

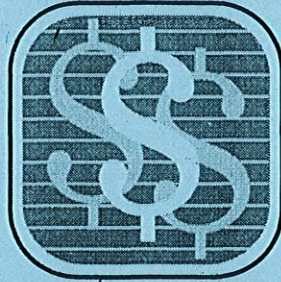
Tax Collection—Delinquent Taxes

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**Collection of Delinquent
Real Property
Ad Valorem Taxes
in Tennessee**

Written by
Charles E. Griffith, III and Ogden Stokes

APRIL 1979

Published by
**THE UNIVERSITY OF TENNESSEE
INSTITUTE FOR PUBLIC SERVICE**



- Center for Government Training
- County Technical Assistance Service
- Municipal Technical Advisory Service

Tax Collection—Delinquent Taxes

9

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IN TENNESSEE

Written By:

Charles E. Griffith, III
Ogden Stokes

Bartholomew, Cleary, Stokes & Mudter, P.A.

Published By:

The University of Tennessee's
Center for Government Training
County Technical Assistance Service
and
Municipal Technical Advisory Service

Revised Edition

April, 1979

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Helping City, County, State Government,
Business and Industry Officials
Build a Better Tennessee

Institute for Public Service

The University of Tennessee • 109 Student Services and Administration Building • Knoxville 37916 • Telephone 615/974-6623

April, 1979

Dear Local Government Official:

Collection of delinquent property taxes is one of the more complex and confusing procedures which local government officials must administer each year. Yet, the collection of these delinquent tax liens is particularly critical now for cities and counties faced by ever-tightening budgets.

Equally significant is the fact that sound, prudent management in the post-"Proposition 13" climate dictates that all approved local revenue sources be fully utilized.

Because of their collective responsibilities to provide technical assistance and training for officials of the state's local government, three agencies of UT's Institute for Public Service have jointly published this revised edition of Collection of Delinquent Real Property Ad Valorem Taxes in Tennessee.

The Center for Government Training, County Technical Assistance Service and Municipal Technical Advisory Service contracted with the original authors, Charles E. Griffith, III, and Ogden Stokes, to revise their 1973 manual.

Copies of the manual will be distributed to appropriate city and county government officials during training sessions planned for Spring, 1979, and later as needed.

It is our hope that the manual will provide the assistance required for the administrator responsible for delinquent tax collection procedures.

Sincerely,

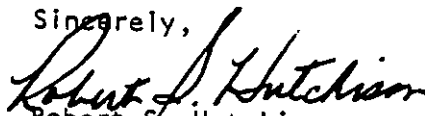

Robert S. Hutchison
Executive Director

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PREFACE

The first edition of this publication was published in November, 1973. The work represented the first attempt ever to collect all relevant Tennessee authority on the subject of delinquent property tax collection procedures. The initial edition of this manual was precipitated by the results of a questionnaire circulated by the Tennessee Municipal Attorneys Association. The questionnaire responses indicated that city and county attorneys across the State were concerned about the complex and confused state of the law governing the enforcement of property tax liens.

Shortly after the publication of the first edition of this manual, the people of the State of Tennessee amended the State Constitution as to local government taxes and as a result the Tennessee General Assembly significantly revised delinquent tax collection procedures. As a result of these legislative enactments, a revision of this publication became necessary. This revision represents an effort not only to reflect the statutory and case law changes which have taken place since the initial writing, but also to refine and expand the original scope of the work.

The primary purposes of the 1973 manuscript were to attempt to clarify the areas of confusion in the delinquent tax collection procedure and to indicate a possible procedure for attorneys filing suits for the collection of delinquent real property taxes. The purposes of this revision are the same; the procedures articulated herein reflect the statutory changes enacted since original publication and the authority originally cited has been strengthened considerably, with both old and new decisions of Tennessee courts.

Although the General Assembly has already made significant changes in the tax collection procedure, the present procedures remain in many ways less than perfect. Extensive amendments to the present statute are being introduced for consideration by the Tennessee General Assembly.

The editors would like to acknowledge the work and very able assistance of Mr. Gary Christian without whose efforts this revision would not have been completed.

CHAPTER ONE:

Constitutional and Statutory Authority

"The taxing power is an essential incident of sovereignty. The only limitations upon it must be sought in the organic law. It is not conferred by constitutions -- but we look to them only for the limitation upon it. If they do not exist in the Constitution they do not exist at all, and the State is left to measure the exercise of this tremendous power by its necessities alone."¹

As the above quote indicates, the State's power to tax is inherent in its existence as a sovereign. This taxing power is unlimited except by the organic law -- the Constitution.² The Constitution of the State of Tennessee has proscribed the power to tax by providing that "... no man shall be...disseized of his freehold, liberties, or privileges...or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land."³ Furthermore, the Constitution requires that "... [a]ll property shall be taxed according to its value, that value to be ascertained in such manner, as the Legislature shall direct, so that taxes shall be equal and uniform throughout the State."⁴ Pursuant to these constitutional mandates, the State of Tennessee has the power to impose a uniform tax on all lands within its boundaries. Since the passage of Question 3, the Legislature is authorized to provide for the classification of real and personal property for purposes of taxation. Such classification does not affect the appraised value of property but does have a direct bearing on the assessed value. Since lands are subject to taxation, it follows that they may be made subject to sale for delinquent taxes, because the power to tax implies the power of the State to enforce the collection of the tax.⁵ Therefore, the State in its sovereign capacity may prescribe the mode of collecting the tax, since the right to tax without the power to enforce payment by sale of the land would be of no avail.⁶

Most of the early Tennessee statutes pertaining to the sale of land for delinquent taxes, dating as far back at 1858,⁷ have been repealed or amended.⁸ A number of the provisions of chapter 602 of the General Assessment Act of 1907, however, have been retained by the present statute.⁹ Perhaps the most far-reaching statutes were the Acts of 1921 and 1923,¹⁰ both of which constitute the major basis for

FOOTNOTES

1. Friedman Bros. v. Mathes, 55 Tenn. 488, 492 (1872).
 2. Harrison, Pepper & Co. v. Willis, 54 Tenn. 35 (1871). See generally Parker, Tax Problems Presented by the Tennessee Constitution, 4 Vand. L. Rev. 116 (1950).
 3. Tenn. Const., Art. 1, §8.
 4. Tenn. Const., Art. 2, §28. See State Nat'l Bank v. City of Memphis, 116 Tenn. 641, 94 S.W. 606 (1906).
 5. Tenn. Const., Art. 1, §28.
 6. Nance v. Hopkins, 78 Tenn. 506 (1882); Myers v. Park, 55 Tenn. 550 (1875).
 7. See 85 C.J.S. Taxation §746.
 8. Code Tenn. 1858, ch. 5, art. 4.
 9. The enactment of 1858 was repealed by Acts 1873, chapter 118; see Cason v. Newsom, 55 Tenn. (8 Heisk.) 446 (1873). Acts 1873, chapter 118, was itself declared unconstitutional, and it was replaced by Acts 1895, chapter 120. Acts 1897, chapter 1, as to assessment and collection of revenue, repealed Acts 1895, chapter 120, but it excepted certain provisions thereof from the operation of the repealing clause; see Levy v. Acklen, 2 Tenn. Ch. App. 201 (1901). Sale proceedings must be in compliance with any amending or subsequent statute. Treece v. American Ass'n, 122 F.2d 598 (Cir.), cert. den. 191 U.S. 568 (1903); Bugher v. Prescott, 23 F. 20 (Cir. 1885).
 10. See, e.g., Tennessee Code Annotated §§67-501, -1302, -1303, -1313, -1318, -1319, -2016, -2023, and -2025 [hereinafter cited as T.C.A.]. See also Tennessee Fertilizer Co. v. McFall, 128 Tenn. 645, 163 S.W. 806 (1912).
 11. The Delinquent Tax Law of 1921 amended the Act of 1907, chapter 602; it repealed the Acts of 1909, chapter 586, and 1911, chapter 37.
 12. The Act of 1921, ch. 115, §2, corresponds roughly with T.C.A. §§67-2007, -2013, -2014, and -2017. The Act of 1923, chs. 71 and 77, are embodied in T.C.A. §§67-1105 -1301 et seq., and -2001 et seq. The foregoing provisions of the delinquent tax law are constitutional. See Sherrill v. Thomason, 145 Tenn. 499, 238 S.W. 876 (1921).
- A subsequent statute, the Tax Moratorium Act of 1935, froze tax suits from the Act's effective date until December 31, 1935. See Tennessee Marble & Brick Co. v. Young, 179 Tenn. 116, 163 S.W.2d 71 (1942).
13. Tennessee Fertilizer Co. v. McFall, 128 Tenn. 645, 163 S.W. 806 (1913); East Tennessee Brewing Co. v. Currier, 126 Tenn. 535, 150 S.W. 541 (1912).
 14. Since the tax statutes provide that upon a sale for taxes the State shall bid a sufficient sum to protect the State, the county, and the municipality, a special act authorizing a particular municipality to buy land at a tax sale is unconstitutional. State v. Collier, 165 Tenn. 28, 52 S.W.2d 361 (1932).

CHAPTER TWO:
ASSESSMENT AND COLLECTION OF REAL PROPERTY TAXES
IN TENNESSEE

Delinquent tax collection procedures are valid only if the prior assessment and levy of the underlying tax has been lawfully completed.¹ As a result, a sound working knowledge of the procedural steps involved in the assessment, levy, and collection of real property taxes in Tennessee becomes quite important to the attorney responsible for the prosecution of delinquent tax suits and tax sales.

This chapter will chronologically present the statutory procedures for assessment, levy, and collection of ad valorem taxes in Tennessee. Careful attention should be given to the applicable case and statutory law referenced in the footnotes, since only a summary explanation is given in the text. A composite list of dates significant in the assessment, levy, and collection procedures for real property taxes is included at the end of this chapter. Since the variety of procedures for assessment, levy, and collection of property taxes in Tennessee spans several years, this discussion will be based upon the tax year 1979 for ease of reference.

In Tennessee, the annual assessment of real property by the county assessor is based upon property values as of January 1 of the tax year, the so-called "Tax Date."² In completing the annual assessment of real property, the assessor is to be guided by assessment manuals approved by the state board of equalization. Such manuals are statutorily required to list the following eight factors for use in determining real property values: 1) the location of the property; 2) current use of the land; 3) whether the property is income-bearing or not; 4) zoning restrictions on use; 5) legal restrictions on use; 6) availability of utilities and municipal services; 7) natural productivity of the soil (although the value of growing crops is not to be considered); and 8) all other factors and evidence of value "generally recognized by appraisers as

Not later than May 20, 1979, the assessor of property must note on his books all assessments against taxable real property in his county.⁸ Also on or before this date, the assessor or his deputy must notify or cause to be notified each taxpayer of any change in the classification or assessed valuation of his property.⁹ A record of such notification of changes in classification or assessed valuation must be preserved by the assessor for a minimum of two years from the date of notification.¹⁰

In the event that property is inadvertently underassessed by the assessor, the property is not subject to a back assessment to recover the lost amount provided that there has been no connivance or fraud by the taxpayer and provided further that the land has not escaped taxation entirely.¹¹ Recent Tennessee case law states that mere acquiescence in paying the underassessment is not sufficient to constitute fraud.¹²

On June 1, 1979, each county board of equalization begins to meet in regular session for periods of time which vary as provided by statute.¹³ On or before this date, the assessor must make a report of his assessments and must provide the local board of equalization with all of his records pertaining to those assessment figures.¹⁴ The county boards of equalization are authorized to determine the validity of taxpayer appeals and to verify that the assessor's determinations as to assessed valuation are proper, just, and lawful, and in accordance with all relevant state laws.¹⁵ The assessor is required by law to sit with the county board on each day of its sessions to serve it in an advisory capacity, and to render assistance to the board in the performance of the board's duties in equalizing assessments.¹⁶ The decisions of the county board of equalization are final, except as they may be altered by the state board of equalization.¹⁷ The right to appeal county board decisions to the state board of equalization is vested in aggrieved taxpayers and in the county assessor in the event

On the first Monday in July, 1979, or as soon thereafter as practicable, each county court is required to fix county tax rates on all properties within its respective jurisdiction.²³ Each county court must thereafter impose upon either the county court clerk or the assessor of property the duty of developing from the latest assessment books prepared by the assessor, either tax books or unit ledger cards.²⁴ Such books or unit ledger cards constitute the "tax rolls", and must be completed and delivered to the county trustee on or before the first Monday in October, 1979.²⁵

The county trustee thereafter enters upon the tax rolls the amount of taxes due on each parcel within his county, based upon the tax rates as set by the county court. At this time (on the first Monday in October, 1979), most municipal and county taxes become due and payable.²⁶ Taxes of certain municipalities may be authorized to be collected locally rather than by the county trustee, and such taxes may thus become due and payable on dates other than the first Monday in October.²⁷ Further, the county trustee with the consent of a majority of the members of the quarterly county court, in a county with a consolidated city/county government (Nashville/Davidson County) is authorized to establish due dates different from the first Monday in October, where necessary "to avoid the destruction of existing municipal fiscal policies."²⁸

The county trustee, in his capacity as tax collector, is required to visit each civil district in his county at least once annually, for the purpose of collecting revenues. Such visits must be preceded by public notice of the time and place of his visits at least twenty (20) days prior to his arrival.²⁹

Taxpayers who fail to pay their assessed taxes promptly are subject to delinquency penalties and interest. These begin to accrue on different dates, depending upon the population of the county in which the assessed land is located. In a

not less than 32,500 nor more than 32,600;
not less than 43,900 nor more than 44,100;
not less than 47,800 nor more than 50,700;
not less than 65,650 nor more than 74,100;
not less than 200,000 nor more than 260,000;
and not less than 721,500 nor more than 723,500³³

In addition to the notices of delinquency required in those enumerated counties as set forth in T.C.A. Section 67-1121 and discussed above, in all counties in Tennessee the county trustee is required to place in one or more county newspapers a warning notice to delinquent taxpayers. The warning notice must be published in a county newspaper once a week for two consecutive weeks, and must be published at least ten (10) days prior to the date of delinquency (i.e., prior to January 5, 1980 in Shelby County and prior to February 19 or 20, 1980 in all other counties in Tennessee.)³⁴ After taxes become delinquent, the county trustee is granted statutory authority to appoint such deputy trustees as may be necessary to assist in the collection of delinquent taxes.³⁵

The most frequent methods for attempting to collect delinquent taxes are mail, telephone, or personal contacts.³⁶ Another method, collection by distraint and sale of personalty, is authorized by statute and can be quite effective. Under T.C.A. Section 67-1305, all taxes remaining delinquent for thirty (30) days are subject to collection through sale "of a sufficient amount of the personal property of any delinquent to satisfy his taxes, interest, penalties and costs."³⁷ Such collection by distraint and sale of personalty has rather obvious political shortcomings, and as a result is not as frequently utilized as other, less drastic methods.

