

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING #01-04**

**WARNING**

**Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.**

**SUBJECT**

Whether the business tax is impermissible double taxation when both the county and the municipality levy the tax at the maximum rate allowed by statute.

**SCOPE**

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling, and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

**FACTS**

[TAXPAYER] currently operates in several locations in Tennessee in which both the county and a municipality within the county levy the maximum rate permitted

by the business tax. The taxpayer pays the business tax at the maximum rate to both the counties and to the municipalities.

### QUESTIONS

1. Can both the county and the municipality levy the business tax?
2. Must the taxpayer pay the full rate of business tax to both the county and to the municipality?

### RULINGS

1. Yes. Both the county and the municipality can levy the business tax.
2. Yes. The taxpayer must pay the full rate of business tax to both the county and to the municipality.

### ANALYSIS

1 & 2. In its ruling request, the taxpayer raised the issue of potential impermissible double taxation due to the fact that both the county and the municipality often levy the maximum rate of business tax at the same location. Tennessee law is clear that the business tax does not impose impermissible double taxation simply because both a county and municipality levy the maximum rate of business tax.

In 1971, the legislature passed Chapter 387, Public Acts of 1971, which is known as the Business Tax Act, ... . The provisions of this Act as codified authorize both the counties and municipalities to assess a tax on the privilege involved without limitation as to multiple taxation. Acuff v. Marion County, 1989 WL 14133 (Tenn. Ct. App.).

In Stalcup v. City of Gatlinburg, 577 S.W.2d 439 (Tenn. 1978), a taxpayer challenged a separate tax by the city of Gatlinburg on the privilege of doing business in that city. The taxpayer claimed that the city tax constituted impermissible double taxation, because both the city and the county also levied the business tax. Id. at 442. The Court noted the general rule, "It is established that double taxation within itself is not prohibited by the Constitution of Tennessee where it is plain that the legislature intended that result." Id. at 443. The Court held that the separate city tax on the privilege of doing business was permissible, because the legislature intended the result. Id.

The general rule that double taxation is permissible if the legislature intended the result is firmly established in Tennessee law. See, for example, Throneberry Properties v. Allen, 987 S.W.2d 37, 41 (Tenn. App. 1998); Super Flea Market v. Olsen, 677 S.W.2d 449, 451-52 (Tenn. 1984); Oliver v. King, 612 S.W.2d 152,

153 (Tenn. 1981); and E & L Transport v. Ellington, 371 S.W.2d 456, 458 (Tenn. 1963). Furthermore, there is no issue of “double taxation” at all (permissible or impermissible), if the two entities imposing the taxes are not the same taxing authority. E & L Transport v. Ellington, 371 S.W.2d 456, 459 (Tenn. 1963). Thus, the imposition of the business tax by a county and also by a municipality within that county does not result in “double taxation,” as this term is explained by the Court.

It is clear from the language of the Business Tax Act that the legislature intended that both a county and a municipality within that county be able to levy the business tax. “[E]ach county and/or incorporated municipality ... may levy a privilege tax ... .” Tenn. Code Ann. § 67-4-704(a) and (b). The word “and” clearly indicates that both entities have the authority to levy the tax. The word “or” is included, because neither the county nor the municipality is required to levy the tax.

The Business Tax Act requires the taxpayer to register “with the county clerk, in the case of taxes owed to the county, and with the city official designated as the collector of tax by city charter or ordinance, in the case of taxes owed to a municipality.” Tenn. Code Ann. § 67-4-706 (Emphasis added). The word “and” shows that the legislature contemplated two potential taxing authorities for each location within a municipality. Similar language is used in the following sections of the Business Tax Act: Tenn. Code Ann. §§ 67-4-715, 67-4-719(b)(2), 67-4-719(c), 67-4-719(d) and 67-4-721(b).

For all of the above reasons, the imposition of the business tax at the maximum rate by both a county and by a municipality within the county does not constitute impermissible double taxation. The taxpayer must pay the full rate of business tax to both taxing authorities.

Steve Butler  
Tax Counsel

APPROVED: Ruth E. Johnson  
Commissioner of Revenue

DATE: 3-20-01