

Opinion No. 2012-081

October 15, 2012

The Honorable Uvalde Lindsey  
State Representative  
2257 East Gentle Oaks Lane  
Fayetteville, Arkansas 72703-6142

Dear Representative Lindsey:

I am writing in response to your request for my opinion on the following questions concerning A.C.A. §§ 26-73-110 through -112 (Repl. 2008 & Supp. 2001), which authorize the levy of a special sales and use tax to support a “Public Mass Transportation System and Facilities” (referred to herein as a “mass transit tax”):

1. If the Quorum Court, by Ordinance, levies a tax pursuant to A.C.A. § 26-73-110 through 26-73-112 and refers such to the electorate, is the Quorum Court required to adopt a Resolution referring such an issue by a 3/5 majority pursuant to A.C.A. § 14-14-905(f)?
2. Must the Ordinance contain rebate language pursuant to A.C.A. § 26-74-213 when in fact, the same items listed in A.C.A. § 26-73-301 already, as a matter of state law, are limited to being taxed on the first \$2,500 of a purchase price?
3. Would the Supreme Court’s rationale in *Foster v. Jefferson County Quorum Court*, 312 Ark. 105, 901 S.W.2d 809, control in this situation?
4. What if the County, already, in its Code of Ordinances, provides for rebates on any sales tax as it has existing sales taxes in place already and amended as a result of the Streamlined Sales and Use Tax Act?

## RESPONSE

The answer to your first question is “no,” in my opinion. As for your remaining questions concerning rebates, it appears that the rebate language in A.C.A. § 26-74-213 was rendered obsolete by the General Assembly’s enactment of new taxing provisions (effective January 1, 2008) to provide consistency with the Streamlined Sales and Use Tax Agreement. While including rebate language in the levying ordinance would therefore seem unnecessary, legislative clarification would be beneficial to definitively resolve the matter.

## DISCUSSION

***Question 1 - If the Quorum Court, by Ordinance, levies a tax pursuant to A.C.A. § 26-73-110 through 26-73-112 and refers such to the electorate, is the Quorum Court required to adopt a Resolution referring such an issue by a 3/5 majority pursuant to A.C.A. § 14-14-905(f)?***

Subsection 14-14-905(f) is the general authority upon which a quorum court may rely for referring an ordinance to the voters.<sup>1</sup> In my opinion, this statute does not apply to an ordinance levying a mass transit tax because the referral of that ordinance is governed specifically by A.C.A. §§ 26-73-110 through -112. It is well established that in the interpretation of statutes, a general provision must yield when there is a specific statute involving the particular matter.<sup>2</sup> Under section 26-73-111, if a quorum court decides to levy the mass transit tax, it must call for an election on the question:

On the date of the adoption of an ordinance levying a special local sales and use tax for the benefit of a county, city, or town, the county, city, or town by ordinance *shall provide for calling and holding a special election* on the question.<sup>3</sup>

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<sup>1</sup> Subsection 14-14-905(f)(A)(i) (Supp. 2011) states: “At the time of or within thirty (30) days of adoption and prior to the effective date of an ordinance, a quorum court may refer the ordinance to the electors for their acceptance or rejection.” The referral “shall be in the form of a resolution and shall require a three-fifths (3/5) affirmative vote of the whole number of justices constituting a quorum court.” *Id.* at (ii).

<sup>2</sup> *E.g., Ozark Gas Pipeline Corp. v. Arkansas Public Service Commission*, 342 Ark. 591, 29 S.W.3d 730 (2000); *Benton v. Gunter*, 342 Ark. 543, 29 S.W.3d 719 (2000); *Shelton v. Fiser*, 340 Ark. 89, 8 S.W.3d 557 (2000).

<sup>3</sup> A.C.A. § 26-73-111(a) (Supp. 2011) (emphasis added).

