



MADISON COUNTY BOARD OF SUPERVISORS

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June 6, 2016

To: Board of Supervisors
From: Shelton Vance
Comptroller / Interim Inventory Clerk
Re: Highway Privilege Tax Levied By MCA 27-19-11

Madison County receives two types of Highway Privilege Tax payments, from the State of Mississippi, that are levied and paid under MCA 27-19-11.

The first source is generally paid annually and is distributed by MCA 27-19-159 (Attachment A, Page 3) for use in paying Road and Bridge bonds and construction expenditures. This is a straight-forward distribution with no calculation required and all funds are deposited into the Road Maintenance Fund.

The second series of payments is paid in two monthly checks and is distributed by MCA 27-19-11. This series of payments is to be distributed as "if these collections were ad valorem taxes" according to MCA 27-19-11 (Attachment B, Page 2). This distribution requires some interpretation and a series of calculations for each check received.

Based on an AG opinion from 2003 (Attachment C), Madison County has distributed these funds to all taxing districts and entities for which ad valorem tax is routinely collected. That is, each city and the Canton School District have received a portion of this money based on the county's tax district where the vehicle was registered.

Through the County Administrator's and Comptroller's Association, I have learned that other counties have been cited by State Audit for improper distribution of this money. In trying to determine if our method was correct, I was provided with an internal memo from State Audit (Attachment D) that conflicts with our method of calculation.

I have presented two options below, but I need your direction.

1. Option 1 – Change the method of calculation to match instruction from State Audit.
2. Option 2 – Request a clarifying opinion from the Attorney General for direction.

For information, since the start of this fiscal year, we have received approximately \$140,000.00 in total receipts. Of this amount, approximately \$60,000 has been shared with cities and the Canton School District.

Please advise of the option that you prefer to employ.

Miss. Code Ann. § 27-19-159

MISSISSIPPI CODE of 1972

*** Current through HB 1, 2016 1st Extraordinary Session and House Bills 447, 461, 496, 968, 1369, 1380 and 1413, and Senate Bills 2209, 2211, 2300, 2342, 2372, 2398, 2508, 2520, 2660, 2704 and 2808, 2016 Regular Session, not including changes and corrections made by the Joint Legislative Committee on Compilation, Revision and Publication of Legislation. The final official version of statutes affected by 2016 legislation will appear on Lexis.com and Lexis Advance in September 2016. ***

TITLE 27. TAXATION AND FINANCE
CHAPTER 19. MOTOR VEHICLE PRIVILEGE AND EXCISE TAXES
ARTICLE 1. MOTOR VEHICLE PRIVILEGE TAXES

Miss. Code Ann. § 27-19-159 (2016)

§ 27-19-159. Distribution of collections

[With regard to any county which is exempt from the provisions of Section 19-2-3, this section shall read as follows:]

Monies collected by the State Tax Commission or remitted to said commission by tax collectors or other officers, as proceeds from the tax imposed by this article, and subject to tax collector's commissions and fees, shall be apportioned by the commissioner who shall determine such amounts as due each county and shall certify to the State Treasurer the amount due each county at the end of each month.

The State Treasurer shall requisition monies from such accounts in such amounts as determined and certified by the Chairman of the State Tax Commission. The State Fiscal Management Board shall deliver the warrant to the State Treasurer who shall transfer such funds to each county by warrant or by electronic funds transfer on or before the fifteenth of the month following collection by the commission to the depositories of the counties of the state, upon signed receipt from the chancery clerk of each county, as follows:

One-third (1/3) of said amount shall be paid to the counties in the proportion which the monthly computed number of registered motor vehicles situated therein bears to the whole monthly computed number of such vehicles registered in the state; one-third (1/3) of said amount shall be paid to the counties in the proportion which the number of square miles of each county bears to the total square miles in the state; and one-third (1/3) of said amount shall be paid to the counties in the proportion which the population of each county bears to the total population of the state, as shown by the last preceding federal census. Said sums shall constitute a road fund of such county receiving its proportionate share and shall thereafter be used as follows:

In any county having countywide road or bridge bonds, or supervisors district, or district road or bridge bonds outstanding, which exceed in the aggregate twelve percent (12%) of the assessed valuation of the taxable property of the county or district, it shall be the duty of the board of supervisors to set aside not less than sixty percent (60%) of such county's or district's share of the tax paid to such county under the provisions of this article, to be used in paying the principal and interest of such road or bridge bonds as they mature.

