



County Technical Assistance Service  
INSTITUTE *for* PUBLIC SERVICE

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# Collection of Delinquent Real Property Taxes

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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 CTAS website material.

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# 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 attorneys 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

In 2024, the Legislature enacted Public Chapter 967, which rewrote T.C.A. § 67-5-2507 and became effective September 1, 2024.

The county mayor shall cause a certified copy of all orders confirming the sale of a parcel to the county pursuant to T.C.A. § 67-5-2501 to be recorded in the office of the register of deeds of the county. It is the duty of the county mayor of each county to take charge of all parcels purchased by the county at a delinquent tax sale pursuant to T.C.A. § 67-5-2501.

The county legislative body may adopt regulations concerning sales of parcels purchased by the county at a delinquent tax sale. The regulations must be designed to promote a fair, effective, competitive, and transparent method of disposing of the parcels so as to attain the highest bid for each parcel. The regulations may include:

- That parcels may be sold on credit and the terms thereof;
- That parcels may be sold for amounts less than the full amount owing in the tax proceeding, the conditions upon which such a sale may take place, and whether such a sale shall be approved by the county legislative body;
- Other similar issues regarding the procedures of sale; and
- Procedures, terms, and conditions applicable to conveyances of a parcel pursuant to T.C.A. § 67-5-2507(b).

T.C.A. § 67-5-2507(a)(1)-(2).

#### **Procedure for Sale**

Unless otherwise required by the regulations adopted by the county legislative body, each parcel must be offered for sale with no minimum bid or approval by the county legislative body required. The county mayor may solicit offers for one or more individual parcels or for all parcels on a list prepared pursuant to T.C.A. § 67-5-2511. Any solicitation of offers must contain a statement as to how and where offers may be filed, and must be published in a newspaper of general circulation in the county.

Upon a written offer being made to purchase a parcel the county mayor shall cause to be published a notice of the details of such offer with a description of the parcel. During the ten-day period following the date of such publication, if a person files with the county mayor or the county mayor's designee a written offer to increase the advertised offer by ten percent (10%) or more, the county mayor or designee shall give notice to those persons filing offers to appear at a certain time, date, and location and shall post the notice at a place available to the general public. At such time, date, and location, the county mayor or the county mayor's designee shall conduct an auction of the parcel with the starting bid being the highest written offer received prior to the auction. All persons are eligible to offer bids at the auction. The highest bidder at such auction is the successful bidder. If no raise offer is timely filed, the original bidder is the successful bidder.

T.C.A. § 67-5-2507(a)(4)(A).

The county mayor may approve the sale by internet sale of parcels purchased by the county at a delinquent tax sale pursuant to T.C.A. § 67-5-2501. T.C.A. § 67-5-2507(a)(4)(A) may be waived by the county mayor as to parcels offered for sale by internet sale. The highest bidder at such internet auction is the successful bidder.

T.C.A. § 67-5-2507(a)(4)(B).

Upon compliance with this section, the parcel must be released from all taxes, penalties, interest, and court costs owing all tax entities, up to the date of the conveyance subject only to any current year taxes that may not have been paid pursuant to this section.

Any conveyance or retention of a parcel that occurs before the expiration of the redemption period provided in part 27 of this chapter remains subject to the right of redemption. A conveyance or retention of a parcel does not affect the redemption period applicable to the parcel.

The county mayor is not required to seek approval of the county legislative body to supervise the sale and conveyance of each parcel unless:



- Otherwise required by the regulations adopted by the county legislative body; or
- The county legislative body has determined to retain or convey the parcel pursuant to .C.A. § 67-5-2507(b).

T.C.A. § 67-5-2507(a)(6)-(8).

### **Proceeds from the Sale**

The proceeds derived from retentions or conveyances of parcels purchased by the county at a delinquent tax sale pursuant to T.C.A. § 67-5-2501 must be applied in the following order:

- First, proceeds must be applied to reimburse the taxing entity for amounts paid by the taxing entity for the purchase of the parcel in the tax proceeding or which remain owing by the taxing entity;
- Any proceeds remaining after the application of proceeds as provided above, must be applied first to unpaid attorney fees allowed in the tax proceeding, then to other unpaid court costs, and then divided on a pro rata basis based upon the taxes levied against the parcel by the county and any other taxing entity which has filed a proceeding as defined in T.C.A. § 67-5-2502;
- Any proceeds remaining after the application of proceeds as provided above, must be applied to pay other taxes and accrued interest, penalties, and court costs, owed to the county and any other taxing entity on a pro rata basis, based upon the amounts of taxes owing each; and
- Any proceeds remaining after the application of proceeds as provided above, inure to the benefit of the county.

