

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

April 26, 2002

Opinion No. 02-053

Execution of Distress Warrants for Unpaid Business Taxes

QUESTION

Who has the authority to serve and execute distress warrants for unpaid business taxes?

OPINION

Tennessee law specifies that sheriffs, deputy sheriffs, constables and the Commissioner of Revenue have the authority to serve and execute distress warrants for unpaid business taxes.

ANALYSIS

The Business Tax Act specifically addresses the execution of distress warrants in Tenn. Code Ann. § 67-4-719(c), which specifies that the execution of those warrants is governed by Tenn. Code Ann. § 67-4-215 or other relevant statutes. Tenn. Code Ann. § 67-4-215 states that once a distress warrant has been properly issued, the sheriff or sheriff's deputy "into whose hands such distress warrant may come . . . may execute same by distraint and sale of personal property." Tenn. Code Ann. § 67-4-215 continues to refer to the person executing the distress warrant as "the officer" and as "the sheriff" in subsections (c) and (d).

Other relevant statutes address the execution of distress warrants for unpaid business taxes. Two provisions in Chapter 4 of Title 67, which generally governs the collection of privilege taxes including the business tax, address the execution of distress warrants. Tenn. Code Ann. § 67-4-109 provides that, in regard to a privilege tax, a distress warrant shall be issued to "the sheriff or constable." Tenn. Code Ann. § 67-4-110 deals with privilege taxes once those taxes become collectable by the Commissioner and refers to the person charged with executing distress warrants for those taxes as "the sheriff." Tenn. Code Ann. § 67-4-110 also specifies that an employee or representative of the Department of Revenue may execute distress warrants with the same powers and authority as a sheriff under Tenn. Code Ann. § 67-1-1201, *et seq.* and under Tenn. Code Ann. § 67-4-110(b)-(d). Tenn. Code Ann. §§ 67-1-1201, 67-1-1202, 67-1-1203 also address the execution of distress warrants. Those sections state that a distress warrant

issued for the collection of state revenues may be executed by “the sheriff, any deputy sheriff or constable” in the county where the taxpayer has an office or property.¹

Thus, the portions of the Tennessee Code that specifically address privilege taxes and the portions that generally address enforcement of taxes include constables as well as sheriffs and deputy sheriffs in the group of persons who have the authority to execute distress warrants for privilege taxes. Therefore, it is the Opinion of this Office that sheriffs, deputy sheriffs, constables and designated employees and agents of the Department of Revenue have been given the authority under Tennessee law to execute distress warrants for unpaid business taxes.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

WYLA M. POSEY
Assistant Attorney General

Requested by:

The Honorable Dewayne Bunch
State Representative
107 War Memorial Building
Nashville, TN 37243

¹ Two other Tennessee Code provisions refer to the execution of distress warrants but do not have widespread application. Tenn. Code Ann. § 6-55-301 includes a city marshal in the list of those persons who may execute a distress warrant for privilege taxes. “City marshal” is an antiquated term and to our knowledge, the office of city marshal no longer exists in most Tennessee municipalities. Tenn. Code Ann. § 6-22-110 seems to give city police chiefs and officers the authority to execute distress warrants, but this provision applies only to those cities that have adopted the city manager-commission charter contained in the Tennessee Code and this provision may not apply to the present-day form of the business tax.