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Budget Guide

Budget Guide

Reference Number: MTAS-1786

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Cause it's better to have money and not need it than to need it and not have it.

-Richard Pryor, Car Wash, 1976

We all know what a budget is: a record of the money we expect to receive and how we expect to spend it. It's a pretty simple concept but a little more difficult to put into action, especially when rules and regulations from state and federal agencies are thrown into the mix.

Why You Need a Budget

The state of Tennessee has a few things to say about your municipal budget. According to T.C.A. § 6-56-201 *et seq.*, otherwise known as the Municipal Budget Law of 1982, "The governing body of each municipality shall adopt and operate under an annual budget ordinance. The budget ordinance shall present a financial plan for the ensuing year..."

Furthermore, the city's charter may dictate various other regulations, in addition to state law budget requirements. Refer to your city's charter to ensure proper compliance. Besides being required by law, having a budget is not a bad idea. Can you imagine what it would be like if your city or town just took whatever money it received and simply paid for everything the departments spent? It might be fun to buy everything you think you need and want, but how long would it take for your checks to bounce? You need a plan of action with limits and controls.

Types of Budgets

Reference Number: MTAS-1787

There is more than one way to define a budget. Local governments usually use one of three types of budgets: line item, program, or performance. Which budget you should use will depend on what you plan to measure.

Line Item Budget

Reference Number: MTAS-1788

The line item budget typically is used when control is the budget's main function. It also is the budget type most cities and towns use. In a line item budget, expenditures are listed under a large subject area – a fund; then broken down by a function or purpose, such as a department; then by an object, for example, office supplies or utilities. Utilities can then be further broken down into items such as gas, water, and electricity. Imagine a tree, where you start at the trunk, then split into branches, then spread into leaves. The trunk is the General Fund, the large branches are the departments, and the leaves are all the items that will be purchased within each department. The more detailed the line items, the more control the governing body or manager has over expenditures.

According to Budgeting: A Guide for Local Governments:

"... the line-item budget originated in the late nineteenth century in response to the excesses of the political machines that controlled many state and local governments: this format was ideally suited to shifting power away from political bosses and toward legislative bodies, which were more accountable to voters."

The downside to line item budgets is they provide no information about the activities or functions of a program or department and how efficiently they operate. The focus is strictly on what is spent.

Performance Budget

Reference Number: MTAS-1789

A performance budget allocates money to activities or programs; plus it describes the amount of services that will be produced with the money allocated. It allows an adjustment of the level of services provided as to both quality and quantity. It is a very useful budget system, but it is difficult to prepare because of the amount of information necessary to do so properly.

Program Budget

Reference Number: MTAS-1790

A program budget focuses on the services to be provided by the city and budgets money according to functions such as public safety, general government, public works, recreation, etc. It shows the purposes for which money will be spent and the importance the city places on these functions. It does not show the level of services provided, and some say that, as a result, its value as a tool for managing the quantity and quality of public service programs is weakened.

Funds

Reference Number: MTAS-1791

City and state laws dictate a large portion of the budget process. There are also other guidelines cities must follow. The Government Finance Officers Association publishes a book titled 'Governmental Accounting, Auditing, and Financial Reporting' (GAAFR), commonly known as "The Blue Book". This book outlines standards for governmental agencies to follow known as "generally accepted accounting principles" (GAAP). Among these principles is the formation of funds. Per the 'Fiscal Administration, Analysis and Applications for the Public Sector' by John L. Mikesell, the definition of a "fund" is:

... an accounting device established to control receipt and disbursement of income from sources set aside to support specific activities or attain certain objectives. In the accounts of individual governments, each fund is treated as a distinct fiscal entity.

In simpler terms, a fund is a smaller record of incoming and outgoing money that is divided by type of activity.

Governmental Funds

Reference Number: MTAS-1792

According to the GAAFR (the Blue Book), governmental funds are "used to account for activities primarily supported by taxes, grants, and similar revenue sources." Within the category of Governmental Funds, there are five types: General Fund, special revenue funds, debt service funds, capital projects funds, and permanent funds.

While there is only one General Fund, which is the primary operating fund, there can be several of each of the other types of governmental funds. For example, you may have multiple special revenue funds for specific revenue sources that are restricted for specific purposes: State Street Aid Fund, Drug Fund, etc. You also may have multiple debt service funds, such as those that account for long-term debt: General Obligation Bond Fund, General Debt Service Fund, etc.

Likewise, the city may have multiple capital projects funds that are set aside for acquisition and/or construction of capital facilities and other capital assets: City Hall Capital Project Fund, Fire Truck Capital Project Fund, Ballpark Improvement Fund, etc. Finally, there can be multiple permanent funds: Cemetery Perpetual Care Fund and School Endowment Fund, for example.

Proprietary Funds

Reference Number: MTAS-1793

Proprietary funds are those that are most like funds in the private sector. According to GAAFR (the Blue Book), proprietary funds are "used to account for activities that receive significant support from fees and charges." There are two types of proprietary funds: enterprise funds and internal service funds.

As defined by GAAFR, enterprise funds are used to "report activities for which a fee is charged to external users for goods or services." Examples include Water Fund, Sewer Fund, Natural Gas Fund, Airport Fund, and possibly the Solid Waste Fund.

Internal service funds are used to track the activity provided by one department for another department within the government itself. A common example is the city garage charging various city departments for its services. The benefit to tracking the expenditures this way is to encourage efficiency. If a department is being charged for an otherwise "free" activity, the department using the service will be less likely to abuse it.

Fiduciary Funds

Reference Number: MTAS-1794

According to the GAAFR (the Blue Book), fiduciary funds are "used to account for resources that a government holds as a trustee or agent on behalf of an outside party that cannot be used to support the government's own programs. The fiduciary fund category includes pension (and other employee benefit) trust funds, investment trust funds, private-purpose trust funds and agency funds." Examples of fiduciary funds a city may have include a law enforcement trust fund and firemen's pension fund.

There is, in effect, no limit on the number of funds that a city can establish. However, since each new fund adds to the complexity of the city's financial operations and takes away flexibility, it is advisable to keep the number of funds as low as possible within legal and financial requirements.

Budget Process/Cycle

Reference Number: MTAS-1795

The constitutional purpose of a budget is to make government responsive to public opinion and responsible for its acts.

William Howard Taft (1857 – 1930),

Message to Congress. December 1909

Overview

The budget process actually begins with the preceding year's audit. Municipalities have their fiscal affairs audited every year, another legal requirement found in T.C.A. § 6-56-105. The audit helps provide a picture of how well the city is doing financially. Information found in the audit can be used to help determine where new revenues are needed and what to set aside for bonded indebtedness, etc. The portion of the audit dealing with revenues and expenditures should be based on the prior fiscal year's budget so that a municipal official can readily compare actual figures with budget estimates. This information, when considered with the staff's day-to-day knowledge, provides a basis for developing a budget, as well as determining needs for improving the city's fiscal picture. The auditor's recommendations for changes in bookkeeping, accounting, etc. complete the review and allow deficiencies to be rectified. Once a review of the financial affairs is completed, this knowledge can be used to plan for the coming year.

Most cities are required to follow guidelines set forth in the Municipal Budget Law of 1982. T.C.A. § 6-56-201 *et seq.* However, there are exceptions. If your charter requires estimates of proposed expenditures for each department, board, office, or other agency of the city; and if your charter requires estimates of anticipated revenues from all sources, including current and delinquent taxes, non-tax revenues, and proceeds from selling bonds or long-term notes, then it is sufficient to follow your city's charter and not the Municipal Budget Law. Mayor-aldermanic (general law) charters require following the budget law; however, modified-city manager-council (general law) charters already require sufficient detail and are not required to follow the budget law. Private act charter cities will have to examine their budgeting provisions to determine if the charter provides enough specificity. Finally, city-manager-commission (general law) charters seem to meet the detailed requirements; however, it is recommended that you contact your auditor for a conclusive determination.

With that being said, according to the Municipal Budget Law of 1982 (T.C.A. § 6-56-203), all budget ordinances require the following six elements:

- Estimates of proposed expenditures for each department, board, office or other agency of the municipality, showing, in addition, expenditures for corresponding items for the last preceding fiscal year, projected expenditures for the current fiscal year and reasons for recommended departures from the current appropriation pattern in such detail as may be prescribed by the governing body. It is the intent of this subdivision that, except for monies expended pursuant to a project ordinance or accounted for in a proprietary type fund or a fiduciary type fund, which are excluded from the budget ordinance, all monies received and expended by a municipality shall be included in a budget ordinance. Therefore, notwithstanding any other provision of law, no municipality may expend any monies regardless of their source (including monies derived from bond and long-term note proceeds, federal, state or private grants or loans, or special assessments), except in accordance with a budget ordinance adopted under this section or through a proprietary type fund or a fiduciary type fund properly excluded from the budget ordinance;
- Statements of bonded and other indebtedness of the municipality, including debt redemption and interest requirements, debt authorized and unissued, and the condition of the sinking fund;
- Estimates of anticipated revenues of the municipality from all sources, including current and delinquent taxes, non-tax revenue, and proceeds from the sale of any bonds or long-term notes with a comparative statement of the amounts received by the municipality from each of such sources for the last preceding fiscal year, the current fiscal year, and the coming fiscal year in such detail as may be prescribed by the governing body;
- A statement of the estimated balance or deficit as of the end of the current fiscal year;
- A statement of pending capital projects and proposed new capital projects relating to respective amounts proposed to be raised therefore by appropriations in the budget and the respective amounts, if any, proposed to be raised therefore by the issuance of bonds during the fiscal year; and
- Such other supporting schedules as the governing body deems necessary or are otherwise required by law.

Budget Calendar

Reference Number: MTAS-1796

The budget cycle consists of four main steps or phases: preparation, approval, execution and audit. The audit, previously mentioned, is typically considered the last phase of the budget cycle; however, it is an integral tool in budget preparation. The following chapters describe in detail how to perform and prepare budget estimates.

The budget calendar is centered around budget adoption. Refer to the appendices for samples of required budget documents, including the public notice, the budget ordinance, and a few sample pages from a General Fund budget narrative (line item descriptions of the individual departments). Keep in mind that charters may vary as to publication and public hearing requirements so be sure to double check your charter before setting your budget calendar.

Below is a sample budget calendar for small- to medium-sized cities. The size, complexity, and any additional charter requirements of your municipality may change the preparation dates; however, the end of the fiscal year for Tennessee municipalities is June 30, and audits should follow closely thereafter.

BUDGET CALENDAR

DATE	PHASE	EVENT
On or before March 15	Preparation	Finance officer prepares previous and current year financial data on estimate forms.
March 15	Preparation	Estimate forms are forwarded to mayor, finance committee, or chief administrative officer and to department heads with instructions.
By April 15	Preparation	Finance officer prepares revenue estimates.
By May 1	Preparation	Department heads prepare estimates and forward to mayor, finance committee or chief administrative officer.
By May 15	Preparation	Mayor, finance committee or chief administrative officer reviews estimates and develops recommendations for legislative body.
By May 15	Preparation	Submit proposed budget or budget requests to legislative body.
By June 30	Approval	Legislative body finalizes budget, holds necessary public hearings, and adopts the budget. State law requires a notice of the budget ordinance to be published "in a newspaper of general circulation ... not less than 10 days prior to the meeting where the governing body will consider final passage of the budget."
July 1 to June 30	Execution	Close monitoring of revenues and expenditures. Budget amendments, as permitted by state law and local charters, should be prepared as necessary.
"As soon as practicable after the end of the the fiscal year."	Audit	Audit firm comes to city hall to conduct fieldwork. This usually is done practicable any time between July and October.
By end of calendar year	Audit	Audit firm should make a presentation to the governing body, which should then accept the report. Per T.C.A. § 6-56-104(b), "A summary of the audit, prepared by the auditor, shall be published in at least one issue of a newspaper of general circulation in the corporation, if there is one."
By end of calendar year	Audit	Send one copy of the audit to "the mayor, chief executive officer, each member of the governing body, and the Comptroller of the Treasury. Copies of each audit shall also be made available to the press."

Emergencies

Reference Number: MTAS-1797

What do you do when a tornado rips through the middle of downtown or a blizzard dumps inches upon inches of snow on the ground and paralyzes the town for days? Of course you don't intend for these events to happen when you prepare the budget, but you have to anticipate the realities of an emergency – and sooner rather than later.

According to state law (T.C.A. § 6-56-205), the governing body may spend more than the estimated available funds, but only when there is “an actual emergency threatening the health, property or lives of the inhabitants of the municipality and declared by a two-thirds (2/3) vote of all members of the governing body present, when there is a quorum.”

In such a case, T.C.A. § 6-56-304 (3) requires the following recordkeeping:

A record of any such emergency purchase shall be made by the person or body authorizing such emergency purchases, and shall specify the amount paid, the items purchased, from whom the purchase was made and the nature of the emergency. A report of any emergency purchase shall be made as soon as possible to the municipal governing body and the chief executive officer of the municipality, and shall include all items of information as required in the record.

From a financial perspective, this is why you have an unassigned fund balance, net assets and, possibly, contingency funds. Disaster assistance may be available in some situations; however, cities and towns should be prepared to handle the immediate circumstances. A good rule of thumb is to have the equivalent of at least two months' operating expenses available as an unassigned fund balance.

Deadline

Reference Number: MTAS-1798

In the event the governing body does not pass the budget by June 30, T.C.A. § 6-56-210 takes effect. It states:

If for any reason a budget ordinance is not adopted prior to the beginning of the next fiscal year, the appropriations for the last fiscal year shall become the appropriations for the next fiscal year, until the adoption of the new budget ordinance.

While this provision exists, municipalities are strongly urged to meet the June 30 deadline. Also, the state OSLF requires cities to file a continuation budget resolution.

Revenue Estimates

Reference Number: MTAS-1799

What we have here is a failure to accumulate.

Jim Varney, Ernest Saves Christmas, 1988

Revenue Estimation

Estimating revenue may seem like a daunting task, but it's really not. It doesn't require a degree in rocket science to be able to arrive at sound, logical figures. It's really just using averages and common sense.

