

Occupational license tax, flat tax

Number: INFORMAL

Date: October 09, 2006

The Honorable Doug Belden
Hillsborough County Tax Collector
601 East Kennedy Boulevard
14th Floor
Tampa, Florida 33602-4931

Dear Mr. Belden:

You have asked whether you may advise the Hillsborough County Commission to adopt a simplified, two-tiered occupational license tax, imposing a flat tax on regulated occupations and lower flat tax on unregulated occupations.

You state that currently Hillsborough County's occupational license tax ordinance establishes a variety of categories of licensees, some with flat fees, some based upon capacity, and some based upon the number of employees. Classifications and tax rates have remained essentially unchanged for almost twenty-five years. You would like to propose a flat tax system with two tiers, one rate for regulated occupations and a lower rate for unregulated occupations. While this office may not comment on the authority of the county to alter its current occupational license tax system, absent a request from a majority of the members of the county commission, the following general observations are offered.

This office has consistently determined that a county may amend or alter its occupational license tax system as provided in Chapter 205, Florida Statutes. A county's taxing power is derived from Article VII of the Florida Constitution. Section 1(a), Article VII, Florida Constitution, provides in part that "[n]o tax shall be levied except in pursuance of law. . . . All other forms of taxation shall be preempted to the state except as provided by general law." In addition, section 9 of Article VII states that counties shall be authorized by general law to levy other taxes for county purposes, with certain exceptions. Thus, a county must be able to point to constitutional or statutory authority to exercise the taxing power.

The "Local Occupational License Tax Act,"[1] Chapter 205, Florida Statutes, authorizes the governing body of a county to levy "an occupational license tax for the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction."[2] Certain conditions are imposed on the authority of a county to levy an occupational tax, such as a requirement that the tax be based on reasonable classifications and be uniform throughout any class.[3]

Section 205.0535, Florida Statutes, adopted in 1993,[4] provides that "[b]y October 1, 1995, any municipality or county may, by ordinance, reclassify businesses, professions, and occupations and may establish new rate structures, if the conditions specified in subsections (2) and (3) are met." Subsection (2) requires the establishment of an equity study commission to recommend a classification system and rate structure for local occupational license taxes prior to adoption of

the ordinance. Subsection (3) sets parameters for the new license tax in terms of the amount that may be imposed and the maximum amount of revenue that may be generated. Subsection (4) of the statute provides that after the conditions specified in subsections (2) and (3) are met, municipalities and counties may, every other year thereafter, by ordinance increase the rates of local occupational license taxes by up to 5 percent, provided that such an increase is enacted by at least a majority plus one vote of the governing body.

In Attorney General Opinion 2004-14, this office was asked whether Alachua County could use the provisions of section 205.0535, Florida Statutes, to amend the classifications and rate structure of its occupational license tax ordinance. The opinion cites to the comprehensive statutory scheme in Chapter 205, Florida Statutes: section 205.0535, Florida Statutes, authorizes counties to revise an existing occupational license tax ordinance by October 1, 1995, while section 205.0315, Florida Statutes, makes provision for counties to adopt an occupational license tax if they had none previously.[5] Alachua County, which did not have an occupational license ordinance in 1995, obviously did not utilize the provisions of section 205.0535 to revise its ordinance. Rather, it utilized the provisions of section 205.0315 to adopt its occupational license tax in 2001. Unlike Alachua County, Hillsborough County had an occupational license tax ordinance on October 1, 1995. Thus, the provisions of section 205.0315, Florida Statutes, would be unavailable to Hillsborough county.

When the Legislature directs how something is to be accomplished, it effectively operates as a prohibition against its being done in any other manner.[6] The Legislature has provided specific directions to local governments regarding occupational license tax rate revisions in section 205.0535, Florida Statutes. This office has previously stated that a municipality or county must have enacted an ordinance on or before October 1, 1995, to avail itself of the authorization in section 205.0535, Florida Statutes, to reclassify businesses, professions, and occupations, and establish a new rate structure for its occupational license tax.[7] No other manner for revising classifications or rate structures is provided in Chapter 205.

I trust that these informal observations are of assistance to you in providing advice to the county commission.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] See s. 205.013, Fla. Stat.

[2] Section 205.032, Fla. Stat. See s. 205.022(1), Fla. Stat., defining "Local occupational license" as "the method by which a local governing authority grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction." It does not, however, refer to any fees or licenses paid to any board, commission or officer for permits, registration,

examination, or inspection. *Id.*

[3] Section 205.033, Fla. Stat.

[4] See s. 8, Ch. 93-180, Laws of Florida, as amended by s. 60, Ch. 98-419, Laws of Florida.

[5] *And see* s. 205.033(1)(b), Fla. Stat., providing that counties may continue to enforce an occupational license tax ordinance adopted prior to October 1, 1995, in those cases where the county did not act to revise its ordinance:

"Unless the county implements s. 205.0535 or adopts a new occupational license tax ordinance under s. 205.0315, an occupational license tax levied under this subsection may not exceed the rate provided by this chapter in effect for the year beginning October 1, 1971; however, beginning October 1, 1980, the county governing body may increase occupational license taxes authorized by this chapter. The amount of the increase above the license tax rate levied on October 1, 1971, for license taxes levied at a flat rate may be up to 100 percent for occupational license taxes that are \$100 or less; 50 percent for occupational license taxes that are between \$101 and \$300; and 25 percent for occupational license taxes that are more than \$300. Beginning October 1, 1982, the increase may not exceed 25 percent for license taxes levied at graduated or per unit rates. . . ."

[6] See, e.g., *Alsop v. Pierce*, 19 So. 2d 799, 805-806 (Fla. 1944); *Dobbs v. Sea Isle Hotel*, 56 So. 2d 341, 342 (Fla. 1952); *Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976).

[7] Op. Att'y Gen. Fla. 02-25 (2002). *And see* Op. Att'y Gen. Fla. 96-83 (1996) in which this office stated that a county which had failed to act prior to October 1, 1995, pursuant to s. 205.0535, Fla. Stat., was not authorized to enact a new occupational license tax ordinance pursuant to section 205.0315, Florida Statutes; and Op. Att'y Gen. Fla. 03-51 (2003).