



# A SELECTED READING

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## Sources of Revenue for Alabama Cities and Towns

**S**ection 104, Alabama Constitution, 2022, states: “The Legislature shall not pass a special, private, or local law in any of the following cases ... (18) amending, confirming, or extending the charter of any private or municipal corporation, or remitting the forfeiture thereof; provided, this shall not prohibit the Legislature from altering or rearranging the boundaries of the city, town or village.”

Prior to 1901, municipalities in Alabama were created individually by acts of the Legislature, each municipality having its special grant of charter powers. Section 104 placed a responsibility on the Alabama Legislature to provide for the incorporation of cities and towns under general laws available to all which might qualify within such general classifications as the general acts adopted by the Legislature might specify.

Between 1901 and 1907, the Legislature began passing general laws relating to the creation and operation of Alabama municipalities. In 1907, these laws were collected in one body of law known as the “Municipal Code of 1907.” Since that time, this code has been added to, amended and handed down in the Alabama Code of 1923, the Code of Alabama 1940, and 1958 Recompiled Edition of the Code of 1940, and Title 11 of the Code of Alabama 1975, as amended.

Alabama is not a so called “home rule” state. Cities and towns in Alabama are dependent on the Legislature for their powers and the Legislature has the power to abolish a municipality in the exercise of its plenary powers, subject to U.S. Constitutional prohibitions against impairing obligations of contract.

This background points out that Alabama cities and towns are created under authority of the Legislature, they receive their charter powers from the Legislature, and they can be abolished by the Legislature.

Municipal taxing power must be granted by the Legislature, either expressly or through an implied grant of power. Thus, simply because municipalities in one state have certain types of taxing authority does not mean that Alabama municipalities have the same power. Alabama cities and towns can only exercise the taxing authority they are granted by the Legislature.

### Statutory Taxing Powers of Alabama Municipalities

The principal statutory grant of authority for Alabama cities and towns to tax businesses or trades, occupations or professions is found in Section 11-51-90, Code of Alabama 1975. Through the years the Supreme Court of Alabama has sanctioned the levy of business license taxes, gasoline taxes, tobacco taxes, amusement taxes, lodgings taxes, gross receipts license taxes in the nature of sales taxes and the occupational license tax similar to an income tax based on this grant of license power. Except as limited by special provisions hereafter listed or discussed in detail in the article on licensing exemptions elsewhere in this publication, the rates are left to the legislative discretion of the municipal governing body, subject to the court-required test of reasonableness.

Section 11-51-90, Code of Alabama 1975, gives all municipalities the power to license any exhibition, trade, business, vocation, occupation or profession not prohibited by the Constitution or laws of the state which may be engaged in or carried on in the municipality. They have the authority to fix the amount of licenses, the time for which they are to run, not exceeding one license year, to provide a penalty for doing business without a license. The city or town may require sworn statements as to the amount of capital invested or value of goods or stocks, or amounts of sales or gross receipts where the amount of the license is made to depend upon the amount of capital invested, value of goods or stocks, or amount of sales or gross receipts and to punish any taxpayer for failure or refusal to furnish sworn statements or for giving of false statements in relation thereto.

The license authorized by subsection (a) of this section as to taxpayers engaged in business in connection with interstate commerce shall be confined to that portion within the limits of the state and where the taxpayer has an office or transacts business in the municipality imposing the license.

The power to license conferred by this section may be used in the exercise of the police power as well as for the purpose of raising revenue, or both. The taxes authorized by Section 11-51-90, Code of Alabama 1975, apply in the corporate limits

of municipalities. Under authority of Section 11-40-10 of the Code, cities and towns are granted extraterritorial police powers extending 1.5 miles beyond the corporate limits of municipalities of less than 6,000 inhabitants and three miles beyond the corporate limits of municipalities having 6,000 or more inhabitants. As a result of Act 2021-297, the police jurisdiction of every municipality was “frozen” as of January 1, 2021 and cannot continue to expand as the corporate limits expand. Section 11-40-10(a)(2), Code of Alabama 1975. Eventually, the police jurisdiction will go away as territory located in the police jurisdiction is annexed into the municipal corporate limits. In addition, regarding the authority to collect license fees in the police jurisdiction, the Act provides that only those municipalities that were collecting licenses in the police jurisdiction on January 1, 2021 may continue to do so. The licensing powers given to municipalities may be exercised in the police jurisdiction to an extent not exceeding one-half the levy in their corporate limits.

