

Seminole Housing Authority, tax exemption

Number: INFORMAL

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Mr. John W. Chapman, Jr.
Attorney for the Hillsborough
County Property Appraiser
Post Office Box 3269
Sarasota, Florida 34230

Dear Mr. Chapman:

You have asked on behalf of The Honorable Ron Alderman, Property Appraiser for Hillsborough County, whether the Seminole Tribal Housing Authority is immune or otherwise exempt from ad valorem taxation.

In sum, while the determination as to whether an entity is entitled to an exemption from ad valorem taxation is one which must be made, at least initially, by the property appraiser and cannot be delegated to this office, it appears that Indian lands located within the reservation have generally been considered exempt from taxation; moreover, as housing authorities have been recognized by the Legislature to serve a public and governmental purpose, the property of the Seminole Tribal Housing Authority located off the reservation may be exempt from ad valorem taxation.

You have indicated that the Seminole Tribal Housing Authority, created by the Seminole Tribe pursuant to federal law, has purchased property in order to carry out its purpose. The authority seeks to provide safe and sanitary dwelling accommodations for persons of low income and is precluded from constructing or operating any project for profit.

The courts have recognized that while Indian property may be immune from state taxation when such property is located on reservation lands, Indian property located off the reservation does not share such immunity.[1] The Legislature, however, has declared that the activities of a housing authority constitute a public use and not-for-profit and serve a governmental function of state concern.[2] Thus, in section 423.02, Florida Statutes, the Legislature has stated that housing projects, including all property of housing authorities used for or in connection therewith or appurtenant thereto, of housing authorities shall be exempt from all taxes and special assessments of the state or any city, town, county, or political subdivision of the state. In lieu of such taxes or special assessments, a housing authority may agree to make payments to any county, municipality or political subdivision of the state for services, improvements or facilities furnished by such governmental entity for the benefit of the housing project provided that such payments do not exceed the cost to such governmental entity of the services, improvements or facilities to be furnished.

While the housing authority was not created pursuant to chapter 421 (Housing Authorities Law) or chapter 422 (Housing Cooperation Law), it is a housing authority operating within this state.

This office has stated that an out-of-state housing authority does not qualify as a housing authority for purposes of the exemptions afforded in chapter 423, Florida Statutes.[3] The conclusion reached in Attorney General Opinion 55-38, for example, was based on a consideration of the language in section 423.01, Florida Statutes, discussing the benefits to be accomplished within this state by the provision of affordable housing. Out-of-state housing authorities, however, did not accomplish that purpose and, accordingly, this office concluded that the exemption did not apply. The housing authority in the instant inquiry is located and performing its functions within Florida, thereby accomplishing the purposes and functions recognized in chapter 423 although created pursuant to federal, rather than state, law.[4]

The determination as to whether an entity is entitled to claim an exemption from ad valorem taxation is one which must be made, at least initially, by the property appraiser and cannot be delegated to this office; however, inasmuch as housing authorities have been recognized by the Legislature to serve a public and governmental purpose, the Seminole Tribal Housing Authority may be exempt from ad valorem taxation.

I trust these informal advisory comments will assist you in the resolution of this matter.

Sincerely,

Joslyn Wilson
Director, Division of Opinions
Assistant Attorney General

JW/tlsgk

[1] See, e.g., *Leading Fighter v. County of Gregory*, 230 N.W. 2d 114 (S.D. 1975); *Salt River Pima-Maricopa Indian Community v. Yavapai County* 50 F. 3d 739 (9th Cir. 1995) (state may tax Indian property located off reservation provided that such taxation is nondiscriminatory and is imposed equally upon similarly situated groups).

[2] See s. 423.01(4), Fla. Stat. (1995).

[3] See, e.g., Ops. Att'y Gen. Fla. 55-38 (1955) and 62-44 (1962).

[4] Cf. *Smith v. Housing Authority of City of Daytona Beach*, 3 So. 2d 880 (Fla. 1941), in considering the precursor to section 423.03, Florida Statutes, the Court stated that the question of exemption turns on the nature of use of the property.