As mentioned above, assessed taxes become a first lien on a taxpayer's property, both real and personal. The furnishing of the tax books to the deputy trustees or to a sheriff indicating tax delinquency thus has the force and effect of a judgment and execution from a court of record.³⁸ According to several Tennessee

are to be imposed after February 1, 1981, are assessed to offset the cost of filing suits against delinquent taxpayers for enforcement of tax liens. Until such suits are filed, the delinquent taxpayer is given notice that he is able to pay back taxes at the trustee's office.⁴⁴

After both of the above procedural requirements have been met (where applicable), the trustee is required to deliver the delinquent tax lists to the delinquent tax attorney. The delinquent tax attorney is chosen by the trustee with the approval of the county executive.⁴⁵ The attorney is then charged with the duty of preparing and filing suits in chancery or circuit courts for the collection of all delinquent land taxes, as well as all arrears of taxes due the state, county, and municipality.⁴⁶

If for any reason suits are not filed within six years from the first of January of the year for which such taxes accrued, the state and municipal tax liens are automatically cancelled and the taxes barred.⁴⁷ Whether suit has been brought or not, all taxes assessed against real property are barred and uncollectable after ten years from the date of delinquency.⁴⁸

16. T.C.A. Sec. 67-802.
17. T.C.A. Sec. 67-809.
18. T.C.A. Sec. 67-810.
19. T.C.A. Sec. 67-201.
20. T.C.A. Sec. 67-810.
21. T.C.A. Sec. 67-840; 67-831.
22. Fentress County Bank v. Holt, 535 S.W.2d 854 (1976).
23. T.C.A. Sec. 67-1004.
24. T.C.A. Sec. 67-1008. The requisite content of the tax books or ledger cards is set forth at T.C.A. Sec. 67-1009.
25. T.C.A. Sec. 67-1008.
26. T.C.A. Sec. 67-1101. State law does not authorize installment or partial payment of taxes. (As to metropolitan governments, see T.C.A. Sec. 6-3724). Various methods, however, have been established by Tennessee municipalities by which taxpayers may pay in installments. See J. Johnson, Current and Delinquent Tax Collection in Knox County, at 13. (Bureau of Public Administration, University of Tennessee, 1960) (hereinafter cited as Johnson, Tax Collection).
27. T.C.A. Sec. 67-1103.
28. T.C.A. Sec. 67-1101; T.C.A. Sec. 67-1103.
29. T.C.A. Sec. 67-1104.
30. T.C.A. Sec. 67-1105; Under T.C.A. Sec. 67-1105, the penalty of $\frac{1}{2}\%$ per month imposed upon realty located in the county continues until the taxes are paid or until the land is finally sold. Upon municipal realty, however, a penalty of 5% accrues upon the date of delinquency, with additional 1% and 2% penalties accruing each month thereafter, until a maximum penalty of 10% is reached. T.C.A. Sec. 67-1106.
31. T.C.A. Sec. 67-1105.
32. T.C.A. Sec. 67-1121.
33. Id.
34. T.C.A. Sec. 67-1301. As part of the notification requirement under this section, the county trustee must forward written notice by first class mail to the last known property owner ten days before taxes become delinquent, in either of the following situations: 1) where no notice has been previously given and the last known property owner resides outside the county in which the land is situated; or 2) as a prerequisite to a distress warrant.

CHAPTER THREE: ENFORCEMENT OF TAX LIENS

The purpose of this chapter will be to view the procedures involved in the preparation of a tax sale. The chapter will first analyze the status and duties of the delinquent tax attorney. Second, an explanation will be given of the mechanics involved in successfully enforcing tax liens. Finally, the proceedings which are required immediately prior to a tax sale will be analyzed and discussed. Special attention should be given to the forms which are referenced in the footnotes and printed in the appendix.

The Delinquent Tax Attorney

As discussed in Chapter Two, after publication of the preliminary notice required by T.C.A. Sec. 67-2001 and the publication of the delinquent tax lists (where applicable) as required by T.C.A. Sec. 67-1304, the county trustee is required to deliver the delinquent tax lists to an attorney chosen by the trustee with the approval of his appointed duties has been held to be performing an essential governmental function in the state's statutory plan for collecting taxes.² The status of the attorney, however, is not as the holder of an office, but rather is construed as that of an attorney dealing with a client.³

The delinquent tax attorney receives no compensation for his services at the time he renders them. Prior to 1978, the delinquent tax attorney's compensation was statutorily fixed at the rate of ten percent of all delinquent taxes. Now, in most Tennessee counties, the delinquent tax attorney's compensation is made the subject of negotiation between the county trustee and the attorney and is subject to the approval of the county governing body. There is a limitation on the amount of compensation

delinquent tax attorney).¹² The bill is to be in substance and form like any other complaint for the enforcement of liens, and must include the names of not less than twenty-five defendant delinquent taxpayers, provided that twenty-five are delinquent.¹³

As set forth above, T.C.A. Sec. 67-2003 does not require a city to file tax suits by means of the county delinquent tax attorney.¹⁴ In fact, it has been held that where a city consistently refuses to certify its list of delinquent taxes to the tax attorney, he may properly file suit to recover state and county taxes alone.¹⁵ More recently, in a 1965 Tennessee Supreme Court decision in the case of City of Nashville v. Marlin,¹⁶ it was held that the City of Nashville had the option of filing tax suits under any of three means: 1) under chapter 20 of Title 67 of the Code, relating to tax suits by the county trustee for the benefit of the county, city and state; 2) under the authority granted by the charter of the City of Nashville; or, 3) under chapter 7 of Title 6 of the Code, which authorizes municipalities to sue for delinquent taxes in chancery court.¹⁷

If the county trustee or the county executive should fail to employ a delinquent tax attorney for the purpose of instituting suit for the collection of unpaid taxes, the district attorney general is required under a recent revision to the Tennessee Code to employ an attorney himself for the purpose of instituting such actions.¹⁸ When such action by the district attorney general is necessitated by the failure on the part of county officials to act, the county incurs a ten percent (10%) penalty of all delinquent taxes payable to the state. The district attorney general is empowered to bring action against the county in behalf of the state when necessary to collect this statutory penalty.¹⁹

After suit is filed for the collection of delinquent taxes, the county trustee is given credit for those taxes for which suit has been filed. The trustee is thus relieved of any further responsibility for the collection of such taxes.²⁹ However, the quarterly county court will only allow credit for delinquent taxes when the trustee has complied fully with all relevant statutory provisions,³⁰ and all items for which the court does not allow credit are charged against the trustee.³¹ Moreover, it has been held that the trustee may be held liable not only for his actual collections, but also for those taxes which he could have collected by the exercise of due diligence.³²

Notice and Service of Process

After the complaint has been filed, a summons must be given to the sheriff to be served upon each defendant taxpayer,³³ for which the sheriff receives a statutory fee of \$2.00.³⁴ A copy of the original complaint filed in court must be printed and supplied to the sheriff to accompany each summons which is served.³⁵ Within thirty (30) days the sheriff must make due "return" on each summons, designating whether and in what manner the service was attempted.³⁶ The plaintiff governing body is allowed to obtain new summonses "from time to time" after any prior summons has been returned unserved.³⁷

In conjunction with the required notification and return by the sheriff, it is essential to note that a tax proceeding is a proceeding in rem.³⁸ As such, the manner in which the court may acquire jurisdiction of the property subject to suit is significant. Authorities are in conflict as to whether there must be an actual "seizure" or attachment of the land in order for the court to acquire proper jurisdiction. A number of cases have stated that a court acquires jurisdiction of a taxpayer's property by virtue of the seizure of the property; all those having an interest in the property are

and requests the court to enter an order requiring the defendant to appear.⁵⁰ A copy of this order must be published in a newspaper for four (4) consecutive weeks.⁵¹ The order of publication in lieu of personal service, which may be made at any time after the filing of the bill, should contain the names of the parties, the style of the court in which the proceedings are had, and the names of the place where the court is held.⁵²

Judicial interpretations of the statutory provision providing for constructive service of process have been prolific. It has been held, for example, that it is within the power of the state to provide, by statute, for bringing into court those nonresidents having an interest in real property situated within the state for the purpose of enforcing a tax lien and that jurisdiction in such cases may be obtained by publication of notice to such nonresidents.⁵³ Other opinions have limited the authority of state courts; thus if the names of defendant taxpayers are unknown, it has been held that there must be strict compliance with the provisions of T.C.A. Sec. 21-216,⁵⁴ and an assessment against the heirs and service upon them by publication has been deemed insufficient.⁵⁵

In a recent decision of the Tennessee Supreme Court in the case of Rast v. Terry,⁵⁶ a tax deed was held not to be necessarily invalid because personal service had not been effectuated. The Court reversed and remanded a Chancellor's order voiding a tax deed, stating, inter alia, that the delinquent taxpayer might have properly been before the court and the tax deed thus valid, despite the fact that the return of summons by the sheriff stating "not to be found in my county" was not made a matter of record and the fact that the court did not issue an order for publication.⁵⁷ Similarly, two considerably older decisions in Tennessee appellate courts have held that notice of the proceeding to collect delinquent taxes is sufficient so long as it makes the taxpayer aware of the proceeding and gives him an opportunity to pay the taxes and to make his defenses.⁵⁸

2. When a minor or incompetent individual is named as a defendant, a motion for the appointment of a guardian ad litem is ordinarily filed. The court is given the authority to appoint such a guardian and set his fees.⁷⁰
3. Where a property owner has acquired property after taxes have been assessed on that property, the plaintiff governing body may file a motion to join new owner in the action.
4. A plaintiff in a delinquent tax action may file a motion for appointment of a receiver to collect rents on the property in order to enforce the tax lien.⁷² It has been held, however, that receivers may not be appointed where the tax lien is against property which is occupied by the owner as the owner's residence.⁷³ There is a conflict of authority relative to whether a receiver may be appointed when the land upon which the tax is owed is not adequate security for taxes due. A Tennessee Supreme Court decision has held that appointment will not be authorized where it is not alleged that the property is adequate security,⁷⁴ apparently ignoring a provision of the Tennessee Code which states that receivers may be appointed, "whether the security for such tax is adequate or not."⁷⁵ Since the receiver's compensation,⁷⁶ including the cost of maintenance, repair, and improvement of receivership property,⁷⁷ is extracted from the gross receipts of the receivership assets before the taxes are paid,⁷⁸ and since the process can be fairly time-consuming in that taxes are often paid from rent or lease proceeds,⁷⁹ and due to the legal limitations mentioned above, the use of receivership is not prevalent as a means of collecting delinquent taxes.⁸⁰
5. If a defendant taxpayer has failed to respond to a suit against him or to otherwise defend the suit within the required time,⁸¹ the plaintiff may file

FOOTNOTES

1. T.C.A. Sec. 67-2002. The tax lists must thus be delivered to the attorney between February 1 and April 1. Prior to a 1975 amendment to T.C.A. Sec. 67-2002, the lists were to be delivered between February 1 and March 1. Where the city recorder failed to certify municipal taxes to the county trustee for collection as provided by T.C.A. Sec. 67-2003, the city was held able to appoint a municipal delinquent tax attorney for the purpose of instituting suit to collect delinquent municipal taxes, and could collect a reasonable fee for so doing. *State v. Delinquent Taxpayers*, 26 Tenn. App. 62, 167 S.W.2d 690 (1942). Where the county trustee and the judge fail to employ the attorney, see T.C.A. Sec. 67-2005.
2. *Brown v. Helvering*, 97 F.2d 189 (6th Cir. 1938).
3. *State ex rel. Harris v. Brown*, 157 Tenn. 39, 6 S.W.2d 560 (1928).
4. T.C.A. Sec. 67-2002; see also T.C.A. Sec. 6-708 (municipal attorney's fees). The statutory ten percent (10%) attorney's fee constitutes a prior lien and is entitled to payment before court costs, interest, any other penalty, and base tax. See *State v. Allen*, 176 Tenn. 670, 145 S.W.2d 769 (1940); T.C.A. Sec. 67-2012.
5. T.C.A. Sec. 67-2008; *State v. Allen*, 176 Tenn. 670, 673 145 S.W.2d 769 (1940); State ex rel. City of Chattanooga v. Bayless, 30 Tenn. App. 621, 209 S.W.2d 504 (1974). The ten percent (10%) fee attaches as an additional penalty when suit is filed.
6. *First Nat'l Bank of Chattanooga v. Coffey*, 170 Tenn. 469, 96 S.W.2d 270 (1936). But see *State v. Allen*, 176 Tenn. 670, 145 S.W.2d 769 (1940).
7. See *Johnson, Tax Collection*, supra, Ch. II, note 13, at 66.
8. *White v. Kelley*, 215 Tenn. 576, 387 S.W.2d 821 (1965); *State v. Bennett*, 181 Tenn. 196, 199, 180 S.W.2d 891, 893 (1944); State ex rel. Bonner v. Andrews, 131 Tenn. 554, 175 S.W. 563 (1914); *State v. Duncan*, 71 Tenn. (3 Lea) 679 (1879).
9. *White v. Kelley*, 215 Tenn. 576, 387 S.W.2d 821 (1965); *City of South Fulton v. Parker*, 160 Tenn. 634, 639, 28 S.W.2d 639, 641 (1930); *State v. Memphis & C.R.R.*, 82 Tenn. (14 Lea) 56, 62 (1884).
10. T.C.A. Sec. 67-2003; See Form 1, Appendix. Prior to 1973 amendments to T.C.A. Sec. 67-2003, suits had to be filed between the dates of February 1 and March 1 of each year. Such suits are prosecuted according to Chancery Court rules of procedure. T.C.A. Sec. 67-2012. For municipal tax suit procedure, see T.C.A. Sec. 6-704 to 6-708. Tax liens on insolvent property (i.e., where liens on property exceed the amount to be received from sale of property at tax sale) may be compromised and settled pursuant to T.C.A. Title 67, Chapter 21.

25. T.C.A. Sec. 67-2008.

26. T.C.A. Sec. 67-2010. It should be noted that such dismissal is at the discretion of the Chancellor. State ex rel. City of Chattanooga v. Bayless, 30 Tenn. App. 631, 209 S.W.2d 504 (1974). See also State v. Patterson, 155 Tenn. 169, 290 S.W. 973 (1927). Under Sec. 67-2010, the Chancellor may dismiss suits for collection of delinquent taxes for "failure to prosecute" sua sponte. State v. Bone, 185 Tenn. 78, 203 S.W.2d 362 (1947).

27. State v. Benner, 182 Tenn. 395, 187 S.W. 2d 609 (1945); State v. McPhail, 156 Tenn. 459, 2 S.W.2d 413 (1928).

28. T.C.A. Sec. 67-2009. Hunt v. Liles, 35 Tenn. App. 173, 243 S.W.2d 149 (1950).

29. T.C.A. Sec. 67-2004. Brown v. Helvering, 97 F.2d 189 (1938).

30. T.C.A. Sec. 67-2004.

31. T.C.A. Sec. 67-1416.

32. Chadwell v. State, 55 Tenn. (8 Heisk.) 340 (1874); 84 C.J.S. Taxation Section 673 (1954).

33. See Form 5, Appendix.

34. T.C.A. Sec. 67-2008.

35. Tenn. R. Civ. P. 4.04.

36. Tenn. R. Civ. P. 4.03.

37. Tenn. R. Civ. P. 4.03; See also Tenn. R. Civ. P. 3. It should be noted that a proposed amendment to Tenn. R. Civ. P. 4.03 would allow for new summonses not only after any prior summons has been returned unserved, but also in the event that such prior summons has not been returned within 30 days after its issuance.

