

EXHIBIT C

LEGAL DEPARTMENT MEMORANDUM
04-44

DATE: August 12, 2004

TO: Honorable Mayor and Members of City Council

FROM: Kenneth R. Krushenski, City Attorney

SUBJECT: SALES TAX ORDINANCE (ANDERSON COUNTY PRIORITY SALES TAX ISSUES

The City Attorney's office has prepared this memorandum at the request of the Mayor in an effort to provide Council with an opinion on the status of the City's sales tax ordinance should Anderson County elect to adopt a similar sales tax increase and preclude the City's ordinance.


The Tennessee Local Option Revenue Act is set out in T.C.A. §67-6-701 et seq. T.C.A. §67-6-703 establishes that the county sales tax levy takes priority over a city sales tax enactment. A county may either act to preempt a city ordinance or the county may elect to take subsequent action by resolution to enact its own increase after a city's increase has been approved by its voters.

Additionally, T.C.A. §67-6-706(b)(1) sets out that:

(b)(1) If a county legislative body adopts a resolution to levy the tax at the same rate that is operative in a city or town in the county, the election under this section to determine whether the county tax is to be operative shall be open only to the voters residing outside of such city or town. If the county tax is at a higher rate of the city or town tax, the election shall also be open to the voters of the city or town.

If the county's referendum fails, the county must wait six (6) months from the date of the election to hold another referendum. This time limit is contained in T.C.A. §67-6-706(b)(2)(A).

If any Council member needs clarification or additional information please contact the Legal Department. Attached are the pertinent sections of the Tennessee Local Option Revenue Act for review.



Kenneth R. Krushenski

Attachment

§ 1; 1971, ch. 55, § 1; 1971, ch. 92, § 1; 1971, ch. 186, § 1; T.C.A. (orig. ed.), § 67-3041; Acts 1989, ch. 591, § 113.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

Cited: *Nasco, Inc. v. Jackson*, 748 S.W.2d 193 (Tenn. 1988).

Collateral References. Sales and use taxes ⇨ 371.1201-1209.

67-6-608. Registration using central, electronic registration system [Effective July 1, 2004. See the Compiler's Notes.] — (a) Notwithstanding the provisions of §§ 67-6-601 and 67-6-602, a person may register using the central, electronic registration system provided by member states of the Streamlined Sales and Use Tax Agreement; and furthermore the commissioner shall permit a person to register through an agent under procedures adopted by member states of the Streamlined Sales and Use Tax Agreement.

(b) By registering using the central, electronic system, the seller agrees to collect and remit sales and use taxes for all taxable sales sourced to Tennessee. If Tennessee ceases to be a member of the agreement, the seller remains liable to remit all taxes previously collected on sales sourced to this state. [Acts 2003, ch. 357, § 63.]

Compiler's Notes. Acts 2003, ch. 357, § 82 provided that the general assembly finds and determines that the Streamlined Sales Tax Agreement is necessary to stop the loss of sales tax revenue due to the rapid growth of Internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate undue burden on interstate commerce; and that the act is necessary in order for Tennessee to be in compliance with the Streamlined Sales Tax Agreement. Under the Streamlined Sales Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. Therefore, the provisions of the act shall become effective either on the effective date specified for that

section or, if no effective date is listed for the section, then on the first day of the second quarter following the effective date of the Streamlined Sales Tax Agreement, the public welfare requiring it; provided, that in no event shall any provision of this act take effect prior to July 1, 2004, the public welfare requiring it.

Acts 2003, ch. 357, § 83 provided that no provision of the act is intended to nor shall it be construed so as to modify, amend or repeal any provisions of § 67-6-510, the provisions of which shall be controlling with respect to the allowance of the credit for the used article taken in trade so that the tax levied by chapter 6 of this title shall continue to be paid only on the "net difference" as that term is used in subsections (a) and (b) of § 67-6-510.

Effective Dates. Acts 2003, ch. 357, § 82. July 1, 2004.

Collateral References. Sales and use taxes ⇨ 371.1201-1209.

PART 7—LOCAL OPTION REVENUE ACT

67-6-701. Short title — Nature of tax. — (a) This part shall be known and may be cited as the "1963 Local Option Revenue Act."

