

Litigation Taxes

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal 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 municipal 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 MTAS website material.

Sincerely,

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Litigation Taxes

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State law mandates that courts collect a "litigation tax" on all cases that are litigated. Litigation tax is not an item of court cost. The state has determined, for the purposes of imposing a litigation tax, that a case is litigated when the defendant is found guilty, either by a guilty plea or after a hearing. The state-mandated litigation tax currently is \$13.75 in all cases in municipal court. T.C.A. § 16-18-305(a). The litigation tax must be submitted to the Tennessee Department of Revenue.

The litigation tax should be collected when:

- The defendant pleads not guilty but subsequently is found guilty;
- The defendant comes to court and pleads guilty; or
- The defendant pays a fine before court.

The litigation tax should not be collected when:

- The defendant is found not guilty after a hearing;
- The case is dismissed, for whatever reason. Note: A defendant may be offered an opportunity to have the charge dismissed after successful completion of a driver improvement course. If the case ultimately is dismissed, no litigation tax is to be collected, even if the dismissal is contingent on paying court costs;
- The defendant submits a "cash bond," usually equal to the court costs and fine, *without pleading guilty*. This can be by mail or by payment in person.

A defendant may pay the fine and court costs prior to court without pleading guilty; this is known as "posting a cash bond" for the offense. If the defendant does not appear in court, the cash bond is forfeited. Generally, paying a fine and posting a cash bond accomplish the same thing, but the litigation tax must be collected when someone pays a fine.

Effective July 1, 2010, the Tennessee General Assembly mandated a "Cash Bond Forfeiture Fee," to be collected when a defendant pays before court, and the city treats the payment as a cash bond. The fee is \$13.75, the same as the litigation tax, but is it reported to the department of revenue on a different form. The city is entitled to keep a five percent commission. T.C.A. §38-6-103(d)(1)(A)-(C).

If a city has been collecting the litigation tax for payments made before court, it has been treating those payments as though they were fines, regardless of what the judge or clerk wrote in the disposition. Those cities should continue to collect the litigation tax on payments made before court, but not the new "Cash Bond forfeiture Fee."

If a city has not been collecting the litigation tax for payments made before court, it has been treating those payments as "cash bond forfeitures," and the city should now collect the new "Cash Bond Forfeiture Fee."

A city should never collect the litigation tax and the cash bond forfeiture fee for the same charge.

Municipalities are authorized to impose local litigation taxes that do not exceed the state amount of \$13.75. See, T.C.A. §16-18-305(c), T.C.A. §67-4-602, and T.C.A. § 67-4-604. The purpose of a local litigation tax is revenue enhancement. As stated above, litigation tax may be collected only if the charge is litigated and the defendant is found guilty. Court costs, however, may be collected without litigation. As a practical matter, it is recommended that if a municipal court wishes to increase revenues, such efforts be focused on imposing a local litigation tax as opposed to increasing court costs.

Litigation Tax on Parking Violations

The Municipal Court Reform Act of 2004 created a litigation tax on parking violations, but the application of the tax is somewhat different from other violations. The court must collect a \$1 litigation tax for every violation of any municipal law or ordinance governing the use of public parking space even if the offender does not appear in court. This \$1 litigation tax is the only litigation tax to be collected on parking violations. T.C.A § 16-18-305(b).

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

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