MEMORANDUM

FROM: Sid Hemsley, Senior Law Consultant

DATE: July 3, 2001

RE: Sales Tax and Transient Vendors Permit Relative to Special Events

You have the following basic questions:

1. Should a Community College collect sales tax on the sales made by temporary vendors during special events sponsored by the college on college property?

2. Is the City entitled to collect from such individual vendors the transient vendors permit fee?

The answer to question 1 is probably technically yes, but from a practical standpoint, the *city’s sales tax* may be difficult to collect.

The answer to question 2 is probably yes.

**Question 1**

The sales tax actually applies to two kinds of sales made by transient vendors from temporary premises. Tennessee Code Annotated, 67-6-102(24) defines “retail sales” to include:

1. The sale of a wide variety of goods and services upon which the sales tax is due;

2. The rent or provision of space to a dealer or vendor without a permanent location. However, the sales tax is not due on such rent or provision of space at a craft fair, antique mall, or book-fair, or gun show, if those activities are sponsored by a not-for-profit organization. [Tennessee Code Annotated, 67-6-102(24)(F)(viii)]

Taking the second kind of sales tax first, the college is probably exempt from paying the sales tax, it being a state institution.

However, the first kind of sales tax appears to be due from individual vendors to whom the college rents or otherwise provides space. However, from a practical and enforcement standpoint, that tax may be difficult to collect. For what I understand, there are several different methods the state uses to enforce the sales tax law, on what can loosely be described as individual transient vendors. Generally, if the vendors operate from flea markets, they pay for a permit costing $5 (good for one day), $15 (good for three months in the same location), or $45 (good for one year throughout the state).

For special events, the promoter can provide the Department of Revenue with a list of vendors, the Department of Revenue provides the promoter with the appropriate tax documents to collect the sales tax on individual sales, and the individual vendors return the sales tax and the documents to the promoter, who, in turn, returns them to the Department of Revenue. Alternatively, the Department of Revenue can itself work the event. There can be variations on those methods. Individual vendors can also have their own sales tax numbers and can themselves handle the collection and payment of the sales tax through the Department of Revenue.

The difficulty of collecting the sales tax in transient vendor situations is noted in a footnote to Tennessee Attorney General’s Opinion 87-124, which in a left-handed manner addresses your question, but concentrates primarily on the sales tax due from the renter or provider of space to transient vendors:

The apparent purpose of the tax imposed by T.C.A. 67-6-213 upon “retail sales” as defined by T.C.A. 67-6-102(13)(E)(viii) [now 67-6-102(24)(F)(viii)] is to complement the fax imposed by T.C.A. 67-6-202 on the retail sale of tangible personal property. The businesses upon which a tax is imposed by T.C.A. 67-6-213 are by their nature temporary and transient and therefor it is difficult to enforce the tax imposed by T.C.A. 67-6-202 against them. A somewhat analogous situation within the context of the business tax was addressed by the Tennessee Supreme Court in Super Flea Market of Chattanooga v. Olsen, 677 S.W.2d 449 (Tenn. 1984). [At p. 8]

In the cited case, the Court did indeed note that with respect to the Business Tax, Tennessee Code Annotated, 67-4-709(a)(5):

It exempts flea markets and other similar businesses from the regular business tax and substitutes the one dollar per day per both assessment. This legislative classification was chosen because certain businesses are by their very nature temporary and transient and therefore it is difficult to enforce the regular business tax against them.

While there is not a similar general exemption of individual transient vendors from the sales tax, both the footnote to TAG 87-124 and Super Flea Market, point to the difficulty of collecting the business (and sales) tax from transient vendors.

I also understand that there are various nuances in the collection of the sales tax among the various tax offices across the state. I suspect it would be wise to contact your Tennessee Department of Revenue Office and explain in detail the situation at the college and see if that office can have a go at the collection of the sales tax, or perhaps points to something I have overlooked that would exempt vendors at special events from the payment of such taxes.

**Question 2**

The City has adopted the Business Tax Act in 5-201 of its Municipal Code. Under the Business Tax Act, cities are authorized to charge individual transient vendors $50 for a 14 day permit. [Tennessee Code Annotated, 67-4-709(a)(6)] A “transient vendor” is one who sells stocks of goods from “temporary premises.” “Temporary premises” means any public or quasi-public place, including a hotel, rooming house, storeroom, building or part of a building, tent, vacant lot, railroad car or motor vehicle which is temporarily occupied for the purpose of exhibiting stocks of merchandise to the public. [Tennessee Code Annotated, 67-4-702(a)(17)] There appears to be nothing in the Business Tax Act that exempts such sales on state property.

I have enclosed TAG 87-124 and 97-108 for your perusal in connection with both the sales tax and the business tax questions.