

Commission charged for collection of taxes levied

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Subject:

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Mr. Thomas W. Brown
Suwannee River Water Management
District Attorney
Post Office Box 1029
Lake City, Florida 32056-1029

RE: SUWANNEE RIVER WATER MANAGEMENT DISTRICT--TAXATION--TAX COLLECTORS--tax collector's commission for collecting district and basin taxes for water management district same as for collection of county taxes. Sections 192.091(2)(a), 373.0697, and 373.503, Fla. Stat. (1993).

Dear Mr. Brown:

On behalf of the Suwannee River Water Management District, you ask substantially the following question:

What rate of commission may be charged for the collection of taxes levied by the Suwannee River Water Management District under section 192.091(2), Florida Statutes?

In sum:

In light of the language in sections 373.539 and 373.503, Florida Statutes, district and basin taxes levied by the Suwannee River Water Management District are subject to the same commission as applied to the collection of a county tax prescribed in section 192.091(2)(a), Florida Statutes.

You state that the Suwannee River Water Management District is a multi-county special taxing district. Within the district may be basins designated by the district's governing board. The basins may request the district's governing board to levy ad valorem taxes within such basin to finance basin functions.[1] For the collection of district and basin taxes, the tax collector of the county is entitled to a commission. While the commission that may be charged for basin taxes appears to be undisputed, there is some question as to the appropriate commission to be allowed for the collection of district taxes. The Honorable Idelle C. Hatcher, Tax Collector for Dixie County, has informed this office that she joins in your request for clarification of this matter.

Section 373.503, Florida Statutes, authorizes the Suwannee River Water Management District, as one of the water management districts enumerated in Chapter 373, Florida Statutes, to levy ad valorem taxes to finance the activities of the district.[2] Each year, the governing board of the

district certifies to the property appraiser of the county in which property is located the tax rate to be used in determining the amount of the district's annual tax.[3] The property appraiser must then extend the amount of such tax on the county tax roll and certify the rate to the tax collector who, in turn, makes the collection on behalf of the district.

Section 192.091(2), Florida Statutes, sets forth the commissions that may be charged by tax collectors as follows:

"(a) On the county tax:

1. Ten percent on the first \$100,000;
2. Five percent on the next \$100,000;
3. Three percent on the balance up to the amount of taxes collected and remitted on an assessed valuation of \$50 million; and
4. Two percent on the balance.

(b) On collections on behalf of each taxing district and special assessment district:

- 1.a. Three percent on the amount of taxes collected and remitted on an assessed valuation of \$50 million; and
- b. Two percent on the balance; and
2. Actual costs of collection, not to exceed 2 percent, on the amount of special assessments collected and remitted."

This office has previously concluded that the collection of both basin and district taxes levied by a water management district is subject to the same commission imposed on the collection of county taxes. In Attorney General Opinion 78-83, the statutory evolution of tax collection rates and water management districts was analyzed. In the case of district taxes, the opinion noted that the legislation creating the water management districts specifically provided for the same rate of commission as for county tax collection.[4] This legislation was passed after the enactment of legislation setting the commission rates for county and taxing district taxes,[5] and, therefore, as the latter in time would control. While the statutes have been amended and renumbered since the issuance of Attorney General Opinion 78-83, there have been no amendments to or judicial interpretations of Chapters 192 and 373, Florida Statutes, that would alter the conclusions reached therein.

In light of the continued viability of the statutes addressed in Attorney General Opinion 78-83, the following general observations are made.

Basin taxes levied by the governing board of the district at the request of the basin are extended by the county property appraiser on the county tax roll in each county within, or partly within, the basin, and are collected by the tax collector in the same manner and time as county taxes. The property appraiser and the tax collector "shall be entitled to compensation for services performed in connection with such taxes at the same rates as apply to county taxes." [6]

The plain language of section 373.0697(2), Florida Statutes, subjects the collection of basin taxes to the same commission rate as that allowed for county taxes under section 192.091(2), Florida Statutes.

For district taxes, however, section 373.539(2), Florida Statutes, states:

"Collection of district taxes, the issuance of tax sale certificates for nonpayment thereof, the redemption or sale of said certificates, the vesting of title by tax forfeiture, and the sale of the land and other real estate so forfeited shall be at the same time, in conjunction with, and *by like procedure and like effect as is provided by law with respect to county taxes.*" (e.s.)

Additionally, the statute provides that the tax officers of the county are authorized and directed to perform the duties placed upon them under Chapter 373, Florida Statutes, and "to receive compensation therefor at such rates or charges as are provided by law with respect to similar services or charges in other cases." [7] Section 373.503(3)(a), Florida Statutes, recognizes that basin taxes and district taxes are levied by the district's governing board in a like manner. [8] When these provisions are read together, it would appear that the commission to be paid to the tax collector for the collection of district taxes is the same as that which is to be paid for the collection of county taxes.

You note, however, that subsequent to Attorney General Opinion 78-83, section 189.403(6), Florida Statutes, was enacted to provide a definition for water management districts clarifying their existence as special taxing districts. You conclude, therefore, that by classifying water management districts as special taxing districts, the collection of district taxes would be subject to the commission rates set forth in section 192.091(2)(b), Florida Statutes, for taxing districts and special assessment districts.

Section 189.403(6), Florida Statutes, defines "'[w]ater management district' *for purposes of this chapter* . . . [as] a special taxing district which is a regional water management district created and operated pursuant to chapter 373 or chapter 61-691, Laws of Florida. . . ." (e.s.) The purposes of chapter 189, Florida Statutes, are "to provide general provisions for the definition, creation, and operation of special districts" and "to have one centralized location for all legislation governing special districts. . . ." [9] While water management districts are included in chapter 189, Florida Statutes, as special taxing districts for purposes stated therein, there is nothing in the chapter that addresses the rate of commission for the collection of district taxes by the tax collector. Nor would recognition as a special taxing district for purposes of chapter 189, Florida Statutes, appear to alter the historical treatment of water management districts as special districts. [10]

Accordingly, I am of the opinion that the rationale of Attorney General Opinion 78-83 is still valid, making the commission for the collection of district and basin taxes the same as that provided in s. 192.091(2)(a), Florida Statutes, for county taxes.

Sincerely,

Robert A. Butterworth
Attorney General

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[1] See s. 373.0697, Fla. Stat. See also s. 373.0695, Fla. Stat., enumerating the duties of the basin boards.

[2] See ss. 373.503(2) and (3), Fla. Stat.

[3] See s. 373.539(1), Fla. Stat.

[4] See section 3, Chapter 25270, 1949, Laws of Florida, and section 8(3), Chapter 61-691, Laws of Florida (1961).

[5] See Chapter 20936, 1941, Laws of Florida and Chapter 21918, 1943, Laws of Florida, precursors to s. 192.091, Fla. Stat., setting out the rates of compensation to be paid to county tax officials for assessing and collecting county and district taxes.

[6] Section 373.0697(2), Fla. Stat.

[7] Section 373.539(4), Fla. Stat.

[8] See s. 373.0697, Fla. Stat., providing that the levy of a basin tax by the governing board of the district shall be subject to the provisions of s. 373.503(3), Fla. Stat., governing the levy of ad valorem taxes by a district.

[9] Section 189.402(1) and (2), Fla. Stat.

[10] See Op. Att'y Gen. Fla. 74-58 (1974), in which this office recognized water management districts as "special districts" requiring authorization by law to levy ad valorem taxes.