

Revenues

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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Revenues

Reference Number: MTAS-111

A primary responsibility of a city's governing body is to determine the city government's functions and activities and how they will be financed. Since cities are required to operate with balanced budgets, they continually face the problem of raising revenues to match rising expenditures.

Property Tax

Reference Number: MTAS-133

Levy

Article II, Sections 28 and 29, of the Tennessee Constitution and T.C.A. § 67-5-101 give cities the authority to tax all real and personal property unless state law provides an exemption. Property tax is the mainstay of municipal revenue for nearly all Tennessee cities (some small cities make no levy). Many cities derive substantial revenues from other sources but even in those cities, property tax is the primary "budget balancer" because the tax rate and imposition of the tax are subject to the discretion of the governing body. T.C.A. § 67-5-103 eliminated all existing maximum tax rate limitations, whether imposed by home rule, general, or private charters; however, it is not clear if re-imposing such a limitation by a subsequent charter provision is allowed. T.C.A. § 67-5-103.

Assessment

Local assessments generally are made by county assessors. The act that consolidated city assessment offices with county assessors directs that a property assessment roll be furnished to each city at the cost of reproduction. T.C.A. § 67-1-513. The assessor also is required to certify to the mayor by the first Monday of every November a copy of the assessor's annual aggregate statement showing the total assessed value of the property in each city, civil district, and ward. T.C.A. § 67-5-807.

The county board of equalization is the only body in each county to hear assessment appeals. However, a city located in two or more counties is authorized to make its own assessments and have a board of equalization. T.C.A. § 67-1-513 provides for cities to appoint some members to county boards of equalization. The number of appointees depends on the size of the city. For example, in counties having one or more cities with between 10,000 and 60,000 residents, each of the two largest cities with populations exceeding 10,000 appoints one member to the board. T.C.A. § 67-1-401(a)(3). Supervision and technical assistance for the counties' assessment functions are provided by the state board of equalization. T.C.A. § 4-3-5103, 5105; T.C.A. § 67-1-307.

The property of privately owned public utilities (railroads, bus lines, gas companies, etc.) is assessed by the Tennessee Comptroller of the Treasury, and the assessments are subject to review and revision by the state board of equalization. The comptroller certifies to each city recorder or other tax-collecting official the assessed valuations subject to local taxation. T.C.A. §§ 67-5-1301–1331.

Reappraisal

Reference Number: MTAS-526

Periodic Reappraisal

Every four to six years, as determined by the assessor, with the county governing body's approval, reappraisal of all real property and equalization of assessments are required in every Tennessee county unless the state board of equalization determines that reappraisal is unnecessary for a particular county. With the board's approval, the program may be undertaken by the county property assessor and staff, the Tennessee Division of Property Assessments, or a professional firm employed for this purpose. Program costs are prorated among the state, counties, and cities. T.C.A. § 67-5-1601.

All property (real, personal, operating, and non-operating) of private utilities is reappraised by the comptroller of the treasury each year. T.C.A. §§ 67-5-1301–1302. As a result, in inflationary times the share of a jurisdiction's taxes paid by utilities could grow for six years until the local reappraisal shifts a fair share of the burden back to homeowners and other locally appraised property owners. To prevent

such tax shifting, the state board of equalization conducts sales ratio studies every two years to measure how up to date a county's assessments are. The analysis takes a sample of properties that have recently been sold and compares actual sale prices to values on the county assessor's books. The comptroller of the treasury uses the resulting sales ratios to adjust the taxable assessed value of the utility property it appraises. T.C.A. §§ 67-5-1605–1606. A similar process is prescribed for the state board of equalization to equalize the personal property assessment used by businesses and manufacturers. T.C.A. § 67-5-1509.

Any city lying in more than one county will be reappraised under a separate plan of reappraisal on a cycle determined by the board of equalization. The reappraisal will be done under contract with the state unless the city has a separate assessment office. T.C.A. § 67-5-1601(b).

Reappraisal Cycles

T.C.A. § 67-5-1601 requires six-year reappraisal cycles. However, the state board of equalization may approve four-year cycles, and the assessor and county legislative body may allow five-year cycles. The board of equalization may extend the reappraisal cycle of a county beyond the six years to synchronize with a contiguous county's cycle when a city lies partly in each county and contains property of the federal government for which in lieu of tax payments are being made. The statute also changes state funding of reappraisals to a per parcel grant. State grants to four- and five-year programs are limited to the amount required by a six-year program. The board of equalization will determine the initial schedule of review and reevaluation.

Tax Rate

Reference Number: MTAS-527

Certified Tax Rate

After completing a general property reassessment, a city must determine the tax rate on the new total assessment that would produce no more than the amount of property tax revenue generated the preceding year. This rate is called the certified tax rate.

To reflect extraordinary assessment changes, the municipality's governing body may adjust the calculated certified tax rate according to a method approved by the state board of equalization. The city must submit for review a new, tentative tax rate and supporting calculations to the executive secretary of the state board of equalization. The municipality must then consider the board official's report before fixing a certified tax rate. When there is an excessive adjustment, the board shall order recapture in the following year if the certified tax rate has been overstated because the appeals adjustment was overestimated. A public hearing is necessary if the city exceeds the recapture rate.

A city may not take an automatic windfall of increased revenue from a reappraisal. However, if a city wants to increase its revenue after a reappraisal, it has to formally advertise its intention before the council votes to adopt a tax rate that is higher than the certified tax rate. T.C.A. §§ 67-5-1701–1703.

Assessment Ratios

Article II, Section 28, of the Tennessee Constitution provides for using the following percentages of full value to determine assessments:

- Public utility real and tangible personal property – 55 percent;
- Industrial and commercial real property – 40 percent;
- Industrial and commercial tangible personal property – 30 percent;
- Residential and farm real property – 25 percent; and
- Other tangible personal property – 5 percent (T.C.A. §§ 67-5-801, 901).

Personal Property

Reference Number: MTAS-528

Tangible Personal Property Tax

Tangible personal property is subject to the property tax, but the state constitution provides an exemption for personal clothing, household goods, and furnishings (Article II, Section 28).

The system for reporting personal property relies largely on the initiative of the individual taxpayer. Consequently, in the past there have been significant differences in the extent of reporting and payment of personal property taxes in different counties across the state. Legislative enactments over the past several years have made the system more uniform. For example, T.C.A. § 67-5-215(b) was repealed in 1984. It authorized county governing bodies to place a zero value on tangible personal property owned by businesses subject to the Business Tax Law. The legislature also closed a loophole that allowed leased personal property to escape taxation. T.C.A. § 67-4-702(a)(7), T.C.A. §§ 67-5-502, 901. The same act established statewide depreciation schedules for valuing industrial personal property. T.C.A. § 67-5-903. The act also requires the state board of equalization to direct that commercial and industrial tangible personal property assessments are equalized with real property in each county by applying the county's real property appraisal ratio to the depreciated value of the taxpayer's personal property. T.C.A. § 67-5-1509.

Intangible Personal Property Tax

The constitution allows taxing stocks, bonds, and other intangible personal property. Intangible personal property is classified and assessed as the legislature directs. Banks and other financial institutions may be taxed in such manner as the legislature provides, and these taxes are in lieu of the property tax on shares of stock, customers' accounts, or any other type of tangible property (Article II, Section 28). Cities do not tax intangible property. However, they do receive a share of the Hall income tax (see later section entitled "Hall Income Tax [1]"), as well as revenue from property taxes on tangible property having no actual situs in this state paid by utilities and carriers and distributable to counties, municipalities, and taxing districts. T.C.A. § 67-5-1325. Recent legislation has set up a repeal of the Hall Income Tax over time. Beginning with FY2017, a 20% decrease in the tax will occur every year over a 5 year period until the tax is repealed in full.

Greenbelt Law

Reference Number: MTAS-529

Lower assessments are provided to encourage open-space land in urban areas. Owners may petition the county assessor to classify land as agricultural (minimum tract size 15 acres), forest (minimum tract size 15 acres), or open space (minimum tract size three acres). An open space easement of at least 15 contiguous acres granted to a qualified conservation organization also qualifies for greenbelt treatment. If so classified by the assessor, the land is assessed and taxed at its use value. Normally, land is appraised at the value an arms-length purchaser would pay. Use value is calculated by capitalizing the annual income a property owner is earning by using his or her land. T.C.A. § 67-5-1008(c) caps the amount greenbelt land can increase in value because of a reappraisal at 6 percent multiplied by the number of years since the latest reappraisal.

An appeals procedure is provided for adverse decisions by the assessor. To limit the fiscal impact and inequities of this tax break, a maximum of 1,500 acres for one owner in any one taxing jurisdiction is fixed, and affiliated ownership is to be included for any person with legal or equitable title in more than 50 percent of the land ownership. Non-contiguous tracts must be located in the same county to qualify as agricultural land for greenbelt purposes. A procedure is provided for determining annually additional taxes that would be payable if the land were assessed at its real value. If the land is subsequently converted to any other use, such cumulative taxes for the preceding three years (agricultural and forest) or five years (open space) – referred to as rollback taxes – must be paid on the first assessment roll following the conversion.

When the assessor determines that there is a liability for rollback taxes, the assessor notifies only the tax-collecting official. This official must then send a notice demanding payment to the responsible person.

The act that created the use value assessments provides a more sure and direct method for a municipality to preserve its open space. Cities and counties also are empowered to expend funds to acquire "the fee or any lesser interest...necessary to achieve the purposes of this act". T.C.A. §§ 67-5-1001–1050.

Collection of Property Taxes

Reference Number: MTAS-530

When read together, T.C.A. §§ 67-1-701–702, T.C.A. § 67-5-1801, and T.C.A. § 67-5-2005 permit a municipality to collect its own property taxes (if authorized by its charter) or to turn over such collection to the county trustee. Generally, if the county trustee collects the municipality's taxes, the tax due date is the first Monday in October, and the delinquency date is the following March 1. The effect of the due and delinquency dates prescribed by the municipal charter or ordinance is outlined in the "Delinquent Property Taxes" section.

By the 10th of each month, the trustee must make settlement and pay the city its share of taxes collected the previous month. T.C.A. § 67-5-1902. The trustee's office keeps the following commissions on taxes collected:

- Up to \$10,000 – 6 percent;
- \$10,000 to \$20,000 – 4 percent;
- More than \$20,000 – 2 percent.

In computing the trustee's compensation, all state, county, school, and special funds are lumped together, and each of the political subdivisions must pay its respective portion of the above commissions. T.C.A. § 8-11-110. A trustee who collects city taxes must "execute such bonds as may be required...by the law or any ordinance of any city or town for the collection and prompt payment of all taxes due said city or town". T.C.A. § 67-5-1901(b).