Special rules apply to the timing of these levies, and a municipality is required to provide notice of the revenue it collects in the police jurisdiction. Since 2015, municipalities collecting revenue within the police jurisdiction have been required by law to provide an annual report accounting for all license revenues collected in the police jurisdiction as well as a list of all services provided in the police jurisdiction. Act 2021-297 amended Section 11-51-91, Code of Alabama 1975 regarding reporting the collection of license revenue in the police jurisdiction. The 2021 statutory change provides that on or before December 31, 2021, any municipality collecting license revenue or other taxes and fees within its police jurisdiction outside the corporate limits shall notify the Department of Examiners of Public Accounts that it collects license revenue and other taxes and fees in its police jurisdiction outside the corporate limits. Section 11-51-91(c)(1), Code of Alabama 1975.

Beginning March 1, 2022, each municipality collecting license revenue and other taxes or fees within its police jurisdiction outside the corporate limits shall prepare an annual report which shall include an accounting of all license revenues and other taxes or fees collected in the police jurisdiction outside the corporate limits during the previous fiscal year and provide a list of the services provided by the municipality and a list of providers within the police jurisdiction outside the corporate limits. If the municipality provides police or fire protection within the police jurisdiction, the report shall include the following information:

- a. The total annual budget for each police department and fire department within the municipal corporate limits
- b. The total number of calls responded to by each police or fire department within the municipal corporate limits and the total number of calls responded to by each police or fire department within the police jurisdiction. For the police department, the number should include the number of calls responded to as well as the number of citations and arrests made. Section 11-51-91(c)(1), Code of Alabama 1975.

A copy of the annual report, which shall be completed by March 1 for the previous fiscal year, shall be forwarded to the Department of Examiners of Public Accounts and shall be made available to the public. Section 11-51-91(c)(2), Code of Alabama 1975. **If a municipality fails to file a report within 12 months of the report being due, the municipality may not collect any further license revenue or any other taxes or fees in the police jurisdiction outside the corporate limits.** Section 11-51-91(c)(3), Code of Alabama 1975. The Department of Examiners of Public Accounts is required to provide written notice to the Department of Revenue of any municipality prevented from the further collection of license revenue or other taxes or fees due to its failure to file. Section 11-51-91(c)(4), Code of Alabama 1975.

In addition, the Legislative Committee on Public Accounts, by majority vote, has the authority to direct the Examiners of Public Accounts to perform an audit of any municipality collecting revenue in its police jurisdiction outside the corporate limits. A municipality is not responsible for the cost of the audit by Examiners of Public Accounts unless it is determined by the Examiners that a municipality is not in compliance with the law for the collection and expenditure of license revenue within the police jurisdiction. In addition to the new reporting requirements in Act 2021-297, and in view of Section 11-51-91 and the Court’s decision in *State Dept. of Rev. v. Reynolds Metal*, the League strongly recommends that all municipal governing bodies compare the amount of revenues collected from businesses in the police jurisdiction with the annual costs of supervision of the area. If the study reveals that more was spent by the city in regulating the area than was collected in revenues, the governing body should adopt a resolution stating this fact and reaffirming the police jurisdiction levy for the next license tax year. If the study reveals the city collected more revenue than was expended to provide services to the police jurisdiction, the amount of the license levy should be lowered accordingly. All funds received from this type of levy must be spent in providing services to the police jurisdiction area. Authority for this power is found in Section 11-51-91, Code of Alabama 1975. Although this section gives a municipality the authority to assess a license tax against businesses located outside the corporate limits of the municipality but within the police jurisdiction, in order to reasonably reimburse the municipality for supervision of the businesses so located, the governing body must make an effort to relate the fees levied to the reasonable cost of supervision in the area. *See, Hueytown v. Burge*, 342 So.2d 339 (Ala. 1977).

