

**IN THE CIRCUIT COURT
FOR
LAWRENCE COUNTY, TENNESSEE**

Case No. 36138

STATE OF TENNESSEE,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	JUDGE DAVID ALLEN
)	
Arthur Jay Hirsch,)	Hearing Requested
)	
<i>Accused.</i>)	
<hr/>		

**REQUEST TO TAKE MANDATORY JUDICIAL NOTICE
RELATIVE TO PRIVILEGE & PRIVILEGE TAX TERMS**

Accused, Arthur Jay Hirsch, without counsel, hereby requests this Court to take mandatory judicial notice of facts and law pursuant to Tennessee Rules of Evidence, Rules 201¹,

¹

Rule 201: Judicial notice of adjudicative facts.

(b) Kinds of Facts - A judicially noticed fact must be one not subject to reasonable dispute, in that it is either

- (1) generally known within the territorial jurisdiction of the trial court or
- (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(d) When Mandatory - A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to Be Heard - A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice is taken.

202,² relative to permissive privilege licensure and privilege tax as material case terms. This request is timely since judicial notice may be taken at any stage of the proceeding (Rule 201(f)).

1. ELEMENTS OF PRIVILEGE & PRIVILEGE TAX.

1.1 *Case Law*

● “The Constitution of the state (article II, § 28) recognizes only two general kinds of taxation—ad valorem and **privilege**.” *Railroad Co. v. Harris*, 99 Tenn. 701, 43 S. W. 119, 53 L. R. A. 921.(emphasis added)

● “**The essential elements of the definition of privilege is occupation and business, and not the ownership simply of property, or its possession or keeping it.**” *Phillips v. Lewis*, 3 Shann. Cas. 231. Nashville, January Term, 1877 (emphasis added)

● “A privilege is whatever business, pursuit, occupation, or vocation, affecting the public, the Legislature chooses to declare and tax as such.” *Corn et al. v. Fort*, 170 Tenn. 377, 385, 95 S.W.2d 629, 623, 106 A.L.R. 647.

● “At the least, any **occupation, business, employment, or the like** affecting the public, may be classed and taxed as a **privilege**. *Turnpike Cases*, 92 Tenn. 372; *Kurth v. State*, 86 Tenn. 135; *Jenkins v. Ewin*, 8 Heisk. 456; *Wiltse v. State*, *ib.* 544; *State v. Schlier*, 3 Heisk. 281; *Columbia v. Guest*, 3 Head, 414; *Robertson v. Hennegar*, 5 Sneed, 258; *French v. Baker*, 4 Sneed, 193; *Mabry v. Tarver*, 1 Hum. 94.” (emphasis added)

● Privileges are **special rights**, belonging to the individual or class, and not to the mass; properly, an exemption from some general burden, obligation or duty; **a right peculiar to some individual or body**.¹ *Lonas v. State*, 50 Tenn. 287, 307. 06/06/60 *Jack Cole Company v. Alfedd T. MacFarland*, 337 S.W.2d 453, 206 Tenn. 694 (emphasis added)

(f) **Time of Taking Notice** - Judicial notice may be taken at any stage of the proceeding.

2

Rule 202: Judicial notice of law.

(a) **Mandatory Judicial Notice of Law.** The court shall take judicial notice of

- (1) the common law,
- (2) the constitutions and statutes of the United States and of every state, territory, and other jurisdiction of the United States,
- (3) all rules adopted by the United States Supreme Court or by the Tennessee Supreme Court, and
- (4) any rule or regulation of which a statute of the United States or Tennessee mandates judicial notice.

● **Privilege.** For tax purposes, any occupation or business which the legislature may declare to be a privilege and tax as such. *Seven Springs Water Co. v. Kennedy*, 156 Tenn. 1, 299 S.W.792, 56 ALR 496. Ballentine's Law Dictionary, 3rd Ed., p. 995.

● **Privilege tax. A tax on the privilege of carrying on a business or occupation for which a license or franchise is required.** *Gulf & Ship Island R. Co. v. Hewes*, 183 U.S. 66, 22 S.Ct. 26, 46 L.Ed. 86. Black's Law Dictionary, 6th Ed., p. 1198. (emphasis added)

● **"A privilege tax cannot be imposed upon anything or any act, unless it constitutes a business, occupation, pursuit or vocation."** *Shannon's Compilation of Tennessee Statutes*, Vol 1, 1917. (emphasis added)

● **"The power to regulate commerce presupposes the existence of commercial activity to be regulated."** *National Federation Of Independent Business, et al., Petitioners (No. 11-393) v. Kathleen Sebelius, Secretary Of Health And Human Services*, 132 S. Ct. 2566 (emphasis added)

● **Privilege tax** A tax upon the pursuit of an occupation or the conducting of a business. *Bank of Commerce & Trust Co. v Senter*, 149 Tenn. 574, 577 , 579, 260 SW 144. Ballentine's Law Dictionary, 3rd Ed., p. 996.

