

Personal Property Taxes in Maryville

I. Authority for collection

Maryville Charter Article X

Section 1. All property within the City not exempt by general law shall be assessed for taxation upon the same principles established in regard to state and county taxation. Assessments made by the county tax assessor may be adopted by the City.

The City shall have the power to levy in any one year for ordinary and general purposes a tax not exceeding \$1.75 on each \$100.00 of the assessed value of taxable property within the City; and such special taxes as are now or shall hereafter be authorized by law.

Section 2. Property taxes shall be payable on and after September 1 for the year in which assessed and shall become delinquent on December 1 following. The Council by ordinance shall fix penalties and interest on delinquent taxes.

Section 3. All taxes delinquent for 30 days may be collected by distress warrants and sale of personal property, and the delinquent tax list in the hands of the collector shall have the force and effect of a judgment and execution from a court of record.

Sections 4 through 6 address real property taxes, and provide for collection through suit in Chancery Court.

Tennessee Code provisions

T.C.A. § 67-5-101. Property subject to tax generally

All property, real and personal, shall be assessed for taxation for state, county and municipal purposes, except such as is declared to be exempt in part 2 of this chapter, or unless otherwise provided.

T.C.A. § 67-5-1806. Bar to collection after ten years

All taxes assessed against real and personal property in this state shall be barred, discharged and uncollectible after the lapse of ten (10) years from April 1 of the year following the year in which such taxes became delinquent, whether suit be brought within that time or not to collect the same, and whether this statute be pleaded n bar of such collection or not, unless the property in question be struck off and sold within such period of ten (10) years as aforementioned.

II. Methods of Collection

There are three ways by which delinquent personal property taxes may be collected: by distress warrant, garnishment or lawsuit. A city may rely on the county trustee for collection, may hire a delinquent tax attorney, or may take these steps without an attorney, although it is not recommended.

Distress Warrants

All delinquent personal property taxes may be immediately collected by the designated municipal tax collector, a delinquent tax attorney or through the county trustee. The tax books and delinquent tax list furnished to the trustee, sheriff or delinquent tax attorney have the force and effect of a judgment and execution from a court of record. T.C.A. § 67-5-2003. The delinquent tax list and tax book provide authority for the officers or delinquent tax attorneys to distrain (seize) and sell a sufficient amount of the personal property to satisfy the delinquent taxes, interest, penalties, costs and attorney's fees. The delinquent personal property taxes may be immediately collected by distraint (distress warrant) and sale of any personal property on which delinquent taxes are owing.

Prior to seizure of property under a distress warrant, the municipal tax collector, trustee, or delinquent tax attorney must give not less than ten (10) days written notice of the intended distraint or seizure. This notice must be either delivered to the person, left at the person's residence or place of business, or mailed to the taxpayer's last known address.

At least ten (10) days before the sale of the property seized, additional notice must be provided. The time and place of the sale of personalty must be given by advertisement posted in three (3) public places in the county, one of which must be the courthouse door. In addition, at least ten (10) days written notice of the sale must be given to the taxpayer by any of the methods listed for the original notice of intent to seize property. The officers conducting the sale must have the personal property present when it is sold, and must be allowed to retain (in addition to the taxes, interest, penalties, costs, and attorney's fees) all commissions, costs, and necessary expenses of seizure, preservation, and storage of the property. If a delinquent tax attorney assists in the sale of the property, the attorney is entitled to fees.

Garnishments

In addition to the distress warrant procedure, the city may have garnishments issued against the taxpayer, to be returned to any general sessions court in the district where the taxpayer resides, or any circuit or chancery court. T.C.A. §§ 67-5-2003, 2004.

Suits to Collect Delinquent Personal Property Taxes

Delinquent personal property taxes may also be collected by lawsuit. To use this method, the city may turn over the delinquent tax list to the delinquent tax attorney thirty (30) days after the taxes become delinquent for inclusion in the suit to collect the prior year's delinquent real property taxes, or as a separate suit. The city may file suit without first having issued a distress warrant. A judgment obtained against a delinquent taxpayer may be enforced as a lien on the property as any other judgment, or may be used to garnish the taxpayer's wages or for seizure and sale of personal property. The following statute authorizes cities to attach liens against a delinquent taxpayer's property.

T.C.A. § 67-5-2101. Taxes on which lien based

(a) The taxes assessed by the state of Tennessee, a county, or municipality, taxing district, or other local governmental entity, upon any property of whatever kind, and all penalties, interest, and costs accruing thereon, shall become and remain a first lien upon such property from January 1 of the year for which such taxes are assessed.

(b) In addition to the lien on property, property taxes are a personal debt of the property owner or property owners as of January 1, and, when delinquent, may be collected by suit as any other personal debt. In any lawsuit for collection of property taxes, the same penalties and attorney fees shall apply as set forth in § 67-5-2410, for suits to enforce liens for property taxes. The claim for the debt and the claim for enforcement of the lien may be joined in the same complaint.

