1-107.

<sup>18</sup>T.C.A. § 67-5-1805.

<sup>19</sup>*Sherrill v. Board of Equalization*, 452 S.W.2d 857 (Tenn. 1970).

## Trustee's Commission

Reference Number: CTAS-1577

The commission of the county trustee for collecting property taxes is as follows:<sup>1</sup>

6 percent on all sums up to \$10,000;

4 percent on all sums above \$10,000 and up to \$20,000; and

2 percent on all sums above \$20,000.

If the trustee collects taxes for a municipality, the county legislative body may enter into an intergovernmental agreement with such municipality for a trustee's commission different from the one set out above.<sup>2</sup>The trustee receives a 1 percent commission on ad valorem taxes collected for watershed districts.<sup>3</sup>

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<sup>1</sup>T.C.A. § 8-11-110. Refer to T.C.A. § 67-5-1905 which notes that the trustee is entitled to a credit for his or her commissions and for all legal disbursements on settlement of his or her accounts with the county mayor.

<sup>2</sup>T.C.A. § 8-11-110(h).

<sup>3</sup>T.C.A. § 69-6-145.

## Receipts

**Reference Number:** CTAS-1578

The trustees must provide to each taxpayer a receipt printed or written in ink or indelible pencil, for all the taxes paid by the taxpayer. If a portion of the tax notice is to be retained by the taxpayer, in lieu of the trustee mailing a separate receipt of the payment to the taxpayer, the tax notice shall (1) clearly state such fact; and (2) inform the taxpayer that if the taxpayer desires the trustee to mail a separate receipt of the payment to the taxpayer, the taxpayer must include a self-addressed, stamped envelope when the taxes are paid. If the trustee provides a separate receipt of all taxes paid by the taxpayer, such receipt shall be numbered and dated.<sup>1</sup>The receipt is required to show separately the amounts of state and county tax levies; however, if receipts are mechanically produced, these amounts may be omitted (unless the taxpayer specifically requests that the information be placed on the receipt). The county legislative body is required to furnish a sufficient number of tax receipts, in duplicate book form, numbered consecutively from one, and shall have the year for which taxes are due printed on the receipt in large figures, not less than one inch deep. The trustee must account for each blank receipt in the final settlement account. When required, the trustee is to provide the county legislative body with duplicate receipts which are to be filed with the county clerk for reference.<sup>2</sup>

The trustee is prohibited from charging for any statement, certificate, or receipt of taxes, except for the fees and costs authorized for the collection of delinquent taxes.<sup>3</sup>Also, it is a misdemeanor for the trustee to collect higher tax amounts than is directed by law.<sup>4</sup>

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<sup>1</sup>T.C.A. §§ 67-1-704(b) and 67-1-705.

<sup>2</sup>T.C.A. § 67-1-704(c) and (d).

<sup>3</sup>T.C.A. § 67-1-705.

<sup>4</sup>T.C.A. § 67-1-706.

## Early Payment and Discounts for Early Payment

**Reference Number:** CTAS-1579

Upon adoption of a resolution by the county legislative body, the county trustee may accept property taxes at any time after July 10 (prior to the first Monday in October established by T.C.A. § 67-1-701, on which date trustees are required to accept property tax payments) and after the tax rates are finally set, the trustee's tax rolls are received and the trustee's receipts are prepared.<sup>1</sup>County trustees may begin accepting tax relief applications on the same date on which the trustee accepts property tax payments.<sup>2</sup>

The governing body of any municipality or county may provide, by appropriate ordinance or resolution, a discount of 2 percent of the ad valorem real property tax currently due, if the taxes are paid within 30 days of the due date established pursuant to T.C.A. § 67-1-701(a) (i.e. between October 1 and October 31) and/or a discount of 1 percent if paid after more than 30 but less than 60 days after the due date established pursuant to T.C.A. § 67-1-701(a) (between November 1 and November 30). Taxpayers receiving tax relief are also eligible to receive early payment discounts.<sup>3</sup>

If, pursuant to T.C.A. § 67-1-702, the county legislative body has given the county trustee the authority to collect taxes at any time after July 10, prior to the first Monday in October, then the county legislative body may provide by resolution for a discount of 3 percent for ad valorem real property taxes paid by the end of July; 2 percent if paid by the end of August; and 1 percent if paid by the end of September. The trustee may accept early payments, in the trustee's discretion, based upon the trustee's capacity to effectively account for the payments. The governing body may rescind the adoption of discounts at any time.<sup>4</sup>

Mortgagees, mortgage servicers, and escrow account holders are not required to make early tax payments; nor are they required to notify any mortgagor or other party with respect to the availability of any such discounts.<sup>5</sup>

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<sup>1</sup>T.C.A. § 67-1-702.

<sup>2</sup>T.C.A. § 67-1-702.

<sup>3</sup>T.C.A. § 67-5-1804(a).

<sup>4</sup>T.C.A. § 67-5-1804(c).

<sup>5</sup>T.C.A. § 67-5-1804(d).

## Delinquency Date

**Reference Number:** CTAS-1580

Property taxes collected by the trustee are delinquent on the first day of March following the tax due date. For instance, 2010 taxes are due and payable on the first Monday in October of 2010 and delinquent on March 1, 2011.<sup>1</sup> Special provisions may apply to persons in military service under the Soldier's and Sailor's Civil Relief Act as well as under state law.<sup>2</sup> Special interest rates may also apply when the Federal Deposit Insurance Corporation owes the property taxes under 12 U.S.C.A. 1825(b)(3). The trustee is required to accept delinquent taxes, and at the same time collect penalties and interest, until the time the taxes are turned over to the delinquent tax attorney for collection.<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-5-2010; T.C.A. § 67-5-1512(b).

<sup>2</sup>50 U.S.C.A. 560; T.C.A. § 67-5-2011 (See 2004 Public Chapter 800. T.C.A. § 67-5-2011(a) was amended to extend the deadline for the payment of property taxes by a person in the armed forces of the United States, or called into active military service of the United States from a reserve or national guard unit from 90 days to 180 days. T.C.A. § 67-5-2011(b) and (c) were amended to authorize military personnel to provide notice of delay in paying property taxes due to deployment to their county trustee instead of the Commissioner of Revenue.)

<sup>3</sup>T.C.A. § 67-5-2008.

## Penalty and Interest

**Reference Number:** CTAS-1581

To the amount of tax due and payable, interest of one and one-half percent (1.5%) shall be added on March 1, following the tax due date and on the first day of each succeeding month.<sup>1</sup> Specific statutory provisions may affect imposition of penalty and interest for those in the military and for property transactions involving the Federal Deposit Insurance Corporation.

There is no statutory authority which authorizes the trustee to waive accrued penalty and interest.<sup>2</sup> Courts, using equitable powers, may relieve a taxpayer of interest and penalty under certain conditions; however, a taxpayer's inability to pay because of financial misfortune will not excuse the imposition of penalty and interest on the unpaid taxes.<sup>3</sup>

Municipal property taxes become delinquent on the delinquency date established by charter or existing law. As is the case with county taxes, municipal taxes not paid on or before the established delinquency

date accrue interest of 1.5 percent, beginning on the first day of March following the tax due date and continuing on the first day of each succeeding month.<sup>4</sup>

Reappraisal and Collection of Penalty and Interest. If a county is undergoing a countywide reappraisal and the values established by the reappraisal program are not turned over to the county by October 1 of the tax year, no penalty and interest may be collected until five months after the date the tax roll is completed. The assessor is required to provide the trustee with written notification which specifically states the date that the tax roll was delivered to the trustee so that the five month period can be determined.<sup>5</sup>

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<sup>1</sup>T.C.A. § 67-5-2010(a)(1). Special provisions may apply to Shelby and Giles counties.

<sup>2</sup>See T.C.A. §§ 67-5-2801 and 67-5-2802. See also *State v. Delinquent Taxpayers*, 526 S.W.2d 453 (Tenn. 1975) (There is no statutory predicate for a suit for the forgiveness of taxes, penalty, or interest, and no case law in this jurisdiction supports such a procedure.).

<sup>3</sup>*Daniel v. Metropolitan Government*, 696 S.W.2d 8 (Tenn. 1985); *State, for Use of City of Chattanooga v. Bayless*, 209 S.W.2d 504 (Tenn.Ct.App. 1948) (Chancellor has power to give equitable relief against enforcement of tax penalties under meritorious conditions.).

<sup>4</sup>T.C.A. § 67-5-2010(b).

<sup>5</sup>T.C.A. § 67-5-1608.

## Settlement of Taxes

**Reference Number:** CTAS-1582

Monthly Report. On or before the tenth day in each month the trustee must report to and make settlement for all taxes collected during the preceding month with the county mayor and with the financial agent or treasurer of each municipality and pay over to the same the amounts shown by the respective settlements to be due each.<sup>1</sup>

Annual Financial Report. The trustee must make a full and complete financial report on or before the first Monday in September, for the year ended June 30, of the condition of the trustee's office. This annual financial report is filed with the county mayor and with the county clerk who provides a copy of the report to each member of the county legislative body on or before the next meeting of the county legislative body. This report is same as required pursuant to T.C.A. § 5-8-505.<sup>2</sup> It is the duty of the county mayor to submit a copy of this settlement, showing all debits and credits, to the county legislative body at the following term for inspection, which must be entered upon the minutes of the county legislative body.<sup>3</sup>

The trustee is not allowed any commission when the trustee fails to make the required filing, and in the event commissions are allowed when the filing is not made, any citizen and taxpayer of the county may bring suit against the trustee and the trustee's bondspersons and recover for the use of the state and county all commissions illegally paid or allowed.<sup>4</sup> Upon settlement of the trustee's accounts with the county mayor, the trustee is entitled to receive credits for the trustee's commissions and for all legal disbursements.<sup>5</sup>

Report of Delinquent Taxes and Double Assessments. Annually, at the July meeting of the county legislative body, the trustee is required to present a report to the county legislative body of all delinquent taxpayers and double assessments in the county. This report must be verified by affidavit of the trustee and filed with the county clerk and must be spread upon the minutes of the county legislative body and municipality, respectively.<sup>6</sup> The county legislative body is required to examine the report and allow the trustee a credit for the taxes so reported insolvent or delinquent and for double assessments, provided the county legislative body is satisfied that the taxes are uncollectible because of reasons other than the failure of the trustee to collect them.<sup>7</sup> A list of the allowances must be made out and certified by the county clerk and transmitted to the proper authorities of the state, county and municipality, respectively.<sup>8</sup> The county legislative body may not allow the trustee a credit for any item on the report, even though duly sworn to by the trustee, if, after examining each credit, the county legislative body has knowledge or information showing the item to be inaccurate.<sup>9</sup> All of the items for which the county legislative body does not allow a credit are charged against the trustee or his or her surety.<sup>10</sup>

Insolvent Property. Insolvent property is that subject to tax liens, special assessments, improvement district liens, and other similar liens securing obligations in excess of the amount for which the property can be sold to a private purchaser at a tax sale. Formerly, Tennessee statutes contained provisions by which insolvent property could be compromised and settled, but these have been repealed.

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<sup>1</sup>T.C.A. § 67-5-1902(a).

<sup>2</sup>T.C.A. § 67-5-1902(b)(1).

<sup>3</sup>T.C.A. § 67-5-1902(b)(3).

