Non ad valorem assessment, taxpayer assistance program

Number: INFORMAL

Date: February 02, 2007

Mr. Scott Knox
Brevard County Attorney
Office of the County Attorney
2725 Judge Fran Jamieson Way
Viera, Florida 32940

Dear Mr. Knox:

On behalf of the Board of County Commissioners of Brevard County, you have asked whether the Board of County Commissioners of Brevard County is authorized, pursuant to section 197.3632, Florida Statutes, to provide a low-income taxpayer assistance program for qualifying taxpayers paying a non-ad valorem fire services special assessment.

According to your letter, the Board of County Commissioners of Brevard County is considering the adoption of a county resolution providing low-income assistance for certain persons who will be assessed a fire services special assessment. This office has been advised that the special assessment is being collected pursuant to the provisions of section 197.3632, Florida Statutes, and Chapter 12D -18, Florida Administrative Code.[1]

Special assessments are charges assessed by a governmental agency or unit against particular parcels of land that have received a special benefit from the public improvement. The amount of the assessment is computed by apportioning all or part of the total cost of such improvements among the properties specially benefitted.[2] Special assessments are not taxes because they confer a special benefit on the land burdened by the assessment.[3] The Florida Supreme Court has recognized that there are two requirements for the imposition of a valid special assessment: first, that the property assessed must derive a special benefit from the service provided, and second, that the assessment must be apportioned fairly and reasonably among the properties that receive the special benefit. Thus, a special benefit is distinguished from a tax because of its special benefits and its fair apportionment.[4]

The Florida Statutes provide several statutory options for the imposition and collection of special assessments by counties.[5] Section 197.3632, Florida Statutes, authorizes a local government to use the method prescribed in that statute for the levy, collection, and enforcement of such assessments. Subsection (3)(a) of the statutes provides:

"Notwithstanding any other provision of law to the contrary, a local government which is authorized to impose a non-ad valorem assessment and which elects to use the *uniform method* of collecting such assessment for the first time as authorized in this section shall adopt a resolution at a public hearing prior to January 1 or, if the property appraiser, tax collector, and local government agree, March 1. The resolution shall clearly state its intent to use the *uniform method* of collecting such assessment. The local government shall publish notice of its intent to

use the *uniform method* for collecting such assessment weekly in a newspaper of general circulation within each county contained in the boundaries of the local government for 4 consecutive weeks preceding the hearing. . . ." (e.s.)

A local government utilizing the provisions of s. 197.3632, Florida Statutes, must adhere to the legislative framework set forth in the statute.[6] When the Legislature has prescribed the manner in which something is to be done, it effectively operates as a prohibition against its being done in any other manner.[7]

Section 197.3632, Florida Statutes, recognizes the authority of a local governing board to accomplish adjustments to an assessment for certain specified purposes. Subsection (4)(c) states:

"[I]f the local governing board adopts the non-ad valorem assessment roll, it shall specify the unit of measurement for the assessment and the amount of the assessment. Notwithstanding the notices provided for in paragraph (b), the local governing board may adjust the assessment or the application of the assessment to any affected property based on the benefit which the board will provide or has provided to the property with the revenue generated by the assessment."

Thus, the Legislature has recognized that adjustments may be made by the board for a particular parcel based on differences in the benefits provided with the non-ad valorem assessment moneys. No other adjustments to assessments are authorized by section 197.3632, Florida Statutes.

Section 197.3632, Florida Statutes, provides a uniform procedure for the levying, collection and enforcement of special assessments imposed by local governments authorized to impose non-ad valorem assessments.[8] "Local government" is defined to include a county levying non-ad valorem assessments.[9] If a county chooses to use the uniform method of collecting such an assessment, it must adhere to the procedures prescribed in section 197.3632, Florida Statutes.[10] Assessments collected pursuant to this section are included in the combined notice for ad valorem taxes and non-ad valorem assessments provided in section 197.3635, Florida Statutes.[11] Moreover, such assessments are subject to all collection provisions of Chapter 197, Florida Statutes, "including provisions relating to discount for early payment, prepayment by installment method, deferred payment, penalty for delinquent payment, and issuance and sale of tax certificates and tax deeds for nonpayment."[12]

In light of the language of section 197.3632, Florida Statutes, prescribing a uniform method for the levy, collection and enforcement of non-ad valorem assessments, it would appear that if Brevard County determines to use that statute for the levy of special assessments, the county is not authorized to create a non-ad valorem fire services special assessment exemption or adjustment program that would reduce the non-ad valorem portion of the tax bill for certain taxpayers. Rather, section 197.3632(4)(c), Florida Statutes, only recognizes the authority of a governing board to adjust assessments for particular property based on the *benefit* provided to that property.

This informal advisory opinion is provided by the Department of Legal Affairs in an effort to assist you. The conclusions expressed herein are those of the writer and do not constitute a formal

opinion of the Attorney General.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] *See* s. 9, Brevard County Resolution No. 06-236A.

[2] *City of Gainesville v. State of Florida,* 863 So. 2d 138 (Fla. 2003); *Atlantic Coast Line R.R. Co. v. City of Gainesville,* 91 So. 118 (Fla. 1922); *Donnelly v. Marion County,* 851 So. 2d 256 (Fla. 5th DCA 2003); 48 Fla.Jur.2d *Special Assessments* s. 1.

[3] *See*, *City of Gainesville, id.*; *City of Boca Raton v. State*, 595 So. 2d 25, 29 (Fla. 1992).

[4] *City of Boca Raton v. State, id.*; *Lake County v. Water Oak Management Corporation*, 695 So. 2d 667 (Fla. 1997).

[5] *See* ss. 125.01(1)(r), Fla. Stat., authorizing counties to levy and collect special assessments; and 197.363, 197.3631, and 197.3632, Fla. Stat., recognizing alternate methods of levying and collecting special assessments.

[6] *Cf.* Rule 12D-18.002(2)(i), F.A.C, defining "Uniform method" as the "method provided in Section 197.3632, F.S., under which assessments are included on an assessment roll and certified, in a compatible electronic medium tied to the property identification number, by a local government to the tax collector for merging with the ad valorem tax roll, for collection by utilizing the tax notice described in Section 197.3635, F.S., and for sale of tax certificates and tax deeds under the nonpayment provisions of the ad valorem tax laws."; *Escambia County v. Bell*, 717 So. 2d 85 (Fla. 1st DCA 1998) (when governmental entity elects to use s. 197.3632, Fla. Stat., and complies with its terms, tax collector has no discretion in collection.)

[7] *See Alsop v. Pierce*, 19 So. 2d 799, 805-806 (Fla. 1944); *Dobbs v. Sea Isle Hotel,* 56 So. 2d 341, 342 (Fla. 1952); *Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976).

[8] Section 197.3632(3), Fla. Stat.

[9] Section 197.3632(1)(b), Fla. Stat.

[10] *See* ss. 197.3632 (3) - (6), Fla. Stat. *And see* Op. Att'y Gen. Fla. 99-40 (1999).

[11] Section 197.3632(7), Fla. Stat.

[12] Section 197.3632(8)(a), Fla. Stat. *See also* Ops. Att'y Gen. Fla. 02-41 (2002) (tax collector may not enforce delinquent non-ad valorem assessments in manner other than selling tax

certificates and tax deeds, when governing body has adopted uniform methods for levy, collection and enforcement of special assessments under s. 197.3632, Fla. Stat.; and 97-51 (1997) (provisions of Ch. 197, Fla. Stat., are the exclusive method for enforcing liens created through the sale of tax certificates for unpaid ad valorem taxes and special assessments).