



MAY 12 2005

STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
DIVISION OF PROPERTY ASSESSMENTS

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May 12, 2005

BLOUNT COUNTY TRUSTEE
347 Court Street, Courthouse
Maryville, Tennessee 37804

Honorable Scott Graves:

This memorandum is in response to your question regarding the issuing of distress warrants on forced accounts when there is no asset list. The following is a response to your question.

It is the opinion of the Division of Property Assessments that a distress warrant may be issued on a forced account when there is no asset list. Any and all property located within a taxing authority's jurisdiction on January 1 of any given tax year is property assessable and taxable and there is a first lien in favor of the taxing jurisdiction upon that property. The burden should be on the taxpayer to prove that the property was not located within the taxing authority's jurisdiction on January 1 of the given tax year or that the property is not owned by the taxpayer or is leased by the taxpayer. However, if you do have an asset list for any account that asset list should be given to the person who will collect and distraint the personal property. Any and all information that can be provided would be helpful, but the fact that a taxpayer has failed to file a schedule or provide any information should not prevent a distress warrant from being issued.

Pursuant to T.C.A. § 67-5-2003, all delinquent personal property taxes may be immediately collected by the county trustee by distraint (distress warrant) and sale of any personal property liable for the tax. However, notice must be given to the taxpayer pursuant to T.C.A. section 67-5-2003(c). In an alternative, thirty days after the personal property taxes become delinquent the trustee may turn over the delinquent list to the delinquent tax attorney to file suit to collect delinquent personal property taxes as part of the suit to collect the prior year's real property taxes, or as a separate lawsuit. This can be done without having first issued a distress warrant.

Please keep in mind that apart from a taxpayer's annual reporting schedule filed with an assessor, information required to be filed or submitted or provided in response to an audit by a taxpayer with regards to tangible personal property is confidential and cannot be disclosed except as authorized pursuant to T.C.A. § 67-5-402. T.C.A. § 67-5-402(b)(3) authorizes the disclosure of this information to those persons responsible for the collection of taxes due from the taxpayer, but only to the extent necessary for that purpose.

Please let me know if additional information is needed.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. E. Allen".

John C. E. Allen
Staff Attorney

CHAPTER NINE

COLLECTION OF DELINQUENT PERSONAL PROPERTY TAXES

For many years, numerous counties in Tennessee did not collect personal property taxes based on a statutory authorization allowing a presumption that personal property owned and used in a business subject to the business tax³⁴⁵ had no value.³⁴⁶ Due to federal legislation enacted to prevent discriminatory property taxation against public utilities, property tax assessed against public utilities³⁴⁷ cannot be assessed in any county where the personal property of businesses is presumed to have no value.³⁴⁸ As noted earlier, statutory authorization for treating non-business tangible personal property as if it has no value has been constitutionally upheld.³⁴⁹

Much of the discussion in the preceding chapter regarding collection of delinquent real property taxes also applies to the collection of delinquent personal property taxes. However there are also areas in which collection differs.

Methods of Collection

There are three ways by which delinquent personal property taxes may be collected.

Distress Warrants.³⁵⁰ All delinquent personal property taxes may be immediately collected by the county trustee, with the assistance of the delinquent tax attorney (if the delinquent tax attorney's assistance is requested by the trustee). The trustee's tax books and the delinquent tax lists furnished to deputy trustees, sheriffs or constables, or to the delinquent tax attorney, have the force and effect of a judgment and execution from a court of record. These documents provide authority for the officers or delinquent tax attorneys to distrain (seize) and sell a sufficient amount of the personal property to satisfy the delinquent taxes, interest, penalties, costs and attorney's fees. The delinquent personal property taxes may be immediately collected by distraint (distress warrant) and sale of any personal property on which delinquent personal property taxes are owing.

³⁴⁵T.C.A. § 67-4-101.

³⁴⁶T.C.A. § 67-5-215(b). 1984 Tenn. Pub. Acts 793.

³⁴⁷T.C.A. § 67-5-1301. See also *Southern Ry. v. Stair*, 801 F. Supp. 37 (W.D. Tenn. 1992); *CSX Transp., Inc. v. State Bd. of Equalization*, 801 F. Supp. 28 (M.D. Tenn. 1992).

