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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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State Departments and Agencies – Ad
Valorem Taxes – Lodging Taxes –
Exemptions – Real Property – Lodgings Tax
Law

Pursuant to section 40-9-1 of the Code of
Alabama, the following property is exempt
from ad valorem taxation: “all property, real
and personal, of the United States and this
state and of county and municipal
corporations in this state.”

Section 11-89C-10 of the Code of Alabama
provides that the storm water assessments
levied pursuant to section 11-89C-9(d) are to
be assessed, collected, and enforced as are
other ad valorem taxes. Therefore, state-
owned property is exempt from the fees,
charges, or assessments levied therein.

Absent a specific exemption, the State of
Alabama, counties and incorporated
municipalities of the state, and educational
institutions and agencies of the state are not
exempt from the state lodgings tax.

The State of Alabama, counties and
incorporated municipalities of the state, and
educational institutions and agencies of the
state are not exempt from local county
lodgings taxes that are patterned after the
state lodgings tax law.

Dear Mr. Childree:

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

QUESTION I

Given the fact that real property owned by the State of Alabama is not subject to the assessment and collection of ad valorem taxes (Amendment 325 of the Constitution of Alabama), is state-owned property likewise exempt from the assessments provided for in section 11-89C-1, *et seq.*, of the Code of Alabama?

FACTS, ANALYSIS, AND CONCLUSION

Section 11-89C-1, *et seq.*, of the Code of Alabama provides for the establishment of public corporations by county and municipal governing bodies to implement storm water laws. Section 11-89C-1 provides as follows:

(a) The Legislature finds and declares that it is in the public interest and the health, safety, and welfare of the citizens of this state and within the police power of the state, county, and municipal governments to promote effective and efficient compliance with federal and state laws, rules, regulations, and municipal permits relating to storm water discharges into municipal separate storm sewers, and to promote and authorize the discovery, control, and elimination, wherever practicable, of that discharge at the local government level.

(b) It is the intention of the Legislature by passage of this chapter to assist the state in its implementation of the storm water laws, and to supplement the authority of the governing bodies of all counties and municipalities in the state to enable them to implement the storm water laws.

(c) It is further the intention of the Legislature to authorize and promote the intercooperation of the governing bodies in implementing the storm water laws and the purposes of this chapter.

(d) It is further the intention of the Legislature to authorize governing bodies to determine the methods and procedures they shall use to carry out the storm water laws and this chapter, to make their respective participation in a public corporation intercooperation program optional, and to adopt policies and procedures pertaining to their responsibilities in the program and the procedure for entry into and exit from the program. It is the intention of the Legislature to grant the governing bodies, whether in the program or acting individually, the enforcement authority needed in order to satisfy the requirements of storm water laws, further, to act by resolution or ordinance enforceable in their respective municipal courts or the district courts and by civil procedures in district and circuit courts, including fines, penalties, damages, and injunction as authorized and appropriate. It is the intention of the Legislature to grant governing bodies the authority to determine their financial needs to fund the administration, operations, and projects of the program, their individual needs, and the methods to generate and collect the necessary revenue and to authorize the use of the assessment, billing, and collection capabilities and authority of the respective county tax assessors and tax collectors for that purpose.

ALA. CODE § 11-89C-1 (Supp. 2003).

Section 11-89C-9(d) of the Code of Alabama allows the governing bodies to impose revenue-raising measures within their jurisdictions, including the assessment of fees and other charges, and reads as follows:

(d) Any governing body may establish, levy, and impose by resolution or ordinance, any revenue-raising measure within its jurisdiction, including, but not limited to, fees, charges, or assessments, without any referendum unless required by the Constitution of Alabama of 1901, deemed necessary to implement this chapter or to comply with all provisions of storm water laws. Any such fee, charge, or assessment may be levied and collected in any manner permissible by law. In addition, any such measure may include incentive provisions including reductions of waiver of all or part of such fee, charge, or assessment where the responsible entity constructs, installs, or otherwise employs or utilizes any structure, service, equipment, or system to reduce or eliminate storm water

pollution. Any governing body may call upon and enter into agreements with the respective tax assessor and tax collector or other public official performing the function of the tax assessor and tax collector to assess and collect any such fees, charges, or assessments.

ALA. CODE § 11-89C-9(d) (Supp. 2003).