The Alabama Supreme Court in *Ex parte Leeds*, 473 So.2d 1060 (1985), held that in order to collect license fees from businesses located in the police jurisdiction, the city had to show that the amount collected from each business bore a

reasonable relationship to the cost of the services the city provided for that business. In 1986, Section 11-51-91, Code of Alabama 1975, was amended to provide that police jurisdiction taxes will be valid as long as the amount of revenue collected from the police jurisdiction as a whole does not exceed the cost of providing services to the area as a whole. A business-by-business accounting is no longer necessary. This was upheld in *State Department of Revenue v. Reynolds Metals Co.*, 541 So.2d 524 (Ala. 1988).

Section 40-25-2, Code of Alabama 1975, prohibits additional municipal tobacco taxes beyond the rate in place on May 18, 2004. Counties and municipalities may use the authority granted in Section 40-25-2(g) of the Code of Alabama 1975, to administer a tobacco tax for cigarettes and require the use of monthly reports, rather than stamps, to account for the monthly sales of cigarettes and remit the taxes collected. AGO 2004-221.

Additional information on business licenses can be found in the *Selected Reading* titled “License Schedule Ordinance”.

### **Limitations on Licensing Powers**

Special limitations on the municipal licensing power are found as follows (all references are to the Code of Alabama 1975): fire and marine insurance companies (Section 11-51-120); insurance other than fire and marine (Section 11-51-121); railroads (Section 11-51-124); sleeping car companies (Section 11-51-125); express companies (Section 11-51-126); telegraph companies (Section 11-51-127); telephone companies (Section 11-51-128); other public utilities (Section 11-51-129); banks (Section 11-51-130); savings and loans (Section 11-51-131); financial institutions (Section 40-16-6); motor carriers (Section 37-3-33); beer (Section 28-3-194); table wine (Section 28-7-13); certain electrical contractors (Section 34-36-13); realtors (Section 11-51-132 and Act 2008-383); Shriner events (Section 40-9-13); and waste renders (Section 11-40-23). In addition, there are a number of partial or full exemptions such as exemptions for farmers (Section 11-51-105) and others. These exemptions are discussed in detail in the *Selected Reading* titled “License Exemptions and Limitations”.

### **Limitations on Additional Local Motor Fuel Tax Levied after August 1, 2023**

In Act 2023-288, the Alabama Legislature placed a limitation on the use of municipal local taxes on motor fuels defined in Section 40-17-322, Code of Alabama 1975, levied after August 1, 2023. Pursuant to this Act, any additional local tax amount levied on motor fuels after August 1, 2023 may be used only for the cost of administering the tax, cost of construction, reconstruction, maintenance, mass transit, and repair of roads, bridges, and rights-of-ways, cost of traffic regulation, and the cost of enforcing traffic and motor vehicle laws. Any local motor fuel taxes levied prior to August 1, 2023 are not subject to this restriction and can be treated as general fund revenue.

### **Occupational License Tax**

Section 11-51-90, Code of Alabama 1975, has been interpreted by the courts as giving municipalities authority to levy a tax for the privilege of working in the municipality. Such a tax operates in a manner similar to an income tax. The tax, which is in effect in at least 20 cities and towns, has been upheld by the Alabama Supreme Court on two occasions in the cases of *Estes v. Gadsden*, 266 Ala. 166, 94 So.2d 744 (1957), and *McPheeter v. Auburn*, 288 Ala. 286, 259 So.2d 833 (1972). Such a tax cannot be collected from persons who work only in the police jurisdiction of a municipality. *See, Mountain Brook v. Beaty*, 349 So.2d 1097 (Ala. 1977).