³⁴⁸*Arkansas-Best Freight System, Inc., v. Cochran*, 546 F.Supp. 915, 919 (M.D. Tenn. 1982).

³⁴⁹*Sherwood Co. v. Clary*, 734 S.W.2d 318, 321 (Tenn. 1987).

³⁵⁰T.C.A. § 67-5-2003.

Pre-Seizure Notice. Prior to distraint (seizure) of any personal property, the trustee, deputy trustee, or delinquent tax attorney must give not less than ten days written notice of the intended distraint (seizure) by any of these methods: (1) delivering the notice in person; (2) leaving the notice at the dwelling place or usual place of business of the taxpayer; or (3) mailing the notice to the taxpayer's last known address.

Sale of Personal Property. Additional notice must also be provided after seizure and at least ten days before the sale. The time and place of the sale of personalty must be given by advertisement posted in three public places in the county, one of which must be the courthouse door. In addition, at least ten days' written notice of the sale must be given to the taxpayer by any of the methods outlined above. The officers conducting the sale must have the personal property present when it is sold, and must be allowed to retain (in addition to the taxes, interest, penalties, costs, and attorney's fees) all commissions, costs, and necessary expenses of removing and keeping the property distrained, including expenses of seizure, preservation, and storage of the property. If a delinquent tax attorney assists the trustee with the seizure and sale of the personalty, the attorney is entitled to attorney's fees.³⁵¹

Garnishments. In addition to the distress warrant procedure, the trustee may have garnishments issued against the taxpayer, to be returned to any general sessions court in the district where the taxpayer resides, or any circuit or chancery court.³⁵²

Suits to Collect Delinquent Personal Property Taxes. Delinquent personal property taxes may also be collected by lawsuit. To use this method, the trustee may turn over the delinquent tax list to the delinquent tax attorney thirty days after the taxes become delinquent for inclusion in the suit to collect the prior year's delinquent real property taxes, or as a separate lawsuit. This alternative may be used without having first issued a distress warrant. In the event the trustee turns over the delinquent list prior to the mailing of the current year's tax bill (which will include notice of delinquent taxes from the previous year), the trustee must forward written notice of the suit to collect delinquent taxes by first class mail to the last known property owner at least ten days before the delinquent list is turned over to the delinquent tax attorney.

A judgment obtained against a delinquent taxpayer may be enforced as a lien on the property, or as any other judgment, including garnishment or sale of property by the sheriff. If this procedure is used, the trustee may, as with real property tax records, turn over records to the court clerk.³⁵³

³⁵¹T.C.A. §§ 67-5-2003, 67-5-2410. See also *Southern Ry. v. Stair*, 801 F. Supp. 37, 51 (W.D. Tenn. 1992) (finding that railroad was subject to tax penalties, but not liable for attorney's fees). See Appendix I, pages 106-108.

³⁵²T.C.A. §§ 67-5-2004, 67-5-2003; Op. Tenn. Atty. Gen. 85-274 (November 4, 1985).

³⁵³T.C.A. § 67-5-2003(g). See Appendix I.

Transfer of Business Liability

One mechanism to aid in the collection of personal property tax is the requirement which requires the purchaser of a business to check for unpaid personal property taxes of the business. Under this procedure any taxpayer who sells or terminates a business must notify the assessor and pay all outstanding personal property taxes within fifteen days of the sale or termination. The buyer must withhold sufficient funds from the purchase price to pay the tax liability, retaining those funds until the seller produces a certificate of compliance from the assessor and receipts from the trustee for the payment of all taxes. If the buyer does not withhold this amount, the buyer becomes personally liable for these unpaid taxes.³⁵⁴

Security Interest Sales

There is a similar provision for security interest sales. If any individual, partnership, joint venture, corporation, or other legal entity owns tangible or intangible personal property, assessable by the county assessor or other authority and then sells the personalty pursuant to the provisions of T.C.A. §§ 47-9-101 et seq., the party possessing the security interest must withhold from the proceeds of the sale an amount sufficient to satisfy the personal property taxes assessed under T.C.A. § 67-5-2101. A party selling the property who fails to withhold this amount is personally liable to the trustee for these personal property taxes.³⁵⁵

³⁵⁴T.C.A. § 67-5-513.

