



Annual Report: FY2016

Administrative Hearing Office

The Administrative Hearing Office's Mission and Role

The Tennessee Department of Revenue offers the Administrative Hearing Office as a forum where taxpayers can work with informal conference personnel to resolve disputes about tax assessments and tax refund claim denials. Hearing Office personnel are required to exercise independent judgment and to render decisions on individual issues based on the facts and the law.

The Hearing Office's mission is to resolve disputes on behalf of the Commissioner of Revenue in an informal, expeditious, consistent, and cost effective manner. The Hearing Office may also make determinations about the correct amount of tax due. To that end, the Hearing Office conducts informal conferences with taxpayers to discuss their legal positions, ask questions, request additional information or documentation, and make a determination as to how the dispute should be resolved.

Sometimes, the answer to how a tax dispute should be resolved is not always clear. In these situations, the Hearing Office is authorized to recommend compromises to the Commissioner of Revenue. The Commissioner may consider compromising a tax liability for less than the full amount owed if it is in the best interests of the state to do so.

The Informal Conference Process: Overview

Information and frequently asked questions about the informal conference process are also available on the Department's website at <http://www.tn.gov/revenue/article/request-an-informal-conference>.

An informal conference is available to any taxpayer that has received a proposed assessment of tax who timely requests a conference. A conference request is timely if it is sent to the Hearing Office within 30 days from the date of the notice of proposed assessment.¹ Additionally, Hearing Office personnel, as the Commissioner's designees, may in their discretion grant an untimely conference request or a request to review a refund claim denial.

A taxpayer is not required to request an informal conference to challenge a proposed tax assessment, but the conference process is an inexpensive way to resolve a tax dispute without going to court. The Department does not charge taxpayers to have a conference, and a taxpayer may participate in a conference without representation.

The process begins with the taxpayer submitting a written request for an informal conference to the Hearing Office. Taxpayers requesting a conference should complete the conference request form

¹ Tenn. Code Ann. § 67-1-1438(b) (Supp. 2016).

available on the Department's website.² The written request can be submitted electronically on the Department's website or sent to the Administrative Hearing Office by mail, email, or fax.³ The taxpayer should include a copy of the notice of proposed assessment and a power of attorney form (if applicable). The taxpayer should also provide a statement outlining the issues to be discussed during the conference and an explanation of why the taxpayer believes that the proposed assessment is incorrect.

The Hearing Office will contact the taxpayer or taxpayer's representative within 10 days after receiving the timely conference request to schedule the conference. Conferences are held either by telephone or in person in the Department's Nashville office, at the preference of the taxpayer.

While waiting for the conference to be held, taxpayers are encouraged to work with the division that issued the proposed assessment. For example, a taxpayer might locate additional documents that were unavailable during an audit. The taxpayer does not need to wait until the conference to provide the documentation to the Department; instead, the taxpayer can contact the auditor directly to discuss whether the assessment should be adjusted based on the additional documents. The Department and taxpayers are often able to resolve an issue this way without going to conference.

After the informal conference is held, the hearing officer reviews all documentation provided, conducts any necessary legal research and issues a written conference decision to the taxpayer.

Information about the taxpayer's rights and the procedure for challenging an assessment after it becomes final is available on the Department's website at:

<http://www.tn.gov/assets/entities/revenue/attachments/billofrights.pdf>.

Informal Conferences: Fiscal Year 2016

The Hearing Office handles a large number of requests for informal conferences each year.⁴ The option of requesting an informal conference has increased in popularity over the past five years, as shown in the chart below.

During fiscal year 2016, taxpayers submitted 578 requests for informal conferences. The actual number of assessments involved is higher, because some taxpayers combine more than one assessment into a single conference request. For example, a taxpayer might have received one assessment for business tax and a separate assessment for sales and use tax. Taxpayers are welcome to combine assessments into one request at their convenience.

