

# **COUNTY PROPERTY TAX MANUAL**

County Technical Assistance Service  
a service of the University of Tennessee

January 2005

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January 2005

Dear County Official:

The purpose of the *Property Tax Manual* is to outline the law and the collection procedures used regarding real and personal property taxes and to provide basic assistance and resource references to county officials and delinquent tax attorneys involved in the collection of property taxes.

CTAS hopes that this manual will be a useful compilation of information relative to the property tax collection process for assessors, trustees, delinquent tax attorneys, clerks of courts, and county mayors. As legislation concerning property tax collection may be passed by the General Assembly each year, the *Tennessee Code Annotated* and other relevant law should be consulted prior to taking any action affecting property tax collection. In addition, county officials should consult an attorney on taxation issues.

Sincerely,

Michael R. Garland  
Executive Director



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## CHAPTER ONE

### INTRODUCTION

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

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<sup>1</sup>T.C.A. § 67-5-2101.

<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).

<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).

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

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<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.

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>

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<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).



## CHAPTER TWO

### PROPERTY CLASSIFICATION

Property is divided into three classes for taxation purposes: (1) real property; (2) tangible personal property; and (3) intangible personal property.<sup>21</sup>

#### Real Property

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>22</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>23</sup> Real property not within any other definition and classification above is classified and assessed as farm or residential property.<sup>24</sup> "For property tax purposes, value attaches to the property itself, not to the interest of the current party in possession."<sup>25</sup> A leasehold is considered real property and is taxable as such.<sup>26</sup> The interest of a lessee is distinct from the fee, and may, under certain circumstances that will be explained in Chapter 3 herein, be taxed when the fee is exempt from taxation.<sup>27</sup>

Mobile homes used for commercial, industrial, or residential purposes are assessed as real property improvements to land.<sup>28</sup> If the mobile home is on a rented lot, the owner of the

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<sup>21</sup>TENN. CONST., art. II, § 28; T.C.A. § 67-5-503.

<sup>22</sup>T.C.A. § 67-5-801(a), (b).

<sup>23</sup>T.C.A. § 67-5-801(c)(1).

<sup>24</sup>T.C.A. § 67-5-801(c)(2).

<sup>25</sup>*Hoover v. State Bd. of Equalization*, 579 S.W.2d 192, 195 (Tenn. Ct. App. 1978).

<sup>26</sup>*United States v. Metropolitan Gov't*, 808 F.2d 1205, 1208-1209 (6th Cir. 1987); T.C.A. § 67-5-502(d).

<sup>27</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>28</sup>TENN. CONST., art. II, § 28; T.C.A. § 67-5-802.

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>29</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>30</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>31</sup> Even though the legislature has discretion in classifying property, a reasonable basis must be established which may not be arbitrary or capricious.<sup>32</sup>

Public Utility and Common Carrier Property. In a recent case, the Tennessee Court of Appeals held that pipelines shall be treated as personal property for the purposes of ad valorem taxation.<sup>33</sup> In response, the legislature amended T.C.A. § 67-5-501(9),<sup>34</sup> which now classifies certain property associated with utilities and railroads as real property for purposes of the property taxation. Examples include but are not limited to the following: surface, underground or elevated railroads, and railroad structures, substructures and superstructures, tracks and the metal thereon; telephone, broadcast, transmission and telegraph poles, supports, conduits, towers and enclosures for electrical conductors upon, above and underground and pipes and conduits used for wire, cables and lines buried underground; mains, pipes, pipelines and tanks permitted or authorized to be built, laid or placed in, upon, or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby.

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<sup>29</sup>*Belle-Aire Village, Inc. v. Chorley*, 574 S.W.2d 723, 725 (Tenn. 1978); T.C.A. § 67-5-802.

<sup>30</sup>Op. Tenn. Atty Gen. 95-071 (July 5, 1995).

<sup>31</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>32</sup>*General Am. Transp. Corp. v. State Bd. of Equalization*, 536 S.W.2d 212, 214 (Tenn. 1976).

<sup>33</sup>*ANR Pipeline Co. v. Tennessee Board of Equalization*, 2002 WL 31840689, \*4 (Tenn.Ct.App. 2002) *perm. app. denied* (Tenn. 2003).

<sup>34</sup>See 2004 Public Chapter 719.



## Tangible Personal Property

Tangible personal property is classified according to its use and assessed as a percentage of its value as follows:

- |    |                                      |            |
|----|--------------------------------------|------------|
| 1. | Public Utility                       | 55 percent |
| 2. | Industrial and Commercial            | 30 percent |
| 3. | All Other Tangible Personal Property | 5 percent  |

Tangible personal property not in use is classified according to its immediate most suitable economic use, which is determined after considering the following factors: immediate past use, if any; nature of the property; classification of the real property upon which it is located; normal use of the property; ownership; and any other factors relevant to a determination of the immediate most suitable economic use of the property.<sup>35</sup>

All property is subject to taxation.<sup>36</sup> 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.<sup>37</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>38</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>39</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>40</sup> The constitutionality of § 67-5-903(f) has been upheld.<sup>41</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

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<sup>35</sup>T.C.A. § 67-5-901(a).

<sup>36</sup>TENN. CONST., art. II, § 28.

<sup>37</sup>T.C.A. § 67-5-901(a)(3)(A).

<sup>38</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>39</sup>T.C.A. §§ 67-5-102, 67-5-103.

<sup>40</sup>*In re All Assessments*, 58 S.W.3d 95, 96 (Tenn. 2000).

<sup>41</sup>*In re All Assessments*, 67 S.W.3d 805, 816-820 (Tenn.Ct.App. 2001), *perm. appeal denied*, (Tenn. 2002).

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. The constitutionality of T.C.A. § 67-5-1509(a) has also been upheld.<sup>42</sup>

Public utility and common carrier property is centrally assessed annually by the Comptroller of the Treasury.<sup>43</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 constitutionality of § 67-5-1302(b)(1) has been upheld.<sup>44</sup> "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>45</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>46</sup>

## Pollution Control

The value of qualified pollution control facilities, for the purpose of ad valorem property taxation, is deemed to be its salvage value (the estimated fair market value), if any, which could be realized upon the voluntary sale or other disposition of the property when it can no longer be used for the purpose for which it was designed. Salvage value should not exceed 0.5 percent of the acquisition value of such facilities.<sup>47</sup>

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<sup>42</sup>*Williamson County v. Tennessee State Board of Equalization*, 86 S.W.3d 216 (Tenn.Ct.App. 2002).

<sup>43</sup>T.C.A. § 67-5-1301.

<sup>44</sup>*In re All Assessments*, 67 S.W.3d 805, 820-821 (Tenn.Ct.App. 2001), *perm. appeal denied*, (Tenn. 2002).

<sup>45</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>46</sup>*ANR Pipeline Co. v. Tennessee Board of Equalization*, 2002 WL 31840689, \*1 (Tenn.Ct.App. 2002) *perm. app. denied* (Tenn. 2003).

<sup>47</sup>T.C.A. § 67-5-604. *But see* Op. Tenn. Atty. Gen. 86-142 (August 12, 1986).

## CHAPTER THREE

### ASSESSMENT

#### County Assessor

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>48</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>49</sup> The assessor also appraises and assesses taxable tangible personal property.<sup>50</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>51</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>52</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 tax assessor 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 tax 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>53</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

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<sup>48</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>49</sup>T.C.A. §§ 67-5-502(d), 67-5-801 *et seq.*, 67-5-1001 *et seq.*, 67-5-1301.

<sup>50</sup>T.C.A. § 67-5-901 *et seq.*

<sup>51</sup>T.C.A. § 67-5-504.

<sup>52</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>53</sup>T.C.A. § 67-5-507.

is consolidated under the county board of equalization of the county in which the property is located.<sup>54</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>55</sup> The obligation to pay taxes is not avoided by the failure of an assessor to make an assessment.<sup>56</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>57</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>58</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.*

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<sup>54</sup>T.C.A. § 67-1-513.

<sup>55</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>56</sup>State v. Nashville C. & St. L. Ry., 137 S.W.2d 297, 299 (Tenn. 1940).

<sup>57</sup>Cook v. McCullough, 735 S.W.2d 464 (Tenn.Ct.App. 1987); T.C.A. § 67-5-2502(b).

<sup>58</sup>T.C.A. § 67-5-303.

The oath shall be taken and subscribed to before the county mayor, or in the county mayor's absence, before a notary public.<sup>59</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>60</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>61</sup>

### **Records and Notice of Assessment**

Prior to May 20th each year, the assessor is required to note upon his/her records the current classification and valuation of all taxable property in the county.<sup>62</sup> The assessor must hold these records open for public inspection at his/her office during normal business hours. In addition, the assessor is required to publish at least once in a newspaper of general circulation within the assessor's jurisdiction a notice of when and where these records may be inspected. The required notice must be published not later than 10 calendar days before the local board of equalization begins its annual session.<sup>63</sup> The notice must be set forth in the publication within distinct and prominent borders, and must have a width of not less than two regular columns of such newspaper and a depth of at least four inches. The notice is required to state the day the county board of equalization will convene and the last day appeals will be accepted by the county board and must contain a warning that failure to appeal the assessment to the county board of equalization may result in the assessment becoming final without further right of appeal.<sup>64</sup> In addition, at least 10 calendar days before the local board of equalization begins its annual session, the assessor or the assessor's deputy must notify each taxpayer of any **change** in the classification or assessed valuation of the taxpayer's property.

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<sup>59</sup>T.C.A. § 67-5-304.

<sup>60</sup>T.C.A. § 67-5-304(c)(1) and (2).

<sup>61</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).

<sup>62</sup>T.C.A. § 67-5-508(a)(1).

<sup>63</sup>T.C.A. § 67-5-508(a)(2).

<sup>64</sup>T.C.A. §§ 67-5-508(a)(2), 67-5-1401.

The notification must be sent by United States mail to the last known address of the taxpayer. The notification must show the previous year's assessment and classification and the current year's assessment and classification. The notification is effective when mailed.<sup>65</sup> The assessor is required to retain a notation of the date of any notification of a change in classification or assessed valuation, or a dated copy of such notification, in the records of the assessor. These records must be preserved by the assessor for not less than two years.<sup>66</sup>

An alternative notice is permissible for the year in which a reappraisal program is completed and the values to be used as the basis for making assessments are approved by the State Division of Property Assessments. In this instance any notice showing the appraised value of property sent to a property owner by a company employed to conduct the reappraisal program satisfies the notice requirement discussed above, provided that the assessor of property uses the appraised value as specified on the notice from the company and does not change the classification of the property from its former classification.<sup>67</sup>

Upon a consolidation of the municipal and other assessment offices within any county with the office of the county assessor of property (as provided in T.C.A. § 67-1-513), the county assessor of property is not required to notify each taxpayer within the municipality unless a change has been made by the county assessor of property from the former classification and assessed valuation which existed on the county tax roll for the preceding year. However, the assessor is required hold his/her records open for public inspection at his/her office during normal business hours and must cause to be published at least once, in a newspaper of general circulation within the assessor's jurisdiction, a notice where and when such records may be inspected. The required notice must be published not later than 10 calendar days before the local board of equalization begins its annual session.<sup>68</sup>

If an assessor fails to complete and note upon the assessor's records the assessment of a taxpayer's property prior to the 20th day of May, or fails to notify a taxpayer, or the taxpayer's agent, of any change in the classification or assessed valuation of the taxpayer's property, the taxpayer has no legal basis for complaint, provided that the assessment against the property was completed, and a notice of any new or changed classification or assessed valuation was sent by United States mail to the last known address of the taxpayer at least 10 calendar days before the local board of equalization ends its annual session.<sup>69</sup>

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<sup>65</sup>T.C.A. § 67-5-508(a)(3).

<sup>66</sup>T.C.A. § 67-5-508(a)(4).

<sup>67</sup>T.C.A. § 67-5-508(a)(5).

<sup>68</sup>T.C.A. § 67-5-508(a)(6).

<sup>69</sup>T.C.A. § 67-5-508(b)(1).

In the event an assessor fails to complete any assessment, or notify a taxpayer of a change in the classification or assessed valuation of his or her property, at least 10 calendar days before the local board of equalization ends its annual session, this failure does not affect in any way the validity of the assessment, classification, or assessed valuation; however, an aggrieved property owner has the right to appeal directly to the State Board of Equalization at its next regular session, and no proceedings may be undertaken to collect any taxes based upon the assessment, and no penalty added, until 30 calendar days after the state board has rendered a final decision on the appeal or complaint. Upon written request of any party, or upon its own motion, the State Board of Equalization may remand any complaint or appeal to the local board of equalization.<sup>70</sup>

Any other irregularity or omission in the assessment procedure does not affect the validity of the assessment unless the defect results in a denial of minimum constitutional guarantees.<sup>71</sup>

### **Assessing Improvements**

In ascertaining the value of properties, assessors take into consideration the status of improvements to property. If, after January 1 and before September 1 of any year, a building or improvement is moved, demolished, or destroyed, or substantially damaged by fire, flood, wind, or any other disaster, and is not restored or replaced by another improvement before September 1 of that year, the assessor makes the assessment or corrects the assessment of such property on the basis of its value after the move, destruction, or substantial damage, notwithstanding the status of the property as of the assessment date of January 1. For the year in which the improvement is moved, demolished, destroyed, or damaged, the assessment of the improvement is prorated for the portion of the year prior to the date of the move, destruction or damage.<sup>72</sup> This provision is not applicable to the movement of a mobile home or other "movable structure" as defined in T.C.A. § 67-5-501.<sup>73</sup> An improvement is deemed substantially damaged if it has been rendered unfit for use or occupancy, or if the damage has reduced the value of the improvement by more than 50 percent.<sup>74</sup>

Improvements to the property are similarly assessed to reflect their change in value during the year. If, after January 1 and before September 1, an improvement or new building is completed and ready for use or occupancy, or the property has been sold or leased, the assessor of property must make or correct the assessment of that property, based on the value of the improvement at the time of its completion, notwithstanding the status of the property as of the assessment date of January 1. For the year in which the improvement or building is

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<sup>70</sup>T.C.A. § 67-5-508(b)(2).

<sup>71</sup>*State v. Delinquent Taxpayers*, 785 S.W.2d 819 (Tenn.Ct.App. 1989); T.C.A. § 67-5-509(b).

<sup>72</sup>T.C.A. § 67-5-603(a)(1).

<sup>73</sup>T.C.A. § 67-5-603(a)(1).

<sup>74</sup>T.C.A. § 67-5-603(a)(3).

completed, the assessment (or increase in assessment) of the improvement is prorated for the portion of the year following the date of its completion.<sup>75</sup> An improvement or new building is deemed completed and ready for use or occupancy when the structural portion of the building or improvement is substantially completed, even though the interior finish or certain appointments may be left to the choice of a prospective buyer or tenant after consummation of a sale or lease.<sup>76</sup> Any improvement or new building is deemed completed and to have a value for assessment purposes when the real property upon which such improvement or new building is located is sold to a bona fide purchaser, or when the new building or improvement has been occupied, used, or is suitable for occupancy or use, whichever occurs first. No improvement or new building is considered incomplete for valuation or assessment purposes for more than one calendar year immediately following the date on which construction was commenced.<sup>77</sup> In the event an improvement or new building is considered incomplete for assessment purposes on January 1 of any year, the owner of the improvement or new building shall, not later than February 1 of that year, submit to the assessor, in writing, the total cost of all materials used in the incomplete structure as of January 1, and the assessor assesses the incomplete structure as real property, based on the fair market value of the materials used.<sup>78</sup>

Issuance of a building permit can alert the assessor to the fact that improvements to the property are being made. In counties where building permits are not issued, the state director of fire prevention is required to furnish the assessor of property with the names of property owners and the location of the property for which electrical inspections have been made. Similarly, in counties which do not require building permits, assessors are to receive copies of permits for subsurface sewage disposal systems.<sup>79</sup>

If the status of an improvement to a property has changed by September 1 of any year, an adjustment to the assessment of the property is mandatory.<sup>80</sup> The adjustment can be made until the trustee relinquishes control of the tax roll after making the annual settlement of the trustee's accounts on the first Monday of September each year. For property on which delinquent taxes are owing, adjustment can be made until suit has been filed to collect the delinquent taxes.<sup>81</sup> Provisions attempting to postpone inclusion of increased value in assessments by providing that no property shall be reassessed to include new improvements until such improvements have been completed or until 18 months have passed following

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<sup>75</sup>T.C.A. § 67-5-603(b)(1).

<sup>76</sup>T.C.A. § 67-5-603(b)(3).

<sup>77</sup>T.C.A. § 67-5-603(b)(4).

<sup>78</sup>T.C.A. § 67-5-603(b)(5).

<sup>79</sup>T.C.A. § 67-5-603(c).

<sup>80</sup>T.C.A. § 67-5-603(a)(1) and (b)(2).

<sup>81</sup>T.C.A. § 67-5-1902; Op. Tenn. Atty Gen. 88-46 (February 1988).



commencement of construction violated the constitutional requirement that all property be taxed according to its value and that taxes be equal and uniform.<sup>82</sup>

### **Assessing Mobile Homes**

Mobile homes used for commercial, industrial or residential purposes are assessed as real property improvements to land.<sup>83</sup> Any movable structure and appurtenance which is attached to real property by virtue of being on a foundation, or being underpinned, or connected with any one utility service, such as electricity, natural gas, water, or telephone, is assessed for tax purposes as real property as an improvement to the land where located.<sup>84</sup> Special provisions apply to mobile homes located in mobile home parks. In cases where the mobile home is attached to land occupied and used as trailer or mobile home parks where the owner of the land is renting spaces or lots for maintaining the mobile home, the owner of the mobile home is responsible for the additional tax imposed by reason of the improvement, and the owner of the land is granted a lien against the mobile home to secure the payment of municipal and county taxes.<sup>85</sup> Before March 1 of each year, the assessor of property is required to furnish each owner of land used as a mobile home park with a schedule on which the owner is required to list all mobile homes in the park as of the assessment date.<sup>86</sup> It is the duty of each owner of land upon which a mobile home is located to list each mobile home, its make, year, serial number, size, original cost, and such other pertinent information as may be required by the division of property assessments, sign the schedule and return it to the assessor of property on or before April 1 of each year.<sup>87</sup> The assessor of property is required to furnish to each owner of land used as a mobile home park a schedule of the assessed value of each moveable structure on or before July 1 of each year.<sup>88</sup> If taxes on a mobile home become delinquent, the land can be sold to satisfy the delinquency.<sup>89</sup>

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<sup>82</sup>*Metropolitan Government v. Hillsboro Land Co.*, 436 S.W.2d 850 (Tenn. 1968).

<sup>83</sup>TENN. CONST., art. II, § 28; T.C.A. § 67-5-802.

<sup>84</sup>T.C.A. § 67-5-802(a)(1). See also T.C.A. 67-5-502(a)(1).

<sup>85</sup>T.C.A. § 67-5-802(a)(1). See also *Belle-Aire Village, Inc. v. Chorley*, 574 S.W.2d 723, 725 (Tenn. 1978).

<sup>86</sup>T.C.A. § 67-5-802(b)(1).

<sup>87</sup>T.C.A. § 67-5-802(b)(2).

<sup>88</sup>T.C.A. § 67-5-802(b)(2).

<sup>89</sup>T.C.A. § 67-5-802. See Op. Tenn. Atty. Gen 95-071 (July 5, 1995) for a discussion regarding the collection of delinquent property taxes due against mobile homes.

## Assessment of Leasehold

A leasehold is considered real property and is taxable as such<sup>90</sup> under certain circumstances. The interest of a lessee is distinct from the fee, and may be taxed under certain circumstances when the fee is exempt from taxation.<sup>91</sup> Leasehold interests assessable under T.C.A. § 67-5-502 are valued by discounting to present value the excess, if any, of fair market rent over actual and imputed rent for the leased premises, for the projected term of the lease including renewal options. By virtue of the speculative nature of valuation of options to purchase, any option which the lessee may be given to purchase the leased premises shall be deemed to have no value. The State Board of Equalization is authorized to promulgate rules governing the procedure for these valuations.<sup>92</sup>

Note: Although a county cannot tax an industrial development property owned by a city, county, or industrial development corporation organized under T.C.A. § 7-53-101 *et seq.*, if the private company lessee pays less in rent and in lieu of tax payments than the fair market value of the rent, the company has a leasehold interest that is taxable based upon the capitalized value of the difference between actual rent (and in lieu of tax payments) and fair market rent.<sup>93</sup>

## Mineral Interests

The owner of a mineral interest is required to register that interest with the assessor of property in the county in which the mineral interest is located by providing a deed reference number for the mineral interest and specifying where it lies, citing tax maps and parcel number of the surface owners. The State Board of Equalization provides assessors with forms for mineral interest owners to use. All property registered and identified sufficiently to the assessor on July 1, 1987, and on which taxes have been paid through that time, does not require a subsequent registration.<sup>94</sup>

Back Assessment or Reassessment of Mineral Interests. Mineral interest owners are subject to back assessment if the property has previously escaped taxation. If the mineral interest is dormant, and the collector of taxes has not previously provided notice to the owner of the assessment of taxes, there shall be no back assessment of taxes, except that the owner of the mineral interest shall be liable for taxes accruing after July 1, 1987.

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<sup>90</sup>*United States v. Metropolitan Gov't*, 808 F.2d 1205, 1208-1209 (6th Cir. 1987); T.C.A. § 67-5-502(d).

<sup>91</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).

<sup>92</sup>T.C.A. § 67-5-605.

<sup>93</sup>See Op. Tenn. Atty. Gen. 88-154 (August 29, 1988), Op. Tenn. Atty. Gen. 79-375 (August 20, 1979), Op. Tenn. Atty. Gen. 79-61 (February 14, 1979) and Op. Tenn. Atty. Gen. 78-251 (June 19, 1978) explaining the taxation of this type of interest in real property.

<sup>94</sup>T.C.A. § 67-5-804(b).

Failure to register a mineral interest with the property assessor by July 1, 1990, subjects the property to back assessment or reassessment and to a penalty of 25 percent of the assessment or back assessment of taxes. Failure to identify the location of a mineral interest pursuant to T.C.A. § 67-5-804 subjects the mineral interest owner who is currently paying taxes to penalty and interest. The penalty is 10 percent of the current assessment of the mineral interest. In addition, failure to identify the location of a mineral interest will render the owner unable to claim payment of taxes as use of a mineral interest against a surface owner's claim of abandonment under T.C.A. § 66-5-108.<sup>95</sup>

## **Greenbelt**

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>96</sup>

No person may place more than 1,500 acres of land within any one taxing jurisdiction under the provisions of the Act.<sup>97</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.<sup>98</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 or any tract of 15 or more acres having tree growth in such quantity and quality and so managed as to constitute a forest.<sup>99</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>100</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>101</sup> The formula for determining the special value is set forth in T.C.A. § 67-5-1008.

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<sup>95</sup>T.C.A. § 67-5-809.

<sup>96</sup>T.C.A. § 67-5-1001 *et seq.*

<sup>97</sup>T.C.A. §§ 67-5-1003(3), 67-5-1008(g). *See also* Op. Tenn. Atty. Gen. 88-81 (April 7, 1988).

<sup>98</sup>T.C.A. § 67-5-1004(1)(B).

<sup>99</sup>T.C.A. § 67-5-1004(4).

<sup>100</sup>T.C.A. § 67-5-1004(8).

