

LEGAL ISSUES FOR COUNTY TRUSTEES

prepared by

**THE UNIVERSITY OF TENNESSEE
COUNTY TECHNICAL ASSISTANCE SERVICE**

January 2019

PART – I

Description of the Office

DESCRIPTION OF THE OFFICE

- Legal Qualifications of the Trustee
- Method of Election and Term of Office
- Oaths of Office
- Bond Requirements / Insurance
- Compensation of the Trustee
- Vacancies

Legal Qualifications of the Trustee

The basis for the office of county trustee lies in Article 7, Section 1 of the Tennessee Constitution:

The qualified voters of each county shall elect for terms of four years a legislative body, a county executive, a Sheriff, a **Trustee**, a Register, a County Clerk and an Assessor of Property.

The office of trustee therefore has the status of a constitutional office.

Residence

The trustee must reside within the county of election during the entire tenure (term) of office.

T.C.A. § 2-2-122 sets forth guidelines to determine residence.

Basically, residence for election purposes is defined as the physical presence of a person with intention to make a place the person's residence.

General Qualifications

T.C.A. § 8-18-101

There are no special requirements to hold the office of trustee.

All persons eighteen years of age and over who are citizens of the United States and Tennessee, and who reside within and are qualified voters of the county they represent, are qualified to hold the office of county trustee, except the following:

Disqualifications

T.C.A. § 8-18-101

- Those convicted of offering or giving a bribe, or larceny, or any other offense declared infamous by law, unless those persons have been restored to citizenship;
- Those against whom there is an unpaid judgment for moneys received by them in an official capacity, due to the United States, Tennessee, or any county;

Disqualifications

T.C.A. § 8-18-101

- Those who are defaulters to the treasury at the time of election (such an election is void);
- Soldiers, sailors, marines, airmen, in the regular Armed Forces of the United States; and,
- Members of Congress, and persons holding any office of profit or trust under any foreign power, other state, or the United States.

Disqualifications

T.C.A. § 8-18-102

Any disqualified person who takes office is guilty of a misdemeanor.

Disqualifications

T.C.A. § 39-16-401 *et seq*

In addition, any person previously convicted of certain criminal offenses involving misconduct in office is forever afterward disqualified from holding any office under the laws or constitution of this state.

See also T.C.A. § 39-16-103 (bribery).

Disqualifications

TCA § 40-20-114

Prohibits state and local elected officials from seeking elected state or local office after conviction of a state or federal felony related to public service, even if citizenship status is later restored.

Furthermore, the conviction is grounds for removal from office and the person is forever prohibited from qualifying for, seeking or holding any public office in this state.

Method of Election & Term of Office

T.C.A. § 8-11-101

The trustee is elected by the county's qualified voters during the regular August election immediately preceding the beginning of a full term.

The term of office is four years and begins on September 1 of the year of election and continues until a successor is elected and qualified.

If a vacancy occurs in the office of trustee, the vacancy is filled as provided for in T.C.A. § 5-1-104(b).

Method of Election & Term of Office

There is no limitation on the number of terms a trustee may serve.

May only run for one Countywide Office

Under T.C.A. § 2-5-101(f)(5), a candidate for the trustee's office is prohibited from running for any other countywide office on the same ballot.

However, when it is not prohibited by statute, a candidate for the trustee's office may also run for an office other than a countywide office at the same election, even though the person may not be able to serve in both capacities if elected.

Example

For example, the Attorney General has opined that Article 2, Section 26 of the Tennessee Constitution does not prohibit a person from seeking the office of state senator and assessor at the same time, but that person could not hold both offices if elected to both of them.

Oaths of Office

The trustee must take the following oath to faithfully perform the duties of the office and to support the constitutions of Tennessee and the United States:

I do solemnly swear that I will perform with fidelity the duties of the office to which I have been elected (or appointed, as the case may be) and which I am about to assume and to support the constitutions of Tennessee and of the United States.

T.C.A. § 8-18-111; TENN. CONST., Art. X, § 1.

See also T.C.A. § 8-11-102.

The oath of office may be administered by:

General sessions judges, retired general sessions judges, retired judges and retired chancellors of courts of record of this state may administer the oaths of office to any elected or appointed public official.

The county mayor, the county clerk, judges of courts of general sessions, or a judge of any court of record in the county may administer the oath of office for any elected or appointed official.

T.C.A. §§ 8-18-107 & 8-18-109.

Oaths of Office

Oaths must be written out and subscribed by the person taking them, and must be accompanied with the certificate of the officer administering the oaths, specifying the day and year when taken.

T.C.A. § 8-18-107.

Oaths of Office

The oath of office for any county official required to file an oath may be administered at any time after the certification of the election returns, in the case of elected officials, or after appointment, in the case of appointed officials.

Even though an official may file an oath before the scheduled start of a term of office, the official may not take office until the term officially begins.

T.C.A. § 8-18-109.

Oaths of Office

The oath and the certificate must be filed with the county clerk, who endorses the day and year of filing and signs the endorsement.

T.C.A. §§ 8-18-109 & 8-18-110.

Any officer or deputy required by law to take and file such oaths, who enters upon the duties of the office without first taking and filing the same as prescribed, commits a Class C misdemeanor.

T.C.A. § 8-18-113.

Additional Oath

At the time of executing bonds, the trustee must take and subscribe to the following oath before the county clerk or county mayor:

I do solemnly swear that I will faithfully collect and account for all taxes for my county, or cause the same to be done, according to law, and that I will use all lawful means in my power to find out and assess such property as may not have been assessed for taxation in my county, and return a list of the same on settlement.

T.C.A. § 67-5-1901.

Bond Requirements

Amount of Bond: The minimum amount of the official bond executed by the trustee for each term of office is determined from the amount of revenues handled by the trustee during the last fiscal year audited by the Comptroller or from the last Comptroller-approved audit which was prepared by certified public accountants.

T.C.A. § 8-11-103.

Official Bond

An official bond may be executed by a surety company authorized to do business in Tennessee (corporate surety), or by personal sureties. T.C.A. § 8-11-103.

The governing body by a two-thirds vote must elect whether or not the county officials of the county shall make a surety bond or a bond with two or more good sureties, approved by the legislative body, prior to the time such official is inducted and sworn into office. T.C.A. § 8-19-101.

Bond Amounts – Surety Company

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

- Four percent (4%) up to three million dollars (\$3,000,000) of the funds collected by the office; and
- Two percent (2%) of the excess over three million dollars (\$3,000,000) shall be added.

These amounts are cumulative.

Bond Amounts – Personal Surety

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

- Six percent (6%) up to three million dollars (\$3,000,000) of the funds collected by the office; and
- Four percent (4%) of the excess over three million dollars (\$3,000,000) shall be added.

These amounts are cumulative.

Bond Amounts

The county legislative body may require the trustee to execute a bond in an amount higher than the minimums.

T.C.A. § 8-11-103.

Form of Bond

The bond is prepared in accordance with the provisions of Title 8, Chapter 19, approved by the county legislative body, recorded in the office of the county register of deeds and transmitted to the office of the county clerk for safekeeping.

T.C.A. § 8-11-102.

Form of Bond

T.C.A. § 8-19-101

- The form of official bonds is prescribed by the Comptroller and approved by the Attorney General.
- Blank copies of official bonds are available from the Comptroller of the Treasury, Division of Local Finance.
- The trustee is responsible for securing his or her bond and should take steps to ensure that the bond is properly executed, approved, and filed.

Filing of Bonds

T.C.A. §§ 8-19-102 & 8-19-103

The official bonds of county officials required by law to execute bonds are transmitted to the office of county clerk for safekeeping immediately upon their execution, approval and recordation in the office of the county register of deeds.

Filing of Bonds

T.C.A. §§ 8-19-104 & 8-19-106

The registers of deeds, whose duty it is to record official bonds, maintains a special record book and records therein each official bond presented for registration.

The respective counties pay the premiums for bonds and the registration fees.

Filing of Bonds

T.C.A. §§ 8-19-115

Official bonds must be filed within forty (40) days after the election, or within twenty (20) days after the term of the office legally begins.

Penalty for Failure to File

T.C.A. §§ 8-19-117

If any officer required by law to give bond fails to file in the proper office within the time prescribed, he or she must vacate the office.

It is the officer's duty in whose office the bond is required to be filed to certify immediately the failure to give bond, and then the vacancy must be filled.

Acting Before Approval of Bond

Any public officer required by law to give bond who performs any official act before such bond is approved as required commits a Class C misdemeanor.

T.C.A. §§ 8-19-119.

Purpose of Bond

An official bond is an instrument which requires the sureties to pay up to a specified amount of money if the trustee fails to perform certain acts or performs wrongful and injurious acts under the color of office.

Bonds constitute a written promise made by the trustee to:

Written Promise

- 1. Perform all of the duties of the office;
- 2. Pay over to authorized persons all funds received in an official capacity;
- 3. Keep all records required by law;
- 4. Turn over to the successor all records, money, and property of the office; and
- 5. Refrain from anything that is illegal, improper, or harmful while acting in an official capacity.

T.C.A. §§ 8-19-111 & 8-19-301.

Trustee's Liability

Any person who is injured by the failure of the trustee to keep this promise may collect from the trustee's sureties.

It is important to know that a bond protects the state, the county, and the citizens in the event the trustee fails to perform his or her duties properly.

The bond does not protect the trustee from liability.

T.C.A. §§ 8-19-111 & 8-19-301.

Trustee's Liability

If a payment is made under the bond, the trustee's sureties may have a right to recover from the trustee the amount paid.

This action against the trustee by the sureties is known as subrogation.

Insurance - T.C.A. § 8-19-101

The county legislative body can chose to use insurance instead of bonds. The insurance policy must provide government crime coverage, employee dishonesty insurance coverage, or equivalent coverage that insures the lawful performance by officials and their employees of their fiduciary duties and responsibilities. Any such policy or agreement maintained shall have limits of not less than four hundred thousand dollars (\$400,000) per occurrence.