The governmental funds list of revenues includes the revenue class (local taxes, licenses and permits, intergovernmental, etc.), the fund (general, state street aid, etc.), account number, a description, any related authorizing state statutes, restrictions, the current rate if it applies, the timing of the payment, if late fees can be assessed, where the money comes from (taxpayers, businesses, the state, etc.), how the money is collected, and any use restrictions. This list is a great tool to help you learn the “who, what, when, where, and how” of each revenue source.

Assuming that you now know all the revenues you need to estimate, where do you begin? Let's start in the governmental funds with the local tax class. This typically is the largest of the revenue classes, and it includes real property taxes, personal property taxes, public utility property taxes, property taxes from prior years, property tax penalties and interest, payments in-lieu-of taxes from electric utilities and industry, local option sales taxes from the city and county, wholesale beer taxes, wholesale liquor taxes, mixed drink taxes, minimum business taxes, natural gas franchise taxes, special assessments, room occupancy (hotel/motel) taxes, and cable TV franchise taxes.

Expenditure Estimates

Reference Number: MTAS-1818

I have but one lamp by which my feet are guided, and that is the lamp of experience. I know no way of judging of the future but by the past.

Patrick Henry (1736 – 1799)

Speech in the Virginia Convention, March 1775

If you know the basics of estimating revenue, you should have no trouble estimating expenditures. Often, the same method is applicable here: past history is a good indication of future performance. If, for the last two years, you haven't spent as much on office supplies as budgeted, chances are you won't spend as much in the upcoming year. However, there are always unusual circumstances that must be addressed, but overall, this is a useful method for estimating expenses.

Chart of Accounts

Reference Number: MTAS-1819

The following comments apply to revenues, as well as to expenditures, but we have chosen to use expenditures to stress the benefits of a chart of accounts. Expenditure accounts are far more numerous than revenues in the typical city budget. Each city must determine the optimum number of line items required for financial management. Too few or too many accounts will decrease the ability of financial managers to properly analyze cost centers. For example, it is difficult to know if water, sewer or electrical rates are the cause for exceeding a line item if they are all included in a single line item.

A standardized chart of accounts should be used in the city's budget, accounting records, and annual audit. This applies to any other finance-related activity. The benefits are uniformity in the city's total financial picture, reduced audit costs, and simplicity if a city has or is going to have an automated accounting system. Furthermore, it is important that the same level of detail is used throughout financial documents. If utilities are listed separately in the budget and accounting records, but the auditor groups all utilities together, then obtaining the specific data you need to begin your budget next year is very difficult. A recommended chart of accounts is posted on our website.

Capital Budgets and Multi-Year Budgets

Reference Number: MTAS-1829

We estimate the wisdom of nations by seeing what they did with their surplus capital.

*Ralph Waldo Emerson,
"Wealth," English Traits (1856)*

Overview

The International City/County Management Association publication *Budgeting: A Guide for Local Governments* defines a capital budget as "a spending plan for improvements to or acquisition of land, facilities, and infrastructure." The definition continues by describing its elements: "The capital budget (1) balances revenues and expenditures, (2) specifies the sources of revenues, (3) lists each project or acquisition, and (4) must ordinarily be approved by the legislative body."

Capital Budget vs. Operating Budget

Reference Number: MTAS-1830

How is a capital budget different from the adopted operating budget? The capital budget is a subset of the adopted budget. A municipality can have a regular budget without a capital budget, but it can't have a capital budget without a regular budget. Furthermore, state laws do not require capital budgets.

Capital budgets typically operate on a project length schedule rather than a fiscal year schedule. Capital budgets also mark the first year of a Capital Improvement Program (CIP) or multi-year budget, which typically spans five years. The CIP should be updated every year to review expected revenues, inflation, project length, project necessity, and prioritization.

So why go to the trouble? For large projects that will take more than one year to complete or finance, and for projects that are not financed by proprietary or trust funds, having a separate place to track the project and its expenses is much easier. In addition, these are very expensive (typically more than \$25,000) undertakings and deserve closer attention and scrutiny. Furthermore, this type of long-term planning helps set priorities, forces consideration of life expectancies of facilities and equipment, allows multi-year financing for projects that could otherwise not be attempted without debt issuance, improves cash management by simplifying debt retirement, and rating agencies look favorably upon cities with CIPs.

Developing a Capital Budget

Reference Number: MTAS-1831

The first step in developing a capital budget is to plan. This includes setting a calendar (much like the one for the annual budget); creating an inventory of equipment, buildings, and facilities; assessing the status of current large projects, including funding and targeted completion dates; identifying future needs; and finally prioritizing the items. All departments need to be involved in this process.

The next step is to look at finances. Assess and establish your financing options (Can we pay for this in cash if we set aside \$10,000 each year for five years? Is lease/purchase a better option? What about issuing a bond for the new public works garage?); determine financial limits (How much will we have to work within two years?); and determine your current debt obligations (We owe \$20,000 on this loan and will have it paid off in the middle of next year).

The last stage of the capital budgeting process is implementation. The CIP is normally approved by resolution, with the first year of the program (the capital budget) adopted as a separate section in the annual budget. As mentioned earlier, once the program has been adopted and firms are hired, land is purchased, and construction begins, close scrutiny of these large and expensive projects will save you a lot of headaches and, potentially, bad publicity in the future.

Budget Execution

Reference Number: MTAS-1832

Beware of little expenses. A small leak will sink a great ship.

Benjamin Franklin

Overview

Okay, you've learned about the different funds, you set your calendar, you researched your revenues and expenditures, you compiled them into a meaningful document, you met your deadlines, and the governing body adopted the budget. Whew! Now you can sit back and relax until next spring, right? Sorry, try again. The last phase of budgeting is execution.

Budget execution requires overseeing revenue collections, purchases, cash management, and proper accounting and auditing. What are some of the rules you need to follow here? Again we look to the Tennessee Code Annotated for guidance. Chapter 56 of Title 6 offers us the most guidance. There we find the Municipal Budget Law of 1982 and the Municipal Purchasing Law of 1983.

The general provisions of this chapter include items such as the requirement of audits, where the municipality can legally invest idle money (bonds, notes, and treasury bills; non-convertible debt securities; U.S. guaranteed obligations; certificates of deposit; money market funds; and the local government investment pool to name a few); how soon you must deposit the money you've collected (within three working days); and the short and sweet statement that "All expenditures of money made by a municipality must be made for a lawful municipal purpose." T.C.A. § 6-56-112.

The Municipal Budget Law of 1982

Reference Number: MTAS-1833

Some items in the Municipal Budget Law of 1982 that we haven't covered include the fact that municipal governing bodies can't appropriate more than the estimated available funds, except in the case of an emergency as defined by statute (T.C.A. § 6-56-205); municipalities can't levy property taxes until a budget ordinance has been adopted (T.C.A. § 6-56-207); the budget officer may be given the right to transfer money from one appropriation to another within the same fund and must report the transfer to the governing body and have the transfer recorded in the minutes (T.C.A. § 6-56-209); and any money left over at the end of the fiscal year is credited to its appropriate fund for further appropriation. T.C.A. § 6-56-211.

The Municipal Purchasing Law of 1983

Reference Number: MTAS-1834

The Municipal Purchasing Law of 1983 is where you'll find the statement "All purchases made from funds subject to the authority of this part shall be made within the limits of the approved budget, when required, and the appropriations, when required, for the department, office or agency for which the purchase is made." T.C.A. § 6-56-303. As if you didn't already know, you can't spend it if it wasn't approved.

This law also covers advertising and bidding requirements, the exceptions to those requirements, and the authority of municipalities to increase and/or lower advertisement and bidding amounts. One of the exceptions to the advertising and bidding requirements is emergencies.

T.C.A. § 6-56-304(3) states:

... A record of any such emergency purchase shall be made by the person or body authorizing such emergency purchases, and shall specify the amount paid, the items purchased, from whom the purchase was made and the nature of the emergency. A report of any emergency purchase shall be made as soon as possible to the municipal governing body and the chief executive officer of the municipality, and shall include all items of information as required in the record.

The purchasing law also refers to Part 10 of the Public Purchases Chapter of T.C.A. Title 12 regarding purchases for local governments: public auctions, buying from other local governments, competitive bidding, and cooperative purchasing agreements. Compliance with these regulations is very much a part of budget management and control.

Monitoring the Budget Process

Reference Number: MTAS-1835

The most important step of the budget process follows adoption: monitoring revenues and expenditures for the budget year. A few basic practices will help you adequately monitor the income and expenditures of your city.

First, devise a monthly report in order to give elected officials and department heads a current picture of the city's finances.

Second, during the course of the fiscal year, prepare a quarterly or mid-year budget review. This will help with the third most important aspect of the monitoring process: budget amendments. Even the best budget will miss a line item. The law allows for amendments to the budget in order to bring actual expenditures in line with the budget. The budget ordinance may be amended "in the same manner as any other ordinance may be amended." T.C.A. § 6-56-208. A public hearing is not required for a budget amendment.

It is impossible to overemphasize the need for budget monitoring. Without it, the budget process is incomplete and may place the city in a tenuous financial position.

Charitable Contributions

Reference Number: MTAS-1836

One budget management issue that comes up frequently is the subject of charitable contributions. How many times have you been asked to contribute to the high school marching band, the Dixie Youth League, the Boy Scouts, the Girl Scouts, or a family who lost everything in a house fire? While your heart may go out to each one of those groups, oftentimes city money can't. The attorney general has issued several opinions on the subject. Before the governing body agrees to donate money, be very sure that the charity meets all legal requirements. T.C.A. § 6-54-111:

(2) (A) For the purposes of this section, "nonprofit charitable organization" is one in which no part of the net earnings inures or may lawfully inure to the benefit of any private shareholder or individual and that provides year-round services benefiting the general welfare of the residents of the municipalities.

(2) (B) For the purposes of this section, "nonprofit civic organization" means a civic organization exempt from taxation pursuant to § 501(c)(4) or (c)(6) of the Internal Revenue Code of 1954, codified in 26 U.S.C. § 501(c)(4) or (c)(6), which operates primarily for the purpose of bringing about civic betterments and social improvements through efforts to maintain and increase employment opportunities in the municipality by promoting industry, trade, commerce, tourism and recreation by inducing manufacturing, industrial, governmental, educational, financial, service, commercial, recreational, and agricultural enterprises to locate in or remain in the municipality...

In addition to meeting these strict requirements, any nonprofit organization that seeks a contribution from your municipality must give the city clerk a copy of its annual report, including its audit, a description of its program that serves the residents of the community and the proposed use of the municipal funds.

Municipalities may also make appropriations to nonprofit organizations other than charitable organizations, but only after publishing in a newspaper of general circulation the municipality's intent to make the contribution and specifying the intended amount and the purpose for which the money will be spent.

Audit Phase of Budget Cycle

Reference Number: MTAS-1837

"The first thing to be done by a biographer in estimating character is to examine the stubs of his victim's cheque-books."
Silas Weir Mitchell (1829–1914), U.S. physician, author.

Quoted in Harvey Cushing, Life of Sir William Osler, Vol. 1, Ch. 21 (1925)

The audit is the last phase of the budget cycle. As mentioned earlier, the audit is prepared after the fiscal year ends but usually before the end of the calendar year. Steps involved in acquiring an audit include creating a request for proposal, accepting proposals, selecting a firm or accountant to conduct the audit, agreeing to a contract, having the contract approved by the state, doing audit preparation work for the auditor, hosting the auditor at city hall during their field work, responding to any findings, and having the governing body receive and accept the audit report.

If you have done an adequate job of budget execution, the audit should go very smoothly with few or no findings. Referring to GAAFR for one last definition, a finding is a "published communication of an internal control weakness or instance of noncompliance ..." This is where your auditor tells you that you have room for improvement.

The basic components of a Comprehensive Annual Financial Report (CAFR) are the introductory, financial and statistical sections. The introductory section usually consists of a report cover, title page, table of contents, list of principal officials, an organizational chart, and a letter of transmittal. The financial section includes the independent auditor's report, management's discussion and analysis (MD&A), basic financial statements, notes to the financial statements, required supplementary information (RSI) and other supplementary information. Finally, the statistical section comprises trend data (over the previous 10 years) and other non-financial information that is useful in determining a city's credit worthiness.

While municipalities are encouraged to prepare a CAFR, a less detailed report is permitted. The minimum reports as required by the Governmental Accounting Standards Board (GASB) are required by the state. Additional statements and schedules are required by the State and can be found in the *Audit Manual and Internal Control and Compliance Manual for Tennessee Municipalities*. Both of these publications are available on the Comptroller's website (<http://www.comptroller.tn.gov/shared/manuals.asp>).

Many city officials and employees will refer to the audit only when they are preparing the next year's budget. However, the audit also may be pulled off the shelf when a credit ranking agency calls, when the city is interested in issuing debt, and when fund balance is discussed as a funding source.

Drug Fund Guidelines

Reference Number: MTAS-1839

DRUG FUND "CHEAT SHEET"

by Rex Barton, Police Management Consultant

[The Drug Fund is a] special revenue account authorized by T.C.A. § 39-17-420: "All fines and forfeitures of appearance

bonds ... and the proceeds of goods seized and forfeited ... and disposed of according to law, shall be accounted for in a special revenue fund of the jurisdiction that initiated the arrest. All financial activities related to funds received under this part shall be accounted for in this fund." Fines are further controlled by T.C.A. § 39-17-428 as specified below. Listed below are some guidelines that cities should use (and are required to by law) in accounting for these funds.

The account is under the control of the city recorder. The police chief and the mayor or chief executive officer will recommend a budget for the special revenue fund to be approved by the governing body. It is best to budget for all the money in the account. You do not have to spend the money, but you cannot spend money that has not been appropriated. Any money left over at the end of the year will carry over to the next year's fund balance. You need to ensure that you keep an amount in the account equal to at least 20 percent of the revenues coming in. You can spend only as much money as you have budgeted, and you can spend only as much money as is in the account. In other words, you can't spend money that you anticipate receiving until you have actually received it.

