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# Other Taxes

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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.

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## Other Taxes

Reference Number: CTAS-222

### Hall Income Tax

Reference Number: CTAS-1638

*Authority.* T.C.A. §§ 67-2-101 through 67-2-125.

*Description.* This is a tax on income derived from stocks and bonds, as defined in T.C.A. §§ 67-2-101 and 67-2-102. There are numerous exemptions, including a \$1,250 personal exemption on individual returns and \$2,500 on joint returns. T.C.A. § 67-2-104. The tax is collected by the Department of Revenue. The rate was previously five percent (5%) but is being phased out as follows:

- (1) For any tax year that begins on or after January 1, 2017, and prior to January 1, 2018, four percent (4%);
- (2) For any tax year that begins on or after January 1, 2018, and prior to January 1, 2019, three percent (3%);
- (3) For any tax year that begins on or after January 1, 2019, and prior to January 1, 2020, two percent (2%);
- (4) For any tax year that begins on or after January 1, 2020, and prior to January 1, 2021, one percent (1%); and
- (5) For any tax year that begins on or after January 1, 2021, and for subsequent tax years, zero percent (0%);

*Distribution.* The tax is distributed as follows:

1. Up to 10 percent of the first \$200,000 of taxes collected and 5 percent of amounts over \$200,000 go to the Department of Revenue for administration of the tax. T.C.A. § 67-2-117.
2. The taxes collected on income from stocks and bonds after deducting administration expenses are distributed as follows:
  - a. Five-eighths (5/8) to the state general fund;
  - b. Three-eighths (3/8) to the counties and municipalities of the state. If the taxpayer resides inside the corporate limits of a municipality, then to that municipality; but if the taxpayer resides outside any municipal limits, then to the county of the taxpayer's residence. T.C.A. § 67-2-119.

### Hotel/Motel Tax

Reference Number: CTAS-1639

A hotel/motel tax is a tax on the privilege of occupancy of hotel rooms. Under T.C.A. § 67-4-1401(2), the term hotel includes private, public, and government owned hotels, inns, tourist camps, tourist courts, tourist cabins, motels, short-term rental units, primitive and recreational vehicle campsites and campgrounds, or any place in which rooms, lodgings, or accommodations are furnished to transients for consideration. Prior to July 1, 2021, counties levied the hotel/motel tax by private act (with the exception of counties with a metropolitan form of government, which use a general law, T.C.A. § 7-4-101 *et seq.*)

Modifying, Levying, and Repealing Hotel/Motel Tax —Public Chapter 496 became effective on July 1, 2021. The law allows a county (except for those with a metropolitan form of government) to levy, modify, or repeal a privilege tax by resolution (rather than by private act) subject to the following restrictions: (i) the tax must not exceed 4% of consideration charged to the occupant of the hotel; (ii) subject to other provisions discussed below, a hotel/motel tax authorized before the effective date of this act that exceeds the limit remains in full force and effect; and (iii) this does not void or modify a private act, ordinance, or resolution authorizing the levy of the privilege tax. T.C.A. § 67-4-1402.

Under T.C.A. § 67-4-1403, revenue received by the county from the tax must be used for tourism purposes. However, revenue from a tax levied before July 1, 2021, may continue to be used in the same manner described in the private act or resolution. Counties are not authorized to change the use of revenue of a preexisting tax except for tourism purposes. See Title 67, Chapter 4, Part 14 of the Tennessee Code Annotated.

**Short-Term Rentals** —Short-term rentals are residential dwellings that are rented wholly or partially for a fee for less than 30 continuous days but do not include a hotel defined in T.C.A. § 68-14-302 or a bed and breakfast as defined in T.C.A. § 68-14-502. See T.C.A. § 67-4-1501(5).

Title 7, Chapter 4 and Title 67, Chapter 4 of the Tennessee Code Annotated define a short-term rental marketplace as a person or entity, (excluding vacation lodging services), that provides a platform for compensation, between a third-party who offers to rent a short-term rental to an occupant. Examples of short-term rental marketplaces are Airbnb and VRBO. Vacation lodging services are engaged in the business of providing management, marketing, booking, and rental or short-term rental units. One example of a vacation lodging service is a cabin rental company.

