



City of North Port

Office of the City Attorney

Memorandum

To: Debbie McDowell, Mayor
Jill Luke, Vice-Mayor
Vanessa Carusone, Commissioner
Pete Emrich, Commissioner
Christopher B. Hanks, Commissioner

Copy: Peter D. Lear, City Manager
Cari Branco, Assistant City Manager
Jason Yarborough, Assistant City Manager
Michael Golen, Assistant City Attorney

From: Amber L. Slayton, City Attorney *ALS*

Date: September 23, 2020

Subject: Local Business Tax; Equity Study Commission

On June 16, 2020, the City Commission directed that an Equity Study Commission be established by resolution to review the City's local business taxes, and that the Equity Study Commission make recommendations on new rate structures. Subsequently, the City Attorney's Office researched the City's history of adopting the business tax and thoroughly researched the application of Florida law.

As more fully explained in Assistant City Attorney Michael Golen's attached memo, due to the date of the City's initial adoption of its business tax, the City is not required to form an Equity Study Commission to modify its local business tax. Florida law authorizes the City to modify its local business tax via ordinance to:

1. Increase the tax up to twenty-five percent for taxes levied at graduated or per unit rates, or increase the tax based on certain other local governments' ordinances;
2. Decrease or repeal any classification of business tax; and
3. Add classifications based on certain other local governments' ordinances.



City of North Port

Office of the City Attorney

Memorandum

To: Amber L. Slayton, City Attorney

From: Michael Golen, Assistant City Attorney *MG*

Date: September 23, 2020

Re: Changes to Local Business Tax; Equity Study Commission

On June 16, 2020, the City Commission directed that an Equity Study Commission be established by resolution to review the City's local business taxes, and that the Equity Study Commission make recommendations on new rate structures. The following provides an analysis of the City's authority to amend its current business taxes and the need for an Equity Study Commission. Following your review, please let me know if you have any questions.

I. SUMMARY

1. Establishing and Amending the Local Business Tax: The City established its local business tax by ordinance in 1959. Because the City established the categories of its local business tax prior to 1995, Florida law authorizes the City to increase its existing business taxes without the use of an Equity Study Commission. Any increase to an established local business tax must not exceed 25% for taxes levied at graduated or per unit rates. The City Commission is authorized to decrease or repeal any local business tax at any time by ordinance. If the City Commission wants to create a new classification to be taxed, or wants to increase an established business tax beyond the level permitted by Florida law, a new business tax ordinance is required.
2. Business Tax Exemptions: Florida law provides exemptions to certain categories of businesses from the local business tax. The City is only authorized to exempt those businesses specifically exempted by Florida law.
3. Protocols Requiring an Equity Study Commission: The requirement to have an Equity Study Commission only applies to those entities that had no adopted local business tax before October 1, 1995, and did not act to create or revise its ordinance by October 1, 2008. Because the City of North Port established its business tax prior to October 1, 1995, this section does not apply, and the City is not required to convene an Equity Study Commission.
4. Current Business Tax: The City's current local business taxes are codified in the City Code. Except for two business taxes identified herein, the current local business tax categories and rates have not changed since codified in 1989.

II. ESTABLISHING AND AMENDING THE LOCAL BUSINESS TAX

On December 14, 1959, the City established its local business tax through the adoption of Ordinance No. 1959-13.¹ Because the City established its local business tax prior to October 1, 1995, and did not establish new rate structures between October 1, 1995 and October 1, 2008,² Florida law authorizes an increase of the business taxes without the use of an Equity Study Commission.³ The conditions imposed on the City to levy or increase an existing local business tax are provided in Florida Statutes Section 205.043.

