

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

**May 6, 2015**

**Opinion No. 15-44**

**Disclosure of Returns and Tax Information to Officials of Local Government**

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**Question 1**

Assuming that a city is located half in County A and half in County B, may the Department of Revenue disclose to the city tax information pertaining to state and local Tennessee sales and use tax taxpayers located in County A and County B, but not in the city?

**Opinion 1**

No. As a general rule, information concerning taxpayers located outside the city will not assist city officials in ensuring that proper local taxes are being paid and, thus, the exception contained in Tenn. Code Ann. § 67-1-1704(d) does not apply.

**Question 2**

May the Department disclose to the city tax information pertaining to Tennessee state and municipal business tax taxpayers located in County A and County B, but not in the city?

**Opinion 2**

No.

**Question 3**

May the Department disclose to the city tax information pertaining to Tennessee Hall income tax taxpayers located in County A and County B, but not in the city?

**Opinion 3**

No.

**Question 4**

Assuming that County C borders County D, County E, and County F, may the Department disclose to County C tax information pertaining to state and local Tennessee sales and use tax taxpayers located in County D, County E, and County F?

**Opinion 4**

No. As a general rule, information concerning taxpayers located outside County C will not assist that county’s officials in ensuring that proper local taxes are being paid and, thus, the exception contained in Tenn. Code Ann. § 67-1-1704(d) does not apply.

**Question 5**

May the Department disclose to County C tax information pertaining to Tennessee state and municipal business tax taxpayers located in County D, County E, and County F?

**Opinion 5**

No.

**Question 6**

May the Department disclose to County C tax information pertaining to Tennessee Hall income tax taxpayers located in County D, County E, and County F?

**Opinion 6**

No.

**ANALYSIS**

Taxpayer confidentiality laws prevent officers and employees of the Department of Revenue from disclosing tax returns and tax information to third parties. Tenn. Code Ann. § 67-1-1702(a). “It is a Class E felony for any person who has, or had at any time, access to any return or tax information to disclose to any person, except as authorized by law, any such return or tax information.” Tenn. Code Ann. § 67-1-1709(a).

The laws broadly define “tax information” to include, *inter alia*,

a taxpayer’s identity, the nature, source, or amount of the taxpayer’s income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax collected, deficiencies, overassessments, or tax payments, . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by, the commissioner with respect to a return or with respect to the determination of the existence, or possible existence, of liability.

Tenn. Code Ann. § 67-1-1701(8).

Despite their broad prohibition on tax information disclosure, the taxpayer confidentiality laws contain certain exceptions. *See* Tenn. Code Ann. § 67-1-1704 (Disclosure for administrative purposes – Tax collection); § 67-1-1705 (Disclosure for tax enforcement); § 67-1-1706 (Disclosure

to parties in interest); and § 67-1-1707 (Disclosure for miscellaneous purposes). In particular, Tenn. Code Ann. § 67-1-1704(d) authorizes the Department to disclose, upon written request, returns and tax information “to duly authorized officials of a unit of local government of this state for the purpose of ascertaining whether proper local taxes are being paid.” This exception contains two basic requirements: the local officials’ request must be made in writing, and the request must be made for the purpose of determining whether taxpayers are properly paying local taxes. Local governmental officials who receive returns and tax information pursuant to this exception are governed by the provisions of Tenn. Code Ann. §§ 67-1-1701 to -1712 and are restricted from further disclosure of the information received.

Your request references several types of taxes that might motivate a request for information from local governmental officials, including state and local option sales taxes, business taxes, Hall income taxes, and personal property taxes. State sales taxes and Hall income taxes are purely state taxes and, thus, a local official’s desire to ensure that these taxes are being properly paid does not fit within the exception of Tenn. Code Ann. § 67-1-1704(d). *See* Tenn. Code Ann. § 67-2-103 (providing that the Hall income tax “is for state purposes only, and no county or municipality shall have power to levy the tax”);<sup>1</sup> Tenn. Code Ann. § 67-6-202(a) (levying sales tax to be “due the state” for the “privilege of engaging in the business of selling tangible personal property at retail in this state”). Similarly, with the exception of business taxes levied by municipalities that have elected to levy the tax, *see* Tenn. Code Ann. § 67-4-705, the business tax is now a state tax and not a local one. *See* Tenn. Code Ann. § 67-4-704(a) (levying a state tax on the privilege of “the making of sales by engaging in any vocation, occupation, business, or business activity enumerated” by statute). The exception contained in Tenn. Code Ann. § 67-1-1704(d) is designed to assist local officials in determining whether proper local taxes are being paid. The exception was not enacted for the purpose of ensuring that proper state taxes are being paid, which is the duty and responsibility of the Commissioner of Revenue and not local officials. *See* Tenn. Code Ann. §§ 4-3-1903(b)(1) & 67-1-102(b)(1).

