



State of Tennessee
PUBLIC CHAPTER NO. 438

HOUSE BILL NO. 137

By Representatives Kevin Brooks, McCormick, Marsh, Stewart, Sargent, Lundberg, Casada, Powers, Eldridge, Tindell, Haynes, Evans

Substituted for: Senate Bill No. 528

By Senators Watson, Johnson, Ketron, Yager, Southerland, Bell

AN ACT to amend Tennessee Code Annotated, Title 67, relative to taxation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 5, is amended by deleting Part 11 in its entirety.

SECTION 2. It is the intent of the general assembly by this act to exercise its discretion granted in the Tennessee Constitution, Art. II, § 28, to establish the manner in which intangible personal property of financial institutions other than banks and insurance companies, and intangible personal property of cemetery companies formerly assessed under Title 67, Chapter 5, Part 11, is assessed and taxed. The allocation of taxes to local governments provided in this act shall be in lieu of the taxation of the subclassification of intangible personal property designated as "shares of stock of stockholders of any loan company, or investment company, or cemetery company" and in lieu of all taxes on the redeemable or cash value of all their outstanding shares of capital stock, loans, accounts or certificates of investment, by whatever name called; provided, that such companies shall nonetheless continue to be subject to ad valorem taxes on their real and tangible personal property and shall continue to be subject to all other taxes (other than the tax deleted in Section 1) to which they are currently subject.

SECTION 3. Tennessee Code Annotated, Title 67, Chapter 4, Part 20, is amended by adding the following as a new, appropriately designated section:

67-4-20 __. Taxes collected from loan and related companies.—

This section does not create or impose a new tax, but shall govern allocation of taxes already collected under this part from financial institutions, including loan or trust companies regulated by the department of financial institutions, which do not have deposit facilities. These taxes shall be allocated as follows:

(1) To cities and counties, an amount for each institution with a branch in this state and each "financial institution unitary business" as defined in this section:

(A) Three percent (3%) of the net earnings of the institution and the net earnings of a financial institution unitary business determined on a combined basis for the second fiscal year preceding the year in which the distribution under this section is made, less seven percent (7%) of the ad valorem taxes paid by the financial institution or financial institution unitary business on its real and tangible personal property for the second fiscal year preceding the year in which the distribution is made. For purposes of this subdivision (1), "net earnings" does not include amounts attributable to interest earned on bonds and other obligations of the state of Tennessee. As used in this section, "financial institution unitary business" includes only those financial institutions that form a unitary business as defined in § 67-4-2004, that file a combined franchise, excise tax return in Tennessee and that have at least one (1) member with a branch in Tennessee. The total amount thus determined shall be allocated between the county and municipal governments where the office of the financial institution or financial institution unitary business is

located in the same proportion as the property tax rate of each such taxing jurisdiction shall bear to the sum of the property tax rates;

(B) In circumstances where a financial institution or financial institution unitary business has more than one (1) branch or office, the total allocation attributable to such financial institution or financial institution unitary business as determined in subdivision (1)(A) shall be further allocated between such counties and cities where its branches or offices are located as follows:

(i) The proportionate percentage that is produced by the ratio of outstanding loans and sales contracts receivable in each branch or office of the financial institution or financial institution unitary business to the total outstanding loans and sales contracts receivable of the financial institution or financial institution unitary business shall be determined as of January 1 for each year, and the percentage so determined shall then be applied to the total allocation to determine the portion of the total attributable to each branch or office;

(ii) The branches or offices shall then be grouped each to a common location so as to determine the aggregate allocation of all branches or offices located in each individual county and municipality; and

(iii) The percentage of the total allocation allowable to each county and municipality shall be divided between the county and municipality where the branch or office is maintained in the same proportion as the property tax rates of each for the second year preceding the year in which the distribution under this section is made shall bear to the total of the property tax rates.

(C) The director of the division of property assessments shall provide to the commissioner, periodically on a timely basis, the ad valorem property tax rates for each taxing jurisdiction. The commissioner shall report the amount of such allocations made to each county and municipality to the comptroller of the treasury for audit purposes on an annual basis.

(D) The status of each financial institution or financial institution unitary business as of January 1 of the fiscal year for which the allocation is calculated shall be the determining basis.

