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OFFICE OF THE ATTORNEY GENERAL

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Honorable Seth Hammett
Speaker, House of Representatives
Alabama State House
11 South Union Street
Montgomery, Alabama 36130

Tobacco Tax – Municipalities – Counties –
Stamps - Revenue Department

Counties and municipalities may use the authority granted in section 40-25-2(g) of the Code of Alabama to administer the tobacco tax for cigarettes and require the use of monthly reports to account for the monthly sales of cigarettes and to remit the tobacco tax.

Section 40-25-2(g) provides specific authorization for the Commissioner of Revenue to require the use of a monthly report to collect local tobacco taxes administered by the Department of Revenue.

Dear Speaker Hammett:

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

QUESTION 1

Pursuant to Act 2004-545, as it applies to existing law, can a county or municipality collect a tax on cigarettes from either wholesalers or retailers without stamps affixed to the cigarettes?

FACTS AND ANALYSIS

Act 2004-545 enacted a new subsection (i) that amends section 40-25-2 of the Code of Alabama to provide that local taxes imposed on the sale of

cigarettes “shall be paid to the local government through the use of stamps affixed to the product as provided herein for the state tax.” ALA. CODE § 40-25-2 (Supp. 2004). Section 40-25-2 also includes a subsection (f) that provides that the state tobacco tax “shall be paid to the state through the use of stamps.” *Id.* Subsection (f) further provides for the time and manner in which the stamps are to be affixed and other related matters. Subsection (g) of section 40-25-2, however, provides that the Commissioner may authorize “the use of a stamp in a denomination other than for the amount of the tax imposed” with the difference paid with the use of a monthly report or “he may require a monthly report without the use of a stamp to report the amount of taxes due.” *Id.*

Subsection 40-25-2(g) continues to allow for the payment of tobacco taxes by monthly report without the use of a stamp. It is clear that the Commissioner may continue to require the payment of local tobacco taxes by monthly report without the use of a stamp. The authority in subsection (g) granting the Commissioner the ability to require the tobacco tax to be paid by report was not affected by the passage of Act 2004-545. Because the use of a report to pay tobacco tax is specifically authorized in subsection (g), the provision in subsection (g) is also available to counties and municipalities that administer their own local tobacco taxes. Act 2004-545 does not specifically prohibit the use of subsection (g) as a means of collecting tobacco tax on cigarettes.

Because section 40-25-2(i) provides for payment of local taxes through the use of stamps “as provided herein for the state tax,” it is the opinion of this Office that the phrase “as provided herein” refers only to section 40-25-2 and not any other section of chapter 25 of title 40. The new subsection (i) clearly incorporates the provisions of section 40-25-2(f) because (f) refers to the manner of affixing stamps. If subsection (f) is incorporated into subsection (i), it would appear to be consistent to also incorporate subsection (g) into subsection (i) because it is also a method by which tobacco tax can be collected on cigarettes.

The meaning of the word “herein” in subsection (i) is determined from the context in which it is used. Because it is used in a sentence that describes how the tobacco tax is to be paid, it is the opinion of this Office that any provision associated with the payment of the state tobacco tax is also applicable to the payment of county and municipal tobacco taxes on cigarettes.

CONCLUSION

Accordingly, counties and municipalities may use the authority granted in section 40-25-2(g) to administer the tobacco tax for cigarettes and require the use of monthly reports to account for the previous month’s sales of cigarettes and to remit the appropriate tobacco tax.

QUESTION 2

If the Department of Revenue were to collect a cigarette tax on behalf of a local government, could the Department of Revenue collect such tax without the local government's stamps being affixed to the cigarette?

FACTS AND ANALYSIS

Section 40-25-2(g) provides that the Commissioner of Revenue is to prepare and issue stamps in denominations for the amount of the tobacco tax *but*, if the Commissioner determines that it is not economical to use a stamp "for one or more types of packages of tobacco products, . . . he may by regulation prescribe the use of a stamp in a denomination other than for the amount of the tax imposed" with the difference paid with the use of a monthly report, "or he may require a monthly report without the use of a stamp to report the amount of taxes due." *Id.*

Effective September 19, 1989, the Commissioner of Revenue promulgated Rule 810-7-1-.09 to require that local tobacco taxes administered by the Department of Revenue be paid by monthly report because it was not economically feasible to use stamps on all county tobacco taxes administered by the Department of Revenue. ALA. ADMIN. CODE r. 810-7-1-.09 (eff. Sept. 19, 1989). The rule was properly published and public hearings held. Even though Act 2004-545 added two new subsections, (h) and (i), to section 40-25-2, the authority in section 40-25-2(g) of the Code of Alabama granting the Commissioner the ability to require that tobacco taxes be paid by report was not affected.

CONCLUSION

Section 40-25-2(g) provides specific authorization for the Commissioner of Revenue to require the use of a monthly report to collect local tobacco taxes administered by the Department of Revenue.

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

Sincerely,

TROY KING
Attorney General
By:

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

BRENDA F. SMITH
Chief, Opinions Division

TK/JWH

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