<sup>4</sup>T.C.A. § 67-5-1902(b)(2).

<sup>5</sup>T.C.A. § 67-5-1905.

<sup>6</sup>T.C.A. § 67-5-1903(a).

<sup>7</sup>T.C.A. § 67-5-1903(b)(1).

<sup>8</sup>T.C.A. § 67-5-1903(c).

<sup>9</sup>T.C.A. § 67-5-1903(b)(2).

<sup>10</sup>T.C.A. § 67-5-1903(d).

## Refunds of Tax Payments

**Reference Number:** CTAS-1583

Taxes collected by the trustee are held in trust for the public, and therefore any disbursement, including refunds of overpaid of taxes, must be made in strict compliance with statutory authority. The trustee is authorized to make refunds of tax overpayments only upon receipt of certification from the assessor that the original assessment was in error. This refund must be made within 60 days after the receipt of certification from the assessor, and can be made even though the taxes were not paid under protest.<sup>1</sup> If the trustee receives the certification prior to the receipt of the tax payment, the taxes must be collected only on the corrected assessment.<sup>2</sup>

Tax payments, even overpayments, which are voluntarily made cannot be recovered by the taxpayer. A payment is voluntary unless made pursuant to an immediate and urgent necessity for making the payment. Payment made due to mistake of law or its application is a voluntary payment and cannot be recovered.<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-5-509.

<sup>2</sup>T.C.A. § 67-5-509. For prior law, see Op. Tenn. Atty. Gen. 87-90 (May 14, 1987) and Op. Tenn. Atty. Gen. 86-121 (July 15, 1986).

<sup>3</sup>*Hertz Corp. v. County of Shelby*, 667 S.W.2d 66 (Tenn. 1984).

## Collection of Delinquent Real Property Taxes

**Reference Number:** CTAS-1584

If property taxes have not been paid by the delinquency date, there is a fairly complex procedure by which the county can attempt collection, beginning with the compilation of the delinquent tax list and culminating years later in the transfer of the property to a new owner after the completion of a tax sale and the redemption period. The trustee and the court clerk both play especially important roles in this process.

## Delinquent Tax Deputies and Delinquent Tax List

**Reference Number:** CTAS-1585

The trustee is authorized to appoint such deputies as may be necessary to collect delinquent taxes after these taxes become delinquent.<sup>1</sup> These deputies may collect delinquent real property taxes as well as delinquent personal property taxes. These deputies take the same oath as the trustee.<sup>2</sup> The official bond

of the trustee is held liable for the acts of these deputies, and also for the actions of any constable or deputy sheriff who may also be furnished with a list of delinquent taxes by the trustee. However, the trustee may require these officials to post a bond securing the faithful performance of their duties prior to turning over the delinquent tax list to them.<sup>3</sup>

The trustee is required to prepare and provide a list of delinquent taxpayers to the deputies appointed to collect delinquent taxes. This list must contain a description of the property of each taxpayer and the amount of taxes due from each. In cases of delinquent real property taxes, the list must identify the current owner of the property and state the owner's last known mailing address, if the owner can be identified; in those cases, there is no need to identify any former owners of the real property. However, the identification of the current owner on the delinquent tax list does not alter the liability of the owner of the property as of January 1 of the tax year. The trustee is not entitled to compensation for the preparation of the delinquent tax list.<sup>4</sup>

Deputy trustees who have not received copies of the delinquent tax list have no authority to collect the delinquent taxes.<sup>5</sup> Deputy trustees who do receive copies are to collect delinquent taxes. Deputy trustees who have delinquent lists for collection must make partial settlement with the trustee whenever required by the trustee, and must, on or before January 1 following the receipt of the delinquent tax lists, make final settlement with the trustee and return the lists showing in the return what disposition was made of each item of taxes therein set out, and the reason for not collecting items remaining unpaid, and sign the return in the deputy trustee's official capacity.<sup>6</sup> The officer making the return shall receive no additional compensation for making it.<sup>7</sup>

On January 1, the deputy trustee must make a final settlement of the taxes in the deputy trustee's hands for collection, and in the settlement will be charged with the aggregate amount of taxes in the deputy trustee's hands for collection, and will be credited with the amount collected and accounted for, with errors, double and illegal assessments, and with the insolvent or other taxes as the officer shows could not have been collected by law after diligent effort on such officer's part.<sup>8</sup> It is the duty of the collecting officers to return the delinquent lists to the county trustee, on or before January 1 of each year, and the officer failing to make a return on or before January 1 will be presumed to have collected all the taxes on the lists delivered to the officer, and will account for and pay the same to the trustee.<sup>9</sup> Any balance found due on the settlements may be recovered from the deputy trustee and the person's sureties on the person's bond, by suit or motion, on five days' notice, in any court of record, instituted by the county trustee or any agent or district attorney general of the state.<sup>10</sup>

The officer making collections receives no additional fees for making delinquent collections. The only compensation consists of salaries paid either to deputies in accordance with T.C.A. Title 8, Chapter 20, or to trustees in accordance with T.C.A. §§ 8-24-102, 8-24-106, and 8-24-107. Postage and other office expenses incurred by the trustee or the trustee's deputies incidental to the collection of delinquent taxes is paid from the fees of the trustee. In the case of a levy or garnishment proceeding, officers receive, in addition to the above mentioned compensation, the fees allowed by law in such cases. The fees are taxed as a part of the costs of collection and are paid by the delinquent tax payer. The county is not liable for costs where no collection is made by the officer.<sup>11</sup>

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<sup>1</sup>T.C.A. § 67-5-2001(a)(1).

<sup>2</sup>T.C.A. §§ 8-18-112; 67-5-1901.

<sup>3</sup>T.C.A. § 67-5-2001(b).

<sup>4</sup>T.C.A. § 67-5-2001(a)(1) - (4).

<sup>5</sup>*Shipp v. Rarick*, 67 S.W.2d 145 (Tenn. 1934).

<sup>6</sup>T.C.A. § 67-5-2006(a)(1).

<sup>7</sup>T.C.A. § 67-5-2006(a)(2).

<sup>8</sup>T.C.A. § 67-5-2006(b).

<sup>9</sup>T.C.A. § 67-5-2006(c).

<sup>10</sup>T.C.A. § 67-5-2006(d).

<sup>11</sup>T.C.A. § 67-5-2007.

## Publication of the Delinquent Tax List

**Reference Number:** CTAS-1586

The county trustee has the discretion to publish annually the delinquent tax lists in one or more county newspapers of general circulation, listing the name of the delinquent taxpayer and the amount of the taxpayer's delinquency on each item of taxable property. The costs for advertising are borne by the county but may not exceed the usual and customary legal advertising rate.<sup>1</sup> Trustees who publish delinquent tax lists must give the lists to newspapers at least 20 days before turning the lists over to the delinquent tax attorney. Failure of any taxpayer's name to appear on a delinquent tax list publication or incorrect information is not a defense to any suit for tax collection.<sup>2</sup> The publication of the delinquent tax list is a valuable aid to collection of delinquent taxes.

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<sup>1</sup>T.C.A. § 67-5-2002(a).

<sup>2</sup>T.C.A. § 67-5-2002(b).

## Delinquent Tax Attorney

**Reference Number:** CTAS-1587

The delinquent tax attorney is chosen by the county trustee with the approval of the county mayor.<sup>1</sup> Due to potential conflict, the county trustee may not serve as county delinquent tax attorney, as the trustee selects the delinquent tax attorney, sets his or her compensation, and assists in carrying out his or her job.<sup>2</sup> However, it is not a conflict of interest for the same attorney to hold the positions of county attorney, delinquent tax attorney, and special master.<sup>3</sup> Only one attorney is appointed annually to collect the delinquent taxes shown on the delinquent tax lists prepared for that year, regardless of whether the county has two register's offices.<sup>4</sup>

The delinquent tax attorney is generally not a holder of an office; however, some counties have private acts which create an "office" of county attorney/delinquent tax attorney. The relationship between the delinquent tax attorney and the county is that of an attorney/client relationship.<sup>5</sup>

In most counties, the compensation for the delinquent tax attorney must be determined in advance through negotiations between the trustee and the attorney, subject to the approval of the county legislative body. The amount of compensation cannot exceed 10 percent of all delinquent land taxes collected by the attorney but may be less than 10 percent. In those instances in which a lower compensation is negotiated, the 10 percent penalty is still imposed with the excess distributed to the county general fund.<sup>6</sup>

In a few counties a 10 percent penalty is added to the taxes upon the filing of the suit to compensate the delinquent tax attorney and there is no negotiation about compensation.<sup>7</sup> The 10 percent penalty is computed on the base amount of delinquent taxes, not including accrued interest and penalties.<sup>8</sup> It is not improper for a county to collect a penalty for expenses of suit under T.C.A. § 67-5-2410 for a period of about a month when the county does not employ a delinquent tax attorney.<sup>9</sup> The delinquent tax attorney is not entitled to compensation until the tax suits for the year have been filed.<sup>10</sup>

If the trustee and county mayor fail to employ a delinquent tax attorney to timely initiate the delinquent tax lawsuit, the district attorney general has the duty to either employ an attorney or maintain an action for a writ of mandamus to compel the trustee and county mayor to employ an attorney to institute the lawsuit. If the delinquent tax attorney fails to prosecute the collection of delinquent taxes within five years of the filing of the suit, the trustee or county mayor may move the court to remove the attorney, unless an explanation for the delay is given. Thus, the chancery court only possesses jurisdiction to remove a delinquent tax attorney on motion of either the county mayor and trustee or the district attorney general.<sup>11</sup> The removal terminates the attorney's lien for compensation.<sup>12</sup>

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<sup>1</sup>T.C.A. § 67-5-2404.

<sup>2</sup>Op. Tenn. Atty. Gen. 82-68 (March 11, 1982).

<sup>3</sup>Op. Tenn. Atty. Gen. U87-124 (December 3, 1987).

<sup>4</sup>Op. Tenn. Atty. Gen. 88-100 (May 19, 1988).

<sup>5</sup>*State v. Brown*, 6 S.W.2d 560, 561 (Tenn. 1928).

<sup>6</sup>T.C.A. §§ 67-5-2404, 67-5-2410. Op. Tenn. Atty. Gen. 07-34 (March 23, 2007) (attorney's fees for collecting delinquent taxes).

<sup>7</sup>T.C.A. § 67-5-2410. See also *Southern Ry. v. Stair*, 801 F. Supp. 37 (W.D. Tenn. 1992) (finding that railroad was subject to tax penalties, but not liable for attorney's fees).

<sup>8</sup>T.C.A. § 67-5-2410.

<sup>9</sup>Op. Tenn. Atty. Gen. U90-53 (March 16, 1990).

<sup>10</sup>*State ex. rel. v. Allen*, 145 S.W.2d 769, 770 (Tenn. 1940).

<sup>11</sup>Op. Tenn. Atty. Gen. U89-124 (November 1, 1989).

<sup>12</sup>T.C.A. § 67-5-2406.

