



County Technical Assistance Service  
INSTITUTE *for* PUBLIC SERVICE

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# County Trustees

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Dear Reader:

The following document was created from the CTAS website ([ctas.tennessee.edu](http://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,

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## Qualifications

Reference Number:

CTAS-2152

General qualifications of officeholders are located in the Tennessee Code Annotated, which provides that all persons 18 years old and over, who are citizens of the United States and of Tennessee, and who meet certain residency requirements are qualified to hold office unless the person:

1. Has been convicted of offering or giving a bribe, of larceny, or, of any other offense declared infamous by law, unless the person has been restored to citizenship (except those who have been convicted of an infamous crime if the offense was committed in the person's official capacity or involved the duties of the person's office, in which case the person shall forever be disqualified from holding office);
2. Has not paid a judgment for money received in an official capacity, which is due to the United States, Tennessee, or any county;
3. Has defaulted to the treasury at the time of election (in which case the election is void);
4. Is a soldier, seaman, marine, or airman in the regular United States Army, Navy or Air Force; or
5. Is a member of Congress or holds any office of profit or trust under any foreign power, other state of the Union, or the United States.

T.C.A. § 8-18-101.

A crime declared infamous by law essentially means a felony, or a crime which is partially punishable by disenfranchisement (loss of the right to vote). Also, there are several criminal statutes related to an official's misconduct in office, such as official misconduct (T.C.A. § 39-16-402), official oppression (T.C.A. § 39-16-403), misuse of official information (T.C.A. § 39-16-404), and conflict of interest (T.C.A. § 12-4-101), which, upon conviction, will result in disqualification to hold office for a period of ten (10) years from the date of conviction (T.C.A. §§ 39-16-406, 12-4-102). Any disqualified person who takes office is guilty of a misdemeanor (T.C.A. § 8-18-102).

The principles for determination of residence for purposes of the election code are (T.C.A. § 2-2-122):

1. The residence of a person is that place in which the person's habitation is fixed, and to which, whenever the person is absent, the person has a definite intention to return.
2. A change of residence is generally made only by the act of removal joined with the intent to remain in another place. There can be only one residence.
3. A person does not become a resident of a place solely by intending to make it the person's residence. There must be appropriate action consistent with the intention.
4. A person does not lose residence if, with the definite intention of returning, the person leaves home and goes to another country, state, or place within this state for temporary purposes, even if of years duration.
5. The place where a married person's spouse and family have their habitation is presumed to be the person's place of residence, but a married person who takes up or continues abode with the intention of remaining at a place other than where the person's family resides is a resident where the person abides.
6. A person may be a resident of a place regardless of the nature of the person's habitation, whether house or apartment, mobile home or public institution, owned or rented.
7. A person does not gain or lose residence solely by reason of the person's presence or absence while employed in the service of the United States or of this state, or while a student at an institution of learning, or while kept in an institution at public expense, or while confined in a public prison or while living on a military reservation.
8. No member of the armed forces of the United States, or such member's spouse or dependent, is a resident of this state solely by reason of being stationed in this state.

The following factors, among other relevant factors, may be considered in the determination of where a person is a resident (T.C.A. § 2-2-122):

- The person's possession, acquisition or surrender of inhabitable property.
- Location of the person's occupation.
- Place of licensing or registration of the person's personal property.

- Place of payment of taxes which are governed by residence.
- Purpose of the person's presence in a particular place.
- Place of licensing activities, such as driving.

These same principles, basically the physical presence with intention to make a place your residence, are also used by the courts in determining residence for other purposes.

Additional statutory qualifications are required for certain county offices, such as sheriff, and are discussed in the individual county office section. The offices and duties may vary in counties with a metropolitan government charter or a county government charter.

## Oaths

Reference Number:  
CTAS-30

Before taking office, the Tennessee Constitution, Article X, Section 1, provides that every person chosen to any office of trust must take an oath to "support the Constitution of this state and of the United States, and an oath of office." Review Oaths of Office for examples of different oaths.

There are various statutes throughout the Tennessee code providing for administering oaths to particular officials. There is also a general provision found at T.C.A. § 8-18-109(b), which provides that oaths of office for any elected or appointed official may be administered by the county mayor, the county clerk, a judge (current or retired) of any court of record in the county, or a current or retired judge of the general sessions court. In addition, under § T.C.A. 8-18-107, the governor, an active or retired supreme court justice, an active or retired inferior court judge, or an active or retired general sessions judge may administer the oath of office to an inferior court judge and, except as otherwise provided by law, to any other elected or appointed official. Notaries public are authorized to administer oaths pursuant to T.C.A. § 8-16-112. Members of the general assembly are also authorized to administer oaths to county officials. T.C.A. § 3-1-105. The oath of office for any county official required to file an oath may be administered at any time after the certification of the election returns by the appropriate legal authority in the case of elected officials, or after appointment in the case of appointed officials. However, even if the official files an oath before the scheduled start of a term of office, the official may not take office until the term officially begins. T.C.A. § 8-18-109.

The oath must be written and subscribed by the person taking it. Accompanying the oath must be a certificate executed by the officer administering the oath specifying the day and the year it was taken. T.C.A. § 8-18-107. The oath and the certificate are filed in the office of the county clerk, who endorses on them the day and year of filing, and signs the endorsement. T.C.A. §§ 8-18-109, 8-18-110. Any county official who fails to take and file the required oaths is guilty of a misdemeanor. T.C.A. § 8-18-113.

## Bonds

Reference Number:  
CTAS-31

An official bond is an instrument that requires the sureties to pay a specified sum of money if the official who executes the bond fails to perform certain acts or performs wrongful and injurious acts in the office. In other words, an official bond is a written promise, made by a public official (1) to perform all the duties of the office, (2) to pay over to authorized persons all funds received in an official capacity, (3) to keep all records required by law, (4) to turn over to his or her successor all records, money, and property, and (5) to refrain from anything that is illegal, improper, or harmful while acting in an official capacity. If the official fails to perform the duties, violates the law, or commits a harmful act, the person who is injured may collect damages from the sureties on the official bond. The sureties must be surety companies authorized to do business in Tennessee. If no surety company is willing to serve as surety for a particular person, the county legislative body may, by resolution, authorize the use of personal sureties approved by the mayor or the use of a cash bond approved by the mayor. T.C.A. §§ 8-19-111, 8-19-101, 8-19-102, 8-19-301.

The bond protects the state, the county, and the citizens in the event the county official fails to perform his or her duties properly. The bond does not protect county officials from liability. If a payment is made under the bond, the county official's sureties may have a right to recover the amount paid from the county official. This action against the county official by the sureties is known as subrogation. The following

county constitutional officials must execute a surety bond: county clerk, court clerks, sheriff, register, property assessor, and trustee. Also, bonds are required for the finance director, director of accounts and budgets, county auditor, constable, coroner, road commissioners, county surveyor, director of schools, purchasing agent, and notaries. A blanket bond is required for all county employees that are not otherwise covered. The specific bond amounts are set out in the table entitled County Officials'/Employees' Minimum Bond.

The form of official bonds is prescribed by the comptroller of the treasury, with the approval of the attorney general. T.C.A. § 8-19-101. Blank copies of official bonds, ready for use, are available from the comptroller, Division of Local Finance.

The official bond of every county public official must be conditioned in the following manner: T.C.A. § 8-19-111.

That if the \_\_\_\_\_ (principal) shall:

1. Faithfully perform the duties of the office of \_\_\_\_\_ of \_\_\_\_\_ County during such person's term of office or continuance therein; and
2. Pay over to the persons authorized by law to receive them, all moneys, properties, or things of value that may come into such principal's hands during such principal's term of office or continuance therein without fraud or delay, and shall faithfully and safely keep all records required in such principal's official capacity, and at the expiration of the term, or in case of resignation or removal from office, shall turn over to the successor all records and property which have come into such principal's hands, then this obligation shall be null and void; otherwise to remain in full force and effect.

Some counties also use "blanket bonds" for all of the county officeholders. T.C.A. § 8-19-101.

Additionally, counties that have chosen to self-insure their liability under the GTLA may also elect to self-insure their risk of loss rather than obtain bonds or insurance. Such an election must be made by resolution, adopted by a 2/3 vote of the governing body. T.C.A. § 8-19-101.

Official bonds of the sheriff, county trustee, county clerk, register of deeds, assessors of property, and persons vested by law with the authority to administer county highway and bridge funds must be approved by the county mayor, recorded in the office of the register of deeds and transmitted to the county clerk for safekeeping. T.C.A. §§ 8-19-102, 8-19-103, 67-1-505, 54-4-103(c), 54-7-108. Official bonds of clerks of court must be approved and certified by the court, entered into the minutes of the court, recorded in the office of register of deeds and transmitted to the county clerk for safekeeping. T.C.A. § 18-2-205. The official bond of the director of schools must be approved by the county mayor, recorded in the office of the register of deeds and transmitted to the office of the county clerk for safekeeping. T.C.A. §§ 49-2-102, 9-3-301. The official bonds of other county officials, constables, and county employees required to have bonds shall be approved by the county mayor, recorded in the office of the register of deeds and transmitted to the office of the county clerk for safekeeping. T.C.A. §§ 8-19-102, 8-19-103. Official bonds of officers which must be transmitted to the county clerk must be filed in the clerk's office within thirty (30) days after the election or appointment of the person named in the bond. T.C.A. § 8-19-115.

The register of deeds must endorse on the bond the day and year on which it was recorded and sign the endorsement. Similarly, the county clerk, with respect to bonds filed for safekeeping in the office of county clerk, must endorse the filing date and sign the endorsement. Failure of the register or county clerk to endorse and sign the bond is a misdemeanor. T.C.A. § 8-19-116.

An officer required by law to give an official bond who fails to execute the bond when the bond is available and transmit the bond to the proper officer for approval within thirty (30) days from the time the bond becomes available for execution, forfeits the office and a vacancy in the office occurs, whether or not the officer has taken an oath of office. It is the duty of the officer who is to receive the executed official bond to certify the failure to execute and transmit the bond in the time required by this section to the official or body who has the power to elect or appoint a successor to the office. T.C.A. § 8-19-117. Upon the filing of a complaint alleging the failure of a county officer or constable to enter into an official bond as required by law, the circuit court clerk or the clerk and master having jurisdiction issues a summons that is served, together with a copy of the complaint, upon the county officer or constable in accordance with the Tennessee Rules of Civil Procedure. T.C.A. § 8-19-205. If the official fails or refuses to execute the required bond after receiving a copy of the complaint and a hearing, the court will enter a judgment declaring the office vacant, and the vacancy will be filled according to law. T.C.A. § 8-19-206.

County officials must enter into a new bond at the beginning of each term. If the original of any bond is lost or destroyed, the record of the bond will be considered the original and suit may be instituted on the

recorded bond. T.C.A. § 8-19-105. The county pays the premiums for official bonds and registration fees of county officials and employees. T.C.A. § 8-19-106.

## Oath of Office and Bond-County Trustee

Reference Number:

CTAS-69

Before entering into office, the trustee must take an oath to support the constitutions of Tennessee and the United States. Oaths of office are covered under the General Information tab of the County Offices topic.

The minimum amount of the official bond executed by the trustee for each term of office is determined from the amount of revenues handled by the trustee during the last fiscal year audited by the Comptroller or from the last Comptroller-approved audit which was prepared by certified public accountants. If the official bond is executed by a surety company authorized to do business in Tennessee (corporate surety), the minimum amount will be based on revenues as follows:

1. 4% up to \$3,000,000 of the funds collected by the office; and
2. 2% of the excess over \$3,000,000 shall be added.

The amounts indicated above are cumulative. T.C.A. § 8-11-103(b).

If the official bond of a trustee is executed by personal sureties, the minimum amount of the bond is based on revenues as follows:

1. 6% up to \$3,000,000 of the funds collected by the office; and
2. 4% of the excess over \$3,000,000 shall be added.

The amounts indicated above are cumulative. T.C.A. § 8-11-103(c).

County officials are prohibited from being sureties for other county officials. T.C.A. §§ 8-19-108; 8-19-109. The amounts stated above are only minimums; the county legislative body may require the trustee to execute a bond in a higher amount. T.C.A. § 8-11-102.

Additional information about Bonds is covered under the General Information tab of the County Offices topic.

## Compensation

Reference Number:

CTAS-32

There are specific statutes regarding compensation for each office. In general, though, statutes prescribe salaries according to county population classes for many officials. The General Assembly has established 17 population classes for the purpose of determining the compensation of county officers. T.C.A. § 8-24-102. This statute provides base minimum salary schedules for three categories of county officers: (1) "general officers," which include assessors of property, county clerks, clerks of court, trustees, and registers of deeds; (2) sheriffs and chief administrative officers of highway departments; and (3) county mayors. These specified minimum salaries cannot be raised or lowered except through subsequent legislation, but since they are minimum salaries, the actual salary may be increased by resolution of the county legislative body, but the class of general officers must all receive the same amount of any increase.

The minimum salaries are adjusted annually on July 1 by a dollar amount equal to the average annualized increase in state employees' compensation during the prior fiscal year multiplied by the compensation established for the county officials of the county with the median population of all counties. The adjustment cannot exceed 5 percent in any year; provided, however, the annual percentage increase in the minimum compensation of county officials shall not be less than the percentage increase established for county officials of the county with the median population of all counties. The average annualized general increase in state employees' compensation for purposes of calculating the adjustment in salary for county officials means the average increase in base salary plus the equivalent percentage increase represented by appropriated funds made available to address classification compensation issues, plus the equivalent percentage increase represented by recurring appropriation amounts provided to improve the level of retirement benefits, longevity benefits, deferred compensation benefits and other similar benefits not including health insurance benefits. These adjustments are calculated and certified by May 1 of each year by the commissioner of finance and administration. T.C.A. § 8-24-102.

Full-time county officials, not including general sessions judges, who complete the County Officials Certificate Training Program (COCTP) administered by the University of Tennessee's County Technical Assistance Service (CTAS) and become a "Certified Public Administrator" may receive an annual incentive

payment up to a maximum of \$1,500 from state-appropriated funds. To continue receiving these payments, certified county officials must take additional training annually. If an official receives incentive pay from the state through other professional development programs, such amounts will be offset so that no official receives more than \$1,500 of incentive pay from the state per year; provided, however, certified public administrator educational incentive payments to assessors shall not be offset by the compensation received by assessors for obtaining certain professional designations pursuant to T.C.A. §§ 67-1-508; 5-1-310(e). These amounts are subject to annual appropriations from the General Assembly and have not reached the maximum allowed by law.

County legislative bodies may appropriate additional amounts as incentive payments to county officials and employees who have become Certified Public Administrators in an amount not exceeding \$3,000 minus payments made by the state. Educational incentive pay received by an official does not affect the calculation of compensation for officials provided in other statutes. CTAS is required to submit a list to the state treasurer, by August 31 each year, of all county officers who have completed all requirements of the COCTP to attain or maintain the designation of Certified Public Administrator. This list replaces individual applications submitted by county officials for purposes of determining eligibility for the educational incentive payment. T.C.A. § 5-1-310.

## Relationship to Other County Officials-County Trustee

Reference Number:

CTAS-73

The trustee's office has significant interaction with almost every other county office and official. The trustee's involvement as county treasurer, issuing checks and county warrants, results in day-to-day contact with other offices. Also, as receiving agent for fees generated by other offices, the trustee is necessarily involved to some extent in the operation of these other county offices. Additionally, the trustee interacts with other officials involved with the investment of idle county funds.

The trustee must interact with the county mayor and/or a finance/budget director as well as the county legislative body regarding the trustee's budget and budget amendments. The exact procedures vary from county to county depending upon whether the county operates under a charter or optional general law regarding budgeting, or has a private act dealing with this subject. However, all trustees must submit budget requests in a timely manner in the first half of each calendar year for inclusion into the county's annual budget. Most counties have budget committees that may recommend appropriations for the trustee's budget that differ from those submitted by the trustee. The county legislative body determines the amount of the trustee's budget, subject to certain restrictions, such as following the requirements of any court order regarding a salary suit for deputies or assistants. In many counties, depending upon the applicable law, the county mayor has the authority to approve line item amendments to the trustee's budget within major categories not affecting personnel, whereas major category amendments require the approval of the county legislative body. T.C.A. § 5-9-407.

The trustee also interacts with the county mayor in the selection each year of the delinquent tax attorney. The selection of the delinquent tax attorney by the trustee is subject to the approval of the county mayor. T.C.A. § 67-5-2404. The trustee interacts with the delinquent tax attorney preparing the delinquent tax lists and giving proper notice during the collection process. The trustee works with the clerk and master as well as the delinquent tax attorney regarding funds collected in delinquent tax suits.

## Fee System or Salary System

Reference Number:

CTAS-33

The sheriff, trustee, county clerk, register of deeds and court clerks receive fees from the public for services they perform; for this reason, these officials are sometimes referred to as "fee officials." There are two methods of accounting for the fees received by these officers. The first and oldest is the "fee system." Under this system, each official remits to the trustee quarterly all of the fees and charges collected by the official in excess of expenses for the following items: salaries of the official's deputies and assistants, necessary expenses of the office, and the official's salary as established by statute. The official is also authorized to maintain a reserve in an amount equal to three times the monthly salaries of the official, deputies, and assistants. T.C.A. § 8-22-104. If in any month the total amount of fees and commissions are insufficient to pay the total amount of the official's salary, the salaries of deputies and assistants, plus the other expenses of the office for the month, the amount of the deficiency may be paid out of any excess fees received by the official during any preceding or succeeding months of the terms for which the official is elected. T.C.A. § 8-22-108. If the fees are insufficient to pay the regular expenses of the office, including the statutory salary of the official and the salaries of deputies and assistants, the



minimum salary of the official is to be paid out of county general funds. T.C.A. § 8-24-107. Excess fees are placed in the county general fund as a source of county revenue.

The county commission is authorized to adopt an alternative system for fee officials, often called the "budget" or "salary" system, although the sheriff is always under this alternative system. T.C.A. § 8-24-103. This budget system can be adopted for some or all of the officials. T.C.A. § 8-22-104. Under this method, the official pays over to the trustee all of the fees, commissions, and charges collected by the office on a monthly basis. The county commission must, in return, budget for expenses, authorizing the trustee to pay the official's salary, salaries of deputies and assistants, and authorized expenses of the office. These salaries and other proper costs of the office are included in the budget and must be paid even if the fees are insufficient to cover them.

## Deputies and Assistants

Reference Number:

CTAS-34

Generally, county "fee officials" (those county officials who regularly collect fees for their services) must have authority other than the county budget resolution before they can hire employees. This authority may come directly from statute, by court order, or through a letter of agreement. T.C.A. § 8-20-101. If the county official's own salary and that of deputies and assistants is paid directly from the county general fund and the county fee official agrees with the amount appropriated for deputies and assistants as set forth in the budget adopted by the county legislative body, the official enters into a letter of agreement with the county mayor, using a form prepared by the state comptroller, that is then filed with the court. T.C.A. § 8-20-101.

If the county official does not agree with the amount appropriated, a salary suit may be filed by petition of the county official under T.C.A. § 8-20-101. The court in which the petition is filed depends on the official. Clerks of court file their petitions with any one of the judges of their respective courts; sheriffs file in circuit or criminal court; clerks and masters, trustees, county clerks and clerks of probate court, and registers of deeds file with the chancery court. The county mayor is named as defendant and the county mayor is required to file an answer within five days after service of the petition. The petition must be filed by the fee official within 30 days after the final adoption of a budget by the county legislative body. Also, a new officeholder has 30 days from the day of taking office to file a petition. The court will then hold a hearing and issue an order determining the appropriate number and compensation of deputies and assistants. T.C.A. § 8-20-102. If the fee official is under the fee system and pays deputies and assistants directly from the official's bank account, the official can negotiate a letter of agreement with the county for the number and compensation of deputies and assistants. If the fee official cannot reach an agreement with the county mayor, the fee official must file suit to obtain authority to hire deputies and assistants.

County officials have the power to employ and discharge employees. The court decree or letter of agreement merely sets the maximum number and maximum compensation of the employees. It is the county official's duty to reduce the number of deputies and assistants or their salaries when it can reasonably be done. T.C.A. § 8-20-105.

The compensation for deputies and assistants established by court decree or letter of agreement must be sufficient to comply with the Federal Fair Labor Standards Act (FLSA) and its minimum wage and overtime provisions. In general, nonexempt employees must receive overtime compensation at the rate of one and one-half their regular rate of pay for all hours worked in excess of 40 in a week. Compensatory time off is allowed in lieu of overtime compensation, but the employee must receive one and one-half hours off for each hour worked in excess of forty (40), and as a general rule, an employee may not accrue more than two hundred forty (240) hours of compensatory time.

## Comptroller's Form - Letter of Agreement

Reference Number:

CTAS-2189

LETTER OF AGREEMENT

COMPENSATION OF EMPLOYEES

\_\_\_\_\_ COUNTY, TENNESSEE

Pursuant to Tennessee Code Annotated, section 8-20-101, this agreement by and between \_\_\_\_\_ (Official/Office) and \_\_\_\_\_ (County Mayor/Executive) is for the

purpose of establishing the number of employees and the authorized salaries for the \_\_\_\_\_ (Office) \_\_\_\_\_.

The parties named herein have agreed and do hereby enter into this agreement according to the provisions set forth herein:

- A. The term of this agreement will be from \_\_\_\_\_ (Beginning Date) \_\_\_\_\_ to \_\_\_\_\_ (Ending Date) \_\_\_\_\_.
- B. In order to ensure the efficient operation of the office, it is agreed that the official is authorized to employ the following employees at salaries not to exceed the specified amounts:

<b>Number of Employees in Job Classification</b>	<b>Job Classification</b>	<b>Annual Salary for Each Employee in Job Classification Not to Exceed</b>
--------------------------------------------------	---------------------------	----------------------------------------------------------------------------

- C. It is further agreed that part time help may be employed at a rate of up to \$ \_\_\_\_\_ an hour with a total cost not to exceed \$ \_\_\_\_\_ for the term of this agreement.
- D. The parties agree to the following special provisions

E. It is further agreed that in no event shall the amount of this agreement exceed \$ \_\_\_\_\_.

In witness whereof, the parties have set their signatures.

\_\_\_\_\_ (OFFICIAL) \_\_\_\_\_ (DATE)  
 \_\_\_\_\_ (COUNTY MAYOR/EXECUTIVE) \_\_\_\_\_ (DATE)

## Duties-County Trustee

Reference Number:  
CTAS-72

The county trustee has three major functions: (1) collecting the county's property taxes; (2) accounting for and disbursing county funds (including proper apportionment and determination of fund availability); and (3) investing temporarily idle county funds. The first of these duties, collection of Property Taxes, is covered under the Revenue topic. The second and third primary responsibilities both relate to financial matters. According to T.C.A. § 8-11-104, the trustee's basic duties include the following:

1. Collect all state and county taxes on property;
2. Keep a fair and regular account of all the money received;
3. Receive the county's bills;
4. Keep a successive warrant book, or a book showing all bills received, ruled in columns, showing the number, payee or holder, date of the day of presentation, and amount of the bill;
5. Pay the legal demands (just claims) immediately if there are unappropriated funds sufficient to do so; otherwise, to deliver the demand to the owner endorsed, and pay it in numerical order (Interest might be due if so contracted by the county legislative body, but only until there are funds in the county treasury to make payment. *Davidson County v. Olwill*, 72 Tenn. 28 (1879).);
6. Keep fair and regular accounts of such payments;
7. Furnish the county executive with any papers and vouchers necessary for perfecting any settlement with any person who is accountable for county revenue; and
8. On going out of office:

- (a) Deliver all books and papers of the office to the successor, especially the book showing warrants payable; and
- (b) Make settlement with the county executive and pay over the balance of funds remaining to the successor in office, making duplicate receipts (one of which is delivered to the county clerk to be recorded in the revenue docket).

## Settlement of Taxes

Reference Number:

CTAS-1582

Monthly Report. On or before the tenth day in each month the trustee must report to and make settlement for all taxes collected during the preceding month with the county mayor and with the financial agent or treasurer of each municipality and pay over to the same the amounts shown by the respective settlements to be due each.<sup>1</sup>

Annual Financial Report. The trustee must make a full and complete financial report on or before the first Monday in September, for the year ended June 30, of the condition of the trustee's office. This annual financial report is filed with the county mayor and with the county clerk who provides a copy of the report to each member of the county legislative body on or before the next meeting of the county legislative body. This report is same as required pursuant to T.C.A. § 5-8-505.<sup>2</sup> It is the duty of the county mayor to submit a copy of this settlement, showing all debits and credits, to the county legislative body at the following term for inspection, which must be entered upon the minutes of the county legislative body.<sup>3</sup>

The trustee is not allowed any commission when the trustee fails to make the required filing, and in the event commissions are allowed when the filing is not made, any citizen and taxpayer of the county may bring suit against the trustee and the trustee's bondspersons and recover for the use of the state and county all commissions illegally paid or allowed.<sup>4</sup> Upon settlement of the trustee's accounts with the county mayor, the trustee is entitled to receive credits for the trustee's commissions and for all legal disbursements.<sup>5</sup>

Report of Delinquent Taxes and Double Assessments. Annually, at the July meeting of the county legislative body, the trustee is required to present a report to the county legislative body of all delinquent taxpayers and double assessments in the county. This report must be verified by affidavit of the trustee and filed with the county clerk and must be spread upon the minutes of the county legislative body and municipality, respectively.<sup>6</sup> The county legislative body is required to examine the report and allow the trustee a credit for the taxes so reported insolvent or delinquent and for double assessments, provided the county legislative body is satisfied that the taxes are uncollectible because of reasons other than the failure of the trustee to collect them.<sup>7</sup> A list of the allowances must be made out and certified by the county clerk and transmitted to the proper authorities of the state, county and municipality, respectively.<sup>8</sup> The county legislative body may not allow the trustee a credit for any item on the report, even though duly sworn to by the trustee, if, after examining each credit, the county legislative body has knowledge or information showing the item to be inaccurate.<sup>9</sup> All of the items for which the county legislative body does not allow a credit are charged against the trustee or his or her surety.<sup>10</sup>

Insolvent Property. Insolvent property is that subject to tax liens, special assessments, improvement district liens, and other similar liens securing obligations in excess of the amount for which the property can be sold to a private purchaser at a tax sale. Formerly, Tennessee statutes contained provisions by which insolvent property could be compromised and settled, but these have been repealed.

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<sup>1</sup>T.C.A. § 67-5-1902(a).

<sup>2</sup>T.C.A. § 67-5-1902(b)(1).

<sup>3</sup>T.C.A. § 67-5-1902(b)(3).

<sup>4</sup>T.C.A. § 67-5-1902(b)(2).

<sup>5</sup>T.C.A. § 67-5-1905.

<sup>6</sup>T.C.A. § 67-5-1903(a).

<sup>7</sup>T.C.A. § 67-5-1903(b)(1).

<sup>8</sup>T.C.A. § 67-5-1903(c).

<sup>9</sup>T.C.A. § 67-5-1903(b)(2).

<sup>10</sup>T.C.A. § 67-5-1903(d).

## Penalties for Failure to Perform Duties

Reference Number:

CTAS-830

If the trustee refuses to pay any county warrant or legal demand, it is a Class C misdemeanor for which the trustee may be removed from office unless such disbursement would have exhausted the funds on hand. T.C.A. § 8-11-105. The trustee's sureties (on the trustee's bond) may be held liable if the county suffers losses as a result of the trustee's failure to pay money owing by the county or to collect money due to the county. T.C.A. § 8-11-106. This is also true if the trustee pays claims in the wrong priority. *Howard v. Horner*, 30 Tenn. 532 (1851).

If a trustee fails to charge or collect from those liable, and if by using reasonable diligence could have collected fees, commissions, or other compensation to which the county is entitled, or if the trustee fails to present the statement of receipts, then the trustee will be held individually liable to the county for the amount which should have been collected. This amount will be charged to the trustee and will be deducted from the trustee's salary or will be collected from the trustee as a personal debt. T.C.A. § 8-22-105.

A trustee who makes or conspires with anyone, in any manner, to make a false or incorrect exhibit of receipts, statement of expenses, or statement of fact required under the statutes relating to accounting for fees, commits a Class E felony and upon conviction may be fined and imprisoned. T.C.A. § 8-22-106.

If the trustee fails or refuses to furnish the county mayor with any vouchers or papers deemed necessary by the county mayor for perfecting any settlement with any person accountable for county revenue, refuses to receive county warrants in payment of county taxes, or refuses to settle or pay as required by law, the circuit court, upon motion, will impose a \$500 forfeiture upon the trustee. T.C.A. § 8-11-108. This forfeiture could be paid from the surety on the trustee's bond. According to this provision the trustee is required to accept a county warrant as payment for county taxes.