Insurance - T.C.A. § 8-19-101

A policy or agreement satisfying these requirements shall be deemed to be a blanket official bond for each official or office identified in the policy or agreement for all purposes.

A certificate of insurance evidencing the officials and offices covered, the amount of coverage maintained, and the type of coverage provided shall be filed in the register's office for the county in which the official is located.

A certificate of insurance shall satisfy the requirement for the filing of the official bond by the named officials.

Compensation of the Trustee

The State Legislature sets the minimum compensation of the trustee according to county population classes.

The county legislative body determines the salary of the trustee each year in an amount equal to or greater than the statutory minimum.

If the county legislative body takes no action, then the salary for the trustee is the statutory minimum amount.

T.C.A. § 8-24-102.

Educational Incentive - COCTP

Any full-time county officer who is designated as a “certified public administrator” shall receive an annual educational incentive payment from the state treasurer.

T.C.A. § 5-1-310

Fee or Non-Fee Office

Two methods exist for using and accounting for fees and commissions received by the trustee and other county officials.

Fee System

Under the older system, called the "fee system," the official transfers to the county general fund on a quarterly basis all of the fees, commissions, and charges collected in the preceding quarter in excess of the amount required to pay salaries of the officer, deputies, and assistants and the necessary office expenses.

Under this system the official may retain fees in an amount equal to three times the monthly salary total. T.C.A. § 8-22-104.

Fee System

If the fees collected by the officer are insufficient to pay all of the salaries and office expenses, the county legislative body must make up the shortfall. T.C.A. § 8-24-107.

The county legislative body does not need to appropriate funds for the salaries and office expenses unless the fees are inadequate.

All excess fees and commissions are remitted to the county general fund. T.C.A. § 8-22-103.

Salary System

The county legislative body may adopt an alternative system for any of the fee officers of the county, including the trustee, or all of them (except the sheriff who is always under this system).

Under the alternative system, sometimes called the “salary system,” the trustee or other official makes monthly payments to the county general fund for all of the fees, commissions, and charges collected.

T.C.A. § 8-22-104(a)(3).

Salary System

The county legislative body is required to pay the trustee's salary, the salaries of the deputies and assistants, and the authorized expenses of the office from the general fund in twelve equal monthly installments, regardless of the fees received by the office.

This alternative system may be adopted by the county legislative body for one or more county offices. It is not necessary for all offices to operate under the same system.

T.C.A. § 8-22-104(a)(3).

Deputies and Assistants

Under both the fee and the salary systems the hiring and compensation of deputies and assistants can be determined either by court decree or a letter of agreement.

The trustee has the power to employ and discharge employees. The court decree or letter of agreement merely sets the maximum number and maximum compensation of the employees.

T.C.A. § 8-20-101 *et seq.*

Deputies and Assistants

The compensation for deputies and assistants established by court decree or letter of agreement must be sufficient to comply with the Federal Fair Labor Standards Act (FLSA) and its minimum wage and overtime provisions.

Vacancies

- **Causes of Vacancies:** A trustee's office, as well as other public offices, is vacated for the following reasons:
 - 1. Death;
 - 2. Resignation, when permitted;
 - 3. Removal of residency from the county of election;

Causes of Vacancies

- 4. A decision of a competent tribunal declaring the election void, the appointment void, or the office vacant;
- 5. The sentencing of the incumbent by a competent tribunal in Tennessee or any other state to the penitentiary, subject to restoration if the judgment is reversed, but not if pardoned; or

Causes of Vacancies

- 6. An adjudication of insanity.

In addition, if a trustee is ousted, fails to give bond, or fails to take the required oath, a vacancy occurs.

Temporary Successors

If the office of trustee becomes vacant due to death, resignation, or removal, the duties of the trustee are to be temporarily discharged by the chief deputy or by the deputy designated in writing by the trustee.

This deputy serves until a successor is appointed by the county legislative body.

It is important to note that this law only applies to the duties of the office and not to the office itself.

PART – II

Powers and Duties

Trustee's Authority

“The rule is that counties have no authority other than that expressly given by statute or that necessarily implied from the provisions of such statute.” [Bayless v. Knox County, 199 Tenn. 268, 281, 286 S.W.2d 579 \(1955\)](#). Thus, a county only possesses the powers granted by the Legislature. [Knox County ex rel. Kessel v. Knox County Personnel Board, 753 S.W.2d 357 \(Tenn.Ct.App.1988\)](#).

Trustee's Authority

Counties are public municipal corporations of limited powers, having no authority other than that expressly given or necessarily implied by statute, and statutes respecting a county's powers are strictly construed.

See *Bayless v. Knox County*, 199 Tenn. 268, 281, 287-89, 286 S.W.2d 579 (1955); *Hagan v. Black*, 159 Tenn. 290, 293, 17 S.W.2d 908 (1929); *State ex rel. Citizens of Wilson County v. Lebanon & Nashville Turnpike Co.*, 151 Tenn. 150, 160, 268 S.W. 627 (1924); *White's Creek Turnpike Co. v. Davidson County*, 82 Tenn. 73, 75 (1884); *Weakley County Municipal Electric System v. Vick*, 43 Tenn. App. 524, 549, 309 S.W.2d 792 (1957).

Trustee's Authority

County fee officials are independent entities.

They do not work for and are not subject to the mayor's control.

Easterly v. Harmon, 1997 WL 718430, n4 (Tenn.Ct.App.,1997) (The county executive and county clerk are independent entities and Easterly is not subject to his control.).

FEEES

Three Important Rules

FEES Authority

RULE 1

The Trustee is not allowed to demand or receive fees or other compensation for any service further than is expressly provided by law.

T.C.A. § 8-21-101

FEES

Criminal Liability

RULE 2

If any officer demands or receives any other or higher fees than are prescribed by law, such officer is liable to the party aggrieved in the penalty of \$50.00, to be recovered before any judge of the court of general sessions, and the officer also commits a Class C misdemeanor.

T.C.A. § 8-21-103.

FEEES

Individual Liability

RULE 3

Any officer who fails to charge or collect from the one liable therefor, every fee, commission, compensation that the county may be entitled to, and which, by the exercise of reasonable diligence could have been collected, or by failing to present the statement of receipts as herein directed, shall be held individually liable to the county for the amount that should have been collected, and the same shall be charged against the officer and be deducted from the officer's salary, or collected from the officer by law.

T.C.A. § 8-22-105.

Powers & Duties

- Basic Duties
 - Collection of property taxes
 - Maintain accurate record of all money received
 - Pay legal demands immediately if sufficient funds exist
 - Maintain accounts and records
 - Settle account on leaving office

Powers & Duties

Pursuant to T.C.A. § 8-11-104, the trustee's basic duties include the following:

1. Collect all state and county taxes on property;
2. Keep a fair and regular account of all the money received;
3. Receive the county's bills;

Powers & Duties

4. Keep a successive warrant book, or a book showing all bills received, ruled in columns, showing the number, payee or holder, date of the day of presentation, and amount of the bill;

Powers & Duties

5. Pay the legal demands (just claims) immediately if there are unappropriated funds sufficient to do so; otherwise, to deliver the demand to the owner endorsed, and pay it in numerical order (Interest might be due if so contracted by the county legislative body, but only until there are funds in the county treasury to make payment.);

Powers & Duties

6. Keep fair and regular accounts of such payments;
7. Furnish the county executive with any papers and vouchers necessary for perfecting any settlement with any person who is accountable for county revenue; and

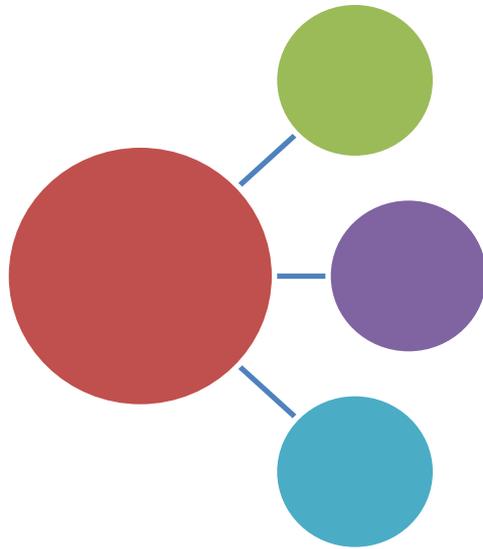
Powers & Duties

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

Powers & Duties

- Financial Responsibilities
 - Interaction with other officials
 - Serves as County Treasurer
 - Checking system
 - Official bank account
 - Annual financial report
 - Commissions and exemptions
 - Investment of county funds

Interaction with other Officials



- All Offices
- County Mayor, Budget Director, CLB
- Fee Officials
- Clerk & Master, Delinquent Tax Attorney

County Treasurer

- Receives and pays out county funds
- Must allocate money received to various county funds
- Disbursement authority granted by CLB
- Excess Fees and commissions
- Files sworn report monthly
- CLB has choice of operating on a salary system



Checking System



- Trustee granted authority to adopt
- 30 days notice required
- Finance committee or CLB may discontinue
- Bank Accounts
 - County Master
 - Check Clearing

Checking System

- Issuance of checks certified by:
 - List Certification
 - Check Signing/Validation Method
 - Combination Method
 - Any method requested by trustee



Checking System

- Departments required to submit list to trustee
- Trustee verifies department funds
- Violation of law to issue w/o trustee certification



Checking System

The Mechanics

- Normal disbursement function for both
- Warrants Accounting
 - Issuing Office, expensed against appropriate accounts at the time of issue/posting
 - For trustee, time of recognition
 - Warrants aren't expensed against the department/fund until they are recognized (presented for payment)
 - Trustee, generally, is not aware of amounts issued until warrants are presented for payment
 - Warrants are covered out of master account, generally
 - Advantage to county as money earns interest until presented for payment

Checking System

The Mechanics

- Checking Accounting
 - Issuing Office, expensed against appropriate accounts at time of issue/posting
 - For trustee
 - Money is expensed against the department/fund when list (file) is received from the issuing office
 - Money is transferred from master account to the appropriate clearing account

Checking System

The Mechanics

- Reconciliation
 - Warrants are reconciled by trustee
 - Checks may be reconciled by either trustee or issuing department
 - Trustee provides a list of reconciled & unreconciled checks to issuing department at the end of the month
- Communication
 - For successful implementation and operation of the checking system, timely, clear, effective communication is **CRITICAL!**

Official Bank Accounts

- CLB authorized contract with bank(s)
 - Highest and best bids
 - Or appoint finance committee
- Trustee takes bids from banks
- County clerk shall provide copy of trustee's report to each member of CLB.
T.C.A. § 5-8-201(a)(2).