## Tax Lien

**Reference Number:** CTAS-1588

To aid in the collection of property taxes, there exists a lien on the property to secure payment of the tax. The lien for taxes becomes a first lien on the property as of January 1 of the tax year, and takes priority over any pre-existing liens on the property;<sup>1</sup> the tax lien is superior to mortgage liens, regardless of whether the taxes accrue before or after the execution of the mortgage. This first lien is, however, superceded by prefiled federal tax liens.<sup>2</sup> There is no lien against leased personal property assessed to a lessee.<sup>3</sup>

While real estate contracts may alter liability between the parties to the contract, the owner as of January 1 is responsible for payment of the tax for the entire year.<sup>4</sup> The taxes are a lien on the fee in the property, and not merely upon the interest of the person to whom the property is or ought to be assessed, and includes any and all other interests in the property, whether in reversion or remainder, or of lienors, or interests of any nature whatsoever. Taxes are a lien on the land even if the owner is unknown or the land has been assessed in a wrong name. However, a lien for taxes which are assessed against a leasehold interest in real property, or against any improvements on real property where the owner is exempt from taxation, extends only to the leasehold interest.<sup>5</sup>

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<sup>1</sup>T.C.A. §§ 67-5-2101, 67-5-2102.

<sup>2</sup>*United States v. Dyna-Tex, Inc.*, 372 F. Supp. 278, 280 (Tenn. 1972).

<sup>3</sup>T.C.A. § 67-5-2102.

<sup>4</sup>Op. Tenn. Atty. Gen. 86-39 (February 21, 1986).

<sup>5</sup>T.C.A. § 67-5-2102; See also 23 *Tenn. Juris.* "Taxation" § 44 at page 69 (1985).

## Notice Requirements

**Reference Number:** CTAS-1589

The trustee and the court clerk have several important notification responsibilities regarding delinquent taxes; the validity of the subsequent proceedings to sell property to satisfy the lien for taxes often depends upon strict compliance with statutory requirements. The trustee is not required to publish a delinquent tax list, but may do so.<sup>1</sup>

Notice of Delinquent Taxes on Current Bill. The trustee must send with the current tax bill for any taxpayer having delinquent taxes as of June 1 of each year a notice with the following or equivalent language:<sup>2</sup>

**IN ADDITION TO THIS AMOUNT, YOU OWE BACK TAXES. CONTACT THIS OFFICE IMMEDIATELY OR YOUR PROPERTY MAY BE SOLD.**

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County Trustee

The property owners to whom this notice is sent is obtained from the delinquent taxpayers list in the trustee's office, and from the list of property owners whose property is subject to a lawsuit to enforce the tax lien which is required to be provided to the trustee by the appropriate court clerk between June 1 and July 1 of each year.<sup>3</sup>

Publication of Notice of Intent to File Suit. The trustee must also publish the following notice before the lawsuit is filed:

*You are advised that after February 1, additional penalties and costs will be imposed in consequence of suits to be filed for enforcement of the lien for property taxes for prior tax years; until the filing of such suits, taxes may be paid in my office.*

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County Trustee

This notice must appear in one or more county newspapers, at least once a week for two consecutive weeks in January. The county pays the publication costs. If there is no newspaper published in the county, this notice must be posted on the courthouse door.<sup>4</sup> It is advisable for the county trustee to also post this notice at other suitable locations both within the courthouse and at other public places.

Notice of Nonpossessory Interest. Under previous law<sup>5</sup> the owner of a nonpossessory interest in real property was required to file a statement of that interest annually with the assessor, or waive any right to notice of a delinquent tax suit or sale. In 1996 the General Assembly deleted that requirement.<sup>6</sup> Consequently, the trustee no longer has the duty to publish an annual notice regarding this former provision. The new law specifies that the delinquent tax attorney is to make a reasonable search for those owners and give them notice of the proceedings, receiving a reasonable fee set by the court for this service.<sup>7</sup>

Notice to Surface Owners of Sale of Mineral Interest. The owner of a surface interest in property overlying a mineral interest may record that interest in the office of the county register of deeds where the land is located. If the mineral interest is sold in a delinquent tax sale, the court clerk must send, by certified return receipt mail, a notice of these proceedings to any registered owner, who then has certain rights to purchase the mineral interest.<sup>8</sup>

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<sup>1</sup>T.C.A. § 67-5-2002.

<sup>2</sup>T.C.A. § 67-5-2402.

<sup>3</sup>T.C.A. §§ 67-5-2402, 67-5-2403.

<sup>4</sup>T.C.A. § 67-5-2401.

<sup>5</sup>T.C.A. § 67-5-2502.

<sup>6</sup>1996 Public Chapter 787.

<sup>7</sup>T.C.A. § 67-5-2502(c).

<sup>8</sup>T.C.A. § 67-5-2502(e).

## Delivery of Delinquent Tax List to Attorney and Acceptance of Delinquent Taxes

**Reference Number:** CTAS-1590

After the trustee has received the delinquent tax list from the delinquent tax deputies, has made a settlement with them,<sup>1</sup> and has published notice of intent to file the tax suit, the trustee must deliver to the delinquent tax attorney a list of all unpaid real property taxes. The list must be delivered between February 1 and April 1.<sup>2</sup> The trustee may accept payment for delinquent taxes until that time, and must keep a record of all such payments.<sup>3</sup>

After suit is filed, the court clerk may accept payment for delinquent taxes along with interest, penalty, and court costs. Payments made to the clerk must be received and paid out in the same manner as other public revenue. The clerk must receive the same compensation for receipting and disbursing taxes as is

allowed for receipt and disbursement of other public revenues and must make settlement when requested by the county mayor or county trustee.<sup>4</sup>

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<sup>1</sup>T.C.A. § 67-5-2006.

<sup>2</sup>T.C.A. § 67-5-2404.

<sup>3</sup>T.C.A. §§ 67-5-2008, 67-5-2009.

<sup>4</sup>T.C.A. § 67-5-2421.

## Municipal Taxes Collected as Part of Tax Suit

**Reference Number:** CTAS-1591

If a municipality wishes to have its taxes collected by the county delinquent tax attorney, it must furnish the trustee or delinquent tax attorney with a certified list of delinquent municipal taxes.<sup>1</sup> The municipality may pursue collection of delinquent property taxes even if county taxes on the property have been timely paid.<sup>2</sup> Note that the municipality is allowed to pursue collection of delinquent property taxes on its own.<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-5-2403.

<sup>2</sup>T.C.A. § 6-55-201; Op. Tenn. Atty. Gen. 87-106 (June 26, 1987).

<sup>3</sup>T.C.A. § 67-5-2005. See 2010 Public Chapter 660 authorizing partial payment of property taxes.

## Certificate for Timber Cutting

**Reference Number:** CTAS-1592

In order to insure the collection of delinquent taxes on timberland, anyone who cuts or removes timber must first obtain a certificate from the trustee stating that no delinquent taxes exist on that land. A timber cutter who fails to obtain the certificate is liable for any delinquent taxes on the property; any equipment used to cut the timber is subject to the lien for taxes. The trustee, the county mayor, and the delinquent tax attorney are required to enforce this liability, and are authorized to obtain an injunction to prevent the unauthorized cutting or removal of any timber.<sup>1</sup>

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<sup>1</sup>T.C.A. §§ 67-5-2301 through 67-5-2306.

## Delinquent Tax Suit

**Reference Number:** CTAS-1593

After February 1, but before April 1, the delinquent tax attorney must file suit in chancery or circuit court to collect delinquent property taxes due the state, county or municipality, as well as the penalties, interest and costs. The complaint shall be in substance and form as other complaints for the enforcement of liens and may be filed against and contain the names of all the delinquent taxpayers in the county, and the fact that the complaint contains the names of more than one defendant shall not be considered by the court multifarious, or a misjoinder of parties. Additional defendants and delinquent taxes may be added to the suit as a matter of right upon the filing of a notice on behalf of the complainant to add additional defendants and without the necessity of amending the complaint. Upon the filing of such notice, the additional defendants shall be served with process pursuant to the Tennessee Rules of Civil Procedure and T.C.A. § 67-5-2415. This type of action has priority by the court.<sup>1</sup> All suits, whether brought in circuit or chancery court, should be prosecuted according to the rules of the chancery court.<sup>2</sup> Upon the filing of this suit, the trustee must submit to the county legislative body a list of uncollected delinquent taxes, and must thereafter receive credit for any taxes for which a lawsuit has been filed.<sup>3</sup> The proceedings shall be automatically dismissed without the entry of any order of a court, as to a defendant's property, upon the payment of the amount of taxes due from the defendant, together with interest and penalty, and such court costs as may have accrued against the defendant in consequence of the filing of the proceedings.<sup>4</sup> Clerks are not

required to prepare petitions, complaints, summons, notices, or orders for the prosecution of tax enforcement suits.<sup>5</sup> See [Sample Delinquent Tax Suit letter](#).

There is no authority for a court to delay collection proceedings against property owners even though it would be in the county's best interest to allow the delinquent taxpayers additional time to pay their taxes. Likewise, the court has no authority to order taxes, interest, penalties and other charges be paid on an installment basis.<sup>6</sup> Tax suit complaints, once filed, may be amended to cure descriptions, add parties, and join new owners.<sup>7</sup> The court retains jurisdiction to collect delinquent taxes even though the assessment may be illegal and improper procedures may have been followed.<sup>8</sup>

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<sup>1</sup>T.C.A. § 67-5-2405.

<sup>2</sup>T.C.A. § 67-5-2414.

<sup>3</sup>T.C.A. § 67-5-2407.

<sup>4</sup>T.C.A. § 67-5-2411.

<sup>5</sup>T.C.A. § 67-5-2410(e).

<sup>6</sup>Op. Tenn. Atty. Gen. 86-130 (July 22, 1986).

<sup>7</sup>Tenn. R. Civ. P. 15, 19, 20.

<sup>8</sup>*State v. Delinquent Taxpayers*, 785 S.W.2d 819, 821 (Tenn. Ct. App. 1989).

## Notice of Tax Suit

**Reference Number:** CTAS-1594

Each defendant named in the tax suit must be served by one of the methods authorized in the Tennessee Rules of Civil Procedure, including constructive service of process (publication).<sup>1</sup> However, the constitution requires that defendants be given the best notice possible, which has been defined as that "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."<sup>2</sup> Under this definition, constructive notice, or publication, probably will not satisfy due process requirements when the identity of the property owner is readily ascertainable by the taxing authority. However, Tennessee statutes specifically state that personal service of process on the defendant is unnecessary; the notice may be sent by certified or registered mail, return receipt requested.<sup>3</sup> Where the taxpayer is not properly before the court either by lack of notice or inadequate description, the resulting sale is a nullity and may be challenged.<sup>4</sup> The trustee's records are important since they may be relied upon when finding names, addresses, and property descriptions for notices in tax suits.

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<sup>1</sup>T.C.A. § 67-5-2415; Tenn. R. Civ. P. 4.

<sup>2</sup>*Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 795 (1983) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)); *Jones v. Flowers*, 126 S.Ct. 1708 (2006); *Wilson v. Blount County*, 207 S.W.3d 741 (Tenn. 2006). See also Op. Tenn. Atty. Gen. 84-208 (June 27, 1984) regarding service of process in delinquent tax suits made by certified mail.

<sup>3</sup>T.C.A. § 67-5-2415. Note, in 2012 the legislature amended this statute to authorize any alternative delivery service as authorized by § 7502 of the Internal Revenue Code. See 2012 Public Chapter 979. See also 2014 Public Chapter 883, Section 8.

<sup>4</sup>*Wilson v. Blount County*, 207 S.W.3d 741 (Tenn. 2006) (In tax lien suits, the government must provide "notice by mail or other means to ensure actual notice ... if [the party's] name and address are reasonably ascertainable.").