(b) The tax authorized by this part is and shall be in addition to all other taxes which counties, cities and towns are now authorized to levy, whether levied in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes now authorized to be levied. [Acts 1963, ch. 329, §§ 1, 8; T.C.A., §§ 67-3049, 67-3056.]

Cross-References. County taxing powers, title 5, ch. 8.

Municipal taxing powers, title 6, ch. 55.

Section to Section References. This part is referred to in §§ 67-4-1004, 67-4-1005, 67-6-103, 67-6-204.

Textbooks. Tennessee Jurisprudence, 23 Tenn. Juris., Taxation, § 76.

Law Reviews. School Finance Litigation: An Urban Perspective (Ernest G. Kelly Jr.), 61 Tenn. L. Rev. 471 (1994).

Cited: Honeywell Information Sys. v. King, 640 S.W.2d 553 (Tenn. 1982); Bowater N. Am. Corp. v. Jackson, 685 S.W.2d 637 (Tenn. 1985).

NOTES TO DECISIONS

1. Telephone Systems.

The plugs, switching systems, and telephone units sold by plaintiff in telephone systems, which articles had unit prices, could be put together to meet various office needs, and could be sold separately to one who needed a system

alteration, were single articles of personal property subject to the local option sales tax; the system itself did not constitute a single unit. *Executone of Memphis, Inc. v. Garner*, 650 S.W.2d 734 (Tenn. 1983).

Collateral References. Sales and use taxes
 ⇐ 371.1201-1209.

67-6-702. Tax authorized — Rates — Termination of services tax [Variable effective dates. See the Compiler's Notes]. — (a)(1) [Amended effective July 1, 2004. See the Compiler's Notes.] Any county by resolution of its county legislative body or any incorporated city or town by ordinance of its governing body is authorized to levy a tax on the same privileges subject to this chapter as the same may be amended, which are exercised within such county, city or town, to be levied and collected in the same manner and on all such privileges but not to exceed two and three-fourths percent (2.75%); provided, that the tax levied shall apply only to the first one thousand six hundred dollars (\$1,600) on the sale or use of any single article of personal property.

(2) Any five dollar (\$5.00) or seven dollar and fifty cent (\$7.50) tax limit on the sale or use of any single article of personal property in effect at present may be removed, and, by resolution in the case of counties and by ordinance in the case of municipalities, the tax at the existing rate may, instead, be made to apply to the bases provided in subdivision (a)(1). The resolution or ordinance shall be passed at least twice at two (2) or more consecutive public meetings, not more than one (1) of which may be held on any single day. Notice of the meetings and of the fact that this matter is on the agenda of the meetings shall be published at least once in a newspaper of general circulation throughout the jurisdiction involved not less than seven (7) days before the first of the meetings. If the county (or counties) in which it is located does not increase the base of the county-wide local sales and use tax pursuant to this subdivision, any municipality may by ordinance apply any county tax rate in effect in the municipality to the bases authorized in subdivision (a)(1) for purposes of the sale or use of any single article of personal property within the municipality's corporate limits. The ordinance increasing the base of the county-wide tax within the municipality shall be adopted as required in this subdivision.

(3) Once any local sales tax limit has been removed and the tax rate applied to the base provided in subdivision (a)(1), future increases in the base beginning on the dates specified in subdivision (a)(1) shall be automatic and

shall not require further action of the local governing body. For any municipality or county which implements a local sales tax for the first time after May 17, 1983, or during the phase-in period provided in subdivision (a)(1), future increases in the base beginning on the dates specified in subdivision (a)(1) shall be automatic and shall not require further action of the local governing body.

(4) For the purpose of this part, persons engaged in the business of selling water shall be considered to be exercising a taxable privilege at the place where the tangible personal property is delivered to the purchaser.

(b) [Effective until July 1, 2004. See the Compiler's Notes.] Notwithstanding other provisions of this chapter, with respect to industrial and farm machinery as defined in § 67-6-102, and with respect to water sold to or used by manufacturers at the state tax rate of one percent (1%) as authorized in § 67-6-206, the local tax thereon shall be imposed at the rate of one third of one percent ($\frac{1}{3}\%$) whenever the rate of the local tax does not exceed one percent (1%) and at the rate of one half of one percent (.5%) whenever the rate of the local tax exceeds one percent (1%). The maximum local tax on the sale or use of any single article of industrial or farm machinery shall be as provided hereinabove.

