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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Fire Protection Fee -- Collections -- Revenue
Commissioners

Any building, structure, or other improvement to real property that is used or expected to be used as a business establishment that does not also meet the definition of a dwelling, as set out in section 3 of Act 2008-123, should be considered a "business" for purposes of levying the fire protection service fee.

The fire protection service fee should be collected, administered, and enforced as closely as possible at the same time and in the same manner as ad valorem taxes of the state. Collection of the fee with regard to manufactured homes should be done in the same manner as the annual registration fee for manufactured homes as provided in section 40-12-255 of the Code of Alabama.

If a "business" is operated out of a "dwelling," the fire protection service fee is assessed against the "dwelling" as set out in section 3 of Act 2008-123.

The fire protection service fee should first be levied in July 2008.

Dwellings and businesses that were located within Limestone County but outside of the corporate boundaries of the City of Athens as of October 1, 2007, should be assessed the

fire protection service fee. Because the fire protection service fee is levied monthly, these dwellings and businesses should only be assessed for the months after which Act 2008-123 became effective. Accordingly, dwellings and businesses located in those portions of Limestone County outside the corporate boundaries of the City of Athens as of October 1, 2007, should be assessed for the fire protection service fee in the months of July, August, and September.

On October 1, 2008, prior to issuing the 2009 registration sticker for a mobile home, the Revenue Commissioner should collect the unpaid fire protection service fee for the months of July through September in addition to any other fees that are due.

In instances where a "dwelling" or "business" only partially exists during the year, the owner of that structure should be assessed only for the actual number of months that the structure existed during the year.

In instances where an owner of a particular structure has paid the fire protection service fee in an annual amount in advance of the year for which it has been levied and at some time during the year the dwelling and/or business no longer exists, that owner, upon request and after a full inspection, should receive a refund for the months remaining after the structure is demolished.

Persons that own either dwellings or businesses that refuse to pay the fire protection fee may be subject to the listing of their property in a tax sale. Owners of dwellings that are considered manufactured homes may not have a current registration sticker issued and may be subject to additional citations.

The fire protection service fee should be levied on each unit of an apartment complex or duplex. These units should individually be assessed as dwellings. Similarly, the fire protection service fee should be levied against each individual business located within a structure that fits the definition of a business.

Because Act 2008-123 does not set forth any limitations on the administrative fee, the commission should make a determination regarding the amount of a "reasonable" administrative fee.

Based on the plain language in Act 2008-123, the Limestone County Association of Volunteer Fire Departments should receive the exact same share as each of the eligible volunteer fire departments.

An owner who is exempt from ad valorem taxes due to a disability would not also be exempt from the fire protection service fee.

Dear Mr. Patterson:

This opinion of the Attorney General is issued in response to your request.

QUESTION 1

Who or what would be considered a "business" for the purpose of levying a fire protection service fee?

FACTS AND ANALYSIS

The questions you pose relate to Act 2008-123. This is a local act specific to Limestone County. Specifically, the provisions of this act will apply to those portions of Limestone County located outside of the corporate boundaries of the City of Athens. 2008 Ala. Acts No. 2008-123.

Section 3 of the act states that a fire protection service fee will be levied on the owner of each dwelling and business located within Limestone County but outside of the corporate limits of the City of Athens. 2008 Ala. Acts No. 2008-123. The term "business," which is used in Act 2008-123, is not defined.

Under the rules of statutory construction, when interpreting a statute, words will be given their "natural, plain, ordinary, and commonly understood meaning. When a term is not defined in a statute, the commonly accepted definition of the term should be applied. *Ex parte Gadsden Reg'l Med. Ctr.*, 904 So. 2d 234, 236 (Ala. 2004), quoting *Bean Dredging, L.L.C. v. Ala. Dep't of Revenue*, 855 So. 2d 513, 517 (Ala. 2003). Ballentine's Law Dictionary defines the term "business" as an establishment where trade or commerce is conducted. Using this definition, a business establishment is a location where business is conducted; goods are made, stored, or processed; or where services are rendered. *BALLENTINE'S LAW DICTIONARY* 162 (3rd ed. 1969). Therefore, any building, structure, or other improvement to real property that is used or expected to be used as a business establishment that does not also meet the definition of a dwelling, as set out in section 3 of Act 2008-123, should be considered a "business" for purposes of levying the fire protection service fee.

CONCLUSION

Any building, structure, or other improvement to real property that is used or expected to be used as a business establishment that does not also meet the definition of a dwelling, as set out in section 3 of Act 2008-123, should be considered a "business" for purposes of levying the fire protection service fee.

