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September 27, 2006

Opinion No. 06-147

Municipal Court Clerks' Commission on Litigation Taxes for Cases Heard Under Concurrent General Sessions Jurisdiction

QUESTION

Which clerk's commission provision, Tenn. Code Ann. § 16-18-305(f) or Tenn. Code Ann. § 8-21-401(h), applies to a municipal court clerk when collecting litigation taxes on cases heard under the municipal court's concurrent general sessions jurisdiction?

OPINION

Municipal court clerks are entitled to a commission of two percent for receiving and paying over privilege taxes on litigation pursuant to Tenn. Code Ann. § 16-18-305(f).

ANALYSIS

The instant question is whether the percentage of litigation taxes that a municipal court clerk is entitled to retain for receiving and paying over litigation taxes when the municipal court is exercising its concurrent general sessions jurisdiction is governed by Tenn. Code Ann. § 16-18-305(f) or Tenn. Code Ann. § 8-21-401(h). The answer hinges on the interpretation of subsections (e) and (f) of Tenn. Code Ann. § 16-18-305. The percentage of litigation taxes that a municipal court is entitled to retain is set forth in § 16-18-305(f), which provides for a 2% commission. However, if § 16-18-305(e) creates an exception to § 16-18-305(f) pursuant to which a municipal court clerk is instead entitled to receive the same commission as a general sessions clerk of court, then § 8-21-401(h) governs. If § 8-21-401(h) controls, then a municipal court clerk is entitled to a higher commission than the 2% afforded by § 16-18-305(e).¹

¹ Tenn. Code Ann. 8-21-401(h) provides as follows:

(h) CLERK'S COMMISSIONS. (1) Except as provided in subdivisions (h)(2) and (3), for receiving and paying over all taxes, fines, forfeitures, fees and amercements, the clerk of the court is entitled to a five percent (5%) commission.

(2) In counties having a population of more than seven hundred thousand (700,000), according to the 1990 federal census or any subsequent federal census, the commission for receiving and paying over all taxes, fines, forfeitures, fees and amercements, shall be ten percent (10%), except as provided in subdivision (h)(3).

In considering the proper interpretation that should be given to Tenn. Code Ann. §§ 16-18-305(e) and (f), it is helpful to consider § 16-18-305 in its entirety:

(a) Notwithstanding the provisions of § 67-4-602, or any other law to the contrary, there is levied a state privilege tax on litigation of thirteen dollars and seventy-five cents (\$13.75) in all cases in a municipal court. All taxes levied pursuant to this subsection (a) shall be collected in accordance with the provisions of § 67-4-603 and shall be paid into the state treasury and allocated in accordance with the provisions of § 67-4-606.

(b) There is also levied a state privilege tax on litigation of one dollar (\$1.00) for each and every violation of any municipal law or ordinance governing use of a public parking space. Such tax is due and shall be collected even if the offender does not appear before the court. Notwithstanding any provision of this section or any other law to the contrary, the only litigation privilege tax collected for a violation of any municipal law or ordinance governing the use of a public parking space shall be the one dollar (\$1.00) litigation tax levied by this subsection (b). The revenue generated by the privilege tax levied by this subsection (b) shall be apportioned in accordance with the provisions of § 67-4-606.

(c) Notwithstanding the provisions of § 67-4-602, or any other law to the contrary, no other state privilege tax on litigation shall be levied or collected with respect to litigation in a municipal court; provided, however, that the provisions of this section shall not be construed to repeal existing authority for the levy of a municipal litigation tax, nor shall this section be construed to grant new authority for the levy of a municipal litigation tax.

(d) Any state privilege tax imposed pursuant to this section which the clerk of the court fails to collect and pay over to the department of revenue shall be a debt of the clerk. Any clerk of the court failing or refusing to collect and pay over to the department state litigation taxes imposed pursuant to this section shall be liable therefor and the clerk's official bondsman shall also be liable therefor, and the commissioner or the commissioner's delegate may collect the amount of the tax from the clerk or the clerk's official bondsman pursuant to title 67, chapter 1, part 14.