Section 11-51-198, Code of Alabama 1975, prohibits a municipality that does not have an occupational tax prior to February 1, 2020 from imposing an occupational tax unless the tax is authorized by local law.

### **True Sales Tax**

In 1969 the Legislature gave municipalities the authority to convert their gross receipts license taxes in the nature of sales taxes to true sales and use taxes which are assessed on the consumer rather than on the seller. Sections 11-51-200 through 11-51-207, Code of Alabama 1975. However, no municipality may levy any such tax against the Alcoholic Beverage Control Board of the State of Alabama in the sale of alcoholic beverages. Section 11-51-200, Code of Alabama 1975.

All municipalities are authorized to collect sales and gross receipts license taxes through the Alabama Department of Revenue. Sections 11-51-180 through 11-51-185, Code of Alabama 1975. Those municipalities not using the Department of Revenue may collect their taxes themselves or hire private collectors.

Further, municipalities may adopt ordinances to obtain information relating to the amount of sales tax that has been reported by specific businesses within their taxing jurisdiction. Municipal officials must follow the laws relating to confidentiality of sales and use tax information due to privacy concerns found in Section 40-2A-10, Code of Alabama 1975. Please see the *Selected Reading* titled “Municipal Sales Tax in Alabama” for more detailed information on this and other issues related to sales and use taxes.

## **Simplified Sellers Use Tax (SSUT)**

The “Simplified Sellers Use Tax Remittance Act”, codified at Sections 40-23-191 to 199.3, Code of Alabama 1975, allows “eligible sellers” to participate in a program to collect, report and remit a flat 8 percent Simplified Sellers Use Tax (SSUT) on sales made into Alabama. An “eligible seller” is one that sells tangible personal property or a service into Alabama from an inventory or location outside the state and who has no physical presence and is not otherwise required by law to collect tax on sales made into the state. The term also includes “marketplace facilitators” as defined in Section 40-23-199.2(a)(3), Code of Alabama 1975, for all sales made through the marketplace facilitator’s marketplace by or on behalf of a marketplace seller.

The proceeds from the SSUT 8 percent tax are distributed as follows:

- 50% is deposited to the State Treasury and allocated 75 percent to the General Fund and 25% to the Education Trust Fund.
- The remaining 50% shall be distributed 60% to each municipality in the state on the basis of the ratio of the population of each municipality to the total population of all municipalities in the state as determined in the most recent federal census prior to distribution and the remaining 40% to each county in the state on the basis of the ratio of the population of each county to the total population of all counties in the state as determined in the most recent federal census prior to distribution.

The department of revenue will provide a list of SSUT account holders on the website disclosing the start and cease date of participants in the program, as applicable. This list is provided so that the local governments are aware of the taxpayers who fall under the protection of the SSUT Act.

## **Ad Valorem Tax**

All cities and towns of the state are authorized to levy a five-mill tax upon real and personal property located within their limits computed on the value as assessed for state and county taxation. No referendum is required for the levy of this tax. Section 216, Alabama Constitution, 2022. Amendment 56 (Section 216.04) Alabama Constitution, 2022, authorizes all municipalities to levy such a tax at a rate not exceeding 12.5 mills, provided that all over five mills is authorized by the electors at an election called for that purpose. Amendments six (Dallas Section 4), eight (Section 216.01), 13 (Section 216.03), 17 (Section 216.02), 54 (Winston Section 9), and 84 (Marion Section 4), Alabama Constitution, 2022, provide different rates for specified cities and towns. The responsibility for levying the ad valorem tax rests upon the council.

