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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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October 9, 2013

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Honorable E. Lee McCarty, III
Mayor, Town of Wilsonville
115 North 1st Street
Alabaster, Alabama 35007

Municipalities – Police Jurisdiction – License Tax – Late Fees – Interest – Shelby County

Because the Town of Wilsonville is providing police and fire services within its police jurisdiction, businesses located therein are subject to reasonable privilege and license taxes.

Failure to timely pay a business license tax requires the assessment of a 15 percent penalty. Business license taxes not paid within 30 days must be assessed a 30 percent penalty. Past due business license taxes are subject to a penalty of 15 percent.

Collection of business license taxes may also be enforced pursuant to sections 11-51-150 through 11-51-161 of the Code of Alabama or by lien and attachment as provided for in section 11-51-96 of the Code.

Dear Mayor McCarty:

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

QUESTION

(1) May a municipality assess a privilege or license tax on a utility operating within the police jurisdiction but outside the corporate limits of the municipality?

FACTS AND ANALYSIS

According to your request, a question has arisen regarding business license fees due to the Town of Wilsonville ("Town") from businesses located within the police jurisdiction but outside the corporate limits of the Town. The Town, by duly adopted ordinance, imposes business license taxes on businesses within its corporate limits and police jurisdiction. The Town does not employ a municipal police force or fire department. Rather, the Town contracts with the local sheriff's department for police services within the police jurisdiction. *See* 2004 Ala. Acts No. 2004-255, 348 (Shelby County local act to provide for contracting of police services between a municipality and the sheriff) and ALA. CODE §§ 11-102-1 to 11-102-8 (2008) (allows contracts between counties and municipalities for the joint exercise of any power or service). Various volunteer fire departments, subsidized by the Town, provide fire protection services within the police jurisdiction.

Section 11-51-90 of the Code of Alabama grants the power to municipalities to license businesses within a municipality. ALA. CODE § 11-51-90 (2008). The maximum amount that may be assessed against certain utilities is limited to "three percent of the gross receipts of the business done by the utility . . . ." ALA. CODE § 11-51-129 (2008). Section 11-51-91 of the Code further extends the authority of the Town to levy business license taxes to locations within the police jurisdiction, but outside the corporate limits of the municipality. ALA. CODE § 11-51-91 (2008). Specifically, the Code states as follows:

> ***Any municipality may fix and collect licenses for any business, trade, or profession done within the police jurisdiction of such municipality but outside the corporate limits thereof; provided, that the amount of such licenses shall not be more than one half the amount charged and collected as a license for like business, trade, or profession done within the corporate limits of such municipality, fees and penalties excluded; and provided further, that the total amount of such licenses shall not be in an amount greater than the cost of services provided by the municipality within the police jurisdiction.*** No calculation is required to be made by the municipal officials or license officer for the cost of services to any particular business or classification of businesses within the police jurisdiction so long as the total amount of revenues from such licenses collected in the police jurisdiction shall not be in an amount greater

> than the cost of services provided by the municipality to the police jurisdiction. When the place at which any such business, trade, or profession is done or carried on is within the police jurisdiction of two or more municipalities which levy the licenses thereon authorized by this section, such licenses shall be paid to, issued, and collected by that municipality only whose boundary measured to the nearest point thereof is closest to such business, trade, or profession. Provided further, that this section shall not have the effect of repealing or modifying the limitations in this division relating to railroad, express companies, sleeping car companies, telegraph companies, telephone companies, and public utilities and insurance companies and their agents. This section shall be given a liberal construction to effectuate its purpose and meaning.

ALA. CODE § 11-51-91 (2008) (emphasis added).

In applying this statute, the Alabama Supreme Court has stated the following:

> ***A municipality must estimate the amount reasonably necessary to provide for the protection of the lives, health, and property of businesses and residents, and for the maintenance of good order and the preservation of public morals within its entire police jurisdiction. The municipality may then, by a properly adopted ordinance or resolution, set a license fee for businesses within its police jurisdiction, but outside its city limits, so that the total receipts from all such licenses do not exceed the amounts estimated to be reasonably necessary to provide these services to the police jurisdiction.*** No license fee charged to any business within the police jurisdiction, but outside the city limits, shall be more than one-half of the license fee charged to a similar business within the city limits. Such ordinances shall be presumed to be reasonable, and the burden shall be upon the business challenging the license fee charged to it to prove that such license fee is unreasonable or that the ordinance was illegally adopted or is violative of the statutory or fundamental law of the United States or of the State of Alabama.

Ex parte City of Mobile, 37 So. 3d 150, 154 (Ala. 2009), *quoting State Dep't of Revenue v. Reynolds Metals Co.*, 541 So. 2d 524 (Ala. 1988) (emphasis added).

Accordingly, because the Town is providing police and fire services within its police jurisdiction, albeit by contract and subsidies, businesses within the police jurisdiction of the Town are subject to reasonable privilege and license taxes. Whether the amount of the tax exceeds an amount reasonably required to provide the services, however, is a factual question that this Office may not answer. Opinion to Honorable Casandra Horsley, Judge of Probate, Winston County, dated April 19, 1996, A.G. No. 96-00189.

CONCLUSION

Because the Town of Wilsonville is providing police and fire services within its police jurisdiction, businesses located therein are subject to reasonable privilege and license taxes.

QUESTIONS

(2) Are delinquent privilege and license taxes subject to late fees and penalties?

(3 What procedures are available to collect delinquent privilege and license taxes?

FACTS AND ANALYSIS

As to your second question, the penalty for failure to pay a business license tax is set forth in section 11-51-93 of the Code. Failure to timely pay a business license tax requires the assessment of a 15 percent penalty. ALA. CODE § 11-51-93(b) (2008). Business license taxes not paid within 30 days must be assessed a 30 percent penalty. *Id.* The penalties are not cumulative. *Id.*

With respect to your third question, the procedure for collection of delinquent business license taxes is set forth in sections 11-51-150 through 11-51-161 of the Code and requires the filing of a verified petition "in the circuit court having jurisdiction over the county in which the petitioning municipality is situated. . . ." ALA. CODE § 11-51-150 (2008). Available remedies include injunctive relief to prohibit the operation and conduct of the business, an accounting, and judgment for delinquent taxes. ALA. CODE §§ 11-51-150 (2008); 11-51-152 (2008). Penalties for delinquent business license taxes may be enforced in the same manner. ALA. CODE § 11-51-93(d) (2008).

The remedies and procedures set forth in sections 11-51-150 through 11-51-161 of the Code are cumulative and do not alter other remedies. ALA. CODE § 11-51-161 (2008). One such remedy provided for in the Code includes a lien that "shall attach as of the date the license is due. . . ." ALA. CODE § 11-51-96 (2008). "Such lien may be enforced by attachment." *Id.*

CONCLUSION

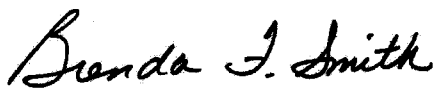
Failure to timely pay a business license tax requires the assessment of a 15 percent penalty. Business license taxes not paid within 30 days must be assessed a 30 percent penalty. Past due business license taxes are subject to a penalty of 15 percent.

Collection of business license taxes may be enforced pursuant to sections 11-51-150 through 11-51-161 of the Code or by lien and attachment as provided for in section 11-51-96 of the Code.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
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