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STATE OF ALABAMA  
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Honorable Larry Means  
Member, Alabama State Senate  
Post Office Box 786  
Attalla, Alabama 35954

Municipalities - Sales Tax -  
Counties - Collections - Etowah  
County

The Town of Mountainboro, which  
was recently annexed by the City of  
Boaz, is still required to pay the one  
percent county sales tax imposed by  
Etowah County.

Dear Senator Means:

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

QUESTION

Is the Town of Mountainboro, which is located in  
Etowah County, still required to pay the one percent  
sales tax imposed by Etowah County, even though the  
town was recently annexed by the City of Boaz, which  
is located in Marshall County?

FACTS AND ANALYSIS

The City of Boaz, located in Marshall County, recently annexed the Town  
of Mountainboro, located in Etowah County. Currently, the Town of  
Mountainboro pays a one percent county sales tax to Etowah County. The City  
of Boaz has sent notification through the Alabama Department of Revenue that  
the Town of Mountainboro should file sales and use tax returns with the City of

Boaz by use of the RDS/AlaTax filing and payment system starting with the period of August 14, 2009, through August 31, 2009.

The State of Alabama is divided into 67 counties, with each county having county commissions that are “authorized and directed to promulgate such rules and regulations and to initiate such procedures as are necessary to implement the provisions . . .” of Alabama law. *See* ALA. CODE §§ 11-1-1 & 11-1-5 (2008). Additionally, section 11-3-11.2 provides the following regarding Alabama counties:

(a) The county commission may, by ordinance or resolution, administer and collect, or contract for the collection of, any local sales and use taxes or other local county taxes levied or authorized to be levied by a general or local act. Where the county commission provides by ordinance or resolution for the administration and collection of the local taxes, the collection of the local sales and use taxes shall occur at the same time as state sales and use taxes are due to be paid to the Department of Revenue, unless otherwise provided by law.

ALA. CODE § 11-3-11.2 (2008).

The governing bodies of Alabama municipalities are also allowed to levy and collect local sales tax. *See* ALA. CODE § 11-51-200 (2008). Only one municipal sales tax and one county sales tax, however, can be collected on the same sale. More specifically, section 40-23-2.1 provides the following:

(a) If a sales tax, gross receipts tax in the nature of a sales tax, as defined in Section 40-2A-3(8), use tax, or rental tax levied by or on behalf of an Alabama municipality is paid under a requirement of law, the property which is the subject of such tax, when imported for use, storage, or consumption into another Alabama municipality, is not subject to the sales tax, use tax, or rental tax regardless of rate, which is required by the second municipality under any municipal ordinance or any act of the Legislature. The collecting agency shall require such proof of payment

of tax to another municipality as is deemed necessary and proper.

(b) If a sales tax, gross receipts tax in the nature of a sales tax, use tax, or rental tax levied by or on behalf of an Alabama county is paid under a requirement of law, the property which is the subject of such tax, when imported for use, storage, or consumption into another Alabama county, is not subject to the sales, use, or rental tax, regardless of rate, which is required by the second county under any county ordinance, resolution, or any act of the Legislature. The collecting agency shall require such proof of payment of the tax to another Alabama county as is deemed necessary and proper.

(c) This section applies to all municipalities in Alabama levying or administering a sales tax, gross receipts tax in the nature of a sales tax, use tax, or rental tax and all counties in Alabama levying or administering a sales tax, gross receipts tax in the nature of a sales tax, use tax, or rental tax. It is the intent of this section that only one municipal sales, use, rental, or gross receipts tax in the nature of a sales tax, and only one county sales, use, rental, or gross receipts tax in the nature of a sales tax be collected or paid on the same sale.

ALA. CODE § 40-23-2.1 (2003).

As stated earlier, the City of Boaz, located in Marshall County, annexed the Town of Mountainboro, located in Etowah County. Under Alabama law, areas in the former Town of Mountainboro may be subject to sales tax imposed by the City of Boaz as provided in section 11-51-200 of the Code. The Etowah County Commission may administer and collect sales tax on areas located in Etowah County.

Even though the Town of Mountainboro was annexed by the City of Boaz, the area is still located in Etowah County. Consequently, the Etowah County Commission may still administer and collect the one percent county sales tax from areas within the former Town of Mountainboro that are located in Etowah

County. The collection of sales tax by the municipality of Boaz and Etowah County does not violate section 40-23-2.1, which expressly indicates legislative intent that "only one municipal sales, use, rental, or gross receipts tax in the nature of a sales tax, and only one county sales, use, rental, or gross receipts tax in the nature of a sales tax be collected or paid on the same sale." *Id.*

It is well settled that in construing statutes, courts are under a duty to ascertain and give effect to the legislative intent as expressed by the words of the statute. *Ex parte Kimberly-Clark Corp.*, 503 So. 2d 304 (Ala. 1987). In *Ex parte Holladay*, 466 So. 2d 956, 960 (Ala. 1985), the Supreme Court held that a court called upon to construe a statute has the duty to ascertain and effectuate the legislative intent expressed in the statute, which may be gleaned from the language used, the reason and necessity for the act, and the purpose sought to be accomplished in enacting the statute. *See also, McGuire Oil Co. v. Mapco. Inc.*, 612 So. 2d 417 (Ala. 1992).

#### CONCLUSION

Based on the foregoing, the Town of Mountainboro, recently annexed by the City of Boaz, is still subject to the one percent sales tax imposed by the Etowah County Commission.

I hope this opinion answers your question. If this Office can be of further assistance, please contact W. William Young, Legal Division, Department of Revenue.

Sincerely,

TROY KING  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division