

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by JANET NAPOLITANO ATTORNEY GENERAL December 10, 2002	No. I02-009 (R02-056) Re: Department of Revenue Authority and Responsibilities Regarding Stadium Districts
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TO: Mark W. Killian, Director
Arizona Department of Revenue

Questions Presented

You have asked about the responsibilities and authority of the Department of Revenue ("DOR") under Arizona Revised Statutes ("A.R.S") § 42-5031(F). Specifically, you have asked about the extent of the obligation and authority of DOR or any other state agency to review a county stadium district's compliance with applicable statutory requirements before the State distributes transaction privilege taxes to a district. You have also asked whether DOR should or must withhold distributions from a county stadium district until a review has been completed and compliance has been established.

Summary Answer

Pursuant to A.R.S. § 42-5031, DOR is required to determine whether a stadium district is entitled to receive state payments, the amount of any state payments to the district, and whether,

after 10 years of state payments, a portion of a municipality's local revenue sharing must be distributed to the district. To determine whether a district is entitled to receive state payments under A.R.S. § 42-5031, DOR should have (1) evidence that voters in the district approved the use of the state monies, (2) a resolution from the district requesting payment, and (3) evidence that voters approved a local transaction privilege tax or that there is an intergovernmental agreement that provides local support for the district. The statute does not, however, give DOR broader oversight responsibility with regard to the district.

The statutes do not address the authority of DOR to withhold monies from the district. Whether such action is appropriate may vary depending on the particular facts. In general, DOR should administer A.R.S. § 42-5031 so that the state Treasurer may make payments to an eligible district in the timeframes prescribed by statute.

Background

In 1990, the Legislature enacted statutes governing county stadium districts. 1990 Ariz. Sess. Laws, Ch. 390 (codified as A.R.S. §§ 48-4201 to -4255). The board of supervisors in a county with a population of more than 1.5 million persons or "any county in which a major league baseball organization has established or seeks to establish a spring training operation" may form a county stadium district. A.R.S. § 48-4202(A). The county board of supervisors serves as the board of directors of a countywide district established pursuant to A.R.S. § 48-4202(A).

These statutes also authorized two or more municipalities in the same county to organize "a district for multipurpose facilities if the governing bodies of the municipalities determine that the public convenience, necessity or welfare will be promoted by establishing the district." A.R.S. § 48-4202(B). The Legislature limited the time for municipalities to form this type of district.

Districts may not be formed under this subsection after October 31, 1999, unless before that date, "the governing body of two or more of the municipalities identified the location of a multipurpose facility site and . . . voted with the purpose of forming a district for multipurpose facilities under this subsection." A.R.S. § 48-4202(B). The board of directors of a district organized by two or more municipalities consists of two members appointed by the governing body of each municipality participating in the district, and if the district enters into an intergovernmental agreement with an Indian tribe or community, the board of directors includes two members appointed by that Indian tribe or community. A.R.S. § 48-4202(C).

Either a countywide or a multi-municipality district may construct spring training facilities, A.R.S. § 48-4204, and multipurpose facilities, A.R.S. § 48-4237.¹ Voters in the districts may approve a transaction privilege tax to fund these projects, and the districts are authorized to issue bonds. A.R.S. §§ 48-4251 to -4255. The districts are "tax levying public improvement district[s] and . . . political taxing subdivision[s] of [the] state." A.R.S. § 48-4202(E).

The Legislature also authorized the transfer of certain transaction privilege tax revenues to these districts. A.R.S. § 42-5031. Pursuant to A.R.S. § 42-5031, a district may receive "one-half of the amount of state transaction privilege tax revenues received . . . from all persons conducting business under any business classification . . . at a multipurpose facility site, or in the construction

¹A "multipurpose facility" means any facility or facilities that include:

(a) A primary component that is located in the district on the multipurpose facility site and on lands that are adjacent to each other or separated by public rights-of-way, that the district owns or leases and that is used to accommodate sporting events and entertainment, cultural, civic, meeting, trade show or convention events or activities.

(b) Secondary components that are located in the district and that the board determines are necessary or beneficial to the primary component, limited to on-site infrastructure, artistic components, parking garages and lots, and public parks and plazas. In addition, secondary components may include related commercial facilities that are located within the multipurpose facility site.