REVENUES – Allowable deposits of funds into the Drug Fund Account.

A. **Fines for drug offenses.** The Sessions or Criminal Court returns fines for all drug offenses to the city. The city deposits 50 percent of fine revenue into the drug fund and 50 percent into the city's general fund. Note: the 50/50 split applies ONLY to drug offense fine revenue. T.C.A. § 39-17-428 specifies certain minimum fines for different classifications of most drug charges.

B. **Forfeited cash.** Any cash seized pursuant to the drug control laws that is ultimately awarded to the city goes into the drug fund pursuant to T.C.A. § 53-11-451.

C. **Proceeds from the sale of items seized pursuant to the drug laws that are ultimately forfeited to the city.** All proceeds from the sale of these items go into the drug fund pursuant to T.C.A. 53-11-451. The items themselves, usually vehicles, may be used for drug enforcement activities. They cannot be used for other city activities, such as using a forfeited pick-up truck at the wastewater treatment plant.

D. **Contributions.** As part of a plea bargain, there may be some amount of money contributed to the city's drug fund. Civic organizations also may contribute funds.

E. **Budget allocations.** The governing body may allocate general fund money to the drug fund.

EXPENDITURES – Allowable uses for funds in the Drug Fund Account.

A. **Local drug treatment programs.** Drug fund money can be used to fund local drug treatment programs. Expenditures must be made in accordance with local purchasing guidelines.

B. **Drug education.** The drug fund can be used to fund drug education programs. Typical examples are the D.A.R.E. program, anti-drug magazines or literature, and anti-drug billboards.

C. **Drug enforcement.** The drug fund can be used for any legitimate drug enforcement activity, operational or capital. Although we strongly recommend against it, drug enforcement salaries may be paid from the drug fund.

There are two types of drug enforcement expenditures: regular and confidential. Regular drug enforcement expenditures include the purchase of surveillance equipment and drug identification kits, maintenance on a narcotics officer's vehicle, and drug enforcement officers' monthly cell phone bills, etc. Confidential expenditures include money paid to informants; gasoline for informants' vehicles; and money spent purchasing drugs, etc.

D. **Non-recurring general law enforcement expenditures.** Generally, but not always, these are fixed asset purchases. These expenditures do not have to be related to drug enforcement, but they cannot be operational expenditures. Legitimate examples include vehicles, standard equipment for the vehicles, body armor, weapons, and computers.

Examples of items that cannot be purchased as non-recurring general law enforcement purposes are uniforms, ammunition, general law enforcement officer's cell phone bill or salary, and jackets for the police department.

ACCOUNTING FOR DRUG FUND MONEY – Required accounting practices for the Drug Fund Account

A. **Special Revenue Account.** ALL revenues destined for the drug fund MUST go into a special revenue account under the control of the city recorder.

The special revenue account should be handled in the same way as other special revenue accounts such as those for state street aid.

With the exception of confidential expenditures, all expenditures MUST follow the city's purchasing guidelines.

B. **Confidential expenditures.** Confidential money must be accounted for according to Procedures for Handling Cash Transactions Related to Undercover Investigative Operation of County and Municipal Drug Enforcement Programs prepared by the comptroller's office.

Generally, for confidential expenditures the police chief requests that the city recorder write him/her a check from the Drug Fund Account. The chief then deposits the check into a separate bank account over which the chief has control. Next, the chief writes a check to an undercover agent/officer who cashes the check. The police department should limit the funds kept in the checking account to no more than an estimated 45-day supply. Unused funds should be returned to the recorder. The police department will generally keep SOME funds in the account or may keep cash for immediate needs.

Sample Budget Public Notice

Reference Number: MTAS-1840

The city of Everywhere, Tennessee, hereby provides certain financial information for the 2012-2013 fiscal year budget in accordance with the requirements of T.C.A. § 6-56-206. There will be a public hearing concerning the budget at city hall on June 18, 2012, at 7 p.m. All citizens are welcomed to attend and to participate. The budget and all supporting data is available at City Hall for public inspection.

	ACTUAL 2010 – 2011	ESTIMATED 2011 – 2012	PROPOSED 2012 – 2013
GENERAL FUND			
<u>Revenues</u>			
Local Taxes	\$4,260,000	\$4,214,500	\$4,260,000
State of Tennessee	550,000	534,500	550,000
Federal Government	50,000	50,000	50,000
Other Sources	330,000	338,000	320,300
Total	\$5,190,000	\$5,137,000	\$5,180,300
<u>Expenditures</u>			
Salaries	\$2,400,000	\$2,420,000	\$2,496,000
Other Costs	2,513,175	2,466,130	2,616,800
Total	\$4,913,175	\$4,886,130	\$5,112,800
<u>Fund Balance</u>			
Beginning	\$1,500,000	\$1,776,825	\$2,027,695
Ending	\$1,776,825	\$2,027,695	\$2,095,195
<u>Employee Positions</u>	85	87	88
STATE STREET AID FUND			
<u>Revenues</u>			
State of Tennessee	\$57,000	\$56,000	\$57,000
Other Sources	2,800	2,300	3,000
Total	\$59,800	\$58,300	\$60,000
<u>Expenditures</u>			
Salaries	\$15,000	\$16,000	\$15,000
Other Costs	64,200	33,400	40,200
Total	\$79,200	\$49,400	\$55,200
<u>Fund Balance</u>			
Beginning	\$20,000	\$600	\$9,500
Ending	\$600	\$9,500	\$14,300
<u>Employee Positions</u>	0	0	0

Note: If a municipality has a General Purpose School Fund and/or Debt Service Funds they are also required to be included in the notice.

Sample Budget Ordinance

Reference Number: MTAS-1841
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF _____, TENNESSEE
 ADOPTING THE ANNUAL Operating and Capital BUDGET AND TAX RATE FOR THE FISCAL YEAR BEGINNING JULY 1, 20XX AND ENDING JUNE 30, 20XY

WHEREAS, *Tennessee Code Annotated* Title 9 Chapter 1 Section 116 requires that all funds of the State of Tennessee and all its political subdivisions shall first be appropriated before being expended and that only funds that are available shall be appropriated; and

WHEREAS, the Municipal Budget Law of 1982 requires that the governing body of each municipality adopt and operate under an annual budget ordinance presenting a financial plan with at least the information required by that state statute, that no municipality may expend any moneys regardless of the source except in accordance with a budget ordinance and that the governing body shall not make any appropriation in excess of estimated available funds; and

WHEREAS, the governing body has published the annual operating budget and budgetary comparisons of the proposed budget with the prior year (actual) and the current year (estimated) in a newspaper of general circulation not less than ten (10) days prior to the meeting where the governing body will consider final passage of the budget.

NOW THEREFORE BE IT ORDAINED BY THE CITY OF _____, TENNESSEE AS FOLLOWS:

Section 1: That the governing body estimates anticipated revenues of the municipality from all sources to be as follows:

GENERAL FUND	20XX ACTUAL	20XY ESTIMATED	20XZ PROPOSED
Local taxes			
License and permits			
Intergovernmental			
Charge for services			
Other			
Total Revenues			
Beg. Fund Balance			
Total Available Funds			

STATE STREET AID	20XX ACTUAL	20XY ESTIMATED	20XZ PROPOSED
Intergovernmental			
Total revenues			
Beg. Fund Balance			
Total Available Funds			

DRUG FUND	20XX ACTUAL	20XY ESTIMATED	20XZ PROPOSED
Court fines			
Beg. Fund Balance			
Total Available Funds			

SECTION 2: That the governing body appropriates from these anticipated revenues and unexpended and unencumbered funds as follows:

General Fund	FY 20XX Actual	FY 20XY Estimated	FY 20XZ Proposed
Administration Police Department Fire Department Public Works Parks and Recreation Debt Service Total Appropriations			

State Street Aid Fund	FY 20XX Actual	FY 20XY Estimated	FY 20XZ Proposed
Streets Total Appropriations			

Drug Fund	FY 20XX Actual	FY 20XY Estimated	FY 20XZ Proposed
Police Total Appropriations			

SECTION 3: At the end of the current fiscal year the governing body estimates balances/(deficits) as follows:

- General Fund
- State Street Aid Fund
- Drug Fund

SECTION 4: That the governing body recognizes that the municipality has bonded and other indebtedness as follows:

Bonded or Other Indebtedness	Debt Redemption	Interest Requirements	Debt Authorized and Unissued	Condition of Sinking Fund
Bonds Notes Capital Leases Other Debt				

SECTION 5: During the coming fiscal year the governing body has planned capital projects and proposed funding as follows:

Proposed Capital Projects	Proposed Amount Financed by Appropriations	Proposed Amount Financed by Debt

SECTION 6: No appropriation listed above may be exceeded without an amendment of the budget ordinance as required

by the Municipal Budget Law of 1982 T.C.A. Section 6-56-208. In addition, no appropriation may be made in excess of available funds except to provide for an actual emergency threatening the health, property or lives of the inhabitants of the municipality and declared by a two-thirds (2/3) vote of at least a quorum of the governing body in accord with Section 6-56-205 of the *Tennessee Code Annotated*.

SECTION 7: Money may be transferred from one appropriation to another in the same fund only by appropriate ordinance by the governing body, subject to such limitations and procedures as it may describe as allowed by Section 6-56-209 of the *Tennessee Code Annotated*. Any resulting transfers shall be reported to the governing body at its next regular meeting and entered into the minutes.

SECTION 8: A detailed financial plan will be attached to this budget and become part of this budget ordinance. In addition, the published operating budget and budgetary comparisons shown by fund with beginning and ending fund balances and the number of full time equivalent employees required by Section 6-56-206, *Tennessee Code Annotated* will be attached.

SECTION 9: If for any reason a budget ordinance is not adopted prior to the beginning of the next fiscal year, the appropriations in this budget ordinance shall become the appropriations for the next fiscal year until the adoption of the new budget ordinance in accordance with Section 6-56-210, *Tennessee Code Annotated* provided sufficient revenues are being collected to support the continuing appropriations. Approval of the Director of the Office of State and Local Finance in the Comptroller of the Treasury for a continuation budget will be requested if any indebtedness is outstanding.

SECTION 10: There is hereby levied a property tax of \$ _____ per \$100 of assessed value on all real and personal property.

SECTION 11: All unencumbered balances of appropriations remaining at the end of the fiscal year shall lapse and revert to the respective fund balances.

SECTION 12: This ordinance shall take effect July 1, 20XY, the public welfare requiring it.

Real Property Tax

Reference Number: MTAS-1843

Revenue Class: Local Taxes

Fund: General

Account No.: 31111

Description: Ad valorem taxes levied within the municipality based on property appraisals.

Authorization: Article II, Section 28 of the Tennessee Constitution; T.C.A. § 67-1-701 *et seq.*; T.C.A. § 67-5-101 *et seq.*; T.C.A. § 67-5-801 *et seq.*

Requirements or Restrictions: Reference T.C.A.

Current Rate: Statutes provide that the following percentages of full value be used to determine assessments:

- Public utility real property, 55 percent (see Public Utility Property Tax, Account # 31120);
- Industrial and commercial real property, 40 percent;
- Residential and farm real property, 25 percent.

Frequency of Payment: Annually, between the first Monday in October and before the following March 1, unless the municipality is authorized to establish other due dates.

Late Pay Penalty: See Interest on Property Taxes, Account #31300.

Exemptions: All government, religious, charitable, scientific, literary and educational properties are exempt (Article II, Section 28 of the Tennessee Constitution and T.C.A. § 67-5-201 *et seq.*). Tax relief is offered to certain disabled and elderly home owners (Article II, Section 28 of the Tennessee Constitution and T.C.A. § 67-5-701 *et seq.*) and cities may provide by ordinance a tax freeze for qualified taxpayers over 65 years of age on their principal place of residence.

Collection: Property taxes are usually paid directly to the municipality. Some counties collect taxes for their municipalities, as in T.C.A. § 67-1-702 and § 67-5-1801(a). Taxes cannot be collected after ten years from April 1 of the year following the year they become delinquent. T.C.A. § 67-5-1806.

Use Restrictions: None.

Personal Property Tax

Reference Number: MTAS-1844

Revenue Class: Local Taxes

Fund: General

Account No.: 31112

Description: Ad valorem taxes levied on personal property used for business purposes within incorporated municipal

limits.

Authorization: Article II, Section 28 of the Tennessee Constitution; T.C.A. § 67-1-701 *et seq.*; T.C.A. § 67-5-101; T.C.A. § 67-5-901.

Requirements or Restrictions: Reference T.C.A.

Current Rate: Statutes provide that the following percentages of full value be used to determine assessments:

- Public utility tangible personal property, 55 percent;
- Industrial and commercial tangible personal property, 30 percent; and
- Other tangible personal property, 5 percent.

Frequency of Payment: Annually, between the first Monday in October and on or before the following March 1, unless the municipality is authorized to establish other due dates.

Late Pay Interest: Interest of one and one half percent (1.5%) shall be added on March 1, (unless the municipality is authorized to establish other due dates) following the tax due date and on the first day of each succeeding month, except as otherwise provided in regard to municipal taxes under T.C.A. § 67-5-2010.

Exemptions: Inventories of merchandise held by merchants and businesses for sale and exchange by persons taxable under T.C.A. § 67-5-901(a).

Collection: Personal property schedules mailed out no later than February 1st by the assessor; completed and returned by March 1; collection same as real property tax. Taxes cannot be collected after 10 years from April 1 of the year following the year they become delinquent. T.C.A. § 67-5-1806.

Use Restrictions: None.

Public Utility Property Tax

Reference Number: MTAS-1845

Revenue Class: Local Taxes

Fund: General

Account No.: 31120

Description: Taxes levied by the municipality on those corporations that provide public utilities (i.e., telephone, railroads, gas, airlines, etc.) and that are subject to government regulation.

Authorization: Article II, Section 28 of the Tennessee Constitution; T.C.A. § 67-5-101; T.C.A. § 67-5-801 *et seq.*; T.C.A. § 67-5-901 *et seq.*; T.C.A. § 67-5-1301 *et seq.*

Requirements or Restrictions: Reference T.C.A.