T.C.A. § 67-5-2507(a)(5).

### **Retention of Parcel by the County**

The county legislative body may determine that it is in the best interest of the county to retain a parcel purchased by the county pursuant to T.C.A. § 67-5-2501 to use the parcel for a public purpose. The county may retain ownership of the parcel, or it may, subject to such terms as may be agreed upon, transfer ownership of the parcel to:

- A governmental entity, including a corporation created pursuant to the Tennessee Local Land Bank Program, compiled in Title 13, Chapter 30; or
- A nonprofit entity; provided, that the parcel is transferred in accordance with T.C.A. § 67-5-2507(b)(3).

A document evidencing the determination of the county legislative body to retain ownership of a parcel must be recorded in the office of the register of deeds.

T.C.A. § 67-5-2507(b)(1)-(2).

### **Transfer of Parcel by the County**

To be eligible to receive a parcel, a nonprofit entity shall comply with the following requirements:

- The entity must be exempt from federal income taxation under § 501(a) of the Internal Revenue Code (26 U.S.C. § 501(a)), or an organization described in § 501(c) of the Internal Revenue Code (26 U.S.C. § 501(c));
- The entity shall agree that the conveyed parcel must be used by the entity for at least a reasonable period for the purposes for which the entity was chartered; and
- The entity is chartered to:

1. Construct or to restore residential dwellings for the purpose of creating affordable and habitable housing for the disadvantaged and needy citizens of the community;
2. Construct or to restore historical properties or buildings in the community;
3. Operate or maintain a community garden in the community; or
4. Construct, operate, or maintain a park, memorial, or gathering place in the community, available for use by the general public.

T.C.A. § 67-5-2507(b)(3).

#### **Conveyance of Parcel by the County**

Conveyances of parcels must be made without warranties by the county. Deeds must be executed by the county mayor. The execution of a deed constitutes a certification by the county that all procedures and rules of the county have been complied with and that all interest of the county in the parcel is being conveyed. The certification must not be overturned absent clear and convincing evidence of a substantial and material violation of a statutorily mandated requirement.

T.C.A. § 67-5-2507(c).

#### **Rescinding the Prior Delinquent Tax Sale**

If the county mayor determines, prior to the sale of a parcel, 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 must be made as to all interested persons as of the date of the filing of the motion.

If a municipality does not authorize the county to convey its interest in tax parcels pursuant to T.C.A. § 67-5-1801(a), or if a municipality files a complaint to collect delinquent property taxes owing the municipality separate from the complaint filed by the county to collect delinquent property taxes owing the county, the municipality's governing body and chief executive officer shall dispose of the parcels purchased by the municipality at a delinquent tax sale, in accordance with this section and T.C.A. § 67-5-2511. In such event, the municipality's legislative body has the powers and duties of the county legislative body as set out in this section and T.C.A. § 67-5-2511; its chief executive officer has the powers and duties of the county mayor as set out in this section and T.C.A. § 67-5-2511; and the municipality stands in the place and stead of the county.

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 or environmental risks associated with the parcel.

If the county mayor determines that such risks exceed the value of the parcel, the county legislative body may adopt a resolution, by a two-thirds ( $\frac{2}{3}$ ) 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. Such relief must be sought by motion pursuant to Rule 60 of the Tennessee Rules of Civil Procedure filed within one hundred twenty (120) 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. If the prior order is rescinded, title to the parcel must be deemed to have remained in that state that existed as of the date of entry of the prior order confirming the sale. The court has broad discretion to ensure that this subsection (f) does not result for any period of time in the creation of a parcel for which a person or entity does not have 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 which may be accepted at the sale.

As an alternative to ordering a second sale or if a person does not present 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. The court may allow an additional fee to the delinquent tax attorney for services rendered in regard to a negotiated sale of a parcel as provided in this chapter.

Subsection (f) applies to the risks of an individual parcel only and does not apply to the aggregated risks of all or multiple parcels bid in to the county pursuant to T.C.A. § 67-5-2501.

T.C.A. § 67-5-2507(d)-(f).

### **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 chief executive officer of a municipality must cause to be prepared and maintained a listing of all parcels owned by the municipality acquired pursuant to T.C.A. § 67-5-2501; provided, however, that the listing may omit any property that is required to be listed by a county.

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.

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