Official Bank Accounts

- Finance committee contracts on behalf of county
- Trustee also authorized
- As necessary for the collateralization of the county's funds

Official Bank Accounts

- Required to evaluate county's banking contract(s)
 - Required to obtain proposals from at least two banks or other financial institutions
 - Prepare written evaluation of the proposals
 - Kept for a period of not less than three years

Official Bank Accounts

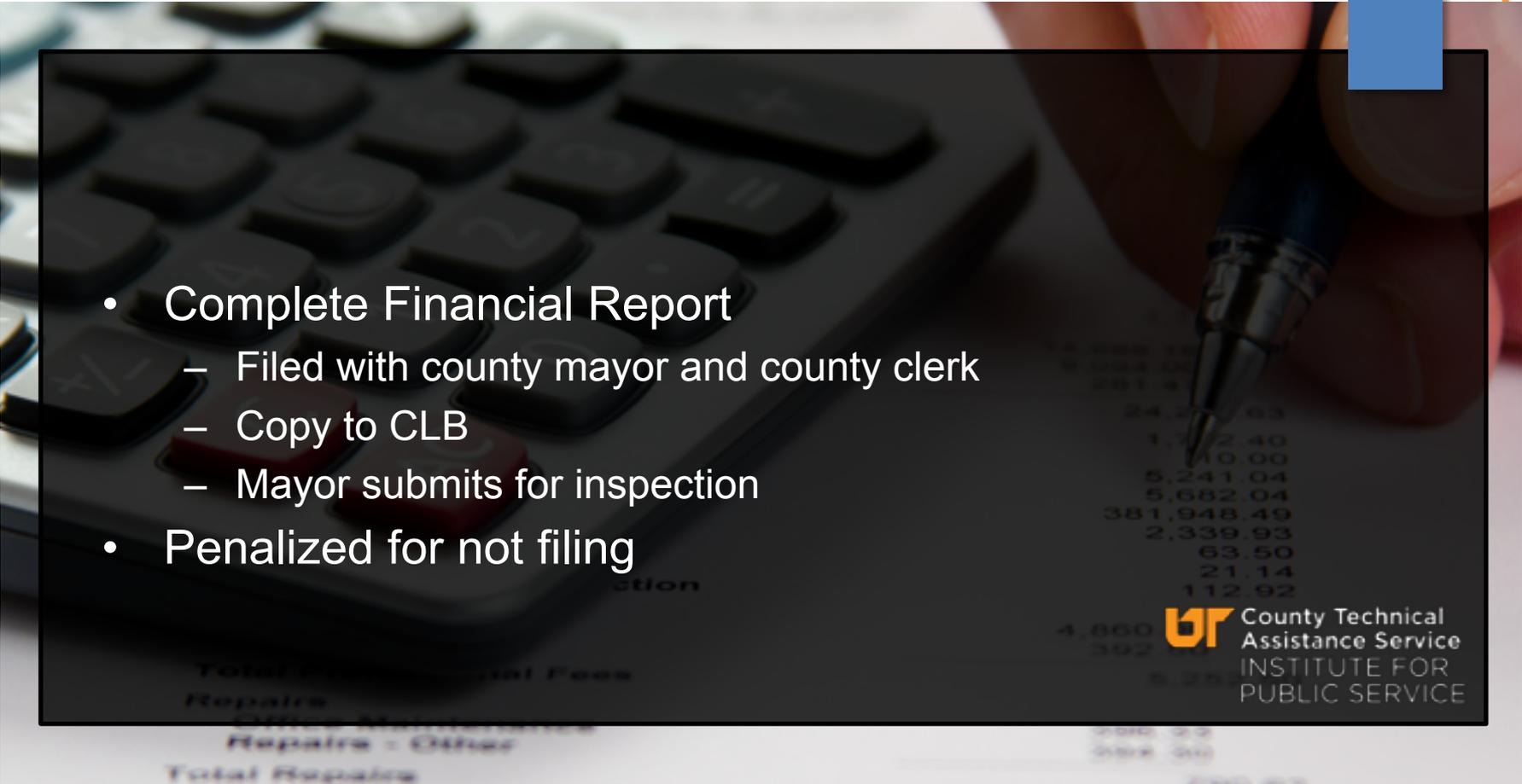
Collateralization of Funds



- Funds required to be collateralized
 - Collateral Pool
- Collateralization is to be 105%

Annual Financial Report

- Complete Financial Report
 - Filed with county mayor and county clerk
 - Copy to CLB
 - Mayor submits for inspection
- Penalized for not filing



4,860
392
6.25

24,277.63
1,772.40
10.00
5,241.04
5,682.04
381,948.49
2,339.93
63.50
21.14
112.92

UT County Technical Assistance Service
INSTITUTE FOR PUBLIC SERVICE

Commissions and Exemptions

Funds Received and Disbursed
(For benefit of the county)



Commission Received

If questioned, duty of courts to decide

Statutory Commissions

State, County, &
Municipal Revenue
County Offices

Schools

Highways

Special District
Funds

Watershed
Drainage & levee

Inquest Proceedings

Municipal Taxes

Investment of County Funds

- Counties are directed to invest all idle county funds to the maximum extent practical
- Three categories of idle county funds that may be invested:
 - Funds derived from bond proceeds
 - Funds from the sale of assets, settlements, or other infrequent occurrences
 - Other idle county funds



Investment of County Funds

- For non-1981 CMFS counties
 - May create investment committee
 - Authority to designate to types, amounts, and maturities



Investment of County Funds

- For CFMS 1981 Counties
 - Authorized to establish investment committee
 - Composed of 5 members
 - May or may not be members of the CLB
 - Establishes and approves policies and procedures
 - Finance director makes investments



Investment of County Funds

- **Funds may be invested:**

U.S. Bonds,
notes,
treasury bills

State/Federally
chartered banks

Obligations of
US

State
investment
pool

State bonds

Nonconvertible
debt securities

County's own
bonds or
notes

Investment of County Funds

- Commercial grade paper provided:
 - Population is in range of 20,000 – 150,000
 - Rated in the highest category by at least two commercial paper rating services
 - Remaining maturity of 90 days or less
- Banks or savings and loan associations with branch in the state under certain conditions

Powers & Duties

- Penalties for failure to perform duties
- Records
- Association dues

Powers & Duties

Penalties for Failure to Perform Duties

If the trustee refuses to pay any county warrant or legal demand, it is a Class C misdemeanor for which the trustee may be removed from office unless such disbursement would have exhausted the funds on hand.

T.C.A. § 8-11-105.

Powers & Duties

Penalties for Failure to Perform Duties

The trustee's sureties (on the trustee's bond) may be held liable if the county suffers losses as a result of the trustee's failure to pay money owing by the county or to collect money due to the county. T.C.A. § 8-11-106.

This is also true if the trustee pays claims in the wrong priority. *Howard v. Horner*, 30 Tenn. 532 (1851).

Powers & Duties

Penalties for Failure to Perform Duties

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

Powers & Duties

Penalties for Failure to Perform Duties

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

T.C.A. § 8-22-106.

Powers & Duties

Penalties for Failure to Perform Duties

If the trustee fails or refuses to furnish the county mayor with any vouchers or papers deemed necessary by the county mayor for perfecting any settlement with any person accountable for county revenue, refuses to receive county warrants in payment of county taxes, or refuses to settle or pay as required by law, the circuit court, upon motion, will impose a \$500 forfeiture upon the trustee. T.C.A. § 8-11-108.

Powers & Duties

Penalties for Failure to Perform Duties

This forfeiture could be paid from the surety on the trustee's bond.

According to this provision the trustee is required to accept a county warrant as payment for county taxes.

Powers & Duties

Penalties for Failure to Perform Duties

A trustee who, upon going out of office, fails to pay over the balance of revenue to the new trustee shall be liable, as are the sureties on the trustee's bond, on motion of the district attorney before the circuit court.

T.C.A. § 8-11-109.

Powers & Duties

Records

Public Records. All records of the office of trustee are open to the public for inspection and copying unless specifically made confidential by statute.

T.C.A. § 10-7-503.

Powers & Duties

Records

While entitled to examine and copy public records maintained by a county office holder pursuant to the public records law, Tennessee citizens are subject to such reasonable rules as the office holder may prescribe governing the making of such copies.

T.C.A. § 10-7-506(a).

Powers & Duties

Records

Any citizen of Tennessee denied access to a public record can file a petition in the chancery court to obtain access; if the trustee willfully refuses to disclose a public record, knowing it to be such, the government can be assessed costs and attorneys fees.

T.C.A. § 10-7-505.

Powers & Duties

Records

In 2008 the legislature amended the public records laws. As a result, the Office of Open Records Counsel was created to answer questions and provide information to records custodians and citizens regarding public records requests. The Office of Open Records Counsel has developed forms for use by records custodians. These forms can be found on their website at:

<http://www.comptroller.state.tn.us/openrecords/forms.htm>

Powers & Duties

Tax Records

There are specific statutes requiring confidentiality of state tax information.

The general statute, T.C.A. § 67-1-1702, provides:

Powers & Duties

Tax Records

Returns, tax information and tax administration information shall be confidential and, except as authorized by this part, no officer or employee of the department or of any office of a district attorney general or any state or local law enforcement agency, and no other person, or officer or employee of the state, who has or had access to such information shall disclose any such information obtained by such officer or employee in any manner in connection with such officer's or employee's service as an officer or employee, or obtained pursuant to this part, or obtained otherwise.

