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Lease/Purchase Agreements

Dear Reader:

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

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

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

Sincerely,

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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Lease/Purchase Agreements

Reference Number: CTAS-1729

Local governments may contract for the purchase of capital improvements using a contract, lease, or lease/purchase arrangement. T.C.A. § 7-51-901 *et seq.* The conditions and interest rates should be checked closely since the plan may cost more than the issuance of notes or bonds. Also, follow restrictions as prescribed in the state law authorizing the use of such agreements. Contracts should contain a "funding out" clause in the event funds are not appropriated in subsequent years. Leases for capital improvement property cannot exceed 40 years or the useful life of the project and must be approved by the county governing body. T.C.A. §§ 7-51-902 through 7-51-904. If the term of any lease exceeds five years, public notice of the meeting at which the project will be discussed must be given at least seven days prior to the meeting. T.C.A. § 7-51-904.

Recommended Practice: Use of Lease/Purchase Agreement should be carefully considered and generally not used.

The Uniformity in Local Government Lease Financing Act

Reference Number: CTAS-2479

Although the Uniformity in Local Government Financing Act became effective April 22, 2021, the terms of the Act apply to lease financing authorized by the local governing body on or after January 1, 2022, and are described below.

Pursuant to T.C.A. § 9-24-102((5)), lease financing is defined as any lease under which (1) the rental payments by the public entity include an identifiable interest component; or (2) the lessee has a right to purchase the property subject to the lease price that is not based upon the fair market value of the property at the time of purchase.

Exempt lease financing is lease financing with a principal amount not exceeding \$100,000 and does not include a lease financing if the principal amount of that lease financing together with the principal amount of all exempt lease financing issued by the public entity previously in the same fiscal year exceeds (\$100,000); See T.C.A. § 9-24-102((1)).

Local governments and other public entities, as defined by T.C.A. § 9-24-104, must adhere to the following requirements in connection with approving and entering into any lease financing that is not exempt:

1. Before entering any lease financing, a local government is required to get approval from the comptroller of treasury or comptroller's designee (comptroller) according to the procedures described below. Once approved by the comptroller, the proposed lease financing must be submitted to the governing body for consideration;
2. The weighted average maturity of the principal payments under the lease financing must not exceed the estimated weighted average life of the property financed through the lease financing;
3. Local governments are not permitted to enter into a lease financing concerning property unless authorized by applicable law to incur indebtedness to finance such property, and the term of any lease financing must not exceed the maximum term of debt that the local government could issue to finance the property being leased;
4. If the indebtedness of the local government is only payable according to applicable law from all or any portion of the revenues of the local government, the payments under the lease financing must only be payable from such revenues; and
5. If the lease payments under the lease financing are payable from or secured by ad valorem taxes of the local government and the term exceeds the maximum term of a capital outlay note that the local government may issue under chapter 21, part 6 of the Tennessee Code Annotated, the local government is not permitted to enter into the lease financing without adopting and publishing an initial resolution for the lease financing in the manner described in chapter 21, part 2 of the Tennessee Code Annotated, if an initial resolution is required for the type of property being financed, and, if required by the terms of such part, undertaking an election for the lease financing in the manner required by that part.

Requesting Approval from the Comptroller — When requesting approval, a local government must submit a plan of lease financing to the comptroller of the treasury. The comptroller may request any additional information required to properly review the proposed plan of lease financing. The comptroller will evaluate each plan of lease financing based on the plan's particular circumstances and approve the plan only if a

determination is made that the repayment terms are in the public's interest. The comptroller will report the approval or disapproval of the plan of lease financing to the governing body within fifteen (15) business days after receipt of the plan, and all requested supplemental documentation. T.C.A. § 9-24-104.

The governing body may act on the proposed plan of lease financing, (1) after receiving the approval of the comptroller; or (2) after the expiration of fifteen (15) business days from the date the plan of lease financing is received by the comptroller and no disapproval having been reported by the comptroller, whichever date is earlier, the governing body may take such action concerning the proposed plan of lease financing as it deems advisable in accordance with T.C.A. § 9-24-104.

All property leased by a local government is deemed property owned by the local government for purposes of and such property is exempt from taxation to the extent property owned by the local government is otherwise exempt from taxation.

Source URL: <https://www.ctas.tennessee.edu/eli/leasepurchase-agreements>