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# Delinquent Tax Attorney

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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.

Sincerely,

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# 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.