In any county having countywide road or bridge bonds, or district road or bridge bonds outstanding, which exceed in the aggregate five percent (5%) of the assessed valuation of the taxable property of the county, but which do not exceed in the aggregate twelve percent (12%) of the assessed valuation of the taxable property of the county, it shall be the duty of the board

of supervisors to set aside not less than thirty-five percent (35%) of such county's share to be used in paying the principal and interest of such road or bridge bonds as they mature. And, in any county having countywide road or bridge bonds or district road or bridge bonds outstanding which do not exceed in the aggregate five percent (5%) of the assessed valuation of the taxable property of the county, it shall be the duty of the board of supervisors to set aside not less than ten percent (10%) of such county's share of the proceeds of the tax paid to such county under the provisions of this article to be used in paying the principal and interest on such road or bridge bonds as they mature.

The portion of such county's share of the privilege taxes imposed by this article thus set aside for the payment of the principal and interest of road or bridge bonds, as provided for in this section, shall be used, first, in paying the currently maturing installments of principal and interest of countywide road and bridge bonds, if there be any such countywide road or bridge bonds outstanding, and secondly, in paying the currently maturing installments of principal and interest of district road or bridge bonds outstanding. It shall be the duty of the board of supervisors to pay bonds and interest maturing in each supervisors district out of such district's share of the privilege taxes imposed by this article.

The remaining portion of such county's share of the privilege taxes, after setting aside the portion above provided for the payment of principal and interest of bonds, shall be used in the construction and maintenance of any public highways, bridges or culverts of the county, including the roads in special or separate road districts, in the discretion of the board of supervisors; or in paying the interest and principal of county road and bridge bonds or district road and bridge bonds, in the discretion of the board of supervisors.

In any county having no countywide road or bridge bonds or district road or bridge bonds outstanding, all of such county's share of the privilege taxes paid to such county under the provisions of this article shall be used in the construction, reconstruction and maintenance of the public highways, bridges or culverts of the county, as the board of supervisors may determine.

[With regard to any county which is required to operate on a countywide system of road administration as described in Section 19-2-3, this section shall read as follows:]

Monies collected by the State Tax Commission or remitted to said commission by tax collectors or other officers, as proceeds from the tax imposed by this article and subject to tax collector's commissions and fees, shall be apportioned by the commissioner who shall determine such amounts as due each county and shall certify to the State Treasurer the amount due each county at the end of each month.

The State Treasurer shall requisition monies from such accounts in such amounts as determined and certified by the Chairman of the State Tax Commission. The State Fiscal Management Board shall deliver the warrant to the State Treasurer who shall transfer such funds to each county by warrant or by electronic funds transfer on or before the fifteenth of the month following collection by the commission to the depositories of the counties of the state, upon signed receipt from the chancery clerk of each county, as follows:

One-third (1/3) of said amount shall be paid to the counties in the proportion which the monthly computed number of registered motor vehicles situated therein bears to the whole monthly computed number of such vehicles registered in the state; one-third (1/3) of said amount shall be paid to the counties in the proportion which the number of square miles of each county bears to the total square miles in the state; and one-third (1/3) of said amount shall be paid to the counties in the proportion which the population of each county bears to the total population of the state, as shown by the last preceding federal census. Said sums shall constitute a road fund of such county receiving its proportionate share and shall thereafter be used as follows:

In any county having road or bridge bonds outstanding which exceed in the aggregate twelve percent (12%) of the assessed valuation of the taxable property of the county, it shall be the duty of the board of supervisors to set aside not less than sixty percent (60%) of such county's share of the tax paid to such county under the provisions of this article, to be used in paying the principal and interest of such road or bridge bonds as they mature.

In any county having road or bridge bonds outstanding which exceed in the aggregate five percent (5%) of the assessed valuation of the taxable property of the county, but which do not exceed in the aggregate twelve percent (12%) of the assessed valuation of the taxable property of the county, it shall be the duty of the board of supervisors to set aside not less than thirty-five percent (35%) of such county's share to be used in paying the principal and interest of such road or bridge bonds as they mature. And, in any county having road or bridge bonds outstanding which do not exceed in the aggregate five percent (5%) of the assessed valuation of the taxable property of the county, it shall be the duty of the board of supervisors to set aside not less than ten percent (10%) of such county's share of the proceeds of the tax paid to such county under the provisions of this article to be used in paying the principal and interest on such road or bridge bonds as they mature.

