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May 2, 2001

Opinion No. 01-068

Potential Effect on the Collection of Litigation Taxes Caused by Definition of "Case" in Proposed Amendment to Tenn. Code Ann. § 16-21-107

QUESTIONS

1. Does the current statute allow the privilege tax on litigation to be levied against a person for each charge involving a single individual and incident with multiple charges, if each charge is put on a separate warrant and filed under a separate docket number?

2. Does the current statute allow the privilege tax on litigation to be levied against a person for each count on an indictment involving a single incident with multiple counts against one person that were filed on the same day?

3. Would the attached amendment to Senate Bill 1389/House Bill 1465, which provides a standardized definition of a case to include a single charge or set of charges arising out of a single incident involving the same victim(s) and concerning a defendant in one court proceeding, and which requires that such matters be put on one warrant and assigned one docket number, preclude clerks from collecting litigation tax on each charge or count for which a defendant is convicted?

4. If the attached language would preclude clerks from collecting litigation tax on each charge or count, could the General Assembly adopt legislation to allow clerks to collect litigation tax on each convicted charge rather than each convicted case?

OPINIONS

1. Yes. The general litigation taxes on both civil and criminal litigation are levied by Tenn. Code Ann. § 67-4-602 , not current Tenn. Code Ann. § 16-21-107. Pursuant to the provisions of Tenn. Code Ann. § 67-4-602, the tax is levied on "suits" and "cases" although these words are not further defined. So long as the court clerk or other appropriate official treats each criminal charge as a separate case, the litigation tax may be levied on that one charge.

2. No. An indictment, even though it contains several criminal charges, is considered

one case, and pursuant to the plain language of Tenn. Code Ann. § 67-4-602, the litigation tax would be levied upon conviction of any one of the charges comprising the indictment, not on each and every charge of the indictment for which a conviction is obtained.

3. Yes. The proposed amendment to Senate Bill 1389/House Bill 1465 defines "case" for purposes of the reporting and data gathering required by Tenn. Code Ann. § 16-21-107. Yet, it requires the clerks of court to docket multiple criminal charges under one docket number, creating what would become one case. This has the practical effect of preventing the clerks of court from levying litigation tax on multiple criminal charges included in one such case. This is because the taxing statutes levy a tax on "cases," not charges, and there is nothing in the taxing statutes that suggests a "case" is anything other than a case as docketed by the clerk of court.

4. Yes. The Tennessee General Assembly may amend and revise the current tax statute that levies the litigation tax so that it unambiguously levies a litigation tax on each criminal charge for which a defendant is convicted instead of each "case" as the statute currently reads.

ANALYSIS

1. The instant request presents four separate questions all of which are related to the potential impact on the collection of litigation taxes from a proposed amendment to Tenn. Code Ann. § 16-21-107. The requestor of this opinion has advised this Office that the phrase "the current statute" in the first two questions refers to the statute levying the litigation tax - Tenn. Code Ann. § 67-4-602. The statute that the pending bill would amend, § 16-21-107, titled "Duties of Council," specifies the duties of the judicial council created by the preceding statute. The proposed amendment would replace the current subsection (5) and define a "criminal case" for purposes of the reporting requirements of court clerks for compiling the caseload reports required by the statute. In pertinent part, the amendment would replace current subsection (5) with the following language:

> (B) Assist the council in this duty, the clerks of all courts of record shall count and report all caseload information according to the appropriate standard definition of a case as provided in this subsection. Each case shall be assigned a docket number upon filing. The term "docket number" is defined as the separate and distinct identification number used for a case once it is filed in general sessions, criminal, circuit, chancery, or probate court;
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> (C) A criminal case shall be defined and counted as a single charge or set of charges, arising out of a single incident involving the same victims(s), concerning a defendant in one court proceeding. An incident shall be considered to be all criminal activity occurring within a twenty-

> four hour period. A court proceeding refers to a single level of court, i.e., general sessions, circuit, appeals or Supreme Court. An appeal, probation revocation, or other post-judgment proceeding shall be considered a separate case. This definition shall not alter the practice in Tennessee Rules of Criminal Procedure dealing with joinder and severance of criminal cases;
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> (D) Criminal caseload data shall be counted and reported according to this definition and according to guidelines set forth by the Administrative Office of the Courts.

