Coates' Canons Blog: The Axe Finally Falls on Local Privilege License Taxes

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Well, that took forever. But it sure happened quickly.

Although this observation sounds like something Yogi Berra might have uttered, it accurately describes the General Assembly's elimination of local privilege license taxes yesterday. After debating this move for years, once it made up its mind to act the legislature took only two weeks to go from a bill introduction to the governor's signature.

The final version of the bill, S.L. 2014-3, does much more than eliminate local privilege license taxes. For one, it allows Moore County to levy occupancy taxes on private houses rented out through realtors for the men's and women's U.S. Opens at Pinehurst starting next week. (Some of which were listed at incredibly high rate: $65,000 for two weeks in a three-bedroom house?!?) I'll be writing on some of those other provisions in the weeks to come.

But today I want to focus on the privilege license tax provisions because some cities and towns have already started billing businesses for the 2014 tax year. Here is a summary of the law's impact and a short Q&A.

The basics:

Section 12 of S.L. 2014-3 is where the rubber hits the road for local privilege license taxes ("PLTs"). First, the law fixes the unintentional repeal of city PLT authority that I discussed here. Without this fix, cities would have had no authority to levy PLTs for 2014.

All Schedule B exemptions and caps (professionals, service stations, etc.) that were in place for 2013 remain in place for 2014.

Second, the law adds a new restriction to city PLTs by limiting these taxes to businesses that are "physically located" in the city limits. The law doesn't define what it means to be "physically located," but I think the best interpretation is that it requires in your city an office or headquarters or some similar physical space from which the business operates. A city may no longer tax service providers such as plumbers, contractors, and landscapers who service customers within the city but have no office or similar working space within the city.

Note that the physical location restriction does not apply to *county* PLTs. Unless we see a technical corrections bill that adds this language to the county PLT provision (G.S. 153A-152), counties can continue to tax service providers who have customers in the county but offices elsewhere.

More on the physical location issue in the Q&A below.

If a city has already collected 2014-2015 PLTs from service providers who do not maintain offices in the city boundaries, then that city must refund the 2014-2015 PLTs to those businesses. (More on this below.) The law doesn't affect prior years' taxes, so no refund is due for taxes from the 2013-2014 tax year or earlier years.

Third, the law limits 2014-2015 city PLTs to the same rates and amounts that were levied by a particular city for the 2013-2014 tax year. This limitation means that if a city had increased its PLT rates from 2013 to 2014 or had moved from a "flat fee" basis to a "gross receipts" basis for 2014 for non-Schedule B businesses, that increase or change is invalid. Each city must keep its 2014 PLTs at the same (or lower) rates that it charged in 2013.

Finally, the law eliminates (nearly) all city and county PLTs for tax years beginning on or after July 1, 2015. The only local PLTs that will remain in 2015 and forward will be the beer and wine taxes authorized by G.S. 105-113.77 and G.S. 105-113.78.

Okay, that was the easy part. Now for some of the tougher questions that have been filling my in-box all morning.

How does the new law affect a city for which the 2014 privilege license tax year began before the law took effect on May 29, 2014?

Most cities use PLT years that run from July 1 to June 30. But some cities start their PLT years on May 1 to correspond with the mandatory May 1 to April 30 tax year for beer and wine licenses.

Technically cities that began their 2014 PLT year prior to May 29,2014 (the day S.L. 2014-3 became law) did not have the authorization to do so because of the unintended repeal of that authority last year.

The conservative, belt-and-suspenders approach for these cities would be to change their tax ordinances so that their 2014 PLT years begin on June 1 or later. However, I think that is overly cautious. I think cities that began their tax years prior to the effective date of S.L. 2014-3 may proceed with their 2014 PLTs as if the law had authorized their taxes from beginning of their tax years.

The only concern I have about this approach would be for businesses that were in operation as of May 1 but closed prior to May 29, when city PLT authorization was re-established. If a city taxed such a business for 2014 PLTs, I think the city should refund that tax payment. But that should be a very, very small number of businesses, if any.

Now about 2015: the law bans all city and county PLTs for tax years that begin on or after July 1, 2015. If a local government uses a PLT tax year that begins on May 1 (or on any date prior to July 1), technically that local government could still levy 2015 PLTs because the ban will not yet have taken effect.

That said, I do not recommend that any local governments plan to levy PLTs for 2015. Clearly the intent of the General Assembly was to eliminate all city and county PLTs as of the 2015 tax year, regardless of when that tax year begins. I think a city or a county that attempts to bill 2015 PLTs runs the risk of incurring the wrath of the legislature. (And I also think the legislature might change the effective date of the ban to January 1, 2015, which would in fact ban all 2015 PLTs.)

What types of businesses are "physically located" in my city and therefore can be subject to PLTs for 2014?

As mentioned above the law does not provide additional explanation of the "physically located" restriction. I think the intent of this language was to ban city PLTs on service providers who come into a city to provide services to customers but who do not maintain an office or similar physical space in the city. The presence of a plumber and his truck in a city to work on a building on the city limits is not enough to trigger liability for city PLTs under the new law.

However, I think retailers and food sellers with mobile locations who park in the city limits and sell their wares or food *are* "physically located" in that city for purposes of PLTs. A food truck that uses a kitchen in Durham as its home base but that parks in Chapel Hill several times a week to sell food should be subject to Chapel Hill PLTs.

I think the same rule would apply to a guy who sells t-shirts out of his car trunk in Raleigh on N.C. State home football Saturdays; I think that seller would be subject to Raleigh PLTs even though he drives his car home to Garner at night. (I also think that guy should pick a better football team and start selling Blue Devil gear.)

That seller is "physically located" in Raleigh because he is conducting his business from a physical location (his car) in that city. If such a business is subject to gross receipts PLTs for 2014, I think the business should be permitted to apportion his gross receipts by city so that he is not taxed multiple times on the same income. I describe the apportionment process here.

How about companies that provide vending machines or video games or water coolers to businesses in your city but have offices elsewhere? I think those types of businesses are more similar to the out-of-city service providers than to the mobile retailers. These businesses should not be taxed by your city because they are "physically located" in their offices where

they actually process transactions and direct their operations.

If a city has already collected 2014 PLTs from businesses that are not physically located in the city boundaries must that city provide refunds to those businesses?

Cities could approach this issue in at least two different ways. A city could initiate the refund process on its own by identifying those businesses with mailing addresses outside of the city and providing those businesses refunds. Or a city could place the burden of requesting refunds on the businesses by sending letters to all PLT taxpayers informing them of the new "physically located" restriction and instructing businesses that are not located in the city to request a refund. Cities could probably put reasonable time restrictions on the refund request period so that they are not processing these requests for the next year.

Does the new law affect municipal motor vehicle fees?

No. Although technically the municipal vehicle registration fees imposed under G.S. 20-97(b) and (c) are taxes for the "privilege" of using public roads, the new law did not affect these fees. Nor did the new law affect the $15 tax levied by cities on taxis and limousines under G.S. 20-97(d).

Links

- www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/2013-2014/SL2014-3.html
- canons.sog.unc.edu/?p=7685
- canons.sog.unc.edu/?p=7106
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153A-152
- canons.sog.unc.edu/?p=6903
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-113.77
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