Economic Development Ad Valorem Tax Exemption

Number: AGO 2015-07

Date: April 20, 2015

Subject:
Economic Development Ad Valorem Tax Exemption

Mr. Donald D. Conn
Pennington, P.A.
2701 North Rocky Point Drive
Suite 900
Tampa, Florida 33607

RE: COUNTIES – TAXATION – ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION – IMPROVEMENTS – tax exemption for improvements to property made prior to adoption of ordinance. s. 196.1995, Fla. Stat.

Dear Mr. Conn:

In your capacity as County Attorney for DeSoto County and on behalf of the DeSoto County Board of County Commissioners, you have asked for my opinion on substantially the following question:

Pursuant to section 196.1995(5), Florida Statutes, is the Board of County Commissioners of DeSoto County authorized to grant an exemption from ad valorem taxation to a private purchaser of real property and improvements thereon, when those improvements had been exempt from taxation as governmentally owned property prior to the date of purchase, and the purchaser intends to operate a new business on that real property using said improvements?

In sum:

To qualify for the economic development ad valorem tax exemption in section 196.1995(5), Florida Statutes, improvements to real property must be made or tangible personal property must be added or increased after the date the ordinance authorizing the exemption is adopted.[1] Thus, to qualify for this exemption from ad valorem taxation in DeSoto County, the improvements must have been made after January 25, 2011, and section 196.1995(5), Florida Statutes, would appear to preclude application of the exemption to any improvements to real property made prior to that date.

According to information you have provided to this office, there is a sale pending by the State of Florida of real property and improvements located in DeSoto County, to a private party. The property was formerly used as the G. Pierce Wood Memorial Hospital, which closed in 2001, and a facility operated by the Department of Juvenile Justice, which closed in 2012. A private purchaser will operate a business leasing the real property and improvements formerly owned by the State of Florida.

The voters of DeSoto County approved by referendum in 2010 and the commission subsequently adopted an ordinance authorizing an exemption from ad valorem taxation for certain new business and expansion of existing businesses in accordance with section 196.1995, Florida Statutes. It appears that you are concerned that the terms of the ordinance may prove problematic for application of the economic development ad valorem tax exemption to this property. The Florida Attorney General's Office is statutorily limited to providing legal opinions on questions of state law and does not comment on local legislation such as the DeSoto County ordinance.[2] To the extent that resolution of this question requires consideration of section 196.1995, Florida Statutes, however, the following discussion is provided in an effort to be of assistance.

Article VII, section 3(c) of the Florida Constitution, provides:

"Any county or municipality may, for the purpose of its respective tax levy and subject to the provisions of this subsection and general law, grant community and economic development ad valorem tax exemptions to new businesses and expansions of existing businesses, as defined by general law. Such an exemption may be granted only by ordinance of the county or municipality, and only after the electors of the county or municipality voting on such question in a referendum authorize the county or municipality to adopt such ordinances. *An exemption so granted shall apply to improvements to real property made by or for the use of a new business and improvements to real property related to the expansion of an existing business and shall also apply to tangible personal property of such new business and tangible personal property related to the expansion of an existing business*. The amount or limits of the amount of such exemption shall be specified by general law. The period of time for which such exemption may be granted to a new business or expansion of an existing business shall be determined by general law. The authority to grant such exemption shall expire ten years from the date of approval by the electors of the county or municipality, and may be renewable by referendum as provided by general law." (e.s.)