(E) If the net earnings of any financial institution or financial institution unitary business shall be redetermined for any period in accordance with this part, the commissioner shall recalculate the allocation attributable to such financial institution or financial institution unitary business, and any indicated increase or decrease in allocation shall be effected in the next succeeding general allocation to the respective county and municipal governments, as appropriate.

(F) The commissioner has the authority and power to prescribe forms upon which all financial institutions or financial institution unitary businesses shall report such facts and information as will enable the department to ascertain the correctness of the allocation. The department has the full power to summon witnesses, to inspect or require the production of books and papers, and to obtain and consider any evidence and records other than the reports submitted by such financial institutions or financial institution unitary businesses that it may deem proper or necessary to carry out its responsibilities under this section. If any financial institution or financial institution unitary business subject to this part fails, refuses or neglects to collect and file such form with the department as provided by this section, the department shall determine

the amount of the allocation in regard to such institution on the basis of the best information available.

(2) After allocation to counties and municipalities as provided in subdivision (1), the remainder of the taxes collected under this part shall be applied to and become a part of the general fund of the state.

SECTION 4. Tennessee Code Annotated, Title 67, Chapter 4, Part 20, is further amended by adding the following as a new, appropriately designated section:

67-4-20___. Taxes collected from investment companies.—

This section does not create or impose a new tax, but shall govern allocation of taxes already collected under this part from regulated investment companies that are not part of a financial institution unitary business. These taxes shall be allocated as follows:

(1) To cities and counties, an amount for each institution with a branch in this state as determined in this subdivision (1).

(A) Three percent (3%) of the net earnings of the company less seven percent (7%) of the ad valorem taxes paid by the company on its real and tangible personal property for the second fiscal year preceding the year in which the distribution is made. For purposes of this subdivision (1), "net earnings" does not include amounts attributable to interest earned on bonds and other obligations of the state of Tennessee. The total amount thus determined shall be allocated between the county and municipal governments where the office of the investment company is located in the same proportion as the property tax rate of each such taxing jurisdiction shall bear to the sum of the property tax rates;

(B) In circumstances where an investment company has more than one (1) branch or office, the total allocation attributable to such company as determined in subdivision (1)(A) shall be further allocated between such counties and cities where its branches or offices are located as follows:

(i) The proportionate percentage that is produced by the ratio of account balances attributed to each branch or office of the company to the total account balances of the company shall be determined as of January 1 of each year, and the percentage so determined shall then be applied to the total allocation to determine the portion of the total attributable to each branch or office;

(ii) The branches or offices shall then be grouped each to a common location so as to determine the aggregate allocation of all branches or offices located in each individual county and municipality; and

(iii) The percentage of the total allocation allowable to each county and municipality shall be divided between the county and municipality where the branch or office is maintained in the same proportion as the property tax rates of each for the second year preceding the year in which the distribution under this section is made shall bear to the total of the property tax rates.

(C) The director of the division of property assessments shall provide to the commissioner, periodically on a timely basis, the ad valorem property tax rates for each taxing jurisdiction. The commissioner shall report the amount of such allocations made to each county and municipality to the comptroller of the treasury for audit purposes on an annual basis.

(D) The status of each investment company as of January 1 of the fiscal year for which the allocation is calculated shall be the determining basis.

(E) If the net earnings of any investment company shall be redetermined for any period in accordance with this part, the commissioner shall recalculate the allocation attributable to the company, and any indicated increase or decrease in allocation shall be effected in the next succeeding general allocation to the respective county and municipal governments, as appropriate.

(F) The commissioner has the authority and power to prescribe forms upon which all investment companies shall report such facts and information as will enable the department to ascertain the correctness of the allocation. The department has the full power to summon witnesses, to inspect or require the production of books and papers, and to obtain and consider any evidence and records other than the reports submitted by such companies that it may deem proper or necessary to carry out its responsibilities under this section. If any investment company subject to this part fails, refuses or neglects to collect and file such form with the department as provided by this section, the department shall determine the amount of the allocation in regard to such company on the basis of the best information available.

(2) After allocation to counties and municipalities as provided in subdivision (1), the remainder of the taxes collected under this part shall be applied to and become a part of the general fund of the state.

