



# County Technical Assistance Service

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## Collection of Property Taxes

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## Collection of Property Taxes

**Reference Number:** CTAS-1573

The trustee collects all property taxes levied by the county and the municipalities within the county, unless a municipality collects its own taxes.<sup>1</sup> However, owners of land are presumed to know taxes are due without demand or personal notice,<sup>2</sup> and assessed taxes become a personal debt of the person whose property is assessed.<sup>3</sup> The whole proceeding for collection of taxes, from the assessment to the sale for delinquency, is a proceeding in rem; even if the land were listed or assessed for taxation to the wrong owner or to an unknown owner, the process is not invalidated. All interested persons are made parties to the proceedings by virtue of the seizure of the parcel occurring upon the filing of a complaint for the purpose of enforcement of the first lien provided for in T.C.A. § 67-5-2101. The filing of a complaint for the purpose of enforcement of the first lien provided for in T.C.A. § 67-5-2101, creates a lien lis pendens as to each parcel which is included in the proceeding, during the pendency of the proceeding, affecting all subsequent owners, without the recording of any copy or abstract thereof in the office of the register of deeds.<sup>4</sup>

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<sup>1</sup>T.C.A. § 67-5-1801. See T.C.A. § 67-5-1901 for the trustee's bond and oath.

<sup>2</sup>*M'Carroll's Lessee v. Weeks*, 6 Tenn. (5 Hayw.) 246 (1814).

<sup>3</sup>*White v. Kelly*, 387 S.W.2d 821 (Tenn. 1965).

<sup>4</sup>T.C.A. § 67-5-2103.

## Timetable of Significant Dates and Activities in the Assessment and Collection of Ad Valorem Real Property Taxes\*

**Reference Number:** CTAS-2193

*\*Note: Specific years are included for illustrative purposes and to clearly indicate chronological sequence; the example shows one complete tax cycle, using the 2010 tax year as an example.*

January 1, 2010	Assessor makes assessments as of this date T.C.A. § 67-5-504; assessed taxes become a first lien on property. T.C.A. § 67-5-2101.
Not later than February 1, 2010	Tax assessor should furnish owners and lessees of business personal property with a tangible personal property schedule. T.C.A. §§ 67-5-902, 67-5-903.
Before March 1, 2010	Assessor furnishes schedule to owners of mobile home parks. T.C.A. § 67-5-802. Personal property schedules due in assessor's office. T.C.A. § 67-5-903. Corrections of assessments for 2008 must be requested by the taxpayer or initiated by assessor prior to this date. T.C.A. § 67-5-509. Greenbelt applications due. T.C.A. §§ 67-5-1005 through 67-5-1007
April 1, 2010	Mobile home park forms due in assessor's office. T.C.A. § 67-5-802
May 20, 2010	Assessor must note all assessments on his or her books on or before this date, T.C.A. §§ 67-5-504, 67-5-508; taxpayers must be notified of any change in their assessments by this date. T.C.A. § 67-5-508

