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# LIMITED REVIEW OF THE ADEQUATE FACILITIES TAX

## SUMNER COUNTY, TENNESSEE



JULY 2008



**LIMITED REVIEW OF THE  
ADEQUATE FACILITIES TAX  
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## **Background**

Sumner County adopted Chapter 57, Private Acts of 1999, entitled the Sumner County Adequate Facilities Tax (AFT). This act imposed a tax on new development in Sumner County payable at the time of issuance of a building permit to ensure and require that the persons responsible for the new development share in the burdens of growth. Proceeds from the tax shall be applied to capital projects and/or the related debt service for new school construction. The private act requires the collection of the AFT for the construction, building, reconstruction, erection, extension, betterment, or improvement of land providing a building or structure or the addition to any building or structure, or any part thereof, which provides, adds to, or increases the floor area of a residential use or an industrial use. The AFT does not apply to commercial property. Residential use means the development of any property for a dwelling unit or units. Industrial means the development of any property for use by any person in a business classified as industrial under the United States Government Standard Industrial Classification Manual.

Section 9 of the private act provides for the county building inspector to collect the AFT if the building permit is issued by the county. However, if the building permit is issued by one of the incorporated cities of Sumner County, the city shall, before issuance of the building permit, require evidence by a valid certificate executed by the county building inspector that the full amount of the tax due to the county has been paid. The issuance of a building permit by any city official, without a certificate from the county indicating that the tax has been paid, shall render the city liable to the county for the sum that would have been collected by the county had the certificate of tax paid been required by the city. The cities of Goodlettsville, Hendersonville, Portland, and White House collect the AFT on behalf of the county and remit the collections to the county. The cities of Gallatin, Westmoreland, Millersville, and Mitchellville do not collect the AFT on behalf of the county.

On May 21, 2007, the Sumner County Commission adopted a resolution requesting the Comptroller's Office include the AFT in the annual audit of Sumner County, including an audit of the sums collected by any cities in Sumner County. Our office determined that we would not perform a detailed audit reconciling each building permit issued by the county with each building permit issued by the city since this process would require a substantial amount of resources. Rather, it was our decision to perform a limited review of the procedures in place related to the administration and collection of the AFT.

## **Scope**

Building permit issuance and AFT collection procedures, as provided by the above-noted private act, were reviewed at Sumner County and the cities of Gallatin, Goodlettsville, Hendersonville, Mitchellville, Millersville, Portland, Westmoreland, and White House with emphasis on compliance with Section 9 of the private act. Our review included interviews with various government officials and limited testwork. This review was based on procedures in place at Sumner County and the city governments as of June 2008.

## Findings, Recommendations, and Managements' Responses

Based on the review of policies and procedures in place at Sumner County and the cities of Goodlettsville, Hendersonville, Portland, White House, Gallatin, Westmoreland, Millersville, and Mitchelleville, the following findings and recommendations are presented below. We reviewed these findings and recommendations with management to provide an opportunity for their response. The written responses are paraphrased in this report. Officials offered oral responses to certain findings and recommendations; however, these oral responses have not been included in this report.

1. Finding: The Sumner County Codes Department issues unofficial generic AFT forms and generic prenumbered receipts that do not indicate that they are official documents of Sumner County.

Recommendation: The Sumner County Codes Department should adopt official forms and receipts that identify the documents as official records of Sumner County.

### Management's Response - Sumner County Finance Director

The Sumner County Codes Department will redraft the form and begin using an official receipt form. Prior to implementation, the manner of authentication will be circulated to the various cities so that they will be aware of the appropriate format for the document.

2. Finding: When a city that does not collect the AFT on behalf of the county sends the property owner to the county to pay the AFT prior to issuing a city building permit, and the county determines that the property is exempt from the AFT, the AFT form does not have a section to document the exemption. Currently, under these circumstances, the property owner verbally tells the city of the exemption; however, the city has nothing from the county to document the exemption.

Recommendation: The AFT form should have a section for the county to document any exemption.

### Management's Response - Sumner County Finance Director

As noted in Finding 1, the official form will be redrafted to include this information.