Amendment 373 (Section 217) Alabama Constitution, 2022:

- Authorizes any county, municipality or other taxing authority to decrease any local ad valorem tax rate at any time, provided such decrease does not jeopardize the payment of any bonded indebtedness secured by such tax.
- Authorizes increasing local ad valorem tax rates through a procedure calling for, first, a proposal and public hearing by the local taxing authority; second, enactment of the proposal by the legislature; and third, approval in a special election by a majority of the qualified electors of the area in which the tax is to be levied or increased who vote on the proposal.
- Provides that, except as otherwise provided in the Constitution for the cities of Mountain Brook, Vestavia Hills and Huntsville, the amount of ad valorem taxes payable to the state and to all counties, municipalities and other taxing authorities with respect to any item of taxable property described as Class I Property (utility property) shall never exceed two percent of the fair and reasonable market value of such taxable property in any one taxable year. For Class II Property (all property not otherwise classified), the limit is 1.5 percent. For Class III Property (agricultural, forest, single-family, owner-occupied residential, and historic site property), the limit is 1 percent. For Class IV Property (private automobiles and pickup trucks), the limit is 1.25 percent.
- Allows all local taxing entities within a county to levy additional millage not to exceed two mills in the aggregate to recoup the costs of the court-ordered statewide reappraisal program. The additional millage is to remain until the cost of the reappraisal program has been recovered.
- This amendment was implemented by legislation codified in Chapters 7 and 8 of Title 40 of the Code of Alabama 1975.

Most cities and towns use the optional method of levying and collecting their ad valorem taxes which is provided in Sections 11-51-40 through 11-51-74, Code of Alabama 1975. Under this authority, the council adopts a resolution or ordinance establishing the levy in May. A certified copy of this action is delivered to the county tax assessor on or before June 1. If this procedure is followed, the county tax collector makes the collection for the municipality, which is due on October 1, based on the state and county assessment for the preceding year. If a municipality has established its ad valorem tax by ordinance, providing it shall be in force from year to year until repealed or amended, then the council would not be required to take any further action on the subject except to amend or repeal.

If a municipality has established its ad valorem tax by ordinance, providing that it shall be in force from year to year until repealed or amended, then the governing body would not be required to take any further action on the subject except to amend or repeal. For this service many municipalities pay the maximum assessment fee of two percent and a collection fee of 2 percent. The fee is one half of one percent each in Jefferson County. *See*, Section 11-51-74, Code of Alabama 1975. In those counties where the tax assessor and tax collector are paid a salary, the municipality pays its pro rata share of the salary. *See*, Section 40-6A-2, Code of Alabama 1975, as amended.

The municipal property tax on automobiles is handled the same way and the law prohibits the issuance of an auto tag without the production of a valid paid certificate.

A grant of general legislative authority to a municipality to assess and levy taxes on property within its jurisdiction confers no express, implied, or inherent authority to exempt any property or any particular class of property from taxation. AGO 2004-217.

### **Limitations on Ad Valorem Tax Assessment**

In Act 2024-344, the Alabama Legislature placed a limitation on the assessed value of certain real property for ad valorem tax purposes. Class II and Class III properties as defined in Section 40-8-1, Code of Alabama 1975 shall be limited to not more than a seven percent (7%) increase in the assessed value of the property from the previous year's assessed value.

Limitations do not apply to (1) real property that has never been assessed, (2) additions or improvements to real property, including new construction not involving repairs or ordinary maintenance of an existing structure or grounds of the property, (3) change in the classification of the property, (4) change in ownership of the property except for transfers between spouse or family members for no or nominal consideration, including upon death of owner and transfers to redemption after foreclosure of a mortgage, tax sale, or tax lien, and (5) property located in a tax increment district created pursuant to Chapter 99 of Title 11.

The limitations provided in Act 2024-344 become effective October 1, 2024 and continue through the fiscal year beginning in October 1, 2027.

### **Selected Attorney General's Opinions and Court Decisions relating to Ad Valorem Taxes**

**NOTE:** In reviewing cases and opinions, please remember these summaries are not intended as a substitute for reading the opinion or decision itself.

