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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Jason R. Eubanks
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Board of the Town of Slocomb
Post Office Box 309
Slocomb, Alabama 36375

Municipalities – Business Licenses – Water Boards – Gross Receipts – Geneva County

Late, reconnect, impact, and garbage fees and fire and rescue donations paid by a customer to the Water Works and Sewer Board of the Town of Slocomb ("Board") are not subject to the privilege license tax levied under section 11-51-129 of the Code of Alabama.

Income received by the Board from customers both inside and outside the corporate limits of the Town of Slocomb are subject to the tax.

Whether the Board passes the tax on to the customer is within the Board's discretion.

Dear Mr. Eubanks:

This opinion of the Attorney General is issued in response to your request on behalf of the Water Works and Sewer Board of the Town of Slocomb.

QUESTIONS

(1) Does "gross receipts" under section 11-51-129 of the Code of Alabama include late, reconnect, impact, and garbage fees and fire and rescue donations?

(2) Does the amount from which the percentage is computed include income received from customers both inside and outside the town?

(3) Can the business license fee be placed on the customers' bills as a separate fee?

FACTS AND ANALYSIS

Your request states as follows:

> The Town of Slocomb passed a resolution imposing a business license fee on the Water Works and Sewer Board of the Town of Slocomb "in the amount of three (3%) percent as allowed by section 11-51-129 of the Code of Alabama 1975." Slocomb, Ala., Resolution No. 12-02 (adopted Nov. 26, 2012). The Board is incorporated as a public corporation pursuant to section 11-50-310, *et seq.*, of the Code of Alabama. ALA. CODE §§ 11-50-310 to 11-50-324 (2008 & Supp. 2012). The Board bills for and collects the garbage fees, along with fire and rescue donations for the town, which are included in the Board's "gross receipts." The income for these two items is then paid to the town. The Board also collects additional fees on top of water and sewer services, i.e., late, reconnect, and impact fees. Lastly, the Board serves customers inside the municipal limits, as well as outside the police jurisdiction.

This Office understands that the garbage fees and donations are collected as a courtesy for the town and are unrelated to the utility services provided by the Board.

Section 11-51-129 provides as follows:

> ***The maximum amount of privilege or license tax which the several municipalities within the state may annually assess and collect of persons operating*** electric or hydroelectric street railroads, electric light and power companies, gas companies, ***waterworks companies***, pipe line companies for transporting or carrying gas, oil, gasoline, water or other commodities, gas distributing companies, whether by means of pipe lines or by tanks, drums, tubes, cylinders, or otherwise, heating companies ***or other public utilities***, incorporated under the laws of this state or any other state or whether incorporated at all or not, except

> telephone and telegraph companies, railroad and sleeping car companies and express companies which are otherwise licensed ***shall not exceed three percent of the gross receipts of the business done by the utility in the municipality during the preceding year***. . . .

ALA. CODE § 11-51-129 (2008) (emphasis added).

This Office has explained that "[s]ection 11-51-129 allows a municipality to assess only a privilege or license tax on a public utility provider in an amount not to exceed three percent of the gross receipts of the business done by the utility company in the preceding year." Opinion to Honorable Barry L. Mullins, Attorney, Waterworks Board of the City of Fayette, dated March 10, 2004, A.G. No. 2004-091, at 2.

The definitional section for municipal business licenses contains the following statement within the definition of "gross receipts": "For a utility or other entity described in Section 11-51-129, gross receipts shall be limited to the gross receipts derived from the ***retail furnishing of utility services*** within a municipality during the preceding year . . . ." ALA. CODE § 11-51-90.1(6)(c) (2008) (emphasis added).

The Alabama Court of Civil Appeals has considered identical limiting language in the "gross receipts" definition in section 40-21-80(a)(3) applicable to the state utility gross receipts tax in section 40-21-82(a) of the Code of Alabama. *State Dep't of Revenue v. Mobile Gas Serv. Corp.*, 621 So. 2d 1333 (Ala. Civ. App. 1993). The Court held that collection fees and reconnect fees charged gas customers were not subject to the tax, reasoning that they "are not part of the sales price of the gas, but, rather, are incidental charges that have no relevance to the completion of the sale of the product." *Id.* at 1335.

Consistent with that opinion, late, reconnect, and impact fees paid by a customer to the Board, much less garbage fees and fire and rescue donations that are completely unrelated to the services provided by the Board, are not subject to the privilege license tax levied under section 11-51-129.

The full definition of "gross receipts" for purposes of municipal business licenses broadly states that it includes the "measure of any and all receipts of a business ***from whatever source derived, to the maximum extent permitted by applicable laws and constitutional provisions*** . . . ." ALA. CODE § 11-51-90.1(6) (2008) (emphasis added). The Alabama Supreme Court has held that a municipality is authorized to collect business license taxes based on gross receipts from transactions conducted outside the city limits. *City of Tuscaloosa v. Tuscaloosa Vending Co.*, 545 So. 2d 13 (Ala. 1989). Accordingly, income received by the Board from customers both inside and outside the corporate limits of the Town of Slocomb are subject to the tax.

Finally, this Office has previously addressed whether a water board organized under section 11-50-310, *et seq.*, may add the tax to the bills of its customers. Opinion to Honorable Harold D. Chandler, Mayor, Town of Rogersville, dated May 6, 2003, A.G. No. 2003-138. That opinion concluded that, "pursuant to sections 11-50-310 and 11-50-314 of the Code of Alabama, the utilities board of a municipality has the authority to set fees and utility rates. Whether the board passes the tax on to the customer is within the board's discretion." *Id.* at 3.

CONCLUSION

Late, reconnect, impact, and garbage fees and fire and rescue donations paid by a customer to the Water Works and Sewer Board of the Town of Slocomb are not subject to the privilege license tax levied under section 11-51-129 of the Code of Alabama.

Income received by the Board from customers both inside and outside the corporate limits of the Town of Slocomb are subject to the tax.

Whether the Board passes the tax on to the customer is within the Board's discretion.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

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