<sup>101</sup>*Marion County v. State Bd. of Equalization*, 710 S.W.2d 521 (Tenn.Ct.App. 1986).

Classification of Agricultural Land. Any owner of land may apply for its classification as agricultural land by filing a written application with the assessor of property by March 1 of the first year for which the classification is sought. Thereafter, reapplication is not required so long as the ownership as of the assessment date remains unchanged.<sup>102</sup>

The assessor must determine whether the land is agricultural land, and if such a determination is made, the assessor will classify and include it as such on the county tax roll. In determining whether the land is agricultural land, the tax assessor must take into account, among other things, the acreage of the land, the productivity of the land, and the portion thereof in actual use for farming or held for farming or agricultural operation. The assessor may presume that a tract of land is used as agricultural land if the land produces gross agricultural income averaging at least \$1,500 per year over any three-year period in which the land is so classified. The presumption may be rebutted, notwithstanding the level of agricultural income by evidence indicating whether the property is used as "agricultural land" as defined in the statute.<sup>103</sup> The assessor must verify actual agricultural uses claimed for the property during the on-site review provided under T.C.A. § 67-5-1601. The assessor may at any time require other proof of use or ownership necessary to verify compliance with the statute.<sup>104</sup>

Any person aggrieved by the denial of any application for the classification of land as agricultural land has the same rights and remedies for appeal and relief as are provided in the general statutes for taxpayers claiming to be aggrieved by the actions of assessors of property or boards of equalization.<sup>105</sup>

Classification of Forest Land. Any owner of land may apply for its classification as forest land by filing a written application with the assessor of property by March 1 of the first year for which the classification is sought. Thereafter, reapplication is not required so long as the ownership as of the assessment date remains unchanged.<sup>106</sup>

The assessor shall determine whether the land is forest land, and if such a determination is made, the assessor shall classify and include it as such on the county tax roll.<sup>107</sup> In determining whether the land is forest land, the assessor must take into account, among other things, the acreage of the land, the amount and type of timber on the land, the actual and potential growth rate of the timber, and the management practices being applied to the land and to the

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<sup>102</sup>T.C.A. § 67-5-1005(a)(1).

<sup>103</sup>T.C.A. § 67-5-1005(a)(2) and (3);

<sup>104</sup>T.C.A. § 67-5-1005(c).

<sup>105</sup>T.C.A. § 67-5-1005(d).

<sup>106</sup>T.C.A. § 67-5-1006(a)(1).

<sup>107</sup>T.C.A. § 67-5-1006(a)(2).

timber on it. The assessor may request the advice of the state forester in determining whether the land should be classified as forest land.<sup>108</sup>

Any person aggrieved by the denial of any application to the assessor of property for designation of land as forest land may appeal to the state forester. The state forester will examine the land, and may have access to the original application filed with the assessor, and must determine if the land is forest land. If the state forester determines that it is, the state forester must notify the owner of the land and the assessor, who must classify the land as forest land and include it as such on the tax rolls of the county.<sup>109</sup>

The landowner, or the assessor, may appeal the decision of the state forester to the chancery court for the county. Such appeal must be taken within 90 days after the issuance of the determination by the state forester. The landowner and the assessor have the same rights and remedies for appeal and relief as are provided in the general statutes with respect to appeals from boards of tax equalization.<sup>110</sup>

Classification of Open Space. The planning commission, in preparing a land use or comprehensive plan for the municipality or county, may designate in the plan areas which it recommends for preservation as areas of open space land, other than lands currently in agricultural and forestry uses. Land included in any area so designated in the plan, as finally adopted, may be classified as open space land for purposes of property taxation provided there has been no change in the use of the area which has adversely affected its essential character as an area of open space land between the date of the adoption of the plan and the date of classification.<sup>111</sup>

Any owner of land included in any area designated as open space land upon any plan as finally adopted, pursuant to T.C.A. § 67-5-1007, may apply for its classification as open space land by filing a written application with the assessor of property by March 1 of the first year for which the classification is sought. Thereafter, reapplication is not required so long as the ownership as of the assessment date remains unchanged. The assessor must determine whether there has been any change in the area designated as an area of open space land in the county (or municipality) plan and, if the assessor determines that there has been no change, the assessor will classify the land as open space land and include it as such upon the tax rolls of the county.<sup>112</sup>

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<sup>108</sup>T.C.A. § 67-5-1006(b)(1) and (2).

<sup>109</sup>T.C.A. § 67-5-1006(d)(1) - (3).

<sup>110</sup>T.C.A. § 67-5-1006(e)(1) - (3).

<sup>111</sup>T.C.A. § 67-5-1007(a)(1) and (2).

<sup>112</sup>T.C.A. § 67-5-1007(b)(1) and (2).

Any person aggrieved by the denial by an assessor of any application for the classification of land as open space land shall have the same rights and remedies for appeal and relief as are provided in the general statutes for taxpayers claiming to be aggrieved by the actions of assessors or boards of equalization.<sup>113</sup>

Present Use Valuation. When a parcel of land has been classified by the assessor of property as agricultural, forest, or open space land under the provisions of T.C.A. § 67-5-1001 *et seq.*, it shall be subsequently considered that its current use for agricultural or timber purposes or as open space is its immediate most suitable economic use, and assessment shall be based upon its value in that current use, rather than on value for some other use as may be determined in accordance with T.C.A. § 67-5-601 *et seq.* It is the responsibility of the applicant to promptly notify the assessor of any change in the use or ownership of the property which might affect its eligibility under the Greenbelt Law.<sup>114</sup>

After a parcel of land has been classified by the assessor of property as agricultural, forest, or open space land under the provisions of T.C.A. § 67-5-1001 *et seq.*, the assessor shall record it on a separate list for such classified property, and the assessor shall record with the register of deeds the application for such classification of the property. Any fees which may be required are paid by the property owner.<sup>115</sup>

The assessor must appraise the land and compute the taxes each year based upon both the 25 percent of appraised value applicable to property in the farm classification and present use value; and farm classification and value as determined pursuant to T.C.A. § 67-5-601 *et seq.*, but taxes shall be assessed and paid only on the basis of farm classification and present use value under the provisions of T.C.A. § 67-5-1001 *et seq.* The taxes computed pursuant to T.C.A. § 67-5-601 *et seq.* shall be used to compute the rollback taxes as defined in T.C.A. § 67-5-1004 and as provided for in T.C.A. § 67-5-1008(d).<sup>116</sup>

Rollback Taxes. 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; or (3) the land is covered by a duly recorded subdivision plat, unless the owner of the property proves

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<sup>113</sup>T.C.A. § 67-5-1007(c).

<sup>114</sup>T.C.A. § 67-5-1008(a).

<sup>115</sup>T.C.A. § 67-5-1008(b)(1).

<sup>116</sup>T.C.A. § 67-5-1008(b)(2) and (3).

to the assessor that the owner meets the agricultural income requirements set forth in T.C.A. § 67-5-1005(a)(3).<sup>117</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>118</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). When the assessor determines that there is liability for rollback taxes, the assessor gives written notice to the county trustee identifying the basis of the rollback taxes and the person the assessor finds to be responsible for payment. The assessor must also provide a copy of the notice to the responsible person. Rollback taxes are payable from the date written notice is provided by the assessor, but are not delinquent until March 1 of the following year. Rollback taxes are a first lien on the disqualified property in the same manner as other property taxes, and are also a personal responsibility of the current owner or seller of the land. Liability for rollback taxes 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>119</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>120</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.<sup>121</sup>

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<sup>117</sup>T.C.A. § 67-5-1008(d)(1).

<sup>118</sup>T.C.A. § 67-5-1008(d)(4)(A) and (B).

<sup>119</sup>T.C.A. § 67-5-1008(d)(3). See also Op. Tenn. Atty. Gen. 79-517 (December 7, 1979).

<sup>120</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>121</sup>T.C.A. § 67-5-1008(e)(1). See also Op. Tenn. Atty. Gen. 85-035 (February 13, 1985).

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>122</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>123</sup>

### **Present Use Valuation for Certain Residential Property**

The concept of taxation based on present use valuation has been extended to certain residential property: property which is used solely for residential purposes, which is occupied by the owner for a period of at least 25 years, and which is zoned for commercial use shall be assessed based on its value for residential purposes. The owner must occupy the residence at least nine months out of the year. This protection also applies to a lineal descent of the original owner who resides on the property.<sup>124</sup>

An owner of a residential house may apply to the assessor of property of the county in which the property is located for its classification under T.C.A. § 67-5-601(c), as described above. Property which has been determined by the assessor of property to qualify under subsection (c) will be valued for ad valorem tax purposes at its market value for residential purposes. The assessment on the property shall include the entire year in which the land is classified under subsection (c). Any person who is denied such classification has the same rights and remedies for appeal and relief as are provided taxpayers for any action of assessors of property.<sup>125</sup>

When the use or ownership of the property changes so that it no longer qualifies under T.C.A. § 67-5-601(c), the property owner has the duty of informing the assessor of property. Upon discovering that a property no longer qualifies for classification under subsection (c), the assessor must reclassify the property and value it according to its current market value for subsequent tax years. In the event a change in the use or ownership does not timely come to the attention of the assessor, and upon the assessor discovering that the property no longer

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<sup>122</sup>T.C.A. § 67-5-1008(e)(2).

<sup>123</sup>T.C.A. § 67-5-1010.

<sup>124</sup>T.C.A. § 67-5-601(c)(1) - (3).

<sup>125</sup>T.C.A. § 67-5-601(c)(4).



qualifies, reclassification will affect each year that the property has failed to qualify, and the taxpayer will be liable for the difference in taxes, including penalty and interest.<sup>126</sup>

## Tangible Personal Property

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>127</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>128</sup> 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>129</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>130</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>131</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>132</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>133</sup> Since 1997, the Board of Equalization has ordered a 15 percent reduction in the assessed value of

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<sup>126</sup>T.C.A. § 67-5-601(c)(5).

<sup>127</sup>T.C.A. § 67-5-903(a).

<sup>128</sup>T.C.A. § 67-5-903(f). See, Appendix.

<sup>129</sup>T.C.A. § 67-5-902.

<sup>130</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>131</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>132</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>133</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.").

centrally assessed tangible personal property in order to bring it to the same level of assessment as locally assessed tangible personal property.<sup>134</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 prior to 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>135</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), commits a Class A misdemeanor, punishable by a fine of not less than \$50.00 nor more than \$500. In addition to this criminal penalty, a taxpayer not filing a required schedule is subject to a "forced assessment." The assessor must give the taxpayer notice of a "forced 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>136</sup> The remedy of a taxpayer against whom a "forced assessment" is made as provided in T.C.A. § 67-5-903(c) is the same as provided in T.C.A. § 67-5-1407, but is conditioned upon the taxpayer filing with the board of equalization a complete listing or schedule of all the tangible personal property owned or used by the taxpayer in the operation of the taxpayer's business on the same form as required to be filed with the assessor of property.<sup>137</sup>

A taxpayer may amend a personal property schedule previously filed with the assessor at any time until September 1 following the tax year. If the assessor agrees with the amended schedule, the assessor must revise the assessment and certify the revised assessment to the trustee. If, on the other hand, the assessor believes the assessment should be otherwise than claimed in the amended schedule, the assessor shall 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 shall not be deemed delinquent until 60 days after the date

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<sup>134</sup>*ANR Pipeline Co. v. Tennessee Board of Equalization*, 2002 WL 31840689, \*1 (Tenn.Ct.App. 2002) *perm. app. denied* (Tenn. 2003).

<sup>135</sup>T.C.A. § 67-5-903(b).

<sup>136</sup>T.C.A. § 67-5-903(c).

<sup>137</sup>T.C.A. § 67-5-903(d).

notice of the amended assessment is sent to the taxpayer. Amendment of a personal property schedule is not permitted once suit has been filed to collect delinquent taxes related to the original assessment.<sup>138</sup>

Leased Personal Property. 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>139</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>140</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>141</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>142</sup>

Pilot Program for Assessing Leased Tangible Personal Property. Notwithstanding contrary provisions of law, the Comptroller of the Treasury may establish a pilot program for assessing leased tangible personal property to the owner/lessor rather than the lessee. Participation in the program is voluntary, at the election of owner/lessors who are selected by the comptroller to participate based on criteria that optimize savings in the cost of assessment compliance and administration. The comptroller may impose a fee to defray the cost of administration. Participants will be permitted to report leased property centrally in lieu of the schedules otherwise required under T.C.A. § 67-5-903 or T.C.A. § 67-5-904, and the comptroller will be responsible for distributing centrally reported assessments based on situs. Participants may be permitted to claim the business tax credit provided in T.C.A. § 67-4-713 for property taxes paid pursuant to a central assessment, and the credit may be taken at the participant's option either on the return due in the jurisdiction of situs or the jurisdiction from which the lease originated.<sup>143</sup>

## **Correction of Erroneous Assessments**

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

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<sup>138</sup>T.C.A. § 67-5-903(e).

<sup>139</sup>T.C.A. § 67-5-502(c).

<sup>140</sup>T.C.A. § 67-5-904(a)(1).

<sup>141</sup>T.C.A. § 67-5-904(a)(2).

<sup>142</sup>T.C.A. § 67-5-904(b).

<sup>143</sup>T.C.A. § 67-5-502(e). See 2004 Public Chapter 667.

tax rolls held by the trustee or city tax collector.<sup>144</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>145</sup> The State Board of Equalization may request a copy of the assessor's certification.<sup>146</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>147</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>148</sup> For example, correction of an erroneous assessment for the 2003 tax year would have to be initiated before March 1 of 2005. 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>149</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>150</sup> alternatively, the taxpayer may go through the regular process by appealing to the county board of equalization.<sup>151</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>152</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

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<sup>144</sup>T.C.A. § 67-5-509(c)(1).

<sup>145</sup>T.C.A. § 67-5-509(c)(2).

<sup>146</sup>T.C.A. § 67-5-509(c)(3).

<sup>147</sup>T.C.A. § 67-5-509(a). Refer to Chapter Seven, Refunds of Tax Payments.

<sup>148</sup>T.C.A. § 67-5-509(d).

<sup>149</sup>T.C.A. § 67-5-509(d).

<sup>150</sup>T.C.A. § 67-5-509(e).

<sup>151</sup>Op. Tenn. Atty. Gen. 96-077 (April 24, 1996).

<sup>152</sup>*State v. Delinquent Taxpayers*, 785 S.W.2d 819 (Tenn.Ct.App. 1989); T.C.A. § 67-5-509(b).

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>153</sup>

### **Back Assessment or Reassessment**

"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>154</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>155</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>156</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>157</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>158</sup>

A back assessment or reassessment must be initiated prior to September 1 of the year following the tax year for which the original assessment was made.<sup>159</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

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<sup>153</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).

<sup>154</sup>T.C.A. § 67-1-1001(a)(1).

<sup>155</sup>T.C.A. § 67-1-1001(a)(2).

<sup>156</sup>*Garner v. Rhea Realty Corp.*, 494 S.W.2d 783, 787 (Tenn.Ct.App. 1971).

<sup>157</sup>*Eastland v. Sneed*, 185 S.W. 717, 718 (Tenn. 1916).

<sup>158</sup>Op. Tenn. Atty. Gen. 87-32 (Mar. 6, 1987).

<sup>159</sup>T.C.A. § 67-1-1005(a).

prior to three years from September 1 of the tax year for which the original assessment was made.<sup>160</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>161</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>162</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>163</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

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<sup>160</sup>T.C.A. § 67-1-1005(a).

<sup>161</sup>T.C.A. § 67-1-1005(a). For prior law, see Op. Tenn. Atty. Gen. 86-136 (August 8, 1986).

<sup>162</sup>T.C.A. § 67-1-1005(b).

<sup>163</sup>T.C.A. § 67-1-1005(c).

property.<sup>164</sup> Witnesses, when properly summoned, are subject to existing laws for non-attendance or failure to give evidence which is in their knowledge.<sup>165</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>166</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>167</sup>

### **State Division of Property Assessments**

The State Division of Property Assessments has the duty to develop methods and procedures to assist local assessors and boards of equalization in administering the annual assessment process and in maintaining assessments through a process of updating valuations, property ownership records, and other information and records.<sup>168</sup> The Division of Property Assessments has developed manuals, rules, and regulations which relate to the duties of assessors of property and to reappraisal programs.<sup>169</sup> These manuals provide for consideration of the following factors in determining property values:

- (1) Location;
- (2) Current use;
- (3) Whether income bearing or non-income bearing;
- (4) Zoning restrictions on use;
- (5) Legal restrictions on use;
- (6) Availability of water, electricity, gas, sewers, street lighting, and other municipal services;
- (7) Inundated wetlands;

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<sup>164</sup>T.C.A. §§ 67-1-1006(a), 67-5-1404.

<sup>165</sup>T.C.A. §§ 67-1-1006(b), 67-5-1404.

<sup>166</sup>T.C.A. § 67-1-1008.

<sup>167</sup>T.C.A. § 67-1-1004.

<sup>168</sup>T.C.A. § 67-1-205(a).

<sup>169</sup>T.C.A. §§ 67-1-205(a); 67-5-505; 67-5-602.

- (8) Natural productivity of the soil, except that the value of growing crops shall not be added to the value of the land ("crops" include trees); and
- (9) All other factors and evidences of values generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment.

For determining the value of industrial, commercial, farm machinery and other personal property, these manuals provide for consideration of the following factors:

- (1) Current use;
- (2) Depreciated value;
- (3) Actual value after allowance for obsolescence; and
- (4) All other factors and evidences of values generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment.

For determining the value of forestland, the State Division of Property Assessments consults with the U.S. Forest Service and the state forester to establish guidelines to be used in the manual.<sup>170</sup>

## **Reappraisal**

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 state reappraisal grants, planning, public notice and hearings, and noncompliance sanctions.<sup>171</sup>

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<sup>170</sup>T.C.A. § 67-5-602.

<sup>171</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.



No proceeding will be undertaken to collect any taxes based on any assessment on property which has undergone a reappraisal and the state has publicly announced or agreed that it will review and/or reappraise the value of the properties. The addition of interest is subject to the provisions of T.C.A. § 67-5-1608.<sup>172</sup>

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<sup>172</sup>T.C.A. § 67-5-1512(b)(3).



## CHAPTER FOUR

### APPEALING AN ASSESSMENT

#### County Board of Equalization

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>173</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>174</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>175</sup>

Oath of Office. Before entering the office, each member of the county board of equalization must take and subscribe to the following oath before the county mayor:

State of Tennessee  
County of \_\_\_\_\_

I, \_\_\_\_\_, member of the board of equalization of such county, do hereby solemnly swear (or affirm) that I will carefully examine, compare and equalize the assessments of such county in accordance with the Constitution and the laws of the state of Tennessee; and that to the best of my knowledge and ability I will faithfully, honestly and impartially perform all duties imposed upon me as a member of the board by the laws of the state of Tennessee.

Sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_.

This oath must be filed with the county clerk who, upon request, shall make a certified copy of the oath and forward it to the State Board of Equalization.<sup>176</sup>

Officers and Compensation. Each county board of equalization elects one member to serve as chairperson and one member to serve as secretary. A majority of the county board constitutes a quorum for the transaction of business. The board must keep a daily record of its transactions, and sign the record. Board members are paid by the by the county for their

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<sup>173</sup>T.C.A. § 67-1-401(a).

<sup>174</sup>T.C.A. § 67-1-401(b).

<sup>175</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>176</sup>T.C.A. § 67-1-402.

services. The compensation of the chair and other members is established by a resolution of the county legislative body.<sup>177</sup>

Sessions. The county board of equalization meets on June 1 of each year and sits in regular session as necessity may require until the equalization has been completed (or for the maximum number of days as set out below). Note: In any county having a population of not less than 26,000 nor more than 26,100 according to the 1970 federal census or any subsequent federal census, the county legislative body may by resolution or ordinance set an earlier date for the board's initial meeting.<sup>178</sup> Any county board of equalization, having jurisdiction over a municipality with a beginning tax due date different from that of the county, shall meet as required by the county legislative body, but at least one month prior to the applicable beginning tax due date.<sup>179</sup>

The county board shall not sit longer than six days in counties having a population of 10,000 or under; 10 days in counties having a population of over 10,000 and under 20,000; and 15 days in counties having a population of over 20,000 and under 35,000. In counties having a population of over 35,000, the county legislative body may fix the number of meeting days not to exceed 30 days.<sup>180</sup> When the county legislative body cannot act, the county mayor may extend the time or may call the board in special session at any time if in the county mayor's judgment, the public welfare requires it.<sup>181</sup>

Duties and Powers. 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. The county board's duties include examining and equalizing the 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.<sup>182</sup> The county board of equalization has the power to obtain evidence concerning the classification, value, or assessment of any property by examining witnesses, hearing proof, and sending for persons and papers.<sup>183</sup> Board members have the power to administer an oath, and any person who willfully or corruptly swears falsely to any material fact before the board

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<sup>177</sup>T.C.A. § 67-1-403.

<sup>178</sup>T.C.A. § 65-1-404(a).

<sup>179</sup>T.C.A. § 65-1-404(c).

<sup>180</sup>T.C.A. § 65-1-404(b)(1).

<sup>181</sup>T.C.A. § 67-1-404(b)(2).

<sup>182</sup>T.C.A. § 67-5-1402. Note Op. Tenn. Atty. Gen. 85-083 (March 20, 1985) opining that T.C.A. § 5-5-124, providing authority for the county legislative body to correct errors in property assessments, is obsolete since other remedies are provided for pursuant to T.C.A. § 67-5-1401 *et seq.*

<sup>183</sup>T.C.A. § 67-5-1404(a) and (b).

commits perjury and is indictable for such offense.<sup>184</sup> The county board may also examine assessors in order to ascertain the manner in which the classification, value, or assessment of property was determined.<sup>185</sup> When a member of the county board knows or reasonably suspects that an assessor of property or deputy assessor has knowingly or willfully classified, valued or assessed any property in violation of the requirements of law, that member has a duty to report the violation to the district attorney general or other proper officer of the state for further proceedings.<sup>186</sup>

Assessor of Property—Assistance and Recommendations to the Board. The assessor of property or deputy assessor is required to meet with the county board of equalization on the first day of its session and to sit with the board in an advisory capacity during each and every day of the board's session, and to render assistance to the board in the performance of its official duties in equalizing assessments. In addition to other assistance, the assessor of property or deputy assessor may recommend to the board that changes of assessment or classification be made from those certified in the report of assessments required under T.C.A. § 67-5-304, but such recommended changes may not be so numerous as to amount to the general reappraisal of a class or type of property.<sup>187</sup>

Complaints to the County Board of Equalization. An owner of property or liable taxpayer has the right to appear personally before the county board, to authorize in writing an agent to appear, or to authorize an attorney to appear, in order to make a complaint on one or more of the following grounds: (1) property owned by the taxpayer was erroneously classified or subclassified; (2) property owned by the taxpayer was assessed on the basis of an appraised value that is more than the basis of value provided for in T.C.A. § 67-5-601 *et seq.*; and (3) property other than the taxpayer's was assessed on the basis of appraised values which are less than the basis of value provided for in T.C.A. § 67-5-601 *et seq.*<sup>188</sup> The county board must hear any complaint that is filed while the board is in session and that relates to the current year under review. The board may not refuse to hear a complaint for the current year on the grounds that an appeal was filed with the State Board of Equalization for a prior year.<sup>189</sup> When a complaint is made before the county board, it may hear any evidence or witness offered by the complainant, or may take such steps as it may deem material to the investigation of the complaint.<sup>190</sup> If an owner, or the owner's duly authorized agent, upon request, fails, refuses, or neglects to supply the assessor or the county board with information regarding the property

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<sup>184</sup>T.C.A. § 67-5-1404(c).