38. T.C.A. Sec. 67-1804; Esch v. Wilcox, 181 Tenn. 165, 178 S.W.2d 770 (1944), citing Obion County v. Massengill, 177 Tenn. 477, 151 S.W.2d 156 (1941); State ex rel. v. Patterson, 155 Tenn. 169, 290 S.W. 973 (1927); Hadley v. Hadley, 114 Tenn. 156, 87 S.W. 250 (1904). Originally, Chancery Courts acted only in personam. The rule was eventually relaxed, due to the inequities inherent in strict adherence to such a rule. Naylor v. Billington, 213 Tenn. 614, 619, 378 S.W.2d 737 (1964), citing Bradley v. Rock Gardens Util. District, 186 Tenn. 665, 212 S.W.2d 657 (1948). In State ex rel. City of Chattanooga v. Bayless, 30 Tenn. App. 621, 209 S.W.2d 504 (1947), it was held that since the City of Chattanooga had a lien upon the property for taxes due the city, a suit to enforce the lien was necessarily a proceeding in rem. Such an action is often referred to as a proceeding quasi in rem.

39. See, Lawrence County v. White, 200 Tenn. 1, 288 S.W.2d 735 (1956); State v. Collier, 160 Tenn. 403, 23 S.W.2d 897 (1930); State ex rel. v. Patterson, 155 Tenn. 169, 290 S.W. 973 (1927). Under common law, "seizure" of real estate is accomplished by attachment.

53. Connor v. Tennessee Cent. Ry., 109 F. 931 (6th Cir.1901); Moore v. Memphis, 184 Tenn. 92, 195 S.W.2d 623 (1946); Anderson v. Stribling, 160 Tenn. 453, 26 S.W.2d 131 (1930). But see Frolich v. Hanson, 155 Tenn. 601, 296 S.W. 353 (1927, a court cannot render a personal judgment against a nonresident defendant who does not appear). Publication for a nonresident is void, however, if it fails to indicate in its caption or elsewhere that the city is the complainant by whom, or for whose benefit, the suit is prosecuted. Donaldson v. Nealis, 108 Tenn. 638, 69 S.W. 732 (1902). By way of dicta it has been said that the word "nonresident" may include domicilaries traveling or residing elsewhere. Saul v. Saul, 122 F.2d 64 (D.C. Cir. 1941). See T.C.A. Sec. 21-218.
54. See Bleidorn v. Pilot Mountain Coal & Mining Co., 89 Tenn. 166, 15 S.W. 737 (1890); Ferris v. Lewis, 2 Cooper's Tenn. Ch. 291 (1875).
55. Peck v. East Tenn. Lumber & Mining Co., Tenn. Ch. App., 53 S.W. 1107 (1899).
56. 532 S.W.2d 552 (Tenn. 1976).
57. Id., at 554.
58. Esch v. Wilcox, 181 Tenn. 165, 178 S.W.2d 770 (1944); Collins v. Oliver, 24 Tenn. App. 337, 144 S.W.2d 9 (1940).
59. In re McCartney, 31 Tenn. App. 171, 213 S.W.2d 25 (1948). For present method of serving minors and incompetents see Tenn. R. Civ. P. 4.04 (2).
60. See Form 15, Appendix.
61. See Tenn. R. Civ. P. 17.03; 1 Gibson's Sections 125, 391, 392; Form 16, Appendix. Under present Rule 17.03, guardians ad litem may be appointed "whenever justice requires." Under a proposed amendment to be considered by the 1978 Tennessee General Assembly, guardians ad litem could only be appointed after the filing of a complaint.
62. Smith v. Smith, 159 Tenn. 36, 15 S.W.2d 747 (1929); 1 Gibson's Sec. 234.
63. The court will take judicial notice that in tax suits it has been the established practice to amend the certified lists in the course of the litigation, and such amendments have been permitted to correct the names of the parties and the description of lands where no rights of intervening parties are affected. State v. Bennett, 181 Tenn. 196, 180 S.W.2d (1944).
64. Tenn. R. Civ. P. 15.01; State v. Bennett, 181 Tenn. 196, 180 S.W.2d 891 (1944); The State may file either an amendment to the original bill or an amended bill. See 1 Gibson's Sections 222, 712-25.
65. Tenn. R. Civ. P. 15.04. See 1 Gibson's Sections 726-38.
66. 1 Gibson's Sections 716, 727.
67. Tenn. R. Civ. P. 15.01. See 1 Gibson's Sec. 721.
68. Tenn. R. Civ. P. 6.04, 7.02, 21.

CHAPTER FOUR:
CONDITIONS PRECEDENT TO A VALID TAX SALE

Three basic prerequisites must be met before a sale of property can be effectuated for the purpose of collecting delinquent real property taxes. These conditions, as set out in the Tennessee Code, are as follows: 1) the land must be subject to sale for taxes; 2) there must be an actual "tax" for the nonpayment of which the land may be sold; and, 3) the levy and assessment of the tax must be regular and in accordance with relevant statutes.¹ Each of these three conditions will be more fully discussed below.

Property Not Subject to Sale

Land that is not subject to sale for taxes falls into three general categories: 1) tax exempt property; 2) nonsaleable property interests; and, 3) property subject to judicial proceedings. It should also be noted that no tax suit may be brought without a legal assessment having been made against the property to be sold.² A fourth category of property in Tennessee includes all property of persons under disabilities, nonresidents, or unknowns; this property is subject to taxation (and thus, to sale for nonpayment of taxes). It will be discussed below, in addition to those land categories which are not subject to sale for taxes.

I. Article II, Section 28 of the Tennessee Constitution sets out the conditions under which the legislature may exempt property from taxation. All statutory enactments must conform to these guidelines set forth in Article II, Section 28. According to Tennessee statutory authority, all property of the United States and of the State of Tennessee and its political subdivisions shall be exempt from taxation. In addition property owned by religious, charitable, scientific, and educational

provisions.¹⁰ In 1974, the Tennessee Supreme Court handed down one of the more important decisions in this area, in the case of Book Agents of the Methodist Episcopal Church, South v. State Board of Equalization, et al.¹¹ Chief Justice Dyer, writing for the court in Book Agents, held, inter alia, that although tax exemption statutes are construed liberally on behalf of religious, charitable, scientific, and educational institutions, what constitutes an exempted use within the context of the statute may not be construed so liberally. The Court determined that a publishing company engaged in the publication of religious literature and owned by a religious institution is not necessarily being utilized for activities or uses which are within the exemption statutes. The Court held, in accordance with T.C.A. Section 67-513(a),¹² that tax should be levied to the extent of the dollar volume of non-exempt activity as compared with the entire dollar volume of business done by the property owners.¹³

II. Certain property interests are not subject to sale for taxes. Under T.C.A. Section 67-602(6), interests in real estate that are owned separately from the general freehold are to be assessed separately. Thus, taxes or penalties against one interest cannot be enforced against the other.¹⁴

The lessor-lessee arrangement is an excellent example of property interests that are separated for purposes of ad valorem taxation. When determining the value of the lessor's interest where there is an outstanding lease, the assessor must deduct from the value of the fee the value, if any, of the outstanding lease. This leasehold value is determined by calculating the present value of the difference between the contract rent and the economic rent; in other words, the difference between what the lessor is actually receiving and the amount for which the property could be leased on the open market. The present value of this difference is the taxable value of the leasehold and must be taxed to the lessee. The leasehold and reversionary interest must be

valid.²⁴ In addition, the sale of land belonging to a nonresident or unknown owner is valid, so long as there has been adequate notice and opportunity to be heard.²⁵

Presence of Actual "Tax"

A second condition precedent to a valid tax sale is that there must be a "tax" for the nonpayment of which the property may be sold. That is, only land which is specifically charged with a "tax" can be sold for nonpayment of that tax. Thus, in the case of Obion County v. Massengill, the Supreme Court of Tennessee held that drainage assessments are not "taxes", but are "special assessments" containing none of the distinctive features of a "tax".²⁶ They are assessed in relation to the advantages accruing to the property as equivalents or compensations for increased value.²⁷ It is thus important to determine whether there is a "tax" involved before a sale of property for nonpayment is contemplated.

Regularity in Levy and Assessment

The third condition precedent to a valid tax sale is that there must be regularity in the levy and the assessment of the tax. In an early case it was held that a court was without jurisdiction to render a decree of sale for delinquent taxes when the assessment of the property was made against one not the owner of the property, although there may have been adequate publication.²⁸ This view has since been relaxed to a degree, to the extent that it now appears that an assessment against a wrong owner will not always be fatal to a tax sale.²⁹ Under a recently enacted provision of the Tennessee Code, the validity of an assessment, levy, or any phase of enforcement of a tax lien " . . . shall not be affected by any defect, error, irregularity or omission in such assessment, levy, or proceeding unless the defect, error, irregularity, or omission shall result in a denial of minimum constitutional guarantees."³⁰ How the Tennessee courts will apply this new statutory provision

FOOTNOTES

1. A fourth condition precedent is that the tax be due and unpaid. See 85 C.J.S. Taxation Sec. 750 (1954).
2. T.C.A. Sections 67-601 to 658 (Cum. Supp. 1978); As to assessment procedures, see Chapter 2, supra.
3. T.C.A. Sections 67-501 to 522; see Tenn. Const. Art. 2, Sec. 28.
4. Rich v. Braxton, 158 U.S. 375 (1895). See also 18 Tenn. Digest, Taxation Sections 191-251; 3 Cooley Taxation Sec. 621 (4th ed. 1924).
5. State v. Grosvenor, 149 Tenn. 158, 258 S.W. 140 (1924); Book Agents of Methodist Episcopal Church, South v. Hinton, 92 Tenn. 188, 21 S.W. 321 (1893).
6. See, e.g., Book Agents of the Methodist Episcopal Church, South v. State Bd. of Equalization, 513 S.W.2d 514 (1974); No. Gates Elks Club v. Garner, 496 S.W.2d 887 (1973); LaManna v. Electrical Workers Local No. 474, I.B.E.W., 518 S.W.2d 348 (1974); Oak Ridge Hosp. of the Methodist Church, Inc. v. City of Oak Ridge, 57 Tenn. App. 487, 420 S.W.2d 583 (1967); Nashville v. State Board of Equalization, 210 Tenn. 587, 360 S.W.2d 458 (1962). See also T.C.A. Sec. 67-513.
7. Metropolitan Gov't of Nashville and Davidson County v. State Bd. of Equalization, 543 S.W.2d 587 (1976); Oak Ridge Hospital of the Methodist Church, Inc. v. Oak Ridge, 57 Tenn. App. 487, 420 S.W.2d 583 (1967).
8. Oak Ridge Hospital, supra, at 586.
9. See State v. Nashville, 178 Tenn. 344, 157 S.W.2d 839 (1942); LaManna v. Univ. of Tenn., 225 Tenn. 25, 462 S.W.2d 877 (1971).
10. This has been particularly true in recent years. See, e.g., Book Agents, supra; No. Gates Elks Club, supra; Oak Ridge Hospital, supra; Metropolitan Government, supra; LaManna, supra.
11. 513 S.W.2d 514 (1974).
12. The relevant statutory provision as cited in Book Agents was then found at T.C.A. Sec. 67-502(2).
13. Id., at 525.
14. T.C.A. Sec. 67-602(6). See State v. Grosvenor, 149 Tenn. 158, 258 S.W. 140 (1923); see also: Sherrill v. State Bd. of Equalization, 224 Tenn. 201, 452 S.W.2d 857 (1970).

30. T.C.A. Sec. 67-639; although only in one Tennessee appellate decision to date, Crown Enterprises Inc. v. State Board of Equalization, 543 S.W.2d 583 (1976), this provision is a significant limitation on the bases for invalidating assessments or levies. Presumably, all Federal and Tennessee State Constitutional guarantees are included in the provision. See also, T.C.A. Sec. 67-627 and Sec. 67-628.

31. Hamilton v. Brownsville Gaslight Co., 115 Tenn. 150, 90 S.W. 159 (1905).

32. Hale's Cut Rate Drug Store v. State, 45 Tenn. App. 110, 321 S.W.2d 262 (1958). See Anderson v. Post, Tenn. Ch. App., 38 S.W. 283 (1896); Hamilton v. Brownsville Gaslight Co. supra.

33. Anderson v. Post, Tenn. Ch. App., 38 S.W. 283 (1896); however, T.C.A. Sec. 67-628 gives the assessor considerable authority to make valid corrections to assessments.

34. See T.C.A. Sec. 67-614 (description of real estate), Sec. 67-1009 (arrangement of tax book), and Sec. 67-1111 (duplicate receipt books).

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Conduct of the Proceeding

Jurisdiction over suits to sell land for overdue taxes is statutorily vested in both circuit and chancery courts in Tennessee.¹⁰ All such suits, whether brought in circuit or chancery court, must be prosecuted according to chancery court rules of procedure.¹¹

Jurisdiction over suits for the sale of property for the collection of delinquent taxes may be exercised by either circuit or chancery courts so long as the delinquent taxpayer is given either actual or constructive notice of the proceeding in rem against his property.¹² Notice is sufficient so long as it is of such character as to make the taxpayer aware of the proceedings and to give him the opportunity to pay the taxes and make his defenses.¹³ All persons having an interest in property against which suits have been filed are deemed to have constructive notice of the proceeding.¹⁴ General rules of evidence govern in determining the sufficiency of evidence to prove or disprove facts necessary to state either a cause of action or a defense.¹⁵

The delinquent tax attorney must file suit for collection of taxes between February 1 and April 1 and must bring suit on behalf of both the county and the state.¹⁶ The bill must be substantively as other bills of complaint for enforcement of liens and must include at least twenty-five (25) defendants, if that number are delinquent.¹⁷ The delinquent tax attorney's right to attorney's fees (in the amount of ten percent (10%)¹⁸ in those counties where said percentage is established by statute, otherwise as agreed to with the county) becomes fixed when the suit is filed.¹⁹

Suits for the collection of delinquent taxes are to be prosecuted to a conclusion as soon as practicable and are accorded priority by the court.²⁰ If the tax attorney fails to prosecute a delinquent tax suit within three (3) years from the date of filing, the suit may be dismissed by the chancellor sua sponte for laches or for failure to prosecute.²¹ When the amount due is ascertained at trial and the validity of the tax lien established, the court will order a sale of land for cash, subject to the equity of redemption.²²

Notice of Sale

After entry of a decree of sale, the next step is publication of the notice of sale. Under present Tennessee statutes, the property need only be advertised in one (1) sale notice.²³ The notice must set out the names of the owners of the various

Land offered at a tax sale must bring not less than the entire amount of taxes due along with all lawful costs.⁴³ If no other bidder offers the same or higher bid, the clerk of the court is required to bid the amount of the taxes, interest, penalties and costs on behalf of the governmental entity or entities involved.⁴⁴ There is authority in foreign jurisdictions for the proposition that a sale is invalid if the minimum sum for which the property is required to be sold includes any amount in excess of the taxes which are actually due, together with other proper charges.⁴⁵ The proceeds from the tax sale are applied first to the payment of legal fees for prosecuting the suit, second to the payment of the costs of the sale, and third to the payment of taxes owing to the state, county, and municipality, in that order.⁴⁶ (There is at the present time no state property tax).