● "Any occupation, business, employment or the like, affecting the public, may be classed and **taxed as a privilege.**" *K. & O. Railroad v. Harris*, 99 Tennessee, 684 (emphasis added)

● "The tax is on the occupation, business, pursuits, vocation, or calling, it being one in which a profit is supposed to be derived by its exercise from the general public, and not a tax on the property itself or the mere ownership of it."..."The legislature cannot, under our constitution, declare the simple enjoyment, possession, or ownership of property of any kind a privilege, and tax it as such. It may declare the business, occupation, vocation, calling, pursuit, or transaction, by which the property is put to a peculiar use for a profit to be derived from the general public, a privilege and tax it as such, but it cannot tax the ownership itself as a privilege. The ownership of the property can only be taxed according to value." *Phillips v. Lewis*, 3 Shann. Cas. 231. Nashville, January Term, 1877 (emphasis added)

1.2 *State Statutes*

● TCA 67-4-101. Privileges taxable -- License required

"The occupations, businesses and business transactions deemed privileges are to be taxed, and not pursued without license, and shall be such as are declared by this code or by legislative acts that are not to be deemed repealed by the enactment

of this code.” (emphasis added)

- **TCA 55-4-101 (a)(1)(2)(2)**

The registration and the fees provided for registration shall constitute a **privilege tax upon the operation** of motor vehicles. (emphasis added)

2. **REQUISITE APPLICATION FOR CLASSIFIED PRIVILEGE LICENSE ISSUANCE.**

2.1 *State Statutes*

- TCA 67-4-104. Issuance of license.

(a) **Licenses for exercising all privileges** for which license provisions are not otherwise made shall be issued on the **applicant's** paying to the clerk or other proper officer the **specific tax laid on the license and the fees.** (emphasis added)

- TCA 55-50-301. License required — Requirements — Exception — Applicability to temporary licenses and permits.

(a) Every person **applying for an original or renewal driver license** shall be required to comply with and be **issued a classified driver license** meeting the following requirements: (emphasis added)

(4) Any person licensed as a driver may exercise the **privilege granted** upon all streets and highways in this state and shall not be required to obtain any other license to **exercise the privilege** by any county, municipal or local board, or body having authority to adopt local police regulations. (emphasis added)

- TCA Title 55-50-321 Applications.

(a) must use designated **application form, show birth certificate, \$2.00 fee payment, proof of Tennessee residency.**

(b) proof of age and identification.

(c)(1)(A) Every **application** shall state the full name, date and place of birth, sex, county of residence, residence address, including the street address and number or route and box number, or post office box number if the **applicant** has no bona fide residential street address, of **applicant**, height, weight, hair and eye color, social security number, if the **applicant** has been issued a social security number, and whether any such license has ever been suspended or revoked, or whether an **application** has ever been refused, and, if so, the date of and reason for the suspension, revocation, or refusal, and other information as the department may require to determine the **applicant's** identity, competency, and eligibility

(C(i)(ii) **applicant** is U.S. citizens and a lawful resident.

- TCA 62-76-104- Denial of license for prior criminal prosecution prohibited
Over a dozen references re. **application for license**, i.e., applicant “submitting the

application necessary to obtain a license, certificate, or registration. . . **for an individual to engage in an occupation, profession, business, or trade in this state.** . . .” (emphasis added)

3. PRIVILEGE TAX PAYMENT & RECEIPT.

3.1 *Case Law*

- "The payment required as a preliminary to the license is in the nature and form of a tax, and is due to the State." *Royall v. Virginia*, 116 U.S. 572, 579.

- **“The granting of a license therefore must be regarded as nothing more than a mere form of imposing a tax.** . . . But as we have already said, **“these licenses give no authority. They are mere receipts for taxes”**
License Tax Cases, 72 U.S. 5 Wall. 462, 472 {1866}. (emphasis added)

- “Not having a **tax receipt** [*e.g.* driver license] or other papers to engage in some business does not prove violation of a tax law **when no business can be shown.**”
United States v. Resnick, 299 U.S. 207, 209, 81 L. Ed. 127, 57 S. Ct. 126 (1936) (emphasis added)

4. PRIVILEGE LICENSE ISSUANCE RULES.

4.1 *Federal Record Keeping Statute for State Compliance.*

- Federal rule: 49 CFR § 384.231(d) **Record keeping requirements.** The State must conform to the record keeping requirements which include driver records and driver identification records, etc.
§ 384.231(e) The department **shall** maintain a copy of all licenses as issued.