Powers & Duties

Tax Records

Violation of this confidentiality statute is a criminal offense.

T.C.A. § 67-1-1709.

Powers & Duties

Tax Relief Records

Financial records filed for purposes of income verification, including financial information reported on any application, are confidential and are not subject to inspection under the Tennessee public records law, but are available to local or state officials who administer, enforce, or audit the tax relief program.

T.C.A. § 67-5-701(m)

Powers & Duties

Association Dues

The county legislative body is authorized to appropriate funds for dues to associations of particular county officeholders or associations made up of groups of officeholders.

T.C.A. § 5-9-111(a).

Powers & Duties

Association Dues

If the county legislative body appropriates funds to pay dues for the county mayor, the county highway superintendent, or the members of the county legislative body, then they are also required to appropriate sufficient funds to pay the annual dues, up to \$100 in at least one association, for the trustee as well as other county officials upon their request. The county legislative body is authorized to appropriate more than \$100, in its discretion. T.C.A. § 5-9-111(b).

Powers & Duties

Association Dues

No such funds appropriated shall be used for lobbying activities as defined in T.C.A. § 3-6-102, for the purpose of influencing legislative action relative to benefits or salaries of the association's members.

T.C.A. § 5-9-111(c).

PART – III

Collection of Property Taxes

Collection of Property Taxes

The primary source of revenue in most counties is the ad valorem property tax.

This tax, based on value, is imposed directly upon property, and the tax follows the property even if it is sold or transferred to a different owner.

Collection of Property Taxes

- Tennessee Constitution - Art. 2, Sec. 28, 29
 - Structures Valuation – Provides classification and percentages of value
 - Authorizes counties and municipalities to levy property tax (as well as state)
 - Authorizes Legislature to provide certain exemptions – religious, charitable, etc.
 - Requires uniformity of valuation, assessment and rate within classes

Classification of Property

- Real Property – land, buildings, fixtures
- Tangible Personal Property – movable, but can be seen and touched
- Intangible Personal Property – everything else that is deemed property

TENN. CONST., Art. 2, § 28; T.C.A. § 67-5-503.

Real Property Subclasses

Real property is further divided into four sub-classifications and assessed at a percentage of value as follows:

- Public Utility 55%
- Industrial and Commercial 40%
- Residential 25%
- Farm 25%

T.C.A. § 67-5-801(a).

Real Property Classification Issues

- More than one purpose – apportioned
- Unused - most suitable use
- Leasehold – taxable if fee is exempt
- Mobile homes – Usually fixture to land
- Present Use Valuation – exception to most suitable economic use (market value) for certain residences
- Greenbelt Property - present use valuation instead of market valuation for qualifying agricultural, forest and open space land

T.C.A. §§ 67-5-801; 67-5-802; 67-5-1001 *et seq.*

Greenbelt Property

- Application to Assessor by March 1 of the first year for which the classification is sought
- **Limited to 1500 acres per owner**
- Minimum acres
 - 15 acres - agricultural and forest
 - 3 acres – open space
 - Two noncontiguous tracts in same county and one 15 acres and other 10 acres

T.C.A. § 67-5-1005 – Agricultural Land

T.C.A. § 67-5-1006 – Forest Land

T.C.A. § 67-5-1007 – Open Space

Greenbelt Property

After a parcel of land has been classified by the assessor of property as agricultural, forest, or open space land, the assessor records it on a separate list for such classified property, and the assessor records with the register of deeds the application for classification of the property. Any fees that may be required are paid by the property owner.

T.C.A. § 67-5-1008(b).

Greenbelt – Rollback Taxes

- Disqualification or Withdrawal – county recaptures a portion of tax savings
- Preceding 3 years – agricultural and forest land
- Preceding 5 years – open space land
- Based on formula
- Trustee accepts amount determined by assessor to be owing

T.C.A. § 67-5-1008(d).

Greenbelt Rollback Taxes

Assessor/Trustee Interaction

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.

When the assessor determines there is liability for rollback taxes, the assessor must give written notice to the trustee identifying the basis of the rollback taxes and the person the assessor finds to be responsible for payment.

The assessor provides a copy of the notice to the responsible person.

Greenbelt Rollback Taxes

Assessor/Trustee Interaction

Rollback taxes are a first lien on the disqualified property in the same manner as other property taxes, and are also the personal responsibility of the current owner or seller of the land.

The assessor may void the rollback assessment, if it is determined that the assessment was imposed in error, except there shall be no refund of rollback taxes that have been collected at the request of a buyer or seller at the time of sale.

Greenbelt Rollback Taxes

Assessor/Trustee Interaction

Liability for rollback taxes, but not property values, may be appealed to the state board of equalization by March 1 of the year following the notice by the assessor.

However, property values fixing the amount of rollback taxes may only be appealed as otherwise provided by law.

T.C.A. § 67-5-1008(d).

Tangible Personal Property

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

- Public Utility 55%
- Industrial and Commercial 30%
- All Other Tangible Personal Property 5%

T.C.A. § 67-5-901(a).

Tangible Personal Property

- Tangible personal property held for use by business or professional is taxed
- Non-business tangible personal property is presumed to have no value is is not subject to tax
- FEMA certified disaster may cause pro-ration of assessment certified by Assessor

Assessment

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.

Assessment

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.

The assessor also appraises and assesses taxable tangible personal property.

Assessment

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).

T.C.A. § 67-5-504.

Correction of Erroneous Assessment

The assessor of property must certify in writing a corrected or revised assessment to the trustee, or city tax collector in the case of city taxes, whenever the assessor discovers, or it has been called to the assessor's attention, that there has been an error or omission in the listing, description, classification or assessed value of property or any other error or omission in the tax rolls held by the trustee or city tax collector.

T.C.A. § 67-5-509(c)(1).

Correction of Erroneous Assessment

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.

T.C.A. § 67-5-509(c)(2).

Correction of Erroneous Assessment

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.

T.C.A. § 67-5-509(a).

Correction of 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.

T.C.A. § 67-5-509(a).

Correction of Erroneous Assessment

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.

Additional taxes due as the result of a corrected assessment shall not be deemed delinquent until sixty (60) days after the date notice of the corrected assessment is sent to the taxpayer.

T.C.A. § 67-5-509(d).

Correction of Erroneous Assessment

Once a suit has been filed for the collection of delinquent taxes pursuant to T.C.A. § 67-5-2405, the assessment and levy for all county, municipal and other property tax purposes are deemed to be valid and are not subject to correction under this section.

T.C.A. § 67-5-509(d).

Correction of Erroneous Assessment

The only errors or omissions which can be corrected are those involving obvious clerical mistakes apparent from the face of the official tax and assessment records and which involve no judgment or discretion by the assessor.

T.C.A. § 67-5-509(f).

Back Assessment

"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.

T.C.A. § 67-1-1001(a)(1).

Reassessment

"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.

T.C.A. § 67-1-1001(a)(2).

Back Assessment & Reassessment

- Must be initiated prior to September 1 of the year following the tax year
- Additional taxes are not delinquent until 60 days after the date notice of back assessment is sent to taxpayer

T.C.A. § 67-1-1005.

Back Assessment & Reassessment

- Back assessment or reassessment must be initiated prior to three years from September 1 of the tax year for which the original assessment was made if the omission or underassessment resulted from:
 1. failure of the taxpayer to file the reporting schedule required by law
 2. actual fraud or fraudulent misrepresentation of the property owner or the property owner's agent, or
 3. collusion between the property owner or the property owner's agent and the assessor

Back Assessment & Reassessment

Additional taxes become delinquent as of the date of delinquency of the original assessment if:

1. the taxpayer failed to file the reporting
2. actual fraud or fraudulent misrepresentation of the property owner or the property owner's agent, or
3. from collusion between the property owner or the property owner's agent and the assessor

T.C.A. § 67-1-1005.

Back Assessment & Reassessment

- Only Assessor may initiate
- Assessor certifies back or reassessment to Trustee
- Trustee sends notice of taxes due
- Person aggrieved may appeal directly to the State Board of Equalization within 60 days of certification to taxpayer

T.C.A. § 67-1-1005.

Property Tax Appeal Process

- County Board of Equalization
- State Board of Equalization
 - Hearing Officer
 - Assessment Appeals Commission
 - State Board review
- Chancery Court
- Court of Appeals & Supreme Court

Property Tax Appeal Process

County Board of Equalization

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, with authority to alter any of these.

T.C.A. § § 67-5-1401 – 67-5-1415.

Property Tax Appeal Process

State Board of Equalization

The State Board of Equalization is the next level of appeal. To maintain an appeal the taxpayer must pay the taxes which would be due if the taxpayer is successful in the appeal, as well as any delinquent taxes on the property.

T.C.A. § 67-5-1512.

Property Tax Appeal Process

State Board of Equalization

Interest

Interest otherwise due on delinquent property taxes does not accrue while an appeal of the assessment is pending before the county or state boards of equalization; **provided**, that the taxpayer, before the delinquency date, either pays the full tax due or the amount the taxpayer would owe based on the taxpayer's good faith claim for relief. T.C.A. § 67-5-1512(b).

Property Tax Appeal Process

State Board of Equalization

Interest

The Trustee may decline to accept the disputed portion of tax.

T.C.A. § 67-5-1512(b).

Property Tax Appeal Process

State Board of Equalization

Interest

Any tax later found to be refundable, or any additional tax due following the appeal, will accrue interest from the delinquency date at the composite prime rate published by the federal reserve board as of the delinquency date, minus two (2) points.

T.C.A. § 67-5-1512(b).

Property Tax Appeal Process

State Board of Equalization

Interest

Taxes related to a properly appealed assessment before the county and state boards of equalization, shall not be deemed delinquent if the taxpayer has paid at least the undisputed portion of tax while the appeal is pending. Delinquency interest postponed under this section shall begin to accrue 30 days after issuance of the final assessment certificate of the state board of equalization and until the tax is paid.

