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# Collection of State Taxes

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Dear Reader:

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

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

Sincerely,

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<b>Collection of State Taxes .....</b>	<b>. 3</b>
<b>Transfer Tax .....</b>	<b>. 3</b>
<b>Mortgage Tax .....</b>	<b>. 4</b>
<b>Most Common Exemptions from Tax .....</b>	<b>. 4</b>
<b>Other Tax Issues .....</b>	<b>. 5</b>

## Collection of State Taxes

Reference Number: CTAS-797

The register is responsible for the collection and transmittal to the Department of Revenue of two related privilege taxes, the state transfer tax, and the state "mortgage" tax (tax on the recording or filing of an instrument evidencing an indebtedness). Both taxes are levied by T.C.A. § 67-4-409. Registers collect a five percent (5%) commission on state transfer and "mortgage" taxes collected. T.C.A. § 67-4-409(d). Fifty-two percent (52%) of this five percent (5%) commission is remitted monthly to the state treasurer. The remaining forty-eight percent (48%) of this five percent (5%) commission is treated as a standard fee of the office.

## Transfer Tax

Reference Number: CTAS-798

The transfer tax is a tax on the privilege of having an instrument recorded where the instrument transfers a freehold interest in real estate, whether by deed, court decree, partition deed or any other instrument. The grantee must pay the tax on the value of the property or the consideration given, whichever is greater, unless the transfer is by quitclaim, whereupon the grantee pays on the basis of the actual consideration for the transfer. The value of the property means the market value or what the property would bring at a fair and voluntary sale.

The rate of the transfer tax is thirty-seven cents (37¢) per one hundred dollars (\$100.00) of value or consideration.

Certain transactions listed in T.C.A. § 67-4-409 are exempt from the transfer tax. No transfer tax is due on the transfer of any real estate which is:

1. A leasehold estate (estate for a fixed number of years);
2. The creation or dissolution of a tenancy by the entirety:
  - a.) By the conveyance from one (1) spouse to the other;
  - b.) By the conveyance from one (1) spouse or both spouses to the original grantor or grantors in the instrument and the original grantor's spouse; or
  - c.) By the conveyance from one (1) spouse or both spouses to a trustee and immediate reconveyance by the trustee in the same instrument as tenants in common, tenants in common with right of survivorship, joint tenants or joint tenants with right of survivorship;
3. A deed of division in kind of realty formerly held by tenants in common;
4. A release of a life estate to the beneficiaries of the remainder interest;
5. A deed or deeds executed by an executor to implement a testamentary devise;
6. A domestic settlement decree and/or domestic decrees and/or deeds which are an adjustment of property rights between divorcing parties;
7. A transfer by a transferor of real estate to a revocable living trust created by the same transferor or by a spouse of the transferor, or transfers by the trustee of a revocable living trust back to the same transferor or to the transferor's spouse;
8. A deed executed by the trustee of a revocable living trust to implement a testamentary devise by the trustor of the trust; or
9. A deed executed by the trustee of a testamentary trust or revocable living trust to implement the distribution of the real property to a trust beneficiary or beneficiaries.

No transfer tax is due until the title to the property is transferred by deed.

The grantee, his agent, or a trustee acting for the grantee is required to state under oath upon the face of the instrument offered for record in the presence of the register, or before an officer authorized to administer oaths, the actual consideration or value, whichever is greater, for the transfer of a freehold estate, except that no oath of value is required in any transaction which is exempt, and in the case of the quitclaim deed, the oath must reflect the actual consideration given for that conveyance. Quitclaim deeds are only entitled to this different tax treatment if they merely convey the grantor's interest, whatever that may be. Consideration reflects anything of pecuniary value and need not be money, but its value must be able to be expressed in monetary terms. The Department of Revenue has promulgated rules for the

valuation of a life estate and remainder interest based on life expectancy. These should be consulted where deeds convey these interests. Knowingly making a false affidavit is perjury (T.C.A. § 39-16-702), and if the register knows this has been done, it should be reported to the District Attorney General and to the Department of Revenue.