The portion of such county's share of the privilege taxes imposed by this article thus set aside for the payment of the principal and interest of road or bridge bonds, as provided for in this section, shall be used in paying the currently maturing installments of principal and interest of road and bridge bonds, if there be any such road or bridge bonds outstanding.

The remaining portion of such county's share of the privilege taxes, after setting aside the portion above provided for the payment of principal and interest of bonds, shall be used in the construction and maintenance of any public highways, bridges or culverts of the county, in the discretion of the board of supervisors; or in paying the interest and principal of county road and bridge bonds, in the discretion of the board of supervisors.

In any county having no road or bridge bonds outstanding, all of such county's share of the privilege taxes paid to such county under the provisions of this article shall be used in the construction, reconstruction and maintenance of the public highways, bridges or culverts of the county, as the board of supervisors may determine.

HISTORY: SOURCES: Codes, 1942, § 9352-64; Laws, 1938, ch. 148; Laws, 1946, ch. 266, § 64; Laws, 1962, ch. 534; Laws, 1968, ch. 361, § 29; Laws, 1981, ch. 309, § 3; Laws, 1984, ch. 478, § 14; Laws, 1988 Ex Sess, ch. 14, § 16; Laws, 1992, ch. 497, § 16, eff from and after November 1, 1992.

Miss. Code Ann. § 27-19-11

MISSISSIPPI CODE of 1972

*** Current through HB 1, 2016 1st Extraordinary Session and House Bills 447, 461, 496, 968, 1369, 1380 and 1413, and Senate Bills 2209, 2211, 2300, 2342, 2372, 2398, 2508, 2520, 2660, 2704 and 2808, 2016 Regular Session, not including changes and corrections made by the Joint Legislative Committee on Compilation, Revision and Publication of Legislation. The final official version of statutes affected by 2016 legislation will appear on Lexis.com and Lexis Advance in September 2016. ***

TITLE 27. TAXATION AND FINANCE
 CHAPTER 19. MOTOR VEHICLE PRIVILEGE AND EXCISE TAXES
 ARTICLE 1. MOTOR VEHICLE PRIVILEGE TAXES

Miss. Code Ann. § 27-19-11 (2016)

§ 27-19-11. Tax on carriers of property and on buses

On each carrier of property, for each motor vehicle, truck-tractor or road tractor, and on each bus, there is hereby levied an annual highway privilege tax in accordance with the following schedule, except that the gross vehicle weight of buses shall be the gross weight of the vehicle plus one hundred fifty (150) pounds per each regular seat.

RATE OF TAX

GROSS WEIGHT OF VEHICLE NOT TO EXCEED IN POUNDS	RATE OF TAX		
	COMMON AND CONTRACT CARRIERS OF PROPERTY	PRIVATE COMMERCIAL AND NONCOMMERCIAL CARRIERS OF PROPERTY	PRIVATE CARRIERS OF PROPERTY
0000-6000	\$ 7.20	\$ 7.20	\$ 7.20
6001-10000	33.60	25.20	16.80
10001-16000	78.40	70.70	39.20
16001-20000	156.00	129.00	78.00
20001-26000	228.00	192.00	114.00
26001-30000	300.00	247.00	150.00
30001-36000	384.00	318.00	192.00
36001-40000	456.00	378.00	228.00
40001-42000	504.00	420.00	264.00
42001-44000	528.00	444.00	276.00
44001-46000	552.00	456.00	282.00
46001-48000	588.00	492.00	300.00
48001-50000	612.00	507.00	312.00
50001-52000	660.00	540.00	336.00
52001-54000	684.00	564.00	348.00
54001-56000	708.00	588.00	360.00
56001-58000	756.00	624.00	384.00
58001-60000	780.00	642.00	396.00
60001-62000	828.00	828.00	420.00
62001-64000	852.00	852.00	432.00

64001-66000	900.00	900.00	482.00
66001-68000	936.00	936.00	504.00
68001-70000	972.00	972.00	516.00
70001-72000	996.00	996.00	528.00
72001-74000	1,128.00	1,128.00	576.00
74001-76000	1,248.00	1,248.00	612.00
76001-78000	1,380.00	1,380.00	720.00
78001-80000	1,512.00	1,512.00	864.00