A trustee who, upon going out of office, fails to pay over the balance of revenue to the new trustee shall be liable, as are the sureties on the trustee's bond, on motion of the district attorney before the circuit court. T.C.A. § 8-11-109

## Fees of County Officers

Reference Number:

CTAS-219

The county receives money through fees and commissions for services performed by county officials. The register, county clerk, trustee, sheriff, circuit and criminal court clerks, and clerk and master receive fees or commissions for their services. Excess fees are a source of county revenue for purposes other than the maintenance of these offices.

The statutory references for the fees of these offices are as follows:

Clerks of Court: T.C.A. §§ 8-21-401 through 8-21-409, 29-22-103, 29-22-105, 32-1-112, 36-5-405, 38-6-103, 40-3-203, 40-3-204, 40-24-101, 40-24-107, 67-8-406. [Note that the clerk of courts' primary fee statute, T.C.A. § 8-21-401, was completely rewritten by 2005 Public Chapter 429.]

County Clerks: T.C.A. §§ 8-21-401 through 8-21-409 and 8-21-701 through 8-21-703, 8-16-106, 8-16-109, 7-81-108, 36-6-413, 45-6-207, 45-6-208, 55-4-105, 55-4-115, 55-4-117, 55-4-123, 55-4-201, 55-4-221, 55-4-223, 55-6-104, 55-50-331, 62-30-103, 67-4-723, 67-4-724, 69-9-208, 70-2-106.

Registers: T.C.A. §§ 8-21-1001, 47-9-525, 7-81-107, 10-7-114, 48-11-303(d), 48-51-303, 48-247-103(e), 61-1-1208(d), 61-2-206, 67-4-409(d).

Sheriffs: T.C.A. §§ 8-21-901 through 8-21-903, 7-81-108, 40-9-127, 67-5-2410.

Jailers: T.C.A. §§ 8-26-105, 41-4-105, 41-4-115, 40-7-122, 41-4-142.

Trustees: T.C.A. §§ 8-11-110, 54-4-103, 54-12-111, 54-12-216, 69-5-802, 69-6-139, 69-6-145, 69-5-835, 69-5-931, 54-12-111, 54-12-424, 54-12-425 and 38-5-119 through 38-5-121.

## Financial Management of Fee Offices

Reference Number:

## CTAS-705

The fee offices – clerks of court, county clerk, register of deeds, and trustee – may operate on the fee system (under which office expenses are paid out of fees received) or the salary system (under which office expenses are paid from the county general fund and fees are turned over monthly). Those under the salary system are included in the county budget and operate under the procedures described above. However, the financial operation of fee offices under the fee system is similar to financial procedures commonly used by a business. Each office establishes a checking account, receives payments, makes deposits, and issues checks and receipts. The accounting system is similar to that of a business using a double-entry, general ledger system. All fees and commissions must be accurately accounted for to comply with the duties of the office. Each officer must consult the statutes codified in the *Tennessee Code Annotated* for the prescribed duties of the office and follow the accounting standards as prescribed by the state comptroller of the treasury. T.C.A. §§ 8-11-104, 9-2-102 through 9-2-105. Most of the duties of each office are recorded in Volume 3 of the *Tennessee Code Annotated*, and it is recommended that each officeholder obtain a copy of this volume or at least a copy of the Section pertaining to the office. Excess fees are turned over quarterly. T.C.A. § 8-22-104(a)(2).

## County Treasurer

Reference Number:

CTAS-824

Acting as treasurer for the county, the trustee receives and pays out county funds. Legislation passed in 1996 prohibits any official, including the trustee, from requiring or encouraging checks to be payable to the official in his or her own name, rather than the name of the governmental entity, the office, or the official's name and title. T.C.A. § 9-1-117.

Monies that the county trustee receives in the role of treasurer for the county must be allocated to one of the county's various funds such as the general fund, school fund, highway fund, solid waste management fund, or debt service fund. Other special purpose funds may be established according to law by the county legislative body or new funds may be authorized by act of the General Assembly. Generally, monies placed in a fund may only be used for the purposes of the particular fund and may not be transferred from one fund to another. The authority to disburse monies from these funds comes from the county legislative body through appropriation resolutions and expenditures for particular purposes are established in annual budget resolutions adopted by the county legislative body. The appropriation and budget actions may be contained in one resolution and may be amended from time to time during the fiscal year which begins July 1 of each year.

Other officials receiving funds turn over some or all of these to the trustee. Under the fee system excess fees and commissions from fee officers, including the clerk and master, the county clerk, court clerks, and the register, are turned over to the trustee and become part of the county's revenue (county general fund). The trustee's excess commissions likewise become part of the county general fund. T.C.A. § 8-22-103. These excess commissions are paid over quarterly on the tenth of January, April, July, and October. The trustee must keep an accurate account of the commissions and transfer excess commissions of the trustee's office from the office commission account to the general fund by these quarterly dates. T.C.A. § 8-22-104.

As soon as possible after the quarterly dates, the trustee files a sworn report with the county mayor/executive showing the funds received from the other county offices and the excess commissions transferred by the trustee to the general fund. The trustee also files a sworn, itemized monthly statement with the county mayor/executive. T.C.A. § 8-22-104. If an official's salary is supplemented from county funds (in order to receive the statutory salary), that official must keep records and make an annual report of collections to the county mayor/executive. Filing such a report is a prerequisite to receiving the county funds since supplementary compensation is computed on the basis of the report. T.C.A. §§ 8-22-108 and 8-24-106.

The county legislative body may choose to operate under the salary system instead of the fee system, paying salaries and expenses of an office and requiring all fees to be turned over monthly to the trustee. T.C.A. § 8-22-104(a)(3). Sheriff's offices always turn over all fees to the trustee and do not operate using the fees collected. T.C.A. § 8-24-103. The sheriff's fees received by the trustee are held in the general fund of the county in a separate designated account. The trustee reports these funds at each regular meeting of the county legislative body, a report which is retained as a permanent record. T.C.A. § 8-22-113. Trustees also handle the accounting for drug fund monies, for which special accounts must be maintained. T.C.A. § 53-11-415.

## County Bank Accounts

Reference Number:

CTAS-1839

The county legislative body is authorized to adopt a resolution to contract with a bank or banks making the highest and best bid or bids to pay interest on daily balances of the county's funds. The county legislative body may also appoint a finance committee composed of the county mayor, the county trustee and three of its members. T.C.A. § 5-8-201(a)(1).

Prior to contracting with any bank, the trustee is required to take bids from banks and then file an analysis of the bids with the county clerk who shall provide a copy of the trustee's report to each member of the county legislative body on or before its next meeting. The trustee's report shall recommend the bank making the highest and best bid or bids to pay interest on daily balances of the county's funds. T.C.A. § 5-8-201(a)(2).

The finance committee is vested with the authority to formulate, make and sign a contract on behalf of the county with a bank upon the terms and conditions specified in the bid. The contract must be approved by the county mayor, and attested by the county clerk, with the county seal attached. Such contract is binding on the county. T.C.A. § 5-8-202.

If the county finance committee does not contract with a bank or other financial institution, the county trustee may contract with a bank or banks or other financial institutions for deposit, safekeeping, and earning of interest on daily balances of the county's funds, according to the same terms as are required by T.C.A. § 5-8-202 for the county finance committee. Additionally, the county trustee is authorized to enter into such agreements with banks and other financial institutions as necessary for the maintenance of collateral to secure the daily balances of the county's funds on deposit with banks or other financial institutions. T.C.A. § 5-8-201(c).

At least once every four years and not less than once every term of office, the county trustee is required to evaluate whether the county's contract with the bank should be rebid. The trustee is required to obtain proposals from at least two banks or other financial institutions and then prepare a written evaluation of the proposals. The evaluation must be preserved for a period of not less than three years. T.C.A. § 5-8-201(d).

Collateralization of County Funds. Pursuant to T.C.A. § 5-8-201(b), the county shall require any financial institution that becomes a depository of the county's funds to secure the funds as provided in a collateral pool created under Title 9, Chapter 4, Part 5, or in the same manner and under the same conditions as state deposits under Title 9, Chapter 4, Parts 1 and 4. See Op. Tenn. Atty. Gen. 09-146 (August 3, 2009).

## Disbursement Warrants-County Trustee

Reference Number:

CTAS-825

In the county financial context, a warrant is an order by which the drawer (the person with authority to make the order) commands the county trustee to pay a particular sum of money to a payee (person or entity) from funds in the county treasury which are or may become available. Although the drawer may have a legal duty only to limit the issuance of warrants according to the amounts appropriated (budgeted) for the purpose of the warrant, the county trustee has a duty to review the warrant and determine whether or not actual monies are currently available to honor the warrant. The county trustee should make arrangements with the bank or other financial institution with accounts holding county monies to insure that overdrafts of county funds are not made. The county trustee must take action to insure that the payee of a warrant is promptly paid when demand is made unless the trustee has clear evidence that disbursements have exhausted money on hand. Failure to honor warrants when monies are in hand is Class C misdemeanor and grounds for removal from office. T.C.A. § 8-11-105. If money is not on hand when a warrant is presented, the warrant must be delivered to the owner with a new number endorsed on the warrant so as to enable the county trustee afterwards to pay it in its numerical order relative to other warrants that have not been honored. A validly issued warrant remains a claim upon the county treasury until honored. The county trustee must keep record of all warrants presented to the trustee for payment, and show the number, payee or holder, date of warrant, date of presentation and amount. The county trustee must keep good records of all payments and balances. T.C.A. § 8-11-104.

The county officers with the power to write warrants vary from county to county according to the applicable laws. The county mayor in most counties has the power to issue a warrant on the county general fund, debt service fund and other special funds. T.C.A. § 5-6-108. However, the power to issue warrants may also extend to the chief administrative officer of the county highway department regarding

highway funds or the director of schools jointly with the chairperson of the county board of education with respect to school funds. T.C.A. § 49-2-205. In those counties operating under the County Fiscal Procedure Law of 1957, disbursement warrant must be consigned by the director of accounts and budgets. T.C.A. § 5-13-105. The director of finance must sign disbursement warrants in counties operating under the 1981 Financial Management System. T.C.A. § 5-21-116. Private acts often provide warrant issuing authority to the chief administrative officer of county highway departments. The county trustee should consult with the county attorney to determine exactly which officials have the power to write a warrant on county funds in his or her particular county.

## Optional Checking Account

Reference Number:  
CTAS-826

A check differs from a warrant in that a check is a direct draft drawn upon a bank (holding county funds) and is payable upon demand whereas a warrant is an order to the county trustee to pay to the payee monies from the county treasury if and when money is available. As a result of legislation enacted in 1992, county trustees have authority to switch from the traditional warrant system to a checking system for disbursing county funds. T.C.A. § 5-8-210. The trustee may adopt the checking system by giving at least thirty days' notice to each official authorized to sign checks. Under this system the county trustee must certify that funds are available to pay checks before they are released, thereby preventing department heads from issuing disbursement warrants when cash is unavailable in the account. Anyone who signs or issues a check without the required certification is subject to removal from office and personal liability for any improperly disbursed funds. T.C.A. § 5-8-210(k).

## Investment of County Funds

Reference Number:  
CTAS-699

Each county is directed by general state law to invest all idle county funds to the maximum practical extent. T.C.A. § 5-8-301(a). Counties are authorized to invest in instruments designated by general law as a safe temporary medium. These temporary investments must either be approved by the county legislative body, be in compliance with an investment policy adopted by the county legislative body, or be approved by an investment committee appointed by the county legislative body. T.C.A. §§ 5-8-301, 5-8-302.

In counties that have not adopted the County Financial Management System of 1981, the county legislative body may create an investment committee to determine the investment of idle county funds from the statutory list of approved investments. The number of members on this committee and the mode of selection is according to resolution of the county legislative body. T.C.A. § 5-8-302.

In counties that have adopted the optional County Financial Management System of 1981, the county legislative body may establish an investment committee composed of five members appointed by the county legislative body. The members may or may not be members of the county legislative body. If the county has adopted the 1981 law, the county legislative body may choose to have the financial management committee perform the functions of the investment committee. The investment committee under the 1981 law establishes and approves policies and procedures for cash management and investing idle cash funds in the investments authorized by law and the director of finance has the authority to make the investments within the guidelines set by law and the committee's policies. T.C.A. §§ 5-21-105(e), 5-21-107(a). The organization of the investment committee in counties with a county charter or metropolitan government charter may differ from that provided by the general law.

There are three categories of idle county funds that may be invested: funds derived from bond proceeds; funds from the sale of assets, settlements, or other infrequent occurrences; and other idle county funds. Under T.C.A. § 5-8-301, all three categories may be invested in any of the following manners:

1. Bonds, notes, or treasury bills of the U.S. as well as other obligations guaranteed by the U.S. or its agencies;
2. Deposits of funds into state and federally chartered banks and savings and loan associations, provided that these investments are properly secured;
3. Obligations of the United States or its agencies under a repurchase agreement for a shorter time than the maturity date of the security itself if the market value of the security itself is more than the amount of funds invested. Counties may invest in repurchase agreements only if the comptroller of the treasury or the comptroller's designee approves repurchase agreements as an authorized investment and if such investments are made in accordance with procedures established

by the state funding board;

4. The state investment pool;

5. State bonds, if they have a rating of A or higher;

6. Nonconvertible debt securities of the following issuers provided such securities are rated in the highest category by at least two nationally recognized rating services:

- The Federal Home Loan Bank;
- The Federal National Mortgage Association;
- The Federal Farm Credit Bank;
- The federal home loan mortgage corporation; and
- Any other obligations that are guaranteed as to principal and interest by the United States or any of its agencies.

7. The county's own bonds or notes issued in accordance with Title 9, Chapter 21.

Additionally, counties with a population of 20,000 to 150,000 may invest idle funds in prime commercial paper if it is rated in the highest category by at least two commercial paper rating services and the paper has a remaining maturity of 90 days or less. T.C.A. § 5-8-301.

Counties may invest funds held by them with a bank or savings and loan association with a branch in Tennessee under certain conditions, including FDIC insurance of the full amount of principal and interest or collateralization of amounts not so insured. T.C.A. § 9-1-118.

There are other restrictions on the investment of specified county funds, as well as requirements for protection of county funds through proper collateralization of the investment. T.C.A. § 5-8-301. The advice of the state director of local finance, CTAS county government consultant, or county attorney will be helpful in determining available investment options, the correct procedures for making such investments, and the proper collateral to protect county investments.

## Statutory Commissions

Reference Number:  
CTAS-827

Trustees receive a commission, for the benefit of the county, for receiving and disbursing funds. However, trustees may not demand or receive any compensation not specified by law, T.C.A. § 8-21-101, and may not receive any authorized commission until the duty or service for which it is granted has been performed, unless specifically allowed by law. T.C.A. § 8-21-102. It is the duty of the courts to decide, upon application by the trustee, any question regarding proper compensation, thereby protecting a trustee acting pursuant to the decision. T.C.A. § 8-21-105. The compensation of the county trustee for receiving and paying over to the rightful authorities all moneys received is listed in the chart below:

1. State, County and Municipal Revenue: T.C.A. § 8-11-110(a).

Sums up to \$10,000	6%
Sums above \$10,000 and up to \$20,000	4%
Sums above \$20,000	2%

2. County Offices: T.C.A. § 8-11-110(e).

Money collected from county officers on fees	1%
Money turned over by clerks of the courts and other collecting office	1%

3. Schools:

Money on the school fund received from the state, except that portion that exceeds the amount of BEP funds provided in the 1991 - 1992 fiscal year. See T.C.A. §§ 8-11-110(e) and 49-3-358. 1%

From federal school lunch program funds handled by the trustee (however, this amount may be paid out of school funds or county general purpose funds if county legislative body so votes) T.C.A. § 8-11-110(f). 1/4%



4. Highways:

For handling county aid funds T.C.A. § 54-4-103(b)(1). 1%

5. Special District Funds:

A. Watershed Districts

For collection of assessments in watershed districts T.C.A. § 69-6-139. 1%

For collection of ad valorem taxes in watershed districts T.C.A. § 69-6-145. 1%

B. Drainage and Levee Districts

For collection of assessments in drainage and levee districts T.C.A. § 69-5-835. 2%

Certified statements, per 100 words T.C.A. § 69-5-835. \$1

For receiving money from the sale of bonds and warrants T.C.A. § 69-5-931. ½%

For paying out money from the sale of bonds and warrants T.C.A. § 69-5-931. ½%

C. Road Improvement Districts

For collecting and paying out assessments in a road improvement district T.C.A. §§ 54-12-111 and 54-12-424. 2%

Certified statements, per 100 words, for road improvement district T.C.A. § 54-12-424. \$1

For receiving money from the sale of bonds and warrants T.C.A. § 54-12-425. ½%

For paying out money from the sale of bonds and warrants T.C.A. § 54-12-425. ½%

6. Inquest Proceedings

Disposition of effects found on a dead body T.C.A. §§ 38-5-119 through 38-5-121. 3%

The trustee is entitled to collect a different percentage for collection of municipal taxes upon a negotiated basis pursuant to an approved intergovernmental agreement. T.C.A. § 8-11-110(h).

## TVA In Lieu of Tax Payments

Reference Number:

CTAS-220

*Authority.* 16 U.S.C. § 831 *et seq.*, T.C.A. §§ 67-9-101 through 67-9-103.

*Description.* TVA in lieu of tax payments are payments made by the Tennessee Valley Authority to the state for the purpose of replacing tax revenue that TVA would otherwise pay if it were not a tax-exempt federal agency. The amount of the payments is determined by federal law. 16 U.S.C. § 831(L), the TVA Act.

*Distribution.* First \$55.2 million to the state general fund. Any amounts above \$55.2 million are distributed as follows:

1. 48.5 % - State
2. 48.5 % - Counties and municipalities to be allocated as follows:
  - a. 30 percent of the 48.5 percent to counties on the basis of their percentage of the state's total population.
  - b. 30 percent of the 48.5 percent to counties on the basis of the percentage that the total acreage of each county bears to the total acreage of the state.
  - c. 10 percent of the 48.5 percent to counties on the basis of the percentage of their land owned by TVA compared to all land owned by TVA in Tennessee.
  - d. 30 percent of the 48.5 percent to municipalities on the basis of the population that the municipality bears to the population of all municipalities in the state.
3. Three percent (3%) to local governments impacted by TVA construction activity on facilities to produce electric power. The impacted areas are designated by TVA and

payments are made during the period of construction activity and for one full fiscal year after completion of such activity. The comptroller of the treasury allocates the impact funds among the counties and municipalities according to a weighted population formula. If, in any fiscal year, there are remaining impact funds after allocation, or if there are no impacted areas, CTAS may receive an amount not greater than 30 percent of the funds, with up to 20 percent of any remaining funds allocated to the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) for an annual inventory of statewide public infrastructure needs, and additional 20 percent, if available, to TACIR for study purposes. The remainder shall be allocated to any regional development authorities that have acquired a former nuclear site from the Tennessee Valley Authority. The funds shall be used to construct roads, install water and wastewater facilities and provide other public infrastructure needs to assist in the development of the sites and other land as regional industrial, business and job incubator facilities consistent with regional development plans. T.C.A. § 67-9-102.

## Property Taxes

Reference Number:

CTAS-225

The primary source of revenue in most counties is the ad valorem property tax, an assessment based on the value of the property. Ad valorem taxes are imposed directly upon property, and the tax generally follows the property even if it is sold or transferred to a different owner.<sup>1</sup>

Article II, Section 28 of the Tennessee Constitution is the basic constitutional authorization to tax; it provides that counties and municipalities are authorized to levy a property tax on all property---real, personal or mixed---based on the value of the property. Pursuant to this constitutional authorization, the General Assembly enacted T.C.A. § 67-5-101, which provides that all property, real and personal, shall be assessed for taxation for state, county, and municipal purposes, except for the property declared exempt. In addition, the General Assembly has enacted legislation to enforce the power to tax, to declare certain property exempt from taxation, and to determine various methods of ascertaining "fair market value." Counties<sup>2</sup> and municipalities<sup>3</sup> are authorized by the General Assembly to levy real property,<sup>4</sup> tangible personal property,<sup>5</sup> intangible personal property,<sup>6</sup> and public utility property<sup>7</sup> taxes within their boundaries.<sup>8</sup> Taxing power is legislative and cannot be delegated except as the Constitution authorizes.<sup>9</sup>

It is essential that a valid assessment and levy of the tax occur in order to lawfully collect delinquent taxes. Assessment and levy are presumed to be properly completed even if the record does not reflect each step, unless an issue is raised as to the proper procedure.<sup>10</sup> Statutes imposing taxes are construed in favor of a taxpayer and strictly construed against the taxing authority; in other words, ambiguities in interpretation of taxing statutes are construed against the county.<sup>11</sup> Although a taxing statute is construed strictly against the taxing authority and in favor of the taxpayer, the court must give full scope to the legislative intent and apply a rule of construction that will not defeat the plain purpose of the statute.<sup>12</sup>

While the Tennessee Constitution mandates taxation according to value, the General Assembly determines the proper method for ascertaining value to insure uniform and equal taxation.<sup>13</sup> In order to further the constitutional mandate, the legislature has defined value, for property tax purposes, to be fair market value: basically, the price the property would bring if it were voluntarily sold by an informed buyer to an informed seller, each acting sensibly and without undue pressure.<sup>14</sup> The uniformity requirement means that the tax burden is to be applied equally to nonexempt property within a constitutional classification in order to achieve uniformity in rate, valuation, and assessment.<sup>15</sup> Furthermore, "[u]niformity of taxation refers, not only to a uniform valuation and rate, but also to uniformity in dates of maturity and the time when interest, penalties, and costs may be imposed upon the taxpayer."<sup>16</sup> Tax increment financing does not violate this uniformity provision.<sup>17</sup> Application of the uniformity provisions established by Article II, Section 28 of the Tennessee Constitution is subject to the Equal Protection Clause of the Fourteenth Amendment of the Federal Constitution.<sup>18</sup>

Article XI, Section 8 of the Tennessee Constitution prohibits the exemption of individual counties by population classification from the operation of a general law unless there is a rational basis for the exemption. Several provisions in the tax statutes provide exemptions or special rules for counties with certain population classifications. These provisions are included in this manual without any opinion as to their constitutionality.

"Taxes are distinguished from fees by the objectives for which they are imposed. If the imposition is

primarily for the purpose of raising revenue it is a tax; if it's [sic] purpose is for the regulation of some activity under the police power of the governing authority it is a fee."<sup>19</sup> Taxes are also different from special assessments. "There is a clear and manifest distinction between a tax and a special assessment. A tax is imposed for a general or public purpose. It is levied for the purpose of carrying on the government. It is a charge on lands and other property which lessens its value, and in the proportion in which the owner is required to pay is his pecuniary ability diminished. This is the sense in which the term 'taxation' is used and understood. On the other hand, a special assessment contains none of the distinctive features of a tax. It is assessed or levied for a special purpose, and not for a general purpose. It is not a charge on property which reduces its value. The assessment is made in the ratio of advantages accruing to the property in consequence of the improvement. In no case can the assessment exceed the advantages accruing to the property assessed. It is therefore regarded but an equivalent or compensation for the increased value the property will derive from the improvement the assessment is levied to discharge."<sup>20</sup>

<sup>1</sup>T.C.A. § 67-5-2101. *See also State v. Nashville C. & St. L. Ry.*, 137 S.W.2d 297 (Tenn. 1938).

<sup>2</sup>T.C.A. § 67-5-102.

<sup>3</sup>T.C.A. § 67-5-103.

<sup>4</sup>T.C.A. §§ 67-5-801 *et seq.*

<sup>5</sup>T.C.A. §§ 67-5-901 *et seq.*

<sup>6</sup>T.C.A. §§ 67-5-1101 *et seq.*, 67-5-1201 *et seq.*

<sup>7</sup>T.C.A. §§ 67-5-1301 *et seq.*

<sup>8</sup>*Edmondson v. Walker*, 195 S.W. 168 (Tenn. 1917).

<sup>9</sup>*Gibson County Special School District v. Palmer*, 691 S.W.2d 544, 550 (Tenn. 1985); Op. Tenn. Atty. Gen. 01-172 (December 18, 2001).

<sup>10</sup>Griffith and Stokes, *Collection of Delinquent Real Property Ad Valorem Taxes in Tennessee*, Revised Edition (1979) at page 7 citing *East Tennessee, V. & G. Ry. Co. v. Morristown*, 35 S.W. 771 (Tenn. Ct. App. 1895); *Obion Valley Land and Investment Co. v. Southern Gen. Life Co.*, 125 S.W.2d 482 (Tenn. 1939); *Nance v. Hopkins*, 78 Tenn (10 Lea) 508 (1882); *Grant Bond & Mortgage Co. v. Ogle*, 65 S.W.2d 1091 (Tenn. Ct. App.1933).

<sup>11</sup>*See 23 Tenn. Juris. "Taxation" § 3* at page 345 (1998).

<sup>12</sup>*Knox v. Emerson*, 131 S.W. 972, 973 (Tenn. 1910).

<sup>13</sup>*Southern Express Co. v. Patterson*, 123 S.W. 353, 357 (Tenn. 1909).

<sup>14</sup>Tenn. Const., art. II, §§ 28 & 29; T.C.A. § 67-5-601. *See In Re All Assessments 1999 & 2000*, 67 S.W.3d 805, 820-821 (Tenn.Ct.App. 2001) ("the fair market value basis is not constitutionally mandated, and the legislature is free to determine the method and means of valuing property").

<sup>15</sup>Tenn. Const., art. II, § 28; T.C.A. § 67-5-503; *Treadwell Realty Co. v. Memphis*, 116 S.W.2d 997, 999 (Tenn. 1938).

<sup>16</sup>*Shipp v. Cummings*, 14 S.W.2d 747, 748 (Tenn. 1929).

<sup>17</sup>*Metropolitan Dev. & Hous. Agency v. Leech*, 591 S.W.2d 427, 429-430 (Tenn. 1979). Tax increment financing refers to the allocation of property taxes attributable to an increase in a property's value after development to retire the bond issue used to develop the property.

<sup>18</sup>*Louisville & N.R.R. v. Public Serv. Comm'n*, 631 F.2d 426, 432 (6th Cir. 1980), *cert. denied*, 450 U.S. 959, (1981). *See also* the Federal "Four R" Act and the Motor Carrier Act.

<sup>19</sup>*S & P Enters, Inc. v. City of Memphis*, 672 S.W.2d 213, 215 (Tenn. Ct. App. 1983), *citing, Memphis Retail Liquor Dealers' Ass'n, Inc. v. City of Memphis*, 547 S.W.2d 244 (Tenn. 1977). For a discussion of the difference between a fee and a tax, *see* Op. Tenn. Atty Gen. 93-57 (September 3, 1993).

<sup>20</sup>*Weakley Co. v. Odle*, 654 S.W.2d 402, 405 (Tenn. Ct. App. 1983), *quoting* Justice Chambliss in, *Obion County v. Massengill*, 151 S.W.2d 156, 159 (Tenn. 1941).

## County Assessor

Reference Number:

CTAS-1475

The county assessor's duties include two basic functions: appraisal and assessment of taxable real and personal property in the county that is not appraised by the state.<sup>1</sup>For purposes of ad valorem taxation of property, the assessor of property places a value on commercial, industrial, residential, and farm land,

including mineral rights and taxable leaseholds, but public utility property is valued by the state.<sup>2</sup>The assessor also appraises and assesses taxable tangible personal property.<sup>3</sup>The assessor must assess and place a value on all property in the county by May 20 of the tax year. The date of valuation is as of January 1 (with the exception of adjustments due to improvements or damage to property discussed later). The assessment of property within a municipality is to be completed not less than 40 days prior to the beginning tax due date of the municipality.<sup>4</sup>The validity of an assessment is generally not affected by any irregularity or omission unless the defect results in a denial of minimum constitutional guarantees.<sup>5</sup>

The county legislative body has the authority to enter into contracts with individuals, firms, or corporations to render advice or assistance to the local assessor of property and the local board of equalization in the assessment and equalization of taxes. However, the final decision as to the amount of an assessment or the equalization of assessments is to be made by the property assessor and the board of equalization. In addition, no such contract shall contain any provisions for payment for services on a percentage basis, or on any basis whereby the compensation under the contract is dependent or conditioned on increasing or reducing the aggregate assessment of property in the county.<sup>6</sup>

County assessors are responsible for city assessments except in cities lying in more than one county, which are entitled to retain a city assessor or to contract with the county assessor or State Board of Equalization for assessment services. Cities not using the county assessor are also required to establish a city board of equalization. Otherwise, review of city assessments is consolidated under the county board of equalization of the county in which the property is located.<sup>7</sup>

Assessors are required to keep current indexes of taxpayers, along with a description of the property on the tax books, and to maintain the property tax maps of the county.<sup>8</sup>The obligation to pay taxes is not avoided by the failure of an assessor to make an assessment.<sup>9</sup> The assessor is not required to search for an owner's address to send assessment notices; rather, the owner has a responsibility to register his or her name and address with the assessor.<sup>10</sup>Previously owners who were not in possession of the property were required to file an annual statement with the assessor between December 1 and December 31 of each year, and the trustee was required to publish a notice of this requirement. However, this provision was deleted by a 1996 amendment; neither the form nor the published notice is now required by current law.

