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OPINION COMMITTEE



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August 12, 2009

FILE # ML-46145-09
I.D. # 46145

The Honorable Greg Abbott
Office of the Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0815-GA

Re: South Texas Water Authority

Dear General Abbott:

The South Texas Water Authority (STWA), which serves Nueces and Kleberg Counties, currently calculates their Effective Tax Rate (ETR), pursuant to Chapter 49 of the Water Code. Chapter 49 provides that the calculation be based solely on average home value for the year. Prior to 1995, when Chapter 49 of the Water Code was adopted, the ETR was determined by the Tax Code. The Tax Code provides that the calculation for the ETR may be determined by the total tax base which includes home, mineral and commercial values for the year.

It is the desire of the STWA to change the manner in which it calculates its ETR by adopting the Tax Code. This letter requests your opinion as to whether the STWA can adopt its taxes pursuant to the provisions of Sections 26.034, 26.05, and 26.06 of the Tax Code.

Background

The STWA was created in accordance with Chapter 436, Acts of the 66th Legislature, Regular Session, 1979 (the "Creation Legislation").

Section 24 of the Creation Legislation addresses the process for collecting the Authority's ad valorem taxes. Section 24(c) provides:

"The laws of this state applicable to general law cities and towns may be adopted and shall be used to the extent pertinent and practicable."

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As stated, Chapter 49 of the Water Code was created in 1995, after the creation of the STWA. Section 49.002(a), Water Code provides:

"(a) Except as provided by Subsection (b), this chapter applies to all general and special law districts to the extent that the provisions of this chapter do not directly conflict with a provision in any other chapter of this code or any Act creating or affecting a special law district. In the event of such conflict, the specific provision in such other chapter or Act shall control."

The STWA would like to change the manner in which it calculates its ETR by adopting a resolution espousing the laws of the State of Texas applicable to general law cities and towns with respect to ad valorem taxes. A copy of the proposed resolution is enclosed.

STWA's concern is that Section 49.107(g), Water Code provides that Sections 26.04, 26.05 and 26.07, Tax Code apply neither to a tax levied under this section nor to an ad valorem tax levied and collected for the payment of interest on and principal of bonds issued by the District. Section 49.108(f) has a similar provision with respect to contract taxes.

For districts operating pursuant to Chapter 49, Water Code, the public notice and hearing requirement and the right to a rollback election are governed by Section 49.236, Water Code, rather than by Sections 26.04, 26.05 and 26.06, Tax Code.

General law cities are subject to sections 26.04, 26.05 and 26.06, Tax Code. Therefore, if the STWA adopts the resolution, it appears that there will be a conflict between the provisions of the Creation Legislation and the provisions of Chapter 49, Water Code with respect to ad valorem tax procedures. In that event, pursuant to Section 49.002, Water Code, the proceeding under the Creation Legislation will control.

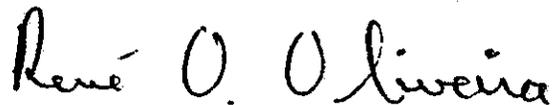
The STWA wants to calculate their ETR using the method that was originally created, based on the Tax Code which compares total values from one year to the next, instead of based on average home values as per the Water Code, because a significant portion of the area served does not include residential areas. The STWA feels that using the Tax Code would be a more accurate representation of their tax base.

We ask your opinion as to whether, after adoption of the resolution, the STWA can adopt its taxes pursuant to the provisions of Sections 26.04, 26.05, and 26.06 Tax Code.

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Thank you for your attention to this matter. Please let me know if I can be of further assistance.

Sincerely,

A handwritten signature in cursive script that reads "René O. Oliveira". The signature is written in black ink and is positioned above the printed name.

René O. Oliveira

cc: Ms. Carola Serrato, South Texas Water Authority
The Honorable Abel Herrero

Draft - Not adopted
CJA

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SOUTH TEXAS WATER AUTHORITY THAT:

Section 1. The laws of the State of Texas with respect to ad valorem taxes that are applicable to general law cities and towns are hereby adopted by the South Texas Water Authority. These laws shall be used to the extent pertinent and practicable for the assessment of the value of property within the South Texas Water Authority and for the assessment, levy and collection of ad valorem taxes by the Authority.

Section 2. This Resolution shall take effect as of the date of its adoption. It shall remain in effect until it is amended or rescinded by the Board of Directors of the South Texas Water Authority.

Section 3. A copy of this Resolution shall be furnished to the Chief Appraisers of the Nueces Central Appraisal District and the Kingsville Central Appraisal District and to the Nueces County Tax Assessor and the Kleberg County Tax Assessor.

Adopted this _____ day of 2009.

By: _____
President, Board of Directors
South Texas Water Authority

ATTEST:

By: _____
Secretary, Board of Directors
South Texas Water Authority