STATE OF TENNESSEE
OFFICE OF THE
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November 27, 2013

Opinion No. 13-96

Court Clerk's Fees in Delinquent Tax Lawsuits

QUESTIONS

1. What compensation, fees, and costs is a Clerk and Master entitled to receive for delinquent taxpayer lawsuits and tax sales?

2. Does the cost reimbursement provided for in Tenn. Code Ann. § 67-5-2506(a)(3) and (b)(3) include the Clerk and Master's total compensation, or is the Clerk and Master entitled to receive fees in addition to this compensation for conducting the tax sale and other duties in connection with delinquent taxpayer lawsuits?

3. If the Clerk and Master is entitled to receive additional fees in delinquent taxpayer lawsuits, what happens if those fees, when combined with costs and attorney's compensation, exceed the 10% of sale proceeds cap amount in Tenn. Code Ann. § 67-5-2506(a)(3)?

4. What compensation is a Clerk and Master entitled to receive under Tenn. Code Ann. § 67-5-2421(a)?

5. Is the determination of compensation provided for in Tenn. Code Ann. § 67-5-2421(a) based on the fee schedule contained in Tenn. Code Ann. § 8-21-401? If so, what fee or percentage mentioned in that section of the law applies to delinquent taxpayer lawsuits?

6. If the Clerk and Master is entitled to receive fees in addition to compensation in delinquent taxpayer lawsuits, are those fees based only on the sale proceeds actually deposited in court under Tenn. Code Ann. § 67-5-2421(a)?

7. If the local government prosecuting a delinquent taxpayer lawsuit does not bid in the amount of taxes owed at the tax sale, and the property remains unsold, is the Clerk and Master entitled to any fee for those properties, other than the filing fee and cost of public notices?

8. Is there a difference in the amount or calculation of compensation and fees to which the Clerk and Master is entitled if the delinquent taxpayer lawsuits are filed as one lawsuit against multiple delinquent taxpayers, or as separate lawsuits against each individual delinquent taxpayer?

OPINIONS

1. In delinquent taxpayer lawsuits, the court clerk is entitled to receive a filing fee of $44.00 per parcel that is included in the suit. Tenn. Code Ann. § 8-21-401(b)(1)(F) & (j)(2). For each parcel of property for which the judge issues an order to sell, the court clerk additionally is entitled to receive a fee of $100.00 for the clerk's services related to the sale. Tenn. Code Ann. § 8-21-401(b)(1)(F). For all property taxes received and paid over by the court clerk in the context of the delinquent tax proceeding, including any associated penalties and interest, the clerk is entitled to a commission of 5%. Tenn. Code Ann. § 8-21-401(h)(1).

2. The court clerk's right to receive fees and commissions is governed by Tenn. Code Ann. §§ 8-21-401 and 67-5-2421(a). The provisions of Tenn. Code Ann. § 67-5-2506(a)(3) and (b)(3) govern the order in which sale proceeds from property sold for delinquent property taxes are distributed and do not entitle the court clerk to receive additional compensation.

3. The provisions of Tenn. Code Ann. § 67-5-2506(a)(3) do not entitle the court clerk to receive additional compensation. Instead, these provisions set forth the generally applicable method for distributing the tax sale proceeds. In any event, the 10% cap referenced in the statute applies only to unpaid attorney's fees and not to court costs.

4. Under Tenn. Code Ann. § 67-5-2421(a), the court clerk is entitled to receive the same compensation as the clerk would receive in any other case involving the receipt and disbursement of taxes or public revenues. Accordingly, the court clerk is entitled to receive a commission of 5% of any property taxes received and paid over in the context of the delinquent tax proceeding, including any penalties and interest, under Tenn. Code Ann. § 8-21-401(h)(1).

5. Yes, the compensation provided for in Tenn. Code Ann. § 67-5-2421(a) is based on the fee schedule contained in Tenn. Code Ann. § 8-21-401. Under Tenn. Code Ann. § 8-21-401(b)(1)(F) and (j)(2), the court clerk is entitled to receive a filing fee of $44.00 per parcel. The court clerk is entitled to receive an additional fee of $100.00 for each parcel of property for which the judge orders a sale. Tenn. Code Ann. § 8-21-401(b)(1)(F). Under Tenn. Code Ann. § 8-21-401(h)(1), the court clerk is entitled to a 5% commission of all property taxes received and paid over in the context of the delinquent tax proceeding, including any penalties and interest.

6. The court clerk is not entitled to receive fees or commissions other than those already described and set forth above. The court clerk is entitled to a filing fee of $44.00 for each parcel included in the lawsuit. Additionally, the court clerk is entitled to a fee of $100.00 for each parcel ordered sold. Tenn. Code Ann. § 8-21-401(b)(1)(F) & (j)(2). The court clerk's 5% commission is based upon the amount of property taxes received and paid over and not upon the amount of the sale proceeds. Tenn. Code Ann. § 8-21-401(h)(1).

7. If the local government prosecuting a delinquent taxpayer lawsuit does not bid in the amount of taxes owed at the tax sale, and the property remains unsold, the court clerk is entitled only to the $44.00 filing fee and the additional $100.00 fee to conduct the sale. The court clerk cannot receive a 5% commission unless the clerk actually receives and pays over property taxes that are due on the parcel. Tenn. Code Ann. § 8-21-401(h)(1).

