



County Technical Assistance Service

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Other Taxes

Dear Reader:

The following document was created from the CTAS electronic library known as e-Li. This online library is maintained daily by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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Other Taxes

Reference Number: CTAS-222

Hall Income Tax

Reference Number: CTAS-1638

Authority. T.C.A. §§ 67-2-101 through 67-2-125.

Description. This is a tax on income derived from stocks and bonds, as defined in T.C.A. §§ 67-2-101 and 67-2-102. There are numerous exemptions, including a \$1,250 personal exemption on individual returns and \$2,500 on joint returns. T.C.A. § 67-2-104. The tax is collected by the Department of Revenue. The rate was previously five percent (5%) but is being phased out as follows:

- (1) For any tax year that begins on or after January 1, 2017, and prior to January 1, 2018, four percent (4%);
- (2) For any tax year that begins on or after January 1, 2018, and prior to January 1, 2019, three percent (3%);
- (3) For any tax year that begins on or after January 1, 2019, and prior to January 1, 2020, two percent (2%);
- (4) For any tax year that begins on or after January 1, 2020, and prior to January 1, 2021, one percent (1%); and
- (5) For any tax year that begins on or after January 1, 2021, and for subsequent tax years, zero percent (0%);

Distribution. The tax is distributed as follows:

1. Up to 10 percent of the first \$200,000 of taxes collected and 5 percent of amounts over \$200,000 go to the Department of Revenue for administration of the tax. T.C.A. § 67-2-117.
2. The taxes collected on income from stocks and bonds after deducting administration expenses are distributed as follows:
 - a. Five-eighths (5/8) to the state general fund;
 - b. Three-eighths (3/8) to the counties and municipalities of the state. If the taxpayer resides inside the corporate limits of a municipality, then to that municipality; but if the taxpayer resides outside any municipal limits, then to the county of the taxpayer's residence. T.C.A. § 67-2-119.

Hotel/Motel Tax

Reference Number: CTAS-1639

The hotel/motel tax is a tax on the privilege of occupancy of hotel and motel rooms and similar spaces. Counties levy the hotel/motel tax by private act (with the exception of Davidson County which uses a general law, T.C.A. § 7-4-101 *et seq.*, applicable only to counties with a metropolitan form of government). The distribution of the tax is set forth in the private act. Rates vary according to the terms of the private act. There is no statutory limit on the rate that may be imposed by the general assembly in the private act (Op. Tenn. Att'y Gen. 01-141).

Under T.C.A. § 67-4-1425, any private act enacted after May 12, 1988, that authorizes a city or county (with exceptions noted in the statute) to levy a hotel/motel tax must limit its application as follows:

1. A city shall only levy such tax on occupancy of hotels located within its municipal boundaries.
2. A city shall not be authorized to levy such tax on occupancy of hotels if the county in which such city is located has levied such tax prior to the adoption of the tax by the city; and
3. A county shall only levy such tax on occupancy of hotels within its boundaries but outside of the boundaries of any municipality that has levied a tax on such occupancy prior to the adoption of such tax by the county.

These limitations only apply prospectively and all private acts levying taxes on the privilege of occupancy of hotels enacted prior to May 12, 1988, shall remain in full force and effect. Note that home rule munic-

ipalities have separate general law authority to levy hotel/motel taxes. As these taxes are not levied by private act, the limitations listed above do not apply to hotel/motel taxes levied by a home rule municipality.

State Litigation Tax

Reference Number: CTAS-1640

Authority. T.C.A. §§ 67-4-601 through 67-4-606.

Description. The General Assembly has provided a privilege tax on litigation, collected upon the commencement of a civil action, a finding or plea of guilty or submission to a fine in a criminal action, the filing of an appeal or writ of error or certiorari, judgment against the defendant in any original civil action brought by a city, county or the state or upon judgment or final decree against the appellee when the appellant is a city, county or the state. Such tax is administered by the commissioner of revenue and collected by the clerks of Supreme Court, Court of Appeals, circuit courts, criminal courts, probate courts, county court, courts of law and equity, chancery courts, general sessions courts, city courts and any other inferior courts the General Assembly may create.