(c) [Amended effective July 1, 2004. See the Compiler's Notes.] A use tax paid by the lessee of tangible personal property from a lessor which is a tax exempt entity pursuant to an election made under § 67-6-204(c) shall be in lieu of any tax which might otherwise be imposed under this part, and no additional sales or use tax may be imposed under this part on rental payments with respect to which a use tax based on the cost price of the tangible personal property has been paid by election.

(d) [Amended effective January 1, 2006. See the Compiler's Notes.] "Single article" means that which is regarded by common understanding as a separate unit exclusive of any accessories, extra parts, etc., and that which is capable of being sold as an independent unit or as a common unit of measure, a regular billing or other obligation. Such independent units sold in sets, lots, suites, etc., at a single price shall not be considered a single article. Parts or accessories for motor vehicles that are installed at the factory and delivered with the unit as original equipment and/or parts or accessories for motor vehicles that are installed by the dealer and/or distributor prior to sale, at the time of the sale, or which are included as part of the sales price of the vehicle shall be treated as a part of the unit. In addition, all necessary parts and equipment installed by a motor vehicle dealer which are essential to the functioning of the motor vehicle or are required to be installed on the motor vehicle prior to sale to the ultimate consumer pursuant to state or federal statutes relating to the lawful use of the motor vehicle shall be treated as a part of the unit. Boat motors, other parts or accessories for boats, freight, and labor, excluding trailers, shall be treated as part of the boat unit in the same manner as parts or accessories for motor vehicles are treated as part of the motor vehicle unit. Parts and accessories and any other additional or incidental items or services that are part of the sale of a manufactured home shall be treated as part of the manufactured home unit in the same manner as parts and accessories for motor vehicles are treated as part of the motor vehicle unit.

(e) [Effective until July 1, 2004. See the Compiler's Notes.] Notwithstanding any other provision of this chapter, with respect to sales of tangible personal

property to common carriers for use outside this state subject to the reduced rate provided in part 2 of this chapter, the local tax thereon shall be at the rate of one and one half percent (1.5%). The maximum local tax on the sale or use of any single article of personal property shall be as hereinabove provided.

(f) [Effective until July 1, 2004. See the Compiler's Notes.] Notwithstanding any other provisions of this part, dealers with no location in this state may choose to pay, in lieu of the tax otherwise authorized by this part, local tax at the rate of two and twenty-five hundredths percent (2.25%) of the sales price on all sales made in this state.

(g)(1) [Effective until July 1, 2004. See the Compiler's Notes.] Notwithstanding any other provisions of this chapter, local tax with respect to interstate telecommunications services, which are subject to state tax, shall be imposed at the rate of one and one-half percent (1.5%); provided, that interstate telecommunication services sold to businesses are exempt from local tax.

(2) Notwithstanding any other provisions of this chapter, local tax with respect to intrastate telecommunications services, which are subject to state tax, shall be imposed at the rate of two and one-half percent (2.5%). [Acts 1963, ch. 329, § 2; 1968, ch. 488, §§ 1, 4; 1971, ch. 117, § 7; 1971, ch. 148, § 1; 1972, ch. 653, § 2; 1973, ch. 239, § 2; 1973, ch. 340, § 1; 1974, ch. 675, § 2; 1975, ch. 316, § 2; 1976, ch. 466, § 5; 1977, ch. 43, § 1; 1977, ch. 178, § 2; 1978, ch. 592, § 2; impl. am. Acts 1978, ch. 934, §§ 7, 36; 1979, ch. 308, § 3; 1980, ch. 886, § 2; 1981, ch. 182, § 2; 1982, ch. 585, § 1; 1983, ch. 278, § 1; T.C.A., § 67-3050; Acts 1984 (E.S.), ch. 8, §§ 5, 9; 1984, ch. 631, § 1; 1984, ch. 721, § 1; 1984, ch. 729, § 1; 1985, ch. 356, §§ 6, 8; 1986, ch. 560, § 2; 1987, ch. 428, § 6; 1988, ch. 684, § 1; 1988, ch. 789, § 2; 1989, ch. 312, § 11; 1990, ch. 661, §§ 1, 2; 1992, ch. 529, § 15; 1992, ch. 913, § 6; 1993, ch. 492, §§ 1-3; 1995, ch. 184, § 1; 1996, ch. 743, § 1; 1997, ch. 194, § 3; 1999, ch. 413, § 5; 2002, ch. 719, §§ 5, 9; 2003, ch. 357, §§ 4, 64, 65.]

