



March 14, 2025

Collection of Delinquent Personal Property Taxes

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 CTAS website material.

Sincerely,

The University of Tennessee
County Technical Assistance Service
226 Anne Dallas Dudley Boulevard, Suite 400
Nashville, Tennessee 37219
615.532.3555 phone
615.532.3699 fax
www.ctas.tennessee.edu

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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.¹ 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.²

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.³ 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.⁴ 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.⁵ 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."⁶ 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.⁷

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.

¹T.C.A. § 67-5-901(a)(3)(A).

²*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).

³T.C.A. §§ 67-5-102, 67-5-103.

⁴*In re All Assessments*, 58 S.W.3d 95, 96 (Tenn. 2000).

⁵T.C.A. § 67-5-1301.

⁶*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").

⁷*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.¹

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).² 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.³ 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.⁴ 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.⁵ 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.⁶

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.⁷

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.⁸

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).⁹

¹T.C.A. § 67-5-2003(b), T.C.A. § 67-5-2004.

²T.C.A. § 67-5-2003(a).

³T.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).

⁴T.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).

⁵T.C.A. §§ 67-5-2003(e).

⁶T.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).

⁷T.C.A. §§ 67-5-2004, 67-5-2003(b); Op. Tenn. Atty. Gen. 85-274 (November 4, 1985).

⁸T.C.A. § 67-5-2003(g).

⁹T.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.¹

¹T.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.¹ 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.²

¹T.C.A. § 67-5-2003(h). *State, ex rel. Davis v. A & F Const.*, 2009 WL 499421 (Tenn.Ct.App. 2009).

²T.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).

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