S T A T E O F T E N N E S S E E
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Opinion No. 03-114

County's Imposition of "Workplace Privilege Tax" on Non-County Residents

QUESTION

Can a county impose a "workplace privilege tax" on persons who work in that county but reside in another county?

OPINION

A county has no power or authority to impose a "workplace privilege tax" on persons who work in that county.

ANALYSIS

A county possesses "no inherent power of taxation, but may exercise only that power to tax which is conferred upon it by the state, acting through the General Assembly." *Southern Ry. Co. v. Claiborne County*, 157 Tenn. 71, 74, 291 S.W. 837, 837 (1927). The General Assembly "is empowered to authorize the counties and incorporated towns of the State to levy taxes for county and corporation purposes, but when such authority is given, the county acts under the power conferred by the law." *Winston v. Tennessee & Pac. R.R. Co.*, 60 Tenn. 60, 76 (1873) (citing Tenn. Const. art. II, § 29). When the General Assembly authorizes a county to impose taxes, such as privilege taxes, "the power thus conferred must be strictly construed and exactly followed." *Southern Ry. Co. v. Hamblen County*, 115 Tenn. 526, 530, 92 S.W. 238, 239 (1906) (quoting *Burnett v. Maloney*, 97 Tenn. 697, 714-15, 37 S.W. 689, 693 (1896)); *accord* Op. Tenn. Att'y Gen. No. 86-033 (Feb. 13, 1986). A county has "no power to levy and collect a tax for any county purpose in excess of that authorized by the General Assembly." *Southern Ry.*, 115 Tenn. at 531, 92 S.W. at 240.

The General Assembly has not enacted legislation that would authorize a county to impose the type of "privilege" tax described in your request. A county can tax only those privileges that the General Assembly has authorized it to tax. A county is "authorized and empowered to levy a privilege tax upon merchants and other such vocations, occupations or businesses" that have been declared to be privileges by the General Assembly. Tenn. Code Ann. § 67-4-502 (1998). A county

has no authority, however, to levy a privilege tax upon an activity that the General Assembly has not declared to be a taxable privilege.

To date the General Assembly has not identified and declared any privilege that would support a county "workplace privilege tax." While there are various means by which the General Assembly could levy a tax on, or measured by, salaries, payrolls, or income, it has thus far elected not to authorize such a tax, either for the counties or for the State. *See* Op. Tenn. Att'y Gen. Nos. 99-217 (Oct. 28, 1999), 99-060 (Mar. 10, 1999), & 81-497 (Sept. 2, 1981). Inasmuch as the General Assembly has not declared this type of activity to constitute a taxable privilege, no authority exists for a county to impose such a tax.[1]

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[1]In any event, such a tax would run afoul of the dormant Commerce Clause of the United States Constitution if a county applied the tax to residents of other states but not to residents of the taxing county. *See, e.g.*, *Oregon Waste Sys., Inc. v. Oregon Dep't of Envtl. Quality*, 511 U.S. 93, 114 S. Ct. 1345, 128 L. Ed. 2d 13 (1994).