Generally, separate interests in land, when separately assessed, may be sold without sale of the fee.⁴⁷ Since a leasehold interest is considered both separately assessable⁴⁸ and real property⁴⁹ in Tennessee, it follows that such an interest ordinarily may be sold separately from the reversion.

However, assessed taxes are a lien on the fee and not merely upon the interest of the person to whom the property is assessed.⁵⁰ Thus, for purposes of taxation, a life estate is not severable from its remainder interest, even though the taxes are properly assessed only to the life tenant.⁵¹

Ordinarily, the sale must be consistent with the assessment.⁵² Property should be sold in separate parcels or tracts when so assessed but may be validly sold en masse when there are several contiguous tracts or parcels which are assessed as a whole.⁵³ Thus, a sale is not invalid where several town lots forming one tract or body are assessed, reported and sold as a whole, instead of separately.⁵⁴ Moreover, a tax sale will not be declared void due to an error as to quantity, or the number of acres in the tract, unless it is so great an error in proportion to the actual quantity in the whole tract as to mislead the owner with respect to its identity. A tax sale of "eighty-four feet of this lot" conveys nothing and is void.⁵⁵

A purchase at a tax sale is statutorily required to be made in cash.⁵⁶ The purchase price must be collected in full at the time of the execution of the deed.⁵⁷

Generally, tenants in common cannot buy common property at a tax sale except for the benefit of all.⁶⁸ For example, the purchase of property by one cotenant at a tax sale inures to the benefit of all, notwithstanding it was purchased by the cotenant's husband rather than by the cotenant.⁶⁹ On the other hand, a mortgagee may set up an independent tax title, which was acquired before possession was taken under the mortgage, or before any duty to pay taxes arose.⁷⁰ In addition, where the owner of the property involved was the defendant in a pending creditors' bill at the time his attorney purchased such property at a tax sale, the attorney is deemed to have purchased the property for his client, not for himself, and is only entitled to reimbursement for the taxes paid, plus interest.⁷¹

There is very old authority in Tennessee to the effect that a beneficiary under a trust assignment for creditors who is also a party to a suit for the execution of the trust cannot acquire a title to any of the property under a tax sale free from the trust; and a person who joins with him in the purchase with knowledge of his fiduciary relationship will stand in no better position.⁷² More recent Tennessee decisions have dealt with an analogous question, deciding that where a tax sale purchaser acquires title free from liens and encumbrances, his grantee may also acquire title free from such liens and encumbrances.⁷³

Report or Return and Record of Sale

A report or return by the officer who conducted the tax sale is commonly the next step in the enforcement of tax liens;⁷⁴ case law suggests, however, that a failure to make such report or return will not invalidate an otherwise valid tax title.⁷⁵ According to one authority, the purposes of the report or return are: (1) to furnish official evidence of the price; (2) to afford notice of the sale; and, (3) to facilitate redemption.⁷⁶ It has been held that if the assessment fails to sufficiently identify the property assessed, the defect is not cured by an accurate description in the report of sale.⁷⁷

Confirmation by the Court

A decree confirming a sale of land for taxes is a necessary step for a valid tax title.⁷⁸ Thus, a sale is not complete until there is a decree of confirmation, and title to the realty purchased at such sale does not pass until there is a final decree divesting and vesting title or ordering the clerk or clerk and master to execute a

was not liable for sale of taxes, or that the taxes for which the land was sold were actually paid prior to the sale.⁹³ If one part of the taxes for which the land was sold was illegal or otherwise not properly chargeable to the land, but a part of such taxes was chargeable, the conveyance cannot be invalidated unless the amount properly chargeable against the land was tendered or paid to the county trustee before the sale.⁹⁴ However, the above statutory provisions presume a valid vestiture of title in the purchaser at a tax sale,⁹⁵ and, therefore, are not applicable where the tax sale is void.⁹⁶ Thus, a tax deed can be set aside where the defendant was not properly before the court.⁹⁷ Similarly, a tax sale is void, and may be set aside, where the pleadings upon which such sale was based did not contain an adequate description of the property.⁹⁸ The statute providing that a tax deed is an assurance of perfect title is also not available to validate a tax title where the clerk was without authority to execute the tax deed.⁹⁹ If an order is void for want of jurisdiction or is erroneous on its face, it is subject to being set aside.¹⁰⁰

A bill to set aside a tax deed is fatally defective where the petition fails to deny or admit that taxes were delinquent and unpaid at the time the property was sold.¹⁰¹ A suit to invalidate a tax title may not be commenced until the plaintiff has paid or tendered to the clerk or clerk and master the amount of the bid and all taxes subsequently accrued, with interest and charges.¹⁰²

A purchaser at a void tax sale has been held entitled to be reimbursed for the taxes for which the property was sold, and all subsequent taxes which he paid, together with interest on such amounts but the purchaser involved was held not to be entitled to reimbursement for costs or penalties.¹⁰³ In a slightly earlier case, the Tennessee Supreme Court held that a purchaser at a void sale could recover: (1) the amount of the purchase price, so far as it had been applied to the owner's benefit; (2) all amounts paid on subsequently accruing taxes; (3) the value of any permanent improvements he may have erected to the extent that such improvements enhanced the value of the land; and, (4) interest on all the foregoing, minus all rents and profits received by the purchaser from the land.¹⁰⁴

FOOTNOTES

1. See Chapter Four, supra, regarding accrual of tax liens.
2. See Johnson, Tax Collection, supra, Chapter 5, at 77-89.
3. Akers v. Burch. 59 Tenn. (12 Heisk.) 606 (1874).
4. T.C.A. Sec. 67-2013. See Crowover, Gibson's Suits in Chancery, Sec. 636, et seq. (5th ed. 1955). See also Form 26 Appendix. The order of reference may be made, however, after the sale, before the confirmation of the sale, or even after confirmation but before distribution of the proceeds. Williams v. Whitmore, 77 Tenn. (9 Lea) 262 (1882), State v. Southern Lumber Mfg. Co., 165 Tenn. 671, 57 S.W.2d 454 (1933).
5. Form 27, Appendix.
6. Form 28, Appendix.
7. Form 29, Appendix. The decree of sale is an essential prerequisite to the sale itself. Without a decree of sale in his hands, an officer has no authority to hold a sale. Randolph v. Metcalf, 46 Tenn. (6 Coldw.) 400 (1869). A decree of sale must show the amount of tax for which it was rendered. Id.
8. T.C.A. Sec. 67-2005.
9. Id.
10. T.C.A. Sec. 67-2003; Salts v. Salts, 28 Tenn. App. 318, 190 S.W.2d 188 (1945).
11. T.C.A. Sec. 67-2012.
12. Esch v. Wilcox, 181 Tenn. 165, 178 S.W.2d 770, 772 (1944), citing Obion County v. Massengill, 177 Tenn. 477, 481, 151 S.W.2d 156 (1941); State ex rel. Revenue Agent v. Patterson, 155 Tenn. 169, 290 S.W. 973 (1927); Collins v. Oliver, 24 Tenn. App. 337, 144 S.W.2d 9 (1940); Marlowe v. Kingdom Hall of Jehovah's Witnesses, 541 S.W.2d 121 (1976).
13. Esch, id., at 771.
14. Moore v. Chattanooga, 52 Tenn. App. 76, 371 S.W.2d 815 (1963).
15. State v. Collier, 165 Tenn. 28, 52 S.W.2d 361 (1932).
16. T.C.A. Sec. 67-2003; Marlowe v. Kingdom Hall of Jehovah's Witnesses, 541 S.W.2d 121 (1976); as to distribution of proceeds, see T.C.A. Sec. 67-2012. Any municipality certifying its lists of delinquent taxes to the tax attorney may be included in the county sale. See T.C.A. Sec. 67-2003 and State v. So. Lumber Mfg. Co., 165 Tenn. 671, 57 S.W.2d 454 (1933).

37. Cooley Taxation Sec. 1422 (4th ed. 1924); 85 C.J.S. Taxation Sec. 798 (1954).
38. 3 Cooley Taxation Sec. 1423 (4th ed. 1924); 85 C.J.S. Taxation Sec. 799 (1954); and 51 Am. Jur. Taxation Sec. 1046 (1944).
39. 3 Cooley Taxation Sections 1424, 1425 (4th ed. 1924); 85 C.J.S. Taxation Sec. 799 (1954).
40. 3 Cooley, Taxation Sec. 1419 (4th ed. 1924); 85 C.J.S. Taxation Sections 800, 801 (1954). Earlier statutes provided that all property had to be sold, starting on a certain specified day each year, and a number of cases held that the failure to observe this requirement rendered a sale invalid. See *Conrad v. Darden*, 12 Tenn. (4 Yerg.) 307 (1833); *Thompson v. Lawrence*, 61 Tenn. (2 Baxt.) 415, (1873); and *Rucker v. Hyde*, 118 Tenn. 358, 100 S.W. 739 (1906).
41. 3 Cooley, Taxation Sec. 1421 (4th ed. 1924); 85 C.J.S. Taxation Sec. 802 (1954). See also *Chadwell v. State*, 55 Tenn. (8 Hiesk.) 340 (1873) where the court reserved the question of the effect of an adjournment period longer than one day.
42. 85 C.J.S. Taxation Sec. 801 (1954). See also 3 Cooley, Taxation Sec. 1420 (4th ed. 1924).
43. 85 C.J.S. Taxation Sec. 803 (1954); 3 Cooley, Taxation Sec. 1426 (4th ed. 1924). In *Brien v. Woodward*, 2 Tenn. Cases (Shannon) 211 (1877), the court held that a statutory provision requiring that no land be sold for less than the amount of taxes, costs, and charges due thereon, was mandatory, and must be strictly followed by the officer performing the sale, unless waived by the defendant.
44. T.C.A. Sections 67-2012, 67-2033. The Acts of 1921 and 1923 provide that suits for the collection of delinquent state, county, and municipal taxes be brought in the name of the state; and that at a sale for delinquent taxes the clerk, acting for the state, bid a sufficient sum to protect not only the state, but the county and municipality as well. *State v. Collier*, 165 Tenn. 28, S.W.2d 361 (1932). (Readers are again reminded that there are presently no state ad valorem taxes on real property).
45. 85 C.J.S. Taxation Sec. 805 (1954); 3 Cooley, Taxation Sec. 1427 (4th ed. 1924).
46. T.C.A. Sec. 67-2012; see also T.C.A. Sec. 67-2033, under which a municipality may hold its own sales.
47. 3 Cooley, Taxation Sec. 1431 (4th ed. 1924); 85 C.J.S. Taxation Sec. 806 (1954).
48. T.C.A. Sec. 67-602(5); *Pulaski Highway Express v. Dunn*, 524 S.W.2d 636, 642 (1975); *State v. Grosvenor*, 149 Tenn. 158, 258 S.W. 140 (1923).
49. T.C.A. Sec. 67-606(5); *Pulaski Highway Express v. Dunn*, 524 S.W.2d 636 (1975); *Mason v. Nashville*, 155 Tenn. 256, 291 S.W. 1047 (1927); *Growers Warehousing Corp. v. Sawyer Tobacco Co.*, 5 Tenn. App. 619 (M.S. 1927); *Pruitt v. Williams*, 21 Tenn. App. 171, 106 S.W.2d 892 (M.S. 1937).
50. T.C.A. Sec. 67-1803; *Pulaski v. Dunn*, supra, at 642.

68. This is the doctrine of *Tisdale v. Tisdale*, 34 Tenn. (2 Sneed) 596 (1855). See also *Davis v. Solari*, 132 Tenn. 225, 177 S.W. 939 (1915). There are some exceptions to this doctrine, however, as shown in *King v. Rowan*, 57 Tenn. (10 Heisk.) 675 (1873); *Keele v. Cunningham*, 49 Tenn. (2 Heisk.) 288 (1871).

69. *State v. Allen*, 27 Tenn. App. 357, 181 S.W.2d 375 (W.S. 1943). The statute imposing a three-year limitation on suits to invalidate a tax title to land has no application to a suit by one cotenant to redeem property purchased by another cotenant at a tax sale. *Id.* See T.C.A. Sec. 67-2025.

70. *Allen v. Dayton Hotel Co.*, 95 Tenn. 480, 32 S.W. 962 (1895).

71. *Paul v. Hill*, 3 Tenn. Chy. Rept. 443 (1877).

72. *Harrison v. Wintson*, 2 Tenn. Chy. Rept. 544 (1875). See also 85 C.J.S. Taxation Sections 810-11 (1954).

73. *Obion County v. Massengill*, 177 Tenn. 477, 151 S.W.2d 156 (1941).

74. 85 C.J.S. Taxation Sec. 819 (1954); 3 Cooley, Taxation Sec. 1450 (4th ed. 1924). See Form 30, Appendix.

75. *Brien and Woodard v. O'Shaughnesy*, 71 Tenn. (3 Lea.) 724 (1879); *Barry's Lessee v. Rhea*, 1 Tenn. (1 Overton) 345 (1808). See also *Bloomstein v. Brien*, 3 Tenn. Chy. Rept. 55 (1875) (case involves Act of 1983); 85 C.J.S. Taxation Sec. 819 (1954).

76. 85 C.J.S. Taxation Sec. 819 (1954).

77. *Town of Morristown v. King*, 79 Tenn. (11 Lea.) 669 (1883). But a substantial compliance with the requirements of the statute in the description of property is sufficient in the assessment and the report of sale. *Nance v. Hopkins*, 78 Tenn. (10 Lea.) 508 (1882).

78. *Marlowe v. Kingdom Hall of Jehovah's Witnesses*, 541 S.W.2d 121, 125 (1976); See T.C.A. Sec. 67-2012, 21-212. *Williams v. Land*, 179 Tenn. 109, 163 S.W.2d 68 (1941). See generally 85 C.J.S. Taxation Sec. 820 (1954); 3 Cooley, Taxation Sec. 1451 (4th ed. 1924). See Form 31, Appendix.

79. *Marlowe v. Kingdom Hall of Jehovah's Witnesses*, 541 S.W.2d 121 (1976); *Tennessee Marble and Brick Co. v. Young*, 179 Tenn. 116, 163 S.W.2d 71 (1942); *Rogers v. Rogers*, 101 Tenn. 428, 47 S.W. 701 (1898). A confirmation decree entered after the effective date of the Tax Moratorium Act of 1939 (prohibiting further prosecution of pending tax suits until specified future date) was void for violation of the Act, and, therefore, subject to both collateral and direct attack. *Hunt v. Liles*, 35 Tenn. App. 173, 243 S.W.2d 149 (W.S. 1951).

