Municipalities -- Business Tax

Number: INFORMAL

Date: January 13, 2016

January 12, 2016

Ms. Michelle Blankenship Jordan
Attorney for the City of Vernon
1512 Highway 90
Chipley, Florida 32428

Dear Ms. Blankenship Jordan:

On behalf of the city council for the City of Vernon, you have asked for assistance in determining whether the city may increase its local business tax. You also question the validity of the council's adoption in 2009 of an ordinance increasing the local business tax. Attorney General Bondi has asked that I respond to your inquiry.

While this office will not comment upon the actions which have already been taken by the city council and will presume the validity of acts that were officially passed, the following general observations regarding local business taxes are offered to be of assistance.

Section 205.0315, Florida Statutes, authorizes the adoption of a business tax ordinance beginning October 1, 1995, for those counties and municipalities that have not adopted a business tax ordinance or resolution. You state, however, that the City of Vernon passed an ordinance in 2009 imposing a $25 license fee for different categories of businesses operating within the city's jurisdiction. Prior to that, the city's business tax ordinance passed in 1977 imposed varying fees from $2.50 – $25.00 for different businesses.

Section 205.0535, Florida Statutes, authorizes reclassification and rate structure revisions of a municipality's existing business tax. Its application, however, is limited to those municipalities which have adopted by ordinance a local business tax after October 1, 1995, and made such reclassifications and rate structure revisions before October 1, 2008.[1] Section 205.043(1), Florida Statutes, provides conditions for the levy of a business tax by municipalities:

"(1) The following conditions are imposed on the authority of a municipal governing body to levy a business tax:
(a) The tax must be based upon reasonable classifications and must be uniform throughout any class.
(b) Unless the municipality implements s. 205.0535 or adopts a new business tax ordinance under s. 205.0315, a business tax levied under this subsection may not exceed the rate in effect in the municipality for the year beginning October 1, 1971; however, beginning October 1, 1980, the municipal governing body may increase business taxes authorized by this chapter. The amount of the increase above the tax rate levied on October 1, 1971, for taxes levied at a flat rate may be up to 100 percent for business taxes that are $100 or less; 50 percent for business

taxes that are between $101 and $300; and 25 percent for business taxes that are more than $300. Beginning October 1, 1982, an increase may not exceed 25 percent for taxes levied at graduated or per unit rates. Authority to increase business taxes does not apply to receipts or licenses granted to any utility franchised by the municipality for which a franchise fee is paid. (c) A receipt is not valid for more than 1 year and all receipts expire on September 30 of each year, except as otherwise provided by law."

Thus, the Legislature has prescribed the manner in which a municipality may enact and amend its business tax ordinances and no other means may be used to effect a change in the structure and rate of business taxes imposed.[2] In Attorney General Opinion 2014-11, this office was asked whether a city was authorized to increase its business tax rates by a super majority vote of the city's governing council or by the authority granted in section 205.043, Florida Statutes. After discussing the specific provisions in Chapter 205, Florida Statutes, governing the imposition and amendment of a business tax ordinance, the opinion concluded that the municipality had not complied with the statute's terms and, therefore, was not authorized to revise its business tax ordinance.

I trust that these informal comments will be of assistance to you in further advising the city of its options in imposing a business tax.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] Section 205.0535, Fla. Stat., provides:

"(1) By October 1, 2008, any municipality that has adopted by ordinance a local business tax after October 1, 1995, may by ordinance reclassify businesses, professions, and occupations and may establish new rate structures, if the conditions specified in subsections (2) and (3) are met. . . .
(2) Before adopting a reclassification and revision ordinance, the municipality or county must establish an equity study commission and appoint its members. Each member of the study commission must be a representative of the business community within the local government's jurisdiction. Each equity study commission shall recommend to the appropriate local government a classification system and rate structure for business taxes.
(3)(a) After the reclassification and rate structure revisions have been transmitted to and considered by the appropriate local governing body, it may adopt by majority vote a new business tax ordinance. Except that a minimum tax of up to $25 is permitted, the reclassification may not increase the tax by more than the following: for receipts costing $150 or less, 200 percent; for receipts costing more than $150 but not more than $500, 100 percent; for receipts costing more than $500 but not more than $2,500, 75 percent; for receipts costing more than $2,500 but not more than $10,000, 50 percent; and for receipts costing more than $10,000, 10 percent; however, in no case may the tax on any receipt be increased more than $5,000.

(b) The total annual revenue generated by the new rate structure for the fiscal year following the fiscal year during which the rate structure is adopted may not exceed:
1. For municipalities, the sum of the revenue base and 10 percent of that revenue base. The revenue base is the sum of the business tax revenue generated by receipts issued for the most recently completed local fiscal year or the amount of revenue that would have been generated from the authorized increases under s. 205.043(1)(b), whichever is greater, plus any revenue received from the county under s. 205.033(4).
2. For counties, the sum of the revenue base, 10 percent of that revenue base, and the amount of revenue distributed by the county to the municipalities under s. 205.033(4) during the most recently completed local fiscal year. The revenue base is the business tax revenue generated by receipts issued for the most recently completed local fiscal year or the amount of revenue that would have been generated from the authorized increases under s. 205.033(1)(b), whichever is greater, but may not include any revenues distributed to municipalities under s. 205.033(4).
(c) In addition to the revenue increases authorized by paragraph (b), revenue increases attributed to the increases in the number of receipts issued are authorized.
(4) After the conditions specified in subsections (2) and (3) are met, municipalities and counties may, every other year thereafter, increase or decrease by ordinance the rates of business taxes by up to 5 percent. However, an increase must be enacted by at least a majority plus one vote of the governing body.
(5) This chapter does not prohibit a municipality or county from decreasing or repealing any business tax authorized under this chapter. By majority vote, the governing body of a county or municipality may adopt an ordinance repealing a local business tax or establishing new rates that decrease local business taxes and do not result in an increase in local business taxes for a taxpayer. Such ordinances are not subject to subsections (2) and (3).
(6) A receipt may not be issued unless the federal employer identification number or social security number is obtained from the person to be taxed."

[2] *See Alsop v. Pierce,* 19 So. 2d 799, 805 (Fla. 1944) (where Legislature prescribes the mode, that mode must be observed; express statutory direction as to how a thing is to be done is implied prohibition of its being done in any contrary manner).