A municipality's governing body may provide by ordinance or resolution for the early payment of property taxes and provide a taxpayer rebate as follows:

- Two percent within 30 days of the due date, and one percent within 30 to 60 days of the due date.

If the county trustee has the authority established by T.C.A. § 67-1-702 to collect taxes any time after July 10 prior to the first Monday in October, a municipality's governing body by the same method may provide for the early payment of property taxes and give a taxpayer rebate as follows:

- Three percent if paid by the end of July;
- Two percent if paid by the end of August; and
- One percent if paid by the end of September.

In the latter instance, the trustee may accept such payments at his discretion. T.C.A. § 67-5-1804.

The purchaser of a business is required to withhold an amount to cover any taxes payable on personal property until the seller produces a receipt from the municipal collector that all taxes, interest, and penalties have been paid. The purchaser's failure to do so makes him or her jointly liable for any such unpaid amounts. T.C.A. § 67-5-513.

Partial Payments

A municipality that collects its own property taxes may, via ordinance, opt to accept partial payments of property taxes. This requires the filing of a plan with the comptroller. T.C.A. § 6-56-152. All trustees in all counties may accept partial payments of property taxes. In Metro Nashville, the minimum payment is no more than 15 percent or \$25, whichever is less. T.C.A. § 67-5-1801(e).

Delinquent Property Taxes

Reference Number: MTAS-531

Delinquent Property Taxes

A municipality has the option to collect delinquent property taxes any one of four ways:

- Under the provisions of its charter for the collection of delinquent property taxes;
- Under T.C.A. §§ 6-55-201–206;
- By the county trustee under T.C.A. § 67-5-2005 (a)-(c); or

- Under T.C.A. § 67-5-2005 (d).

If the municipality has the authority under its charter to collect its property taxes, but the charter makes no provision for the collection of delinquent property taxes, then the municipality may provide by ordinance for the collection of delinquent property taxes. (As a practical matter, it is unlikely that any municipal charter authorizes a municipality to collect its own property taxes but does not authorize it to collect delinquent property taxes).

If a municipality uses the county trustee or the delinquent tax attorney to collect its delinquent property taxes, the municipality must certify its delinquent taxes to the trustee by April 1 of the second calendar year after the taxes become due.

T.C.A. § 67-5-2405 requires the county delinquent tax attorney to bring suit in the name of the county, in the county's behalf and for the benefit of any municipality that has certified a delinquent tax list.

Property certified to the county trustee shall be advertised and sold by the county trustee at the same time, in the same manner, and as a part of the county trustee's other sales of property for state and county taxes. T.C.A. § 67-5-2005.

T.C.A. § 67-5-2010(a)(1) provides that, "To the amount of tax due and payable, a penalty of one-half percent and interest of one percent shall be added on March 1 following the tax due date and on the first of each succeeding month except as otherwise provided in regard to municipal taxes."

Therefore, if the municipality collects its own current property taxes but turns the collection of its delinquent property taxes over to the trustee, the property tax due and delinquency dates, the penalties, and the interest are those set out in the municipality's charter or ordinance.

T.C.A. § 67-5-2010(b) provides that, in all instances in which current municipal taxes are collected by the county trustee, the following provisions and rules for collecting delinquent taxes that may be due to the municipalities, and none other, shall prevail and obtain, anything in this chapter to the contrary notwithstanding:

- The taxes levied and assessed by such municipalities shall become due and delinquent on the date now provided by existing law; and
- If the municipal taxes are not paid on or before the date fixed for delinquency in the amount due and payable, a penalty of 0.5 percent and interest of 1 percent shall be added on March 1 following the tax due date and on the first day of each succeeding month.

In this circumstance, where the county trustee collects the municipality's current or delinquent property taxes, the property tax due and the delinquency dates remain those set out in the municipality's charter or ordinance; however, the penalty and interest prescribed by that statute prevail over the municipality's charter or ordinance and do not attach until March 1 following the tax due date.

A municipality is barred from collecting property taxes after the lapse of ten (10) years from April 1 of the year following the year in which such taxes become delinquent. T.C.A. § 67-5-1806.

T.C.A. § 67-5-1512 outlines the conditions under which taxpayers appealing their assessments must pay all or a part of the property tax and interest during the appeals process as a condition of the appeal.

Property taxes, interest, and penalties owed to the state, county, and municipality on property shall become and remain a first lien upon the property from January 1 of the year for which the taxes were assessed. Property taxes are also a personal debt of the property owners as of the same date. T.C.A. § 67-5-2101.

Cities have the authority to give foreclosed properties to private, non-profit entities. T.C.A. § 67-5-2509(d)(2).

Extension of Due Date for Military Personnel Engaged in Hostilities

T.C.A. § 67-5-2011 extends the due date of property taxes owed by persons in the armed services or who are called into active duty from a reserve or National Guard unit and who are engaged in hostilities until 180 days after the conclusion of the hostilities or 180 days after the person is transferred from the area of hostilities, whichever is sooner.

When Delinquent if Mailed

"Any tax report, claim, return, statement, remittance, or other tax document required or authorized to be filed with any payment made to the state or to any political subdivision thereof, which is ... transmitted through the U.S. mail to the state or political subdivision and postmarked no more than 24 hours

subsequent to the last date for the timely filing of such document or payment shall not be considered delinquent." T.C.A. § 67-1-107.

Interest Rate on Delinquent Taxes

Reference Number: MTAS-748

The payment of taxes to local municipalities or to the state of Tennessee generally has a due date associated with it. If a taxpayer fails to pay the tax, or a portion thereof, on or before the date the taxes are required to be paid, interest is added to the amount of tax due. The commissioner of revenue determines the interest rate for delinquent taxes collected or administered by the state of Tennessee. Sales tax and local business tax are examples of taxes falling into this category.

Formula Rate of Interest

T.C.A. § 67-1-801 provides for the rate of interest to be charged on delinquent tax payments. This rate is called the "formula rate of interest" and is determined and set annually by the Tennessee commissioner of revenue.

Action Required by Municipal Finance Staff

Finance directors, city recorders and other finance office personnel responsible for collecting or remitting delinquent taxes collected or administered by the state of Tennessee should review the interest rate currently used for delinquent accounts and verify that it complies with the chart below.

Historical Interest Rates

The following table from the Tennessee Department of Revenue is a historical presentation of the "formula rate of interest" as determined by the commissioner of revenue. This information is provided as supplemental data to give finance officials a perspective of interest rates for prior years.

INTEREST RATE HISTORY DELINQUENT TAXES OF ALL TYPES T.C.A. § 67-1-801(a)(1-3)								
PERIOD COVERED			RATE		PERIOD COVERED			RATE
Through	-	9/30/1974	6.00%		7/1/1996	-	6/30/1997	12.25%
10/1/1974	-	7/31/1980	8.00%		7/1/1997	-	6/30/1998	12.50%
8/1/1980	-	6/30/1983	10.00%		7/1/1998	-	6/30/1999	12.50%
7/1/1983	-	6/30/1984	14.50%		7/1/1999	-	6/30/2000	11.75%
7/1/1984	-	6/30/1985	16.00%		7/1/2000	-	6/30/2001	13.50%
7/1/1985	-	6/30/1986	14.50%		7/1/2001	-	6/30/2002	11.00%
7/1/1986	-	6/30/1987	14.50%		7/1/2002	-	6/30/2003	8.75%
7/1/1987	-	6/30/1988	12.25%		7/1/2003	-	6/30/2004	8.25%
7/1/1988	-	6/30/1989	13.00%		7/1/2004	-	6/30/2005	8.00%
7/1/1989	-	6/30/1990	15.50%		7/1/2005	-	6/30/2006	10.00%
7/1/1990	-	6/30/1991	14.00%		7/1/2006	-	6/30/2007	12.00%
7/1/1991	-	6/30/1992	12.50%		7/1/2007	-	6/30/2008	12.25%
7/1/1992	-	6/30/1993	10.50%		7/1/2008	-	6/30/2009	9.00%
7/1/1993	-	6/30/1994	10.00%		7/1/2009	-	6/30/2016	7.25%
7/1/1994	-	6/30/1995	11.25%		7/1/2016	-	6/30/2017	7.50%
7/1/1995	-	6/30/1996	13.00%					

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Property Tax Relief for the Elderly and Disabled

Reference Number: MTAS-532

Article II, Section 28, of the Tennessee Constitution provides that the legislature "shall provide, in such manner as it deems appropriate, tax relief to elderly, low-income taxpayers through payments by the state to reimburse all or part of the taxes paid by such persons on owner-occupied residential property, but such reimbursement shall not be an obligation imposed directly or indirectly upon counties, cities, or towns." It also authorizes the legislature to provide tax relief to totally and permanently disabled homeowners "as provided herein for the elderly."

T.C.A. § 67-5-702 and T.C.A. § 67-5-703, respectively, provide state-reimbursed tax relief to people age 65 and older and to totally and permanently disabled homeowners under rules and regulations adopted by the state board of equalization. These property owners must meet maximum income requirements set annually in the state's General Appropriations Act. The ceiling is revised yearly based on the cost-of-living adjustment for Social Security recipients. The tax relief applies to the first \$23,000 of the home's full market value. T.C.A. § 67-5-704 provides state-reimbursed tax relief to severely disabled veterans and their surviving spouses on the first \$100,000 of the full market value of their homes, regardless of their total annual income.

The state board of equalization has issued rules and regulations governing the administration of T.C.A. §§ 67-5-701–704, including definitions, age requirements, disability requirements, widows of disabled veterans requirements, certification of ownership and residency requirements, income requirements, methods and handling of applications (including forms and documents), and decertification requirements. Rule 0600-3-.01, *et seq.*

Four statutes authorize municipalities to create their own supplemental tax relief programs for the elderly and disabled. Two are pure tax relief statutes, and two are tax deferral statutes. Under T.C.A. § 67-5-705, the city may, by resolution, adopt a program freezing the property tax of people age 65 and older whose annual incomes do not exceed \$12,000. The tax is frozen at the amount they paid in the tax year they reached 65. Improvements to the property are taxed as prescribed by the statute. In *Perkins v. Alexander*, the Chancery Court of Shelby County on January 10, 1980, declared that statute violated Article II, Section 28, of the Tennessee Constitution, which requires that all property be taxed according to its value, that taxes be equal and uniform within a taxing jurisdiction, and that tax relief for the elderly could not be imposed by the state upon local governments. Although that case has no formal precedential value, it is persuasive.

T.C.A. § 67-5-701(j) allows all counties and municipalities to appropriate funds for the tax relief of elderly low-income and disabled homeowners who are eligible for tax relief under state law. The tax relief provided cannot exceed the total taxes actually paid.

