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# Methods of Collection

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Dear Reader:

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

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Reference Number: CTAS-1608

There are four ways by which delinquent personal property taxes may be collected. The delinquent personal property taxes may be immediately collected by distraint (distress warrant) and sale of any personal property on which delinquent personal property taxes are owing, by suit at law against the taxpayer, by garnishment, and/or by retention of a collection agent.<sup>1</sup>

Distress Warrants. All delinquent personal property taxes may be immediately collected by the county trustee, with the assistance of the delinquent tax attorney (if the delinquent tax attorney's assistance is requested by the trustee). The trustee's tax books and the delinquent tax lists furnished to deputy trustees, sheriffs or constables, or to the delinquent tax attorney, have the force and effect of a judgment and execution from a court of record. These documents provide authority for the officers or delinquent tax attorneys to distraint (seize) and sell a sufficient amount of the personal property to satisfy the delinquent taxes, interest, penalties, costs, and attorney's fees. Note, however, leased personal property assessed to a lessee may not be distrained and sold pursuant to T.C.A. 67-5-2003(a).<sup>2</sup> See Sample Distress Warrant.

Pre-Seizure Notice. Prior to distraint (seizure) of any personal property, the trustee, deputy trustee, or delinquent tax attorney must give not less than 10 days written notice of the intended distraint (seizure) by any of these methods: (1) delivering the notice in person; (2) leaving the notice at the dwelling place or usual place of business of the taxpayer; or (3) mailing the notice to the taxpayer's last known address.<sup>3</sup> See Sample Pre-Seizure Notice Letters.

Sale of Personal Property. After seizure, additional notice must be provided before the sale. Ten days notice of the time and place of any sale of personal property must be given by advertisement posted in three public places in the county, one of which shall be at the courthouse door. In addition, at least 10 days written notice of the sale must be given to the taxpayer by any of the methods outlined above.<sup>4</sup> The officers conducting the sale must have the personal property present when it is sold and must be allowed to retain (in addition to the taxes, interest, penalties, costs, and attorney's fees) all commissions, costs, and necessary expenses of removing and keeping the property distrained, including expenses of seizure, preservation, and storage of the property.<sup>5</sup> If a delinquent tax attorney assists the trustee with the seizure and sale of the personal property, the attorney is entitled to attorney's fees.<sup>6</sup>

Garnishments. In addition to the distress warrant procedure, the trustee may have garnishments issued against the taxpayer, to be returned to any general sessions court in the district where the taxpayer resides, or any circuit or chancery court.<sup>7</sup>

Suits to Collect Delinquent Personal Property Taxes. Delinquent personal property taxes may also be collected by lawsuit. To use this method, the trustee may turn over the delinquent tax list to the delinquent tax attorney 30 days after the taxes become delinquent for inclusion in the suit to collect the prior year's delinquent real property taxes, or as a separate lawsuit. This alternative may be used without having first issued a distress warrant. In the event the trustee turns over the delinquent list prior to the mailing of the current year's tax bill (which will include notice of delinquent taxes from the previous year), the trustee must forward written notice of the suit to collect delinquent taxes by first class mail to the last known property owner at least 10 days before the delinquent list is turned over to the delinquent tax attorney.

A judgment obtained against a delinquent taxpayer may be enforced as a lien on the property, or as any other judgment, including garnishment or sale of property by the sheriff. If this procedure is used, the trustee may, as with real property tax records, turn over records to the court clerk.<sup>8</sup>

Retention of Collection Agent. The county trustee may proceed against a taxpayer who is delinquent in the payment of tangible personal property taxes by retaining an agent to collect such delinquent tangible personal property taxes, plus interest authorized by law, reasonable costs, and legal fees, provided that the collection activities are in compliance with T.C.A. 67-5-2004(b).<sup>9</sup>

<sup>1</sup>T.C.A. § 67-5-2003(b), T.C.A. § 67-5-2004.

<sup>2</sup>T.C.A. § 67-5-2003(a).

<sup>3</sup>T.C.A. § 67-5-2003(c). *But see Mennonite Board of Missions v. Adams*, 462 U.S. 791, 103 S.Ct.

2706, 77 L.Ed.2d 180 (1983) (failure to provide the mortgagee with adequate notice constitutes a deprivation of due process in violation of the Fourteenth Amendment to the United States Constitution). See also Op. Tenn. Atty. Gen. 85-274 (Nov. 4, 1985) (actual notice should be given, where possible, to all parties with a legally protected property interest).

<sup>4</sup>T.C.A. §§ 67-5-2003(d). But see *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983) (failure to provide the mortgagee with adequate notice constitutes a deprivation of due process in violation of the Fourteenth Amendment to the United States Constitution). See also Op. Tenn. Atty. Gen. 85-274 (Nov. 4, 1985) (actual notice should be given, where possible, to all parties with a legally protected property interest).

<sup>5</sup>T.C.A. §§ 67-5-2003(e).

<sup>6</sup>T.C.A. §§ 67-5-2003, 67-5-2410. See also *Southern Ry. v. Stair*, 801 F. Supp. 37, 51 (W.D. Tenn. 1992) (finding that railroad was subject to tax penalties, but not liable for attorney's fees).

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

<sup>8</sup>T.C.A. § 67-5-2003(g).

<sup>9</sup>T.C.A. § 67-5-2004(b).

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