In addition to the above levied annual highway privilege tax on vehicles with a gross weight exceeding ten thousand (10,000) pounds, there is levied and shall be collected an additional privilege tax in the amount of One Thousand Three Hundred Fifty Dollars (\$ 1,350.00) for each current or later year model vehicle based upon a licensed weight of eighty thousand (80,000) pounds. This additional privilege tax shall be reduced by the amount of One Hundred Seventy-five Dollars (\$ 175.00) for each year of age to a minimum of Fifty Dollars (\$ 50.00) and further reduced by the ratio of licensed weight to the maximum weight of eighty thousand (80,000) pounds. During the first year only, the privilege tax monies collected under the provisions of this paragraph shall be distributed to the various counties of the state on the basis of the ratio of the last year of annual ad valorem taxes collected by such counties on such vehicles to the total ad valorem taxes collected by all counties on such vehicles in the same year. In all subsequent years, the distribution to the counties shall be made on the basis of the ratio of the number of motor vehicles registered in excess of ten thousand (10,000) pounds, in each taxing district in each county, to the total number of such vehicles registered statewide. **The counties shall then distribute these proceeds as they would if these collections were ad valorem taxes.**

From the privilege tax monies collected under this section, Three Million Seven Hundred Thirty-two Thousand Four Hundred Three Dollars and Eleven Cents (\$ 3,732,403.11) shall be earmarked and set aside to be apportioned and **paid to the counties of the state in the manner provided by Section 27-19-159**, Mississippi Code of 1972. Any excess privilege tax monies collected under this section shall be deposited into the State Highway Fund for the construction, maintenance and reconstruction of highways and roads of the State of Mississippi or the payment of interest and principal on bonds authorized by the 1972 Regular Session of the Legislature for construction and reconstruction of highways.

No privilege license shall be issued for any period of time for less than One Dollar (\$ 1.00).

The annual highway privilege tax imposed on operators engaged exclusively in the transportation of household goods shall be the same as the tax imposed upon private commercial carriers by this section. In determining the amount of privilege taxes due under the provisions of this section, there shall be allowed a maximum tolerance of five hundred (500) pounds on all classes of carriers except carriers of liquefied compressed gases and in the case of carriers of liquefied compressed gases there shall be allowed a maximum tolerance of two thousand (2,000) pounds.

Any owner or operator who operates a motor vehicle on the public highways, with a license tag attached to it which was issued for another or different vehicle, shall be liable for the privilege tax on said vehicle for twelve (12) months plus a penalty thereon of twenty-five percent (25%).

Carriers of property duly registered and licensed in another state and being used to transport farm harvesting machinery or equipment to and from a particular county in this state may, upon adoption of a resolution by the board of supervisors of the county where such machinery or equipment is being exclusively used in harvesting farm crops within the county, be exempt from the taxes herein levied when the resolution is filed with the State Tax Commission. However, the exemption shall not exceed a period of forty (40) days for any annual period without a second resolution of approval by the board of supervisors who shall have the authority to extend the exemption not to exceed an additional period of twenty (20) days

during any annual period.

A private commercial carrier of property hauling interstate may purchase a common and contract carrier of property license plate at the prescribed fee to allow the carrier to lease on a one-way basis per trip without qualifying with the Public Service Commission.

HISTORY: SOURCES: Codes, 1942, § 9352-06; Laws, 1938, chs. 119, 148; Laws, 1940, ch. 165; Laws, 1946, ch. 266, §§ 6-8; Laws, 1948, ch. 271, § 3; Laws, 1954, ch. 336, § 1; Laws, 1958, ch. 496; Laws, 1960, ch. 421; Laws, 1962, ch. 531; Laws, 1963, 1st Ex Sess ch. 23; Laws, 1966, ch. 574, § 1; Laws, 1972, ch. 486, § 2; Laws, 1973, ch. 495, § 2; Laws, 1974, ch. 575; Laws, 1979, ch. 386; Laws, 1981, ch. 309, § 2, ch. 366, § 1; Laws, 1983, ch. 460; Laws, 1984, ch. 382; Laws, 1987, ch. 322, § 21; Laws, 1992, ch. 497, § 3; Laws, 1993, ch. 496, § 1; Laws, 2001, ch. 596, § 2; Laws, 2004, ch. 354, § 1; Laws, 2004, ch. 506, § 2, eff from and after July 1, 2004.



WestlawNext Mississippi Attorney General Opinions

Roy Noble Lee, Jr., Esq.

Office of the Attorney General
October 20, 2003

2003 WL 22536080 (Miss.A.G.)

Office of the Attorney General

State of Mississippi

*1

Opinion No.

2003

-0483

*1 October 20, 2003

Re: Distribution of Proceeds of Additional Privilege Tax Pursuant to Section 27-19-11

*1 Roy Noble Lee, Jr., Esq.

*1 Lee & Lee, P.A.

