Ad Valorem Tax -- Industrial Development Authority

Number: AGO 2016-03

Date: March 11, 2016

Subject:
Ad Valorem Tax -- Industrial Development Authority

The Honorable Patricia Patterson
Chairperson, Taylor County
Board of County Commissioners
Post Office Box 620
Perry, Florida 32348

RE: TAXATION – COUNTIES – AD VALOREM TAX – INDUSTRIAL DEVELOPMENT AUTHORITY – there is no specific legislative authority allowing the county to apportion a percentage of ad valorem tax proceeds to the industrial development authority based upon the number of businesses that locate in the county due to the efforts of the authority. ss. 125.016 and 159.48, Fla. Stat.

Dear Ms. Patterson:

The Board of County Commissioners has asked for my opinion on the following question:

Is the Taylor County Board of County Commissioners authorized to increase the regular budget of the Taylor County Development Authority by apportioning to the Authority a percentage of ad valorem tax revenues generated from new businesses that have located in Taylor County as a result of the efforts and assistance of the Authority?

In sum:

Sections 125.016 and 159.48, which grant counties the power to levy and collect ad valorem taxes, do not grant a board of county commissioners the power to award a percentage of the proceeds to the industrial development authority based upon the number of new businesses that have located in the county as a result of the authority's efforts, nor do counties have an independent power to tax.

In 1959, the Legislature enacted Chapter 59-1927, Laws of Florida, creating the Taylor County Development Authority, a public corporation tasked with assisting in the planning and development of Taylor County. In 1970, the Legislature passed sections 159.44 through 159.53, Florida Statutes, which articulate the functions and powers of county industrial development authorities, and provide that these powers are supplemental to powers already created by law.

You have advised this office that the Taylor County Development Authority proposed to the Taylor County Board of County Commissioners that a percentage of new ad valorem tax revenues be apportioned to the Authority based upon the number of new businesses that moved

to or started up in Taylor County as a result of the Authority's efforts and assistance. The Authority believes this would "incentivize" it by "increasing its operating budget when it secures new investment" and that it would relieve the Authority of the obligation "to prepare and present justifications for the existing budget and for budget increases[.]" You suggest that the proposed apportionment would be "a natural extension of the county's inherent tax and spend power" found in two statutes that specifically grant counties the power to levy ad valorem taxes, namely, sections 125.016 and 159.48, Florida Statutes.

Section 125.016, Florida Statutes, is a general grant to counties of the authority to impose an ad valorem tax, and provides, in full:

"Annually an ad valorem tax of not exceeding 1½ mills may be levied upon all property in the county, which shall be levied and collected as other county taxes are levied and collected. The taxes shall be charged to the general fund, but such revenue may be appropriated by the county for the cost of constructing, operating, maintaining, expanding, enlarging, improving, or developing any project or projects herein specified, or for the payment of the costs of removing and relocating any structures, installations, or facilities which in the opinion of the board of county commissioners may be required for the safe and efficient operation of any such projects. Said tax may be levied, collected, and expended for any of the purposes herein specified notwithstanding the cost and expense thereof which may have been incurred in a previous year, and when so collected and used the tax shall be considered to be levied, collected and used for a county purpose."

Section 159.48, Florida Statutes, specifically authorizes a board of county commissioners to levy ad valorem taxes for the benefit of the county's industrial development authority, and provides, in full:

"The exercise of the powers granted industrial development authorities is declared to be a public and county purpose. The board of county commissioners is authorized to, and may, levy ad valorem taxes in an amount not to exceed 1 mill annually for the purposes of ss. 159.44-159.53. The proceeds of such ad valorem tax shall be used to aid each industrial development authority in fostering, developing, and locating industry in the county and to pay the reasonable operating expenses of the authority to the extent that the board of county commissioners finds necessary. No ad valorem taxes shall ever be used for the purpose of paying the interest or principal on any bonds issued to finance or refinance an industrial or manufacturing project as prohibited by the State Constitution."