The amendment thus instructs court clerks on what charge(s) constitute a "case" for purposes of their caseload reports to the judicial council, and it concomitantly appears to direct that cases be docketed in accordance with this definition. Current Tenn. Code Ann. § 16-21-107 lacks any such definition or instruction.

The litigation taxes levied on criminal and civil litigation in this State that are the subject matter of this opinion request are imposed by the legislature through the provisions of Tenn. Code Ann. § 67-4-602.[1] The various tax rates imposed by this statute are imposed on "civil suits" and "criminal cases." This statute does not further define these terms. If at the direction of the prosecuting attorney or consistent with the court's own internal procedures, a court clerk puts each of different criminal charges against one person on separate warrants with separate docket numbers, thus classifying them as separate prosecutable cases, the litigation tax is imposed on any of these cases for which the person is convicted. A criminal defendant is only assessed litigation tax if there is a conviction. *See* Tenn. Code Ann. § 67-4-603. While it might seem more appropriate to combine charges against one person arising from the same incident as one case, there is currently no provision of law that prevents prosecutors and clerks from exercising considerable discretion in this regard.

2. An indictment, even though it may charge more than one criminal offense, is generally considered one case and will have one docket or case number. Consistent with the language of Tenn. Code Ann. § 67-4-602, this "case" is subject to the imposition of the litigation tax and only one tax will be imposed upon conviction of at least one of the charges. A tax will not be imposed on each charge for which there is a conviction. This Office has previously opined as much in Op. Tenn. Atty. Gen. No. 99-056 (March 9, 1999).

3. The statute imposing litigation tax is separate and distinct from the statutes that create the judicial council and describe the reporting requirements of court clerks to the judicial council.

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[1]There are other "litigation" taxes such as those that fund the Criminal Injuries Compensation Fund. *See* Tenn. Code Ann. § 40-24-107.

The current statute levying the litigation tax does not incorporate a definition of "case" from elsewhere in the Tennessee Code and of course could not incorporate the definition contained in the proposed amendment to § 16-21-107. The proposed amendment to Tenn. Code Ann. § 16-21-107 defines "case" for purposes of the reporting and data gathering required by the statute. Yet, once a charge or set of charges is docketed by the clerk under one docket number, as would be required by the amendment, it will of necessity be treated as one case.

Certain features of the proposed amendment, such as its directions about assigning docket numbers and reopening cases, indicate that its intent is indeed to mandate the manner in which cases are established by clerks of court, and this Office construes it to have that effect. We read the proposed amendment to require court clerks to treat all criminal charges against one person as a "case" in the manner described in the amendment for all purposes. This appears to be the real and practical effect of the docketing procedures that the amendment requires. Although the language of the proposed amendment does not specify that its definition of "case" should be incorporated into other sections of the code, including the litigation tax statutes, it has that effect because a set of charges is one case if it is docketed by the clerk with one docket number. This appears to be the result even though the caption of the bill characterizes it merely as an act "relative to reporting court information."

The proposed amendment thus would have the effect of preventing clerks from assessing litigation tax on individual criminal charges. This is because the taxing statutes levy a tax on "cases." There is nothing in the plain language of Tenn. Code Ann. § 67-4-602 that defines "case" and there is certainly no language in the same statute that incorporates a definition for "case" from elsewhere in the Code. The longstanding practices of the clerks of court apparently have varied concerning the number of charges that are docketed as one case. But, if a court clerk must docket multiple charges against one person as one case, as specified by the proposed amendment, then only one litigation tax would apply.

While most of the language of the proposed amendment focuses on its intent to establish a counting convention, we interpret it to mandate the manner in which court clerks docket cases. As a result, the practical effect of the amendment's current language is to create a process for defining and docketing "cases" that will control the levying of the litigation tax.

4. As noted in the answers to the previous questions, Tenn. Code Ann. § 67-4-602 levies a litigation tax on "civil suits" and "criminal cases." The Tennessee General Assembly could amend this statute to revise the language so that a litigation tax is imposed on every criminal charge against a person for which he is convicted regardless of whether or not that charge could be considered part of a larger case or is treated for administrative purposes as part of a larger case. Currently, the tax imposed to fund the Criminal Injuries Compensation Fund is imposed on a per conviction basis. *See* Tenn. Code Ann. § 40-24-107 and Regulations 1320-4-8-.01(1) and (2).

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