

HOUSE BILL 1883

By McCormick

AN ACT to amend Tennessee Code Annotated, Section 50-6-904 and Title 67, Chapter 4, Part 7, relative to privilege taxes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, Part 7, is amended by adding the following as a new section:

67-4-731.

(a) Notwithstanding § 67-4-715, § 67-4-723, or any other law to the contrary, in any county having a population in excess of three hundred thousand (300,000), according to the 2000 federal census or any subsequent federal census, the county clerk, or the city official designated as the collector of the tax by city charter or ordinance in the case of taxes owed to a municipality, shall act as the collector and administrator of the taxes, county or incorporated municipality and state, levied by this part, as provided in this section; provided, however, that the taxes paid by persons described in § 67-4-708(5) shall be collected and administered by the commissioner as provided in §§ 67-4-706 and 67-4-715. This part shall continue to apply to taxes collected and administered pursuant to this section unless such provisions conflict with this section, in which case this section shall prevail.

(b)

(1) In permitting or allowing credits to be taken in accordance with § 67-4-713, the county clerk or designated city official shall use county or incorporated municipality records to determine if personal property taxes claimed as a credit have actually been paid. No credit shall be disallowed by any county clerk or designated city official solely as a result of the taxpayer's failure to produce a

written receipt or document evidencing payment from the applicable county or incorporated municipality; provided, however, that a copy of the receipt showing payment of personal property tax has been made shall be submitted prior to allowing the credit authorized by § 67-4-713(a)(3).

(2)

(A) The amount of any credit allowable under § 67-4-713, but not permitted or allowed by any county clerk or city official, shall be refunded by the county clerk or city official to each person to whom the credit has not been properly permitted or allowed.

(B) It is the duty of the county clerk or city official to furnish proper claim forms and to refund to each person the amount of any credit that has been disallowed.

(C) If the county clerk or designated city official fails to make a refund in accordance with this subdivision (b)(2) within six (6) months of the delinquency date for any person taxable under this part, then the commissioner shall notify the state treasurer of the amount of refunds not made by the county clerk or city official.

(D) Upon receiving notification from the commissioner, the state treasurer shall withhold and transfer to an appropriate account from any amount due the local governmental unit by the state a sufficient amount to cover the amount of refunds not made by the county clerk or designated city official.

(E) From the amounts withheld by the state treasurer, the commissioner shall then refund, in accordance with prescribed procedures, to each person the amount for which each person has not

been allowed credit and has not been refunded by the county clerk or designated city official.

(F) Any action for refund under this section shall comply with the provisions of chapter 1, part 9 of this title.

(c)

(1) The taxes levied by this part that are collected and administered as provided in this section shall be due and payable annually on the dates prescribed in § 67-4-715(a).

(2) For the purpose of ascertaining the amount of tax payable under this part to counties and cities, it is the duty of all persons taxable under this part to transmit to the county clerk, in the case of taxes owed to the county, and to the city official designated as the collector of tax by city charter or ordinance, upon the form prescribed by the commissioner, a return showing the gross receipts from all sales taxable under this part during the period covered by the return. The return shall also include all the applicable deductions or credits specifically allowed under this part and any other information required by the commissioner to determine the amount of tax properly due. The returns shall be transmitted to the county clerk or designated city official on or before the dates prescribed in § 67-4-715(b).

(3) In all cases, the payment of the tax shall accompany the return and failure to remit the tax shall cause the tax to become delinquent.

(4) Each taxpayer who operates more than one (1) place of business in a city or county shall, upon request, be provided forms prescribed by the commissioner and furnished by the county clerk or designated city official to

permit the taxpayer to file a consolidated tax return for all business locations in a single taxing jurisdiction.

(5) All forms furnished to the taxpayers by the county clerk or designated city official shall contain, or be accompanied by, instructions prescribed by the commissioner indicating in detail the steps to be taken by the taxpayer in completing the form or forms.

(6) The failure of any person to secure the forms referenced in this subsection (c) shall not relieve the person from the payment of the tax at the time and in the manner provided in this section.

