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JUSTICE BUILDING, LITTLE ROCK 72201

December 5, 1985

#119
(501) 371-2007

OPINION NO. 85-217

Lt. Governor Winston Bryant
Study Commission on Amendment 59
Office of Lt. Governor - State Capitol
Little Rock, Arkansas 72201

Re: Amendment 59

Dear Governor Bryant:

This is in response to your request for an official opinion on the following question:

Would a new tax approved by either a school district, city or county after reappraisal and reassessment and millage rollback be applied to personal property, utility property, and carrier property as well as real property?

It is my opinion that a new tax for a new purpose after reassessment and the subsequent millage rollback would apply to tangible personal property as well as real property.

Amendment 59 to the Constitution of Arkansas was passed in wake of the Arkansas Supreme Court's decision in Arkansas Public Service Commission v. Pulaski County Board of Equalization, 266 Ark. 64, 582 S.W.2d 942 (1979). Amendment 59 is designed to adjust property taxes after reappraisal. The amendment seeks to prevent an immediate shift of the tax burden to real property owners after the reappraisal and reassessment of their property. After reappraisal of taxable real property, the increase in revenue is held to ten percent (10%), with the millage rate being rolled back to compensate for the increased value of the property. Then, to equalize the millage rate on taxable personal property, the revenues for the year of reappraisal derived from tangible personal property are frozen and the millage rate allowed to decrease each year to correspond with the increased value of tangible personal property so that the revenues will remain the same. When the decreasing millage rates of tangible personal property become equal to the millage rates of real property, equalization is achieved within the taxing unit.

Previously, in opinion no. 82-159, a copy of which is attached, I stated my opinion that millage rate increases enacted after the rolled-back millage rate is established should only affect real property in a taxing unit and should not be applied to assessments of tangible personal property or the real and personal property assessments of public utilities and regulated carriers. However, that opinion dealt with increases of existing taxes. Until millage rates are equalized in a county, the millage rate cannot be increased on tangible personal property as well as real property unless the tax is a new tax for a new purpose.

As stated above, Amendment 59 covers the year in which a county undergoes reassessment and reappraisal of its property and covers the millage rates on tangible personal property and real property for existing millage rates and taxes on that year and years following until they are equalized. A new tax passed for a new purpose would not be covered by Amendment 59. At that point, Article 16 §5 of the State Constitution which requires that ". . . no one species of property for which a tax may be collected shall be taxed higher than another species of property of equal value. . . ." would control and require that the tax be applied to all real and tangible personal property subject to taxation. In Woolard v. Thomas, 238 Ark. 162, 381 S.W.2d 453 (1964) the Arkansas Supreme Court held that the levying of a county tax for county purposes must be uniform upon all property within a county.

The next issue becomes what is a new tax for a new purpose. A new tax is one not existing at the time of the county's reassessment and reappraisal pursuant to Amendment 59 or the increase of millage rates on real property for these taxes as allowed by Amendment 59 after reassessment and reappraisal. An example would be the enactment of the 3 Mill Road Tax pursuant to Amendment 61 when the county had no road tax.

The next aspect of Amendment 59 that needs to be addressed regards the taxes to be paid by public utilities and regulated carriers in their respective taxing units. Amendment 59 provides that for the first five years after reappraisal, the taxes paid by public utilities and regulated carriers shall be the greater of either the amount of taxes paid during the base year, or the amount of taxes due at the rolled-back millage rate for all other real property located in the taxing unit and levied for the current year. This is another of the "frozen" revenue established by Amendment 59. After the first five years following reappraisal, taxes paid by public utilities and regulated carriers are adjusted according to the difference between current year taxes, levied at the rolled-back millage rate and the base year

Lt. Governor Winston Bryant
Page 3
December 5, 1985

taxes, if greater than the current year taxes. If a county passes a new tax for a new purpose, this tax would apply to public utility and carrier real and tangible personal property. This would then be compared with their base year and the utility or carrier would pay the greater of the two amounts as provided in Amendment 59. For the second five years, current year taxes would be those including taxes which are for new purpose, adjusted according to the difference between the current year taxes and base year taxes as stated in Amendment 59.

The foregoing opinion, which I hereby approve, was prepared by Deputy Attorney General Curtis L. Nebben.

Sincerely,



STEVE CLARK
Attorney General

SC:CLN:dd