## Mortgage Tax

Reference Number: CTAS-799

The "mortgage" tax is a tax on the privilege of recording or filing any instrument evidencing an indebtedness, including but not limited to mortgages, deeds of trust, conditional sales contracts, UCC financing statements and liens on personal property, other than motor vehicles. The mortgage tax is not levied on the recording of judgment liens, contractor's liens, subcontractor's liens, furnisher's liens, laborer's liens, and mechanic's and materialmen's liens, nor is the tax due on mortgages or deeds of trust issued under the *Home Equity Conversion Act* (i.e., reverse mortgages) and which are labeled as such on the face of the instrument. Also, no mortgage tax is due on the recording of instruments giving notice of the creation of a lien, security interest or pledge wherein an energy acquisition corporation formed for the benefit of a local government is either the secured party or the debtor.

The rate of the mortgage tax is \$.115 on each one hundred dollars (\$100.00) over two thousand dollars (\$2,000.00) of indebtedness. The incidence of the tax is declared to be on the mortgagor, grantor or debtor, as evidenced by the instrument offered for recording.

The word "indebtedness" as used in this tax law means the principal debt or obligation which is reasonably contemplated by the parties to be included within the terms of the agreement. If the principal indebtedness secured is not determinable from the terms of the instrument, then the statute calls for the tax to be determined according to the value of the property covered by the instrument.

Every recorded instrument evidencing an indebtedness must contain the following language on the face of the instrument or in an attached sworn statement:

Maximum principal indebtedness for Tennessee recording tax purposes is \$\_\_\_\_\_.

When the collateral is located both within and outside of Tennessee, the tax is calculated according to the value of the collateral located within Tennessee as a percentage of the total value of collateral securing the debt.

Except for Uniform Commercial Code transactions, the taxpayer's security interest will be entitled to priority only to the amount on which tax has been paid. American City Bank of Tullahoma v. Western Auto Supply Co., 631 S.W.2d 410 (Tenn. Ct. App. 1981), appeal denied April 12, 1982. However, no link exists between whether tax is paid and priority of instruments filed under the provisions of the Uniform Commercial Code. T.C.A. § 47-9-403.

There is a special governmental exemption not mentioned earlier. The recording or re-recording of all transfers of realty in which a "municipality" is the grantee or transferee and all instruments evidencing an indebtedness in which a "municipality" is the holder or owner of the indebtedness is exempt from the transfer or "mortgage" tax as the case may be. For the purposes of these two taxes, "municipality" means the state of Tennessee or any county, or incorporated city or town, utility district, school district, power district, sanitary district, or other municipal, quasi-municipal, or governmental body or political subdivision of this state and any agency, authority, branch, bureau, or instrumentality of this state. T.C.A. § 67-4-409(f). Additionally, when a governmental entity (federal, state or local) is the debtor, the instrument is exempt from the "mortgage" tax under the judicial doctrine of sovereign immunity.

In transactions involving certain manufacturing type facilities, the total tax is capped at one hundred thousand dollars (\$100,000.00) for the transfer tax and five hundred thousand dollars (\$500,000.00) for the "mortgage" tax. T.C.A. § 67-4-409(h).

Also exempt from the mortgage tax are UCC instruments which secure an interest solely in "investment" property such as stocks and bonds.

Also, the recording or filing of certain instruments is exempt under federal law. For example, transfers that are made pursuant to bankruptcy court orders are exempt from the tax.

## Most Common Exemptions from Tax

Reference Number: CTAS-800

The following are some of the most common exemptions from tax:

1. *Certain Investment Companies*: There are exemptions for certain investment companies and for instruments evidencing an indebtedness of a health and educational facility