## Annual List of Property in Tax Suits

**Reference Number:** CTAS-1595

Between June 1 and July 1 each year, the clerk of the court in which tax suits have been filed must provide the trustee with a list of property involved in these suits. The list must be current through June 1 of that year and must include identification of the property, taxpayers' names, and the years for which taxes are delinquent. A fee of \$5 is added to the costs for each property, for each year of inclusion on the list.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-2403; T.C.A. § 8-21-409(g)(2).

## Fees and Additional Expenses of the Tax Suit

**Reference Number:** CTAS-1596

There is no litigation tax in delinquent tax suits. However, in addition to the 10 percent penalty for expenses of prosecuting the suit, additional funds are added for the clerk's and the sheriff's statutory fees, as well as other court-ordered fees for basic services; the sheriff is to receive a \$7.50 fee for service of process on each defendant when the sheriff serves the summons. Additional expenses ordered by the court, including but not limited to title examination fees, extra publication, survey fees, or other necessary costs are considered as part of the court costs for purposes of the tax suit. If necessary for the prompt dispatch of suits for the collection of delinquent taxes, the court may order all reasonable expenses of prosecuting such suits to be paid out of delinquent tax money on hand, in addition to that otherwise provided.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-2410. The penalty under T.C.A. § 67-5-2410(a)(1)(A) is not an attorney's fee, but rather a penalty for the county's expense of prosecuting suits for delinquent taxes. Op. Tenn. Atty. Gen. U90-53 (March 16, 1990).

## Receivership

**Reference Number:** CTAS-1597

In all cases, the court in which the delinquent tax suit is filed may appoint receivers to take charge of the property and collect the rents and profits. After the receiver is compensated, the funds are to be applied to the taxes, costs, penalties and interest.<sup>1</sup>

For delinquent taxes which have been due and payable for at least two years, any governmental body having an interest in such tax lien has the right to petition the court in which the delinquent tax suits are filed to appoint receivers to collect rents on the property subject to the tax lien. The right to appoint a receiver exists whether or not the property is being misused, wasted, or neglected, and whether the security for such tax is adequate or not.<sup>2</sup> However, a residence is not subject to a receivership.<sup>3</sup>

After the receiver is compensated, the assets of the receivership are to be distributed for court costs, necessary or desirable expenses for maintenance of the receivership and taxes due parties to the tax suit. Any remaining amount should be paid to the owner of the receivership property.<sup>4</sup>

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<sup>1</sup>T.C.A. § 67-5-2417.

<sup>2</sup>T.C.A. § 67-5-2202.

<sup>3</sup>T.C.A. § 67-5-2203.

<sup>4</sup>T.C.A. §§ 67-5-2206, 67-5-2209.

## Report Under Reference

**Reference Number:** CTAS-1598

When the tax obligations relating to a parcel of property are unclear, a procedure known as a reference may be taken to ascertain all delinquent revenues together with all the costs, fees, penalties and interest.

Notice of a reference must be given to all officers whose duty it is to collect delinquent revenue.<sup>1</sup> The master's reference report may be made before the sale, and even after confirmation of the sale, but must be made before distribution of the sale proceeds.<sup>2</sup>

Reports under reference in delinquent tax sales are made pursuant to Tenn. R. Civ. P. 53 on an order of reference by the court. Within 20 days after the date of the order of reference the clerk should set a time and place for a meeting of the parties or their attorneys in regard to the amounts due on the property. The clerk must notify in writing the parties or their attorneys. The clerk should proceed with reasonable diligence. Either party, on notice to the parties and clerk, may apply to the court for an order requiring the clerk to speed the proceedings and to make his or her report. If a party fails to appear at the time and place appointed, the clerk may proceed *ex parte* or may adjourn the proceedings to a future day, giving notice in writing to the absent party of the adjournment. After the clerk prepares the report regarding the amounts due, he or she must mail a notice that the report is on file at the clerk's office.<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-5-2416.

<sup>2</sup>*State v. Southern Lumber Mfg. Co.*, 57 S.W.2d 454, 455 (Tenn. 1933). The better alternative would be to make the report before the sale to correctly ascertain all amounts due on the property at the time of the sale.

<sup>3</sup>Tenn. R. Civ. P. 53.

## The Tax Sale

**Reference Number:** CTAS-1599

After the conclusion of the delinquent tax suit, the county holds a tax sale to sell property in order to collect delinquent taxes.

Advertisement of the Sale. The advertisement of the tax sale is an important duty that the clerk performs. The property must be advertised in one sale notice in the newspaper (or by printed handbills as the court orders) setting out the names of the owners of the different tracts or parcels of land, describing the property and setting out the amount of the judgment against each taxpayer. The description of the property must reference to a deed book and page (where a complete legal description can be found or the official property number as provided by T.C.A. § 67 -5-806) and may include a description (street address, map and parcel number, number of acres) of the property as it is commonly known. A mistake in the common description will not invalidate the sale so long as the deed book and page reference is accurate.<sup>1</sup>

Notice of the sale must be sent by certified return receipt mail to the last known address of the present owner (as reflected in the assessor's records) and to anyone else with an interest in the property, if that person can be located after a reasonable search. A tax sale notice, which shall be the same or substantially the same as the advertised notice, may be recorded in the register of deeds' office for the county in which the property is located upon the setting of the tax sale date. The recording cost shall be divided between the parcels of land listed in the tax sale notice and added as an additional court cost to each such parcel of land. This tax sale notice shall be recorded for informational purposes only and no release shall be required. In the event of the sale of severed mineral interest property, the court clerk must send a notice of proceedings regarding the sale by certified return receipt mail to any owner of the surface interest who has filed a declaration of surface ownership with the register of deeds. This certified mailing is part of the cost of the tax suit.<sup>2</sup>

Procedures of Sale. The sale must be conducted at the place and time given in the notice or as advertised. The sale should be public and open to all. Generally, a valid sale is not held on a Sunday or a non-judicial day. However, the mere designation of a day as a holiday does not invalidate a sale held on that day.<sup>3</sup>

The court shall order the sale of the property for cash, subject to the equity of redemption, which gives the taxpayer the right to pay the taxes, interest, penalties and costs, and terminate the sale proceeding.<sup>4</sup> Property interests which are less than an entire fee are separately assessed and may be sold without selling the entire fee. Examples of separate interests include leaseholds and tenancies in common.

A remainder interest constitutes part of the total present ownership of the land and cannot be separately assessed.<sup>5</sup>

Generally, any person not disqualified by statute may purchase at a tax sale. Those disqualified include persons under a moral or legal obligation to pay taxes on land being sold. A disqualified person cannot become a valid purchaser at a tax sale. If such a person does purchase, it is deemed a redemption or payment of the tax and does not establish a new title. In addition, persons occupying positions of trust ("fiduciaries") with the taxpayer cannot acquire title at a tax sale. For example, an agent of a deceased taxpayer who had control of the property and sufficient funds to pay accrued taxes cannot purchase such property at a tax sale and claim title in himself. A member of a taxpayer's family is not precluded from purchasing the property at a tax sale as long as no fiduciary relationship or fraud is involved. However, a husband or wife is usually precluded from purchasing the other's property at a tax sale.<sup>6</sup>

The clerk should bid in the amount due for taxes, penalties, interest and costs at the sale if no other bidder offers the same or larger bid. The clerk shall not offer a bid in the case of property where the county legislative body has determined that no bid should be made on behalf of the county due to a determination that such property poses an environmental risk. The county legislative body may also make a determination that no bid shall be made on behalf of the county on non-buildable or non-conforming parcels, including, without limitation, storm water detention basins; drainage ditches; private road right-of-ways; private drives; common open areas; and utility easements.<sup>7</sup>

Disposition of Proceeds from Sale. The sale proceeds are applied first to payment of any unpaid balance of compensation due the delinquent tax attorney. Second, the proceeds of the sale shall be applied to the costs of the suits. Third, the remainder shall be applied to the state first, county second, and municipality third, the amount due each to be ascertained by a decree of the court. If there is any remainder after the proceeds of the sale have been distributed, the party receiving notice pursuant to T.C.A. § 67-5-2502 shall also be given notice of the amount of proceeds resulting from the sale, the division of such proceeds, and the remainder.<sup>8</sup>

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<sup>1</sup>T.C.A. § 67-5-2502. See Op. Tenn. Atty. Gen. U89-30 (April 5, 1989) (finding that only a single sale notice pursuant to T.C.A. § 67-5-2502 is required for tax sales, as T.C.A. § 35-5-101(a) is inapplicable). For general requirements as to publication in a "newspaper," see *Cook v. McCullough*, 1989 WL 155926 (Tenn. Ct. App. 1989), *cert. denied*, 498 U.S. 855 (1990). See also Op. Tenn. Atty. Gen. U89-133 (November 28, 1989) (finding that the *Memphis Business Journal* qualifies as a "newspaper of general circulation" for purposes of publication of official notices); Op. Tenn. Atty. Gen. U90-55 (March 28, 1989) (finding that the *Nashville Business Journal* qualifies as a "newspaper of general circulation" for purposes of publication of official notices).

<sup>2</sup>T.C.A. § 67-5-2502.

<sup>3</sup>C.J.S. *Taxation* § 801 (1954).

<sup>4</sup>T.C.A. § 67-5-2501.

<sup>5</sup>*Sherrill v. State Bd. of Equalization*, 452 S.W.2d 857, 858 (Tenn. 1970). See also *Hadley v. Hadley*, 87 S.W. 250, 255 (Tenn. 1905).

<sup>6</sup>C.J.S. *Taxation* § 809 (1954). See also *Salts v. Salts*, 190 S.W. 2d 188 (1945). See also T.C.A. § 39-16-405 (Prohibits judges, clerks of court, court officers, and employees of court, from bidding on or purchasing any property sold through the court for which such person discharges official duties); Op. Tenn. Atty. Gen. 99-105 (May 10, 1999).

<sup>7</sup>T.C.A. §§ 67-5-2501; 67-5-2506.

<sup>8</sup>T.C.A. §§ 67-5-2501(a)(3) and (b)(3); 67-5-2506(a)(3) and (b)(3). T.C.A. § 67-5-2502(a)(3). See also Op. Tenn. Atty. Gen. 07-34 (March 23, 2007) (distribution of proceeds); Op. Tenn. Atty. Gen. 95-060 (May 25, 1995) (effect of county delinquent tax sale on city tax lien); Op. Tenn. Atty. Gen. 85-201 (June 24, 1985) (distribution of surplus funds).

## Tax Sale Ledger

**Reference Number:** CTAS-1600

The trustee must maintain a ledger of all property sold at a tax sale and purchased by the state, county, or a municipality, if the governmental entity has taken possession of such property. The ledger must be a well-bound book, properly indexed containing a sheet or page for each parcel and containing the following information: (1) the taxes for each year for which the property was sold, (2) the book and page of the tax roll from which the listing of taxes was obtained, and (3) the rents or net sales price received, along with the distribution of such rents or sales price.<sup>1</sup> The trustee should make the following note on the current tax roll:

*Paid by sale of property, see Land Ledger, p. \_\_\_\_; actual possession having been taken by \_\_\_\_\_ (County, City, or City and County)*

However, if actual possession is not taken by the state, by a county, or by a municipality, the lands are not be removed from the tax rolls, nor will the lands be removed from the tax rolls if the owner or former tenant is permitted to remain in possession of the property without the payment of rent to the governmental entity.<sup>2</sup>

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<sup>1</sup>T.C.A. § 67-5-2511.

