

Tax exemption; construction commencement date

Number: INFORMAL

Date: August 26, 1996

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

RE: COUNTIES--TAXATION--commencement date of construction controls application of tax exemption ordinance. s. 196.1995, Fla. Stat.

Dear Mr. Knox:

This is in response to your letter requesting an opinion as to whether a "master ordinance" passed pursuant to section 196.1995, Florida Statutes, may apply to allow an economic development tax exemption for improvements that were initiated prior to passage of the ordinance, but completed after such date.

In sum, section 196.1995, Florida Statutes, would appear to contemplate that the date of commencement of construction of improvements controls the application of a "master ordinance" allowing an exemption from taxation.

Section 196.1995, Florida Statutes, authorizes a board of county commissioners, upon referendum approval, to enact an ordinance granting economic development property tax exemptions of up to 100 percent to new businesses and for expansions of existing businesses. Subsection (5), of the statute specifically provides:

"Upon a majority vote in favor of such authority, the board of county commissioners . . . at its discretion, by ordinance may exempt from ad valorem taxation up to 100 percent of the assessed value of all improvements to real property made by or for the use of a new business and of all tangible personal property of such new business, or up to 100 percent of the assessed value of all added improvements to real property made to facilitate the expansion of an existing business and of the net increase in all tangible personal property acquired to facilitate such expansion of an existing business, provided that the improvements to real property are made or the tangible personal property is added or increased on or after the day the ordinance is adopted."

Any person or firm desiring an economic development exemption must file a written application with the board of county commissioners or the governing body of the municipality or both and request the adoption of an ordinance granting an exemption. Section 196.1995(7), prescribes information that must be included on the application, including:

"(b) A description of the improvements to real property for which an exemption is requested and the date of commencement of construction of such improvements;

(c) A description of the tangible personal property for which an exemption is requested and the dates when such property was or is to be purchased[.]"

In light of the plain language of the statute requiring that improvements be made on or after the day the ordinance is adopted and the specific requirement that the date of commencement of construction be indicated on the application for the exemption, it would appear that the date of commencement of the improvements controls for determining whether a particular property is eligible under section 196.1995, Florida Statutes.

In this instance, the threshold date to determine whether property is entitled to the tax exemption is on or after passage of the ordinance. Applying the fundamental rule that exemption statutes are to be strictly construed, it would be consistent to require that only property improvements commenced on or after the date of enactment of the county's ordinance are eligible for exemption from taxation.

I trust these informal comments will assist you in the resolution of this matter.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tgk