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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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August 1, 2005

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Honorable Curt Lee
Member, Alabama State Senate
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TO THE EXTENT THAT IT CONFLICTS,
THIS OPINION HAS BEEN OVERRULED BY
THE OPINION ISSUED TO HON. TIM
RUSSELL, COMMISSIONER, DEPART-
MENT OF REVENUE, DATED 6-10-2009,
A.G. NO. 2009-074.

Ad Valorem Taxes - Collections -
Contingency Fees - Walker County

Under section 40-2A-6 of the Code of Alabama, a city, county, or state agency in Alabama may engage a private firm on a contingency-fee basis to collect delinquent property taxes by verifying from the tax assessor's records that property taxes are due, but any determination concerning the proper amount of taxes due must be made by the tax assessor.

Dear Senator Lee:

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

QUESTION

May an Alabama unit of government engage a private firm to verify from the tax assessor's records that a property tax return has been filed and that the amount paid is consistent with the taxpayer's prior payments and to then collect any taxes owed on a contingency-fee basis?

FACTS AND ANALYSIS

Cities, counties, and several state agencies have used private companies to collect delinquent taxes for a number of years on a contingency-fee basis. These arrangements are governed by section 40-2A-6 of the Code of Alabama, which provides as follows:

- (a) The state or any county or municipal governing authority may not enter into any contract or

arrangement for the examination of a taxpayer's books and records if any part of the compensation or other benefits paid or payable for the services of the private examining or collecting firm conducting the examination is contingent upon or otherwise related to the amount of tax, interest, court cost, or penalty assessed against or collected from the taxpayer. Any such contract or arrangement, if made or entered into, is void and unenforceable. Any assessment or preliminary assessment of taxes, penalties, court costs, or interest proposed or asserted by, or based upon the recommendation of, a private examining or collecting firm compensated under any such contract or arrangement shall be void and unenforceable. This provision does not prohibit or restrict the state or any county or municipal governing authority from entering into contracts or arrangements for the collection of any tax, interest, court cost, or penalty when the private examining or collecting firm has no authority to determine the amount of tax, interest, court cost, or penalty owed the state, county, or municipal governing authority.

ALA. CODE § 40-2A-6(a) (2003).

The primary rule of statutory construction is to ascertain the intent of the Legislature. *Beavers v. County of Walker*, 645 So. 2d 1365 (Ala. 1994). The intent of the Legislature may be gleaned from the language used, the reason and necessity for the statute, and the purpose sought to be obtained. *Bama Budweiser, Inc. v. Anheuser-Busch, Inc.*, 611 So. 2d 238 (Ala. 1992). Statutes, however, must be enforced as written when the language is plain and unambiguous. *Putman v. Womack*, 607 So. 2d 166 (Ala. 1992).

Section 40-2A-6 of the Code of Alabama makes a distinction between determining the amount of taxes that are due and owing, which may not be performed by a private entity on a contingency-fee basis, and simply collecting taxes that have been determined to be due by the appropriate tax officials, which may be performed by private entities on a contingency-fee basis. This provision allows a private contractor to review the tax assessor's record to verify that a property tax return has been filed. If no taxes or insufficient taxes have been paid, the private contractor may then attempt to collect the taxes. The private contractor is not allowed to review the records and determine the appropriate amount of tax due. If the amount paid is determined to be inconsistent with the taxpayer's previous payments, the private contractor may submit this information to the tax assessor for a determination by the tax assessor of the proper amount to be collected. Any discrepancy in the proper amount of taxes due must be determined by the tax assessor.

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CONCLUSION

It is the opinion of this Office that section 40-2A-6 of the Code of Alabama allows the examination of the tax assessor's records by private entities working for a city, county, or state agency on a contingency-fee basis for the purpose of collecting taxes due, as long as any question concerning the proper amount of the taxes due is determined by the tax assessor.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ron Bowden, Legal Division, Department of Revenue.

Sincerely,

TROY KING
Attorney General
By:


BRENDA F. SMITH
Chief, Opinions Division

TK/RB

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