<sup>185</sup>T.C.A. § 67-5-1405.

<sup>186</sup>T.C.A. § 67-5-1415.

<sup>187</sup>T.C.A. § 67-5-1403.

<sup>188</sup>T.C.A. § 67-5-1407(a)(1).

<sup>189</sup>Op. Tenn. Atty. Gen. 92-60 (October 8, 1992).

<sup>190</sup>T.C.A. § 67-5-1407(a)(2).

not readily available through public records but which is necessary to make an accurate appraisal of the property, the owner forfeits the right to introduce the requested information upon appeal to the State Board of Equalization.<sup>191</sup>

Local governmental entities have the right to make a complaint before the assessor of property and the county board of equalization on the value of property within the local governmental entity on one or more of the following grounds: (1) the property has been erroneously classified or subclassified for purposes of taxation; (2) the property has not been included on the assessment lists; and (3) the property has been assessed on the basis of appraised values which are less than the basis of value provided for in T.C.A. § 67-5-601 *et seq.*<sup>192</sup> After the local governmental entity has filed a complaint, the county board must give the property owner at least five days notice of a hearing to be held before the board. The notice must be sent by U.S. mail to the last known address of the property owner.<sup>193</sup> The county board may hear any evidence or witnesses offered by the local governmental entity or owner or may take such steps as it may deem material to the investigation of the complaint.<sup>194</sup>

Hearing Officers. In the event the State Board of Equalization determines that the number of complaints made to any county board of equalization is sufficiently numerous to justify such action, the county board of equalization may appoint one or more hearing officers to conduct preliminary hearings and to make investigations regarding complaints before the board. Hearing officers must be approved by the State Board of Equalization. The hearing officers assist the county board and prepare proposed findings of fact and conclusions for recommendation to the county board. The county board may adopt any recommendation of a hearing officer as its final decision, however, any property owner who desires to be heard directly by the county board must be given the opportunity to be heard by the board.<sup>195</sup>

Disposition of Complaints. Upon consideration of any complaint, or any other information available, the county board of equalization may make changes, increasing or decreasing assessments, appraised values, or changes in classifications or subclassifications, as in its judgment are proper, just and equitable. The property owner or owners must be notified by the board of any increase of assessment or change in classification and given an opportunity to be heard. The notice must be sent by U.S. mail to the last known address of the taxpayer at least five days before the adjournment of the county board. The notice must include the tax year for which any increase of assessment or change in classification is made.<sup>196</sup> If the taxpayer fails, neglects or refuses to appear before the county board prior to its final adjournment, the

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<sup>191</sup>T.C.A. § 67-5-1407(d).

<sup>192</sup>T.C.A. § 67-5-1407(b)(1).

<sup>193</sup>T.C.A. § 67-5-1407(b)(2).

<sup>194</sup>T.C.A. § 67-5-1407(c).

<sup>195</sup>T.C.A. § 67-5-1406.

<sup>196</sup>T.C.A. § 67-5-1408.

assessment as determined by the assessor shall be conclusive against the taxpayer, and the taxpayer will be required to pay the taxes on such amount.<sup>197</sup>

Time for Completion of Board Action and Certificate of Completion. Actions by the county board during its regular sessions, except for complaints brought pursuant to T.C.A. § 67-5-1407 (the regular complaint procedure for property owners described on page 33 herein), are to be completed and the notice of decision and appeal procedure sent no later than five days prior to the date taxes are due. This deadline does not apply to special sessions, extraordinary actions, or to years in which a county completes reappraisal.<sup>198</sup> Upon completion of its duties, the county board prepares a certificate signed by each member.

We, the undersigned members of the board of equalization of \_\_\_\_\_ County, do hereby certify that we have examined the assessments and classifications of taxable property within the county; we have heard and considered all appeals of such taxpayers as have duly made complaint to the county board of equalization; we have made only such changes in assessments and classifications as in our judgment are proper, just and equitable and are prescribed by law; and we have faithfully discharged all our duties without fear, favor, or affection to the best of our knowledge and ability in accordance with the laws of the state of Tennessee.

Witness our hand this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

The certificate of completion is filed in the office of the county clerk.<sup>199</sup>

Final Action and Notice to Taxpayer. Actions of the county board are final except for revisions or changes by the State Board of Equalization. The county board of equalization must give notice to each property owner heard of its final decision and the procedure of appeal to the State Board of Equalization.<sup>200</sup>

Appeal to the State Board of Equalization. Any taxpayer or property owner who is aggrieved by any action taken by the county board of equalization has the right to a hearing and determination by the State Board of Equalization of any complaint made on any of the grounds set forth in T.C.A. § 67-5-1407.<sup>201</sup> The assessor of property or taxing jurisdiction also has the right to appeal from any action of the local board of equalization to the State Board of Equalization.<sup>202</sup>

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<sup>197</sup>T.C.A. § 67-5-1401.

<sup>198</sup>T.C.A. § 67-5-1409.

<sup>199</sup>T.C.A. § 67-5-1410.

<sup>200</sup>T.C.A. § 67-5-1411.

<sup>201</sup>T.C.A. § 67-5-1412(a)(1).

<sup>202</sup>T.C.A. § 67-5-1412(d).

Before filing an appeal with the State Board of Equalization, the taxpayer or owner must first make a complaint and appeal to the local board of equalization unless the taxpayer or owner has not been duly notified by the assessor of property of an increase in the taxpayer's or owner's assessment or change in classification as provided for in T.C.A. § 67-5-508.<sup>203</sup>

All complaints and appeals to the State Board of Equalization must be specific, in writing, and sworn. Complaints and appeals are filed with the Executive Secretary of the state board. The State Board of Equalization may provide for the filing of appeals in a computer-readable format, and the date of postmark of data in such format constitutes the date of filing of the appeal. Rules of the State Board of Equalization that permit electronic appeals must also permit electronic appeal for a single parcel, in such format as the board may require by rule. The taxpayer or owner has the right to withdraw any complaint and appeal at any time before the final order has been entered on the primary issue of the complaint and appeal.<sup>204</sup>

Appeals to the State Board of Equalization from action of a local board of equalization must be filed before August 1 of the tax year, or within 45 days of the date notice of the local board action was sent, whichever is later. If notice of an assessment or classification change pursuant to T.C.A. § 67-5-508 was sent to the taxpayer's last known address later than 10 days before the adjournment of the local board of equalization, the taxpayer may appeal directly to the state board at any time within 45 days after the notice was sent. If notice was not sent, the taxpayer may appeal directly to the state board at any time within 45 days after the tax billing date for the assessment. The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in T.C.A. § 67-5-1412 and, upon demonstrating reasonable cause, the board must accept the appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.<sup>205</sup>

Record of Board's Action and Report to State Board. Upon the completion of the duties of the board, the records and papers of the board are turned over to the assessor of property for preservation for a period of at least 10 years. The individual property records maintained in the office of each assessor of property must show all actions taken by the county board which change the classification, value or assessment of any parcel of property.<sup>206</sup> It is the duty of the assessor of property to make a complete record of each and every change made in the assessment by the county board of equalization and forward a report to the State Board of Equalization, showing the increase or decrease made in each assessment and the reason or reasons for the change.<sup>207</sup>

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<sup>203</sup>T.C.A. § 67-5-1412(b).

<sup>204</sup>T.C.A. § 67-5-1412(c).

<sup>205</sup>T.C.A. § 67-5-1412(e).

<sup>206</sup>T.C.A. § 67-5-1414.

<sup>207</sup>T.C.A. § 67-5-1413.



Remand of Complaints to the County Board of Equalization. In the event the complaints filed with the State Board of Equalization from any county are sufficiently numerous to justify such action, the state board may reconvene the county board of equalization and remand the complaints to the county board with directions that the county board reconvene on a certain date and hear and act upon the complaints and certify its action in each case to the State Board of Equalization.<sup>208</sup>

## **State Board of Equalization**

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>209</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>210</sup>

Appeal to the State Board of Equalization. Any taxpayer or property owner who is aggrieved by any action taken by the county board of equalization has the right to a hearing and determination by the State Board of Equalization of any complaint made on any of the grounds set forth in T.C.A. § 67-5-1407.<sup>211</sup> In order to maintain an appeal to the State Board of Equalization, the taxpayer must, prior to the delinquency date, pay to the trustee the amount of taxes the taxpayer would be required to pay if the taxpayer prevails on appeal, as well as any delinquent taxes on the property.<sup>212</sup>

All complaints and appeals to the State Board of Equalization must be specific, in writing, and sworn. Complaints and appeals are filed with the Executive Secretary of the state board. The taxpayer or owner has the right to withdraw any complaint and appeal at any time before the final order has been entered on the primary issue of the complaint and appeal.<sup>213</sup> The assessor

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<sup>208</sup>T.C.A. § 67-5-1504.

<sup>209</sup>T.C.A. § 67-5-1501(a) and (b).

<sup>210</sup>T.C.A. § 67-5-1328.

<sup>211</sup>T.C.A. § 67-5-1412(a)(1).

<sup>212</sup>T.C.A. § 67-5-1512(b)(1)(B). See T.C.A. § 67-5-1512(b)(1)(C) for the special rule for Shelby County.

<sup>213</sup>T.C.A. § 67-5-1412(c).

of property or taxing jurisdiction also has the right to appeal from any action of the local board of equalization to the State Board of Equalization.<sup>214</sup>

Appeals to the State Board of Equalization from action of a local board of equalization must be filed before August 1 of the tax year, or within 45 days of the date notice of the local board action was sent, whichever is later. If notice of an assessment or classification change pursuant to T.C.A. § 67-5-508 was sent to the taxpayer's last known address later than 10 days before the adjournment of the local board of equalization, the taxpayer may appeal directly to the state board at any time within 45 days after the notice was sent. If notice was not sent, the taxpayer may appeal directly to the state board at any time within 45 days after the tax billing date for the assessment. The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in T.C.A. § 67-5-1412 and, upon demonstrating reasonable cause, the state board must accept the appeal from the taxpayer up to March 1 of the year following the year in which the assessment was made.<sup>215</sup>

Appeals to the State Board of Equalization from initial determinations in exemption and tax relief cases must be filed within 90 days from the date notice of the determination was sent. Appeals from initial decisions of administrative judges or hearing examiners for the State Board of Equalization must be filed within 30 days from the date the initial decision is sent.<sup>216</sup>

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>217</sup>

Assistance of Agents. Taxpayers and assessors of property are entitled to the assistance of a qualified agent at any conference or hearing held pursuant to T.C.A. § 67-5-1501 *et seq.*, or § 67-5-1401 *et seq.* Furthermore, taxpayers and assessors of property may appear in person, by qualified agent, or, in the case of taxpayers, by a member of the taxpayer's immediate family.<sup>218</sup> All conferences or hearings will be conducted in an informal manner where the

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<sup>214</sup>T.C.A. § 67-5-1412(d).

<sup>215</sup>T.C.A. § 67-5-1412(e). See also Op. Tenn. Atty. Gen. 92-62 (October 8, 1992); Op. Tenn. Atty. Gen. 92-59 (October 8, 1992).

<sup>216</sup>T.C.A. § 67-5-1501(c).

<sup>217</sup>T.C.A. § 67-1-1005(b).

<sup>218</sup>T.C.A. § 67-5-1514(a) and (b).

primary issue of the complaint, protest or appeal pertains to the grounds set forth in T.C.A. § 67-5-1407 (as described on page 33 under Complaints to the County Board of Equalization).<sup>219</sup>

The agent must register with the State Board of Equalization, pay a biennial fee of \$200, and qualify on the basis of the following criteria: (1) four years of experience in real property appraisal and/or assessment valuation; (2) successful completion of at least 120 classroom hours of academic instruction in subjects related to property appraisal or assessment of property from a college or university, or from a nationally recognized appraisal or assessment organization approved by the board; and (3) passed the examination for Tennessee certified assessor as administered by the board. No person will be required to meet the additional registration qualifications required by T.C.A. § 67-5-1514 if the person registered or applied for registration prior to June 30, 2002. The board may, in lieu of the evidence required in T.C.A. § 67-5-1514(c)(2), recognize and accept certain professional designations which are awarded by appraisal and/or assessment organizations on the basis of qualifications at least equal to those set forth in the statute.<sup>220</sup> Additional registration requirements are set forth in T.C.A. § 67-5-1514(k). Agent disciplinary rules, renewal procedures and advertising disclaimers are set forth in T.C.A. §§ 67-5-1514(f) and (g).

The following persons are permitted to act, appear and participate as an agent for the taxpayer: (1) attorneys; (2) the regular officers, directors or employees of a corporation or other artificial entity; (3) a certified public accountant where the only issue of an appeal is the valuation of tangible personal property; and (4) any person who holds a valid registration issued by the board of equalization where the primary issue of the complaint, protest or appeal pertains to the grounds set forth in T.C.A. § 67-5-1407.<sup>221</sup> The provisions of T.C.A. § 67-5-1514 regarding registered agents do not apply in any manner to the representation of a taxpayer by an attorney. Furthermore, no provision in T.C.A. § 67-5-1514 is intended to require that a person must be an attorney, certified public accountant, registered agent with the state board, or otherwise in order to act as an agent for a taxpayer before a county board of equalization.<sup>222</sup>

Assessment Appeals Commission. In addition to the powers and duties conferred upon the State Board of Equalization by T.C.A. § 67-5-1501, the State Board of Equalization may by resolution create an Assessment Appeals Commission consisting of not less than three nor more than six members, three members of which shall constitute a quorum for the transaction of business. The State Board of Equalization may delegate to the Assessment Appeals Commission the jurisdiction and duties conferred by law upon the State Board of Equalization to hear and act upon all complaints and appeals regarding the assessment, classification and value of property for purposes of taxation, including, but not limited to, complaints and appeals from assessments made by the Comptroller of the Treasury, complaints and appeals

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<sup>219</sup>T.C.A. § 67-5-1514(d).

<sup>220</sup>T.C.A. § 67-5-1514(c)(2) and (3).

<sup>221</sup>T.C.A. § 67-5-1514(c)(1).

<sup>222</sup>T.C.A. § 67-5-1514(i) and (j).

from actions of local boards of equalization, complaints and appeals concerning exemption of property from taxation, complaints and appeals from assessments made by the Division of Property Assessments, and complaints in inheritance tax cases that concern only the valuation of property in the estate.<sup>223</sup>

Actions taken by the Assessment Appeals Commission are final. However, within 45 days of any final action taken by the Assessment Appeals Commission, the State Board of Equalization may enter an order upon its own motion requiring a review of the action. In such an instance, the action taken by the Assessment Appeals Commission does not become final until the State Board of Equalization has rendered its final decision in the matter. A party desiring the State Board of Equalization to review an action of the Assessment Appeals Commission must file a written petition with the Executive Secretary to the state board within 15 days of the action of the Assessment Appeals Commission. In the event that the State Board of Equalization exercises its discretion to review any action of the Assessment Appeals Commission, review may be upon the record before the Assessment Appeals Commission or in such manner as the state board shall direct.<sup>224</sup> If the State Board of Equalization does not exercise its discretion to review a matter heard by the Assessment Appeals Commission, the Assessment Appeals Commission will issue a certificate of assessment or other final certificate of its actions. The certificate is subject to judicial review in the same manner as are final actions of the State Board of Equalization.<sup>225</sup>

The Assessment Appeals Commission must prepare and maintain records of its proceedings in the form of minutes. The minutes, together with all other papers and records of the Assessment Appeals Commission, are kept and maintained in the office of the Executive Secretary to the State Board of Equalization.<sup>226</sup>

Hearing Examiners. The State Board of Equalization is authorized to appoint members of the staff of the Division of Property Assessments to serve as hearing examiners. Hearing examiners conduct preliminary hearings and investigations for the board or the Assessment Appeals Commission regarding complaints and appeals from assessments and classifications, or regarding any other matter for which the board has responsibility by law. Based upon the evidence presented in a preliminary hearing or facts gained in an investigation, the hearing examiner prepares proposed findings of fact and conclusions for the state board or the Assessment Appeals Commission and notifies each property owner who may be affected by the hearing examiner's recommendation. Unless a party to the appeal objects in writing, the hearing examiner may render a proposed decision. The proposed decision is limited to words and/or figures reflecting conclusions as to the proper classification or valuation of the subject

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<sup>223</sup>T.C.A. § 67-5-1502(a).

<sup>224</sup>T.C.A. § 67-5-1502(j).

<sup>225</sup>T.C.A. § 67-5-1502(k). See also T.C.A. § 67-5-1511.

<sup>226</sup>T.C.A. § 67-5-1502(l).

property.<sup>227</sup> Appeals from initial decisions of hearing examiners for the state board must be filed within 30 days from the date the initial decision is sent.<sup>228</sup> In the absence of an exception to the recommendation of the hearing examiner by either the property owner or the property owner's agent, the county assessor of property or the taxing jurisdiction, the State Board of Equalization or the Assessment Appeals Commission may adopt the recommendation of its hearing examiner as its final decision without the necessity of a hearing before the board or commission. If an exception to the recommendation of the hearing examiner is taken by any of the parties or the State Board of Equalization or the Assessment Appeals Commission does not adopt the recommendation of the hearing examiner, a hearing shall be scheduled before the state board or commission before final action is taken.<sup>229</sup>

Collection of Evidence and Information. The State Board of Equalization and the Assessment Appeals Commission have the power to send any of its members or such other person as it may designate to any portion of the state to obtain information and evidence deemed material to the duties of equalization, and to hear questions, and report to the board or commission as the case may be.<sup>230</sup> The board and the commission also have the power to require the Director of Property Assessments and any member of the Director's staff to submit such facts and reports as may be deemed necessary to enable the board or commission to equalize assessments of property of the various classes and in the different localities of the state.<sup>231</sup>

Equalization Action by the State Board of Equalization. The State Board of Equalization or the Assessment Appeals Commission, on the basis of reports, evidence, or other available information, takes whatever steps it deems are necessary to effect the assessment of property in accordance with the constitution of Tennessee and the laws of this state. The state board by order or rule must direct that commercial and industrial tangible personal property assessments be equalized using the appraisal ratios adopted by the board in each jurisdiction. However, such equalization is available only to taxpayers who have filed the reporting schedule required by law.<sup>232</sup>

Equalization may be made by the State Board of Equalization or the Assessment Appeals Commission, as the case may be, by reducing or increasing the appraised values of properties within any taxing jurisdiction, or any part thereof. In the event that the state board or the commission deems it necessary to increase or decrease appraised values of properties of any taxing jurisdiction, or any part thereof, in any manner whereby its action affects properties in

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<sup>227</sup>T.C.A. § 67-5-1505.

<sup>228</sup>T.C.A. § 67-5-1501(c).

<sup>229</sup>T.C.A. § 67-5-1506.

<sup>230</sup>T.C.A. § 67-5-1507.

<sup>231</sup>T.C.A. § 67-5-1508.

<sup>232</sup>T.C.A. § 67-5-1509(a). Note: The constitutionality of T.C.A. § 67-5-1509(a) has been upheld; see *Williamson County v. Tennessee State Board of Equalization*, 86 S.W.3d 216 (Tenn.Ct.App. 2002).

general rather than individual properties, it is not necessary that the state board or commission notify each individual property owner as provided for in T.C.A. § 67-5-1510. However, notice of the action of the state board or the commission must be published at least once in a newspaper of general circulation within the affected taxing jurisdiction.<sup>233</sup>

Changes of Individual Classification or Assessment. Whenever the State Board of Equalization or the Assessment Appeals Commission, after a county or local board has acted, has reason to believe that an individual assessment of real property or personal property is inadequate, or the classification of such property is erroneous, it has the authority to command the person to whom the property is assessed to appear before the board or commission to show cause why the assessment should not be increased or the classification should not be changed. The taxpayer is entitled to 10 days written notice of the right to appear before the board.<sup>234</sup> The taxpayer is entitled to be heard either personally or by counsel and has the privilege of introducing any competent evidence touching upon the question of the adequacy of the assessment or change of the classification.<sup>235</sup> Thereafter, the board or commission will determine the amount, if any, that the assessment will be increased or determine the proper classification of the property. The board or commission will reduce its judgment to writing and certify its findings to the proper county officials.<sup>236</sup>

Certification of Board Action. After the State Board of Equalization or the Assessment Appeals Commission has made its determination of the assessment of the property that was the subject of the appeal and complaint, the Executive Secretary to the state board will sign and keep the original copy of the official certificate on file in the Executive Secretary's office. The official certificate will show the description of the property and the assessment as determined by the state board or the commission, as the case may be. Copies of the official certificate are sent to the owner of the property or the owner's agent, the chief executive officer of the taxing jurisdiction, trustee, and assessor of property for the jurisdiction in which the property is located.<sup>237</sup>

Record of Board Actions. The records of all actions of the State Board of Equalization and the Assessment Appeals Commission are maintained for at least 10 years in the office of the Executive Secretary of the board. The records are open to public inspection during regular business hours and any state citizen may request copies. Requested copies of records or documents are sent by first class mail or, upon request, by telecopier. The person requesting

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<sup>233</sup>T.C.A. § 67-5-1509(b) and (c).

<sup>234</sup>T.C.A. § 67-5-1510(a).

<sup>235</sup>T.C.A. § 67-5-1510(b).

<sup>236</sup>T.C.A. § 67-5-1510(c).

<sup>237</sup>T.C.A. § 67-5-1512(a)(1) - (3).

the records or documents is required to pay the board the reasonable costs of reproducing and transmitting the copies.<sup>238</sup>

Finality of Board Action—Collection of Taxes. The action of the State Board of Equalization is final and conclusive as to all matters passed upon by the board, subject to judicial review, and taxes will be collected upon the assessments determined and fixed by the board.<sup>239</sup>

Penalties and Interest. Except as provided in T.C.A. § 67-5-1512(b)(2), no penalties or interest will be imposed or collected upon delinquent taxes if the taxpayer is pursuing an appeal pursuant to the provisions of T.C.A. § 67-5-1401 *et seq.* or T.C.A. § 67-5-1501 *et seq.* and either (1) pays prior to March 1 (or other applicable delinquency date) an amount equal to the taxes imposed based upon the assessment certified by the local board of equalization; or (2) elects to make a payment in an amount equal to the taxes the taxpayer would be required to pay if the taxpayer prevailed on appeal.<sup>240</sup>

Except as provided in T.C.A. § 67-5-1512(b)(2)(B), as noted below, if the taxpayer has made a payment in accordance with T.C.A. § 67-5-1512(b)(1) and prevails on appeal, the county or municipality is required to pay interest at the rate of two percentage points below the composite prime rate as published by the federal reserve board as of the date such taxes would have normally become delinquent. Interest will be calculated from March 1 (or other applicable delinquency date) upon the amount paid in excess of the taxes due as determined by final action of the State Board of Equalization, the Assessment Appeals Commission, or county board of equalization. If the taxpayer loses or withdraws the appeal or it is determined that taxes in excess of the amount paid, if any, pursuant to T.C.A. § 67-5-1512(b)(1) are owed, then the taxpayer is required to pay, in addition to such amount, interest at the same rate on the balance of the amount due as provided above.<sup>241</sup>

Pursuant to T.C.A. § 67-5-1512(b)(2)(B), if the taxpayer prevails in any appeal to the local or State Board of Equalization, the county or municipality must, within 60 days from the date of the final action by the State Board of Equalization or Assessment Appeals Commission, refund any overpayment in taxes, together with interest thereon at the rate of two percentage points below the composite prime rate as published by the federal reserve board computed from the date the overpayment was made until the date refunded. The taxpayer or taxpayer's agent, who is successful in appeals and has multiple properties, will, on request, receive refunds for those properties in one check. In lieu of the original paid tax receipts, where there are multiple properties, the taxpayer or taxpayer's agent must post a bond in the amount to be determined by the county trustee. A taxpayer having a single property may provide the trustee with an affidavit satisfactory to the trustee or cancelled check and receive the refund to which the

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<sup>238</sup>T.C.A. § 67-5-1513.