This statute in effect requires that the ordinance levying the mass transit tax be referred to the voters. Unlike A.C.A. § 14-14-905(f), it does not give the quorum court the option of referring the measure to a vote. Nor does it require a super-majority vote to refer the question. Instead, A.C.A. § 27-73-110 itself requires that an election be held. In my opinion, A.C.A. § 14-14-905(f) simply does not apply to the enactment of this mass transit tax.

In response to your particular question, therefore, the quorum court in my opinion is not required to adopt a resolution pursuant to § 14-14-905(f) referring the mass transit tax to the voters.

***Question 2 - Must the Ordinance contain rebate language pursuant to A.C.A. § 26-74-213 when in fact, the same items listed in A.C.A. § 26-73-301 already, as a matter of state law, are limited to being taxed on the first \$2,500 of a purchase price?***

Before considering the rebate language under A.C.A. § 26-74-213, it is necessary to address the threshold question whether this statute, which is part of the general county sales and use tax law, even applies in the context of a mass transit special sales and use tax levied under A.C.A. §§ 26-73-110 through -112. Section 26-74-213 states in part:

A county shall provide in its *ordinance authorized by this subchapter* a rebate from the county for taxes collected pursuant to this subchapter in excess of the tax on the first two thousand five hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price on the sale of a:

- (1) Motor vehicle;
- (2) Aircraft;
- (3) Watercraft;
- (4) Modular home;
- (5) Manufactured home; or
- (6) Mobile home.<sup>4</sup>

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<sup>4</sup> A.C.A. § 26-74-213(a) (Repl. 2008) (emphasis added)..

The subchapter referenced by the above-emphasized language authorizes the levy of a countywide sales and use tax for general or designated purposes, as well as to secure the payment of capital improvement bonds.<sup>5</sup> Because a mass transit tax is authorized by a separate subchapter (A.C.A. §§ 26-73-110 through -112), the rebate language in Section 26-74-213 plainly has no direct applicability to an ordinance levying that tax. Nevertheless, one of the mass transit tax statutes provides that the tax will be administered and collected under the local sales and use tax statutes:

With the exception of the purpose for which the tax herein authorized may be used, *all provisions of § 26-75-201 et seq.*, being enabling legislation for cities and incorporated towns to levy and collect local sales and use taxes, *and §§ 26-74-201 et seq. and 26-74-301 et seq.*, being enabling legislation for counties to levy and collect local sales and use tax, *shall be applicable and controlling in the levy, election, administration, collection, and enforcement of the tax herein authorized....*<sup>6</sup>

The enabling legislation referenced in this statute includes A.C.A. § 26-74-213, along with its requirement of a “rebate from the county” for excess sales and use tax collections. Because a rebate provision undoubtedly relates to the tax’s administration or collection, it would seem to follow from the above statute that Section 26-74-213 applies in the administration and collection of the mass transit tax.

You have nevertheless questioned whether the rebate language must be included in an ordinance levying the mass transit tax. In suggesting the language is unnecessary, you have focused on the fact that state law places a cap on sales and use taxes on the first \$2,500 of proceeds from the sale of certain specified items:

Any municipal or county sales or use tax levied pursuant to the laws of this state shall be levied and collected only on the first two thousand five hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price on the sale of a:

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<sup>5</sup> *See id.* at -204 and -208.

<sup>6</sup> *Id.* at -112(b) (Supp. 2011) (emphasis added).

- (1) Motor vehicle;
- (2) Aircraft;
- (3) Watercraft;
- (4) Modular home;
- (5) Manufactured home; and
- (6) Mobile home.<sup>7</sup>

This sales tax cap was enacted under Act 1273 of 2003,<sup>8</sup> which became effective January 1, 2008.<sup>9</sup> Act 1273 of 2003 made the bulk of the necessary amendments to the various tax laws (including those governing local sales and use taxes) for Arkansas to be a party to the Streamlined Sales and Use Tax Agreement.<sup>10</sup> Act 1273 authorized the Director of the Arkansas Department of Finance and Administration (DF&A) to enter into the Agreement, and provided for the administration of local sales and use taxes under the Arkansas Gross Receipts and Compensating Tax Acts.<sup>11</sup> These acts are administered by DF&A.<sup>12</sup>