QUESTION 2

Would the fire protection service fee be collected at the same time and in the same manner as any license for the privilege of doing business in Limestone County?

FACTS AND ANALYSIS

Section 4 of the act sets forth the manner in which the fire protection service should be administered. Specifically, this section states, in pertinent part, as follows:

The fire protection service fee shall be collected, administered, and enforced as closely as possible at the same time, in the same manner, and under the same requirements and laws as are the ad valorem taxes of the state. In the case of mobile homes, the fee shall be collected, administered, and enforced as closely as possible at the same time, in the same manner, and under the same requirements and laws as the annual registration fee for manufactured homes provided in Section 40-12-255 of the Code of Alabama 1975.

2008 Ala. Acts No. 2008-123. Based on the foregoing, the fire protection service fee shall be collected, administered, and enforced in the same manner as are the ad valorem taxes of this state. Further, in the case of mobile homes, the fee shall be collected, administered, and enforced in the same manner as the annual registration fee for manufactured homes as provided in section 40-12-255 of the Code of Alabama.

CONCLUSION

The fire protection service fee should be collected, administered, and enforced as closely as possible at the same time and in the same manner as ad valorem taxes of the state. Collection of the fee with regard to manufactured homes should be done in the same manner as the annual registration fee for manufactured homes as provided in section 40-12-255 of the Code of Alabama.

QUESTION 3

If the answer to Question 2 is in the negative, when would the fire protection service fee levied on businesses be collected?

FACTS, ANALYSIS, AND CONCLUSION

Based on the response given to Question 2, this issue is moot.

QUESTION 4

Subject to the answer to Question 1, if a "business" is operated out of a "dwelling," is the fire protection service fee assessed against the "business" and the "dwelling?"

FACTS AND ANALYSIS

Section 3 of the act, which thoroughly defines the term "dwelling," discusses the treatment that buildings that are operated as both dwellings and businesses should receive. The act provides as follows:

A building, structure, or other improvement shall be classified as a "dwelling" for purposes of this act notwithstanding:

(1) That it is wholly or partially vacant or uninhabited at any time during the year for which a fire protection service fee with respect thereto is or is to be levied; or

(2) That it is also used or expected to be used simultaneously for a purpose, whether or not commercial in nature, other than as a dwelling or residence as aforesaid.

2008 Ala. Acts No. 2008-123, § 3. Based on the foregoing, a fire protection service fee is assessed against a dwelling in instances where a particular structure operates as both a dwelling and a business.

CONCLUSION

If a "business" is operated out of a "dwelling," the fire protection service fee is assessed against the "dwelling" as set out in section 3 of Act 2008-123.

QUESTION 5

If the fire protection service fee is to be levied monthly, and if this act is effective immediately

following the passage and approval of the Governor, subject to the approval of a majority of the requisite qualified electors, in which month will the fire protection service fee first be levied?

FACTS, ANALYSIS, AND CONCLUSION

The act provides that the fee should take effect immediately after being approved by the electorate of Limestone County outside the corporate limits of the City of Athens who vote for it at a referendum held for such purpose. 2008 Ala. Acts No. 2008-123, § 9. The referendum was held on June 3, 2008, and was approved by a majority of the requisite electors. Therefore, the first month in which the fire protection service fee is to be levied is July 2008.

QUESTION 6

If the fire protection service fee is to be levied monthly, and if ad valorem taxes are collected in arrears, how will the Limestone County Revenue Commissioner levy and collect the fire protection service fee for any months during the 2008 tax year, if any, that would have been assessed on October 1, 2007?

FACTS AND ANALYSIS

Local Act 2008-123 provides that the fire protection service fee shall be collected, administered, and enforced in the same manner, and under the same requirements and laws, as are the ad valorem taxes of this state. Ad valorem taxes in this state are collected in arrears; therefore, the taxes becoming due on October 1, 2008, cover the period October 1, 2007, through September 30, 2008. *See, generally, ALA. CODE § 40-7-1 (2003).* The fee authorized by this act took effect immediately after being approved by the electorate of Limestone County outside the corporate limits of the City of Athens. The referendum was held on June 3, 2008, and was approved by a majority of the requisite electors. The fee of \$2.50 on each dwelling and \$5.00 on each business is to be levied monthly, but collected annually. Therefore, three months of the fee (July through September) should be collected beginning October 1, 2008, on the owners of each dwelling and business located in those portions of Limestone County outside the corporate boundaries of the City of Athens as of October 1, 2007, in addition to the ad valorem taxes due on that date.