<sup>239</sup>T.C.A. § 67-5-1511(a).

<sup>240</sup>T.C.A. § 67-5-1512(b)(1)(A).

<sup>241</sup>T.C.A. § 67-5-1512(b)(2)(A).

taxpayer is entitled. Currently, the provisions of T.C.A. § 67-5-1512(b)(2)(B) apply only to Shelby County.

Refund of Property Taxes after Final Action. When a county has been ordered to make a refund of property taxes pursuant to the final action of a court or the State Board of Equalization or Assessment Appeals Commission, no specific appropriation is required to authorize the county trustee to make the refund. The trustee may make the ordered refund and any interest owing the taxpayer as otherwise provided from any taxes collected for the year or years to which the refund relates prior to the allocation to the various county funds. If the trustee does not have funds collected from the year to which the refund relates, the trustee may make the refund and pay any interest owing the taxpayer from current collections prior to the allocation of revenue to the various county funds. Where a refund plus accrued interest exceeds 1 percent of all property taxes levied for the year in which the refund is due, the trustee may defer the refund for a period of up to three years in equal annual installments, and the deferred amounts shall accrue interest in the manner set forth in T.C.A. § 67-5-1512(c).<sup>242</sup> Pursuant to T.C.A. § 67-5-1512(c), the interest rate on a deferred refund shall increase two points from the date of the deferral 60 days after the board of equalization decision is rendered until the refund is finally paid.

Judicial Review. The judicial review provided in T.C.A. § 67-5-1511(a) from final actions of the State Board of Equalization or Assessment Appeals Commission consists of a new hearing in the chancery court based upon the administrative record and any additional or supplemental evidence which either party wishes to adduce relevant to any issue. The petition for review may be filed in the chancery court of the county where the disputed assessment was made or in the chancery court of Davidson, Washington, Knox, Hamilton, Madison or Shelby county, whichever county is closest in mileage to the situs of such property. If the situs of the property is in Knox, Hamilton or Shelby county, then the petition for review may alternatively be filed in Davidson County at the election of the petitioner.<sup>243</sup>

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<sup>242</sup>T.C.A. § 67-5-1809.

<sup>243</sup>T.C.A. § 67-5-1511 (b).



## CHAPTER FIVE

### EXEMPTIONS AND TAX RELIEF

#### Exemptions

“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>244</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>245</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>246</sup> Exemptions not meeting the specific requirements set out in Article II, Section 28 are not constitutionally permissible.<sup>247</sup>

Property does not become exempt from taxation because it may be difficult to assess it at its actual worth.<sup>248</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>249</sup>

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<sup>244</sup>*City of Nashville v. State Board of Equalization*, 360 S.W.2d 458, 594-595 (Tenn. 1962).

<sup>245</sup>TENN. CONST., art. II, §§ 28

<sup>246</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>247</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>248</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>249</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).

“The presumption is against the exemption, and exemption from taxation will not be read into a taxing statute by implication.”<sup>250</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>251</sup>

Real Property Transferred between Exempt and Nonexempt Persons. When exempt real property is conveyed or transferred by sale, lease or otherwise to a person, firm or corporation, rendering the property nonexempt by reason of the transfer, the nonexempt grantee, lessor or other nonexempt taxpayer will be liable for the property taxes on the property from the date of the transfer to the end of the taxable year. The state, county or municipal collector of taxes will collect the property taxes due from the date of the transfer, on a pro rata basis for the current taxable year, notwithstanding the status of the property as of the assessment date of January 1 of each year. A tax lien attaches on the date of the transfer as otherwise provided by law. The nonexempt grantee remains personally liable for taxes resulting from the transfer of the property regardless of any subsequent transfer that may occur during that tax year.<sup>252</sup>

An owner of tax-exempt property who sells or leases the property must promptly notify the assessor of property if the sale or lease renders the property as nonexempt.<sup>253</sup> This requirement applies to governmental entity owners and lessors as well as any other owners or lessors of the property.<sup>254</sup> The person or entity buying or leasing tax-exempt property must also promptly notify the assessor of property of the change in the use or ownership of such property. The buyer or lessee of the real property is personally liable for all taxes, and penalties and interest, from the date of the transfer to the date the assessor is notified of the change in the use or ownership of property, and the collection of taxes against the buyer or lessee with respect to the property will not be barred. However, no tax lien arises against real property conveyed to a bona fide purchaser who records the deed for the property or notifies the assessor of the change in the use or ownership of the property. The burden of proving a bona fide sale is upon the owner of the property at the time of the recording or notification.<sup>255</sup>

When real property which has been subject to assessment and taxation is conveyed or transferred by sale, lease or otherwise to a person, firm or corporation and is used for purposes which would render the status of the property as exempt from assessment and taxation, the owner of the property will not be liable for the real property taxes on the property from the date of transfer and change of use from a nonexempt use to an exempt use to the end of the taxable year, notwithstanding the status of the property as of the assessment date of January

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<sup>250</sup>*Tennessee Farmers’ Coop. v. State ex rel. Jackson*, 736 S.W.2d 87, 90 (Tenn. 1987).

<sup>251</sup>*Kopsombut-Myint Buddhist Center v. State Board of Equalization*, 728 S.W.2d 327, 335 (Tenn.Ct.App. 1986).

<sup>252</sup>T.C.A. § 67-5-201(a)(1) and (2).

<sup>253</sup>T.C.A. § 67-5-201(a)(3)(A).

<sup>254</sup>T.C.A. § 67-5-201(a)(3)(B).

<sup>255</sup>T.C.A. § 67-5-201(a)(3)(C).

1 of that year. The assessor of property will make an assessment of the property on the basis of its value and use to which it is put following its transfer; provided, that for the year in which the transfer of property occurred, the assessment will be prorated and the owner shall be liable only for the taxes for the portion of the year that the property was subject to assessment. The state, county and municipal tax collector will collect taxes on the basis of the assessment as prorated by the assessor of property.<sup>256</sup>

The grantor or lessor of nonexempt property must notify the assessor of any change in the use or ownership of the property that may affect its nonexempt status. This notice is required when the property is conveyed or transferred by sale, lease or otherwise to a person, firm, or corporation. The grantor or lessor of nonexempt property includes any person, firm, or corporation who is not otherwise exempt from property taxes. The nonexempt grantor's or lessor's notice of the change in ownership or use to the assessor is a prerequisite to the grantor or lessor seeking a refund of taxes paid related to exempt ownership or use of the property occurring after the date of transfer to the tax exempt grantee or lessee by sale or lease.<sup>257</sup>

Trust Estates. Every trust estate is entitled to the same exemption as if owned by a single taxpayer.<sup>258</sup>

Government Property. All property of the United States, the state of Tennessee, any county, or any incorporated town, city or taxing district in the state that is used exclusively for public, county or municipal purposes is exempt from taxation. All property of an educational institution owned, operated or otherwise controlled by the state of Tennessee as trustee, or otherwise, is exempt from taxation. However, real property purchased for investment purposes by the Tennessee consolidated retirement system is subject to property taxation.<sup>259</sup>

When the United States government, the state of Tennessee, or any agency or political subdivision thereof acquires property assessed as a single unit by the assessor of property of any political subdivision, any lien for property taxes assessed by the political subdivision for the year in which the property is acquired will be released on the approval of the assessor of property of the political subdivision assessing the taxes with respect to that portion of the taxes representing the remainder of the calendar year after the date of the instrument or conveyance by the property owner, or after the date of the entry of an order of possession if the property is acquired by condemnation. The property owner will be relieved of all personal liability for

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<sup>256</sup>T.C.A. § 67-5-201(b)(1), (2) and (3). See *Senter School Foundation, Inc. v. Nobles*, 1990 WL 3983 (Tenn.Ct.App. 1990).

<sup>257</sup>T.C.A. § 67-5-201(b)(4)(A) and (B).

<sup>258</sup>T.C.A. § 67-5-202.

<sup>259</sup>T.C.A. § 67-5-203(a)(1) and (2). See also Op. Tenn. Atty. Gen. 86-64 (March 17, 1986). For a nonexclusive list of governmental property exemptions, see T.C.A. §§ 7-57-307 (Metropolitan Hospital Authority Act); 7-66-110, 111 (Tennessee Homestead Act); 7-82-105 (Utility District Law of 1937); 7-86-117 (Emergency Communications District Law); 13-22-107 (Tennessee Housing Development Agency); 13-23-127 (Tennessee Housing Development Agency Act); 13-27-108 (Tennessee Export Development Act of 1983).

that portion of the taxes. Either the condemnor or the property owner may request the assessor to provide proration. Proration is based on the last assessment made and rate fixed and the trustee must accept tender of the amount determined to be owing.<sup>260</sup>

If real property owned by the state or any political subdivision of the state is leased to a person, corporation, or other business entity for the purpose of operating a golf course or for the purpose of developing and operating a golf course, the person, corporation, or business entity makes payments in lieu of ad valorem taxes. The payments will be in an amount equal to the ad valorem taxes otherwise due and payable by the taxpayer upon the current fair market value of the leased real property.<sup>261</sup>

Public Ways. All roads, streets, alleys, and promenades intended for public use are exempt from taxation.<sup>262</sup>

Government Bonds and Notes. The principal and interest on bonds or notes issued by the state of Tennessee for any public purpose are exempt from taxation, except for inheritance, transfer and estate taxes.<sup>263</sup> The principal and interest on bonds or notes issued by any county, incorporated town or city, for any public purpose are exempt from taxation by the state or by any county or municipality in this state.<sup>264</sup> United States bonds are exempt from property taxation.<sup>265</sup> A nonexclusive list of exempt governmental bonds and notes includes the following:

- (1) bonds and notes issued pursuant to the Tennessee Local Development Authority Act, T.C.A. § 4-31-101 *et seq.*, and the income therefrom are exempt from taxation by the state or any local governmental unit, except inheritance, transfer and estate taxes;
- (2) bonds issued pursuant to the Revenue Bond Law, T.C.A. § 7-34-101 *et seq.*, and the income therefrom are exempt from all state, county and municipal taxation except inheritance, transfer and estate taxes;<sup>266</sup>
- (3) bonds issued pursuant to the provisions of the Industrial Building Revenue Bond Act of 1951, T.C.A. § 7-37-101 *et seq.*, and the income therefrom are

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<sup>260</sup>T.C.A. § 67-5-203(b)(1) and (2).

<sup>261</sup>T.C.A. § 67-5-203(c).

<sup>262</sup>T.C.A. § 67-5-204.

<sup>263</sup>T.C.A. § 67-5-205(a)(1).

<sup>264</sup>T.C.A. § 67-5-205(a)(2) and (3).

<sup>265</sup>31 U.S.C. § 3124.

<sup>266</sup>T.C.A. § 7-34-116(b).

exempt from all state, county and municipal taxation except inheritance, transfer and estate taxes, except as otherwise provided by law;<sup>267</sup>

(4) bonds issued by any municipality to provide sufficient funds to carry out energy production pursuant to the provisions of T.C.A. § 7-54-101 *et seq.*, and the income therefrom are exempt from all state, county and municipal taxation except inheritance, transfer and estate taxes;<sup>268</sup>

(5) bonds and notes issued by a county pursuant to the Tennessee Home Mortgage Act, T.C.A. § 7-60-101 *et seq.*, and the income therefrom are exempt from taxation, except for inheritance, transfer and estate taxes;<sup>269</sup>

(6) bonds issued by an authority pursuant to the Port Authority Act, T.C.A. § 7-87-101 *et seq.*, and the income therefrom are exempt from all state, county and municipal taxation, except for inheritance, transfer and estate taxes, and except as otherwise provided by law;<sup>270</sup>

(7) bonds or notes issued by a local government pursuant to the Local Government Public Obligations Act of 1986, T.C.A. § 9-21-101 *et seq.*, and the income therefrom are exempt from all state, county and municipal taxation except for inheritance, transfer and estate taxes, and except as otherwise provided by law;<sup>271</sup>

(8) bonds issued by an authority pursuant to the Airport Authorities Act, T.C.A. § 42-3-101 *et seq.*, and the income therefrom are exempt from all taxes;<sup>272</sup>

(9) bonds issued by an authority pursuant to the Metropolitan Airport Authority Act, T.C.A. § 42-4-101 *et seq.*, and the income therefrom are exempt from all state, county and municipal taxation except for inheritance, transfer and estate taxes, and except as otherwise provided by law;<sup>273</sup> and

(10) school bonds issued pursuant to the provisions of T.C.A. § 49-3-1002 and the income therefrom are exempt from all state, county and municipal taxation except for inheritance, transfer and estate taxes and except as otherwise provided by law.<sup>274</sup>

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<sup>267</sup>T.C.A. § 7-37-114.

<sup>268</sup>T.C.A. § 7-54-106.

<sup>269</sup>T.C.A. § 7-60-211.

<sup>270</sup>T.C.A. § 7-87-109(d).

<sup>271</sup>T.C.A. § 9-21-117.

<sup>272</sup>T.C.A. § 42-3-111(d).

<sup>273</sup>T.C.A. § 42-4-109(d).

<sup>274</sup>T.C.A. § 49-3-1002(c).

Housing Authorities. The property of housing authorities is exempt from all taxes and special assessments of the state or any county, city, town, or metropolitan government. In lieu of such taxes or special assessments, a housing authority must agree to make payments to the county, city, town, or metropolitan government for services, improvements or facilities furnished by the county, city, town, or metropolitan government for the benefit of a housing project owned by the housing authority. In no event may these payments exceed the estimated cost to the county, city, town, or metropolitan government of the services, improvements or facilities furnished.<sup>275</sup>

The bonds or notes issued by a housing authority, together with the interest thereon and the income therefrom, are exempt from all taxes.<sup>276</sup>

Low Cost Housing for Elderly Persons. Property of Tennessee nonprofit corporations which is used for the permanent housing of low income persons with disabilities, or low income elderly or handicapped persons, is exempt in accordance with T.C.A. § 67-5-207. The property must be financed by a grant under § 811 or § 211 of the National Affordable Housing Act (42 U.S.C. §§ 8013, 12741) or the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11301 *et seq.*), or be financed by a loan made, insured, or guaranteed by a branch, department or agency of the United States government under § 515(b) or § 521 of the Housing Act of 1949 (42 U.S.C. §§ 1485(b) or 1490a), § 202 of the Housing Act of 1959 (12 U.S.C. § 1701q), §§ 221, 231 or 236 of the National Housing Act (12 U.S.C. §§ 1715l, 1715v, or 1715z-1), or § 8 of the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974 (42 U.S.C. § 1437f). Eligibility for the exemption under these programs continues so long as there is an unpaid balance on the loan, or in the case of a grant, so long as the project is restricted to use for elderly or handicapped persons or persons with disabilities as defined in the programs. The property must be used as below-cost housing for elderly or handicapped persons or persons with disabilities within the program definitions, who have incomes not in excess of limits established for the enumerated program by the department of housing and urban development (HUD). If a property was approved by HUD for participation in the program without specific low income guidelines, the property may nevertheless qualify for exemption on a pro rata basis if at least 50 percent of the residents (low income residents) have incomes which would qualify under HUD guidelines for any of the enumerated programs. In such cases the property shall be exempt in the same percentage which low income residents represent of the total occupancy of the property at full capacity, determined as of January 1 each year, on the basis of information supplied to the assessor on or before April 20.<sup>277</sup> Also exempted under T.C.A. § 67-5-207 is the property of not-for-profit organizations funded under the HOME Investment Partnerships Program (42 U.S.C. § 12701 *et seq.*) or funded as a special needs project under the HOUSE program established by Acts 1988, ch. 900, and used as permanent housing for low income and very low income persons

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<sup>275</sup>T.C.A. § 67-5-206(a).

<sup>276</sup>T.C.A. § 67-5-206(b).

<sup>277</sup>T.C.A. § 67-5-207(a)(1).

with "permanent conditions" within the meaning of the HOUSE program.<sup>278</sup> To qualify for an exemption, a not-for-profit corporation must first be exempt from federal income taxation by virtue of qualifying as an exempt charitable organization or as an exempt social welfare organization under the provisions of the Internal Revenue Code.<sup>279</sup> Additional requirements are set forth in T.C.A. § 67-5-207(b)(1) - (5). Furthermore, all claims for exemption under T.C.A. § 67-5-207 are subject to the provisions of T.C.A. § 67-5-212(b) regarding exemptions for charitable institutions.<sup>280</sup>

Certain facilities permitted by federal statute in such housing projects are not exempt from property taxation. For example, under Department of Housing and Urban Development regulations, these housing projects may contain such facilities such as snack bars, craft shops, grocery stores, restaurants, and beauty shops, which are not considered charitable and therefore not exempt from taxation.<sup>281</sup>

In lieu of any taxes for which a property is granted exemption under T.C.A. § 67-5-207, the owners of projects which exceed 12 units must agree to make payments to any county, municipality, metropolitan government, or district for improvements, facilities or services rendered by the county, municipality, metropolitan government or district. In no event may such payments exceed the estimated cost to provide the improvements, facilities, or services furnished, and in no event may such payments be required from public housing authorities operating under *Tennessee Code Annotated* Title 13, Chapter 20.<sup>282</sup>

Property Used to Recycle Waste Products. Property owned by a non-profit corporation whose purpose is to convert waste products for heating or cooling public buildings or facilities is exempt from taxation if the reversionary interest is in the governmental entity. Some by-products of this recycling process can be furnished to private entities without changing the tax-exempt status.<sup>283</sup>

Private Act Hospital Authorities. In addition to all the rights and powers granted to a private act hospital authority under the provisions of T.C.A. § 7-57-601 *et seq.*, beginning with the 2001 tax year, and thereafter, a private act hospital authority will be exempt from the payment of any taxes or fees to the state or any subdivisions thereof, or to any officer or employee of the state or any subdivision thereof, except as provided in T.C.A. § 67-5-209. This exemption does not include fees paid by private act hospital authorities as required by T.C.A. § 68-11-216. The property of an authority is exempt from all county and municipal taxes; however,

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<sup>278</sup>T.C.A. § 67-5-207(d).

<sup>279</sup>T.C.A. § 67-5-207(b).

<sup>280</sup>T.C.A. § 67-5-207(c).

<sup>281</sup>Op. Tenn. Atty. Gen. 79-140 (February 22, 1979).

<sup>282</sup>T.C.A. § 67-5-207(a)(2).

<sup>283</sup>T.C.A. § 67-5-208.

the authority must pay all county and municipal fees. An authority may agree to the payment of tax equivalents to the creating or participating governing authority or entity. Effective January 1, 2002, any claim for exemption under T.C.A. § 67-5-209 must be determined by the State Board of Equalization, following application in the manner required by T.C.A. § 67-5-212. Exemptions will be (1) limited to property of the authority which would be exempt if owned and operated by a charitable hospital under T.C.A. § 67-5-212; and (2) granted in accordance with the same criteria used by the board of equalization in granting exemptions to property owned and operated by a charitable hospital under T.C.A. § 67-5-212.<sup>284</sup>

Charter or Contract Exemptions. All property protected by a valid charter or contract exemption is exempt from taxation.<sup>285</sup>

Religious, Charitable, Scientific, Educational Institutions. The real and personal property, or any part of the property, owned by a religious, charitable, scientific or nonprofit educational institution is exempt from property taxation if it is occupied and used by the institution or its officers purely and exclusively for carrying out one or more of the purposes for which the institution was created or exists. Likewise, the real and personal property owned by a religious, charitable, scientific or nonprofit educational institution is exempt from property taxation if it is occupied and used by another exempt institution purely and exclusively for one or more of the purposes for which it was created or exists and the owning institution receives no more rent than \$1.00 per year. The owning institution may receive a reasonable service and maintenance fee for the use of the property.<sup>286</sup>

"The tax exemption statutes in Tennessee are construed liberally in favor of religious, charitable and educational institutions.<sup>287</sup> The basis for a liberal construction is a 'benefit conferred on the public by such institutions, and a consequent relief, to some extent, of the burden upon the state to care for and advance the interests of its citizens.'"<sup>288</sup> However, the mere "fact that an organization is chartered for the general welfare, or not for profit, is not sufficient to entitle its property to tax exempt status."<sup>289</sup> In order to be tax exempt, the property

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<sup>284</sup>T.C.A. § 67-5-209. See also T.C.A. § 67-9-201.

<sup>285</sup>T.C.A. § 67-5-211.

<sup>286</sup>T.C.A. § 67-5-212(a)(1)(A). See *Memphis Development Foundation v. State Board of Equalization*, 653 S.W.2d 266 (Tenn.Ct.App. 1983). See 2004 Public Chapter 635 for exception for institution which owns and operates parking garage which leases spaces to a metropolitan government hospital authority.

<sup>287</sup>*Book Agents of the Methodist Episcopal Church, South v. State Board of Equalization*, 513 S.W.2d 514, 521 (Tenn. 1974) citing *Peabody College v. State Board of Equalization*, 407 S.W.2d 443 (Tenn. 1966); *Mid-State Baptist Hospital, Inc. v. Nashville*, 366 S.W.2d 769 (Tenn. 1963). See also *Kopsombut-Myint Buddhist Center v. State Board of Equalization*, 728 S.W.2d 327, 332 (Tenn.Ct.App. 1986).

<sup>288</sup>*Id.*, citing *M. E. Church, South v. Hinton*, 21 S.W. 321, 322 (Tenn. 1893).

<sup>289</sup>*LaManna v. Electrical Workers Local Union No. 474*, 518 S.W.2d 348, 352 (Tenn. 1974) citing *Memphis Chamber of Commerce v. City of Memphis*, 232 S.W. 73, 74 (1921); *North Gates Elks Club v. Garner*, 496 S.W.2d 887, 889 (Tenn. 1973).



must be used "purely and exclusively" for one or more of the purposes for which the institution seeking a tax exemption was created. In a series of cases, the Tennessee Supreme Court has held "that the use requirement for property to be tax exempt is met where the use is 'directly incidental to or an integral part of' one of the recognized purposes of an exempt institution."<sup>290</sup> Pursuant to the application of the use requirement, employee parking lots owned by non-profit hospitals, employee lunch rooms owned by non-profit corporations, and off-campus housing facilities owned by non-profit educational institutions have been found to be exempt from property taxation.<sup>291</sup> However, property that is owned by a charitable institution but not used for any purpose but held for future development does not qualify as tax exempt property.<sup>292</sup>

Pursuant to T.C.A. § 67-5-212, no property will be totally exempted, nor will any portion of the property be pro rata exempted, unless the property or portion of the property is actually used purely and exclusively for religious, charitable, scientific or educational purposes.<sup>293</sup> The property of the institution will not be exempt from taxation if the owner, or any stockholder, officer, member or employee of the institution receives any profit (other than reasonable compensation for their services) from the operations of the property in competition with like non-exempt property.<sup>294</sup> The property of the institution will not be exempt if the organization of the institution for any avowed purpose is merely a guise or pretense for directly or indirectly making a pecuniary profit for the institution, or for any of its members or employees, or if it is not in good faith organized or conducted exclusively for one or more of the avowed purposes.<sup>295</sup>

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<sup>290</sup>*Methodist Hospitals of Memphis v. Assessment Appeals Comm'n*, 669 S.W.2d 305, 307 (Tenn. 1984). See also *Metropolitan Government of Nashville & Davidson County v. State Board of Equalization*, 817 S.W.2d 953, 955 (Tenn. 1991).