Section 11-89C-10 of the Code sets out the provisions for assessment and collection of the storm water assessments and reads as follows:

(a) The tax assessor and the tax collector, or other public official performing the functions of the tax assessor and tax collector, of every county in this state shall, upon request, implement procedures necessary and appropriate in order to assess and collect the fees, charges, or assessments levied by any governing body or member governing body, whether or not related to the value of any land.

(b) The fees, charges, or assessments shall be a lien upon any land to which it may be levied, and shall be assessed, collected, and enforced as are other ad valorem taxes. Each county collecting such fee, charge, or assessment shall receive a two percent commission on all amounts levied and collected which shall be deposited to the county general fund.

ALA. CODE § 11-89C-10 (Supp. 2003).

Amendment 325 of the Constitution of Alabama and section 40-9-1 of the Code of Alabama provide that property owned by the State is exempt from ad valorem taxation. Section 40-9-1 provides as follows:

The following property and persons shall be exempt from ad valorem taxation and none other:

(1) All bonds of the United States *and this state* and all county and municipal bonds issued by counties and municipalities in this state, *all property, real and personal, of the United States and this state and of county and municipal corporations in this state*

ALA. CODE § 40-9-1 (2003).

Statutes creating an exemption from taxation must be strictly construed. *Brown v. Protective Life Ins. Co.*, 66 So. 47 (Ala. 1914); *State v. Bridges*, 21 So. 2d 316 (Ala. 1945). Section 11-89C-10 of the Code provides that the storm water assessments levied pursuant to section 11-89C-9(d) are to be assessed, collected, and enforced as are other ad valorem taxes. Therefore, state-owned property is exempt from the fees, charges, or assessments levied therein.

QUESTION II

Is lodging paid for by a state agency subject to a county lodgings tax assessed pursuant to section 11-3-11.3(a) of the Code of Alabama?

FACTS, ANALYSIS, AND CONCLUSION

The Alabama Lodgings Tax Law is codified in section 40-26-1, *et seq.*, of the Code of Alabama and provides as follows:

(a) There is levied and imposed, in addition to all other taxes of every kind now imposed by law, a privilege or license tax upon every person, firm, or corporation engaging in the business of renting or furnishing any room or rooms, lodging, or accommodations to transients in any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration, in any county which is located in the geographic region comprising the Alabama mountain lakes area, those being Blount, Cherokee, Colbert, Cullman, DeKalb, Etowah, Franklin, Jackson, Lauderdale, Lawrence, Limestone, Madison, Marion, Marshall, Morgan, and Winston, in an amount to be determined by the application of the rate of five percent of the charge for such room, rooms, lodgings, or accommodations, including the charge for use or rental of personal property and services furnished in such room, and the rate of four percent of the charge in every other county. There is exempted from the tax levied under this chapter any rentals or services taxed under Division 1 of Article 1 of Chapter 23 of this title.

(b) The tax shall not apply to rooms, lodgings, or accommodations supplied: (i) For a period of 180

continuous days or more in any place; (ii) by camps, conference centers, or similar facilities operated by nonprofit organizations primarily for the benefit of, and in connection with, recreational or educational programs for children, students, or members or guests of other nonprofit organizations during any calendar year; (iii) in connection with the production of an approved project authorized by the Alabama Film Office and which meets criteria established by the Alabama Film Office through the Alabama Administrative Procedure Act; or (iv) by privately operated camps, conference centers, or similar facilities that provide lodging and recreational or educational programs exclusively for the benefit of children, students, or members or guests of nonprofit organizations during any calendar year.

(c) For purposes of subsection (b): "Children" means individuals under age 21; "student" is defined in accordance with 26 U.S.C. §151(c)(4), as in effect from time to time or by any successor law; "nonprofit organization" is an organization exempt from federal income tax under 26 U.S.C. §501(c)(3), as in effect from time to time or any successor law; and "privately operated" refers to any camp, conference center, or similar facility other than those operated by a nonprofit organization as herein defined.

ALA. CODE § 40-26-1 (2003). The law does not make a specific exemption for lodgings rented to agencies of the State of Alabama. As stated above, exemption statutes are to be strictly construed. Therefore, absent a specific exemption, the State of Alabama, counties and incorporated municipalities of the state, and educational institutions and agencies of the state are not exempt from the state lodgings tax. See Opinion of the Attorney General to Dr. Wayne Teague, State Superintendent of Education, dated June 4, 1981, A.G. No. 81-00410.

