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Opinion No. 10-79

Distribution of Tennessee Valley Authority Payments in Lieu of Taxes

QUESTION

Should the payment percentage set forth under Tenn. Code Ann. § 67-9-102(a)(1)(C) be computed by taking into account inundated land owned by the Tennessee Valley Authority, i.e., land that is located beneath bodies of water?

OPINION

It is the opinion of this Office that the disbursement of TVA payments in lieu of taxes made by the Department of Revenue to the counties based on the portion of TVA-owned land in each county should take into account both dry and inundated land owned by TVA because both types of land would previously have been subject to ad valorem property taxes but are now exempt because of the taking by TVA.

ANALYSIS

The Tennessee Valley Authority pays to Tennessee and other state and local governments a percentage of the gross proceeds it derives from the sale of power. 16 U.S.C. § 831l (Supp. 2009). Half the amount Tennessee receives is based on the percentage of TVA power sales in Tennessee as compared to all TVA power sales. Id. The other half is based on the percentage of the book value of TVA "power property" in Tennessee as compared to the book value of all TVA power property. Id. At a minimum TVA must pay to Tennessee and its counties an amount equal to the property tax levied against TVA power property and "reservoir lands . . . allocable to power" when that property or land was last privately owned or operated. Id. These TVA payments are made "[i]n order to render financial assistance to those States and local governments . . . in which [TVA] has acquired properties previously subject to State and local taxation." Id. See Tennessee Valley Authority v. Polk County, 68 F. Supp. 692, 694 (E.D. Tenn. 1945), *aff'd*, 158 F.2d 96 (6th Cir. 1946); Crider v. County of Henry, 295 S.W.3d 269, 271 (Tenn. Ct. App. 2008).

Pursuant to Tenn. Code Ann. §§ 67-9-101 et seq. (the "Act"), Tennessee distributes to counties and municipalities 48.5% of the amount Tennessee receives from TVA that is "above the payments received in the fiscal year 1977-1978." Tenn. Code Ann. § 67-9-101(a)(2) (2006). That amount is distributed as follows:

> (A) Thirty percent (30%) of the available amount shall be paid to counties in accordance with the percentage that the population of each county bears to the total state population;
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> (B) Thirty percent (30%) of the available amount shall be paid to counties in accordance with the percentage that the total acreage of each county bears to the total acreage of the state;
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> (C) Ten percent (10%) of the available amount shall be paid to each county containing land owned by the Tennessee Valley authority *in accordance with the percentage that Tennessee Valley authority owned land in that county bears to all Tennessee Valley authority owned land in Tennessee*; and
>
> (D) Thirty percent (30%) of the available amount shall be paid to incorporated municipalities in accordance with the percentage that the population of that municipality bears to the population of all incorporated municipalities in Tennessee.

Tenn. Code Ann. § 67-9-102(a)(1) (Supp. 2009) (emphasis added).

With regard to the section 67-9-102(a)(1)(C) distribution, TVA provides to the state agency authorizing such distribution a schedule of TVA-owned land in each county. The amount of land in the schedule TVA provided to the Department of Revenue in October 2009 was significantly less than in previous years. The reduction was the result of an audit performed by TVA of its Tennessee land. In the years preceding the audit, TVA's schedules had not taken into account sales and transfers of land by TVA and, thus, included land no longer owned by TVA.

Because the Act does not define the term "land," the answer to the instant question requires us to impute the meaning of the term in light of its general meaning and the purpose of the provisions in question. Tenn. Code Ann. § 1-3-105, which provides the definitions of many terms used in the Tennessee Code "unless the context otherwise requires," defines "lands" as including "lands, tenements and hereditaments, and all rights thereto and interests therein, equitable as well as legal." Tenn. Code Ann. § 1-3-105(14) (Supp. 2009). This definition is not instructive; however, the definition of "land" elsewhere in the Code does shed some light on the matter. In Tenn. Code Ann. § 70-7-101, "land" or "premises" includes "waters . . . owned by" TVA.[1] Tenn. Code Ann. § 70-7-101(1)(B) (2004). Also, in Tenn. Code Ann. § 11-10-101, the definition of "land" includes "water [and] watercourses."[2] Tenn. Code Ann. § 11-10-101(3) (1999). Most significantly, Tenn. Code Ann. § 67-5-602(b)(7) (2006) directs that the valuation of real property take into account that it includes "inundated wetlands." Thus, such inundated lands are clearly included in the property tax base, but are valued in light of their inundated condition. Furthermore, the general purpose of the Act supports the view that "land," as used in

[1] Tenn. Code Ann. §§ 70-7-101 *et seq*. concern the duty of care of persons in control of land used for recreational activities such as hunting, fishing, camping, water sports, and boating.

[2] Tenn. Code Ann. §§ 11-10-101 *et seq*. concern the duty of care of owners of land leased to the state, county, or municipality, or any agency thereof, for recreational purposes.

section 67-9-102(a)(1)(C), includes both dry and inundated land. "The premier rule of statutory construction is to ascertain and give effect to the legislative intent. In doing this we look to the general purpose to be accomplished." *Stallcup v. Duncan*, 684 S.W.2d 643, 646 (Tenn. Ct. App. 1984) (citations omitted). The purpose of this portion of the TVA payments is to reimburse Tennessee and its counties for the property tax revenues they lost because the land in those jurisdictions was taken off the property tax rolls when acquired by TVA. It follows that the section 67-9-102(a)(1)(C) disbursement made by the Department of Revenue to the counties out of those TVA payments should take into account both inundated and dry land owned by TVA because both types were rendered and remain exempt from county property taxes because of their ownership by TVA. Accordingly, when the Department of Revenue makes such disbursements, it should take into consideration both dry and inundated land owned by TVA.

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