Hotel/motel taxes on short-term rental units secured through a short-term rental marketplace must be collected and remitted by the short-term rental marketplace to the department of revenue for distribution to the local government levying the tax, in accordance with Title 67, Chapter 4, Part 33, of the Tennessee Code Annotated. Vacation lodging services are not responsible for collecting and remitting hotel/motel taxes to the department of revenue but may be responsible for remitting such taxes to the county if required by private act or resolution.

Hotel/Motel Tax in Metropolitan Counties – Metropolitan Counties follow the general law found at T.C.A. § 7-4-101 et seq. These counties are authorized to impose a hotel/motel tax in an amount not to exceed 3% of the consideration charged by the operator. The privilege tax shall be approved by ordinance of the metropolitan council. [T. C. A. § 7-4-102.](#)

In addition to tax described above, metropolitan counties having population of less than 25,000 according to the 2020 federal census or subsequent federal census are authorized to impose an additional hotel/motel tax not to exceed 3% of the consideration charged by the operator. The additional tax shall be approved by ordinance of the metropolitan council. T. C. A. § 7-4-102.

## Short-Term Rental Unit Act of 2018

Reference Number: CTAS-2492

The Short-Term Rental Unit Act became effective on May 17, 2018, and is codified at T. C. A. § 13-7-602 et. seq. The act provides guidance on the regulation of short-term rentals.

T. C. A. § 13-7-602 provides definitions of terms used throughout the act.

### **Legacy Clause**

Under T. C. A. § 13-7-603(a), and except as provided in subsection T. C. A. § 13-7-603(b), any ordinance, resolution, regulation, or other rule (“regulation”) that prohibits or otherwise regulates the use of property as a short-term rental does not apply to the property if the property was being used as a short-term rental by the property owner prior to the enactment of the regulation by the local governing body. The regulation in effect at the time the property began being used as a short-term rental unit is the law that governs the use of the property until the property is sold, transferred, or is not used as a short-term rental unit for 30 continuous months, or has been in violation of the local laws three or more separate times as provided in T. C. A. § 13-7-604.

Notwithstanding subsection T. C. A. § 13-7-603(a), a regulation enacted prior to January 1, 2014, that prohibits or effectively prohibits the use of property as a short-term rental unit may apply to any property within the local governing body’s jurisdiction, regardless of the property’s existing use. T. C. A. § 13-7-603(b). This exception only applies to regulations that expressly limit the time a residential dwelling may be rented and does not apply to regulations that prohibit commercial activity or renting residential dwellings to transients.

### **Violation of Local Laws**

T. C. A. § 13-7-603 does not prevent a local governing body from prohibiting the use of property as a short-term rental unit when the unit has violated applicable local laws three or more separate times, and the owner has no appeal rights remaining. The burden of proof to show a violation of the applicable local laws occurred is on the local governing body. T. C. A. § 13-7-604(a).

### **Permitting Process.**

T. C. A. § 13-7-604(b) allows a local governing body to authorize short-term rental units through a permitting or application process. If the local governing body authorizes short-term rental units through a reasonable permitting or application process, it may suspend the continued use of the property as a short-term rental unit when the unit does not maintain a permit or approved application.

If the local governing body accepts complaints about the operation of short-term rental units, it must notify all complainants any false complaints are punishable under T. C. A. § 39-16-702.

T. C. A. § 13-7-604 further provides that if the local governing body prohibits, suspends, or otherwise regulates property used as a short-term rental unit that is also subject to T. C. A. § 13-7-603(a) (the above-mentioned legacy clause), the owner may challenge the prohibition, suspension, or regulation as in conflict with this part through a civil action or appeal in the chancery or circuit court.

**Restricting the Use of Property as Short-Term Rental Units**

T. C. A. § 13-7-605 provides:

1. A condominium, co-op, homeowners’ association, or other similar entity may prohibit or restrict an owner of property from using the owner’s property as a short-term rental unit as provided for in the entity’s governing documents;
2. A lessor, through terms of the lease agreement, may restrict the use of the property as a short-term rental unit; and
3. A property owner may place a restrictive covenant or easement on the property that restricts the future use of the property as a short-term rental unit as authorized under existing law.

**Preemption**

T. C. A. § 13-7-606 provides that the act supersedes any regulation or other requirement of any type enacted, maintained, or enforced by the local governing body that conflicts with the act.

