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Chapter XI - Taxation

Dear Reader:

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

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

Sincerely,

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Chaper XI - Taxation

Hotel/Motel Tax

Private Acts of 2021 Chapter 26

SECTION 1. As used in this Act, unless the context requires otherwise:

(a) "Consideration" means the consideration charges, whether or not received, for the occupancy in a hotel valued in money whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and service of any kind or nature without any deduction therefrom whatsoever. Nothing in this definition shall be construed to imply that consideration is charged when the space provided to the person is complimentary from the operator and no consideration is charged or received from any person;

(b) "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging, or sleeping purposes for a consideration, and includes any hotel, inn, tourist cabin, campground, bed and breakfast, or motel;

(c) "Occupancy" means the use or possession or the right to use or possession of any room, lodging, or accommodations in a hotel for a period of less than thirty (30) continuous days;

(d) "Operator" means the person operating the hotel whether as owner, lessee, or otherwise;

(e) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, governmental unit other than the United States or any of its agencies, or any other group or combination acting as a unit to include the State of Tennessee;

(f) "Tax collection official" means the County Clerk; and

(g) "Transient" means any person who exercises occupancy or is entitled to occupancy of any rooms, lodgings, or accommodations in a hotel.

SECTION 2. Smith County is hereby authorized to levy a privilege tax upon the privilege of occupancy in any hotel by a transient in an amount not to exceed five percent (5%) of the consideration charged by the operator. The tax imposed is a privilege tax upon the transient occupying such room or other accommodation and is to be collected and distributed as herein provided. The rate of the tax may be modified by the county legislative body subject to the five percent (5%) limitation.

SECTION 3. The tax shall be added by each operator to each invoice prepared by the operator for the occupancy of his hotel. Such invoice must be given directly or transmitted to the transient, a copy thereof filed by month and retained by the operator as provided in Section 7 hereof.

When a person has maintained occupancy for thirty (30) continuous days, he shall receive from the operator refund or credit for the tax previously collected from or charged to him, and the operator shall receive credit for the amount of such tax if previously paid or reported to the County.

SECTION 4.

(a) The tax hereby levied shall be remitted by all operators who lease, rent, or charge for any rooms or accommodation space in a hotel to the County Clerk not later than the twentieth (20th) day of each month next following such collection from the transient. The operator is required to collect the tax from the transient at the time of the presentation of the invoice for occupancy, whether prior to, during, or after occupancy, as may be the custom of the operator. The obligation to the county entitled to such tax shall be that of the operator.

(b) For the purpose of compensating the County Clerk for collecting the tax, the County Clerk shall be allowed five percent (5%) of the amount of tax remitted by the operators.

SECTION 5. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will be added to the rent, or that, if added, any part will be refunded.

SECTION 6. Taxes collected by an operator which are not remitted to the County Clerk on or before the due dates are delinquent. An operator shall be liable for interest on such delinquent taxes from the due date at a rate of twelve percent (12%) per annum, and in addition for a penalty on such taxes of one percent (1 %) for each month or fraction thereof that such taxes are delinquent. Such interest and penalty

shall become a part of the tax herein required to be remitted. Willful refusal of an operator to collect or remit the tax or willful refusal of a transient to pay the tax imposed may result in the imposition of a civil penalty not to exceed five hundred dollars (\$500.00) upon a finding of such willful refusal by a court of competent jurisdiction. Any civil penalty imposed shall be applicable to each individual transaction involving lodging services paid by a transient to the operator in those cases when the operator fails or refuses to pay the tax payable to the County Clerk.

SECTION 7. It is the duty of every operator liable for the collection and payment of any tax imposed by this Act to keep and preserve for a period of three (3) years all records necessary to determine the amount of such tax, which records the tax collection official shall have the right to inspect at all reasonable times.

SECTION 8. In administering and enforcing the provisions of this Act, the tax collection official shall have as additional power the powers and duties with respect to collection of taxes provided in Tennessee Code Annotated, Title 67, or otherwise provided by law.

SECTION 9. The County Clerk shall faithfully account for and make proper reports of all funds paid to and received by such Clerk for the privilege tax.

SECTION 10. The proceeds of the tax shall be paid over to the County Clerk and placed in the county general fund to be appropriated by the county commission for the public safety and tourism.

SECTION 11. The privilege tax levied by this Act shall be in addition to all other taxes levied or authorized to be levied whether in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes now levied or authorized to be levied.

SECTION 12. If any clause, sentence, paragraph, section, or any part of this Act shall be held or declared to be unconstitutional, it shall not affect the remainder of this Act notwithstanding the part held to be invalid, if any, and to that end the provisions of this Act are declared severable.

SECTION 13. This Act shall have no effect unless it is approved by a two-thirds (2/3) vote of the county legislative body of Smith County. Its approval or nonapproval shall be proclaimed by the presiding officer of the legislative body and certified by such officer to the Secretary of State.

SECTION 14. For the purpose of approving this Act as provided in Section 13, it shall take effect on becoming a law, the public welfare requiring it. For all other purposes, it shall take effect on the first day of the month following approval as provided in Section 13.

Passed: May 4, 2021.

Litigation Tax

Private Acts of 1967-68 Chapter 10

SECTION 1. That a litigation tax of five dollars (\$5.00) shall be taxed as part of the costs in all civil and criminal actions in the General Sessions Court, the Circuit Court and the Chancery Court of Smith County. As amended by: Private Acts of 1981, Chapter 125.

SECTION 2. That the said Clerks of the said Courts will collect the said litigation tax and pay same into a separate fund, which is to be designated as the "Court House and Jail Maintenance Repair Fund," to be used exclusively for the purpose of maintenance and repair of the Court House and Jail.