The assessor has the power and duty to examine any person he or she believes has any information relating to the property assessment of any taxpayer. Pursuant to this power, the assessor may administer oaths and compel any witness to appear and to answer oral or written questions. Any witness refusing to appear or to take an oath or answer questions, when called upon by the assessor to do so, commits a Class C misdemeanor. The assessor also has the authority to go upon land to obtain information for the assessment of property. Specifically, the assessor may enter a building which is under construction and not yet occupied or secured without obtaining the consent of the owner. After the building is occupied or secured, the assessor may enter with the owner's consent, or if consent is unreasonably denied, under a court order.<sup>11</sup>

The assessor is to make a report of the assessor's assessments and make available to the local board of equalization all of the assessor's records pertaining to the area involved on or before the first day the board meets. Each assessor, when making the report of assessments to the local board of equalization shall accompany the report with the following oath:

*I, \_\_\_\_\_, assessor of the county (city) of \_\_\_\_\_, State of Tennessee, do solemnly swear (or affirm) that I have assessed all taxable property, in the county (city) of \_\_\_\_\_, as far as ascertainable, to the true owners thereof, and that I have determined the classification and assessed valuation of all taxable property as prescribed by law; and that I have faithfully discharged all my duties without fear, favor, or affection to the best of my knowledge and ability, so help me God.*

The oath shall be taken and subscribed to before the county mayor, or in the county mayor's absence, before a notary public.<sup>12</sup>

In addition to the report to the local board of equalization, the assessor has a duty to compile a report listing the total of all assessments prepared by the assessor's office and file the report with the State Board of Equalization.<sup>13</sup>

An assessor of property or deputy assessor who willfully fails, refuses, or neglects to perform, obey, and observe his/her statutory duties is subject to sanctions as set out in T.C.A. § 67-5-305.

It is unlawful for an assessor of property or deputy assessor to willfully or knowingly assess property in

the wrong name, omit property from assessment, assess property at lower than the proper percentage of value, or to fail to perform other duties required by law. A district attorney general who receives evidence of such an offense has the duty to investigate and prosecute that offense.<sup>14</sup>

<sup>1</sup>T.C.A. §§ 67-5-101, 67-5-102, 67-5-301 *et seq.*, 67-5-502(1), 67-5-601 *et seq.*, 67-5-1301. T.C.A. § 67-1-501 *et seq.* deals with the qualifications and office of the assessor.

<sup>2</sup>T.C.A. §§ 67-5-502(d), 67-5-801 *et seq.*, 67-5-1001 *et seq.*, 67-5-1301.

<sup>3</sup>T.C.A. § 67-5-901 *et seq.*

<sup>4</sup>T.C.A. § 67-5-504.

<sup>5</sup>T.C.A. § 67-5-509(b); *see also State v. Delinquent Taxpayers*, 785 S.W.2d 819, 821 (Tenn. Ct. App. 1989).

<sup>6</sup>T.C.A. § 67-5-507.

<sup>7</sup>T.C.A. § 67-1-513.

<sup>8</sup>T.C.A. §§ 67-5-804 through 67-5-806. *See also 23 Tenn. Juris.* "Taxation" § 32 (1998) for a discussion regarding "adequate description."

<sup>9</sup>*State v. Nashville C. & St. L. Ry.*, 137 S.W.2d 297, 299 (Tenn. 1940).

<sup>10</sup>*Cook v. McCullough*, 735 S.W.2d 464 (Tenn.Ct.App. 1987); T.C.A. § 67-5-2502(b).

<sup>11</sup>T.C.A. § 67-5-303.

<sup>12</sup>T.C.A. § 67-5-304.

<sup>13</sup>T.C.A. § 67-5-304(c)(1) and (2).

<sup>14</sup>T.C.A. 67-5-306; Op. Tenn. Atty Gen. 83-388 (November 11, 1983); *See also*: Op. Tenn. Atty Gen. 83-233 (June 27, 1983); Op. Tenn. Atty. Gen. 83-53 (February, 14 1983).

## Real Property

Reference Number:

CTAS-1470

Real property, except vacant or unused property or property held for use, is classified according to use and assessed as a percentage of its value as follows:

1. Public Utility—55 percent
2. Industrial and Commercial—40 percent
3. Residential—25 percent
4. Farm Property—25 percent

If a parcel of real property is used for more than one purpose so that different assessment subclassifications and percentages apply, the tax is apportioned among the subclasses according to guidelines established by the State Board of Equalization.<sup>1</sup> If a parcel of real property is vacant, unused, or held for use, it is classified according to its immediate most suitable economic use, after considering several factors.<sup>2</sup> Real property not within any other definition and classification above is classified and assessed as farm or residential property.<sup>3</sup> "For property tax purposes, value attaches to the property itself, not to the interest of the current party in possession."<sup>4</sup> A leasehold is considered real property and is taxable as such.<sup>5</sup> The interest of a lessee is distinct from the fee, and may, under certain circumstances, be taxed when the fee is exempt from taxation.<sup>6</sup>

Mobile homes used for commercial, industrial, or residential purposes are assessed as real property improvements to land.<sup>7</sup> If the mobile home is on a rented lot, the owner of the mobile home is responsible for the additional property tax imposed because of the improvement. The owner of the land actually pays the tax and has a first lien against the mobile home to secure payment of the property tax from the mobile home owner.<sup>8</sup> However, the county has a lien against the real property itself in case of delinquent taxes on the mobile home, and may include the real property in a tax sale to satisfy the delinquency.<sup>9</sup>

Perfection in the classification system for the ad valorem tax is rarely attainable. Indeed, taxing real property containing two or more rental units based on 40 percent of its value as industrial and commercial property while taxing real property containing one rental unit based on 25 percent of its value as residential property has been constitutionally upheld as a reasonable classification even though some

discrimination exists.<sup>10</sup> Even though the legislature has discretion in classifying property, a reasonable basis must be established which may not be arbitrary or capricious.<sup>11</sup>

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<sup>1</sup>T.C.A. § 67-5-801(a), (b).

<sup>2</sup>T.C.A. § 67-5-801(c)(1).

<sup>3</sup>T.C.A. § 67-5-801(c)(2).

<sup>4</sup>*Hoover v. State Bd. of Equalization*, 579 S.W.2d 192, 195 (Tenn. Ct. App. 1978).

<sup>5</sup>*United States v. Metropolitan Gov't*, 808 F.2d 1205, 1208-1209 (6th Cir. 1987); T.C.A. § 67-5-502(d).

<sup>6</sup>*Jeston v. University of the South*, 208 U.S. 489, 500, 28 S.Ct. 375, 377 (1908); *University of the South v. Franklin Co.*, 506 S.W.2d 779, 784 (Tenn.Ct.App. 1973); T.C.A. § 67-5-605.

<sup>7</sup>Tenn. Const., art. II, § 28; T.C.A. § 67-5-802.

<sup>8</sup>*Belle-Aire Village, Inc. v. Ghorley*, 574 S.W.2d 723, 725 (Tenn. 1978); T.C.A. § 67-5-802.

<sup>9</sup>Op. Tenn. Atty Gen. 95-071 (July 5, 1995).

<sup>10</sup>*Snow v. City of Memphis*, 527 S.W.2d 55, 64-66 (Tenn. 1975), *appeal dismissed*, 423 U.S. 1083, *reh. den.*, 424 U. S. 979 (1976).

<sup>11</sup>*General Am. Transp. Corp. v. State Bd. of Equalization*, 536 S.W.2d 212, 214 (Tenn. 1976).

## Greenbelt

Reference Number:

CTAS-1481

Under the Agricultural, Forest, and Open Space Land Act of 1976, also known as the Greenbelt Law, owners of property qualifying as agricultural, forest, or open space property may have it specially valued. The act was promulgated to allow for assessment of the land based on current use, not its potential for conversion to another, higher value use.<sup>1</sup>

No person may place more than 1,500 acres of land within any one taxing jurisdiction under the provisions of the Act.<sup>2</sup> To be eligible as agricultural land, the property must meet minimum size requirements. The property must consist either of a single tract of at least 15 acres, including woodlands and wastelands, or two noncontiguous tracts within the same county, including woodlands and wastelands, one of which is at least 15 acres and the other being at least 10 acres and together constituting a farm unit, or two noncontiguous tracts within the same county totaling at least 15 acres, including woodlands and wastelands, that are separated only by a road, body of water, or public or private easement and together constituting a farm unit.<sup>3</sup> To be eligible as forest land, the property must constitute a forest unit engaged in the growing of trees under a sound program of sustained yield management that is at least fifteen (15) acres and that has tree growth in such quantity and quality and so managed as to constitute a forest.<sup>4</sup> Open space land is any area of land, of not less than three acres, characterized principally by open or natural conditions which is not currently in agricultural or forest use. Open space land includes greenbelt lands or lands primarily devoted to recreational use.<sup>5</sup> The Tennessee Court of Appeals has held that it is constitutionally permissible for the General Assembly to create sub-classes of real property, such as Greenbelt property, provided a constitutional valuation method is used for the sub-class.<sup>6</sup> The formula for determining the special value is set forth in T.C.A. § 67-5-1008.

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<sup>1</sup>T.C.A. § 67-5-1001 *et seq.*

<sup>2</sup>T.C.A. §§ 67-5-1003(3), 67-5-1008(g). *See also* Op. Tenn. Atty. Gen. 88-81 (April 7, 1988).

<sup>3</sup>T.C.A. § 67-5-1004(1)(B).

<sup>4</sup>T.C.A. § 67-5-1004(3).

<sup>5</sup>T.C.A. § 67-5-1004(7).

<sup>6</sup>*Marion County v. State Bd. of Equalization*, 710 S.W.2d 521 (Tenn.Ct.App. 1986).

# Rollback Taxes

Reference Number:

CTAS-1486

The assessor of property will compute the amount of taxes saved by the difference in present use value assessment and value assessment pursuant to T.C.A. § 67-5-601 *et seq.*, for each of the preceding three years for agricultural and forest land, and for the preceding five years for open space land, and the assessor shall notify the trustee that such amount is payable, if (1) the land no longer qualifies as agricultural land, forest land, or open space land as defined in T.C.A. § 67-5-1004; (2) the owner of the land requests in writing that the classification as agricultural land, forest land, or open space land be withdrawn; (3) the land is covered by a duly recorded subdivision plat or an unrecorded plan of development and any portion is being developed; except that, where a recorded plat or an unrecorded plan of development contains phases or sections, only the phases or sections being developed are disqualified; (4) an owner fails to file an application as required by this part; (5) the land exceeds the acreage limitations of T.C.A. § 67-5-1003(3); or (6) the land is conveyed or transferred and the conveyance or transfer would render the status of the land exempt.<sup>1</sup>

If, under the provisions of T.C.A. § 67-5-1008(d)(1), only a portion of a parcel is subject to rollback taxes, the assessor must apportion the assessment of the parcel on the first tax roll prepared after the taxes become payable, and enter the apportioned amount attributable to that portion as a separately assessed parcel on the tax roll. Apportionment will be made for each of the years to which the rollback taxes apply.<sup>2</sup>

The rollback taxes due as the result of disqualification or withdrawal of the land from classification are the tax savings calculated under T.C.A. § 67-5-1008(d). Rollback taxes shall be payable from the date written notice is provided by the assessor, but shall not be delinquent until March 1 of the following year. When the assessor determines there is liability for rollback taxes, the assessor shall give written notice to the tax collecting official identifying the basis of the rollback taxes and the person the assessor finds to be responsible for payment, and the assessor shall provide a copy of the notice to the responsible person. Rollback taxes shall be a first lien on the disqualified property in the same manner as other property taxes, and shall also be a personal responsibility of the current owner or seller of the land as provided in this part. The assessor may void the rollback assessment, if it determined that the assessment was imposed in error. Liability for rollback taxes, but not property values, may be appealed to the state board of equalization by March 1 of the year following the notice by the assessor. Property values fixing the amount of rollback taxes may only be appealed as otherwise provided by law.<sup>3</sup>

If land that is classified under the Greenbelt Law as agricultural, forest, or open space land (or any portion thereof) is converted to a use other than those stipulated in the statute by virtue of a taking by eminent domain or other involuntary proceeding, except a tax sale, the land (or any portion thereof) involuntarily converted to another use is not subject to rollback taxes by the landowner, and the agency or body doing the taking will be liable for the rollback taxes. Property transferred and converted to an exempt or nonqualifying use shall be considered to have been converted involuntarily if the transferee or an agent for the transferee sought the transfer and had power of eminent domain.<sup>4</sup>

In the event that the land involuntarily converted to another use constitutes only a portion of a classified parcel on the assessment rolls, the assessor must apportion the assessment and enter the portion involuntarily converted as a separately assessed parcel on the appropriate portion of the assessment roll. Furthermore, for as long as the landowner continues to own the remaining portion of such parcel and for as long as the landowner's lineal descendants collectively own at least 50 percent of the remaining portion of such parcel, the remaining portion will not be disqualified from use value classification under the Green belt Law solely because it is made too small to qualify as the result of the involuntary proceeding.<sup>5</sup>

If the sale of agricultural, forest or open space land results in the property being disqualified due to conversion to an ineligible use or otherwise, the seller is liable for rollback taxes unless otherwise provided by in a written contract. If the buyer declares in writing at the time of sale an intention to continue the greenbelt classification but fails to file any form necessary to continue the classification within 90 days from the sale date, the rollback taxes become the sole responsibility of the buyer.<sup>6</sup>

Property passing to a lineal descendant of a deceased greenbelt owner, by reason of the death of the greenbelt owner, are not subject to rollback solely because the total greenbelt acreage of the new owner exceeds the maximum under T.C.A. § 67-5-1003, or will exceed the maximum following the transfer. Property exceeding the limit in these circumstances will be disqualified from greenbelt classification, but will not be assessable for rollback unless other disqualifying circumstances occur before the property has

been assessed at market value three years.<sup>7</sup>

If an assessor fails to carry out his or her duties in accordance with the provisions of the Greenbelt Law, all compensation to the assessor will be discontinued pursuant to the provisions of T.C.A. § 67-5-305.<sup>8</sup>

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<sup>1</sup>T.C.A. § 67-5-1008(d)(1).

<sup>2</sup>T.C.A. § 67-5-1008(d)(4)(A) and (B).

<sup>3</sup>T.C.A. § 67-5-1008(d)(3). *See also* Op. Tenn. Atty. Gen. 79-517 (December 7, 1979).

<sup>4</sup>T.C.A. § 67-5-1008(e)(1). *See also* Op. Tenn. Atty. Gen. 85-035 (February 13, 1985).

<sup>5</sup>T.C.A. § 67-5-1008(e)(2).

<sup>6</sup>T.C.A. § 67-5-1008(f). *See also* Op. Tenn. Atty. Gen. 87-27 (February 19, 1987); Op. Tenn. Atty. Gen. 86-015 (January 23, 1986).

<sup>7</sup>T.C.A. § 67-5-1008(h).

<sup>8</sup>T.C.A. § 67-5-1010.

## Drainage and Levee Districts

Reference Number:

CTAS-688

The county clerk has numerous responsibilities with regard to drainage or levee districts located in the county. The county clerk receives petitions for the establishment of drainage and levee districts, and approves and determines the amount of the bond which is filed with the county clerk at the time of the filing of the petition to secure the cost of establishing the drainage and levee district. T.C.A. § 69-5-103. In counties where a district is sought to be established, the county clerk maintains a book known as the "drainage record" of all proceedings involving the creation and operation of the drainage district (T.C.A. § 69-5-140), prepares the assessment rolls for use by the county trustee in collecting drainage assessments to finance construction by a drainage district (T.C.A. §§ 69-5-110; 69-5-111; 69-5-127; 69-5-128), prepares and maintains the "drainage assessment book" showing all parcels of land affected by the drainage district upon which a drainage assessment is made and provides a copy of this book to the county trustee (T.C.A. § 69-5-813), and also advises the trustee of changes in ownership of said parcels of land. T.C.A. § 69-5-815.

The county clerk receives from the county trustee the assessments for drainage and levee districts collected by the trustee and pays the expenses of the drainage and levee district as approved by the county legislative body. T.C.A. §§ 69-5-127; 69-5-804. The county clerk is required to post a bond for double the amount received from the county trustee prior to receiving said funds from the trustee. T.C.A. §§ 69-5-113; 69-5-130; 69-5-805. Also, the county clerk receives claims of persons claiming damages incurred in the construction of a drainage district (T.C.A. § 69-5-201), receives reports and drawings of engineers designated to perform work for such districts (T.C.A. § 69-5-115), serves notice upon persons whose land is within the scope of a proposed drainage district (T.C.A. § 69-5-120), receives the bond of engineers employed to supervise construction of drainage or levee improvements (T.C.A. § 69-5-708), and receives monthly reports of engineers responsible for supervising construction of levee and water work improvements. T.C.A. § 69-5-709. If bonds are sold to finance a district, the county clerk may receive the full assessment from any property owner prior to the bonds being issued (T.C.A. § 69-5-902), and countersigns any bonds issued by such a district. T.C.A. § 69-5-903.

The county clerk is authorized to collect fees for performing these duties in the same amount as authorized for similar services, or additional amounts for extra services or for services not covered by existing fee statutes as authorized by the county legislative body. T.C.A. § 69-5-141.

The county clerk also receives petitions for the creation of watershed districts (T.C.A. § 69-6-103), but may not collect any fees for the filing of such petitions or any other services required under the laws governing watershed districts. T.C.A. § 69-6-115.

## Tangible Personal Property/Assessor

Reference Number:

CTAS-1488

The assessor of property, not later than February 1 of each year, is to furnish a schedule on which business owners list in detail tangible personal property used or held for use in the business or profession



of the taxpayer.<sup>1</sup>This schedule, the format of which is specified by statute, lists allowable depreciated costs for different categories of property, as well as general data of the particular taxpayer.<sup>2</sup> (Sample Personal Property Depreciation Chart.) The taxpayer can use a value different from the standard depreciated cost if the different value more closely approximates fair market value; the assessor may request supportive information in such instances from the taxpayer.<sup>3</sup>The depreciation tables set out in the *Tennessee Code Annotated* have given rise to a great deal of litigation. Recent decisions by the Tennessee Supreme Court and Court of Appeals have upheld the constitutionality of the application of the depreciation schedules set forth in T.C.A. § 67-5-903(f) to locally assessed tangible personal property;<sup>4</sup>the constitutionality of the requirement to adjust the assessments of public utility property on the basis of ratio studies pursuant to T.C.A. § 67-5-1302(b)(1);<sup>5</sup>and the constitutionality of the requirement that locally assessed commercial and industrial tangible personal property be adjusted by the appraisal ratio adopted for each county pursuant to T.C.A. § 67-5-1509(a).<sup>6</sup>Due to these decisions, and other tax litigation cases, counties have experienced a significant reduction in the amount of revenue received from the taxation of tangible personal property.<sup>7</sup> 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.<sup>8</sup>

It is the duty of the taxpayer to list fully the tangible personal property used, or held for use, in the taxpayer's business or profession on the schedule, including other information required by the assessor, place the property's correct value on the schedule, and to sign and return the schedule to the assessor on or before March 1 of each year. In lieu of detailing acquisition cost on the reporting schedule, the taxpayer may certify that the depreciated value of tangible personal property otherwise reportable on the schedule is \$1,000 or less. The assessor must accept the certification, subject to audit, and fix the value of tangible personal property assessable to the taxpayer pursuant to the schedule, at \$1000. This value is subject to equalization pursuant to T.C.A. § 67-5-1509. The certification stated on the schedule must warn the taxpayer that it is made subject to penalties for perjury and subject to statutory penalty and costs if proven false.<sup>9</sup>

A taxpayer who fails, refuses or neglects to complete, sign and file the schedule with the assessor, as provided in T.C.A. § 67-5-903(b), is deemed to have waived objections to the forced assessment determined by the assessor, subject only to the remedies provided in T.C.A. § 67-5-903(d). In determining a forced assessment, the assessor must consider available evidence indicative of the fair market value of property assessable to the taxpayer under T.C.A. § 67-5-903. After determining the assessable value of the property, the assessor must give the taxpayer notice of the assessment by United States mail, addressed to the last known address of the taxpayer or the taxpayer's agent at least five calendar days before the local board of equalization commences its annual session.<sup>10</sup>

The remedies of a taxpayer against whom a forced assessment is made are as follows:

1. The taxpayer may appeal to the county board of equalization pursuant to T.C.A. § 67-5-1407, but must present a completed schedule as otherwise provided in T.C.A. § 67-5-903;
2. If the deadline to appeal to the county board of equalization has expired, then the taxpayer may request the assessor to mitigate the forced assessment by reducing the forced assessment to the standard depreciated value of the taxpayer's assessable property plus twenty-five percent (25%), so long as the failure to file the schedule or failure to timely appeal to the county board of equalization was not the result of gross negligence or willful disregard of the law. Mitigation of the forced assessment shall follow the procedure, including appeal, prescribed for correction of error under T.C.A. § 67-5-509, but must be requested within the same deadline as provided for amendment of a schedule pursuant to subsection (e). Gross negligence shall be presumed if notice of the forced assessment, in a form approved by the State Board of Equalization, was sent certified mail, return receipt requested, to the taxpayer's last known address on file with the assessor.

Whether or not an assessor's error affected the original assessment, the assessor may correct a forced assessment using the procedure provided and subject to the deadlines provided in T.C.A. § 67-5-509, upon determining that the taxpayer was not in business as of the assessment date for the year at issue, and upon determining that the taxpayer did not own or lease tangible personal property used or held for use in a business as of the assessment date for the year at issue.<sup>11</sup>

A taxpayer may amend a personal property schedule timely filed with the assessor at any time on or before September 1 following the tax year. If the assessor agrees with the amended schedule, the

assessor will revise the assessment and certify the revised assessment to the trustee. If the assessor believes the assessment should be otherwise than claimed in the amended schedule, the assessor will adjust the assessment and give written notice to the taxpayer of the adjusted assessment. The taxpayer may appeal the assessor's adjustment of or refusal to accept an amended assessment schedule to the local and state boards of equalization in the manner otherwise provided by law. Additional taxes due as the result of an amended schedule are not deemed delinquent on or before 60 days after the date notice of the amended assessment was sent to the taxpayer. Amendment of a personal property schedule is not be permitted once suit has been filed to collect delinquent taxes related to the original assessment. The assessor must, within 60 days from receipt of the taxpayer's amended schedule, review and accept or reject the schedule. In any event, the taxpayer must be notified in writing of the results of the review. If the assessor has not notified the taxpayer that the amended schedule has been accepted or rejected within 60 days, the taxpayer's amended schedule will be deemed not accepted by the assessor.<sup>12</sup>

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<sup>1</sup>T.C.A. § 67-5-903(a).

<sup>2</sup>T.C.A. § 67-5-903(f).

<sup>3</sup>T.C.A. § 67-5-902.

<sup>4</sup>*In Re All Assessments 1999 & 2000*, 67 S.W.3d 805, 816-820 (Tenn.Ct.App. 2001) (upholding the constitutionality of T.C.A. §§ 67-5-903(f) and 67-5-1302(b)(1)).

<sup>5</sup>*In Re All Assessments 1999 & 2000*, 67 S.W.3d 805, 820-821 (Tenn.Ct.App. 2001) (upholding the constitutionality of T.C.A. §§ 67-5-903(f) and 67-5-1302(b)(1)).

<sup>6</sup>*Williamson County v. Tennessee State Board of Equalization*, 86 S.W.3d 216 (Tenn.Ct.App. 2002) (upholding the constitutionality of T.C.A. §§ 67-5-903(f) and 67-5-1509(a)).

<sup>7</sup>*See also In Re All Assessments 1998*, 58 S.W.3d 95, 102 (Tenn. 2000) (holding: "The Tennessee Board of Equalization is authorized to reduce (or increase) the appraised (and therefore corresponding assessed) value of centrally-assessed public utility tangible personal property as part of the equalization process, the purpose of which is to equalize the ratio of the appraised value to fair market value of public utility property in any particular county with the corresponding ratio for industrial and commercial property in that county.").

<sup>8</sup>*ANR Pipeline Co. v. Tennessee Board of Equalization*, 2002 WL 31840689, \*1 (Tenn.Ct.App. 2002) *perm. app. denied* (Tenn. 2003).

<sup>9</sup>T.C.A. § 67-5-903(b).

<sup>10</sup>T.C.A. § 67-5-903(c).

<sup>11</sup>T.C.A. § 67-5-903(d).

<sup>12</sup>T.C.A. § 67-5-903(e).

## Leased Personal Property

Reference Number:  
CTAS-1489

Leased personal property is classified according to the lessee's use and assessed to the lessee, unless the property is the subject of a lawful agreement between the lessee and a local government for payments in lieu of taxes.<sup>1</sup>For the purpose of assessing leased property, it is the duty of the taxpayer to list fully on a schedule provided by the assessor all tangible personal property which is leased by the taxpayer for the conduct of the taxpayer's business.<sup>2</sup>Leased property shall include equipment, machinery and all tangible personal property used in the conduct of, or as a part of, the taxpayer's business.<sup>3</sup>The lessor, or owner of leased tangible personal property, must provide such information as the assessor may request regarding the location, valuation or use of such property.<sup>4</sup>

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<sup>1</sup>T.C.A. § 67-5-502(c).

<sup>2</sup>T.C.A. § 67-5-904(a)(1).

<sup>3</sup>T.C.A. § 67-5-904(a)(2).

<sup>4</sup>T.C.A. § 67-5-904(b).

## Correction of Erroneous Assessments

Reference Number:

CTAS-1491

The assessor of property must certify in writing a corrected or revised assessment to the trustee, or city tax collector in the case of city taxes, whenever the assessor discovers, or it has been called to the assessor's attention, that there has been an error or omission in the listing, description, classification or assessed value of property or any other error or omission in the tax rolls held by the trustee or city tax collector.<sup>1</sup>The assessor must certify to the trustee or city tax collector the facts and the reasons for the change in the assessment, and the tax must be collected upon the revised assessment.<sup>2</sup>The State Board of Equalization may request a copy of the assessor's certification.<sup>3</sup>If the tax computed on an erroneous basis of valuation or assessment has been paid prior to the assessor's certification of the corrected assessment, the trustee or city tax collector must, within 60 days after receipt of the certification from the assessor, refund to the taxpayer that portion of such tax paid which resulted from the erroneous assessment. The refund is to be made without the necessity of payment under protest or such other requirements as usually pertain to refunds of taxes unjustly or illegally collected.<sup>4</sup>

Correction of assessments must be requested by the taxpayer, or initiated by the assessor, prior to March 1, no more than the second year following the tax year for which the correction is to be made.<sup>5</sup>For example, correction of an erroneous assessment for the 2010 tax year would have to be initiated before March 1 of 2012. If additional taxes are due as a result of the corrected assessment, they are not delinquent until 60 days after the date notice of the corrected assessment is sent to the taxpayer. Once a suit has been filed to collect delinquent taxes pursuant to T.C.A. § 67-5-2405, the assessment and levy are deemed valid and are not subject to correction.<sup>6</sup>If the assessor does not correct an error in an assessment within 30 days after the request, or if the correction results in an increase in an assessment, the aggrieved taxpayer may appeal directly to the State Board of Equalization;<sup>7</sup>alternatively, the taxpayer may go through the regular process by appealing to the county board of equalization.<sup>8</sup>A defect in assessment, levy, or tax procedure will not affect the validity of a decision unless it results in a denial of minimum constitutional guarantees.<sup>9</sup>

It is important to note that the only errors or omissions which may be corrected under this provision are those involving obvious clerical mistakes, ascertainable from the face of the official tax and assessment records and involving no judgment or discretion by the assessor. Examples of correctable mistakes include the name or address of an owner, the location or physical description of the property, misplacement of a decimal point or mathematical miscalculation, errors of classification, and duplicate assessments. Matters of opinion by the assessor and clerical mistakes in tax reports or schedules filed by a taxpayer are not correctable under this procedure.<sup>10</sup>

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<sup>1</sup>T.C.A. § 67-5-509(c)(1).

<sup>2</sup>T.C.A. § 67-5-509(c)(2).

<sup>3</sup>T.C.A. § 67-5-509(c)(3).

<sup>4</sup>T.C.A. § 67-5-509(a).

<sup>5</sup>T.C.A. § 67-5-509(d).

<sup>6</sup>T.C.A. § 67-5-509(d).

<sup>7</sup>T.C.A. § 67-5-509(e).