Requirements and Increases

Pursuant to Section 205.043(1), a local business tax “must be based upon reasonable classifications and must be uniform throughout any class.”⁴ Additionally, “a receipt is not valid for more than 1 year and all receipts expire on September 30 of each year, except as otherwise provided by law.”⁵ Finally, this section limits any increase to an established business tax to an increase that does not “exceed 25 percent for taxes levied at graduated or per unit rates.”⁶

Decreases or Repeal

The City Commission is authorized to decrease or repeal any local business tax at any time.⁷ Florida law provides that by majority vote, the governing body of a municipality “may adopt an ordinance repealing a local business tax or establishing new rates that decrease local business taxes and do not result in an increase in local business taxes for a taxpayer.”⁸

Adding Classifications or Increases Beyond Statutory Level

If the City Commission wants to create a new classification to be taxed, or wants to increase an established business tax beyond the level permitted in Section 205.043(1), a new business tax ordinance is required⁹ and must meet the requirements provided in Florida Statutes Section 205.0315. The business tax rate structure and classifications must be reasonable and based upon the rate structure and

¹ At the time Ordinance No. 1959-13 was adopted, Florida law referred to a local business tax and an occupational license tax. On September 14, 2009, the City amended its business tax regulations through the adoption of Ordinance No. 2009-26, renaming the occupational license tax as a local business tax receipt.

² See § 205.0535(1), Fla. Stat.

³ This is true where the tax is otherwise authorized by Florida Statutes Chapter 205; See § 205.043(1)(b), Fla. Stat.

⁴ § 205.043(1)(a), Fla. Stat.

⁵ § 205.043(1)(c), Fla. Stat.

⁶ § 205.043(1)(b), Fla. Stat. This subsection further provides the following, which is not applicable to the business taxes imposed by the City: “Unless the municipality implements § 205.0535 or adopts a new business tax ordinance under § 205.0315, a business tax levied under this subsection may not exceed the rate in effect in the municipality for the year beginning October 1, 1971; however, beginning October 1, 1980, the municipal governing body may increase business taxes authorized by this chapter. The amount of the increase above the tax rate levied on October 1, 1971, for taxes levied at a flat rate may be up to 100 percent for business taxes that are \$100 or less; 50 percent for business taxes that are between \$101 and \$300; and 25 percent for business taxes that are more than \$300...Authority to increase business taxes does not apply to receipts or licenses granted to any utility franchised by the municipality for which a franchise fee is paid.”

⁷ See § 205.0535(5), Fla. Stat., “This chapter does not prohibit a municipality or county from decreasing or repealing any business tax authorized under this chapter.”

⁸ *Id.*

⁹ See § 205.043(1)(b), Fla. Stat.

classification of adjacent local governments that have adopted business tax ordinances by implementing Florida Statutes Section 205.0535 and used an Equity Study Commission.

Alternatively, the rate structure and classifications may be based on non-adjacent local governments that have adopted business tax ordinances by implementing Florida Statutes Section 205.0535 and used an Equity Study Commission, provided the non-adjacent local governments have a comparable population to the City's, and: (1) no adjacent local government adopted a business tax ordinance by implementing Florida Statutes Section 205.0535; or (2) the adjacent local government's rate structures or classifications are unreasonable.

II. BUSINESS TAX EXEMPTIONS

Pursuant to Florida law,¹⁰ the City Commission may levy a business tax for the privilege of engaging in or managing any business, profession, or occupation within the City's jurisdiction. The business tax may be levied on the following:

1. Any person who maintains a permanent business location or branch office within the municipality, for the privilege of engaging in or managing any business within its jurisdiction.
2. Any person who maintains a permanent business location or branch office within the municipality, for the privilege of engaging in or managing any profession or occupation within its jurisdiction.
3. Any person who does not qualify under 1 or 2 above, and who transacts any business or engages in any occupation or profession in interstate commerce, if the business tax is not prohibited by the Commerce Clause of the United States Constitution.^{11, 12}

Florida law provides several exemptions and partial exemptions¹³ from a local business tax, and the City cannot create an exemption for any category that does not otherwise exist. Florida's Attorney General has consistently opined that "absent a specific statutory exemption, a municipality may not create new exemptions."¹⁴

¹⁰ § 205.042, Fla. Stat.

¹¹ § 205.022(7), Fla. Stat., defines a "Person" as: "any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and includes the plural as well as the singular."

¹² See U.S. Const. art. I, § 8.