<sup>2</sup>T.C.A. § 67-5-2510.

## Confirmation of Sale and Tax Deed

**Reference Number:** CTAS-1601

Courts having jurisdiction of any delinquent tax proceeding are vested with the authority to render judgments and decrees and order writs of possession to enforce tax liens. Typically, after the property is sold, the clerk reports to the court on the sale, and the court issues a decree confirming the sale. The decree concludes the tax sale, and usually contains a description of the property and complies with all legal requirements to properly pass title. Once completed, the buyer is entitled to possession and to all the rights and liabilities. Insurance coverage should be obtained immediately, as risk of loss passes to the buyer when the tax sale becomes final, and the buyer's liability for property taxes begins to accrue on that date. Taxes accruing between the sale date and the confirmation date are paid out of the proceeds of the sale.<sup>1</sup>

The tax deed may be issued before or after the statutory redemption period expires. If the deed is issued before the period expires, the deed should state that it is subject to statutory redemption. The court clerk may ascertain the buyer's preference on the time of issuing the deed and proceed accordingly. Generally, if the tax deed is not issued until after the redemption period expires, a certified copy of the confirmation decree may be filed at the registers' office (and a copy given to the assessor), stating the owner, purchaser, sale amount, and property description, along with a statement that the property is subject to redemption.

Generally, a tax deed assures the purchaser of perfect title except where the land was not liable for taxes or the taxes were paid. However, even though tax deeds generally assure perfect title and are invalidated only in certain circumstances provided by statute, a tax deed is invalid if legally sufficient process is not served upon the owners, notwithstanding the owners' admission that taxes were due and had not been paid.<sup>2</sup>

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<sup>1</sup>T.C.A. § 67-5-2419. See also *Marlowe v. Kingdom Hall of Jehovah's Witnesses*, 541 S.W.2d 121 (Tenn. 1976); *Rogers v. Rogers*, 47 S.W. 701 (1898); *State v. Sexton*, 368 S.W.2d 69 (Tenn. Ct. App. 1962).

<sup>2</sup>*Watson v. Waters*, 694 S.W. 2d 524, 525 (Tenn. Ct. App. 1984).

## Setting Aside a Tax Sale

**Reference Number:** CTAS-1602

An order confirming the sale of a parcel shall confer the right to possession of the parcel to the purchaser effective upon entry of the order. On such date, the risk of loss shall transfer from the original owner to the purchaser. In the event of a loss occurring after the sale and before the order confirming the sale is entered, the court shall, on motion of the purchaser filed before the order confirming the sale becomes final, determine whether any portion of the purchaser's bid should be refunded to the purchaser. T.C.A. § 67-5-2503(a).

A writ of possession shall, upon application of the purchaser, in a proper case, be ordered by the court in which the tax sale has been made. A purchaser not making an advance demand for rents or profits shall have no rights to rents or profits from a taxpayer who has remained in possession during the redemption period. T.C.A. § 67-5-2503(b).

Any person who buys real estate sold for delinquent taxes that were a lien thereon, and who fails to get a good title or to recover possession of the realty, is subrogated to all liens that secured the taxes, and all interest, costs, penalties and fees; and the person has the right to enforce the same in chancery for the reimbursement of the purchase money paid by the person and interest thereon. T.C.A. § 67-5-2504(a)(1).

A tax deed of conveyance or an order confirming the sale is an assurance of perfect title to the purchaser of such land, and no such conveyance will be invalidated in any court, except by proof that the land was not liable to sale for taxes, or that the taxes for which the land was sold have been paid before the sale or that there was substantial noncompliance with mandatory statutory provisions relating to the proceedings in which the parcel was sold; and if any part of the taxes for which the land was sold is illegal or not chargeable against it, but a part is chargeable, that shall not affect the sale, nor invalidate the conveyance thereunder, unless it appears that before the sale the amount legally chargeable against the land was paid or tendered to the county trustee, and no other objection either in form or substance to the sale or the title thereunder shall avail in any controversy involving them. An action seeking to invalidate any tax title to a parcel shall allege specific facts establishing the grounds set out herein and proof of compliance with T.C.A. § 67-5-2504(c) prior to the filing of the complaint. T.C.A. § 67-5-2504(b).

No suit may be commenced in any court of the state to invalidate or declare void any tax title to land until the party suing has paid or tendered to the clerk of the court where the suit is brought the amount of the bid and all taxes subsequently accrued, with interest and charges. T.C.A. § 67-5-2504(c).

A suit to invalidate any tax title to land must be commenced within one year from the date the cause of action accrued, which is the date of the entry of the order confirming the tax sale. The statute of limitations to invalidate the sale of any tax title is one year, except that it may be extended to one year after the plaintiff discovered or with the exercise of reasonable due diligence should have discovered the existence of such cause of action. In no event may any action to invalidate any tax sale title be brought more than three years after the entry of the order confirming the tax sale. T.C.A. § 67-5-2504(d)(1)-(3).

After entry of an order confirming the sale of a parcel, the purchaser may file suit to quiet title, notwithstanding the deadline for tax sale challenges, or the redemption period. Any order quieting title to a tax sale parcel entered before the expiration of the redemption period shall specify that the purchaser's title to the parcel remains subject to any such remaining redemption period. T.C.A. § 67-5-2504(d)(4).

Any person successfully challenging the validity of a tax sale of the person's interest in a parcel shall also be responsible to the person purchasing the property at the tax sale and the purchaser's successors in interest, for any increase in the value of the parcel, including any improvements thereto, from the date of the entry of the order confirming the sale until the entry of a court order declaring the tax sale invalid as to the challenger. In the alternative, the challenger shall be responsible to the person purchasing the property at the tax sale and the purchaser's successors in interest, for all amounts expended by the purchaser or the purchaser's successors, if such amount is in excess of the increased value of the parcel. The purchaser and successors shall have a lien upon the parcel to secure the payment of the amount determined by the court to be due. T.C.A. § 67-5-2504(f).

## Redemption

**Reference Number:** CTAS-1603

Upon the entry of an order confirming a sale of a parcel, a right to redeem vests in all interested persons. The right to redeem must be exercised within the time period established by law beginning on the date of the entry of the order confirming the sale, but in no event can the right to redeem be exercised more than one year from that date. The redemption period of each parcel must be determined by the court prior to the tax sale of the parcel and may also be stated in the order confirming the sale.

Unless the court finds sufficient evidence to order a reduced redemption period, the redemption period for each parcel shall be one year.

The redemption period shall be determined for each parcel based on the period of delinquency. Once the period of delinquency is established, the redemption period shall be set on the following scale:

If the period of delinquency is five years or less, the redemption period shall be one year from the entry of the order confirming the sale;

If the period of delinquency is more than five years but less than eight years, the redemption period shall be one hundred eighty days from the entry of the order confirming the sale; or

If the period of delinquency is eight years or more, the redemption period shall be ninety days from the entry of the order confirming the sale.

T.C.A. § 67-5-2701(a)(1).

For all real property for which a showing is made that there is a reasonable basis to believe that real property is vacant, or, in the case of vacant land, a reasonable basis to believe that the property is abandoned, the redemption period shall be thirty days from the entry of the order confirming the sale without regard to the number of years of delinquent taxes owed on the property, beyond that required to make the property legally eligible for the sale. T.C.A. § 67-5-2701(a)(1)(D) & (2).

In order to redeem a parcel, the person entitled to redeem must file a motion to such effect in the proceedings in which the parcel was sold. The motion must describe the parcel, the date of the sale of the parcel, the date of the entry of the order confirming the sale and must contain specific allegations establishing the right of the person to redeem the parcel. Prior to the filing of the motion to redeem, the movant must pay to the clerk of the court an amount equal to the total amount of delinquent taxes, penalty, interest, court costs, and interest on the entire purchase price paid by the purchaser of the parcel. The interest shall be at the rate of 12% per annum, which shall begin to accrue on the date the purchaser pays the purchase price to the clerk and continuing until the motion to redeem is filed. If the entire amount owing is not timely paid to the clerk or if the motion to redeem is not timely filed, the redemption shall fail. T.C.A. § 67-5-2701(b)(1).

In any motion to enforce a right of redemption brought by a transferee against a tax sale purchaser or other interested party:

The tax sale purchaser or other interested party in whom the right of redemption originally vested must be served with a copy of the motion to redeem;

The motion to redeem must be denied on the objection or response to the motion to redeem by the tax sale purchaser or any other interested party if it appears that the transferee is engaged in speculation or profiteering with respect to such right of redemption;

Such speculation and profiteering is presumed if it appears that the transfer of the right of redemption was made for consideration in an amount less than the purchase price paid by the tax sale purchaser at the tax sale minus the amount the debtor would have been required to pay to redeem the property under this chapter; and

If a motion to redeem by a transferee is denied under T.C.A. § 67-5-2701(b)(2) based on a finding by the court of such speculation and profiteering, the court may award reasonable attorney's fees to the tax sale purchaser or any other interested party challenging the motion to redeem.

T.C.A. § 67-5-2701(b)(2). This subdivision is intended to further the public policies of the state of protecting the interests of owners of real property subject to debt, protecting the integrity of the tax sale process, providing reliable tax sale titles to purchasers, and prohibiting the profiteering and speculation in rights of redemption; and be remedial and construed to apply to any existing rights of redemption.  
T.C.A. § 67-5-2701(b)(3).

Upon the filing of the motion to redeem and the payment of the required amount, the clerk shall within ten days send a notice of the filing of the redemption motion to the purchaser and all persons entitled to redeem the parcel. The notice of redemption shall state the amount paid at the time of the filing of the motion and refer the persons to T.C.A. § 67-5-2701. The purchaser may within thirty days after the mailing of the notice of redemption, file a response seeking additional funds to be paid by the proposed redeemer to compensate the purchaser for amounts expended by the purchaser for the purposes set out in T.C.A. § 67-5-2701(e). The response shall specifically set out the basis for each category of additional funds claimed. The response may also allege that the motion to redeem was not properly or timely filed. If no response is timely filed, the court shall determine whether the redemption has been properly made, and if so, shall cause an order to be entered requiring the proposed redeemer to pay additional interest at the rate set forth in T.C.A. § 67-5-2701(b), accruing from the date the motion to redeem was filed until the date of such payment. T.C.A. § 67-5-2701 (c) and (d).

Any additional funds ordered to be paid by the proposed redeemer shall be paid to the clerk prior to the later of the following dates: (1) The date of the expiration of the redemption period; or (2) Thirty days after the entry of the order allowing additional funds. T.C.A. § 67-5-2701(f).

If the proposed redeemer timely pays the full amount of any additional funds ordered by the court, the court shall declare that the property has been redeemed. If the proposed redeemer fails to timely pay the full amount of any additional funds ordered by the court, the redemption shall fail and any funds paid by the proposed redeemer shall be refunded to him less the clerk's fee and any other court costs. T.C.A. § 67-5-2701 (g) and (h).

In the event a person tenders the full amount owing in the proceeding at a time after the date of sale and prior to the entry of an order confirming the sale, the person shall also pay interest computed as established by T.C.A. § 67-5-2701(b) on the total purchase price paid by the purchaser. T.C.A. § 67-5-2701(i).