*1 Post Office Box 370

*1 Forest, Mississippi 39074

Dear Mr. Lee :

*1 Attorney General Mike Moore has received your request for an official opinion and has assigned it to me for research and reply.

*1 Your letter states in pertinent part:

*1 This office represents the Scott County Board of Supervisors, and the Board has asked me to contact your office requesting an opinion. The Scott County Board of Supervisors presently receives funds pursuant to Section 27-19-11 in the form of an additional privilege tax. Scott County has been distributing these funds among the municipalities, taxing Districts, and schools of the county on a pro-rated basis. The Board questions whether or not it is required to disperse funds as is presently done, or whether the Board has the right to maintain all funds solely for county purposes. Is Scott County required to disperse and distribute the additional privilege tax contemplated in Section 27-19-11 to the municipalities located within Scott County? Your assistance on this question is most appreciated.

*1 Miss. Code Ann. Section 27-19-11 provides in part:

*1 In addition to the above levied annual highway privilege tax on vehicles with a gross weight exceeding ten thousand (10,000) pounds, there is levied and shall be collected an additional privilege tax in the amount of One Thousand Three Hundred Fifty Dollars (\$1,350.00) for each current or later year model vehicle based upon a licensed weight of eighty thousand (80,000) pounds. This additional privilege tax shall be reduced by the amount of One Hundred Seventy-five Dollars (\$175.00) for each year of age to a minimum of Fifty Dollars (\$50.00) and further reduced by the ratio of licensed weight to the maximum weight of eighty thousand (80,000) pounds. During the first year only, the privilege tax monies collected under the provisions of this paragraph shall be distributed to the various counties of the state on the basis of the ratio of the last year of annual ad valorem taxes collected by such counties on such vehicles to the total ad valorem taxes collected by all counties on such vehicles in the same year. In all subsequent years, such distribution to the counties shall be made on the basis of the ratio of the number of motor vehicles registered in excess of ten thousand (10,000) pounds, in each taxing district in each county, to the total number of such vehicles registered statewide. **The counties should then distribute these proceeds as they would if these collections were ad valorem taxes.** [emphasis added].

*1 This office has previously opined that Section 27-19-11 authorizes a County Board of Supervisors to distribute the proceeds collected from the additional tax on a pro rata basis to other taxing districts of the county as if they were ad valorem tax distributions, although there is no requirement that the county make such a distribution. We interpreted that statutory language to give authority for the county board of supervisors, in its discretion, to distribute funds to municipalities and municipal separate school districts located within the county. MS AG Op., Barry (December 7, 2000); MS AG Op., Foxworth (December 1, 2000). Statutes often employ the word "shall" to express mandatory provisions and "may" to express discretionary. Here, the Legislature has used "should." We continue to interpret this to mean that although counties are not required to distribute the proceeds, the legislature strongly suggests that such be done.

*2 If our office may be of further assistance, please advise.

Sincerely,

*2 Mike Moore

*2 Attorney General

*2 By: Heather P. Wagner

*2 Assistant Attorney General

2003 WL 22536080 (Miss.A.G.)



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Shelton Vance

From: Greg Higginbotham <Greg.Higginbotham@osa.ms.gov>
Sent: Tuesday, April 26, 2016 10:22 AM
To: Shelton Vance
Subject: FW: Section 27-19-11 additional privilege tax

Mr. Vance,

Below is the letter from Pat Dendy outlining our position on the Additional Privilege Tax:

I understand that questions have arisen about the proper settlement of the additional privilege tax on carriers of property and buses.

In the second paragraph of 27-19-11 there is language about the distribution of this tax. The last sentence says "The counties shall then distribute these proceeds as they would if these collections were ad valorem taxes." A question has arisen about whether these proceeds should be shared with (a) municipalities and (b) school districts.

Our understanding is that these funds are to be allocated based on the county's tax levy, which would include the county school district levy set by the board of supervisors. Any municipal levy, including municipal school districts, would be approved by the municipal governing authorities, and the county is merely collecting these taxes pursuant to a contract between the county and the municipality. Further, many municipalities collect their own ad valorem taxes, which would prevent the county from sharing these taxes with them.

I have discussed this matter with our Special Assistant Attorney General and she concurs with this position.

Patrick Dendy, CPA
Director, Financial and Compliance Audit Division

This is not an official advisory opinion or statement of law; however, I hope you find the information useful. If I can be of further assistance, feel free to contact me.

Greg Higginbotham
Technical Assistance
Mississippi Office of the State Auditor
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