Property Tax Appeal Process

State Board of Equalization

Refunds of Property Taxes

When a county has been ordered to make a refund of property taxes pursuant to 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.

T.C.A. § 67-5-1809.

Property Tax Appeal Process

State Board of Equalization

Refunds of Property Taxes

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.

T.C.A. § 67-5-1809.

Property Tax Appeal Process

State Board of Equalization

Refunds of Property Taxes

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.

T.C.A. § 67-5-1809.

Property Tax Appeal Process

State Board of Equalization

Refunds of Property Taxes

Where a refund plus accrued interest exceeds 1% 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 3 years in equal annual installments, and the deferred amounts shall accrue interest in the manner otherwise provided by law.

T.C.A. § 67-5-1809.

Property Tax Appeal Process

State Board of Equalization

Deferred Refund of Property Taxes

The interest rate on a deferred refund increases by two points from the date of the deferral sixty days after the board of equalization decision until the refund is finally paid.

T.C.A. § 67-5-1512(c).

Property Tax Exemptions

- Governmental Property
- Growing crops
- Property owned privately and qualified by State:
 - Educational
 - Religious
 - Charitable
 - Nonprofit

T.C.A. § 67-5-201 *et seq.*

Tax Relief

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.

T.C.A. § 67-5-701 *et seq.*

Tax Relief

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.

T.C.A. § 67-5-701 *et seq.*

Tax Relief

The trustee makes a preliminary determination of eligibility and forwards the application to the state for final approval.

The trustee 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 property taxes due at the time the credit is given.

T.C.A. § 67-5-701(c).

Tax Relief

Elderly Low Income

- Authorizes payment or reimbursements for the elderly (65+yrs) on the first \$27k of the full market value of the residence or other amount specified in appropriations act.
- Combined annual income of all owners of the property cannot exceed income limit set by the General Assembly.

T.C.A. § 67-5-702.

Tax Relief

Disabled Homeowners

- Authorizes payment or reimbursements for totally and permanently disabled taxpayers on the first \$27k of the full market value of the residence or other amount specified in appropriations act.
- Combined annual income of all owners of the property cannot exceed income limit set by the General Assembly.

T.C.A. § 67-5-703.

Tax Relief – Disabled Veterans

- Disabled veterans reimbursement is paid on the first \$175k of the full market value of the residence.
- Does not apply to dishonorably discharged vets.
- No income limit.
- A surviving spouse is entitled to receive the disabled veterans' property tax relief if the surviving spouse does not remarry, solely or jointly owns the property and uses the property for exclusively as a home.

T.C.A. § 67-5-704(a) – (c) and (e).

Tax Relief – Disabled Veterans

Property tax relief shall also be extended to the surviving spouse of a veteran whose death results from a service-connected, combat-related cause, as determined by the United States Veterans' Administration, provided that the surviving spouse:

- Does not remarry;
- Solely or jointly owns the property for which tax relief is claimed; and
- Uses the property for which tax relief is claimed exclusively as a home.

T.C.A. § 67-5-704(f).

Tax Relief – Disabled Veterans

Property tax relief shall also be extended to the surviving spouse of a soldier whose death results from being deployed, away from any home base of training and in support of combat or peace operations; provided, that the surviving spouse:

- Does not remarry;
- Solely or jointly owns the property for which tax relief is claimed; and
- Uses the property for which tax relief is claimed exclusively as a home.

T.C.A. § 67-5-704(g).

Tax Relief

Temporary Relocation for Health Care

Elderly low-income homeowners, disabled homeowners, and disabled veterans continue to qualify for property tax relief while the taxpayer is temporarily relocated for health care to the home of a friend or relative, or to a hospital or skilled or intermediate care facility if the taxpayer indicates an intent to return to the residence when recovered sufficiently.

T.C.A. §§ 67-5-702(d); 67-5-703(e); 67-5-704(j).

Confidentiality of Tax Relief Information

Any information concerning the disability status of a disabled homeowner or the disability status of a disabled veteran or the death of a soldier is confidential and is not be subject to inspection under Tennessee public records law, but is available to local or state officials who administer, enforce, or audit the tax relief program or requirements.

T.C.A. §§ 67-5-703(d) & 67-5-704(i).

Tax Relief

In **2006**, the legislature amended T.C.A. § 67-5-701(j) to allow all counties to appropriate funds for tax relief for elderly low income homeowners, disabled homeowners and disabled veterans.

The total tax relief from the state and local appropriations cannot exceed the total taxes actually paid.

Only the taxpayers eligible for the state program are eligible for tax relief from a county appropriation.

Tax Relief – Tax Freeze Act

In 2007, the General Assembly passed the “Property Tax Freeze Act.” The Act allows the legislative body of any county or municipality to adopt by resolution or ordinance the property tax freeze program established in the Act. The Act specifies that the property tax freeze program is not intended to displace other forms of property tax relief available under existing statutes. The new law does not apply to Special School Districts.

T.C.A. § 67-5-705

Tax Levy

- County legislative body levies taxes –
 - Sets property tax rate for specific funds
 - First Monday in July or as soon thereafter as possible
 - Must adopt a budget and levy property taxes by October 1 in order to continue receiving state school funds

Assessment and Tax Levy

- Valuation (usually fair market) x Classification (Constitutional percentage) = Assessment
- Assessment x Tax Rate = Tax Levy Amount or Taxes Due

Assessment and Tax Levy

- 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.

Use of Tax Revenues

- Must only be used for the purposes for which it is levied
- Must be equal and uniform throughout the county or taxing district
- General Purpose Levy for General Fund is for all county purposes except schools, debt service, roads, bridges, and sinking funds and levies under special tax laws

Certified Tax Rate

Before the county legislative body can set a property tax rate for the county, after a general reappraisal of property as determined by the State Board of Equalization, 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.

T.C.A. § 67-5-1701.

Certified Tax Rate

The county legislative body must certify a tax rate which will provide the same revenue which was generated by the tax the previous year using the taxable value appearing on the assessment roll exclusive of properties appearing for the first time.

T.C.A. § 67-5-1701.

Certified Tax Rate

Prior to final determination of the certified tax rate by the governing body, a proposed certified tax rate, including the calculations used to compute the proposed certified tax rate, must be submitted to the Executive Secretary of the State Board for review in accordance with policies established by the board.

T.C.A. § 67-5-1701.

Exceeding the Certified Rate

- Before the certified rate may be exceeded:
 - County legislative body must advertise intent in newspaper of general circulation
 - The mayor must send to the State Board an Affidavit of publication
 - Hold a public hearing

After the public hearing the county legislative body may adopt a resolution levying a tax rate in excess of the certified tax rate. T.C.A. § 67-5-1702.

Collection of Current Property Tax

- Tax Roll
 - Statutory requirements
 - Alterations

Collection of Current Property Tax

One of the trustee's primary functions is the collection of all property taxes levied by the county and by municipalities within the county, unless a municipality collects its own taxes.

T.C.A. § 67-5-1801.

Collection of Current Property Tax

The trustee's role in this process begins with the tax roll, which is **prepared by the assessor** and is delivered to the trustee on or before the first Monday in October of each year.

T.C.A. § 67-5-807.

The trustee collects the tax amounts shown in the tax roll.

T.C.A. § 67-5-1801.

Collection of Current Property Tax Tax Roll – Statutory Requirements

There are **specific statutory requirements** for the tax roll (T.C.A. § 67-5-807), but briefly stated, it must be a bound or loose-leaf book, or unit tax ledger cards, arranged by districts or their subdivisions.

It must be ruled to show names of owners in alphabetical order or by parcel numbers and must also contain information regarding lots, blocks, and acreage.

Collection of Current Property Tax Tax Roll – Statutory Requirements

Each piece of property must be described and valued, with property located inside municipalities separated from other county property.

Personal property values are also listed under appropriate headings.

Another column entry indicates taxes, which are calculated from the assessment values according to the rate set by the county legislative body.

T.C.A. § 67-5-807.

Collection of Current Property Tax Tax Roll – Statutory Requirements

However, county officials may maintain such records on computer storage media instead of bound or loose-leaf books if proper standards are maintained.

T.C.A. § 10-7-121.

Collection of Current Property Tax Tax Roll – Statutory Requirements

10-7-121. Government records kept on computer or removable computer storage media.

(a) (1) Notwithstanding any other law to the contrary, any information required to be kept as a record by any government official may be maintained on a computer or removable computer storage media, including in any appropriate electronic medium, instead of bound books or paper records if the following standards are met:

(A) Such information is available for public inspection, unless it is a confidential record according to law;

Collection of Current Property Tax Tax Roll – Statutory Requirements

(B) Due care is taken to maintain any information that is a public record during the time required by law for retention;

(C) All daily data generated and stored within the computer system shall be copied to computer storage media daily, and the newly created computer storage media more than one (1) week old shall be stored at a location other than at the building where the original is maintained; and

Collection of Current Property Tax Tax Roll – Statutory Requirements

(D) The official can provide a paper copy of the information when needed or when requested by a member of the public.

(2) Nothing in this section shall be construed to require the government official to sell or provide the media upon which such information is stored or maintained.

Collection of Current Property Tax Tax Roll – Statutory Requirements

NOTE: The Tennessee State Library & Archives advises that:

**ELECTRONIC RECORDS ARE NOT
PERMANENT ARCHIVAL RECORDS**

<https://tsla.tnsosfiles.com/archives/tama/tama07electronic.pdf>

Collection of Current Property Tax

Tax Roll – Alterations

The tax roll entries may be altered to reflect changes in the status of property. For example:

Acquisition by an entity which is exempt from taxation. T.C.A. § 67-5-201.

Revisions due to damaged or incomplete improvements. T.C.A. § 67-5-603.

Collection of Current Property Tax Tax Roll – Alterations

Roll back taxes on land previously classified as agricultural, forest, or open space lands.
T.C.A. § 67-5-1008.

Actions of the State Board of Equalization.
T.C.A. § 67-5-1510.