The following are the most common state privilege taxes upon litigation:

1. Criminal charges; T.C.A. § 67-4-602(a)	\$29.50
2. Civil suits in courts of record; T.C.A. § 67-4-602(b)	\$23.75
3. Civil cases in general sessions; T.C.A. § 67-4-602(c)	\$17.75

When a general sessions court is exercising state court jurisdiction, except with regard to juvenile court, there is levied an additional privilege tax of \$1 added to the \$23.75 listed above.

In all criminal charges in any state, county or municipal court for any violation of Title 55, Chapter 8, or for any violation of any ordinance governing the use of a public parking space there is levied an additional state litigation tax of \$1.

Additionally, T.C.A. § 67-4-602(h) imposes an additional privilege tax on litigation of \$3.00 on all criminal charges, upon conviction or by order, instituted in any state or general sessions court, to be deposited in a special account in the state treasury to be known as the "Statewide Automated Victim Information and Notification System Fund."

There is also an additional litigation tax of \$2.00 imposed on all criminal charges, upon conviction or by order, instituted in the general sessions court of any county served by a judicial commissioner. T.C.A. § 67-4-602(k).

Collection. State litigation taxes are collected by the various court clerks. For services in collecting and remitting these taxes, clerks are entitled to a 6.75 percent commission. T.C.A. § 8-21-401. As this commission is a change to a uniform percentage from prior law, which provided for different commissions in different courts and counties, the Department of Revenue provided that clerks shall be held harmless and shall not receive a commission that is less than the commission received by the clerk in the fiscal year ending June 30, 2005.

County Litigation Taxes

Reference Number: CTAS-1641

Authority. TCA 67-4-601, 16-15-5006, and 16-20-106.

Description. Counties have authority to levy a local litigation tax up to the amount levied as state litigation tax. This local litigation tax may be levied by private act, by resolution of the county legislative body, or by a combination of private acts and county legislative body resolutions. Clerks of the various courts to which such tax applies as specified in the private act or resolution collect the local litigation tax. The private acts and local resolutions of each individual county must be consulted for that county's litigation tax rate.

In addition to matching the state litigation tax, TCA 16-15-5006 authorizes counties to levy a litigation tax of up to \$6 per case for each case filed in general sessions court or in a court where the general sessions judge serves as judge, except juvenile court, by resolution passed by a two-thirds vote of the county legislative body, proclaimed by the presiding officer and certified to the secretary of state. This statute also contains a provision allowing the litigation tax to be raised above \$6 if in any fiscal year the proceeds of the tax do not raise sufficient revenue to fund the salary, under the circumstances specified in the statute. *See* Op. Tenn. Att'y Gen. U94-130. The county litigation tax authorized by TCA 16-15-5006 is earmarked for the salary of the general sessions judge.

Counties are authorized to levy an additional local privilege tax on litigation in all civil and criminal cases instituted in the county, not including those instituted in municipal court under subsection (b) of TCA 67-4-601. This additional tax may be levied by a resolution passed by a two-thirds vote of the county legislative body. Counties are authorized to levy the tax for jail or workhouse construction, reconstruction or upgrading, or to retire debt, including principal and interest and related expenses, on such construction, reconstruction or upgrading or for courthouse renovation.

Originally, the Attorney General issued opinions indicating that counties were limited to a maximum tax levy of \$50 under subsection (b) of TCA 67-4-601 (AG Op. Nos. 08-167 and 12-13). These opinions interpreted subdivisions (b)(1) and (b)(5) of subsection (b) not as separate taxes but linked. The opinions state that (b)(5) only authorizes an increase in the (b)(1) tax to a maximum of \$25. However, in 2016 the Attorney General issued another opinion (Op. No. 16-10) that interprets subdivisions (b)(1) and (b)(5) as unrelated separate taxes. Thus, in the 2016 opinion, the Attorney General opines that counties can levy a maximum \$60 tax under subsection (b) of TCA 67-4-601 (\$10 under subdivision (b)(1), \$25 under (b)(5), and \$25 under (b)(6)). The 2016 opinion appears to supersede the 2008 and 2012 opinions.