T.C.A. § 67-5-1515 allows a property tax freeze for certain elderly homeowners in Shelby County. This tax freeze is optional for the county governing body but would also apply to municipal taxes.

T.C.A. §§ 7-64-101 *et seq.*, (Chapter 821 [Public Acts 1998] Deferral) authorize municipalities to defer, by resolution, taxes on principal residences owned by single people, married couples over the age of 65, and totally disabled people whose gross annual income is less than \$12,000. The city's governing body may by a two-thirds vote approve an increase in the gross income to \$25,000 a year; approval must be certified to the Tennessee Secretary of State. The tax deferral applies to the principal residence and a maximum of one acre of land and to a maximum of \$60,000 appraised market value. Improvements to the property are taxed as provided in the statute. The assessment of taxes continues on an annual basis, and the tax deferral continues until a terminating event such as death of the person(s) to whom the deferral was granted or sale of the residence. The deferred taxes constitute a lien on the property and earn 10 percent interest annually but are not subject to the statutory penalties for delinquent taxes. The schedule for payment of deferred taxes after a terminating event is set out in the statute.

T.C.A. §§ 7-64-201, *et seq.*, (Chapter 659 [Public Acts 1980] Deferral) authorize municipalities by resolution to defer taxes on principal residences owned by taxpayers and their spouses over the age of 65, totally and permanently disabled taxpayers, and disabled veterans whose combined incomes do not

exceed \$12,000 annually. The city's governing body may by a two-thirds vote approve an increase in the gross income to \$25,000 a year; approval must be certified to the Tennessee Secretary of State. The tax deferral is limited to the principal residence and one acre of land and to a maximum appraised value of \$50,000. A qualifying taxpayer who turned 65 on or before March 27, 1980, is entitled to a tax deferral on taxes in excess of his or her 1979 taxes, and a qualifying taxpayer who turned 65 after March 27, 1980, may defer any taxes in excess of the amount of taxes in effect the year the taxpayer turned 65. A qualifying taxpayer who purchases property after turning 65 may defer taxes in excess of the amount of taxes owed in the year the property was purchased. Improvements to property are taxed as provided in the statute. The statute's provisions for a tax lien and interest are similar to those in T.C.A. §§ 7-64-101, *et seq.* Termination of deferral events include death of the person(s) to whom the deferral was granted, sale of the residence, and change in the use of the property from the principal place of residence.

Property Tax Freeze Local Option

Reference Number: MTAS-533

T.C.A. § 67-5-705 allows municipalities and counties to provide property tax relief to homeowners 65 years of age and older who have low income. The municipality must pass an ordinance to implement the freeze, which applies to the elderly homeowner's principal residence. Taxes would be frozen at the "base tax," which is the amount due in the year the taxpayer becomes eligible for the program and successfully applies. Improvements made or discovered after the tax base is established, however, would increase the taxes owed.

To qualify for the freeze, the taxpayer must be 65 years of age or older and have income, combined with that of any other owners of the residence, within the greater of the weighted average median household income for (1) age groups 65 to 74 and (2) age groups 75 and over, and the state tax relief income limit. The weighted average median household income for each county must be published annually by the comptroller. The taxpayer must apply annually to the tax collecting official, who approves or denies the application.

The comptroller will provide income verification and other services to implement this freeze, and municipalities and counties must pay the costs. Financial records are confidential but will be made available to officials who administer this program. A taxpayer who knowingly provides false information to take advantage of the program commits a Class A misdemeanor.

The maximum size of lots (five acres) eligible for the freeze and other rules for implementation of the program are established by the state Board of Equalization through the Division of Property Assessments.

In-Lieu of Tax Payments

Reference Number: MTAS-134

Tennessee Valley Authority

The Tennessee Valley Authority (TVA) pays 5 percent of gross power sales proceeds to the state in lieu of taxes. Counties and cities are allocated 48.5 percent of the increase in TVA payments made to the state above the amount received in the base year (fiscal year 1978). Counties receive 70 percent of this allocation, and cities receive 30 percent.

Distribution of the city share is based on population. Three percent of the earmarked revenue is allocated to cities and counties affected by TVA power plant construction. Cities that received TVA in-lieu-of-tax payments from the state before implementing the per capita formula continue to receive that amount in addition to the formula allocation. T.C.A. §§ 67-9-101–103.

Utility Tax Equivalent

Tennessee cities that operate electric distribution systems are allowed to take tax equivalents up to maximums prescribed by the Municipal Electric System Tax Equivalent Law of 1987. This law replaces former statutory provisions and supersedes all charter or private act provisions.

The allowed payment is an amount equal to the property tax the system would pay if it were a private utility, plus 4 percent of the average of revenue minus power costs from electric operations for the

preceding three fiscal years. T.C.A. § 7-52-304. A city's governing body is allowed to prescribe the amount up to the maximum after consulting with a power board to determine the "fair share of the cost of government" borne by the municipality on behalf of the utility. The act also provides for tax equivalent payments to the county government and to neighboring municipalities served by a city's electric distribution system. T.C.A. §§ 7-52-301–310.

Another act contains almost identical provisions and is applicable to gas systems owned and operated by municipalities, counties, and metropolitan governments. It, too, supersedes the provisions of any charter or private act. T.C.A. §§ 7-39-401–406.

Expenditure Reports by CDBG Recipients

T.C.A. § 6-54-124 requires municipalities that receive community development block grants (CDBG) and municipalities and industrial development corporations that are party to an in-lieu-of-property-tax agreement to make a report addressing the expenditures of such funds. In addition, municipalities must place a copy of the report in the main branch of their public libraries or on the Internet.

Municipal Utility

Municipalities are authorized to request by resolution in-lieu-of-tax payments from any public works. T.C.A. § 7-34-115. "Public works" is defined by T.C.A. § 7-34-104(3) as water; sewer; gas or electric heat, light, or power; or parking facilities. Except for municipal gas and electric plants, these payments may not exceed the amount of taxes payable on private property of a similar nature. T.C.A. § 7-34-115. Gas and electric in-lieu-of-tax payments are computed under T.C.A. § 7-39-404 and T.C.A. §§ 7-52-301, *et seq.*, respectively.

Housing Authority

Housing authorities "shall agree" to pay in-lieu-of-tax payments or special assessments not to exceed the cost of services, improvements, or facilities provided. T.C.A. § 67-5-206. A similar requirement provides that non-profit housing corporations providing low-cost housing for elderly or handicapped people must agree to make in-lieu-of-tax payments for any project exceeding 12 units occupied after January 1, 1990. T.C.A. § 67-5-207.

Municipalities with housing authorities, except in Davidson County, may delegate to the authority by a majority vote the right to negotiate and accept payments in lieu of taxes from lessees operating property restricted under the Low Income Housing Tax Credit Program. The housing authority must submit the agreement to the local legislative bodies of affected jurisdictions for approval. Housing authorities must file reports by October 1 of each year on property owned by them that is subject to in-lieu-of-tax payments. T.C.A. § 13-20-104.

Golf Courses

If a government body leases a golf course to a private operator, the operator must make in-lieu-of-property-tax payments equal to what the ad valorem taxes would be if the course were private property. T.C.A. § 67-5-203(c).

Local Taxes

Reference Number: MTAS-135

Click on the topics listed below in this section for more information.

Local Option Sales Tax

Reference Number: MTAS-534

A municipality may levy a local sales tax, but the combined rate of the county's levy and that of the municipality may not exceed 2.75 percent. A county's levy supersedes the municipality's levy. Therefore, if the county levy is 2.75 percent, a municipality in that county may not levy a local sales tax. If the county levy is 2.25 percent, a municipality could levy an additional 0.5 percent. Regardless of the local levy amount, it must be approved by a majority vote in a referendum in the affected municipality. An ordinance calling for such a referendum may specify a period for which the tax shall be effective. T.C.A. §§ 67-6-701, *et seq.* A statewide uniform local sales tax rate of 2.5 percent applies to intrastate telecommunications services, and a uniform local rate of 1.5 percent applies to interstate and

international telecommunication services except for services to businesses that are exempt. Revenues will be used for the same purposes as other local sales tax revenues. T.C.A. § 67-6-702.

Unlike the state sales tax, the local option tax is not applied to the full purchase cost of expensive items. The local tax now applies to the first \$1,600 of the purchase price. Because of this cap, the purchaser of an economy car and the buyer of a Rolls-Royce pay the same local option sales tax. T.C.A. § 67-6-702.

If a countywide local option sales tax is levied by referendum, then state law requires that half of any county levy be distributed on the same basis as the county property tax for schools (average daily attendance formula). The other half is distributed to the jurisdictions where collection took place. If it was collected in a city, it is distributed to that city. If it was collected outside the city, it is distributed to the county. However, an agreement between a county and a city may provide for a different distribution. One hundred percent of a city-only levy is general fund revenue subject to appropriation by the governing body, but it would terminate at the end of the city's current fiscal year if the county makes a levy at the same or higher rate. T.C.A. § 67-6-703, T.C.A. § 67-6-712.

The local option sales tax is a situs tax. That is, the geographic location where the sale is made or the service is delivered determines which jurisdiction receives the collected tax.^[1] A municipality receives the tax if the transaction occurs within its corporate limits. Municipalities could enhance their revenues by verifying the situs code for every business located within their corporate boundaries.

For a period of 15 years, a newly annexed area or newly incorporated city gives the county the same amount of local option sales tax and wholesale beer tax it was collecting on the date of incorporation. T.C.A. § 67-6-712.

Situs Reports: How to Get Your Fair Share

Reference Number: MTAS-544

Sales Tax Revenue: How to Get Your Fair Share

Sales tax is collected by businesses all across the state when they sell a taxable item. Taxable items include practically everything except professional services and labor. Technically, taxable items are tangible personal property, things you can touch and see. Periodically, businesses remit the sales tax to the state by completing a form that calculates the sales tax and sending that with a check to the department of revenue.

Sales tax consists of the state portion (currently 5.5 percent on food and 7 percent all other tangible personal property unless specifically exempted) and the city and county portion for a maximum total of 9.75 percent. The combined city and county local option portion may not exceed 2.75 percent. If your city and county tax is less than the maximum 2.75 percent, then raising it to the maximum should be a consideration for any local government seeking to increase sales tax revenue.

Cities receive a share of the state sales tax directly from the state every month based on population. This is often called a state "shared" revenue. It is also the largest of the state shared revenues, accounting for more than half of the population-based state shared revenues.

The local option portion of the sales tax is split with the county, city, and schools. The county initially receives all the local sales tax from the state and then allocates it. The county has no discretion on how to distribute the funds. Cities receive their share of local sales tax from their counties.

What Could Go Wrong?

