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State of Louisiana
DEPARTMENT OF JUSTICE
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August 26, 2013
OPINION 13-0099

135 Taxation – License taxes – liability of persons & property
La. R.S. 47:341 *et seq.*

The Honorable Terry R. Brown
State Representative, District 22
510 Main Street
Colfax, Louisiana 71417

The Town of Tullos may collect occupational license taxes properly enacted by the Town's governing authority pursuant to La. R.S. 47:341, and which have not prescribed.

Dear Representative Brown:

You requested an opinion from this office in which you asked several questions regarding certain provisions of the occupational license tax, La. R.S. 47:341 *et seq.*

You indicated that, in the past thirteen years, the Town of Tullos (the "Town") has only collected payment of occupational license taxes from one business, a small liquor store. That business paid an annual flat fee. Recently, the Town has pursued other businesses, including those that produce revenue from crude oil, gas, and licensed contractors. On February 21, 2013, the Town mailed occupational license tax applications to all businesses. The Town indicated that payment was due on January 1, 2013 and would be delinquent on March 1, 2013.

First, you ask whether the Town has the authority to collect an occupational license tax considering that it has not pursued collection from delinquent taxpayers within the last thirteen years.

Municipalities may impose an occupational license tax under La. R.S. 47:341, which provides as follows:

A. Any municipality or parish shall have the right to impose a license tax on any person conducting any business herein enumerated within the territorial jurisdiction of the municipality or parish at a rate which shall not exceed the maximum tax rates set forth in this Chapter, provided that the imposition of such license tax is approved by two-thirds of the elected members of the municipal or parochial governing authority and after affording the public an opportunity to comment at a minimum of three public hearings.

B. The tax collector, administrator of finance, treasurer, or any other officer whose duty is to receive and collect the taxes and money due to each municipality or parish may enforce the collection of any and all taxes due.

Further, under La. Civ. Code art. 8, laws are repealed, either entirely or partially, by other laws. Thus, in the past thirteen years, the Town did not have to take any further action to continue to impose the tax.

Moreover, we note that the occupational license tax is basically similar to the income tax in that it involves self-reporting. In fact, under La. R.S. 47:351, the tax collector is not even required to make demand or put the person subject to the tax in default. So, the taxpayer must pay whether or not the Town sends reminder notices.

Assuming that the ordinance imposing the tax was approved by two-thirds of the elected members of the Town's governing authority after affording the public an opportunity to comment at a minimum of three public hearings and has not since been repealed, the ordinance is still valid. Thus, it may be enforced by the tax collector, administrator of finance, treasurer, or any other officer whose duty is to receive and collect the taxes.

Your next question pertains to the prescriptive period for collecting the tax. You ask whether the Town may collect occupational license taxes for the past thirteen years.

Under La. Const. art. VII, §16, "[t]axes, except real property taxes, and licenses shall prescribe in three years after the thirty-first day of December in the year in which they are due, but prescription may be interrupted or suspended as provided by law." Therefore, presently, the Town can only collect taxes due after December 31, 2009, unless prescription has been sufficiently interrupted or suspended as provided by law.

Finally, you ask whether the mayor can change the method of calculating the license tax due. We note that method of calculation depends on the classification of the business as set forth in La. R.S. 47:341 *et seq.* and cannot be changed by the mayor.

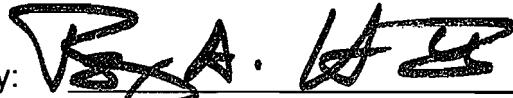
Considering the forgoing statutory authority, it is the opinion of this office that, assuming the ordinance imposing the occupational license tax was approved by two-thirds of the elected members of the Town's governing authority after affording the public an opportunity to comment at a minimum of three public hearings and has not since been repealed, the ordinance is still valid, and the Town can collect those occupational license taxes calculated under La. R.S. 47:341 *et seq.* that have not prescribed.

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,

JAMES D. "BUDDY" CALDWELL
Attorney General

By:

A handwritten signature in black ink, appearing to read "B.A. Huxen II", written over a horizontal line.

BENJAMIN A. HUXEN II
Assistant Attorney General

JDC/BAH II