Property Appraiser, distribution of excess funds

Number: INFORMAL

Date: August 30, 2011

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Dear Messrs. Dye and Kirkland:

On behalf of the West Manatee Fire & Rescue District and the Manatee County Property Appraiser, you have asked for this office's assistance in determining whether section 218.36(2), Florida Statutes, authorizes the distribution of excess funds held by the property appraiser to a special district which imposes a non-ad valorem special assessment and pays a fee to the property appraiser pursuant to a uniform collection agreement under section 197.3632, Florida Statutes. As discussed herein, it would appear that Rule 12D-11.009, Florida Administrative Code, promulgated by the Department of Revenue, directs that excess funds held by the property appraiser shall be distributed to each governmental unit in proportion to amounts billed and paid.

Pursuant to a uniform collection agreement authorized by section 197.3632, Florida Statutes, the West Manatee Fire & Rescue District (district), an independent special district, has contracted with the Manatee County Property Appraiser for administrative assistance in the levy and collection of non-ad valorem special assessments imposed by the district.[1] The agreement provides that the district will pay 1.5% of the special assessments collected as "an accurate estimate of the administrative costs incurred by the Property Appraiser." The district represents that prior to this year, at the end of the budget cycle, the property appraiser refunded excess funds collected on behalf of the district back to the district. This past year on a reported $926,000.00 in excess funds received by the property appraiser, the district's calculated share of $16,000.00 was not returned to the district, based upon a determination by the property appraiser's office that section 218.36(2), Florida Statutes, limits disbursement of excess funds only to governmental units imposing ad valorem taxes. The property appraiser's office has taken the position that funds received from the district are not part of the property appraiser's operating budget, since the district is not an ad valorem taxing unit for which a commission is calculated and paid to the property appraiser under section 192.091, Florida Statutes.[2]

Section 197.3632, Florida Statutes, provides a uniform method for the levy, collection, and enforcement of non-ad valorem assessments. Subsection (2) of the statute, states:

"A local governing board shall enter into a written agreement with the property appraiser and tax collector providing for *reimbursement of necessary administrative costs* incurred under this section. Administrative costs shall include, but not be limited to, those costs associated with personnel, forms, supplies, data processing, computer equipment, postage, and programming."[3] (e.s.)

The enactment of section 197.3632, Florida Statutes, provides a uniform method for the levy, collection, and enforcement of non-ad valorem assessments and, by its plain language, authorizes tax collectors and property appraisers to be reimbursed for the administrative costs incurred in providing services to local governments.[4] The statute provides the means to collect a commission or fees from special districts for administrative assistance rendered in the levy and collection of non-ad valorem assessments.[5]

Section 218.36, Florida Statutes, states:

"(1) Each county officer who receives any expenses or compensation in fees, commissions, or other remuneration shall keep a complete record of all fees, commissions, or other remuneration collected by that county officer and shall make an annual report to the board of county commissioners within 31 days of the close of his or her fiscal year. Such report shall specify in detail the purposes, character, and amount of all official expenses and the amount of net income or unexpended budget balance as of the close of the fiscal year. All officers shall prepare such reports and subscribe under oath as to their accuracy and propriety.
(2) On or before the date for filing the annual report, each county officer shall pay into the county general fund all money in excess of the sum to which he or she is entitled under the provisions of chapter 145. Whenever a tax collector has money in excess, he or she shall distribute the excess to each governmental unit in the same proportion as the fees paid by the governmental unit bear to the total fee income of his or her office. *Any excess held by a property appraiser shall be divided into parts for each governmental unit which was billed and which paid for the operation of the property appraiser's office in the same proportion as the governmental units were originally billed. Such part shall be an advance on the current year's bill, if any.*" (e.s.)

In its role as the agency which enforces the tax laws, the Department of Revenue has promulgated Rule 12D-11.009, Florida Administrative Code, which implements section 218.36, Florida Statutes. The rule gives direction to property appraisers regarding the distribution of excess funds, stating:

"The distribution of excess funds shall be distributed to each governmental unit in proportion to amounts billed and paid. In calculating this ratio, extend to five significant digits. This will result in a percentage followed by three decimals . . . ."