- A subdivision lot on which a house is under construction cannot be classified as a Class III property unless the house is occupied by the owners for their exclusive use as a single-family dwelling on law day, October 1. A farm on which a house is under construction can be classified as Class III property, regardless of occupancy, if the farm is being used for any of the purposes described in Section 40-8-1(b)(1), Code of Alabama 1975, on law day, October 1. Any questions of equal protection concerning Section 40-8-1 must be left to the courts. AGO 2000-123.
- Property of a medical clinic board organized under Sections 11-58-1, et seq., Code of Alabama 1975, is exempt from ad valorem taxation. AGO 1996-147.
- Property of the State Retirement System is exempt from ad valorem taxation. AGO 1996-154
- A property owner must claim an exemption from ad valorem taxation in order to receive the exemption. Absent factual issues which might justify it, the taxing official may not grant an exemption for years in which the exemption was not claimed. AGO 1997-064 and AGO 1996-220.
- In *State v. Delaneys, Inc.*, 668 So.2d 768 (1995), the Alabama Court of Civil Appeals held that the classification of land as timberland in one tax period did not preclude reclassifying the land during a different tax period if the assessor determined that the property was no longer being used as timberland.
- In *Pilcher Land Corp. v. Johns*, 677 So.2d 746 (1996), the Alabama Supreme Court held that the tax assessor properly refused to classify property as current use property.
- In *Mingledorff v. Vaughn Regional Medical Center, Inc.*, 682 So.2d 415 (1996), the Alabama Supreme Court held that a nonprofit hospital is entitled to an ad valorem tax exemption as a charitable organization because receipt of payment from patients financially able to pay does not defeat the charitable purpose of the hospital.
- There is no income limitation for claiming a homestead exemption for someone who has a permanent and total disability or who is blind as defined by Section 1-1-3 of the Code. AGO 1998-079.
- The burden is on a person claiming an ad valorem tax exemption to prove that they are entitled to the exemption. AGO 1998-040.

- The question of what constitutes occupancy on tax day is to be determined by the assessing officer. AGO 1998-084.
- A county tax official cannot exempt property that is not listed by the taxpayer as exempt for the tax year in question. AGO 1997-119
- Motor vehicles held under a lease-purchase agreement and used for personal or private use should be classified as Class IV property. AGO 1998-145.
- Although the Amendment 509 (Section 36.01) Alabama Constitution, 2022, makes English the official state language, this Amendment does not restrict non-English speaking residents from being able to claim a homestead exemption. AGO 1998-223.
- Pursuant to Section 40-11-1(15), Code of Alabama 1975, ad valorem taxes are due on all manufactured homes located on land owned by the home owner, except homes leased for business purposes or those in the inventory of a manufactured home dealer or manufacturer. AGO 1999-073.
- The Legislature cannot by local law waive an entity’s responsibility to contribute a pro rata share of the cost of programs for equalization of ad valorem taxes. AGO 1999-237.
- The tax assessor must determine whether property owned by a Lions Club and leased to other groups is exempt from taxation because it is being used for purely charitable purposes. AGO 1999-124.
- Tools used exclusively by the owner to maintain and repair farm tractors and implements are exempt from the requirement that they be listed on the property return forms filed as a part of the ad valorem taxation process. The tools would continue to be subject to sales tax when purchased. AGO 2001-057.
- If a portion of ad valorem taxes are collected and earmarked for a particular purpose, a city may choose to exclusively use it for that purpose. However, under Section 212 of the Constitution of Alabama, 2022, a municipality cannot delegate the decision of how to spend revenue to individuals through the ballot. Therefore, there is no legal obligation for the city to abide by the results of a referendum on the use of ad valorem tax revenue. AGO 2002-243.
- A taxpayer has the responsibility to make a claim for an exemption to paying ad valorem taxes. A taxpayer, who is entitled to an exemption, but paid ad valorem taxes by mistake because the taxpayer failed to claim the exemption, is entitled to a refund pursuant to Section 40-10-160 of the Code of Alabama 1975. AGO 2002-280.
- Intentional misrepresentations by a taxpayer do not constitute “other error” under Section 40-10-160 of the Code of Alabama 1975 so as to allow a refund of taxes. AGO 2005-096. See also *Ex parte HealthSouth Corp.*, 978 So.2d 745 (Ala. 2007)
- Under Sections 40-2A-2(2) and 40-2A-6 of the Code of Alabama, a city or county may not engage a private firm on a contingency-fee basis to collect delinquent property taxes. All property taxes collected by the local revenue commissioner must be collected by and remitted to the entity designated to receive them. AGO 2009-074.
- An owner of property that is reclassified from Class II to Class III because it is a historic building or site is eligible to claim a refund for years in which it was improperly classified. Refunds are limited to two years from the date of payment of the tax. AGO 2006-089.
- A single-family dwelling owned by a limited liability company, partnership, or corporation does not qualify to be Class III property for ad valorem tax purposes. AGO 2007-043.
- A homeowner that owns more than one dwelling on the same piece of property, or even a dwelling on a different parcel, may lawfully claim that the property is Class III property in accordance with section 40-8-1 of the Code of Alabama, so long as the property is used exclusively by the homeowner as a single-family dwelling for his or her family. AGO 2007-082.
- Status of facilities as nonprofit charitable organizations exempt from federal income taxation did not automatically exempt them from ad valorem taxation. *Surtees v. Carlton Cove, Inc.*, 974 So.2d 1013 (Ala. Civ. App. 2007).
- Section 40-7-25.1 of the Code of Alabama specifically requires the owner of Class III property to request appraisal on the basis of current use and states that failure of the owner to do so means that the property must be appraised based on its fair and reasonable market value. A Class III taxpayer who fails to timely request appraisal on the basis of current use and consequently pays ad valorem taxes on the fair market value of the property is not entitled to a refund under section 40-10-160. AGO 2008-012