Your local sales tax may be going to another Tennessee city or county. Conversely, your city may be receiving local sales tax revenue from another jurisdiction in error. The problem occurs on the front end when a business first applies for a Tennessee sales tax number (Sales and Use Tax Certificate of Registration). There is a place on the form for the address of the new business, but occasionally, the applicant uses an incorrect address for the business location. The application is entered into the state's computer system, and the address on the application dictates the location of the business, even if it is wrong.

This is significant because Tennessee local sales tax is determined at the point of sale. The point of sale is the business location listed on the application for a Sales and Use Tax Certificate of Registration. An incorrect business location results in the local sales tax going to an incorrect county or city.

What Can You Do?

The first thing you should do is contact the Tennessee Department of Revenue, which handles sales taxes. It maintains a list of every registered business in Tennessee. Every business is assigned a four-digit county/city code that determines location. This coding is based on the business address in the business application. The first two-digit number represents the county. Cities are assigned an additional unique two-digit number. Together, this four-digit number is called a situs code. A situs code report lists all registered businesses in your city, by county. **A city in two counties will have two situs codes.**

City officials have a right to this confidential information as provided in T.C.A. § 67-1-1704. To obtain your situs report, send a request in writing from a local official to the Tennessee Department of Revenue. You should receive your situs report within two weeks. You will need to confirm that all businesses within the corporate limits are on your situs report. **If your city is in two or more counties, you should request reports for both situs codes your city is assigned.**

Who to Contact

The Taxpayer Services Division of the Tennessee Department of Revenue (DOR) administers the sales and local sales tax. It processes the Sales and Use Tax Certificate of Registration received from businesses. The DOR assigns a situs code.

You can contact the DOR in writing at its main office at
Tennessee Department of Revenue
500 Deaderick Street
Nashville, Tennessee 37242

The phone number is (615) 253-0600 or (800) 342-1003 toll free.

Identify All Businesses in Your City

As stated above, you need to identify all the businesses in your city limits. These businesses generate local sales tax on every taxable sale. You should build an inventory of all the business in your town, that is, anyone with a Tennessee sales tax number (Sales and Use Tax Certificate of Registration). This will be very time consuming the first time, but subsequent annual checks will be much easier. In smaller cities, the city recorder may be aware of all the businesses in the city. With a short review, you may be able to account for them all. If your city levies a business tax, compare your business tax customers with the situs report. Property tax records and utility records also can help identify customers to compare against the situs report. The best way to maximize your city's local sales tax is to review the state's record of business locations (situs report) and correct any errors. After your review, you should make changes on the situs report and submit a copy to the DOR.

Making Corrections to the Situs Report

Make a list of all businesses that do not appear on your situs report. These are the businesses that are paying sales tax to some other city/county. To facilitate the DOR review, obtain that business's sales tax number and any other useful contact information. You should make these additions and corrections on the situs report itself. Before submitting your corrected situs report back to the DOR, make a copy for your records.

Show Me the Money

After receiving your requested changes, the DOR determines if a business is incorrectly coded, which would mean some other jurisdiction is getting your local sales tax. Then, the DOR will contact the jurisdiction that is incorrectly receiving the local sales tax and explain the error. Sometimes, there is disagreement, and you may need to submit proof of your corporate boundaries to the DOR. Basically, one jurisdiction received too much local sales tax while another received too little. The DOR will go back only one year from the notification date to make corrections. Any amounts beyond one year are lost (or gained). Truly, time is money. If the amounts involved are small, the DOR will adjust the next month's local sales tax distribution. A large adjustment in one month could be harmful to a small city; therefore, larger amounts are adjusted over the following year.

Sample Tax Ballots

Reference Number: MTAS-539

SAMPLE BALLOT FOR ELECTION ON TAX BEING LEVIED FOR THE FIRST TIME

Sample Ordinance for Levying Additional Sales and Use Tax

Shall an ordinance passed by the

_____ (governing body) of _____ (city) on _____, 20____, numbered _____ and published in _____, a newspaper of general circulation in _____ County, which levied a tax on the same privileges subject to the Retailers' Sales Tax Act under Chapter 6, Parts 1-6, Title 67, Tennessee Code Annotated, as the same may be amended, which are exercised within _____ (city), to be levied and collected as provided in the act and at the rate of _____, except as limited or modified by statute, become operative? YES, for the Ordinance _____ NO, against the Ordinance _____

SAMPLE BALLOT FOR ELECTION TO INCREASE COUNTY OR CITY SALES TAX

Shall a resolution (or ordinance) passed by the Board of County Commissioners (or city governing body) of _____ (county or city) on _____, 20____, numbered _____ and published in _____, a newspaper of general circulation in _____ County, which levied an additional tax on the same privileges subject to the Retailers' Sales Tax Act under Chapter 6, Parts 1-6, Title 67, Tennessee Code Annotated, as the same may be amended, which are exercised within _____ (county or city), to be levied and collected as provided in the Act at an amended rate of _____, except as limited or modified by statute, become operative? YES, for the Resolution (or Ordinance) _____ NO, against the Resolution (or Ordinance) _____

Sample Ordinance for Levying Additional Sales and Use Tax

Reference Number: MTAS-538

SAMPLE RESOLUTION OR ORDINANCE FOR LEVYING AN ADDITIONAL SALES AND USE TAX

Be it resolved (ordained) by the Board of County Commissioners (or city governing body) of _____ County (or city), Tennessee: Section 1. The resolution (or ordinance) of the Board of County Commissioners (or city governing body) of _____ County (or city), Tennessee, imposing a local sales and use tax as authorized under the provisions of Tennessee Code Annotated, Sections 67-6-701, et seq., adopted by the county (or city governing body) at a regular (or special) meeting (for county court, specify term) of recording in Minute Book _____, page _____, is amended to levy a local sales and use tax at a rate of _____, not to exceed the maximum percentage as provided for in the "1963 Local Option Revenue Act," Tennessee Code Annotated, Section 67-6-702, as amended, except as limited or modified by statute. Section 2. If a majority of those voting in the election required by T.C.A. § 67-6-706 vote for the increase in the tax imposed by this resolution (or ordinance), collection of the increased tax levied by this resolution (or ordinance) shall begin on the first day of the month occurring 30 or more days after the county election commission makes its official canvass of the election returns. Section 3. The Department of Revenue of the state of Tennessee shall collect the additional tax imposed by this resolution (or ordinance) concurrent with the collection of the state tax and the local tax being collected for _____ County (or city), in accordance with rules and regulations promulgated by the Department. Section 4. The _____ (specify officer) is authorized to contract with the Department of Revenue for the collection of the additional tax imposed by this resolution (or ordinance), and to provide in the contract that the department may deduct from the tax

collected a reasonable amount or percentage as provided by statute to cover the expense of the administration and collection of the tax as provided for in *Tennessee Code Annotated*, Section 67-6-710.

Section 5. In the event the tax is collected by the Department of Revenue, suits for the recovery of any tax illegally assessed or collected shall be brought against the state commissioner of revenue and the _____ (specify county or city officer).

Section 6. A certified copy of this resolution (or ordinance) shall be transmitted to the Department of Revenue by the county clerk (or city recorder) forthwith and shall be published one time in a newspaper of general circulation in _____ County (or city) prior to the election called for in Section 2.

Adopted this _____ day of _____, 20_____.

Local Sales Tax Guide

Reference Number: MTAS-730

Under the 1963 Local Option Revenue Act (found in T.C.A. §§ 67-6-701, *et seq.*), any county by resolution of its legislative body, or any city or town by ordinance of its governing body, can levy the local sales tax at a combined rate up to 2.75 percent. T.C.A. § 67-6-702.

With certain exceptions, the local sales tax covers the same items as the state sales tax. The local tax, however, applies only to the first \$1,600 of the sale or use of a single article of personal property. T.C.A. § 67-6-702(a)(1). What constitutes a "single article" is defined in T.C.A. § 67-6-702(d). Industrial and farm machinery and water sold to or used by manufacturers is taxed locally at 1/3 percent when the local tax rate is 1 percent or less and at 0.5 percent when the local rate exceeds 1 percent. T.C.A. § 67-6-702(b). Dealers with no location in this state may choose to pay, in lieu of the local option sales tax, a local tax at the rate of 2.25 percent of the sales price on all sales made in this state. T.C.A. § 67-6-702(f). Local tax on interstate telecommunication service subject to the tax is imposed at 1.5 percent, but interstate telecommunications services sold to businesses are exempt from local tax. Local tax with respect to intrastate telecommunications services, which are subject to state tax, is imposed at the rate of 2.5 percent. T.C.A. § 67-6-702(g).

How is Local Sales Tax Adopted?

The local sales tax is levied as a percentage of the sale price of a single article. To levy or increase a local option sales tax, the local government first passes an ordinance or resolution to levy the tax. Since the state Department of Revenue administers the sales tax and is usually the collector of the local tax, every resolution or ordinance levying or increasing a local sales tax must be sent to the Department or Revenue for review immediately after its adoption. Cities must provide it after the first reading. This will allow the department to check the resolution or ordinance to assure the validity of the levy. If the resolution or ordinance is not drafted properly, the department will refuse to collect the tax.

If the county has levied the tax at the maximum rate, no city in the county can levy a local sales tax. If the county has a sales tax of less than the maximum, a city can levy a tax equal to the difference between the county rate and the maximum. (Example: County has a tax of 2 percent. City could levy a municipal tax up to 0.75 percent, making the total combined rate inside the city no more than 2.75 percent.)

If a city levies an increase in the local sales tax rate above the county rate, the city ordinance is suspended for 40 days. If, during this period, the county legislative body adopts a resolution to levy a tax at least equal to the rate in the ordinance, the ordinance remains suspended until a countywide referendum is held.

If the countywide tax is approved, the ordinance is dead. But if the county tax is not approved, the city ordinance becomes effective, and the referendum is held inside the city. If the vote is favorable, the city tax is in effect.

If the county should later adopt a local sales tax increase, however, it would cancel out the city tax to the extent that the new county rate duplicates the city rate. In this event, the city will receive from the

county tax the same amount it would have received from its own tax until the end of the city's current fiscal year. T.C.A. § 67-6-703.

Collection of Local Sales Tax

Reference Number: MTAS-732

Cities and counties formerly had the option of collecting the local option sales tax themselves. This authority was eliminated by the General Assembly, and the law now requires the state Department of Revenue to collect the local sales tax at the same time it collects the state sales tax. T.C.A. § 67-6-710. The Department of Revenue requires that a certified copy of the resolution or ordinance be sent immediately upon adoption to the Department of Revenue if the tax is to be collected by that department. The department has promulgated Local Option Sales and Use Tax Rules and Regulations governing collection. The state will retain a reasonable amount (currently 1.125 percent) to cover its expenses. T.C.A. § 67-6-710(b)(2). The ordinance or resolution will designate the county or municipal officer against whom suit may be brought for recovery if the tax is collected by the state. The Department of Revenue recommends that the commissioner of revenue also be named in the resolution or ordinance as a party against whom suit for recovery is brought. T.C.A. § 67-6-710(d)(2).