Compiler's Notes. Acts 2003, ch. 357, § 82 provided that the general assembly finds and determines that the Streamlined Sales Tax Agreement is necessary to stop the loss of sales tax revenue due to the rapid growth of Internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate undue burden on interstate commerce; and that the act is necessary in order for Tennessee to be in compliance with the Streamlined Sales Tax Agreement. Under the Streamlined Sales Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. Therefore, the provisions of the act shall become effective either on the effective date specified for that section or, if no effective date is listed for the section, then on the first day of the second

quarter following the effective date of the Streamlined Sales Tax Agreement, the public welfare requiring it; provided, that in no event shall any provision of this act take effect prior to July 1, 2004, the public welfare requiring it.

Acts 2003, ch. 357, § 83 provided that no provision of the act is intended to nor shall it be construed so as to modify, amend or repeal any provisions of § 67-6-510, the provisions of which shall be controlling with respect to the allowance of the credit for the used article taken in trade so that the tax levied by chapter 6 of this title shall continue to be paid only on the "net difference" as that term is used in subsections (a) and (b) of § 67-6-510.

Acts 2003, ch. 357, § 4, amended this section effective July 1, 2004. Prior to July 1, 2004, subsection (c) reads as set out above. On and after July 1, 2004, subsection (c) will read: "A use tax paid by the lessee of tangible personal property from a lessor which is a tax exempt entity pursuant to an election made under § 67-6-204(c) shall be in lieu of any tax which might otherwise be imposed under this part,

Collateral References. Sales and use taxes
↔ 371.1201-1209.

67-6-703. Priority of county levy. — (a)(1) The levy of the tax by a county shall preclude, to the extent of the county tax, any city or town within such county from levying the tax, but a city or town shall at any time have the right to levy the tax at a rate equal to the difference between the county tax and the maximum rate authorized in this chapter. For cities and towns having territory in more than one (1) county, "cities and towns" means that part of their territory in which they are not precluded by a county tax.

(2) Cities and towns having territory in more than one (1) county may levy the tax throughout the entire city or town at a rate equal to the difference between the lowest operative rate of any county in which the city is located and the maximum rate authorized in this chapter; provided, that if such rate levied should cause the total tax rate levied within any one (1) county in which the city or town is located to exceed the maximum rate authorized by this part, then only so much of the city or town levy as equals the difference between the county tax and the maximum rate authorized by this part shall become effective in the territory of the city or town located in such county. Nothing in this subdivision shall in any manner affect the priority of any county levy; provided, that nothing in this part shall permit any rate above the maximum rate authorized by this part to become effective.

(b) If an ordinance levying the tax authorized by this part is adopted by a city or town prior to adoption of the tax by the county in which the city or town is located, the effectiveness of the ordinance shall be suspended for a period of forty (40) days beyond the date on which it would otherwise be effective under the charter of the city or town. If during this forty-day period, the county legislative body adopts a resolution to levy the tax at least equal to the rate provided in such ordinance, the effectiveness of the ordinance shall be further suspended until it is determined whether the county tax is to be operative, as provided in § 67-6-706. If the county tax becomes operative by approval of the voters as provided in § 67-6-706, the ordinance shall be null and void, but if the county tax does not become operative, the ordinance shall become effective on the same date that the county tax is determined to be nonoperative, and the election required by § 67-6-706 shall be held. After initial adoption of the tax by a county or a city or town therein, the tax rate may be increased by a city, town or county under the same procedure. If the tax levied by a county legislative body is finally determined to be nonoperative, such action shall not preclude subsequent action by the county to adopt the tax at a rate at least equal to the city or town tax rate, in which event the city or town tax shall cease to be effective; provided, that the city or town shall receive from the county tax the same amounts as would have been received from the city or town tax until the end of the current fiscal year of the city or town. [Acts 1963, ch. 329, § 3; 1968, ch. 488, § 2; T.C.A., § 67-3051; Acts 1986, ch. 785, § 1.]

