Business tax receipt conditioned on E-Verify compliance

Number: AGO 2019-04

Date: April 01, 2019

Subject:
Business tax receipt conditioned on E-Verify compliance

Ms. Eden Bentley
Brevard County Attorney
2725 Judge Fran Jamieson Way
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Viera, Florida 32940

RE: LOCAL BUSINESS TAX – E-VERIFY – There are no statutory provisions that would allow a county to enact an ordinance conditioning issuance of a local business tax receipt upon compliance with federal immigration law via E-Verify. Art. VII, §1(a), Fla. Const.; ch. 205, Fla. Stat. (2018).

Ms. Bentley:

We have received your letter on behalf of the Brevard County Board of County Commissioners asking for an opinion on the following question:

Whether Brevard County may enact an ordinance conditioning the issuance and renewal of a business tax receipt on compliance with the federal E-Verify program.

In sum:

The county may not enact an ordinance requiring compliance with E-Verify to obtain a business tax receipt, because no general law authorizes such an ordinance.

Chapter 205, Florida Statutes (2018), authorizes local governments to impose a local business tax as defined in section 205.022(5). Section 205.032 is specifically applicable to counties. Section 205.053 directs the county tax collector to collect the tax and thereupon to issue the taxpayer a “business tax receipt,” and provides penalties and remedies for engaging in a business, occupation, or profession without having paid the tax.

Brevard County, a charter county, has enacted business tax provisions pursuant to chapter 205 within its code of ordinances.[1] You state that the county wishes to enact an ordinance that would make issuance and renewal of a “business license,” formerly called an “occupational license,” contingent upon an applicant’s “participation and compliance in the federal E-Verify program.” E-Verify is a voluntary federal program originally authorized by the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996,[2] administered by the Department of Homeland Security, the Social Security Administration, and the United States Citizenship and Immigration Services. It is “‘an internet-based system that allows an employer to verify an employee’s work-authorization status.’”[3]

Chapter 205, however, authorizes counties to levy a *tax*, not to grant a *license*. Until 2006, the tax was called a "local occupational license tax," and section 205.053(1) provided that the tax collector would issue the taxpayer an "occupational license." In 2006, the Legislature replaced this terminology because it was misleading. The Legislature was concerned that an "occupational license" could be interpreted as an imprimatur by the county that a person was qualified to engage in a particular occupation or that a business was qualified to operate.[4] Accordingly, the Legislature replaced the term "local occupational license" with "local business tax" throughout chapter 205, to more accurately communicate that chapter 205 authorizes a revenue-producing tax and not qualifications for licensure.

Because the local business tax is a tax rather than a license, it is subject to article VII, section 1(a) of the Florida Constitution which provides: "No tax shall be levied except in pursuance of law." In addition, article VII, section 9(a) provides: "Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes[.]" Local governments do not have the inherent power to tax, but derive such power from the state by enacted law. When a statute authorizes a tax, it may be levied, assessed, and collected only in the express manner provided.[5] *See, e.g., Collier Cty. v. State*, 733 So. 2d 1012, 1014 (Fla. 1999); *Belcher Oil Co. v. Dade Cty.*, 271 So. 2d 118, 122 (Fla. 1972). The Legislature has specified the conditions under which a county may levy and collect a business tax. §§ 205.032, 205.033, Fla. Stat. (2018). Those conditions do not include compliance with the E-Verify program.

There is no provision within chapter 205 that authorizes a county to require compliance with the E-Verify program before it will issue a business tax receipt to a business that has paid the tax. This office has concluded in prior opinions that the Legislature has the "exclusive prerogative" to regulate the levy and collection of the local business tax via chapter 205, and that local governments are prohibited from modifying existing regulation.[6]

It is therefore my opinion that Brevard County may not enact an ordinance requiring persons to comply with E-Verify as a condition of obtaining a business tax receipt.

Sincerely,

Ashley Moody
Attorney General

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[1] Art. II, §§ 102-26 to 102-96, Business Tax Receipt, Brevard County Code of Ordinances.

[2] Pub. L. No. 104-208, 110 Stat. 3009 (codified as amended in scattered sections of 8 U.S.C.).

[3] *Chamber of Commerce of the United States v. Whiting*, 563 U.S. 582, 590 (2011) (quoting *Chicanos Por La Causa, Inc. v. Napolitano*, 558 F.3d 856, 862 (9th Cir. 2009)). "An employer submits a request to the E-Verify system based on information that the employee provides…. In

response to that request, the employer receives either a confirmation or a tentative nonconfirmation of the employee's authorization to work." *Whiting*, 563 U.S. at 590.

[4] *See* Ch. 2006-152, Laws of Fla. (2006) (stating such concerns in the preamble).

[5] The definition of the business tax receipt in section 205.022(2) requires proof of compliance only with the laws within (and authorized by) chapter 205. The receipt "evidences that the person in whose name the document is issued has complied with the provisions of this chapter relating to the business tax."

[6] *See* Ops. Att'y Gen. Fla. 90-25 (1990) (no statute authorized Monroe County to establish a system requiring the county planning and zoning director to certify that a business was properly zoned before the taxpayer could be issued a business tax receipt); 84-91 (1984) (no statute authorized Hernando County to transfer by ordinance the duty of collecting the local business tax from the tax collector to the code enforcement board); 84-65 (1984) (no statute authorized Collier County to direct an entity other than the tax collector to collect the local business tax).