June 1, 2010	Assessor turns over books to the county board of equalization, T.C.A. § 67-5-304; county board of equalization commences its session. T.C.A. § 67-1-404.
July 2010	County legislative body sets tax rate. T.C.A. § 67-5-510. Trustee reports on all delinquent taxpayers and double assessments in the county. T.C.A. § 67-5-1903.
1st Monday in October 2010	On or before this date, county tax rolls must be delivered to trustee T.C.A. § 67-5-807; taxes become due and payable. T.C.A. §§ 67-1-701, 67-1-702.
On or before 1st Monday in November 2010	County clerk or the tax assessor prepares an aggregate of real and personal property to forward to the commissioner of revenue and the mayor of each municipality. T.C.A. § 67-5-807.
March 1, 2011	2010 taxes become delinquent. 0.5 percent per month penalty and 1 percent interest begin to accrue. T.C.A. § 67-5-2010.
September 1, 2011	Back assessments and reassessments must be initiated prior to this date. T.C.A. § 67-1-1005.
1st Monday in September 2011	Trustee makes a full and complete financial report of the condition of the trustee's office. T.C.A. § 67-5-1902.
January 1, 2012	Tax collectors must make final settlements and return delinquent tax lists to trustee. T.C.A. § 67-5-2006.
January 1 — 31, 2012	During this period the trustee must cause to be published notice that suits will be filed to enforce tax liens. T.C.A. § 67-5-2401.
January 2 — 31, 2012	The delinquent tax list may be given to newspapers for publication. T.C.A. § 67-5-2002. This must be done at least 20 days prior to turning the tax list over to the tax attorney.
February 2 — April 1, 2012	Tax attorney must during this period file suit for enforcement of tax liens, T.C.A. § 67-5-2405; an additional 10 percent penalty and the additional costs accrue with the filing of such suit. T.C.A. § 67-5-2410.
April 1, 2012	Delinquent municipal real property taxes must be certified to trustee on or before this date. T.C.A. § 67-5-2005.
June 1 — July 1, 2012	Clerks collecting delinquent taxes are required to provide the trustee with a list of tax suits. T.C.A. § 67-5-2403.
April 1, 2022	All 2010 property taxes assessed but not collected by counties are barred and discharged because of the statute of limitations. T.C.A. § 67-5-1806.

## Tax Roll

**Reference Number:** CTAS-1574

The trustee collects the taxes in the amount set out in the tax roll or tax book prepared by the county clerk or assessor and delivered to the trustee on or before the first Monday in October of each year. The assessor identifies all taxable property in the assessment records so that tax rolls can be provided for each taxing entity within the county. The county legislative body may assign the duty of making the tax roll or book to the county clerk or the assessor.<sup>1</sup> There are statutory requirements for the tax roll or tax book.

1. It is either a bound or loose-leaf book or unit tax ledger cards, one for each parcel of property;
2. It is arranged by districts or subdivision of districts;
3. It is ruled to show names of owners in alphabetical order or in the order in which the parcels of property are identified by a parcel number;
4. It shows the number of lots and blocks;
5. It states the number of acres;
6. It contains a description of the property; and
7. It states the value of each lot, tract, or parcel.

A "description" of the property includes the name of the owner, if known, a description of each lot, tract, or parcel, and its value. Under the appropriate headings, the value of personal property is also listed. From the valuation placed on real and personal property, taxes are calculated and placed in an appropriate column according to the rate set by the county legislative body (or other appropriate authority). Dollar marks should be placed to clearly delineate the dollar amounts.<sup>2</sup> The property located within municipalities should be separated from other property of the county.<sup>3</sup>

The entries contained in the tax roll may be altered to reflect changes in the status of the property: the acquisition of the property by an entity which is exempt from taxation,<sup>4</sup> revisions due to damaged or incomplete improvements,<sup>5</sup> the roll back of taxes on land previously classified as agricultural, forest, or open space lands,<sup>6</sup> or actions of the State Board of Equalization.<sup>7</sup> The assessor must notify owners of any change in the classification or assessed valuation, usually by mail.<sup>8</sup> Decisions of the State Board of Equalization or the assessment appeals commission are evidenced by a certificate, a copy of which is sent to the owner, chief executive officer, trustee, and assessor.<sup>9</sup>

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<sup>1</sup>T.C.A. § 67-5-807.

<sup>2</sup>*Hunter Glover Co. v. Harvey Steel Prods. Corp.*, 3 F.2d 634 (W.D. Tenn. 1924).

<sup>3</sup>T.C.A. § 67-5-807. Note T.C.A. § 67-5-808 which refers to the tax rolls for metropolitan governments.

<sup>4</sup>T.C.A. § 67-5-201.

<sup>5</sup>T.C.A. § 67-5-603.

<sup>6</sup>T.C.A. § 67-5-1008.

<sup>7</sup>T.C.A. § 67-5-1510.

<sup>8</sup>T.C.A. § 67-5-508.

<sup>9</sup>T.C.A. § 67-5-1512.