4.2 *Compliant State Record Keeping Statute.*

- TCA Title 55-50-204. Records to be kept by department — Fee for furnishing copies.
 - (a) The department of safety **shall file every application for a license received by** it and shall maintain suitable indices containing in alphabetical order:
 - (3) The name of every licensee whose license has been suspended or revoked by the department, and after each name note the reasons for this action.
 - (c)(2)(B)(3) The department shall retain on the driver history record all convictions, disqualifications and other licensing actions for violations for at least three (3) years

or longer as required under 49 CFR 384.231(d)³

5. TESTING REQUIREMENTS FOR PRIVILEGE LICENSE ISSUANCE

5.1 *Federal License Testing Statutes for State Compliance.*

- 49 USC § 31308. Commercial driver's license. Requirements for the issuance of a driver's license: (abbreviated to save space)
 - pass written and driving tests;
 - the license to be tamperproof;
 - the name and address of the individual issued the license;
 - a physical description of the individual;
 - the social security account number or other number or information the Secretary decides is appropriate to identify the individual;
 - the class or type of commercial motor vehicle the individual is authorized to operate;
 - the name of the State that issued the license;
 - the dates between which the license is valid.

- 49 CFR § 384.201 Testing program.

(a) The **State** shall adopt and administer a program for testing and ensuring the fitness of persons to operate commercial motor vehicles (CMVs) in accordance with the minimum Federal standards contained in part 383 of this title.

- 49 CFR § 384.202 Test standards.

No State shall authorize a person to operate a CMV unless such person passes a **knowledge and driving skills test** for the operation of a CMV in accordance with part 383 of this title.

5.2 *State Privilege License Examination Statutes.*

- TCA 55-50-322. Examination of applicants.

(a)

(1)

(A) The department shall examine **every applicant** for a driver license, intermediate driver license, learner permit, temporary driver license, temporary learner permit, and

³ 49 CFR § 384.231 Satisfaction of State disqualification requirement.

(a) Applicability. The provisions of §§ 384.203, 384.206(b), 384.210, 384.213, 384.215 through 384.219, 384.221 through 384.224, and 384.231 of this part **apply to the State of licensure** of the person affected by the provision. The provisions of § 384.210 of this part also apply to any State to which a person makes application for a transfer CDL.

temporary intermediate driver license, except as otherwise provided in this part. This examination shall include a test of the **applicant's eyesight** to be administered according to standards set by the department, the **applicant's ability to read** and/or understand highway signs regulating, warning and directing traffic, the **applicant's knowledge of the traffic laws** of this state, and shall include an actual demonstration of ability to exercise ordinary and reasonable **control in the operation of a motor vehicle** or combination of vehicles of the type covered by the license classification or endorsement that the **applicant** is seeking. The examination may also include further **physical and mental examinations** the department finds necessary to determine the **applicant's fitness** to operate a motor vehicle safely upon the highways.

6. PRIVILEGE LICENSEE DEBT PAYMENT PLAN.

6.1 *Privilege Licensee Compulsory Payment Plan.*

- TCA 40-24-105. Collection of fines, costs and litigation taxes -- Installment payment plan -- Suspended license -- Restricted license -- Conversion to civil judgment -- Settlement.

(b)

(1) Any person who is **issued** a license under title 55 and who has not paid all litigation taxes, court costs, and fines assessed as a result of disposition of any offense under the criminal laws of this state within one (1) year of the date of the completion of the sentence **shall enter into an installment payment plan** with the clerk of the court ordering disposition of the offense to make payments on the taxes, costs, and fines owed.

7. PRIVILEGE REVOCATION/CANCELLATION.

7.1 *State Privilege License Revocation/Cancellation Statute.*

- TCA 55-50-102(5) "Cancellation of driver license" means the annulment or termination by formal action of the department of a person's driver license because of some error or defect in the license or **application** or because the **licensee is no longer entitled to that license;**

- TCA 55-50-102(48) "Revocation of driver license" means the termination by formal action of the department of a person's **driver license or privilege** to operate a motor vehicle on the public highways, which termination shall not be subject to renewal or restoration except that an **application** for a new license may be presented and acted upon by the department after the expiration of at least one (1) year after the date of revocation;

8. **GROUNDS FOR PRIVILEGE LICENSE REVOCATION/SUSPENSION**

8.1 *Federal Disqualification Statute.*

- Federal; 49 CFR §383.51 Disqualification of drivers.

§ 383.51(a)(7)(b) Disqualification for **major offenses**, includes:

DUI, drug use, high blood alcohol level, refusing to take alcohol test, leaving scene of an accident, using vehicle to commit felony, driving on prior revoke/suspended license, manslaughter/homicide, using vehicle to transport drugs, using vehicle in human trafficking.

§383.51(a)(7)© **Disqualification for serious traffic offenses**, includes:

speeding, reckless driving, improper lane changes, following too closely, violating traffic control laws, driving a CMV without license, wrong class of license, texting while driving, phone holding while driving.