Textbooks. Tennessee Jurisprudence, 23
Tenn. Juris., Taxation, § 76.

Cited: Honeywell Information Sys. v. King,
640 S.W.2d 553 (Tenn. 1982).

NOTES TO DECISIONS

1. Preservation of County Authority.

This section did not require that a county call a referendum within 40 days of passage of a city ordinance to preserve its authority to levy a future sales tax. The reference to a county referendum within 40 days of adoption of a city

ordinance merely means that the calling of a referendum within the 40 day suspension period did not preclude imposition of the tax at a future date if that county referendum fails. *Lenoir City v. Loudon County*, 222 Tenn. 319, 435 S.W.2d 824 (1968).

Collateral References. Sales and use taxes
 ⇐ 371.1201-1209.

67-6-704. Exemptions [Amended effective July 1, 2004. See the Compiler's Notes.] — No county or incorporated city or town is authorized to levy any tax on the sale, purchase, use, consumption or distribution of electric power or energy, or of natural or artificial gas, or coal and fuel oil or steam and chilled water produced and distributed by an energy resource recovery facility operated in a county with a metropolitan form of government. [Acts 1963, ch. 329, § 2; 1968, ch. 488, §§ 1, 4; 1971, ch. 117, § 7; 1971, ch. 148, § 1; 1972, ch. 653, § 2; 1973, ch. 239, § 2; 1973, ch. 340, § 1; 1974, ch. 675, § 2; 1975, ch. 316, § 2; 1976, ch. 466, § 5; 1977, ch. 43, § 1; 1977, ch. 178, § 2; 1978, ch. 592, § 2; impl. am. Acts 1978, ch. 934, §§ 7, 36; Acts 1979, ch. 308, § 3; 1980, ch. 886, § 2; 1981, ch. 182, § 2; 1982, ch. 585, § 1; 1983, ch. 278, § 1; T.C.A., § 67-3050; Acts 1985, ch. 452, § 7; 1989, ch. 430, § 7; 2003, ch. 357, § 66.]

Compiler's Notes. Acts 2003, ch. 357, § 82 provided that the general assembly finds and determines that the Streamlined Sales Tax Agreement is necessary to stop the loss of sales tax revenue due to the rapid growth of Internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate undue burden on interstate commerce; and that the act is necessary in order for Tennessee to be in compliance with the Streamlined Sales Tax Agreement. Under the Streamlined Sales Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. Therefore, the provisions of the act shall become effective either on the effective date specified for that section or, if no effective date is listed for the section, then on the first day of the second quarter following the effective date of the Streamlined Sales Tax Agreement, the public welfare requiring it; provided, that in no event shall any provision of this act take effect prior to July 1, 2004, the public welfare requiring it.

Acts 2003, ch. 357, § 83 provided that no provision of the act is intended to nor shall it be construed so as to modify, amend or repeal any provisions of § 67-6-510, the provisions of which shall be controlling with respect to the allowance of the credit for the used article taken in trade so that the tax levied by chapter 6 of this title shall continue to be paid only on the "net difference" as that term is used in subsections (a) and (b) of § 67-6-510.

Acts 2003, ch. 357, § 66, amended this section effective July 1, 2004. Prior to July 1, 2004, this section reads as set out above. On and after July 1, 2004, this section will read as set forth in the amendment note.

Amendments. The 2003 amendment, effective July 1, 2004, rewrote this section to read: "No county or incorporated city or town is authorized to levy a sales or use tax on the sale, purchase, use, consumption or distribution of energy in the form of steam or chilled water sold by an energy resource recovery facility operated in a county with a metropolitan form of government." See the Compiler's Notes.

Effective Dates. Acts 2003, ch. 357, § 82, July 1, 2004.

Collateral References. Sales and use taxes
 ⇐ 371.1201-1209.

67-6-705. Tax subject to referendum. — (a) The operation of the resolution or ordinance authorized in § 67-6-702 shall be subject to approval of the voters as required in § 67-6-706 and to the other provisions of this part.