8. Regardless of the number of parcels included in a delinquent tax lawsuit, the filing fee remains $44.00 per parcel included and $100.00 per parcel ordered sold. Tenn. Code Ann. § 8-21-401(b)(1)(F) & (j)(2). Accordingly, the court clerk still should receive the same amount of fees whether the delinquent tax attorney chooses to pursue a single or multiple lawsuits.

ANALYSIS

The right of court clerks to receive fees and commissions in civil and other cases generally is governed by Tenn. Code Ann. § 8-21-401.[1] As pertinent to your request, that statute authorizes court clerks in delinquent property tax cases to "assess a filing fee of forty-two dollars ($42.00) per parcel." Tenn. Code Ann. § 8-21-401(b)(1)(F). Effective July 1, 2012, this amount increased by $2.00 for a total filing fee of $44.00 per parcel. Tenn. Code Ann. § 8-21-401(j)(2).[2] Additionally, "[f]or each parcel of property for which the judge issues an order to sell," the court clerk is authorized to assess "a fee of one hundred dollars ($100) for [the] clerk's services related to that action." Tenn. Code Ann. § 8-21-401(b)(1)(F).

In delinquent tax proceedings, "[t]he money paid into court shall be received by the clerk and paid out by the clerk in the same manner as other public revenue, and the clerk shall receive the same compensation for receipting for and disbursing taxes under these proceedings as is allowed upon the clerk's receipt and disbursement of other public revenues." Tenn. Code Ann. § 67-5-2421(a) (2013). Section 8-21-401(h)(1), in turn, provides that "for receiving and paying over all taxes, fines, forfeitures, fees and amercements, the clerk of the court is entitled to a five percent (5%) commission." Accordingly, to the extent that the court clerk collects and pays over any property taxes received in the context of the delinquent tax lawsuit, including statutory penalties and interest, the clerk "is entitled to a five percent (5%) commission" of such taxes received and paid over. Tenn. Code Ann. § 8-21-401(h)(1).[3] The court clerk is entitled to this commission whether the clerk receives and pays over the taxes prior to a tax sale or after a tax sale from the sale proceeds. The commission applies to the amount of property taxes actually received and paid over and not to the total sale proceeds in cases where the sale price exceeds the taxpayer's obligation to pay taxes, court costs, and attorney's fees.[4]

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[1]This statute applies in all Tennessee jurisdictions except Knox County. *See* Tenn. Code Ann. § 8-21-409.

[2]The extra $2.00 is earmarked for "computer hardware purchases or replacement, but may be used for other usual and necessary computer related expenses at the discretion of the clerk." Tenn. Code Ann. § 8-21-401(j)(2).

[3]In Shelby County, the commission is 10%. Tenn. Code Ann. § 8-21-401(h)(2).

[4]Another subsection of Tenn. Code Ann. § 8-21-401 authorizes the court clerk "[f]or selling real or personal property under decree of court," to receive out of the sales proceeds "a commission not to exceed ten percent (10%) on the amount of sales up to six thousand dollars ($6,000), and an additional amount to be fixed within such limits, in the discretion of the court." Tenn. Code Ann. § 8-21-401(i)(7). This subsection applies in cases where the court appoints a special commissioner to sell certain property within the court's jurisdiction. *See, e.g., Ridley v. Spain*, 178 Tenn. 504, 506-07, 160 S.W.2d 402, 403 (1942); *Marra v. Bank of New York*, 310 S.W.3d 329, 337-38 (Tenn. Ct. App. 2009); *see also* Tenn. Code Ann. § 8-21-801. The court may appoint the court clerk as a special commissioner for this purpose. Tenn. Code Ann. § 8-22-101. Other more specific provisions govern the fees to be assessed by court clerks in delinquent property tax cases. *See* Tenn. Code Ann. § 8-21-401(b)(1)(E) & (h)(1).

Once the court clerk has conducted a tax sale, Tenn. Code Ann. § 67-5-2506 sets forth the generally applicable method for distributing the sale proceeds. That statute provides that

> [u]p to ten percent (10%) of the sale proceeds shall be applied, first, to payment of any unpaid balance of compensation due the prosecuting attorney; second, the proceeds of the sale shall be applied to the costs of the suits; and third, the remainder shall be applied to the county first and second, to any municipality having a tax lien on the same property.

Tenn. Code Ann. § 67-5-2506(a)(3). The statute provides an alternative, but similar, method for distributing the sale proceeds in counties falling within eight specified population brackets. Tenn. Code Ann. § 67-5-2506(b)(3).

The 10% cap referred to in your request applies only to the payment of unpaid attorney's fees. The statute initially provides that up to 10% of the sale proceeds shall be applied to pay attorney's fees. Then, the sale proceeds "shall be applied to the costs of the suits." Tenn. Code Ann. § 67-5-2506(a)(3). Finally, the "remainder shall be applied" to the payment of county and municipal taxes. *Id.* While the 10% cap restricts the amount that may be paid as attorney's fees, it does not serve to limit the percentage of proceeds that may be applied toward the court clerk's fees or local property tax obligations.[5] At the same time, Tenn. Code Ann. § 67-5-2506(a)(3) does not authorize any additional compensation for the court clerk beyond that already discussed above.

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[5] The court clerk is entitled to be reimbursed for other expenses associated with the delinquent tax proceeding, such as service of process and other sheriff's fees, Tenn. Code Ann. § 67-5-2410(c)(1), and "title examination fees, extra publications, survey fees, environmental assessments and other necessary costs." Tenn. Code Ann. § 67-5-2410(d). This opinion does not affect the court clerk's right to seek reimbursement for these expenses.

Requested by:

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