Local option sales taxes, on the other hand, are local taxes that are levied by the counties and the incorporated cities and towns that have passed resolutions authorizing such taxes. *See* Tenn. Code Ann. §§ 67-6-701(b) & -702(a). Ad valorem taxes on real and personal property imposed by counties and municipalities also are local taxes. *See* Tenn. Code Ann. § 67-5-102(a)(1) (providing that “[f]or county general purposes, the various counties are authorized to levy an ad valorem tax upon all property subject to this form of taxation”); Tenn. Code Ann. § 67-5-103(a) (authorizing “[t]axes on property for municipal purposes”). And, as previously mentioned, the business tax may be considered a local tax if it is levied by a municipality that has adopted the tax. *See* Tenn. Code Ann. § 67-4-705. Under Tenn. Code Ann. § 67-1-1704(d), the Department may share returns and tax information with the local governments that impose these taxes to the extent that such information will assist local officials in determining whether proper local taxes are being paid.

Written requests for returns and tax information should be evaluated on a case-by-case basis. Generally, returns and tax information relative to taxpayers located outside a requesting city’s or county’s jurisdiction will not assist the local government in ensuring that proper local

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<sup>1</sup> Despite the fact that three-eighths of Hall income taxes collected are distributed to the respective cities and counties where the taxpayers reside, Tenn. Code Ann. § 67-2-119, the Hall income tax is a state tax only. Tenn. Code Ann. § 67-2-103.

taxes are being paid. For this reason, the answers to Questions 1 through 6 generally will be “no” because they all contemplate disclosing tax information relative to taxpayers in jurisdictions other than the requesting city or county. Of course, exceptions to the general rule could arise, such as when the Department’s records show that certain taxpayers located outside the requesting city or county own personal property within the city or county that is subject to taxation by that local government or when the records of the Department and the local government conflict as to the location of a particular taxpayer.

In any event, the tax information disclosed by the Department should not be any more comprehensive than that required to ensure that proper local taxes are being paid. A city or county might justifiably request information on business taxpayers located within its jurisdiction to the extent that such information aids city or county officials in ensuring that business taxpayers are reporting and paying ad valorem taxes on their tangible personal property. *See* Tenn. Code Ann. § 67-5-903(a). And, when the Department responds to such a request, the confidentiality exception contained in Tenn. Code Ann. § 67-1-1704(d) does not preclude the Department from relying on returns and tax information related to various types of state taxes. For example, the Department’s franchise and excise tax records, its business tax records, and its sales and use tax records all might have information that assists the city or county in identifying local businesses that should be paying ad valorem taxes on their tangible personal property.

The more difficult question arises when the request relates to taxes that are local in nature but that are administered by the Commissioner of Revenue. *See* Tenn. Code Ann. § 67-4-703 (authorizing commissioner to collect and administer municipal business taxes); Tenn. Code Ann. § 67-6-710 (authorizing commissioner to collect and administer local option sales taxes). A local government may have difficulty showing that it needs tax information to determine whether proper local option sales taxes or municipal business taxes are being paid when the Commissioner is the party charged with collecting and administering those taxes. *But see* Tenn. Code Ann. § 67-4-719 (authorizing commissioner “to enter into a contract with the county clerk, in the case of business taxes levied by the state, or the appropriate city official, in the case of business taxes levied by a municipality, for the collection of taxes that have become delinquent”). When responding to requests for tax information, therefore, the Department should carefully consider the particular local tax that the local government seeks to enforce, as well as the scope of the tax information that realistically would assist local governmental officials in ensuring that the local tax is being properly paid.

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