A county's power to levy taxes is governed by the Florida Constitution.[1] The Constitution provides that "[n]o tax shall be levied except in pursuance of law"[2] and directs the state to authorize counties to levy ad valorem taxes.[3] "Counties do not possess inherent power to tax; the legal authority of a county to tax must derive from the state."[4] Being purely statutory in nature, taxes on property "can be lawfully levied, assessed, and collected *only in the express method pointed out by statute*."[5] (e.s.) Section 125.01(1)(r), Florida Statutes, provides that counties have the power to: "Levy and collect taxes,…for county purposes…which power shall be exercised in such manner, and subject to such limitations, as may be provided by general law." Thus, a county must be authorized by general law to exercise its taxing authority and has no home rule power or independent power to tax.[6]

Neither section 125.016, Florida Statutes, nor section 159.48, Florida Statutes, contains language that would allow the board of county commissioners to carve out a percentage of the ad valorem revenues collected from a subset of new businesses and pledge it to the Authority. Section 125.016 permits ad valorem tax revenues to be used (1) for "the cost of constructing, operating, maintaining, expanding, enlarging, improving, or developing" county projects, and (2) for "the costs of removing and relocating any structures, installations, or facilities" to ensure "the safe and efficient operation of any such projects." Section 159.48 permits the proceeds to be used (1) to aid the Authority in "fostering, developing, and locating industry in the county[,]" and (2) "to pay the reasonable operating expenses of the authority[.]" The latter directs the county commissioners to dedicate ad valorem proceeds to the Authority "to the extent that the board of county commissioners finds necessary."

Both provisions, therefore, permit the use of tax proceeds to fund ongoing and future projects, activities, and expenses that are consistent with the Authority's purpose. They do not authorize the county to release a portion of the tax proceeds to reward past efforts as a means of "incentivizing" the Authority. The merit of incentivizing the Authority is not at issue in this opinion, only whether the method you propose is permitted under the law. When a statute authorizes a unit of local government to impose a tax, the statute must be strictly construed, may not be extended by implication, and may not be enlarged to include any matter not specifically included, even if consistent with the purpose of the statute.[7] Pledging the tax revenues in the manner you propose would exceed the parameters of sections 125.016 and 159.48, Florida Statutes.[8]

Even section 125.045(2), Florida Statutes, which authorizes a county to use public funds to encourage the development of private enterprise within its borders, speaks in terms of granting funds for ongoing and future projects rather than as a reward for having previously attracted new businesses to the county: "The governing body of a county may expend public funds *to attract and retain business enterprises*, and the use of public funds toward the achievement of such economic development goals constitutes a public purpose."[9] (e.s.) Indeed, paragraph (3) suggests the kinds of economic development activities the county may fund:

"developing or improving local infrastructure, issuing bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants, leasing or conveying real property, and making grants to private enterprises for the expansion of businesses existing in the community or the attraction of new businesses to the community."

In sum, the Board of County Commissioners has no authority under either section 125.016 or 159.48 to pledge a percentage of ad valorem tax proceeds to the Taylor County Development Authority based upon the amount of revenue collected from new businesses that have located in Taylor County as a result of the Authority's efforts, because these statutes do not grant that power to the counties, and counties possess no home rule or independent power regarding taxation.

Sincerely,

Pam Bondi
Attorney General

PB/tebg

---

[1] *County v. State*, 733 So. 2d 1012, 1014 (Fla. 1999); *Whitney v. Hillsborough County*, 127 So. 486, 490-91 (Fla. 1930).

[2] Art. VII, s. 1(a), Fla. Const.

[3] “Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes[.]” Art. VII, s. 9(a), Fla. Const.

[4] *Gilreath v. Westgate Daytona, Ltd.*, 871 So. 2d 961, 966 (Fla. 5th DCA 2004). *See also* Op. Att’y Gen. Fla. 00-06 (2000).

[5] *State ex rel. Seaboard Air Line R. Co. v. Gay*, 35 So. 2d 403, 409 (Fla. 1948). *See also Wilson v. School Bd. of Marion County*, 424 So. 2d 16, 19-20 (Fla. 5th DCA 1982); Op. Att’y Gen. Fla. 08-26 (2008) (the statutory enumeration of things upon which tax revenues may be spent “is ordinarily to be construed as excluding from its operation all things not expressly mentioned.”).

[6] *Alachua County v. Adams*, 677 So. 2d 396 (Fla. 1st DCA 1996); *and see* Ops. Att’y Gen. Fla. 09-28 (2009); 00-06 (2000); 99-72 (1999).

[7] *Alachua County v. Adams*, 677 So. 2d at 398.

[8] *Cf.* Op. Att’y Gen. Fla. 90-23 (1990) (a municipality could not enact an ordinance allowing a rebate to property owners of a portion of ad valorem taxes collected on their newly annexed property, as an incentive to encourage further annexation of property into the municipality, when there was no specific statutory or constitutional basis for it).

[9] Section 125.045(2), Fla. Stat., also directs that a liberal construction be applied to provisions in Ch. 125, Fla. Stat., that set forth the powers and duties of the county. By its terms, however, this provision applies only to the powers that may lawfully be exercised by the county, and thus would not allow an exercise of taxing power in a manner that is inconsistent with general law.