SECTION 5. Tennessee Code Annotated, Title 67, Chapter 4, Part 20, is further amended by adding the following as a new, appropriately designated section:

67-4-20___. Taxes collected from cemetery companies.—

This section does not create or impose a new tax, but shall govern allocation of taxes already collected under this part from cemetery companies as defined in § 46-1-102. These taxes shall be allocated as follows:

(1) To cities and counties, an amount for each company with an office in this state as determined in this subdivision (1).

(A) Three percent (3%) of the net earnings of the company less seven percent (7%) of the ad valorem taxes paid by the company on its real and tangible personal property for the second fiscal year preceding the year in which the distribution is made. For purposes of this subdivision (1), "net earnings" does not include amounts attributable to interest earned on bonds and other obligations of the state of Tennessee. The total amount thus determined shall be allocated between the county and municipal governments where the office of the company is located in the same proportion as the property tax rate of each such taxing jurisdiction shall bear to the sum of the property tax rates;

(B) In circumstances where a company has more than one (1) office, the total allocation attributable to such company as determined in subdivision (1)(A) shall be further allocated between such counties and cities where its offices are located as follows:

(i) The proportionate percentage that is produced by the ratio of assessed value for ad valorem tax of real and tangible personal property associated with each office of the company, to the total assessed value for all offices of the company shall be determined as of January 1 of each year, and the percentage so determined shall then be applied to the total allocation to determine the portion of the total attributable to each office;

(ii) The offices shall then be grouped each to a common location so as to determine the aggregate allocation of all offices located in each individual county and municipality; and

(iii) The percentage of the total allocation allowable to each county and municipality shall be divided between the county and municipality where the office is maintained in the same proportion as the property tax rates of each for the second year preceding the year in which the distribution under this section is made shall bear to the total of the property tax rates.

(C) The director of the division of property assessments shall provide to the commissioner, periodically on a timely basis, the ad valorem property tax rates for each taxing jurisdiction. The commissioner shall report the amount of such allocations made to each county and municipality to the comptroller of the treasury for audit purposes on an annual basis.

(D) The status of each cemetery company as of January 1 of the fiscal year for which the allocation is calculated shall be the determining basis.

(E) If the net earnings of any cemetery company shall be redetermined for any period in accordance with this part, the commissioner shall recalculate the allocation attributable to the company, and any indicated increase or decrease in allocation shall be effected in the next succeeding general allocation to the respective county and municipal governments, as appropriate.

(F) The commissioner and the county assessors of property shall exchange such information as will enable the department to ascertain the correctness of the allocation.

(2) After allocation to counties and municipalities as provided in subdivision (1), the remainder of the taxes collected under this part shall be applied to and become a part of the general fund of the state.

SECTION 6. The allocation of excise taxes to counties and cities provided in Sections 2 through 5 of this act shall be limited to one million dollars (\$1,000,000) for 2011, and distribution shall not be made before July 1, 2012. If total sharing is diminished for any county as the result of this cap, counties with certified 2010 assessments pursuant to Tennessee Code Annotated, Title 67, Chapter 5, Part 11 will share first up to the amount of property tax billed on the 2010 assessments, and the remaining counties shall share the balance in proportion to their share in the original allocation.

SECTION 7. Sections 1 through 9 of this act shall not affect rights or duties that matured, liabilities or penalties that were incurred, or proceedings begun before their effective date, except as otherwise therein specifically provided.

SECTION 8. If any provision of Sections 1 through 9 of this act or the application thereof to any person or circumstance is held invalid on the basis that the legislature has not properly exercised its authority, then all provisions and applications of Sections 1 through 9 of this act are declared to be invalid and void.

SECTION 9. Sections 1 through 9 of this act shall take effect upon becoming law, the public welfare requiring it, and shall apply both to assessments made under Tennessee Code Annotated Title 67, Chapter 5, Part 11, and to collections received under Title 67, Chapter 4, Part 20 of Tennessee Code Annotated, on and after January 1, 2011.

HOUSE BILL NO. 137

PASSED: May 20, 2011



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES



RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 10th day of June 2011



BILL HASLAM, GOVERNOR