- corporation formed under Tennessee Code Annotated, Title 48, Chapter 101, Part 3.
2. *Credit Unions (state chartered)*. Exempt when entity is the debtor (mortgage tax) or the grantee (transfer tax). Instruments are not exempt from the mortgage tax when these entities are the secured party and the debtor is not exempt. T.C.A. § 45-4-803.
  3. *Electric Cooperatives and Electric Membership Corporations*. Exempt when entity is the debtor (mortgage tax) or the grantee (transfer tax). Instruments are not exempt from the mortgage tax when these entities are the secured party and the debtor is not exempt. T.C.A. § 65-25-122.
  4. *Fannie Mae, Freddie Mac and Sallie Mae*. Exempt when entity is the debtor (mortgage tax) or the grantee (transfer tax). Instruments are not exempt from the mortgage tax when these entities are the secured party and the debtor is not exempt. 12 U.S.C. § 1723a and 12 U.S.C. § 1452.
  5. *Farm Credit Services (production credit associations)*. Exempt when entity is the debtor or secured party (mortgage tax) or the grantee (transfer tax). 12 U.S.C. § 2077.
  6. *Farmer's Cooperatives*. Exempt when entity is the debtor (mortgage tax) or the grantee (transfer tax). Instruments are not exempt from the mortgage tax when these entities are the secured party and the debtor is not exempt. T.C.A. § 43-16-145.
  7. *Federal Credit Unions*. Exempt when entity is the debtor (mortgage tax) or the grantee (transfer tax). Instruments are not exempt from the mortgage tax when these entities are the secured party and the debtor is not exempt. T.C.A. § 45-4-803 and 12 U.S.C. § 1768.
  8. *FHA*. Same as THDA.
  9. *Governmental Entities*. All transfers of realty in which a "municipality" is the grantee or transferee and all instruments evidencing an indebtedness in which a "municipality" is the holder or owner of the indebtedness are exempt from the transfer or "mortgage" tax as the case may be. For the purposes of these two taxes, "municipality" means the state of Tennessee or any county, or incorporated city or town, utility district, school district, power district, sanitary district, or other municipal, quasi-municipal, or governmental body or political subdivision of this state and any agency, authority, branch, bureau, or instrumentality of this state. T.C.A. § 67-4-409(f). Additionally, when a governmental entity (federal, state or local) is the debtor, the instrument is exempt from the "mortgage" tax under the judicial doctrine of sovereign immunity.
  10. *Local Utilities*. If the utility is a "municipality" that is a governmental entity (such as a county, municipality, utility district, power district, sanitary district or local authority) then the instrument is exempt from the recording tax if the utility is the owner or holder of the indebtedness (mortgage tax) or is the grantee of a freehold interest in real estate (transfer tax). T.C.A. § 67-4-409(f). A utility that is a governmental entity and is the debtor in an instrument evidencing indebtedness is exempt from paying the mortgage tax under the doctrine of sovereign immunity. Utilities that are not governmental entities, such as private utilities and cooperatives, are not exempt from the transfer or mortgage tax under T.C.A. § 67-4-409(f) and are subject to the recording taxes unless another specific statute (federal or state) provides for an exemption (which is the case in some instances).
  11. *Telephone Cooperatives*. Exempt when entity is the debtor (mortgage tax) or the grantee (transfer tax). Instruments are not exempt from the mortgage tax when these entities are the secured party and the debtor is not exempt. T.C.A. § 65-29-129.
  12. *THDA*. Exempt when entity is the debtor or the secured party (mortgage tax) or the grantee (transfer tax). This entity is not exempt from the mortgage tax when it is the guarantor and a private party, such as a bank, is the secured party and the debtor is a private party. The recording is exempt from the mortgage tax when THDA is assigned a security interest in the document. T.C.A. §§ 13-23-127(a) and 67-4-409(f).

## Other Tax Issues

Reference Number: CTAS-801

Increase in indebtedness / underpayment. In the event of an increase in indebtedness beyond the amount stated when the instrument was recorded, the holder of the indebtedness shall pay the tax on the amount of the increase. Such payment is due on the date of the increase, but may be made without penalty if made within sixty (60) days after the increase occurs (time begins on the execution date).

T.C.A. § 67-4-409(b)(8).

If the holder of the indebtedness fails to pay or underpays the "mortgage tax" including any tax increase due to an increase in indebtedness, then the holder of the indebtedness shall be liable for a penalty, in addition to the tax. The penalty is double the unpaid tax due or two hundred fifty dollars (\$250), whichever is greater. T.C.A. § 67-4-409(b)(12).

The register must report all collections monthly to the Commissioner of Revenue on forms prescribed by the Commissioner and remit such collections by the fifteenth (15th) day of the month following the month of collection. For collecting and reporting these taxes, the register retains as a commission five percent (5%) of the taxes collected, with fifty-two percent (52%) of this amount remitted to the state treasurer and forty-eight (48%) retained by the register and treated as a standard fee of the office. T.C.A. § 67-4-409(d).

Also, registers may charge and collect a fee of one dollar (\$1.00) for issuing each tax receipt. This fee is collected along with the other recording or filing fees. T.C.A. § 67-4-409(d).

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