## Tax Due Date

**Reference Number:** CTAS-1575

State, county and municipal property taxes are payable on the first Monday in October in each year, except that certain municipalities may have a different date fixed by law when they collect their own property taxes. However, all municipal taxes collectible by the county trustee are due and delinquent at the same time as county taxes. T.C.A. § 67-1-701. The county legislative body, by resolution, may allow the trustee to collect taxes after the tax rates are finally set, the tax rolls are received by the trustee, and the

tax receipts have been prepared, but not earlier than July 11. T.C.A. § 67-1-702(b). The county trustee may (but is not required to) adopt a policy of not accepting current county real property taxes due when delinquent property taxes are owing, except when the obligor is in bankruptcy or a dispute exists over responsibility for these taxes. T.C.A. § 67-5-1801(b). A person in the armed forces of the United States, or called into active military service of the United States from a Reserve or National Guard unit has an 180-day extension on the time that property taxes are due. T.C.A. § 67-5-2011.

## Payment of Taxes

**Reference Number:** CTAS-1576

The county trustee acts as collector of all county property taxes and of all municipal property taxes when the municipality does not collect its own.<sup>1</sup> These taxes are paid to the trustee at the trustee's office at the county seat. Additionally, the trustee has authority to designate other collection sites, including a bank.<sup>2</sup> Procedures for such a designation require the trustee to establish an account with the bank for the deposit of property taxes. In order to pay at the bank, the taxpayer must show evidence of the amount owed. The bank may not accept delinquent taxes and must provide a deposit form to the taxpayer which states that the bank is acting as agent for the trustee. The bank then furnishes a daily accounting to the trustee, who must check amount deposited and owed before issuing a tax receipt.<sup>3</sup> Tax payments may also be mailed to the trustee.<sup>4</sup>

Tax Statements. The trustee's use of tax bills or mailed statements indicating the amount of currently payable taxes is not required or even specifically authorized, except in counties with consolidated forms of government.<sup>5</sup> Owners of land are presumed to know taxes are due without demand or personal notice.<sup>6</sup> Nevertheless, tax statements are almost uniformly used as a very effective way to remind taxpayers of their obligations to pay property taxes. This widespread use of mailed tax statements has been recognized in legislation dealing with notices of delinquent taxes, which are required to be part of mailed tax bills, and also with time limits for appealing to the State Board of Equalization.<sup>7</sup> A county cannot include other charges on the property tax bill unless there is specific statutory authority, as is the case, for example, with solid waste special assessments.<sup>8</sup>

Currency and Partial Payments. The trustee is required to accept constitutional and lawful U.S. currency or warrants on the state treasury legally outstanding in the hands of a person to whom they were issued and unpaid, U.S. coins, U.S. legal tender notes, and federal reserve notes.<sup>9</sup> Prior to any county trustee accepting partial payment of property taxes, the county trustee must file a plan with the Comptroller of the Treasury. The plan must indicate that the county trustee's office has the accounting system technology to implement a program for partial payment of property taxes. The plan must also indicate whether such a program will be implemented within the existing operating resources of the office or indicate prior approval of the county legislative body if additional operating resources are needed.<sup>10</sup> If a trustee does accept a partial payment of taxes, this action does not release the tax lien, except to the extent of the partial payment; the trustee has the duty to accept the balance as if no partial payment has been made.<sup>11</sup>

Checks. The trustee is not authorized to "hold" a check for a taxpayer until sufficient funds are in the account upon which it is drawn. All public funds received by the trustee are to be deposited into that official's bank account within three days after receipt.<sup>12</sup> Trustees accepting checks may encounter problems with nonpayment. If these checks are not paid, the taxpayer is still liable for the tax as well as all legal penalties and interest.<sup>13</sup> A "bad" check may be pursued under the civil provisions<sup>14</sup> or the criminal provisions<sup>15</sup> of the Code but not under both provisions. An official who receives a "bad" check may contact the office of the district attorney. If a check is not duly paid, most trustees void the receipt and proceed as if no check were tendered.