Collection of Current Property Tax Tax Roll – Alterations

Notice of these revisions is usually provided to the trustee by the assessor in the form of a certificate of correction (T.C.A. § 67-5-509), or by a certificate of assessment from the State Board of Equalization (T.C.A. § 67-5-1512).

Collection of Current Property Tax

- Tax Due Date
 - First Monday in October of the Tax Year
 - Military Extension

Collection of Current Property Tax

Tax Due Date

Property taxes imposed by counties are due and payable on the first Monday of October of the tax year.

Municipal property taxes collected by the trustee are also due and payable on this date.

T.C.A. §§ 67-1-701 and 67-1-702.

Collection of Current Property Tax

Tax Due Date

However, when a municipal charter has provided for a consolidation of functions and offices, then the trustee, with the approval of the county legislative body, may establish another municipal due date to maintain existing municipal fiscal policies. T.C.A. § 67-1-701.

Collection of Current Property Tax

Military Extension – T.C.A. § 67-5-2011

No property tax owed 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, shall be due until one hundred eighty (180) days following the conclusion of hostilities in which such person is actually engaged outside the United States or one hundred eighty (180) days after such person is transferred from the theater of operations of such hostilities, whichever is sooner. T.C.A. § 67-5-2011.

Collection of Current Property Tax

Military Extension – T.C.A. § 67-5-2011

A person claiming this delay must apply to the county trustee on or before the day the tax becomes delinquent, and present copies of official orders or other satisfactory proof of such person's deployment and stationing outside the United States during a period of hostilities.

The trustee gives notice of approved applications to city collecting officials and to the clerk and master of the chancery court.

Collection of Current Property Tax

- Payment of Taxes
 - Tax statements
 - Currency and Partial Payment
 - Nonpayment of checks
 - Part ownership
 - Current and delinquent tax

Collection of Current Property Tax

Payment of Taxes – Trustee's Office

Property taxes are paid to the trustee at the trustee's office.

A trustee is authorized to adopt a policy of not accepting current county real property taxes due when delinquent real property taxes are owing; provided, that this prohibition does not apply when the obligor of 1 or more of the prior year's taxes is in bankruptcy or there is a dispute as to the responsibility for such taxes.

T.C.A. § 67-5-1801(b).

Collection of Current Property Tax

Payment of Taxes – Bank

The county trustee may designate a bank and/or the branches that are located within the county to act as a collection agent for the trustee and accept the deposit of county and municipal property taxes.

The county trustee must establish an account with the bank for this purpose, which is restricted to the deposit of county and municipal property taxes.

T.C.A. § 67-5-1801(c).

Collection of Current Property Tax

Payment of Taxes - Bank

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 amounts deposited and owed before issuing a tax receipt to the taxpayer.

Collection of Current Property Tax

Payment of Taxes - Mail

Property tax payments may also be mailed to the trustee.

T.C.A. § 67-1-107.

Collection of Current Property Tax

Payment of Taxes - Mail

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.

If the payment is postmarked no more than 24 hours subsequent to the last date for the timely payment of taxes, it must be accepted as if timely filed. T.C.A. § 67-1-107.

Collection of Current Property Tax Tax Statements

The use of mailed tax bills or statements is not specifically authorized or required except as authorized in counties with consolidated forms of government. T.C.A. § 7-3-203.

Owners of land are presumed to know taxes are due without demand or personal notice. *M'Carrol's Lessee v. Weeks*, 6 Tenn. (5 Hayw.) 246 (1814).

Collection of Current Property Tax Tax Statements

However, tax statements are uniformly used to remind taxpayers of their obligations to pay property taxes.

The widespread use of mailed tax statements has been recognized in legislation dealing with notices of delinquent taxes, which requires these notices to be mailed with tax statements.

T.C.A. § 67-5-2402.

Collection of Current Property Tax

Notice of Delinquent Taxes on Current Bill

The trustee must send a notice of delinquent taxes with the current tax bill for any taxpayer having delinquent taxes as of June 1 of each year.

The property owners to whom this notice is sent is obtained from the delinquent taxpayers list and from the list of property owners whose property is subject to a lawsuit to enforce the tax lien.

T.C.A. §§ 67-5-2402 and 67-5-2403.

Collection of Current Property Tax Tax Statements

A county cannot include other charges on the property tax bill unless there is specific statutory authority, as is the case with solid waste special assessments (applies to municipalities).

T.C.A. § 67-5-103.

Collection of Current Property Tax Tax Statements

Removal of Vegetation and Debris from Property

T.C.A. § 5-1-115(c)(1) provides the county with a lien for cleanup costs which may be placed upon the tax rolls and collected in the same manner as taxes.

Collection of Current Property Tax Currency

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. T.C.A. § 67-1-704.

The trustee may also receive payment by check, money order, credit card or debit card.

Collection of Current Property Tax Partial Payments

T.C.A. § 67-5-1801(e) & T.C.A. § 67-5-1808(a)

After the tax rate is set - Any county trustee may accept partial payments of property taxes. Prior to the trustee accepting partial payment of property taxes, the trustee must file a plan with the comptroller. The plan must indicate that the 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. T.C.A. § 67-5-1801(e).

Collection of Current Property Tax Partial Payments

T.C.A. § 67-5-1801(e) & T.C.A. § 67-5-1808(a)

Before the tax rate is set - The county trustee may accept partial payments of property taxes for the current tax year prior to the date the tax rate is established for the current tax year. Any partial payment of property taxes for the current tax year that is received before the later of July 1 or the date the property tax rate for the current year is established shall be held in a designated revenue account established to hold undistributed taxes and then transferred to the revenue account established for the current year's taxes after the later of July 1 or the date the property tax

Collection of Current Property Tax Partial Payments

T.C.A. § 67-5-1801(e) & T.C.A. § 67-5-1808(a)

rate for the current year is adopted by the county legislative body. T.C.A. § 67-5-1808(a).

The trustee must file a plan with the comptroller.
T.C.A. § 67-5-1808(b).

Must be approved by the CLB. T.C.A. § 67-5-1808(e).

Collection of Current Property Tax Partial Payments

Accepting a partial payment of taxes 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.

T.C.A. § 67-5-1801(e) & T.C.A. § 67-5-1808(d)

Collection of Current Property Tax

Non-Payment of Checks

Trustees accepting checks may encounter problems with nonpayment.

If checks are not paid, the taxpayer is still liable for the payment of the tax as well as all legal penalties and interest. T.C.A. §§ 9-1-108 & 9-1-109.

A "bad" check may be pursued under civil provisions (T.C.A. § 47-29-101) or under criminal provisions (T.C.A. § 39-14-121) of the Code but not under both provisions.

Collection of Current Property Tax

Non-Payment of Checks

A trustee or other official who receives a bad check may contact the office of the district attorney.

If a check is not paid, most trustees void the receipt and proceed as if no check were tendered.

Collection of Current Property Tax

Part Ownership

Whenever a property owner owns an undivided interest in 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 stating that the assessor has fixed the valuation of that particular portion.

T.C.A. § 67-5-1805

Collection of Current Property Tax

Part Ownership

If the remainder is unpaid and the property later goes to a tax sale, the interest sold would be the tenant in common's undivided interest.

A life tenant in possession is deemed the owner and is liable for the assessed taxes which accrue during that tenancy; taxes are not prorated between a life tenant and the remainder interest.

Sherrill v. Board of Equalization, 452 S.W.2d 857 (Tenn. 1970).

Collection of Current Property Tax

Current & Delinquent Taxes

A trustee is authorized to adopt a policy of not accepting current county real property taxes due when delinquent real property taxes are owing; provided, that this prohibition shall not apply when the obligor of one (1) or more of the prior year's taxes is in bankruptcy or there is a dispute as to the responsibility for such taxes.

T.C.A. § 67-5-1801(b).

Collection of Current Property Tax

- Receipts
 - Numbered
 - Dated
 - Amount
- Early payment and discounts
- Delinquency date
- Interest

Collection of Current Property Tax Receipts - T.C.A. § 67-1-704

The trustee is **required** to issue a numbered and dated receipt, printed or written in ink or indelible pencil, for all property taxes paid by each taxpayer.

This receipt must show the amount of the county tax levy and must show separately any state amounts; however, if receipts are mechanically produced, these amounts may be omitted (unless the taxpayer specifically requests that the information be placed on the receipt).

Collection of Current Property Tax Receipts - T.C.A. § 67-1-704

If a portion of the tax notice is to be retained by the taxpayer, in lieu of the trustee mailing a separate receipt of the payment to the taxpayer, the tax notice shall:

(A) Clearly state such fact; and

(B) 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.

Collection of Current Property Tax Receipts

T.C.A. § 67-1-704

The county legislative body is required to furnish a sufficient number of tax receipts, in duplicate book form, numbered consecutively from one; the receipts must display the year for which the taxes are due in large figures, not less than one inch deep.

Collection of Current Property Tax Receipts

T.C.A. § 67-1-704

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.

Collection of Current Property Tax Early Payment

Upon the adoption of a resolution by the county legislative body, the county trustee may accept property taxes at any time after July 10 and after the tax rates are finally set, the trustee's tax rolls are received and the trustee's receipts are prepared. T.C.A. § 67-1-702(b).

Tax relief applications may be accepted on the same date on which the trustee accepts property tax payments. T.C.A. § 67-1-702(b).

Collection of Current Property Tax Discounts for Early Payment

Counties and municipalities are authorized to provide, by ordinance or resolution, for a discount of taxes under one of two possible statutory systems.

Collection of Current Property Tax Discounts

First, the governing body of any county may provide by a resolution adopted in connection with the levy of ad valorem real property taxes for any year for a discount of:

2% for taxes paid within thirty days of the tax due date (in other words, between October 1 and October 31) and/or

1% for taxes paid more than thirty days, but within sixty days of the tax due date (between November 1 and November 30).

T.C.A. § 67-5-1804(a).