A.R.S. § 48-4201(4).

of a multipurpose facility." However, this statute is only applicable if the public or district-owned components of the multipurpose facility cost at least \$200 million to construct. A.R.S. § 42-5031(B). These returns of state transaction privilege tax monies to the district begin after the district board of directors delivers to DOR a resolution requesting payment. A.R.S. § 42-5031(A). The resolution "shall contain notice of the exercise of the option to begin payments provided for in this subsection." *Id.* The state Treasurer is to make these payments each month, beginning the second calendar month after the "commencement event" identified in the resolution. *Id.*

These state payments to the district "shall continue for ten years after either the commencement or the completion of construction of the primary component of the multipurpose facilities, at the option of the district." A.R.S. § 42-5031(A). The state payments are equal to the aggregate amount that the district receives from the municipality, either by a voter-approved transaction privilege tax or through an intergovernmental agreement between the municipality and the district. A.R.S. § 42-5031(D). If the local monies paid to the district fall short, beginning six months after the ten-year period for state payments ends, state shared revenues to the municipality are reduced by an amount equal to the excess in state transaction privilege taxes received over the local support for the district. A.R.S. § 42-5031(E).² This amount is then distributed to the district. *Id.*

²This withholding provision reads as follows:

If the municipality in which the multipurpose facility site is located fails to satisfy the obligations of the municipality pursuant to subsection D of this section, then beginning six months after the end of the ten year period referred to in subsection A of this section, distributions otherwise payable to the municipality pursuant to subsection C of § 42-5029, shall be reduced by an amount equal to the excess of the amount received by the district pursuant to this section over the amount paid or expended by the municipality. The amount of the reduction shall be distributed to the district to satisfy the financial commitment of the municipality pursuant to subsection D of this section.

A.R.S. § 42-5031(E).

Section 42-5031 also addresses DOR's responsibilities to administer that section by providing:

To comply with the requirements of this section, the county stadium district board of directors of any city or town that is part of the county stadium district shall supply the department [of revenue] with all requested information necessary to administer this section.

A.R.S. § 42-5031(F).

Analysis

The role of DOR is determined by an analysis of the relevant statutory language. The primary goal of statutory construction is to effectuate the Legislature's intent. *State v. Huskie*, 202 Ariz. 283, 284, 44 P.3d 161, 162 (App. 2002). Pursuant to A.R.S. § 42-5031(F), the district must supply DOR "with all requested information necessary to administer" the statutory provisions. The statute provides no similar instruction regarding any other state agency. This suggests that although the Treasurer is responsible for actually making the appropriate payments, DOR should request the information that the State needs to comply with the requirements of Section 42-5031.

Triggering State Payments to District. Pursuant to A.R.S. § 42-5031, before a district may receive state payments:

(1) voters must authorize the use of the state payments as prescribed in the statutes governing these stadium districts;³

³The voters must authorize the district to

[u]se amounts paid to the district pursuant to § 42-5031 and received from the multipurpose facility site the boundaries or boundary amendment of which are described in the publicity pamphlet as allowed by law, including securing the district's bonds or other financial obligations issued or incurred under this chapter for the construction of the multipurpose facilities which are owned by the district or which are publicly owned.

A.R.S. § 48-4237(F)(5).

(2) the district must deliver a resolution requesting payment and give notice of the event on which payments are to commence (either commencement or completion of construction of the "primary component" of the multipurpose facility);⁴ and

(3) voters must approve a local transaction privilege tax or enter into an intergovernmental agreement between the municipality and the district for payments to the district.⁵

Before any state payments are commenced, DOR should have evidence that these requirements have been satisfied. DOR could, for example, receive the election canvass or a similar public record to verify that voters approved the use of the state payments as required by A.R.S. § 42-5031(A). If the district is relying on an intergovernmental agreement to comply with § 42-5031(D), DOR should obtain a copy of the agreement. The statutory language, however, does not suggest that DOR must investigate procedural requirements concerning an election or the adoption of the resolution, or, for example, review whether the specific project meets all legal requirements set forth in statute. Although the word "administer" may include decision-making responsibilities, *see Facilitec v. Hibbs*, No. 1 CA CV01-0139, slip op. at ¶ 9 (App. Nov. 5, 2002), DOR is

⁴These first two requirements are described in subsection A of Section 42-5031:

[I]f a county stadium district is authorized by an election pursuant to § 48-4237, subsection F, paragraph 5 to use the amounts paid to the district pursuant to subsection B of this section as permitted by law, then after delivery of a resolution of the district board of directors requesting payment, which resolution shall contain notice of the exercise of the option to begin payments provided for in this subsection, the state treasurer shall pay each month, beginning with the second calendar month after the optional payment commencement event contained in the resolution. . . the amount determined under subsection B of this section to the district.

