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Opinion No. 11-46

County Trustee's Commission for Handling Local Option Sales Tax Funds

QUESTION

Under Tenn. Code Ann. § 8-11-110(a), a county trustee is entitled to a commission "for receiving and paying over to the rightful authorities all moneys received[.]" This commission is a percentage ranging from two to six percent, depending upon the dollar amount involved. Under Tenn. Code Ann. § 8-11-110(e), the trustee is entitled to a commission of one percent on "all moneys collected from county officers on fees and on the school fund received from the state or on money turned over to the trustee by clerks of the courts and other collecting officers." Which of these subsections governs the trustee's commission on county and city local option sales tax funds the trustee receives from the State?

OPINION

The Tennessee Department of Revenue collects local option sales taxes and, after deducting an administrative fee, remits them to the levying county, city, or town, usually through the county trustee. For this reason, local option sales taxes are "money turned over to the trustee by . . . other collecting officers" within the meaning of Tenn. Code Ann. § 8-11-110(e). Under this statute, in most counties, the county trustee would be entitled to a commission of one percent on the amount of local option sales tax funds the trustee receives from the State.

ANALYSIS

This opinion concerns the county trustee's commission for handling city and county local option sales tax revenues. Tenn. Code Ann. § 8-11-110 provides in relevant part:

> (a) The compensation of the county trustee for receiving and paying over to the rightful authorities all moneys received shall be six percent (6%) on all sums up to ten thousand dollars ($10,000), and four percent (4%) on all sums above ten thousand dollars ($10,000) and up to twenty thousand dollars ($20,000), and a commission of two percent (2%) on all sums above twenty thousand dollars.

* * * *

> (e) The trustee shall receive one percent (1%) on all moneys collected from county officers on fees and on the school fund received from the state or *on money turned over to the trustee by* clerks of the courts and *other collecting officers.*

(Emphasis added). The question is whether subsection (a) or (e) governs the commission the county trustee may receive for handling county and city local option sales tax revenues that the trustee receives from the State.

Local option sales taxes are collected and distributed under Tenn. Code Ann. §§ 67-6-701, *et seq.* Under Tenn. Code Ann. § 67-6-702, cities and counties are authorized to levy a tax on the same privileges subject to the state sales tax. The tax must be approved by a referendum in the city or county levying it. Tenn. Code Ann. § 67-6-706. Tenn. Code Ann. § 67-6-710(a)(1) provides:

> In collecting and administering the tax levied under the authority of this part, the commissioner of revenue shall have the same powers as the commissioner has in collecting and administering the state sales tax.

Thus, the Tennessee Commissioner of Revenue collects the local option sales tax. Tenn. Code Ann. § 67-6-710(b)(1). Subsection (b)(2) of the statute provides:

> The department shall remit the proceeds of the tax to the county, city or town levying the tax, less a reasonable amount of percentage as determined by the department to cover the expenses of administration and collection. This percentage shall be one and one hundred twenty-five thousandths percent (1.125%). The percentage shall not be less than necessary to defray the state's expenses in administering, collecting, and remitting the local sales tax, as determined annually by the department and certified by the comptroller of the treasury.

Thus, the Tennessee Department of Revenue collects local option sales taxes and remits them to the levying county, city, or town, usually through the county trustee, after deducting an administrative charge. For this reason, local option sales taxes are "money turned over to the trustee by . . . other collecting officers" within the meaning of Tenn. Code Ann. § 8-11-110(e). Under this statute, the county trustee in most counties is entitled to a commission of one percent on county and city local option sales taxes the trustee receives from the State. However, it should be noted that, under the provisions of Tenn. Code Ann. § 67-6-712(b), if locally approved by a two-thirds vote of the county legislative body, the county trustee in any county with a population of 700,000 or more according to the 1980 federal census or any subsequent census would not be entitled to any compensation for receiving and distributing such taxes. *See* Tenn.

Code Ann. § 67-6-712(b)(1) and (2). At this time, only Shelby County falls within this population classification.

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