Collection of Current Property Tax Discounts

Under the alternative method, if the county legislative body has given the county trustee the authority to collect taxes at any time after July 10 (pursuant to T.C.A. § 67-1-702), then the county legislative body may provide by resolution for a discount of:

- 3 % for property taxes paid by the end of July;
- 2 % if paid by the end of August; and
- 1 % if paid by the end of September.

T.C.A. § 67-5-1804(c).

Collection of Current Property Tax Discounts

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. T.C.A. § 67-5-1804(c).

Although former law required mortgage holders to take advantage of these discounts and to notify customers of their availability, the current statute explicitly states that this is no longer the case. T.C.A. § 67-5-1804(d).

Collection of Current Property Tax Delinquency Date

Property taxes collected by the trustee are delinquent on the first day of March following the tax due date.

For example, 2018 taxes are due and payable on the first Monday in October of 2018 and delinquent on March 1, 2019. See T.C.A. § 67-5-2010.

The trustee is required to continue collection of delinquent taxes, as well as interest, until the time the delinquent taxes are turned over to the delinquent tax attorney for collection. T.C.A. § 67-5-2008.

Collection of Current Property Tax Delinquency Date

Special provisions may apply to persons in military service under the Soldier's and Sailor's Civil Relief Act (50 U.S.C.A. 560) as well as under state law. T.C.A. § 67-5-2011.

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).

Collection of Current Property Tax Interest

On the first day of March following the tax due date, interest of 1.5% is added to delinquent county and municipal taxes collected by the trustee.

The interest amount is thereafter added to delinquent taxes on the first day of each succeeding month until the taxes are paid.

T.C.A. § 67-5-2010

Collection of Current Property Tax Interest

There is no statutory authority which authorizes the trustee to waive accrued interest.

Courts, using equitable powers, may relieve a taxpayer of interest and penalty under certain conditions; however, a taxpayer's inability to pay because of financial misfortune will not excuse the imposition of penalty and interest on the unpaid taxes.

Collection of Current Property Tax Interest

T.C.A. § 67-5-2803

In order to promote equality and uniformity of taxation, except as provided in this part, § 67-5-1806 or § 67-5-2507, no person, public official, governmental entity or court shall have the power or authority to waive, compromise, remit, prorate, apportion or release property taxes, penalty, interest or court costs nor the first lien securing the same. (Acts 2014, ch. 883, § 19.)

Collection of Current Property Tax

- Settlement of taxes
- Report of Delinquent taxes and double assessments
- Refunds of tax payments

Collection of Current Property Tax Settlement of Taxes

On or before the 10th day of each month, the trustee must make a settlement for all taxes collected during the preceding month by reporting to the county mayor (and the treasurer of any municipality) and by paying over the taxes collected to the proper account (i.e. the account for which the tax was levied, since a tax can only be lawfully spent for the purpose for which it was levied).

T.C.A. § 67-5-1902.

Collection of Current Property Tax Settlement of Taxes

These monthly settlements are included in the minutes of the county legislative body and specify credits allowed to the trustee (not including the trustee's compensation).

The trustee also files a complete annual report on or before the first Monday in September with the county mayor and the county clerk, who provides copies to the county commission.

T.C.A. § 67-5-1902.

Collection of Current Property Tax Settlement of Taxes

A trustee who fails to make the statement is not allowed any commissions.

Upon settling the office's accounts with the county mayor, the trustee gets credit for commissions and all legal disbursements.

T.C.A. §§ 67-5-1902, 67-5-1905.

Collection of Current Property Tax

Report of Delinquent Taxes and Double Assessments

In addition to the annual financial report required in September, the trustee is also required to submit a report, verified by affidavit, to the county legislative body during its July term.

This report lists all delinquent taxpayers and double assessments in the county, with the amounts due from each.

T.C.A. § 67-5-1903.

Collection of Current Property Tax

Report of Delinquent Taxes and Double Assessments

After submission of the report, the trustee is allowed a credit for double assessments and for taxes reported insolvent or delinquent, if the county legislative body is satisfied that the taxes are uncollectible due to reasons other than the failure of the trustee to collect them.

T.C.A. § 67-5-1903.

Collection of Current Property Tax

Report of Delinquent Taxes and Double Assessments

The trustee is not allowed a credit for items the county legislative body feels are inaccurate. All items which the county legislative body does not allow as a credit are charged against the trustee or the trustee's surety.

T.C.A. § 67-5-1903.

Collection of Current Property Tax Refunds Of Tax Payments

Taxes collected by the trustee are held in trust for the public, and therefore any disbursement, including refunds of overpaid 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.

Collection of Current Property Tax Refunds Of Tax Payments

This refund must be made within sixty days after the receipt of certification from the assessor, and can be made even though the taxes were not paid under protest.

If the trustee receives the certification prior to the receipt of the tax payment, the taxes must be collected only on the corrected assessment.

T.C.A. § 67-5-509. *See also* T.C.A. § 67-5-1809.

Collection of Current Property Tax Refunds Of Tax Payments

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**.

Hertz Corp. v. County of Shelby, 667 S.W.2d 66 (Tenn. 1984).

Delinquent Property Tax Collection

- Delinquent tax deputies
- Delinquent tax list
 - Description of the property
 - Amount of taxes due
 - Name of current owner
 - Owner's last known mailing address
 - May be published in county newspaper at least 20 days prior to delivery to delinquent tax attorney
- Partial Payment of Delinquent Taxes

Delinquent Property Tax Collection

Delinquent Tax Deputies

Pursuant to T.C.A. § 67-5-2001, the trustee is authorized to appoint the deputies necessary to collect delinquent taxes, who must take the same oaths required of the trustee. T.C.A. §§ 8-18-112; 67-5-1901.

The official bond of the trustee is held liable for the acts of these deputies, as well as for the actions of any constable or deputy sheriff who collects delinquent taxes. T.C.A. § 67-5-2001.

Delinquent Property Tax Collection

Delinquent Tax Deputies

However, the trustee may require these officials to post a bond securing the faithful performance of their duties before turning over the delinquent tax list to them. T.C.A. § 67-5-2001.

Delinquent Property Tax Collection

Delinquent Tax List

The trustee is required to prepare a list of delinquent taxpayers which is then turned over to the delinquent tax deputies for collection. T.C.A. § 67-5-2001.

This list must contain a description of the property and the amount of taxes due from each taxpayer.

For real property, the list must identify the current owner and the owner's last known mailing address, if the owner can be identified; in these cases, there is no need to identify any former owners of the real property.

Delinquent Property Tax Collection

Delinquent Tax List

However, 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.

Deputies who have not received copies of the delinquent tax list have no authority to collect delinquent taxes.

Deputies who have received copies of the list are to collect delinquent taxes, make periodic settlements of the amounts collected, make final settlement, and return the delinquent tax list to the trustee by January 1 of the following year.

T.C.A. § 67-5-2006.

Delinquent Property Tax Collection

Delinquent Tax List - Publication

The trustee has the discretion to publish the delinquent tax list in one or more county newspapers. T.C.A. § 67-5-2002.

Trustees who decide to publish the list must give it to the newspapers at least twenty days before it is turned over to the delinquent tax attorney.

However, failure of any taxpayer's name to appear on a delinquent tax list publication, or the publication of incorrect information, is not a defense to any suit for tax collection. T.C.A. § 67-5-2002.

Delinquent Property Tax Collection

Partial Payment of Delinquent Tax

The trustee may accept partial payments of delinquent property taxes.

If the entire amount of delinquent taxes due is not paid prior to the date the trustee delivers the delinquent tax lists to the delinquent tax attorney, the entire property is subject to the tax lien and enforcement by a tax sale or other legally-authorized procedures. T.C.A. § 67-5-2001(d).

Delinquent Property Tax Collection

Partial Payment of Delinquent Tax

Prior to the trustee accepting partial payment of delinquent property taxes, the trustee must file a plan with the Comptroller at least 30 days prior to the acceptance of the payments.

T.C.A. § 67-5-2001(d).

Delinquent Property Tax Collection

Partial Payment of Delinquent Tax

The plan must indicate that the trustee's office has the accounting system technology to implement a program for partial payment of delinquent property taxes. The plan shall also indicate whether the 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.

T.C.A. § 67-5-2001(d).

Delinquent Property Tax Collection

Partial Payment of Delinquent Tax

The delinquent date for property taxes and interest applicable to delinquent property taxes are not affected by application of a partial payment system.

Interest applies only to the amount of delinquent property taxes remaining due.

Partial payment does not release the tax lien on the property upon which the taxes were assessed.

Collection Methods

Personal Property

- Distress Warrant
- Inclusion in Real Property Delinquent Tax Suit
- Separate Suit to Collect
- Garnishment
- Business Transfer - Buyer Liability
- Sales with Security Interest – Withholding Duty

Collection Methods

Distress Warrant

There are several methods by which the trustee may choose to collect delinquent personal property taxes, one of which is through use of a distress warrant.

All delinquent personal property taxes may be immediately collected by the county trustee, with the assistance of the delinquent tax attorney, if the trustee so requests.

The trustee's tax books, as well as the delinquent lists furnished to deputy trustees, sheriffs, constables, or the delinquent tax attorney, have the force and effect of a judgment and execution from a court of record.

Collection Methods

Distress Warrant

These documents provide authority for the officers or delinquent tax attorney to distraint (seize) and sell a sufficient amount of the personal property to satisfy the delinquent taxes, interest, costs, and attorney's fees.

The delinquent personal property taxes may be immediately collected by distraint (seizure through the use of a distress warrant) and sale of any personal property on which delinquent personal property taxes are owing.

T.C.A. § 67-5-2003.

Distress Warrant - Pre-Seizure Notice

Prior to distraint (seizure) of any personal property, the trustee, deputy trustee, or delinquent tax attorney must give not less than ten days' written notice of the intended 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.

T.C.A. § 67-5-2003.

Distress Warrant Sale of Personal Property

Additional notice must also be provided after the seizure.

At least ten days before the sale, the time and place of the sale of personal property must be given by advertisement posted in three public places in the county, one of which is to be at the courthouse door.

