

Census correction, redistribution of sales tax

Number: AGO 2002-36

Date: May 20, 2002

Subject:

Census correction, redistribution of sales tax

Mr. Paul J. Nicoletti
Town Attorney of South Palm Beach
Post Office Box 20077
West Palm Beach, Florida 33416-0077

RE: MUNICIPALITIES–TAXATION–CENSUS–HALF-CENT SALES TAX CLEARING TRUST FUND–redistribution of sales tax funds based on change in population certification. ss. 218.60, 218.61, Fla. Stat.; Part VI, Ch. 218, Fla. Stat.

Dear Mr. Nicoletti:

On behalf of the town council of the Town of South Palm Beach, you ask substantially the following question:

Must the Department of Revenue adjust the distribution of moneys from the Local Government Half-cent Sales Tax Clearing Trust Fund pursuant to Part VI, Chapter 218, Florida Statutes, in the event that the Executive Office of the Governor revises the population estimate previously certified under section 186.901, Florida Statutes?

In sum:

Unlike the provisions of section 218.26, Florida Statutes, relating to the Revenue Sharing Trust Fund, which provide for the correction of errors during a fiscal year, there is no statutory authority to allow the adjustment of the apportionment factors for distributions under Part VI, Chapter 218, Florida Statutes, relating to the Local Government Half-cent Sales Tax Clearing Trust Fund, during a fiscal year.

According to your letter, following the 2000 Census an erroneous population figure for the Town of South Palm Beach was originally published. On March 5, 2002, a corrected figure was provided to the Florida Department of Revenue by the Governor's Office of Policy and Budget. The Town of South Palm Beach received a letter from the Department of Revenue, dated March 21, 2002, stating that the department would incorporate the revised census figures in the current fiscal year for the Municipal Revenue Sharing Program; however, the Half-cent Sales Tax program, unlike the State Revenue Sharing Program, does not allow for an adjustment during the local government fiscal year. Thus, while the revised census figures would be included in the 2002-2003 fiscal year for the Half-cent Sales Tax Program, the department advised the town that no such adjustment could be made during the current fiscal year.

In its letter to the town, the department referred to Attorney General Opinion 92-87, which addressed the authority of the Department of Revenue to adjust distributions of trust funds under Chapter 218, Florida Statutes, in the event the Executive Office of the Governor revised the population estimates. The department advised you that if you wished further clarification of this issue or to have the issue readdressed, you should contact this office. You therefore ask that this office reconsider the conclusions reached in that opinion. The Department of Revenue has advised this office that it has no objection to this office rendering an opinion on this issue.

You refer to section 186.901(1), Florida Statutes, which provides:

"The Office of Economic and Demographic Research shall annually provide to the Executive Office of the Governor population estimates of local governmental units as of April 1 of each year, *utilizing accepted statistical practices*. The population of local governments provided by the Office of Economic and Demographic Research shall apply to any revenue-sharing formula with local governments under the provisions of ss. 218.20-218.26, part II of chapter 218. The Office of Economic and Demographic Research shall additionally provide the Executive Office of the Governor population estimates for municipal annexations or consolidations occurring during the period April 1 through February 28, and the Executive Office of the Governor shall include these estimates in its certification to the Department of Revenue for the annual revenue-sharing calculation." (e.s.)

You state that the correction of mistakes should be considered an "accepted statistical practice" and thus permit the modification of the population figures during a current fiscal year.

Section 218.61(3), Florida Statutes, creates the Local Government Half-cent Sales Tax Clearing Trust Fund in the State Treasury. Money remitted by a sales tax dealer located within the county and transferred into the trust fund is earmarked for distribution to the governing body of that county and of each municipality within that county.[1] Moneys in the fund are appropriated to the Department of Revenue and are distributed monthly to participating units of local government.[2]

As discussed in Attorney General Opinion 92-87, the population of each participating county and municipality is used in determining the proportion of the trust fund that will be distributed by the department.[3] "Population" is defined for purposes of Part VI, Chapter 218, Florida Statutes, relating to the Local Government Half-cent Sales Tax Clearing Trust Fund, as "the latest official state estimate of population certified pursuant to s. 186.901 *prior to the beginning of the local government fiscal year*." [4] (e.s.) In contrast, section 218.26, Florida Statutes, which relates to the State Revenue Sharing program, provides for the computation of the apportionment factors each fiscal year that "shall, *except in the case of error*, remain in effect for the fiscal year." [5] (e.s.)

While the correction of errors may well constitute an accepted statistical practice, Part VI, Chapter 218, Florida Statutes, clearly provides that in distributing the half-cent sales tax, the population estimate certified *prior* to the beginning of the local government fiscal year is to apply. According to your letter, the certified population estimate for the Town of South Palm Beach prior to the 2001-2002 fiscal year is the population figure being used by the Department of Revenue. The revised population figure (revised March 5, 2002) will be used by the department for the 2002-2003 fiscal year. Such actions taken by the department would therefore appear to be

consistent with the statute.

Nearly ten years have passed since Attorney General Opinion 92-87 was issued. During that time, the pertinent parts of Part VI, Chapter 218, Florida Statutes, relied on in that Attorney General Opinion have not been amended, nor am I aware of any appellate decision by the courts of this state that would alter the conclusions reached in that opinion. You may wish, therefore, to address your concerns to the Legislature.

Accordingly, I am of the opinion that unlike the provisions of section 218.26, Florida Statutes, relating to the Revenue Sharing Trust Fund, which provide for the correction of errors during the fiscal year, there is no statutory authority to allow the adjustment of the apportionment factors for distributions under Part VI, Chapter 218, Florida Statutes, relating to the Local Government Half-cent Sales Tax Clearing Trust Fund, during a fiscal year.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tjw

[1] Section 218.61(2), Fla. Stat.

[2] Section 218.61(3), Fla. Stat.

[3] Section 218.62(3), Fla. Stat., which provides that "[t]he proportion for each municipal government shall be computed by dividing the population of that municipality by the sum of the total county population plus two-thirds of the incorporated area population."

[4] Section 218.60(1)(a), Fla. Stat.

[5] Section 218.26(3)(b), Fla. Stat.