County Technical Assistance Service
INSTITUTE *for* PUBLIC SERVICE

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In Lieu of Tax or Tax Equivalent Payments

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

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 CTAS website material.

Sincerely,

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In Lieu of Tax or Tax Equivalent Payments

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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.[1]

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.[2]Contracts for the distribution of tax equivalent payments are authorized.[3]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.[4]

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*.[5]

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).[6]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.[7]

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.[8]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. [9] 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.[10]

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.[11] 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.[12]

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.[13]

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[1] T.C.A. § 7-39-404.

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

[3] T.C.A. § 7-52-306.

[4] 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).

[5] T.C.A. § 7-52-404.

[6] T.C.A. § 7-52-606(a).

[7] T.C.A. § 7-52-606(b).

[8] T.C.A. § 7-53-305(a).

[9] 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).

[10] T.C.A. § 67-5-206.

[11] 16 U.S.C. § 831 *et seq*.

[12] T.C.A. § 67-9-101(a).

[13] T.C.A. § 67-9-201.

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