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STATE OF ALABAMA
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Sales Tax – Use Tax – Counties –
Legislation – Local Laws

Act 2015-412 must be followed in the
distribution of funds from the sales and use
tax in Etowah County.

The Etowah County Commission
determines if the redistribution of funds
reduces the revenue needed on bond
indebtedness, necessitating an adjustment
in the distribution formula under section
45-28-244.01(h) of the Code of Alabama.

Dear Mr. Turnbach:

This opinion of the Attorney General is issued in response to your request
on behalf of the Etowah County Commission.

QUESTION

(1) Does Act 2015-412 prevail over Act 2015-
324?

FACTS AND ANALYSIS

Section 45-28-244.01 of the Code is a local act applicable to Etowah
County providing for the collection and distribution of the county sales and use
tax. ALA. CODE § 45-28-244.01 (2012). Section 45-28-244.01(c) provides for
the distribution of the tax proceeds to various entities in varying amounts. ALA.
CODE § 45-28-244.01(c) (2012).

Acts 2015-412 and 2015-324 amended the distribution provisions of section 45-28-244.01. 2015 Ala. Acts No. 2015-412; 2015 Ala. Acts No. 2015-324. You correctly point out that the acts contain some new language that is identical. Both acts add a new entity to share in the distribution provided for in section 45-28-244.01(c)(2), remove two of the entities receiving distributions in sections 45-28-244.01(c)(3) and (4), add a restriction on use of the tax and an accounting mechanism for one of the entities receiving a distribution in renumbered section 45-28-244.01(c)(4)a., replace section 45-28-244.01(d) with language reducing the distribution to some entities, and replace section 45-28-244.01(e) with language redistributing the amount from the latter reductions to certain new entities. *Id.*

On the other hand, you also correctly point out that Act 2015-412 includes several provisions not present in Act 2015-324. Act 2015-412 replaces section 45-28-244.01(c)(3) with a new entity to receive a distribution in a different amount; reduces the distribution to the fund in renumbered section 45-28-244.01(c)(5); and adds section 45-28-244.01(c)(9), redistributing the amount from the latter reduction to a new entity. 2015 Ala. Acts No. 2015-412.

Act 2015-324 was passed on June 3, 2015, while Act 2015-412, passed on June 9, 2015, is the latest expression of the Legislature. In cases of conflicting statutes on the same subject, the latest expression of the Legislature is the law. *Baldwin County v. Jenkins*, 494 So. 2d 584, 588 (Ala. 1986); *Soles v. State*, 820 So. 2d 163, 165 (Ala. Crim. App. 2001); *Ex parte CSX Transp., Inc.*, 533 So. 2d 613, 617 (Ala. Civ. App. 1987). Accordingly, Act 2015-412 governs the distribution of the sales and use tax in Etowah County.

CONCLUSION

Act 2015-412 must be followed in the distribution of funds from the sales and use tax in Etowah County.

QUESTION

(2) Who decides if the redistribution in funding reduces the revenue needed on bonded indebtedness? Is this simply a financial decision of the Etowah County Commission?

FACTS AND ANALYSIS

Section 45-28-244.01, as amended by Act 2015-412, retains its provisions about bonds. Renumbered section 45-28-244.01(h) continues to state that “[a]ny **redistribution** of the funds **shall not reduce** the amount of **revenue** needed to meet the obligations of any existing bonded indebtedness on the effective date of redistribution.” 2015 Ala. Acts No. 2015-412 (emphasis added). Some of the entities receiving distributions are authorized to issue bonds in renumbered sections 45-28-244.01(c)(4)a, 45-28-244.01(f), and 45-28-244.01(g). *Id.*

Section 45-28-244.01, as amended, does not specifically identify the entity or official that is to determine the amount of the distributions. The prefatory language to section 45-28-244.01(c) merely directs that the net proceeds “shall be distributed annually as follows” ALA. CODE § 45-28-244.01(c) (2012).

Section 45-28-244.01(b), however, charges the Etowah County Commission with “administer[ing] and collect[ing]” the tax. ALA. CODE § 45-28-244.01(b) (2012). Black’s Law Dictionary defines “administer” as “[t]o **provide or arrange** (something) officially as part of one’s job <courts administer justice>.” BLACK’S LAW DICTIONARY 52 (10th ed. 2014) (emphasis added). That term is further defined in Webster’s Third New International Dictionary as “to **give or furnish** a real or assumed benefit” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 27 (2002) (emphasis added). Accordingly, section 45-28-244.01(b) plainly states that it is the county that makes the distribution pursuant to the distribution formula, which would include distributions to entities with bond indebtedness subject to the limitation on reduced revenue in section 45-28-244.01(h).

This conclusion is supported by language in sections 45-28-244.01(d) and (e), as amended. The replacement language for section 45-28-244.01(d) reducing the distribution to some entities provides for the reduction “as calculated by the county administrator.” 2015 Ala. Acts No. 2015-412. Furthermore, the replacement language for section 45-28-244.01(e) redistributing that reduction to certain new entities provides that “the county administrator shall distribute” the reductions. *Id.*

CONCLUSION

The Etowah County Commission determines if the redistribution of funds reduces the revenue needed on bond indebtedness, necessitating an adjustment in the distribution formula under section 45-28-244.01(h) of the Code of Alabama.

Honorable James E. Turnbach
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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:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

LS/GWB

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