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Transient Occupancy Tax - Lodging
Taxes - Exemptions

The Jackson County Park Board, created under section 11-86-1 of the Code of Alabama, is a firm under section 40-26-1 and must collect and remit lodgings tax levied under sections 40-26-1 through -21.

Dear Mr. Porter:

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

QUESTIONS

You have asked whether the Jackson County Park Board of Trustees, operating a campground facility for short- and long-term rentals, is subject to the transient occupancy tax (hereinafter "lodgings tax") levied in section 40-26-1, *et seq.*, of the Code. More precisely, this raises the following questions:

(1) Is the Jackson County Park Board a person, firm, or corporation that is subject to the "lodgings tax" levied in section 40-26-1?

(2) Whether the term "accommodations," as found in section 40-26-1, includes the renting of camping space for tents, trailers, and recreational vehicles?

camping space for tents, trailers, and recreational vehicles?

(3) Are there any applicable provisions that would exempt the Jackson County Park Board from being subject to the tax?

FACTS AND ANALYSIS

The Jackson County Park Board was formed (and operates) as a recreation board, pursuant to section 11-86-1, *et seq.*, of the Code of Alabama. Although there is no definition section in the statute under which the lodgings tax is levied, the Revenue Department has, through the promulgation of rule 810-6-5-.13 of the Alabama Administrative Code, defined a "person" for purposes of application of the "lodgings tax" as "[a]ny individual, association, estate, trust, partnership, corporation, or other entity of any kind." *See* ALA. ADMIN. CODE r. 810-6-5-.13(2) (2002). This rule was promulgated pursuant to authority granted to the Revenue Department in section 40-26-19 of the Code of Alabama. Notably, this definition is identical to the definition found in section 40-1-1(8), which governs definitions commonly encountered throughout title 40 of the Alabama Code. Thus, the Jackson County Park Board falls clearly within the ambit of those "persons" subject to tax under the "lodgings tax." *See also* Opinion to Honorable Thomas M. Galloway, Attorney for Dauphin Island Park and Beach Board, dated September 24, 1997, A.G. No. 97-00291 (wherein the Dauphin Island Park and Beach Board was advised that it was subject to the "lodgings tax" for renting space for trailer parking and tent sites).

The question then becomes whether imposition of the "lodgings tax" on the rental of a campsite, upon which a privately owned trailer, recreational vehicle, or tent is commonly placed, was contemplated by the Legislature. More precisely, the question is whether the term "accommodations," as found in section 40-26-1 of the Code of Alabama, includes the renting of space for tents, travel trailers, and recreational vehicles.

Again, there is no definition section in the statute under which the "lodgings tax" is levied. There is, however, a clear distinction made between "rooms," "lodgings," and "accommodations." Thus, by negative inference, "accommodations" refers to things not contained within the definitions of "rooms" or "lodgings."

A fundamental precept of statutory construction is that it will not be presumed that the Legislature has done a futile thing in enacting a statute. *See, e.g., Ex parte Watley*, 708 So. 2d 890, 892 (Ala. 1997). A

presumption is made that every word, sentence, or provision was intended for some useful purpose, has some force and effect, that some effect is to be given to each, and also that no superfluous words or provisions were used. *See, e.g., Sheffield v. State*, 708 So. 2d 899, 909 (Ala. Crim. App. 1997). Thus, “accommodations” must refer to things other than the commonly held meanings of “rooms” or “lodgings.”

A general delegation of authority has been granted to the Department of Revenue to adopt rules and regulations to ascertain, assess, and collect the lodgings tax. *See* ALA. CODE § 40-26-19 (2003). Pursuant to this authority, the Alabama Department of Revenue promulgated a “lodgings tax” rule that provides some clarification of the department’s construction and administration. Rule 810-6-5-.13(4) provides as follows:

The lodgings tax shall be collected by all persons who operate any hotel, motel, rooming house, apartment house, lodge, inn, tourist cabin, tourist court, tourist home, camp, trailer court, or any other place where rooms, apartments, cabins, sleeping accommodations, house trailer parking accommodations, or other accommodations are made available to travelers, tourists, or other transients.

ALA. ADMIN. CODE r. 810-6-5-.13(4) (2002).

The “lodgings tax” statute, originally codified in 1955 by the Legislature, has been reenacted (substantially unchanged) five times, most recently in 2001. It is well settled under Alabama law that when a tax statute has been construed by the highest officials charged with administering the laws, such construction should be given favorable consideration by the courts, especially if such construction has stood unchallenged for a considerable time. The weight to be given to this administrative interpretation is increased when the Legislature, in reenacting the law, fails to indicate disapproval of the settled administrative construction. *See, e.g., Robinson v. City of Montgomery*, 485 So. 2d 695 (Ala. 1986); *see also State v. Birmingham Rail & Locomotive Co.*, 259 Ala. 443, 66 So. 2d 884 (1953); *see also Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 81 L.Ed.2d 694, 104 S.Ct. 2778 (1984). Therefore, the department’s reference to “camp,” “trailer court,” and “house trailer parking accommodations,” unchanged by subsequent reenactment by the Legislature, indicates that “accommodations” includes within its ambit the renting of space for tents, trailers, and recreational vehicles.

Unlike the provisions found under the sales and use tax statutes, there are no exemptions for governmental entities that charge a fee for the renting or furnishing of accommodations. The tax in question is similar to the sales tax in that, while levied upon the entity renting the facility, it is required to be passed through to the consumer. ALA. CODE § 40-26-16 (2003). Put another way, the burden of the tax is directly upon the consumer, with the renter or vendor being merely a conduit collecting the tax from its customers and passing it along to the state.

There is, however, an exemption for long-term rentals. Section 40-26-1(b) provides, in relevant part, that the "lodgings tax" shall not apply to rooms, lodgings, or accommodations supplied for a period of 180 continuous days or more in any place. Thus, with regard to long-term rentals meeting this minimum-day threshold, there is an exemption that relieves the Jackson County Park Board from collecting the tax in question.

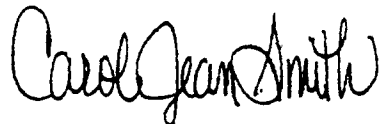
CONCLUSION

The Jackson County Park Board is a "person" within the ambit of the "lodgings tax." In addition, the term "accommodations" includes the renting of camping space for tents, trailers, and recreational vehicles. The tax, however, shall not apply to rooms, lodgings, or accommodations supplied for a period of 180 continuous days or more in any place.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Glenmore Powers, Legal Division, Department of Revenue.

Sincerely,

TROY KING
Attorney General
By:



CAROL JEAN SMITH
Chief, Opinions Division

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