3. Finding: The Sumner County Codes Department does not review the building permits issued by the cities to verify that the county's AFT has been collected on the applicable properties prior to the issuance of the city permit.

Recommendation: On a test basis, Sumner County should periodically review the cities' building permits for compliance with the private act.

Management's Response - Sumner County Finance Director

A proposal for annual audits will be presented to the County Commission for funding.

4. Finding: The cities of Goodlettsville, Hendersonville, Portland, and White House collect the AFT on behalf of the county and generally remit the collections to the county monthly. The cities of Goodlettsville, Portland, and White House provide detailed listings of properties with their remittances. The City of Hendersonville does not provide the county any listing of properties that comprises its remittances. The collections and any listings are forwarded to the Sumner County's Finance Office, where the money is receipted and the listings are filed.

Recommendation: The Sumner County Finance Office should forward copies of any property listings to the Sumner County Codes Department for reconciliation with the county's records for the AFT. The City of Hendersonville should provide a detailed listing of properties comprising each remittance.

Management's Response - Sumner County Finance Director

A standardized information sheet will be developed, and all cities will be encouraged to submit the information in this format.

Management's Response - City of Hendersonville Mayor

The City of Hendersonville has graciously collected the AFT on behalf of the county at no cost for nearly nine years. The city has collected this tax in an effort to streamline the process for those persons responsible for new growth. The city has recently performed an internal audit on approximately 100 building permits pulled in the City of Hendersonville in the last fiscal year and found that buildings constructed matched the building plans within approximately plus/minus three percent, with one exception. This audit took a considerable amount of both time and effort.

Beginning immediately, Monday, July 14, 2008, the City of Hendersonville shall no longer collect the AFT on behalf of the county. Nor shall the city collect the recently passed Road Impact Fee on behalf of the county. The levying of taxes by the county and collection by the city has created confusion in the constituency of the city, has become overly burdensome, and is no longer cost effective for the city. The City of Hendersonville shall join the cities of Gallatin, Westmoreland, Millersville, and Mitchellville and not collect the AFT on behalf of the county.

The city shall, before issuance of a building permit, require evidence by a valid certificate and/or receipt executed by the county building inspector that the full amount of taxes, AFT and Road Impact Fee, has been paid.

The city shall notify the county by submitting a copy of this response to the offices of the County Executive and County Building Inspector, and by posting notice in the city's Codes Department.

5. Finding: The cities of Gallatin, Westmoreland, Mitchellville, and Millersville do not collect the AFT on behalf of the county. Auditors were advised that city officials generally instruct taxpayers to pay the AFT at the county Codes Department before applying for a city building permit; however, some city officials stated that they do not always require proof that the AFT has been paid prior to issuing a city permit.

Recommendation: All cities that issue building permits and do not collect the AFT on behalf of the county should have evidence on file to ensure that the AFT has been collected by Sumner County prior to the issuance of the city permit.

Management's Response - Sumner County Finance Director

Cities will be encouraged to retain, in their files, a copy of the form discussed above. Annual auditing, if approved, will address this issue as well.

Management's Response - City of Millersville City Manager

The Millersville Codes Department will not issue a building permit without proof and evidence on file of the AFT payment as was confirmed by your auditor.

6. Finding: The City of White House does not review building plans to verify square footage on residential property when calculating the AFT, and the City of Hendersonville only reviews building plans if the structure exceeds 5,000 square feet.

Recommendation: The cities of White House and Hendersonville should review all building plans to verify the square footage of floor area to ensure that the AFT is properly calculated.

Management's Response - Sumner County Finance Director

Sumner County will encourage the cities to address this issue.

Management's Response - City of White House Planning/Codes Director

The City of White House is willing to work with Sumner County to ensure that the facilities taxes are accurately collected. The City of White House requests that instead of the plan review required with each single family residential permit, that the City of White House will work with Sumner County to develop an inspection check procedure on the home prior to the certification of occupancy being issued. This procedure would ensure that the house is constructed as listed on the permit. If there is a discrepancy