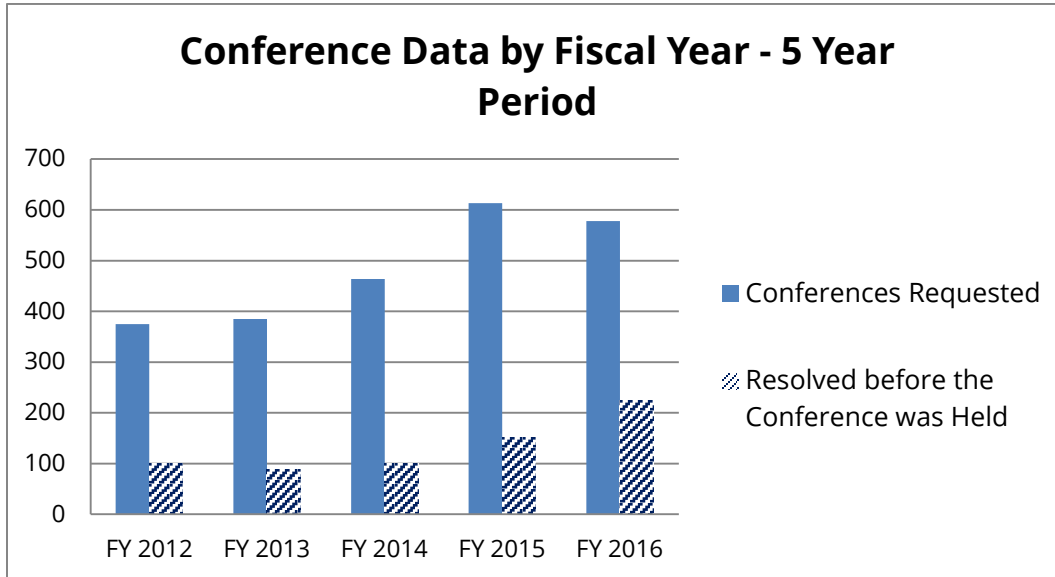
As mentioned previously, taxpayers are also encouraged to continue working with the division that issued the proposed assessment during the time leading up to the scheduled conference.

² The form is called "Request for Informal Conference to Review Proposed Assessment or Refund Denial" and is available on the Department's website at: <http://www.tn.gov/revenue/article/request-an-informal-conference>.

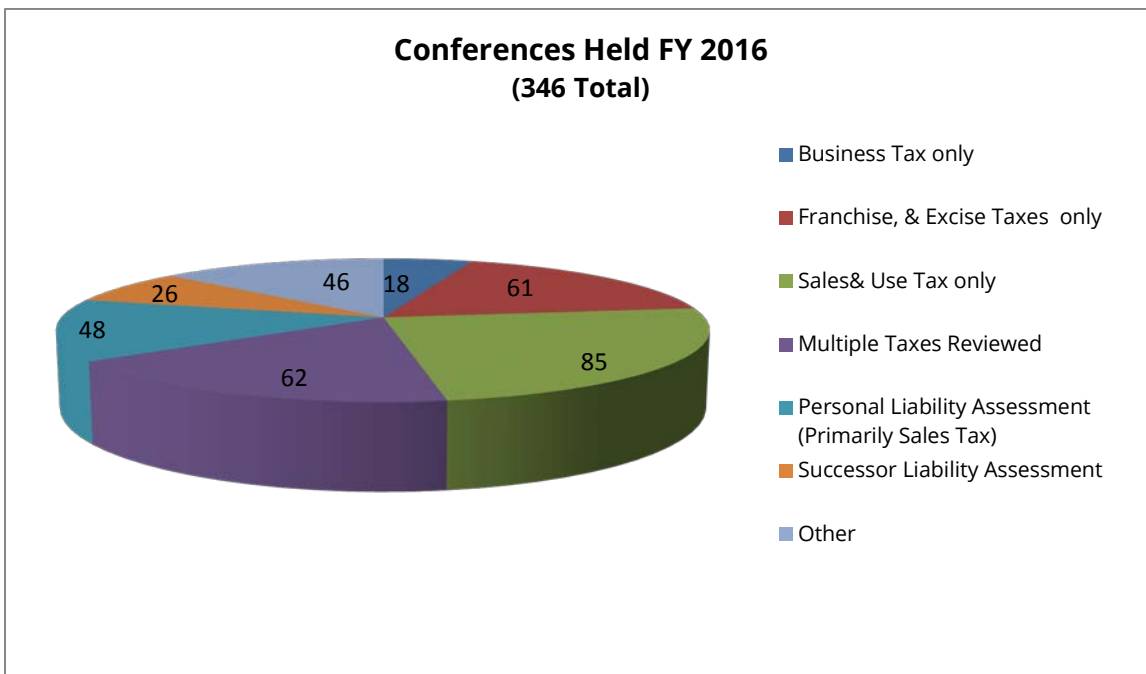
³ Mail: Tennessee Department of Revenue, Administrative Hearing Office, Andrew Jackson Bldg., 11th Floor, 500 Deaderick St., Nashville, TN 37242; Email: DORConference.Request@tn.gov; Fax: 615-741-6463.