Perhaps the best, or most frequently used, method of collection of delinquent personal property taxes is to capture the amount owed when the personal property is sold. State law, at T.C.A. § 67-5-513, requires the purchaser of a business to check for unpaid personal property taxes of the business. Any taxpayer who sells or terminates a business must notify the assessor and pay all outstanding personal property taxes within fifteen days of the sale or termination. The buyer of the business must withhold sufficient funds from the purchase price to pay the tax liability and retain those funds until the seller produces a certificate of compliance from the assessor and receipts from the trustee or city official for the payment of all taxes. If the buyer does not withhold this amount, the buyer becomes personally liable for these unpaid taxes.

A similar provision applies to the sale of security interests. If any individual, partnership, joint venture, corporation, or other legal entity owns tangible or intangible personal property, assessable by the county assessor or other authority, and the entity then sells the personalty pursuant to the provisions of T.C.A. § 47-9-101, et seq., the party possessing the security interest must withhold from the proceeds of the sale an amount sufficient to satisfy the personal property taxes assessed under T.C.A. § 67-5-2101. A party selling the property who fails to withhold this amount is personally liable to the trustee for these personal property taxes. T.C.A. § 67-5-2003.

What other Tennessee cities are doing to collect personal property taxes

Many cities rely on the county trustee to collect delinquent personal property taxes and deliver the delinquent personal property tax list at the same time the real property list is provided. Franklin and Brentwood rely on Williamson County for collection, and the county immediately has delinquent tax attorney Bill Yoest send letters to the delinquent taxpayers advising them that suit will be filed. Mr. Yoest says that the letters usually result in payment, but he does have to file suit occasionally to collect personal property taxes. He does not use distress warrants until after suit has been filed. Interestingly, Mr. Yoest names each party having a security interest in the property as a defendant to the lawsuit, so that all parties have sufficient notice. Only after receiving a court order does he seize the property for sale. Mr. Yoest claims that Williamson County consistently fights for payment of the full amount of taxes owed.

Germantown is a city that collects its own delinquent personal property taxes. Finance Director John Dluhos states that the city uses a delinquent tax attorney who sends letters to taxpayers and gets good results. Mr. Dluhos does not believe that the city has ever filed suit to collect delinquent personal property taxes. Knoxville likewise collects its own personal property

taxes, and has an attorney on staff to specifically deal with the collection of personal property taxes. He files suit yearly and pursues collection through the court.

Gatlinburg relies on the county to collect their delinquent personal property taxes, but the city does not aggressively pursue collection. As Finance Director David Beeler explains, the city considers personal property taxes to be “a wash” because businesses deduct the amount paid from their business taxes. Gatlinburg has never filed a suit to collect the taxes, and has never seized property for sale.

III. Authority to waive penalties and interest

T.C.A. § 67-5-2801. Personal property taxes, penalties and interest, and attorney fees and costs - Waiver of enforcement and collection.

(a) The local tax administrative officers, being the county trustee with respect to county personal property taxes and the comparable tax collecting officers in a municipality with respect to municipal property taxes, may request the delinquent tax attorney to seek court approval in order to waive the enforcement and collection of all, but not a portion of, personal property taxes, penalties and interest in cases in which the tax collecting officers determine, after reviewing the facts and circumstances, that:

(1) The business or enterprise which was subject to the tax levy had ceased all business operations;

(2) The personal property of an out-of-existence business or enterprise cannot be located after diligent search and inquiry; and

(3) Neither fraud nor an intention to avoid payment of the taxes on the part of the business or enterprise caused the circumstances giving rise to such waiver.

(b) Any waiver under this part shall be included and set forth as a credit in the monthly settlement and annual statement pursuant to §§ 67-5-1903 and 67-5-1904.

(c) With respect to personal property taxes, penalties and interest for which no delinquent tax lawsuit has been filed, but for which court approval has been sought and obtained for waiver as provided in subsection (a), the local tax administrative officers shall provide a report to the chief executive officer of the local government of the taxes, penalties and interest waived under this section. With respect to delinquent personal property taxes, for which the delinquent lawsuit has been filed, the court having jurisdiction of the delinquent tax lawsuit may, upon motion and a finding that the factors outlined in subsections (a)(1)-(3) exist, order the waiver of enforcement and collection of all, but not a portion of, such personal property taxes, penalties and interest, and attorney fees and costs.

This statute sets out the only manner through which personal property taxes, penalties and interest may be waived. It provides for an “all or nothing” scenario, since the waiver must apply to all amounts, not just the penalties or specific years.

Although the code states that municipal officers have the duty “to furnish the county trustee or the trustee’s attorney certified lists of delinquent municipal taxes,” so that all

delinquent taxes may be collected at the same time, *there is no requirement that all delinquent tax lists for every year be turned over to the trustee.* T.C.A. § 67-5-2404(a)(4). Once the delinquent tax list is provided to the county trustee, he has an affirmative duty to employ a lawyer to file suits to collect the taxes owed. T.C.A. §§ 67-5-2404, 2406. If the county trustee fails to hire an attorney to file lawsuits for tax collection, the attorney general has the duty to step in and either hire an attorney to file tax suits, or file suit to compel the county trustee to do so. T.C.A. § 67-5-2406.