

STATE OF TENNESSEE

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Opinion No. 05-161

Implementation of Tennessee River Resort District Act, Chap. No. 212, 2005 Public Acts

QUESTIONS

1. Under Chapter 212 of the Public Acts of 2005, if an eligible county elects to become a Tennessee River resort district and a municipality that is eligible for the same election declines to make the election, resulting in the county receiving a percentage of actual sales tax collections within the non-electing municipality, does the municipality continue to receive the population-based allocation set out in Tenn. Code Ann. § 67-6-103(a)(3)(A)?

2. If an eligible county elects to become a Tennessee River resort district but contains a municipality that is ineligible to make the same election because it is not located within three miles of the river, does the ineligible municipality become part of the district, resulting in the county receiving a percentage of actual sales tax collections within the ineligible municipality? If so, does the ineligible municipality continue to receive the population-based allocation set out in Tenn. Code Ann. § 67-6-103(a)(3)(A)?

3. Can a club, hotel, motel or restaurant located more than three miles from the nearest bank of the Tennessee River, but within an area that is a Tennessee River resort district for sales taxes purposes, apply for a license to sell alcoholic beverages for consumption on the premises pursuant to this public chapter?

OPINIONS

1. Yes. An eligible municipality that does not elect Tennessee River resort district status is still entitled to receive its population-based distribution of the state sales tax.

2. Yes. If a county elects Tennessee River resort status, it is entitled to a percentage of sales taxes collected in the ineligible municipalities, and the ineligible municipalities may continue to receive their population-based distributions.

3. No. A club, hotel, motel or restaurant located within the boundaries of a Tennessee River resort district, but more than three (3) miles from the nearest bank of the river, may not apply for a license to sell alcoholic beverages on the premises pursuant to Chapter 212 of the Public Acts of 2005.

ANALYSIS

1. Ability of a non-electing, but eligible, municipality to continue to receive population-based distributions and effect on electing county

Section 2 of Chapter 212 of the Public Acts of 2005 in part amends Tenn. Code Ann. § 67-6-103 by, among other things, adding the following provisions:

(F)(i) A county ranking in the first quartile of county economic distress in the United States for fiscal year 2006 as determined pursuant to subdivision (a)(3)(F)(v) and bordering on, or crossed by, the Tennessee River, may elect to be a "Tennessee River resort district" for purposes of this chapter. A municipality within such county and located within three (3) miles of the nearest bank of the Tennessee River, may also elect to be a "Tennessee River resort district" for purposes of this chapter. Notwithstanding any other provision of law to the contrary, as an alternative to and in lieu of the allocation prescribed in subdivision (a)(3)(A), a Tennessee River resort district shall receive four and fifty-nine hundred twenty-five ten-thousandths percent (4.5925%) of the tax actually collected and remitted by dealers within the boundaries of such district. Any distribution made to a Tennessee River resort district pursuant to such election shall be earmarked and paid from the general fund. If, however, any such payment is made to a Tennessee River resort district pursuant to the election, the amount which would have been received by such district had the district not exercised the election shall be earmarked and allocated to the general fund;

(ii) Subject to the provisions of subdivision (iv), a county, or municipality within a county, described in subdivision (a)(3)(F)(i) may elect Tennessee River resort district status by adopting a resolution or ordinance approved by a two-thirds (2/3) vote of the legislative body of the jurisdiction. . . .

* * *

(iv) Tennessee River resort district status may be elected by both a county and a municipality within such county subject to the following provisions:

(a) If election occurs between January 1, 2006, and June 30, 2006, a municipality electing such status shall be entitled to the authorized percentage of tax actually collected and remitted by dealers within the boundaries of such municipality only. A county electing such

status shall be entitled to the authorized percentage of tax actually collected and remitted by dealers within the boundaries of such county; provided, however, that the county shall only be entitled to receive such revenue outside the jurisdiction of any municipality electing Tennessee River resort district status located in such county.