⁴ Conference statistics are kept by fiscal year. A fiscal year starts on July 1st of one year and ends on June 30th of the following year.

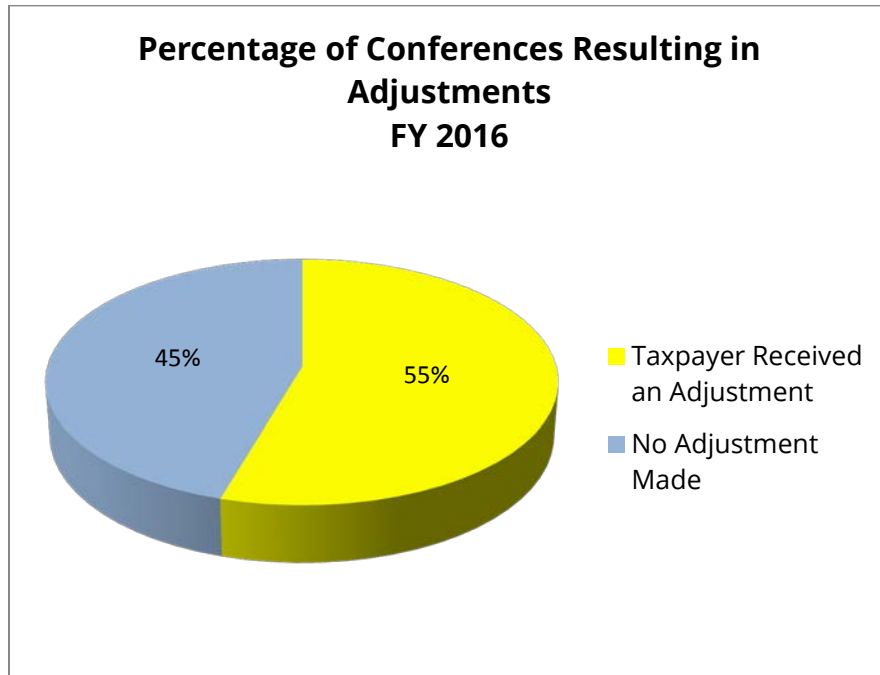
Significantly, taxpayers who made timely requests for conferences during Fiscal Year 2016 were able to resolve their disputes almost 40% of the time before the informal conference was held.



In addition to serving an increasing number of customers each year, the hearing officers hold conferences on a wide variety of topics. The most common issues involve sales and use tax, business tax, liquor-by-the-drink tax, and the franchise and excise taxes. The Department’s hearing officers are licensed attorneys, each with several years of experience working with Tennessee tax laws.



The Department's hearing officers have the authority to make adjustments to a proposed assessment when doing so is legally correct. During fiscal year 2016, a full 55% of taxpayers having an informal conference received a partial or full adjustment to their assessments. This number does not include the taxpayers who resolved their disputes before the conference was held.



In many cases, an adjustment is the result of the taxpayer providing additional information or documentation that was not made available during an audit. In other instances, the proposed assessment was based on a tax statute that can be interpreted different ways, and the hearing officer determined that an adjustment was appropriate after applying the law to the taxpayer's facts.

Conferences Held in Fiscal Year 2016: Topics of Interest

As a service to the public, the Department has selected several topics of interest to taxpayers, which are summarized below with overviews of related conference decisions.

Please be aware that Tennessee has laws that protect the identity and information of individual taxpayers. The Department is required by law to maintain a taxpayer's information as confidential, unless the taxpayer gives the Department permission to disclose information. The unauthorized disclosure of taxpayer information is in fact a criminal offense.

Because the Department takes taxpayer confidentiality very seriously, the following summaries of conference decisions do not contain any details that could lead to an individual taxpayer being identified.

Please also be aware that the summaries are of actual cases and the applicable law might have changed since the time the conference decision was issued. Taxpayers should consult with a tax professional before relying on any information contained in the following summaries.

