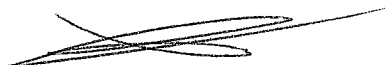


CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION - #09-005

TO: Honorable Mayor Tomas Regalado
FROM: Julie O. Bru, City Attorney 
DATE: November 23, 2009
RE: Ad Valorem Tax Exemption Program - Method for City to refund taxes paid by businesses entitled to ad valorem tax exemption

You have requested a legal opinion on the following question:

MAY THE CITY REIMBURSE EXCESS AD VALOREM TAXES PAID BY NEW OR EXPANDING BUSINESSES THAT HAVE BEEN GRANTED AD-VALOREM TAX EXEMPTIONS UNDER THE CITY'S AD-VALOREM TAX EXEMPTION FOR ENTERPRISE ZONE BUSINESSES PROGRAM BY CREDITING THE EXCESS PAYMENT AGAINST FUTURE PAYMENT OF AD-VALOREM TAXES?

For the reasons set forth below, your question is answered in the affirmative.

FACTS

On December 12, 2002, the City Commission adopted Ordinance No. 12308, which, as amended by Ordinance Nos. 12814 and 12913, adopted June 22, 2006 and May 10, 2009, respectively (collectively, the "Ordinance"), sets forth the procedure by which New and Expanding Businesses (as the terms are defined in the Ordinance) located within the City of Miami Enterprise Zones may apply for, and obtain, ad-valorem tax exemptions (the "Ad-Valorem Tax Exemption Program"). The Ordinance was adopted after approval by referendum held on November 6, 2001, as required by Section 196.1995, Florida Statute (the "Enabling Law"). The Ordinance has been codified under Chapter 56 of the City of Miami Code (the "Code").

Although the Ordinance was originally adopted in 2002 and the Ad Valorem Tax Exemption Program was established in 2004, it has not yet been implemented. This year, the City's Department of Real Estate and Economic Development has approved several applications, and is recommending approval to the City Commission. Many of the applications refer to businesses that were created or expanded prior to 2009 and, consequently, the exemptions would be effective with respect to years prior to 2009. If such exemptions are granted, the City will owe the applicants a total of approximately \$2,500,000. This amount represents the aggregate sum of all ad-valorem taxes paid by the applicants in excess of the amounts that would have been due, had the exemptions been granted in the years in which the businesses were created or

expanded. For ease of reference, the excess amount paid by each applicant is referred to herein as the "Excess Amount."

ANALYSIS

Chapter 56 of the Code gives the City Commission discretion to grant tax exemptions, determine the total term of the exemptions and establish the percentage of the assessed value to be exempt, all within the parameters established in Chapter 56. The effective date of the exemption must be the year in which the New or Expanding Business is established.

Section 56-110 provides:

The City Commission, *at its discretion*, may grant, by ordinance, ad valorem tax exemptions to New and Expanding Businesses located within Enterprise Zones, as defined herein.

Section 56-112, entitled "Scope and terms of exemptions," provides that if a business qualifies as a New Business or an Expanding Business, "*it may be granted an ad valorem tax exemption of up to one hundred (100%) of the assessed value*" of the new or added improvements, as applicable.

Section 56.118 provides:

The City Commission, *at its discretion*, may grant a tax exemption by adopting an ordinance in the same manner as any other City ordinance, which shall include the following:

...

(c) *the period of time for which the exemption may remain in effect, which shall commence in the year in which the new or additional real or tangible personal property is first subject to ad valorem assessment, and the expiration date of the exemption, which shall be no later than 10 years thereafter*

It is clear from the above excerpts from Chapter 56 that the City Commission has vast discretion with respect to ad-valorem exemptions. This discretion is not limited or restricted in Chapter 56 or the Enabling Law. Therefore, in the absence of restriction, it is logical to conclude that where an exemption results in the City owing an applicant an Excess Amount the City Commission, in its discretion, may establish the terms and conditions of the reimbursement of the Excess Amount.

It is well established that Florida law prohibits agreements between municipalities and private parties that have the effect of directly or indirectly waiving the private party's obligation to pay ad-valorem tax. *See, e.g. Lykes Brothers, Inc., v. City of Plant City*, 354 So.2d 878 (Fla. 1978). However, the prohibition applies only in the absence of specific valid legislative

authority permitting the municipality to waive ad-valorem tax. City of Naples v. Conboy, 182 So.2d 412 (Fla. 1965). Because the ad-valorem tax exemption is authorized by Ordinance and the Enabling Law, an agreement between the City and a taxpayer that has been granted an exemption under the Ad Valorem Tax Exemption Program, setting forth the terms of reimbursement of an Excess Amount, is not prohibited.

CONCLUSION

The City Commission may grant ad-valorem tax exemptions under Chapter 56 of the Code having an effective date prior to the year in which the exemption is granted. In such cases, the City Commission may establish the terms by which it will refund to taxpayers any excess ad-valorem taxes paid pending the granting of the exemption. The agreement may provide that the Excess Amount will be credited against the payment of future ad-valorem taxes, although the logistic of implementing such credit should be considered.

PREPARED BY:

REVIEWED BY:



Olga Ramirez-Seijas, Assistant City Attorney



Maria J. Chiaro, Deputy City Attorney

cc: Members of the City Commission
Pedro G. Hernandez, City Manager