



Recordation Tax

Tenn. Code Ann. § 67-4-409

Introduction

Introduction: Recordation

Recordation: the legal procedure by which an individual formally establishes his right to an interest in real property or priority as a creditor under a debt instrument

Introduction: Privilege Taxes

- **Privilege Tax:** a tax on the privilege of engaging in a particular activity in Tennessee
- **Business Tax:** The privilege of doing business
- **Professional Privilege Tax:** The privilege of engaging in an occupation licensed by the State
- **Sales Tax:** The privilege of making sales at retail
- **Recordation Tax:** The privilege of publicly recording documents

Introduction: Overview

Recordation Tax is imposed on two separate privileges:

- Public recordation of *transfers of realty*
- Public recordation of *debt instruments*

Realty Transfer Tax

Realty Transfer Tax: Statute

On all transfers of realty, whether by deed, court deed, decree, partition deed, or other instrument evidencing transfer of any interest in real estate, there shall be paid for the privilege of having the same recorded a tax, for state purposes only, of *37¢ per \$100.*

TENN. CODE ANN. § 67-4-409(a)

Realty Transfer Tax: Overview

TENN. CODE ANN. § 67-4-409(a) addresses the following:

- Freehold Estates
- Quitclaim Deeds
- Transfers Not Subject to the Realty Transfer Tax
- Payment and Collection
- Administration of the Realty Transfer Tax

Freehold Estates

Realty Transfer Tax: Freehold Estates

- **Tax Base:** the tax shall be based on *whichever is greater*, either:
 - The consideration for the transfer or
 - The value of the property at the time of transfer
- **Value of Property:** the amount that the property transferred would command *at a fair and voluntary sale*
 - **Contrast to:** Foreclosures, Auctions, Familial Transactions

TENN. CODE ANN. § 67-4-409(a)(1)

Quitclaim Deeds

Realty Transfer Tax: Quitclaim Deeds

- **Quitclaim Deeds:** contain no title covenants and offer no warranty as to the status of the property title
- **Value of Property:** the tax shall be based only on the actual consideration given for that conveyance

TENN. CODE ANN. § 67-4-409(a)(4)

Realty Transfer Tax: Quitclaim Deeds

- A deed is treated as a quitclaim deed if
 - the deed contains language substantially similar to the form for quitclaim deeds in TENN. CODE ANN. § 66-5-103(2), **AND**
 - Only conveys the grantor's ***interest*** to the grantee.

Public Chapter 834 (2022)

Realty Transfer Tax: Quitclaim Deeds

- For example, a true quitclaim deed may state:
 - “I hereby quitclaim to Grantee all my interest in the following land.”
 - “I hereby remise, release and quitclaim unto the said Grantee forever, all the right, title, interest and claim which the said Grantor has in and to the following described parcel of land, and improvements and appurtenances thereto.”
 - I hereby bargain, sell, release, remise, quit claim, and convey unto Grantee all right, title, and interest in and to the following real estate.”

Realty Transfer Tax: Quitclaim Deeds

- Deeds that do not clearly convey the grantor's ***interest*** in the real property generally do not qualify as a true quitclaim deed.
- Tax is due on the fair market value of the property when the language in the deed shows intent to convey the property itself ("in fee") including warranty, evidenced by language substantially similar to the form provided in TENN. CODE ANN. § 66-5-103(1)(A), rather than a mere chance of title.

Realty Transfer Tax: Quitclaim Deeds

- **Examples** of such language include, but are not limited to:
 - “to have and to hold” (habendum clause)
 - “in fee simple” (absolute)
 - “I warrant the title against all persons whomsoever”
 - “I hereby grant, devise, bargain, sell, and convey by quitclaim unto Grantee the following premises” (Although this language is substantially similar to the quitclaim deed language above, it does not state that the grantor is only conveying his or her *interest* in the real property.)