The court in which the proceedings are pending may order that any proposed redeemer shall also pay to the clerk the amount necessary to record any orders of the court in the office of the register of deeds. Such payment may be required to be paid upon the filing of the motion to redeem or upon determining whether any additional funds are to be allowed. T.C.A. § 67-5-2701(j).

Upon any order pertaining to redemption becoming final, the clerk shall make such disbursements as are provided in the order. T.C.A. § 67-5-2701(k).

In the event the court directs the delinquent tax attorney or an attorney ad litem to participate in the redemption portion of the proceedings as an assistance to the court, the court may allow a reasonable attorney's fee to be paid by either the movant or the purchaser as directed by the court. T.C.A. § 67-5-2701(l).

In the event all parties to the action waive their right to appeal all issues in the cause, the clerk shall immediately disburse all amounts owing. T.C.A. § 67-5-2701(m).

Upon entry of an order of the court declaring that the redemption is complete, title to the parcel shall be divested out of the purchaser, and the clerk shall promptly refund the purchase money and pay all sums due to the purchaser under T.C.A. § 67-5-2701. The interests of the taxpayer and other interested parties, or their successors in interest, shall be restored to that state which existed as of the date of entry of

the order confirming the sale. Any lienholder who redeems the parcel may thereafter proceed to foreclose upon the parcel or otherwise enforce such lien. T.C.A. § 67-5-2701(n).

## Disposition of Property Purchased by County at Tax Sale

**Reference Number:** CTAS-2188

It is the duty of the county mayor of each county to take charge of all the lands bought in by the county at a county delinquent tax sale. During the redemption period of any tract of land, the land shall be:

Held and put only to a use that will not result in a waste of the land; or

Sold to a third party, in accordance with T.C.A. § 67-5-2507(b), subject to the right of redemption. If any parcel is sold subject to redemption, it may be redeemed in accordance with T.C.A. § 67-5-2701.

After the period of redemption has elapsed, it shall be the duty of the county mayor to arrange for the disposition of every tract of such land as expeditiously and advantageously as possible unless parcels acquired by the county are identified by the county mayor, or the mayor's designee, as being in an area or zoning classification that would make the accumulation of larger areas advantageous to the parcels' reuse and redevelopment. In such cases, the mayor may hold those properties until a sufficient number of parcels or area has been acquired to improve the parcels' marketability and redevelopment profile. In no event shall this accumulation result in property being held without being marketed for more than five years.

If the county mayor determines, prior to the sale of a parcel brought in by the county at a delinquent tax sale, that there may be a defect in the title to the parcel, the county mayor may move the court in which the parcel was sold in the tax proceeding, to take action to cure the defect. A diligent effort to give notice of any such motion shall be made as to all interested persons as of the date of the filing of the motion.

T.C.A. § 67-5-2507(a).

### **Procedure for Sale**

A committee of four members shall be elected by the county legislative body, from the county legislative body, who, together with the county mayor, shall place a fair price on each tract of land, for which price the land shall be sold.

In counties having adopted the County Financial Management System of 1981, the financial management committee created by T.C.A. § 5-21-104 may serve as this committee, instead of the committee established above.

The committee may authorize the sale of any tract of land upon such terms as will secure the highest and best sale price, but the credit extended shall not exceed three years and a lien shall be retained to secure purchase price.

No tract of land shall be sold for an amount less than the total amount of the taxes, penalty, cost and interest, unless the legislative body, upon application, determines that it is impossible to sell the tract of land for this amount, and grants permission to offer the land for sale at some amount to be fixed by such legislative body.

Interest is calculated on the full amount of the taxes, penalty, cost and interest from the time of the acquisition of the land by the county until the sale thereof.

Whenever the sale of a tract of land is arranged by the county mayor, the deed shall not be executed and the sale shall not become final until ten days after the publication in a newspaper published in the

county of a notice of the proposed sale, the name of the purchaser and the terms, conditions and price. The land shall be described in the notice only by number, which shall refer to a description on file with such committee.

If anyone, during the ten 10 days, increases the offer made for the land by ten percent or more, the party making the first offer shall be notified and a day fixed when both parties must appear and make offers. The tract of land shall be sold to the party making the highest and best offer.

Conveyances of the land shall be made without warranties of any sort, and deeds shall be executed by the county mayor or other chief fiscal officer of the county. The deed shall be prepared by the back-tax attorney as a part of the duties for which the attorney is compensated by T.C.A. § 67-5-2410, and no additional compensation shall be allowed.

The county may, upon a majority vote of its legislative body determining it in the best interests of the county to use the property for a public purpose, decide to retain ownership and possession of such property.

T.C.A. § 67-5-2507(b). NOTE: subsection (b) does not apply in Davidson county.

For provisions dealing with a political subdivision purchasing property at a tax sale, see T.C.A. § 67-5-2508. See T.C.A. § 67-5-2508(d) for the procedure for delinquent tax sales when delinquent taxes are owed to both a county and a municipality.

If the land cannot be sold at the end of the statutory redemption period, property held by a county is exempt from taxation, regardless of use, as long as the property is held for the purpose of realizing the full amount of taxes, penalties, costs, and interest. T.C.A. § 67-5-2509.

See [Sample Resolution to Establish a Committee for Resale of Land Bought at Delinquent Tax Sales](#). See [Bidding Procedures for Sale of Property Acquired at Delinquent Tax Sales](#).

#### **Rescinding the Prior Delinquent Tax Sale**

As to a particular parcel conveyed to a county pursuant to T.C.A. § 67-5-2501, the county mayor may make an evaluation of the parcel to determine whether the value of the parcel or amount of money the county is likely to receive if the county sold the parcel exceeds the financial obligations or environmental risks associated with the parcel.

If the county mayor determines that the financial obligations or environmental risks exceed the value of the parcel, the county legislative body may adopt a resolution, by a two-thirds vote, concurring in the county mayor's determination and directing the county mayor to request relief from the court in which the parcel was sold.

Relief shall be sought by motion pursuant to Rule 60 of the Tennessee Rules of Civil Procedure filed within one hundred twenty days after the entry of the order confirming the sale.

If the court finds that the motion should be granted, the court may rescind its prior order upon such terms as are just. In the event the prior order is rescinded, title to the parcel shall be deemed to have remained in that state which existed as of the date of entry of the prior order confirming the sale. The court shall have broad discretion to ensure that rescinding its prior order does not result for any period of time in the creation of a parcel for which no person or entity has responsibility.

The court may then appoint a special master and direct the special master to conduct a second sale of the parcel upon such terms and conditions as may be ordered by the court, including the reduction or elimination of the minimum bid that may be accepted at the sale.

In the event no person presents a bid at the second sale of the parcel, the court may thereafter approve a negotiated sale of the parcel upon such terms and conditions as may be ordered by the court or such other relief as the court may order, including the conveyance to a nongovernmental entity claiming contractual rights to dues or assessments pursuant to T.C.A. § 67-5-2516.

T.C.A. § 67-5-2507(c) shall be applicable to the financial obligations or environmental risks of an individual parcel only and shall not be applicable to the aggregated financial obligations or environmental risks of all or multiple parcels bid in to the county pursuant to T.C.A. § 67-5-2501.

### **Listing of Parcels Owned by County**

Pursuant to T.C.A. § 67-5-2511, the county mayor must prepare and maintain a listing of all parcels owned by the county acquired pursuant to T.C.A. § 67-5-2501.

The listing must be prepared no later than July 1, 2018. The listings shall be published in a newspaper of general circulation in the county or posted on the local government website with a notice of the posting published in a newspaper of general circulation in the county.

At least annually, the county mayor shall determine if any additional parcels have been purchased by the county pursuant to T.C.A. § 67-5-2501 and shall publish an updated list, as necessary, in the same manner as the original list.

Each published list or notice may contain a solicitation for offers to purchase the parcels listed and a statement as to how and where such offers may be filed.

Parcels acquired by the county which are identified by the county mayor, or the mayor's designee, as being in an area or zoning classification that would make the accumulation of larger areas advantageous to the reuse and redevelopment of the parcels, may be excluded from the list of parcels prepared and maintained under T.C.A. § 67-5-2511 until a sufficient number of parcels or property has been acquired to improve the marketability and redevelopment profile of the parcels. In no event shall this accumulation result in property being held without being published for more than five years. A separate list of such designated parcels shall be maintained by the mayor or the mayor's designee.

T.C.A. § 67-5-2511(a)-(d).

## **Escheat of Funds**

**Reference Number:** CTAS-1604

A clerk may have funds remaining in court from a delinquent tax sale after all taxes, interest, penalties and cost have been paid and the former owners of the property cannot be located in order to disburse these funds to them. A clerk should make a reasonable effort to locate the owners of such property. *Tennessee Code Annotated* §§ 66-29-101 *et seq.*, sets forth the procedure a clerk should follow regarding unclaimed property. The procedure requires the clerk to file reports and to remit the funds to the state after a certain time period. The county may ultimately recover these funds, which are distributed to the county general fund, if they remain unclaimed while in the state's possession.<sup>1</sup>

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<sup>1</sup>Op. Tenn. Atty. Gen. 85-201 (June 24, 1985) (duty of the Clerk and Master after a judicial sale of real property, where a buyer pays a sum in excess of all taxes, fees, and costs owing against the property).

## **Statute of Limitations**

**Reference Number:** CTAS-1605

Taxes on real and personal property are barred, discharged and uncollectible after the lapse of 10 years from April 1 of the year following the year in which such taxes become delinquent, unless the property is sold at a tax sale during this period. The bar against collection is tolled as to taxes at issue in an administrative appeal before the State Board of Equalization, from the date of filing the appeal until issuance of the final assessment certificate.<sup>1</sup>

Property taxes are not barred or discharged after ten years if the county purchased the property at the tax sale and then did not take possession, thus leaving the property on the tax rolls pursuant to T.C.A. § 67-5-2510..<sup>2</sup>

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<sup>1</sup>T.C.A. § 67-5-1806. See also Op. Tenn. Atty. Gen. 90-35 (March 16, 1990).

<sup>2</sup>Op. Tenn. Atty. Gen. 83-379 (November 8, 1983).