Counties may take the following steps to adopt a reasonable permitting process for short-term rentals:

1. Develop reasonable regulations governing the use and permitting process for short-term rental units that do not conflict with T. C. A. § 13-7-601 *et. seq.* (Example – Sevier County Short-Term Rental Inspection Program)
2. Obtain approval from the county legislative body.
3. Implement regulations and permitting process.

## State Litigation Tax

Reference Number: CTAS-1640

*Authority.* T.C.A. §§ 67-4-601 through 67-4-606.

*Description.* The General Assembly has provided a privilege tax on litigation, collected upon the commencement of a civil action, a finding or plea of guilty or submission to a fine in a criminal action, the filing of an appeal or writ of error or certiorari, judgment against the defendant in any original civil action brought by a city, county or the state or upon judgment or final decree against the appellee when the appellant is a city, county or the state. Such tax is administered by the commissioner of revenue and collected by the clerks of Supreme Court, Court of Appeals, circuit courts, criminal courts, probate courts, county court, courts of law and equity, chancery courts, general sessions courts, city courts and any other inferior courts the General Assembly may create.

The following are the most common state privilege taxes upon litigation:

- |  |         |
|--|---------|
| 1. Criminal charges; T.C.A. § 67-4-602(a)                | \$29.50 |
| 2. Civil suits in courts of record; T.C.A. § 67-4-602(b) | \$23.75 |
| 3. Civil cases in general sessions; T.C.A. § 67-4-602(c) | \$17.75 |

When a general sessions court is exercising state court jurisdiction, except with regard to juvenile court, there is levied an additional privilege tax of \$1 added to the \$23.75 listed above.

In all criminal charges in any state, county or municipal court for any violation of Title 55, Chapter 8, or for any violation of any ordinance governing the use of a public parking space there is levied an additional state litigation tax of \$1.

Additionally, T.C.A. § 67-4-602(h) imposes an additional privilege tax on litigation of \$3.00 on all criminal charges, upon conviction or by order, instituted in any state or general sessions court, to be deposited in a special account in the state treasury to be known as the "Statewide Automated Victim Information and Notification System Fund."

There is also an additional litigation tax of \$2.00 imposed on all criminal charges, upon conviction or by order, instituted in the general sessions court of any county served by a judicial commissioner. T.C.A. § 67-4-602(k).

*Collection.* State litigation taxes are collected by the various court clerks. For services in collecting and remitting these taxes, clerks are entitled to a 6.75 percent commission. T.C.A. § 8-21-401. As this

commission is a change to a uniform percentage from prior law, which provided for different commissions in different courts and counties, the Department of Revenue provided that clerks shall be held harmless and shall not receive a commission that is less than the commission received by the clerk in the fiscal year ending June 30, 2005.

## County Litigation Taxes

Reference Number: CTAS-1641

*Authority.* TCA 67-4-601, 16-15-5006, and 16-20-106.

*Description.* Counties have authority to levy a local litigation tax up to the amount levied as state litigation tax. This local litigation tax may be levied by private act, by resolution of the county legislative body, or by a combination of private acts and county legislative body resolutions. Clerks of the various courts to which such tax applies as specified in the private act or resolution collect the local litigation tax. The private acts and local resolutions of each individual county must be consulted for that county's litigation tax rate.

In addition to matching the state litigation tax, TCA 16-15-5006 authorizes counties to levy a litigation tax of up to \$6 per case for each case filed in general sessions court or in a court where the general sessions judge serves as judge, except juvenile court, by resolution passed by a two-thirds vote of the county legislative body, proclaimed by the presiding officer and certified to the secretary of state. This statute also contains a provision allowing the litigation tax to be raised above \$6 if in any fiscal year the proceeds of the tax do not raise sufficient revenue to fund the salary, under the circumstances specified in the statute. See Op. Tenn. Att'y Gen. U94-130. The county litigation tax authorized by TCA 16-15-5006 is earmarked for the salary of the general sessions judge.

Counties are authorized to levy an additional local privilege tax on litigation in all civil and criminal cases instituted in the county, not including those instituted in municipal court under subsection (b) of TCA 67-4-601. This additional tax may be levied by a resolution passed by a two-thirds vote of the county legislative body. Counties are authorized to levy the tax for jail or workhouse construction, reconstruction or upgrading, or to retire debt, including principal and interest and related expenses, on such construction, reconstruction or upgrading or for courthouse renovation.