80. *Hyder v. O'Brien*, Tenn. Chy. App., 48 S.W. 262 (1898); *Armstrong v. McClure*, 51 Tenn., (4 Heisk.) 80 (1871), *Rogers v. Rogers* 101 Tenn. 428, 47 S.W. 701 (1898).

81. *Rogers v. Rogers*, 101 Tenn. 428, 47 S.W. 701 (1898); *Houston v. Aycok*, 37 Tenn. (5 Sneed) 406 (1858).

103. Hamilton v. Brownsville Gaslight Co. 115 Tenn. 150, 90 S.W. 159 (1905).
But see Bloomstein v. Brien, 3 Tenn. Chy. Rept. 55 (1875).
104. Strother v. Reilly, 105 Tenn. 48, 58 S.W. 332 (1900).
105. 85 C.J.S. Taxation Sec. 821 (1954).
106. Id.
107. Id.
108. See "Conduct of Sale," supra.
109. See T.C.A. Sections 67-2034 to 67-2042. See also Shelby County v. McCannless, 163 S.W.2d 63 (Sup. Ct. 1942).
110. Scott v. Goss, 43 Tenn. App. 659, 311 S.W.2d 326 (1957).
111. Id.
112. Scott v. Goss, 43 Tenn. App. 659, 311 S.W.2d 326 (E S. 1957), quoting 85 C.J.S. Taxation Sec. 918 (1954).
113. Moore v. City of Memphis, 184 Tenn. 92, 195 S.W 2d 623 (1946).

Although redemption has been held to be a matter of "strict law" rather than equity,¹² the policy of the law has been to construe the Tennessee redemption statutes liberally.¹³

The Tennessee redemption statutes provide a two-year period in which property sold at a tax sale may be redeemed.¹⁴ This statutory right to redeem within two years has been found to be a law of property rather than a statute of limitations.¹⁵ The right may be perfected simply by the tender of money.¹⁶ The redemption period is computed from the date of the confirmation of the sale; it does not begin to run until after the sale has been confirmed by decree and the tax debtor's title to the property divested.¹⁷ A tax deed is a nullity and the tax debtor's title to property is not divested until the decree of confirmation has been entered.¹⁸

Although, ordinarily, Tennessee courts have refused to extend the two-year period or make other exceptions to statutory provisions,¹⁹ there is some case law to the effect that equitable relief may be available where strict compliance with the letter of the redemption statutes works an injustice. Thus, when an owner of land was ignorant of the date on which his land was sold for taxes and was erroneously informed by the tax sale purchaser as to when the time for redemption would expire, it was held that the delinquent tax attorney could accept the amount for redemption after the actual period for redemption had ended, but before the expiration of the time stated by the purchaser.²⁰ Similarly, when a party entitled to redemption was misled by the sheriff's false return of the date of sale, the redemptioner was allowed to redeem within two years from the erroneous date.²¹

Generally, any person may redeem land from a tax sale whose interest in the property would be affected by the vestiture of title in the tax sale purchaser. It has

T.C.A. Section 64-813 requires that payment of money to redeem land from a tax sale may be made to the clerk of the circuit court of the county in which the land is located where the purchaser is absent from his usual place of residence so that tender to him personally is prevented.³⁴ Further, it has been held that where the land has been sold by judgment or decree of the court, the debtor may always make certain of his redemption by paying redemption money to the clerk of the court from which the sale was made.³⁵ It has been held that the fact that the purchaser cannot be found within the county is not a sufficient excuse for failure to redeem the land within the time allowed, since the redeeming party does have the alternative of payment to the clerk of the proper court.³⁶ The Tennessee Supreme Court in the case of In Re Delinquent Taxpayers has recently held that where redemption money is paid to the clerk of the court, notice must be given to the purchaser prior to the entry of an order approving the redemption of the property or issuance of a deed of redemption.³⁷ The Court reasoned that such notice is necessary to allow the purchaser an opportunity of testing the redemption payment, either as to amount, as to time of payment, or as to any other "meritorious ground." The Court held, however, that de facto notice, as demonstrated by the filing of a challenge by purchasers to such redemption, would render immaterial the fact that the clerk of the court failed to give notice as required by law.³⁸

If the clerk upon payment of redemption money fails or refuses to pay over that money to the one entitled to it, it may be recovered by motion.³⁹ If the purchaser fails or refuses to reconvey the land to the party entitled to redeem, the latter, upon payment, shall have the right to file in chancery court a bill to enforce his right of redemption.⁴⁰

FOOTNOTES

1. T.C.A. Sec. 67-2034.
2. Id.
3. Id. See Scott v. Goss, 43 Tenn. App. 659, 311 S.W.2d 326 (1957).
4. T.C.A. Sec. 64-801 et seq. See also Rogers v. Tindall, 99 Tenn. 356, 42 S.W. 86 (1897) (debtor or any judgment creditor, or creditors whose debt is acknowledged by deed, has right to redeem); Gentry v. Gentry, 33 Tenn. (1 Sneed) 87 (1853) (redemption by tenants in common); Clark v. Cantwell, 40 Tenn. (3 Head) 202 (1859) (widow of deceased debtor may redeem, but holds in trust for debtor's heirs).
5. 85 C.J.S. Taxation Sec. 841 (1954).
6. Cannon Mills, Inc., v. Spivey, 208 Tenn. 419, 346 S.W.2d 266 (1961).
7. 85 C.J.S. Taxation Sec. 841 (1954).
8. Keely v. Sanders, 99 U.S. 441 (1878); Sherry v. McKinley, 99 U.S. 496 (1878).
9. Id. at Sec. 842. But see Lowry v. McGhee 16 Tenn. (8 Yerg.) 242 (1835); Hill v. Walker, 46 Tenn. (6 Coldw.) 424 (1869).
10. McGee v. Carter, 31 Tenn App. 141, 212 S.W 2d 902 (1948).
11. Keely v. Sanders, 99 U.S. 441, 25 L. Ed. 327 (1878). See also Rogers v. Tindall, 99 Tenn. 356, 42 S.W 86 (1897); Ewing v. Cook, 85 Tenn. 332, 3 S.W. 507 (1887); Reynolds v. Baker & Walker Bros., 46 Tenn. (6 Coldw.) 221 (1869).
12. Rogers v. Tindall, supra; Ewing v. Cook, supra.
13. Keely v. Sanders, supra, note 11. See also Rogers v. Tindall, supra, note 11.
14. T.C.A. Sections 64-801, 64-802. Russell v. John T. Dobson & Co., 65 Tenn. (7 Baxt.) 16 (1873). Legislation has been proposed which would reduce the period of redemption to one year. It has been suggested that this two-year period is excessive for two main reasons: One, the purchaser is not certain of his title for at least two years; and, two, the period overly protects the property rights of the delinquent taxpayer. See Johnson, Tax Collection, supra, ch. 1, note 11, at 86.

29. *Fite v. Jennings*, 193 Tenn. 250, 246 S.W.2d 1 (1952).
30. *Lincoln Sav. Bank v. Ridgway*, 71 Tenn. (3 Lea) 623 (1879). Possession of a purchaser at a tax sale is not adverse, but is under, and in privity, and by succession to the estate and title of the tax debtor. *Hunt v. Liles*, 35 Tenn. App. 173, 243 S.W.2d 149 (W.S. 1950).
31. *Fite v. Wood*, 194 Tenn. 308, 250 S.W.2d 543 (1952).
32. 85 C.J.S. Taxation Sec. 872 (1954); see *State v. Duncan*, 71 Tenn. (3 Lea) 679, (1879); *Pyley v. Allison*, 113 Tenn. (3 Cates) 500, 82 S.W. 475 (1904).
33. T.C.A. Sec. 64-806. See notes to decisions cited under this section of the Code. When the redeeming party is a creditor, see T.C.A. Sections 64-808, 64-810.
34. T.C.A. Sec. 64-813. See *Hitt v. Caney Fork Gulf Coal Co.*, 124 Tenn. 334, 139 S.W. 693 (1910); *Anderson, Green & Co. v. Ryan & Co.*, 69 Tenn. (1 Lea) 658 (1878); *Rothwell v. Gettys*, 30 Tenn. (11 Humph.) 135 (1850). The clerk of the court cannot receive anything but money in redemption of land. *Lytle v. Etherly*, 18 Tenn. (10 Yerg.) 389 (1937). The money must actually be tendered; the bare refusal of the clerk or purchaser to accept the amount proposed is not in itself sufficient to excuse an actual tender. *Farnsworth v. Howard*, 41 Tenn. (1 Coldw.) 215 (1860).
35. *In Re Delinquent Taxpayers*, 529 S.W.2d 48 (1975), citing *Hitt v. Caney Fork Gulf Coal Co.*, supra, note 34. See T.C.A. Sec. 64-813.
36. *Rothwell v. Gettys*, 30 Tenn. (11 Humph.) 135 (1850). See also *Griffin v. Haines*, 65 Tenn. (6 Baxt.) 409 (1873).
37. *In Re Delinquent Taxpayers*, supra note 35, at 49-50.
38. Id. at 50.
39. T.C.A. Sec. 64-814.
40. T.C.A. Sec. 64-815.
41. T.C.A. Sec. 67-2028; see also III A.L.R. at 258.
42. Id.
43. T.C.A. Sec. 67-2030.
44. See 85 C.J.S. Taxation Sections 893-94 (1954).

APPENDIX A: FORMS

Form No. 1 - Original Complaint

IN THE CHANCERY COURT OF _____ COUNTY,
AT _____, TENNESSEE

THE STATE OF TENNESSEE in its own)
behalf and for the use and benefit of)
(city and/or county))
_____)
TENNESSEE,)

Plaintiff,)

v.)

Delinquent Taxpayers as shown on the)
197____ Real Property Delinquent Tax)
Records of (city and/or county))
and as more fully set out in Exhibit "A")
annexed hereto,)

Defendants.)

No. _____

COMPLAINT

The Plaintiff would respectfully show unto the Court the following:

I.

This is an action pursuant to Section 67-2003, et seq., Tennessee Code Annotated, for the collection of certain delinquent 197____ real property, ad valorem taxes assessed and levied by the Plaintiff, as well as the interest, penalties, and costs attached to, and made a part of, such taxes and for the enforcement of the liens for such taxes, interest, penalties, and costs.

VI.

In accordance with the provisions of Section 67-2011, Tennessee Code Annotated, (city and/or county) has adopted a resolution expressly exempting such Government from the limitations contained in said Section; such action being taken by (city and/or county) on (date) by Resolution No. . The Plaintiff therefore requests that all pending Actions for delinquent taxes assessed and levied by the Plaintiff on the properties listed in Exhibit "A", be consolidated in this Action pursuant to the provisions of Section 67-2007, Tennessee Code Annotated.

PREMISES CONSIDERED, Plaintiff prays:

1. That all those parties named in the caption hereof and Exhibit "A" be made Defendants hereto by proper process of this Court; that ordinary process issue as to all resident Defendants; that service by publication, as provided by law, be made as to those Defendants whose residences are unknown and cannot be ascertained after diligent search and inquiry; that all Defendants be required to appear and answer this Complaint;
2. That Guardians ad Litem be appointed to answer and represent those Defendants, and any unknown heirs-at-law or devisees of such Defendants, who are infants, or who are under other disability, and who have no duly appointed representative;
3. That, whenever proper, a receiver or receivers be appointed to take charge of those properties which are yielding rental, or other income; that said receiver or receivers be granted the power and right to collect all rents, profits, and other income from such property, and to apply the net amount of such income, after payment of reasonable compensation to such receiver or receivers, to the taxes, interest, penalties, and costs which are the subject matter of this Action; and, that said receiver or receivers be granted the power and right to make ordinary and necessary repairs, and to obtain fire and liability insurance, so as to preserve the property or properties held in receivership;

(Suggested Exhibit "A")

197 Delinquent Metropolitan Nashville and Davidson County, Tennessee
Real Property, Ad Valorem Taxes

<u>Item No.</u>	<u>Name(s) and Address(es) of Owner(s)</u>	<u>Description (Optional: Official Map & Parcel Nos.)</u>	<u>Valuation \$</u>	<u>Tax \$</u>
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IV.

In addition to delinquent 197____ real property, ad valorem taxes, there are also certain unpaid and delinquent real property, ad valorem taxes which were lawfully assessed and levied by the Plaintiff on the above described property in prior years; actions for the collection of such taxes heretofore having been instituted by the Plaintiff in this Court. For each such delinquent tax, including the delinquent tax for the year 197____, the following information is set out in Exhibit "B", which is filed herewith, annexed hereto, and incorporated herein; but which need not be copied for the issuance of process: (1) the year for which such tax was assessed and levied; (2) the Rule Docket Number of the Action filed for the collection of such tax; (3) the name(s) and address(es) of the owner(s), as of the applicable assessment date; (4) the assessed value of the property, including all taxable improvements, for the year involved; (5) the amount of the tax levied; and, (6) the amount of accrued interest, penalties, and other charges.

V.

In addition to the above information, Exhibit "B" also contains, under the heading "PRESENT OWNER(S)", the name(s) and address(es) of the present owner(s) as of the property described in paragraph III above, if different from that as of January 1, 197____. Exhibit "B" also contains, under the heading "ENCUMBRANCE(S)", the name(s) and address(es) of the owner(s) of any existing encumbrance(s), known to the Plaintiff, on the described property, and the nature of such encumbrance(s).

PREMISES CONSIDERED, Plaintiff prays, in addition to the prayers of the Original Complaint:

1. That it be permitted to file this Amended and Supplemental Complaint;
2. That all pending Actions heretofore filed for unpaid and delinquent real property, ad valorem taxes assessed and levied by the Plaintiff upon the property described herein, be consolidated and incorporated in this Action;

(Suggested Exhibit "B")

<u>Tax Year</u>	<u>Docket Number</u>	<u>Name(s) and Address(es) of Owner(s)</u>	<u>Assessed Value</u>	<u>Amount of Tax</u>	<u>Accrued Interest, Etc.</u>
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Present Owner(s)

Encumbrance(s)

(Style of case - Same as Form No. 2)

ORDER OF CONSOLIDATION

This Cause came on to be heard on the _____ day of _____, 197____, before the Honorable _____, Chancellor, upon Motion of Plaintiff for an Order consolidating and incorporating in this Cause all pending action(s) heretofore filed for the collection of certain delinquent real property, ad valorem taxes assessed and levied by the Plaintiff upon the property described in Item No. _____ of Exhibit "A" to the Complaint in this Cause, and more specifically described in an Amended and Supplemental Complaint heretofore filed;

And it appearing to the Court that such Motion is proper and should be granted;

It is now, therefore, ORDERED, ADJUDGED, AND DECREED, that the pending Action(s) heretofore filed, under Rule Docket Number(s) _____ (Docket numbers of prior suits) _____, for the collection of certain delinquent real property, ad valorem taxes assessed and levied by the Plaintiff upon the property described in Item No. _____ of Exhibit "A" to the Complaint in this Cause, and more specifically described in an Amended and Supplemental Complaint heretofore filed, be, and the same hereby is (are), consolidated and incorporated in this Cause.