(b) Nothing contained in this part shall be deemed to permit an increase in the privilege tax rates authorized in this part, without the ratification thereof in the manner provided in § 67-6-706, regardless of the nature of any previous call and regardless of future action of the general assembly regarding the levy of the tax authorized by this part.

(c) Any amendment to any existing tax rate shall be subject to approval of the voters of the city or county in the same manner as is required for the initial adoption of the tax; provided, that a change in the limitation on the amount of the tax made in accordance with § 67-6-702(a)(2) shall not be subject to approval of the voters of the city or county. [Acts 1963, ch. 329, § 2; 1968, ch. 488, §§ 1, 4; 1971, ch. 117, § 7; 1971, ch. 148, § 1; 1972, ch. 653, § 2; 1973, ch. 239, § 2; 1973, ch. 340, § 1; 1974, ch. 675, § 2; 1975, ch. 316, § 2; 1976, ch. 466, § 5; 1977, ch. 43, § 1; 1977, ch. 178, § 2; 1978, ch. 592, § 2; impl. am. Acts 1978, ch. 934, §§ 7, 36; Acts 1979, ch. 308, § 3; 1980, ch. 886, § 2; 1981, ch. 182, § 2; 1982, ch. 585, § 1; 1983, ch. 278, § 1; T.C.A., § 67-3050.]

Textbooks. Tennessee Jurisprudence, 23
Tenn. Juris., Taxation, § 76.

Collateral References. Sales and use taxes
= 371.1201-1209.

67-6-706. Referendum [Amended effective July 1, 2004. See the Compiler's Notes.] — (a)(1) Any ordinance or resolution of a county or of a city or town levying the tax under authority of this part shall not become operative until approved in an election herein provided in the county or the city or town, as the case may be.

(2) The county election commission shall hold an election on the question pursuant to § 2-3-204, providing options to vote "FOR" or "AGAINST" the ordinance or resolution, after the receipt of a certified copy of such ordinance or resolution, and a majority vote of those voting in the election shall determine whether the ordinance or resolution is to be operative.

(3) [Amended effective July 1, 2004. See the Compiler's Notes.] If the majority vote is for the ordinance or resolution, it shall be deemed to be operative on the date that the county election commission makes its official canvass of the election returns; provided, however, that no tax shall be collected under any such ordinance or resolution until the first day of a month occurring at least thirty (30) days after the operative date.

(b)(1) If a county legislative body adopts a resolution to levy the tax at the same rate that is operative in a city or town in the county, the election under this section to determine whether the county tax is to be operative shall be open only to the voters residing outside of such city or town. If the county tax is at a higher rate than the rate of the city or town tax, the election shall also be open to the voters of the city or town.

(2)(A) Except as provided in subdivision (b)(2)(B), should any county or city or town hold an election under this section, and the ordinance or resolution is rejected, no other election thereon shall be held by such county, city or town for a period of six (6) months from the date of the holding of such prior election.

(B) In counties having a population of not more than seven hundred fifty thousand (750,000) nor less than seven hundred thousand (700,000) and not more than two hundred seventy-eight thousand (278,000) and not less than two hundred fifty thousand (250,000) according to the federal census of 1970 or any subsequent federal census, in case of rejection, the limitation period on subsequent elections shall be one (1) year from the date of the holding of such prior election.

(c) Any ordinance or resolution levying the tax under this part which was approved by the voters prior to January 1, 1985, and which made the effectiveness of the tax depend on a contingency relating to distribution of the proceeds of the tax, shall be deemed valid and effective under the provisions of this part, so long as the contingency is satisfied before or after the holding of the referendum. [Acts 1963, ch. 329, § 5; 1967, ch. 113, § 1; 1968, ch. 488, § 3; 1971, ch. 83, § 1; 1972, ch. 455, § 1; 1982, ch. 591, § 1; T.C.A., § 67-3053; Acts 1985, ch. 234, § 1; 1998, ch. 618, § 3; 2003, ch. 357, § 67.]