(d) The county clerk or designated city official may, for good cause shown, grant an extension in the manner provided and under the same conditions, including payment of interest, as provided in § 67-4-718.

(e)

(1) When any person fails to file any form, statement, report or return required to be filed with the county clerk or city official, after being given written notice of the tax, the county clerk or designated city official is authorized to determine the tax liability of the person from whatever source of information may be available.

(2) An assessment made by the county clerk or designated city official pursuant to this authority shall be binding as if made upon the sworn statement, report or return of the person liable for the payment of the tax; and any person against whom an assessment is lawfully made shall subsequently be estopped to dispute the accuracy of the tax except upon filing a true and accurate return, together with any supporting evidence as the county clerk or city official may require, indicating precisely the amount of the alleged inaccuracy.

(f)

(1)

(A) In addition to all other available methods of collection, the county clerk, in the case of taxes owed the county, and the designated city official, in cases of taxes owed to a municipality under this part, may retain, by written contract, an attorney or agent to collect or to institute proceedings to collect delinquent business taxes, interest and penalties, upon any terms as the county clerk or city official deems appropriate. The costs of collection, including, but not limited to, the court costs and the reasonable compensation for the attorney or agent, as approved by the court, are the responsibility of the delinquent taxpayer. The court shall disburse any taxes collected to the appropriate county clerk or designated city official, and the county clerk or city official shall disburse the taxes according to the disbursement formula established by law.

(B) The county clerk or designated city official shall notify the taxpayer by mail to the taxpayer's last known address fifteen (15) days prior to turning delinquent taxes over to an attorney or agent retained for collection or instituting proceedings to collect the taxes. The notice shall state that the tax is delinquent, and if not paid within ten (10) days will be subject to additional costs of collection including court costs. The notice shall also include the rate of penalty and interest.

(C) If the county clerk or city official retains an attorney or agent to assist in the collection of taxes imposed by this part, the attorney or agent is deemed to be a tax collector for the purpose of having access to

all statements, reports or returns of a taxpayer and is subject to subdivision (h)(2).

(D) This subsection (f) is local in effect and shall be implemented in a particular municipality or county only upon the adoption of a resolution by a two-thirds (2/3) vote of the governing body of the municipality or county.

(2) The county clerk in the case of taxes owed a county, and the designated city official in the case of taxes owed a municipality, are empowered and it is their duty when any tax becomes delinquent under this part, to issue a distress warrant for the collection of tax, interest and penalty from each delinquent taxpayer, in accordance with the procedures used by other county officials in the collection of delinquent personal property taxes as prescribed in § 67-4-215 or other relevant statutes.

(3) If the county clerk or designated city official fails to collect the tax, interest and penalty from any delinquent taxpayer, then it shall be the duty of the commissioner, at any time after the tax has become delinquent for more than six (6) months, to collect the tax, interest and penalty from the delinquent taxpayer in accordance with the procedure specified in chapter 1, part 14 of this title; provided, however, that the county clerk or designated city official may collect the tax at any time before the commissioner notifies the taxpayer of an audit of the taxpayer or takes any other action authorized under chapter 1, part 14 of this title to collect the tax.

(4) Any tax, interest and penalty collected from a delinquent taxpayer by the commissioner under chapter 1, part 14 of this title shall be allocated to the state and paid into the state treasury.

(5)

(A) Any incorporated municipality or metropolitan government that has levied the taxes authorized by this part may, by resolution of its governing body, designate the department as its agent in the administration and collection of the taxes; and if the department determines that the administration and collection of local business taxes are feasible, it may agree to act as the agent, subject to any rules as the department may promulgate. The rules shall include a schedule showing when taxes shall be remitted to the incorporated municipality or metropolitan government and the cost of collection as determined by the commissioner.

(B) Any incorporated municipality or metropolitan government that has designated the department as its agent in the administration and collection of the taxes authorized by this part may, by resolution of its governing body, terminate it any time after sixty (60) days from the passage of the resolution. The agency can resume local administration and collection of the taxes levied by this part.

