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

November 27, 2013

Opinion No. 13-94

Clerk's Fee Under Tenn. Code Ann. § 55-4-105(g) Related to Motor Vehicles

QUESTIONS

1. Is the clerk's fee authorized by Tenn. Code Ann. § 55-4-105(g)(2) mandatory or permissive?

2. Does the clerk's fee apply when the owner of a vehicle is late in registering a vehicle, when the owner makes an application for a renewal certificate of registration or registration plate for a vehicle and owes a motor vehicle registration fee on another vehicle, or to any liability other than a motor vehicle registration fee?

3. a. If the owner making an application for a renewal certificate of registration or registration plate owes a motor vehicle registration fee and a local wheel tax on the vehicle, is the clerk's fee calculated on both?

b. If yes, is the state's portion of the clerk's fee based on both or only the motor vehicle registration fee?

OPINIONS

1. The imposition of the clerk's fee is not mandatory but is within the county clerk's discretion.

2. The clerk's fee applies when the owner makes an application for a renewal certificate of registration or registration plate for a vehicle and owes a motor vehicle registration fee on that vehicle or any other vehicle. Because the fee only applies when the certificate or registration or plate is being renewed, it does not apply to a late initial registration of the vehicle. The fee does not apply to any liability for a tax or fee other than a motor vehicle registration fee.

3. a. No.

b. In view of the answer to Question 3a, Question 3b is moot.

ANALYSIS

1. Tennessee Code Ann. § 55-4-105 governs applications for motor vehicle renewal certificates of registration and registration plates. Subsection (g), added by 2013 Tenn. Pub. Acts, ch. 376, provides:

> (1) If a person makes an application for a renewal certificate of registration or registration plate pursuant to this section and at the time of application owes any motor vehicle registration fee to the office of the county clerk, then the clerk may deny the application until the person makes full payment on such fee amount.
>
> (2) In addition to the fee amount described in subdivision (g)(1), the clerk may charge the person a clerk's fee, which shall be equal to ten percent (10%) of the fee amount described in subdivision (g)(1); provided, that eighty percent (80%) of such clerk's fee may be retained by the county and the remaining twenty percent (20%) of such clerk's fee shall be forwarded by the clerk to the department.

Subsection (g)(1) provides that the county clerk "may" charge the clerk's fee. The term "may" is "permissive and operates to confer a discretion." *Sneyd v. Washington County*, 387 S.W.3d 1, 7 (Tenn. Ct. App. 2012) (quoting *Huey v. King*, 220 Tenn. 189, 415 S.W.2d 136, 139 (1967)). Therefore, the imposition of the clerk's fee is not mandatory but is within the county clerk's discretion.

2. Under § 55-4-105(g)(1), the county clerk's denial of the application and imposition of the clerk's fee is conditioned upon the person making an application for "a renewal certificate of registration or registration plate." Therefore, the clerk's fee does not apply to a late initial registration of the vehicle.

The clerk's fee applies when, at the time of the application for renewal, the person owes "*any* motor vehicle registration fee to the office of the county clerk." Tenn. Code Ann. § 55-4-105(g)(1) (emphasis added). Therefore, the clerk's fee applies when the owner owes a motor vehicle registration fee on any vehicle, including such a fee owed on another vehicle that is not the one to which the particular application pertains. The statute plainly does not impose the clerk's fee on any liability for a tax or fee other than a motor vehicle registration fee.

3. Subsection (g) specifically applies only when the person owes a "motor vehicle registration fee." Tenn. Code Ann. § 55-4-105(g)(1). Thus, by its plain terms, the statute does not include wheel tax liability. Furthermore, in separate portions of § 55-4-105, the statute refers to "wheel or road taxes," Tenn. Code Ann. §§ 55-4-105(a)(2), 55-4-105(f); "wheel taxes," Tenn. Code Ann. § 55-4-105(a)(3)(A); and "county wheel tax or like local fee," Tenn. Code Ann. § 55-4-105(e)(3)(B) & (C). There is no mention of these taxes or fees in § 55-4-105(g). When a statute contains a given provision, the omission of such a provision from a similar statute is significant to show that a different intention of the Legislature existed. *State v. Lewis*, 958 S.W.2d 736, 739 (Tenn. 1997). Therefore, the absence of any reference to a wheel tax in subsection (g) suggests that the Legislature did not intend to include a wheel tax within the scope

of § 55-4-105(g), but only a motor vehicle registration fee. In view of this answer, the question whether under § 55-4-105(g)(2) the state's portion of the clerk's fee is based on both the delinquent motor vehicle registration fee and any delinquent wheel tax, or just the delinquent motor vehicle registration fee, is moot.

ROBERT E. COOPER, JR.
Attorney General and Reporter

WILLIAM E. YOUNG
Solicitor General

GORDON W. SMITH
Associate Solicitor General

Requested by:

The Honorable Mike Carter
State Representative
Suite G-3, War Memorial Building
Nashville, Tennessee 37243