- The county tax collector is required to collect for any municipal or county liens according to statute. The purchaser of a tax certificate at a tax sale is required to pay any liens or assessments that accrue during his or her time of ownership of the tax certificate. AGO 2008-034
- Residential property owned by a limited liability company may be properly classified as Class III property if occupied by an individual pursuant to an executory sales contract. AGO 2008-049
- Section 40-9-21 of the Code of Alabama is a full exemption from ad valorem taxation. Anyone meeting the “permanent and total” disability requirement set forth in section 40-9-19(d) would certainly meet the “total disability” requirement set forth in section 40-9-21, as there is no requirement that the person be retired or that the disability be permanent. There is no age or income limitation for claiming a homestead exemption for someone who is retired because of a permanent and total disability or who is blind as defined by section 1-1-3 of the Code of Alabama. AGO 2008-079
- Residential property, in order to be classified as Class III single-family owner-occupied residential property, must be being used by the owner as their dwelling at the time taxes are assessed. A taxpayer’s single family residence did not qualify as “residential property,” and, thus, was not eligible for classification as Class III single-family owner-occupied residential property for taxation purposes, as their residence was still under construction and was not occupied by or being used by taxpayers as a single-family dwelling on the applicable assessment date. *Weinrib v. Wolter*, 1 So.3d 1032 (Ala.Civ.App.2008)
- Retroactive modifications to tax abatement agreements, while permissible, may not violate existing law. A city cannot, through the vehicle of a retroactive amendment to a Tax Abatement Agreement (“Agreement”), forgive ad valorem taxes that accrued as a fixed obligation prior to the date of the subject Agreement. AGO 2008-108.
- The municipal ad valorem taxes collected on October 1, 2007, by the municipality are based on the assessment for the preceding tax year (October 1, 2006) according to section 11-51-40 of the Code, and not on subsequent changes in classification which occurred in January 2007. No refund is authorized where there is no error in the assessment. AGO 2009-018
- A vacant parsonage loses its tax-exempt status if there is no good-faith intent that it is to be used for a future tax-exempt purpose. A minister’s family member may live in the parsonage without the parsonage losing its otherwise tax-exempt status. Pursuant to section 40-9-1 of the Code of Alabama, real or personal property owned by any educational, religious, or charitable institution, society, or corporation let for rent or hire or for use for business purposes shall not be exempt from taxation notwithstanding that the income from such property shall be used exclusively for educational, religious, or charitable purposes. AGO 2009-053
- Excess proceeds arising from a tax sale are properly payable to the owner of the property or a representative or agent of the owner. The original owner can contract with a third party to receive the excess funds. AGO 2009-058
- Act 2009-508 applies to tax assessment dates falling on or after October 1, 2009 and expands the definition of Class III residential property found under section 40-8-1(a) of the Code of Alabama. AGO 2010-047
- Property occupied by the original owner after being sold at a tax sale is not qualified for the age and disability homestead exemption under section 40-9-21 of the Code of Alabama. As a new purchaser, the taxpayer is only allowed the exemptions in effect on the assessment date for which the property was sold for taxes and no more. AGO 2010-078
- The income of a professional corporation that is owned by the taxpayer should not be considered when determining whether the taxpayer has met the income qualification for the ad valorem tax exemption provided in section 40-9-21 of the Code of Alabama. AGO 2012-062.
- Additional legislative approval is not required to propose ad valorem tax increases pursuant to Amendment 202 and Amendment 382 of the Constitution of Alabama. AGO 2012-070.
- Section 40-10-12, Code of Alabama 1975, authorizes the property tax commissioner to post notice of a tax sale at the county courthouse and at some other public place in each precinct within the county within which the real estate is located in lieu of publication in a newspaper published in the county. AGO 2013-024.
- A person must be retired because of permanent and total disability to be granted the ad valorem tax exemption found in section 40-9-21(a), Code of Alabama 1975. AGO 2013-027.