³⁵⁵T.C.A. § 67-5-2003.

67-5-2003. Collection by distraint and sale of personalty - Actions at law, or garnishment.

(a) All delinquent personal property taxes may be immediately collected by the county trustee, with the assistance of the delinquent tax attorney selected pursuant to § 67-5-2404, if such delinquent tax attorney's assistance is requested by the trustee. The tax books in the hands of the trustee and the delinquent lists furnished to deputy trustees, or the sheriff or constables in any county where the taxpayer or any property liable for the taxes may be found, or the delinquent tax attorney, shall have the force and effect of a judgment and execution from a court of record, and shall be ample authority for the officers or delinquent tax attorney having such taxes for collection to distraint and sell a sufficient amount of the personal property to satisfy the delinquent taxes, interest, penalties, costs and attorneys' fees. However, leased personal property assessed to a lessee shall not be distrained and sold pursuant to this section.

(b) These delinquent personal property taxes may be immediately collected by distraint (distress warrant) and sale of any personal property liable therefor, by suit at law against the taxpayer, and/or by garnishment.

(c) Prior to distraint (seizure) of any personal property, the trustee, deputy trustee or delinquent tax attorney shall give not less than ten (10) days' written notice of the intended distraint (seizure) by either:

(1) Delivering such notice in person;

(2) Leaving such notice at the dwelling place or usual place of business of the taxpayer; or

(3) By mailing such notice to the taxpayer's last known address.

(d) Ten (10) days' notice of the time and place of any sale of personalty shall be given by advertisement posted in three (3) public places in the county, one (1) of which shall be at the courthouse door. In addition, at least ten (10) days' written notice of the sale shall be given to the taxpayer by any of the methods outlined in subsection (c).

(e) The officers shall in all cases have the personal property present when sold and shall be allowed to retain in addition to the taxes, interest, penalties, costs, and attorney's fees, all commissions, costs and necessary expenses of removing and keeping the property distrained (expenses of seizure, preservation and storage of the property).

(f) Any delinquent tax attorney assisting the trustee shall be allowed attorney's fees, computed as are attorney's fees for collection of real property taxes in § 67-5-2410.

(g) The trustee may turn over the delinquent list thirty (30) days after such taxes become delinquent to the delinquent tax attorney, selected pursuant to § 67-5-2404, to file suit to collect delinquent personal property taxes as part of the suit to collect the prior year's real property taxes, or as a separate lawsuit. Such can be done without having first issued a distress warrant. In the event the trustee turns over the delinquent list prior to the mailing of the notice required by § 67-5-2402, the trustee shall be required to forward written notice by first class mail to the last known property owner at least ten (10) days before the delinquent list is turned over to the delinquent tax attorney. A judgment obtained against a delinquent taxpayer may be enforced as a lien on the property, or as any other judgment, including garnishment or sale of property by the sheriff. If this procedure is used, the trustee is also authorized, as with real property tax records, to turn over records to the court clerk.

(h) If any individual, partnership, joint venture, corporation or other legal entity has personal property, tangible or intangible, assessable by the county assessor or other authority, which is sold pursuant to the provisions of title 47, chapter 9, the party possessing the security interest shall withhold from the proceeds of the sale an amount sufficient to satisfy the personal property taxes assessed under § 67-5-2101. A party selling the property

who fails to withhold such amount shall be held to be personally liable to the trustee or other local taxing authority to which these personal property taxes are due.

[Acts 1907, ch. 602, § 49; Shan., §§ 877a1, 877a2; Acts 1923, ch. 77, § 3; Shan. Supp., § 913b2; mod. Code 1932, §§ 1574-1576; C. Supp. 1950, § 1574; T.C.A. (orig. ed.), §§ 67-1305 - 67-1307; Acts 1987, ch. 346, §§ 6, 17; 1990, ch. 1075, § 11.]

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