(g) The county clerk or designated city official may, under the same criteria and requirements as used by the commissioner of revenue, waive the payment of penalty on any tax due.

(h)

(1)

(A) It is the duty of every person required to pay a tax under this part to keep and preserve records showing the gross amount of sales tax owed to the state, and the amount of the person's gross receipts taxable

under this part; and any other books of account as may be necessary to determine the amount of tax due under this part, and all such books and records shall be open to inspection at all reasonable hours to the commissioner, county clerk or designated city official or any person duly authorized by the commissioner or such officials.

(B) All such books and records shall be maintained by the taxpayer for a period of three (3) years from December 31 of the year in which the associated return required by this part was filed.

(2)

(A) All statements, reports or returns of taxpayers and all audits of their records and files made as authorized by this part and this section are confidential. Additionally, it is unlawful for anyone to make known in any manner any information contained in the statements, reports or returns except as follows:

(i) To the taxpayer personally;

(ii) To an attorney or other agent duly authorized by the taxpayer;

(iii) To employees of the department or of the other tax collectors for the purpose of checking, comparing and correcting returns;

(iv) To any collection, regulatory or inspection agency of this state, the United States, or another state; or

(v) In accordance with proper judicial order or as otherwise required by law.



(B) A violation of this subdivision (h)(2) is a Class A misdemeanor.

(3) Notwithstanding any other law to the contrary, the name and address of any present or former owner or operator of any trade or business as appearing on any business or occupation license or application for a license is a public record open for public inspection within the meaning of title 10, chapter 7, part 5, and such record is not confidential information.

(i)

(1) Upon receipt of the prescribed application and payment of fifteen dollars (\$15.00), together with any other information reasonably required, it shall be the duty of the county clerk, in the case of taxpayers located within the county, and the designated city official, in the case of taxpayers located within a municipality, to issue a license to the taxpayer. The license shall be issued at the time of registration under § 67-4-706.

(2) In addition to the initial license issued under subdivision (i)(1), the issuing county clerk or city official shall renew the license upon the taxpayer's compliance with subsection (c). There shall be no fee charged for the renewal of an existing license.

(3) Notwithstanding § 8-21-701, no additional fee shall be charged to the taxpayer for the filing of the application or issuance of the license provided for in this section.

(4) It shall be the duty of each taxpayer to exhibit the license so received.

(j)

(1)

(A) Each county clerk and designated city official shall be required to pay the commissioner fifteen percent (15%) of the total amount collected under this part. This subdivision (j)(1)(A) does not apply to any amount collected by a county clerk or city official pursuant to:

(i) A local government field audit and related collection effort; or

(ii) Increased revenues directly attributable to the amendments to former § 67-4-709(b) by Chapter 856, § 9(a) of the Public Acts of 2002.

(B) Each county clerk and designated city official shall pay the commissioner all increased revenues directly attributable to the amendments to former § 67-4-709(b) by Chapter 856, § 9(a) of the Public Acts of 2002.

(2)

(A) Each county clerk and designated city official shall maintain a complete record of collections made under this part and shall report the collections to the commissioner, upon forms prescribed by the commissioner, on each May 31, for the period from June 1 through May 31.

(B) The commissioner may:

(i) Examine the records of a county clerk or city official under chapter 1, part 14 of this title, to ensure that the proper amount of tax is collected and that the total amount of tax collected is paid to the department; and

(ii) Collect any tax from a county clerk or city official or the surety of the county clerk or official under chapter 1, part 14 of this title when an examination of the records of the county clerk or city official reflects that tax due the state has been collected by the county clerk or city official but not paid to the department.

(3) Each county clerk and designated city official shall make any report or payment required by this subsection (j) within twenty (20) days after the due date of the required report or payment.

(4)

(A) If each report is not filed as required and payments not made as specified in this subsection (j), interest and penalty shall be imposed as provided by chapter 1, part 8 of this title.

(B) The commissioner may, under § 67-1-803, waive the penalty provided for in subdivision (j)(4)(A).

