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County Litigation Taxes

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

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

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

Sincerely,

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County Litigation Taxes

Reference Number: CTAS-1641

Authority. TCA 67-4-601, 16-15-5006, and 16-20-106.

Description. Counties have authority to levy a local litigation tax up to the amount levied as state litigation tax. This local litigation tax may be levied by private act, by resolution of the county legislative body, or by a combination of private acts and county legislative body resolutions. Clerks of the various courts to which such tax applies as specified in the private act or resolution collect the local litigation tax. The private acts and local resolutions of each individual county must be consulted for that county's litigation tax rate.

In addition to matching the state litigation tax, TCA 16-15-5006 authorizes counties to levy a litigation tax of up to \$6 per case for each case filed in general sessions court or in a court where the general sessions judge serves as judge, except juvenile court, by resolution passed by a two-thirds vote of the county legislative body, proclaimed by the presiding officer and certified to the secretary of state. This statute also contains a provision allowing the litigation tax to be raised above \$6 if in any fiscal year the proceeds of the tax do not raise sufficient revenue to fund the salary, under the circumstances specified in the statute. See Op. Tenn. Att'y Gen. U94-130. The county litigation tax authorized by TCA 16-15-5006 is earmarked for the salary of the general sessions judge.

Counties are authorized to levy an additional local privilege tax on litigation in all civil and criminal cases instituted in the county, not including those instituted in municipal court under subsection (b) of TCA 67-4-601. This additional tax may be levied by a resolution passed by a two-thirds vote of the county legislative body. Counties are authorized to levy the tax for jail or workhouse construction, reconstruction or upgrading, or to retire debt, including principal and interest and related expenses, on such construction, reconstruction or upgrading or for courthouse renovation.

Originally, the Attorney General issued opinions indicating that counties were limited to a maximum tax levy of \$50 under subsection (b) of TCA 67-4-601 (AG Op. Nos. 08-167 and 12-13). These opinions interpreted subdivisions (b)(1) and (b)(5) of subsection (b) not as separate taxes but linked. The opinions state that (b)(5) only authorizes an increase in the (b)(1) tax to a maximum of \$25. However, in 2016 the Attorney General issued another opinion (Op. No. 16-10) that interprets subdivisions (b)(1) and (b)(5) as unrelated separate taxes. Thus, in the 2016 opinion, the Attorney General opines that counties can levy a maximum \$60 tax under subsection (b) of TCA 67-4-601 (\$10 under subdivision (b)(1), \$25 under (b)(5), and \$25 under (b)(6)). The 2016 opinion appears to supersede the 2008 and 2012 opinions.

In addition to the uses set forth above (i.e., jail/courthouse) as much as \$25 of this tax may be used for courthouse security. Also, up to \$50 of the tax may be used for the purpose of obtaining and maintaining software and hardware associated with collecting, receiving and maintaining records for law enforcement agencies. Finally, the entire amount may also be used for substance abuse prevention purposes.

The law contains a sunset provision that causes the tax levy to cease once the costs of the project have been paid or the debt for the project has been retired.

Finally, per TCA 16-20-106, counties by a two-thirds (2/3) vote may levy an additional \$2 litigation per case to be denominated as a part of the court costs for each petition, warrant and citation, including warrants and citations for traffic offenses, in matters before the local general sessions courts and juvenile courts to be used by the county for the exclusive purpose of supporting a local victim-offender mediation center or centers.

Distribution. Distribution of county litigation taxes that are to match the state levy may be used for any county purpose or purposes specified in the private acts or resolutions.

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