STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 12-13

Scope of County Litigation Tax

QUESTIONS

1. Is it legal for a county to exempt certain types of litigation (i.e., uncontested divorces) from the privilege tax on litigation authorized by Tenn. Code Ann. § 67-4-601(b)(6)?

2. Does Tenn. Code Ann. § 67-4-601(b)(6) allow a county to impose a privilege tax on litigation in certain courts within the county, without applying the tax in all courts?

OPINIONS

1. No. Pursuant to Tenn. Code Ann. § 67-4-601(b)(6), the General Assembly has authorized counties to levy the litigation tax in "all civil and criminal cases," thereby requiring that any tax imposed must be levied on all civil and criminal cases.

2. No. Because the General Assembly has authorized the tax to apply in "all civil and criminal cases," counties may not limit the tax to civil and criminal cases in certain courts instead of levying it in all courts.

ANALYSIS

1. Pursuant to the provisions of Tenn. Code Ann. § 67-4-601, the General Assembly has authorized counties to levy specified privilege taxes on litigation, with the revenue to be used for certain designated purposes. For example, Tenn. Code Ann. § 67-4-601(b)(1) and (5) permit counties to "levy a privilege tax on litigation in all civil and criminal cases instituted in the county" in an amount not exceeding $25 per case, with the tax revenues to be used for building or renovating jails and courthouses. See Op. Tenn. Atty. Gen. No. 08-167 (Oct. 16, 2008).

This request concerns the litigation tax authorized under Tenn. Code Ann. § 67-4-601(b)(6), which reads as follows:

> Notwithstanding any law to the contrary, upon the adoption of a resolution by a two-thirds (2/3) majority vote of a county legislative body, a privilege tax on litigation in all civil and criminal cases may be levied in an amount not to exceed twenty-five dollars ($25.00) per case, to be used exclusively for court

> house security, in addition to those purposes identified in subdivision (b)(1).

The tax is to be applied "in ***all*** civil and criminal cases." Tenn. Code Ann. § 67-4-601(b)(6) (emphasis added). The term "all" requires that counties that levy the tax must do so in all litigation without exception, and does not grant counties the authority to designate which types of litigation will bear the tax. *See Leggett v. Duke Energy Corp.*, 308 S.W.3d 843, 851 (Tenn. 2010) (courts will apply the plain meaning of a statute when the statutory language is clear and unambiguous); *Bryant v. Baptist Health System Home Care of East Tennessee*, 213 S.W.3d 743, 748 (Tenn. 2006) (courts should avoid applying to a statute any forced or subtle construction that extends the statute's meaning). If the General Assembly had intended to allow a county the ability to determine which types of litigation would bear the tax, then it would have used the word "any" instead of "all." Furthermore, other language in subdivision (b)(6) suggests that counties are not authorized to limit the tax to certain types of cases. The statute explicitly grants counties the ability to set the level of the tax at an amount up to $25 and to choose from the specified purposes how to use the revenue. In contrast, subdivision (b)(6) does not provide counties with any choice as to the types of civil and criminal litigation upon which the tax may be levied. *Compare* Tenn. Code Ann. § 67-4-601(b)(1) and (5) *with* Tenn. Code Ann. § 67-4-601(b)(6).

2. Similarly, subdivision (b)(6) does not include any language permitting counties to choose the courts in which to levy the tax. The tax is to be levied "in ***all*** civil and criminal cases." *Id*. (emphasis added). Accordingly, counties may not levy this tax in some courts but not others.

ROBERT E. COOPER, JR.
Attorney General and Reporter

WILLIAM E. YOUNG
Solicitor General

NICHOLAS G. BARCA
Assistant Attorney General

Requested by:

The Honorable Steve K. McDaniel
Deputy Speaker of the House of Representatives
18 Legislative Plaza
Nashville, Tennessee 37243-0172