determined by the inspector, the difference in facilities tax and city building permit fee would be required prior to the certificate of occupancy being permitted. The city would provide a spreadsheet on a monthly basis that includes the building permit square footage and actual constructed square footage. The City of White House would request this program as an alternative to the plan review due to staff time needed for the additional step in the building permit process. If the plan review is required, then building inspectors will be required to store plans for site inspections. The City of White House feels the potential problem with the facilities tax collection is not the up front collection of fees, but the actual construction being completed is different from the originally permitted square footage, and the plan review would not change this problem. The plan review procedure will not prevent builders and owners who choose to misrepresent the building square footage or provide inaccurate plans for the building permit from doing so. The City of White House would be willing to work with Sumner County to develop a building permit application section and procedure for the final inspection check list and methods to handle discrepancies listed above. Except for single and two-family dwellings, the City of White House completes the plan review for residential, commercial and industrial developments. The State of Tennessee does not require a plan submittal for single family residences.

Management's Response - City of Hendersonville Mayor

See the mayor's response in number four above.

7. Finding: Auditors requested the files to examine the building permits issued by the City of Westmoreland for 2006; however, city officials could not locate the files. Of the other building permits reviewed, several forms were not complete.

Recommendation: The City of Westmoreland should ensure that documents are properly filed and available for public inspection. Also, all forms should be properly completed.

Management's Response - Sumner County Finance Director

Sumner County will encourage the city to address this issue.

8. Finding: The City of White House failed to remit AFT collections totaling \$7,630 from September 2007 until notified by auditors from the Comptroller's Office in June 2008.

Recommendation: Officials should ensure that collections of the AFT are remitted to Sumner County monthly.

Management's Response - Sumner County Finance Director

Sumner County will encourage the city to address this issue.

Management's Response - City of White House Planning/Codes Director

The City of White House does submit facilities tax payments monthly. The city made a mistake regarding the payment of facilities tax for a multi-family development, but quickly corrected the situation and included the payment with May 2008 facilities tax payment submittal.

9. Finding: Sumner County does not have any written agreements with the cities providing agreed upon procedures for the collection and remittance of the AFT.

Recommendation: Sumner County and the cities that issue building permits should have written agreements detailing agreed upon procedures to properly administer the provisions of Chapter 57, Private Acts of 1999.

Management's Response - Sumner County Finance Director

Sumner County will encourage the cities to enter into mutual aid agreements to address the duties and responsibilities for collection of the tax.

Management's Response - City of White House Planning/Codes Director

The City of White House encourages and will be willing to work with Sumner County to develop a policy for the collection and remittance of facilities tax. The City of White House requests that Sumner County submit a draft agreement for review.

Management's Response - City of Goodlettsville City Manager

While the city collects this tax on behalf of Sumner County as an accommodation to the county and those paying the tax, we will be happy to work with the county to discuss the creation of a written agreement with the county that documents our practice of collecting the tax and the procedures used to do so.

**Additional Comments from the City of Gallatin**

The following comments concerning the Background section of the limited review were made by the attorney for the City of Gallatin to the city mayor in a memorandum dated July 2, 2008:

The Background section of the limited review correctly recites the language of Chapter 57, Private Acts of 1999: "The issuance of a building permit by any city official, without certificate from the county that the tax has been paid, shall render the city liable to the county for the sum that would have been collected by the county had the certificate of tax paid been required by the city." However, it is the opinion of this office that this provision of the private act is in violation of Tennessee Constitution Article 11, Section 9, and is **void**. In fact, the City of Gallatin and Sumner County have litigated this issue in the past with

respect to the Sumner County Resource Authority. In that case, the City of Gallatin prevailed, and the court found the following language of Article 11, Section 9, of the Tennessee Constitution controlling:

Any act of the general assembly, private or local in form or in effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and have no effect unless the act by its terms either requires the approval by two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected.

The punitive provisions of Chapter 57, Private Acts of 1999, are void and of no effect with respect to the City of Gallatin, because the act did not, by its terms, require approval by two-thirds majority of the Gallatin City Council or by a city referendum. Not only did the act not require such approval, no approval was ever granted. I have provided this information to the auditors performing the limited review.

### **Auditor's Concluding Comments**

Sumner County government officials and the officials of the incorporated cities of Sumner County should develop written agreements to address the collection process which includes the duties and responsibilities of all parties in the administration of the Sumner County Adequate Facilities Tax.