Sections 11-3-11.2 and 11-3-11.3 of the Code of Alabama provide for the collection of local lodgings taxes by the county commissions of the various counties or by the Department of Revenue. Section 11-3-11.2 states as follows:

(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.

(b) Any county commission which elects to administer and collect, or contract for the collection of, any local sales and use taxes or other local taxes, shall have the same rights, remedies, power and authority, including the right to adopt and implement the same procedures, as would be available to the Department of Revenue if the tax or taxes were being administered, enforced, and collected by the Department of Revenue.

Any rules and regulations adopted or utilized by the county or its designee shall be consistent with the rules and regulations adopted through the provisions of the Alabama Administrative Procedure Act by the Department of Revenue for the corresponding state tax. If a specific provision of the rules and regulations of the Department of Revenue is inconsistent with a specific provision of a local act, resolution, or general law authorizing or levying a local tax, including a gross receipts tax in the nature of a sales tax, as defined in Section 40-2A-3(8), which was enacted or adopted prior to February 25, 1997, the local act, resolution, or general law provision shall prevail. Any taxpayer that possesses a direct pay permit issued by the Department of Revenue shall pay to the county the sales and use taxes and other county taxes pursuant to the direct pay permit in accordance with rules and regulations promulgated by the Department of Revenue.

ALA. CODE § 11-3-11.2 (Supp. 2003).

Section 11-3-11.3 states as follows:

Counties may, upon request of the county commission, engage the Department of Revenue to collect any county sales, use, rental, lodgings, tobacco, or other local taxes for which there is a corresponding state levy. Subject to subsections (d) and (e) below, the department shall collect a county sales, use, rental, lodgings, tobacco, or other tax for which there is a corresponding state levy on behalf of the requesting county. *Any county sales, use, rental, or lodgings tax levy administered and collected*

by the Department of Revenue pursuant to this section, whether the levy is imposed pursuant to the authority of Section 40-12-4, or any general, special, or local act of the Legislature, shall parallel the corresponding state tax levy, except for the rate of tax, and shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, provisions, rules, regulations, direct pay permits and drive-out certificate procedures, statutes of limitation, penalties, fines, punishments, and deductions as applicable to the corresponding state tax, except where otherwise provided in this section, including provisions for the enforcement and collection of taxes. The Department of Revenue shall make available to those counties for which it collects a sales, use, rental, or lodgings tax collected pursuant to this section the same services which are made available to municipal governments pursuant to Division 4 of Article 2 of Chapter 51 and Article 3 of Chapter 51.

ALA. CODE § 11-3-11.3 (Supp. 2003); *see also*, ALA. ADMIN. CODE, r. 810-6-5-.13, entitled "Persons, Firms, and Corporations Subject to Lodgings Tax" (eff. Apr. 29, 2002). That regulation provides, in pertinent part, as follows:

The term "lodgings tax" as used in this rule shall mean the state tax levied in Section 40-26-1(a), Code of Ala. 1975, and county and municipal taxes which parallel the state tax levy.

.....

(8) The state of Alabama, counties and incorporated municipalities of the state, and educational institutions and agencies of the state and the counties or incorporated municipalities of the state are not exempt from lodgings tax. Accordingly, charges for rooms, lodgings, or other accommodations furnished to these entities are taxable whether billed directly to, and paid for directly by, the entity or paid by employees of these entities with their own funds. (AGO, Graddick, June 4, 1981) (Section 40-26-1)

(9) Other states, counties and incorporated municipalities of other states, and educational institutions and agencies of other states and counties and incorporated municipalities of other states are not exempt from

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lodgings tax. Accordingly, charges for rooms, lodgings, or other accommodations furnished to these entities are taxable whether billed directly to, and paid for directly by, the entity or paid by employees of these entities with their own funds. (Section 40-26-1)

ALA. ADMIN. CODE r. 810-6-5-.13 (eff. April 29, 2002).

Therefore, it is the opinion of this Office that, absent a specific exemption, the State of Alabama, counties and incorporated municipalities of the state, and educational institutions and agencies of the state are not exempt from local county lodgings taxes that are patterned after the Alabama Lodgings Tax Law.

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:



CAROL JEAN SMITH
Chief, Opinions Division

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