8.2 *State Causes for Suspension/Revocation.*

- TCA Title 55-50-102(51) “**Serious traffic violation**” means:

(A) Excessive speeding, as defined by the secretary by regulation; (B) Reckless, careless or negligent driving, as defined under § 55-10-205;(C) A violation of any state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with an accident or collision resulting in death or personal injury to any person, or property damage;(D) Driving a commercial motor vehicle without obtaining a commercial driver license; (E) Driving a commercial motor vehicle without a commercial driver license in the driver's possession;(F) Driving a commercial motor vehicle without the proper class of commercial driver license and endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported; or (G) Any other violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, that the secretary determines by regulation to be serious.

9. **WHEN PRIVILEGE LICENSE ISSUANCE IS FRAUD ON STATE LAW.**

9.1 *Privilege License Obtained Without Business Activity is Fraud.*

- *Gibbons v. Ogden*, 22 U.S 1, Wheat. 1 (1824)“But, when no trade is carried on, or intended to be carried on, under the license, it is clear that **the license is a fraud** upon the State law, if that law is in other respects valid.” (emphasis added)

10. **WHEN PRIVILEGE ENDS.**

10.1 *No Regulations When There Is No Privilege.*

● **"When the privilege ends, the power of regulation ceases."**
Munn v. Illinois, 94 U.S. 113, 147 (1876) (emphasis added)

11. **RIGHT v. PERMISSIVE PRIVILEGE.**

11.1 ***Right v. Permissive Privilege in Highway Travel.***

● A public highway is such a passageway as any and **all members of the public** have an **absolute right** to use as distinguished from a **permissive privilege** of using same. *Standard Life Ins. Co. v. Hughes*, 203 Tenn. 636, 315 S.W.2d 239, 243, 1958 Tenn. LEXIS 229 (1958). (emphasis added)

12. **PLEASURE TAKING NOT TAXABLE PRIVILEGE.**

12.1 ***Pleasure Taking Not Taxed as a Business.***

● **Pleasure taking does not constitute a business, occupation, pursuit or vocation, in the sense of the definition of a taxable privilege; and therefore is not subject to privilege taxation."**
Shannon's Compilation of Tennessee Statutes, Vol. 1, 1917 (emphasis added)

13. **PRIVILEGES TAXABLE BY STATE ALONE.**

13.1 ***Businesses Declared to be Privilege-Taxable.***

● TCA 67-4-401. Generally. Engaging in the various businesses mentioned in this part is declared to be a **privilege** for state purposes and **taxable** by the state alone, and any person so engaged shall pay to the commissioner of revenue, unless otherwise provided, the tax stated in this part. No county or municipality may impose any **tax upon the privileges** mentioned in this part, except license fees upon motor vehicles that might be imposed in the absence of this part. (emphasis added)

● TCA 67-4-1702. Occupations subject to tax. Privileges are for the following callings and occupations: lobbyists; agents; broker-dealers; investment advisers; accountants; architects; brokers; engineers; and landscape architects. audiologists; chiropractors; dentists; optometrists; osteopathic physicians; pharmacists; physicians; podiatrists; psychologists; speech pathologists; veterinarians; attorneys; and athlete agents.

14. **HIGHWAY USE FOR-PROFIT PRIVILEGE.**

14.1 ***State Granted Privilege to Drive For-Profit on Highways.***

● TCA §55-50-301(a)(4) Any person licensed as a driver may exercise the **privilege** granted upon all streets and highways in this state and shall not be required to obtain any other license to exercise the **privilege** by any county, municipal or local board, or body having authority to adopt local police regulations.

15. **SCOTUS RULING ON INAPPLICABLE PRIVILEGED COMMERCE REGS.**

15.1 *Prosecution Fatal When No Commercial Activity.*

● "But we have never permitted Congress to anticipate that activity itself in order to regulate individuals **not currently engaged in commerce**. . . , commerce. . . prosecution of those. . . **not currently engaged in any commercial activity**. . . **is fatal to the Government's effort to "regulate..."** *National Federation Of Independent Business, et al., Petitioners (No. 11-393) v. Kathleen Sebelius, Secretary Of Health And Human Services*, 132 S. Ct. 2566 (emphasis added)

~ END OF MANDATORY JUDICIAL NOTICE ~

Accused request the Court Judge to state in writing, with particularity, the facts and law relied on if this mandatory judicial notice is denied contrary to the Tenn. R. Evid. Rules 201 & 202.

HEARING REQUESTED

Date: Novmber 28, 2022

Arthur Jay Hirsch
1029 W. Gaines St
Lawrenceburg, TN 38464

CERTIFICATE OF SERVICE

I hereby certify that a copy of this request for Mandatory Judicial Notice was delivered to district attorney, Brent Cooper, by hand on November 28, 2022.

Arthur Jay Hirsch