<sup>8</sup>Op. Tenn. Atty. Gen. 96-077 (April 24, 1996).

<sup>9</sup>*State v. Delinquent Taxpayers*, 785 S.W.2d 819 (Tenn.Ct.App. 1989); T.C.A. § 67-5-509(b).

<sup>10</sup>T.C.A. § 67-5-509(f). For prior law, see Op. Tenn. Atty. Gen. 76-07 (June 25, 1976) and Op. Tenn. Atty. Gen. 87-90 (May 14, 1987).

## Back Assessment or Reassessment

Reference Number:

CTAS-1492

"Back assessment" means the assessment of property, including land or improvements not identified or included in the valuation of the property, which has been omitted from or totally escaped

taxation.<sup>1</sup>"Reassessment" means the assessment of property which has been assessed at less than its actual cash value by reason of connivance, fraud, deception, misrepresentation, misstatement, or omission of the property owner or his/her agent.<sup>2</sup>

"Connivance" means some conscious conduct by the taxpayer, similar to but short of actual fraud, which caused or induced the low assessment. However, where property has been assessed below its actual cash value by the regularly constituted assessing authorities, failure of the taxpayer to report the underassessment even though grossly underassessed does not constitute connivance nor afford a basis for reassessment. If the taxpayer simply acquiesces in the underassessment by paying the low amount and failing to report it, the taxpayer's actions do not constitute fraud.<sup>3</sup>Moreover, when property has been properly listed and has not been omitted from assessment, there can be no back assessment, unless frauds of the nature indicated in T.C.A. § 67-1-1002(a)(2) and (3) is shown. Furthermore, the presumption of fraud, declared by the statute to arise from a grossly inadequate assessment, is not conclusive, but rebuttable.<sup>4</sup>Failure of the property owner to obtain a required building permit or to file a required written report would be grounds for reassessment, if such failure caused the property to be underassessed.<sup>5</sup>

A back assessment or reassessment must be initiated on or before September 1 of the year following the tax year for which the original assessment was made.<sup>6</sup>However, if the omission or underassessment resulted from the failure of the taxpayer to file the reporting schedule required by law, from actual fraud or fraudulent misrepresentation of the property owner or the property owner's agent, or from collusion between the property owner or the property owner's agent and the assessor, a back assessment or reassessment must be initiated prior to three years from September 1 of the tax year for which the original assessment was made.<sup>7</sup>

With respect to tangible personal property, if a taxpayer would be liable for additional tax due to back assessment of property omitted from a reporting schedule, or due to reassessment of property included in the schedule, the taxpayer may offset this liability by showing that other property listed on the schedule was over reported, or by providing information that the reassessed property or other property listed on the schedule should be valued using a nonstandard method that more closely approximates fair market value.<sup>8</sup>

Additional taxes due as the result of a back assessment or reassessment shall not be deemed delinquent until 60 days after the date notice of taxes resulting from the back assessment or reassessment is sent to the taxpayer. However, if the back assessment or reassessment resulted from the failure of the taxpayer to file the reporting schedule required by law, from actual fraud or fraudulent misrepresentation of the property owner or the property owner's agent, or from collusion between the property owner or the property owner's agent and the assessor, the additional taxes shall become delinquent as of the date of delinquency of the original assessment.<sup>9</sup>

A back assessment or reassessment may be initiated by certification of the assessor of property to the appropriate collecting officials identifying the property and stating the basis of the back assessment or reassessment and the tax year(s) and amount of any additional assessment for which the owner or taxpayer is responsible. The assessor shall send a copy of the certification to the owner or taxpayer. The collecting official shall thereupon send a notice of taxes due based on the back assessment and reassessment. Any taxpayer aggrieved by a back assessment or reassessment may appeal directly to the State Board of Equalization within 60 days from the date that a copy of the certification is sent to the taxpayer, in the manner provided in T.C.A. § 67-5-1412, and such person may be assisted or represented in the appeal as provided in T.C.A. § 67-5-1514. The accrual of delinquency penalty and interest otherwise applicable is suspended while the appeal is pending, however, simple interest will accrue during the appeal period in the amount provided in T.C.A. § 67-5-1512.<sup>10</sup>

A back assessment or reassessment for merchants' taxes and delinquent privilege taxes may be initiated by a chief administrative officer of a tax jurisdiction to which the tax is payable, any citizen of such jurisdiction, or by the department of revenue. The back assessment or reassessment shall be initiated by the filing of a sworn, written complaint to the county clerk stating the basis of the complaint. The county clerk may require a complainant, other than a public official acting in the official's capacity, to post a reasonable bond for payment of costs of the proceeding if the back assessment or reassessment is unsuccessful. An aggrieved party may appeal the clerk's disposition of the complaint to the department of revenue.<sup>11</sup>

Those officials having the power to back assess or reassess property are vested with full authority to administer oaths, send for and examine witnesses, and take such steps as may be deemed necessary or

material to obtain information and evidence as to the value of the property.<sup>12</sup> Witnesses, when properly summoned, are subject to existing laws for non-attendance or failure to give evidence which is in their knowledge.<sup>13</sup>

If the back assessment or reassessment is upheld, the costs of the proceeding are added to the amount of taxes owed. If the back assessment or reassessment is set aside, the taxing jurisdiction must pay costs. However, if the board determines the complaint was filed or prosecuted by the complainant without good cause, then the complainant pays the cost. If the board finds connivance, fraud, deception, misrepresentation, or failure to file a personal property schedule, it may impose a penalty of up to 15 percent of the tax due.<sup>14</sup>

Innocent purchasers are protected from a reassessment of inadequately assessed real property by a bona fide sale, although this provision does not apply to a back assessment of property that has wholly escaped taxation. The taxes are a liability against the person owning the real property at the time of the inadequate assessment. The burden of proving a bona fide sale is on the person owning the real property at the time of back assessment or reassessment.<sup>15</sup>

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<sup>1</sup>T.C.A. § 67-1-1001(a)(1).

<sup>2</sup>T.C.A. § 67-1-1001(a)(2).

<sup>3</sup>*Garner v. Rhea Realty Corp.*, 494 S.W.2d 783, 787 (Tenn.Ct.App. 1971).

<sup>4</sup>*Eastland v. Sneed*, 185 S.W. 717, 718 (Tenn. 1916).

<sup>5</sup>Op. Tenn. Atty. Gen. 87-32 (Mar. 6, 1987).

<sup>6</sup>T.C.A. § 67-1-1005(a).

<sup>7</sup>T.C.A. § 67-1-1005(a).

<sup>8</sup>T.C.A. § 67-5-902(b).

<sup>9</sup>T.C.A. § 67-1-1005(a). For prior law, see Op. Tenn. Atty. Gen. 86-136 (August 8, 1986).

<sup>10</sup>T.C.A. § 67-1-1005(b).

<sup>11</sup>T.C.A. § 67-1-1005(c).

<sup>12</sup>T.C.A. §§ 67-1-1006(a), 67-5-1404.

<sup>13</sup>T.C.A. §§ 67-1-1006(b), 67-5-1404.

<sup>14</sup>T.C.A. § 67-1-1008.

<sup>15</sup>T.C.A. § 67-1-1004.

## Reappraisal

Reference Number:

CTAS-1494

Pursuant to T.C.A. § 67-5-1601 *et seq.*, reappraisal must be completed either in four, five, or six year cycles. In counties on a six year cycle, the first five years are used for on-site review, followed by a revaluation in the sixth year. In the third year, there must be an updating of all real property values if the overall level of appraisal for the jurisdiction is less than 90 percent of fair market value. Even if the jurisdiction as a whole meets the 90 percent level, there must be an update of subgroups which do not fall within 10 percent of the jurisdictional appraisal level.

Instead of the six-year cycle, a county may opt for either a four or five-year reappraisal schedule. Although few counties have chosen the four-year option, it is available with the approval of the State Board of Equalization. Under this plan, on-site review is to be accomplished in the first three years, followed by a revaluation in the fourth year. A third option was passed in 1997, which allows the assessor, with approval of the county legislative body, to choose a continuous five-year cycle comprised of an on-site review of each parcel over a four-year period, followed by revaluation in the fifth year. Counties adopting either of these latter alternatives are not required to update or index values as must be done on the six-year cycle. These statutes also contain requirements for planning, public notice and hearings, and noncompliance sanctions.<sup>1</sup>

In a year of reappraisal, if the number of foreclosures is of a significant number in any area or neighborhood, the assessor of property may recognize the effects of the foreclosures on the values of other properties located within the affected area or neighborhood.<sup>2</sup>

In the event that in the year a reappraisal program is completed, the values established in such

reappraisal program are turned over to the county after October 1 of such year, no penalty and interest shall be added until five (5) months following the tax roll completion date as evidenced by written notification from the assessor of property to the trustee, specifically stating the date the tax roll was delivered to the trustee.<sup>3</sup>

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<sup>1</sup>T.C.A. §§ 67-5-1601 *et seq.* See Op. Tenn. Atty. Gen. 92-61 (October 8, 1992) for a discussion of requirements for changing a reappraisal schedule.

<sup>2</sup>T.C.A. §§ 67-5-1603(d).

<sup>3</sup>T.C.A. § 67-5-1608.

## Appealing an Assessment

Reference Number:

CTAS-1495

The County Board of Equalization and the State Board of Equalization deliberate complaints regarding property assessments.

## County Board of Equalization

Reference Number:

CTAS-1496

The county board of equalization is the first level of administrative appeal for all complaints regarding the assessment, classification and valuation of property for tax purposes. Board duties include examining and equalizing county assessments, assuring that all taxable properties are included on the assessment lists, eliminating exempt properties from taxation, hearing complaints of aggrieved taxpayers, decreasing over-assessed property, increasing under-assessed property and correcting clerical mistakes. T.C.A. §§ 67-1-401 *et seq.*, 67-5-1401 *et seq.*

### Composition of the Board

At the April session in each even year, the county legislative body elects five “freeholders and taxpayers” from the different sections of the county to serve as the county board of equalization.<sup>1</sup>(Note: T.C.A. § 67-1-401 contains numerous exceptions for counties and cities specified through population class.) Members of the board of equalization serve two year terms. If the county legislative body fails to elect these members, then the county mayor makes the appointments and fills the vacancies as they occur.<sup>2</sup>Magistrates along with state, municipal or county legislative and executive officials, as well as their employees, are ineligible to serve, except in some circumstances in Shelby County.<sup>3</sup>

In addition to its regular appointments, an appointing authority may designate one or more alternates, and the board of equalization chair may call upon an alternate to sit for a regular member who becomes unavailable for a particular hearing due to disqualification or other reason. A duly appointed alternate shall be sworn in the same manner as regular members, and any action taken by a duly appointed alternate shall be as effective as if taken by the unavailable individual.<sup>4</sup>

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<sup>1</sup>T.C.A. § 67-1-401(a).

<sup>2</sup>T.C.A. § 67-1-401(b).

<sup>3</sup>T.C.A. § 67-1-401(c). See Op. Tenn. Atty. Gen. 90-106 (December 27, 1990) which states that it is a prohibited conflict of interest for a county trustee, a municipal tax collector, or an employee of either to sit on a county board of equalization. See *also* Op. Tenn. Atty. Gen. U92-82 (June 30, 1992) which opines that this provision regarding Shelby County is constitutionally suspect.

<sup>4</sup>T.C.A. § 67-1-401(d).

## State Board of Equalization

Reference Number:

CTAS-1510

Jurisdiction and Duties

The State Board of Equalization has jurisdiction over the valuation, classification and assessment of all properties in the state. The state board is responsible for performing the following duties: (1) receive, hear, consider and act upon complaints and appeals made to the board; (2) hear and determine complaints and appeals made to the board concerning exemption of property from taxation; (3) take whatever steps it deems are necessary to effect the equalization of assessments, in any taxing jurisdiction within the state in accordance with the laws of the state; (4) carry out such other duties as are required by law; and (5) provide assistance and information on request to members and committees of the General Assembly relative to the taxation, classification and evaluation of property.<sup>1</sup>In addition to its responsibility to hear complaints and appeals from actions of local boards of equalization, the state board reviews public utility and common carrier assessments made by the Comptroller of the Treasury.<sup>2</sup>

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<sup>1</sup>T.C.A. § 67-5-1501(a) and (b).

<sup>2</sup>T.C.A. § 67-5-1328.

## Exemptions

Reference Number:

CTAS-1525

"It is a fundamental rule that all property shall be taxed and bear its just share of the cost of government, and no property shall escape this common burden, unless it has been duly exempted by organic or statute law; and that one claiming such exemption has the burden of showing his right to it."<sup>1</sup>Pursuant to Article II, Section 28 of the Tennessee Constitution, the legislature may exempt certain types of property from taxation.

In accordance with the following provisions, all property real, personal or mixed shall be subject to taxation, but the Legislature may except such as may be held by the State, by Counties, Cities or Towns, and used exclusively for public or corporation purposes, and such as may be held and used for purposes purely religious, charitable, scientific, literary or educational, and shall except the direct product of the soil in the hands of the producer, and his immediate vendee, and the entire amount of money deposited in an individual's personal or family checking or savings accounts.<sup>2</sup>

Tennessee case law states that "this provision of our Constitution does not grant any tax exemption, does not establish any public policy of exemption, but merely authorizes, permits, the Legislature to grant exemption in the cases specified."<sup>3</sup>Exemptions not meeting the specific requirements set out in Article II, Section 28 are not constitutionally permissible.<sup>4</sup>

Property does not become exempt from taxation because it may be difficult to assess it at its actual worth.<sup>5</sup>Moreover, exemptions in tax statutes are construed strictly against the taxpayer and in favor of the state; and, the burden is on the taxpayer to establish the exemption.<sup>6</sup> "The presumption is against the exemption, and exemption from taxation will not be read into a taxing statute by implication."<sup>7</sup>However, once property has been exempted from taxation, it takes a showing of actual use for a nonexempt purpose to remove the exemption.<sup>8</sup>

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<sup>1</sup>*City of Nashville v. State Board of Equalization*, 360 S.W.2d 458, 594-595 (Tenn. 1962).

<sup>2</sup>Tenn. Const., art. II, §§ 28

<sup>3</sup>*City of Nashville*, 360 S.W.2d at 595-596; *Book Agents of the Methodist Episcopal Church, South v. State Board of Equalization*, 513 S.W.2d 514, 521 (Tenn. 1974).

<sup>4</sup>*See University of the South v. Franklin Co.*, 506 S.W.2d 779, 788-789 (Tenn.Ct.App. 1973). *See also* Op. Tenn. Atty. Gen. 86-142 (August 12, 1986), Op. Tenn. Atty. Gen. 83-418 (December 16, 1983).

<sup>5</sup>*Pryor v. Marion County*, 204 S.W. 1152, 1154 (Tenn. 1918). However, 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. T.C.A. § 67-5-901(a)(3)(A). 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. *Sherwood v. Clary*, 734 S.W.2d 318, 320-321 (Tenn. 1987).

<sup>6</sup>*Feldman v. Huddleston*, 912 S.W.2d 161, 163 (Tenn.Ct.App. 1995); *Hearthstone, Inc. v. Moyers*, 809 S.W.2d 888, 890 (Tenn. 1991); *United Cannery, Inc. v. King*, 696 S.W.2d 525, 527 (Tenn. 1985).

<sup>7</sup>*Tennessee Farmers' Coop. v. State ex rel. Jackson*, 736 S.W.2d 87, 90 (Tenn. 1987).

<sup>8</sup>*Kopsombut-Myint Buddhist Center v. State Board of Equalization*, 728 S.W.2d 327, 335 (Tenn.Ct.App. 1986).

## In Lieu of Tax or Tax Equivalent Payments

Reference Number:

CTAS-1558

In lieu of tax or tax equivalent payments are not taxes. Payments in lieu of taxes are intended to replace lost property tax revenues. A governmental entity may not require payments in lieu of taxes without specific statutory authorization.

Municipal Gas System Tax Equivalent Law of 1987. Pursuant to the Municipal Gas System Tax Equivalent Law of 1987, T.C.A. § 7-39-401 *et seq.*, every municipality (county, city, town, or metropolitan government) may pay or cause to be paid from its gas system revenues for each fiscal year an amount for payments in lieu of taxes on its gas system and gas operations which, in the judgment of the municipality's governing body, represents the fair share cost of government properly to be borne thereby, subject to the conditions set forth in the statute.<sup>1</sup>

Municipal Electric System Tax Equivalent Law of 1987. Pursuant to the Municipal Electric System Tax Equivalent Law of 1987, T.C.A. § 7-52-301 *et seq.*, every municipality (county, city, town, or metropolitan government) may pay or cause to be paid from its electric system revenues for each fiscal year an amount for payments in lieu of taxes on its electric system and electric operations which, in the judgment of the municipality's governing body after consultation with the supervisory body, represents the fair share of the cost of government properly to be borne thereby, subject to the conditions set forth in the statute.<sup>2</sup> Contracts for the distribution of tax equivalent payments are authorized.<sup>3</sup> In the absence of an agreement, a formula has been established for apportionment and payment to the taxing jurisdictions in which its electric plant in service is located.<sup>4</sup>

Telecommunications Services. A municipality providing any of the services authorized by T.C.A. § 7-52-401 is required to make tax equivalent payments with respect to those services in the manner established for electric systems under T.C.A. § 7-52-301 *et seq.*<sup>5</sup>

Cable Television, Internet, and Related Services. A municipal electric system providing any of the services authorized by T.C.A. § 7-52-601 *et seq.*, is required to make tax equivalent payments with respect to those services in the manner established for electric systems under T.C.A. § 7-52-301 *et seq.*, provided, that the payments shall not include amounts based on net system revenues as provided in T.C.A. § 7-52-304(1)(B).<sup>6</sup> In addition to the aforementioned tax equivalent payments, a municipal electric system providing cable or internet services must pay an amount in lieu of the following taxes to the same extent as if it were a private provider of those services: (1) excise and franchise taxes; (2) sales taxes; and (3) local privilege taxes.<sup>7</sup>

Industrial Development Corporations. Pursuant to T.C.A. § 7-53-305, an industrial development corporation and all properties owned by it, and the income and revenues therefrom, and all bonds issued by it, and the income therefrom, is exempt from all taxation in the state of Tennessee.<sup>8</sup> A municipality (county, city, town, or metropolitan government) has the power to delegate to an industrial development corporation the authority to negotiate and accept from the corporation's lessees, payments in lieu of ad valorem taxes; provided, that any such authorization will be granted only upon a finding that such payments are deemed to be in furtherance of the corporation's public purposes as defined in the statute. Municipalities that do not levy a property tax are prohibited from negotiating PILOT agreements unless the county signs off on the agreement or the municipality or the IDB agree to pay the county the property taxes that would otherwise be due.<sup>9</sup> PILOT agreements for retail projects may only be negotiated if certain criteria are met. T.C.A. § 7-53-305, Pursuant to T.C.A. § 7-53-305, PILOT payments can be waived for 23 years without the approval of ECD and the comptroller. Under T.C.A. § 48-101-312(b), Health, Educational and Housing Facility Corporations are authorized to negotiate PILOT agreements with respect to tax-credit housing projects without any delegation from the municipality unless the municipality adopts an ordinance or resolution requiring the agreements to be approved by the municipality. Housing authorities have been granted this same authority in counties without such corporations. Industrial development Corporations have been granted this same authority with respect to tax-credit housing projects. T.C.A. § 7-53-305.

Housing Authorities. Housing authority property and its bonds and notes, together with the interest and



income are exempt. In lieu of taxes, the housing authority must agree to make payments to the taxing jurisdiction for services, improvements or facilities furnished for the benefit of a housing project owned by the housing authority. Payments in lieu of taxes for services must not exceed the estimated cost of providing the services, improvements or facilities.<sup>10</sup>

Tennessee Valley Authority. In lieu of tax payments made by the Tennessee Valley Authority to the state replace tax revenue which the Tennessee Valley Authority would otherwise pay if it were not a tax exempt federal agency. The amount of the payments is determined by federal law.<sup>11</sup> Pursuant to the Tennessee State Revenue Sharing Act, T.C.A. § 67-9-101 *et seq.*, in lieu of tax payments received by the state from the Tennessee Valley Authority are apportioned between the state and local governments based on a formula determined by law.<sup>12</sup>

Local Hospital Authorities—Leased Commercial Real Property. A hospital authority, created by a county or municipality pursuant to private act, which owns real property leased for commercial purposes, must agree to the payment of tax equivalents to any municipality and county where the leased commercial property is located. The amount of the tax equivalent payments is fixed at the amount of ad valorem taxes otherwise due and payable by a tax paying entity upon the assessed value of the leased commercial property. If the leased commercial property is located within the boundaries of a municipality, pro rata shares of the total amount collected from the local hospital authority is distributed to the county and municipality based on the tax rates of each.<sup>13</sup>

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<sup>1</sup>T.C.A. § 7-39-404.

<sup>2</sup>T.C.A. § 7-52-304. *See also Knox County v. City of Lenoir*, 837 S.W.2d 382 (Tenn. 1992)

<sup>3</sup>T.C.A. § 7-52-306.

<sup>4</sup>T.C.A. § 7-52-307. *See also Knox Co. ex rel. Kessel v. Lenoir City*, 837 S.W.2d 382, 385 (Tenn. 1992) (holding that the 1987 Act specifically permits the allocation of payments among taxing jurisdictions to be established by means of a private act).

<sup>5</sup>T.C.A. § 7-52-404.

<sup>6</sup>T.C.A. § 7-52-606(a).

<sup>7</sup>T.C.A. § 7-52-606(b).

<sup>8</sup>T.C.A. § 7-53-305(a).

<sup>9</sup>T.C.A. § 7-53-305(b). *See also* Op. Tenn. Atty. Gen. 85-264 (October 22, 1985)(discussing the apportionment of in lieu of tax payments between various governmental entities).

<sup>10</sup>T.C.A. § 67-5-206.

<sup>11</sup>16 U.S.C. § 831 *et seq.*

<sup>12</sup>T.C.A. § 67-9-101(a).

<sup>13</sup>T.C.A. § 67-9-201.

## Tax Relief

Reference Number:

CTAS-1559

The legislature has provided authority for tax relief programs in which the state pays a portion of the county property taxes due on residences of qualified taxpayers. The program authorizes payment, or reimbursement of taxes already paid, to the following taxpayers: (1) elderly low-income homeowners, (2) disabled homeowners, and (3) disabled veterans.<sup>1</sup>

Counties may not provide tax relief by setting a lower tax rate, or by reducing penalty and interest, for particular classes of residents. Such provisions violate the uniformity provisions of Tenn. Const. art. II, § 28.<sup>2</sup> However, in 2006, the legislature amended T.C.A. § 67-5-701(j) to allow all counties to appropriate funds for tax relief for elderly low income homeowners, disabled homeowners and disabled veterans. 2006 Public Chapter 739. The total tax relief from the state and local appropriations cannot exceed the total taxes actually paid. Only the taxpayers eligible for the state program are eligible for tax relief from a county appropriation.<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-5-701 *et seq.*

<sup>2</sup>Ops. Tenn. Atty. Gen. 96-044 (March 13, 1996) and 89-111 (September 5, 1989).

<sup>3</sup>T.C.A. § 67-5-701(j)

## Administrative Provisions

Reference Number:

CTAS-1560

The State Board of Equalization, through the Division of Property Assessments, is charged with the implementation of T.C.A. §§ 67-5-702 - 67-5-704, and promulgates all the necessary rules, regulations and procedures for their implementation.<sup>1</sup>

Property tax relief is obtainable by submitting an application to the collecting official (i.e., county trustee) using a form approved by the State Board of Equalization. The collecting official will make a preliminary determination of eligibility and forwards the application to the state for final approval. The collecting official may allow the applicant a credit for the projected amount of property tax relief if the applicant appears from the application to be eligible and submits the balance of the property taxes due at the time the credit is given. The collecting official may present evidence of the credit to the director of the Division of Property Assessments, who then authorizes the payment to the tax jurisdiction of the amount for which the applicant was credited in taxes. If later processing of the application indicates that the applicant was ineligible or the credit was otherwise issued in error, the state notifies the applicant and the collecting official and may recover the erroneous payment from the tax jurisdiction. The amount represented by the erroneous payment then becomes due and payable by the applicant as property taxes, but the taxes do not accrue delinquency penalty or interest until 60 days from the date of the notification to the applicant.<sup>2</sup>

A county trustee may enter into a contract with a city collecting official to process tax relief applications received by the city collecting official.<sup>3</sup>

Any person who received tax relief payments in error for any tax year or years must repay the state the amount received in error. There is a bar against collection of repayments unless demand is made within two years following the due date for the tax year to which the erroneous payments relate. Any person who received tax relief payments in error may reapply and may obtain tax relief for a subsequent tax year; provided that eligibility is established and the person either pays the full amount of repayment due or applies one half of the tax relief amount for which the person may be eligible to repay the state for amounts received in error until no further repayment is due. The limited liability and right to reapply afforded under the statute is not be available to persons who willfully provide false information concerning eligibility. Any taxpayer who willfully provides false information concerning the taxpayer's income or other information relative to eligibility for tax relief will be required to immediately repay to the state the full amount of any tax relief received as a result of such false information, plus an amount equal to the penalty and interest calculated according to the rates specified in former T.C.A. § 67-1-801(b).<sup>4</sup>

All taxpayers otherwise eligible for tax relief under T.C.A. §§ 67-5-702 - 67-5-704, but who fail to apply for a refund or present a credit voucher for credit on their taxes within 35 days from the date taxes in the jurisdiction become delinquent for that year, are deemed ineligible for tax relief for that tax year. The payment of the full amount of taxes by the delinquency date is not a condition of eligibility for tax relief.<sup>5</sup>

Tax relief will be provided to only one recipient for a given property for any tax year and under no condition will any taxpayer receive tax relief for property taxes paid on more than one place of residence for any tax year.<sup>6</sup>

If a taxpayer eligible for tax relief pursuant to T.C.A. § 67-5-702 (elderly low-income homeowners) or T.C.A. § 67-5-703 (disabled homeowners) dies after applying for tax relief or after receiving a voucher, the surviving spouse, and only the surviving spouse, is qualified to present to the collecting official the tax relief voucher selected for the deceased and to receive a final payment for the tax year for which the voucher was selected, unless the taxes were paid prior to the taxpayer's death. If the taxes were paid at the time application was made and prior to the taxpayer's death, either the surviving spouse or any duly appointed personal representative of the decedent may receive the payment.<sup>7</sup>

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<sup>1</sup>T.C.A. § 67-5-701(a).

<sup>2</sup>T.C.A. § 67-5-701(c).

<sup>3</sup>T.C.A. § 67-5-701(l). 2010 Public Chapter 932.

<sup>4</sup>T.C.A. § 67-5-701(g).

<sup>5</sup>T.C.A. § 67-5-701(d)(1).

<sup>6</sup>T.C.A. § 67-5-701(f).

<sup>7</sup>T.C.A. § 67-5-701(h).

## Elderly Low-Income Homeowners

Reference Number:

CTAS-1561

Low-income taxpayers 65 years of age or older who owned and used a principal residence may qualify for tax relief for all or part of the local property taxes paid for a given year on that property.<sup>1</sup> Such reimbursement shall be paid on the first twenty-seven thousand dollars (\$27,000), or such other amount as set forth in the general appropriations act or as adjusted pursuant to subdivision (a)(3)(B), of the full market value of such property. Beginning for tax year 2018, and each subsequent tax year, the amount on which reimbursement shall be paid under subdivision T.C.A. § 67-5-702(a)(3)(A) shall be increased annually to reflect inflation, as measured by the United States bureau of labor statistics consumer price index for all urban consumers and shall be rounded to the nearest one hundred dollars (\$100). The comptroller of the treasury shall notify taxpayers of any change in dollar amounts made pursuant to this subdivision (a)(3)(B) and post the information in a readily identifiable location on the comptroller's website. The annual percentage changes used in this calculation shall be no less than zero percent (0%) and no more than three percent (3%).<sup>2</sup>

For tax year 2007 and thereafter, the taxpayer's annual income from all sources can not exceed \$24,000, or such other amount as set forth in the general appropriations act. For subsequent years, the annual income limit is adjusted to reflect the cost of living adjustment for social security recipients as determined by the social security administration and is rounded to the nearest \$10. The income attributable to the applicant for tax relief shall be the income of all owners of the property, the income of applicant's spouse and the income of any owner of a remainder or reversion in the property if the property constituted the person's legal residence at any time during the year for which tax relief is claimed.<sup>3</sup> Any portion of social security income, social security equivalent railroad retirement benefits, and veterans entitlements required to be paid to a nursing home for nursing home care by federal regulations is not considered income to an owner who relocates to a nursing home.<sup>4</sup>

Taxpayers who become 65 years of age on or before December 31 of the year for which an application for property tax relief is made and are otherwise eligible will be qualified as elderly low-income homeowners.<sup>5</sup>

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<sup>1</sup>T.C.A. § 67-5-702(a)(1).