Personal Liability for Taxes (Tenn. Code Ann. § 67-1-1443)

One reason for operating a business in the form of a corporation or other limited liability entity is to avoid personal liability for the business' debts and obligations. This protection from liability is not complete, however, because "trust fund taxes" collected on behalf of the government are an exception to the protections provided by corporate or other limited liability structures. Individuals who are responsible for remitting tax collected from customers may be held personally liable for any sales tax collected but not remitted (plus associated penalties and interest).⁵ An individual may be held personally liable if he or she had the authority to determine which creditors would be paid and chose not to remit the collected taxes to the Department. When a business has an unpaid sales tax liability, the Department's Collection Services Division will first attempt to collect the tax from the business, but if that effort is unsuccessful, it will identify officers or employees responsible for remitting collected sales tax and issue proposed assessments to those people individually. In addition to holding conferences about a business' underlying tax liability, the Hearing Office hears challenges to proposed personal tax assessments.

Examples:

The Hearing Office abated a proposed personal liability assessment against one of the owners of a local dining establishment because the owner was able to show that he was a passive investor who had no involvement in the business' day-to-day operations.

The Hearing Office upheld a proposed personal liability assessment against the other owner of the local dining establishment (see above) because that owner ran the business, was responsible for collecting taxes from customers, and prepared the business' sales/use tax returns.

The Hearing Office reduced a proposed personal liability assessment against the owner of a business by excluding taxes assessed for a period of time during which the owner had relinquished control of the business to another individual. The owner provided copies of an agreement showing that the other individual was responsible for the taxes that were not remitted for a portion of the assessment period. The Hearing Office held the owner personally responsible only for the period of time during which he actually ran the business, collected taxes from customers, and oversaw the preparation of the business' tax returns.

Successor Liability Assessments

After purchasing a business, the buyer may find that in addition to acquiring the business, the buyer has also acquired outstanding tax liabilities of the business. Under Tennessee law, the buyer of the business is considered the seller's "successor, successors, or assigns." The buyer is required to withhold from the purchase price of the business the amount of unpaid taxes, interest, and penalties, unless the seller has provided a certificate of clearance from the Department stating that

⁵ Tenn. Code Ann. § 67-1-1443 (2013).

no taxes, penalties or interest are due. Alternatively, the seller can provide the buyer with an affidavit stating that the business has no past due tax liability; in order to be protected from liability by the seller's affidavit, the buyer must provide the affidavit to the Department. The Department has 15 days to notify the buyer if the affidavit is incorrect.

Examples:

The Hearing Office abated a proposed successor liability assessment against a landlord who evicted a tenant operating a retail store for nonpayment of rent. The landlord disposed of the tenant's leftover inventory after he evicted the tenant. The landlord then opened a new business in the same location a few weeks afterward. Based on documentation provided by the landlord, the hearing officer determined that the landlord did not purchase the business but had instead exercised his legal right to take back possession of the property when the tenant defaulted.

The Hearing Office upheld a proposed successor liability assessment against the purchaser of a restaurant with an outstanding tax liability. The purchaser's attorney had recommended to the purchaser that she contact the Department to verify that the prior business owner had no outstanding tax liabilities but the purchaser failed to do so. After purchasing the business, the new owner learned of the outstanding liability and was held responsible for paying it.

The Hearing Office abated a proposed successor liability assessment against a company operating a business that was similar to a business operated by a previous tenant at the same location. The previous tenant abandoned the premises, had the electricity turned off and discontinued its business one month before the new company entered into a lease with the landlord at the same location. After meeting with the landlord and reviewing all relevant documentation, the Hearing Office determined that the company had not purchased the business from the previous tenant.

Excise Tax: Intangible Expense Deductions

It is not uncommon for large companies with multiple affiliates to place the ownership of intellectual property into a related entity. The affiliates pay that entity royalties for the use of the intellectual property and deduct this expense on their Tennessee franchise and excise tax returns. During fiscal year 2016, taxpayers wishing to claim intangible expense deductions were required to submit an application and supporting documentation to the Department for review.⁶ A number of taxpayers whose applications were denied had claimed the intangible expense deduction on their returns pending review of the applications. In these instances, the disallowance of the deduction resulted in a proposed assessment.