SECTION 3. That all expenditures made from the said Fund are to be made by the Purchasing and Finance Commission, upon the authorization of the Quarterly County Court.

SECTION 4. That this Act shall have no effect unless the same shall have been approved by a two-thirds (2/3) vote of the County Court of Smith County, Tennessee, on or before the next regular meeting of such County Court occurring more than thirty (30) days after its approval by the Chief Executive of the State. Its approval or non-approval shall be proclaimed by the presiding officer of the body having jurisdiction to approve or the reverse, and shall be certified by him to the Secretary of State.

SECTION 5. That this Act shall take effect from and after its passage, the public welfare requiring it.

Passed: March 8, 1967.

Taxation - Historical Notes

Assessor of Property

The following acts were superseded, repealed or failed to win local ratification, but they are listed here as

a reference to laws which once affected the Smith County Assessor.

1. Private Acts of 1911, Chapter 411, amended Acts of 1907, Chapter 602, a general law concerning tax assessors, by setting the salaries of the tax assessors in several counties, including Smith County. The Tax Assessor's salary was fixed at \$1,000 per annum in Smith County.
2. Private Acts of 1913, Chapter 332, amended Private Acts of 1911, Chapter 411, above, by increasing the annual salary of the Tax Assessor to \$1,500 per year.
3. Private Acts of 1921, Chapter 928, fixed the annual salary of the Tax Assessor in Smith County at \$1,500, all conflicts being repealed.
4. Private Acts of 1957, Chapter 72, amended Private Acts of 1921, Chapter 928, above, by providing that the Tax Assessor of Smith County would be reimbursed up to \$175 per month for all expenses incurred in assessing property. Upon the filing of a sworn statement by the Tax Assessor concerning those expenses, the County Judge would pay the reimbursement out of regular county funds. This act was rejected by the Quarterly Court of Smith County and did not become effective.

Taxation

The following is a listing of acts pertaining to taxation in Smith County which are no longer effective. Also referenced below are acts which repeal prior law without providing new substantive provisions.

1. Acts of 1807, Chapter 23, declared that when Smith County was reduced to its constitutional limits, persons living in land transferred from Smith County owed taxes due the County. This act made it lawful for the Sheriff to collect those taxes due at the time the partition.
2. Acts of 1807, Chapter 77, allowed the County Court of Smith County to levy a tax for the relief of William Bartlett who had contracted to build a jail in Carthage, completed the undertaking in a satisfactory manner, and thereby had been materially damaged. The County Court was to compensate him in a manner and to the extent to which they considered right and proper, payable out of any funds available.
3. Acts of 1809 (Sept. Sess.), Chapter 61, stated that John Gordon, the collector of public taxes in Smith County for the year 1803, was prevented from passing into the treasury the full amount of taxes charged to him because he was prohibited from selling the lands of nonresidents by interference of state laws. Judgment was rendered against him in the amount of \$43.21. The act authorized payment of the money to Gordon.
4. Acts of 1815, Chapter 76, authorized the County Courts of Smith and Overton Counties to lay a sufficient amount of taxes in the next succeeding two years to build a good and substantial jail and stocks at their respective courthouses. The Commissioners in charge of the work at Carthage and Monroe would proceed with the building as soon as money collected from the tax was available.
5. Private Acts of 1819, Chapter 29, allowed the County Court of Smith County to levy a tax in order to build an office to be located in Carthage for the County Register, Circuit Court, and the County Court Clerk.
6. Private Acts of 1819, Chapter 101, suspended the effective date of Private Acts of 1819, Chapter 29, above, until December 1, 1821.
7. Private Acts of 1821, Chapter 80, repealed Private Acts of 1819, Chapter 29, above.
8. Public Acts of 1870-71, Chapter 50, allowed several counties and incorporated towns in the State to levy taxes for county and city purposes under the following conditions: (1) that all taxable property be taxed according to its value upon principles established for state taxation, and (2) that the credit of no county or town would be given or be loaned to any person, company, association or corporation unless a majority of the Justices of the County Court first agreed to submit the issue to a referendum vote by the people and that the issue be approved by a threefourths majority of the voters. Several counties, including Smith County, were exempted from the requirement of a three-fourth's majority for the next succeeding ten years and the requirement of a simple majority vote was substituted for that period.
9. Private Acts of 1975, Chapter 2, established a privilege tax for using the county highways in counties with not less than 12,050 and not more than 13,000 in population, according to the 1970 Census, which figures applied to Hickman and Smith Counties. The privilege tax was \$15 for all vehicles except those expressly exempted, such as farm vehicles and machinery, and \$7.50 for motorcycles, and like vehicles. Anyone using the roads for at least thirty days each year was subject to the tax. Noncompliance was declared a misdemeanor. The County Court Clerk would collect the tax at the same time state license fees were collected and would issue a decal to be

placed on the vehicle to denote payment, for which the Clerk would be paid fifty cents per license as part of the cost. The tax was good from March 1st to the last day of February. A \$1 fee was to be charged for the replacement of lost or destroyed decals or for the transfer of decals to another vehicle. The act was rejected or disapproved by the Quarterly Courts of the counties involved and did not become effective.

10. Private Acts of 1979, Chapter 88, levied a special privilege tax of \$15 upon motor driven vehicles in Smith County. Procedures to be followed in the collection of the tax and distribution of tax proceeds were set forth. The act was subject to approval in a referendum. The act was approved by the County Legislative Body but was defeated in the referendum and did not become effective.

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