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# Miscellaneous Matters

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

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

Sincerely,

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<b>Miscellaneous Matters .....</b>	<b>. 3</b>
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# Miscellaneous Matters

Reference Number: CTAS-1606

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

Trustees or court clerks should always file a proof of claim, showing amounts due plus interest and attorney's fees which may be recovered if the value of the property is sufficient. Proofs of claim are divided into pre-petition tax claims and post-petition tax claims. Pre-petition tax claims include all taxes for which liability has incurred as of the date the debtor filed for bankruptcy, plus interest, costs, and penalties, and post-petition interest to the extent that the value of the property is sufficient to permit it. Post-petition tax claims are for taxes assessed on the debtor's property after the date of the bankruptcy petition. These claims are generally treated as administrative expenses of the debtor's bankruptcy estate and are paid at the time they normally become due and payable.<sup>2</sup>

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

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

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

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

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

<sup>3</sup>T.C.A. § 67-5-2802.

<sup>4</sup>T.C.A. § 5-1-115.

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