Surtax Proceeds

Number: INFORMAL

Date: July 25, 2016

Ms. Denise Marie Nieman
Palm Beach County Attorney
Post Office Box 1989
West Palm Beach, Florida 33402-1989

Dear Ms. Nieman:

At the request of the Palm Beach County Commission, you request assistance from this office for an interpretation of section 212.055, Florida Statutes. Generally, you have asked about the manner of determining the distribution of surtax proceeds, for what purposes the proceeds may be expended, the recalculation of a governmental entity's share, and how surplus surtax proceeds are to be handled. You also ask whether a governmental entity's ability to impose ad valorem taxes for other purposes is impacted by enactment of the surtax.

In sum, section 212.055, Florida Statutes, requires the calculation of surtax proceeds based upon the average expenditures of the five fiscal years prior to the initial enactment of the surtax. The only other recalculation of surtax proceeds contemplated by the statute is triggered by a change in the service area. The statute does not otherwise affect a governmental entity's taxing authority. Surtax proceeds are first to be used by a local entity to reduce ad valorem taxes imposed for fire control and emergency fire rescue services in the fiscal year following enactment of the tax. Any surplus distribution over projected proceeds is to be used to further reduce ad valorem taxes in the next fiscal year. The proceeds are applied as a rebate to the final millage, after the TRIM notice is completed in accordance with the statute, which in context is a procedure to provide taxpayers with a further reduction in ad valorem taxes which have been imposed for fire control and emergency fire rescue services. If no further reduction in ad valorem tax rates is possible (because the millage rate has been reduced to zero), surplus proceeds are then to be used to reduce non-ad valorem assessments levied for the purposes described in the section. If no ad valorem or non-ad valorem assessment reduction for fire control and emergency fire rescue services is possible, the surplus must be returned to the county which shall then reduce the county millage rates to offset the surplus tax proceeds.

Section 212.055(8), Florida Statutes, authorizes counties that, have not otherwise imposed two separate discretionary surtaxes, by ordinance to levy a discretionary sales surtax of up to 1 percent for emergency fire rescue services and facilities.[1] For purposes of the subsection, "'emergency fire rescue services' includes, but is not limited to, preventing and extinguishing fires; protecting and saving life and property from fires or natural or intentional acts or disasters; enforcing municipal, county, or state fire prevention codes and laws pertaining to the prevention and control of fires; and providing prehospital emergency medical treatment."[2]

Section 212.055(8)(c), Florida Statutes, directs the county to distribute the proceeds it receives from the Florida Department of Revenue to each local government entity providing emergency

fire rescue services in the county. The subsection further provides:

“The surtax proceeds, less an administrative fee not to exceed 2 percent of the surtax collected, shall be distributed by the county based on each entity’s average annual expenditures for fire control and emergency fire rescue services in the 5 fiscal years preceding the fiscal year in which the surtax takes effect in proportion to the average annual total of the expenditures for such entities in the 5 fiscal years preceding the fiscal year in which the surtax takes effect. The county shall revise the distribution proportions to reflect a change in the service area of an entity receiving a distribution of the surtax proceeds. If an entity declines its share of surtax revenue, such revenue shall be redistributed proportionally to the entities that are participating in the sharing of such revenue based on each participating entity’s average annual expenditures for fire control and emergency fire rescue services in the preceding 5 fiscal years in proportion to the average annual total of the expenditures for the participating entities in the preceding 5 fiscal years.

Upon the surtax taking effect and the initiation of collections, each local government entity receiving a share of surtax proceeds shall reduce the ad valorem tax levy or any non-ad valorem assessment for fire control and emergency rescue services[3] in its next and subsequent budgets by the estimated amount of revenue provided by the surtax.”[4]

In response to your question as to what time frame is used to calculate a governmental entity’s proportionate share, the plain language of the statute states that the surtax proceeds shall be distributed based upon each entity’s average annual expenditures for fire control and emergency fire rescue services “in the 5 fiscal years preceding the fiscal year in which the surtax takes effect” in proportion to the average annual total of the expenditures for such entities “in the 5 fiscal years preceding the fiscal year in which the surtax tax takes effect.” Thus, the base proportional share of each governmental entity providing fire control and emergency fire rescue services within a county imposing the surtax is determined in the fiscal year in which the surtax takes effect, using the previous 5 fiscal years as the time frame to calculate the average. There is nothing in the language of the statute which would indicate that the proportional share of the proceeds is to be recalculated each fiscal year or that the beginning of a new fiscal year constitutes a new “taking of effect” of the surtax.

The statute specifies the purposes for which the surtax may be expended, but acknowledges that the expenditures are “not limited to” those enumerated. Such language, while on its face appearing to allow a more expansive field of expenditures, must be read in the context of the enumerated expenditures.[5] Thus, the expenditure of surtax proceeds received under section 212.055(8), Florida Statutes, must relate to emergency fire rescue services. Regrettably, this office is not in a position to propose a list of allowed expenditures. Rather, the county governing body must make the determination that an expenditure relates to such services.