<sup>2</sup>T.C.A. § 67-5-702(a)(3).

<sup>3</sup>T.C.A. § 67-5-702(a)(2).

<sup>4</sup>T.C.A. § 67-5-702(a)(2).

<sup>5</sup>T.C.A. § 67-5-702(c).

## Disabled Homeowners

Reference Number:

CTAS-1562

Taxpayers who are totally and permanently disabled who owned and used a principal residence may qualify for tax relief for all or part of the local property taxes paid for a given year on that property.

Disability is determined by rules and regulations of the State Board of Equalization.<sup>1</sup> Such reimbursement shall be paid on the first twenty seven thousand dollars (\$27,000), or such other amount as set forth in the general appropriations act or as adjusted pursuant to subdivision (a)(3)(B), of the full market value of such property. Beginning for tax year 2018, and each subsequent tax year, the amount on which reimbursement shall be paid shall be increased annually to reflect inflation, as measured by the United States bureau of labor statistics consumer price index for all urban consumers and shall be rounded to the nearest one hundred dollars (\$100). The comptroller of the treasury shall notify taxpayers of any change in dollar amounts made pursuant to this subdivision T.C.A. § 67-5-703 (a)(3)(B) and post the information in a readily identifiable location on the comptroller's website. The annual percentage changes used in this calculation shall be no less than zero percent (0%) and no more than three percent (3%).<sup>2</sup>

For tax year 2007 and thereafter, the taxpayer's annual income from all sources shall not exceed \$24,000,

or such other amount as set in the general appropriations act. For subsequent years, the annual income limit is adjusted to reflect the cost of living adjustment for social security recipients as determined by the social security administration and is rounded to the nearest \$10. The income attributable to the applicant for tax relief shall be the income of all owners of the property, the income of applicant's spouse and the income of any owner of a remainder or reversion in the property if the property constituted the person's legal residence at any time during the year for which tax relief is claimed.<sup>3</sup> Any portion of social security income, social security equivalent railroad retirement benefits, and veterans entitlements required to be paid to a nursing home for nursing home care by federal regulations is not considered income to an owner who relocates to a nursing home.<sup>4</sup>

Taxpayers who become totally and permanently disabled on or before December 31 of the year for which application is made for property tax relief and are otherwise eligible will be qualified as disabled homeowners.<sup>5</sup>

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<sup>1</sup>T.C.A. § 67-5-703(a)(1).

<sup>2</sup>T.C.A. § 67-5-703(a)(3).

<sup>3</sup>T.C.A. § 67-5-703(a)(2).

<sup>4</sup>T.C.A. § 67-5-703(a)(2).

<sup>5</sup>T.C.A. § 67-5-703(c).

## Disabled Veterans

Reference Number:

CTAS-1563

Disabled veterans who owned and used a principal residence may qualify for tax relief for all or part of the local property taxes paid for a given tax year on that property.<sup>1</sup> Reimbursement is paid on the first \$175,000 of the full market value of the property.<sup>2</sup> Property tax relief will not be extended to any person who was dishonorably discharged from any branch of the armed services.<sup>3</sup>

For the purposes of T.C.A. § 67-5-704, a "disabled veteran" means a person who has served in the armed forces of the United States, and who has

1. acquired in connection with his or her military service a disability from paraplegia or permanent paralysis of both legs and lower part of the body resulting from traumatic injury or disease to the spinal cord or brain, or from legal blindness, or from loss or loss of use of two or more limbs from any service-connected cause;
2. acquired 100 percent permanent total disability, as determined by the United States Veterans' Administration, and the disability resulted from having served as a prisoner of war; or
3. acquired service-connected permanent and total disability or disabilities, as determined by the United States Department of Veterans' Affairs.<sup>4</sup>

The determination of the United States Veterans' Administration concerning the disability status of a veteran is conclusive for purposes of this statute.<sup>5</sup>

Property tax relief will also be extended to the surviving spouse of a disabled veteran who at the time of the disabled veteran's death was eligible for disabled veterans' property tax relief. If a subsequent amendment to the law concerning eligibility as a disabled veteran would have made the deceased veteran eligible for disabled veterans' property tax relief, then property tax relief shall also be extended to the surviving spouse. A surviving spouse shall continue to qualify for disabled veterans' property tax relief as long as the surviving spouse does not remarry, solely or jointly owns the property for which tax relief is claimed, and uses the property for which tax relief is claimed exclusively as a home.<sup>6</sup>

Property tax relief will also be extended to the surviving spouse of a veteran whose death results from a service-connected, combat-related cause, as determined by the United States Veterans' Administration; provided that the surviving spouse does not remarry and the property for which tax relief is claimed is owned by and used exclusively by the surviving spouse as a home.<sup>7</sup>

Property tax relief will also be extended to the surviving spouse of a soldier whose death results from being deployed, away from any home base of training and in support of combat or peace operations; provided, that the surviving spouse does not remarry, solely or jointly owns the property for which tax relief is

claimed, and uses the property for which tax relief is claimed exclusively as a home. T.C.A. § 67-5-704(g).

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<sup>1</sup>T.C.A. § 67-5-704(a)(1).

<sup>2</sup>T.C.A. § 67-5-704(3).

<sup>3</sup>T.C.A. § 67-5-704(c).

<sup>4</sup>T.C.A. § 67-5-704(b). See *also* Op. Tenn. Atty. Gen. 86-66 (March 17, 1986) (addressing the issue of combat-related injury).

<sup>5</sup>T.C.A. § 67-5-704(d).

<sup>6</sup>T.C.A. § 67-5-704(e).

<sup>7</sup>T.C.A. § 67-5-704(f).

## Additional Tax Relief

Reference Number:

CTAS-1564

The county legislative body may provide for the appropriation of funds for tax relief for elderly low-income homeowners as described in T.C.A. § 67-5-702, for disabled homeowners as described in T.C.A. § 67-5-703, and for disabled veterans as described in T.C.A. § 67-5-704. However, in no event may the total relief allowed by the state and county exceed the total taxes actually paid.<sup>1</sup> Only those taxpayers who qualify under T.C.A. §§ 67-5-702 - 67-5-704 are eligible for this additional tax relief, and the eligible taxpayers must have previously applied for and obtained the relief authorized by T.C.A. § 67-5-702, T.C.A. § 67-5-703 or T.C.A. § 67-5-704.<sup>2</sup>

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<sup>1</sup>T.C.A. § 67-5-701(j)(1).

<sup>2</sup>T.C.A. § 67-5-701(j)(2).

## Property Tax Freeze Act

Reference Number:

CTAS-1565

In 2007, the General Assembly enacted the Property Tax Freeze Act, T.C.A. § 67-5-705. The act authorizes the county legislative body, by resolution, to adopt the property tax freeze program according to the statute. The county legislative body is also authorized to terminate the tax freeze program by resolution, but the resolution terminating the program cannot have the effect of terminating the program until the following tax year.

In counties that have adopted the property tax freeze, taxpayers apply annually to the collecting official (county trustee) by the deadline established in the program rules, and applicants must qualify on the basis of age, income and ownership of eligible property. The trustee determines whether requirements for eligibility have been met, and the trustee's determination is final, subject to audit and recovery of taxes, including penalty and interest at the rates provided for delinquent taxes under T.C.A. § 67-5-2010, if the applicant is later determined to have not been eligible. Any taxpayer who knowingly provides false information concerning the taxpayer's income or other information relative to eligibility for such program commits a Class A misdemeanor.

Once the trustee approves the application, property taxes due upon the applicant's principal residence shall be the lesser of: (1) the actual tax due; or (2) the base tax, provided the base tax shall be adjusted to reflect any percentage increase in the value of the property determined by the assessor to be attributed to improvements made or discovered after the time the base tax was established. The base tax shall be recalculated in any year in which the actual tax due is less than the previously established base tax for the property, and the recalculated base tax shall apply until further recalculated. "Base tax" is defined as the property tax due on the principal residence of a qualifying taxpayer at the time the jurisdiction levying the tax adopts a resolution approving the property tax freeze; provided, however, if the taxpayer did not qualify or did not own an eligible residence when the freeze was adopted, "base tax" means the maximum property tax due on the taxpayer's eligible residence for the year in which the taxpayer became eligible on the basis of an approved application. If a taxpayer reapplies after acquiring a new residence or after a period of ineligibility, the base tax shall be recalculated for the year of reapplication and reestablishment

of eligibility.

To qualify for the property tax freeze, the applicant must be sixty-five (65) years of age by the end of the year in which the application is filed. The applicant must own and use the property as the applicant's principal residence for which the tax freeze is sought in the year of application or reapplication and through the deadline date for application or reapplication. The tax freeze only applies to the principal residence and no more than the maximum limit for land established by state rules. The state rules establish the maximum size limits for land which may qualify as a taxpayer's principal residence. The rules are to take into consideration lot size requirements under applicable zoning as well as property actually used to support residential structures; provided, however, the size limit cannot exceed five acres.

In addition to the qualifications stated in above, the applicant's income, combined with the income of any other owners of the property, the income of the applicant's spouse, and the income of any owners of a remainder or reversion in the property who used the property as their principal place of residence at any time during the year may not exceed the income limit set forth in the act. Income for purposes of qualification means income from all sources as defined by the program rules. The act provides that the income limit for the property tax freeze program shall be the greater of weighted average of the median household income for age groups sixty-five to seventy-four, and seventy-five or over, who resided within the county as determined in the most recent federal decennial census, or the applicable state tax relief income limit established under T.C.A. § 67-5-702. This limit is to be adjusted by the comptroller to reflect the cost of living adjustment for social security recipients as determined by the social security administration and shall be rounded to the nearest ten dollars. The adjusted weighted average median household income level for each county shall be published annually by the comptroller. The comptroller is authorized to perform income verification or other related services or assistance at the request of a county or municipality if the county or municipality agrees to pay fees sufficient to reimburse the actual costs of the comptroller in providing such services or assistance, unless or to the extent not appropriated by the General Assembly. Financial records filed for purposes of income verification are declared to be confidential and not subject to inspection under the Tennessee public records act, but are to be made available to local or state officials who administer or enforce the provisions of the law.

The property tax freeze program is subject to any uniform definitions, application forms and requirements, income verification procedures and other necessary or desirable rules, regulations, policies and procedures, not in conflict with the terms of the act, as may be adopted by the State Board of Equalization through the Division of Property Assessments.

## The Tax Levy

Reference Number:  
CTAS-1569

For county general purposes, counties may levy an ad valorem tax on all property subject to this form of taxation.<sup>1</sup>“County general purpose levy” means a levy for all county purposes except roads, bridges, schools, debt service, sinking funds and levies pursuant to special tax laws.<sup>2</sup>In addition to the levy for general purposes, the county may levy taxes to (1) build, extend or repair, any courthouse, jail or public office for county purposes;<sup>3</sup>(2) provide funds for the purpose of securing humane treatment of animals;<sup>4</sup>(3) pay a judgment against the county;<sup>5</sup>(4) provide funds for the operation of a county fire department;<sup>6</sup>(5) provide funds for the collection and disposal of garbage;<sup>7</sup>(6) provide funds for a public library;<sup>8</sup>(7) provide funds for the operation and maintenance of county schools;<sup>9</sup>(8) repay loans for capital projects;<sup>10</sup>(9) repay loans for the purchase of fire equipment;<sup>11</sup>(10) repay loans made to an airport authority or municipal airport which are guaranteed by the county;<sup>12</sup>and (11) repay loans for capital projects for kindergarten through grade twelve educational purposes.<sup>13</sup> This list is not exhaustive, for example, some counties have been granted the authority by private act to levy property taxes for highway, road or bridge purposes.

The county legislative body sets the rate of the tax, which under general law should be done by the first Monday in July, or shortly thereafter.<sup>14</sup> Changes made in 2015 to the County Financial Management System of 1981 and the County Budgeting Law of 1957

removed specific deadlines in July for approving the budget. Now, under both of those laws, if a county fails to adopt a budget by July 1 the current budget continues through August or until the new budget is adopted. If a county is unable to approve a budget beyond August, it is required to obtain the comptroller's approval to continue the budget through the end of September. T.C.A. § 5-21-111, 5-12-109. Those revisions were not made to the Local Option Budgeting Law of 1993, which still requires adoption of a tax rate and budget by July 31, or the date required by any other budget law applicable in the county.<sup>15</sup> Under this 1993 Act, if the county legislative body fails to adopt a budget, a property tax rate resolution and appropriation resolution by August 15 of any year, then the portion of the budget, tax levy and appropriation for education proposed by the board of education becomes effective by operation of law; and, the balance of the budget, tax levies and appropriations proposed by the budget committee or county mayor/executive likewise takes effect. Counties not under the 1993 Act that do not set a tax rate and adopt a budget by the applicable statutory deadline may continue operations by the adoption of a continuation budget, which remains in effect until a budget is passed. However, the county legislative body must adopt a budget by October 1 in order to continue receiving state school funds.<sup>16</sup> For more information on County Budget Laws, see Financial Management under General Laws with Local Option Application under Financial Structure of County Government of the Accounting/Budgeting/Finance topic.

The rate applies annually as of January 1, and is assessed to the owner of record and becomes a lien on the property as of this date (excepting leased personal property in the hands of the lessee). In addition to the lien, property taxes are a personal debt of the owner or owners as of January 1 and, when delinquent, may be collected by suit as any other personal debt. In any lawsuit for collection of property taxes, the same penalties and attorney fees apply as set forth in T.C.A. § 67-5-2410 for suits to enforce liens for property taxes. The claim for the debt and the claim for enforcement of the lien may be joined in the same complaint. The owner of record as of January 1 has the sole responsibility for paying the property tax assessed for the year even if the property is sold during the year, as the seller is the record owner.<sup>17</sup> However, the tax lien runs with the land and failure by the seller to pay does not limit enforcement actions against the land to recover any delinquent taxes.

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<sup>1</sup>T.C.A. § 67-5-102(a)(1).

<sup>2</sup>T.C.A. § 67-5-102(a)(3).

<sup>3</sup>T.C.A. §§ 5-5-122, 5-7-106

<sup>4</sup>T.C.A. § 5-9-110.

<sup>5</sup>T.C.A. § 5-9-312. *See also* T.C.A. § 29-20-402.

<sup>6</sup>T.C.A. §§ 5-17-101, 5-17-105, 5-17-106, 5-17-107.

<sup>7</sup>T.C.A. § 5-19-108.

<sup>8</sup>T.C.A. § 10-3-102.

<sup>9</sup>T.C.A. § 49-2-101.

<sup>10</sup>T.C.A. § 4-31-410.

<sup>11</sup>T.C.A. § 4-31-510.

<sup>12</sup>T.C.A. § 4-31-607.

<sup>13</sup>T.C.A. § 4-31-1006.

<sup>14</sup>T.C.A. § 67-5-510. *See also* T.C.A. §§ 5-5-123, 67-1-601.

<sup>15</sup>T.C.A. § 5-12-210.

<sup>16</sup>T.C.A. § 49-3-316(d)(3).

<sup>17</sup>T.C.A. § 67-5-2101; *see also* Op. Tenn. Atty. Gen. 86-39 (February 21, 1986).

## Certified Tax Rate

Reference Number:

CTAS-1570

Upon a general reappraisal of property as determined by the State Board of Equalization, the county assessor of property shall certify to the governing bodies of the county and of each municipality within the county the total assessed value of taxable property within the jurisdiction of each governing body. The assessor shall also furnish each governing body an estimate of the total assessed value of all new construction and improvements not included on the previous assessment roll and the assessed value of deletions from the previous assessment roll. Exclusive of such new construction, improvements and deletions, each governing body, in the event of a general reappraisal as determined by the state board, shall determine and certify a tax rate which will provide the same ad valorem revenue for that jurisdiction as was levied during the previous year.<sup>1</sup>

For the purpose of calculating the certified rate, the governing body shall use the taxable value appearing on the roll exclusive of taxable value of properties appearing for the first time on the assessment roll. In calculating the certified tax rate, the governing body of the county or municipality may adjust the calculation, according to a method approved by the State Board of Equalization, to reflect extraordinary assessment changes anticipated from appeals to the state or local boards of equalization. The State Board of Equalization shall order recapture of an excessive adjustment in the following year if the certified tax rate is found to have been overstated due to overestimation of the appeals adjustment, and in these cases the jurisdiction may exceed the recapture rate only after public hearing..<sup>2</sup>

The State Board of Equalization is authorized to establish policies providing a procedure or formula for calculating the certified tax rate. Prior to final determination of the certified tax rate by the county legislative body, a proposed certified tax rate, including supporting calculations, must be submitted to the executive secretary of the State Board of Equalization for review. The executive secretary has fifteen days to report on the rate, and after this period passes, the county legislative body must determine the certified tax rate, which may be adjusted in accordance with the executive secretary's report, if one has been provided.<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-5-1701(a)(1) - (3).

<sup>2</sup>T.C.A. § 67-5-1701(a)(4) - (5).

<sup>3</sup>T.C.A. § 67-5-1701(b)(1) - (5); Op. Tenn. Atty. Gen. 83-006 (January 7, 1983).

## Levy in Excess of the Certified Rate

Reference Number:

CTAS-1571

No tax rate in excess of the certified tax rate may be levied by the county legislative body until a resolution or ordinance has been approved by county legislative body according to the following procedure: (1) the county legislative body must advertise its intent to exceed the certified tax rate in a newspaper of general circulation in the county (See Sample newspaper advertisement of Notice of Intent to Exceed Certified Tax Rate), (2) the county mayor must, within 30 days after publication, furnish to the State Board of Equalization an affidavit of publication; (3) a public hearing must be held on the issue, and (4) the county legislative body, after the public hearing, may adopt a resolution or ordinance levying a tax rate in excess of the certified tax rate.<sup>1</sup>

If the resolution or ordinance is approved it must be forwarded to the county board of equalization and the State Board of Equalization. The county board or the state board, as appropriate, must notify each taxing authority of any change in the assessment roll which results from action by either board. An increase in the tax rate above that certified or adopted by resolution or ordinance of the county legislative body, which is required solely by a reduction of the assessment roll by the state or county boards, may be adopted without further notice. A levy of tax found to be based on an erroneous calculation may be revised prior to tax billing on certification of a revised calculation by the state board of equalization accepted by act or resolution of the governing body of the affected taxing authority without further notice. If the error is certified after tax billing, the revised rate will take effect as of the next general ad valorem levy by the governing body of the affected taxing authority.<sup>2</sup>



<sup>1</sup>T.C.A. § 67-5-1702; Op. Tenn. Atty. Gen. U87-43 (April 13, 1987).

<sup>2</sup>T.C.A. § 67-5-1703.

## Special School Districts

Reference Number:

CTAS-1572

Notwithstanding the provisions of the general law or a private act to the contrary which creates a special school district, upon a general reappraisal of property as determined by the State Board of Equalization, the tax rate as established in any general law or private act must be adjusted to provide the same ad valorem revenue for the special school district as was levied during the previous year prior to the general reappraisal. The county assessor of property must certify to the appropriate county trustee the total assessed value of taxable property within the jurisdiction of the special school district. The assessor must also furnish the county trustee an estimate of the total assessed value of all new construction and improvements not included on the previous assessment roll and the assessed value of deletions from the previous assessment roll.<sup>1</sup>

In the event of a general reappraisal as determined by the State Board of Equalization, the county trustee must determine and certify the adjusted tax rate exclusive of such new construction, improvements and deletions. For the purpose of calculating the adjusted rate, the county trustee must use the taxable value appearing on the roll exclusive of taxable value of properties appearing for the first time on the assessment roll. The procedure or formula for calculating the certified adjusted tax rate must be in accordance with policies as established by the state board of equalization pursuant to T.C.A. § 67-5-1701(b). A levy of tax found to be based on an erroneous calculation may be revised prior to tax billing on certification of a revised calculation by the state board of equalization accepted by act or resolution of the board of education of the special school district without further notice. If the error is certified after tax billing, the revised rate shall take effect as of the next general ad valorem levy for the special school district.<sup>2</sup>

The county trustee must certify the adjusted tax rate to the school board of the special school district within a reasonable time following the general reappraisal, and in addition, must post the adjusted tax rate at each school within the special school district, at the appropriate courthouse, and at one other public building within the appropriate county.<sup>3</sup> If additional revenue is required in a special school district following the general reappraisal and the adjustment to the tax rate, the General Assembly must by general law or private act set the tax rate for the special school district at a level to generate the ad valorem revenue necessary for the special school district. Before the board of education of the special school district requests legislation to exceed the certified rate, it shall first publish notice of its intent to exceed the certified rate in the manner required of cities and counties pursuant to 67-5-1702.<sup>4</sup>

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<sup>1</sup>T.C.A. § 67-5-1704(a)(1) - (3).

<sup>2</sup>T.C.A. § 67-5-1704(a)(4) - (6).

<sup>3</sup>T.C.A. § 67-5-1704(b).

<sup>4</sup>T.C.A. § 67-5-1704(c).

## Collection of Property Taxes

Reference Number:

CTAS-1573

The trustee collects all property taxes levied by the county and the municipalities within the county, unless a municipality collects its own taxes.<sup>1</sup> However, owners of land are presumed to know taxes are due without demand or personal notice,<sup>2</sup> and assessed taxes become a personal debt of the person whose property is assessed.<sup>3</sup> The whole proceeding for collection of taxes, from the assessment to the sale for delinquency, is a proceeding in rem; even if the land were listed or assessed for taxation to the wrong owner or to an unknown owner, the process is not invalidated. All interested persons are made parties to the proceedings by virtue of the seizure of the parcel occurring upon the filing of a complaint for the purpose of enforcement of the first lien provided for in T.C.A. § 67-5-2101. The filing of a complaint for the purpose of enforcement of the first lien provided for in T.C.A. § 67-5-2101, creates a lien *lis pendens* as to each parcel which is included in the proceeding, during the pendency of the proceeding, affecting all

subsequent owners, without the recording of any copy or abstract thereof in the office of the register of deeds.<sup>4</sup>

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<sup>1</sup>T.C.A. § 67-5-1801. See T.C.A. § 67-5-1901 for the trustee's bond and oath.

<sup>2</sup>*M'Carroll's Lessee v. Weeks*, 6 Tenn. (5 Hayw.) 246 (1814).

<sup>3</sup>*White v. Kelly*, 387 S.W.2d 821 (Tenn. 1965).

<sup>4</sup>T.C.A. § 67-5-2103.

## Timetable of Significant Dates and Activities in the Assessment and Collection of Ad Valorem Real Property Taxes\*

Reference Number:

CTAS-2193

*\*Note: Specific years are included for illustrative purposes and to clearly indicate chronological sequence; the example shows one complete tax cycle, using the 2010 tax year as an example.*

January 1, 2010	Assessor makes assessments as of this date T.C.A. § 67-5-504; assessed taxes become a first lien on property. T.C.A. § 67-5-2101.
Not later than February 1, 2010	Tax assessor should furnish owners and lessees of business personal property with a tangible personal property schedule. T.C.A. §§ 67-5-902, 67-5-903.
Before March 1, 2010	Assessor furnishes schedule to owners of mobile home parks. T.C.A. § 67-5-802. Personal property schedules due in assessor's office. T.C.A. § 67-5-903. Corrections of assessments for 2008 must be requested by the taxpayer or initiated by assessor prior to this date. T.C.A. § 67-5-509.
March 15, 2010	Greenbelt applications must be filed by March 15. T.C.A. §§ 67-5-1005 through 67-5-1007.
April 1, 2010	Mobile home park forms due in assessor's office. T.C.A. § 67-5-802
May 20, 2010	Assessor must note all assessments on his or her books on or before this date, T.C.A. §§ 67-5-504, 67-5-508; taxpayers must be notified of any change in their assessments by this date. T.C.A. § 67-5-508
June 1, 2010	Assessor turns over books to the county board of equalization, T.C.A. § 67-5-304; county board of equalization commences its session. T.C.A. § 67-1-404.
July 2010	County legislative body sets tax rate. T.C.A. § 67-5-510. Trustee reports on all delinquent taxpayers and double assessments in the county. T.C.A. § 67-5-1903.
1st Monday in October 2010	On or before this date, county tax rolls must be delivered to trustee T.C.A. § 67-5-807; taxes become due and payable. T.C.A. §§ 67-1-701, 67-1-702.
On or before 1st Monday in November 2010	County clerk or the tax assessor prepares an aggregate of real and personal property to forward to the commissioner of revenue and the mayor of each municipality. T.C.A. § 67-5-807.

- March 1, 2011 2010 taxes become delinquent. 1.5 percent per month interest begin to accrue. T.C.A. § 67-5-2010.
- September 1, 2011 Back assessments and reassessments must be initiated prior to this date. T.C.A. § 67-1-1005.
- 1st Monday in September 2011 Trustee makes a full and complete financial report of the condition of the trustee's office. T.C.A. § 67-5-1902.
- January 1, 2012 Tax collectors must make final settlements and return delinquent tax lists to trustee. T.C.A. § 67-5-2006.
- January 1 — 31, 2012 During this period the trustee must cause to be published notice that suits will be filed to enforce tax liens. T.C.A. § 67-5-2401.
- January 2 — 31, 2012 The delinquent tax list may be given to newspapers for publication. T.C.A. § 67-5-2002. This must be done at least 20 days prior to turning the tax list over to the tax attorney.
- February 2 — April 1, 2012 Tax attorney must during this period file suit for enforcement of tax liens, T.C.A. § 67-5-2405; an additional 10 percent penalty and the additional costs accrue with the filing of such suit. T.C.A. § 67-5-2410.
- April 1, 2012 Delinquent municipal real property taxes must be certified to trustee on or before this date. T.C.A. § 67-5-2005.
- June 1 — July 1, 2012 Clerks collecting delinquent taxes are required to provide the trustee with a list of tax suits. T.C.A. § 67-5-2403.
- April 1, 2022 All 2010 property taxes assessed but not collected by counties are barred and discharged because of the statute of limitations. T.C.A. § 67-5-1806.

## Tax Roll

Reference Number:  
CTAS-1574

The trustee collects the taxes in the amount set out in the tax roll or tax book prepared by the county clerk or assessor and delivered to the trustee on or before the first Monday in October of each year. The assessor identifies all taxable property in the assessment records so that tax rolls can be provided for each taxing entity within the county. The county legislative body may assign the duty of making the tax roll or book to the county clerk or the assessor.<sup>1</sup> There are statutory requirements for the tax roll or tax book.

1. It is either a bound or loose-leaf book or unit tax ledger cards, one for each parcel of property;
2. It is arranged by districts or subdivision of districts;
3. It is ruled to show names of owners in alphabetical order or in the order in which the parcels of property are identified by a parcel number;
4. It shows the number of lots and blocks;
5. It states the number of acres;
6. It contains a description of the property; and
7. It states the value of each lot, tract, or parcel.

A "description" of the property includes the name of the owner, if known, a description of each lot, tract, or parcel, and its value. Under the appropriate headings, the value of personal property is also listed. From the valuation placed on real and personal property, taxes are calculated and placed in an appropriate column according to the rate set by the county legislative body (or other appropriate authority). Dollar marks should be placed to clearly delineate the dollar amounts.<sup>2</sup>The property located within municipalities should be separated from other property of the county.<sup>3</sup>

The entries contained in the tax roll may be altered to reflect changes in the status of the property: the acquisition of the property by an entity which is exempt from taxation,<sup>4</sup>revisions due to damaged or incomplete improvements,<sup>5</sup>the roll back of taxes on land previously classified as agricultural, forest, or open space lands,<sup>6</sup>or actions of the State Board of Equalization.<sup>7</sup>The assessor must notify owners of any change in the classification or assessed valuation, usually by mail.<sup>8</sup>Decisions of the State Board of Equalization or the assessment appeals commission are evidenced by a certificate, a copy of which is sent to the owner, chief executive officer, trustee, and assessor.<sup>9</sup>

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<sup>1</sup>T.C.A. § 67-5-807.

<sup>2</sup>*Hunter Glover Co. v. Harvey Steel Prods. Corp.*, 3 F.2d 634 (W.D. Tenn. 1924).

<sup>3</sup>T.C.A. § 67-5-807. Note T.C.A. § 67-5-808 which refers to the tax rolls for metropolitan governments.

<sup>4</sup>T.C.A. § 67-5-201.

<sup>5</sup>T.C.A. § 67-5-603.

<sup>6</sup>T.C.A. § 67-5-1008.

<sup>7</sup>T.C.A. § 67-5-1510.

<sup>8</sup>T.C.A. § 67-5-508.

<sup>9</sup>T.C.A. § 67-5-1512.