⁵This requirement is established in A.R.S. § 42-5031(D):

To qualify for payments under this section, the municipality in which the multipurpose facility site is located must either obtain vote approval for a local transaction privilege to pay costs associated with a multipurpose facility, or make a financial commitment by intergovernmental agreement between the municipality and the district to make direct payments to the district from any lawful source

responsible only for "administering" the State payments to the district. DOR does not have broader oversight responsibilities for the district operations. The local district board is responsible for the district's governance and should ensure that the district complies with all legal requirements.⁶

This conclusion regarding DOR's limited responsibilities is supported by the legislative history. The language in Section 42-5031(F) was added in 1999 in response to testimony by DOR representatives that they would have difficulty getting information needed to perform their responsibilities relating to state payments to the district. 1999 Ariz. Sess. Laws, Ch. 290, § 9; *see also* Minutes, Ariz. House of Representatives, Committee on Gov't Reform, 44th Leg., 1st Reg. Sess. (Feb. 10, 1999); Minutes, Ariz. House of Representatives, Committee on Program Authorization Review, 44th Leg., 1st Reg. Sess. (March 29, 1999). Thus, subsection F enables DOR to obtain the information that it needs to administer Section 42-5031. *See* Bundgaard Senate Floor Amendment #2 to HB 2061, 44th Leg., 1st Reg. Sess. (1999); Tape of Senate Committee of the Whole, 44 Leg., 1st Reg. Sess. April 27, 1999 (HB 2061).⁷ Nothing in the statutory language or legislative history suggests a broader oversight role for DOR.

Determining the Amount of the State Payments to the District. If the district is eligible to receive payments from the State, DOR must then determine the amount of those payments. This requires a calculation of the transaction privilege taxes collected from persons conducting business

⁶ The Auditor General provides some state oversight of the district. For example, the statute requires that the district send annual audits to the Auditor General and permits the Auditor General to conduct further inquiries "as he deems necessary." A.R.S. § 48-4231(D). In addition, the Auditor General must audit the district if the district's liquid assets will not cover its obligations. *See* A.R.S. § 48-4231(C).

⁷ DOR representatives expressed their concerns in testimony regarding SB 1172, which was entitled "stadium districts; multipurpose facilities." SB 1172 made various changes to the statutes governing these stadium districts. The language in 42-5031(F) was added in a different bill, HB2061, which was entitled "DOR; Omnibus Tax Administration Act."

"at a multipurpose facility site or in the construction of a multipurpose facility." A.R.S. § 42-5031(B). The State is to transfer 50% of those transaction privilege taxes to the district.

There are, however, two limitations on this general principle. First, to receive any state funding, the public or district owned components of the multipurpose facility district must cost at least \$200 million to construct. Second, the amount transferred each month under this section cannot exceed "the net new state transaction privilege tax revenues received from the multipurpose facility site as compared to the revenues received in the same month during the twelve months prior to the month in which the public vote. . . [approving the project] is held." A.R.S. § 42-5031(B). Obviously, before construction begins, the actual facility costs cannot be determined, but the district should satisfy DOR that, when completed, the \$200 million requirement will be met. A statement in the resolution from the district board that the facility will cost at least \$200 million and an estimated budget supporting that conclusion are among the items that may satisfy that requirement.

DOR should determine whether a district is entitled to receive state payments and the amount of those payments so that the Treasurer may make the necessary payments in the time frame established by statute. *See* A.R.S. § 42-5031(A) (payments commence in the "second calendar month after the optional payment commencement event contained in the resolution"). The Legislature did not address the authority of DOR to delay or withhold monies from the district. Whether such action is appropriate would require an analysis of specific facts.

Diverting Payments to a District Because of Insufficient Local Funding. The total local support for the district (either by payments through an intergovernmental agreement or a voter-approved tax) must equal the total amount that the district receives from the State over ten years. A.R.S. § 42-5031(D). If the local share does not equal the amount that the district receives from the

State, then amounts that the municipality would have received in state shared revenues under A.R.S. § 42-5029(C) are, instead, diverted to the district. The state shared revenues diverted to the district equal the difference between the amount the district received from the State and the amount the district received in local contributions. A.R.S. § 42-5031(E).

DOR must therefore ensure that the district provides it with the information necessary to compare the State and local payments to the district, so that DOR may redirect revenue sharing from the municipality to the district, if necessary. *See* A.R.S. § 42-5031(F).

Conclusion

Based on information provided by a district, DOR is required to determine whether state payments to a district are required pursuant to A.R.S. § 42-5031, the amount of those payments, and whether a portion of a municipality's local revenue sharing must be distributed to the district as described in A.R.S. § 42-5031(E). However, DOR need not investigate or otherwise audit the information provided by the district. DOR should make the determinations required to implement Section 42-5031 in the statutorily prescribed time frames.

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