(b) If election occurs on and after July 1, 2006, a county electing such status prior to a non-electing municipality shall be entitled to the authorized percentage of tax actually collected and remitted by dealers within the boundaries of such county and within the boundaries of non-electing municipalities. No such non-electing municipality shall later elect such status; provided, that a non-electing municipality may elect such status prior to election of such status by the county in such event tax collections would be distributed in accordance with the provisions of subdivision (iv)(a).

Under the prior law, municipalities received 4.2462% of the total sales taxes collected by the state and apportioned to each municipality based on the municipality's population. Under the new law, a municipality or county meeting the conditions set forth in (F)(i) can elect to become a "Tennessee River resort district" (hereinafter sometimes referenced as "TRRD"). If a municipality elects to become a TRRD it will receive 4.5925% of the sales taxes actually collected in the municipality rather than the population-based distribution set out in Tenn Code Ann. § 67-6-103(a)(3)(A).

Under the prior law, counties did not receive any distribution of sales taxes collected by the state. Under the new law, an eligible county that elects to become a TRRD will receive 4.5925% of the sales taxes collected by the state within that county.¹ Because eligible counties that elect TRRD status will receive a distribution of state sales tax collections, money that they have never received before, and will not receive if they do not elect TRRD status, eligible counties have every incentive to elect TRRD status.²

The Act states that a county or municipality may elect to become a TRRD, and if a municipality elects TRRD status, "as an alternative to and in lieu of the allocation prescribed in

¹ The question of whether a county that elects TRRD status will receive a percentage of the sales taxes collected in the municipalities located within that county will be discussed further herein.

² The fiscal note does not address the fact that the counties that elect TRRD status will receive a distribution of sales taxes collected by the state. The fiscal note also only considers the effect of Wayne and Hardin counties, and their respective municipalities of Savannah and Clifton, electing TRRD status. However, according to the map published by the Commissioner of Economic and Community Development, as required by the Act, the counties of Benton, Decatur, Henry, Houston and Meigs are all eligible to elect TRRD, and some of those counties have municipalities that may be eligible. The failure of the fiscal note to address these matters makes the note of limited assistance in resolving the issues presented here.

subdivision (a)(3)(A), [the TRRD] shall receive . . . (4.5925%) of the tax actually collected and remitted by dealers within the boundaries of such district.” Thus, a municipality that elects TRRD status, and becomes a TRRD, will receive the 4.5925% distribution “as an alternative to and in lieu of” the population-based distribution. Only a TRRD receives the 4.5925% distribution “*as an alternative to and in lieu of*” the population-based distribution. A non-electing municipality does not become a TRRD and the “*as an alternative to and in lieu of*” language in the Act does not cut off the non-electing municipality’s entitlement to the population-based distribution prescribed in subdivision (a)(3)(A). In the absence of any language in the Act explicitly stating that an eligible, but non-electing, municipality in a county that elects TRRD status loses its population-based distribution, there is no basis for so construing the statute.

Additionally, the legislative history supports this construction of the Act. The legislative history establishes that the purpose of the Act is to give municipalities and counties the opportunity to promote local economic development by providing them with the option to elect an alternative distribution of state sales taxes. The history also shows that the legislative intent was to allow municipalities to elect the alternative scheme if it helps the city, but not if it harms the city. During the debate in the House State and Local Government Committee on April 19, 2005, in response to a question, the bill’s sponsor, Rep. Randy Rinks, stated that the bill was strictly permissive and that a municipality could opt into the Act if it helps the municipality, but the Act would not harm a municipality if it does not opt for TRRD status.

To construe the Act in such a way that if a county elects TRRD status, an eligible municipality within the county must either do so or lose all state-collected sales taxes is contrary to the plain language of the statute and the legislative intent. Accordingly, it is the opinion of this Office that the statute should be interpreted so that if an eligible municipality does not elect TRRD status, it is still entitled to receive its population-based distribution of state-collected sales taxes regardless of what the county does.