Examples:

The Hearing Office upheld a proposed assessment against three affiliated taxpayers who all paid licensing fees and interest to the same intangible holding company ("IHC"). The IHC was located in the state of Delaware, had only three part-time employees whose combined salaries totaled less than \$2,200.00 a year and whose expenses were significantly less than one percent of its total income. The IHC's total income consisted of licensing fees paid by the taxpayers as well as the

⁶ Tenn. Code Ann. § 67-4-2006(b)(2)(N) (Supp. 2012).

interest charged on the monies it loaned back to them. The Tennessee taxpayers then excluded both of these intangible expenses from their excise tax base. Even though the taxpayers paid the licensing fees and interest, they were never without use of these funds because the funds were being loaned back to them by the IHC, thus creating a circular flow of funds. Since there were no unrelated third-party licensees and the IHC neither developed the intellectual properties nor had the staff to actively manage them, the Hearing Office agreed with the Department's determination that the IHC was not a viable business on its own and the principal purpose of these intangible expense transactions was tax avoidance.

The Hearing Office abated proposed assessments against two related corporations that paid the same intangible holding company ("IHC") royalties for use of its intellectual property. It was not the typical situation where a taxpayer transferred its intellectual property to an IHC for very little consideration, paid royalties, and then received the royalties back in the form of a loan or dividend. Instead, the IHC in this case continued to develop intangibles and did not return the royalty payments to the taxpayers but instead used the funds to develop, maintain, and protect the intellectual property. Since the IHC served a valid business purpose, and was not merely set up to create a circular flow of cash to avoid tax, the Hearing Office abated the proposed assessments.

Lack of Records

Tennessee law requires dealers to keep adequate books and records of sales and purchases for three years from December 31 of the year in which the associated return was filed, so that the Department can verify returns and determine a dealer's tax liability.⁷ If an assessment was made and a taxpayer challenges the assessment, either to the Department or in court, the taxpayer must keep all records covered by the assessment until the matter is resolved.⁸ If a taxpayer fails to keep sufficient records, the Department may make an assessment using the best information available.⁹ When a taxpayer has not kept adequate records, auditors will examine available third-party information such as the taxpayer's purchases, bank deposits and federal tax returns. Auditors often must perform a purchase markup audit, which involves applying a percentage markup to the taxpayer's purchases, to calculate taxable sales. In these cases, unless a taxpayer can furnish documentation that was unavailable during the audit, the Hearing Office generally has no basis on which to make an adjustment to the assessment.

Examples:

In two separate matters, the Hearing Office upheld proposed assessments based on an International Fuel Tax Association ("IFTA") audit because the contract carriers did not have the required Individual Vehicle Mileage Records. IFTA requires licensed carriers to keep detailed records showing each vehicle's distance records that include the trip date, origin, destination, route, and beginning and ending odometer reading for each trip. If a licensee does not keep these required records, the auditor may disregard a licensee's reported (but unsubstantiated) mileage and instead estimate a fuel usage of four miles per gallon.

⁷ Tenn. Code Ann. § 67-6-523(a, b) (2013) and Tenn. Code Ann. § 67-1-113 (2013).

⁸ TENN. COMP. R. & REGS. 1320-5-1-.80(2).

⁹ Tenn. Code Ann. § 67-1-113(b) (2013).

When a convenience store did not maintain records of its purchases or sales, and discarded its cash register tapes, the Hearing Office upheld a proposed assessment where the auditor calculated the store's tax liability by marking up the store's purchases that were reported by the store's vendors. Although the store claimed that the vendor purchase information that the auditor used did not include credits from vendors, the store did not present any documentation of vendor credits.

The Hearing Office upheld a proposed assessment of use tax on the assets and expensed items a fitness center purchased during the audit period. The fitness center did not provide records showing it had paid Tennessee tax to its out-of-state vendors. The fitness center's owners claimed that they were unaware of Tennessee's record keeping requirements and had discarded the purchase records to make room for newer records.

The Hearing Office upheld a proposed sales tax assessment against a retailer. The auditor noted various transactions where the taxpayer did not collect sales tax. The taxpayer stated that the transactions were sales to out-of-state customers, sales to tax-exempt organizations, and sales to another retailer for resale. The taxpayer, however, was unable to provide the auditor with any documentation to establish that the sales in question should not have been taxed, such as an invoice showing shipping information, an exemption certificate, or a resale certificate. The Hearing Office upheld the proposed assessment due to the taxpayer's failure to retain and provide proper required documentation.