Credit Cards. County officials or entities may receive payment by credit card or debit card for any public taxes collected. Any municipal or county entity or officer collecting payment by credit card or debit card shall set and collect a processing fee in an amount that is equal to the amount paid the third party processor for processing the payment. Such processing fee may be waived by approval of the governing body. If payment is not honored by the credit card company or the entity upon which a debit card payment is drawn, the county entity or official may collect a service charge in the same amount charged for the collection of a check drawn on an account with insufficient funds.<sup>16</sup>

Date of Receipt. Any tax payment which is transmitted by U.S. mail to the trustee is deemed filed and received on the date on the postmark, or if the postmark is illegible, erroneous, or omitted, on the date the payment was mailed, as established by the sender by competent evidence. Also, if the payment is postmarked no more than 24 hours subsequent to the last date for timely payment of taxes, it shall be accepted as if timely filed.<sup>17</sup>

Part Ownership. Whenever a property owner has an undivided interest in any property or a specific portion of any property assessed to another, that part owner may pay the taxes on his or her portion and receive a receipt for payment in full for that share of the taxes. Prior to accepting such a payment, the trustee must be satisfied that the value placed on each portion is a correct relative valuation, either by agreement of the owners or by a certificate from the assessor that the assessor has fixed the valuation of that portion.<sup>18</sup> Then, any necessary tax sale would involve a sale of the delinquent tenant in common's undivided interest. A life tenant in possession is deemed the owner and is liable to pay the assessed taxes which accrue during that tenancy; taxes are not prorated between a life tenant and the remainder interest.<sup>19</sup>

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<sup>1</sup>T.C.A. § 67-5-1801(a); § 67-1-702.

<sup>2</sup>T.C.A. § 67-5-1801(b); Op. Tenn. Atty. Gen. 83-392 (November 18, 1983).

<sup>3</sup>T.C.A. § 67-5-1801(c).

<sup>4</sup>T.C.A. § 67-1-107.

<sup>5</sup>T.C.A. § 7-3-203.

<sup>6</sup>*M'Carrol's Lessee v. Weeks*, 6 Tenn. (5 Hayw.) 246 (1814).

<sup>7</sup>T.C.A. §§ 67-5-1412; 67-5-2402.

<sup>8</sup>T.C.A. § 67-5-103.

<sup>9</sup>T.C.A. § 67-1-704(a).

<sup>10</sup>T.C.A. § 67-5-1801(e)(2). See also T.C.A. § 67-5-1808.

<sup>11</sup>*White v. Kelly*, 387 S.W.2d 821 (Tenn. 1965); *Salts v. Salts*, 190 S.W.2d 188 (Tenn. 1945).

<sup>12</sup>T.C.A. § 5-8-207.

<sup>13</sup>T.C.A. §§ 9-1-108, 9-1-109.

<sup>14</sup>T.C.A. § 47-29-101.

<sup>15</sup>T.C.A. § 39-14-121.

<sup>16</sup>T.C.A. § 9-1-108(c); Op. Tenn. Atty. Gen. 01-015 (January 31, 2001) (processing fees for use of credit card).

<sup>17</sup>T.C.A. § 67-1-107.

<sup>18</sup>T.C.A. § 67-5-1805.

<sup>19</sup>*Sherrill v. Board of Equalization*, 452 S.W.2d 857 (Tenn. 1970).

## Trustee's Commission

**Reference Number:** CTAS-1577

The commission of the county trustee for collecting property taxes is as follows:<sup>1</sup>

6 percent on all sums up to \$10,000;

4 percent on all sums above \$10,000 and up to \$20,000; and

2 percent on all sums above \$20,000.

If the trustee collects taxes for a municipality, the county legislative body may enter into an intergovernmental agreement with such municipality for a trustee's commission different from the one set out above.<sup>2</sup> The trustee receives a 1 percent commission on ad valorem taxes collected for watershed districts.<sup>3</sup>

<sup>1</sup>T.C.A. § 8-11-110. Refer to T.C.A. § 67-5-1905 which notes that the trustee is entitled to a credit for his or her commissions and for all legal disbursements on settlement of his or her accounts with the county mayor.

<sup>2</sup>T.C.A. § 8-11-110(h).

<sup>3</sup>T.C.A. § 69-6-145.