In addition to the uses set forth above (i.e., jail/courthouse) as much as \$25 of this tax may be used for courthouse security. Also, up to \$50 of the tax may be used for the purpose of obtaining and maintaining software and hardware associated with collecting, receiving and maintaining records for law enforcement agencies. Finally, the entire amount may also be used for substance abuse prevention purposes.

The law contains a sunset provision that causes the tax levy to cease once the costs of the project have been paid or the debt for the project has been retired.

Finally, per TCA 16-20-106, counties by a two-thirds (2/3) vote may levy an additional \$2 litigation per case to be denominated as a part of the court costs for each petition, warrant and citation, including warrants and citations for traffic offenses, in matters before the local general sessions courts and juvenile courts to be used by the county for the exclusive purpose of supporting a local victim-offender mediation center or centers.

Distribution. Distribution of county litigation taxes that are to match the state levy may be used for any county purpose or purposes specified in the private acts or resolutions.

Marriage License Taxes

Reference Number: CTAS-1642

Authority. T.C.A. §§ 67-4-411, 67-4-502, 67-4-505, 36-6-413.

Description. There are two state privilege taxes on marriage, and a local option privilege tax on marriage that may be levied in an amount up to \$5 by resolution of the county legislative body. The collector of

both state and local marriage taxes is the county clerk. The \$5 state tax is retained locally and the \$15 state tax is forwarded to the commissioner of revenue for distribution. An additional "fee" was imposed on marriage licenses in a 2002 amendment to T.C.A. § 36-6-413, which fee is collected by the county clerk and forwarded to the state treasurer for distribution.

Rate. The rate of these taxes is as follows:

1. State privilege tax, T.C.A. § 67-4-411.....\$15
2. State privilege tax, T.C.A. § 67-4-505..... \$5
3. County privilege tax, T.C.A. § 67-4-502, up to..... \$5
4. Additional state "fee" (tax), T.C.A. § 36-6-413..... *\$60

*This \$60 "fee" (tax) is not collected in any county from couples who file a certificate showing they have taken a premarital preparation course, nor is it collected from out-of- state residents who obtain their license in Sevier County (the only county with this special exemption). T.C.A. § 36-6-413.

Distribution. These taxes are distributed as follows:

1. T.C.A. § 67-4-505 state tax (\$5) is used:
 - a. 5 percent to county clerk as commission for collecting and paying over the revenue, T.C.A. § 8-21-701(55); and
 - b. 95 percent used for county school purposes.
2. T.C.A. § 67-4-411 (\$15) tax is used:
 - a. 5 percent to county clerk as commission, and
 - b. The remainder is forwarded to the commissioner of revenue.
3. The county tax is distributed five percent (5%) to the county clerk as commission for collecting and paying over the revenue and the remainder according to county legislative body resolution.
4. T.C.A. § 36-6-413 additional \$60 state fee is forwarded to the state treasurer to be distributed as follows:
 - a. \$7 to the Administrative Office of the Courts for funding parenting plan requirements;
 - b. \$15 to the Department of Children's Services for child abuse prevention;
 - c. \$7.50 to Office of Criminal Justice programs for domestic violence services;
 - d. \$20.50 to the Tennessee Disability Coalition for families and children with disabilities;
 - e. \$3.00 to the Tennessee Court Appointed Special Advocates Association;
 - f. \$4 to the Department of Education for grants to Boys and Girls Clubs; and
 - g. \$3 to the Tennessee Chapter of the National Association of Social Workers to strengthen services to families and children.

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