Compiler's Notes. For table of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Acts 2003, ch. 357, § 82 provided that the general assembly finds and determines that the Streamlined Sales Tax Agreement is necessary to stop the loss of sales tax revenue due to the rapid growth of Internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate undue burden on interstate commerce; and that the act is necessary in order for Tennessee to be in compliance with the Streamlined Sales Tax Agreement. Under the Streamlined Sales Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. Therefore, the provisions of the act shall become effective either on the effective date specified for that section or, if no effective date is listed for the section, then on the first day of the second quarter following the effective date of the Streamlined Sales Tax Agreement, the public welfare requiring it; provided, that in no event shall any provision of this act take effect prior to July 1, 2004, the public welfare requiring it.

Acts 2003, ch. 357, § 83 provided that no provision of the act is intended to nor shall it be construed so as to modify, amend or repeal any provisions of § 67-6-510, the provisions of which shall be controlling with respect to the allowance of the credit for the used article

taken in trade so that the tax levied by chapter 6 of this title shall continue to be paid only on the "net difference" as that term is used in subsections (a) and (b) of § 67-6-510.

Acts 2003, ch. 357, § 67, amended this section effective July 1, 2004. Prior to July 1, 2004, subdivision (a)(3) reads as set out above. On and after July 1, 2004, subdivision (a)(3) will read: "If the majority vote is for the ordinance or resolution, it shall be deemed to be operative on the date that the county election commission makes its official canvass of the election returns; provided, however, that no tax shall be collected under any such ordinance or resolution until the first day of a calendar quarter occurring at least sixty (60) days after the operative date."

Amendments. The 2003 amendment, effective July 1, 2004, substituted "calendar quarter occurring at least sixty (60) days" for "month occurring at least thirty (30) days" in (a)(3). See the Compiler's Notes.

Effective Dates. Acts 2003, ch. 357, § 82. July 1, 2004.

Section to Section References. This section is referred to in §§ 67-6-703, 67-6-705, 67-6-707.

Textbooks. Tennessee Jurisprudence, 23 Tenn. Juris., Taxation, § 76.

Law Reviews. Tennessee Annexation Law: History, Analysis, and Proposed Amendments (Frederic S. Le Clercq), 55 Tenn. L. Rev. 577 (1989).

Cited: State ex rel. Shriver ex rel. Higgins v. Dunn, 496 S.W.2d 480 (Tenn. 1973); Honeywell Information Sys. v. King, 640 S.W.2d 553 (Tenn. 1982).

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.
2. Eligibility to vote.
3. Ballot.
4. Standing.

1. Constitutionality.

Provision of subsection (b) to the effect that in a referendum on a county-wide sales tax held after city in county adopted sales tax at same rate only voters outside the city could vote was not a denial of equal protection of city voters. *Lenoir City v. Loudon County*, 222 Tenn. 319, 435 S.W.2d 824 (1968); *City of Gatlinburg v. Sevier County Bd. of Educ.*, 63 Tenn. App. 724, 479 S.W.2d 811 (1972).

2. Eligibility to Vote.

If after a sales tax has been previously adopted by the city the county court called a referendum pursuant to subsection (b) for a county-wide sales tax at the same rate as the city tax only county voters residing outside the city were eligible to vote. *Lenoir City v. Loudon County*, 222 Tenn. 319, 435 S.W.2d 824 (1968); *City of Gatlinburg v. Sevier County Bd. of*

Educ., 63 Tenn. App. 724, 479 S.W.2d 811 (1972).

A referendum called by a county court either before the passage of a city ordinance levying the sales tax subject to a referendum or within the 40-day suspension period following, such city action would be open to all residents of the county including residents of the city. *Lenoir City v. Loudon County*, 222 Tenn. 319, 435 S.W.2d 824 (1968).

3. Ballot.

Election under resolution proposing to levy local sales tax was not invalid because resolution was not copied in toto on voting machines where abbreviated notice conveyed a reasonable certainty of meaning so that voters could intelligently cast a vote for or against resolution. *Pidgeon-Thomas Iron Co. v. Shelby County*, 217 Tenn. 288, 397 S.W.2d 375 (1965).

4. Standing.

Municipal corporations could not challenge the county sales tax referendum held pursuant to this section, under the provisions of § 2-17-101 relating to election contests generally. *City of Greenfield v. Butts*, 573 S.W.2d 748 (Tenn. 1978).