Distribution of Local Sales Tax

Reference Number: MTAS-733

If the tax is effective only inside a city, the proceeds go to the city general fund. If the tax is levied by the county, the money is divided as follows in accordance with T.C.A. § 67-6-712:

- One-half is expended and distributed in the same manner as the county property tax for schools, including division with any city or district schools by the trustee on the basis of the weighted full-time equivalent average daily attendance in accordance with Title 49, Chapter 3, Part 3.
- (a) The other half is distributed on the basis of where the sale occurred. Collections in incorporated cities or towns go to their general fund. Collections in unincorporated areas go to the county general fund. (b) Or, a county and city may, by contract, provide for some other division of the half not allocated to schools.

The situs-based distribution of the second half of sales tax revenue also is affected by "hold harmless" provisions of the Tennessee Growth Policy Law (1998 Public Chapter 1101). For 15 years following any annexation or new incorporation by a municipality, the county is held harmless for the loss of local option sales tax revenues that would otherwise have gone to the city under prior law following the annexation. This dollar amount for any annexed tax-generating property is referred to as "annexation date revenue." Any increases over the annexation date revenue are distributed to the annexing municipality. (Note that these provisions do not affect the distribution of the first half of the local option sales tax, which continues to go to education funding.) For more details on how to determine annexation date revenue and how these provisions apply, see T.C.A. § 6-51-115.

In a few counties and cities, distribution of sales tax revenue also is affected by the presence of a sports authority that has acquired a professional sports franchise. In these cases, an amount equal to the amount of local tax revenue derived from the sale of admissions to the games and the sale of other related items on the premises of the facility is distributed to the municipality or county for the exclusive use of the sports authority. T.C.A. § 67-6-712(c). There are similar provisions relative to qualified public use facilities in a tourism development zone created under the Convention Center and Tourism Financing Act. T.C.A. § 7-88-106.

An ordinance or resolution levying the tax is perpetual unless it establishes a specific termination date, or unless it is repealed in the same way it was adopted. T.C.A. § 67-6-709. Any election for the repeal of a county tax is open to voters of the entire county. A county or municipality may adopt a local sales tax for a specific period of time when the expiration date for the tax is included in the adopting resolution or ordinance. T.C.A. § 67-6-708.

Local Alcohol Taxes

Reference Number: MTAS-535

Local Wholesale Beer Tax

Wholesale beer deliveries to retail outlets in a city or county are taxed at 17 percent of wholesale prices (excluding state and federal privilege taxes levied after May 3, 1983). The tax is paid by each beer wholesaler directly to the city or county, and monthly sales reports are made to the state Department of Revenue and to each city and county. A city should check that tax payments are being received from beer wholesalers serving the area based on deliveries to all retail beer outlets in the city. An investigation by the Department of Revenue may be requested if there is doubt about administration of the tax. T.C.A. §§ 57-6-101–118. For a period of 15 years, a newly annexed area or newly incorporated city gives the county the same amount of wholesale beer tax it was collecting on the date of incorporation. T.C.A. § 57-6-103.

Local Mixed-Drink Tax

Cities that have passed a liquor-by-the-drink referendum may levy and collect a local privilege tax from businesses selling alcohol for on-premises consumption based on the schedule provided in T.C.A. § 57-4-301(b)(2).

Retail Liquor License Inspection Fees

Cities may levy inspection fees on retail liquor licensees based on wholesale liquor prices. The fees may not exceed 8 percent in counties with a population of less than 60,000 and in counties where premier tourist resort cities are located, or 5 percent in other counties. Populations are to be taken from the most recent federal census. T.C.A. § 57-3-501.

Business Taxes

Reference Number: MTAS-540

The business tax in Tennessee is to be "in addition to all other privilege taxes" and is intended by the legislature to be in lieu of any other ad valorem tax on "inventories of merchandise held for sale or exchange". T.C.A. § 67-4-701. The statutes governing business tax changed significantly effective January 1, 2014. Consequently, information about business tax should be referred to <https://www.tn.gov/content/dam/tn/revenue/documents/taxguides/bustaxguide.pdf> [2].

Local Tourism Development Zone Business Tax

Municipalities and counties may levy a privilege tax of up to 5 percent of the sale price on goods sold in a qualified public use facility or in a tourism development zone established under the Convention Center and Tourism Development Financing Act of 1998 codified in T.C.A. §§ 7-88-101, *et seq.* Businesses exempt from the business tax also are exempt under this tax. Passage of the tax requires a two-thirds vote of the governing body at two consecutive meetings. A petition signed by 10 percent of those who voted in the municipality in the latest gubernatorial election can require that the tax be put to referendum. Revenues from the tax will be used to pay the cost of the convention center or other qualified public use facility. Authority to levy this tax does not apply in Davidson County. T.C.A. §§ 67-4-3001, *et seq.*

Hotel/Motel Tax

Reference Number: MTAS-541

Hotel/Motel Taxes Levied by Home Rule, Metropolitan, and Certain Private Acts Home rule municipalities, metropolitan governments, and certain cities by private act or ordinance may levy a hotel/motel tax. For home rule municipalities, the hotel/motel tax applies to motel occupancies of fewer than 30 days. T.C.A. § 67-4-1401. The tax levied by a home rule municipality may not exceed 5 percent of the consideration charged for occupancy. It is collected when the customer is invoiced and remitted by the operator no later than the 20th of each month. Penalties and interest for delinquencies are authorized under T.C.A. § 67-4-1408, which allows home rule municipalities to use distress warrants to collect the tax.

Hotel/Motel Taxes Levied by Private Act

Municipalities that levy the tax by private act but that did not impose a hotel/motel tax by May 12, 1988, are prohibited from adopting such a tax if the county where the city is located already levies the tax. (This prohibition was removed for cities in Rutherford, Williamson, Blount, Dickson, Hardin, and Shelby counties, and for cities that have constructed a project under the Convention Center and Tourism Development Financing Act, codified as T.C.A. §§ 7-88-101, *et seq.* Because of the wording of the exemption in subsection (c) of 67-4-1425, this exemption might apply now or in the future in other counties not listed here.) If a city has already enacted the hotel/motel tax, the county may impose a hotel/motel tax only outside that city. T.C.A. § 67-4-1425. A recent AG opinion 15-78, opined that if the Hotel/Motel tax was levied through a private act, that it was also applicable to short-term rentals such as found through new services like Airbnb.

Hotel/Motel Taxes Authorized by General Law or General Law of Local Application

Cities in certain counties exempted under subsection (c) of T.C.A. § 67-4-1425 are limited to a 5 percent rate and cities in counties incorporated under the general law may levy the tax by ordinance passed by a two-thirds vote of the governing body.

The tax levied by these cities may not exceed 5 percent of the consideration charged by the operator, and revenues from the tax by cities in Blount County must be used for tourism as defined in T.C.A. § 7-4-101(8).

Levying the Tax and Limitation

Reference Number: MTAS-1129

In Home Rule chartered-cities

- The tax is levied by ordinance with approval by a two-thirds vote of the legislative body at two consecutively scheduled meetings or upon the approval of a majority of the voters in a municipal referendum. The referendum is held by the county election commission upon a petition of 10 percent of the qualified voters who voted in the municipality in the most recent gubernatorial election.
- The tax levy is limited to 5 percent.
- The tax levy is not pre-empted by, and is in addition to, any county tax. See T.C.A. § 67-4-1402.

In private act-chartered cities and most general law cities (mayor-aldermanic, city manager-commission, and modified manager-council charters):

- The tax is authorized by private acts of the Tennessee General Assembly. The private act must be ratified by a two-thirds vote of the authorized membership of the municipality's legislative body or approved by a majority of those voting in a referendum held for that purpose, the method to be prescribed by the private act.
- Generally, there is no limit on the tax. However, after May 12, 1988, if a county has levied a hotel-motel tax, the city cannot levy such a tax in any amount. Conversely, if the city has levied a hotel-motel tax, the county may not levy such a tax within the city in any amount.

Note: MTAS legal consultants advise that general law charters may be supplemented with a private act as long as the act is consistent with state general laws and the general law charters.

Collecting the Tax

Reference Number: MTAS-1132

Provisions for collecting the tax are outlined in Tennessee statutes for home rule chartered-cities, in private acts and ordinances for those adopting the tax under private act, and in statutes and ordinances for metropolitan governments.

The hotel-motel operator generally is required to file, under oath, a monthly tax return with the authorized collector with the number of copies of the return as the collector reasonably requires. The report must include facts and information deemed reasonable to verify the tax due. The form of the

report generally is developed by the authorized collector and approved by the city legislative body prior to use. The collector generally is required to audit each operator in the city at least once per year and report on the audits made on a quarterly basis to the city legislative body. See for example T.C.A. § 67-4-1406.

Taxes collected by hotel or motel operators that are not remitted to the authorized collector on or before the due dates are delinquent. An operator is liable for interest on delinquent taxes authorized by general law or private act.

It generally is the duty of every hotel and motel operator liable for collecting and paying to the city any tax imposed by the city to keep and preserve for a period of three years all records that may be necessary to determine the amount of the tax owed. The authorized collector generally may inspect the records at all reasonable times. See your private act or general law authority.

Local Option Sales Tax: Municipality

Reference Number: MTAS-1854

Revenue Class: Local Taxes

Fund: General

Account No.: 31620

Description: Receipts from municipal local option sales tax.

Authorization: T.C.A. § 67-6-701 *et seq.* (1963 Local Option Revenue Act).

Requirements or Restrictions: Where county tax exists, municipality may levy a tax equal to the difference between the county tax and the maximum rate of 2.75 percent. T.C.A. § 67-6-703. Tax can be increased only by ordinance after voters approve by referendum. T.C.A. § 67-6-706. Tax is applicable only to the first \$1,600 on the sale or use of any single article of personal property. T.C.A. § 67-6-702. See also the requirements and restrictions listed under Account # 31610 – Local Option Sales Tax: Countywide (MTAS document MTAS-1853)

Current Rate: Varies, but cannot exceed 2.75 percent.

Frequency of Payment: Monthly.

Late Pay Penalty: N/A

Exemptions: Same as account 31610.