(k) Any county clerk or designated city official responsible for the collection and recording of taxes levied under this part, for collecting and recording amounts from the business tax may charge a fee of five dollars (\$5.00); provided, however that no such fee shall be charged if:

(A) A person is paying the annual minimum tax under this part; and

(B) The tax is paid on the same date as the respective and related return is filed.

(m) Settlement upon selling or quitting a business shall be governed by § 67-4-721.

SECTION 2. Tennessee Code Annotated, Section 67-4-707, is amended by deleting the language “may be called by the state” and by substituting instead the language “shall be for the use and benefit of the taxing unit”.

SECTION 3. Tennessee Code Annotated, Section 67-4-710(b), is amended by adding the following language at the end of the subsection:

or § 67-4-731, whichever is applicable

SECTION 4. Tennessee Code Annotated, Section 67-4-711(a)(8), is amended by deleting subdivision (E) in its entirety and by substituting instead the following language:

(i) Except as provided in subdivision (a)(8)(E)(ii), when the amount of bad debt exceeds the amount of gross receipts for the period during which the bad debt is written off, the taxpayer may file a refund claim and receive a refund pursuant to § 67-1-1802. The statute of limitations for filing the claim shall be measured from the due date of the return on which the bad debt could first be claimed.

(ii) When the amount of bad debt exceeds the amount of gross receipts for the period during which the bad debt is written off, and the taxpayer is subject to § 67-4-731, the taxpayer may file a claim under chapter 1, part 9 of this title.

SECTION 5. Tennessee Code Annotated, Section 67-4-721(b), is amended by inserting the language “, or county clerk, or designated city official, whichever if applicable” immediately following the language “commissioner”.

SECTION 6. Tennessee Code Annotated, Section 67-4-721(c), is amended by deleting subdivision (3) and by substituting instead the following language:

(3) The purchaser shall have no liability for the taxes, interest or penalties, if the department, county clerk or designated city official, whichever if applicable, releases the former owner, owners or assigns from the original liability for the taxes, interest or

penalty through payment of the amount due and settlement with the department, county clerk or city official.

SECTION 7. Tennessee Code Annotated, Section 67-4-721(d), is amended by deleting the subsection in its entirety and by substituting instead the following:

(d) A purchaser who, in good faith and without knowledge of any false statement in the affidavit, receives from the seller at the time of the purchase an affidavit stating under oath of the penalties of perjury the amount of the taxes, interest and penalty due and unpaid by the seller to the department, county clerk or designated city official, whichever if applicable, through the date of the purchase, or a statement that there are no due and unpaid taxes, interest and penalty, who in good faith withholds and sets aside from the purchase money to be paid to the seller an amount sufficient to pay the amount of the taxes, interest and penalty shown to be due and unpaid in the seller's affidavit, and who tenders a copy of the seller's affidavit by registered or certified mail or by personal service to the tax enforcement division of the department, county clerk or city official, whichever if applicable, shall be entitled to a release from the commissioner, county clerk or city official, from any liability, in excess of that shown on the affidavit, for the payment of the taxes, interest and penalty accrued and unpaid on account of the operation of the business by any former owner or assigns, unless the commissioner, or county clerk or city official, notifies the purchaser of the correct tax liability at the return address provided by the purchaser within fifteen (15) days of receipt of the affidavit.

SECTION 8. Tennessee Code Annotated, Section 67-4-721(e)(3), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(3) Succeeding transfers by the same licensee, within the same annual taxable period, shall submit a final return and payment within fifteen (15) days to the commissioner, or county clerk, in the case of taxes owed to the county, or designated

city official, in the case of taxes owed the municipality or incorporated metropolitan government. In addition, the licensee shall be required to obtain a new business license for the new location as set forth in § 67-4-723 or § 67-4-731.

SECTION 9. Tennessee Code Annotated, Section 50-6-904(a)(2)(H), is amended by deleting the language "pursuant to § 67-4-723" and by substituting instead the language "pursuant to § 67-4-723 or § 67-4-731".

SECTION 10. For the purpose of promulgating rules and publishing forms, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2012, the public welfare requiring it.