The rule exhibits a table with entities which have been billed for budgetary purposes pursuant to section 192.091(1), Florida Statutes, and includes a billing of $6,000 which was not billed for purposes of the office's $100,000 budget but which is credited toward the total billings of the office.[6] The example goes on to use the $6,000 in the calculation of the pro-rata share paid

toward the total amount billed by the office and shows a refund to the billed entity in proportion to the amount that the special district paid. The rule further states that the property appraiser should "[c]redit these amounts to subsequent period billings if the district is subject to billing for the following fiscal period."

As the Department of Revenue is the agency charged with implementing the provisions of the tax statutes, its interpretation of the requirements of section 218.36(2), Florida Statutes, is entitled to great weight.[7] The department's direction in the rule appears to indicate that the property appraiser should include fees billed other than under section 192.091(1), Florida Statutes, and received for services rendered to the special district as income to his or her office and calculate the district's pro-rata share to the total amount billed by the office in allocating credits toward billings for the subsequent fiscal period. Moreover, this office has been advised by the Department of Revenue that section 218.36(2), Florida Statutes, is appropriately used to distribute excess funds to a special district which imposes a non-ad valorem special assessment and pays a fee to the property appraiser pursuant to a uniform collection agreement under section 197.3632, Florida Statutes.

I trust that these informal comments will be of assistance to you in resolving the question you have presented.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] While the district's charter authorizes the levy of ad valorem taxes after referendum approval, the district has not done so.

[2] Section 192.091(1), Fla. Stat., states:

"Commissions of property appraisers and tax collectors.—
(1)(a) The budget of the property appraiser's office, as approved by the Department of Revenue, shall be the basis upon which the several tax authorities of each county, except municipalities and the district school board, shall be billed by the property appraiser for services rendered. Each such taxing authority shall be billed an amount that bears the same proportion to the total amount of the budget as its share of ad valorem taxes bore to the total levied for the preceding year. All municipal and school district taxes shall be considered as taxes levied by the county for purposes of this computation.
(b) Payments shall be made quarterly by each such taxing authority. The property appraiser shall notify the various taxing authorities of his or her estimated budget requirements and billings thereon at the same time as his or her budget request is submitted to the Department of Revenue pursuant to s. 195.087 and at the time the property appraiser receives final approval of the budget by the department."

[3] Section 197.3632(1)(c), defines "[l]ocal governing board" as a "governing board of a local government." Subsection (1)(b) of the statute defines "[l]ocal government" as "a county, municipality, or special district levying non-ad valorem assessments."

[4] *See* Rule12D-18.004(2), F.A.C., stating:

"The agreement(s) shall provide for reimbursement of administrative costs, as provided in Sections 197.3632(2), (7), and (8)(c), F.S., incurred by the property appraiser and tax collector in complying with Sections 197.3632 and 197.3635, F. S., and this rule chapter. These administrative costs include, but are not limited to, costs associated with personnel, forms, supplies, data processing, computer equipment, postage, pro rata insurance premiums, and programming. In any agreement with the local governing board, the tax collector or the property appraiser shall be responsible for the performance of duties specified, or permitted by Section 197.3632, F.S., for that party, and shall be entitled to reimbursement of administrative costs."

[5] *See* Ops. Att'y Gen. Fla. 78-157 (1978), 78-146 (1978), and 74-78 (1974).

[6] Rule 12D-11.009, F.A.C., characterizes the $6,000 as "[b]illings other than under section 192.091(1), Florida Statutes."

[7] *See AmeriSteel Corporation v. Clark,* 691 So. 2d 473 (Fla. 1997) (interpretation by agency charged with administration of a statute is entitled to great weight); Op. Att'y Gen. Fla. 74-71 (1974) (construction of a statute by the administrative agency charged with its enforcement and interpretation is entitled to great weight and a court generally will not depart therefrom except for the most cogent reasons and unless the construction is clearly erroneous), *citing Daniel v. Florida State Turnpike Authority,* 213 So. 2d 585 (Fla. 1968); *Miller v. Brewer Co. of Florida,* 122 So. 2d 565 (Fla. 1960).