Collection: State collects (and keeps 1.125 percent for administrative expenses), forwards the remainder to the county, and the county distributes 50 percent for school purposes and 50 percent to the jurisdiction where collected or as contracted between jurisdictions (less a 1% administrative fee retained by the County Trustee). Local sales tax revenues that the Department of Revenue cannot identify to a particular *situs* will be distributed 50 percent to municipalities based on population and 50 percent to counties based on population. The county then forwards their portion to the municipality where collected.

Use Restrictions: None.

Impact Fees and Adequate Facilities Taxes

Reference Number: MTAS-542

Impact Fees

Municipalities incorporated under the general law mayor-aldermanic charter and the general law modified city manager-council charters have authority to levy impact fees. See T.C.A. § 6-2-201(15) and § 6-33-101(a). Private acts authorize some other municipalities to levy impact fees. The County Powers Relief Act of 2006 placed some restrictions on the assessing of impact fees for counties and metropolitan governments after June 30, 2006 however, these restrictions did not extend to cities.

Adequate Facilities Taxes

Several municipalities have levied adequate facilities taxes under authority of general law and/or private acts. A statute authorizing high-growth counties to levy adequate facilities taxes however, provides that it is "the exclusive authority for local governments to adopt any new or additional adequate facilities taxes on development." T.C.A. § 67-4-2913. A complication for municipalities wishing to levy adequate facilities taxes, which are privileges taxes, is that they should be aware of section T.C.A. § 67-4-503. This section prohibits a municipality from levying a privilege tax under authority of a private act if the county in which the municipality is located has previously levied a tax by private act on the same privilege. Although this statute apparently has never been used to invalidate a privilege tax, it is still on the books and could be used.

Tax Refund

Reference Number: MTAS-543

T.C.A. § 67-1-707(b) establishes an administrative method for refunding municipal taxes collected erroneously or illegally. The claim for a refund must be made within one year of payment, or it is barred.

Sales Tax Rate on Utility Sales

Reference Number: MTAS-1175

State law limits both state and local sales taxes on water, gas, electricity, and other energy sources used by manufacturers. Your city needs to ensure that your utility billing system reflects these different rates. If you have been overcharging your manufacturer utility customers, you may owe them a refund. **The streamlined sales tax act is scheduled to take effect on July 1, 2017. If not extended again by our legislature, these rates and exemptions will change.**

Water

Tennessee Code Annotated (T.C.A.) § 67-6-206(b)(1) provides for a lower state sales tax of 1 percent applied to sales of water used in manufacturing. T.C.A. § 67-6-702(b) also limits the local sales tax rate on such water sales to 0.33 percent whenever the local tax does not exceed 1 percent and at the rate of 0.5 percent whenever the rate of local tax exceeds 1 percent. This combined 1.5 percent maximum rate is in lieu of the combined state and local sales tax levied on residential water sales. Normal residential water sales are taxed at the 7 percent state rate plus your local rate, which could result in 9.75 percent with a maximum 2.75 percent local rate.

Energy

T.C.A. § 67-6-206(b)(1) also provides that a "tax at the rate of 1.5 percent shall be imposed with respect to gas, electricity, fuel oil, coal, and other energy fuels when sold or used by manufacturers." T.C.A. § 67-6-704 exempts all energy sales from the local sales tax. This state-only sales tax is in lieu of the combined state and local sales tax levied on other taxable sales (seven percent state rate plus your local rate).

Manufacturer Defined

T.C.A. § 67-6-206(b)(2) describes a manufacturer's principal business as fabricating or processing tangible personal property for sale.

Exemptions from Sales Tax

T.C.A. § 67-6-206(b)(3) provides for a certificate issued by the Commissioner of Revenue that completely exempts water and energy used directly in the manufacturing process from sales tax. Typically, a manufacturer has to provide evidence of a separate meter for the manufacturing process water or energy usage to obtain a certificate. The burden is on the manufacturer to apply for and obtain this certificate, and the manufacturer must provide a certified copy of the certificate to the city.

Refunds of Tax Overpayments

Any previous collections resulting in overpayment must be refunded to the taxpayer. The statute of limitations on sales tax refunds extends back three years. T.C.A. § 67-1-1802 describes the refund process. The Department of Revenue has a form (RV-F0102401) [3] that the city must complete and return with documentation showing that it has refunded the correct amount.

State-Shared Taxes

Reference Number: MTAS-136

State Sales Tax

The state sales and use tax is 7 percent (except for food, on which the rate is 4 percent), plus an additional 2.75 percent on the portion of the purchase price of single articles subject to local sales taxes from \$1,600.01 through \$3,200. The 0.5 percent increase adopted in 1992 is earmarked for K-12 education. The 2002 increase from 6 percent to 7 percent on non-food items accrues to the state general fund. Cities receive 4.6030 percent of the remaining 5.5 percent state tax after deductions, including funds to support MTAS. A city's share is calculated by computing the city population as a portion of all city residents in the state. T.C.A. § 67-6-103.

A city that elects Tennessee river resort status under T.C.A. § 67-6-103(a)(3)(F) will receive 4.6030 percent of the taxes actually collected within the city rather than its normal allocation.

T.C.A. § 67-6-221 levies a 7.5 percent sales tax on interstate telecommunications services sold to businesses. Revenues from 0.5 percent of this tax are distributed to municipalities and counties based on population and must be used for the same purposes as local sales tax revenues.

Sales Tax Holiday

Sales of clothing, school supplies, and school art supplies costing \$100 or less per item and computers costing \$1,500 or less per item will be exempt from state and local sales taxes beginning on the last Friday in July and lasting through the following Sunday. Municipalities are substantially held harmless for local sales tax losses. T.C.A. §§ 67-6-393, 67-6-710.

State Beer Tax

The state levies a \$4.29 per barrel tax on the manufacture, sale, and transportation of beer. T.C.A. § 57-5-201. Cities are allocated 10.05 percent of this money on a per capita basis without regard to legal beer sales in the community. Another 10.05 percent of the revenue is allocated to counties. T.C.A. § 57-5-205. MTAS-1877 [4] has more detailed analysis on state beer tax.

State Mixed-Drink Tax

In addition to a state privilege tax, the state levies a 15 percent gross receipts tax on all alcoholic beverages sold for consumption on the premises. T.C.A. § 57-4-301(c). The tax is earmarked for education and local government. Distributions to cities and counties depend on several factors, including which local governments operate their own school systems. Interim laws are now in place through June 30, 2019. T.C.A. § 57-4-306. MTAS-1857 [5] has more detailed analysis on state mixed drink tax.

Excise Tax on Banks

Generally, the excise tax on banks is 3 percent of net earnings (excluding interest from state bonds) minus 7 percent of ad valorem taxes, with a complicated formula for determining a minimum tax based on a bank's capital stock. Local tax rates determine the payment allocation between the county and the city, so a city must levy a property tax to receive any funds. Another formula is prescribed for allocating such revenue if a bank has branches in more than one city and/or county. T.C.A. § 67-4-2017. See MTAS-1883 [6].

Hall Income Tax

Chapter No. 181 enacted in 2017 will eliminate this tax over a five-year period. Three-eighths of the 5 percent state tax on certain dividend and interest income paid by taxpayers is remitted by the state to the city in which the taxpayers live. Payment is made for all such taxpayers no later than the following July 31 based on taxes collected in that city in the preceding fiscal year. T.C.A. § 67-2-119. See MTAS-1876 [7].

Like the local option sales tax, the Hall income tax is a situs tax. Cities should check situs codes and review situs reports to assure that all revenue due to the city is actually received.

Tax Information

Certain information and data that taxpayers report to the state are open to city officials whose "official duties require such inspection or disclosure for tax administration purposes". T.C.A. § 67-1-1704. Any person who divulges or uses this information and data for any purpose other than collecting municipal revenues may be convicted of a felony that carries a maximum \$5,000 fine, up to five years imprisonment, or both. T.C.A. § 67-1-1709.

Litigation Tax – Municipal

A municipality may levy a privilege tax on litigation in all cases in municipal court. The tax must be established by ordinance or resolution and may not exceed the state litigation tax. The tax is collected upon all judgments against the defendant in municipal court. T.C.A. § 67-4-601; Op. Tenn. Atty. Gen. No. 81-598, Nov. 9, 1981; T.C.A. § 16-18-305. See MTAS-319 [8].

Litigation Tax – State

The state litigation tax of \$13.75, like the municipal litigation tax, is collected on all judgments against the defendant in municipal court. The tax applies in all civil suits and to all criminal charges, upon conviction or by order, instituted in city courts except that the tax for violation of an ordinance on using a public parking space is one dollar. When the municipal court is exercising general sessions jurisdiction, the litigation tax will be levied and collected in the same manner as a general sessions court. See MTAS-305 [9].

City Tag or Wheel Tax

The terms "tag tax" and "wheel tax" commonly are used to describe the regulatory fee levied by some cities on motor vehicles using city streets. T.C.A. § 6-55-501 provides that "no tax (for the privilege of driving any motor vehicle upon streets) under any guise or shape shall hereafter be assessed, levied, or collected by any municipality." However, T.C.A. § 6-55-502 somewhat equivocally provides that the law shall not "abridge [a city's] right to require city automobile tags." The same section also authorizes cities to operate automobile safety lanes and inspection stations. Cities are prohibited from imposing a wheel tax on vehicle owners living outside the city. T.C.A. § 7-51-702.

State vehicle license plates must be stamped in a way that will provide space to display a municipal wheel tax sticker. This provision supersedes any local requirement respecting the display of such stickers. T.C.A. § 55-4-103(b). A city may contract with the county clerk of the county in which it is wholly or partially located to collect its motor vehicle regulatory fees when motorists obtain their state licenses from the clerk. T.C.A. § 7-51-703.

Refuse Collection Fees

Many cities have a long history of charging for collecting garbage and other refuse. Some charge only for pickups from businesses. The Solid Waste Management Act of 1991 explicitly authorizes cities to charge solid waste disposal fees, which may be collected through electric utility bills. T.C.A. § 68-211-835. Cities that fund waste disposal by special assessment are allowed to bill homeowners on their property tax notices. T.C.A. § 67-5-103.

A municipality may not collect amounts owed for solid waste disposal charges, or make refunds of overpayments, if the payment is more than 36 months past the date the payment was first due. T.C.A. § 28-3-304.

Stormwater Management Fees

T.C.A. §§ 68-221-1101, *et seq.*, allow municipalities to levy fees for the privilege of discharging stormwater. Persons who do not discharge stormwater through the stormwater or flood control facilities of a municipality, including owners and operators of agricultural land, are exempt from stormwater fees.