I believe you have correctly questioned the need for a rebate provision in the levying ordinance, given the changes brought about by Act 1273 of 2003, as well as other legislation that was enacted to provide consistency with the Streamlined Sales and Use Tax Agreement. As noted above, Act 1273 amended the sales tax laws to provide that a sales or use tax shall be levied and collected only on the first \$2,500 of proceeds from the sale of certain specified items. Previously, the cap was not limited to the sale of these certain items. Originally, the maximum tax was \$25.00. Act 26 of the first special session of 1981 authorized the levy of a 1% countywide sales and use tax, and required a “rebate from the county for taxes collected pursuant to this Act in excess of twenty-five dollars (\$25.00) paid to the

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<sup>7</sup> A.C.A. § 26-73-301 (Repl. 2008).

<sup>8</sup> Acts 2003, No. 1273, § 33. *See also id.* at § 38 (amending A.C.A. § 26-74-220, consistent with the amendment to A.C.A. § 26-73-301, to make the \$2,500 maximum tax limitation applicable to certain named items only).

<sup>9</sup> *See* Acts 2007, No. 180, § 1.

<sup>10</sup> The Streamlined Sales and Use Tax Agreement is an agreement among states that focuses on improving sales and use tax administration through, *inter alia*, “[s]tate level administration of sales and use tax collections[.]” Acts 2003, No. 1273, A.C.A. § 1(b).

<sup>11</sup> *See id.* at § 1(c); 36 (codified at A.C.A. § 26-74-212 (Repl. 2008)).

<sup>12</sup> A.C.A. §§ 26-52-105 and 26-53-103 (Repl. 2008).

county on a single transaction.”<sup>13</sup> The vendor collected the tax on the entire sale amount and the purchaser applied to the county for a rebate. Under a subsequent amendment, the tax was collected only on the first \$2,500 from a single transaction, as defined by county ordinance.<sup>14</sup> Then, with the enactment of Act 1273 of 2003, the \$2,500 cap was limited to the first \$2,500 of proceeds from the sale of the specified items.

The rebate language has remained a part of the legislation throughout these various amendments to the maximum sales tax limitation. A rebate system clearly made sense when the tax was collected on total proceeds, and perhaps subsequently when the tax limitation was tied to a county’s definition of “single transaction.”<sup>15</sup> But the need for a rebate provision would seem to be obviated by Act 1273’s clear limitation on the tax that is to be collected, which is defined by both the amount and the limited number of items that are subject to the cap.

Additionally, and perhaps of greater significance, sales and use tax collections are now administered at the state level, through DF&A, under the Gross Receipts Act and the Compensating Tax Act (A.C.A. §§ 26-52-101 *et seq.* and 26-53-101 *et seq.*, respectively).<sup>16</sup> Particularly significant for purposes of your question concerning rebates, the Gross Receipts Act was amended, effective January 1, 2008, to provide for rebates through DF&A for the local sales and use tax paid on certain eligible purchases:

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<sup>13</sup> Acts 1981 (1st Ex. Sess.) No. 26, § 10.

<sup>14</sup> See Acts 1993, No. 669, §§ 3; 6.

<sup>15</sup> *But cf. Foster v. Jefferson County Quorum Court*, 321 Ark. 105, 116-I, 901 S.W.2d 809 (1995) (supplemental opinion on rehearing) (finding that there was no need for a rebate provision in the ordinance levying a sales and use tax pursuant to Act 26 of the first special session of 1981, as amended by Act 669 of 1993, where the ordinance provided that the tax was only levied “on the first \$2,500 for each single transaction.”)