Hall Income Tax – Return of Capital

Although it does not tax income from wages, Tennessee imposes the Hall income tax on stock dividends and bond interest.¹⁰ Returns of capital, however, are not subject to tax.¹¹ Tennessee's definition of what constitutes a dividend was crafted by the courts and is quite broad; a dividend is the recurrent payment to stockholders that does not reduce stock holdings leaving owners in a position to enjoy future returns on the same stock and may come from any source. "Stock" can also include some partnership interests.

Through a federal matching program, the Department compares the federal tax returns of Tennessee residents to Hall income tax returns, and it may issue a proposed assessment for taxable distributions that were not reported to Tennessee. Taxpayers in these situations often are not aware that a distribution may be a dividend for Hall income tax purposes even if the distribution is characterized as some other type of income on federal Form 1099.

Examples:

The Hearing Office abated the proposed assessment where a company spun off one of its subsidiaries before merging with another company, and issued shareholders a cash distribution and shares of the subsidiary for their shares of the company's common stock. The taxpayers held over 100,000 shares of the company's common stock before the distribution and no shares after the distribution, so they were no longer in a position to enjoy future returns on the same stock.

¹⁰ Tenn. Code Ann. § 67-2-102 (2013).

¹¹ Tenn. Code Ann. § 67-2-104(e)(7) (2013).

In several conferences involving unrelated taxpayers, the Hearing Office upheld proposed assessments where taxpayers claimed that distributions they received were non-taxable distributions of capital. Because the taxpayers had the same number of shares after a distribution that they owned before the distribution, the Hearing Office determined the distribution was a taxable dividend. When taxpayers argued that the distribution affected the basis of their shares, the Hearing Office explained that the change in basis was not relevant if the taxpayer did not sell or redeem shares, and the issuing entity had not made a liquidating distribution.

Hall Income Tax - Miscellaneous

Persons who are domiciled in Tennessee for at least six months are subject to Tennessee's Hall income tax. The Hearing Office upheld a proposed assessment against a married couple who claimed to be domiciled in Florida during the year in question. State records showed that the husband and the wife continued to have valid Tennessee driver's licenses and that the wife had early voted in Tennessee in October of that year, which involved swearing under oath that she resided in Tennessee. The available evidence supported a conclusion that the couple had not changed their domicile until the end of November of the year in question; thus, the couple was domiciled in Tennessee for more than six months during the year for which they were assessed income tax. The proposed assessment was found to be correct.

Sales Tax: Miscellaneous

The Hearing Office conducts conferences on a wide variety of sales and use tax issues. Below are examples of some topics the office addressed in conferences during FY 2016.

Examples:

The Hearing Office partially abated and partially upheld a proposed sales and use tax assessment based on purchases that the auditor determined did not qualify for the industrial machinery exemption. Two portions of the proposed assessment were abated: (1) the portion that was based on repair charges for items used in packaging products and (2) the portion that was based on charges to calibrate equipment used to test a product during the manufacturing process. Two portions of the proposed assessment were upheld: (1) the portion that was based on the taxpayer's purchase of tools and equipment that did not qualify for the industrial machinery exemption because their use was not necessary to and primarily for the manufacture of the product that the taxpayer sold, and (2) the portion that was based on a product used to clean manufacturing equipment, which was "spent" after its use for that purpose.

The Hearing Office abated a proposed sales tax assessment against a company that installs, repairs, and maintains entertainment business equipment. The auditor had determined that some of the tangible personal property that the taxpayer installed became part of the real property (a nontaxable service), but other items remained tangible personal property after installation (a taxable service). During the conference, the taxpayer provided evidence that all items it installed became part of the realty after they were installed, and the sales were therefore not subject to the sales tax.

The Hearing Office upheld a proposed assessment of sales and use tax imposed because of the taxpayer's failure to collect sale for resale exemption certificates from its customers who were primarily dealers, fabricators, and contractors. Such failure meant that the transactions did not qualify for the sale for resale exemption and were subject to tax.

Business Tax: Miscellaneous

The Hearing Office conducts conferences on a wide variety of business tax issues. Below are examples of some topics the office addressed during FY 2016.

Examples:

The taxpayer, a retailer, purchased bulk natural gas from a wholesaler. The taxpayer then sold a portion of the natural gas to its sister company, also a retailer, at the same price that the taxpayer had paid the wholesaler. When filing its business tax returns, the taxpayer did not include these sales to its sister company as "gross sales" because the taxpayer believed its transfers were excluded from the definition of "sale" in the business tax statute as exempt transfers from a retailer to a retailer.¹² The Hearing Office agreed with the taxpayer and adjusted the proposed assessment to exclude the sales at issue from the tax base.