Not Subject to Tax

Realty Transfer Tax: Not Subject to Tax

The Realty Transfer Tax shall not be levied on:

- The transfer of a leasehold estate (TENN. CODE ANN. § 67-4-409(a)(2));
- The transfer of any real estate resulting from a creation or dissolution of a tenancy by the entirety:
 - By the conveyance of one spouse to the other;
 - By the conveyance from one spouse or both spouses to the original grantor in the instrument and the original grantor's spouse; or
 - By the conveyance of one spouse or both spouses to a trustee and immediate conveyance by the trustee in the same instrument as tenants in common, or the like;

Realty Transfer Tax: Not Subject to Tax

The Realty Transfer Tax shall not be levied on:

- The transfer of real estate formerly held by tenants in common;
- The transfer of real estate resulting from the release of a life estate to the beneficiaries of the remainder interest;
- The transfer of real estate involving deeds executed by an executor to implement a testamentary devise

Realty Transfer Tax: Not Subject to Tax

The Realty Transfer Tax shall not be levied on:

- The transfer of real estate resulting from a domestic settlement:
 - Domestic settlement decrees;
 - Adjustments of property rights between divorcing parties;

Realty Transfer Tax: Not Subject to Tax

The Realty Transfer Tax shall not be levied on:

- The transfer of real estate involving revocable living trusts:
 - Transfers of real estates to a revocable living trust created by the same transferor (or spouse);
 - Transfers by the trustee back to the same transferor (or spouse);
 - Deeds executed by the trustee to implement a testamentary devise by the trustor of the trust; or
 - Deeds 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.

TENN. CODE ANN. § 67-4-409(a)(3)

Realty Transfer Tax: Not Subject to Tax

Under Tenn. Code Ann. § 45-4-803, credit unions are exempt from recordation taxes if they are the grantee in a warranty deed or the grantor in a trust deed. See also 12 U.S.C. §1768.

Payment and Collection

Realty Transfer Tax: Payment & Collection

- **Who pays the tax?**

- The grantee or transferee of the interest in real estate, as shown on the instrument evidencing the transfer of such interest.

- **Where is the tax paid?**

- The tax shall be collected by the register of the county in which the instrument is offered for recordation.

TENN. CODE ANN. § 67-4-409(a)(6)

Administration

Realty Transfer Tax: Administration

- **Recordation Requirement:**

- The grantee or trustee *must state* under oath *upon the face of the instrument* offered for record in the presence of the register the actual consideration or value, *whichever is greater*, for the transfer of a freehold estate.

- **Penalties:**

- False statements known to be false respecting the consideration for value of property transferred shall be punishable as *perjury*.

TENN. CODE ANN. § 67-4-409(a)(6)(A) and (B)

Realty Transfer Tax: Administration

- An oath is not required on a transfer tax exempt transfer.

TENN. CODE ANN. § 67-4-409(a)(5)

Realty Transfer Tax: Administration

- **Multiple Deeds or Other Instruments of Conveyance:** a person who obtains *several* deeds or other instruments of conveyance *for the same transfer of one and the same tract* or parcel of real estate shall pay tax *only one time* with respect to such transfer

TENN. CODE ANN. § 67-4-409(a)(6)(C)

- **Tax Due:** no tax is due until the title to the property is transferred by deed

TENN. CODE ANN. § 67-4-409(a)(7)

Realty Transfer Tax: Administration

The register is **forbidden** to record the transfer until the Realty Transfer Tax has been paid.

TENN. CODE ANN. § 67-4-409(a)(6)(D)

Debt Instruments Tax

Debt Instruments Tax: Statute

Prior to the public recordation of any instrument evidencing an indebtedness, including, but not limited to, mortgages, deeds of trust, conditional sales contracts, financing statements contemplated in the Uniform Commercial Code, compiled in title 47, and liens on personalty, other than on motor vehicles, there shall be paid a tax, for state purposes only, of *11.5¢ on each \$100* of the indebtedness so evidenced.

BUT *it does not apply with respect to the first \$2,000 of the indebtedness.*

TENN. CODE ANN. § 67-4-409(b) & -409(b)(4)

Debt Instruments Tax: Overview

TENN. CODE ANN. § 67-4-409(b) addresses the following:

- Recording Instruments Securing:
 - Payment of Specific Sums of Money;
 - Performance of Obligation Other than Specific Sum of Money;
 - Revolving Lines of Credit;
- Instruments not subject to the Debt Instruments Tax;
- Payment and Collection;
- Administration of the Debt Instruments Tax

Specific Sum of Money

Debt Instruments Tax: Specific Sum of Money

- **Indebtedness:** the principal debt or obligation which is reasonably contemplated by the parties to be included within the terms of the agreement
 - **Does not include:** any amount of interest, collection expense including, but not limited to, attorney's fees and expenses incurred in preserving, protecting, improving, or insuring property which serves as collateral for indebtedness, or any other amount, other than the principal, for which a debtor becomes liable unless such amount is added to the principal debt

TENN. CODE ANN. § 67-4-409(b)(5)(A)

Debt Instruments Tax: Specific Sum of Money

Every recorded instrument evidencing an indebtedness *must contain the required statement:*

- “Maximum principal indebtedness for Tennessee Recording tax purposes is \$_____.”
 - This statement can be on the face of the instrument or in an attached sworn statement.

