

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

February 22, 2012

Opinion No. 12-18

County Wheel Taxes

QUESTIONS

1. May a county levying a wheel tax under Tenn. Code Ann. § 5-8-102(b) choose the vehicles upon which to levy the tax from among those vehicles taxable by the State, or must the county levy the wheel tax on all vehicles taxable by the State?
2. May a county levying a wheel tax under Tenn. Code Ann. § 5-8-102(b) levy the tax at different rates for different vehicles, or must the rate be uniform for all vehicles to which the tax applies?
3. May a county levying a wheel tax under Tenn. Code Ann. § 5-8-102(b) create exemptions to the tax in addition to the exemption set out in Tenn. Code Ann. § 5-8-102(d)(1) for disabled veterans?

OPINIONS

1. Pursuant to Tenn. Code Ann. § 5-8-102(b), the General Assembly has authorized counties to levy the wheel tax “on *any* motor vehicle taxable by the state,” thereby permitting counties to choose which motor vehicles set forth in Tenn. Code Ann. §§ 55-4-111 and -112 will bear the tax.
2. Because the General Assembly has accorded to counties discretion as to which motor vehicles to tax and has not set tax rates, counties levying a wheel tax under Tenn. Code Ann. § 5-8-102(b) may levy the tax at different rates for different vehicles, as long as there is a rational basis to distinguish among them.
3. Because the General Assembly has accorded to counties discretion as to which motor vehicles to tax, counties levying a wheel tax under Tenn. Code Ann. § 5-8-102(b) may create additional exemptions from the tax, as long as there is a rational basis for those exemptions.

ANALYSIS

1. Pursuant to Tenn. Code Ann. § 5-8-102, the General Assembly has authorized each county to levy “a motor vehicle privilege tax as a condition precedent to the operation of a

motor vehicle within the county.” Tenn. Code Ann. § 5-8-102(b). This tax is known as the wheel tax, and it “may be levied on any motor vehicle taxable by the state.” *Id.* The vehicles that are “taxable by the state” are set forth in Tenn. Code Ann. §§ 55-4-101 to -135. Pursuant to those statutes, the State requires the registration of motor vehicles operated on “the streets or highways of this state,” Tenn. Code Ann. § 55-4-101(a)(1), and “[t]he registration and fees . . . constitute a privilege tax” on such operation. Tenn. Code Ann. § 55-4-101(a)(2). The motor vehicles that are subject to the state’s registration fee and, thus, a county’s wheel tax include motorcycles, passenger motor vehicles, trailers, mobile homes, private buses, and motor vehicles operating for hire. Tenn. Code Ann. §§ 55-4-111 and -112. The amounts of the registration fees differ based upon the motor vehicle’s classification. *Id.* For example, the fee is \$11.75 for a motorcycle, \$18.75 for a passenger motor vehicle, and \$200 for a private bus. Tenn. Code Ann. § 55-4-111(a)(1).

Counties may levy the wheel tax “on *any* motor vehicle taxable by the state.” Tenn. Code Ann. § 5-8-102(b) (emphasis added). The term “any” grants counties the authority to designate which motor vehicles listed in Tenn. Code Ann. §§ 55-4-111 and -112 will bear the wheel 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 a forced or subtle construction that extends the statute’s meaning). If the General Assembly had intended to require counties to levy the wheel tax on all motor vehicles taxable by the State, then it would have used the word “all” instead of “any.”

2. Tenn. Code Ann. § 5-8-102 does not specify the amount of the wheel tax to be levied by counties. As discussed in previous opinions issued by this Office, the General Assembly has not limited the amount of the wheel tax or required that it be equal to the amount of the state registration fee. *Op. Tenn. Atty. Gen. No. 97-109* (August 6, 1997); *Op. Tenn. Atty. Gen. No. 96-098* (July 31, 1996). However, even though the General Assembly has not limited the ability of counties to levy the tax at different rates, counties doing so must comply with Article XI, Section 8, of the Tennessee Constitution and the Fourteenth Amendment of the United States Constitution, which require that there be a rational basis for any rate differences. *See Op. Tenn. Atty. Gen. No. 00-106* (June 9, 2000). As noted above, the state registration fee differs based on the classification of the vehicle.

3. In authorizing the wheel tax, the General Assembly included restrictions on the ability of counties to levy the tax. For example, the tax must have the same term, collection method, proration, and grace period as the state registration fee. Specifically,

[i]n each county that has levied or may hereafter levy a motor vehicle privilege tax under either this chapter or by private act, the duration or term for which the privilege is issued, method of collection, proration of the amount chargeable for a period of either more or less than a calendar year interval, and the grace period allowable shall be the same as that provided for in § 55-4-

104 for payment of state motor vehicle registration fees for all such vehicles described in that section.

Tenn. Code Ann. § 5-8-102(d)(2). The General Assembly also exempted disabled veterans, former prisoners-of-war, and company vehicles of certain manufacturers from the wheel tax through the following provisions:

(1) Any disabled veteran . . . or any former prisoner-of-war . . . is exempt from the motor vehicle privilege tax imposed by this section or by private act

(4) Any OEM headquarters company¹ may make application to the commissioner of revenue to be exempt from the motor vehicle privilege tax imposed by this section or by private act; provided, however, that the exemption granted under this subdivision (d)(4) shall apply only with respect to OEM headquarters company vehicles.²

Tenn. Code Ann. § 5-8-102(d)(1) and (4). Subdivisions (d)(1) and (d)(4) merely exempt the persons and entities listed therein, and can in no way be read as a limitation on the ability of counties to exempt additional persons or entities from the wheel tax. If the General Assembly had intended such a limitation, it could have so stated or included language similar to that of subdivision (d)(2) requiring the counties to have the same exemptions as those stated in subdivisions (d)(1) and (d)(4) and no more. *See Harmon v. University of Tennessee*, 353 S.W. 3d 734, 738-39 (Tenn. 2011) (quoting *Carver v. Citizen Utils. Co.*, 954 S.W. 2d 34, 35 (Tenn. 1997)) (stating that “omissions are significant when statutes are express in certain categories but not others”). As with any rate differences, counties must have a rational basis for any exemptions.

ROBERT E. COOPER, JR.
Attorney General and Reporter

¹ “OEM headquarters company” is defined as “an original equipment manufacturer that is engaged in the business of manufacturing motor vehicles and qualifies to receive the credit provided in § 67-6-224, or any affiliate thereof.” Tenn. Code Ann. § 55-1-126(1) (Supp. 2011).

² “OEM headquarters company vehicle” is defined as “any motor vehicle subject to registration in accordance with this title that is owned by an OEM headquarters company . . . and . . . motor vehicles provided by the OEM headquarters company for use by eligible employees and their eligible family members in accordance with policies established by the OEM headquarters company and approved by the commissioner.” Tenn. Code Ann. § 55-1-126(2) (Supp. 2011).

WILLIAM E. YOUNG
Solicitor General

NICHOLAS G. BARCA
Assistant Attorney General

Requested by:

The Honorable Kelly T. Keisling
State Representative
108 War Memorial Building
Nashville, Tennessee 37243