## Miscellaneous Matters

**Reference Number:** CTAS-1606

Bankruptcy of the Taxpayer. Usually, taxes are a high priority debt in a bankruptcy proceeding and are generally paid even though payment may be delayed or made in installments through a court-approved bankruptcy plan. Upon receiving a notice of bankruptcy or being advised of the filing of bankruptcy under federal law, the trustee and other tax collecting officials are stayed (prohibited) from taking any action to collect property taxes. The automatic stay provisions allow notice of a tax delinquency to be issued. However, language in the notice beyond mere notification of the existence of delinquent taxes is probably prohibited. Any act to obtain possession of the debtor's property or to collect or recover a claim against the debtor after the debtor files a bankruptcy petition is prohibited. The automatic stay is effective until it is terminated by the bankruptcy court.<sup>1</sup>

Trustees or court clerks should always file a proof of claim, showing amounts due plus interest and attorney's fees which may be recovered if the value of the property is sufficient. Proofs of claim are divided into pre-petition tax claims and post-petition tax claims. Pre-petition tax claims include all taxes for which liability has incurred as of the date the debtor filed for bankruptcy, plus interest, costs, and penalties, and post-petition interest to the extent that the value of the property is sufficient to permit it. Post-petition tax claims are for taxes assessed on the debtor's property after the date of the bankruptcy petition. These claims are generally treated as administrative expenses of the debtor's bankruptcy estate and are paid at the time they normally become due and payable.<sup>2</sup>

Environmental Concerns. Counties should be aware of potential environmental problems with land subject to sale pursuant to a delinquent tax suit. With respect to property that has environmental problems, all or any portion of the penalty and interest and attorney fees which are due on the real property taxes may be waived by order of the court having jurisdiction of the delinquent tax lawsuit upon a motion and a finding that the following factors exist:

1. The property has been determined to be environmentally hazardous pursuant to federal or state environmental protection or hazardous materials laws by those officials, agencies or courts with the responsibility for enforcing the environmental protection or hazardous materials laws;
2. The county legislative body has determined that no bid should be made on behalf of the governmental entity to which taxes are owed pursuant to § 67-5-2506;
3. The waiver is made in conjunction with the remediation and cleanup of the property; and
4. The circumstances giving rise to the waiver did not result from fraud or an intention to avoid payment.<sup>3</sup>

Debris Removal. The county governing body may choose to exercise statutory authority which allows the county to remove from real property accumulated debris which is harmful to the health, safety, and welfare of the population. Costs of this removal are assessed against the owner of the property and are placed on the tax rolls as a lien upon the property; these are collected in the same manner as the county's taxes.<sup>4</sup>

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<sup>1</sup>11 U.S.C. § 362(a)-(c). See also *In re Shamblin*, 890 F.2d 123, 125 (9th Cir. 1989) (finding that tax sales in violation of the automatic stay are void).

<sup>2</sup>11 U.S.C. § 506(a), (b). But see *Bondholder Comm. V. Williamson County*, 43 F.3d 256 (6<sup>th</sup> Cir. 1994), cert. denied, 514 U.S. 1096 (1995), which states that counties may not claim statutory penalties which have not accrued by the date a bankruptcy petition is filed, since creditors normally are not entitled to post-petition additions.

<sup>3</sup>T.C.A. § 67-5-2802.

<sup>4</sup>T.C.A. § 5-1-115.

## Collection of Delinquent Personal Property Taxes

**Reference Number:** CTAS-1607

The legislature has determined that non-business tangible personal property is assumed to have no value and a tax is not imposed on this property.<sup>1</sup> The no-value presumption for non-business personal property has been upheld, based on the fact that the tax produces little revenue in relation to its administration costs, as well as the long-standing rule that the legislature may choose the method of valuation as well as whether the tax itself has any practical value.<sup>2</sup>

Most industrial and commercial tangible personal property is valued and assessed by the county taxing authorities in the counties where the owners of such property do business.<sup>3</sup> Pursuant to T.C.A. § 67-5-901, *et seq.*, industrial and commercial taxpayers must annually file a schedule on which they list the tangible personal property they use in their businesses. Section 67-5-903(f) contains a schedule of allowable rates of depreciation for commercial and industrial tangible personal property.<sup>4</sup> Pursuant to T.C.A. § 67-5-1509(a), the State Board of Equalization must, by order or rule, direct that commercial and industrial tangible personal property assessments be equalized using the appraisal ratios adopted by the state board for each county. However, such equalization is available only to taxpayers who have filed the reporting schedule required by law.

Public utility and common carrier property is centrally assessed annually by the Comptroller of the Treasury.<sup>5</sup> Pursuant to T.C.A. § 67-5-1302(b)(1), the assessments of public utility property shall be adjusted, where necessary, to equalize the values of public utility property to the prevailing level of value of property in each jurisdiction. "The authority to adjust the appraised values of public utility property to achieve equalization with industrial and commercial property is found in § 67-5-1509(b). This statute provides: (b) Equalization may be made by the board or commission, as the case may be, by reducing or increasing the appraised values of properties within any taxing jurisdiction, or any part thereof, in such manner as is determined by the state board of equalization will enable the board or commission to justly and equitably equalize assessments in accordance with law."<sup>6</sup> Since 1997, the Board of Equalization has ordered a 15 percent reduction in the assessed value of centrally assessed tangible personal property in order to bring it to the same level of assessment as locally assessed tangible personal property.<sup>7</sup>

Much of the discussion regarding [collection of delinquent real property taxes](#) also applies to the collection of delinquent personal property taxes. However there are also areas in which collection differs.

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<sup>1</sup>T.C.A. § 67-5-901(a)(3)(A).

<sup>2</sup>*Sherwood v. Clary*, 734 S.W.2d 318, 320-21 (Tenn. 1987); *citing*, *Lehnhausen v. Lake Shore Auto Parts*, 410 U.S. 356 (1973). For prior law, see Op. Tenn. Atty. Gen. 86-80 (April 3, 1986); Op. Tenn. Atty. Gen. 84-273 (September 27, 1984).

<sup>3</sup>T.C.A. §§ 67-5-102, 67-5-103.

<sup>4</sup>*In re All Assessments*, 58 S.W.3d 95, 96 (Tenn. 2000).

<sup>5</sup>T.C.A. § 67-5-1301.

<sup>6</sup>*In re All Assessments*, 58 S.W.3d 95, 101 (Tenn. 2000). See also *Louisville & N.R.R. v. Public Serv. Comm'n*, 249 F.Supp. 894 (M.D. Tenn. 1966), *aff'd*, 389 F.2d 247 (6th Cir. 1968) ("L & N I"); *Louisville & N.R.R. v. Public Serv. Comm'n*, 493 F.Supp. 162 (M.D. Tenn. 1978), *aff'd*, 631 F.2d 426 (6th Cir. 1980), *cert. denied*, 450 U.S. 959, 101 S.Ct. 1418 (1981) ("L & N II").

<sup>7</sup>*ANR Pipeline Co. v. Tennessee Board of Equalization*, 2002 WL 31840689, \*1 (Tenn.Ct.App. 2002) *perm. app. denied* (Tenn. 2003).

## Methods of Collection

**Reference Number:** CTAS-1608

There are four ways by which delinquent personal property taxes may be collected. The delinquent personal property taxes may be immediately collected by distraint (distress warrant) and sale of any personal property on which delinquent personal property taxes are owing, by suit at law against the taxpayer, by garnishment, and/or by retention of a collection agent.<sup>1</sup>

Distress Warrants. All delinquent personal property taxes may be immediately collected by the county trustee, with the assistance of the delinquent tax attorney (if the delinquent tax attorney's assistance is requested by the trustee). The trustee's tax books and the delinquent tax lists furnished to deputy trustees, sheriffs or constables, or to the delinquent tax attorney, have the force and effect of a judgment and execution from a court of record. These documents provide authority for the officers or delinquent tax attorneys to distrain (seize) and sell a sufficient amount of the personal property to satisfy the delinquent taxes, interest, penalties, costs, and attorney's fees. Note, however, leased personal property assessed to a lessee may not be distrained and sold pursuant to T.C.A. 67-5-2003(a).<sup>2</sup> See [Sample Distress Warrant](#).

Pre-Seizure Notice. Prior to distraint (seizure) of any personal property, the trustee, deputy trustee, or delinquent tax attorney must give not less than 10 days written notice of the intended distraint (seizure) by any of these methods: (1) delivering the notice in person; (2) leaving the notice at the dwelling place or usual place of business of the taxpayer; or (3) mailing the notice to the taxpayer's last known address.<sup>3</sup> See [Sample Pre-Seizure Notice Letters](#).

Sale of Personal Property. After seizure, additional notice must be provided before the sale. Ten days notice of the time and place of any sale of personal property must be given by advertisement posted in three public places in the county, one of which shall be at the courthouse door. In addition, at least 10 days written notice of the sale must be given to the taxpayer by any of the methods outlined above.<sup>4</sup> The officers conducting the sale must have the personal property present when it is sold and must be allowed to retain (in addition to the taxes, interest, penalties, costs, and attorney's fees) all commissions, costs, and necessary expenses of removing and keeping the property distrained, including expenses of seizure, preservation, and storage of the property.<sup>5</sup> If a delinquent tax attorney assists the trustee with the seizure and sale of the personal property, the attorney is entitled to attorney's fees.<sup>6</sup>

Garnishments. In addition to the distress warrant procedure, the trustee may have garnishments issued against the taxpayer, to be returned to any general sessions court in the district where the taxpayer resides, or any circuit or chancery court.<sup>7</sup>

Suits to Collect Delinquent Personal Property Taxes. Delinquent personal property taxes may also be collected by lawsuit. To use this method, the trustee may turn over the delinquent tax list to the delinquent tax attorney 30 days after the taxes become delinquent for inclusion in the suit to collect the prior year's delinquent real property taxes, or as a separate lawsuit. This alternative may be used without having first issued a distress warrant. In the event the trustee turns over the delinquent list prior to the mailing of the current year's tax bill (which will include notice of delinquent taxes from the previous year), the trustee must forward written notice of the suit to collect delinquent taxes by first class mail to the last known property owner at least 10 days before the delinquent list is turned over to the delinquent tax attorney.

A judgment obtained against a delinquent taxpayer may be enforced as a lien on the property, or as any other judgment, including garnishment or sale of property by the sheriff. If this procedure is used, the trustee may, as with real property tax records, turn over records to the court clerk.<sup>8</sup>

Retention of Collection Agent. The county trustee may proceed against a taxpayer who is delinquent in the payment of tangible personal property taxes by retaining an agent to collect such delinquent tangible personal property taxes, plus interest authorized by law, reasonable costs, and legal fees, provided that the collection activities are in compliance with T.C.A. 67-5-2004(b).<sup>9</sup>

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<sup>1</sup>T.C.A. § 67-5-2003(b), T.C.A. § 67-5-2004.

<sup>2</sup>T.C.A. § 67-5-2003(a).

<sup>3</sup>T.C.A. § 67-5-2003(c). *But see Mennonite Board of Missions v. Adams*, 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983) (failure to provide the mortgagee with adequate notice constitutes a deprivation of due process in violation of the Fourteenth Amendment to the United States Constitution). See *also* Op. Tenn. Atty. Gen. 85-274 (Nov. 4, 1985) (actual notice should be given, where possible, to all parties with a legally protected property interest).

<sup>4</sup>T.C.A. §§ 67-5-2003(d). *But see Mennonite Board of Missions v. Adams*, 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983) (failure to provide the mortgagee with adequate notice constitutes a deprivation of due process in violation of the Fourteenth Amendment to the United States Constitution). See

also Op. Tenn. Atty. Gen. 85-274 (Nov. 4, 1985) (actual notice should be given, where possible, to all parties with a legally protected property interest).

<sup>5</sup>T.C.A. §§ 67-5-2003(e).

<sup>6</sup>T.C.A. §§ 67-5-2003, 67-5-2410. See also *Southern Ry. v. Stair*, 801 F. Supp. 37, 51 (W.D. Tenn. 1992) (finding that railroad was subject to tax penalties, but not liable for attorney's fees).

<sup>7</sup>T.C.A. §§ 67-5-2004, 67-5-2003(b); Op. Tenn. Atty. Gen. 85-274 (November 4, 1985).

<sup>8</sup>T.C.A. § 67-5-2003(g).

<sup>9</sup>T.C.A. § 67-5-2004(b).