## Tax Due Date

Reference Number:  
CTAS-1575

State, county and municipal property taxes are payable on the first Monday in October in each year, except that certain municipalities may have a different date fixed by law when they collect their own property taxes. However, all municipal taxes collectible by the county trustee are due and delinquent at the same time as county taxes. T.C.A. § 67-1-701. The county legislative body, by resolution, may allow the trustee to collect taxes after the tax rates are finally set, the tax rolls are received by the trustee, and the tax receipts have been prepared, but not earlier than July 11. T.C.A. § 67-1-702(b). The county trustee may (but is not required to) adopt a policy of not accepting current county real property taxes due when delinquent property taxes are owing, except when the obligor is in bankruptcy or a dispute exists over responsibility for these taxes. T.C.A. § 67-5-1801(b). A person in the armed forces of the United States, or called into active military service of the United States from a Reserve or National Guard unit has an 180-day extension on the time that property taxes are due. T.C.A. § 67-5-2011.

## Payment of Taxes

Reference Number:  
CTAS-1576

The county trustee acts as collector of all county property taxes and of all municipal property taxes when the municipality does not collect its own.<sup>1</sup>These taxes are paid to the trustee at the trustee's office at the county seat. Additionally, the trustee has authority to designate other collection sites, including a bank.<sup>2</sup>Procedures for such a designation require the trustee to establish an account with the bank for the deposit of property taxes. In order to pay at the bank, the taxpayer must show evidence of the amount owed. The bank may not accept delinquent taxes and must provide a deposit form to the taxpayer which states that the bank is acting as agent for the trustee. The bank then furnishes a daily accounting to the trustee, who must check amount deposited and owed before issuing a tax receipt.<sup>3</sup>Tax payments may also be mailed to the trustee.<sup>4</sup>

Tax Statements. The trustee's use of tax bills or mailed statements indicating the amount of currently

payable taxes is not required or even specifically authorized, except in counties with consolidated forms of government.<sup>5</sup> Owners of land are presumed to know taxes are due without demand or personal notice.<sup>6</sup> Nevertheless, tax statements are almost uniformly used as a very effective way to remind taxpayers of their obligations to pay property taxes. This widespread use of mailed tax statements has been recognized in legislation dealing with notices of delinquent taxes, which are required to be part of mailed tax bills, and also with time limits for appealing to the State Board of Equalization.<sup>7</sup> A county cannot include other charges on the property tax bill unless there is specific statutory authority, as is the case, for example, with solid waste special assessments.<sup>8</sup>

Currency and Partial Payments. The trustee is required to accept constitutional and lawful U.S. currency or warrants on the state treasury legally outstanding in the hands of a person to whom they were issued and unpaid, U.S. coins, U.S. legal tender notes, and federal reserve notes.<sup>9</sup> Prior to any county trustee accepting partial payment of property taxes, the county trustee must file a plan with the Comptroller of the Treasury. The plan must indicate that the county trustee's office has the accounting system technology to implement a program for partial payment of property taxes. The plan must also indicate whether such a program will be implemented within the existing operating resources of the office or indicate prior approval of the county legislative body if additional operating resources are needed.<sup>10</sup> If a trustee does accept a partial payment of taxes, this action does not release the tax lien, except to the extent of the partial payment; the trustee has the duty to accept the balance as if no partial payment has been made.<sup>11</sup>

Checks. The trustee is not authorized to "hold" a check for a taxpayer until sufficient funds are in the account upon which it is drawn. All public funds received by the trustee are to be deposited into that official's bank account within three days after receipt.<sup>12</sup> Trustees accepting checks may encounter problems with nonpayment. If these checks are not paid, the taxpayer is still liable for the tax as well as all legal penalties and interest.<sup>13</sup> A "bad" check may be pursued under the civil provisions<sup>14</sup> or the criminal provisions<sup>15</sup> of the Code but not under both provisions. An official who receives a "bad" check may contact the office of the district attorney. If a check is not duly paid, most trustees void the receipt and proceed as if no check were tendered.

Credit Cards. County officials or entities may receive payment by credit card or debit card for any public taxes collected. Any municipal or county entity or officer collecting payment by credit card or debit card shall set and collect a processing fee in an amount that is equal to the amount paid the third party processor for processing the payment. Such processing fee may be waived by approval of the governing body. If payment is not honored by the credit card company or the entity upon which a debit card payment is drawn, the county entity or official may collect a service charge in the same amount charged for the collection of a check drawn on an account with insufficient funds.<sup>16</sup>

Date of Receipt. Any tax payment which is transmitted by U.S. mail to the trustee is deemed filed and received on the date on the postmark, or if the postmark is illegible, erroneous, or omitted, on the date the payment was mailed, as established by the sender by competent evidence. Also, if the payment is postmarked no more than 24 hours subsequent to the last date for timely payment of taxes, it shall be accepted as if timely filed.<sup>17</sup>

Part Ownership. Whenever a property owner has an undivided interest in any property or a specific portion of any property assessed to another, that part owner may pay the taxes on his or her portion and receive a receipt for payment in full for that share of the taxes. Prior to accepting such a payment, the trustee must be satisfied that the value placed on each portion is a correct relative valuation, either by agreement of the owners or by a certificate from the assessor that the assessor has fixed the valuation of that portion.<sup>18</sup> Then, any necessary tax sale would involve a sale of the delinquent tenant in common's undivided interest. A life tenant in possession is deemed the owner and is liable to pay the assessed taxes which accrue during that tenancy; taxes are not prorated between a life tenant and the remainder interest.<sup>19</sup>

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<sup>1</sup>T.C.A. § 67-5-1801(a); § 67-1-702.

<sup>2</sup>T.C.A. § 67-5-1801(b); Op. Tenn. Atty. Gen. 83-392 (November 18, 1983).

<sup>3</sup>T.C.A. § 67-5-1801(c).

<sup>4</sup>T.C.A. § 67-1-107.

<sup>5</sup>T.C.A. § 7-3-203.

<sup>6</sup>*M'Carrol's Lessee v. Weeks*, 6 Tenn. (5 Hayw.) 246 (1814).

<sup>7</sup>T.C.A. §§ 67-5-1412; 67-5-2402.

<sup>8</sup>T.C.A. § 67-5-103.

<sup>9</sup>T.C.A. § 67-1-704(a).

<sup>10</sup>T.C.A. § 67-5-1801(e)(2). *See also* T.C.A. § 67-5-1808.

<sup>11</sup>*White v. Kelly*, 387 S.W.2d 821 (Tenn. 1965); *Salts v. Salts*, 190 S.W.2d 188 (Tenn. 1945).

<sup>12</sup>T.C.A. § 5-8-207.

<sup>13</sup>T.C.A. §§ 9-1-108, 9-1-109.

<sup>14</sup>T.C.A. § 47-29-101.

<sup>15</sup>T.C.A. § 39-14-121.

<sup>16</sup>T.C.A. § 9-1-108(c); Op. Tenn. Atty. Gen. 01-015 (January 31, 2001) (processing fees for use of credit card).

<sup>17</sup>T.C.A. § 67-1-107.

<sup>18</sup>T.C.A. § 67-5-1805.

<sup>19</sup>*Sherrill v. Board of Equalization*, 452 S.W.2d 857 (Tenn. 1970).

## Credit Cards

Reference Number:

CTAS-708

County officials or entities may (but are not required to) receive payment by credit card or debit card for any public taxes, licenses, fines, fees or other monies collected. The entity or official collecting payment by credit or debit card must collect a processing fee in an amount equal to the fee charged by the third-party processor for processing the payment. The amount or percentage of the processing fee must be stated on the notice sent to the person owing the tax, fine, fee or other money. This processing fee may be waived, however, with approval of the county legislative body. T.C.A. § 9-1-108(c). If payment is not honored by the credit card company or the entity upon which a debit card payment is drawn, the county entity or official may collect a service charge in the same amount charged for the collection of a check drawn on an account with insufficient funds. T.C.A. § 9-1-108(c)(4).

Acceptance of payments by credit cards for clerks of court and county clerks is also authorized under T.C.A. § 8-21-107. Acceptance of credit card or debit card payments for taxes collected by trustees is also covered in T.C.A. § 67-1-704. Both of these statutes are substantially the same as T.C.A. § 9-1-108, discussed above.

In credit or debit card transactions, no more than the last five digits of the card number may be printed on the receipt. T.C.A. § 47-18-126.

## Receipts

Reference Number:

CTAS-1578

The trustees must provide to each taxpayer a receipt printed or written in ink or indelible pencil, for all the taxes paid by the taxpayer. If a portion of the tax notice is to be retained by the taxpayer, in lieu of the trustee mailing a separate receipt of the payment to the taxpayer, the tax notice shall (1) clearly state such fact; and (2) inform the taxpayer that if the taxpayer desires the trustee to mail a separate receipt of the payment to the taxpayer, the taxpayer must include a self-addressed, stamped envelope when the taxes are paid. If the trustee provides a separate receipt of all taxes paid by the taxpayer, such receipt shall be numbered and dated.<sup>1</sup>The receipt is required to show separately the amounts of state and county tax levies; however, if receipts are mechanically produced, these amounts may be omitted (unless the taxpayer specifically requests that the information be placed on the receipt). The county legislative body is required to furnish a sufficient number of tax receipts, in duplicate book form, numbered consecutively from one, and shall have the year for which taxes are due printed on the receipt in large figures, not less than one inch deep. The trustee must account for each blank receipt in the final settlement account. When required, the trustee is to provide the county legislative body with duplicate receipts which are to be filed with the county clerk for reference.<sup>2</sup>

The trustee is prohibited from charging for any statement, certificate, or receipt of taxes, except for the fees and costs authorized for the collection of delinquent taxes.<sup>3</sup>Also, it is a misdemeanor for the trustee

to collect higher tax amounts than is directed by law.<sup>4</sup>

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<sup>1</sup>T.C.A. §§ 67-1-704(b) and 67-1-705.

<sup>2</sup>T.C.A. § 67-1-704(c) and (d).

<sup>3</sup>T.C.A. § 67-1-705.

<sup>4</sup>T.C.A. § 67-1-706.

## Early Payment and Discounts for Early Payment

Reference Number:

CTAS-1579

Upon adoption of a resolution by the county legislative body, the county trustee may accept property taxes at any time after July 10 (prior to the first Monday in October established by T.C.A. § 67-1-701, on which date trustees are required to accept property tax payments) and after the tax rates are finally set, the trustee's tax rolls are received and the trustee's receipts are prepared.<sup>1</sup>County trustees may begin accepting tax relief applications on the same date on which the trustee accepts property tax payments.<sup>2</sup>

The governing body of any municipality or county may provide, by appropriate ordinance or resolution, a discount of 2 percent of the ad valorem real property tax currently due, if the taxes are paid within 30 days of the due date established pursuant to T.C.A. § 67-1-701(a) (i.e. between October 1 and October 31) and/or a discount of 1 percent if paid after more than 30 but less than 60 days after the due date established pursuant to T.C.A. § 67-1-701(a) (between November 1 and November 30). Taxpayers receiving tax relief are also eligible to receive early payment discounts.<sup>3</sup>

If, pursuant to T.C.A. § 67-1-702, the county legislative body has given the county trustee the authority to collect taxes at any time after July 10, prior to the first Monday in October, then the county legislative body may provide by resolution for a discount of 3 percent for ad valorem real property taxes paid by the end of July; 2 percent if paid by the end of August; and 1 percent if paid by the end of September. The trustee may accept early payments, in the trustee's discretion, based upon the trustee's capacity to effectively account for the payments. The governing body may rescind the adoption of discounts at any time.<sup>4</sup>

Mortgagees, mortgage servicers, and escrow account holders are not required to make early tax payments; nor are they required to notify any mortgagor or other party with respect to the availability of any such discounts.<sup>5</sup>

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<sup>1</sup>T.C.A. § 67-1-702.

<sup>2</sup>T.C.A. § 67-1-702.

<sup>3</sup>T.C.A. § 67-5-1804(a).

<sup>4</sup>T.C.A. § 67-5-1804(c).

<sup>5</sup>T.C.A. § 67-5-1804(d).

## Delinquency Date

Reference Number:

CTAS-1580

Property taxes collected by the trustee are delinquent on the first day of March following the tax due date. For instance, 2010 taxes are due and payable on the first Monday in October of 2010 and delinquent on March 1, 2011.<sup>1</sup>Special provisions may apply to persons in military service under the Soldier's and Sailor's Civil Relief Act as well as under state law.<sup>2</sup>Special interest rates may also apply when the Federal Deposit Insurance Corporation owes the property taxes under 12 U.S.C.A. 1825(b)(3). The trustee is required to accept delinquent taxes, and at the same time collect penalties and interest, until the time the taxes are turned over to the delinquent tax attorney for collection.<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-5-2010; T.C.A. § 67-5-1512(b).

<sup>2</sup>50 U.S.C.A. 560; T.C.A. § 67-5-2011 (See 2004 Public Chapter 800. T.C.A. § 67-5-2011(a) was amended to extend the deadline for the payment of property taxes by a person in the armed forces of the

United States, or called into active military service of the United States from a reserve or national guard unit from 90 days to 180 days. T.C.A. § 67-5-2011(b) and (c) were amended to authorize military personnel to provide notice of delay in paying property taxes due to deployment to their county trustee instead of the Commissioner of Revenue.).

<sup>3</sup>T.C.A. § 67-5-2008.

## Interest - Delinquent Taxes

Reference Number:

CTAS-1581

To the amount of tax due and payable, interest of one and one-half percent (1.5%) shall be added on March 1, following the tax due date and on the first day of each succeeding month.<sup>1</sup> Specific statutory provisions may affect imposition of penalty and interest for those in the military and for property transactions involving the Federal Deposit Insurance Corporation.

There is no statutory authority which authorizes the trustee to waive accrued penalty and interest. No person, public official, governmental entity or court shall have the power or authority to waive, compromise, remit, prorate, apportion or release property taxes, penalty, interest or court costs nor the first lien securing the same.<sup>2</sup> Courts, using equitable powers, may relieve a taxpayer of interest and penalty under certain conditions; however, a taxpayer's inability to pay because of financial misfortune will not excuse the imposition of penalty and interest on the unpaid taxes.<sup>3</sup>

Municipal property taxes become delinquent on the delinquency date established by charter or existing law. As is the case with county taxes, municipal taxes not paid on or before the established delinquency date accrue interest of 1.5 percent, beginning on the first day of March following the tax due date and continuing on the first day of each succeeding month.<sup>4</sup>

Reappraisal and Collection of Penalty and Interest. If a county is undergoing a countywide reappraisal and the values established by the reappraisal program are not turned over to the county by October 1 of the tax year, no penalty and interest may be collected until five months after the date the tax roll is completed. The assessor is required to provide the trustee with written notification which specifically states the date that the tax roll was delivered to the trustee so that the five month period can be determined.<sup>5</sup>

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<sup>1</sup>T.C.A. § 67-5-2010(a)(1). Special provisions may apply to Shelby and Giles counties.

<sup>2</sup>See T.C.A. §§ 67-5-2801, 67-5-2802 and 67-5-2803. See also *State v. Delinquent Taxpayers*, 526 S.W.2d 453 (Tenn. 1975) (There is no statutory predicate for a suit for the forgiveness of taxes, penalty, or interest, and no case law in this jurisdiction supports such a procedure.).

<sup>3</sup>*Daniel v. Metropolitan Government*, 696 S.W.2d 8 (Tenn. 1985); *State, for Use of City of Chattanooga v. Bayless*, 209 S.W.2d 504 (Tenn.Ct.App. 1948) (Chancellor has power to give equitable relief against enforcement of tax penalties under meritorious conditions.).

<sup>4</sup>T.C.A. § 67-5-2010(b).

<sup>5</sup>T.C.A. § 67-5-1608.

## Refunds of Tax Payments

Reference Number:

CTAS-1583

Taxes collected by the trustee are held in trust for the public, and therefore any disbursement, including refunds of overpaid of taxes, must be made in strict compliance with statutory authority. The trustee is authorized to make refunds of tax overpayments only upon receipt of certification from the assessor that the original assessment was in error. This refund must be made within 60 days after the receipt of certification from the assessor, and can be made even though the taxes were not paid under protest.<sup>1</sup> If the trustee receives the certification prior to the receipt of the tax payment, the taxes must be collected only on the corrected assessment.<sup>2</sup>

Tax payments, even overpayments, which are voluntarily made cannot be recovered by the taxpayer. A payment is voluntary unless made pursuant to an immediate and urgent necessity for making the payment. Payment made due to mistake of law or its application is a voluntary payment and cannot be recovered.<sup>3</sup>



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<sup>1</sup>T.C.A. § 67-5-509.

<sup>2</sup>T.C.A. § 67-5-509. For prior law, see Op. Tenn. Atty. Gen. 87-90 (May 14, 1987) and Op. Tenn. Atty. Gen. 86-121 (July 15, 1986).

<sup>3</sup>*Hertz Corp. v. County of Shelby*, 667 S.W.2d 66 (Tenn. 1984).

## Delinquent Tax Deputies and Delinquent Tax List

Reference Number:

CTAS-1585

The trustee is authorized to appoint such deputies as may be necessary to collect delinquent taxes after these taxes become delinquent.<sup>1</sup>These deputies may collect delinquent real property taxes as well as delinquent personal property taxes. These deputies take the same oath as the trustee.<sup>2</sup>The official bond of the trustee is held liable for the acts of these deputies, and also for the actions of any constable or deputy sheriff who may also be furnished with a list of delinquent taxes by the trustee. However, the trustee may require these officials to post a bond securing the faithful performance of their duties prior to turning over the delinquent tax list to them.<sup>3</sup>

The trustee is required to prepare and provide a list of delinquent taxpayers to the deputies appointed to collect delinquent taxes. This list must contain a description of the property of each taxpayer and the amount of taxes due from each. In cases of delinquent real property taxes, the list must identify the current owner of the property and state the owner's last known mailing address, if the owner can be identified; in those cases, there is no need to identify any former owners of the real property. However, the identification of the current owner on the delinquent tax list does not alter the liability of the owner of the property as of January 1 of the tax year. The trustee is not entitled to compensation for the preparation of the delinquent tax list.<sup>4</sup>

Deputy trustees who have not received copies of the delinquent tax list have no authority to collect the delinquent taxes.<sup>5</sup>Deputy trustees who do receive copies are to collect delinquent taxes. Deputy trustees who have delinquent lists for collection must make partial settlement with the trustee whenever required by the trustee, and must, on or before January 1 following the receipt of the delinquent tax lists, make final settlement with the trustee and return the lists showing in the return what disposition was made of each item of taxes therein set out, and the reason for not collecting items remaining unpaid, and sign the return in the deputy trustee's official capacity.<sup>6</sup>The officer making the return shall receive no additional compensation for making it.<sup>7</sup>

On January 1, the deputy trustee must make a final settlement of the taxes in the deputy trustee's hands for collection, and in the settlement will be charged with the aggregate amount of taxes in the deputy trustee's hands for collection, and will be credited with the amount collected and accounted for, with errors, double and illegal assessments, and with the insolvent or other taxes as the officer shows could not have been collected by law after diligent effort on such officer's part.<sup>8</sup>It is the duty of the collecting officers to return the delinquent lists to the county trustee, on or before January 1 of each year, and the officer failing to make a return on or before January 1 will be presumed to have collected all the taxes on the lists delivered to the officer, and will account for and pay the same to the trustee.<sup>9</sup> Any balance found due on the settlements may be recovered from the deputy trustee and the person's sureties on the person's bond, by suit or motion, on five days' notice, in any court of record, instituted by the county trustee or any agent or district attorney general of the state.<sup>10</sup>

The officer making collections receives no additional fees for making delinquent collections. The only compensation consists of salaries paid either to deputies in accordance with T.C.A. Title 8, Chapter 20, or to trustees in accordance with T.C.A. §§ 8-24-102, 8-24-106, and 8-24-107. Postage and other office expenses incurred by the trustee or the trustee's deputies incidental to the collection of delinquent taxes is paid from the fees of the trustee. In the case of a levy or garnishment proceeding, officers receive, in addition to the above mentioned compensation, the fees allowed by law in such cases. The fees are taxed as a part of the costs of collection and are paid by the delinquent tax payer. The county is not liable for costs where no collection is made by the officer.<sup>11</sup>

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<sup>1</sup>T.C.A. § 67-5-2001(a)(1).

<sup>2</sup>T.C.A. §§ 8-18-112; 67-5-1901.

<sup>3</sup>T.C.A. § 67-5-2001(b).

<sup>4</sup>T.C.A. § 67-5-2001(a)(1) - (4).

<sup>5</sup>*Shipp v. Rarick*, 67 S.W.2d 145 (Tenn. 1934).

<sup>6</sup>T.C.A. § 67-5-2006(a)(1).

<sup>7</sup>T.C.A. § 67-5-2006(a)(2).

<sup>8</sup>T.C.A. § 67-5-2006(b).

<sup>9</sup>T.C.A. § 67-5-2006(c).

<sup>10</sup>T.C.A. § 67-5-2006(d).

<sup>11</sup>T.C.A. § 67-5-2007.

## Municipal Taxes Collected as Part of Tax Suit

Reference Number:

CTAS-1591

If a municipality wishes to have its taxes collected by the county delinquent tax attorney, it must furnish the trustee or delinquent tax attorney with a certified list of delinquent municipal taxes.<sup>1</sup>The municipality may pursue collection of delinquent property taxes even if county taxes on the property have been timely paid.<sup>2</sup>Note that the municipality is allowed to pursue collection of delinquent property taxes on its own.<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-5-2403.

<sup>2</sup>T.C.A. § 6-55-201; Op. Tenn. Atty. Gen. 87-106 (June 26, 1987).

<sup>3</sup>T.C.A. § 67-5-2005. See 2010 Public Chapter 660 authorizing partial payment of property taxes.

## Certificate for Timber Cutting

Reference Number:

CTAS-1592

In order to insure the collection of delinquent taxes on timberland, anyone who cuts or removes timber must first obtain a certificate from the trustee stating that no delinquent taxes exist on that land. A timber cutter who fails to obtain the certificate is liable for any delinquent taxes on the property; any equipment used to cut the timber is subject to the lien for taxes. The trustee, the county mayor, and the delinquent tax attorney are required to enforce this liability, and are authorized to obtain an injunction to prevent the unauthorized cutting or removal of any timber.<sup>1</sup>

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<sup>1</sup>T.C.A. §§ 67-5-2301 through 67-5-2306.

## Publication of the Delinquent Tax List

Reference Number:

CTAS-1586

The county trustee has the discretion to publish annually the delinquent tax lists in one or more county newspapers of general circulation, listing the name of the delinquent taxpayer and the amount of the taxpayer's delinquency on each item of taxable property. The costs for advertising are borne by the county but may not exceed the usual and customary legal advertising rate.<sup>1</sup>Trustees who publish delinquent tax lists must give the lists to newspapers at least 20 days before turning the lists over to the delinquent tax attorney. Failure of any taxpayer's name to appear on a delinquent tax list publication or incorrect information is not a defense to any suit for tax collection.<sup>2</sup>The publication of the delinquent tax list is a valuable aid to collection of delinquent taxes.

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<sup>1</sup>T.C.A. § 67-5-2002(a).

<sup>2</sup>T.C.A. § 67-5-2002(b).

## 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.<sup>1</sup>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.<sup>2</sup>

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.<sup>3</sup>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.<sup>4</sup>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.<sup>5</sup>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."<sup>6</sup>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.<sup>7</sup>

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.

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<sup>1</sup>T.C.A. § 67-5-901(a)(3)(A).

<sup>2</sup>*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).

<sup>3</sup>T.C.A. §§ 67-5-102, 67-5-103.

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

<sup>5</sup>T.C.A. § 67-5-1301.

<sup>6</sup>*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").

<sup>7</sup>*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.<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 personalty 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 personalty, 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>

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<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).

## 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.<sup>1</sup>

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<sup>1</sup>T.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.<sup>1</sup> 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.<sup>2</sup>

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

<sup>2</sup>T.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).

## Collection of Delinquent Real Property Taxes

Reference Number:  
CTAS-1584

If property taxes have not been paid by the delinquency date, there is a fairly complex procedure by which the county can attempt collection, beginning with the compilation of the delinquent tax list and culminating years later in the transfer of the property to a new owner after the completion of a tax sale and the redemption period. The trustee and the court clerk both play especially important roles in this process.

## Tax Lien

Reference Number:  
CTAS-1588

To aid in the collection of property taxes, there exists a lien on the property to secure payment of the tax. The lien for taxes becomes a first lien on the property as of January 1 of the tax year, and takes priority over any pre-existing liens on the property;<sup>1</sup> the tax lien is superior to mortgage liens, regardless of whether the taxes accrue before or after the execution of the mortgage. This first lien is, however,

superceded by prefiled federal tax liens.<sup>2</sup>There is no lien against leased personal property assessed to a lessee.<sup>3</sup>

While real estate contracts may alter liability between the parties to the contract, the owner as of January 1 is responsible for payment of the tax for the entire year.<sup>4</sup>The taxes are a lien on the fee in the property, and not merely upon the interest of the person to whom the property is or ought to be assessed, and includes any and all other interests in the property, whether in reversion or remainder, or of lienors, or interests of any nature whatsoever. Taxes are a lien on the land even if the owner is unknown or the land has been assessed in a wrong name. However, a lien for taxes which are assessed against a leasehold interest in real property, or against any improvements on real property where the owner is exempt from taxation, extends only to the leasehold interest.<sup>5</sup>

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<sup>1</sup>T.C.A. §§ 67-5-2101, 67-5-2102.

<sup>2</sup>*United States v. Dyna-Tex, Inc.*, 372 F. Supp. 278, 280 (Tenn. 1972).

<sup>3</sup>T.C.A. § 67-5-2102.

<sup>4</sup>Op. Tenn. Atty. Gen. 86-39 (February 21, 1986).

<sup>5</sup>T.C.A. § 67-5-2102; *See also 23 Tenn. Juris.* "Taxation" § 44 at page 69 (1985).

## Notice Requirements

Reference Number:

CTAS-1589

The trustee and the court clerk have several important notification responsibilities regarding delinquent taxes; the validity of the subsequent proceedings to sell property to satisfy the lien for taxes often depends upon strict compliance with statutory requirements. The trustee is not required to publish a delinquent tax list, but may do so.<sup>1</sup>

Notice of Delinquent Taxes on Current Bill. The trustee must send with the current tax bill for any taxpayer having delinquent taxes as of June 1 of each year a notice with the following or equivalent language:<sup>2</sup>

*IN ADDITION TO THIS AMOUNT, YOU OWE BACK TAXES. CONTACT THIS OFFICE IMMEDIATELY OR YOUR PROPERTY MAY BE SOLD.*

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County Trustee

The property owners to whom this notice is sent is obtained from the delinquent taxpayers list in the trustee's office, and from the list of property owners whose property is subject to a lawsuit to enforce the tax lien which is required to be provided to the trustee by the appropriate court clerk between June 1 and July 1 of each year.<sup>3</sup>

Publication of Notice of Intent to File Suit. The trustee must also publish the following notice before the lawsuit is filed:

*You are advised that after February 1, additional penalties and costs will be imposed in consequence of suits to be filed for enforcement of the lien for property taxes for prior tax years; until the filing of such suits, taxes may be paid in my office.*

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County Trustee

This notice must appear in one or more county newspapers, at least once a week for two consecutive weeks in January. The county pays the publication costs. If there is no newspaper published in the county, this notice must be posted on the courthouse door.<sup>4</sup>It is advisable for the county trustee to also post this notice at other suitable locations both within the courthouse and at other public places.

Notice of Nonpossessory Interest. Under previous law<sup>5</sup>the owner of a nonpossessory interest in real property was required to file a statement of that interest annually with the assessor, or waive any right to notice of a delinquent tax suit or sale. In 1996 the General Assembly deleted that requirement.<sup>6</sup>Consequently, the trustee no longer has the duty to publish an annual notice regarding this former provision. The new law specifies that the delinquent tax attorney is to make a reasonable search for those owners and give them notice of the proceedings, receiving a reasonable fee set by the court for

this service.<sup>7</sup>

Notice to Surface Owners of Sale of Mineral Interest. The owner of a surface interest in property overlying a mineral interest may record that interest in the office of the county register of deeds where the land is located. If the mineral interest is sold in a delinquent tax sale, the court clerk must send, by certified return receipt mail, a notice of these proceedings to any registered owner, who then has certain rights to purchase the mineral interest.<sup>8</sup>

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<sup>1</sup>T.C.A. § 67-5-2002.

<sup>2</sup>T.C.A. § 67-5-2402.

<sup>3</sup>T.C.A. §§ 67-5-2402, 67-5-2403.

<sup>4</sup>T.C.A. § 67-5-2401.

<sup>5</sup>T.C.A. § 67-5-2502.

<sup>6</sup>1996 Public Chapter 787.

<sup>7</sup>T.C.A. § 67-5-2502(c).