The Hearing Office upheld a proposed business tax assessment against a taxpayer that sold swimming pool products to contractors who then used the products to build swimming pools for their customers. Because it made sales to contractors instead of the contractors' customers, the taxpayer believed that it had made sales for resale and remitted business tax at the wholesale rate. The Hearing Office upheld the proposed assessment because contractors are considered end-users of products used in construction; therefore, the taxpayer's sales were actually retail sales.

The Hearing Office upheld a proposed business tax assessment against a taxpayer who passed the business tax on to its customers, collected more tax than was legally due, and failed to remit the amount it over collected to the Department. The Hearing Office upheld the proposed assessment because Tennessee law does not allow a taxpayer to collect more tax than is due and then keep the excess tax.

The Hearing Office upheld a proposed business tax assessment against a nonprofit organization that failed to register and remit business tax on its sales. The taxpayer held a monthly fundraiser where it sold prepared food and drinks to the public. The taxpayer believed it was not required to file city and county business tax returns or pay city and county business taxes because of its nonprofit status. The Hearing Office determined that the taxpayer was subject to business tax on its monthly taxable sales because the business tax nonprofit exemption extends only to gross receipts from sales of services, and does not extend to sales of food, drink, and other tangible personal property.¹³

¹² Tenn. Code Ann. § 67-4-702(a)(17)(B) (2011).

¹³ TENN. COMP. R. & REGS. 1320-4-5-.32.

Retail Accountability Program

The Department's Retail Accountability Program helps ensure that the sales tax collected by retailers from consumers is remitted properly to the state of Tennessee. The Department receives purchase information electronically from beer and tobacco wholesalers. The Department uses this information to compare a taxpayer's purchases to its reported sales. If a discrepancy is found, the Department may issue a proposed assessment.

Note that all of the conferences during Fiscal Year 2016 were heard under the law in effect prior to the revised law that went into effect on July 25, 2016.¹⁴ Under the revised law, the Department will continue to receive purchase information from beer and tobacco wholesalers. The Department will also receive purchase information from wholesalers of food, candy and non-alcoholic beverages.

A taxpayer who receives a proposed assessment is encouraged to contact the Department's Retail Accountability Program directly and work with one of that program's personnel. Many taxpayers who work directly with the Retail Accountability Program group are able to resolve the issues regarding their proposed assessments and eliminate the need to have a conference.

Examples:

Despite a retail store's claim that its purchases exceeded its reported sales because it was increasing its inventory, the Hearing Office upheld the proposed assessment because the store's owner was not able to provide inventory records. The Hearing Office also noted that the store's purchases and sales were fairly consistent each month, indicating that the store had not been building up its inventory.

The Hearing Office upheld a proposed assessment where a retailer claimed that the theft of its products explained the discrepancy between its purchases and reported sales, but failed to provide sufficient documentation of the claimed theft. The retailer was asked to provide a copy of the police report that had reportedly been filed, detailing the alleged theft. The retailer was also asked to provide a copy of any claim filed with the retailer's insurance company and any response received. Because the retailer did not provide the requested documentation and could not document the alleged theft, the Hearing Office was not able to make the requested adjustments to the proposed assessment.

A proposed assessment against a tobacco retailer was abated after the retailer provided tobacco buydown documentation and documentation that allowed for adjustments for changes in inventory.

Franchise and Excise Taxes: Miscellaneous

In addition to the intangible expense deduction issues seen in conference and discussed above, the Hearing Office addressed a number of other franchise and excise tax issues during FY 2016.

¹⁴ Tenn. Code Ann. § 67-6-410 (Supp. 2016).

Examples:

Under Tennessee law, a sale of something other than tangible personal property is considered a Tennessee sale for franchise and excise tax purposes if the greater proportion of the earnings-producing activity is performed in Tennessee.¹⁵ The Hearing Office upheld a proposed assessment of excise tax against a company that provided staffing and administrative services to in- and out-of-state businesses from its location in Tennessee. The Tennessee company had no property or employees but subcontracted with others to provide the services. The company sourced none of its sales to Tennessee, but the auditor determined that 100% of the company's sales should have been subject to Tennessee tax. The Hearing Office agreed, reasoning that the company was not providing the services but was contracting with others to provide the services, and the contracting activity occurred in Tennessee.

