S T A T E O F T E N N E S S E E
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Opinion No. 01-058

Payment of Litigation Tax by an Individual with Convictions in Multiple Criminal Cases

QUESTION

May the circuit court clerk or other appropriate official accept payment for litigation taxes, fines, court costs, and other fees in one criminal case if the litigation taxes in other cases against the same criminal defendant have not been paid?

OPINION

Yes. Although the relevant statutes make it clear that the litigation tax must be paid first from moneys received by the clerk before fines, court costs, and other fees are paid, this priority applies to individual lawsuits or criminal cases. The clerk may not require a criminal defendant to pay all of the litigation taxes that he owes in several different cases before he is allowed to pay the fines, costs, and fees in one particular case.

ANALYSIS

The instant request refers to an individual who "has several separate and independent criminal cases in which litigation taxes, costs and fines are due and owing in each. The individual has presented money to the Circuit Court Clerk with the directive that such money be applied to pay and satisfy litigation taxes, costs and fines due in one particular case." For purposes of this opinion request, this Office assumes that the "individual" was convicted of one or more of the various criminal charges that comprised each case, or that he otherwise pled guilty. Otherwise, the individual would not be assessed litigation tax under Tenn. Code Ann. § 67-4-603. The circuit court clerk is uncertain as to whether he should comply with the individual's request when litigation taxes are due and owing in that individual's other cases.

The request also states that "[t]he Clerk understands that in each individual case, any money received by the Circuit Court Clerk must be applied first to litigation taxes before applying any money to fines, costs, etc. . . ." This Office agrees with the clerk's understanding in this regard. This Office

has previously opined that litigation taxes must always be paid before fines, court costs, or other fees.[1] But the questions addressed in these prior opinions did not contain the specific factual scenario presented in this request -- multiple cases involving the same criminal defendant with unpaid litigation taxes in each case.

Tenn. Code Ann. § 67-4-602 imposes privilege taxes on litigation, both civil and criminal, in this State. Pursuant to Tenn. Code Ann. § 67-4-603(c), "[t]he tax imposed by § 67-4-602 shall be paid out of the first moneys collected ***in each case***, and may be collected in the same manner as costs are collected, but the tax imposed by § 67-4-602 shall not be deemed to be costs." (emphasis added). Tenn. Code Ann. § 40-24-105(a) specifies the following priorities and allocations for funds paid into court by convicted criminal defendants: "the first moneys paid ***in any case*** shall first be credited toward payment of litigation taxes and once litigation taxes have been paid, the next moneys shall be credited toward payment of costs; then additional moneys shall be credited toward payment of the fine." (emphasis added). As the applicable statutes in the Revenue Code and Criminal Code speak of "each case" and "any case," the priority accorded to the litigation tax must be viewed as one that exists within an individual criminal case.

This Office knows of no legal authority that would require a criminal defendant who has been convicted or otherwise pled guilty in multiple cases to pay the litigation tax in several or all of those cases before paying court costs or fines in any one of the cases. Similarly, this Office knows of no legal authority that would require a court clerk to apply moneys received to the litigation taxes assessed in multiple cases before applying those moneys to court costs or fines in any one case if the moneys were tendered for application to that one case. So long as the clerk applies moneys received in one case to the litigation tax before all court costs, fines, and other fees in the case, the clerk is following the plain language of the applicable statutes.

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[1] *See* Op. Tenn. Atty. Gen. No. 98-099 (May 27, 1998); Op. Tenn. Atty. Gen. No. U97-014 (Mar. 31, 1997).

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