2. Ability of an ineligible municipality to continue to receive its population-based distribution and effect on electing county

The Act provides at section (F)(iv)(a) that if a county elects TRRD status between January 1, 2006, and June 30, 2006, the county electing TRRD status shall be entitled to 4.5925% of sales taxes “actually collected and remitted by dealers within the boundaries of such county; provided, however, that *the county shall only be entitled to receive such revenue outside the jurisdiction of any municipality electing Tennessee River resort district status located in such county.*” Under this provision, if a county elects TRRD status between January 1, 2006 and June 30, 2006, it is entitled to receive 4.5925% of the state sales taxes collected within the boundaries of the county.³ The only exception to a county’s entitlement to 4.5925% of all sales taxes collected in

³ While this language is somewhat at odds with the language in (F)(i) stating that a TRRD “shall receive . . . (4.5925%) of the tax actually collected and remitted by dealers within the boundaries of such district,” the language in (F)(i) is the more general, describing the general nature of the Act, whereas the language in (F)(iv)(a) and (b) addresses the specific revenues a TRRD is entitled to receive. Accordingly,

the county is that a county is not entitled to a percentage of sales taxes that are collected in municipalities electing TRRD status.

Sales taxes collected in a non-eligible municipality would not be taxes collected within “the jurisdiction of any municipality electing Tennessee River resort district status,” so such tax would not be excluded by that provision. Nonetheless, taxes collected in an ineligible municipality would be taxes collected “within the boundaries of such county,” because if the phrase “within the boundaries of such county” did not include incorporated municipalities, the statute would not need to exclude sales taxes collected in incorporated municipalities that elect TRRD status.

If a county elects TRRD status between January 1, 2006 and June 30, 2006, it is entitled to receive 4.5925% of the state sales taxes collected within the boundaries of the county, including ineligible municipalities. The only limitation on the sales taxes which a county can receive is that a county may not receive a percentage of sales taxes collected within the boundaries of an eligible municipality that elects TRRD status. Sales taxes collected in an ineligible municipality are not sales taxes collected within the jurisdiction of any municipality electing TRRD status. Accordingly, a county electing TRRD status is entitled to 4.5925% of sales tax revenue collected in ineligible municipalities under provision (a).

Under provision (b), if a county elects TRRD status on or after July 1, 2006, the county is entitled to receive a percentage of state sales taxes actually collected and remitted by “dealers within the boundaries of such county and within the boundaries of non-electing municipalities.” Having established for the purposes of provision (a) that “within the boundaries of such county” includes the incorporated municipalities within the county, absent language to the contrary, there is no reason to interpret it as having a different meaning for the purposes of provision (b).

The second part of the question is whether the ineligible municipalities will continue to receive their population-based distribution of state sales taxes if the county is entitled to a percentage of the sales taxes collected in those municipalities — and the answer is yes. An ineligible municipality is not a TRRD, in the same way that an eligible, but non-electing, municipality is not a TRRD, and as a result, the “as an alternative to and in lieu of” language is inapplicable and does not cut off an ineligible municipality’s entitlement to the population-based distribution.

It may seem anomalous that under this reading of the statute, distributions attributable to non-electing and ineligible municipalities will be made twice, once to the municipality itself, and again through its inclusion in the share distribution to the county. This extra distribution will be subsidized by the general fund in accordance with section F(i) of the new law. But a contrary reading, to the effect that the county’s election of TRRD status is in lieu of the normal distribution to its non-electing and ineligible municipalities, would produce the even more peculiar result that those municipalities would lose all of their share of state sales tax. Such an application of the Act,

the language in (F)(iv)(a) and (b) is controlling for this question, because the specific controls over the more general. *See Washington v. Robertson County*, 29 S.W.3d 466, 475 (Tenn. 2000).