<sup>16</sup> A.C.A. § 26-74-212(a) (Repl. 2008) (as amended by Acts 2003, No. 1273, § 36). See also A.C.A. § 26-73-105(a) (Repl. 2008) (stating, with regard to the collection of local taxes, that the Director of DF&A “shall collect the tax ... and shall perform all functions incident to the administration, collection, enforcement, and operation of the taxes in the manner and following the procedures that are prescribed for the corresponding state taxes.”) This latter provision was enacted under Act 181 of 2007, effective January 1, 2008. Acts 2007, No. 181, §§ 40; 45. The title to this act states, in part, that it is “An Act to Provide Consistency with the Streamlined Sales and Use Tax Agreement....” Prior to its amendment by the 2007 act, subsection 26-73-105(a) provided for the collection of local taxes either at the local level or, upon request of the local government, by DF&A. See Acts 1977, No. 942, § 5.

A purchaser that pays any county sales or use tax in excess of the tax due on the first two thousand five hundred dollars (\$2,500) of gross receipts or gross proceeds ***from the purchase of a travel trailer or from a qualifying purchase of tangible personal property or a taxable service in a single transaction is entitled to a credit or rebate*** of the excess amount of county sales or use tax paid on each single transaction.<sup>17</sup>

I believe it may reasonably be concluded that the rebate language under A.C.A. § 26-74-213 has been superseded or rendered obsolete in light of this provision. The state-level administration of sales and use tax collections is a clear outgrowth of the State's entry into the Streamlined Sales and Use Tax Agreement. I am informed by DF&A that rebates for local sales and use taxes are no longer provided at the local level. And that would seem to follow from this rebate language under A.C.A. § 26-52-523, as well as A.C.A. § 26-73-301's clear maximum tax limitation enacted under Act 1273 of 2003.

While it is therefore my opinion that the inclusion of rebate language in an ordinance levying a mass transit tax pursuant to A.C.A. §§ 26-73-110 through 112 is likely unnecessary, a question may remain as long as the language is included in A.C.A. § 26-74-214. Legislative clarification would therefore be beneficial to definitively resolve the matter.

***Question 3 - Would the Supreme Court's rationale in Foster v. Jefferson County Quorum Court, 312 Ark. 105, 901 S.W.2d 809, control in this situation?***

*Foster* is a 1995 case. The court found that there was no need for a rebate provision in the ordinance levying a sales and use tax because the ordinance provided that the tax was only levied "on the first \$2,500 for each single transaction."<sup>18</sup> Because state law has changed considerably since *Foster* was decided, I do not believe the case can be viewed as controlling on the current rebate issue. It could potentially have some relevance. But as indicated above, I believe it reasonably follows from the changes brought about by Act 1273 of

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<sup>17</sup> A.C.A. § 26-52-523(b)(2) (emphasis added). A "qualifying purchase" is defined to include certain business purchases. *Id.* at (a)(1). Section 26-52-523 was enacted under Act 179 of 2007, effective January 1, 2008. Acts 2007, No. 179, §§ 1; 2. The title to Act 179 states that it is "An Act to Provide Consistency with the Streamlined Sales and Use Tax Agreement" and "to Provide a Rebate for Local Tax Paid on a Single Transaction[.]"

<sup>18</sup> See n. 16, *supra*.

2003, as well as other legislation that was enacted to provide consistency with the Streamlined Sales and Use Tax Agreement, that there is no need for a rebate provision in a sales tax levying ordinance. If the court is faced with the question and agrees with my analysis, then the decision in *Foster* would seemingly not bear on the matter.

***Question 4 - What if the County, already, in its Code of Ordinances, provides for rebates on any sales tax as it has existing sales taxes in place already and amended as a result of the Streamlined Sales and Use Tax Act?***

Your reference to county ordinances suggests that this question may be premised upon the applicability of *Foster*, and the court's emphasis upon language that was included in the levying ordinance. As stated in response to your third question, however, I do not view *Foster* as controlling, given the changes in state law in this area.

Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN MCDANIEL  
Attorney General

DM/EAW:cyh