<sup>291</sup>*Metropolitan Government of Nashville & Davidson County v. State Board of Equalization*, 817 S.W.2d 953, 955 (Tenn. 1991) citing *Vanderbilt University v. Ferguson*, 554 S.W.2d 128 (Tenn.Ct.App. 1976); *Shared Hospital Services Corporation v. Ferguson*, 673 S.W.2d 135 (Tenn. 1974); *George Peabody College for Teachers v. State Board of Equalization*, 407 S.W.2d 443 (Tenn. 1966).

<sup>292</sup>*Oak Ridge Hospital of the Methodist Church, Inc. v. City of Oak Ridge*, 420 S.W.2d 583, 586 (Tenn.Ct.App. 1967) (the occupation and use of the property must be such as to contribute presently or in the very immediate future to the operation of the charitable institution if the institution is going to enjoy a tax exempt status of the property). See also *Memphis Development Foundation v. State Board of Equalization*, 653 S.W.2d 266 (Tenn.Ct.App. 1983) (Neither the Constitution nor the statute allows the ownership of unused property by a tax exempt organization to confer exemption upon the property. It is the use and not the non-use which confers exemption.).

<sup>293</sup>T.C.A. § 67-5-212(a)(1)(A).

<sup>294</sup>T.C.A. § 67-5-212(a)(3)(A). See *Book Agents of the Methodist Episcopal Church, South v. State Board of Equalization*, 513 S.W.2d 514, 523 (Tenn. 1974).

<sup>295</sup>T.C.A. § 67-5-212(a)(3)(B). See *Summers v. Cherokee Children & Family Services, Inc.*, 112 S.W.3d 486, 502 (Tenn.Ct.App. 2002).

If the real property of an institution is not used exclusively for carrying out one or more of the stated purposes, but is leased or otherwise used for other purposes, it will not be exempt regardless of whether the income received is used for one or more of the avowed purposes. If a portion of any lot or building of an institution is used purely and exclusively for carrying out one or more of the stated purposes of the institution, then that lot or building will be exempt only to the extent of the value of the portion so used, and the remaining or other portion will be subject to taxation.<sup>296</sup>

No church will be granted an exemption on more than one parsonage, which may include up to three acres of land.<sup>297</sup>

Land not necessary to support exempt structures or site improvements associated with exempt structures, including land used for recreation, retreats or sanctuaries, is not eligible for exemption beyond a maximum of 100 acres per county for each religious, charitable, scientific or nonprofit educational institution qualified for exemption pursuant to T.C.A. § 67-5-212. For purposes of applying this limit, land owned by an exempt institution is aggregated with land owned by related exempt institutions having common ownership or control. Land in excess of the limit may be designated by the county for open space classification pursuant to T.C.A. § 67-5-1007 as an alternative to exemption.<sup>298</sup>

*Application for Exemption.* Any owner of real or personal property claiming an exemption under T.C.A. § 67-5-207, § 67-5-212, § 67-5-213, or § 67-5-219 must file an application for the exemption with the State Board of Equalization on a form prescribed by the board, and supply any further information that the board may require to determine whether the property qualifies for exemption. No property will be exempted from property taxes under these sections unless the application has been approved in writing by the board. A separate application must be filed for each parcel of property for which an exemption is claimed. An application is deemed filed on the date it is received by the board or, if mailed, on the postmark date. The applicant must provide a copy of the application with any supporting materials to the assessor of property of the county in which the property is located. An application for an exemption pursuant to T.C.A. § 67-5-212 or any other section referring to these procedures will be treated as an appeal for purposes of T.C.A. § 67-5-1512.<sup>299</sup>

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<sup>296</sup>T.C.A. § 67-5-212(a)(3).

<sup>297</sup>T.C.A. § 67-5-212(a)(1)(A). See *Metropolitan Government of Nashville & Davidson County v. State Board of Equalization*, 817 S.W.2d 953 (Tenn. 1991); *Blackwood Brothers Evangelistic Ass'n v. State Board of Equalization*, 614 S.W.2d 364, 366 (Tenn.Ct.App. 1980) (Parsonages, per se, are not given exemption under the statute; only those pieces of property that are used purely and exclusively for religious, charitable, scientific or educational purposes are exempt.). See also *First Presbyterian Church of Chattanooga v. State Board of Equalization*, 2003 WL 21994804 (Tenn.Ct.App. 2003).

<sup>298</sup>T.C.A. § 67-5-212(o).

<sup>299</sup>T.C.A. § 67-5-212(b)(1).

The board makes an initial determination granting or denying an exemption through its staff designee, who sends written notice of the initial determination to the applicant and the assessor of property. Either the assessor of property or the applicant may appeal the initial determination to the board and is entitled to a hearing prior to any final determination of exemption. The assessor maintains on file copies of all approved applications. After an exemption has been approved, it is not necessary to reapply each year, but the exemption is not transferable or assignable and the applicant is required to promptly report to the assessor any change in the use or ownership of the property which might affect its exempt status.<sup>300</sup>

The board may by rule impose a fee for processing exemption applications. The fee cannot exceed \$100 and must be proportionate to the value of the property at issue. The total fees collected in any fiscal year cannot exceed the cost of processing exemption applications in that fiscal year.<sup>301</sup>

*Deadlines for Filing Application.* An institution claiming an exemption under T.C.A. § 67-5-212 which has not previously filed an application for and been granted an exemption for a parcel must file an application for exemption with the State Board of Equalization by May 20 of the year for which the exemption is sought. If the application is approved, the exemption will be effective as of January 1 of the year of application or as of the date the exempt use of such parcel began, whichever is later. If application is made after May 20 of the year for which the exemption is sought, but prior to the end of the year, the application may be approved but will be effective for only a portion of the year determined as follows: (1) if the application is filed within 30 days after the exempt use of the property began, the exemption will be effective as of the date the exempt use began or May 20, whichever is later; or (2) if the application is filed more than 30 days after the exempt use began, the exemption will be effective as of the date of application.<sup>302</sup>

Where a religious institution acquires property previously approved for a religious use exemption or property to replace its own property previously approved for a religious use exemption, the effective date of exemption shall be one year prior to the date of application, or the date the acquiring institution began to use the property for religious purposes, whichever is later.<sup>303</sup>

*Administrative and Judicial Review.* All questions of exemption under T.C.A. § 67-5-212 are subject to review and final determination by the State Board of Equalization. However, any determination by the state board is subject to judicial review by petition of certiorari to the appropriate chancery court. The petition must be filed within 60 days after entry of the state

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<sup>300</sup>T.C.A. § 67-5-212(b)(2).

<sup>301</sup>T.C.A. § 67-5-212(b)(2).

<sup>302</sup>T.C.A. § 67-5-212(b)(3). See *Metropolitan Government of Nashville & Davidson County v. Delinquent Taxpayers*, 1992 WL 124434 (Tenn.Ct.App. 1992).

<sup>303</sup>T.C.A. § 67-5-212(b)(3).

board's final order. All other provisions of law notwithstanding, no property is entitled to judicial review of its status under T.C.A. § 67-5-201 *et seq.*, except as provided by the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5 of the Code, and only after the exhaustion of administrative remedies as provided in T.C.A. § 67-5-212.<sup>304</sup>

*Revocation of Exemption.* The State Board of Equalization may revoke any exemption approved under T.C.A. § 67-5-212 if it determines that the exemption was approved on the basis of fraud, misrepresentation or erroneous information, or that the current owner or use of the property does not qualify for exemption. The Executive Secretary of the board may initiate proceedings for revocation on the Executive Secretary's own motion or upon the written complaint of any person upon a determination of probable cause. Revocation will not be retroactive unless the order of revocation incorporates a finding of fraud or misrepresentation on the part of the applicant or failure of the applicant to give notice of a change in the use or ownership of the property as required by T.C.A. § 67-5-212.<sup>305</sup>

*Charitable Institution Defined.* As used T.C.A. 67-5-212, "charitable institution" includes any nonprofit organization or association devoting its efforts and property, or any portion thereof, exclusively to the improvement of human rights and/or conditions in the community.<sup>306</sup>

A long, nonexclusive statutory list of organizations and institutions which may qualify for property tax exemption include nonprofit organizations chartered by the United States Congress;<sup>307</sup> labor organizations;<sup>308</sup> nonprofit artificial breeding associations;<sup>309</sup> fraternal organizations exempted from the payment of federal income taxes;<sup>310</sup> nonprofit county fair associations;<sup>311</sup> property containing a residential dwelling located in a community park that meets certain conditions;<sup>312</sup> property upon which a caretaker's residence is located that meets

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<sup>304</sup>T.C.A. § 67-5-212(b)(4). See *State ex rel. County of Hamblen v. Knoxville College*, 60 S.W.3d 93 (Tenn.Ct.App. 2001)(college's failure to pursue its statutory remedies during the requisite time periods rendered the Board's decision final, and the Chancery Court was without jurisdiction to entertain the appeal ).

<sup>305</sup>T.C.A. § 67-5-212(b)(5).

<sup>306</sup>T.C.A. § 67-5-212(c). See *Downtown Hosp. Ass'n v. State Board of Equalization*, 760 S.W.2d 954 (Tenn.Ct.App. 1988) (under T.C.A. § 67-5-212, any nonprofit organization or association which devotes its efforts to improvement of conditions in the community is a charitable institution and exempted from property taxation).

<sup>307</sup>T.C.A. § 67-5-212(d).

<sup>308</sup>T.C.A. § 67-5-212(e).

<sup>309</sup>T.C.A. § 67-5-212(f).

<sup>310</sup>T.C.A. § 67-5-212(h).

<sup>311</sup>T.C.A. § 67-5-212(i).

<sup>312</sup>T.C.A. § 67-5-212(j).

certain conditions;<sup>313</sup> property owned by a public radio station meeting certain conditions;<sup>314</sup> property owned by a public television station;<sup>315</sup> and property owned by a religious or charitable institution that is used by the institution for a thrift shop, provided certain conditions are met.<sup>316</sup>

Property of Certain Educational Institutions. The real estate owned by an educational institution that is used primarily for dormitory purposes for its students is exempt from taxation, even though other student activities are incidentally conducted there, and even though the student's spouse or children may reside there.<sup>317</sup> The residence of the chief executive officer of a college or university, and no more than three acres of its surrounding grounds, owned by a college or university, is exempt from taxation, if the chief executive officer of the institution is required to reside there as a condition of employment.<sup>318</sup> The residential units owned by a nonprofit college or university or nonprofit secondary school that boards all or some of its students and located on or immediately adjoining its campus are exempt from taxation if the residential units meet all of the following criteria: (1) the unit is occupied by a member of the faculty or staff of the institution; (2) occupancy is required as a condition of that person's employment as a convenience for the institution or to attend to plant or equipment; (3) the institution which owns the unit receives no income from the unit except a reasonable service and maintenance fee; (4) the employee occupying the unit receives no equity of ownership or any other thing of permanent or transferable value from occupancy of the unit; (5) the right of the employee to occupy the unit ends with the employee's tenure on the faculty or staff of that institution; and (6) the unit is occupied wholly by the employee and the employee's immediate family.<sup>319</sup> A bookstore owned by a college or university which is located on the campus and is operated on a not-for-profit basis to furnish students at that institution with textbooks and other ancillary required materials is exempt from taxation, even though the bookstore may sell other items of a souvenir nature, such as wearing apparel, glassware, and china embossed with the name, seal or logo of the institution, or items such as toiletries or stationery supplies for the convenience of students.<sup>320</sup>

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<sup>313</sup>T.C.A. § 67-5-212(k).

<sup>314</sup>T.C.A. § 67-5-212(l).

<sup>315</sup>T.C.A. § 67-5-212(m).

<sup>316</sup>T.C.A. § 67-5-212(n).

<sup>317</sup>T.C.A. § 67-5-213(a).

<sup>318</sup>T.C.A. § 67-5-213(b).

<sup>319</sup>T.C.A. § 67-5-213(c).

<sup>320</sup>T.C.A. § 67-5-213(d).

University bookstores and residential units owned by any nonprofit college or university or secondary school located in Hamilton County are not eligible for the exemption provided in T.C.A. § 67-5-213(c) and (d).<sup>321</sup>

Cemeteries and Monuments. Places of burial, all nonprofit cemeteries, and monuments of the dead are exempt from taxation. Real property owned by cemeteries operated on a for-profit basis which has been prepared and is being held for burial purposes is exempt from taxation; provided, that the amount of such property does not exceed the reasonable expectation of public needs. Cemeteries are required to apply for exemption and obtain approval of exemption by the State Board of Equalization if charges are imposed for use of burial plots.<sup>322</sup>

Personal Bank Accounts and Other Personal Property. The entire amount of money deposited in an individual's personal or family checking or savings account and \$7,500 worth of personal household goods and furnishings, wearing apparel and other such tangible personal property in the hands of a taxpayer is exempt from taxation. Where the property is owned jointly by a husband and wife, the exemption is \$15,000 and any exemption applying to any minor child of the family living at home and not used by the minor child personally may be applied to the total family household goods and furnishings, wearing apparel, and other such tangible personal property used by the family in common.<sup>323</sup>

Growing Crops. All growing crops of whatever kind, including, but not limited to, timber, nursery stock, shrubs, flowers, and ornamental trees, the direct product of the soil of this state or any other state of the union, in the hands of the producer or the producer's immediate vendee, and articles manufactured from the produce of this state, or any other state of the union, in the hands of the manufacturer, is exempt from taxation. All livestock and poultry of whatever kind in the hands of the producer or the producer's immediate vendee is exempt from taxation.<sup>324</sup>

Property in Transit. Tangible personal property which is moving in interstate commerce through or over the territory of the state of Tennessee or was consigned to a warehouse within the state of Tennessee from outside the state of Tennessee, for storage, in transit, to a final destination outside the state of Tennessee, is deemed not to have acquired a situs in the state of Tennessee for purposes of ad valorem taxation. Tangible personal property transported to a plant, warehouse or establishment within the state of Tennessee, from outside the state of Tennessee, for storage or repackaging, and held for eventual sale or other disposition, other

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<sup>321</sup>T.C.A. § 67-5-213(c)(3) and (d)(2).

<sup>322</sup>T.C.A. § 67-5-214.

<sup>323</sup>T.C.A. § 67-5-215.

<sup>324</sup>T.C.A. § 67-5-216.

than at retail, to a destination outside this state, is deemed not to have acquired a situs within the state of Tennessee for purposes of ad valorem taxation.<sup>325</sup>

Historic Properties. The value of any improvement made to or restoration of any structure included within the provisions of T.C.A. § 4-11-201 *et seq.*, or which is certified by a historic properties review board, as provided for in T.C.A. § 67-5-218(a)(2), is exempt from property taxation when the improvement or restoration is necessitated by (1) any comprehensive plan for the development of a district or zone authorized in T.C.A. § 13-7-401; (2) the official preservation plan of the state of Tennessee as required by the provisions of United States Public Law 89-665; (3) any other federal or state plan of development or redevelopment which includes the preservation and restoration of structures covered by T.C.A. § 67-5-218; or (4) the agreement of the owner of an individual structure to restore the structure in accordance with guidelines specified by a historic properties review board, as provided for in T.C.A. § 67-5-218, and to refrain from significantly altering or demolishing the structure during the period of exemption.<sup>326</sup>

The provisions of T.C.A. § 67-5-218 only apply to counties having a population of 200,000 or more according to the 1970 federal census, or any subsequent federal census; and, which, by a majority vote of the governing body of the county, choose to come under its provisions.<sup>327</sup> The chief administrative officer of each county appoints a historic properties review board for that jurisdiction, to be approved by a majority vote of the county governing body. The review board consists of at least five members. One member of the review board must be an architect, if resident in the county, who is a member of the American Institute of Architects or meets the membership qualifications of that body. One member of the review board must be a member of the local planning commission. And, one member must be the county historian, a member of the county historical commission, or a member of the county historical society. The review board is required to formulate criteria for certification of historic properties with the assistance of the Tennessee Historical Commission, subject to review and comment by the state preservation officer.<sup>328</sup>

All structures (except those on the Tennessee or National Register of Historic Properties) whose owners seek to benefit from the provisions of T.C.A. § 67-5-218, must be certified in accordance with the criteria established by the local historic properties review board. The exemption of any structure certified in accordance with T.C.A. § 67-5-218, wherever located, will also include any structure or residence used in the management or care of the historical structure. Any structure 175 years of age or older is presumed to meet the criteria on the basis of age alone, any structure 125 years of age or older is presumed to meet the criteria unless established otherwise, and any structure 75 years of age or older is assumed to meet the

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<sup>325</sup>T.C.A. § 67-5-217.

<sup>326</sup>T.C.A. § 67-5-218(a)(1).

<sup>327</sup>T.C.A. § 67-5-218(b) and (c)(1).

<sup>328</sup>T.C.A. § 67-5-218(a)(2).

criteria subject to individual review.<sup>329</sup> Exemptions continue in effect for 10 years in the case of a partial or exterior restoration or improvement, as determined by the review board, and 15 years in the case of a total restoration, as determined by the review board. At the end of the applicable period, the structure is assessed and taxed on the basis of its full market value. If any structure receiving an exemption under T.C.A. § 67-5-218 is demolished or significantly altered, as determined by the review board, during the period of exemption, the exemption of the improved value will immediately end and the owner will be liable at that time for any difference between the tax paid and the tax which would have been due on the improved value. The exemptions and restrictions provided for in T.C.A. § 67-5-218 apply to the structure itself and pass with its title.<sup>330</sup>

Airport Runways and Aprons. The real property of private public use airports that is used for airport runways and aprons is exempt from property tax.<sup>331</sup>

Property Held in Foreign Trade Zone. Tangible personal property imported from outside of the United States and held in a foreign trade zone or foreign trade subzone, as defined in *Tennessee Code Annotated* Title 7, Chapter 85, for the purpose of sale, manufacture, processing, assembly, grading, cleaning, mixing or display is exempt from Tennessee ad valorem taxation while held in the foreign trade zone or subzone and thereafter, if the property is then exported from the foreign trade zone or subzone directly to a location outside of Tennessee.<sup>332</sup>

Property Owned by a Charitable Organization for Low-Income Housing. Under T.C.A. § 67-5-221, certain property owned by a charitable organization and held for the housing of persons with low income may be exempt from taxation upon the adoption of a resolution by two-thirds vote of the county legislative body.<sup>333</sup> If the provisions of T.C.A. § 67-5-221 are adopted and subject to the application requirements of T.C.A. § 67-5-212, land owned by a charitable institution and held for the purpose of constructing one or more single family dwellings to be conveyed for use as the residence of a low-income household as defined in T.C.A. § 13-23-103(12), is exempt during the period of its ownership by the charitable institution until the date it is conveyed to the adult head of the low-income household, but not to exceed the periods established in T.C.A. § 67-5-221(b) and (c). The effective date of exemption is determined under T.C.A. § 67-5-212. If a dwelling is not constructed and conveyed as provided in T.C.A. § 67-5-221 within the allotted periods, the property will be encumbered

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<sup>329</sup>T.C.A. § 67-5-218(a)(3).

<sup>330</sup>T.C.A. § 67-5-218(a)(4).

<sup>331</sup>T.C.A. § 67-5-219.

<sup>332</sup>T.C.A. § 67-5-220.

<sup>333</sup>T.C.A. § 67-5-221(d).



by the full amount of taxes together with penalties and interest which would otherwise have been due.<sup>334</sup>

If the property purchased is a single lot on which only a single family home may be constructed, the property is exempt for a period not to exceed 18 months.<sup>335</sup> If the property is planned for subdivision into multiple single family lots according to plans filed by the organization, the period of exemption is 18 months plus six months for each additional lot planned beyond the first. If a lot is not developed as planned, a proportionate share of taxes which would have been due upon the lot, including delinquency penalties and interest, will accrue from the date of acquisition of the property by the organization. Taxes will accrue on individual lots within a multi-lot development at the time each lot is conveyed as provided in T.C.A. § 67-5-221.<sup>336</sup>

Historic Properties Owned by Charitable Institutions. Under T.C.A. § 67-5-222, certain historical properties owned by charitable institutions are exempt from property taxation if the provisions of T.C.A. § 67-5-222 are adopted in a resolution by a two-thirds vote of the county legislative body.<sup>337</sup> Upon local approval and subject to the application requirements of T.C.A. § 67-5-212, property owned by a charitable institution receives a 100 percent exemption from property taxation if the property is (1) on the National Register of Historical Places; (2) used for occasional rentals which last for no more than two days at a time per event; (3) not rented out more than one hundred eighty days per year, and the proceeds received from rental periods are used solely for the purposes of defraying the maintenance and upkeep of the property; and (4) has been owned and maintained by the charitable institution for at least 10 years prior to the application for the exemption.<sup>338</sup>

The owner of the qualified property must submit a comprehensive preservation and maintenance plan to the historic properties review board that demonstrates how the property tax savings will be applied to the preservation and maintenance of the property. The plans must meet the guidelines established by the historic properties review board. The tax exemption is valid for a 10 year period; however, the owner of the property may apply for additional exemption periods; provided, that an updated preservation and maintenance plan is filed with the historic properties review board in accordance with its guidelines.<sup>339</sup>

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<sup>334</sup>T.C.A. § 67-5-221(a).

<sup>335</sup>T.C.A. § 67-5-221(b).

<sup>336</sup>T.C.A. § 67-5-221(c).

<sup>337</sup>T.C.A. § 67-5-222(d).

<sup>338</sup>T.C.A. § 67-5-222(a).

<sup>339</sup>T.C.A. § 67-5-222(b) and (c).