Local Population Counts

Most state-shared taxes are distributed on the basis of population data certified by the Tennessee State Planning Office as of July 1 each year. A rapidly growing city may take, at its expense, four city-wide censuses between federal decade counts to keep its revenue current. After the local census is certified by the State Planning Office, the new population count is used to compute state-shared revenues the following July. T.C.A. § 67-6-103(b)(3), T.C.A. § 54-4-203(b). Special censuses that count newly annexed residents of a city are not subject to the four-per-decade limit. T.C.A. § 6-51-114.

State-Shared Taxes and Appropriations for the Coming Fiscal Year

Reference Number: MTAS-545

The Tennessee Department of Revenue makes payments of state-shared revenues to all Tennessee municipalities based on population. MTAS tracks the monthly revenues reported by the Department of

Revenue and uses those along with estimates to forecast what cities may expect to receive in the coming fiscal year.

The first column in the chart below shows an updated estimate for the 2018-19 fiscal year (\$138.40). The second column takes what is estimated through June, uses available market data for 2019-20 and the increase in gas and motor fuel taxes generated by the IMPROVE Act and makes a conservative estimate of state-shared revenues for the 2019-20 fiscal year (\$141.80). This estimate is preliminary, especially since only eight months of actual data are available at this time. This is to be used as a tool in estimating projected revenue for the 2019-20 fiscal year. It is but one tool, and a multi-year trend analysis should also be prepared to assist in determining the appropriate estimate for the FY 2019-20 budget.

NOTE** The IMPROVE Act of 2017 provided for additional gas and motor taxes. For FY 2019-20 the Act provides for an additional 1 cent of gas tax and 3 cents of diesel tax. Through November 2018 state sales tax shows a state-wide increase of slightly more than 6 percent over the prior year. State beer tax, the special petroleum tax and the TVA in-lieu-of tax remain essentially unchanged. Gasoline and motor fuel taxes have increased about 6.8% percent over the prior year due primarily to the IMPROVE Act. MTAS will review monthly actual revenue and will update the estimate if it changes significantly.

	Updated Estimate 2018-2019	Initial Estimate 2019- 2020
General Fund	Per Capita Amount	Per Capita Amount
State Sales Tax	\$88.00	\$89.00
State Beer Tax	.50	.50
Special Petroleum Products Tax (City Streets and Transportation Revenue)	2.00	2.00
Gross Receipts Tax (TVA in lieu of taxes)	11.90	11.80
Total General Fund Revenue	\$102.40	\$103.30
State Street Aid Funds		
Gasoline and Motor Fuel Taxes	\$36.00	\$38.50
Total Per Capita (General and State Street Aid Funds)	\$138.40	\$141.80

Petroleum Taxes

Reference Number: MTAS-137

Gas Tax

Public Acts 1997, Chapter 316, effective January 1, 1998, repealed entirely the previous laws governing petroleum taxes (the "gas tax") and replaced it with the Petroleum and Alternative Fuels Tax Law, codified at T.C.A. §§ 67-3-1201, *et seq.* The Petroleum and Alternative Fuel Tax statutes subsequently were transferred to T.C.A. §§ 67-3-101, *et seq.* That law imposes a state tax on various petroleum products sold in Tennessee. Most of the proceeds from this tax go into the state highway fund, state sinking fund, state general fund, and other state funds or programs, but the law also provides that counties and municipalities receive a share of the tax. However, tax rates and formulas for the distribution of those taxes, including the shares for counties and municipalities, cannot be determined solely from the face of the law. Those rates and formulas require extensive reference to the previous

laws governing petroleum taxes and to the public acts upon which they were based, particularly Public Acts 1985, Chapters 419 and 454; Public Acts 1986, Chapter 931; and Public Acts 1989, Chapter 46.

Public Acts 2017, Chapter 181 (the "IMPROVE" Act) amends T.C.A. § 67-3-201(a) by increasing the gasoline tax to 24 cents per gallon from July 1, 2017 to June 30, 2018 and increases the tax an additional 1 cent on July 1, 2018 and July 1, 2019. It also amends T.C.A. § 67-3-202(a) by increasing the diesel tax to 21 cents per gallon from July 1, 2017 to June 30, 2018 and increases the tax an additional 3 cents on July 1, 2018 and July 1, 2019. These additional taxes are noted on the monthly state-shared distribution report to each local government as "2017 Gasoline Tax".

Counties and municipalities share in the proceeds of petroleum taxes. In general, counties receive about 30 percent of the proceeds and municipalities about 15 percent. The state retains roughly 55 percent of the proceeds.

Except where specifically indicated otherwise:

- Fifty percent of the counties' shares are divided equally among the 95 counties, 25 percent on the basis of area and 25 percent on the basis of population;
- Municipalities' shares are divided based on the population each municipality bears to the aggregate population of all municipalities, according to the federal census or a special census as prescribed by T.C.A. § 54-4-203, T.C.A. § 67-3-901(b), (c), (f)(2) and (i); T.C.A. § 67-3-905; T.C.A. § 67-3-1108; T.C.A. § 54-4-103; and T.C.A. § 54-4-204; Op. Tenn. Atty. Gen. No. 86-136; and
- The money each individual municipality receives under the Petroleum and Alternative Fuels Tax Law is paid into the municipality's state street aid fund and is required to be administered and spent under the law that governs that fund. T.C.A. § 54-4-103, T.C.A. § 54-4-204.

Special Privilege Tax; Export Tax

T.C.A. § 67-3-203 levies a special privilege tax of 1 cent per gallon on all petroleum products, and T.C.A. § 67-3-205 levies an export tax of one-twentieth of 1 cent per gallon on certain petroleum products exported from Tennessee. Ninety-eight percent of the proceeds from these taxes are paid into the state highway fund, and 2 percent is paid into the state general fund for administrative purposes. From the actual proceeds of those taxes, there is established a local government fund of \$12,017,000. "The local government fund shall be used solely for county roads and city streets." Counties receive from this fund the monthly sum of \$381,583 based on county population; municipalities receive from the fund a monthly sum of \$619,833, based on municipal population. ^[1] T.C.A. § 67-3-2006.

Local Option Gasoline Tax for Public Transportation

T.C.A. §§ 67-3-1001, et seq., authorize municipalities and counties to levy a local gasoline tax of 1 cent per gallon to fund public transportation systems, but no local government has used this authority.

[1] \$10,000 per month is deducted from the municipalities' share to help support The University of Tennessee training program, which is now housed at MTAS.

State Street Aid Fund Revenues

Reference Number: MTAS-546

The Tennessee Legislature authorized the state to distribute a portion of the proceeds from the state gasoline fuel taxes to incorporated cities and towns for use on municipal streets. Each year MTAS estimates the per capita amount of state street funds cities will receive. The per capita amount estimated for fiscal year 2019 is \$34.30.

State Gasoline Tax Revenue

The state petroleum and alternative fuel taxes for fiscal year 2019 are:

- Gasoline tax — 25 cents per gallon;
- Diesel tax — 24 cents per gallon;
- Liquefied gas tax — 0.19 cents per gallon; and
- Natural gas tax — 0.18 cents per gallon.

These tax amounts include a special privilege tax of 1 cent per gallon on petroleum products and a 0.4 cent petroleum tax for the underground storage tank fund.

The proceeds from these taxes are paid monthly to local governments on a per capita basis. The law permits motor vehicle fuel tax monies to be used for street-related purposes. The law further requires that these funds be accounted for separately in a special revenue fund, commonly titled the state street aid fund or gas tax fund. Cities may request permission from the state comptroller's office to account for these funds in the general fund. T.C.A. § 54-4-204. See T.C.A. § 54-4-203 for distribution of funds for premier tourist resort cities.

Definitions

- "Municipal Street Aid Fund" means the funds provided for municipalities from state gasoline fuel taxes;
- "Municipality" means any incorporated city or incorporated town charged with the duty of constructing and maintaining streets within its corporate boundaries;
- "Street" includes streets, highways, avenues, boulevards, publicly owned rights-of-way, bridges, tunnels, public parking areas and other public ways dedicated to public use and maintained for general public travel lying within a municipality's corporate boundaries; and
- "Street improvements" means construction, reconstruction, improvement, and maintenance of streets, including paving, repaving, grading and drainage, repairs, cleaning, acquisition and maintenance of rights-of-way, extension and widening of existing streets, elimination of railroad grade crossings, acquisition or lease or lease/purchase of trucks or other equipment necessary in the construction and maintenance of streets, including the purchase, construction or leasing of facilities to store equipment, street lighting, signage, and other traffic control devices, and administrative and other necessary expenses, including labor and employee benefits, in connection with such street improvements. T.C.A. § 54-4-201.

Administration

Each municipality is required to keep records of receipts and expenditures for its state street aid fund in accordance with sound municipal accounting practices. At the end of each fiscal year the municipality must provide an audit of the accounts of the fund by a certified public accountant, and submit one certified copy of the audit to the comptroller of the treasury to be reviewed for compliance with the provisions of the statute. Minimum standards for municipal audits prescribed by the comptroller of the treasury must be met. see T.C.A. § 54-4-204(c).

All purchases made by a municipality with state street aid funds are required to be in conformity with public advertisement and competitive bidding laws applicable to the particular municipality. Generally, municipalities must follow the provisions of the 1983 Municipal Purchasing Law.

Municipalities are not required to employ a licensed engineer to prepare bid specifications and estimates. T.C.A. § 54-4-204 (d)(2). Upon written request of a municipality, the comptroller of the treasury may authorize that funds received from municipal state street aid fund may be kept and accounted for in the general fund of the municipality. Fund revenue and expenditures related to funds received for the municipal street aid fund are required to be accounted for separately in the general fund in such a manner as to allow identification of the source of revenue and the expenditures related to such revenue.

Funds in the municipal street aid fund may be used by municipalities receiving such funds for funding mass transit systems. No more than 22.22 percent of such funds may be used for funding mass transit. T.C.A. § 54-4-204 (e).

Cities may be eligible for 15-year loans from funds accumulated and set apart from petroleum funds to fund costs incurred in relocating, moving or reinstalling utility facilities, without any additions. Such loans are allowable only for relocating utility lines located within rights-of-way of highways on the system of state highways if relocation is required because of highway construction projects administered by the department of transportation. Applications for assistance should be directed to the State Utility Management Review Board. (see T.C.A. § 67-3-901 (j)). Cities are advised that utility relocation expenses for state highway projects may be paid for with state highway project funds.

It is a Class C misdemeanor for any municipal official or employee to authorize, direct, or permit the expenditure of such funds for any purpose, except those authorized by the state law. Any municipal

official or employee who violates this provision shall be personally liable for any unauthorized expenditures of such fund. T.C.A. § 54-4-205.

