



9-26-1980

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Recommended Citation

MTAS, "Technical Bulletins: Rental Inventory Expert from Ad Valorem Personal Property Tax Where Rentor is Subject to Business Tax" (1980). *MTAS Publications: Technical Bulletins*.
https://trace.tennessee.edu/utk_mtastech/295

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technical bulletin

Municipal Technical Advisory Service
Institute for Public Service, The University of Tennessee
In cooperation with the Tennessee Municipal League

Sept. 26, 1980

RENTAL INVENTORY EXEMPT FROM AD VALOREM PERSONAL PROPERTY TAX WHERE RENTOR IS SUBJECT TO BUSINESS TAX

The Middle Section of the Tennessee Court of Appeals has held that rental inventory of a taxpayer who is subject to the business tax, as authorized in Tennessee Code Annotated § 67-5801, et seq., is exempt from the payment of personal property ad valorem taxes on that inventory. In Art Pancake's United Rent-All v. Glenn Ferguson, 601 S.W.2d 926 (October 1979), the court relied primarily on statutory construction to reach its conclusion that the business tax is in lieu of ad valorem taxes on rental inventories. The court quoted from T.C.A. § 67-5801 that:

It is the legislative intent that the taxes imposed by the Business Tax Act shall be in lieu of any or all ad valorem taxes on inventories of merchandise held for sale or exchange by persons taxable under this chapter. 601 S.W.2d at 929

These provisions in § 67-5801 were made applicable to rental inventories by noting that the definition of "sale" in § 67-5804 included the "lease or rental . . . of tangible personal property for a consideration." 601 S.W.2d 926. The court held that the Business Tax Act and the Property Tax Act, T.C.A. § 67-601, et seq., should be interpreted in pari materia (together) and that the definition of "sale" in § 67-616 must be the same as its definition in § 67-5804, "particularly since there is a direct reference in one statute to the other." 610 S.W.2d at 930.

This case is in accord with a somewhat later decision of the Western Section of the Court of Appeals, Dixie Rents, Inc. v. Memphis, 594 S.W.2d 397 (November 1979). Certiorari was denied on both these cases Jan. 28, 1980.

In the Dixie Rents case, the court relied more heavily on an interpretation of Article II, Section 28, of the Tennessee Constitution, which states that:

. . . the Legislature may levy a gross receipts tax on merchants and businesses in lieu of ad valorem taxes on the inventories of merchandise held by such merchants and businesses for sale or exchange.

The court held that the word "sale" in this section "not only can, but does include leases or rentals . . ." 594 S.W.2d at 399. The court further stated that it was the purpose of this provision "to allow a

(over)

merchant or business to pay only one tax instead of two on his inventory of goods -- that one tax being based on gross receipts rather than ad valorem." 594 S.W.2d at 400.

The court, in the Dixie Rents case, concluded by quoting favorably from the appellee's brief as follows:

. . . Whether this case is considered on the basis of an analytical construction of the language of the statutes involved, or on the basis of the principles of Constitutional interpretation, or on the basis of fairness and equity to a limited category of merchants, or on the basis of a review of the statutory scheme inherent in the interplay of Article II, Section 28, the Property Tax Act and the Business Tax Act, the answer comes out the same: the Constitutional and statutory intent is to substitute the gross receipts tax of the Business Tax Act for the Property Tax Act's ad valorem tax on inventories of merchandise; and there is no basis for discrimination between inventories of merchandise held by rental merchants and those held by other retail merchants. 594 S.W.2d at 401.

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