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SPRINGFIELD

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FILE NO. 82-045

REVENUE:

Proper Distribution, by County,
of Funds Received From the
Personal Property Replacement Tax

Honorable James S. Williams
State's Attorney
Carroll County
Courthouse
Mt. Carroll, Illinois 61053

Dear Mr. Williams:

I have your letter wherein you inquire as to the proper distribution, by a county, of funds received from the personal property replacement tax. For the reasons hereinafter stated, it is my opinion that, under the provisions of section 12 of "AN ACT in relation to State revenue sharing with local governmental entities" (Ill. Rev. Stat. 1981, ch. 85, par. 616), replacement tax monies should be distributed in the following sequence:

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(1) Replacement tax funds received by a county, based on personal property taxes levied for another governmental body or school district in 1977 and outside of Cook County should be paid over to these entities. The amount to be paid over is the amount which such governmental body or school district would have received had it levied its own taxes.

(2) Replacement funds held by the county should then be applied toward payment of the proportionate amount of debt service which was previously levied and collected from extensions against personal property on bonds outstanding as of December 31, 1978.

(3) The replacement funds should then be applied toward payment of the proportionate share of the pension or retirement obligations of the taxing district which were previously levied and collected from extensions against personal property.

(4) Any replacement funds remaining should be used by the county for the same purposes as the revenues from ad valorem taxes on real estate.

Section 12 of "AN ACT in relation to State revenue sharing with local governmental entities" (Ill. Rev. Stat. 1981, ch. 85, par. 616) was added to that Act by section 3 of "AN ACT in relation to the abolition of ad valorem personal property tax and the replacement of revenues lost thereby, and amending and repealing certain Acts and parts of Acts in connection therewith" (P.A. 81-1st S.S.-1, effective August 14, 1979), which was enacted to effectuate the constitutional mandate to abolish all ad valorem personal property taxes and thereafter replace all revenue lost by units of local government and school districts as a result of that abolition. (Ill. Const. 1970, § 5(c), art. IX.) Section 12 of the aforementioned Act provides in pertinent part that:

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" * * *

Prior to December 31, 1980, as soon as may be after the end of each quarter beginning with the quarter ending December 31, 1979, and on and after December 31, 1980, as soon as may be after January 1, March 1, April 1, May 1, July 1, August 1, October 1 and December 1 of each year, the Department of Revenue shall allocate to each taxing district as defined in Section 1 of the Revenue Act of 1939, in accordance with the provisions of paragraph (2) of this Section, the portion of the funds held in the Personal Property Tax Replacement Fund which is required to be distributed, as provided in paragraph (1), for each quarter. * * * The Department shall then certify, pursuant to appropriation, such allocations to the State Comptroller who shall pay over to the several taxing districts the respective amounts allocated to them.

* * * "

(Emphasis added.)

The term "Taxing District" is defined in section 1 of the Revenue Act of 1939 (Ill. Rev. Stat. 1981, ch. 120, par. 482) as follows:

" * * *

(12) Taxing District--Counties, townships, incorporated cities, towns and villages, school, road, park, sanitary, mosquito abatement, forest preserve, public health, fire protection, river conservancy, tuberculosis sanitarium, and any other municipal corporations or districts with the power to levy taxes.

* * * "

In addition to direct allocations of replacement funds to taxing districts, section 12 of "AN ACT in relation to revenue sharing, etc." provides for indirect allocation of replacement funds to governmental bodies, which do not have power to levy taxes:

" * * *

Any taxing district which receives an allocation based in whole or in part upon personal property taxes which it levied for another governmental body or school district in Cook County in 1976 or for another governmental body or school district in the remainder of the State in 1977 shall immediately pay over to that governmental body or school district the amount of personal property replacement funds which such governmental body or school district would receive directly under the provisions of paragraph (2) of this Section, had it levied its own taxes.

* * * "

No definition of "governmental body" appears in "AN ACT in relation to State revenue sharing, etc." (Ill. Rev. Stat. 1981, ch. 85, par. 611 et seq). However, section 5 of article IX of the 1970 Illinois Constitution directs that revenues lost by units of local government "as a result of the abolition of ad valorem personal property taxes" be replaced. As evidenced by its preamble, Public Act 81-1st S.S.-1 was expressly enacted to comply with this constitutional mandate:

"WHEREAS, Section 5(c) of Article IX of the Illinois Constitution of 1970 directs the General Assembly to repeal the ad valorem tax on personal property and to replace the revenue lost by units of local government and school districts as a result of said abolition by imposing statewide taxes on those classes relieved of the burden of paying ad valorem taxes on personal property; and

WHEREAS, the General Assembly has determined that the taxes imposed by the Act hereinafter set forth will fulfill the mandate of Section 5(c) of Article IX of the Illinois Constitution of 1970; and

WHEREAS, the General Assembly adopts the Act hereinafter set forth in compliance with the mandate of Section 5(c) of Article IX of the Illinois Constitution of 1970; * * * " [the enacting clause and text of the Act follow].