Current Rate: Assessment rate is 55 percent of the appraised value for public utility real property and tangible personal property; T.C.A. § 67-5-1302.

Frequency of Payment: Annually, between the first Monday in October and before the following March 1, unless the municipality is authorized to establish other due dates.

Late Pay Interest: The same interest listed in Property Tax, Account #31300, are applicable, but are assessed by the comptroller.

Exemptions: Does not apply to corporations organized under the laws of Tennessee whose principal business is the manufacture of products of the soil of Tennessee and who for the transportation alone of such products furnish their own cars.

Collection: The public utilities tax roll is established and maintained by the state. Complete tax roll and tax bills are mailed to the municipality each year, which in turn re-mails the tax bill to individual taxpayers.

Use Restrictions: None.

Property Taxes: Prior Years

Reference Number: MTAS-1846

Revenue Class: Local Taxes

Fund: General

Account No.: 31200

Description: Some people do not pay their property taxes by the due date. This represents property tax payments from previous years that are received by the municipalities.

Authorization: Article II, Section 28 of the Tennessee Constitution; T.C.A. § 67-1-701 *et seq.*; T.C.A. § 67-1-801 *et seq.*; T.C.A. § 67-5-801 *et seq.*; T.C.A. § 67-5-901 *et seq.*; T.C.A. § 67-5-2001 *et seq.*

Requirements or Restrictions: N/A

Current Rate: Statutes provide that the following percentages of full value be used to determine assessments:

- Public utility real and tangible personal property – 55 percent;
- Industrial and commercial real property – 40 percent;
- Industrial and commercial tangible personal property – 30 percent;
- Residential and farm real property – 25 percent;
- Other tangible personal property – 5 percent.

Frequency of Payment: Varies.

Late Pay Interest: See Interest on Property Taxes, Account #31300.

Exemptions: N/A

Collection: There are several options for collecting delinquent property taxes, including publishing a list of delinquent taxpayers in a local newspaper, turning the delinquent list over to a tax attorney, distraint, garnishment and a tax sale. See T.C.A. § 67-5-2001 *et seq.* for a complete list and procedures.

Use Restrictions: N/A

Interest on Delinquent Property Taxes

Reference Number: MTAS-1847

Revenue Class: Local Taxes

Fund: General

Account No.: 31300

Description: Revenue received from interest on delinquent property tax payments.

Authorization: T.C.A. § 67-1-701 *et seq.*; T.C.A. § 67-1-801 *et seq.*; T.C.A. § 67-5-2010.

Requirements or Restrictions: N/A

Current Rate: Interest of 1.5 percent imposed on March 1 and on the first day of **each additional month**, except as otherwise provided in reference to municipal taxes.

Frequency of Payment: N/A

Late Pay Penalty: N/A

Exemptions: For cities in any county having a population of not less than 24,600 nor more than 24,700 according to the federal census, upon approval by two-thirds of the governing body, the rate of interest may be reduced to an amount not less than 12 percent per year in the aggregate. In addition, members serving in the armed services in an active hostility outside the U.S. have additional time before interest accrues. T.C.A. § 67-5-2011.

Collection: Interest is collected, along with delinquent property taxes. T.C.A. § 67-5-2001 *et seq.*

Use Restrictions: None.

Payments in Lieu of Taxes: Electric Utilities

Reference Number: MTAS-1848

Revenue Class: Local Taxes

Fund: General

Account No.: 31511

Description: Revenue received as payment in lieu of tax on electric system property and operations that represents the public utility's fair share of the cost of local government. Payments are based upon the plant value of the electrical system and electric system operations. It applies only to municipalities that own an electrical distribution system and who buy power from TVA.

Authorization: T.C.A. § 7-52-301 *et seq.* (Municipal Electric System Tax Equivalent Law of 1987).

Requirements or Restrictions: Payments cannot be made to the municipality unless the following expenses are paid or provided for: operating expenses, debt payments, reasonable reserves or contingencies, and cash working capital adequate to cover operating expenses for a reasonable number of weeks. Cities that have private act or home rule charters that differ from these requirements should continue with their formulas for calculations until the tax equivalent payments exceed the tax equivalent amount paid in the fiscal year ending June 30, 1987. At that point the charter provisions are repealed and become subject to the T.C.A. requirements.

Current Rate: In lieu of tax payments are computed under T.C.A. § 7-52-304.

Frequency of Payment: Varies (in accordance with the resolution passed by the governing body – T.C.A. § 7-52-304(4)).

Late Pay Interest: None.

Exemptions: All underground equipment and all substation transmission lines are exempt.

Collection: Payments are transferred from the electric fund in accordance with a resolution passed by the governing body. T.C.A. § 7-52-307.

Use Restrictions: Twenty-two and one-half percent of the total tax equivalent payment is distributed to the county or counties that the system serves. Likewise, other cities that the system serves receive an amount equal to the equalized property tax rate of the other cities' taxing jurisdictions, multiplied by the net plant value of the electric plant plus the book value of materials and supplies located within the other cities' boundaries, multiplied by the assessment ratio, minus reductions required by T.C.A. § 7-52-304(3) and (4).

Payment in Lieu of Taxes: Water Utilities

Reference Number: MTAS-1849

Revenue Class: Local Taxes

Fund: General

Account No.: 31512

Description: A payment in lieu of tax that cannot exceed the amount of taxes payable on privately owned property of similar nature. A calculation worksheet may be found under "MTAS Resources: In-lieu-of tax calculator at: <http://www.mtas.tennessee.edu/finance-and-accounting>

Authorization: T.C.A. § 7-34-115 (a)(9)

Requirements or Restrictions: Must be authorized by resolution.

Current Rate: Varies by municipality, based on 1) the equalized tax rate, 2) net book value of net fixed assets located within the city limits, and 3) book value of inventory located within the city limits.

Frequency of Payment: Established in the authorizing resolution.

Late Pay Interest: Not specified.

Exemptions: None.

Collection: Payment is made by water utility to municipality pursuant to authorizing resolution.

Use Restrictions: None.

Payments in Lieu of Taxes: Sewer Utilities

Reference Number: MTAS-1850

Revenue Class: Local Taxes

Fund: General

Account No.: 31513

Description: A payment in lieu of tax that cannot exceed the amount of taxes payable on privately owned property of similar nature. A worksheet may be found under MTAS Resources: In-lieu-of tax calculator at <http://www.mtas.tennessee.edu/finance-and-accounting>

Authorization: T.C.A. § 7-34-115 (a)(9)

Requirements or Restrictions: Must be authorized by resolution.

Current Rate: Varies by municipality, based on 1) equalized tax rate, 2) net book value of net fixed assets located within the city limits, and 3) book value of inventory located within the city limits.

Frequency of Payment: Established in authorizing resolution.

Late Pay Interest: Not specified.

Exemptions: None.

Collection: Payment is made by sewer utility to municipality pursuant to authorizing resolution.

Use Restrictions: None.

Payments in Lieu of Taxes: Natural Gas Utilities

Reference Number: MTAS-1851

Revenue Class: Local Taxes

Fund: General

Account No.: 31514

Description: Revenue received as payment in lieu of tax on the gas system property and operations that represents the public utility's fair share of the cost of local government. Payments are based on the value of the gas system and gas

operations. It applies only to municipalities that own and operate a gas system. A worksheet can be found under MTAS Municipal Resources: In-lieu-of tax calculator on the <http://www.mtas.tennessee.edu/finance-and-accounting>.

Authorization: T.C.A. § 7-39-401 *et seq.* (Municipal Gas System Tax Equivalent Law).

Requirements or Restrictions: Payments cannot be made to the municipality unless the following expenses are paid or provided for: operating expenses, debt payments, reasonable reserves, and cash working capital adequate to cover operating expenses for a reasonable number of weeks. A resolution is required that sets forth the tax equivalent provisions.

Current Rate: In lieu of tax payments are computed under T.C.A. § 7-39-404 (1).

Frequency of Late Pay Interest: None.

Exemptions: Retail sales or use taxes on gas energy at the same rates applicable generally to sales or use of personal property or services are not included in the calculations. T.C.A. § 7-39-404(6).

Collection: Payments are transferred from the gas fund in accordance with resolution passed by the governing body. T.C.A. § 7-39-405.

Use Restrictions: None.

Payments in Lieu of Taxes: Industry

Reference Number: MTAS-1852

Revenue Class: Local Taxes

Fund: General

Account No.: 31520

Description: Property in this category is not subject to *ad valorem* taxes as the industrial development corporation is declared to be performing a public function on the behalf of the municipality. The corporation has the authority to negotiate and accept from its' lessees payments in lieu of *ad valorem* taxes to the municipality, provided that these payments do not exceed *ad valorem* taxes otherwise due where the leased property is owned by an entity subject to taxation.

Authorization: T.C.A. § 7-53-305

Requirements or Restrictions: Cannot permit payment of in-lieu-of taxes to be waived or otherwise not assessed for a period of more than 20 years from the date of agreement (plus a reasonable construction or installation period not to exceed three (3) years) or contract unless both the commissioner of economic and community development and the comptroller of the treasury have made a written determination that it is in the best interest of the state to do so. T.C.A. § 7-53-305(b)(1).

Current Rate: N/A

Frequency of Payment: Annually.

Late Pay Penalty: Ten percent per annum interest from the due date plus reasonable attorneys' fees. Other late penalties apply, but municipalities are not recipients of those penalties.

Exemptions: Minimum payments are not applicable to an eligible headquarters facility. Other exceptions apply to Memphis.

Collection: Corporation lessees submit on or before October 1 an annual report to the state board of equalization. A copy must be sent to the assessor on or before October 15.

Use Restrictions: None.

Local Option Sales Tax: Countywide

Reference Number: MTAS-1853

Revenue Class: Local Taxes

Fund: General

Account No.: 31610

Description: Receipts from countywide local option sales tax that is levied within the municipality.

Authorization: T.C.A. § 67-6-701 *et seq.* (1963 Local Option Revenue Act)

Requirements or Restrictions: Tax can be increased only by ordinance after voters approve by referendum. T.C.A. § 67-6-706. Tax is applicable only to the first \$1,600 on the sale or use of any single article of personal property. T.C.A. § 67-6-702. "Single article" applies only to motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes. After July 1, 2017, the tax levied on the sale, purchase, use, consumption of electricity, piped natural or artificial gasses, or other heating fuels delivered by the seller will be 0.5 percent. Also after July 1, 2019, there will be no local option sales tax exemption for cable or wireless cable television services.

Current Rate: Varies according to county and municipality; maximum rate is 2.75 percent.

Frequency of Payment: Monthly.

Late Pay Penalty: N/A

Exemptions: Same as statewide sales tax, plus electricity and fuels through June 30, 2019 (see T.C.A. § 67-6-704) and the above listed restrictions. Until June 30, 2019, cable or wireless cable television services are exempted up to \$27.50 per month. T.C.A. § 67-6-714.

Collection: State collects (and keeps 1.125 percent for administrative expenses), forwards the remainder to the county, and the county distributes 50 percent for school purposes and 50 percent to the jurisdiction where collected or as contracted between jurisdictions (less a 1% administrative fee retained by the county trustee). Local sales tax revenues that the Department of Revenue cannot identify to a particular *situs* are distributed 50 percent to municipalities based on population and 50 percent to counties based on population. For out-of-state internet sales collections that are voluntarily remitted (usually dealers with more than \$100,000 in annual revenue), taxes that can be attributed to specific SITUS codes are distributed to those local governments. Taxes that are not attributable to specific SITUS codes are distributed based on a Department of Revenue formula that weights the taxes based on known SITUS-specific collections.

Use Restrictions: None for the 50 percent returned to municipality, unless contracted differently.

Local Option Sales Tax: Municipality

Reference Number: MTAS-1854

Revenue Class: Local Taxes

Fund: General

Account No.: 31620

Description: Receipts from municipal local option sales tax.

Authorization: T.C.A. § 67-6-701 *et seq.* (1963 Local Option Revenue Act).

Requirements or Restrictions: Where county tax exists, municipality may levy a tax equal to the difference between the county tax and the maximum rate of 2.75 percent. T.C.A. § 67-6-703. Tax can be increased only by ordinance after voters approve by referendum. T.C.A. § 67-6-706. Tax is applicable only to the first \$1,600 on the sale or use of any single article of personal property. T.C.A. § 67-6-702. See also the requirements and restrictions listed under Account # 31610 – Local Option Sales Tax: Countywide (MTAS document MTAS-1853)

Current Rate: Varies, but cannot exceed 2.75 percent.

Frequency of Payment: Monthly.

Late Pay Penalty: N/A

Exemptions: Same as account 31610.

Collection: State collects (and keeps 1.125 percent for administrative expenses), forwards the remainder to the county, and the county distributes 50 percent for school purposes and 50 percent to the jurisdiction where collected or as contracted between jurisdictions (less a 1% administrative fee retained by the County Trustee). Local sales tax revenues that the Department of Revenue cannot identify to a particular *situs* will be distributed 50 percent to municipalities based on population and 50 percent to counties based on population. The county then forwards their portion to the municipality where collected.

Use Restrictions: None.

Wholesale Beer Tax

Reference Number: MTAS-1855

Revenue Class: Local Taxes

Fund: General

Account No.: 31710

Description: State authorized tax on wholesale sales of beer. Wholesale beer deliveries to retail outlets in a city or county are taxed at flat rate of \$35.60 per barrel sold. The tax is paid by each beer wholesaler directly to the city or county, and monthly reports on such sales are made to the state Department of Revenue and to each city and county. Of this tax, a wholesaler must remit \$.17 to the state for administration and retain \$.92 to defray the cost of collecting and remitting the tax. A city should check that tax payments are being received from beer wholesalers serving the area based on deliveries to all retail beer outlets in the city. If there is doubt about administration of the tax, an investigation by the Department of Revenue may be requested.

Authorization: T.C.A. § 57-6-101 *et seq.* (Wholesale Beer Tax Act)

Requirements or Restrictions: N/A

Current Rate: \$35.60 per barrel sold (31 gallons).