## Receipts

**Reference Number:** CTAS-1578

The trustees must provide to each taxpayer a receipt printed or written in ink or indelible pencil, for all the taxes paid by the taxpayer. If a portion of the tax notice is to be retained by the taxpayer, in lieu of the trustee mailing a separate receipt of the payment to the taxpayer, the tax notice shall (1) clearly state such fact; and (2) inform the taxpayer that if the taxpayer desires the trustee to mail a separate receipt of the payment to the taxpayer, the taxpayer must include a self-addressed, stamped envelope when the taxes are paid. If the trustee provides a separate receipt of all taxes paid by the taxpayer, such receipt shall be numbered and dated.<sup>1</sup> The receipt is required to show separately the amounts of state and county tax levies; however, if receipts are mechanically produced, these amounts may be omitted (unless the taxpayer specifically requests that the information be placed on the receipt). The county legislative body is required to furnish a sufficient number of tax receipts, in duplicate book form, numbered consecutively from one, and shall have the year for which taxes are due printed on the receipt in large figures, not less than one inch deep. The trustee must account for each blank receipt in the final settlement account. When required, the trustee is to provide the county legislative body with duplicate receipts which are to be filed with the county clerk for reference.<sup>2</sup>

The trustee is prohibited from charging for any statement, certificate, or receipt of taxes, except for the fees and costs authorized for the collection of delinquent taxes.<sup>3</sup> Also, it is a misdemeanor for the trustee to collect higher tax amounts than is directed by law.<sup>4</sup>

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<sup>1</sup>T.C.A. §§ 67-1-704(b) and 67-1-705.

<sup>2</sup>T.C.A. § 67-1-704(c) and (d).

<sup>3</sup>T.C.A. § 67-1-705.

<sup>4</sup>T.C.A. § 67-1-706.

## Early Payment and Discounts for Early Payment

**Reference Number:** CTAS-1579

Upon adoption of a resolution by the county legislative body, the county trustee may accept property taxes at any time after July 10 (prior to the first Monday in October established by T.C.A. § 67-1-701, on which date trustees are required to accept property tax payments) and after the tax rates are finally set, the trustee's tax rolls are received and the trustee's receipts are prepared.<sup>1</sup> County trustees may begin accepting tax relief applications on the same date on which the trustee accepts property tax payments.<sup>2</sup>

The governing body of any municipality or county may provide, by appropriate ordinance or resolution, a discount of 2 percent of the ad valorem real property tax currently due, if the taxes are paid within 30 days of the due date established pursuant to T.C.A. § 67-1-701(a) (i.e. between October 1 and October 31) and/or a discount of 1 percent if paid after more than 30 but less than 60 days after the due date established pursuant to T.C.A. § 67-1-701(a) (between November 1 and November 30). Taxpayers receiving tax relief are also eligible to receive early payment discounts.<sup>3</sup>

If, pursuant to T.C.A. § 67-1-702, the county legislative body has given the county trustee the authority to collect taxes at any time after July 10, prior to the first Monday in October, then the county legislative body may provide by resolution for a discount of 3 percent for ad valorem real property taxes paid by the end of July; 2 percent if paid by the end of August; and 1 percent if paid by the end of September. The trustee may accept early payments, in the trustee's discretion, based upon the trustee's capacity to effectively account for the payments. The governing body may rescind the adoption of discounts at any time.<sup>4</sup>



Mortgagees, mortgage servicers, and escrow account holders are not required to make early tax payments; nor are they required to notify any mortgagor or other party with respect to the availability of any such discounts.<sup>5</sup>

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<sup>1</sup>T.C.A. § 67-1-702.

<sup>2</sup>T.C.A. § 67-1-702.

<sup>3</sup>T.C.A. § 67-5-1804(a).

<sup>4</sup>T.C.A. § 67-5-1804(c).

<sup>5</sup>T.C.A. § 67-5-1804(d).