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In opinion No. 81-012, issued May 8, 1981, I advised that the term "governmental body" is synonymous with the term "units of local government":

"The cardinal rule of statutory construction is that a statute must be construed so as to ascertain and give effect to the intention of the General Assembly as expressed in the statute. Moreover, in construing a statute to give effect to that intention, a court should look to the object or purpose to be attained or subserved by the statute. (Lincoln Nat. Life Ins. Co. v. McCarthy (1957), 10 Ill. 2d 489, 494-95; People v. Floom (1977), 52 Ill. App. 3d 971, 974-75.) Based on these rules of construction and because, as you also point out, the purpose of Public Act 81-1st S.S.-1, which amended 'AN ACT in relation to State revenue sharing, etc.' to add section 12, was to replace revenues lost by 'units of local government', the term 'governmental body', in the context of section 12, can be construed to be synonymous with the term 'units of local government'."

The term "units of local government" is defined in section 1 of article VII of the 1970 Illinois Constitution as follows:

" * * * 'Units of local government' means counties, municipalities, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects, but does not include school districts."

The Illinois Constitution does not define the term "special district" within the context of the term "units of local government". In Chicago Transit Authority v. Danaher (1976), 40 Ill. App. 3d 913, 917, the Appellate Court for the First District held:

"

* * *

* * *The words 'special district,' so far as they

are used in reference to units of government, have a technical meaning. A 'special district' is a relatively autonomous local government which provides a single service. They have also been characterized as 'possessing a structural form, an official name, perpetual succession, and the right to make contracts and to dispose of property.' (See 1973 Illinois Attorney General's Opinions, 102, 104, No. S-601, dated June 27, 1973.) * * *

* * *

"

The court determined at pages 917-918 that a "special district" need not have its own powers of taxation and ruled that CTA and CHA were each special districts.

After the county has distributed the replacement funds as described above, section 12 of "AN ACT in relation to State revenue sharing, etc." provides that county held replacement funds should first be applied to debt service on bonds, and then be applied to pension or retirement obligations:

"

* * *

Monies received by any taxing districts from the Personal Property Tax Replacement Fund shall be first applied toward payment of the proportionate amount of debt service which was previously levied and collected from extensions against personal property on bonds outstanding as of December 31, 1978 and next applied toward payment of the proportionate share of the pension or retirement obligations of the taxing district which were previously levied and collected from extensions against personal property. * * * "

After these obligations have been satisfied each calendar year, from the replacement funds, the remainder of the funds is to be used for the same purposes as the revenues derived from ad valorem taxes on real property:

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* * *

The amounts allocated and paid to taxing districts pursuant to the provisions of this amendatory Act of 1979 shall be deemed to be substitute revenues for the revenues derived from taxes imposed on personal property pursuant to the provisions of the 'Revenue Act of 1939' or 'An Act for the assessment and taxation of private car line companies', approved July 22, 1943, as amended, or Section 414 of the Illinois Insurance Code, prior to the abolition of such taxes and shall be used for the same purposes as the revenues derived from ad valorem taxes on real estate.

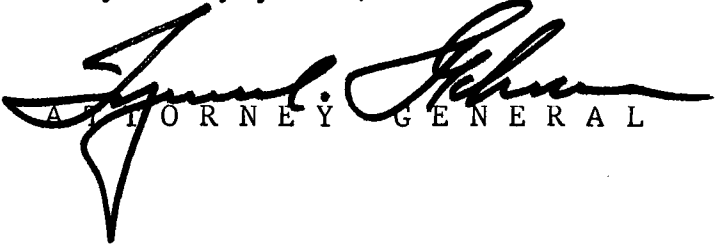
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(Emphasis added.)

Ad valorem taxes on real estate may be levied for general county purposes under section 25.05 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1981, ch. 34, par. 406). Therefore, counties may use any remaining replacement funds for general county purposes.

Very truly yours,


ATTORNEY GENERAL