Nonprofit Community and Performing Arts Organizations. Under T.C.A. § 67-5-223, upon approval of a resolution by a two-thirds vote of the county legislative body, certain property owned by a non—profit community arts organization is exempt from property taxation. Upon adoption of the provision of T.C.A. § 67-5-223 and subject to the application requirements of T.C.A. § 67-5-212, property owned by nonprofit community and performing arts organizations and used by them or other nonprofit community and performing arts organizations is eligible for property tax exemption as a charitable or educational use of property upon compliance with the provisions of T.C.A. § 67-5-223. Real property owned by these organizations is eligible for exemption to the extent that it is used for public museums, art galleries, performing arts auditoriums and theaters, and any uses necessary and incidental to the foregoing. Personal property owned by these organizations is eligible for exemption to the extent it is used by the organization to equip and operate real property as set out above. Other personal property, regardless of its location, is eligible for exemption to the extent it is used for business or office operations of the organization or used in shows, exhibits or productions of the organization.<sup>340</sup>

The organization seeking exemption shall meet the following requirements: (1) the property must be owned and used by a public benefit nonprofit organization established as either a nonprofit corporation or an unincorporated entity operating as an association, a trust or a foundation pursuant to written articles of governance; (2) the organization must be operated and governed by a board of directors of not less than 10 members, all of whom are natural persons, and all powers and affairs of the organization must be exercised under the authority of the board of directors; (3) not more than three members of the organization or its board of directors may be employees of the organization; (4) other than as an employee, no member, officer or director can be compensated for service as such; (5) other than for services as an employee, no member, director or officer of the organization, directly or indirectly,<sup>341</sup> may sell or provide, for monetary remuneration, any goods or services to the organization;(6) no member, director or officer of the organization may lend money to the organization if the loan is secured by the organization's property; (7) other than for services as an employee, no member, director or officer of the organization may profit from shows, exhibits or productions of the organization or have any monetary interest in shows, exhibits or productions of the organization; (8) in the event the organization sells any of its property which has been exempt from taxation, it must notify the attorney general and reporter of its intent to sell the property at least 21 but not more than 60 days before the date of sale; (9) the articles of governance of any unincorporated organization must include the provisions set out in T.C.A. § 67-5-223(b) or be specifically incorporated by reference; (10) the articles of governance of the organization, whether incorporated or not, and all amendments thereto must be filed with the assessor of property in the county in which the organization owns exempt property;<sup>342</sup> and

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<sup>340</sup>T.C.A. § 67-5-223(a).

<sup>341</sup>"Indirectly" means through a business organization of which the employee, member, director or officer of the organization or a spouse, child or parent owns more than a three percent (3 %) interest in the business.

<sup>342</sup>This requirement is not to be construed to override any other existing law as to filing of organizational documents.

(11) the organization must supply the assessor of property with an annual report which includes a listing of activities and uses of the property, current statements of financial condition, and any further information the assessor may require.<sup>343</sup>

The county governing body may impose a requirement of periodic local review or renewal of the exemption. The assessor of property must maintain with the records for the property an estimate of the market value of the property as of the date of the last county-wide reappraisal.<sup>344</sup>

Economic Development. Under T.C.A. § 67-5-224, an exemption for certain economic development activities applies to certain property in counties containing a national laboratory facility and counties immediately adjacent to such counties. In these counties and subject to the general requirements of T.C.A. § 67-5-212, real and tangible personal property owned and used by a nonprofit economic and/or charitable development organization is eligible for property tax exemption as a charitable use of property when the provisions of T.C.A. § 67-5-224 are met. The real and tangible personal property owned by a nonprofit entity, whether charitable or otherwise, that is recognized as tax exempt by the internal revenue service and is engaged in economic development, is eligible for property tax exemption to the extent the property is used to provide small business counseling and/or shared office and information systems infrastructure for small business development. The tangible personal property owned by a nonprofit charitable organization is likewise eligible for property tax exemption to the extent it is used to provide counseling, informational and technical assistance to other charitable organizations in applying for grants. Any owner of real or personal property claiming an exemption under T.C.A. § 67-5-224 must file an application for exemption with the State Board of Equalization on the same form and in the same manner prescribed in T.C.A. § 67-5-212(b).<sup>345</sup>

Family Wellness Centers. Real and personal property used as a nonprofit family wellness center is exempt from property taxes as a charitable use of property if the center is owned and operated as provided in T.C.A. § 67-5-225. "Family wellness center" means real and personal property used to provide physical exercise opportunities for children and adults. The property must be owned by a nonprofit corporation that is a charitable institution which (1) has as its historic sole purpose the provision of programs promoting physical, mental, and spiritual health, on a holistic basis without emphasizing one over another; (2) provides at least five of the following eight programs dedicated to the improvement of conditions in the community and support for families:

- (A) day care programs for preschool and school-aged children;
- (B) team sports opportunities for youth and teens;
- (C) leadership development for youth, teens, and adults;

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<sup>343</sup>T.C.A. § 67-5-223(b).

<sup>344</sup>T.C.A. § 67-5-223(c).

<sup>345</sup>T.C.A. § 67-5-224.

- (D) services for at-risk youth and teens;
- (E) summer programs for at-risk and non-at-risk youth and teens;
- (F) outreach and exercise programs for seniors;
- (G) aquatic programs for all ages and skill levels; and
- (H) services for disabled children and adults; and

(3) provides all programs and services to those of all ages, incomes and abilities under a fee structure which reasonably accommodates persons of limited means and, therefore, ensures that ability to pay is not a consideration. The corporation must further meet the requirements of T.C.A. § 67-5-225(b).<sup>346</sup>

In order to qualify for exemption, the nonprofit corporation must first be exempt from federal income taxation as an exempt charitable organization under the provisions of § 501(c)(3) of the Internal Revenue Code and any amendments thereto. In addition, the nonprofit corporation must provide that (1) the directors and officers will serve without compensation beyond reasonable compensation for services performed; (2) the corporation is dedicated to and operated exclusively for nonprofit purposes; (3) no part of the income or the assets of the corporation will be distributed to inure to the benefit of any individual; and (4) upon liquidation or dissolution, all assets remaining after payment of the corporation's debts will be conveyed or distributed only in accordance with the requirements applicable to a § 501(c)(3) corporation.<sup>347</sup> Furthermore, all claims for exemptions under T.C.A. § 67-5-225 are subject to the provisions of T.C.A. § 67-5-212(b).<sup>348</sup>

Museums. Subject to the applicable requirements of T.C.A. § 67-5-212, the real and tangible personal property owned and used by an organization as a museum receives a 100 percent exemption from property taxation if (1) the organization owns the real property for which the exemption is sought; (2) the organization owning the property is exempted from the payment of federal income taxes by § 501(c)(3) of the Internal Revenue Code; (3) the property is located within the limits of an incorporated municipality; (4) the exempt organization actually operates the museum; (5) the museum displays local, regional and state crafts and items of historical interest; and (6) the board members of the organization receive no compensation for their services.<sup>349</sup>

Any owner of real or personal property claiming exemption under T.C.A. 67-5-226 is required to file an application for exemption with the State Board of Equalization on the same form and in the same manner prescribed in T.C.A. § 67-5-212(b).<sup>350</sup>

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<sup>346</sup>T.C.A. § 67-5-225(a). See Op. Tenn. Atty. Gen. 00-106 (June 9, 2000).

<sup>347</sup>T.C.A. § 67-5-225(b).

<sup>348</sup>T.C.A. § 67-5-225(c).

<sup>349</sup>T.C.A. § 67-5-226(a).

<sup>350</sup>T.C.A. § 67-5-226(b).

Leased Tangible Personal Property. Inventories of merchandise held by merchants and businesses for sale and exchange by persons taxable under the business tax (*Tennessee Code Annotated*, Title 67, Chapter 4, Part 7) are exempt from property taxation. This exemption includes tangible personal property held for lease or rental, but does not include such property in the possession of a lessee. Leased personal property in the possession of the lessee is subject to property taxation and is classified and assessed according to the lessee's use.<sup>351</sup>

### **In Lieu of Tax or Tax Equivalent Payments**

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>352</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>353</sup> Contracts for the distribution of tax equivalent payments are authorized.<sup>354</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>355</sup>

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<sup>351</sup>T.C.A. § 67-5-901. See also Op. Tenn. Atty. Gen. 89-89 (May 30, 1989) (finding that the statute excepting categories of leased personal property from the property tax exemption for leased property is constitutional); Op. Tenn. Atty. Gen. 91-94 (November 27, 1991) (finding that the ultimate user of the tangible personal property in a business or profession is liable for the property tax, whether the user is a lessee or sublessee, and the owner, lessee, or sublessee from whom the ultimate user, lessee or sublessee obtained the property is not liable for the property tax assessment).

<sup>352</sup>T.C.A. § 7-39-404.

<sup>353</sup>T.C.A. § 7-52-304. See also *Knox County v. City of Lenoir*, 837 S.W.2d 382 (Tenn. 1992)

<sup>354</sup>T.C.A. § 7-52-306.

<sup>355</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).

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>356</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>357</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>358</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>359</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.<sup>360</sup>

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>361</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

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<sup>356</sup>T.C.A. § 7-52-404.

<sup>357</sup>T.C.A. § 7-52-606(a).

<sup>358</sup>T.C.A. § 7-52-606(b).

<sup>359</sup>T.C.A. § 7-53-305(a).

<sup>360</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>361</sup>T.C.A. § 67-5-206.

federal law.<sup>362</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>363</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>364</sup>

## **Tax Relief**

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>365</sup> However, 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>366</sup>

Administrative Provisions. 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>367</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

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<sup>362</sup>16 U.S.C. § 831 *et seq.*

<sup>363</sup>T.C.A. § 67-9-101(a).

<sup>364</sup>T.C.A. § 67-9-201.

<sup>365</sup>Ops. Tenn. Atty. Gen. 96-044 (March 13, 1996) and 89-111 (September 5, 1989).

<sup>366</sup>T.C.A. § 67-5-701 *et seq.*

<sup>367</sup>T.C.A. § 67-5-701(a).

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>368</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>369</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>370</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>371</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

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<sup>368</sup>T.C.A. § 67-5-701(c).

<sup>369</sup>T.C.A. § 67-5-701(g).

<sup>370</sup>T.C.A. § 67-5-701(d)(1).

<sup>371</sup>T.C.A. § 67-5-701(f).



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>372</sup>

Elderly Low-Income Homeowners. 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>373</sup> Reimbursement is paid on the first \$18,000, or such other amount as set forth in the general appropriations act, of the full market value of the property.<sup>374</sup>

For tax year 1996, the taxpayer's annual income from all sources could not exceed \$10,550. 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 is the income of all owners of the property 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. 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>375</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>376</sup>

Disabled Homeowners. 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>377</sup> Reimbursement is paid on the first \$18,000, or such other amount as set forth in the general appropriations act, of the full market value of the property.<sup>378</sup>

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<sup>372</sup>T.C.A. § 67-5-701(h).

<sup>373</sup>T.C.A. § 67-5-702(a)(1).

<sup>374</sup>T.C.A. § 67-5-702(a)(3).

<sup>375</sup>T.C.A. § 67-5-702(a)(2).

<sup>376</sup>T.C.A. § 67-5-702(c).

<sup>377</sup>T.C.A. § 67-5-703(a)(1).

<sup>378</sup>T.C.A. § 67-5-703(a)(3).

For tax year 1996, the taxpayer's annual income from all sources could not exceed \$10,550. 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 is the income of all owners of the property 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. 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>379</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>380</sup>

Disabled Veterans. 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>381</sup> Reimbursement is paid on the first \$140,000 of the full market value of the property.<sup>382</sup> Property tax relief will not be extended to any person who was dishonorably discharged from any branch of the armed services.<sup>383</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

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<sup>379</sup>T.C.A. § 67-5-703(a)(2).

<sup>380</sup>T.C.A. § 67-5-703(c).

<sup>381</sup>T.C.A. § 67-5-704(a)(1).

<sup>382</sup>T.C.A. § 67-5-704(a)(2).

<sup>383</sup>T.C.A. § 67-5-704(c).

(3) 100 percent permanent total disability from any other service-connected, combat-related cause, as determined by the United States Veterans' Administration.<sup>384</sup>

The determination of the United States Veterans' Administration concerning the disability status of a veteran is conclusive for purposes of this statute.<sup>385</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, as long as the surviving spouse does not remarry and as long as the property for which tax relief is claimed is owned by and used exclusively by the surviving spouse as a home.<sup>386</sup>

Additional Tax Relief. Counties with a metropolitan form of government may, by act of the local legislative body, 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>387</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>388</sup>

## **Real Property Tax Deferral**

### Chapter 831 Deferral

*Eligibility for Deferral.* Pursuant to T.C.A. § 7-64-101, the legislative body of any county or municipality may provide by resolution that any single person age 65 years of age or older, or any married couple of which both are 65 years of age or older, or any person who is totally and permanently disabled, who owns real property, and who uses and occupies the property as a place of residence, may apply to the county trustee of the county where the residence is located for a deferral of payment of all real property taxes on that residence. The deferral of property taxes is not available to single persons age 65 years of age or older, or to married couples of which both are 65 years of age or older or to any family group which has more than

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<sup>384</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>385</sup>T.C.A. § 67-5-704(d).

<sup>386</sup>T.C.A. § 67-5-704(e).

<sup>387</sup>T.C.A. § 67-5-701(j)(1).

<sup>388</sup>T.C.A. § 67-5-701(j)(2).

one person residing permanently in the principal residence, whose combined gross income, as defined by the Internal Revenue Code, is greater than \$12,000 a year.<sup>389</sup>

*Limitations.* The tax deferral provided for in T.C.A. § 7-64-101 applies to no more than \$60,000 of the appraised fair market value, as determined from the records of the county tax assessor. In addition, the tax deferral applies only to the principal residence and no more than one acre of land.<sup>390</sup>

*Application Process.* Applications for the deferral of real property taxes is made annually, on or before March 1 of each year, unless a later date for applications is provided for by resolution of the legislative body of the county or municipality authorizing the program. Applications received by the county trustee after this date will be considered for deferral of real property taxes for the following tax year. Application forms are prepared by the state Division of Property Assessments. Pursuant to the statute, a \$5.00 application fee is imposed to defray the expenses of processing of the application. The fee must be paid when the application is submitted. The county trustee or appropriate municipal official furnishes the county assessor of property a copy of each application for the deferral of property taxes. Whenever an application for the deferral of real property taxes is made, the county assessor of the county where the residence is located must, within 90 days, reassess the property claimed for deferral and notify the county trustee or the appropriate municipal official of the amount of the reassessment and value for tax purposes. After the trustee determines that the applicant qualifies for deferral, the trustee will approve the application only after receiving written approval from the holder of a note secured by any mortgage or deed of trust on the residence. The trustee must provide the register of deeds notice of each approved application for the deferral of taxes.<sup>391</sup>

*Lien for Unpaid Taxes.* Whenever a deferral of real property taxes is granted, the assessment of taxes will continue on an annual basis; however, the taxes will not become due and payable until the deferral is terminated. The unpaid balance of assessed real property taxes constitutes a lien against the property, and is subject to interest at the rate of 10 percent a year. The accrued taxes and interest will be a lien of the first priority on the property in the particular local government. The lien will remain in effect until the taxes and interest are paid. The tax deferrals created pursuant to T.C.A. § 7-64-101 *et seq.* are not subject to the statutory penalties imposed on delinquent taxes, and the lien created in the local government is not subject to any applicable statute of limitation.<sup>392</sup>

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<sup>389</sup>T.C.A. § 7-64-101.

<sup>390</sup>T.C.A. § 7-64-102.

<sup>391</sup>T.C.A. § 7-64-103.

<sup>392</sup>T.C.A. § 7-64-104.

*Termination of Deferral.* Deferrals on the payment of real property taxes, granted pursuant to T.C.A. § 7-64-101 *et seq.*, will be terminated (1) upon the death of the person to whom the deferral was granted and that person's surviving spouse if the spouse qualifies; or (2) when the residence is sold. When the termination is by death, the taxes and interest become due and payable within 18 months of the termination or the settlement of the estate, whichever occurs first. When the termination occurs as a result of the sale of the property, all unpaid taxes and interest thereon become due and payable within 60 days. A deed for the sale of the property will not be accepted for recordation in the office of the county register of deeds until all taxes and interest have been paid.<sup>393</sup>

## Chapter 659 Deferral

*Eligibility for Deferral.* Pursuant to T.C.A. § 7-64-201, the legislative body of any county or municipality may provide by resolution that

(1) any taxpayer or spouse who is 65 years of age or older who owns residential property that is the person's principal place of residence will pay taxes on that property as any other taxpayer, but taxes on the property in the amount that exceeds the person's property tax for the year 1979 may be deferred at the interest rate set forth in T.C.A. § 7-64-209, with the deferred taxes to remain a lien upon the property as provided by T.C.A. § 7-64-209;

(2) any taxpayer who reaches 65 years of age on or before March 27, 1980, who owns residential property that is the person's principal place of residence will thereafter pay taxes on the property in the same amount as other taxpayers, but that any taxes in excess of the 1979 taxes may be deferred until the date of sale of the property or the date of death of the taxpayer, or the death of the surviving spouse, and that any taxpayer who reaches 65 years of age after March 27, 1980, may defer any taxes in excess of the amount in effect in the year the person becomes 65 years of age subject to the other provisions of T.C.A. § 7-64-201 *et seq.*; and

(3) any taxpayer who is 65 years of age or older who purchases residential property as the person's principal place of residence after the person's 65th birthday may defer taxes in excess of the amount of tax in the year the person purchased the property subject to the provisions of T.C.A. § 7-64-201 *et seq.*<sup>394</sup>

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<sup>393</sup>T.C.A. § 7-64-105.

<sup>394</sup>T.C.A. § 7-64-201(a).

The deferral benefits provided by T.C.A. § 7-64-201 *et seq.* also apply to totally and permanently disabled taxpayers, as defined by T.C.A. § 67-5-703, and disabled veterans as defined in T.C.A. § 67-5-704.<sup>395</sup>

Whenever the fair market value of the property is increased as the result of improvements to the property after March 27, 1980, the assessed value of the property will be adjusted to include the increased value, and the taxes will also be increased proportionally with the increased value. The increased value will not be subject to the benefits of the tax deferral.<sup>396</sup>

*Claim by Surviving Spouse.* In the event of the death of one spouse of a married couple who has qualified for deferral pursuant to the statute, if the surviving spouse is over 50 years of age, that spouse can continue to claim the deferral benefits subject to the tax lien already accumulated against the property.<sup>397</sup>

*Limitation on Eligibility—Taxpayer Income.* No taxpayer or taxpayers whose income exceeds \$12,000 annually is eligible for the tax deferral.<sup>398</sup> The limitation of \$12,000 on income from all sources applies to the combined income of both the husband and wife and/or all family members residing in the residence.<sup>399</sup>

*Limitation on Value of Principal Residence.* The limitation on the value of the principal place of residence is under \$50,000 and shall be determined by the appraised fair market value as it appears on the records of the county assessor and not the reduced assessment.<sup>400</sup> In addition, the tax deferral applies only to the principal residence and no more than one acre of land.<sup>401</sup>

*Application Process.* Applications for the deferral of real property taxes is made annually, on or before March 1 of each year, unless a later date for applications is provided for by resolution of the legislative body of the county or municipality authorizing the program. Applications received by the county trustee or collector of municipal taxes after the appropriate date will be considered for deferral of real property taxes for the following tax year.<sup>402</sup> Application forms are prepared by the state Division of Property Assessments. Pursuant to the statute, a \$6.00 application fee is imposed to defray the expenses of processing

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<sup>395</sup>T.C.A. § 7-64-211.

<sup>396</sup>T.C.A. § 7-64-201(b).

<sup>397</sup>T.C.A. § 7-64-205.

<sup>398</sup>T.C.A. § 7-64-202.

<sup>399</sup>T.C.A. § 7-64-203.

<sup>400</sup>T.C.A. § 7-64-206.

<sup>401</sup>T.C.A. § 7-64-201(c).

<sup>402</sup>T.C.A. § 7-64-212.

of the application. The fee must be paid when the application is submitted. The county trustee or municipal collector of taxes makes the final determination of eligibility of the applicant.<sup>403</sup>

*Lien for Unpaid Taxes—Interest.* In the event of a sale of the property, the deferred taxes are not subject to penalty as provided for delinquent taxes but are subject to interest at the rate of 10 percent per annum. The accrued taxes and interest at 10 percent per annum remain a first lien on the property in favor of the local government involved until paid and are not subject to the statutes of limitations.<sup>404</sup> The tax deferrals created pursuant to T.C.A. § 7-64-201 *et seq.* are not subject to penalties as provided in Tennessee statutes for delinquent taxes.<sup>405</sup>

*Termination of Deferral.* The deferred payments become due and payable at the time of sale of the residence and at the time of the death of the beneficiary. In addition, the deferred payments become due and payable in the event of a change of use of the property from the principal place of residence of the beneficiary or beneficiaries.<sup>406</sup>

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<sup>403</sup>T.C.A. § 7-64-207(a) - (c).

<sup>404</sup>T.C.A. § 7-64-209.

<sup>405</sup>T.C.A. § 7-64-204.

<sup>406</sup>T.C.A. § 7-64-210.





## CHAPTER SIX

### THE TAX LEVY

For county general purposes, counties may levy an ad valorem tax on all property subject to this form of taxation.<sup>407</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>408</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>409</sup> (2) provide funds for the purpose of securing humane treatment of animals;<sup>410</sup> (3) pay a judgment against the county;<sup>411</sup> (4) provide funds for the operation of a county fire department;<sup>412</sup> (5) provide funds for the collection and disposal of garbage;<sup>413</sup> (6) provide funds for a public library;<sup>414</sup> (7) provide funds for the operation and maintenance of county schools;<sup>415</sup> (8) repay loans for capital projects;<sup>416</sup> (9) repay loans for the purchase of fire equipment;<sup>417</sup> (10) repay loans made to an airport authority or municipal airport which are guaranteed by the county;<sup>418</sup> and (11) repay loans for capital projects for kindergarten through grade twelve educational purposes.<sup>419</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>420</sup> Under the County Financial Management

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<sup>407</sup>T.C.A. § 67-5-102(a)(1).

<sup>408</sup>T.C.A. § 67-5-102(a)(3).

<sup>409</sup>T.C.A. §§ 5-5-122, 5-7-106

<sup>410</sup>T.C.A. § 5-9-110.

<sup>411</sup>T.C.A. § 5-9-312. *See also* T.C.A. § 29-20-402.

<sup>412</sup>T.C.A. §§ 5-17-101, 5-17-105, 5-17-106, 5-17-107.

<sup>413</sup>T.C.A. § 5-19-108.

<sup>414</sup>T.C.A. § 10-3-102.

<sup>415</sup>T.C.A. § 49-2-101.

<sup>416</sup>T.C.A. § 4-31-410.

<sup>417</sup>T.C.A. § 4-31-510.

<sup>418</sup>T.C.A. § 4-31-607.

<sup>419</sup>T.C.A. § 4-31-1006.

<sup>420</sup>T.C.A. § 67-5-510. *See also* T.C.A. §§ 5-5-123, 67-1-601.

System of 1981, the county budget committee presents the proposed budget, along with a tax levy resolution, to the county legislative body, which adopts a budget in July.<sup>421</sup> Under the County Budgeting Law of 1957, the county legislative body must pass a tax levy resolution and adopt a budget no later than the third Monday in July.<sup>422</sup> The Local Option Budgeting Law of 1993 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>423</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>424</sup>

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>425</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.

## **Certified Tax Rate**

Before the county legislative body can set a property tax rate for the county, the tax assessor is required to certify to that body the total assessed value of taxable property in the county, including 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 assessment roll. The county legislative body must then certify a tax rate which will provide the same revenue which was generated by the tax the previous year. For the purpose of calculating the certified

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<sup>421</sup>T.C.A. § 5-21-111.

<sup>422</sup>T.C.A. § 5-12-109.

<sup>423</sup>T.C.A. § 5-12-210. See, Appendix for a list of budget laws in effect in Tennessee's counties.

<sup>424</sup>T.C.A. § 49-3-316(d)(3).