Originally, the Attorney General issued opinions indicating that counties were limited to a maximum tax levy of \$50 under subsection (b) of TCA 67-4-601 (AG Op. Nos. 08-167 and 12-13). These opinions interpreted subdivisions (b)(1) and (b)(5) of subsection (b) not as separate taxes but linked. The opinions state that (b)(5) only authorizes an increase in the (b)(1) tax to a maximum of \$25. However, in 2016 the Attorney General issued another opinion (Op. No. 16-10) that interprets subdivisions (b)(1) and (b)(5) as unrelated separate taxes. Thus, in the 2016 opinion, the Attorney General opines that counties can levy a maximum \$60 tax under subsection (b) of TCA 67-4-601 (\$10 under subdivision (b)(1), \$25 under (b)(5), and \$25 under (b)(6)). The 2016 opinion appears to supersede the 2008 and 2012 opinions.

In addition to the uses set forth above (i.e., jail/courthouse) as much as \$25 of this tax may be used for courthouse security. Also, up to \$50 of the tax may be used for the purpose of obtaining and maintaining software and hardware associated with collecting, receiving and maintaining records for law enforcement agencies. Finally, the entire amount may also be used for substance abuse prevention purposes.

The law contains a sunset provision that causes the tax levy to cease once the costs of the project have been paid or the debt for the project has been retired.

Finally, per TCA 16-20-106, counties by a two-thirds (2/3) vote may levy an additional \$2 litigation per case to be denominated as a part of the court costs for each petition, warrant and citation, including warrants and citations for traffic offenses, in matters before the local general sessions courts and juvenile courts to be used by the county for the exclusive purpose of supporting a local victim-offender mediation center or centers.

*Distribution.* Distribution of county litigation taxes that are to match the state levy may be used for any

county purpose or purposes specified in the private acts or resolutions.

## Marriage License Taxes

Reference Number: CTAS-1642

*Authority.* T.C.A. §§ 67-4-411, 67-4-502, 67-4-505, 36-6-413.

*Description.* There are two state privilege taxes on marriage, and a local option privilege tax on marriage that may be levied in an amount up to \$5 by resolution of the county legislative body. The collector of both state and local marriage taxes is the county clerk. The \$5 state tax is retained locally and the \$15 state tax is forwarded to the commissioner of revenue for distribution. An additional "fee" was imposed on marriage licenses in a 2002 amendment to T.C.A. § 36-6-413, which fee is collected by the county clerk and forwarded to the state treasurer for distribution.

*Rate.* The rate of these taxes is as follows:

1. State privilege tax, T.C.A. § 67-4-411.....\$15
2. State privilege tax, T.C.A. § 67-4-505..... \$5
3. County privilege tax, T.C.A. § 67-4-502, up to..... \$5
4. Additional state "fee" (tax), T.C.A. § 36-6-413..... \*\$60

\*This \$60 "fee" (tax) is not collected in any county from couples who file a certificate showing they have taken a premarital preparation course, nor is it collected from out-of- state residents who obtain their license in Sevier County (the only county with this special exemption). T.C.A. § 36-6-413.

*Distribution.* These taxes are distributed as follows:

1. T.C.A. § 67-4-505 state tax (\$5) is used:
  - a. 5 percent to county clerk as commission for collecting and paying over the revenue, T.C.A. § 8-21-701(55); and
  - b. 95 percent used for county school purposes.
2. T.C.A. § 67-4-411 (\$15) tax is used:
  - a. 5 percent to county clerk as commission, and
  - b. The remainder is forwarded to the commissioner of revenue.
3. The county tax is distributed five percent (5%) to the county clerk as commission for collecting and paying over the revenue and the remainder according to county legislative body resolution.
4. T.C.A. § 36-6-413 additional \$60 state fee is forwarded to the state treasurer to be distributed as follows:
  - a. \$7 to the Administrative Office of the Courts for funding parenting plan requirements;
  - b. \$15 to the Department of Children's Services for child abuse prevention;
  - c. \$7.50 to Office of Criminal Justice programs for domestic violence services;
  - d. \$20.50 to the Tennessee Disability Coalition for families and children with disabilities;
  - e. \$3.00 to the Tennessee Court Appointed Special Advocates Association;
  - f. \$4 to the Department of Education for grants to Boys and Girls Clubs; and
  - g. \$3 to the Tennessee Chapter of the National Association of Social Workers to strengthen services to families and children.

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