STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 11-56

Allocation of Sales and Use Taxes for Debts Incurred by County for Development at State Park

QUESTIONS

1. Does Tenn. Code Ann. § 67-6-103(h) provide for Campbell County to receive an allocation of sales and use taxes derived from sales occurring within a specified state park as to which the state has leased or conveyed to the county its rights to the property for development? If so, how is the allocation calculated and for what purpose may the county use the allocation?

2. How or when should the county contact the State Building Commission to obtain approval to authorize the issuance of bonds for the development of the state park?

3. How or when should the county contact the Department of Finance and Administration to issue a directive to the Department of Revenue to implement the allocation of sales and use taxes?

4. What specific actions should the Campbell County Commission take prior to June 30, 2011, in order to proceed with the development of the state park? Is Tenn. Code Ann. § 67-6-103(o)(2) applicable to a county seeking the allocation under Tenn. Code Ann. § 67-6-103(h)?

5. Would Campbell County be liable for repayment of either the bonded indebtedness or operating expenses applicable to the development of the state park beyond the sales tax generated from the development itself?

OPINIONS

1. Yes, Campbell County may receive the allocation to the extent authorized by Tenn. Code Ann. § 67-6-103(h)(1). The allocation does not include revenues from the state sales and use tax rate increases pursuant to the 1992 and 2002 public acts. The allocation may be used only for the purpose of retiring debts incurred by the county for developing the park. Also, it must be noted that the legislation providing for this allocation does not become operative until Campbell County has paid to the Department of Revenue the estimated cost of software changes necessary to implement Tenn. Code Ann. § 67-6-103(h).

2. The county must submit its development plan to the executive committee of the State Building Commission for the committee's review and recommendation to the Commission prior to the issuance of any bonds.

3. The statute does not specify whether, how, or when the county should contact the Department of Finance and Administration and the Department of Revenue to implement the sales tax allocation. This is not a legal question that this Office can answer.

4. The statute does not provide a deadline that Campbell County must meet to implement these allocation provisions. A county seeking the allocation provided under Tenn. Code Ann. § 67-6-103(h) does not need to comply with Tenn. Code Ann. § 67-6-103(o).

5. The provisions of Tenn. Code Ann. § 67-6-103(h) merely create a means by which a qualifying county can obtain additional funding to develop the park. The county would be liable for the bonded indebtedness and operating expenses that it chooses to incur in developing and operating the park, in accordance with bond instruments and contracts into which it enters. The county's liability is not limited by Tenn. Code Ann. § 67-6-103(h) to the sales tax revenues generated from the project site itself, which revenues can be used only to retire the county's bonded debt, but would be determined by the county's own contracts and undertakings.

ANALYSIS

1. Pursuant to Tenn. Code Ann. § 67-6-103(h), a county that includes a state park as described therein may receive an allocation of sales and use tax revenues "equal to the amount of state and local sales and use taxes derived from sales occurring within such property." Tenn. Code Ann. § 67-6-103(h)(1) (Supp. 2010). The allocation does not include revenue derived from the state sales and use tax rate increases in 1992 and 2002. Tenn. Code Ann. § 67-6-103(h)(2)(A) and -202(a) and (b) (Supp. 2010). The allocation is "exclusively for retirement of the indebtedness incurred by such county for development of such property, to the same extent that such county may pledge any revenues of the county." Tenn. Code Ann. § 67-6-103(h)(1) (Supp. 2010).

It must be noted that the legislation providing for this allocation does not become operative until Campbell County, which appears to be the only county to which it would apply, has paid to the Department of Revenue the estimated cost of software changes necessary to implement Tenn. Code Ann. § 67-6-103(h). The General Assembly provided that the act

> shall become operative only if the estimated cost of software changes necessary to implement the provisions of this act are paid to the department of revenue by Campbell County. Such payment shall be made prior to any expenditure of funds by the state. The department shall return any unused portion of the estimated cost to Campbell County within thirty (30) days of completion of the software changes necessary to implement the provisions of this act. If the actual cost exceeds the estimated cost, an amount equal to the difference in such costs shall be remitted to the department by Campbell County within thirty (30) days of receiving an itemized invoice of the actual cost from the department.

Acts 2005, ch. 505, § 2.

2. The county commission must submit a plan for development of the state park to the executive committee of the State Building Commission, which the committee will review and then use in making its recommendation to the Commission. Tenn. Code Ann. § 67-6-103(h)(3). The statute does not provide a deadline for the county to contact the Commission; instead, it only requires that the plan be submitted "[p]rior to the issuance of any bonds for development of the property."

3. The statute contains no reference to the Department of Finance and Administration or the Department of Revenue. The allocation should occur once the development has been approved by the State Building Commission and a bonded indebtedness for the project has been incurred by the county. The county may wish to inform the Department of Revenue as to when these things have occurred so the Department can make the correct allocation of revenues when sales taxes begin to be collected at the development.

4. The statute does not provide a deadline for developing the state park, whether it be June 30, 2011, or any other date. *See* Tenn. Code Ann. § 67-6-103(h) (Supp. 2010). Pursuant to Tenn. Code Ann. § 67-6-103(o), a county may receive an allocation of sales and use tax revenues collected within a county-designated commercial development zone in which a private entity plans to build a mixed-use development. Tenn. Code Ann. § 67-6-103(o)(2) (Supp. 2010). Of the many requirements specified in that statute, the county legislative body must have adopted a resolution designating such a commercial development zone on or before June 30, 2011. *Id*. While both Tenn. Code Ann. §§ 67-6-103(h) and (o) are procedures by which a county may receive an allocation of state and local sales and use taxes for the development of certain property, they are entirely separate and distinct. A county seeking an allocation under one statute need not comply with the other. Thus, the June 30, 2011, deadline does not apply to a county developing a state park pursuant to Tenn. Code Ann. § 67-6-103(h).

5. The statute expressly provides that the revenue distributed to the county under its provisions "shall be exclusively for retirement of the indebtedness incurred by such county for development of such property, to the same extent that such county may pledge any revenues of the county." Tenn. Code Ann. § 67-6-103(h)(1). Thus, a prerequisite to the use of these funds is that the county has pledged its own revenue for retirement of the bonded indebtedness associated with the development. But this does not in any way limit the county's liability to the amount contributed by the state. The county would be liable for the bonded debt, as well as any operating expenses in accordance with the contracts, documents, and undertakings it has entered in developing and running the facilities.

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