<sup>425</sup>T.C.A. § 67-5-2101; see also Op. Tenn. Atty. Gen. 86-39 (February 21, 1986).

rate, the county legislative body must use the taxable value appearing on the roll exclusive of taxable value of properties appearing for the first time on the assessment roll.<sup>426</sup> In calculating the certified tax rate, the county legislative body 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>427</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>428</sup>

Levy in Excess of the Certified Rate. 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, (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>429</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.<sup>430</sup>

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<sup>426</sup>T.C.A. § 67-5-1701(a)(1) - (4).

<sup>427</sup>T.C.A. § 67-5-1701(a)(5).

<sup>428</sup>T.C.A. § 67-5-1701(b)(1) - (5); Op. Tenn. Atty. Gen. 83-006 (January 7, 1983). See Appendix for a "Notice of Calculation for Certified Tax Rate," which represents the formula approved by the State Board of Equalization for the proper computation of the certified tax rate. The assessor of property completes Part I, while the county executive completes Part II.

<sup>429</sup>T.C.A. § 67-5-1702; Op. Tenn. Atty. Gen. U87-43 (April 13, 1987).

<sup>430</sup>T.C.A. § 67-5-1703.

Special School Districts. There are particular provisions applicable to special school districts in reappraisal years, although there are exceptions to the statute for counties of the first, second, or third class (according to population as set forth in T.C.A. 8-24-101).<sup>431</sup> 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>432</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).<sup>433</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>434</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.<sup>435</sup>

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<sup>431</sup>T.C.A. § 67-5-1704(d).

<sup>432</sup>T.C.A. § 67-5-1704(a)(1) - (3).

<sup>433</sup>T.C.A. § 67-5-1704(a)(4) - (6).

<sup>434</sup>T.C.A. § 67-5-1704(b).

<sup>435</sup>T.C.A. § 67-5-1704(c).

## CHAPTER SEVEN

### COLLECTION OF PROPERTY TAXES BY THE TRUSTEE

The trustee collects all property taxes levied by the county and the municipalities within the county, unless a municipality collects its own taxes.<sup>436</sup> However, owners of land are presumed to know taxes are due without demand or personal notice,<sup>437</sup> and assessed taxes become a personal debt of the person whose property is assessed.<sup>438</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.<sup>439</sup>

#### Tax Roll

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>440</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.

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<sup>436</sup>T.C.A. § 67-5-1801. See T.C.A. § 67-5-1901 for the trustee's bond and oath.

<sup>437</sup>*M'Carrol's Lessee v. Weeks*, 6 Tenn. (5 Hayw.) 246 (1814).

<sup>438</sup>*White v. Kelly*, 387 S.W.2d 821 (Tenn. 1965).

<sup>439</sup>T.C.A. § 67-5-2103.

<sup>440</sup>T.C.A. § 67-5-807.

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>441</sup> The property located within municipalities should be separated from other property of the county.<sup>442</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>443</sup> revisions due to damaged or incomplete improvements,<sup>444</sup> the roll back of taxes on land previously classified as agricultural, forest, or open space lands,<sup>445</sup> or actions of the State Board of Equalization.<sup>446</sup> The assessor must notify owners of any change in the classification or assessed valuation, usually by mail.<sup>447</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>448</sup>

## **Tax Due Date**

Property taxes imposed by counties are due and payable on the first Monday of October of the tax year.<sup>449</sup> Municipal property taxes collected by the trustee are also due and payable on this date. After a consolidation of county offices and comparable offices provided for by municipal charter, the trustee, with the approval of a majority of the county legislative body, may establish another due date in order to avoid the destruction of existing municipal fiscal policies.<sup>450</sup>

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<sup>441</sup>*Hunter Glover Co. v. Harvey Steel Prods. Corp.*, 3 F.2d 634 (W.D. Tenn. 1924).

<sup>442</sup>T.C.A. § 67-5-807. Note T.C.A. § 67-5-808 which refers to the tax rolls for metropolitan governments.

<sup>443</sup>T.C.A. § 67-5-201.

<sup>444</sup>T.C.A. § 67-5-603.

<sup>445</sup>T.C.A. § 67-5-1008.

<sup>446</sup>T.C.A. § 67-5-1510.

<sup>447</sup>T.C.A. § 67-5-508. See discussion under "Records and Notice of Assessment" in Chapter 3.

<sup>448</sup>T.C.A. § 67-5-1512.

<sup>449</sup>T.C.A. § 67-1-702.

<sup>450</sup>T.C.A. § 67-1-701.

## Payment of Taxes

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>451</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>452</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>453</sup> Tax payments may also be mailed to the trustee.<sup>454</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>455</sup> As stated earlier, owners of land are presumed to know taxes are due without demand or personal notice.<sup>456</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>457</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>458</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>459</sup> Although previously only certain counties listed by population class were authorized to accept partial payments, trustees in all counties may now accept partial payment of property

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<sup>451</sup>T.C.A. § 67-5-1801(a); § 67-1-702.

<sup>452</sup>T.C.A. § 67-5-1801(b); Op. Tenn. Atty. Gen. 83-392 (November 18, 1983).

<sup>453</sup>T.C.A. § 67-5-1801(c).

<sup>454</sup>T.C.A. § 67-1-107.

<sup>455</sup>T.C.A. § 7-3-203.

<sup>456</sup>*M'Carrol's Lessee v. Weeks*, 6 Tenn. (5 Hayw.) 246 (1814).

<sup>457</sup>T.C.A. §§ 67-5-1412; 67-5-2402.

<sup>458</sup>T.C.A. § 67-5-103.

<sup>459</sup>T.C.A. § 67-1-704(a).

taxes.<sup>460</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>461</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>462</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>463</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>464</sup> A "bad" check may be pursued under the civil provisions<sup>465</sup> or the criminal provisions<sup>466</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. 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, but not exceeding 5 percent of the amount of the payment. The amount or percentage of the processing fee must be stated on the notice sent to the person owing the tax. This processing fee may be waived, however, with approval of the county legislative 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>467</sup>

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<sup>460</sup>T.C.A. § 67-5-1801(e); 1997 Public Chapter 187. In Davidson County the trustee is authorized to set a minimum amount acceptable as a partial payment; this minimum must be no more than the lesser of 15% or \$25.

<sup>461</sup>T.C.A. § 67-5-1801(e)(2). Note: The provisions of this subdivision do not apply to any county which has implemented a partial payment program prior to April 19, 1995.

<sup>462</sup>*White v. Kelly*, 387 S.W.2d 821 (Tenn. 1965); *Salts v. Salts*, 190 S.W.2d 188 (Tenn. 1945). See Appendix.

<sup>463</sup>T.C.A. § 5-8-207.

<sup>464</sup>T.C.A. §§ 9-1-108, 9-1-109.

<sup>465</sup>T.C.A. § 47-29-101.

<sup>466</sup>T.C.A. § 39-14-121.

<sup>467</sup>T.C.A. § 9-1-108(c).



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>468</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>469</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>470</sup>

### **Trustee's Commission**

The commission of the county trustee for collecting property taxes is as follows:<sup>471</sup>

- 6 percent on all sums up to \$10,000;
- 4 percent on all sums above \$10,000 and up to \$20,000; and
- 2 percent on all sums above \$20,000.

If the trustee collects taxes for a municipality, the county legislative body may enter into an intergovernmental agreement with such municipality for a trustee's commission different from the one set out above.<sup>472</sup> The trustee receives a 1 percent commission on ad valorem taxes collected for watershed districts.<sup>473</sup>

### **Receipts**

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,

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<sup>468</sup>T.C.A. § 67-1-107.

<sup>469</sup>T.C.A. § 67-5-1805.

<sup>470</sup>*Sherrill v. Board of Equalization*, 452 S.W.2d 857 (Tenn. 1970).

<sup>471</sup>T.C.A. § 8-11-110. Refer to T.C.A. § 67-5-1905 which notes that the trustee is entitled to a credit for his or her commissions and for all legal disbursements on settlement of his or her accounts with the county mayor.

<sup>472</sup>T.C.A. § 8-11-110(h).

<sup>473</sup>T.C.A. § 69-7-145.

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>474</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>475</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>476</sup> Also, it is a misdemeanor for the trustee to collect higher tax amounts than is directed by law.<sup>477</sup>

### **Early Payment and Discounts for Early Payment**

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>478</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).<sup>479</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

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<sup>474</sup>T.C.A. §§ 67-1-704(b) and 67-1-705.

<sup>475</sup>T.C.A. § 67-1-704(c) and (d).

<sup>476</sup>T.C.A. § 67-1-705.

<sup>477</sup>T.C.A. § 67-1-706.

<sup>478</sup>T.C.A. § 67-1-702.

<sup>479</sup>T.C.A. § 67-5-1804(a).

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>480</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>481</sup>

## **Delinquency Date**

Property taxes collected by the trustee are delinquent on the first day of March following the tax due date. For instance, 2004 taxes are due and payable on the first Monday in October of 2004 and delinquent on March 1, 2005.<sup>482</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>483</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>484</sup>

## **Penalty and Interest**

On the first day of March following the tax due date, a penalty of 0.5 percent and interest of 1 percent are added to delinquent county and municipal taxes collected by the trustee. These penalty and interest amounts are thereafter added to delinquent taxes on the first day of each succeeding month until the taxes are paid.<sup>485</sup> There is no statutory authority which would authorize the trustee to waive accrued penalty and interest. Courts, using equitable powers, may relieve a taxpayer of interest and penalty under meritorious conditions; however, a taxpayer's inability to timely pay taxes due to financial misfortune will not excuse the

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<sup>480</sup>T.C.A. § 67-5-1804(c).

<sup>481</sup>T.C.A. § 67-5-1804(d).

<sup>482</sup>T.C.A. § 67-5-2010; T.C.A. § 67-5-1512(b)(1)(A).

<sup>483</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>484</sup>T.C.A. § 67-5-2008.

<sup>485</sup>T.C.A. § 67-5-2010(a)(1). Special provisions may apply to Shelby and Giles counties.

imposition of penalty and interest on the unpaid taxes.<sup>486</sup> As mentioned above, 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.

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 a penalty of 0.5 percent and interest of 1 percent, beginning on the first day of March following the tax due date and continuing on the first day of each succeeding month.<sup>487</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>488</sup>

## **Settlement of Taxes**

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 Commissioner of Revenue and 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>489</sup> The monthly settlements must be spread upon the minutes of the county legislative body and municipality, respectively, and must specify every credit allowed the officers for errors, removals, double taxation, and such other credits as are now allowed by law. However, the monthly settlements do not include the trustee's compensation.<sup>490</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>491</sup> The trustee must also submit the aforementioned statement to the Commissioner of Revenue for all state revenue collected by the trustee; to the county

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<sup>486</sup>*Daniel v. Metropolitan Government*, 696 S.W.2d 8 (Tenn. Ct. App. 1985).

<sup>487</sup>T.C.A. § 67-5-2010(b).

<sup>488</sup>T.C.A. § 67-5-1608.

<sup>489</sup>T.C.A. § 67-5-1902(a)(1).

<sup>490</sup>T.C.A. § 67-5-1902(a)(2).

<sup>491</sup>T.C.A. § 67-5-1902(b)(1).

mayor for all county revenue collected; and to the proper officer of the municipality, for the purpose of making the final settlement with the officer and accounting for all taxes, damages, penalties, fines, interest, and other revenue collected by the trustee.<sup>492</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>493</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>494</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>495</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>496</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>497</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>498</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>499</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>500</sup>

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<sup>492</sup>T.C.A. § 67-5-1902(b)(3).

<sup>493</sup>T.C.A. § 67-5-1902(b)(4).

<sup>494</sup>T.C.A. § 67-5-1902(b)(2).

<sup>495</sup>T.C.A. § 67-5-1905.

<sup>496</sup>T.C.A. § 67-5-1903(a).

<sup>497</sup>T.C.A. § 67-5-1903(b)(1).

<sup>498</sup>T.C.A. § 67-5-1903(c).

<sup>499</sup>T.C.A. § 67-5-1903(b)(2).

<sup>500</sup>T.C.A. § 67-5-1903(d).

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.

### **Refunds of Tax Payments**

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>501</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>502</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>503</sup>

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<sup>501</sup>T.C.A. § 67-5-509.

<sup>502</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>503</sup>*Hertz Corp. V. County of Shelby*, 667 S.W.2d 66 (Tenn. 1984).

## CHAPTER EIGHT

### COLLECTION OF DELINQUENT REAL PROPERTY TAXES

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.

#### **Delinquent Tax Deputies and Delinquent Tax List**

The trustee is authorized to appoint such deputies as may be necessary to collect delinquent taxes after these taxes become delinquent.<sup>504</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>505</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>506</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>507</sup>

Deputy trustees who have not received copies of the delinquent tax list have no authority to collect the delinquent taxes.<sup>508</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

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<sup>504</sup>T.C.A. § 67-5-2001(a)(1).

<sup>505</sup>T.C.A. §§ 8-18-112; 67-5-1901.

<sup>506</sup>T.C.A. § 67-5-2001(b).

<sup>507</sup>T.C.A. § 67-5-2001(a)(1) - (4).

<sup>508</sup>*Shipp v. Rarick*, 67 S.W.2d 145 (Tenn. 1934).

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>509</sup> The officer making the return shall receive no additional compensation for making it.<sup>510</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>511</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>512</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>513</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>514</sup>

### **Publication of the Delinquent Tax List**

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

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<sup>509</sup>T.C.A. § 67-5-2006(a)(1).

<sup>510</sup>T.C.A. § 67-5-2006(a)(2).

<sup>511</sup>T.C.A. § 67-5-2006(b).

<sup>512</sup>T.C.A. § 67-5-2006(c).

<sup>513</sup>T.C.A. § 67-5-2006(d).

<sup>514</sup>T.C.A. § 67-5-2007.



advertising rate.<sup>515</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>516</sup> The publication of the delinquent tax list is a valuable aid to collection of delinquent taxes.

## **Delinquent Tax Attorney**

The delinquent tax attorney is chosen by the county trustee with the approval of the county mayor.<sup>517</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>518</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>519</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>520</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>521</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>522</sup>

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<sup>515</sup>T.C.A. § 67-5-2002(a).

<sup>516</sup>T.C.A. § 67-5-2002(b).

<sup>517</sup>T.C.A. § 67-5-2404.

<sup>518</sup>Op. Tenn. Atty. Gen. 82-68 (March 11, 1982).

<sup>519</sup>Op. Tenn. Atty. Gen. U87-124 (December 3, 1987).

<sup>520</sup>Op. Tenn. Atty. Gen. 88-100 (May 19, 1988).

<sup>521</sup>*State v. Brown*, 6 S.W.2d 560, 561 (Tenn. 1928).

<sup>522</sup>T.C.A. §§ 67-5-2404, 67-5-2410.

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>523</sup> The 10 percent penalty is computed on the base amount of delinquent taxes, not including accrued interest and penalties.<sup>524</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>525</sup> The delinquent tax attorney is not entitled to compensation until the tax suits for the year have been filed.<sup>526</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>527</sup> The removal terminates the attorney's lien for compensation.<sup>528</sup>

## Tax Lien

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>529</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>530</sup> There is no lien against leased personal property assessed to a lessee.<sup>531</sup>

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<sup>523</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>524</sup>T.C.A. § 67-5-2410.

<sup>525</sup>Op. Tenn. Atty. Gen. U90-53 (March 16, 1990).

<sup>526</sup>*State ex. rel. v. Allen*, 145 S.W.2d 769, 770 (Tenn. 1940).

<sup>527</sup>Op. Tenn. Atty. Gen. U89-124 (November 1, 1989).

<sup>528</sup>T.C.A. § 67-5-2406.

<sup>529</sup>T.C.A. §§ 67-5-2101, 67-5-2102.

<sup>530</sup>*United States v. Dyna-Tex, Inc.*, 372 F. Supp. 278, 280 (Tenn. 1972).

<sup>531</sup>T.C.A. § 67-5-2102.

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>532</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>533</sup>

### Notice Requirements

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. As noted above, the trustee is not required to publish a delinquent tax list, but may do so.<sup>534</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>535</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>536</sup>

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<sup>532</sup>Op. Tenn. Atty. Gen. 86-39 (February 21, 1986).

<sup>533</sup>T.C.A. § 67-5-2102; See also 23 Tenn. Juris. "Taxation" § 44 at page 69 (1985).

<sup>534</sup>T.C.A. § 67-5-2002.

<sup>535</sup>T.C.A. § 67-5-2402.

<sup>536</sup>T.C.A. §§ 67-5-2402, 67-5-2403.

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 taxes against land; until the filing of such suits, taxes may be paid at 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>537</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>538</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>539</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>540</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>541</sup>

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

After the trustee has received the delinquent tax list from the delinquent tax deputies, has made a settlement with them,<sup>542</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

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<sup>537</sup>T.C.A. § 67-5-2401.

<sup>538</sup>T.C.A. § 67-5-2502.

<sup>539</sup>1996 Public Chapter 787.

<sup>540</sup>T.C.A. § 67-5-2502(c).

<sup>541</sup>T.C.A. § 67-5-2502(d).

<sup>542</sup>T.C.A. § 67-5-2006.

list must be delivered between February 1 and April 1.<sup>543</sup> The trustee may accept payment for delinquent taxes until that time, and must keep a record of all such payments.<sup>544</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>545</sup>

### **Municipal Taxes Collected as Part of Tax Suit**

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>546</sup> The municipality may pursue collection of delinquent property taxes even if county taxes on the property have been timely paid.<sup>547</sup> Note that the municipality is allowed to pursue collection of delinquent property taxes on its own.<sup>548</sup>

### **Certificate for Timber Cutting**

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>549</sup>

### **Delinquent Tax Suit**

After February 1, but before April 1, the delinquent tax attorney must file suit in chancery or circuit court to collect delinquent property taxes due the state, county or municipality, as well as the penalties, interest and costs. The complaint should include not less than 25 defendants, if there are 25 delinquent taxpayers in the county. This suit can also be filed against all the

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<sup>543</sup>T.C.A. § 67-5-2404.

<sup>544</sup>T.C.A. §§ 67-5-2008, 67-5-2009.

<sup>545</sup>T.C.A. § 67-5-2421.

<sup>546</sup>T.C.A. § 67-5-2403.

<sup>547</sup>T.C.A. § 6-55-201; Op. Tenn. Atty. Gen. 87-106 (June 26, 1987).

<sup>548</sup>T.C.A. § 67-5-2005.

<sup>549</sup>T.C.A. §§ 67-5-2301 through 67-5-2306.

delinquent taxpayers in the county. This type of action has priority by the court. Additional defendants may be added to the suit as a matter of right upon filing notice to add defendants. Such notice must comply with the Tennessee Rules of Civil Procedure and T.C.A. § 67-5-2415.<sup>550</sup> All suits, whether brought in circuit or chancery court, should be prosecuted according to the rules of the chancery court.<sup>551</sup> Upon the filing of this suit, the trustee must submit to the county legislative body a list of uncollected delinquent taxes, and must thereafter receive credit for any taxes for which a lawsuit has been filed.<sup>552</sup> After suit is filed, a defendant may have the case dismissed as to his or her property, by paying into court the amount of taxes due plus interest, penalty, and court costs.<sup>553</sup> Clerks are not required to prepare petitions, complaints, summons, notices, or orders for the prosecution of tax enforcement suits.<sup>554</sup>

There is no authority for a court to delay collection proceedings against property owners even though it would be in the county's best interest to allow the delinquent taxpayers additional time to pay their taxes. Likewise, the court has no authority to order taxes, interest, penalties and other charges be paid on an installment basis.<sup>555</sup> Tax suit complaints, once filed, may be amended to cure descriptions, add parties, and join new owners.<sup>556</sup> The court retains jurisdiction to collect delinquent taxes even though the assessment may be illegal and improper procedures may have been followed.<sup>557</sup>

## Notice of Tax Suit

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>558</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>559</sup> Under this definition, constructive notice, or publication, probably will not

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<sup>550</sup>T.C.A. § 67-5-2405.

<sup>551</sup>T.C.A. § 67-5-2414.

<sup>552</sup>T.C.A. § 67-5-2407.

<sup>553</sup>T.C.A. § 67-5-2411. See Appendix.

<sup>554</sup>T.C.A. § 67-5-2410(e).

<sup>555</sup>Op. Tenn. Atty. Gen. 86-130 (July 22, 1986).

<sup>556</sup>Tenn. R. Civ. P. 15, 19, 20.

<sup>557</sup>*State v. Delinquent Taxpayers*, 785 S.W.2d 819, 821 (Tenn. Ct. App. 1989).

<sup>558</sup>T.C.A. § 67-5-2415; Tenn. R. Civ. P. 4.

<sup>559</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)).

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>560</sup> If the defendant does not respond within the time required, after being properly served, a default judgment motion may be filed.

### **Annual List of Property in Tax Suits**

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>561</sup>

### **Fees and Additional Expenses of the Tax Suit**

There is no litigation tax in delinquent tax suits. However, in addition to the 10 percent penalty for expenses of prosecuting the suit (discussed above under "Delinquent Tax Attorney"), 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>562</sup>

### **Receivership**

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>563</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

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<sup>560</sup>T.C.A. § 67-5-2415.

<sup>561</sup>T.C.A. § 67-5-2403.

<sup>562</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).

<sup>563</sup>T.C.A. § 67-5-2417.

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>564</sup> However, a residence is not subject to a receivership.<sup>565</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>566</sup>

### **Report Under Reference**

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>567</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>568</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>569</sup>

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<sup>564</sup>T.C.A. § 67-5-2202.

<sup>565</sup>T.C.A. § 67-5-2203.

<sup>566</sup>T.C.A. §§ 67-5-2206, 67-5-2209.

<sup>567</sup>T.C.A. § 67-5-2416.

<sup>568</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>569</sup>Tenn. R. Civ. P. 53.



## The Tax Sale

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) 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>570</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. 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>571</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>572</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>573</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

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<sup>570</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>571</sup>T.C.A. § 67-5-2502.

<sup>572</sup>C.J.S. *Taxation* § 801 (1954).

<sup>573</sup>T.C.A. § 67-5-2501.

interest constitutes part of the total present ownership of the land and cannot be separately assessed.<sup>574</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>575</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 proceeds of the sale are applied in the following order: (1) the attorney's fee; (2) court costs; (3) the state (if any proceeds are due the state); (4) the county; and (5) municipalities.<sup>576</sup>

County as Purchaser at the Tax Sale. If the county purchases land at a tax sale, the county mayor is in charge of the land. During the statutory redemption period, the county mayor should preserve the land from waste. At the end of the statutory redemption period, the county mayor should arrange to sell the land expeditiously and beneficially. A committee of five members, consisting of the county mayor and four other members elected from and by the county legislative body, must place a fair sales price on each tract of land. The committee may authorize the sale of any tract of land upon such terms that will secure the highest and best sale price, but the credit extended must not exceed three years, and a lien must be retained to secure the purchase price. In no event shall any tract of land be sold for less than the total amount of the taxes, penalty, cost and interest. Interest is calculated on the full amount of the taxes, penalty, cost and interest from the time of acquisition of the land by the county until the sale of the land. If it appears to be impossible to sell the land for this amount, the county legislative body in session may grant permission, upon application, to offer the land for sale at some lower amount fixed by the county legislative body.<sup>577</sup>

Whenever the sale of land is arranged by the county mayor, the deed must not be executed or become final until ten days after notice of a proposed sale, the name of the purchaser and

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<sup>574</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>575</sup>C.J.S. *Taxation* § 809 (1954). See also *Salts v. Salts*, 190 S.W. 2d 188 (1945).

