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Opinion No. 02-091

Distribution of Hall Income Tax Revenues to Municipalities and Counties

QUESTION

When a trust receives income that is taxable under the Hall Income Tax, pursuant to Tenn. Code Ann. § 67-2-119, which municipality receives three eighths of the tax revenues — the municipality where the trustee resides, or the municipality where the trust beneficiary resides?

OPINION

In cases where both the trustee and beneficiary reside in Tennessee, the trustee is the taxpayer, and the three-eighths distribution referenced in Tenn. Code Ann. § 67-2-119 should go to the municipality (or county) where the trustee resides. In cases where the beneficiary resides in Tennessee, but the trust is located outside the state of Tennessee, the beneficiary is the taxpayer, and the local distribution should go to the municipality (or county) where the beneficiary resides.

ANALYSIS

The Hall Income Tax levies a tax in the amount of six percent (6%) per annum on income derived from stock dividends or bond interest. *See* Tenn. Code Ann. § 67-2-102 (1998). The tax applies to income received by "each person, partnership, association, *trust* and corporation in the state of Tennessee." *Id*. (emphasis added). For purposes of the Hall Income Tax, the term "person" includes "every natural person, inhabitant, resident, *beneficiary of every trust* or estate, partnership, joint-stock company, business trust, corporation or any other form of organization" in receipt of taxable income. Tenn. Code Ann. § 67-2-101(5) (1998) (emphasis added). Thus, the Hall Income Tax applies to both trusts and trust beneficiaries.

Pursuant to Tenn. Code Ann. § 67-2-119, of the taxes collected under the Hall Income Tax, five eighths (5/8) is paid into the general fund of the state treasury, while the remaining three eighths (3/8) is distributed to the cities and counties. *See* Tenn. Code Ann. § 67-2-119(a) (1998). If the taxpayer resides within the corporate limits of a municipality, the three-eighths distribution goes to the city where the taxpayer resides. *See* Tenn. Code Ann. § 67-2-119(b) (1998). If the taxpayer does not reside within the corporate limits of a municipality, the three-eighths distribution

goes to the county where the taxpayer resides. *See* Tenn. Code Ann. § 67-2-119(c) (1998). Your request asks which municipality should receive the three-eighths distribution — the municipality (or county, if applicable) where the trustee resides, or the municipality (or county) where the trust beneficiary resides.

The Hall Income Tax provisions specify who is responsible for filing a return and paying the tax to the Department of Revenue. If a Tennessee trustee receives income taxable under the Hall Income Tax for the benefit of a Tennessee beneficiary, the trustee is required to make the return and pay the tax. *See* Tenn. Code Ann. § 67-2-110(a) (1998). If a Tennessee beneficiary receives taxable trust income, and the trust is located outside the state of Tennessee, the beneficiary is responsible for reporting the income and paying the tax. *See* Tenn. Code Ann. § 67-2-111 (1998). If a trustee receives income on behalf of a non-resident beneficiary, the trustee is not required to pay the tax, even if the trustee is a Tennessee resident. *See* Tenn. Code Ann. § 67-2-110(b) (1998).

As the foregoing provisions demonstrate, the identity of the taxpayer varies under the Hall Income Tax, depending on whether or not the trustee and/or trust beneficiary is a Tennessee resident. In each instance, the residence of the taxpayer will determine the jurisdiction to which revenues are distributed. *See* Tenn. Code Ann. § 67-2-119(b), (c) (1998). In cases where both the trustee and beneficiary reside in Tennessee, the trustee is the taxpayer, and the three-eighths distribution referenced in Tenn. Code Ann. § 67-2-119 should go to the municipality (or county) where the trustee resides. In cases where the beneficiary resides in Tennessee, but the trust is located outside the state of Tennessee, the beneficiary is the taxpayer, and the local distribution should go to the municipality (or county) where the beneficiary resides.

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