TENN. CODE ANN. § 67-4-409(b)(5)(C)(1)

Non-Specific Sum of Money

Debt Instruments Tax: Non- Specific Sum of Money

- If the instrument is given to secure the performance of an obligation *other than the payment of a specific sum of money*, and a maximum amount secured is not expressed in the instrument, such instrument shall be taxable upon *the value of the property covered by the instrument*.

TENN. CODE ANN. § 67-4-409(b)(5)(B)

- The instrument must contain on its face or in an attached sworn statement the following:
 - “Secures obligation other than payment of specific sum – valuation statement submitted herewith.”

TENN. CODE ANN. § 67-4-409(b)(5)(C)(ii)

Revolving Lines of Credit

Debt Instruments Tax: Revolving Lines of Credit

Instruments Securing a Line of Credit, the amount of which may vary:

- The Debt Instruments Tax shall be based on *the maximum amount of indebtedness* as stated in the instrument, and the reduction or subsequent increasing of the amount of the indebtedness within such limits shall **NOT** result in an additional tax.

TENN. CODE ANN. § 67-4-409(b)(5)(D)

Not Subject to Tax

Debt Instruments Tax: Not Subject to Tax

The Debt Instruments Tax is not required for the recordation of:

- Judgment liens,
- contractors' liens,
- subcontractors' liens,
- furnishers' liens,
- laborers' liens,
- mechanics' and materialmen's liens,
- financing statements filed pursuant to the UCC, compiled in title 47, that secure an interest solely in investment property,
- and mortgages or deeds of trust issued under the Home Equity Conversion Mortgage Act.

TENN. CODE ANN. § 67-4-409(b)(1)

Payment and Collection

Debt Instruments Tax: Payment & Collection

- **Who pays the tax?**

- The mortgagor, grantor, or debtor, evidenced by the instrument offered for recordation. A holder of indebtedness must collect and remit the tax.

- **Where is the tax paid?**

- This tax shall be paid to and collected by county registers, the secretary of state, and any other official who may receive any instrument for recordation.

TENN. CODE ANN. § 67-4-409(b)(3)

Administration

Debt Instruments Tax: Administration

An official charged with collection of the Debt Instruments Tax is ***forbidden*** to record any instrument evidencing indebtedness, until the *required statement* is provided and the *Debt Instruments Tax* is properly paid!

TENN. CODE ANN. § 67-4-409(b)(5)(C)(iii)

Debt Instruments Tax: Administration

Property Securing Payment Located both Inside and Outside of Tennessee:

- Optional Method of Computing Tax:

$$\text{Taxable Indebtedness} = \frac{\text{Value of TN Collateral}}{\text{Value of Total Collateral}} = \text{-----} \% \times \text{Indebtedness}$$

TENN. CODE ANN. § 67-4-409(b)(7)(A)(i)

Debt Instruments Tax: Administration

Tennessee Collateral: all collateral in which a security interest, deed of trust, mortgage lien or other consensual lien is perfected by filing or recording one or more instruments in the state of Tennessee

- **Does NOT include:**

- Any personal property physically located outside the state of Tennessee;
- Any property in which a security interest could be perfected by possession;
- **Mobile Goods:** goods that are mobile and are normally used in more than one jurisdiction; unless the debtor's chief executive office is also located in Tennessee

TENN. CODE ANN. § 67-4-409(b)(7)

Debt Instruments Tax: Administration

- If there is an *increase* in indebtedness beyond amount stated subsequent to the filing or recordation of the instrument, the holder shall pay the Debt Instruments Tax *on the total amount of the increase*.
- **Payment:** Payment is due on the date the increase occurs but may be made without penalty within 60 days after the increase.

TENN. CODE ANN. § 67-4-409(b)(8)

Debt Instruments Tax: Administration

Penalty: If the holder of the indebtedness fails to pay or underpays the Debt Instruments Tax, the holder must pay a penalty of (whichever is greater):

- \$250 or
- Double the unpaid Debt Instruments Tax

TENN. CODE ANN. § 67-4-409(b)(12)

Miscellaneous

Recordation Tax: Miscellaneous

The Realty Transfer Tax and Debt Instruments Tax are two separate taxes. An instrument evidencing a transfer of interest that is subject to the Realty Transfer Tax is also subject to the Debt Instruments Tax when such instrument evidences an indebtedness.