State Street Aid Fund Explained

Reference Number: MTAS-547

General

State street aid funds can pay:

- Street improvements, including work by TDOT or by a county highway department or another municipality, performed under an agreement;
- Valid administration expenses connected with issuing street improvement bonds;
- Principal and interest on street improvement bonds or other indebtedness incurred to pay for street improvements issued after February 19, 1953;
- Street work supervision fees;
- Workers' compensation insurance for employees engaged in street improvement activities;
- General and automotive liability insurance coverage of street improvement activities;
- Property insurance coverage for portions of buildings used to store and maintain street improvement equipment; and
- Mass transit systems, provided that such funding shall not exceed 22.22 percent.

State street aid funds can't pay:

- Auto expenses for the city recorder;
- Salary supplements to the street superintendent;
- Loans temporarily borrowed from the municipal state street aid fund;
- Audit fees;
- Recorder's commission;
- Personal damages;
- Property damages;
- Office assistance; or
- General administrative expenses.

Be careful:

- If a city makes curb and gutter improvements and pays the total cost from state street aid funds but has assessed the abutting property owners for two-thirds of the cost, the funds derived from the assessments must remain available for other qualified street projects;
- Interest received by a municipality from the investment of state street aid funds is subject to the same restrictions as the state street aid fund money; and
- A city must keep records in accordance with sound municipal accounting practices and include the state street aid funds in the year-end audit.

Construction

State street aid funds can pay for:

- Engineering fees for street improvements. Cities are not required to employ licensed engineers to prepare bid specifications and estimates;
- Constructing sidewalks along city streets;
- Acquiring rights-of-way for city streets, including approaches to bridges and tunnels;
- Widening and/or draining a creek to prevent city street flooding, where the primary purpose is to stop street flooding. Protecting other property may be an incidental benefit;

- Up to one-third of the city's rights-of-way acquisition costs for a state highway through the city; and
- The city's part of the cost of grade eliminations on streets and highways, including state and federal highways.

State street aid funds can't pay for:

- Extending municipal sewer lines even if tunneling under city streets is necessary; or
- Drainage improvements not associated with protecting a street.

Be careful:

- Funds may not exceed one-third of the total costs of rights-of-way for state and federal highways within the municipality; and
- All purchases must be made in conformity with public advertisement and competitive bidding laws applicable to the city.

Repair and Maintenance

State street aid funds can pay for:

- Purchasing machinery to repair and maintain municipal streets;
- Purchasing and maintaining equipment for mowing areas within street rights-of-way;
- Removing dead trees, tree limbs, leaves, and similar objects;
- Purchasing boiler for asphalt plant if used to heat asphalt for street improvements; and
- Purchasing street cleaning equipment.

State street aid funds cannot pay for:

- Maintaining county roads; or
- Purchasing refuse pick-up equipment.

Be careful:

If purchasing a piece of equipment is questionable, spend the money on other equipment, supplies, or paving.

Street Signs and Street Lights

State street aid funds can pay for:

- Erecting street signs;
- Installing and maintaining traffic lights; and
- Street light installation and electric bills for street lights.

State street aid funds cannot pay for:

- Welcome-to-the-city signs; or
- Community event and general informational signs.

Other Facilities

State street aid funds can pay for:

- Purchasing, constructing, repairing, or leasing a facility to store street equipment, street lighting, signs, and other traffic control devices.

Cities are advised to use municipal street aid funds for known eligible expenditures and fund questionable expenditures from the general fund.

Amusement Taxes

Reference Number: MTAS-564

The State of Tennessee taxes certain types of amusements, and these taxes are levied in different ways and authorized under different sections of the *Tennessee Code Annotated* (T.C.A.). There is some confusion and overuse of the term "amusement tax."

In 1984, the General Assembly passed a law extending state and local sales taxes to certain amusements. This law, labeled the "Amusement Tax," is codified under the "Sales and Use Tax" section of T.C.A. § 67-6-212. The law levies a tax equal to the sales tax on specific sales (amusement type items or events) that were previously exempt from sales taxation. These taxable amusement events, listed on the following page, consist primarily of recreational club dues and charges for attending or participating in sporting events.

Coin-operated amusement machines are taxed differently than amusement events as defined under T.C.A. § 67-4-507. This section was repealed in 2002 and replaced by T.C.A. § 67-4-2201 - 2207, now called the "Coin-Operated Amusement Machine Tax Act." Sales and revenues from coin-operated amusement machines are *not* subject to state or local sales taxes or to the amusement tax cited above in T.C.A. § 67-6-212.

However, coin-operated amusement machines are taxed exclusively by the state through an annual master license and sticker attached to each machine. These annual fees, listed in T.C.A. § 67-4-2204, have increased considerably. Owners of fewer than 50 coin-operated amusement machines pay \$500 each year for a master license. The fee is \$1,000 for those owning more than 50 but fewer than 200 machines. A person who owns more than 200 machines pays \$2,000 every year. Additionally, another \$10 per machine is charged for the privilege of owning and offering a machine for commercial use. After payment is received, the Commissioner of Revenue issues a decal to be affixed to each machine as evidence that the tax has been paid.

Not all coin-operated machines are amusement devices. Part of the confusion over amusement taxes stems from the taxes on vending machines. A vending machine was defined in T.C.A. § 67-4-506(a) as a machine that sells a tangible item with a market value roughly equal to the value of the money deposited in the machine. Vending machine gross receipts were taxed at a special rate of only one and one-half percent (two and one-half percent on tobacco items) in lieu of sales tax. That section was repealed and replaced in 2002 with T.C.A. § 6-102(24)(l). The new law eliminates the special tax rates (one and one-half percent) and simply makes all vending machine gross receipts subject to both state and local sales taxes.

The Amusement Tax (T.C.A. § 67-6-212), which has nothing to do with machines, has been amended several times since 1984. Currently, this law extends the sales tax to certain "amusement" activities:

- Dues and membership fees for sports and recreation clubs;
- Sales of tickets, fees, or other charges made for admission to or voluntary contributions made to places of amusement, sports, entertainment, exhibition, display, or other recreational events or activities;
- Charges for the privilege of entering or engaging in any kind of recreational activity when no admission is charged to spectators;
- Charges made for using items for amusement, sports, entertainment, or recreational activities;
- All charges for admission to professional sporting events, including seat license, skybox, luxury suite, or any other accommodation for spectators, whether styled as a license, lease, rental or otherwise.

With T.C.A. § 67-6-212, the General Assembly was attempting to tax events in the private sector, such as concerts or spectator sports. Specific exemptions also were placed in law resulting in more listed exemptions than items taxed. Generally, these exemptions are for recreational events held by cities, schools, and nonprofit organizations. There are several exemptions from the amusement tax listed in T.C.A. § 67-6-330. Following is a summary of those exemptions:

- Events held or sponsored by schools from kindergarten through grade 12;
- Proceeds for admission to county or agricultural fairs;
- Membership application fees, dues, or contributions, except the portion attributable to admission prices, paid to federal tax-exempt entities organized under IRS code 501(c)(3), (8), and (19);
- Membership fees or dues of organizations listed in Major Group No. 86 of the Standard Industrial Classification Manual of 1972, as amended. This list is maintained by the Federal Office of Management and Budget;

- Gross proceeds derived from admissions to amusement or recreational activities conducted by:
 - Nonprofit museums, historical sites, or societies;
 - Organizations that have received an IRS determination of exemption under 501(c);
 - Organizations listed in Major Group No. 86 of the Standard Industrial Classification Manual of 1972, as amended, prepared by the Federal Office of Management and Budget;
 - Tennessee historic property preservation or rehabilitation entities defined in T.C.A. § 67-4-2004.
- Fees in any form resulting from the production of television, film, radio, or theatrical presentations. This exemption does not include charges for admission;
- Events or activities conducted upon rivers and waterways in this state whose continued use for recreational purposes is contingent upon revenue produced pursuant to agreements entered into between the state and federal governments, or an agency thereof, which provides for the establishment of a trust fund for such purposes, provided that this exemption shall prevail only if the annual distribution of funds to the state from the trust fund exceeds the amount of revenue to the state that would otherwise be produced if the amusement tax were imposed;
- All sales committed to or paid for prior to June 1, 1984;
- Athletic events for participants under 18 years of age sponsored by civic or nonprofit organizations;
- Gross proceeds from admissions to amusement or recreational activities or facilities conducted, produced and controlled by local government;
- Membership assessments for capital improvements made by a recreational club, community service organization or country club;
- Gross proceeds derived from admissions to beauty pageants or rodeos and any fees, charges, or rental fees that entitle the entrant to engage in any otherwise taxable amusement activity held therein that is conducted by a nonprofit civic organization. This exemption applies only to beauty pageants and rodeos that have been held in the same city for 30 years or longer;
- Gross proceeds derived from admissions to musical concerts conducted by nonprofit community group associations if the associations promote, produce and control the concerts;
- Any event held by an employer solely for the benefit of its employees provided the event is produced and controlled entirely by the employer;
- Fishing tournament registration fees collected from tournament participants;
- Money charged for equipment that is paid to qualifying organizations offering the development or preservation of physical fitness through exercise or athletics. Certain qualifications must be met and this exemption is determined by the state on a case-by-case basis;
- Any entry fee that allows an entrant to participate in a horse show;
- Charges for hunting native wildlife paid to landowners in counties with a population of more than 31,900 and less than 32,000 based on the federal census;
- The fee paid by an establishment selling prepared food for live entertainment.

Summary

The amusement tax on certain events is equal to the state and local sales taxes. T.C.A. § 67-6-212 lists events subject to the amusement tax, and T.C.A. § 67-6-330 lists events exempted from the amusement tax. Note that the Department of Revenue has issued letter rulings interpreting the application of exemptions to specific taxpayers.

Coin-operated amusement machines are taxed exclusively by the state through an annual master license and sticker attached to each machine. Coin-operated amusement devices are taxed under T.C.A. § 67-4-2201 *et seq.*

Vending machine gross receipts are now taxed similarly to other taxable sales with both state and local sales taxes. There is no longer a special low rate.

Links:

- [1] <https://www.mtas.tennessee.edu/reference/state-shared-income-tax-hall-income-tax>
- [2] <https://www.tn.gov/content/dam/tn/revenue/documents/taxguides/bustaxguide.pdf>
- [3] <https://www.tn.gov/revenue/taxpayer-education/existing-businesses/request-a-refund.html>
- [4] <https://www.mtas.tennessee.edu/node/143248>
- [5] <https://www.mtas.tennessee.edu/node/143230>
- [6] <https://www.mtas.tennessee.edu/node/143254>
- [7] <https://www.mtas.tennessee.edu/node/143247>
- [8] <https://www.mtas.tennessee.edu/reference/litigation-tax>
- [9] <https://www.mtas.tennessee.edu/reference/litigation-taxes>

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