

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 04-037

Effective Date of Annexation for Purposes of Local Sales Tax Distribution Under
Tenn. Code Ann. § 6-51-115(b)(2)

QUESTIONS

1. What application, if any, does the November 25, 1997, date found in Section 16 of Chapter 1101 of the Public Acts of 1998 have to Tenn. Code Ann. § 6-51-115(b)(2), enacted by the Act?

2. Does Tenn. Code Ann. § 6-51-115(b)(2), enacted by Chapter 1101 of the Public Acts of 1998 and effective May 19, 1998, apply to annexations that were passed by ordinance, the final reading of which occurred prior to May 19, 1998, but that were not operative until after May 19, 1998, because of litigation challenging the annexation?

3. If the answer to question 2 above is “yes,” in the case of annexations challenged by litigation, does the revenue from those businesses that began in an annexed area more than three (3) months after the final reading of the annexation ordinance, but before the annexation became operative at the conclusion of the litigation, go into the determination of the fifteen (15) year payment to the county?

4. How will answers to questions 1 through 3 above affect the Department of Revenue’s administrative decisions in specific annexation situations and what, if any, additional action should the Department take in these situations?

OPINIONS

1. None. The November 25, 1997, date found in Section 16 of Chapter 1101 of the Public Acts of 1998 does not apply to Tenn. Code Ann. § 6-51-115(b)(2).

2. Yes. Tenn. Code Ann. § 6-51-115(b)(2) applies to annexations that were not operative until after the statute’s May 19, 1998, effective date because of pending litigation challenging the annexation’s validity.

3. In cases where annexations are challenged by litigation, the three-month period to be used in determining the fifteen-year payment to the county under Tenn. Code Ann. § 6-51-115(b)(2) is the three months immediately after the effective date of the annexation at the conclusion of the litigation, not the three months after the date of the final reading of the annexation ordinance.

4. The Department of Revenue should handle any pending and future annexation questions in accordance with the opinions set forth herein.

ANALYSIS

Your request requires this Office to opine on the meaning of the term “effective date of the annexation” as contained in Tenn. Code Ann. § 6-51-115(b). That statute provides:

when a municipality annexes territory in which there is retail or wholesale activity **at the time the annexation takes effect** or within three (3) months after the annexation date, the following shall apply:

.....
(2) Notwithstanding the provisions of § 67-6-712 or any other law to the contrary, for retail activity subject to the Local Option Revenue Act, the county shall continue to receive annually an amount equal to the amount of revenue the county received pursuant to § 67-6-712(a)(2)(A) in the twelve (12) months immediately preceding **the effective date of the annexation** for business establishments in the annexed area that produced Local Option Revenue Act revenue during that entire twelve (12) months. For business establishments that produced such revenues for more than a month but less than the full twelve (12) month period, the county shall continue to receive an amount annually determined by averaging the amount of local option revenue produced by the establishment and allocated to the county under § 67-6-712(a)(2)(A) during each full month the establishment was in business during that time and multiplying this average by twelve (12). For business establishments which did not produce revenue before the annexation date and produced revenue within three (3) months after the annexation date, and for establishments which produced revenue for less than a full month prior to annexation, the county shall continue to receive annually an amount determined by averaging the amount of Local Option Revenue produced and allocated to the county under § 67-6-712(a)(2)(A) during the first three (3) months the establishment was in operation and multiplying this average by twelve (12). The provisions of this subdivision are subject to the exceptions in subsection (c). A municipality shall only pay the

county the amount required by this subdivision, for a period of fifteen (15) years.

Tenn. Code Ann. § 6-51-115(b)(2) (1998) (emphases added). Tenn. Code Ann. § 6-51-115(b)(2) was created by Chapter 1101 of the Public Acts of 1998, which became effective May 19, 1998. *See* 1998 Tenn. Pub. Acts 1101, §§ 24, 30.

In order to effectuate the distribution of revenues required by Tenn. Code Ann. § 6-51-115(b)(2), the county within which the annexed territory lies is responsible for certifying and providing to the Department of Revenue “a list of all tax revenue producing entities within the proposed annexation area.” Tenn. Code Ann. § 6-51-115(d)(1) (1998). From this information, the Department determines the county’s “local share of revenue . . . generated within the annexed territory for the year before **the annexation becomes effective.**” Tenn. Code Ann. § 6-51-115(d)(2) (1998) (emphasis added).

As explained in your request, in several cases, a municipality passed an annexation ordinance prior to May 19, 1998, the effective date of Tenn. Code Ann. § 6-51-115(b)(2); however, due to subsequent litigation challenging the annexation’s validity, the annexation did not become operative until some time after May 19, 1998. You have questioned whether, in such cases, the “effective date of the annexation” is the date the annexation ordinance is passed by the municipality upon final reading or, alternatively, the date the annexation becomes operative at the conclusion of litigation challenging the annexation. This question is important because the effective date of the annexation determines what twelve-month period the municipality and county use to calculate the amount of local option tax revenues that will be paid to the county under Tenn. Code Ann. § 6-51-115(b)(2).