## Transfer of Business Liability

**Reference Number:** CTAS-1609

One mechanism to aid in the collection of personal property tax is the requirement which requires the purchaser of a business to check for unpaid personal property taxes of the business. Under this procedure any taxpayer who sells or terminates a business must notify the assessor and pay all outstanding personal property taxes within 15 days of the sale or termination. The buyer must withhold sufficient funds from the purchase price to pay the tax liability, retaining those funds until the seller produces a certificate of compliance from the assessor and receipts from the trustee for the payment of all taxes. If the buyer does not withhold this amount, the buyer becomes personally liable for these unpaid taxes.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-513.

## Security Interest Sales

**Reference Number:** CTAS-1610

If any individual, partnership, joint venture, corporation, or other legal entity owns tangible or intangible personal property, assessable by the county assessor or other authority and then sells the personal property pursuant to the provisions of T.C.A. §§ 47-9-101 *et seq.*, the party possessing the security interest must withhold from the proceeds of the sale an amount sufficient to satisfy the personal property taxes assessed under T.C.A. § 67-5-2101 and subject to the provisions of T.C.A. § 67-5-1805. A secured party selling the property who fails to withhold and pay such amount is personally liable for such amount to the trustee or other collecting official to which these personal property taxes are due.<sup>1</sup> Any action to enforce the provisions of T.C.A. § 67-5-2003(h) must commence against the secured party as a named defendant within four years of the assessment date. Any amount paid by or collected from a secured party pursuant to T.C.A. § 67-5-2003(h) reduces by that same amount the balance due by the taxpayer to the trustee or other collecting official who has been paid, and such amount also becomes a new obligation of payment by the delinquent taxpayer to the secured party, regardless of contractual limitations to the contrary.<sup>2</sup>

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<sup>1</sup>T.C.A. § 67-5-2003(h). *State, ex rel. Davis v. A & F Const.*, 2009 WL 499421 (Tenn.Ct.App. 2009).

<sup>2</sup>T.C.A. § 67-5-2003(h). See also T.C.A. § 67-5-1805(c). 2010 Public Chapter 1007 (payment of delinquent taxes by PMSI holder); *Williamson County v. A&F Construction*, 2009 WL 499421 (Tenn.Ct.App. 2009).

## Sales and Use Taxes

**Reference Number:** CTAS-226

### State Sales and Use Tax

**Reference Number:** CTAS-1616

*Authority.* T.C.A., Title 67, Chapter 6, Parts 1 through 6.

*Description.* The sales and use tax in Tennessee is in the process of undergoing changes as a part of a national effort to streamline sales tax collections. Numerous reforms and changes to Tennessee law have been adopted by the General Assembly but not yet implemented. The implementation dates for these amendments were tied to certain developments at the national level, which have been delayed. As a result, many statutes regarding sales and use tax are expected to change but at an uncertain date. The description of the sales and use tax in this Section reflects the law as it reads prior to the implementation of certain of these changes related to the streamlining effort. The sales and use tax is imposed upon every person who (1) engages in the business of selling tangible personal property at retail in this state; (2) uses or consumes in this state any item or Article of tangible personal property; (3) is the recipient of certain specified things or services or who rents or furnishes any of the things or services taxable; (4) stores for use or consumption in this state any item or Article of tangible personal property; (5) leases or rents such property within the state, or charges admission, dues or fees, or sells space as defined in the statutes dealing with the sales tax; (6) charges a fee for subscription to television services; (7) leases or rents tangible personal property; (8) performs specifically taxable services; (9) sells or uses admissions, dues and fees on amusements; and (10) certain other specifically listed taxable activities. T.C.A. § 67-6-201. The taxable privileges listed above are modified by numerous credits and exemptions. This tax is included as a source of county revenue because the state sales and use tax is the source of most of the state funds allocated to county school systems under the Basic Education Program (BEP). Counties do not receive a direct allocation from this tax as do municipalities.

The Tennessee Department of Revenue administers the tax, which is imposed upon every dealer engaging in a taxable privilege under this chapter. T.C.A. § 67-6-501. The current general state sales and use tax rate is 7 percent with an additional state tax of 2.75 percent levied on the amount in excess of \$1,600 but less than or equal to \$3,200 on sales of any single Article of personal property. T.C.A. §§ 67-6-202 through 67-6-205. Additionally, a number of statutes provide for variation of rates for different products (e.g., the rate for the retail sale of food and food ingredients is 4 percent).

### Streamlining Sales Tax

**Reference Number:** CTAS-1617

In 2003 the General Assembly passed a massive act to make a multitude of changes and adjustments to the sales tax laws in order to bring Tennessee into compliance with the provisions of the national Streamlined Sales and Use Tax Agreement. 2003 Public Chapter 357. In 2004 Public Chapter 959, many revisions were made to the 2003 act regarding the streamlined sales tax provisions. Since 2004, the effective dates for many of these provisions have been continually extended.

### Local Option Sales Tax

**Reference Number:** CTAS-1618

*Authority.* T.C.A., Title 67, Chapter 6, Part 7.

*Description.* Any county, by resolution of its legislative body, or any city or town by ordinance of its governing body, may levy a sales tax on the same privileges subject to the state sales tax, with certain exceptions. T.C.A. § 67-6-702. Telecommunications services and certain energy related services are exempt from the local tax or limited in the rate chargeable. T.C.A. §§ 67-6-702 and 704. No local sales tax or increase in the local sales tax is effective until it is approved in a referendum in the county or city levying it. T.C.A. § 67-6-705.

If the county has levied the tax at the maximum rate, no city in the county may levy an additional local sales tax. If a county has a sales tax of less than the maximum, a city may levy an additional tax up to

the difference between the county rate and the maximum. If a city passes an ordinance to increase its sales tax rate above the county rate, the city ordinance is suspended for 40 days during which time the county legislative body may pass a resolution to increase the county tax. If such a resolution is passed, the ordinance remains suspended until a countywide referendum is held. If the referendum is successful, the city ordinance is dead. However, if the referendum is not successful, the city may proceed with a city referendum on the matter. T.C.A. § 67-6-703. If the city referendum passes, the city receives all revenues generated by the increase above the county level; the first half is not earmarked for education. However, if the county, at a later date, raises its sales tax rate up to the level of the city rate, then the distribution formula outlined below would apply to the entire local option portion of the sales tax.

A resolution or ordinance levying the sales tax may be initiated by a petition of 10 percent of the registered voters of the taxing jurisdiction. T.C.A. § 67-6-707. The tax, once levied, is perpetual unless the resolution or ordinance establishes a specific termination date or unless the tax is repealed by a manner in which it could be adopted. T.C.A. §§ 67-6-708, 67-6-709. The same exemptions generally apply to the local option sales tax as apply to the state sales tax. The local sales tax cannot exceed 2.75 percent, and applies only up to the first \$1,600 on the sale or use of any single Article of personal property. The old law provided for a \$5 or \$7.50 single item limit on the sale or use of any single Article of personal property. These limits remain effective unless and until the county legislative body removes these old limits by a resolution, whereupon the local option tax will apply to the first \$1,600 on the sale or use of any single Article of personal property. T.C.A. § 67-6-702.

*Distribution.* Revenue from local option sales tax levied by counties is distributed as follows:

1. 50 percent specifically for education, to be distributed in the same manner as the county property tax for school purposes.
2. 50 percent distributed on the basis of where the sale occurred. Taxes collected inside a municipality are distributed to that municipality, and taxes collected in unincorporated areas are distributed to the county. Counties and cities may contract with each other for distribution of the half not allocated to school purposes. T.C.A. § 67-6-712.

In 1998, the General Assembly passed Public Chapter 1101 which was a major reform of the annexation and incorporation laws having a great impact upon the way the local option sales tax is distributed among cities and counties. T.C.A. § 6-51-115. It included a "hold harmless" provision to protect county revenue sources. When a city annexes territory or a new city incorporates, revenue amounts generated in that area by local option sales taxes, which had been received by the county prior to the annexation or incorporation, continue to go to the county for 15 years after the date of the annexation or incorporation. During that time, any increase in the situs-based portion of the revenues generated in the area would be distributed to the annexing or incorporating municipality. Note that this does not affect the distribution of the first half of the local option sales tax, which would continue to go to education funding. If commercial activity in the annexed area decreases due to business closures or relocations, a city may petition the Department of Revenue to adjust the payments it makes to the county.

## Severance Taxes

**Reference Number:** CTAS-227

## Coal Severance Tax

**Reference Number:** CTAS-1612

*Authority.* T.C.A. §§ 67-7-101 through 67-7-110.

*Description.* The state levies a per ton severance tax on all coal products severed from the ground in Tennessee. T.C.A. § 67-7-104. The coal severance tax is \$1.00 per ton. "Coal products" means coal ore and any other substance that might be severed from the earth by the process of producing salable coal, by whatever method of severance used. T.C.A. § 67-7-101.

*Distribution.* According to T.C.A. § 67-7-110, the tax is collected by the Tennessee Department of Revenue and is distributed as follows:

1. 1.125% is retained by the department of revenue and credited to its current service revenue to cover administrative expenses and tax collection expenses.
2. 98.875% to the county in which the coal products were severed.
  - a. 50 percent for the educational systems of the county.

- b. 50 percent for county highways and stream cleaning systems.

## Oil and Gas Severance Tax

**Reference Number:** CTAS-1613

*Authority.* T.C.A. §§ 60-1-301 through 60-1-302.

*Description.* The state levies a tax of 3 percent of the sales price of all gas and oil removed from the ground in Tennessee. T.C.A. § 60-1-301.

*Distribution.* The Tennessee Department of Revenue collects the tax and distribution is made as follows:

1. One third (1/3) to the county where the wellhead is located.
2. Two thirds (2/3) to the state general fund. T.C.A. § 60-1-301.

## County Mineral Severance Tax (General Law)

**Reference Number:** CTAS-1614

*Authority.* T.C.A. §§ 67-7-201 through 67-7-212.

*Description.* This is a local option tax wherein a county legislative body by resolution adopted by a two-thirds majority vote may levy a tax on all sand, gravel, sandstone, chert and limestone severed from the ground within the county. T.C.A. §§ 67-7-201, 67-7-212. The county legislative body sets the rate, but the rate cannot exceed 15 cents per ton. T.C.A. § 67-7-203. A tax authorized under this Section may be repealed by a resolution passed by a two-thirds majority of the county legislative body. T.C.A. § 67-7-201.

*Distribution.* The Tennessee Department of Revenue collects this tax. T.C.A. § 67-7-204. All revenues collected, less administrative expenses, are remitted to the county trustee quarterly and become a part of the county road fund. T.C.A. § 67-7-207.

## County Mineral Severance Tax (Private Act)

**Reference Number:** CTAS-1615

Several counties have enacted mineral severance taxes by private act. Private acts on this subject are no longer authorized, but private acts on this subject enacted prior to June 5, 1984, remain in effect, except that the rate cannot exceed 15 cents per ton. T.C.A. §§ 67-7-209, 67-7-212. The minerals subject to the tax are delineated in each county's private act, along with provisions regarding rate, collection and distribution of the tax proceeds. Currently, the following counties have a mineral severance tax levied by private act: Benton, Carroll, Carter, Decatur, Giles, Humphreys, Roane, Rutherford, Unicoi, Weakley, White, and Williamson.

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