

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

January 20, 2017

Shelton Vance, County Administrator
Madison County
P. O. Box 608
Canton, MS 39046

Re: Distribution of privilege tax proceeds pursuant to Section 27-19-11

Dear Mr. Vance:

Attorney General Jim Hood received your request and assigned it to me for research and response.

Issues Presented

(1) Should Madison County distribute privilege tax proceeds received pursuant to Section 27-19-11 to (1) the county, county school district, separate municipal school districts and municipalities; or, should distribution be only to the county and the county school district?

Response: Section 27-19-11 requires Madison County to distribute the privilege tax proceeds in the same manner as ad valorem tax proceeds. Madison County is authorized to levy ad valorem taxes for support of the county and the county school district. We are aware of no authority for Madison County to levy ad valorem taxes for the support of municipalities or municipal school districts. Consequently, the privilege tax proceeds received pursuant to Section 27-19-11 must be distributed only to the county and the county school district.

(2) Should the county's portion of this tax be divided among all county tax levies (funds) for the tax district where the privilege tax originated?

Response: Absent specific direction otherwise in Section 27-19-11, the county's portion of the tax should be deposited in the county general fund.

Background

In your letter of request, you state, in part:

Madison County receives periodic payments from the Department of Revenue (DOR) that are identified as Additional Privilege Tax payments under MCA 27-19-11. This money is a county-collected privilege tax that is remitted to the state for distribution among several Legislatively-defined purposes, including two portions that are returned to each county.

Prior to July 1, 2004, the law instructed that “counties should then distribute these proceeds as they would if these collections were ad valorem taxes.”

In October 2003, an opinion was issued regarding this distribution – Roy Noble Lee, Jr., October 20, 2003. The opinion, referencing older opinions, indicates that “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.” Further, the opinion reads, “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.”

After July 1, 2004, the law was changed to instruct that “counties shall then distribute these proceeds as they would if these collections were ad valorem taxes.”

When Madison County is paid the monthly distribution of this tax, we are provided (By DOR) with a report indicating the tax district in which the registration occurred. The tax district reflects the location within the county – i.e. school district and / or municipality - applicable to the registration.

In an inquiry (April 26, 2016) to the Office of the State Auditor, Madison County was advised to only distribute these taxes to the county and the county’s school district. This would exclude sharing this money with municipalities and municipal separate school districts.

Applicable Law

Section 27-19-11 reads, in part:

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.

* * *

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.

* * *

(Emphasis added.)

OFFICIAL OPINION

Conclusion

Section 27-19-11 requires Madison County to distribute the privilege tax proceeds in the same manner as ad valorem tax proceeds. Madison County is authorized to levy ad valorem taxes for support of the county and the county school district. We are aware of no authority for Madison County to levy ad valorem taxes for the support of municipalities or municipal school districts. Consequently, the privilege tax proceeds received pursuant to Section 27-19-11 must be distributed only to the county and the county school district.

The fact that a county may, by agreement, collect ad valorem taxes for municipalities would not authorize the county to distribute these privilege tax proceeds to municipalities or municipal school districts.

Absent specific direction otherwise in Section 27-19-11, the county's portion of the tax should be deposited in the county general fund.

Very truly yours,

JIM HOOD, ATTORNEY GENERAL

By:



Chuck Rubisoff
Assistant Attorney General