

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
P.O. BOX 20207
NASHVILLE, TENNESSEE 37202

May 27, 2003

Opinion No. 03-069

Taxation of Boat Dock Rentals by a Local Government

QUESTION

Does a local government, by private act or general bill of local application, have the right to tax boat dock rentals on lake property owned by the United States Corps of Engineers?

OPINION

A private or public act authorizing local governments to tax boat dock rentals on Corps of Engineers lakes would violate the doctrine of intergovernmental tax immunity. The legislature could authorize local governments to tax boat dock rentals, but to be constitutional, such a tax could not be restricted to lake property owned by the Corps of Engineers.

ANALYSIS

Your question concerns whether local governments have the right to tax boat dock rentals on lake property owned by the United States Corps of Engineers and operated by independent contractors. It is the understanding of this Office that the Corps of Engineers has authorized various contractors to operate commercial marinas on Corps lakes in Tennessee. These contractors rent boat slips to private entities and individuals, some of whom dock houseboats and other craft for extended periods of time. The legislation alluded to in your request would seek to tax the rental receipts received by the marina operators. The legislation would apply in counties which have Corps of Engineers lakes located within their borders.

The tax described in your request would violate the doctrine of intergovernmental tax immunity. The doctrine of intergovernmental tax immunity prohibits state and local governments from taxing the federal government or its agencies. *See South Carolina v. Baker*, 485 U.S. 505, 524, 108 S. Ct. 1355, 1366-67, 99 L. Ed. 2d 592 (1988). Although the doctrine does not prohibit state and local governments from taxing government contractors, it does prohibit them from imposing taxes against government contractors in a discriminatory manner. *See United States v. Fresno County*, 429 U.S. 452, 462-64, 97 S. Ct. 699, 704-05, 50 L. Ed. 2d 683 (1977); *see also* Op. Tenn. Att'y Gen. No. 94-058 (Apr. 15, 1994). If the tax described in your request applies only in counties

with Corps of Engineers lakes, such a tax would violate the doctrine of intergovernmental tax immunity by discriminating against those contractors with whom the Corps of Engineers does business.

If the general revenue laws of this state even-handedly taxed all boat dock rentals in the State of Tennessee, such a tax could be applied to private marina operators and federal contractors alike. The tax described in your request, however, specifically applies only to lake property owned by the United States Corps of Engineers. Under these circumstances, the tax would violate the constitutional doctrine of intergovernmental tax immunity.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

MARY ELLEN KNACK
Assistant Attorney General

Requested by:

The Honorable Frank Buck
State Representative, 40th Legislative District
24 Legislative Plaza
Nashville, TN 37243-0140