This _____ day of _____, 197_____.

CHANCELLOR

RETURN

I certify and return that:

I served this Summons, together with a copy of the Complaint, on the _____ day of _____, 197____, on the Defendant _____ by _____ (state how summons was served) .

I failed to serve this Summons within thirty (30) days after its issuance because (state reason for failure to serve summons).

Dated this _____ day of _____, 197_____.

(Name)
Sheriff

By _____
Deputy Sheriff

He, therefore, prays that publication be made to bring the Defendant before the Court.

Delinquent Tax Attorney
(Address)

Sworn to and subscribed before me
this ____ day of _____, 197 ____.

Notary Public

My Commission Expires:

Form No. 8 - Affidavit for Publication (deceased defendant)

(Style of case - Same as Form No. 2)

AFFIDAVIT FOR PUBLICATION

_____(Name)_____, Attorney for the Plaintiff, makes oath that the names and residences of the heirs-at-law of the deceased Defendant, _____(Name) are unknown and cannot be ascertained upon diligent search and inquiry.

He, therefore, prays that publication be made to bring the heirs-at-law of such deceased Defendant before the Court.

Delinquent Tax Attorney
(Address)

Sworn to and subscribed before me
this ____ day of _____, 197 ____.

Notary Public

My Commission Expires:

Form No. 11 - Motion to Dispense with Personal Service (residence unknown)

(Style of case - Same as Form No. 2)

MOTION TO DISPENSE WITH PERSONAL SERVICE

Plaintiff moves the Court to dispense with personal service of process of the Defendant, (Name), whose residence is unknown and cannot be ascertained upon diligent search and inquiry.

Dated this _____ day of _____, 197 ____.

Delinquent Tax Attorney
(Address)

Form No. 12 - Order of Publication (nonresident of Tennessee)

(Style of case - Same as Form No. 2)

ORDER OF PUBLICATION

This Cause came on to be heard this ____ day of _____, 197____, before the Honorable _____, Chancellor, and it appearing to the Court by affidavit, (or by the return of the Sheriff of _____ County, Tennessee, duly noted on the leading process of this Cause), that the Defendant _____, is a nonresident of the State of Tennessee;

It is now, therefore, ORDERED, ADJUDGED, AND DECREED that publication be made for two (2) consecutive weeks in the (Name of publication), a newspaper published, and of general circulation, in _____ County, Tennessee, notifying said Defendant to appear and make defense to the Complaint in this Cause, or said Cause shall be taken as confessed by said Defendant, and shall be set for hearing ex parte.

CHANCELLOR

It is now, therefore, ORDERED, ADJUDGED, AND DECREED that publication be made for two (2) consecutive weeks in the _____ (Name of publication) _____, a newspaper published and of general circulation in _____ County, Tennessee, notifying said Defendant to appear and make defense to the Complaint in this Cause, or said Cause shall be taken as confessed by said Defendant, and shall be set for hearing ex parte.

This _____ day of _____, 197____.

CHANCELLOR

Form No. 15 - Motion for Appointment of Guardian ad Litem

(Style of case - Same as Form No. 2)

MOTION FOR APPOINTMENT OF GUARDIAN AD LITEM

Comes the Plaintiff and moves the Court for the appointment of a Guardian ad Litem for the Defendant(s), _____, and for the unknown heirs or devisees of such Defendant(s), who may be infants or incompetent persons, and who may be without duly appointed representatives to defend this Action.

Dated this _____ day of _____, 197____.

Delinquent Tax Attorney
(Address)

Form No. 17 - Motion to Substitute Party

(Style of case - Same as Form No. 2)

MOTION TO SUBSTITUTE PARTY

The Defendant _____, being deceased, the Plaintiff moves the Court to substitute in this Cause, the heir(s)-at-law (or, successor(s)-in-interest) of such deceased Defendant.

The Plaintiff will rely upon the affidavit of _____ (Name of affiant), which is annexed hereto, filed herewith, and incorporated herein, at the hearing of this Motion.

Dated this _____ day of _____, 197_____.

Delinquent Tax Attorney
(Address)

(Note that Rule 25, Tennessee Rules of Civil Procedure, requires that a copy of this Motion and a Notice of Hearing be served upon the parties and upon those interested persons who are not parties).

Form No. 18 - Order for a Scire Facias

(Style of case - Same as Form No. 2)

ORDER FOR A SCIRE FACIAS

This Cause came on to be heard this _____ day of _____, 197_____, before the Honorable _____, Chancellor, upon Motion of Plaintiff for an Order for a Scire Facias; and it duly appearing to the Court that the death of the Defendant _____ was duly proven in open court, and it being suggested that _____ is (are) the heir(s)-at-law (or, successor(s)-in-interest) of said deceased Defendant;

Form No. 20 - Motion to Join New Owner

(Style of case - Same as Form No. 2)

MOTION TO JOIN NEW OWNER

Comes the Plaintiff and moves the Court for an Order joining (Name),
(Address) , as a party Defendant in this Cause, such person having acquired
subsequent to January 1, 197___, the property described in Item Number ___ of
Exhibit "A" of the Complaint in this Cause, and more specifically described in the
Amended and Supplemental Complaint theretofore filed.

Plaintiff also moves for issuance of process, as provided by law, against such
person.

Dated this _____ day of _____, 197___.

Delinquent Tax Attorney
(Address)

Form No. 21 - Order Joining New Owner

(Style of case - Same as Form No. 2)

ORDER JOINING NEW OWNER

This Cause came on to be heard this ___ day of _____, 197___,
before the Honorable _____, Chancellor, upon Motion of Plaintiff for an Order
joining (Name) , (Address) , as a party Defendant in this Cause; and it
duly appearing to the Court that said person acquired, subsequent to January 1,
197___, the property described in Item Number ___ of Exhibit "A" of the Complaint
in this Cause, and more specifically described in an Amended and Supplemental
Complaint heretofore filed;

(Style of case- Same as Form No. 2)

AFFIDAVIT IN SUPPORT OF MOTION FOR RECEIVERSHIP

I, (Name of affiant), being duly sworn say as follows:

I.

I am employed by the Collection Office of (city and/or county), and am responsible for the investigation and collection of the delinquent real property, ad valorem taxes of such (city and/or county).

II.

I certify that Schedule "A", which is annexed hereto, filed herewith, and incorporated herein, is a true and complete statement of all delinquent real property, ad valorem taxes assessed by (city and/or county), upon the property described in Item Number _____ of Exhibit "A" to the Complaint in this Cause, and more specifically described in an Amended and Supplemental Complaint heretofore filed, together with all interest, penalties, and cost accrued as of the ____ day of _____, 197____, as such information is shown on the tax records and books of said (city and/or county), said books being located in (address).

III.

Numerous efforts, including (describe collection efforts) have been made by (my predecessors and) me to collect these delinquent taxes, penalties, interest and costs.

IV.

I visited and inspected the property in question on (date or dates of inspection). To the best of my knowledge, such property is not occupied by the owner(s) as his (their) residence(s), including any farm connected with or leased by such owner(s) to (name of lessee), and is used as a (describe use of property).

3. To the best of Plaintiff's information and belief Defendant is neither an infant nor an incompetent person; and,

4. The Defendant has failed and neglected to enter his appearance and make defense as required by law.

Dated this ____ day of _____, 197 ____.

Delinquent Tax Attorney
(Address)

Form No. 25 - Order for Judgment by Default

(Style of case - Same as Form No. 2)

ORDER FOR JUDGMENT BY DEFAULT

The Cause came to be heard this ____ day of _____, 197 ____, before the Honorable _____, Chancellor, upon Motion of Plaintiff for a default judgment against the Defendant _____, and it appearing to the Court that:

1. The Complaint was filed in this Cause by the Plaintiff on the ____ day of _____, 197 ____;

2. The above named Defendant was regularly served with process by personal service on the ____ day of _____, 197 ____, (or, by publication appearing for two (2) consecutive weeks in (name of publication), as provided by law);

3. Defendant is neither an infant nor an incompetent person; and,

4. Defendant has failed and neglected to enter his appearance and make defense as required by law.

(Style of case - Same as Form No. 2)

MOTION FOR REFERENCE

Comes the Plaintiff and moves the Court for a reference to the Clerk and Master to determine the following information concerning the property described in Item No. _____ of Exhibit "A" to the Complaint in this Cause, and more specifically described in an Amended and Supplemental Complaint heretofore filed;

1. The name(s) and address(es) of the owner(s) of such property, as of the applicable assessment dates;
2. The name(s) and address(es) of the present owner(s), if different from the above;
3. Whether such real estate is encumbered, and, if so, the nature(s) and amount(s) of the encumbrance(s) and the name(s) and address(es) of the owner(s) thereof;
4. The amount, for each year in question, of real property ad valorem taxes upon such property due and owing to the Plaintiff together with all interest, penalties and costs for each of said years; and the Rule Docket Numbers for all pending Actions for the collection of said taxes upon such property;
5. The legal description of said property; and,
6. Any other or further information of which the Court should have knowledge.

Dated this _____ day of _____, 197____.

Delinquent Tax Attorney
(Address)

5. The legal description of said property; and,

6. Any other or further information of which the Court should have knowledge.

The Clerk and Master shall examine pertinent public records and take whatever proof he deems necessary, and shall file his report within sixty (60) days from the date hereof, but need not file a transcript of the proceedings.

All other matters are reserved until the submission of the Report of the Clerk and Master.

This ____ day of _____, 197 ____.

CHANCELLOR

Form No. 29 - Report of Clerk and Master of Tax Reference

(Style of Case - Same as Form No. 2)

REPORT OF CLERK AND MASTER ON TAX REFERENCE

Responding to an Order of Reference, entered in Minute Book ____, Page Number ____, for the ascertainment of certain information concerning property described in Item Number ____ of Exhibit "A" to the Complaint in this Cause, and more specifically described in an Amended and Supplemental Complaint heretofore filed, the Undersigned respectfully finds and reports as follows:

1. The name(s) and address(es) of the owner(s), as of the applicable assessment dates, of such property is (are) as follows:

Form No. 30 - Decree Confirming Report of Clerk and Master and Ordering Sale

(Style of case - Same as Form No. 2)

DECREE CONFIRMING REPORT OF CLERK AND MASTER AND ORDERING SALE

This Cause came on to be heard this ____ day of _____, 197__, before the Honorable _____, Chancellor, upon the Report of the Clerk and Master finding real property, ad valorem taxes due and owing to the Plaintiff on the property described in Item Number ____ of Exhibit "A" to the Complaint in this Cause, and more specifically described in an Amended and Supplemental Complaint heretofore filed, upon the default judgment(s) heretofore entered against the following owner(s) of such property, _____; upon the affidavit filed herein in compliance with the Soldier's and Sailor's Civil Relief Act of 1940, 50 U.S.C. Section 501 et seq.; and upon the entire record in this Cause;

And it appearing to the Court that the Clerk and Master, in accordance with a reference directed by this Court, filed the foregoing Report on the ____ day of _____, 197__ concerning the property described in Item Number ____ of Exhibit "A" to the Complaint in this Cause, and, more specifically described, in the Amended and Supplemental Complaint heretofore filed:

(Copy of Clerk and Master's Report)

And it further appearing to the Court that such report is without exception taken for more than ten days;

And it also appearing to the Court that the Original Complaint in this Cause prayed for a sale of said property, subject to the equity of redemption, and the Court being of the opinion that such prayer be granted;

It is, therefore, ORDERED, ADJUDGED, AND DECREED by the Court:

1. That the foregoing Report of the Clerk and Master is in all things confirmed;

to equity of redemption to (name of purchaser), he being the highest and best bidder, for cash in the amount of \$. Said property so sold is that certain parcel of land in the Civil District of (county), Tennessee, more particularly described as follows:

(Copy of detailed description of property sold)

Said cash money is in my possession, subject to the Orders of the Court.

Respectfully submitted this day of , 197 .

CLERK AND MASTER

By _____
DEPUTY CLERK AND MASTER

Form No. 32 - Decree Confirming Sale

(Style of case - Same as Form No. 2)

DECREE CONFIRMING SALE

This Cause came on to be heard the day of , 197 , before the Honorable , Chancellor, upon the Motion of Plaintiff for a Decree Confirming the sale heretofore conducted by the Clerk and Master, upon the entire record in this Cause, and especially upon the Clerk and Master's Report of such sale, which Report is in words and figures as follows:

(Copy of Report of Clerk and Master in full)

And it further appearing to the Court that said Report is without exception taken for more than 10 days;

It is, therefore, ORDERED, ADJUDGED, AND DECREED by the Court:

1. That the foregoing Report of the Clerk and Master is in all things confirmed;

APPENDIX B: SELECTED STATUTES

Title 6; Chapter 7

Municipal Powers Generally

* * * *

6-703. Sale of real estate of delinquency. If taxes assessed upon real estate in such corporation, according to its ordinances, are not paid by the owner of the property within the year for which they were assessed, and he has no personal property subject to distress, the collector shall report the facts to the recorder, or other officer, and he shall proceed to cause said real estate to be sold in the manner prescribed for sales of real estate for state and county taxes. The sheriff or county trustee shall pay the money received on such sales to the treasurer of the corporation, and, if he fails to do so, he shall be liable to judgment on motion.

6-704. Suit in chancery for taxes. It shall be lawful for any incorporated municipality to sue in the chancery court of the county in which it is located for taxes due said municipality upon real estate, whenever said taxes are past due and unpaid. In such suit may be included as many as twenty-five (25) distinct pieces or tracts of land, the owners thereof being made defendants to the bill. Such cause shall not be subject to objection for misjoinder by reason of the distinct interests the several defendants have in the properties proceeded against.

6-705. Prerequisites to suit for taxes. Suit shall not be so brought until the collecting officer shall have made due return to the corporate authorities of such delinquent taxes and that there is no personal property out of which to make the same; provided, that publication be made for four (4) consecutive weeks in a newspaper published in said municipality, or if no newspaper is published there, then in a newspaper published nearest thereto, which publication shall contain the name or names of delinquents and the amount due from each.

6-706. Payment of taxes after suit filed. Should any person interested pay, after bill filed, and before sale of the land, to the attorney representing the municipality, or such other person as may be designated by the municipality to receive it, the amount of taxes sued for, and interest thereon, it shall be the duty

6-2212. Lien of taxes--Errors and irregularities. All municipal taxes on real estate in the city, and all penalties and costs accruing thereon, are hereby declared to be a lien on said realty from and after the first (1st) day of January of the year for which same are assessed, superior to all other liens except the liens of the United States, state of Tennessee and county, for taxes legally assessed thereon, with which it shall be a lien of equal dignity. No assessment shall be invalid because the size and dimensions of any tract, lot or parcel of land shall not have been precisely named nor the amount of the valuation or tax not correctly given, nor because the property has been assessed in the name of a person who did not own the same, nor because the same was assessed to unknown owners, nor on account of any objection or informality merely technical, but all such assessments shall be good and valid. The board of commissioners shall have power to correct any errors in the tax assessments upon a certificate filed by the assessor or assessing body.