TENN. CODE ANN. § 67-4-409(b)(6)

Recordation Tax: Miscellaneous

Exemptions:

- Instruments made pursuant to mergers, consolidations, sales or transfers of substantially all the assets in this state of corporations, pursuant to plans of reorganization;
- Health and Educational Facility Corporations: Exemption from Debt Instruments Tax when such corporations are formed pursuant to TENN. CODE ANN. § 48-101-304;
- Municipalities: when a municipality is the grantee transferee of a transfer of realty or is the holder or owner of indebtedness

TENN. CODE ANN. § 67-4-409(e) and (f)

Recordation Tax: Miscellaneous

Municipality: the state of Tennessee or any county, incorporated city or town, utility district, school district, power district, sanitary district, or other municipal, quasi-municipal, or governmental body or political subdivision in this state, and any agency, authority, branch, bureau, commission, corporation, department, or instrumentality thereof now or later authorized to be created

- Municipality also includes federal government entities and instrumentalities

TENN. CODE ANN. § 67-4-409(f)(2)

Recordation Tax: Miscellaneous

Collection and Reporting

- County Registers shall report all collections to the Department on forms prescribed by the Commissioner
- County Registers are entitled to retain a 5% commission of the taxes collected **BUT** 52% of the 5% commission shall be remitted to the state treasurer and credited to the general fund of the state.
- County Registers may charge a \$1 fee for issuing each receipt for the Realty Transfer Tax and Debt Instruments Tax.

TENN. CODE ANN. § 67-4-409(d)

Refund Claims

- Duplicate filing or filings with errors
- Filer should file a refund claim using the forms on the Department's website
 - Claim for Refund form
 - Report of Debts form - required
 - Mail to the address on the Claim for Refund form
 - Amount paid for county official fees and commissions is not refunded
- The claim for refund form can be found here:
<https://www.tn.gov/content/dam/tn/revenue/documents/forms/general/f0102401.pdf>
- The report of debts form that needs to be attached to the refund claim is here:
<https://www.tn.gov/content/dam/tn/revenue/documents/forms/general/f1406501.pdf>

UCC Fixture Filings

- Uniform Commercial Code ("UCC") fixture filings are subject to indebtedness tax.
 - However, they are not subject to the tax if the incidence of tax is on an entity that is exempt from the tax or
 - if a governmental entity is the mortgagor (lender) or the mortgagee (debtor).
- Always require a value to be stated as Maximum Principal Indebtedness. It cannot be \$0.
- If the filer claims the document is exempt, the proper statute citation must be included on the document.

Solar Panel Fixture Filings

- In 2020, it was brought to our attention that some companies were filing these and reporting a maximum principal indebtedness of \$0 and reporting \$0 tax due.
- One register of deeds reported that she was returning them and explaining they were not exempt.
- The Department checked with the Secretary of State's Office ("SOS") and found that they had been filed there.
- The SOS will file them without collecting tax; SOS assumes the counties are collecting any tax owed.
- A review of filings in 2021 and 2022 have shown that tax is now being properly paid.
- If you get one of these, notify the Department and we can look into it.
- It is the lender's responsibility to collect the tax from the debtor and remit it to the register of deeds when filing.

Modification Agreements

Tenn. Code Ann. § 67-4-409(b)(8) provides:

“In the event of an increase in the indebtedness beyond the amount stated subsequent to the filing or recordation of the instrument, the holder of the indebtedness shall pay the tax on the amount of the increase. Such a payment shall be due on the date the increase occurs, but may be made without penalty if made within sixty (60) days after the increase occurs. **Thereafter, such payment may be made only upon payment of the penalty provided in subdivision (b) (12) based on the amount of the increase in the indebtedness.**”

Modification Agreements

- **Issue:** late filed modification agreement with unpaid penalties
- First – If you receive one of these, and you collect the tax, you also need to collect any penalty that is due.
- Tenn. Code Ann. § 67-4-409(d) places the duty of collection, reporting, and paying over to the state on the county register.
- If the filer refuses to pay the penalty, you can refuse to record the modification agreement until both tax and penalty are paid.

Information Required on Modified or Amended Deeds

A modified conveyance deed or deed of trust should contain at least the book and page of the previous document to ensure that the proper tax was previously paid when originally filed.

