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Opinion No. 00-062

Exclusion from Ad Valorem Taxation of Personal Property of Individuals

QUESTION

Does Tenn. Code Ann. § 67-5-602(c)(2) conclusively exempt from taxation and/or preclude assessment of "household and kitchen furniture, tableware, musical instruments, wearing apparel, private passenger motor vehicles, jewelry and other personal property of similar character used in the taxpayer's own household, together with all intangible property . . . of the taxpayer" when the value of said property is in fact greater than (or with due diligence can be proven to be greater than) $7,500 (individual) and $15,000 (couple)?

OPINION

Tenn. Code Ann. § 67-5-602(c)(2) does not, by its own force, conclusively exempt from taxation all tangible and intangible personal property held for individual use. When construed, however, with Tenn Code Ann. § 67-5-901(a)(3)(A), Tennessee law does conclusively relieve all personal property from ad valorem taxation in this State, unless it is commercial, industrial, or public utility property.

ANALYSIS

Article II, § 28 of the Tennessee Constitution, the taxation article, was extensively revised by an amendment adopted in 1972. *Sherwood Co. v. Clary*, 734 S.W.2d 318, 320 (Tenn. 1987). The amendment made all property subject to the taxing power of the Legislature and authorized classifications of real property, tangible property, and intangible property. Tangible personal property was then divided into three subclassifications: public utility property; industrial and commercial property; and all other tangible personal property.[1] With regard to "all other tangible personal property," the amendment provided that the General Assembly "should exempt seventy-five hundred dollars worth of such tangible personal property." *Sherwood* at 320. Thus, Tenn. Code Ann. § 67-5-215(a) provides that "seven thousand five hundred dollars ($7,500) worth of personal household goods and furnishings, . . . and other such tangible personal property in the hands

[1]"'All other tangible personal property' includes all tangible personal property, including that used in agriculture, except public utility tangible personal property and commercial industrial tangible personal property." Tenn. Code Ann. § 67-5-501(1).

of a taxpayer shall be exempt from taxation." Additionally, where the property is owned jointly by a husband and wife, the exemption is $15,000. Tenn. Code Ann. § 67-5-215(b).

It proved both difficult and unproductive to assess and to collect the taxes on "all other tangible personal property," the value of which exceeded the amount of the exemption. The Supreme Court of Tennessee noted that "[a]ttempts to administer the system proved futile and produced almost no revenue." *Sherwood* at 320. As a result, in 1977, the General Assembly adopted two new relief provisions. First, Tenn. Code Ann. § 67-5-602(c)(2) codifies a presumption that "all farm personal property and also all household and kitchen furniture, . . . and other personal property of similar character used in the taxpayer's own household, together with all intangible property" does not have a value of more than $7,500 individually or $15,000 jointly and, thus, is within the amount exempted under Tenn. Code Ann. § 67-5-215. However, the statute further provides that if any tax return or schedule indicates that the property is worth more than $7,500 individually or $15,000 jointly, the presumption may be overcome and the result would be that the taxpayer would be liable for taxes on the value exceeding the exemption at the appropriate rate.[2]

Nevertheless, with regard to all tangible property other than public utility property and industrial and commercial property, the taxpayer does not need to be concerned that the value of this tangible personal property may actually exceed the presumed value and be subject to taxation. The second relief provision from 1977, Tenn. Code Ann. § 67-5-901(a)(3)(A), provides that "for the purpose of taxation under this chapter, all other tangible personal property shall be deemed to have no value." Therefore, even if the actual value of an individual's "all other tangible personal property" exceeds the amount exempted, the excess value will not be assessed because for tax purposes, "all other tangible personal property" has no value.

Ordinarily, these presumptions, which common sense tells us are frequently contrary to fact, might raise serious constitutional concerns. However, the Supreme Court of Tennessee expressly sanctioned provisions of this particular sort in *Sherwood Co. v. Clary*, 734 S.W.2d 318, 320 (Tenn. 1987). In *Sherwoo*d, the appellant, the owner of tangible personal property used in business, questioned the constitutionality of a statute that effectively exempted tangible personal property of an individual by declaring that "all other tangible personal property" had no value. Specifically, the appellant alleged that Tenn. Code Ann. § 67-5-901(a)(3)(A) violated the provisions of the Tennessee Constitution "especially the taxation article, Article 2, § 28, and the provisions of Article 11, § 8, respecting invidious class discrimination." *Sherwood* at 320. The Supreme Court disagreed and in upholding the constitutionality of the statute stated:

> Given the fact that the 1972 amendment exempted the entire amount of individual "personal or family checking or savings accounts" and substantial amounts of tangible personal property, the attempt to levy ad valorem taxes upon private

[2]Under the Constitution, Art. II, § 28, tangible personal property would be assessed at 5% of its value.

> assets of individuals not used in commerce or industry proved futile and self-defeating. In our opinion the General Assembly was not constitutionally required to attempt to administer and maintain an impractical system of taxation, and it was given very broad discretion with respect to determining the value and definition of property in each of the authorized classifications or subclassifications.

Sherwood at 321. Thus, the Supreme Court of Tennessee held that the General Assembly had the discretion to determine the value of property even to the extent of mandating such presumptions, because of the legislature's power to decide which classes of property are actually taxed, at least in the peculiar circumstances outlined in *Sherwood*.

In addition, the legislature has chosen to tax only very limited classes of intangible personal property. Pursuant to Tenn. Code Ann. § 67-5-602(c)(2), intangible personal property is presumed to have a value of less than the statutory exemption set forth in Tenn. Code Ann. § 67-5-215. Tenn. Code Ann. § 67-5-215 also exempts the "entire amount of money deposited in an individual's personal or family checking or savings account," as dictated by the express language of Art. II, § 28. Moreover, the legislature has chosen not to impose the property tax generally on stocks and bonds. *See* Tenn. Code Ann. §§ 67-5-1101 *et. seq.* and 67-5-1201 *et. seq.* *See also* Op. Tenn. Att'y Gen. No. 99-217 (Oct. 28, 1999). So, in practice, intangible personal property of individuals also escapes ad valorem taxation in Tennessee.

Therefore, the technical answer to your precise question is that Tenn. Code Ann. § 67-5-602(c)(2) does not conclusively exempt tangible personal property or intangible personal property from taxation. It only establishes the presumption that the value of these classes of property is not in excess of the amount exempted under Art. II, § 28 and Tenn. Code Ann. § 67-5-215. However, all tangible property other than public utility and industrial and commercial property has been deemed to have no value for tax purposes and thus is not taxed pursuant to Tenn. Code Ann. § 67-5-901(a)(3)(A). Thus, as a practical matter, all tangible and intangible personal property in Tennessee is exempt from ad valorem taxation, unless it falls within the classifications of public utility property or commercial and industrial property.

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