6-2213. Delinquent penalties--Discount. On the first day of December of the year for which the taxes are assessed, or other date provided by ordinance, a penalty of two per cent (2%) upon all taxes remaining unpaid shall be imposed and collected by the city and paid into the city treasury. An additional penalty of two per cent (2%) shall be added for each month thereafter for twelve (12) months.

If any taxpayer elects to pay his taxes prior to October first, he shall be entitled to a discount of two per cent (2%) from the amount of his bill.

* * * *

6-2215. Sale of real property for delinquency. The recorder shall, under the provisions of the state law for the collection of delinquent taxes, certify to the trustee of the county a list of all real estate upon which municipal taxes remain due and unpaid, or which is liable for sale for other taxes and the same shall be sold in like manner and upon the same terms and conditions as real estate is sold for delinquent state and county taxes.

* * * *

64-810. Total amount payable on redemption. The person proposing to redeem shall always pay, or tender, to the holder of the land, the amount of money lawfully paid by him, with interest thereon, at the rate of six per cent (6%) per annum; and, if he be a creditor, shall pay to the debtor or credit his debt with a sum equal to ten per cent (10%) or more on the sum bid at the original sale, or with a sum equal to ten per cent (10%) or more upon the judgment of said creditor, at the election of said creditor.

64-811. Unauthorized increase of bid. In no case shall the holder or claimant of the property increase his bid against the debtor, or any bona fide creditor offering to redeem the real estate, except as above provided.

64-812. Rent during redemption period. The debtor, permitted by the purchaser to remain in possession, shall not be liable for rent from the date of the sale to the time of the redemption; and if the purchaser or his assignee take possession under his purchase, upon redemption by the debtor, he shall have a credit for the fair rent of the premises during the time they were in the purchaser's possession.

64-813. Payment of redemption money through clerk of court. Where the purchaser is absent from his usual place of residence, so that the tender to him in person is prevented, or resides out of the county where the land lies, the debtor, or party entitled to redeem, may pay the redemption money to the clerk or the circuit court of the county in which the land lies, or in case the land is sold by the judgment or decree of a court, then to the clerk of the court from which the same is sold, to be held by him for the person entitled to it, and such payment shall be good to all intents and purposes.

64-814. Failure of clerk to pay over. If the clerk fail or refuse to pay over such money to the person entitled to it, on application, it may be recovered by motion, in the same way; as money paid to him on execution, and not paid over on demand.

67-1104. County trustee as collector. The county trustee shall continue to act as the collector of all the taxes - state, municipal, and county - levied on property, which shall be paid to him, at his office, at the county seat of his county, or at such other place as he may designate; and it shall be his duty to visit each civil district in the county, at least one (1) time, for the purpose of collecting revenue, after first having given twenty (20) days' notice of the time and place at which he will attend by advertisement at four (4) of the most public places in each civil district.

67-1105. Payment to trustee - Penalty for delinquency. Every taxpayer shall pay his state, county, municipal, highway, school and all his property taxes to said county trustee, except when otherwise provided by law; and said taxes shall be due and payable on the first Monday in October of each year, and shall bear interest from the first day of May following.

In addition to the foregoing, in any county having a population of six hundred thousand (600,000), or more, according to the 1960 federal census or any subsequent federal decennial census, a penalty of one-half of one per cent ($\frac{1}{2}\%$) for each month the taxes are delinquent is to be added on the fifteenth day of January and on the first day of each succeeding month, beginning with the fifteenth day of January, except as otherwise provided in regard to municipal taxes. In any county having a population of less than six hundred thousand (600,000) according to the 1960 federal census, or any subsequent federal decennial census, a penalty of one-half of one per cent ($\frac{1}{2}\%$) for each month the taxes are delinquent is to be added on the first day of each month, beginning with the first day of March, except as otherwise provided in regard to municipal taxes.

In the event that in the year a reappraisal program is completed and approved by the state division of property assessments the values established in such reappraisal program are turned over to the county after October 1 of such year, no penalty shall be added until five (5) months following the date said values are made available to the county and no interest shall be added until seven (7) months following the date said values are made available to the county.

not less than 3,700 nor more than 4,000
not less than 6,300 nor more than 6,650
not less than 6,750 nor more than 7,000
not less than 7,600 nor more than 8,200
not less than 9,000 nor more than 9,100
not less than 12,550 nor more than 12,650
not less than 14,350 nor more than 14,800
not less than 16,300 nor more than 16,400
not less than 18,300 nor more than 18,400
not less than 21,900 nor more than 22,200
not less than 23,700 nor more than 24,300
not less than 24,900 nor more than 24,975
not less than 32,500 nor more than 32,600
not less than 43,900 nor more than 44,100
not less than 47,800 nor more than 50,700
not less than 65,650 nor more than 74,100
not less than 200,000 nor more than 260,000
not less than 721,500 nor more than 723,500.

* * * *

Title 67; Chapter 13
Collection Of Delinquent Taxes

67-1301. Warning notice of delinquency. The county trustee shall, ten (10) days before taxes become delinquent, insert in one (1) nor more newspapers published in the county once a week for two (2) consecutive weeks, a warning to taxpayers as follows:

WARNING TO TAXPAYERS

After _____, unpaid taxes bear interest and in addition a penalty of one-half of one per cent a month. Taxes may be paid at my office until _____, when lists will be delivered to officers for collection at the cost of the taxpayers.

County Trustee.

Provided that the provisions of the next preceding paragraph shall not apply to counties having a population of more than 180,000 nor to counties having a population of not more than 69,100, nor less than 69,070, nor to counties having a population of not more than 39,425, nor less than 39,400, nor to counties having a population of not less than 34,900, nor more than 35,000, nor to counties having a population of not less than 28,650 and not more than 28,800, nor to counties having a population of not less than 25,900 and not more than 25,980, according to the federal census of 1940, or any subsequent federal census. Provided further that nothing in the next preceding paragraph shall apply to counties which now have or may hereafter have their own auditing system and in all counties where the books are audited by a certified public accountant, the publication of said accountant's report shall be deemed to be in compliance with the provisions of said paragraph.

67-1305. Collection by distraint. All taxes remaining delinquent for thirty (30) days shall immediately be collected by the county trustee, by distress and sale of any personal property liable therefor; and the tax books in the hands of said trustee and the delinquent lists to be furnished by him to deputy trustees, or to sheriff and constables, shall have the force and effect of a judgment and execution from a court of record, and shall be ample authority for the officers having such taxes for collection to distraint and sell a sufficient amount of the personal property of any delinquent to satisfy his taxes, interest, penalties, and costs.

67-1306. Notice of time and place of sale. Ten (10) days' notice of the time and place of said sale of personalty shall be given by advertisement posted in three (3) public places in the county, one (1) of which shall be in the district where the taxpayer resides, and one (1) at the courthouse door.

67-1307. Property present at sale - Costs and commissions. The officers shall in all cases have the personal property present when sold, and shall be allowed to retain, in addition to the taxes, all commissions, costs and necessary expenses of removing and keeping the property distrained.

such a return on or before January 1, as herein provided, shall be presumed to have collected all the taxes on the lists delivered to him, and shall account for and pay the same to the trustee.

67-1315. Collecting officer not entitled to additional fees. The officer making said collection shall receive no additional fees for making delinquent collections. The only compensation shall be salaries paid to deputies in accordance with chapter 20 of title 8, or to trustees in accordance with Sections 8-2403, 8-2409. Postage and other office expenses incurred by the trustee or his deputies incident to the collection of delinquent taxes shall be paid from the fees of the trustee.

67-1316. Levy and garnishment fees. In case of a levy or garnishment proceeding, officers shall receive in addition to the above mentioned compensation, the fees allowed by law in such cases, same to be taxed as a part of the costs of collection and to be paid by delinquent.

67-1317. Costs dependent on collections. Neither the state or county shall be liable for costs where no collection is made by the officer.

67-1318. Action against deputy for balance due. Any balance found due on such settlements may be recovered of the constable or deputy trustee and his sureties on his bond, by suit or motion, on five (5) days' notice, in any court of record, instituted by the county trustee or any agent or district attorney general of the state.

67-1319. Delinquent municipal taxes. All delinquent real property taxes of all kinds of all municipal corporations shall be certified by the proper officer of said corporations to their respective county trustees by the first of May of the year next after such taxes become due, and the property so certified and sold by the county trustee at the same time and in the same manner and as a part of his other sales of property for state and county taxes, and the proceeds of such sale shall be disposed of and the property may be redeemed as elsewhere provided in this title with reference to property sold for the collection of state and county taxes; provided, that municipal corporations having power under their charters to collect their own taxes may provide by ordinance for the collection of their delinquent taxes.

(1) In the case of a failure to file a return the tax may be assessed or a levy or other proceedings to enforce the collection of such tax may be begun with or without assessment at any time; and

(2) In the case of a false or fraudulent return with the intent to evade the tax the tax may be assessed or a levy or other proceeding to enforce collection of such tax may be begun with or without assessment at any time; and

(3) In the case of a revision of any federal income tax resulting in a corporation owing the state additional corporation excise tax the statutory period for the assessment of additional corporation excise tax resulting from such revision shall not expire prior to the expiration of two (2) years from the date the commissioner or his delegate is notified in writing by the date the commissioner or his delegate is notified in writing by the taxpayer of such revision; and

(4) In the case of an agreement in writing entered into by the commissioner or his delegate and the taxpayer within the time prescribed hereinabove for assessment, consenting to an assessment after such time, the tax may be assessed or a levy or other proceeding to enforce collection of such tax may be made or begun with or without assessment at any time within the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

State taxes requiring the filing of returns: Collection. The amount of any tax assessed as prescribed by subsection (b) hereof may be collected within the period of limitation provided in Section 67-6028.

67-1324. Dismissal of action after expiration of limitation. It shall be the duty of the court in which proceedings concerning the collection of taxes may be brought, where the same shall be claimed to be barred under the provision of Section 67-1323, when this statute is pleaded, and the truth of the plea appears to the satisfaction of the court, to dismiss the cause, and order that the officer having the respective tax books in charge, enter thereon, opposite the name of the taxpayer, a memorandum of the judgment of the court.

67-1805. Fee exempt from tax on leasehold. Where there is assessable under the law a leasehold interest in real estate or any improvements on real estate, which said real estate is exempt from taxation in the hands of and to the owner thereof, the taxes assessed against such leasehold interest or interest in improvements on such exempt real estate shall be a lien only upon such leasehold interest or interest in improvements, and not upon the interest of the owner of the fee or the remainder or reversion of the fee.

* * * *

Title 67; Chapter 19
Protection Of Tax Liens

67-1901. Definition of terms. When used in Sections 67-1901 - 67-1910, the following terms shall have the following meanings:

- (a) "Property" means any and all real property and all improvements thereon or used in connection therewith.
- (b) "Governmental body" means the state of Tennessee, or any county, municipality or other governmental subdivision of the state.
- (c) "Tax" means any obligation due a governmental body which obligation is secured by a lien on real property.
- (d) "Tax lien" means the lien securing a tax as herein defined.
- (e) "Delinquent tax" means a tax as herein defined that has been due and payable for at least two (2) years.
- (f) "Tax suit" means any suit brought to enforce a tax lien as herein defined.

67-1902. Right to appointment of receiver. When a suit is brought or has been brought to enforce a tax lien and when such tax lien secures a delinquent tax, any governmental body having an interest in such tax lien shall have the right to have the court in which the tax suit is pending appoint a receiver to collect rents on the property subject to such tax lien. This right shall exist whether or not such property is being misused, wasted, or neglected, and whether the security for such tax is adequate or not.

receivership suit. Such attorney for the receiver shall serve without any compensation other than that received from the governmental body that he represents as attorney.

67-1908. Termination of receivership. The receivership may be discontinued at any time by order of the court in which said receivership is pending, and the receivership shall be terminated when all taxes due parties to the tax suit have been paid by the receiver, by the owner of the receivership property, or in any other manner. Where a receivership is secured for a number of parcels of land belonging to the same owner, the receivership of all parcels may be continued until the taxes on all such parcels have been paid.

67-1909. Distribution of receivership assets. The assets of the receivership shall be distributed for the following purposes, preference being given to the purposes in the order named:

- (1) Court costs and all necessary or desirable expenses of the receivership, including the cost of maintenance, repair and improvement of receivership property.
- (2) Taxes due parties to the tax suit in which the receiver is appointed, the same preference being given on such distribution that would be given in the distribution of funds resulting from a tax sale of the receivership property.
- (3) Any residue remaining after the termination of the receivership shall be paid to the owner of the receivership property.

67-1910. Remedies additional. The remedies provided for in Sections 67-1901 - 67-1909 shall be in addition to all existing remedies for the collection of delinquent taxes, including any existing right concerning the appointment of a receiver in tax suits.

not less than 36,900 nor more than 37,100
not less than 56,200 nor more than 56,300
or to counties with a metropolitan form of government.

(b) In counties having the following populations according to the 1970 federal census or any subsequent federal census:

not less than 3,765 nor more than 5,200
not less than 8,100 nor more than 8,200
not less than 12,300 nor more than 12,350
not less than 12,400 nor more than 12,550
not less than 14,700 nor more than 14,800
not less than 36,900 nor more than 37,100
not less than 56,200 nor more than 56,300

or in counties with a metropolitan form of government after the publication of the aforesaid notice, and between the date of February 1 and April 1, the trustee shall deliver the delinquent lists showing all unpaid land taxes to an attorney chosen by him with the approval of the county executive, and it shall be the duty of the county trustee and the county executive to cause said attorney to prepare and file suits in the chancery or circuit courts for the collection of all delinquent land taxes, and all arrears of taxes due the state, county, and municipality; and, so that delinquent and municipal taxes may be collected at the same time as other taxes, it shall be the duty of the proper municipal officers to furnish the county trustee or his attorney, certified lists of delinquent municipal taxes, unless otherwise provided.

67-2003. Filing of suits - prosecution. The attorney designated by the trustee with the approval of the county judge, shall after February 1, and not later than April 1, file suits in the circuit or chancery courts of the county for the collection of delinquent land taxes due the state, county, and municipality, as well as the interest, penalties, and costs attached to and a part of such taxes, which taxes, interest, penalties, and costs are declared a lien upon the land; and, for the enforcement of this lien, said suits shall be brought in the name of the state, in its own behalf and for the use and benefit of the county, and of any municipality certifying the lists of delinquent taxes. The bill shall be in substance and form as

This subsection shall not apply to counties having the following populations according to the 1970 federal census or any subsequent federal census:

not less than 3,765 nor more than 5,200

not less than 6,600 nor more than 6,700

not less than 8,100 nor more than 8,200

not less than 12,300 nor more than 12,350

not less than 12,400 nor more than 12,550

not less than 14,700 nor more than 14,800

not less than 36,900 nor more than 37,100

not less than 56,200 nor more than 56,300

or to the counties with a metropolitan form of government.