<sup>8</sup>T.C.A. § 67-5-2502(e).

## Delivery of Delinquent Tax List to Attorney and Acceptance of Delinquent Taxes

Reference Number:  
CTAS-1590

After the trustee has received the delinquent tax list from the delinquent tax deputies, has made a settlement with them,<sup>1</sup>and has published notice of intent to file the tax suit, the trustee must deliver to the delinquent tax attorney a list of all unpaid real property taxes. The list must be delivered between February 1 and April 1.<sup>2</sup>The trustee may accept payment for delinquent taxes until that time, and must keep a record of all such payments.<sup>3</sup>

After suit is filed, the court clerk may accept payment for delinquent taxes along with interest, penalty, and court costs. Payments made to the clerk must be received and paid out in the same manner as other public revenue. The clerk must receive the same compensation for receipting and disbursing taxes as is allowed for receipt and disbursement of other public revenues and must make settlement when requested by the county mayor or county trustee.<sup>4</sup>

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<sup>1</sup>T.C.A. § 67-5-2006.

<sup>2</sup>T.C.A. § 67-5-2404.

<sup>3</sup>T.C.A. §§ 67-5-2008, 67-5-2009.

<sup>4</sup>T.C.A. § 67-5-2421.

## 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.

## Notice of Tax Suit

Reference Number:

CTAS-1594

Each defendant named in the tax suit must be served by one of the methods authorized in the Tennessee Rules of Civil Procedure, including constructive service of process (publication).<sup>1</sup> However, the constitution requires that defendants be given the best notice possible, which has been defined as that "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."<sup>2</sup> Under this definition, constructive notice, or publication, probably will not satisfy due process requirements when the identity of the property owner is readily ascertainable by the taxing authority. However, Tennessee statutes specifically state that personal service of process on the defendant is unnecessary; the notice may be sent by certified or registered mail, return receipt requested.<sup>3</sup> Where the taxpayer is not properly before the court either by lack of notice or inadequate description, the resulting sale is a nullity and may be challenged.<sup>4</sup> The trustee's records are important since they may be relied upon when finding names, addresses, and property descriptions for notices in tax suits.



<sup>1</sup>T.C.A. § 67-5-2415; Tenn. R. Civ. P. 4.

<sup>2</sup>*Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 795 (1983) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)); *Jones v. Flowers*, 126 S.Ct. 1708 (2006); *Wilson v. Blount County*, 207 S.W.3d 741 (Tenn. 2006). See also Op. Tenn. Atty. Gen. 84-208 (June 27, 1984) regarding service of process in delinquent tax suits made by certified mail.

<sup>3</sup>T.C.A. § 67-5-2415. Note, in 2012 the legislature amended this statute to authorize any alternative delivery service as authorized by § 7502 of the Internal Revenue Code. See 2012 Public Chapter 979. See also 2014 Public Chapter 883, Section 8.

<sup>4</sup>*Wilson v. Blount County*, 207 S.W.3d 741 (Tenn. 2006) (In tax lien suits, the government must provide "notice by mail or other means to ensure actual notice ... if [the party's] name and address are reasonably ascertainable.").

## Annual List of Property in Tax Suits

Reference Number:

CTAS-1595

Between June 1 and July 1 each year, the clerk of the court in which tax suits have been filed must provide the trustee with a list of property involved in these suits. The list must be current through June 1 of that year and must include identification of the property, taxpayers' names, and the years for which taxes are delinquent. A fee of \$5 is added to the costs for each property, for each year of inclusion on the list.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-2403; T.C.A. § 8-21-409(g)(2).

## Fees and Additional Expenses of the Tax Suit

Reference Number:

CTAS-1596

There is no litigation tax in delinquent tax suits. However, in addition to the 10 percent penalty for expenses of prosecuting the suit, additional funds are added for the clerk's and the sheriff's statutory fees, as well as other court-ordered fees for basic services; the sheriff is to receive a \$7.50 fee for service of process on each defendant when the sheriff serves the summons. Additional expenses ordered by the court, including but not limited to title examination fees, extra publication, survey fees, or other necessary costs are considered as part of the court costs for purposes of the tax suit. If necessary for the prompt dispatch of suits for the collection of delinquent taxes, the court may order all reasonable expenses of prosecuting such suits to be paid out of delinquent tax money on hand, in addition to that otherwise provided.<sup>1</sup>

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<sup>1</sup>T.C.A. § 67-5-2410. The penalty under T.C.A. § 67-5-2410(a)(1)(A) is not an attorney's fee, but rather a penalty for the county's expense of prosecuting suits for delinquent taxes. Op. Tenn. Atty. Gen. U90-53 (March 16, 1990).

## Receivership

Reference Number:

CTAS-1597

In all cases, the court in which the delinquent tax suit is filed may appoint receivers to take charge of the property and collect the rents and profits. After the receiver is compensated, the funds are to be applied to the taxes, costs, penalties and interest.<sup>1</sup>

For delinquent taxes which have been due and payable for at least two years, any governmental body having an interest in such tax lien has the right to petition the court in which the delinquent tax suits are filed to appoint receivers to collect rents on the property subject to the tax lien. The right to appoint a receiver exists whether or not the property is being misused, wasted, or neglected, and whether the security for such tax is adequate or not.<sup>2</sup> However, a residence is not subject to a receivership.<sup>3</sup>

After the receiver is compensated, the assets of the receivership are to be distributed for court costs, necessary or desirable expenses for maintenance of the receivership and taxes due parties to the tax suit. Any remaining amount should be paid to the owner of the receivership property.<sup>4</sup>

<sup>1</sup>T.C.A. § 67-5-2417.

<sup>2</sup>T.C.A. § 67-5-2202.

<sup>3</sup>T.C.A. § 67-5-2203.

<sup>4</sup>T.C.A. §§ 67-5-2206, 67-5-2209.

## Report Under Reference

Reference Number:

CTAS-1598

When the tax obligations relating to a parcel of property are unclear, a procedure known as a reference may be taken to ascertain all delinquent revenues together with all the costs, fees, penalties and interest. Notice of a reference must be given to all officers whose duty it is to collect delinquent revenue.<sup>1</sup>The master's reference report may be made before the sale, and even after confirmation of the sale, but must be made before distribution of the sale proceeds.<sup>2</sup>

Reports under reference in delinquent tax sales are made pursuant to Tenn. R. Civ. P. 53 on an order of reference by the court. Within 20 days after the date of the order of reference the clerk should set a time and place for a meeting of the parties or their attorneys in regard to the amounts due on the property. The clerk must notify in writing the parties or their attorneys. The clerk should proceed with reasonable diligence. Either party, on notice to the parties and clerk, may apply to the court for an order requiring the clerk to speed the proceedings and to make his or her report. If a party fails to appear at the time and place appointed, the clerk may proceed *ex parte* or may adjourn the proceedings to a future day, giving notice in writing to the absent party of the adjournment. After the clerk prepares the report regarding the amounts due, he or she must mail a notice that the report is on file at the clerk's office.<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-5-2416.

<sup>2</sup>*State v. Southern Lumber Mfg. Co.*, 57 S.W.2d 454, 455 (Tenn. 1933). The better alternative would be to make the report before the sale to correctly ascertain all amounts due on the property at the time of the sale.

<sup>3</sup>Tenn. R. Civ. P. 53.

## The Tax Sale

Reference Number:

CTAS-1599

After the conclusion of the delinquent tax suit, the county holds a tax sale to sell property in order to collect delinquent taxes.

Advertisement of the Sale. The advertisement of the tax sale is an important duty that the clerk performs. The property must be advertised in one sale notice in the newspaper (or by printed handbills as the court orders) setting out the names of the owners of the different tracts or parcels of land, describing the property and setting out the amount of the judgment against each taxpayer. The description of the property must reference to a deed book and page (where a complete legal description can be found or the official property number as provided by T.C.A. § 67 -5-806) and may include a description (street address, map and parcel number, number of acres) of the property as it is commonly known. A mistake in the common description will not invalidate the sale so long as the deed book and page reference is accurate.<sup>1</sup>

Notice of the sale must be sent by certified return receipt mail to the last known address of the present owner (as reflected in the assessor's records) and to anyone else with an interest in the property, if that person can be located after a reasonable search. A tax sale notice, which shall be the same or substantially the same as the advertised notice, may be recorded in the register of deeds' office for the county in which the property is located upon the setting of the tax sale date. The recording cost shall be divided between the parcels of land listed in the tax sale notice and added as an additional court cost to each such parcel of land. This tax sale notice shall be recorded for informational purposes only and no release shall be required. In the event of the sale of severed mineral interest property, the court clerk must send a notice of proceedings regarding the sale by certified return receipt mail to any owner of the surface interest who has filed a declaration of surface ownership with the register of deeds. This certified mailing is part of the cost of the tax suit.<sup>2</sup>

Procedures of Sale. The sale must be conducted at the place and time given in the notice or as

advertised. The sale should be public and open to all. Generally, a valid sale is not held on a Sunday or a non-judicial day. However, the mere designation of a day as a holiday does not invalidate a sale held on that day.<sup>3</sup>

The court shall order the sale of the property for cash, subject to the equity of redemption, which gives the taxpayer the right to pay the taxes, interest, penalties and costs, and terminate the sale proceeding.<sup>4</sup> Property interests which are less than an entire fee are separately assessed and may be sold without selling the entire fee. Examples of separate interests include leaseholds and tenancies in common. A remainder interest constitutes part of the total present ownership of the land and cannot be separately assessed.<sup>5</sup>

Generally, any person not disqualified by statute may purchase at a tax sale. Those disqualified include persons under a moral or legal obligation to pay taxes on land being sold. A disqualified person cannot become a valid purchaser at a tax sale. If such a person does purchase, it is deemed a redemption or payment of the tax and does not establish a new title. In addition, persons occupying positions of trust ("fiduciaries") with the taxpayer cannot acquire title at a tax sale. For example, an agent of a deceased taxpayer who had control of the property and sufficient funds to pay accrued taxes cannot purchase such property at a tax sale and claim title in himself. A member of a taxpayer's family is not precluded from purchasing the property at a tax sale as long as no fiduciary relationship or fraud is involved. However, a husband or wife is usually precluded from purchasing the other's property at a tax sale.<sup>6</sup>

The clerk should bid in the amount due for taxes, penalties, interest and costs at the sale if no other bidder offers the same or larger bid. The clerk shall not offer a bid in the case of property where the county legislative body has determined that no bid should be made on behalf of the county due to a determination that such property poses an environmental risk. The county legislative body may also make a determination that no bid shall be made on behalf of the county on non-buildable or non-conforming parcels, including, without limitation, storm water detention basins; drainage ditches; private road right-of-ways; private drives; common open areas; and utility easements.<sup>7</sup>

Disposition of Proceeds from Sale. The sale proceeds are applied first to payment of any unpaid balance of compensation due the delinquent tax attorney. Second, the proceeds of the sale shall be applied to the costs of the suits. Third, the remainder shall be applied to the state first, county second, and municipality third, the amount due each to be ascertained by a decree of the court. If there is any remainder after the proceeds of the sale have been distributed, the party receiving notice pursuant to T.C.A. § 67-5-2502 shall also be given notice of the amount of proceeds resulting from the sale, the division of such proceeds, and the remainder.<sup>8</sup>

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<sup>1</sup>T.C.A. § 67-5-2502. See Op. Tenn. Atty. Gen. U89-30 (April 5, 1989) (finding that only a single sale notice pursuant to T.C.A. § 67-5-2502 is required for tax sales, as T.C.A. § 35-5-101(a) is inapplicable). For general requirements as to publication in a "newspaper," see *Cook v. McCullough*, 1989 WL 155926 (Tenn. Ct. App. 1989), cert. denied, 498 U.S. 855 (1990). See also Op. Tenn. Atty. Gen. U89-133 (November 28, 1989) (finding that the *Memphis Business Journal* qualifies as a "newspaper of general circulation" for purposes of publication of official notices); Op. Tenn. Atty. Gen. U90-55 (March 28, 1989) (finding that the *Nashville Business Journal* qualifies as a "newspaper of general circulation" for purposes of publication of official notices).

<sup>2</sup>T.C.A. § 67-5-2502.

<sup>3</sup>C.J.S. *Taxation* § 801 (1954).

<sup>4</sup>T.C.A. § 67-5-2501.

<sup>5</sup>*Sherrill v. State Bd. of Equalization*, 452 S.W.2d 857, 858 (Tenn. 1970). See also *Hadley v. Hadley*, 87 S.W. 250, 255 (Tenn. 1905).

<sup>6</sup>C.J.S. *Taxation* § 809 (1954). See also *Salts v. Salts*, 190 S.W. 2d 188 (1945). See also T.C.A. § 39-16-405 (Prohibits judges, clerks of court, court officers, and employees of court, from bidding on or purchasing any property sold through the court for which such person discharges official duties); Op. Tenn. Atty. Gen. 99-105 (May 10, 1999).

<sup>7</sup>T.C.A. §§ 67-5-2501; 67-5-2506.

<sup>8</sup>T.C.A. §§ 67-5-2501(a)(3) and (b)(3); 67-5-2506(a)(3) and (b)(3). T.C.A. § 67-5-2502(a)(3). See also Op. Tenn. Atty. Gen. 07-34 (March 23, 2007) (distribution of proceeds); Op. Tenn. Atty. Gen. 95-060 (May 25, 1995) (effect of county delinquent tax sale on city tax lien); Op. Tenn. Atty. Gen. 85-201 (June 24, 1985) (distribution of surplus funds).

## Tax Sale Ledger

Reference Number:

CTAS-1600

The trustee must maintain a ledger of all property sold at a tax sale and purchased by the state, county, or a municipality, if the governmental entity has taken possession of such property. The ledger must be a well-bound book, properly indexed containing a sheet or page for each parcel and containing the following information: (1) the taxes for each year for which the property was sold, (2) the book and page of the tax roll from which the listing of taxes was obtained, and (3) the rents or net sales price received, along with the distribution of such rents or sales price.<sup>1</sup>The trustee should make the following note on the current tax roll:

*Paid by sale of property, see Land Ledger, p. \_\_\_\_\_; actual possession having been taken by \_\_\_\_\_ (County, City, or City and County)*

However, if actual possession is not taken by the state, by a county, or by a municipality, the lands are not be removed from the tax rolls, nor will the lands be removed from the tax rolls if the owner or former tenant is permitted to remain in possession of the property without the payment of rent to the governmental entity.<sup>2</sup>

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<sup>1</sup>T.C.A. § 67-5-2511.

<sup>2</sup>T.C.A. § 67-5-2510.

## Confirmation of Sale and Tax Deed

Reference Number:

CTAS-1601

Courts having jurisdiction of any delinquent tax proceeding are vested with the authority to render judgments and decrees and order writs of possession to enforce tax liens. Typically, after the property is sold, the clerk reports to the court on the sale, and the court issues a decree confirming the sale. The decree concludes the tax sale, and usually contains a description of the property and complies with all legal requirements to properly pass title. Once completed, the buyer is entitled to possession and to all the rights and liabilities. Insurance coverage should be obtained immediately, as risk of loss passes to the buyer when the tax sale becomes final, and the buyer's liability for property taxes begins to accrue on that date. Taxes accruing between the sale date and the confirmation date are paid out of the proceeds of the sale.<sup>1</sup>

The tax deed may be issued before or after the statutory redemption period expires. If the deed is issued before the period expires, the deed should state that it is subject to statutory redemption. The court clerk may ascertain the buyer's preference on the time of issuing the deed and proceed accordingly. Generally, if the tax deed is not issued until after the redemption period expires, a certified copy of the confirmation decree may be filed at the registers' office (and a copy given to the assessor), stating the owner, purchaser, sale amount, and property description, along with a statement that the property is subject to redemption.

Generally, a tax deed assures the purchaser of perfect title except where the land was not liable for taxes or the taxes were paid. However, even though tax deeds generally assure perfect title and are invalidated only in certain circumstances provided by statute, a tax deed is invalid if legally sufficient process is not served upon the owners, notwithstanding the owners' admission that taxes were due and had not been paid.<sup>2</sup>

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<sup>1</sup>T.C.A. § 67-5-2419. *See also Marlowe v. Kingdom Hall of Jehovah's Witnesses*, 541 S.W.2d 121 (Tenn. 1976); *Rogers v. Rogers*, 47 S.W. 701 (1898); *State v. Sexton*, 368 S.W.2d 69 (Tenn. Ct. App. 1962).

<sup>2</sup>*Watson v. Waters*, 694 S.W. 2d 524, 525 (Tenn. Ct. App. 1984).

## Setting Aside a Tax Sale

Reference Number:

CTAS-1602

An order confirming the sale of a parcel shall confer the right to possession of the parcel to the purchaser effective upon entry of the order. On such date, the risk of loss shall transfer from the original owner to the purchaser. In the event of a loss occurring after the sale and before the order confirming the sale is entered, the court shall, on motion of the purchaser filed before the order confirming the sale becomes final, determine whether any portion of the purchaser's bid should be refunded to the purchaser. T.C.A. § 67-5-2503(a).

A writ of possession shall, upon application of the purchaser, in a proper case, be ordered by the court in which the tax sale has been made. A purchaser not making an advance demand for rents or profits shall have no rights to rents or profits from a taxpayer who has remained in possession during the redemption period. T.C.A. § 67-5-2503(b).

Any person who buys real estate sold for delinquent taxes that were a lien thereon, and who fails to get a good title or to recover possession of the realty, is subrogated to all liens that secured the taxes, and all interest, costs, penalties and fees; and the person has the right to enforce the same in chancery for the reimbursement of the purchase money paid by the person and interest thereon. T.C.A. § 67-5-2504(a)(1).

A tax deed of conveyance or an order confirming the sale is an assurance of perfect title to the purchaser of such land, and no such conveyance will be invalidated in any court, except by proof that the land was not liable to sale for taxes, or that the taxes for which the land was sold have been paid before the sale or that there was substantial noncompliance with mandatory statutory provisions relating to the proceedings in which the parcel was sold; and if any part of the taxes for which the land was sold is illegal or not chargeable against it, but a part is chargeable, that shall not affect the sale, nor invalidate the conveyance thereunder, unless it appears that before the sale the amount legally chargeable against the land was paid or tendered to the county trustee, and no other objection either in form or substance to the sale or the title thereunder shall avail in any controversy involving them. An action seeking to invalidate any tax title to a parcel shall allege specific facts establishing the grounds set out herein and proof of compliance with T.C.A. § 67-5-2504(c) prior to the filing of the complaint. T.C.A. § 67-5-2504(b).

No suit may be commenced in any court of the state to invalidate or declare void any tax title to land until the party suing has paid or tendered to the clerk of the court where the suit is brought the amount of the bid and all taxes subsequently accrued, with interest and charges. T.C.A. § 67-5-2504(c).

A suit to invalidate any tax title to land must be commenced within one year from the date the cause of action accrued, which is the date of the entry of the order confirming the tax sale. The statute of limitations to invalidate the sale of any tax title is one year, except that it may be extended to one year after the plaintiff discovered or with the exercise of reasonable due diligence should have discovered the existence of such cause of action. In no event may any action to invalidate any tax sale title be brought more than three years after the entry of the order confirming the tax sale. T.C.A. § 67-5-2504(d)(1)-(3).

After entry of an order confirming the sale of a parcel, the purchaser may file suit to quiet title, notwithstanding the deadline for tax sale challenges, or the redemption period. Any order quieting title to a tax sale parcel entered before the expiration of the redemption period shall specify that the purchaser's title to the parcel remains subject to any such remaining redemption period. T.C.A. § 67-5-2504(d)(4).

Any person successfully challenging the validity of a tax sale of the person's interest in a parcel shall also be responsible to the person purchasing the property at the tax sale and the purchaser's successors in interest, for any increase in the value of the parcel, including any improvements thereto, from the date of the entry of the order confirming the sale until the entry of a court order declaring the tax sale invalid as to the challenger. In the alternative, the challenger shall be responsible to the person purchasing the property at the tax sale and the purchaser's successors in interest, for all amounts expended by the purchaser or the purchaser's successors, if such amount is in excess of the increased value of the parcel. The purchaser and successors shall have a lien upon the parcel to secure the payment of the amount determined by the court to be due. T.C.A. § 67-5-2504(f).

## Redemption

Reference Number:  
CTAS-1603

Upon the entry of an order confirming a sale of a parcel, a right to redeem vests in all interested persons. The right to redeem must be exercised within the time period established by law beginning on the date of the entry of the order confirming the sale, but in no event can the right to redeem be exercised more than

one year from that date. The redemption period of each parcel must be determined by the court prior to the tax sale of the parcel and may also be stated in the order confirming the sale.

Unless the court finds sufficient evidence to order a reduced redemption period, the redemption period for each parcel shall be one year.

The redemption period shall be determined for each parcel based on the period of delinquency. Once the period of delinquency is established, the redemption period shall be set on the following scale:

If the period of delinquency is five years or less, the redemption period shall be one year from the entry of the order confirming the sale;

If the period of delinquency is more than five years but less than eight years, the redemption period shall be one hundred eighty days from the entry of the order confirming the sale; or

If the period of delinquency is eight years or more, the redemption period shall be ninety days from the entry of the order confirming the sale.

T.C.A. § 67-5-2701(a)(1).

For all real property for which a showing is made that there is a reasonable basis to believe that real property is vacant, or, in the case of vacant land, a reasonable basis to believe that the property is abandoned, the redemption period shall be thirty days from the entry of the order confirming the sale without regard to the number of years of delinquent taxes owed on the property, beyond that required to make the property legally eligible for the sale. T.C.A. § 67-5-2701(a)(1)(D) & (2).

In order to redeem a parcel, the person entitled to redeem must file a motion to such effect in the proceedings in which the parcel was sold. The motion must describe the parcel, the date of the sale of the parcel, the date of the entry of the order confirming the sale and must contain specific allegations establishing the right of the person to redeem the parcel. Prior to the filing of the motion to redeem, the movant must pay to the clerk of the court an amount equal to the total amount of delinquent taxes, penalty, interest, court costs, and interest on the entire purchase price paid by the purchaser of the parcel. The interest shall be at the rate of 12% per annum, which shall begin to accrue on the date the purchaser pays the purchase price to the clerk and continuing until the motion to redeem is filed. If the entire amount owing is not timely paid to the clerk or if the motion to redeem is not timely filed, the redemption shall fail. T.C.A. § 67-5-2701(b)(1).

In any motion to enforce a right of redemption brought by a transferee against a tax sale purchaser or other interested party:

The tax sale purchaser or other interested party in whom the right of redemption originally vested must be served with a copy of the motion to redeem;

The motion to redeem must be denied on the objection or response to the motion to redeem by the tax sale purchaser or any other interested party if it appears that the transferee is engaged in speculation or profiteering with respect to such right of redemption;

Such speculation and profiteering is presumed if it appears that the transfer of the right of redemption was made for consideration in an amount less than the purchase price paid by the tax sale purchaser at the tax sale minus the amount the debtor would have been required to pay to redeem the property under this chapter; and

If a motion to redeem by a transferee is denied under T.C.A. § 67-5-2701(b)(2) based on a finding by the court of such speculation and profiteering, the court may award reasonable attorney's fees to the tax sale purchaser or any other interested party challenging the motion to redeem.

T.C.A. § 67-5-2701(b)(2). This subdivision is intended to further the public policies of the state of protecting the interests of owners of real property subject to debt, protecting the integrity of the tax sale process, providing reliable tax sale titles to purchasers, and prohibiting the profiteering and speculation in rights of redemption; and be remedial and construed to apply to any existing rights of redemption. T.C.A. § 67-5-2701(b)(3).

Upon the filing of the motion to redeem and the payment of the required amount, the clerk shall within ten days send a notice of the filing of the redemption motion to the purchaser and all persons entitled to redeem the parcel. The notice of redemption shall state the amount paid at the time of the filing of the motion and refer the persons to T.C.A. § 67-5-2701. The purchaser may within thirty days after the mailing of the notice of redemption, file a response seeking additional funds to be paid by the proposed redeemer to compensate the purchaser for amounts expended by the purchaser for the purposes set out in T.C.A. § 67-5-2701(e). The response shall specifically set out the basis for each category of additional funds claimed. The response may also allege that the motion to redeem was not properly or timely filed. If no response is timely filed, the court shall determine whether the redemption has been properly made, and if so, shall cause an order to be entered requiring the proposed redeemer to pay additional interest at the rate set forth in T.C.A. § 67-5-2701(b), accruing from the date the motion to redeem was filed until the date of such payment. T.C.A. § 67-5-2701 (c) and (d).

Any additional funds ordered to be paid by the proposed redeemer shall be paid to the clerk prior to the later of the following dates: (1) The date of the expiration of the redemption period; or (2) Thirty days after the entry of the order allowing additional funds. T.C.A. § 67-5-2701(f).

If the proposed redeemer timely pays the full amount of any additional funds ordered by the court, the court shall declare that the property has been redeemed. If the proposed redeemer fails to timely pay the full amount of any additional funds ordered by the court, the redemption shall fail and any funds paid by the proposed redeemer shall be refunded to him less the clerk's fee and any other court costs. T.C.A. § 67-5-2701 (g) and (h).

In the event a person tenders the full amount owing in the proceeding at a time after the date of sale and prior to the entry of an order confirming the sale, the person shall also pay interest computed as established by T.C.A. § 67-5-2701(b) on the total purchase price paid by the purchaser. T.C.A. § 67-5-2701(i).

The court in which the proceedings are pending may order that any proposed redeemer shall also pay to the clerk the amount necessary to record any orders of the court in the office of the register of deeds. Such payment may be required to be paid upon the filing of the motion to redeem or upon determining whether any additional funds are to be allowed. T.C.A. § 67-5-2701(j).

Upon any order pertaining to redemption becoming final, the clerk shall make such disbursements as are provided in the order. T.C.A. § 67-5-2701(k).

In the event the court directs the delinquent tax attorney or an attorney ad litem to participate in the redemption portion of the proceedings as an assistance to the court, the court may allow a reasonable attorneys fee to be paid by either the movant or the purchaser as directed by the court. T.C.A. § 67-5-2701(l).

In the event all parties to the action waive their right to appeal all issues in the cause, the clerk shall immediately disburse all amounts owing. T.C.A. § 67-5-2701(m).

Upon entry of an order of the court declaring that the redemption is complete, title to the parcel shall be divested out of the purchaser, and the clerk shall promptly refund the purchase money and pay all sums due to the purchaser under T.C.A. § 67-5-2701. The interests of the taxpayer and other interested parties, or their successors in interest, shall be restored to that state which existed as of the date of entry of the order confirming the sale. Any lienholder who redeems the parcel may thereafter proceed to foreclose upon the parcel or otherwise enforce such lien. T.C.A. § 67-5-2701(n).

## Disposition of Property Purchased by County at Tax Sale

Reference Number:

CTAS-2188

It is the duty of the county mayor of each county to take charge of all the lands bought in by the county

at a county delinquent tax sale. During the redemption period of any tract of land, the land shall be:

Held and put only to a use that will not result in a waste of the land; or

Sold to a third party, in accordance with T.C.A. § 67-5-2507(b), subject to the right of redemption. If any parcel is sold subject to redemption, it may be redeemed in accordance with T.C.A. § 67-5-2701.

After the period of redemption has elapsed, it shall be the duty of the county mayor to arrange for the disposition of every tract of such land as expeditiously and advantageously as possible unless parcels acquired by the county are identified by the county mayor, or the mayor's designee, as being in an area or zoning classification that would make the accumulation of larger areas advantageous to the parcels' reuse and redevelopment. In such cases, the mayor may hold those properties until a sufficient number of parcels or area has been acquired to improve the parcels' marketability and redevelopment profile. In no event shall this accumulation result in property being held without being marketed for more than five years.

If the county mayor determines, prior to the sale of a parcel brought in by the county at a delinquent tax sale, that there may be a defect in the title to the parcel, the county mayor may move the court in which the parcel was sold in the tax proceeding, to take action to cure the defect. A diligent effort to give notice of any such motion shall be made as to all interested persons as of the date of the filing of the motion.

T.C.A. § 67-5-2507(a).

### **Procedure for Sale**

A committee of four members shall be elected by the county legislative body, from the county legislative body, who, together with the county mayor, shall place a fair price on each tract of land, for which price the land shall be sold.

In counties having adopted the County Financial Management System of 1981, the financial management committee created by T.C.A. § 5-21-104 may serve as this committee, instead of the committee established above.

The committee may authorize the sale of any tract of land upon such terms as will secure the highest and best sale price, but the credit extended shall not exceed three years and a lien shall be retained to secure purchase price.

No tract of land shall be sold for an amount less than the total amount of the taxes, penalty, cost and interest, unless the legislative body, upon application, determines that it is impossible to sell the tract of land for this amount, and grants permission to offer the land for sale at some amount to be fixed by such legislative body.