Section 196.1995, Florida Statutes, implements this constitutional provision.[3] Subsection (5) of the statute, addresses the granting of an exemption and states:

"Upon a majority vote in favor of such authority, the board of county commissioners or the governing authority of the municipality, at its discretion, by ordinance may exempt from ad valorem taxation up to 100 percent of the assessed value of all improvements to real property made by or for the use of a new business and of all tangible personal property of such new business, or up to 100 percent of the assessed value of all added improvements to real property made to facilitate the expansion of an existing business and of the net increase in all tangible personal property acquired to facilitate such expansion of an existing business. *To qualify for this exemption, the improvements to real property must be made or the tangible personal property must be added or increased after approval by motion or resolution of the local governing body, subject to ordinance adoption or on or after the day the ordinance is adopted*. However, if the authority to grant exemptions is approved in a referendum in which the ballot question contained in subsection (3) appears on the ballot, the authority of the board of county commissioners or the governing authority of the municipality to grant exemptions is limited solely to new businesses and expansions of existing businesses that are located in an enterprise zone or brownfield area. Property acquired to replace existing property shall not be considered to facilitate a business

expansion. The exemption applies only to taxes levied by the respective unit of government granting the exemption. The exemption does not apply, however, to taxes levied for the payment of bonds or to taxes authorized by a vote of the electors pursuant to s. 9(b) or s. 12, Art. VII of the State Constitution. Any such exemption shall remain in effect for up to 10 years with respect to any particular facility, regardless of any change in the authority of the county or municipality to grant such exemptions. The exemption shall not be prolonged or extended by granting exemptions from additional taxes or by virtue of any reorganization or sale of the business receiving the exemption." (e.s.)

Thus, section 196.1995(5), Florida Statutes, implementing the provisions of Article VII, section 3(c), Florida Constitution, limits the tax exemption provided therein to improvements to real property that are made or to tangible personal property that is added or increased on or after the day the ordinance is adopted.[4] You advise that the DeSoto County ordinance was adopted on January 25, 2011. Thus, the statute would preclude application of the exemption to any improvements to real property made prior to that date.

While doubtful language in taxing statutes should be resolved in favor of the taxpayer, the reverse applies in the construction of exceptions and exemptions from taxation.[5] Thus, to the extent that there is any question, exceptions and exemptions such as the one discussed above should be read to favor the taxing authority.

In sum, it is my opinion that to qualify for the economic development ad valorem tax exemption in section 196.1995(5), Florida Statutes, improvements to real property must be made or tangible personal property must be added or increased after the date the ordinance authorizing the exemption is adopted.[6] Thus, to qualify for this exemption from ad valorem taxation in DeSoto County, the improvements must have been made after January 25, 2011, and section 196.1995(5), Florida Statutes, precludes application of the exemption to any improvements to real property made prior to that date.

Sincerely,

Pam Bondi
Attorney General

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[1] Section 196.1995(5), Fla. Stat., also authorizes granting the exemption for improvements "added or increased after approval by motion or resolution of the local governing body, subject to ordinance adoption[.]" You have provided the date of adoption of DeSoto County Ordinance 2011-01, but no information regarding approval by motion or resolution. The date of adoption of the ordinance is, therefore, used herein.

[2] *See* section 16.01(3), Fla. Stat., and Department of Legal Affairs Statement Concerning Attorney General Opinions (available at: www.myfloridalegal.com / Legal Resources / AG Opinions / Frequently Asked Questions).

[3] *See* s. 196.1995(1), Fla. Stat., which provides in part that "[t]he board of county commissioners of any county or the governing authority of any municipality shall call a referendum within its total jurisdiction to determine whether its respective jurisdiction may grant economic development ad valorem tax exemptions under s. 3, Art. VII of the State Constitution . . . ." *And see* s. 5, Ch. 80-347, Laws of Fla., creating s. 196.1995 and providing that "[t]his act shall take effect upon approval by the electors of an amendment to s. 3, Art. VII of the State Constitution authorizing the ad valorem tax exemptions provided for in this act, and shall first apply to the 1981 assessment rolls." Senate Joint Resolution 9-E, amending Art. 7, s. 3, Fla. Const., by adding subsection (c) pertaining to economic development tax exemptions, was approved by the electors at the special election of October 7, 1980.

[4] *And see* n.1.

[5] *See Markham v. PPI, Inc.*, 843 So. 2d 922 (Fla. 4th DCA 2003), *rehearing denied*.

[6] *Supra* n.1.