as discussed above, is not supported by a careful reading of its language or by the legislative history, which indicates that no municipality will be harmed. Granted, neither of these results is entirely satisfying. But a satisfying construction, which would leave the non-electing and ineligible municipalities unaffected and allocate to the county the specified percentage collections from its unincorporated areas only, finds no support in the language of the statute, and it is perfectly clear that all Tennessee municipalities are “within the boundaries” of one or more counties. To read “within the boundaries of such county” as referring only to unincorporated areas would unduly warp that phrase and run counter to the last sentence of § F(iv)(a), which such a construction would render superfluous. It is not the role of this Office, or even of the courts, to rewrite, reform or warp the language used by the Legislature in order to reach what we deem to be a “better” result, when the statutory language is clear on its face.

Accordingly, it is the opinion of this Office that a county that elects TRRD status is entitled to receive a percentage of the state sales taxes collected in the incorporated municipalities within the county that are ineligible to elect TRRD status and that those ineligible municipalities are entitled to continue to receive their population-based distributions.

3. Ability of a club, hotel, motel or restaurant located within a Tennessee River resort district, but more than three (3) miles from the river, to sell liquor by the drink

Chapter 212 of the Public Acts of 2005 provides in pertinent part:

SECTION 3. Tennessee Code Annotated, Section 57-4-101(a), is amended by deleting the language "to be consumed on the premises of any:" and by substituting instead the language "to be consumed on the premises of, or within the boundaries of, any:".

SECTION 4. Tennessee Code Annotated, Section 57-4-101(a), is amended by adding the following language as a new, appropriately designated subdivision:

() Tennessee River resort district as defined in § 57-4-102, subject to the further provisions of this chapter other than § 57-4-103;

SECTION 5. Tennessee Code Annotated, Section 57-4-102, is amended by adding the following language as a new, appropriately designated subdivision:

() "Tennessee River resort district" means a club, hotel, motel or restaurant located within a jurisdiction which has elected Tennessee River resort district status pursuant to the provisions of § 67-6-

103(a)(3)(F); provided, that for the purposes of this chapter such district shall only extend inland for three (3) miles from the nearest bank of the Tennessee River.

Sections 3 and 4 of Chapter 212 amend Tenn. Code Ann. §§ 54-4-101 and 54-4-102 to permit the sale and consumption of wine, alcoholic beverages and beer “on the premises of, or within the boundaries of, any” “Tennessee River resort district,” as that term is defined in Tenn. Code Ann. § 57-4-102. Section 4 of the bill sets forth the definition of “Tennessee River resort district” as follows:

“Tennessee River resort district” means a club, hotel, motel or restaurant located within a jurisdiction which has elected Tennessee River resort district status pursuant to the provisions of § 67-6-103(a)(3)(F); *provided, that for the purposes of this chapter such district shall only extend inland for three (3) miles from the nearest bank of the Tennessee River. . . .*

Chapter 212, Public Acts of 2005 [emphasis added].

Under the definition of “Tennessee River resort district” provided in Chapter 4 of Title 57, for the purpose of selling liquor by the drink, a Tennessee River resort district only extends inland three miles from the nearest bank of the river. While it is possible to be within the boundary of a TRRD, as that term is defined in Title 67, and be more than three miles from the nearest bank of the Tennessee River, for the purposes of selling liquor by the drink, such a location would not be within a Tennessee River resort district as that term is defined in Chapter 4 of Title 57. The specific definition contained in Title 57 is controlling for the purpose of selling alcohol for consumption on the premises, because the specific definition controls over the more general definition. *See Washington v. Robertson County*, 29 S.W.3d 466, 475 (Tenn. 2000). Therefore, it is the opinion of this Office that a club, hotel, motel or restaurant located more than three miles from the nearest

bank of the Tennessee River, even if it is within a TRRD for sales tax purposes, may not apply for a license to sell alcoholic beverages for consumption on the premises pursuant to the Act.

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