CONCLUSION

Dwellings and businesses that were located within Limestone County but outside of the corporate boundaries of the City of Athens as of October 1, 2007, should be assessed the fire protection service fee. Because the fire protection service fee is levied monthly, these dwellings and businesses should only be assessed for the months after which Act 2008-123 became effective. Accordingly, dwellings and businesses located in those portions of Limestone County outside the corporate boundaries of the City of Athens as of October 1, 2007, should be assessed for the fire protection service fee in the months of July, August, and September.

QUESTION 7

If the fire protection service fee is to be levied monthly, and if manufactured home registration fees were collected by the Limestone County Revenue Commissioner on October 1, 2007, for the 2008 year, how will the Limestone County Revenue Commissioner levy and collect the fire protection service fee for those months remaining in the 2008 tax year?

FACTS AND ANALYSIS

Act 2008-123 stated that the fire protection service fees for mobile homes would be collected in accordance with section 40-12-255 of the Code of Alabama. Pursuant to this section, manufactured home registration fees are collected in advance. Therefore, the Limestone County Revenue Commissioner collected the mobile home registration fee for 2008 on October 1, 2007. On October 1, 2008, the revenue commissioner should collect the unpaid fee for the months of July through September, in addition to the annual amount due pursuant to the act for the upcoming year, before issuing a current registration sticker for 2009.

CONCLUSION

On October 1, 2008, prior to issuing the 2009 registration sticker for a mobile home, the revenue commissioner should collect the unpaid fire protection

service fee for the months of July through September in addition to any other fees that are due.

QUESTION 8

If the fire protection service fee is to be levied monthly and collected annually, how will the Limestone County Revenue Commissioner levy and collect the fire protection service fee for any "dwelling" or "business" that only partially exists during the year?

FACTS AND ANALYSIS

While Act 2008-123 distinctly imposes the fee on structures that are wholly or partially vacant or uninhabited, your question seeks clarification in instances where the structure only partially exists. *See, generally*, 2008 Ala. Acts No. 2008-123, § 3. The particular issue that is outlined in this question contemplates what action is taken when there is an error in the amount of tax assessed. In similar issues regarding ad valorem taxation, where an error in an assessment has been made, the assessor may correct the error. ALA. CODE §§ 40-7-9 and 40-7-9.1 (2003). Accordingly, the fire protection service fee should be prorated such that the owner of the structure is assessed for the actual number of months the dwelling and/or business existed during the year.

CONCLUSION

In instances where a "dwelling" or "business" only partially exists during the year, the owner of that structure should be assessed only for the actual number of months that the structure existed during the year.

QUESTION 9

What if the owner of a dwelling and/or business has paid the fire protection service fee in an annual amount in advance of the year for which it has been levied and asks the revenue commissioner or the county commission for a refund because the dwelling and/or business no longer exists?

FACTS AND ANALYSIS

The particular issue outlined in this question would be handled in much the same manner as discussed above in response to Question 8. Specifically, the tax assessor, after reviewing the particular situation, may change his or her records to reflect the fact that the dwelling no longer exists. The fire protection service fee is not a tax on property. 2008 Ala. Act No. 2008-123, § 3. These fees are collected for the purpose of funding fire protection services. *Id.* Where neither a dwelling nor a business exists as contemplated within Act 2008-123, the fire protection service fee should not be collected. *See, generally,* 2008 Ala. Act No. 2008-123. Accordingly, the owner may request and should receive a refund for the months remaining after the dwelling and/or business property is demolished.

CONCLUSION

In instances where an owner of a particular structure has paid the fire protection service fee in an annual amount in advance of the year for which it has been levied and at some time during the year the dwelling and/or business no longer exists, that owner, upon request and after a full inspection, should receive a refund for the months remaining after the structure is demolished.

QUESTION 10

What if the owner of a dwelling and/or business refuses to pay the fire protection service fee?

FACTS AND ANALYSIS

The fee was approved by a majority of the electorate of the county. Therefore, it is to be enforced against everyone regardless of how they voted. Because this fee is to be enforced in the same manner as ad valorem taxes, when someone refuses to pay the fire protection service fee, the property should be listed as delinquent and subject to sale. ALA. CODE §§ 40-10-1 to 40-10-31 (2003).

For any manufactured homes or other property subject to ad valorem tax, the fee will be delinquent if not paid before January 1. For manufactured homes subject to the annual registration fee required by section 40-12-255 of the Code of Alabama, no current registration sticker will be issued unless any delinquency is paid. The annual registration fee becomes delinquent if not paid before December

1 of each year. Owners failing to comply may be issued a citation as set out in section 40-12-257. ALA. CODE § 40-12-257 (2003).

CONCLUSION

Persons that own either dwellings or businesses that refuse to pay the fire protection fee may be subject to the listing of their property in a tax sale. Owners of dwellings that are considered manufactured homes may not have a current registration sticker issued and may be subject to additional citations.