When a corporation does business both within and outside of Tennessee, its franchise and excise tax liability is apportioned based on three factors: property, payroll, and sales. The Hearing Office upheld a proposed excise tax assessment against an out-of-state corporation that employed district sales managers residing in Tennessee but had not included their compensation in the numerator of its Tennessee payroll factor. The auditor added the Tennessee employees' compensation to the corporation's payroll factor, which resulted in a proposed excise tax assessment. The Hearing Office concurred with the auditor that the compensation was "compensation paid in this state,"¹⁶ reasoning that the managers each had their base of operations in Tennessee because the managers conducted business from their Tennessee residences.¹⁷

The Hearing Office upheld a proposed excise tax assessment against a manufacturing company whose manufacturing activities were performed outside Tennessee but who also sold and delivered certain components in the state. A larger company purchased the taxpayer and the taxpayer subsequently ceased operations in the state as part of the purchase agreement. The taxpayer reported the gain from the sale of its business as nonbusiness income. Since the sale of the taxpayer constituted the disposition of integral assets of the taxpayer's regular business, the Hearing Office agreed that the auditor correctly reclassified the gain as business income subject to the excise tax.

The Hearing Office upheld a proposed assessment against a corporation that sold off the assets of its subsidiaries and allocated the gain on the sale to goodwill as nonbusiness earnings, agreeing with the auditor's determination that the gain was properly classified as business earnings under Tennessee law. Tennessee defines "business earnings" as "earnings arising from transactions and activity in the regular course of the taxpayer's trade or business or earnings from tangible and intangible property, if the acquisition, use, management or disposition of the property constitutes an integral part of the taxpayer's regular trade or business operations."¹⁸ The Hearing Office determined that the gain the taxpayer allocated to goodwill represented business earnings because

¹⁵ Tenn. Code Ann. § 67-4-2012(i) (2006). Note that this law was amended effective July 1, 2016.

¹⁶ TENN. COMP. R. & REGS. 1320-6-1-.31.

¹⁷ Tenn. Code Ann. § 67-4-2012(f) (2006).

¹⁸ Tenn. Code Ann. § 67-4-2004(4)(2013).

the goodwill constituted an integral part of the taxpayer's regular trade or business operations. Because the goodwill was derived from the taxpayer's use of business assets, the taxpayer should have included the gain in its apportionable business earnings when filing its Tennessee franchise and excise tax return.

Miscellaneous other taxes

In addition to the tax categories discussed above, the Hearing Office occasionally conducts conferences where the tax type is one that is less frequently seen. Below are some examples of topics the office addressed in FY 2016.

Examples:

The Hearing Office upheld a proposed assessment against a wholesale seller of other tobacco products (*i.e.*, products other than cigarettes). Tennessee law requires that the 6.6% tax¹⁹ on the wholesale cost price of other tobacco products be paid by the wholesaler at the time of purchase. The Department audited the taxpayer and found that the taxpayer had remitted the 6.6% tax at the time that it sold the products rather than when it purchased the products. If the tax is not remitted at the time of purchase, however, under the law the tobacco products in the wholesaler's possession would be considered contraband goods subject to seizure.²⁰ Because the Taxpayer did not pay the 6.6% tax when it purchased the other tobacco products, the Hearing Office determined the taxpayer was responsible for paying the unpaid tax on the other tobacco products in the taxpayer's inventory for which no tax had been paid.

The Hearing Office abated a proposed assessment issued to a company for failing to honor a levy. The company had been sent a levy notice ordering it to remit a percentage of an employee's net paycheck to the Department, but the company did not send the Department any money. The proposed assessment was abated because the company provided documentation showing that it had not paid the employee any salary or wages between the date of the levy notice and the date of the proposed assessment.

Conclusion

In addition to the above information and summaries, a wealth of tax information is available on the Department's website found at <http://www.tn.gov/revenue/>. The "contact us" link at the bottom of the page provides links to telephone numbers for the general call center, as well as telephone number hotlines associated with specific tax areas. Questions may also be submitted in writing by clicking on the "Revenue help" link on the "contact us" page.

¹⁹ Tenn. Code Ann. § 67-4-1005 (2011).

²⁰ Tenn. Code Ann. § 67-4-1019(a)(1) (2011).