(b) In counties having the following populations according to the 1970 federal census or any subsequent federal census:

not less than 3,765 nor more than 5,200

not less than 6,600 nor more than 6,700

not less than 8,100 nor more than 8,200

not less than 12,300 nor more than 12,350

not less than 12,400, nor more than 12,550

not less than 14,700 nor more than 14,800

not less than 36,900 nor more than 37,100

not less than 56,200 nor more than 56,300

or in counties with a metropolitan form of government upon the failure of the county trustee and the county executive to employ an attorney and institute suits for the collection of delinquent taxes, and within the time provided, the district attorney general shall have power, and it is his duty, to employ an attorney and institute such suits; and for the failure of the trustee and the county executive to the state a penalty of ten percent (10%) of all delinquent taxes appearing in the delinquent lists in the office of the trustee, and it shall be the duty of the district attorney general at the same time he employs an attorney to prosecute suits for the county trustee and county judge to recover a penalty of said ten percent (10%) herein imposed upon them for their failure or refusal to comply with the provisions of this chapter.

not less than 3,765 nor more than 5,200
not less than 6,600 nor more than 6,700
not less than 8,100 nor more than 8,200
not less than 12,300 nor more than 12,350
not less than 12,400 nor more than 12,550
not less than 14,700 nor more than 14,800
not less than 36,900 nor more than 37,100
not less than 56,200 nor more than 56,300
or to counties with a metropolitan form of government.

(b) In counties having the following populations according to the 1970 federal census:

not less than 3,765 nor more than 5,200
not less than 6,600 nor more than 6,700
not less than 8,100 nor more than 8,200
not less than 12,300 nor more than 12,350
not less than 12,400 nor more than 12,550
not less than 14,700 nor more than 14,800
not less than 36,900 nor more than 37,100
not less than 56,200 nor more than 56,300

or in counties with a metropolitan form of government upon the filing of suits to enforce the tax lien, an additional penalty of ten percent (10%) upon all delinquent land taxes shall accrue and the same is imposed upon the amount due from any defendant to the state, county, or municipality, which penalty shall be devoted to the expense of prosecuting said suits and shall be allowed to the attorney filing the suits as compensation for his services. The sheriff shall receive as costs to be taxed against each delinquent, two dollars (\$2.00) for serving all original processes and the statutory fees for all other services by him performed, and the clerks of the courts shall receive for their services the statutory fees allowed the clerks under existing laws. No litigation tax shall be imposed.

If necessary to the prompt dispatch of suits for the collection of delinquent taxes the court may order paid out of delinquent tax money on hand all reasonable expense of prosecuting said suits in addition to that otherwise provided by law.

The defendants do not have to be served with a copy of the complaint and exhibit and instead the clerk may issue a notice to accompany the summons. The notice shall identify the suit mentioned in the summons sufficiently to enable the taxpayer to know what delinquent taxes he is being sued for and what property is being subject to the lien. The summons and notice may be for more than one (1) suit where suits have been consolidated. Constructive service of process shall be made as now provided by law.

This subsection shall not apply to counties having the following populations according to the 1970 federal census or any subsequent federal census:

not less than 3,765 nor more than 5,200

not less than 6,600 nor more than 6,700

not less than 8,100 nor more than 8,200

not less than 12,300 nor more than 12,350

not less than 12,400 nor more than 12,550

not less than 12,400 nor more than 12,550

not less than 14,700 nor more than 14,800

not less than 36,900 nor more than 37,100

not less than 56,200 or more than 56,300

or to counties with a metropolitan form of government.

(b) In counties having the following populations according to the 1970 federal census or any subsequent federal census:

not less than 3,765 nor more than 5,200

not less than 6,600 nor more than 6,700

not less than 8,100 nor more than 8,200

not less than 12,300 nor more than 12,350

not less than 12,400 nor more than 12,550

not less than 14,700 nor more than 14,800

not less than 36,900 nor more than 37,100

not less than 36,900 nor more than 37,100

not less than 56,200 nor more than 5,300

67-2015. Judgment and sale as to part of defendants - Appeals. Pro confesso may be taken and entered of record against any one or more defendants included in a bill and the cause proceeded with, against any one or more, to a final judgment and a sale of the property, without affecting the rights of the other parties to the suit. Any one (1) or more defendants shall have the right to appeal and such appeal shall not affect the standing of the cause as to other parties to the proceedings.

67-2016. Implementation of decrees. The courts having jurisdiction of any delinquent tax proceedings, are vested with the authority to render judgments and decrees, and order writs of possession for the purposes declared in this chapter, and the commissioner of revenue is authorized to take all steps necessary to put the state in possession of said property.

67-2017. Right of appeal. Any party to a suit brought under the provisions of this chapter shall have the right to appeal to the Supreme Court, or have said cause reviewed by writ of error, but an appeal or writ of error by one defendant shall not affect the suits as to other defendants; provided, however, that no appeal in the nature of a writ of error or writ of errors shall be allowed except from or to a final decree.

67-2018. Advertisement of sale - Notice to present owner. In the event of a sale under a decree of the court, the property shall be advertised in one (1) sale notice, which notice shall set out the names of the owners of the different tracts or parcels of land and a concise description of the property and the amount of judgment against each defendant. Said advertisement may be by publication in a newspaper as required by law, or by printed handbills as the courts may decree.

However, notice of the sale shall be sent by registered return receipt mail to the last known address of the present owner of any real property if the delinquent taxes for which the sale is to be conducted were assessed on the real property when owned by a prior owner of the real property.

67-2023. Grounds for attacking tax sale. A tax deed of conveyance shall be an assurance of perfect title to the purchaser of said land, and no such conveyance shall be invalidated in any court, except by proof that the land was not liable to sale for taxes or that the taxes for which the land was sold have been paid before said sale; and if any part of the taxes for which said land was sold is illegal or not chargeable against it, but a part is chargeable, that shall not affect the sale, nor invalidate the conveyance thereunder, unless it appears that before the sale the amount legally chargeable against the land was paid or tendered to the county trustee, and no other objection either in form or substance to the sale or the title thereunder shall avail in any controversy involving them.

67-2024. Payment as prerequisite to attack on tax title. No suit shall be commenced in any court of the state to invalidate any tax title to land until the party suing shall have paid or tendered to the clerk of the court where the suit is brought the amount of the bid and all taxes subsequently accrued, with interest and charges as herein provided.

67-2025. Limitation of actions to invalidate tax title. No suit shall be commenced in any court of the state to invalidate any tax title to land after three (3) years from the time said land was sold for taxes, except in case of persons under disability, who shall have one (1) year in which to bring suit after such disability is removed.

67-2026. Validity of sale attacked without joining state as party. In all cases where the state be not the holder of the legal title to the property bought by it at a tax sale for delinquent state and county taxes, any person desiring to attack the validity of such tax sale may do so by making only the holder of the legal or equitable title thereto and those persons claiming through such holder, parties to such suit; and it shall not be necessary to make the state a party thereto.

67-2027. State not liable for costs. In the event the state should become the purchaser of said property on the bid of the clerk, the cost and the five percent (5%) attorney's fees and the county and municipal taxes shall not become

thereof as trustee for the state and/or any of said political subdivisions, the commissioner of revenue shall take possession of such lands, and shall appoint local agents to manage the same and collect the rents thereof, and to that end shall have the right and power to rent, let or demise said lands on such terms as he may deem best; provided, however, that no letting for any term, other than a tenancy at will, to be terminable at the will of said commissioner, shall be made without the consent of the governor and attorney-general.

* * * *

67-2031. Compromise of delinquencies - Conveyance of purchased property.

The commissioner of revenue shall also have the power, with the consent of the governor and attorney-general, to compromise said delinquent taxes, whether rights or titles therein, and also power, subject to the approval of the governor and attorney-general, to sell said lands for cash or on time, and on such terms and for such purchase price as he may deem to the best advantage of the state. The approval of the governor and attorney-general endorsed on the face of any muniment of title, contract, lease or compromise agreement executed by the commissioner shall be sufficient and conclusive evidence thereof.

Each tax deed executed by the commissioner under authority hereof shall be transmitted to the commissioner of finance and administration who shall record or note the execution of the same on the records of his office.

* * * *

67-2033. Sale of land for county taxes only - Disposition of proceeds. When any land must be sold for payment of delinquent county taxes only, it shall be sold under the provisions of this chapter and chapter 13 of this title so far as the same apply. It shall be the duty of the clerk of the court ordering the sale to bid, on behalf of the country, the amount ascertained to be due for taxes, interest, penalties and costs, where no other bidder offers the same or higher bid. Up to ten percent (10%) of the sale proceeds shall be applied first to payment of any unpaid balance of compensation due the prosecuting attorney. Second, the proceeds of the sale shall be applied to the costs of the suits. Third, the remainder shall be applied to the county first and second, to any municipality having a tax lien on the same property.

67-2034. Management and sale of land purchased by county. It shall be the duty of the county judge or chairman of each county to take charge of all lands bought in by the county at such delinquent tax sales. During the period when redemption of any such tract of land can be made the same shall be held and put only to such use as will not result in a waste thereof. After the period of redemption has elapsed, it shall be the duty of said county judge to arrange to sell every tract of such land as expeditiously and advantageously as possible.

67-2035. Terms and proceedings for sale by county. A committee of four (4) members shall be elected by the quarterly county court, from the court, who, together with the county judge, shall place a fair price on each tract of land, for which price the same shall be sold. Such committee may authorize the sale of any tract of land upon such terms as will secure the highest and best sale price, but the credit extended shall not exceed three (3) years and a lien shall be retained to secure purchase price. In no event shall any tract of land be sold for an amount less than the total amount of the taxes, penalty, cost and interest. Interest shall be calculated on the full amount of taxes, penalty, cost and interest from the time of the acquisition of the land by the county until the sale thereof. Provided, that if it shall appear that it is impossible to sell any tract of land for this amount, upon application the quarterly county court in session may grant permission to offer the land for sale at some amount to be fixed by the court. Whenever the sale of a tract of land is arranged by the county judge, the deed shall not be executed and the same shall not become final until ten (10) days, after the publication in a newspaper published in the county of a notice of the proposed sale, the name of the purchaser and the terms, conditions and price. The said land shall be described in said notice only by number, which shall refer to a description on file with said committee. If anyone, during said ten (10) days, shall increase the offer made for the land by ten percent (10%) or more, the party making the first offer shall be notified and a day fixed when both parties shall appear and make offers. The tract of land shall be sold to the party making the highest and best offer. Conveyances of said land shall be made without warranties of any sort, and deeds shall be executed by the county judge or chairman or other chief fiscal officer of the county and the county trustee, who shall collect the purchase price at the time of the execution of the deed, and prorate it as hereinabove provided.

of this section and Section 67-2036. Provided, that any county, city, town, taxing district, or other municipal corporation, having become a purchaser at a tax sale, or having otherwise acquired real estate, may fully discharge the lien or liens of delinquent taxes of the state, which have priority or are superior to its lien for taxes, by paying into the hands of the clerk and master or clerk conducting such sale, the net amount of such state taxes without interest or penalty.

67-2038. Tax exemption of property purchased by governmental units - Resale. Whenever land sale shall be purchased at a tax sale by the state, by a county, or by a municipality of the state or by a county and a municipality, as tenants in common, and the state, a county or municipality, or a county and municipality, goes into or takes actual possession of such land, the said land shall, after the expiration of the two (2) year period of redemption, be exempt from taxation, as property held for a public, county or municipal purpose, and no taxes shall be collected thereon, and no assessment shall be made thereon, so long as the said property is held for the purpose of realizing therefrom the taxes and assessments which have been lost by the several tax funds entitled thereto as result of the failure of the former owner of said property to pay the taxes for which the sale was held.

Provided, however, that it shall be the duty of the proper officers of the state, the county and the municipality, or any or all of the same who have an interest in said property, promptly, upon its acquisition, to offer the same for sale to private purchasers by appropriate means and to make diligent effort to sell the same at its reasonable market value. In case the property is owned by a county, or a municipality, or by a county and a municipality as tenants in common, such property may be sold upon credit with the land as security for any deferred purchase money by authority of an appropriate resolution of the governing body of the county, or municipality, or both if both have an interest in said property.

Provided further, that when the state, a county, or a municipality, or any or all of them, shall have recovered from the sale or rental of any property purchased by the, or any one, or any combination of the, moneys sufficient to pay the taxes for which the said property was sold, it shall be the duty of the officers

upon which page the taxes for which the property was sold shall be listed, year by year, without the addition of any interest or penalties. As to each item of tax entered on said ledger, a reference shall be made to the tax roll, showing the book and page from which the same was taken, and on said ledger page shall be also entered the net amount of rents received, or the net sale price thereof, and the distribution of such rents and sale price.

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67-2042. Disposition of receipts from property purchased. Whenever any property is purchased at a tax sale by the state, a county, or a municipality, or by any two (2) or more of them the net receipts collected from the sale or rental of said property shall be used to pay the following obligations in the order named:

- (1) State taxes or such amount thereof as the commissioner of revenue, with the consent of the governor and attorney general, is willing to accept in full settlement thereof, those state officials being authorized to compromise such taxes in a manner similar to that provided for in Section 67-2031.
- (2) County and municipal taxes beginning with the taxes which have become delinquent most recently, which are secured by an existing lien against the property and proceeding successively to the oldest taxes against said property, pay the court costs and attorney fees in all of the cases, and if the money available is sufficient to pay part, but not all of the county and municipal taxes for each of said years, the money shall be divided between the county and municipality in proportion to the amount of their delinquent taxes for these years.
- (3) Any special assignment, improvement, district, or other similar liens according to their legal priority.

- January 15, 1980 Taxes become delinquent in counties having a population of 600,000 or more, and ½% per month penalty begins to accrue (T.C.A. Sec. 67-1105)
- January 30 or 31, 1980 On or before one of these dates (i.e., at least 30 days before the date of delinquency on March 1), notices of taxes due must be sent to the owners of property in certain specified counties having populations of less than 600,000 (T.C.A. Sec. 67-1121).
- February 19 or 20, 1980 On or before one of these dates (i.e., at least 10 days before the date of delinquency on March 1), warning notices of delinquency must be published in counties of less than 600,000 population; written notices may also be required under certain conditions (T.C.A. Sec. 67-1301).
- March 1, 1980 Taxes become delinquent in counties having less than 600,000 population and ½% per month penalty begins to accrue (T.C.A. Sec. 67-1105).
- April 1, 1980 In counties having less than 600,000 population, the trustee must begin collecting delinquent taxes by distress and sale of personalty (T.C.A. Sec. 67-1305).
- May 1, 1980 Delinquent taxes begin to accrue interest (T.C.A. Sec. 67-1105); delinquent municipal real property taxes must be certified to the trustee on or before this date (T.C.A. Sec. 67-1319).
- January 1, 1981 Tax collectors must make final settlements and return delinquent tax lists to the trustee (T.C.A. Sec. 1311, 1314).
- January 1 - January 31, 1981 During this period the trustee must cause to be published notice that suits will be filed for enforcement of tax liens (T.C.A. 67-2001).