(3) For receiving and paying over all privilege taxes on litigation, the clerk of the court is entitled to a six and seventy-five hundredths percent (6.75%) commission. The total amount of commissions receivable by the clerk of the court during any fiscal year shall not be less than the amount received by such clerk during the fiscal year ending June 30, 2005; provided, that if the statewide amount of litigation tax collected during such fiscal year is less than the amount collected during the fiscal year ending June 30, 2005, then the total amount of commissions receivable by the clerk of the court for that fiscal year shall be reduced by a percentage equal to the percentage reduction in statewide litigation tax collections for that fiscal year.

(e) Notwithstanding any provision of law to the contrary, to the extent that a municipal court is exercising its duly conferred concurrent general sessions jurisdiction in a given case, the provisions of this section do not apply and litigation taxes in such case shall be levied and collected in the same manner as such taxes are levied and collected in the general sessions court.

(f) For receiving and paying over all privilege taxes on litigation, the clerk of a municipal court is entitled to a commission of two percent (2%).

To answer the question presented, two critical components of § 16-18-305(e) require a more in-depth analysis. As previously stated, § 16-18-305(e) provides: "[n]otwithstanding any provision of law to the contrary, to the extent that a municipal court is exercising its duly conferred concurrent general sessions jurisdiction in a given case, the provisions of this section do not apply and litigation taxes in such case shall be levied and collected in the same manner as such taxes are levied and collected in the general sessions court." One critical component is the statement "and litigation taxes in such case shall be levied and collected in the same manner as such taxes are levied and collected in the general sessions court." A second critical component is the phrase "the provisions of this section do not apply . . ."

The statement "and litigation taxes in such case shall be levied and collected in the same manner as such taxes are levied and collected in the general sessions court" defines the scope of what other provisions of the section (§ 16-18-305) do not apply when the municipal court is exercising its general sessions jurisdiction. That litigation taxes "shall be levied and collected in the same manner as such taxes are levied and collected in the general sessions court" does not mean that the same commission would be received by the municipal clerk of court as the general sessions clerk of court for receiving and paying over litigation taxes. Levying taxes in the same manner as a general sessions court results in the same tax being imposed. Thus, the amount the parties actually owe in taxes will be identical whether the parties are proceeding before a general sessions court or a municipal court exercising its concurrent general sessions jurisdiction. Collecting taxes in the same manner as a general sessions court means that the taxes imposed will actually be gathered using the same procedures as a general sessions court. Neither levying nor collecting litigation taxes in the same manner requires that the same commission be received by a clerk for collecting and paying over the levied taxes.

This understanding of the terms "levied" and "collected" is consistent with their usage throughout § 16-18-305. For example, within § 16-18-305, the term collection does not include paying into the state treasury or paying to the Department of Revenue, allocating litigation taxes, or apportioning litigation taxes. Tenn. Code Ann. §§ 16-18-305(a), (b), (d). This narrows the potential meaning of the term collection. Similarly, in another section of the Municipal Court Reform Act of 2004,² the legislature refers to costs being "assessed, collected and distributed in the same manner as such costs are assessed, collected and distributed in the court of general sessions."

² Pursuant to Tenn. Code Ann. § 16-18-301(a), the title of this part of the Code, which is codified as § 16-18-301 through § 16-18-311, is identified as the Municipal Court Reform Act of 2004.

Tenn. Code Ann. § 16-18-304 (b). That the legislature seemingly viewed distribution as distinct from collection distribution in the previous section of the same Act further bolsters the view that the term “collection” in § 16-18-305(e) is not so expansive as to include retaining the same commission for receiving and paying over litigation taxes. Simply stated, the requirement that “litigation taxes in such case shall be levied and collected in the same manner as such taxes are levied and collected in the general sessions court” does not create an exception to the commission percentage established by § 16-18-305(f).