Frequency of Payment: Monthly by the 20th.

Late Pay Penalty: City may institute legal action for collection. T.C.A. § 57-6-107(b).

Exemptions: Wholesalers may deduct this amount from their gross receipts tax liability. T.C.A. § 67-4-711 (b)(5). Wholesale sales are tax-free if sold to U.S. armed forces. T.C.A. § 57-6-111.

Collection: Beer wholesalers remit monthly, directly to the municipality on state-prescribed forms.

Use Restrictions: None.

Wholesale Liquor Tax

Reference Number: MTAS-1856

Revenue Class: Local Taxes

Fund: General

Account No.: 31720

Description: State authorized tax on wholesale sales of liquor. City must pass an ordinance to impose an inspection fee upon licensed retailers of alcoholic beverages or upon retail food store wine licensees located within such municipality.

Authorization: T.C.A. § 57-3-501 *et seq.*

Requirements or Restrictions: As delineated in T.C.A.

Current Rate: Depending upon the size of municipality's county, the municipality levies by ordinance a 5 percent or 8 percent inspection fee that is collected by the wholesalers from the retailer during distribution. The wholesalers then retain 5 percent of the fee for performing the collection. The fee cannot exceed 8 percent of the wholesale price of alcoholic beverages sold in municipalities located in counties having a population of less than 60,000; and cannot exceed 5 percent for municipalities located in counties having a population more than 60,000.

Frequency of Payment: Monthly by the 20th.

Late Pay Penalty: A penalty of 10 percent is assessed after the 20th of each month. T.C.A. § 57-3-503(b).

Exemptions: None.

Collection: The inspection fee is collected by the wholesaler from the retailer and remitted by wholesalers to the municipality monthly on municipal-prescribed form.

Use Restrictions: None.

Mixed Drink Taxes

Reference Number: MTAS-1857

Revenue Class: Local Taxes

Fund: General

Account No.: 31730

Description: Tax on the sale of alcoholic beverages for consumption on the premises.

Authorization: T.C.A. § 57-4-301(c); T.C.A. § 57-4-306

Requirements or Restrictions: N/A

Current Rate: Fifteen percent of the sales price of all alcoholic beverages sold for consumption on the premises.

Frequency of Payment: Monthly.

Late Pay Penalty: N/A

Exemptions: Not applicable to charitable, nonprofit, or political organizations selling alcohol under a special occasion license. T.C.A. § 57-4-301(e). Also exempted from this tax are commercial airlines (but not airline travel clubs), paddlewheel steamboat companies, and passenger trains. T.C.A. § 57-4-301(d).

Collection: State retains the first 50 percent for its general fund and it is earmarked for education; the remaining 50 percent is distributed to the municipality, if collected in an incorporated municipality, or to the county if collected in an unincorporated area. Recent legislation found at T.C.A. § 57-4-306 (b) provides detailed instructions on further distribution and should be reviewed carefully. Determining factors include whether or not municipalities have their own school system (LEA) or special school district (SSA). Also included are compliance, notice and exemption provisions.

Use Restrictions: For premier tourist resorts, the municipality's percentage must be spent on schools in the municipality. T.C.A. § 57-4-306 (d).

Minimum Business Tax

Reference Number: MTAS-1858

Revenue Class: Local Taxes

Fund: General

Account No.: 31810

Description: The business tax is levied in addition to all other privilege taxes and is intended by the legislature to be in-lieu-of any other *ad valorem* tax on "inventories of merchandise held for sale or exchange." T.C.A. § 67-4-701 (b).

Authorization: T.C.A. § 67-4-701 *et seq.* (Business Tax Act)

Requirements or Restrictions: Businesses are required to file tax returns with the state on state subscribed forms.

Current Rate: A minimum of \$22 annually is required for each taxpayer in classifications 1-4 and 5B (\$450 annually for classification 5A) for each fixed place, location or outlet from which a business is operated. The state has established different classifications of businesses and gross receipt rates assessed to the different classifications. The classifications and rates are listed in detail in T.C.A. § 67-4-708 and T.C.A. § 67-4-709. The rates include a wide range of percentages. Some examples are:

- 1/10 of 1 percent of all retail sales of the business for businesses classified under T.C.A. § 67-4-708 (1);
- 1/40 of 1 percent of all wholesale sales of the business by people classified under T.C.A. § 67-4-708 (1)(A);
- 3/80 of 1 percent of all wholesale sales of the business by people classified under T.C.A. § 67-4-708 (1)(B) and (1)(C), T.C.A. § 67-4-708 (2) and T.C.A. § 67-4-708 (3);
- 1/20 of 1 percent of all retail sales of the business by people classified under T.C.A. § 67-4-708 (1)(D);
- Transient vendors must pay a minimum tax of \$50 for each 14-day period of business in a municipality, but they are not subject to the percent of the gross receipts portion of the tax. T.C.A. § 67-4-710 (a)(2).

The Tennessee Department of Revenue Business Tax Guide can be found at : <https://www.tn.gov/content/dam/tn/revenue/documents/taxguides/bustaxguide.pdf>

Frequency of Payment: Monthly. Due dates for different business classifications are listed under T.C.A. § 67-4-715.

Late Pay Penalty: N/A

Exemptions: Exemptions are listed under T.C.A. § 67-4-712. Businesses may deduct certain items from their gross receipts liability (listed under T.C.A. § 67-4-711). Certain credits are also allowed as listed in T.C.A. § 67-4-713.

Collection: State forwards municipality's share monthly.

Use Restrictions: None.

Amusement Tax

Reference Number: MTAS-1859

Revenue Class: Local Taxes

Fund: General

Account No.: 31860

Description: A tax levied at the same rate for tangible personal property on the sales price of each sale at retail of dues or fees for membership to recreational clubs, admission ticket sales, entrance fees, and charges made for the privilege of using tangible personal property for amusement, sports, entertainment or recreational activities.

Authorization: T.C.A. § 67-6-202; T.C.A. § 67-6-212; T.C.A. § 67-6-330

Requirements or Restrictions: Free or complimentary tickets or admissions are to be computed at equivalent values and included as sales, unless they are provided to people attending a public school, college, or university.

Current Rate: Municipalities receive 99 percent of 4.603 percent of six percent of the statewide seven percent sales tax. This allocation is different for premiere type tourist resorts and Tennessee River resort districts. All increased revenues from the 2002 state sales tax rate increase from six percent to seven percent go to the state general fund (Public Acts, 2002 Chapter 856, Section 4).

Frequency of Payment: Monthly.

Late Pay Penalty: N/A

Exemptions: There are several other exemptions listed in T.C.A. § 67-6-330 that include admissions to K-12 school activities, fairs, dues to 501(c) organizations, and admissions to various nonprofit organizations' events. Notice #19-11 <https://www.tn.gov/content/dam/tn/revenue/documents/notices/sales/sales19-11.pdf> details exemptions for physical fitness facilities.

Collection: The state collects the tax and distributes to municipalities.

Use Restrictions: None.

Natural Gas Franchise

Reference Number: MTAS-1860

Revenue Class: Local Taxes

Fund: General

Account No.: 31911

Description: Municipalities can impose a franchise fee and other conditions upon the operation of a gas company within their corporate limits.

Authorization: T.C.A. § 6-54-109; T.C.A. § 65-4-107

Requirements or Restrictions: The franchise agreement is subject to the approval of the Tennessee Regulatory Authority. T.C.A. § 65-4-107. The franchise agreement is passed by municipal ordinance.

Current Rate: Varies; there is no maximum franchise fee.

Frequency of Payment: Annually.

Late Pay Penalty: N/A

Exemptions: N/A

Collection: N/A

Use Restrictions: N/A

Room Occupancy Tax

Reference Number: MTAS-1862

Revenue Class: Local Taxes

Fund: General

Account No.: 31920

Description: Occupancy tax on hotel or motel room rentals, imposed by private act. Rates vary from 1.25 percent to 5 percent.

Authorization: T.C.A. § 67-4-1401 *et seq.*; T.C.A. § 6-55-102; and various private acts

Requirements or Restrictions: Tax must be approved by ordinance by two-thirds vote of the governing body at two consecutive regularly scheduled meetings; or be approved by referendum, and tax cannot exceed five percent. T.C.A. § 67-4-1402. City cannot assess the tax if the county has already levied an occupancy tax. T.C.A. § 67-4-1425 (a)(2). Additional limitations are found in T.C.A. § 67-4-1425.

Current Rate: Cannot exceed 5 percent. Hotel operator is allowed to retain 2 percent of the amount of the tax due for collecting the tax. T.C.A. § 67-4-1405 (b).

Frequency of Payment: Monthly by the 20th.

Late Pay Penalty: Interest is charged at 12 percent per annum plus a penalty of 1 percent for each month taxes are delinquent. T.C.A. § 67-4-1408.

Exemptions: N/A

Collection: Monthly. The municipality has the authority to collect delinquent taxes by any means available by law including issuing distress warrants and the seizure of assets. T.C.A. § 67-4-1408(d).

Use Restrictions: None unless the governing body specifies such in the authorizing ordinance. T.C.A. § 67-4-1403.

Special Assessments

Reference Number: MTAS-1863

Revenue Class: Local Taxes

Fund: General

Account No.: 31930

Description: Municipalities have the power to design and execute construction and improvement or reconstruction and re-improvement of any street, avenue, alley, highway or public place including improvements or alterations for flood control, water management, soil erosion, and disaster relief and assess not less than two-thirds of the cost or expense of the work against the property abutting or adjacent to the street, avenue, alley, or any other public place that is improved. If 75 percent of the property owners whose lots about the proposed improvement petition for the work to be done, 100 percent of the cost of the project can be assessed to the property owners. T.C.A. § 7-32-118.

Authorization: T.C.A. § 7-32-101 *et seq.*

Requirements or Restrictions: The municipality needs to adopt an ordinance and hold a public hearing prior to making the improvements. The ordinance should describe in detail the nature of the intended work. After apportionments are made, the municipality must hold another hearing on objections to the assessments. T.C.A. § 7-32-121. Appeals to the

assessment may be made to the circuit court. T.C.A. § 7-32-126. If any objections to an assessment to pay costs are made, the confirmation of the assessment shall require the unanimous approval of the members of the governing body present at the meeting at which the objection is considered. T.C.A. § 7-32-123.

Current Rate: Depends upon the cost of the project and the number and sizes of properties involved.

Frequency of Payment: Payments are due 30 days after the assessment is made final. At the request of the property owner, the assessment may be paid in five annual installments, and shall bear interest at the rate of 6 percent per annum, interest payable semiannually. T.C.A. § 7-32-133. An assessment levied in connection with a public facility may be paid back over thirty years. T.C.A. § 7-32-133.

Late Pay Penalty: If any property owner makes default in the payment schedule, all of the installments with interest and an additional sum equal to one-half the annual interest, shall become immediately due and payable T.C.A. § 7-32-137. After 60 days delinquency, the city recorder turns the collection over to the city attorney who may then attach a lien on the property. T.C.A. § 7-32-138.

Exemptions: The total assessment made against any lot or parcel of land shall not exceed one-half of the cash value (fair sale price of the lot and improvements on the lot if sold at a voluntary sale) of the lot and improvements. T.C.A. § 7-32-116.

Collection: Collected by the municipal tax collector following the assessment. The assessment is a lien on the property. T.C.A. § 7-32-131.

Use Restrictions: N/A

Automobile Registration

Reference Number: MTAS-1864

Revenue Class: Licenses and Permits

Fund: General

Account No.: 32110

Description: Municipalities may require by ordinance an automobile regulatory fee or inspection fee for all vehicles owned or operated by residents who live within its corporate boundaries.

Authorization: T.C.A. § 6-55-501 *et seq.*; T.C.A. § 7-51-701 *et seq.*

Requirements or Restrictions: Non-residents cannot be required to pay such fees (T.C.A § 6-55-502(c) and T.C.A. § 7-51-702).

Current Rate: Varies.

Frequency of Payment: Usually annually.

Late Pay Penalty: N/A

Exemptions: Varies.

Collection: Varies. The municipality may enter into an agreement with the county authorizing the county clerk to collect the motor vehicle regulatory fee at the same time the clerk sells a state license.

Use Restrictions: Some municipalities dedicate revenue to streets and highways, but this is not required by T.C.A.

Taxicab Licenses

Reference Number: MTAS-1865

Revenue Class: Licenses and Permits

Fund: General

Account No.: 32130

Description: Under the Tennessee Passenger Transportation Services Act, municipalities have the authority to license, control and regulate by ordinance or resolution passenger-for-hire vehicles providing transportation services within its jurisdiction. Municipalities in counties with populations greater than 500,000 also have the authority to regulate entry into the business of providing passenger transportation services.

Authorization: T.C.A. § 7-51-1001 *et seq.* (Tennessee Passenger Transportation Services Act)

Requirements or Restrictions: Allowable regulations include:

- Entry into the transportation services business through licensing;
- Rates charged;
- Safety and insurance requirements;
- Establishment of stands;
- Limited or exclusive access to airports or other facilities within the municipality;

- Regulations concerning the drivers;
- Routes and stops of fixed routes;
- Any other regulation that ensures safe and reliable passenger transportation service.

Current Rate: Variable.

Frequency of Payment: Not specified by T.C.A.

Late Pay Penalty: Not specified by T.C.A.

Exemptions: Does not apply to cities in counties with a population of between 287,700 and 287,800 (T.C.A. § 7-51-1006) and does not supercede authority of the department of safety (T.C.A. § 7-51-1005).

Collection: Not specified by T.C.A.

Use Restrictions: N/A

Beer Licenses

Reference Number: MTAS-1867

Revenue Class: Licenses and Permits

Fund: General

Account No.: 32210

Description: Revenue received from beer permits sold to individuals who sell beer at retail establishments.

Authorization: T.C.A. § 57-5-101 *et seq.*; T.C.A. § 57-5-108

Requirements or Restrictions: Business must operate within and comply with municipal and/or county ordinances.

