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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

TROY KING  
ATTORNEY GENERAL

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ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, AL 36130  
(334) 242-7300  
WWW.AGO.STATE.AL.US

Honorable Todd Greeson  
Member, House of Representatives  
Post Office Box 159  
Iber, Alabama 35981

Community Development Districts –  
Alcoholic Beverage Taxes – Dry  
Counties – DeKalb County

When a community development district is located in a dry county or in a dry municipality, the county or municipality is included in the distribution of taxes levied on the sale of alcoholic beverages in the same manner as those taxes would be distributed in a wet county or municipality.

Dear Representative Greeson:

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

QUESTION

When a community development district is located in a dry county, is the dry county included in the distribution of taxes and license fees levied on the sale of alcoholic beverages?

FACTS AND ANALYSIS

Chapter 8B of title 35 of the Code of Alabama provides for the establishment of an entity known as a community development district, which includes, among other things, a certain number of residences, a golf

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course, and a social club. That chapter also allows the social club of a community development district to hold an Alabama Alcoholic Beverage Control Board ("ABC Board") license for the retail sale of alcoholic beverages, even if the district is located within a dry municipality or a dry county. ALA. CODE § 35-8B-1 to -3 (Supp. 2004).

Section 28-7-16 of the Code of Alabama provides for the levy of a privilege or excise tax on the sale of table wine, and in its provision for the disposition of proceeds of that tax, provides the following:

Seven cents (\$.07) per liter of table wine sold shall be paid by the board on its sales or by wholesale licensees on their sales, either into the treasury of the municipality in which the table wine was sold at retail within its corporate limits, or, where sold outside the corporate limits of any municipality, into the treasury of the county in which the table wine was sold at retail.

ALA. CODE § 28-7-16(c)(2) (2003). The above-quoted disposition of tax on table wine directs payment to the municipality or the county within which the wine was sold, without regard to whether the municipality or the county is wet or dry.

Section 28-3-190 of the Code of Alabama provides for the levy of a privilege or excise tax on the sale of beer, and in its provision for the disposition of proceeds of that tax, provides, in pertinent part, as follows:

One and six hundred twenty-five thousandths cents (1.625 cents) per four fluid ounces or fractional part thereof shall be paid by wholesale licensees on their sales either into the treasury of the *wet* municipality in which the beer was sold or delivered by a wholesaler to a retailer within its corporate limits, or, where sold outside the corporate limits of any municipality, into the treasury of the *wet* county in which the beer was sold or delivered by the wholesaler to a retailer.

ALA. CODE § 28-3-190(c)(1) (2003) (emphasis added). As worded, section 28-3-190 provides for a tax that would be levied on sales of beer in a community development district located in a dry municipality or a dry

county, yet provides no direction for disposition of that tax because the section refers only to wet counties. That problem, however, is resolved by section 35-8B-1 of the Code of Alabama, which provides in subsection (d), as follows:

Any dry county or municipality having one or more community development district located in such county or municipality shall be included within the distribution of taxes and license fees levied on the sale of alcoholic beverages pursuant to Chapters 3 and 3A, Title 28.

ALA. CODE § 35-8B-1(d) (Supp. 2004). Therefore, dry counties or dry municipalities, in which community development districts are located, can receive distribution of the tax levied in section 28-3-190 on beer sold in those counties or municipalities.

Section 28-3-184(a) of the Code of Alabama provides for the levy of a separate privilege or excise tax on the sale of malt or brewed beverages in the amount of \$.05 for each 12 fluid ounces or fractional part thereof, and the provision for disposition of those proceeds contains the following, in pertinent part, that “[o]ne-half cent of said proceeds shall be paid into the State Treasury to the credit of the wet counties in the state and shall be divided and distributed equally on or before the fifteenth day of each month to said counties.” ALA. CODE § 28-3-184(c) (1) (2003). The wording of section 35-8B-1(d), quoted above, would also allow dry counties in which community development districts are located to share in the distribution of this tax as well.

Chapter 3A of Title 28, entitled “Alcoholic Beverage Licensing Code,” sets the license taxes or fees to be charged by the State for various licenses issued by the ABC Board. All of these state license taxes or fees received by the ABC Board are paid to the State General Fund as directed in section 28-3A-22 of the Code of Alabama. There is no distribution of these taxes or fees to counties or municipalities.

### CONCLUSION

When a community development district is located in a dry county or in a dry municipality, the county or municipality is included in the distribution of taxes levied on the sale of alcoholic beverages in the same


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manner as those taxes would be distributed in a wet county or municipality.

I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING  
Attorney General  
By:

A handwritten signature in black ink that reads "Brenda F. Smith". The signature is written in a cursive, flowing style.

BRENDA F. SMITH  
Chief, Opinions Division

TK/BH

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