In addition to the terms “levying” and “collecting” being too narrow to include the commission percentage retained under § 16-18-305 for collecting the levied taxes, the chronology of amendments to § 8-21-401 and § 16-18-305 also supports the conclusion that § 16-18-305(e) does not create an exception to § 16-18-305(f). The commission provision (§ 16-18-305(f)) was an amendment enacted approximately one year after the passage of the other section provisions including § 16-18-305(e). *See* 2004 Tenn. Pub. Ch. 914; 2005 Tenn. Pub. Ch. 429. Thus, when § 16-18-305(e) was originally enacted, there was no § 16-18-305(f) from which to create an exception. The adoption of § 16-18-305(f) essentially amounted to moving former § 8-21-401(a)(6)(A)(vi), which authorized city clerks to charge for their services “for receiving and paying over all privilege taxes on litigation, two percent (2%) on the dollar,” to a chapter of the Code directly related to municipal courts. This predecessor commission provision was removed from § 8-21-401 by the same public act that added § 16-18-305(f). 2005 Tenn. Pub. Ch. 429. Section 16-18-305(e) certainly did not create an exception to the predecessor commission provision at § 8-21-401(a)(6)(A)(vi). There is little in the chronology of the amendments to suggest that the legislature intended in enacting § 16-18-305(e) to create an exception to the commission established by § 16-18-305(f), which was not even originally part of the section. Quite to the contrary, the amendment chronology further bolsters the view that § 16-18-305(e) does not create an exception to § 16-18-305(f).

The plain language of § 16-18-305(f) also suggests that this provision sets the only commission amount that a municipal clerk is entitled to receive. “For receiving and paying over *all* privilege taxes on litigation, the clerk of a municipal court is entitled to a commission of two percent (2%).” Tenn. Code Ann. § 16-18- 305(f) (emphasis added). Not all taxes are remitted to the Department of the Revenue; rather, the commission is subtracted from what is remitted. *See* Tennessee Department of Revenue Litigation Tax Return PRV 401. Thus, the use of “all” appears to refer to the commission on all privilege taxes on litigation, which would include litigation taxes in cases where the municipal court is exercising its general sessions jurisdiction.

With regard to the other critical component, “the provisions of this section do not apply . . . [.]” this phrase is insufficient to make § 8-21-401(h), rather than § 16-18-305(f), the applicable commission amount. Section 8-21-401(h) is not a default provision for municipal court clerk commissions that would automatically apply if the commission provided for in § 16-18-305(f) were rendered inapplicable by a municipal court exercising its general sessions jurisdiction. Section 8-21-401(h) establishes a clerk commission percentage that is higher than the 2% afforded by § 16-18-305(f). This higher percentage commission provision is set forth in § 8-21-401, which establishes fees in circuit and chancery courts, general session courts, juvenile courts, and criminal

cases in courts of record, which do not include municipal courts.³ Municipal court clerks are not among the clerks of court entitled to the higher commission percentage under § 8-21-401(h). A separate statutory provision, § 16-18-305(f), unambiguously sets forth the general rule as to the commission that municipal court clerks are entitled to receive. Furthermore, fees for municipal courts are not referenced in § 8-21-401, and lists of "all courts" affected by the provisions of the section do not include municipal courts. *See e.g.*, § 8-21-401(i) (listing "general sessions, juvenile, probate, circuit or chancery" but not municipal courts). Although § 8-21-401(h)(1) establishes a commission percentage for clerks on taxes on litigation, it does not apply to municipal clerks' commissions. Accordingly, the first critical component of § 16-18-305(e), "the provisions of this section do not apply . . .[,]" is insufficient to convert § 8-21-401(h) into the applicable commission percentage.

Simply stated, § 16-18-305(e) does not create an exception to § 16-18-305(f). Rather, for collecting and paying over litigation taxes on cases heard under the municipal court's concurrent general sessions jurisdiction, a municipal court clerk is entitled to receive a commission of 2% under § 16-18-305(f).

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³ "It is generally recognized in the state of Tennessee that general sessions courts and municipal courts are not courts of record." Tenn. Op. Atty. Gen. No. 03-043 (April 15, 2003).