Current Rate: Applicants pay \$250 and each permit holder pays \$100 per year for renewal of the privilege tax. In addition to the first time application fee, new applicants are required to pay the privilege tax on a prorated basis for each month or portion thereof remaining until the next tax payment date. T.C.A. § 57-5-104

Frequency of Payment: \$250 fee is imposed upon application and the annual renewal fee of \$100 is due on January 1.

Late Pay Penalty: Permit may be revoked for nonpayment. If a permit holder does not pay the tax by January 31 or within 30 days after written notice of the tax was mailed, whichever is later, then the city shall notify the permit holder by certified mail that the tax payment is past due. If a permit holder does not pay the tax within 10 days after receiving notice of its delinquency by certified mail, then the city may suspend or revoke the permit or impose a civil penalty pursuant to T.C.A. § 57-5-108. T.C.A. § 57-5-104 (b)(3).

Exemptions: None

Collection: By the municipality from applicants and permit holders.

Use Restrictions: None

Liquor Licenses

Reference Number: MTAS-1868

Revenue Class: Licenses and Permits

Fund: General

Account No.: 32220

Description: This is a privilege tax on those who engage in the business of selling retail alcoholic beverages for consumption on the premises. The tax varies by the type of establishment that sells the liquor by the drink.

Authorization: T.C.A. § 57-4-301 *et seq.*

Requirements or Restrictions: These same privilege taxes are paid twice by the businesses; once to the county and once to the municipality. Privilege tax increases imposed after fiscal year 2004 do not go to cities, but rather to the Alcoholic Beverage Commissioner to administer the law.

Current Rate: Municipalities are allowed to levy a privilege tax on the sale of alcoholic beverages for consumption on the premises. The taxes, paid annually, are:

- Private club — \$500
- Convention center — \$1,000
- Premiere type tourist resort — \$2,000
- Historical performing arts center — \$150
- Urban park center — \$150
- Commercial passenger boat company — \$1,250

- Historic mansion house site — \$150
- Historic interpretive center — \$150
- Community theater — \$150
- Zoological institution — \$150
- Museum — \$150
- Establishment in commercial airport terminal — \$1,500
- Commercial airline travel club — \$1,000
- Public aquarium — \$150
- Motor speedway — \$2,000
- Sports Facility — \$2,000
- Theater — \$150
- Restaurant, according to seating capacity, on licensed premises:
 - 40 – 74 seats — \$650
 - 75 – 125 seats — \$750
 - 126 – 175 seats — \$925
 - 176 – 225 seats — \$975
 - 226 – 275 seats — \$1,100
 - 276 or more seats — \$1,200
- Wine-only restaurant, according to seating capacity on licensed premises:
 - 75 – 125 seats — \$270
 - 126 – 175 seats — \$300
 - 176 – 225 seats — \$310
 - 226 – 275 seats — \$330
 - 276 or more seats — \$350
- Caterers — \$625
- Hotels, according to room capacity, on licenses premises:
 - 0 – 99 rooms — \$1,000
 - 100 – 399 rooms — \$1,250
 - 300 rooms and over — \$1,500
 -
- **Frequency of Payment:** Annually.

Late Pay Penalty: N/A

Exemptions: No tax authorized or imposed by this section shall be levied or assessed from any charitable, nonprofit or political organization selling alcoholic beverages at retail pursuant to a special occasion license. T.C.A. § 57-4-301 (e).

Collection: The state notifies the municipality when renewal is due, then the municipality sends a letter to the establishment, which sends the revenue to the municipality.

Use Restrictions: None.

Building Permits

Reference Number: MTAS-1869

Revenue Class: Licenses and Permits

Fund: General

Account No.: 32610

Description: Revenue received from the sale of building permits and builder and contractor licenses. Municipalities are authorized and empowered to enact laws or ordinances to safeguard and protect the home owner or prospective home owner, commercial property owner or assembly building property owner by requiring the licensing of the residential, commercial or assembly builders and residential, commercial and assembly maintenance and alteration contractors.

Authorization: T.C.A. § 6-54-501 *et seq.*; T.C.A. § 7-62-101 *et seq.*; T.C.A. § 7-62-201 *et seq.*

Requirements or Restrictions: City cannot issue more than 10 active building permits at one time to an unlicensed contractor. T.C.A. § 7-62-202 (b). Unlicensed contractors are required to post a cash bond with the city for a period of at least two years. T.C.A. § 7-62-203.

Current Rate: Varies.

Frequency of Payment: Upon issuance of permit.

Late Pay Penalty: N/A

Exemptions: N/A

Collection: N/A

Use Restrictions: None.

Electrical Permits

Reference Number: MTAS-1870

Revenue Class: Licenses and Permits

Fund: General

Account No.: 32620

Description: Revenue received from permits for electrical work.

Authorization: T.C.A. § 6-54-104; T.C.A. § 6-54-501 *et seq.*

Requirements or Restrictions: Permits issued only to contractors or appliance electricians licensed according to municipal ordinance or to a homeowner doing personal work within his/her residence.

Current Rate: Varies.

Frequency of Payment: Upon issuance of permit.

Late Pay Penalty: N/A

Exemptions: N/A

Collection: N/A

Use Restrictions: None.

Plumbing Permits

Reference Number: MTAS-1871

Revenue Class: Licenses and Permits

Fund: General

Account No.: 32630

Description: Revenue received from permits for plumbing work.

Authorization: T.C.A. § 6-54-501 *et seq.*; T.C.A. § 62-6-401 *et seq.*

Requirements or Restrictions: Permits issued only to licensed plumbing contractors or to a homeowner doing personal work in his or her residence.

Frequency of Payment: Upon issuance of permit.

Late Pay Penalty: N/A

Exemptions: N/A

Collection: N/A

Use Restrictions: None.

Zoning Permits

Reference Number: MTAS-1872

Revenue Class: Licenses and Permits

Fund: General

Account No.: 32660

Description: Fees for zoning permits and, in some municipalities, subdivision plats and other plans.

Authorization: Various general law charters T.C.A. § 6-2-201; T.C.A. § 6-19-101 and 102; T.C.A. § 6-33-101; T.C.A. § 13-7-201 *et seq.*

Requirements or Restrictions: Changes to the zoning ordinance must be made by an amending ordinance and include

a public hearing.

Current Rate: Varies.

Frequency of Payment: Upon issuance of permit.

Late Pay Penalty: N/A

Exemptions: N/A

Collection: N/A

Use Restrictions: None.

Federal Community Development Grants

Reference Number: MTAS-1873

Revenue Class: Intergovernmental Revenue

Fund: General

Account No.: 33110

Description: Authorized by the Housing and Community Development Act of 1974 (42 USC 5301) replacing several community development categorical grant programs, Community Development Block Grants (CDBG) provide eligible metropolitan cities and urban counties (called "entitlement communities") with annual direct grants that they can use to "revitalize neighborhoods, expand affordable housing and economic opportunities, and/or improve community facilities and services, principally to benefit low- and moderate-income persons."

Authorization: T.C.A. § 6-54-124 and 42 USC 5301 *et seq.*

Requirements or Restrictions: T.C.A. § 6-54-124 requires municipalities that receive community development block grants and municipalities or industrial development corporations that are a party to an in-lieu-of property tax agreement to make a report addressing the expenditures of such funds. In addition, the municipality must place a copy of such report in the main branch of the municipality's public library or place the report on the Internet.

Current Rate: N/A

Frequency of Payment: N/A

Late Pay Penalty: N/A

Exemptions: N/A

Collection: N/A

Use Restrictions: N/A

Housing Authority in-Lieu-of-Tax

Reference Number: MTAS-1874

Revenue Class: Intergovernmental Revenue

Fund: General

Account No.: 33310

Description: Payments in lieu of taxes from local housing authority, based on gross rent receipts. Housing authorities "shall agree" to pay in-lieu-of taxes or special assessments not to exceed the cost of services, improvements, or facilities provided. A similar requirement provides that nonprofit housing corporations providing low-cost housing for elderly or handicapped people must agree to make in-lieu-of-tax payments for any project exceeding 12 units occupied after January 1, 1990. Bonds and notes of a housing authority are issued for a public purpose and together with the interest shall be exempt from taxation.

Authorization: T.C.A. § 67-5-206; T.C.A. § 67-5-207

Requirements or Restrictions: Subject to federal housing law and regulations. There also are several qualifications for nonprofit housing corporations that must be met to be eligible for the payment in-lieu-of taxes listed under T.C.A. § 67-5-207.

Current Rate: Varies.

Frequency of Payment: Varies.

Late Pay Penalty: N/A

Exemptions: N/A

Collection: Varies.

Use Restrictions: None.

State-Shared Sales Tax

Reference Number: MTAS-1875

Revenue Class: Intergovernmental Revenue

Fund: General

Account No.: 33510

Description: The Retailers' Sales Tax is applied to the sale, use, consumption, distribution, lease, or rental of tangible personal property and selected services, of which cities receive a population-based share of a portion of the total statewide collections. Additional money is available to cities that have sports authorities that have secured professional major league baseball, football, basketball or hockey franchises. Premier type tourist resorts that meet specified requirements (*i.e.*, golf courses, ski slopes, theme parks, etc.) are entitled to additional distributions per T.C.A. § 67-6-103 (a)(3)(B).

Authorization: T.C.A. § 67-6-101 *et seq.*

Requirements or Restrictions: Municipalities may conduct only four special censuses after the decennial census to increase their population-based share. T.C.A. § 67-6-103(a)(3)(C) and (D). Special options exist for "premiere type tourist resort" cities, cities that have a major league sports team, and others as noted in T.C.A.

Current Rate: 99 percent of 4.6030 percent of 6 percent of the statewide 7 percent sales tax (which equates to 4.55697%). The 1 percent (which equates to 0.04603%) is retained by the state and sent to the University of Tennessee to partially fund the Municipal Technical Advisory Service (MTAS). For example, if the state collected \$1 million in sales tax, MTAS would receive \$418.46, and cities would split \$45,569.70 based on population.

Frequency of Payment: Monthly

Late Pay Penalty: N/A

Exemptions: Revenues from fuel sales used for aviation, railways or water carriers are placed in the transportation equity fund.

Collection: Revenue is distributed monthly by the state.

Use Restrictions: None

State-Shared Income Tax (Hall Income Tax)

Reference Number: MTAS-1876

Revenue Class: Intergovernmental Revenue

Fund: General

Account No.: 33520

Description: State taxes levied on the earnings of stock dividends and interest on bonds earned by individuals, partnerships, associations, trusts and corporations. The municipality's share depends upon the residence of taxpayers; *i.e.*, if he/she resides within the corporate limits of the municipality.

Authorization: T.C.A. § 67-2-101 *et seq.*

Requirements or Restrictions: N/A

Current Rate: The "IMPROVE Act" which passed in April of 2017 included a phaseout over the next five years, as follows:

- 4% for tax years beginning January 1, 2017
- 3% for tax years beginning January 1, 2018
- 2% for tax years beginning January 1, 2019
- 1% for tax years beginning January 1, 2020
- Repeal beginning January 1, 2021

Frequency of Payment: Annually on or on or before the fifteenth day of the fourth month commencing after the end of the taxpayer's tax year. Armed forces personnel have 180 days in which to file in certain circumstances.

Late Pay Penalty: N/A

Exemptions: Exemptions are listed in T.C.A. § 67-2-104. The most common exemptions include the first \$1,250 of an individual's return and the first \$2,500 of income for a joint return; people 65 or older whose income is not more than \$37,000 (\$68,000/couple); blind people; pension trusts; profit-sharing trusts; and all income derived from government bonds and securities.

Collection: State forwards municipalities' share annually.

Use Restrictions: None.

State-Shared Beer Tax

Reference Number: MTAS-1877

Revenue Class: Intergovernmental Revenue

Fund: General

Account No.: 33530

Description: State tax on the manufacture, sale, and transportation of beer, of which the municipalities receive a share of 10.05 percent of the total taxes, distributed based on population.

Authorization: T.C.A. § 57-5-201 *et seq.*

Requirements or Restrictions: None.

Current Rate: \$4.29 per 31-gallon barrel; returns are based upon population. Revenue generated from the increase from \$3.40 to \$3.90 is allocated to the state highway fund

Frequency of Payment: Semi-annually.

Late Pay Penalty: 10 percent interest and penalty is collected by the state. T.C.A. § 57-5-204.

Exemptions: Beer and ale sold for consumption at U.S. military installations.

Collection: State forwards municipality's share semi-annually.

Use Restrictions: None

State Alcoholic Beverage Tax

Reference Number: MTAS-1878

Revenue Class: Intergovernmental Revenue

Fund: General

Account No.: 33540

Description: Any seized intoxicating liquors or vehicles associated with the production or transport of illegal intoxicating liquors are turned over to the Alcoholic Beverage Commission for public sale as contraband by the Commissioner of General Services. A portion of the revenue from sales of these contraband items goes to the municipality where the officer who made the seizure works.

Authorization: T.C.A. § 57-9-115; T.C.A. § 59-9-201

Requirements or Restrictions: None

Current Rate: Ninety percent of proceeds from the sale of seized liquor and 50 percent of proceeds from the sale of seized vehicles, aircraft and boats.

Frequency of Payment: Periodic. Depends on the frequency of seizures by cities and sales by the state.

Late Pay Penalty: N/A

Exemptions: N/A

Collection: The Commissioner of General Services collects the money at the time of the sale then forwards it to municipalities.

Use Restrictions: N/A

State Gasoline and Motor Fuel Tax

Reference Number: MTAS-1879

Revenue Class: Intergovernmental Revenue

Fund: State Street Aid

Account No.: 33551

Description: Local share of state gasoline and other motor fuel taxes comprising the Gasoline Tax, the Diesel Tax, the Liquefied Gas Tax on vehicles, the Compressed Natural Gas Tax, and the Prepaid User Diesel Tax. Distribution to municipalities is based upon population.

Authorization: T.C.A. § 67-3-201; T.C.A. § 67-3-202; T.C.A. § 67-3-901; T.C.A. § 67-3-905; T.C.A. § 67-3-908; T.C.A. § 67-3-1102; T.C.A. § 67-3-1113; T.C.A. § 67-3-1309.

