

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #94-06**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of the Tennessee Hall Income Tax to dividend and interest income received by [INDIVIDUAL] and his wife who live and maintain a permanent residence in [STATE OTHER THAN TENNESSEE] when [INDIVIDUAL] works at a Tennessee [INSTITUTION] and rents an apartment nearby where he stays overnight Monday through Friday.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[INDIVIDUAL] is a [PROFESSIONAL] who retired from the [PROFESSION] in [STATE OTHER THAN TENNESSEE] in [MONTH, YEAR]. Since [DATE], [INDIVIDUAL] has been employed at [INSTITUTION] in [CITY, TENNESSEE].

During his entire employment in Tennessee [INDIVIDUAL] and his wife have maintained their permanent residence at [CITY, STATE OTHER THAN TENNESSEE]. [INDIVIDUAL] commutes by plane to [CITY, TENNESSEE] from [CITY, STATE OTHER THAN TENNESSEE] each weekend and lives Monday through Friday in a rented one bedroom apartment near the [INSTITUTION IN TENNESSEE] where he works.

[INDIVIDUAL] has always been a legal resident of [STATE OTHER THAN TENNESSEE]. He votes there, maintains his bank accounts and property there, attends church there and has a [STATE OTHER THAN TENNESSEE] driver's license. His wife resides at their permanent address in [STATE OTHER THAN TENNESSEE] and during [INDIVIDUAL'S] Tennessee employment she has visited Tennessee only for one weekend. For many years [WIFE] has worked at full time employment in [STATE OTHER THAN TENNESSEE] for a physician or for a hospital there. [INDIVIDUAL'S] children have never been in Tennessee.

[INDIVIDUAL] receives dividend and interest income from a [STATE OTHER THAN TENNESSEE] S corporation in which he owns stock. [WIFE] also owns a small amount of stock in the [STATE OTHER THAN TENNESSEE] S corporation and as a result receives dividend income. [INDIVIDUAL] and his wife hold no investments jointly. Federal income taxes and [STATE OTHER THAN TENNESSEE] state income taxes are paid on all taxable income, including dividends and interest from the [STATE OTHER THAN TENNESSEE] S corporation.

ISSUE

1. Is dividend or interest income of a taxable nature received by [INDIVIDUAL] subject to the Tennessee Hall Income tax?
2. Is dividend or interest income of a taxable nature received by [WIFE] subject to the Tennessee Hall Income tax?

RULINGS

1. Yes.
2. No.

ANALYSIS

TENNESSEE INCOME TAX APPLIES TO PERSONS MAINTAINING A TENNESSEE RESIDENCE FOR MORE THAN SIX MONTHS

T.C.A. Section 67-2-102 imposes the Tennessee Hall Income tax as follows:

"An income tax in the amount of six percent (6%) per annum shall be levied and collected on income derived by way of dividends from stocks or by way of interest on bonds of each person . . . in the State of Tennessee who received, or to whom accrued, or to whom was credited during any year income from the sources above enumerated, except as hereafter provided".

For purposes of the Tennessee Hall Income tax a "person" is defined in the following manner by T.C.A. Section 67-2-101(5):

"Person . . . means every natural person, inhabitant, resident . . . in receipt of dividends from corporate stocks and/or interest on bonds . . . Any person who has a legal domicile in Tennessee shall be subject to the tax hereby imposed; every person who maintains a place of residence in Tennessee for more than six (6) months in the tax year shall be subject to the tax hereby imposed, regardless of what place such person may claim as legal domicile;"

Under Tennessee law the Tennessee Hall Income tax applies to any person maintaining a place of residence in Tennessee for over six (6) months.

[INDIVIDUAL] IS SUBJECT TO THE TENNESSEE INCOME TAX DUE TO THE FACT THAT HE MAINTAINS A PLACE OF RESIDENCE IN TENNESSEE FOR OVER SIX MONTHS

In the case of [INDIVIDUAL] it is not necessary to reach the question of domicile. By renting an apartment in [CITY, TENNESSEE] and living there Monday through Friday of each week throughout the year, he is maintaining a place of residence in Tennessee for more than six months of the tax year. He is subject to the Tennessee income tax on any dividends or interest he receives, or which are accrued or credited to him from the [STATE OTHER THAN TENNESSEE] S corporation in which he is a shareholder. Any other dividend or interest income of a taxable nature he receives or which is accrued or credited to him is also subject to the tax. The \$1,250 exemption (\$2,500 for joint filers, even if only one had taxable income) granted by T.C.A. Section 67-2-104(a) may be offset against any taxable income reported and the six percent (6%) rate applied to the difference.

[WIFE] IS NOT SUBJECT TO THE TENNESSEE INCOME TAX

[WIFE] has visited Tennessee for only one weekend during [INDIVIDUAL'S] Tennessee employment. She has not maintained a place of residence in Tennessee for over six months and here one weekend visit would not begin to satisfy the requirements for Tennessee domicile. Any dividend or interest income which she may have, including dividend or interest income from the [STATE OTHER THAN TENNESSEE] S corporation, would not be subject to the Tennessee income tax. She would not be required to file a Tennessee income tax return, but if she files a joint return with her husband, all her dividend and interest income should be reported as nontaxable.

Arnold B. Clapp, Special Counsel

APPROVED: Joe Huddleston, Commissioner

DATE: 4-20-94