## Delinquency Date

**Reference Number:** CTAS-1580

Property taxes collected by the trustee are delinquent on the first day of March following the tax due date. For instance, 2010 taxes are due and payable on the first Monday in October of 2010 and delinquent on March 1, 2011.<sup>1</sup> Special provisions may apply to persons in military service under the Soldier's and Sailor's Civil Relief Act as well as under state law.<sup>2</sup> Special interest rates may also apply when the Federal Deposit Insurance Corporation owes the property taxes under 12 U.S.C.A. 1825(b)(3). The trustee is required to accept delinquent taxes, and at the same time collect penalties and interest, until the time the taxes are turned over to the delinquent tax attorney for collection.<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-5-2010; T.C.A. § 67-5-1512(b).

<sup>2</sup>50 U.S.C.A. 560; T.C.A. § 67-5-2011 (See 2004 Public Chapter 800. T.C.A. § 67-5-2011(a) was amended to extend the deadline for the payment of property taxes by a person in the armed forces of the United States, or called into active military service of the United States from a reserve or national guard unit from 90 days to 180 days. T.C.A. § 67-5-2011(b) and (c) were amended to authorize military personnel to provide notice of delay in paying property taxes due to deployment to their county trustee instead of the Commissioner of Revenue.).

<sup>3</sup>T.C.A. § 67-5-2008.

## Penalty and Interest

**Reference Number:** CTAS-1581

To the amount of tax due and payable, interest of one and one-half percent (1.5%) shall be added on March 1, following the tax due date and on the first day of each succeeding month.<sup>1</sup> Specific statutory provisions may affect imposition of penalty and interest for those in the military and for property transactions involving the Federal Deposit Insurance Corporation.

There is no statutory authority which authorizes the trustee to waive accrued penalty and interest.<sup>2</sup> Courts, using equitable powers, may relieve a taxpayer of interest and penalty under certain conditions; however, a taxpayer's inability to pay because of financial misfortune will not excuse the imposition of penalty and interest on the unpaid taxes.<sup>3</sup>

Municipal property taxes become delinquent on the delinquency date established by charter or existing law. As is the case with county taxes, municipal taxes not paid on or before the established delinquency date accrue interest of 1.5 percent, beginning on the first day of March following the tax due date and continuing on the first day of each succeeding month.<sup>4</sup>

Reappraisal and Collection of Penalty and Interest . If a county is undergoing a countywide reappraisal and the values established by the reappraisal program are not turned over to the county by October 1 of the tax year, no penalty and interest may be collected until five months after the date the tax roll is completed. The assessor is required to provide the trustee with written notification which specifically states the date that the tax roll was delivered to the trustee so that the five month period can be determined.<sup>5</sup>

<sup>1</sup>T.C.A. § 67-5-2010(a)(1). Special provisions may apply to Shelby and Giles counties.

<sup>2</sup>See T.C.A. §§ 67-5-2801 and 67-5-2802. See also *State v. Delinquent Taxpayers*, 526 S.W.2d 453 (Tenn. 1975) (There is no statutory predicate for a suit for the forgiveness of taxes, penalty, or interest, and no case law in this jurisdiction supports such a procedure.).

<sup>3</sup>*Daniel v. Metropolitan Government*, 696 S.W.2d 8 (Tenn. 1985); *State, for Use of City of Chattanooga v. Bayless*, 209 S.W.2d 504 (Tenn.Ct.App. 1948) (Chancellor has power to give equitable relief against enforcement of tax penalties under meritorious conditions.).

<sup>4</sup>T.C.A. § 67-5-2010(b).

<sup>5</sup>T.C.A. § 67-5-1608.

