Local Option Gas Tax -- Municipalities

Number: AGO 2013-32

Date: January 03, 2014

Subject:
Local Option Gas Tax -- Municipalities

The Honorable John R. Crescimbeni
City Councilman At-Large, Group 2
City of Jacksonville
117 West Duval Street, Suite 425
Jacksonville, Florida 32202

RE: LOCAL OPTION GAS TAX – MUNICIPALITIES – whether city may reimpose or extend local option gas tax. s. 336.025, Fla. Stat.

Dear Councilman Crescimbeni:

On behalf of the Jacksonville City Council, you have asked for my opinion on substantially the following questions:

1. Does section 336.025(1)(a)1., Florida Statutes, prohibit the City of Jacksonville from relevying the current local option gas tax?

2. What is the maximum period of time that a new or subsequent local option gas tax could be levied?

In sum:

1. Pursuant to section 336.025(1)(a)1., Florida Statutes, the City of Jacksonville may reimpose or relevy the local option gas tax to commence following the expiration of the current local option gas tax on August 31, 2016.

2. A reimposition or relevying of the local option fuel tax pursuant to section 336.025(1)(a)1., Florida Statutes, following its expiration, appears to contemplate the imposition of the tax again subject to the same terms as the original tax, that is, for a period of up to, but not more than, 30 years.

You have advised this office that, pursuant to section 336.025, Florida Statutes, the Jacksonville City Council enacted Ordinance 1985-793 which authorized a six-cent local option gas tax upon every gallon of motor fuel and special fuel sold in the General Services District as provided in Chapter 206, Florida Statutes, for the 10-year period running from September 1, 1986, through August 31, 1996. Subsequently, on October 8, 1991, the Jacksonville City Council enacted Ordinance 1991-819 which extended the collection period from August 31, 1996, to August 31, 2016, thereby establishing a total collection period for the current tax of 30 years. Your questions

relate to the expiration of the ordinance in 2016 and the authority of the city council to reenact or extend imposition of the local option gas tax and the terms of any such action.

Question One

You have asked whether the City of Jacksonville may reimpose a local option gas tax pursuant to section 336.025(1)(a)1., Florida Statutes, following the expiration of the currently imposed local option gas tax. Based on the clear language of the statute, I conclude that the city is authorized by section 336.025(1)(a)1., Florida Statutes, to reimpose such a local option gas tax.

Section 336.025, Florida Statutes, authorizes the levy of local option fuel taxes on motor fuel and diesel fuel for local transportation system projects. The statute provides that "[c]ounty and municipal governments shall utilize moneys received pursuant to this paragraph only for transportation expenditures."[1]

As provided in section 336.025(1)(a)1., Florida Statutes:

"All impositions and rate changes of the tax shall be levied before October 1 to be effective January 1 of the following year for a period not to exceed 30 years, and the applicable method of distribution shall be established
pursuant to subsection (3) or subsection (4). However, levies of the tax which were in effect on July 1, 2002, and which expire on August 31 of any year may be reimposed at the current authorized rate effective September 1 of the year of expiration. *Upon expiration, the tax may be relevied provided that a redetermination of the method of distribution is made as provided in this section.*" (e.s.)

It is well settled that where a statute is clear and unambiguous as it is here, a court will not look behind the statute's plain language for legislative intent[2] and there is no occasion for resorting to rules of statutory interpretation and construction as the statute must be given its plain and obvious meaning.[3] The provisions under which the City of Jacksonville has adopted its local option gas tax, section 336.025(1)(a), Florida Statutes, clearly authorize the city to reimpose this tax following its expiration.[4]

Thus, it is my opinion that the City of Jacksonville may "reimpose" or "relevy" the local option gas tax it imposed pursuant to section 336.025(1)(a), Florida Statutes, following the expiration of the current local option gas tax.

Question Two

You also question the maximum period of time that the new or extended local option gas tax could be levied under section 336.021(1)(a), Florida Statutes.

The Legislature has provided no specific direction relating to the length of time for which the local option gas tax imposed under section 336.025, Florida Statutes, may be "reimposed" or "relevied" pursuant to subparagraph (1)(a). The statute states that "[a]ll impositions . . . shall be levied . . . for a period not to exceed 30 years" and a "reimposition" would, logically and in the absence of any legislative or judicial limitation, be subject to the same maximum period. The

prefix "re-" means "again" or "again and again" to indicate repetition.[5] Thus, it would appear that a relevy or reimposition of the local option gas tax pursuant to section 336.025(1)(a), Florida Statutes, would be accomplished subject to the same time constraints as the original tax, that is, a period not to exceed 30 years.

Thus, it is my opinion that a reimposition or relevying of the local option fuel tax pursuant to section 336.025(1)(a)1., Florida Statutes, appears to contemplate the imposition of the tax again, following its expiration, subject to the same terms as the original tax, that is, for a period of up to, but not more than, 30 years.

Sincerely,

Pam Bondi
Attorney General

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[1] Section 336.025(1)(a)2., Fla. Stat. The term "transportation expenditures" is defined in section 336.025(7), Fla. Stat. *And see, e.g.,* Ops. Att'y Gen. Fla. 10-29 (2010), 02-02 (2002), 00-37 (2000), 99-70 (1999), 97-25 (1997), and 94-20 (1994), discussing appropriate uses of the local option fuel tax.

[2] *See, e.g., In re McCollam*, 612 So. 2d 572, 573 (Fla. 1993); and *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984).

[3] *See M.W. v. Davis*, 756 So. 2d 90 (Fla. 2000); *McLaughlin v. State*, 721 So. 2d 1170 (Fla. 1998); *Osborne v. Simpson*, 114 So. 543 (Fla. 1927) (where statute's language is plain, without ambiguity, it fixes legislative intention and interpretation and construction are not needed); *Holly v. Auld, id.*

[4] *And see* s. 336.025(1)(b), Fla. Stat., authorizing levies of the tax imposed under subparagraph (b) "which were in effect on July 1, 2002, and which expire on August 31 of any year [to] be reimposed at the current authorized rate effective September 1 of the year of expiration."

[5] Webster's New Universal Unabridged Dictionary, p. 1605.