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DEPARTMENT OF JUSTICE
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APR 11 2013
OPINION 13-0031

115 TAXATION - Collection & Enforcement against person & property
La. R.S. 40:1502.1; La. Const. art. VII, § 21

Honorable Robert W. Kostelka
State Senator, District 35
P.O. Box 2122
Monroe, LA 71207

Service charges imposed by fire protection districts under La. R.S. 40:1502.1 are specific taxes and thus are not subject to the provisions of law governing *ad valorem* taxation, such as La. Const. art. VII, § 21. Therefore, a residential or commercial structure exempt from *ad valorem* taxation under La. Const. art. VII, § 21 is not exempt from a service charge imposed under La. R.S. 40:1502.1.

Dear Senator Kostelka:

Your request for an Attorney General's Opinion regarding service charges imposed by fire protection districts under La. R.S. 40:1502.1 has been assigned to me for research and reply. Specifically, you ask whether buildings are exempt from such service charges if they are exempt from *ad valorem* taxation under La. Const. art. VII, § 21.

Pertinently, La. R.S. 40:1502.1(A)(1)(a) provides as follows:

The governing authority of any fire protection district situated wholly within the geographical boundaries of Rapides Parish, Lincoln Parish, Claiborne Parish, Union Parish, Morehouse Parish, East Carroll Parish, or West Carroll Parish is hereby authorized to establish, by majority vote of the members of the authority, a service charge or rates of service charges for each residential or commercial structure for a term not to exceed ten years to be assessed persons owning each such structure, whether occupied or unoccupied, located wholly or partly within the boundaries of the fire protection district, subject to the provisions of Subsection B of this Section.

As you can see, the service charge under La. R.S. 40:1502.1(A)(1)(a) is imposed on each residential or commercial structure.

In *Acorn v. City of New Orleans*, 377 So.2d 1206 (La. 1979), the Supreme Court distinguished specific taxes from *ad valorem* taxes, and classified a parcel fee as a "specific tax." In pertinent part, the Court stated:

"Duties are either *ad valorem* or specific; the former when the duty is laid in the form of a percentage on the value of the property, the latter where it

is imposed as a fixed sum on each article of a class without regard to its value.

* * *

The tax under consideration is clearly not levied according to the valuation of the property taxed; it is a specific tax, and not an *ad valorem* tax. It is not, therefore, a millage increase upon a parish *ad valorem* tax, and is not regulated by other provisions of law governing *ad valorem* taxation."

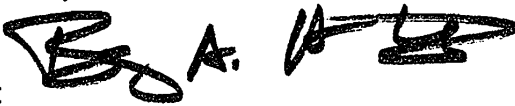
In Atty. Gen. Op. No. 91-400, we determined that service fees imposed under authority of La. R.S. 40:1502, a similar fire protection service charge statute, are "specific taxes" as they are imposed upon each residential or commercial structure, as defined therein, without regard to the value of the structure. We believe the same logic applies to service charges imposed under La. R.S. 40:1502.1(A)(1)(a). In accordance with *Acorn, supra*, such specific taxes are "...not regulated by provisions of law governing *ad valorem* taxation," such as La. Const. art. VII, § 21.

Considering the forgoing, it is the opinion of this office that service charges imposed by fire protection districts under La. R.S. 40:1502.1 are specific taxes and thus are not subject to the provisions of law governing *ad valorem* taxation, such as La. Const. art. VII, § 21. Therefore, a residential or commercial structure exempt from *ad valorem taxation* under La. Const. art. VII, § 21 is not exempt from a service charged imposed under La. R.S. 40:1502.1.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

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By: 

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JDC/BAH II