## Settlement of Taxes

**Reference Number:** CTAS-1582

**Monthly Report.** On or before the tenth day in each month the trustee must report to and make settlement for all taxes collected during the preceding month with the county mayor and with the financial agent or treasurer of each municipality and pay over to the same the amounts shown by the respective settlements to be due each.<sup>1</sup>

**Annual Financial Report.** The trustee must make a full and complete financial report on or before the first Monday in September, for the year ended June 30, of the condition of the trustee's office. This annual financial report is filed with the county mayor and with the county clerk who provides a copy of the report to each member of the county legislative body on or before the next meeting of the county legislative body. This report is same as required pursuant to T.C.A. § 5-8-505.<sup>2</sup> It is the duty of the county mayor to submit a copy of this settlement, showing all debits and credits, to the county legislative body at the following term for inspection, which must be entered upon the minutes of the county legislative body.<sup>3</sup>

The trustee is not allowed any commission when the trustee fails to make the required filing, and in the event commissions are allowed when the filing is not made, any citizen and taxpayer of the county may bring suit against the trustee and the trustee's bondspersons and recover for the use of the state and county all commissions illegally paid or allowed.<sup>4</sup> Upon settlement of the trustee's accounts with the county mayor, the trustee is entitled to receive credits for the trustee's commissions and for all legal disbursements.<sup>5</sup>

**Report of Delinquent Taxes and Double Assessments.** Annually, at the July meeting of the county legislative body, the trustee is required to present a report to the county legislative body of all delinquent taxpayers and double assessments in the county. This report must be verified by affidavit of the trustee and filed with the county clerk and must be spread upon the minutes of the county legislative body and municipality, respectively.<sup>6</sup> The county legislative body is required to examine the report and allow the trustee a credit for the taxes so reported insolvent or delinquent and for double assessments, provided the county legislative body is satisfied that the taxes are uncollectible because of reasons other than the failure of the trustee to collect them.<sup>7</sup> A list of the allowances must be made out and certified by the county clerk and transmitted to the proper authorities of the state, county and municipality, respectively.<sup>8</sup> The county legislative body may not allow the trustee a credit for any item on the report, even though duly sworn to by the trustee, if, after examining each credit, the county legislative body has knowledge or information showing the item to be inaccurate.<sup>9</sup> All of the items for which the county legislative body does not allow a credit are charged against the trustee or his or her surety.<sup>10</sup>

**Insolvent Property.** Insolvent property is that subject to tax liens, special assessments, improvement district liens, and other similar liens securing obligations in excess of the amount for which the property can be sold to a private purchaser at a tax sale. Formerly, Tennessee statutes contained provisions by which insolvent property could be compromised and settled, but these have been repealed.

<sup>1</sup>T.C.A. § 67-5-1902(a).

<sup>2</sup>T.C.A. § 67-5-1902(b)(1).

<sup>3</sup>T.C.A. § 67-5-1902(b)(3).

<sup>4</sup>T.C.A. § 67-5-1902(b)(2).

<sup>5</sup>T.C.A. § 67-5-1905.

<sup>6</sup>T.C.A. § 67-5-1903(a).

<sup>7</sup>T.C.A. § 67-5-1903(b)(1).

<sup>8</sup>T.C.A. § 67-5-1903(c).

<sup>9</sup>T.C.A. § 67-5-1903(b)(2).

<sup>10</sup>T.C.A. § 67-5-1903(d).

## Refunds of Tax Payments

**Reference Number:** CTAS-1583

Taxes collected by the trustee are held in trust for the public, and therefore any disbursement, including refunds of overpaid taxes, must be made in strict compliance with statutory authority. The trustee is authorized to make refunds of tax overpayments only upon receipt of certification from the assessor that the original assessment was in error. This refund must be made within 60 days after the receipt of certification from the assessor, and can be made even though the taxes were not paid under protest.<sup>1</sup> If the trustee receives the certification prior to the receipt of the tax payment, the taxes must be collected only on the corrected assessment.<sup>2</sup>

Tax payments, even overpayments, which are voluntarily made cannot be recovered by the taxpayer. A payment is voluntary unless made pursuant to an immediate and urgent necessity for making the payment. Payment made due to mistake of law or its application is a voluntary payment and cannot be recovered.<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-5-509.

<sup>2</sup>T.C.A. § 67-5-509. For prior law, see Op. Tenn. Atty. Gen. 87-90 (May 14, 1987) and Op. Tenn. Atty. Gen. 86-121 (July 15, 1986).

<sup>3</sup>*Hertz Corp. v. County of Shelby*, 667 S.W.2d 66 (Tenn. 1984).

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