¹³ See §§ 205.054, 205.063, 205.064, 205.065, 205.162, 205.171, 205.191, 205.192, 205.193, Fla. Stat.

¹⁴ 2010-41, Fla. Op. Atty. Gen. (2010) ("Thus, the local business tax law applies to and operates on any person, engaged in any business, profession, or occupation who exercises the taxable privilege within a municipality's jurisdiction and is not excepted or exempted from the license tax by the terms of Chapter 205, Florida Statutes, or other applicable general law. While municipalities have been granted broad home rule powers, such powers do not include the authority to levy taxes or to provide exemptions therefrom. Thus, a municipality must rely upon specific constitutional or statutory authority to exercise taxing powers. The plain language of section 205.042, Florida Statutes, is couched in terms of the permissive "may" for the levy of a business tax. I cannot say, therefore, that a city "must" impose such a tax, but in the event that it does adopt an ordinance imposing a local business tax, it must do so in compliance with the provisions in Chapter 205, Florida Statutes."); see also 2000-01, Fla. Op. Atty. Gen. (2000) (city may not exempt real estate agents operating under real estate brokers from its occupational license requirement, absent specific exemption in Ch. 205, Fla. Stat.); 83-17 (1983) (real estate salesperson licensed and regulated by the state and operating under the supervision of a broker is subject to occupational

IV. PROTOCOLS REQUIRING AN EQUITY STUDY COMMISSION

Between the window of October 1, 1995 and October 1, 2008, Florida Statutes Section 205.0535 gave municipalities that had no local business tax, or wanted to reclassify and establish a new rate structure for their existing business tax, an opportunity to do so. A municipality that qualifies under this section would use an Equity Study Commission to reclassify a business, profession, or occupation, or establish a new rate structure. This section only applies where a municipality had no adopted local business tax before October 1, 1995 and did not act to revise its ordinance pursuant to this section by October 1, 2008.¹⁵ Because the City of North Port established its business tax prior to October 1, 1995, this section does not apply and the City is not required to convene an Equity Study Commission.

Despite not being required to do so, on May 8, 1995, the City Commission established an Equity Study Commission through the adoption of Resolution No. 95-R-10 for the purpose of “providing recommendations for a classification system and a rate structure for occupational license taxes assessed by the City.”¹⁶ This resolution set the membership criteria, functions, meeting and quorum requirements, and the powers, duties, and responsibilities of the Equity Study Commission. The Equity Study Commission was directed to make written recommendations to the Commission by July 1, 1995 regarding the reclassification and increase in the rate structure for the City’s occupational licenses taxes. However, there is no evidence that the Equity Study Commission ever met or provided recommendations to the City Commission.

V. CURRENT BUSINESS TAX

The City Code codifies the City’s current business taxes.¹⁷ The current business tax categories and rates are almost identical to the categories and rates that were codified in Ordinance No. 89-10, on July 31, 1989. There is only one business tax included in the current City Code that was not codified in Ordinance No. 89-10: a \$50.00 tax for “contractors maintaining a permanent business location or branch office within the city.”¹⁸ Additionally, Ordinance No. 89-10 included a business tax of \$50.00 in the professional category of “Advertising Agency,” that does not appear in the current City Code.¹⁹ I have brought this codification error to the attention of the City Clerk for proper codification in Municode.

license tax); Inf. Op. to Ms. Julie B. Schutta, January 31, 2001 (real estate salespersons appropriately included within scope of occupational license tax ordinance).

¹⁵ 1996-83, Fla. Op. Atty. Gen. (1996); *analyzing* § 205-0535, Fla. Stat.

¹⁶ Resolution No. 95-R-10, § 2.

¹⁷ See Appendix A, Section D, Code of the City of North Port, Fla.

¹⁸ Appendix A, Section D, Code of the City of North Port, Fla. After a thorough review of the City’s ordinances, I am unable to determine when this tax was adopted and how it was added to the City Code.

¹⁹ See Ordinance No. 89-10. After a thorough review of the City’s ordinances, I am unable to determine why this tax was not included in the City Code or if it was removed.