In addition, at least ten days' written notice of the sale must be given to the taxpayer by any of the methods outlined above.

T.C.A. § 67-5-2003.

Distress Warrant Sale of Personal Property

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, 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.

If a delinquent tax attorney assists the trustee with the seizure and sale of the personalty, the attorney is entitled to attorneys fees. T.C.A. §§ 67-5-2003; 67-5-2410.

Suits to Collect Delinquent Personal Property Taxes

Another method of collection is through inclusion of delinquent personal property taxes in the delinquent tax suit.

The trustee may turn over the delinquent tax list thirty days after the taxes become delinquent to the tax attorney 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 prior issuance of a distress warrant.

T.C.A. § 67-5-2003.

Suits to Collect Delinquent Personal Property Taxes

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 is required to forward written notice of the suit to collect delinquent taxes by first class mail to the last known property owner at least ten days before the delinquent list is turned over to the delinquent tax attorney.

T.C.A. § 67-5-2003.

Suits to Collect Delinquent Personal Property Taxes

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 is also authorized, as with real property tax records, to turn over records to the court clerk.

T.C.A. § 67-5-2003(g).

Garnishment

In addition to the distress warrant procedure or a lawsuit, 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.

T.C.A. §§ 67-5-2004 & 67-5-2003(b).

Transfer of Business Liability

Another effective collection device requires any taxpayer who sells or terminates a business to notify the assessor and trustee and pay all outstanding personal property taxes within fifteen 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.

Transfer of Business Liability

If the buyer does not withhold this amount, the buyer also becomes liable for the unpaid taxes.

This provision greatly aids in the collection of personal property taxes, since the buyer who has failed to comply with its requirements can serve as an additional source of funds to satisfy the tax obligation of the seller.

T.C.A. § 67-5-513.

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.

T.C.A. § 67-5-2003(h).

Security Interest Sales

A secured party selling the property who fails to withhold and pay such amount shall be held to be personally liable for such amount to the trustee to which these personal property taxes are due.

T.C.A. § 67-5-2003(h).

See also T.C.A. § 67-5-1805(c).

Security Interest Sales

Payment of Delinquent Taxes by PMSI Holder

Sets forth procedure to determine amount of delinquent taxes owing. Limits secured party's liability to four years.

Allows a secured party to pay delinquent personal property taxes on repossessed property.

T.C.A. § 67-5-2003(h).

Collection of Delinquent Real Property Taxes

- Lien on real estate
- Personal debt
- Usually collected through tax suit and sale of land

Collection of Delinquent Real Property Taxes

Tax Lien

To aid in the collection of real 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 real estate as of January 1 of the tax year, and takes priority over pre-existing liens on the real estate.

T.C.A. §§ 67-5-2101; 67-5-2102.

Collection of Delinquent Real Property Taxes

Tax Lien

The tax lien is superior to mortgage liens, regardless of whether the taxes accrue before or after the execution of the mortgage. However, this first lien may be superseded by prefilled federal tax liens.

Collection of Delinquent Real Property Taxes

Tax Lien

In addition to the lien, property taxes are also a personal debt of the property owner as of January 1; if taxes are delinquent, they may be collected by suit as any other debt. The claims for the debt and for enforcement of the lien may be joined.

T.C.A. § 67-5-2101.

Tax Suit Procedures - Notices

- Notice of Delinquent Taxes on Current Bill
- Publication of Notice of Intent to File Suit
 - One or more county newspapers
 - At least once a week for two consecutive weeks in January
 - No newspaper in county – courthouse post

Tax Suit Procedures - Notices

Prior to the commencement of legal proceedings to sell real property for delinquent taxes, the trustee has several important notification responsibilities.

The completion of these is vital, since the validity of the subsequent enforcement proceedings depends upon strict compliance with statutory requirements.

Tax Suit Procedures - Notices

Notice of Delinquent Taxes on Current Bill

Pursuant to T.C.A. § 67-5-2402, 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:

In addition to this amount, you owe back taxes. Contact this office immediately or your property may be sold.

Tax Suit Procedures - Notices

Notice of Delinquent Taxes on Current Bill

This notice should be sent to all property owners on the trustee's list of delinquent taxpayers as well as those appearing on the list of owners whose property is subject to a delinquent tax lawsuit; the appropriate court clerk must provide this list to the trustee between June 1 and July 1 of each year.

T.C.A. § 67-5-2403.

Tax Suit Procedures - Notices

Publication of Notice of Intent to File Suit.

Pursuant to T.C.A. § 67-5-2401, the trustee must also publish the following notice before the lawsuit is filed:

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

Tax Suit Procedures - Notices

Publication of Notice of Intent to File Suit.

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 cost.

If there is no newspaper published in the county, this notice must be posted at the courthouse.

T.C.A. § 67-5-2401.

Tax Suit Procedures - Notices

Publication of Notice of Intent to File Suit.

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.

Note: this notice requirement should not be confused with the provision in T.C.A. § 67-5-2002 regarding publication of the delinquent tax list.

Tax Suit

Delivery of Delinquent Tax List

After the trustee has published notice of intent to file tax suit discussed above, the trustee must deliver a list of all unpaid taxes to the delinquent tax attorney. The list must be delivered between February 1 and April 1. T.C.A. § 67-5-2404(a)(1).

The trustee may accept payment for delinquent taxes until the suit is filed. T.C.A. § 67-5-2008.

Delinquent Tax Attorney

TCA 67-5-2404

- Chosen by County Trustee with the approval of the County Mayor
- Only one such attorney per tax year
- Compensation subject to negotiation, usually capped at 10% of taxes collected
- DA acts if Trustee & County Mayor cannot agree on an attorney

Delinquent Tax Attorney

In most counties the compensation of the delinquent tax attorney is determined in advance through negotiations between the trustee and the attorney, subject to the approval of the county legislative body.

In these counties, the amount of compensation cannot exceed 10% of all delinquent land taxes collected by the attorney.

T.C.A. §§ 67-5-2404(a); 67-5-2410(a)(1)(A).

Delinquent Tax Attorney

In most of the remaining counties, and in counties with metropolitan forms of government, there is no negotiation, a penalty of 10% of the delinquent taxes must be paid exclusively to the delinquent tax attorney.

T.C.A. §§ 67-5-2404(b); 67-5-2410(b)(1).

Op. Tenn. Atty. Gen. 07-34 (March 23, 2007)
(delinquent tax attorney fees discussed).

Delinquent Tax Attorney

Upon the failure of the county trustee and the county mayor to employ an attorney and institute suits for the collection of delinquent taxes, and within the time provided, the district attorney general has the power and the duty to:

(1) Employ an attorney to institute and prosecute suits for the collection of such taxes; or

(2) Maintain an action for a writ of mandamus to compel the county trustee and county mayor to employ an attorney to institute and prosecute suits for the collection of such taxes.

T.C.A. § 67-5-2406.

Tax Suit

- Filed February 1 to April 1 each year, but does not prevent late filings
- Chancery or Circuit Court
- At least 25 delinquent taxpayers
- Trustee submits list of uncollected taxes to county legislative body after suit filed

Tax Suit

Amounts to be Recovered

- County taxes
- Municipal taxes may be added
- Penalty (10% for the attorney) & Interest
- Court costs - Clerks and Sheriff's fees, other expenses (title examinations, etc.)

Tax Sale

- Court orders sale of property
- Sold for cash, subject to right of redemption
- Clerk bids in for county unless amount bid by another party covers taxes, interest and costs
- Clerk does not bid on property with environmental risks

Tax Sale Proceeds

- Sale for County Taxes Only
 - Compensation of Delinquent Tax Attorney
 - Costs of Suit
 - County Taxes, including interest
 - Municipal taxes

T.C.A. §§ 67-5-2501 & 67-5-2506.

AG OP 12-85 – Distribution of Proceeds

County Purchase at Tax Sale

T.C.A. § 67-5-2507

- County Mayor takes charge of land
- County Mayor arranges sale after redemption period expires (1 year)
- Committee (Mayor and 4 Commissioners) set price
- Exempt from property tax so long as held by county (if county takes possession)

Tax Sale Ledger

T.C.A. § 67-5-2510

- Trustee maintains ledger of all property sold at a tax sale and purchased by the state, county, or a municipality and government takes possession
- Ledger must show each parcel, the taxes for which it was sold, the book and page of the tax roll, list of rents received or net sale price and distribution of funds and notes exempt status on current tax roll

Tax Sale Ledger

T.C.A. § 67-5-2510

- If actual possession is not taken by the state, by a county, or by a municipality, or by a county and municipality, the lands are not removed from the tax rolls, nor are the lands 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 state, county or municipality or county and municipality

Statute of Limitation

T.C.A. § 67-5-1806

- 10 years from April 1 in the year following the year in which the taxes become delinquent
- Example: 2018 taxes become delinquent in 2019 and collection is barred April 1, 2030.
- Exceptions that toll the statute (bankruptcy)

Redemption

T.C.A. §§ 67-5-2701 & 67-5-2702

- Within 1 year of confirmation of tax sale by court
- All accrued charges must be paid
- People eligible: delinquent taxpayer, creditors, heirs, tenants in common, and those holding similar interests

Bankruptcy of Taxpayer

- Upon receiving notice of bankruptcy, trustee and all collecting officials are prohibited from taking any action to collect property taxes
- Notice of delinquency may be given to taxpayer – but that is all
- Trustee should file proof of claim with bankruptcy court

Waiver of Personal Property Taxes for Defunct Business

- Trustee may request delinquent tax attorney to seek court waiver for personal property taxes, penalty and interest of defunct business
- To qualify, business must have ceased operations, personal property cannot be located, and no fraud exists

T.C.A. § 67-5-2801.

Waiver for Hazardous Property

- A court may waive all or a portion of penalty, interest and attorney fees due on delinquent taxes if the property is environmentally hazardous, the county legislative body has determined that no bid should be made by county at tax sale, and no fraud is involved

T.C.A. § 67-5-2802.

THE END