Enterprize Zone Program -- Ad Valorem Tax Exemption

Number: INFORMAL

Date: December 18, 2015

Mr. Loren E. Levy
The Levy Law Firm
1828 Riggins Lane
Tallahassee, Florida 32308

Dear Mr. Levy:

On behalf of the Honorable Chris Jones, Escambia County Property Appraiser, you have asked for my opinion on several questions involving Florida's Enterprise Zone Program and the sunset of that program pursuant to Chapter 2015-221, Laws of Florida.

Specifically, you have asked whether the expiration of the Enterprise Zone Program on December 31, 2015, precludes an economic development exemption for improvements to real property that are located in an enterprise zone from qualifying as a "new business" or the "expansion of an existing business," under section 196.012(14)(b) and (15)(b), Florida Statutes (2015), subsequent to that date. In addition, you question what date the property appraiser must use in making the determination of whether an applicant qualifies under section 196.1995(9)(d), Florida Statutes (2015), which also refers to "new business" or "expansion of an existing business" in an "enterprise zone" as those terms are defined in section 196.012, Florida Statutes.[1]

The Florida Enterprise Zone Act, sections 290.001 - 290.016, Florida Statutes, was repealed by the terms of section 290.016, Florida Statutes (2015), and sunsets on December 31, 2015. The bill repealing the act preserves state incentives for certain businesses with incentive agreements with the state that are currently located within enterprise zones. Included within the bill is a definition of an "eligible business" which is defined to mean a business that entered into a contract with the Department of Economic Opportunity between January 1, 2012, and July 1, 2015, for a project that is located in an enterprise zone.[2] As stated in a recent Florida Department of Revenue Tax Information Publication (TIP):

"Except for certain extensions provided for in Chapter 2015-221, Laws of Florida, the Florida Enterprise Zone Program expires on December 31, 2015. For businesses that do not qualify for the extension program, enterprise zone credits or refunds will be approved after December 31, 2015, only if the business applying for the credit or refund meets the statutory requirements to be eligible for the incentive(s) on or before December 31, 2015."[3]

As the Department commented with regard to a property tax exemption for a licensed child care facility operating in an Enterprise Zone under section 196.095, Florida Statutes[4]:

"Calendar year 2015 (property tax assessment based on value as of January 1, 2015) is the last year that the exemption for licensed child care facilities operating in an enterprise zone is

available. Even though the statute will remain in existence after December 31, 2015, no enterprise zones will exist. The application filing deadline for 2015 was March 1, 2015. No new enterprise zone property tax exemptions will be approved after December 31, 2015."

This reasoning would appear to apply equally to tax exemptions for other types of uses involving the Florida Enterprise Zone Act, sections 290.001 - 290.016, Florida Statutes.[5] I note that not only have the provisions of the Florida Enterprise Zone Act been repealed, but references to "enterprise zone[s]" contained elsewhere in the statutes will expire "on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act."[6] Thus, as stated in the Department of Revenue TIP cited above "[e]ven though the statute will remain in existence after December 31, 2015, no enterprise zones will exist."

The Department of Revenue publication reviews the sales tax incentive for building materials used in the rehabilitation of real property located in an Enterprise Zone, under section 212.08(5), Florida Statutes. If a business is eligible for the incentive on or before December 31, 2015, the publication states:

"Section 212.08(5)(g), F.S., provides a refund of tax paid on building materials used to rehabilitate property located in an enterprise zone. To be entitled to this refund after December 31, 2015, the materials must have been purchased and used in the rehabilitation and the rehabilitation must have been deemed to be substantially complete no later than December 31, 2015. Applications for refund must be submitted to the Department within 6 months after the rehabilitation has been deemed to be substantially complete by the local building code inspector."[7]

With regard to programs extended under the act, that is, those businesses applying for the credit or refund and meeting the statutory requirements to be eligible for the incentive on or before December 31, 2015, the Department of Revenue states:

"The extensions approved through December 31, 2018, are for the businesses located in an enterprise zone as of May 1, 2015, and that entered into contracts between January 1, 2012 and July 1, 2015, with the Florida Department of Economic Opportunity (DEO) for [certain enumerated programs]. . .

* * *

These qualified businesses will be eligible for the exemptions and credits noted above through December 31, 2018. Effective January 1, 2016, DEO will process and certify Florida enterprise zone tax incentive applications in place of local enterprise zone coordinators. The Department of Revenue will continue to receive and process refund applications for these qualified businesses."[8]

Comment on the questions you have posed and the facts involved in this matter directly affects not only the Escambia County Property Appraiser's Office, but the Escambia County Board of County Commissioners and the City of Pensacola. Further, duties and responsibilities of the Florida Department of Revenue appear to be implicated. Under these circumstances, this office recommends that the property appraiser and affected local governmental entities seek a

definitive judicial resolution in this matter. In light of the significant tax implications and real property and development consequences related to resolution of this matter, the Florida Attorney General's Office recommends the courts be consulted.[9]

I regret that this office could not be of more substantive assistance to you in this matter, but trust that you will understand that Attorney General Opinions are advisory only and the momentous nature of these issues and their tax implications would be better served by a binding judicial resolution.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] Section 196.012, Fla. Stat., is a definitional section and subsection (18) defining "[e]nterprise zone" expires "on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act."

[2] An enterprise zone as designated (defined) pursuant to s. 290.0065, Fla. Stat. (2014), on Dec. 31, 2015.

[3] Florida Department of Revenue TIP No. 15ADM-04, issued Sept. 8, 2015.

[4] Section 196.095, Fla. Stat., provides a specific exemption for licensed child care facilities operating in an enterprise zone. The child care facilities covered by the exemption are those operating in an enterprise zone pursuant to Ch. 290, Fla. Stat.

[5] *Cf.* Op. Att'y Gen. Fla. 15-07 (2015), concluding that "[t]o qualify for the economic development ad valorem tax exemption in section 196.1995(5), Florida Statutes, improvements to real property must be [made] after the date the ordinance authorizing the exemption is adopted." However, in the absence of an enterprise zone program and the expiration of the term "enterprise zone" from s. 196.012, Fla. Stat., there appears to be no exemption for which to qualify.

[6] *See* s. 196.012(18), Fla. Stat., and *see also* s. 196.012(14)(b) and (15)(b), Fla. Stat., which refer to "enterprise zone" and s. 196.1995, Fla. Stat., which provides the economic development ad valorem tax exemption for businesses located in an "enterprise zone."

[7] Florida Department of Revenue TIP No. 15ADM-04, issued Sept. 8, 2015; *see also* the discussion of other incentives relating to Florida's Enterprise Zone Program for, among others, sales taxes and corporate income taxes.

[8] *Ibid.*

[9] *See* Department of Legal Affairs Statement Concerning Attorney General Opinions stating that "[p]articularly difficult or momentous questions of law should be submitted to the courts for resolution by declaratory judgment. When deemed appropriate, this office will recommend this course of action."