Collateral References. Sales and use taxes
 ⇐ 371.1201-1209.

67-6-707. Petition for tax. — A resolution or ordinance levying the tax authorized may be initiated by petition of the voters in the following manner:

(1) The petition shall be addressed to the county legislative body or the governing body of the city or town requesting that a resolution or ordinance be adopted levying the tax and shall state the rate of the tax, whether the tax is to be collected by the county, city or town, or by the department of revenue, and shall specify the officer against whom suit for the recovery of any tax illegally assessed or collected shall be brought;

(2) The petition shall be signed by at least a number of registered voters in the taxing jurisdiction equal to ten percent (10%) of the total number of registered voters in the taxing jurisdiction on the date the petition is filed; provided, that a petition requesting a resolution of the county legislative body may not be signed by a registered voter in a city or town where a tax authorized by this part is operative equal to that levied by the resolution, and the registered voters in such city or town shall not be considered in arriving at the required percentage;

(3) A petition requesting a resolution shall be filed with the county clerk, a petition requesting an ordinance with the chief clerical officer of the city or town, and a photographic copy of the petition shall be filed at the same time with the county commissioners of elections who shall be the judges of the sufficiency of the petition; and

(4) If, within thirty (30) days from the filing of a petition, a resolution or ordinance is not adopted as requested and a certified copy filed with the commissioners of elections, the petition shall constitute a resolution or ordinance, and the commissioners of elections shall hold an election thereon as in § 67-6-706(a). [Acts 1963, ch. 329, § 5; 1967, ch. 113, § 1; 1968, ch. 488, § 3; 1971, ch. 83, § 1; 1972, ch. 455, § 1; T.C.A., § 67-3053.]

Collateral References. Sales and use taxes
 ⇐ 371.1201-1209.

67-6-708. Termination of tax. — (a) The tax imposed in this part shall remain in effect in the county or city on a perpetual basis as permitted by law, unless the city or county by ordinance or resolution respectively shall provide for a specific termination date.

(b) The city or county by ordinance or resolution respectively may provide for a specific period of time during which the tax shall be in effect. [Acts 1963, ch. 329, § 2; 1968, ch. 488, §§ 1, 4; 1971, ch. 117, § 7; 1971, ch. 148, § 1; 1972, ch. 653, § 2; 1973, ch. 239, § 2; 1973, ch. 340, § 1; 1974, ch. 675, § 2; 1975, ch. 316, § 2; 1976, ch. 466, § 5; 1977, ch. 43, § 1; 1977, ch. 178, § 2; 1978, ch. 592, § 2; impl. am. Acts 1978, ch. 934, §§ 7, 36; 1979, ch. 308, § 3; 1980, ch. 886, § 2; 1981, ch. 182, § 2; 1982, ch. 585, § 1; 1983, ch. 278, § 1; T.C.A., § 67-3050.]

Collateral References. Sales and use taxes
 ⇐ 371.1201-1209.

67-6-709. Repeal of tax. — Any ordinance or resolution of a county, city or town adopted in accordance with this part may be repealed in the same manner as provided by this part for its adoption; provided, that any election for the repeal of a county tax shall be open to the voters of the entire county. [Acts 1963, ch. 329, § 7; T.C.A., § 67-3055.]

Cited: *Honeywell Information Sys. v. King*,
 640 S.W.2d 553 (Tenn. 1982).

Collateral References. Sales and use taxes
 ⇐ 371.1201-1209.

67-6-710. Collection and administration [Amended effective July 1, 2004. See the Compiler's Notes.] — (a)(1) In collecting and administering the tax levied under the authority of this part, the commissioner of revenue shall have the same powers as the commissioner has in collecting and administering the state sales tax.

(2) Rules and regulations promulgated by the commissioner under §§ 67-1-102 and 67-6-402 shall be applicable to the tax levied under the authority of this part, and shall be binding on cities, counties, and towns, and interest and penalty for delinquencies shall be imposed equal to the rates provided in § 67-6-516.

(b)(1) The department of revenue shall collect such tax concurrently with the collection of the state tax in the same manner as the state tax is collected; provided, that the department has determined that such collection of the tax is feasible, and has promulgated rules and regulations governing such collection.