1. As a preliminary matter, you have asked this Office to address whether the November 25, 1997, date found in Section 16 of Chapter 1101 of the Public Acts of 1998 applies to Tenn. Code Ann. § 6-51-115(b)(2). Section 16 of Chapter 1101 provides that “[t]he provisions of **this chapter** shall not apply to any annexation ordinance that was pending, but not yet effective, on November 25, 1997.” 1998 Tenn. Pub. Acts 1101, § 16 (emphasis added). Section 16’s reference to “this chapter” means Chapter 58, within which the provision appears, and not the Act as a whole. Section 2 of the Act provides that “Tennessee Code Annotated, Title 6, is amended by adding Sections 3 through 16 as a new Chapter 58.” 1998 Tenn. Pub. Acts 1101, § 2. Section 16 of the Act became part of Chapter 58, but Section 16 was not included as part of Chapter 51 or any other chapter amended by the Act. Subsequent to its enactment, Section 16 was codified as Tenn. Code Ann. § 6-58-115. On the other hand, the “effective date of annexation” language on which you have requested an opinion appears in Section 24 of the Act, which specifically directs that it become a new subsection to Tenn. Code Ann. § 6-51-115, contained within Chapter 51. Under these circumstances, Section 16 of the Act, as codified at Tenn. Code Ann. § 6-58-115, has no application to the provisions of Tenn. Code Ann. § 6-51-115(b)(2).

2. In Attorney General Opinion No. 80-495, this Office opined that Tenn. Code Ann. § 6-51-103 “governs the effective date of an annexation by a Tennessee municipality.” Op. Tenn. Att’y Gen. No. 80-495 (Oct. 27, 1980). As explained in that opinion, “if the annexation of an area is not contested it takes effect in accordance with the annexation ordinance.” *Id.* If an annexation is contested, however, Tenn. Code Ann. § 6-51-103(c) “states that it shall become operative thirty-one days after judgment is entered upholding its validity, unless an abrogating appeal is taken.” *Id.* This Office concluded that “[t]he clear design of the statute is that upon filing of a lawsuit, the operation of the annexation ordinance is suspended until a court determines the validity of the ordinance.” *Id.* (citing Tenn. Code Ann. § 6-51-103(d)).

Consistent with this Office’s prior opinion, the Court of Appeals has observed that, where residents challenged the validity of an annexation ordinance in a lawsuit filed in chancery court, the annexation ordinance “did not become effective until the Supreme Court’s judgment finding the ordinance valid became final.” *Piper v. City of Memphis*, 861 S.W.2d 832, 834 (Tenn. Ct. App. 1992). In essence, such litigation delays the effective date of the annexation. See *PEP Properties v. Town of Farragut*, 1991 WL 50211, at *1 (Tenn. Ct. App. Apr. 10, 1991), *perm. app. denied* (Tenn. Sept. 9, 1991).

This Office’s attention has been drawn to the Court of Appeals’ decision in *Jefferson County v. City of Morristown*, No. 03A01-9810-CH-00331, 1999 WL 817519 (Tenn. Ct. App. Oct. 13, 1999) (*no perm. app. filed*), wherein the Court concluded that the annexation law to be applied to an annexation ordinance is the law in effect at the time the legislative body takes its final action to approve the ordinance. In that case, however, the statute at issue provided that it would “not affect any annexation ordinance adopted on final reading by a municipality prior to May 19, 1998.” *Id.*, at *2 (quoting Tenn. Code Ann. § 6-58-108(e) (1998)). Thus, for purposes of determining the statute’s applicability, the critical date was the date the legislative body adopted the annexation ordinance on final reading. In contrast, the critical date for purposes of determining the applicability of Tenn. Code Ann. § 6-51-115(b)(2) is “the effective date of the annexation,” which this Office has opined, and the Court of Appeals has agreed, is the date a court order is entered finally upholding the annexation ordinance’s validity.

Admittedly, the *Jefferson County* opinion contains language and reasoning that would apply this principle more broadly to instances that do not involve such “final reading” phraseology. But that discussion is not necessary to the Court’s decision. In any event, to the extent they are in conflict, in the opinion of this Office, the reasoning of *Piper* is more persuasive and authoritative than that found in *Jefferson County*.

3. In accordance with the foregoing analysis, the three-month period referred to in Tenn. Code Ann. § 6-51-115(b)(2) is the three months immediately after the effective date of the annexation at the conclusion of the litigation, not the three months after the date of the final reading of the annexation ordinance. Accordingly, calculation of the fifteen-year payment to the county should include revenue from those businesses that began in an annexed area within this time period,

even if the businesses were not in existence three months after the annexation ordinance's final reading.

4. In handling any pending and future annexation questions from counties and municipalities, the Department of Revenue should act consistently with the principles set forth in this Opinion. That is, in determining the effective date of the annexation for purposes of calculating the fifteen-year payment required by Tenn. Code Ann. § 6-51-115(b)(2), the Department should use the date of the order, judgment, or mandate of the last court that acts authoritatively to uphold the validity of the challenged annexation ordinance.

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