Requirements or Restrictions: Special census counts are limited to four in addition to the decennial census.

Current Rate:

- Gasoline Tax – Of the 26 cent tax per gallon, municipalities receive 99 percent (one percent is retained by the state for administration) of 14.38 percent of the first 11 cents (minus 0.1074 percent designated for boating safety); 33.33 percent of an additional two cents from increases in 1985 and 1986 (minus 0.1074 percent designated for boating safety); and 33.33 percent of an additional one cent increase in 1989. Public Chapter 181, known as the "IMPROVE Act" was passed in April of 2017.
- Diesel Tax – Beginning with fiscal year 2020-21 the tax will be 27 cents. Of the original 17 cents tax per gallon, municipalities receive 12.38 percent of 12 cents.
- Liquefied Gas – Of the 14 cents tax per gallon, municipalities receive 14.14 percent of the first 11 cents and 99 percent of 33.33 percent of an additional one-cent increase in 1986.
- Liquefied Gas Tax on Vehicles – Municipalities receive 14.14 percent of a flat rate that varies depending on the classification of the vehicle (by gross vehicle weight). The rate varies from \$70 to \$114.
- Compressed Natural Gas – Of the 13 cents tax per gallon, municipalities receive 12.38 percent.
- Prepaid User Diesel Tax – Municipalities receive 12.38 percent of a flat rate (\$56 – \$159) for farmers whose use of diesel fuel is mostly for agricultural purposes yet who own diesel powered passenger cars or trucks.

Frequency of Payment: Monthly.

Late Pay Penalty: N/A

Exemptions: As noted in T.C.A.

Collection: Revenue is distributed monthly by the state.

Use Restrictions: Outlined in T.C.A. § 54-4-204. Funds can be spent on street improvements; principal and interest payments for street improvement project loans; the costs of acquiring rights-of-way for approaches to bridges and tunnels; the city's share of grade eliminations; one-third of the total costs of rights-of-way for state or federal highways; paying another municipality, county or TDOT for doing road improvements; and up to 22.22 percent can be spent on funding mass transit.

State Streets and Transportation

Reference Number: MTAS-1880

Revenue Class: Intergovernmental Revenue

Fund: General

Account No.: 33552

Description: This represents what is referred to as the Special Privilege Tax or the Petroleum Special Products Tax/Gas Inspection Fee and the Export Tax. The Special Privilege Tax establishes a local government fund created by a tax of one cent per gallon on all petroleum products. The export tax is a tax of 1/20th of one cent per gallon of petroleum product that is stored in Tennessee or stored in Tennessee and then exported. If the special privilege tax has already been paid, then 19/20th of the Special Privilege Tax can be credited on the Export Tax return. The local share is distributed to municipalities based on population.

Authorization: T.C.A. § 67-3-203; T.C.A. § 67-3-205; T.C.A. § 67-3-906

Requirements or Restrictions: As noted in T.C.A.

Current Rate: The state distributes \$619,833 per month to cities on a population basis. Before the money is distributed to cities, the state retains \$10,000 per month and allocates it to **The University of Tennessee Center for Government Training**.

Frequency of Payment: Monthly.

Late Pay Penalty: N/A

Exemptions: As noted in T.C.A. § 67-3-401 *et seq.* Some of the exemptions include government agencies, products used for agricultural purposes, exported products, kerosene, and aviation fuels.

Collection: Revenue is distributed monthly by the state.

Use Restrictions: Although this money is general fund revenue, it is limited in the same manner as the state gasoline and motor fuel tax (to fund city street projects).

Gross Receipts: TVA

Reference Number: MTAS-1881

Revenue Class: Intergovernmental Revenue

Fund: General

Account No.: 33591

Description: TVA pays five percent of gross power sales proceeds to the state in lieu of taxes. 48.5 percent of the increase in TVA payments made to the State of Tennessee above the amount received in the base year (1977-1978) is distributed to county and municipal governments.

Authorization: T.C.A. § 67-9-101 *et seq.* and 16 USC 831i

Requirements or Restrictions: Before making the 30 percent of the 48.5 percent distribution to cities and counties, the state deducts \$4,462 monthly and appropriates it to the Tennessee Advisory Commission on Intergovernmental Relations (TACIR).

Current Rate: Thirty percent of 48.5 percent (minus \$4,462) collected above the base rate set in 1978 to cities based upon population.

Frequency of Payment: Quarterly.

Late Pay Penalty: N/A

Exemptions: N/A

Collection: State remits municipality's share quarterly.

Use Restrictions: None

Special Impact Area Funds: TVA

Reference Number: MTAS-1882

Revenue Class: Intergovernmental Revenue

Fund: General

Account No.: 33592

Description: Three percent of the increase in gross power sales paid by TVA as payments in-lieu-of property taxes since June 30, 1978, is paid to municipalities where TVA is performing construction activity on facilities to produce electric power.

Authorization: T.C.A. § 67-9-101 (a)(3); T.C.A. § 67-9-102(b)

Requirements or Restrictions: TVA designates the construction activity areas. Payments are made during the time of construction and for one year after the construction activity is completed. For the next three fiscal years, payments are made in decreasing amounts based on the last year of the entitlement. The first year yields 75 percent of the payment based on the last year of the entitlement, the second year yields 50 percent, and the third year yields 25 percent. T.C.A. § 67-9-102 (b)(2).

This impact allocation for one county and its cities cannot exceed 10 percent of funds received under the normal distribution of the TVA gross receipts tax. T.C.A. § 67-9-102 (b)(1).

Current Rate: Three percent of the increase in gross receipts taxes from the fiscal year ended June 30, 1978 is distributed to TVA-impacted cities and counties.

Frequency of Payment: Annually

Late Pay Penalty: N/A

Exemptions: If in any fiscal year funds remain or there are no areas impacted by TVA construction activity, then no more than 30 percent of the impact funds are allocated to The University of Tennessee for the County Technical Assistance Service (CTAS). If there are still funds remaining, then no more than 20 percent of the impact funds are allocated to TACIR in two separate 20 percent increments. If there are still funds remaining, then they go to regional development authorities that have acquired a former nuclear site from TVA. Any money remaining after these allocations follows the normal distribution of TVA gross receipts tax.

Collection: State remits municipality's share quarterly.

Use Restrictions: None.

Corporate Excise Tax

Reference Number: MTAS-1883

Revenue Class: Intergovernmental Revenue

Fund: General

Account No.: 33593

Description: The state corporate excise tax collected from banks is shared with municipalities and counties.

Local tax rates determine the payment allocation between the county and the city, so a city must levy a property tax to receive any funds. Another formula is prescribed for allocating such revenue if a bank has branches in more than one city and/or in more than one county. T.C.A. § 67-4-2017 (a)(1)(B).

Authorization: T.C.A. § 67-4-2017

Requirements or Restrictions: As noted in T.C.A.

Current Rate: The tax is 3 percent of net earnings (excluding interest from state bonds), less 7 percent of *ad valorem* taxes, divided between counties and municipalities based on property tax rates.

Frequency of Payment: Annually in the third quarter.

Late Pay Penalty: N/A

Exemptions: None.

Collection: State forwards revenue to municipalities in third quarter of each year.

Use Restrictions: None.

Delinquent Property Tax Table

Reference Number: MTAS-1884

Interest by Month

Current Month	Year(s) Delinquent				
	1 Year	2 Years	3 Years	4 Years	5 Years
March 1	1.5%	19.5%	37.5%	55.5%	73.5%
April 1	3.0%	21.0%	39.0%	57.0%	75.0%
May 1	4.5%	22.5%	40.5%	58.5%	76.5%
June 1	6.0%	24.0%	42.0%	60.0%	78.0%
July 1	7.5%	25.5%	43.5%	61.5%	79.5%
August 1	9.0%	27.0%	45.0%	63.0%	81.0%
September 1	10.5%	28.5%	46.5%	64.5%	82.5%
October 1	12.0%	30.0%	48.0%	66.0%	84.0%
November 1	13.5%	31.5%	49.5%	67.5%	85.5%
December 1	15.0%	33.0%	51.0%	69.0%	87.0%
January 1	16.5%	34.5%	52.5%	70.5%	88.5%
February 1	18.0%	36.0%	54.0%	72.0%	90.0%

Municipal Donations to Nonprofit Organizations: What Documentation is Required?

Reference Number: MTAS-1889

Many municipalities throughout Tennessee appropriate monies to nonprofit charitable organizations and nonprofit civic organizations. T.C.A. 6-54-111 includes specific guidelines for appropriating these funds. One question that often arises is whether a municipality is required to obtain audited financial statements before making a donation. Recently, the Tennessee Code was amended to provide that "either a copy of the entity's most recently completed annual audit or an annual report detailing all receipts and expenditures in a form prescribed by the Comptroller of the Treasury and prepared and certified by the chief financial officer of such nonprofit organization" can be obtained.

Additionally, the relevant portion of the Comptroller's Division of Local Government Audit Manual reads:

5. Municipal Donations to Nonprofit Organizations

Section 6-54-111, *Tennessee Code Annotated*, as amended, authorizes a municipality's governing body to appropriate funds for the financial aid of any nonprofit charitable organization that provides services benefiting the general welfare of the residents of the municipality or any nonprofit civic organization working to maintain and increase employment opportunities in the municipality. This section also provides for the Comptroller of the Treasury to establish standard procedures to assist the municipal governing body in the disposition of funds so appropriated. The auditor should consider whether the municipality has complied with the following laws and rules:

- A municipality may appropriate funds for only those nonprofit charitable organizations that provide services benefiting the general welfare of the residents of the municipality, or any nonprofit civic organization classified under Sections 501(c)(4) or (6) of the Internal Revenue Code working to maintain and increase employment opportunities in the municipality.
- Municipal payments to nonprofit organizations shall be limited to the amounts appropriated for such purposes and in keeping with the municipality's guidelines for how the appropriated funds may be spent.
- The municipality shall require that each nonprofit organization that desires financial assistance from a municipality shall file with the city clerk of the municipality a copy of an annual report of its business affairs and transactions that includes, but is not limited to:

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Either a copy of the entity's most recently completed annual audit or an annual report detailing all receipts and expenditures in a form prescribed by the comptroller of the treasury and prepared and certified by the chief financial officer of the nonprofit organization;

A description of the program that serves the residents of the municipality; and the proposed use of the municipal assistance.

The annual reporting form can be found at <https://www.comptroller.tn.gov/content/dam/cot/la/documents/guidance/general-guidance/AnnualReportingFormForNonprofitOrganizations.docx> .

- For appropriations to nonprofit civic organizations, notices shall be published in a newspaper of general circulation in the municipality of the intent to make an specifying the intended amount and purpose.

AG Opinion: Appropriation of Municipal Funds to Nonprofit Charitable Organizations Providing "Year-Round Services"

Reference Number: MTAS-1890
Tenn. Op. Atty. Gen. No. 98-214
Office of the Attorney General
State of Tennessee

Opinion No. 98-214
November 23, 1998

Appropriation of Municipal Funds to Nonprofit Charitable Organizations Providing "year-round services"

The Honorable Bobby Sands
State Representative
War Memorial Building, Suite 110
Nashville, Tennessee 37243

Question

Does a nonprofit day care center or similar child care facility, which does not operate all 12 months of the year, meet *T.C.A. § 6-54-11(a)(2)(A)*'s requirement that a nonprofit charitable organization provide "year-round services" in order to qualify for appropriated funds from a municipality?

Opinion

No. A nonprofit charitable organization, including a day care center or similar child care facility, must operate during the entire year in order to meet the "year-round" services requirement of *T.C.A. § 6-54-111(a)(2)(A)*.

Analysis

The inquiry to this office requests a legal opinion regarding *T.C.A. § 6-54-111(a)(2)(A)*. The specific question is the definition of "year- round services benefiting the general welfare" and whether a nonprofit day care center or similar child care facility which does not operate all 12 months of the year meets the requirement of providing "year-round services."

T.C.A. § 6-54-111(a) provides:

(a)(1) The legislative body of each municipality may appropriate funds for the financial aid of any nonprofit charitable organization or any nonprofit civic organization in accordance with the guidelines required by subsection (b).

(2)(A) For the purposes of this section, a nonprofit charitable organization is one in which no part of the net earnings inures or may lawfully inure to the benefit of any private shareholder or individual and which provides year-round services benefiting the general welfare of the residents of the municipalities.

T.C.A. § 6-54-111(a) (emphasis added).

"The rule of statutory construction to which all others yield is that the intention of the legislature must prevail." *City of*

Caryville vs. Campbell County, 660 S.W.2d 510, 512 (Tenn. App. 1983), perm. app. denied (1983). Legislative intent is “derived from a reading of the statute in its entirety and within its statutory context.” *Crown Enterprises, Inc. vs. Woods*, 557 S.W.2d 491, 493 (Tenn.1977).

Whenever possible, legislative intent and purpose are “ascertained primarily from the natural and ordinary meaning of the language used, when read in the context of the entire statute, without any forced or subtle construction to limit or extend the impact of the language.” *Worrall vs. Kroger Co.*, 545 S.W.2d 736, 738 (Tenn. 1977). *City of Caryville vs. Campbell County*, 660 S.W.2d 510, 512 (Tenn. App.), perm. app. denied (1983). If legislative intent is without contradiction or ambiguity, “there is no room for interpretation or construction, and the judges are not at liberty, on consideration of policy or hardship, to depart from the words of the statute; ... they have no right to make exceptions or insert qualifications, however abstract justice or the justice of a particular case may require it.” *Carson Creek Vacation Resorts, Inc. vs. Woods*, 865 S.W.2d 1, 2 (Tenn. 1993) (citations omitted). The ordinary and common meaning of a word may be established by its definition in a recognized dictionary. *Edelman vs. State*, 62 Wis.2d 613, 620, 215 N.W.2d 386 (1974).

The term “year-round” is not defined in *T.C.A. § 6-54-111*. The term is not used or defined in the regulations promulgated by the Comptroller of the Treasury pursuant to *T.C.A. § 6-54-111(b)*. (Tenn. Admin. Comp. 0380-3-7-.01 et seq., Rules of Comptroller of the Treasury.) Tennessee courts have not addressed the meaning of the term “year-round” in *T.C.A. § 6-54-111(a)*.

