

**STATE OF TENNESSEE  
OFFICE OF THE ATTORNEY GENERAL**

February 4, 2015

Opinion No. 15-11

Arbitration of Disputes Involving Remittance of Liquor-by-the-Drink Tax Revenue

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**Question**

In the event of a dispute between local governmental entities over the remittance of liquor-by-the-drink tax revenue, does Tenn. Code Ann. § 49-2-203(d)(3)(A)(ii) authorize the Comptroller of the Treasury to undertake binding arbitration to resolve the dispute upon the unilateral request of one party?

**Opinion**

Yes, provided one party requested arbitration on or before December 31, 2014, and the other party failed to pursue the statute's alternative remedy of seeking equitable relief in the Davidson County Chancery Court on or before that date, then the Comptroller is authorized to undertake binding arbitration to resolve the dispute upon the unilateral request of the first party, even absent the affirmative agreement of the second party.

**ANALYSIS**

Your request concerns the applicability of statutory arbitration provisions in the event of a dispute between local governmental entities over the remittance of liquor-by-the-drink taxes. In 2014, the General Assembly enacted statutory provisions that gave local governmental entities the ability to resolve disputes concerning the remittance of liquor-by-the-drink taxes received by a local governmental entity prior to July 1, 2014.<sup>1</sup> The provisions authorized the local governmental entities, including the local board(s) of education and the city and county legislative bodies, to negotiate and enter into a binding agreement addressing the remittance of the taxes. Tenn. Code Ann. § 49-2-203(d)(1)(A).

In the event the local governmental entities were unable to enter into a binding agreement by September 1, 2014, however, the statute provided two alternative remedies to any party involved in such a dispute: (i) seeking equitable relief in the Davidson County Chancery Court or (ii) submitting the dispute to binding arbitration with an arbitrator selected by the Comptroller. Tenn. Code Ann. § 49-2-203(d)(3)(A). These are the only two remedies available to a party involved in the dispute, and if the party fails to pursue one of the remedies on or before December

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<sup>1</sup>Local school boards generally do not have the authority to waive their statutory rights to receive these tax revenues. *See* Tenn. Att'y Gen. Op. 14-22 (Feb. 26, 2014). The newly-enacted statutory provisions gave them and other local governmental entities the authority to settle disputes over the remittance of taxes received prior to July 1, 2014.

31, 2014, then the party will be barred from any other relief relative to proceeds received by a local governmental entity prior to July 1, 2014. Tenn. Code Ann. § 49-2-203(d)(3)(D).

You have asked whether all parties must be in agreement to arbitration before the Comptroller can undertake binding arbitration to resolve the dispute under Tenn. Code Ann. § 49-2-203(d)(3)(A)(ii). The answer to this question depends upon whether any party pursued the alternative remedy of seeking equitable relief in the Davidson County Chancery Court on or before December 31, 2014. If a timely request for arbitration was made on or before December 31, 2014, and if none of the parties filed an action in Chancery Court on or before that date, then all of the parties must submit to binding arbitration because that is the only possible remedy remaining. A party failing to participate in arbitration under these circumstances will be barred from seeking any other relief.<sup>2</sup>

If a party did file suit in Davidson County Chancery Court on or before December 31, 2014, however, that party should be allowed to pursue this judicial remedy to its conclusion. The two statutory remedies are alternative ones, and nothing in the statute would require a party that timely asserted its right to seek equitable relief in the Chancery Court pursuant to subsection (i) to submit to binding arbitration under subsection (ii), absent that party's agreement.

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Requested by:

The Honorable Justin P. Wilson  
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<sup>2</sup> “[L]ocal governments are creatures of the state and possess no more authority than has been conferred upon them by the General Assembly.” *Southern Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 714 n.9 (Tenn. 2001).