<sup>576</sup>T.C.A. §§ 67-5-2501; 67-5-2506.

<sup>577</sup>T.C.A. § 67-5-2507(a)(1) - (3), (b)(1) - (5).

the terms, conditions and price are published in a newspaper in the county. The land must be described in the notice only by number, which must refer to a description on file with the committee. If anyone increases the offer within the 10 days by 10 percent or more, the party making the first offer must be notified and a day must be fixed when both parties shall appear and make offers. The tract of land must be sold to the highest and best offer.<sup>578</sup>

Conveyances of land are made without warranties of any sort, and deeds are executed by the county mayor or other chief fiscal officer of the county and the county trustee, who must collect the purchase price at the time of execution of the deed and apply the proceeds accordingly. The deed is prepared by the delinquent tax attorney as a part of the duties for which he or she is compensated by the provisions of T.C.A. § 67-5-2410; no additional compensation is allowed.<sup>579</sup> 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.<sup>580</sup>

### **Tax Sale Ledger**

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>581</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>582</sup>

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<sup>578</sup>T.C.A. § 67-5-2507(b)(6) - (8).

<sup>579</sup>T.C.A. § 67-5-2507(b)(9).

<sup>580</sup>T.C.A. § 67-5-2509. For provisions dealing with the state or a political subdivision purchasing property at a tax sale, see T.C.A. §§ 67-5-2505, 67-5-2508, 67-5-2512, 67-5-2513.

<sup>581</sup>T.C.A. § 67-5-2511.

<sup>582</sup>T.C.A. § 67-5-2510.

## Confirmation of Sale and Tax Deed

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>583</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>584</sup>

## Setting Aside a Tax Sale

A writ of possession may be ordered by the court in which the tax sale was made upon application of the purchaser. A purchaser not taking actual possession of the property has no rights to rents or profits from a taxpayer who has remained in possession during the redemption period.<sup>585</sup> A purchaser of property sold for delinquent taxes who fails to receive good title or to recover possession of the real property due to procedural irregularities "stands in the shoes" of the tax lienholders and may enforce these rights in chancery court for reimbursement of the purchase price plus interest. The sale will be invalidated if the (1) land is not liable for taxes; (2) taxes are paid before the sale; (3) defendant is improperly before the court; or (4) pleadings do not adequately describe the property. The sale will not be invalidated if only part of the tax was illegal or not chargeable against the land, unless it

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<sup>583</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>584</sup>*Watson v. Waters*, 694 S.W. 2d 524, 525 (Tenn. Ct. App. 1984).

<sup>585</sup>T.C.A. § 67-5-2503.

appears that before the sale the amount legally chargeable against the land was paid or tendered to the country trustee, and no other objection either in form or substance to the sale or the title shall avail in any controversy involving them.<sup>586</sup> The plaintiff must pay to the court clerk the amount of the bid and all taxes subsequently accrued, with interest and charges. No suit to invalidate any tax title shall be commenced after three years from the time of the sale. Persons under disability have one year in which to bring suit after the disability is removed.<sup>587</sup>

## Redemption

Any time within one year from the date of a tax sale, any person with a legal or equitable interest in property sold may “redeem” that property by paying all charges which have accrued on it (delinquent taxes, interest and penalties, and court costs), as well as 10 percent interest on the purchase price from the date of the sale.<sup>588</sup> The redemption period is computed from the confirmation date of the report of the sale.<sup>589</sup> Those eligible to redeem include creditors, heirs, tenants in common, and those holding similar interest, as well as the delinquent taxpayers owning the property.<sup>590</sup> One wishing to redeem must pay the required amount to the clerk, who then notifies the tax sale purchaser within ten days of receipt of the funds. The purchaser then has 30 days to protest the redemption or to request additional funds for expenses in preserving the property. After additional funds have been paid and the court finds that the redemption has been properly made, or after the 30 day period has expired, the court issues an order and the clerk pays the funds over to the original purchaser.<sup>591</sup>

## Escheat of Funds

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.

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<sup>586</sup>T.C.A. § 67-5-2504. See also *Rast v. Terry*, 532 S.W.2d 552, 553-54 (Tenn. 1976); *Colligan v. Cooney*, 64 S.W. 31, 33 (Tenn. 1901).

<sup>587</sup>T.C.A. § 67-5-2504.

<sup>588</sup>T.C.A. § 67-5-2703.

<sup>589</sup>*Marlowe v. Kingdom Hall of Jehovah's Witnesses*, 541 S.W.2d 121, 126 (Tenn. 1976); T.C.A. § 66-8-101.

<sup>590</sup>T.C.A. § 67-5-2701.

<sup>591</sup>T.C.A. § 67-5-2704.

## Statute of Limitations

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.<sup>592</sup> However, 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, discussed above.<sup>593</sup>

## Miscellaneous Matters

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>594</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>595</sup>

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<sup>592</sup>T.C.A. § 67-5-1806. See also Op. Tenn. Atty. Gen. 90-35 (March 16, 1990).

<sup>593</sup>Op. Tenn. Atty. Gen. 83-379 (November 8, 1983).

<sup>594</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>595</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.

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>596</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>597</sup>

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<sup>596</sup>T.C.A. § 67-5-2802.

<sup>597</sup>T.C.A. § 5-1-115.





## CHAPTER NINE

### COLLECTION OF DELINQUENT PERSONAL PROPERTY TAXES

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>598</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>599</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>600</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>601</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>602</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

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<sup>598</sup>T.C.A. § 67-5-901(a)(3)(A).

<sup>599</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>600</sup>T.C.A. §§ 67-5-102, 67-5-103.

<sup>601</sup>*In re All Assessments*, 58 S.W.3d 95, 96 (Tenn. 2000).

<sup>602</sup>T.C.A. § 67-5-1301.

commission to justly and equitably equalize assessments in accordance with law."<sup>603</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>604</sup>

Much of the discussion in the preceding chapter 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.

## Methods of Collection

There are three 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, and/or by garnishment.<sup>605</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>606</sup>

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>607</sup>

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<sup>603</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>604</sup>*ANR Pipeline Co. v. Tennessee Board of Equalization*, 2002 WL 31840689, \*1 (Tenn.Ct.App. 2002) *perm. app. denied* (Tenn. 2003).

<sup>605</sup>T.C.A. § 67-5-2003(b).

<sup>606</sup>T.C.A. § 67-5-2003(a).

<sup>607</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

*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>608</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>609</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>610</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>611</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>612</sup>

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interest).

<sup>608</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>609</sup>T.C.A. §§ 67-5-2003(e).

<sup>610</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). *See* Appendix I, pages 106-108.

<sup>611</sup>T.C.A. §§ 67-5-2004, 67-5-2003(b); Op. Tenn. Atty. Gen. 85-274 (November 4, 1985).

<sup>612</sup>T.C.A. § 67-5-2003(g). *See* Appendix I.

## **Transfer of Business Liability**

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>613</sup>

## **Security Interest Sales**

There is a similar provision for security interest sales. 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 personalty 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. A party selling the property who fails to withhold this amount is personally liable to the trustee for these personal property taxes.<sup>614</sup>

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<sup>613</sup>T.C.A. § 67-5-513.

<sup>614</sup>T.C.A. § 67-5-2003(h).

## APPENDIX

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## EXPLANATION OF APPENDIX

The material contained in this appendix has not been drafted by the CTAS staff but has been collected from various court files, newspapers, forms, and other information in hopes of further explaining the written text. The included samples are not intended as a recommended approach to collection of property taxes. Rather, the material is offered as samples of notices, advertisements, and other tax collection related documents. When using this appendix, always check with the delinquent tax attorney or county attorney to ensure all existing legal requirements are met.

CTAS welcomes any interested person to submit improved samples for future use and welcomes any comments or suggestions regarding ways to make this manual and its appendix more useful.

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

*\*Note: Specific years are included for illustrative purposes and to clearly indicate chronological sequence; the example shows one complete tax cycle, using the 2004 tax year as an example.*

January 1, 2004	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, 2004	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, 2004	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. § 67-5-902. Corrections of assessments for 2002 must be requested by the taxpayer or initiated by assessor prior to this date. T.C.A. § 67-5-509.
April 1, 2004	Greenbelt applications due. T.C.A. §§ 67-5-1005 through 67-5-1007. Mobile home park forms due in assessor's office. T.C.A. § 67-5-802.
May 20, 2004	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, 2004	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 2004	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 2004	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 2004	County clerk or the tax assessor prepares an aggregate statement showing value 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, 2005	2004 become delinquent. 0.5 percent per month penalty and 1 percent interest begin to accrue. T.C.A. § 67-5-2010.
September 1, 2005	Back assessments and reassessments must be initiated prior to this date. T.C.A. § 67-1-1005.
1st Monday in September 2005	Trustee makes a full and complete financial report of the condition of the trustee's office. T.C.A. § 67-5-1902.
January 1, 2006	Tax collectors must make final settlements and return delinquent tax lists to trustee. T.C.A. § 67-5-2006.
January 1 — 31, 2006	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, 2006	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, 2006	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.
May 1, 2006	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, 2006

Clerks collecting delinquent taxes are required to provide the trustee with a list of tax suits. T.C.A. § 67-5-2403.

April 1, 2016

All 2004 property taxes assessed but not collected by counties are barred and discharged because of the statute of limitations. T.C.A. § 67-5-1806.

## PERSONAL PROPERTY DEPRECIATION CHART

GROUP	DESCRIPTION	LIFE EXPECTANCY	DEPRECIATION TABLE	
1 A	VEHICLES	5	YEAR 1	80%
			YEAR 2	60%
			YEAR 3	40%
			PRIOR	20%
1 B	FURNITURE, FIXTURES, GENERAL EQUIPMENT, AND ALL OTHER PROPERTY NOT LISTED IN ANOTHER GROUP	8	YEAR 1	88%
			YEAR 2	75%
			YEAR 3	63%
			YEAR 4	50%
			YEAR 5	38%
			YEAR 6	25%
			PRIOR	20%
2	COMPUTERS, COPIERS, PERIPHERALS, AND TOOLS	3	YEAR 1	67%
			YEAR 2	33%
			PRIOR	20%
3	MOLDS, DIES, AND JIGS	4	YEAR 1	75%
			YEAR 2	50%
			YEAR 3	25%
			PRIOR	20%
4	AIRCRAFT, TOWERS, AND BOATS	13	YEAR 1	92%
			YEAR 2	85%
			YEAR 3	77%
			YEAR 4	69%
			YEAR 5	62%
			YEAR 6	54%
			YEAR 7	46%
			YEAR 8	38%
			YEAR 9	31%
			YEAR 10	23%
			PRIOR	20%
5	MANUFACTURING MACHINERY	8	YEAR 1	88%
			YEAR 2	75%
			YEAR 3	63%
			YEAR 4	50%
			YEAR 5	38%
			YEAR 6	25%
			PRIOR	20%

6	BILLBOARDS, TANKS, AND PIPELINES	16	YEAR 1    94% YEAR 2    88% YEAR 3    81% YEAR 4    75% YEAR 5    69% YEAR 6    63% YEAR 7    56% YEAR 8    50% YEAR 9    44% YEAR 10   38% YEAR 11   31% YEAR 12   25% PRIOR     20%
7	SCRAP PROPERTY	VALUED AT 2% OF ORIGINAL COST	
8	RAW MATERIALS AND SUPPLIES	VALUED AT 100% OF ORIGINAL COST	

## COUNTY BUDGET LAWS<sup>615</sup>

### Charters

Shelby	Charter
Knox	Charter
Davidson	Metro Charter
Moore	Metro Charter

### 1957 Act

Anderson	Schools Included
Blount	Schools Excluded
Cheatham	Schools Excluded
Franklin	Schools Excluded
Gibson	Schools Excluded
Greene	Schools Excluded
Johnson	Schools Included
Lawrence	Schools Excluded
Loudon	Schools Included
Montgomery	Schools Excluded
Overton	Schools Excluded
Roane	Schools Included
Sullivan	Schools Included
Washington	Schools Excluded
Wayne	Schools Excluded
Williamson	Schools Excluded

### Private Acts

Benton  
Chester  
Dyer  
Hamilton  
Hardeman  
Henderson  
Henry  
Madison  
Marshall  
Maury  
McNairy  
Meigs  
Rutherford  
Tipton  
Williamson

### 1981 Act

Campbell  
Cumberland  
Hickman  
Lincoln  
McMinn  
Monroe  
Morgan  
Rhea  
Robertson  
Scott  
Sumner  
Weakley  
White  
Wilson

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<sup>615</sup>All other counties are under general law budgeting provisions.

**[Sample Letter]**

Dear Taxpayer:

Our records indicate that you are the present owner of the business identified on the enclosed notice which has delinquent personal property taxes.

It is not the desire of this office to cause a hardship on anyone, but if after thirty (30) days from the above date payment is not received, a citation will be issued and served by a deputy sheriff from this office.

If this method of collection fails, we have no recourse but to adhere to the provisions of T.C.A. § 67-5-2003 enabling us to seize and sell personal property found on the premises by means of a distress warrant through the General Sessions Courts.

To avoid any additional costs and the above action being taken on this account, please return said notice along with a check or money order made payable to the \_\_\_\_\_ County on or before \_\_\_\_\_, 20\_\_.

An envelope is provided for your convenience.

Sincerely,

\_\_\_\_\_, Collector  
Delinquent Personal Property Taxes

NOTE: If payment has been mailed, or if this account is pending in Bankruptcy Court, please disregard this notice.

**[Sample Letter]**

Dear Delinquent Taxpayer:

As you are aware, collection of all property taxes, including personal property taxes, helps keep down the tax rate, and is an important aspect of a fair and constitutional taxing system. Our records show that you owe delinquent personal property taxes for tax year \_\_\_\_, which were due and payable \_\_\_\_\_, and delinquent \_\_\_\_\_. These taxes are accruing interest and penalty at a rate of one and one-half percent (1 1/2%) per month. Under the provisions of Tennessee law, the delinquent tax list has "the force and effect of a judgment" and is authority for the seizure and sale of the personal property. Additionally, taxpayers are personally liable for their delinquent taxes.

Because you can save a significant amount of money by paying taxes prior to the time a distress warrant is issued to seize and sell the personal property or a lawsuit is filed for collection (in court costs, costs of sale, and attorney fees), I wanted to send you this extra notice, which is not required by law, to encourage you to promptly pay these delinquent personal property taxes.

The trustee's office will begin sending or delivering notices to begin seizure and sale of your personal property for which taxes are liable beginning \_\_\_\_\_. You should contact the office of the trustee immediately should you wish to avoid future additional costs and pay these delinquent taxes! My staff is well organized to receive your tax payment and give you a receipt (which may be important for your income tax and business tax deduction records). This can be done by mail, but you should call my office to get the correct amount of taxes, including accrued interest and penalty.

Sincerely,

\_\_\_\_\_, County Trustee

**[Sample Letter]**

Dear Taxpayer:

Our records indicate that you are the present owner of the property identified on the enclosed notice which has delinquent taxes. Pursuant to the provisions of T.C.A. §§ 67-5-2405, 67-5-2410, suit has been filed in Chancery Court to enforce \_\_\_\_\_ County's tax lien, thereby causing additional interest and penalty, plus court costs and attorney fees to be charged against said property.

In order to dismiss this lien, please return said notice along with a check or money order made payable to \_\_\_\_\_, Clerk and Master of Chancery Court in the amount indicated. An envelope is provided for your convenience.

Further delays could result in the sale of this property.

Sincerely,

\_\_\_\_\_  
Delinquent Property Tax Collector

If payment has been mailed consider this a THANK YOU.

**DISTRESS WARRANT**

STATE OF TENNESSEE  
COUNTY OF \_\_\_\_\_

\_\_\_\_\_ COUNTY  
COURT OF GENERAL SESSIONS

OFFICE OF  
DELINQUENT PERSONALTY  
TAX COLLECTOR

DOCKET NO. \_\_\_\_\_

\_\_\_\_\_, Tennessee \_\_\_\_\_, 20\_\_

TO THE SHERIFF OR ANY CONSTABLE OF \_\_\_\_\_ COUNTY:

WHEREAS, pursuant to the statutes of the State of Tennessee, the following \_\_\_\_\_ has been duly and regularly taxed by the County of \_\_\_\_\_ for the year(s) \_\_\_\_\_:

AND WHEREAS, \_\_\_\_\_ taxes consequently charged and assessed to said \_\_\_\_\_ now appear unpaid and delinquent in the office of the Delinquent Personalty Tax Collector, in the sum of \_\_\_\_\_ Dollars, and interest and penalty have accrued in accordance with the law, in the sum of \_\_\_\_\_.

YOU ARE, THEREFORE, HEREBY COMMANDED; that of the goods and chattels of said \_\_\_\_\_ to levy and disdain and cause to be made the sum of \_\_\_\_\_ Dollars, being the \_\_\_\_\_ Tax, together with interest and penalties owed to the Delinquent Personalty Tax Collector, also all the costs and charges herein endorsed.

Herein, fail not, and have you this writ before the Delinquent Personalty Tax Collected of \_\_\_\_\_ County, Tennessee, with a return in thirty days from the issuance thereof.

Given under my hand at office, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Year	Tax	Interest-Penalty	Total
_____	\$ _____	_____	\$ _____

\_\_\_\_\_  
COLLECTOR  
By \_\_\_\_\_

DISTRESS WARRANT  
ISSUED \_\_\_\_\_, 20\_\_  
CAME TO HAND \_\_\_\_\_, 20\_\_

TAX...\$ \_\_\_\_\_  
INT. - PENALTY \_\_\_\_\_  
TOTAL \$ \_\_\_\_\_

STATE OF TENNESSEE  
VS  
\_\_\_\_\_  
FOR \_\_\_\_\_ TAX

COSTS:  
Clerk's Tax Fee \_\_\_\_\_  
Clerk's Fee \_\_\_\_\_  
Officer's Fee \_\_\_\_\_  
Sheriff's Comm. \_\_\_\_\_  
Answer Fee \_\_\_\_\_  
TOTAL \_\_\_\_\_

EXECUTED THE WITHIN DISTRESS WARRANT BY LEVING ON \_\_\_\_\_  
\_\_\_\_\_

AS PROPERTY OF \_\_\_\_\_ TO SATISFY SAID WARRANT, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
SHERIFF



**[Sample Notice]**

DATE: \_\_\_\_\_

(must be mailed at least 10 days prior to turning over list to delinquent tax attorney)

**NOTICE**

TO: \_\_\_\_\_  
(last known property owner)

\_\_\_\_\_  
(address)

\_\_\_\_\_

In accordance with T.C.A. § 67-5-2003(g), the delinquent personal property tax list may be turned over to the delinquent tax attorney for collection thirty (30) days after such delinquent personal property taxes become delinquent. Such taxes were delinquent March 1, 20\_\_\_. T.C.A. § 67-5-2010. You are hereby notified that after ten (10) days from the date of this written notice being mailed by first class mail, your delinquent personal property taxes will be turned over to the delinquent tax attorney for collection by lawsuit.

Please contact this office immediately if you desire to avoid further legal actions by making full payment of your personal property taxes. As of \_\_\_\_\_(date), the records of my office reflect that you owe personal property taxes, penalty and interest in amount of \$\_\_\_\_\_. Additional penalty and interest apply at the first of each month.

County Trustee  
Courthouse  
County Seat, Tennessee 00000  
(000) 000-0000

[Sample]

RESOLUTION NO. \_\_\_\_\_

**TO ESTABLISH A COMMITTEE FOR RESALE OF LAND  
BOUGHT AT DELINQUENT TAX SALES**

WHEREAS, \_\_\_\_\_ County has purchased land at tax sales, and

WHEREAS, T.C.A. § 67-5-2507(b)(1), provides a committee of four (4) 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 same shall be sold. (In counties having adopted the provisions of Title 5, Chapter 21, the County Financial Management System Act of 1981, the Financial Management Committee created by T.C.A. § 5-21-104 may serve as this committee as established in this subdivision.)

NOW, THEREFORE, BE IT RESOLVED by the \_\_\_\_\_ County Legislative Body meeting in \_\_\_\_\_ session on this \_\_\_ day of \_\_\_\_\_, 20\_\_; that:

SECTION 1. The following members shall comprise the committee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECTION 2. Such committee shall be charged with the duties specified in T.C.A. § 67-5-2507.

SECTION 3. This Resolution shall take effect upon passage, the public welfare requiring it.

APPROVED:

\_\_\_\_\_  
County Mayor

ATTEST:

\_\_\_\_\_  
County Clerk

[Sample]

**FOR SALE  
PROPERTY ACQUIRED BY \_\_\_\_\_ COUNTY  
THROUGH PAST DELINQUENT TAX SALES**

The below listed properties acquired by \_\_\_\_\_ County through delinquent tax sales will be offered for sale by sealed bids.

LAST OWNERS	DIST.	MAP	PARCEL	MINIMUM BID
Doe, John				

**BIDDING PROCEDURES**

1. Each parcel must be bid on separately. The amount of the bid, STATE TAX MAP NUMBER identifying the parcel name, address and telephone number of the bidder must be included in a sealed envelope for each parcel on which a bid is submitted. The information should be typed or clearly printed.
2. PLEASE USE TWO (2) ENVELOPES:
  - A. The FIRST envelope (outside envelope) should be addressed to the address listed below.
  - B. The SECOND envelope containing the bid must be marked with the STATE TAX MAP NUMBER on the outside. This envelope should be placed inside the first envelope and delivered or mailed to:

Office of County Mayor  
of \_\_\_\_\_ County  
\_\_\_\_\_, Tennessee 3000

3. All bids must be received by the County Mayor no later than \_\_\_\_ (a.m. or p.m.) EST, on \_\_\_\_\_, 20\_\_.
4. Sealed bids will be opened publicly at the office of the County Mayor at \_\_\_\_ (a.m. or p.m.) EST, on \_\_\_\_\_, 20\_\_.
5. The bidder or a representative must be present at the bid opening.

6. TERMS

7. Following the above public bid opening notice will be placed in a local newspaper showing each parcel bid on (identified by State Tax Map Number) , the name of the highest bidder, and the amount of the bid.
8. During the ten (10) days following publication of the above notice in the newspaper, any party may bid by increasing the first offer by ten percent (10%) or more. This offer must be proposed in writing to the County Mayor of \_\_\_\_\_ County.
9. The County Mayor will notify the party making the first offer and fix a day where all qualified parties shall appear to make offers.
10. Each parcel will be sold to the person making the highest and best offer, subject to the minimum bid requirements.
11. \_\_\_\_\_ County reserves the right to reject any and all bids.
12. Bids less than the minimum bids will be accepted, but approval of such bids is subject to the discretion of the County Mayor and the approval of the \_\_\_\_\_ County Legislative Body.

FOR FURTHER INFORMATION, CONTACT \_\_\_\_\_, COUNTY MAYOR AT (\_\_\_\_) \_\_\_\_\_.





















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Inquiries and charges of violation concerning Title VI, Title IX, Section 504, the ADA, the Age Discrimination in Employment Act (ADEA) or any of the other above referenced policies should be directed to the Affirmative Action Officer, 711E Andy Holt Tower, Knoxville, TN 37996-0174, telephone (423) 974-2243. Requests for accommodation of a disability should be directed to ADA Coordinator at the above address.

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