Assumption Agreements

- There are two types of assumption agreements.
- The most common type is an arrangement where the purchaser promises to pay the debt of the seller, but the seller remains liable on the debt in the case of default. Indebtedness tax is **not** due on this type of assumption agreement, as there is no new debt, only a continuation of the existing debt.
- The other type is one whereby the purchaser enters into a new contract with the mortgagee, changing the terms of the mortgage and canceling the seller's obligation. Indebtedness tax **is due** on this type of assumption agreement because a new indebtedness is created. Under this type of agreement, tax is due on the new mortgage.

Proving Recordation Tax Has Been Paid to Another Jurisdiction

To prove recordation tax has been paid in another jurisdiction, the individual will need to provide the name of the jurisdiction where the tax was paid, along with the book and page where the document was recorded.

How to Determine Fair Market Value of Property

- The Department would accept as the FMV of the property:
 - the tax base that is listed in the local tax assessor's office, or
 - a recent appraisal that has been accepted by the assessor's office when disputing the tax base.
- Anything less is subject to audit by the Department and could be assessed, along with penalties and interest.

Warranty Deed with Retained Life Estate

- The recordation tax on the transfer of a warranty deed with a retained life estate is based on the fair market value (FMV) of the property less the value of the life estate. The preparer of the deed is responsible for calculating the value of the life estate. The valuation must reflect the fair market value of the property, life estate, and remainder interest.
- There are two alternatives the preparer may use when calculating the value of the life estate.

Warranty Deed with Retained Life Estate

Alternative 1

The preparer may use the tables referenced in Tenn. Comp. R. & Regs. 1320-4-9-.01 (1983), which have been reproduced as Table VIII-A and VIII-B in Tennessee Code Annotated Volume 13 (Supp. 2017).

Multiply the life estate factor that applies to the life estate holder by the FMV of the property being transferred to determine the life estate value. Once the value of the life estate has been determined that amount should be subtracted from the FMV of the property. Recordation tax is owed on that amount. The preparer of the deed must show the calculation of the life estate when filing the deed.

Warranty Deed with Retained Life Estate

Example:

In September 2018, a father, age 70, transfers property valued at \$250,000 to his daughter, but he retains a life estate in the property.

Applicable interest rate per Table VIII-A is 6%

Life estate factor for a male aged 70 is .41294

FMV of property	\$250,000
Life estate factor	x <u>.41294</u>
Life estate value	\$ 103,235

FMV of property	\$250,000
Life estate value	- <u>103,235</u>
Recordation tax base	\$146,765

Recordation tax base	\$146,765
Recordation tax rate	x <u>.0037</u>
Recordation tax due	\$ 543.03

Warranty Deed with Retained Life Estate

Alternative 2

The preparer may use the IRS Actuarial Computation Tables (select Section 1, Table S under Publication 1457). The actuarial factors used must be based on an interest rate that is equal to 120% of the midterm applicable federal rate for the month of valuation rounded to two-tenths of a percent (the applicable interest rate is provided at <https://www.irs.gov/businesses/small-businesses-self-employed/section-7520-interest-rates>).

Multiply the life estate factor that applies to the life estate holder by the FMV of the property being transferred to determine the life estate value. Once the value of the life estate has been determined that amount should be subtracted from the FMV of the property. Recordation tax is owed on that amount. The preparer of the deed must show the calculation of the life estate when filing the deed.

Warranty Deed with Retained Life Estate

Example:

In September 2018, a father, age 70, transfers property valued at \$250,000 to his daughter, but he retains a life estate in the property.

Applicable interest rate for September 2018 is 3.4%

Life estate factor at the 3.4% interest rate for a person aged 70 is .35876

FMV of property	\$250,000
Life estate factor	x <u>.35876</u>
Life estate value	\$ 89,690

FMV of property	\$250,000
Life estate value	- <u>89,690</u>
Recordation tax base	\$160,310

Recordation tax base	\$160,310
Recordation tax rate	x <u>.0037</u>
Recordation tax due	\$ 593.15

Department of Revenue Website

- **Home Page:** <https://www.tn.gov/revenue>
- **Help Desk:** <https://revenue.support.tn.gov/hc/en-us>
- **Forms:** <https://www.tn.gov/content/tn/revenue/taxes/local-taxes.html>
- **Recordation Tax Manual:**
<https://www.tn.gov/revenue/tax-resources/legal-resources/tax-manuals.html>
Choose Miscellaneous Taxes and click on the link for Recordation Tax Manual

Questions?