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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable Don Kyle  
Mayor, City of Decatur  
Post Office Box 488  
Decatur, Alabama 35602

Municipalities - Taxes - Penalties -  
Collections - Revenue Department -  
Morgan County

A municipality that elects to use the online tax filing system provided by the Alabama Department of Revenue to collect its taxes must have penalty provisions that parallel the penalties assessed by the Alabama Department of Revenue.

Dear Mayor Kyle:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Decatur.

QUESTION

Does Act 98-192, duly adopted and as last amended by the State Legislature, or any other provision of the Code require a self-administered municipality to assess the same types and rates of penalties as are assessed by the Alabama Department of Revenue ("ADOR") with respect to sales, use, lodgings, or rental taxes that ADOR administers for the state or administers for municipalities that elect to have the ADOR collect the taxes for the respective municipality?

FACTS AND ANALYSIS

Your letter of request states the following:

The City of Decatur is considering using the online tax filing capability provided by the ADOR. There have been discussions regarding the necessity of the city having the parallel provisions of section 40-2A-11 of the Code of Alabama for the city to participate in the online filing service. The city is a self-administered municipality as defined in section 40-2A-3 of the Code. The ADOR and the city presently take different positions as to the applicability and levy of the taxes authorized by sections 11-51-200 through 11-51-205 of the Code. Our present penalties are assessed at a lower rate than the ADOR penalties. We believe our penalty structure simplifies collection and administration of our taxes and is made for the convenience of the taxpayer. The City of Decatur would like to use the online tax filing capacity provided by ADOR and keep our present penalty provisions.

The preamble of Act 98-192, known as the Local Tax Simplification Act of 1998, states that the purpose of the act is “[t]o clarify that municipal and county sales, use, rental, and lodgings taxes ***must generally conform to the corresponding state levies*** except for the rate of tax. . . .” 1998 Ala. Acts No. 1998-192, 310, 311 (emphasis added).

Section 11-51-200, *et seq.*, of the Code of Alabama amended Act 98-192. This section provides as follows:

***The governing body of any municipality within the State of Alabama may provide by ordinance for the levy and assessment of sales taxes, parallel to the state levy of sales taxes as levied by Sections 40-23-1, 40-23-2, 40-23-2.1, 40-23-4 to 40-23-31, inclusive, 40-23-36, 40-23-37, except for those provisions relating to the tax rate, and 40-23-38, except where inapplicable or where otherwise provided in this article; provided, that no municipality may levy any such tax against the Alcoholic Beverage Control Board of the State of Alabama in the sale of alcoholic beverages.***

ALA. CODE § 11-51-200 (Supp. 2006). This section mandates that sales taxes levied and assessed by a municipality must be parallel to the corresponding state

sales and use taxes. Opinion to Honorable Charles W. "Sonny" Penhale, Mayor, City of Helena, dated October 4, 1995, A.G. No. 96-00004.

Section 11-51-201 requires that all taxes levied by municipal ordinances follow the rules of the state sales tax laws. Section 11-51-201 provides as follows:

**(a) All taxes levied or assessed by any municipality pursuant to the provisions of Section 11-51-200 shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, provisions, rules and regulations promulgated under the Alabama Administrative Procedure Act, direct pay permit and drive-out certificate procedures, statutes of limitation, *penalties, fines, punishments, and deductions for the corresponding state tax* as are provided by Sections 40-2A-7, 40-23-1, 40-23-2, 40-23-2.1, 40-23-4 to 40-23-31, inclusive, 40-23-36, 40-23-37, except for those provisions relating to the tax rate, and 40-23-38, except where inapplicable or where otherwise provided in this article.**

ALA. CODE § 11-51-201(a) (Supp. 2006).

You state in your letter of request that the City of Decatur would like to use the online tax filing capacity provided by ADOR but keep the city's lower penalty provisions. Section 11-51-201, however, expressly states that all taxes levied or assessed by a municipality pursuant to section 11-51-200 are subject to all definitions, penalties, and fines for the corresponding state tax, as provided by the provisions of title 40 set forth in section 11-51-201.

The issue of municipal rules and regulations relating to sales tax collection procedures was addressed in an opinion to Honorable Jerry K. Selman, Attorney at Law, dated November 21, 1995, A.G. No. 96-00044. In the *Selman* opinion, this Office stated as follows:

A municipality is also authorized to adopt in whole or in part any rules and regulations promulgated by the State Revenue Department and to modify and amend any such rules as long as they parallel the rules and regulations promulgated by the Revenue Department. Code of Alabama 1975, § 11-51-202. This is because the statute authorizing the tax requires that the levy

and assessment of such taxes be parallel to the state levy and assessment of such taxes. Code of Alabama 1975, § 11-51-200.

*Selman* at 4.

Section 11-51-200 allows the governing body of any municipality to provide, by ordinance, for the levy and assessment of sales taxes parallel to the state levy of sales taxes. Section 11-51-201 requires that all taxes levied or assessed by a municipality pursuant to section 11-51-200 are subject to all penalties, fines, punishments, and deductions for the corresponding state tax. As noted above in the preamble, the purpose of the Local Tax Simplification Act is to clarify that municipal and county taxes must generally conform to the corresponding state levies. Because any penalty assessed at a lower rate than the ADOR penalties would not parallel the corresponding state penalty, a municipality electing to have the ADOR collect its taxes must assess the same types and rates of penalties as are assessed by the ADOR.

#### CONCLUSION

A municipality that elects to use the online tax filing system provided by the Alabama Department of Revenue to collect its taxes must have penalty provisions that parallel the penalties assessed by the Alabama Department of Revenue.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Noel S. Barnes of my staff.

Sincerely,

TROY KING  
Attorney General

By:



BRENDA F. SMITH  
Chief, Opinions Division