Interest is calculated on the full amount of the taxes, penalty, cost and interest from the time of the acquisition of the land by the county until the sale thereof.

Whenever the sale of a tract of land is arranged by the county mayor, the deed shall not be executed and the sale shall not become final until ten days after the publication in a newspaper published in the county of a notice of the proposed sale, the name of the purchaser and the terms, conditions and price. The land shall be described in the notice only by number, which shall refer to a description on file with such committee.

If anyone, during the ten 10 days, increases the offer made for the land by ten percent or more, the party making the first offer shall be notified and a day fixed when both parties must appear and make offers. The tract of land shall be sold to the party making the highest and best offer.

Conveyances of the land shall be made without warranties of any sort, and deeds shall be executed by the county mayor or other chief fiscal officer of the county. The deed shall be prepared by the back-tax attorney as a part of the duties for which the attorney is compensated by T.C.A. § 67-5-2410, and no additional compensation shall be allowed.

The county may, upon a majority vote of its legislative body determining it in the best interests of the county to use the property for a public purpose, decide to retain ownership and possession of such proper-



ty.

T.C.A. § 67-5-2507(b). NOTE: subsection (b) does not apply in Davidson county.

For provisions dealing with a political subdivision purchasing property at a tax sale, see T.C.A. § 67-5-2508. See T.C.A. § 67-5-2508(d) for the procedure for delinquent tax sales when delinquent taxes are owed to both a county and a municipality.

If the land cannot be sold at the end of the statutory redemption period, property held by a county is exempt from taxation, regardless of use, as long as the property is held for the purpose of realizing the full amount of taxes, penalties, costs, and interest. T.C.A. § 67-5-2509.

See Sample Resolution to Establish a Committee for Resale of Land Bought at Delinquent Tax Sales. See Bidding Procedures for Sale of Property Acquired at Delinquent Tax Sales.

### **Rescinding the Prior Delinquent Tax Sale**

As to a particular parcel conveyed to a county pursuant to T.C.A. § 67-5-2501, the county mayor may make an evaluation of the parcel to determine whether the value of the parcel or amount of money the county is likely to receive if the county sold the parcel exceeds the financial obligations or environmental risks associated with the parcel.

If the county mayor determines that the financial obligations or environmental risks exceed the value of the parcel, the county legislative body may adopt a resolution, by a two-thirds vote, concurring in the county mayor's determination and directing the county mayor to request relief from the court in which the parcel was sold.

Relief shall be sought by motion pursuant to Rule 60 of the Tennessee Rules of Civil Procedure filed within one hundred twenty days after the entry of the order confirming the sale.

If the court finds that the motion should be granted, the court may rescind its prior order upon such terms as are just. In the event the prior order is rescinded, title to the parcel shall be deemed to have remained in that state which existed as of the date of entry of the prior order confirming the sale. The court shall have broad discretion to ensure that rescinding its prior order does not result for any period of time in the creation of a parcel for which no person or entity has responsibility.

The court may then appoint a special master and direct the special master to conduct a second sale of the parcel upon such terms and conditions as may be ordered by the court, including the reduction or elimination of the minimum bid that may be accepted at the sale.

In the event no person presents a bid at the second sale of the parcel, the court may thereafter approve a negotiated sale of the parcel upon such terms and conditions as may be ordered by the court or such other relief as the court may order, including the conveyance to a nongovernmental entity claiming contractual rights to dues or assessments pursuant to T.C.A. § 67-5-2516.

T.C.A. § 67-5-2507(c) shall be applicable to the financial obligations or environmental risks of an individual parcel only and shall not be applicable to the aggregated financial obligations or environmental risks of all or multiple parcels bid in to the county pursuant to T.C.A. § 67-5-2501.

### **Listing of Parcels Owned by County**

Pursuant to T.C.A. § 67-5-2511, the county mayor must prepare and maintain a listing of all parcels owned by the county acquired pursuant to T.C.A. § 67-5-2501.

The listing must be prepared no later than July 1, 2018. The listings shall be published in a newspaper of general circulation in the county or posted on the local government website with a notice of the posting published in a newspaper of general circulation in the county.

At least annually, the county mayor shall determine if any additional parcels have been purchased by the county pursuant to T.C.A. § 67-5-2501 and shall publish an updated list, as necessary, in the same manner as the original list.

Each published list or notice may contain a solicitation for offers to purchase the parcels listed and a statement as to how and where such offers may be filed.

Parcels acquired by the county which are identified by the county mayor, or the mayor's designee, as being in an area or zoning classification that would make the accumulation of larger areas advantageous to the reuse and redevelopment of the parcels, may be excluded from the list of parcels prepared and maintained under T.C.A. § 67-5-2511 until a sufficient number of parcels or property has been acquired to improve the marketability and redevelopment profile of the parcels. In no event shall this accumulation result in property being held without being published for more than five years. A separate list of such designated parcels shall be maintained by the mayor or the mayor's designee.

T.C.A. § 67-5-2511(a)-(d).

## Escheat of Funds

Reference Number:

CTAS-1604

A clerk may have funds remaining in court from a delinquent tax sale after all taxes, interest, penalties and cost have been paid and the former owners of the property cannot be located in order to disburse these funds to them. A clerk should make a reasonable effort to locate the owners of such property. *Tennessee Code Annotated* §§ 66-29-101 *et seq.*, sets forth the procedure a clerk should follow regarding unclaimed property. The procedure requires the clerk to file reports and to remit the funds to the state after a certain time period. The county may ultimately recover these funds, which are distributed to the county general fund, if they remain unclaimed while in the state's possession.<sup>1</sup>

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<sup>1</sup>Op. Tenn. Atty. Gen. 85-201 (June 24, 1985) (duty of the Clerk and Master after a judicial sale of real property, where a buyer pays a sum in excess of all taxes, fees, and costs owing against the property).

## Statute of Limitations

Reference Number:

CTAS-1605

Taxes on real and personal property are barred, discharged and uncollectible after the lapse of 10 years from April 1 of the year following the year in which such taxes become delinquent, unless the property is sold at a tax sale during this period. The bar against collection is tolled as to taxes at issue in an administrative appeal before the State Board of Equalization, from the date of filing the appeal until issuance of the final assessment certificate.<sup>1</sup>

Property taxes are not barred or discharged after ten years if the county purchased the property at the tax sale and then did not take possession, thus leaving the property on the tax rolls pursuant to T.C.A. § 67-5-2510..<sup>2</sup>

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<sup>1</sup>T.C.A. § 67-5-1806. *See also* Op. Tenn. Atty. Gen. 90-35 (March 16, 1990).

<sup>2</sup>Op. Tenn. Atty. Gen. 83-379 (November 8, 1983).

## Miscellaneous Matters

Reference Number:

CTAS-1606

Bankruptcy of the Taxpayer. Usually, taxes are a high priority debt in a bankruptcy proceeding and are generally paid even though payment may be delayed or made in installments through a court-approved bankruptcy plan. Upon receiving a notice of bankruptcy or being advised of the filing of bankruptcy under federal law, the trustee and other tax collecting officials are stayed (prohibited) from taking any action to collect property taxes. The automatic stay provisions allow notice of a tax delinquency to be issued. However, language in the notice beyond mere notification of the existence of delinquent taxes is probably prohibited. Any act to obtain possession of the debtor's property or to collect or recover a claim against the debtor after the debtor files a bankruptcy petition is prohibited. The automatic stay is effective until it is terminated by the bankruptcy court.<sup>1</sup>

Trustees or court clerks should always file a proof of claim, showing amounts due plus interest and attorney's fees which may be recovered if the value of the property is sufficient. Proofs of claim are

divided into pre-petition tax claims and post-petition tax claims. Pre-petition tax claims include all taxes for which liability has incurred as of the date the debtor filed for bankruptcy, plus interest, costs, and penalties, and post-petition interest to the extent that the value of the property is sufficient to permit it. Post-petition tax claims are for taxes assessed on the debtor's property after the date of the bankruptcy petition. These claims are generally treated as administrative expenses of the debtor's bankruptcy estate and are paid at the time they normally become due and payable.<sup>2</sup>

Environmental Concerns. Counties should be aware of potential environmental problems with land subject to sale pursuant to a delinquent tax suit. With respect to property that has environmental problems, all or any portion of the penalty and interest and attorney fees which are due on the real property taxes may be waived by order of the court having jurisdiction of the delinquent tax lawsuit upon a motion and a finding that the following factors exist:

1. The property has been determined to be environmentally hazardous pursuant to federal or state environmental protection or hazardous materials laws by those officials, agencies or courts with the responsibility for enforcing the environmental protection or hazardous materials laws;
2. The county legislative body has determined that no bid should be made on behalf of the governmental entity to which taxes are owed pursuant to § 67-5-2506;
3. The waiver is made in conjunction with the remediation and cleanup of the property; and
4. The circumstances giving rise to the waiver did not result from fraud or an intention to avoid payment.<sup>3</sup>

Debris Removal. The county governing body may choose to exercise statutory authority which allows the county to remove from real property accumulated debris which is harmful to the health, safety, and welfare of the population. Costs of this removal are assessed against the owner of the property and are placed on the tax rolls as a lien upon the property; these are collected in the same manner as the county's taxes.<sup>4</sup>

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<sup>1</sup>11 U.S.C. § 362(a)-(c). *See also In re Shamblin*, 890 F.2d 123, 125 (9th Cir. 1989) (finding that tax sales in violation of the automatic stay are void).

<sup>2</sup>11 U.S.C. § 506(a), (b). *But see Bondholder Comm. V. Williamson County*, 43 F.3d 256 (6<sup>th</sup> Cir. 1994), *cert. denied*, 514 U.S. 1096 (1995), which states that counties may not claim statutory penalties which have not accrued by the date a bankruptcy petition is filed, since creditors normally are not entitled to post-petition additions.

<sup>3</sup>T.C.A. § 67-5-2802.

<sup>4</sup>T.C.A. § 5-1-115.

## Retention Schedules

Reference Number:  
CTAS-202

The County Technical Assistance Service, in cooperation with the Tennessee State Library and Archives and the Division of Records Management, is authorized to publish schedules which are to be used as guides by all county public records commissions, county offices, and judges of courts of record in determining which records should, can, and may not be destroyed. T.C.A. § 10-7-404. Those schedules are called the Retention Schedules. The retention schedules describe more than 650 different records series for multiple county offices. This material is organized by county office and by subject. Obviously CTAS recommends that all county public record commissions adopt these schedules as the basis for determining the disposition of county records in their county. When the schedules were developed, they were reviewed and revised by the legal and technical staff of CTAS, by the Division of County Audit in the office of the comptroller, by representatives of the Tennessee State Library and Archives and the Division of Records Management in the State Department of General Services, and by committees and groups of numerous county officials. The language of the statute says that county officials and records commissions shall use these schedules as "guides" in determining whether a record should be kept or destroyed. This does not mean that a County Public Records Commission can never deviate from the CTAS schedules. However, any decision to use a different retention period should be thoughtfully considered and the reasons well documented by the records commission. Any decision to destroy a record sooner than is recommended by the schedules certainly needs to be taken seriously. If your records commission decides that there is a significant reason why a record should be destroyed before the recommended retention period has elapsed, contact CTAS first to discuss the retention period and see if there is a reason why the

recommended retention period in the manual should be shortened.

For additional information, see Appraisal and Disposition of Records, Tennessee Archives Management Advisory.

## Current Retention Schedules

Reference Number:

CTAS-2068

### **Policy Statement**

The Tennessee State Library and Archives (TSLA) is given authority by T.C.A. § 10-7-413 to review proposed destruction of county records and to take into the state archives such records proposed for destruction as may have historical research value. TSLA has reviewed and approved these retention guidelines prepared by the County Technical Assistance Service (CTAS).

### **Permanent Records.**

With respect to records designated in these guidelines as "permanent," TSLA-

1. Concurs entirely with all guidelines herein that appraise records series to be of permanent value;
2. Reminds local governments that they are obliged by the provisions of T.C.A. § 10-7-503 to make such records permanently and consistently available for public inspection;
3. Advises that a county archives, which is an integral office of local government and responsible to the local county mayor through the public records commission, is the most effective and economical means of doing this; and
4. Encourages local governments to establish, support, and maintain such archives.

In cooperation with CTAS and other agencies, TSLA has designated certain records as permanent based on their value as legal and historical evidence to document the collective experience of the citizens of the community. Such records should be retained and made available to the public in public archives in accordance with T.C.A. § 10-7-503.

### **Temporary Records.**

TSLA has appraised for historical value the descriptions of temporary records series that are herein recommended for destruction at the ends of their retention terms. Because of the confidence we have in this review and in the guidelines, TSLA certifies that-

- Destruction of records in accordance with these guidelines may be authorized by local public records commissions;
- Public records commissions may issue continuing records disposition authorizations for routine disposals, so that local offices do not have to present repeated requests to the public records commission; and that
- Disposal may then proceed without further review by TSLA;

*provided that*

- (1) Local officials report all such disposals to the local public records commission;
- (2) The local public records commission certifies to the county mayor that destruction has been authorized in accordance with these guidelines;
- (3) The certification cites the specific applicable guideline in each case of authorized destruction; and that
- (4) Local public records commissions consider carefully the needs of local historical and genealogical societies, consult with them, and upon their advice or request use the provisions of T.C.A. § 10-7-414(a) to authorize transfer of records otherwise scheduled for destruction (e.g. marriage bonds or court case files) to the local historical society for retention and historical research.

In the interest of building and maintaining a strong sense of community history, TSLA further encourages local public records commissions, executives, and legislative bodies to provide material and financial support for the local preservation and public inspection of such transferred records in accordance with T.C.A. § 10-7-414(c).

Questions about the possible disposition of county records and the establishment of a county archives and records program for the preservation of permanent value records can be referred to-

Tennessee State Library and Archives

403 7th Avenue North  
 Nashville, Tennessee 37243  
 (615) 741-2764

## Trustee's Records

Reference Number:  
 CTAS-2062

**Trustee’s Records.** The records included in this schedule are only those specific to the office of the County Trustee. Records that may be kept in the same format by several county offices (such as employment records, purchasing records, etc.) will be found listed under topical retention schedules in this manual. Included in this table is a listing of “obsolete” records. Your office should no longer be generating these records. They are still included in the disposition schedule so that anyone discovering those materials in older records of the office will know how to deal with them. To a certain extent, the records kept by county offices vary from county to county in either the format of record kept, the name given to the record, or the frequency of its occurrence. The fact that a certain record is listed in this schedule does not necessarily indicate that you should have it in your office. It may be a format for record-keeping that was never utilized in your county, or you may keep the record under a different name. If you have records in your office that are not listed in this schedule by name, check the descriptions of the records to see if we may have called it by a different term. If you still cannot locate any entry relative to the record, contact us at the County Technical Assistance Service for guidance in determining the proper disposition of the record and so that we can make note of that record’s existence to include it in future revisions of this manual.

### Retention Schedule for the County Trustee

Description of Record	Retention Period	Legal Authority/ Rationale
<b>14-001 Bank Deposit Books</b> —Bank books showing name and location of bank, and amounts and dates of deposits.	Retain five years after last entry, then destroy.	Keep for audit purposes T.C.A. § 10-7-404(a).
<b>14-002 Bank Deposit Slips</b> —Slips showing name and location of bank, and amounts and dates of deposits.	Retain five years after last entry, then destroy.	Keep for audit purposes T.C.A. § 10-7-404(a).
<b>14-003 Bank Statements</b> —Statements showing name and location of bank, and amounts and dates of deposits, amounts and dates of check withdrawals, and running balance.	Retain five years after last entry, then destroy.	Keep for audit purposes T.C.A. § 10-7-404(a).
<b>14-004 Canceled Checks</b> —Canceled checks showing date check issued, name of bank on which drawn, check number, to whom payable, purpose of payment, amount of check, and date canceled. (See warrants if using that system).	Retain five years after last entry, then destroy.	Keep for audit purposes T.C.A. § 10-7-404(a).  Note: Your county may not get these back from the bank.
<b>14-005 Cash Books</b> —Record of trustee’s daily receipts showing name of fund, date, and amounts received. In computerized counties, these records would not be kept in books. Maintain same retention period for electronic files with this information.	Retain five years after last entry, then destroy.	Keep for audit purposes T.C.A. § 10-7-404(a).
<b>14-006 Cash Journals</b> —Record of all receipts and disbursements of the Trustee as distributed to various county accounts, showing date of entry, amount, source of receipt or purpose of payment, amount of debit or credit, and name of account credited or charged.	For cash journals after 1930, keep for 10 years, then destroy. If older than 1930, the record has historical value and should be kept permanently.	Comptroller’s office considers this record important for demonstrating patterns in investigations of mis-appropriation of funds. T.C.A. § 10-7-404(a). Prior to the advent of general budgetary practices, the Trustee’s Cash Journal would

**Retention Schedule for the County Trustee**

Description of Record	Retention Period	Legal Authority/ Rationale
<p><b>14-007 Check Books</b>—Books containing stubs of checks issued by the Trustee showing check number, date issued, name of payee, amount, and purpose of payment. (See warrants if using that system).</p>	<p>Retain five years after date of last check, then destroy.</p>	<p>be the best record for tracking the total revenue stream of the county and have historical value. For this reason, records prior to 1930 should be kept permanently.</p> <p>Keep for audit purposes T.C.A. § 10-7-404(a).</p>
<p><b>14-008 Delinquent Real Estate Tax Reports (a.k.a. Errors and Double Assessment Report)</b>— Duplicates of annual reports to the county legislative body by the trustee of all delinquent taxpayers and double assessments in the county. Report is required by T.C.A. § 67-5-1903(a)(1).</p>	<p>Retain five years after date of creation, then destroy.</p>	<p>Keep for audit purposes T.C.A. § 10-7-404(a).</p>
<p><b>14-009 Delinquent Tax Receipt Books</b>— Duplicates of receipts issued for payment of delinquent realty, and personalty taxes, showing receipt number, date issued, name of taxpayer, amount, year of assessment, signature of Trustee, etc. May not be kept in a book. This record is obsolete if computerized and in compliance with EDP standards.</p>	<p>Retain five years after issuance of last receipt in book or five years after creation of receipt if not in book or information is stored electronically.</p>	<p>Keep for audit purposes T.C.A. § 10-7-404(a).</p>
<p><b>14-010 Dog Tax Books</b>—Record of dog taxes collected, showing name of owner, name and description of dog, amount of tax, date of payment, and tag number. Prior to 1921 these collections were used to reimburse sheep owners for losses due to damage and killing of sheep by dogs; distribution is shown on this record.</p>	<p>Retain until audit is complete, then destroy. Few counties do this, but technically it is still in the law and may be ongoing in certain counties.</p>	<p>T.C.A. § 68-8-104.</p>
<p><b>14-011 General (Miscellaneous) Receipt Ledgers</b>—Record of funds received on general accounts, including such payments as poll tax, state and county taxes, interest, fees, and penalties on delinquent taxes, showing date of payment, name of payor, amount, fund credited, and balance. This information is included in the journal package of most software in computerized counties. If stored electronically in compliance with EDP standards, paper copy is not necessary.</p>	<p>Retain five years after last entry, then destroy. If stored electronically, keep 5 years after date of creation of record, then destroy.</p>	<p>Keep for audit purposes T.C.A. § 10-7-404(a).</p>
<p><b>14-012 Investment Ledgers</b>—Surplus cash investments, rate of interest, date and amount collected.</p>	<p>Retain 10 years, then destroy.</p>	<p>Keep for audit purposes and to address arbitrage concerns.</p>
<p><b>14-013 Miscellaneous Receipts from Other Offices Receiving Money, Records of</b>— Records of receipts collected by other county offices and department. Examples: fees collected by the ambulance service, out of county tuition collected by the school board, probation fees, building permits, etc.</p>	<p>Retain five years after creation, then destroy.</p>	<p>Keep for audit purposes T.C.A. § 10-7-404(a).</p>
<p><b>14-014 Pickup Tax Books</b>—Record of taxes levied and collected by the trustee after the assessor failed to make an assessment, the</p>	<p>Permanent record.</p>	<p>Analogous to Tax Books. Keep for historical purposes.</p>

**Retention Schedule for the County Trustee**

Description of Record	Retention Period	Legal Authority/ Rationale
<p>error being caught by the trustee. This record shows name of property owner, civil district number, amount of assessment, whether on poll, personalty, or realty, taxes due, and date paid. This record series includes information about back assessments, re-assessments and errors.</p>		
<p><b>14-015 Property Tax Relief Report</b>—Record of property taxes paid by the state on behalf of elderly low income homeowners, disabled homeowners and disabled veterans.</p>	<p>Retain until audited and updated version received, then destroy in accordance with rules of the Public Records Commission.</p>	<p>In the nature of a working paper (T.C.A. § 10-7-406(b)).</p>
<p><b>14-016 Receipt Books</b>—Duplicate receipts for revenue collected, showing from whom received, date receipt given, receipt number, amount and purpose of payment, account credited, and signature of Trustee or deputy. Receipts may be or may have been issued for funds received from other county offices for payment of transfer tax, delinquent taxes, poll tax, state funds, utilities tax, etc. Receipts may be loose rather than in books. This record series is associated with the General (Miscellaneous) Receipt Ledgers.</p>	<p>Retain five years after last entry, then destroy. If stored electronically, destroy file five years after date of creation. Additional copies of the receipts that aren't needed for any purpose would be considered working papers that could be destroyed as soon as it is determined they are superfluous.</p>	<p>Keep for audit purposes (T.C.A. § 10-7-404(a)), (T.C.A. § 10-7-406(b)).</p>
<p><b>14-017 Reports, Daily (Cash Reconciliation)</b>— Trustee's daily record showing receipts, names of accounts paying, disbursements, and balance.</p>	<p>Retain until after audit, then destroy in accordance with rules of the Public Records Commission.</p>	<p>Working paper (T.C.A. § 10-7-406(b)).</p>
<p><b>14-018 Reports of Trustee to County Legislative Body and County Mayor (Duplicate copy)</b>— Report gives information on different accounts, balances on last report, receipts, disbursements, commissions, transfers, balances on this report, totals, bank balances of county accounts in different banks, and classification of receipts (sources received from - state, local, etc.).</p>	<p>Retain one year, then destroy in compliance with rules of the Public Records Commission.</p>	<p>Working paper used by general fund bookkeeper to reconcile accounts with the Trustee's records (T.C.A. § 10-7-406(b), (T.C.A. § 5-8-505 ).</p>
<p><b>14-019 Sales Tax Reports</b>—Report from the state showing total tax collection less cost of state collection. Report shows amounts distributed to county and to incorporated towns.</p>	<p>Retain 10 years, then destroy.</p>	<p>This record series is kept longer than the usual audit standard in case of a dispute regarding city/county distribution of revenues.</p>
<p><b>14-020 Special District Supplemental Tax Books</b>—Record of supplemental taxes, showing name of property owner, location and description of property, assessed valuation, total amount of taxes, interest, penalty, and cost of collection. Would include any extra district taxes such as fire taxes, special school district taxes, etc.</p>	<p>Permanent record.</p>	<p>Analogous to other tax ledgers.</p>
<p><b>14-021 Tax Books (a.k.a. Tax Lists, Tax Roll, Roll Books)</b>—Record of taxable property by civil districts, showing owner's name, location and description of property, number and value of town lots, number of acres of farm land, value of land, value of personal property, state and county taxes, total of all taxes, and date paid.</p>	<p>Permanent record.</p>	<p>Keep for historical purposes. Additional, old records may be used as evidence in suits to quiet land title.</p>

**Retention Schedule for the County Trustee**

Description of Record	Retention Period	Legal Authority/ Rationale
<p><b>14-022 Tax Cases Sent to Clerk and Master, Record of</b>—Record of delinquent land tax cases filed in Chancery Court (sometimes Circuit Court) showing property owner's name, district or ward, property boundaries, acres, valuation, total tax due, and remarks.</p>	<p>Retain 15 years, then destroy.</p>	<p>Statute of limitations on property tax actions is 10 years (T.C.A. § 67-5-1806). Additional time is given for cases that may be delayed due to bankruptcy.</p>
<p><b>14-023 Tax Collector's or Tax Deputies Report to Trustee</b>—Report of tax collector's receipts to Trustee, showing date, from whom received, and for what purpose. This record is obsolete in many counties. This report of collections is authorized by T.C.A. § 67-5-2009.</p>	<p>Retain 15 years, then destroy.</p>	<p>Statute of limitations on property tax actions is 10 years (T.C.A. § 67-5-1806). Additional time is given for cases that may be delayed due to bankruptcy.</p>
<p><b>14-024 Warrants</b>—Canceled warrants showing date issued, warrant number, amount of warrant, name of payee, and purpose of payment. (See also checks if using the checking system)</p>	<p>Retain five years, then destroy.</p>	<p>Keep for audit purposes (T.C.A. § 10-7-404(a)).</p>
<p><b>14-025 Warrant Registers</b>—Record of all warrants paid by the Trustee and charged to county, highway, school, and other funds, showing warrant number, amount, account charged, date issued, to whom, and purpose of payment. Some counties may have separate warrant registers for different funds. (See also checks if using the checking system).</p>	<p>Permanent record.</p>	<p>Keep for audit purposes (T.C.A. § 10-7-404(a)).</p>
<p><b>OBSOLETE RECORDS</b></p>		<p>Obsolete record no longer generated or necessary for operation of the office.</p>
<p><b>14-026 Delinquent Poll Tax Books</b>—Record of poll tax assessments that have become delinquent against persons who own no real property, showing district number, name of taxpayer, amount of tax, interest, and fees, year of assessment, and total amount collected. This is an obsolete record.</p>		<p>However, in periods where there is no federal census, poll tax records are invaluable for locating individuals and can have great historical value. Retain as a permanent record.</p>
<p><b>14-027 Fee Books</b>—Daily record of fees collected, showing date, tax book collections, tax book fees, collections from other sources, and "turn in" fees. This record is now obsolete.</p>		<p>Destroy (obsolete record).</p>
<p><b>14-028 Highway Account Books</b>—An itemized account of the receipt and disbursement of highway funds, showing date, source, and amount of revenue received; date, amount, and purpose of disbursement; and total. May also be called District Road Account Book and Road Journal. This record is now obsolete.</p>		<p>Permanent record. No longer being generated in the offices, but old records should be retained for historical purposes.</p>
<p><b>14-029 Poll Tax Books</b>—Record of poll tax assessments against persons who own no property, showing name and sex of taxpayer, receipt number, district number, amount of tax, and date paid. This is an obsolete record.</p>		<p>Destroy (obsolete record), if kept separately from Tax Books.</p>
<p><b>14-030 Receivable Warrant Registers</b>—Register of warrants showing date, warrant number, name of recipient, reason for issuance, and amount of warrant. This record is obsolete.</p>		<p>Retain five years after last entry, then destroy (obsolete record).</p>
<p><b>14-031 Road Improvement Assessment Books</b>—Lists tracts of land and amounts of assessments; used by Trustee for collection of special assessments levied. This is an obsolete record.</p>		<p>Permanent record. No longer being generated, but keep for historical purposes.</p>
<p><b>14-032 Road Overseer Settlement Books</b>—Record of settlements with overseers of county roads showing number of civil district, number of road, amount paid, purpose, name of overseer, and date of payment. This is an obsolete record.</p>		<p>Permanent record. No longer being generated, but keep for historical purposes.</p>
<p><b>14-033 Road Warrant Books</b>—Record of warrants, issued on road funds</p>		<p>Permanent record. No longer</p>



**Retention Schedule for the County Trustee**

Description of Record	Retention Period	Legal Authority/ Rationale
<p>showing to whom issued, date issued, amount, and date canceled. May also show amount due each civil district, amount of warrants paid, and balance due. This is an obsolete record.</p>		<p>being generated, but keep for historical purposes.</p>
<p><b>14-034 School Fund Books (Receipts and Disbursements)</b>—An itemized account of the Trustee's receipts and disbursements of school funds, showing date, amount, and source of collections; date, warrant number, amount, and purpose of disbursements. Early volumes may be arranged by civil district. This is an obsolete record.</p>		<p>Destroy (obsolete record).</p>
<p><b>14-035 School Receipt Register Books</b>—Register of receipts for school funds showing date and type of warrants - school bond warrants, public school warrants, general purpose warrants - warrant number, and amount of warrant. Obsolete record.</p>		<p>Destroy (obsolete record).</p>
<p><b>14-036 School Receipts, Reports of</b>—Trustee's report of receipts for public school funds showing receipts from all sources, distribution of funds, and signature of trustee; made monthly and annually. This is an obsolete record.</p>		<p>Destroy (obsolete record).</p>
<p><b>14-037 Tax Exemptions for Fox Scalps, Record of</b>—Record shows name of owner, date, number of fox scalps produced, and certification of exemption in detail. This is an obsolete record.</p>		<p>Destroy (obsolete record).</p>

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