QUESTION 11

Will the fire protection service fee be levied on each unit of an apartment complex or duplex, and will the fire protection service fee also be levied on the apartment complex or duplex as a business?

FACTS AND ANALYSIS

Section 3 of Act 2008-123 specifically defines an apartment complex or duplex as a dwelling rather than as a business. 2008 Ala. Act No. 2008-123 § 3. As such, the service fee should be levied on these structures as dwellings and not businesses. *See, generally*, Opinion to the Honorable Tommy Lavender, Dale County Revenue Commissioner, dated December 4, 2007, A.G. No. 2008-018. The issue raised in this question was previously addressed in the *Lavender* opinion. In this opinion, this Office was asked to interpret the language of Act 2006-390, which has verbiage regarding duplex and apartment buildings that is nearly identical to the language found in Act 2008-123. In that opinion, Revenue Commissioner Lavender asked whether the fire protection and emergency medical service fee was to be assessed separately against each apartment in a duplex or apartment building or on the duplex and apartment building as a whole. In that opinion, this Office stated that, in applying the plain language of the act, the fee was payable per duplex or apartment building and not per each individual unit in the duplex or apartment building.

CONCLUSION

The fire protection service fee should be levied on each apartment building or duplex as a dwelling. These units should not be individually assessed as dwellings.

QUESTION 12

What limitations, if any, are there on the administrative fees that may be retained by the Limestone County Commission?

FACTS AND ANALYSIS

The act does not set forth any limitations with regard to the administrative fees. Pursuant to Act 2008-123, the county commission is to establish rules and procedures regarding the transfer, investing, accounting, and handling of the funds collected, and the commission may retain a "reasonable" administrative fee. 2008 Ala. Act No. 2008-123, § 4.

CONCLUSION

Because Act 2008-123 does not set forth any limitations on the administrative fee, the commission should make a determination regarding the amount of a "reasonable" administrative fee.

QUESTION 13

Said act provides that the county commission is to divide the funds equally between eligible volunteer fire departments and the Limestone County Association of Volunteer Fire Departments. Does that mean that the Limestone County Association of Volunteer Fire Departments receives one-half of the funds, or does the Limestone County Association of Volunteer Fire Departments receive the exact same share as each volunteer fire department receives?

FACTS AND ANALYSIS

Section 4 of Act 2008-123 discusses the fire protection service fee, its collection, and administration. This section states, in pertinent part, as follows:

The proceeds of the fee shall be paid into a special county fund. Within 30 days of payment into the special fund, the county commission *shall divide the funds equally among all eligible volunteer fire departments and the Limestone County Association of Volunteer Fire Departments.*

2008 Ala. Acts No. 2008-123, § 4 (emphasis added). Earlier, this Office stated that when interpreting a statute, the natural and commonly understood meaning of words should be used. Section 4 of the act states that the funds shall be divided equally among eligible volunteer fire departments and the Limestone County Association of Volunteer Fire Departments. As this section is written, it is the opinion of this Office that the Limestone County Association of Volunteer Fire Departments should receive the exact same share as each of the eligible volunteer fire departments.

CONCLUSION

Based on the plain language in Act 2008-123, the Limestone County Association of Volunteer Fire Departments should receive the exact same share as each of the eligible volunteer fire departments.

QUESTION 14

If an owner is exempt from ad valorem taxes due to a disability, would said owner also be exempt from the fire protection service fee?

FACTS AND ANALYSIS

In matters involving ad valorem tax, exemptions are construed against the person asserting the exemption. Therefore, the burden is on the persons claiming the exemption to prove that they are entitled to take the exemption. *See Eagerton v. Terra Res., Inc.*, 426 So. 2d 807, 808 (Ala. 1982); *State v. Bankhead Mining Co.*, 279 Ala. 566, 569, 188 So. 2d 527, 530 (1966). Section 3 of Act 2008-123

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specifically exempts any person age 65 or older who has a net taxable income of \$7500 or less, as shown on the person's and spouse's latest United States income tax return. These persons are not responsible for paying the fire protection service fee levied by this act. There are no other exemptions provided for within the act.

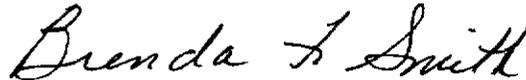
CONCLUSION

An owner who is exempt from ad valorem taxes due to a disability would not also be exempt from the fire protection service fee.

I hope this sufficiently answers your questions. If this Office can be of further assistance, please do not hesitate to contact Gwendolyn B. Garner, Legal Division, Department of Revenue.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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