The single sentence for recalculating the proportional share of surtax proceeds due to a change in the service area of a governmental entity provides no further formula or means to calculate the proceeds which will be distributed. A common sense interpretation of the method to recalculate would be based upon the change in size of the area wherein services are provided. It is assumed that the increase in size of an area where fire protection and emergency fire rescue services are provided by one governmental entity would necessarily result in the decrease in

size of an area served by another governmental area. Thus, it would appear rational to use the change in size of the area in calculating the gain or loss of surtax proceeds to any given area.

Nothing in the statute evidences an intent to limit or otherwise hinder a county's authority to levy ad valorem taxes for purposes other than fire control and emergency fire rescue, when a county has elected to impose the surtax pursuant to section 212.055(8), Florida Statutes. The statute prescribes that each local government entity is required to reduce ad valorem taxes and non-ad valorem assessments for fire control and emergency fire rescue by the estimated amount of surtax revenue it would receive. There is no rule of statutory construction which would dictate application of section 212.055(8), Florida Statutes, to alter ad valorem taxes or non-ad valorem assessments not related to fire control and emergency fire rescue.

In regard to the handling of surplus surtax proceeds, section 212.055(8)(f), Florida Statutes, clearly states:

"If surtax collections exceed projected collections in any fiscal year, any surplus distribution shall be used to further reduce ad valorem taxes in the next fiscal year. These proceeds shall be applied as a rebate to the final millage, after the TRIM notice is completed in accordance with this provision. If a local government entity receiving a share of the surtax is unable to further reduce ad valorem taxes because the millage rate is zero, the funds shall be applied to reduce any non-ad valorem assessments levied for the purposes described in this section. If no ad valorem or non-ad valorem reduction is possible, the surplus surtax collections shall be returned to the county, and the county shall reduce the county millage rates to offset the surplus surtax proceeds."

By reading together the Legislature's specific language in section 212.055(8)(e), Florida Statutes, directing that surtax proceeds be used by each local governmental entity receiving a share to reduce ad valorem and non-ad valorem assessments for fire control and emergency rescue services and the provisions in section 212.055(8)(f), Florida Statutes, requiring the return to the county of any surplus (once the ad valorem tax and non-ad valorem assessments for such services have been extinguished by application of the surtax proceeds), it is clear that surtax proceeds returned to the county are to be used to reduce county millage rates. By use of the term "rates," the Legislature indicates something other than merely the rate imposed for fire control and emergency fire rescue services. This office, however, cannot say that the individual governmental entities receiving surtax proceeds in lieu of ad valorem taxes or non-ad valorem assessments may use the surplus which is transferred forward under section 212.055(f), Florida Statutes, to reduce ad valorem taxes or non-ad valorem assessments imposed for other purposes.[6] To do so would ignore the clearly stated purpose of imposing the surtax to "reduce the ad valorem tax levy or any non-ad valorem assessment for fire control and emergency rescue services[.]"[7]

I trust these informal comments will be of assistance to you in resolving the questions you have raised.

Sincerely,

Lagran Saunders

Senior Assistant Attorney General

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[1] *See also* s. 212.055(8)(h), Fla. Stat., stating:

"Notwithstanding s. 212.054, if a multicounty independent special district created pursuant to chapter 67-764, Laws of Florida, levies ad valorem taxes on district property to fund emergency fire rescue services within the district and is required by s. 2, Art. VII of the State Constitution to maintain a uniform ad valorem tax rate throughout the district, the county may not levy the discretionary sales surtax authorized by this subsection within the boundaries of the district."

[2] Section 212.055(8)(a), Fla. Stat.

[3] While there has been a question as to the use of the broader term "emergency rescue services," as opposed to "emergency fire rescue services," it is clear that emergency rescue services related to the provision of fire control and emergency fire rescue services are contemplated by the statute.

[4] Section 212.055(8)(e), Fla. Stat.

[5] *See City of West Palm Beach v. Board of Trustees of the Internal Improvement Trust Fund,* 746 So. 2d 1085 (Fla. 1999) (where statute uses terms confined and limited to a particular class of a known species of things and later uses a broader term, the more general word is construed as applying to the same kind of species with those comprehended by the preceding limited and confined terms); and Ops. Att'y Gen. Fla. 99-32 (1999) and 97-36 (1997) (general term "other structures" may be interpreted to include facilities comparable to or in the same class as those enumerated). *See also Turnberry Isle Resort and Club v. Fernandez,* 666 So. 2d 254 (Fla. 3d DCA 1996) (doctrine of *noscitur a sociis* allows meaning of statutory terms and the Legislature's intent in using them to be discovered by referring to words associated with them in a statute).

[6] *See Alachua County v. Adams,* 677 So. 2d 396 (Fla. 1st DCA 1996) (taxing statute is strictly construed and use of taxes cannot be expanded by a municipality); *City of Tampa v. Birdsong Motors, Inc.,* 261 So. 2d 1, 3 (Fla. 1972) (taxation by city must be expressly authorized by either constitution or legislative grant and may not be extended by implication).

[7] Section 212.055(8)(e), Fla. Stat.