

STATE OF TENNESSEE
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Opinion No. 04-116

Imposition of Civil Penalty for Violation of Hamilton County Hotel-Motel Tax Act

QUESTION

Whether court action is required to impose a civil penalty for failure to collect or remit the hotel-motel occupancy privilege tax levied in Hamilton County pursuant to Chapter 905, 1980 Public Acts, as amended by Chapter 700, 2004 Public Acts?

OPINION

No. Court action is not required to impose a civil penalty for failure to collect or remit the hotel-motel occupancy privilege tax. The county trustee, as collector of the tax, should impose and collect the appropriate civil penalties as authorized by Chapter 700, 2004 Public Acts.

ANALYSIS

Public Chapter 700 of the 2004 Acts imposes a civil penalty of not more than fifty dollars (\$50.00) for each failure to collect or remit a hotel-motel occupancy privilege tax. This chapter amends Chapter 905 of the Public Acts of 1980 which established the hotel-motel occupancy tax for counties having a population of not less than 254,000 nor more than 255,000 (effectively, Hamilton County). Under Chapter 905 as originally enacted, each occurrence of willful refusal of an operator to collect or remit the tax or willful refusal of a transient to pay the tax imposed was declared to be unlawful and was punishable upon conviction by a fine not in excess of fifty dollars (\$50.00). The 2004 Amendment changed the penalty from criminal to civil by eliminating the criminal language from the law. For the former criminal language in section 7 of Chapter 905, Chapter 700 substituted the following:

Each occurrence of knowing refusal of an operator to collect or remit the tax or knowing refusal of a transient to pay the tax imposed is a separate violation of this act and may result in the imposition of a civil penalty, to be imposed separately for each violation, not to exceed fifty dollars (\$50.00). As used in this section, "each occurrence" means each day.

Chapter 700 also amended Chapter 905 by adding the following language as section 7(b):

Nothing in this section shall be construed to prevent the trustee or other authorized collector of the tax from pursuing any civil remedy available to the collector by law, including issuing distress warrants and the seizure of assets, to collect any taxes due or delinquent under this act.

The previous language of Chapter 905 contemplated court action before a penalty could be imposed. Chapter 905 originally stated that failure to comply with the law “shall be punishable upon conviction.” The 2004 amendment, however, removes the criminal language and replaces it with civil penalty language that does not require a conviction and thus does not require court action. Section 7, Chapter 905, expressly declares that “interest and penalty shall become a part of the tax,” thereby establishing in the law the long held principle that penalties and interest are assessed and collected in the same manner as a tax “as if they were a part of the tax imposed.” *Combustion Engineering Company Inc. v. McFarland*, 349 S.W. 2d 138, 139 (Tenn. 1961). If the penalty is considered part of the tax, then there is no reason why the trustee would collect the penalty in any way other than the way in which the tax is collected.

The language in sections 9 and 10 of Chapter 905 provides that the trustee is charged with collecting the tax and is given all the powers that the county clerks have to enforce payment of the tax. In accordance with the language of Chapter 905 itself as well as general principles of tax law, these powers of the trustee extend to collection of the associated penalties as an integral part of the tax. The second portion of the amendment, which specifically negates any limit on the civil remedies available to the trustee, also buttresses the conclusion that the trustee is authorized to collect the penalty along with the tax without any court action.

The Legislature has chosen not to require a criminal conviction against the transient or operator who has failed to collect or remit taxes; rather, the Legislature has chosen simply to impose a civil penalty which is collectable by the trustee in the same manner as the tax without any assistance from the court.

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