Black’s Law Dictionary defines “year” but not “year-round.”^[1] English language dictionaries define the term “year-round.” It means “[e]xisting, active, or continuous throughout the year; during all seasons.” American Heritage Dictionary, p. 1400 (2d college ed. 1985). The Webster Dictionary defines the adjective “year-round” as “occurring, effective, employed, staying, or operating for the full year: not seasonal” and gives “a year-round resort” as an example. Webster Dictionary (Internet dictionary based on Merriam-Webster Collegiate Dictionary, 10th ed. 1998), entry for “year-round” as adjective, at

Based on the common, unambiguous meaning of “year-round,” a day care or similar child care facility must operate continuously throughout the year, during all seasons, in order to qualify as a “a nonprofit charitable organization ... which provides year-round services benefiting the general welfare of the residents of the municipalities” within the meaning of *Tenn. Code Ann. § 6-54-111(a)(2)(A)*.^[2]

John Knox Walkup, Attorney General and Reporter
Michael Moore, Solicitor General
Margaret M. Huff, Assistant Attorney General

Notes:

[1] “Year” is “[t]he period in which the revolution of the earth round the sun, and the accompanying changes in the order of nature, are completed. Generally, when a statute speaks of a year, twelve calendar, and not lunar, months are intended.... When the period of a “year” is named, a calendar year is generally intended, but the subject-matter or context of statute or contract in which the term is found or to which it relates may alter its meaning.” *Black’s Law Dictionary* (6th ed. 1998).

[2] The term “year-round” is found, but not defined, in four other Tennessee statutes. In these statutes, as well as the statute at issue, the legislature has used the term “year-round” in a consistent way to mean during the entire year or continuously throughout the year and during all seasons. *T.C.A. § 54-5-705*, regarding eligibility of historic sites for interstate highway directional signs, requires that a historic site be “open to the public on a year-round basis.” *T.C.A. § 68-221-703(19)(B)(i)* of the Safe Drinking Water Act defines “Community water system” as “a public water system which serves at least 15 service connections used by year-round residents ...” A provision in the Education Finance Act at *T.C.A. 49-3-317(b)*, regarding adjustments to reflect local changes, states, “Whenever the schools in any LEA are conducted on a year-round basis, such shall not operate to reduce the level of state support to the LEA ...” *T.C.A. § 49-6-101(f)(2)*, regarding special services for preschools, states, “Programs should strive to assist families by providing full-day, year- round services”

AG Opinion: Municipally Owned Electrical Systems and Electric Cooperatives

Reference Number: MTAS-1888
Tenn. Op. Atty. Gen. No. 91-106
Office of the Attorney General
State of Tennessee

Opinion No. 91-106
December 23, 1991

Municipally Owned Electrical Systems and Electric Cooperatives — Funding Economic and Community Organizations

Phillip E. Pinion
109 War Memorial Building
Nashville, TN 37243

Question

Can municipally owned electrical systems and electric cooperatives legally put money into economic and community organizations?

Opinion

It is the opinion of this office that municipally owned electrical systems may be barred, and electric cooperatives are barred, by the statutes which govern their operations from using their revenues to fund economic and community organizations; further, each may be barred from such use of revenues by documents executed in connection with the issuance of any bonds to finance or refinance the system notwithstanding the lack of any specific bar to such action in the governing statutory scheme.

Analysis

Both municipally owned electrical systems and electric cooperatives are creatures of statutes and it is to those statutes to which we must look, at least in part, for the answer to the question posed. Moreover, for purposes of this opinion, we assume that the phrase “economic and community organizations” means those organizations which are customarily thought of as tax-exempt or charitable organizations and that any appropriation by a municipality would be made in accordance with *T.C.A. § 6-54-111*, which provides guidelines for a municipality’s appropriating money for the financial aid of any nonprofit charitable organization or any nonprofit civic organization. In addition, we assume that the question posed is concerned with the use of surplus system revenues from operations and not with the use of bond proceeds.

The Tennessee judiciary has held that, in the absence of statutory prohibition, a municipality may divert its profits from the sale of a public works commodity to other municipal purposes. *Killion vs. City of Paris*, 192 Tenn. 466, 241 S.W.2d 524 (1951). In *Killion*, the city of Paris issued its general obligation debt to construct and acquire a water works system. Subsequently, the city passed an ordinance providing that a portion of the water works fees would be applied to retire debt service on all of the city’s bonded indebtedness. Water customer *Killion* sued to have the ordinance stricken.

The court noted that if the water works system were acquired under the authority of *T.C.A. § 7-35-401 et seq.*, then surplus revenues would have to be applied exclusively to the improvements, extensions or additions to the water works system pursuant to *T.C.A. § 7-35-417, 418*. However, plaintiff in *Killion* did not allege application of the above cited statutes. Consequently, the Court held these statutes to be wholly inapplicable, and in the absence of any statutory prohibition, “a municipality may divert its profits from the sale of water to its customers to municipal purposes other than those of the water works enterprise.” 192 Tenn. at 453.

Also, we have opined previously that a municipality owning a gas system could apply surplus revenues from that system to other municipal purposes where the gas system was financed pursuant to the Municipal Recovery and Post War Aid Act of 1945, *T.C.A. § 7-36-101 et seq.* (repealed effective July 1, 1988, but not as to bonds issued before that date, 1988 Tenn. Public Acts Ch. 750, Sections 22 and 71). *Op. Tenn. Atty. Gen. No. 87-03* (January 9, 1987); *Op. Tenn. Atty. Gen. No. U87-47* (April 24, 1987).

In examining the statutory scheme governing the organization and operation of municipally owned electrical systems, we find that a municipally owned electrical system may be governed by one of a number of statutes. Some of these statutory schemes have been repealed and no longer govern municipally owned electrical systems, except in those cases where bonds were issued prior to the repeal of the statutes to finance or refinance the system.

Under current law, a municipality may organize a municipally owned electrical system pursuant to the Municipal Electric Plant Law of 1935, *T.C.A. § 7-52-101 et seq.*, and issue its debt for the acquisition and improvement of the system pursuant to the Local Government Public Obligations Act of 1986, *T.C.A. § 9-21-101 et seq.* (“LGPOA”). Neither the Municipal Electric Plant Law of 1935 nor the LGPOA contains prohibitions against the municipality’s applying revenues from the municipally owned electrical system to economic and community organizations. Therefore, absent restrictive covenants in any bond documents executed in connection with financing or refinancing of the electrical system, the decision in *Killion* should permit a municipality to apply revenues from a municipally owned electrical system to economic and community organizations.

In addition, a municipality can organize and finance its municipally owned electrical system pursuant to the Revenue Bond Law, *T.C.A. § 7-34-101 et seq.* The Revenue Bond Law restricts the municipality in its use of surplus system revenues to fund economic and community organizations and provides that all surplus revenues can be used only to reduce rates. *T.C.A. § 7-34-103(b)* and *§ 7-34-115*.

Under law prior to July 1, 1988, a municipality could both organize and finance a municipally owned electrical system under the Municipal Electric Plant Law of 1935. The portions of that law dealing with financing municipally owned electrical systems have now been repealed pursuant to 1988 Tenn. Pub. Acts, Ch. 750. However, prior to that repeal, *T.C.A. § 7-52-130* (now repealed) states that the supervisory body of the municipally owned electric plant shall devote all moneys in the electric plant fund derived from any source other than the issuance of bonds to or for certain listed items of expenditure (not including funding economic and community organizations) and that any surplus thereafter remaining, after the establishment of proper reserves, if any, shall be devoted solely to the reduction of rates (the use of bond proceeds is governed by *T.C.A. § 7-52-129* (now repealed), which also precludes the use of bond proceeds to fund economic and community organizations).

Tenn. Pub. Acts, Ch. 750, Section 71, states that nothing in the act affects the validity or enforceability of any bond, note or other obligation legally issued by a local government under any law existing prior to the effective date of the act. If bonds were issued pursuant to the Municipal Electric Plant Law of 1935 prior to its repeal, we interpret the repealing act to

mean that the restrictions on the use of system revenues or bond proceeds could survive the repeal until the bonds were retired. If those restrictions affected the “enforceability” of the payment of the bonds, then we think they would survive the repeal. For example, if the system revenues were pledged for payment of the bonds, then we think the restrictions would survive since diversion of these revenues could affect the enforceability of the bonds by affecting the money available for payment of the bonds. However, we caution that each bond financing is unique and we cannot opine as to any one financing without reviewing it. If no such bonds are outstanding, then the use of system revenues would be governed by the Municipal Electric Plant Law of 1935 as now in effect (which as earlier noted does not contain restrictions precluding the use of system revenues to fund economic and community organizations).

In contrast to the multiple statutes which could govern a municipally owned electrical system, electric cooperatives are organized pursuant to and their operations governed by the Rural Electric and Community Cooperative Law, T.C.A. § 65-25-201 et seq. Revenues in excess of those necessary to pay certain listed items of expenditure are required by T.C.A. § 65-25-212 to be distributed by the cooperative to its patrons in the form of refunds or general reduction of rates. The permitted uses of revenues listed in the statute do not include payments to economic or community organizations and, therefore, such excess moneys must be distributed to the patrons in the form of refunds or general reduction of the rates. Although the statute permits a cooperative, prior to reducing rates or making refunds to patrons, to provide a “fund for education in cooperation and for the dissemination of information concerning the effective use and conservation of electric power and energy and concerning any other services made available by the cooperative,” we do not think that this provision would permit a payment to the organizations with which we are concerned. Thus, we conclude that an electric cooperative organized pursuant to this law cannot use its revenues to make payments to economic and community organizations.

In conclusion, for both municipally owned electrical systems and electric cooperatives, restrictions on funding economic and community organizations with surplus system revenues may be imposed by the statutes which govern their organization, financing and operation. Restrictions on such use of surplus system revenues may also be imposed by documents executed in connection with bonds issued to finance or refinance the construction of the electrical system. We cannot emphasize enough the importance of examining carefully those statutes and documents.

Sincerely,
 Charles W. Burson, Attorney General and Reporter
 John Knox Walkup, Solicitor General
 H. Phillip Carnes, Assistant Attorney General

AG Opinion: Pledge of City Appropriations to Nonprofit Organization

Reference Number: MTAS-1887
Tenn. Op. Atty. Gen. No. 99-225
Office of the Attorney General
State of Tennessee

Opinion No. 99-225
 December 3, 1999

Pledge of City Appropriations to Nonprofit Organization

Honorable Curtis Person, Jr.
 State Senator
 Suite 308, War Memorial Building
 Nashville, TN 37243-0031

Question

Is the City of Millington authorized to make a commitment to appropriate funds to a nonprofit organization for 15 years without a public referendum?

Opinion

The City of Millington is not authorized, either under its charter or [under] any provision of general law, to make a binding commitment to appropriate funds to a nonprofit organization for 15 years.

Analysis

This opinion concerns the authority of the City of Millington to make a commitment to appropriate funds to a nonprofit organization for 15 years. Our opinion is confined to this question and does not address any other legal issues that the proposed transaction might present.

Our opinion is based on the following facts as presented in the opinion request: The YMCA is planning to build a new center in the City of Millington. It has been proposed that the City of Millington would donate 10 acres of land, presumably owned by the city, to the YMCA for the project. The city would “pledge” \$150,000 to the YMCA each year for the next 15 years, beginning in 1999, for the construction of the Millington YMCA. The city would sign a “letter of commitment” addressed to the YMCA stating that the city is committed to the YMCA and desires that construction begin as soon as financing can be finalized. The city would waive all costs associated with fees and permits generally required by the City of Millington for the construction project. The board of directors of the YMCA would sign an agreement stating that, in the event the Millington YMCA decides to close in the future, the building and property will revert to the City of Millington. The

lender providing the funds for construction would accept these conditions.

The request does not specify the form of the city's commitment to appropriate funds or the purpose the commitment is intended to serve. Based on the request, it appears that the city's "pledge" to appropriate funds is intended to provide some incentive for the YMCA to obtain a loan to finance construction of the new facility. We therefore address whether the city may enter into a commitment to appropriate funds for this purpose, either from current or from future city revenues, that could be enforced by a proposed recipient or a third party such as a lender. Generally, municipalities may exercise those express or necessarily implied powers delegated to them by the legislature in their charters or under statutes. *City of Lebanon vs. Baird*, 756 S.W.2d 236, 241 (Tenn. 1988); *Professional Home Health & Hospice, Inc. vs. Jackson-Madison County General Hospital District*, 759 S.W.2d 416, 419 (Tenn.Ct.App. 1988), p.t.a. denied (1988), reh'g denied (1988); *City of Chattanooga vs. Tennessee Electric Power Co.*, 172 Tenn. 524, 533, 112 S.W.2d 385, 388 (1938) (a municipal corporation may exercise only such powers "as are expressly granted in its charter or arise by necessary implication in order to carry out the declared objects and governmental purposes for which the corporation was created"). Neither the Millington City Charter, nor any general law, expressly authorizes such a commitment.

Under T.C.A. § 12-2-301 et seq., a city may lease property to or from a not-for-profit corporation. Based on the facts included in the request, however, the proposed transaction does not appear to fall within this statutory scheme. Cities are generally authorized to appropriate city funds for the financial aid of civic and charitable organizations under the limitations set forth in T.C.A. § 6-54-111. Depending on the facts and circumstances, the beneficiary of an appropriation made in compliance with this statute may have the right to enforce its disbursement in accordance with its terms. But that statute does not authorize a city to make a binding commitment or pledge to appropriate funds either from current or from future revenues, nor is such a transaction "necessarily implied" by any of the powers granted in the Millington City Charter or general law.

Therefore the City of Millington is not authorized, either under its charter or any provision of general law, to make a binding commitment to appropriate funds to a non-profit organization for fifteen years.

Paul G. Summers, Attorney General and Reporter

Michael E. Moore, Solicitor General

Ann Louise Vix, Senior Counsel

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