

March 31, 2008
OPINION NUMBER 07-0284

Honorable Craig Webre
Sheriff
Parish of Lafourche
P.O. Box 5608
Thibodaux, Louisiana 70302

160 TAXATION – SALES TAX

La. R.S. 51:1783

Local sales and use taxes which have been dedicated to a particular use or purpose in the tax proposition imposing such taxes, cannot be rebated under the provisions of the Louisiana Enterprise Zone Act, La. R.S. 51:1781 et seq.

Dear Sheriff Webre:

You requested an Attorney General's opinion regarding sales tax rebates under the Louisiana Enterprise Zone Act, La. R.S. 51:1781 et seq. ("LEZA"). LEZA allows the State Board of Commerce to enter into contracts to provide for the rebate of sales and use taxes imposed by the state and its political subdivisions. You question the propriety of rebating sales taxes paid to the Lafourche Law Enforcement District No. 1. Specifically, you ask whether LEZA prohibits the rebate of local sales taxes that have been dedicated.

La. R.S. 51:1787 sets forth the incentives available under LEZA and provides in part:

A. The board, after consultation with the secretaries of the Department of Economic Development and Department of Revenue, and with the approval of the governor, may enter into contracts not to exceed five years to provide:

(1) For either:

(a)(i) The rebate of sales and use tax imposed by the state and imposed by its political subdivisions upon approval of the governing authority of the appropriate municipality or the appropriate parish where applicable, or both, and of the governing authority of any other political subdivision, including the office of sheriff in the case of a law enforcement district, for the following:

(aa) The use of customer-owned tooling in a compression molding process.

(bb) Purchases of the material used in the construction of a building, or any addition or improvement thereon, for housing any legitimate business enterprise and machinery and equipment used in that enterprise.

* * * * *

B. The board may enter into the contracts provided in Subsection A of this Section provided that:

(1) The business and its contractors give preference and priority to Louisiana manufacturers and, in the absence of Louisiana manufacturers, to Louisiana suppliers, contractors, and labor, except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operational efficiency.

(2)(a) The request for such a rebate of sales and use tax is accompanied by an endorsement resolution approved by the governing body of the appropriate municipality, parish, port district, industrial development board, or other political subdivision or the written approval of the office of sheriff in the case of a law enforcement district, in whose jurisdiction the establishment is to be located. The endorsement resolution or letter of approval is to be submitted by the governing body or sheriff's office within ninety days of receipt of notification that the department has received an advance notification to file an application for benefits under this Chapter. The department shall notify the appropriate local governing body or sheriff's office of receipt of the application by certified mail.

(b) If the governing body of the appropriate jurisdiction has not submitted an endorsement resolution, written reasons for denial, or a written request for delay of consideration of the application, the board may take unilateral action, for the rebate of sales and use taxes imposed by the state only, in approving or denying the request.

(c) **If there are no local sales and use taxes that can be rebated, as in the event that all such taxes are dedicated**, no endorsement resolution shall be required of a local governing authority before the board considers its application for benefits under this Chapter.
(Emphasis added)

This statute allows for the rebate of sales and use taxes imposed by the state and its political subdivisions in certain instances. However, R.S. 51:1787B(2)(c) indicates that there are situations in which no local sales and use taxes can be rebated, "as in the event that all such taxes are dedicated". Based upon this language, it is our opinion that local sales and use taxes which have been dedicated to a particular use or purpose in the tax proposition imposing such taxes, cannot be rebated under the provisions of LEZA.

You next question whether the proceeds of the following tax propositions would be considered “dedicated” for purposes of LEZA:

1. “Shall Law Enforcement Sub-District No. 1 of the Parish of Lafourche, State of Louisiana (the “District”), be authorized to levy and collect, a tax of one-half of one percent (1/2%) (the “Tax”) upon the sale at retail, the use, the lease or rental, the consumption, and storage for use or consumption, of tangible personal property and on sales of services in the Sub-District, all as presently defined in La. R.S. 47:301 through La. R.S. 47:317, inclusive, with the proceeds of the Tax (after paying the reasonable and necessary costs and expenses of collecting and administering the Tax) to be dedicated and used by the Sub-District solely for the purposes of providing funds for employee salaries and additional deputies, said Tax to be in addition to any sales and use tax now authorized and being levied by the Sub-District?”
2. “Should Law Enforcement Sub-District No. 1 of the Parish of Lafourche, State of Louisiana (the “District”), under the provisions of Article VI, Sections 19 and 30 of the Constitution of the state of Louisiana of 1974 and other constitutional and statutory authority supplemental thereto, be authorized to continue to levy and collect, a tax of one-half (1/2%) (the “Tax”) upon the sale at retail, the use, the lease or rental, the consumption, and storage for use or consumption, of tangible personal property and on sales of services in the District, all as defined in La. R.S. 47:317, inclusive, for a period of ten (10) years from August 1, 2000, with the proceeds of the Tax (after paying the reasonable and necessary costs and expenses of collecting and administering the Tax) to be dedicated and used for the purpose of providing additional funds for law enforcement purposes in the district, including the cost of acquiring, operating and maintaining equipment for the sheriff’s department, it being provided, however, that the sum of \$275,000.00 annually, plus 25% of all annual net revenues derived from the tax in excess of two million dollars shall be dedicated for the purposes of constructing, improving, operating and maintaining jail facilities and minimum security facilities in the parish, and paying the cost of feeding and transporting prisoners and medical care therefore.”

This office has consistently opined that the use of the proceeds of a sales and use tax adopted at an election in the State of Louisiana must be used in accordance with the will of the electorate, as set forth in the proposition approved by the voters. R.S. 39:704; R.S. 33:2714; R.S. 33:2723. In accord: Attorney General’s Opinion Nos. 04-0267, 03-0157, 01-269, 98-421, 98-287, 96-246, 95-145, 94-540, 94-346, 93-424, 93-47 and 92-50.

Each of the above propositions specifically set forth the use of the proceeds of the respective tax, and dedicated the proceeds to be used for such purposes. As such, the proceeds of these two tax propositions would be considered dedicated, such that the proceeds of the taxes cannot be rebated under the provisions of LEZA.

Trusting this adequately responds to your request, we remain

Very truly yours,

JAMES D. "BUDDY" CALDWELL
Attorney General

By: _____
RICHARD L. MCGIMSEY
Assistant Attorney General

JDC:RLM:crt

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RICHARD L. MCGIMSEY
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