- A tax-sale purchaser of land on which a manufactured home was located did not acquire the manufactured home by virtue of the tax deed for the real property. The treatment of certain manufactured homes as realty for purposes of ad valorem taxation does not serve to convert them to real property. A manufactured home is personal property unless and until the certificate of title is canceled. *Green Tree-AL LLC v. Dominion Resources, L.L.C.*, 104 So.3d 177 (Ala.Civ.App.2011).
- Pursuant to section 40-10-28 of the Code of Alabama, the mortgagor, as owner, and the person against whom ad valorem taxes are assessed is entitled to excess funds received as a result of a tax sale. AGO 2013-059.
- The new owner of property, who is tax exempt, would be responsible for the roll-back charges expressed in section 40-7-25.3 of the Code of Alabama in the property in question was not being used exclusively for charitable purposes as of the October 1 next succeeding conversion of the property. Even though the developer changed the current use of Portion “B” in November 2013, it is the owner of property as of October 1 who is responsible for the ad valorem taxes levied on a particular parcel of land. Section 40-7-25.3 of the Code authorizes a tax assessor to apportion an assessment to a particular parcel of land. Accordingly, the amount assessed in ad valorem taxes should stand alone as to Portion “B.” AGO 2015-021.
- The 30-day period for taxpayer to file a notice of appeal of a final ad valorem tax assessment with the secretary of the county board of equalization began to run on the date of the entry of the final tax assessment. *Ex parte Shelby County Bd. of Equalization*, 159 So.3d 1 (Ala.2014).
- The county health care authority may provide financial support to Community Hospital, a private, nonprofit corporation in the county from the lease revenue or other authority funds that are not ad valorem tax proceeds. AGO 2017-020.
- A private residence used as a home school is not exempt from ad valorem taxation if it is not used exclusively for educational purposes. AGO 2017-031.
- Alabama’s Constitution local amendment on school property tax did not invalidate the city’s ad valorem taxes collected for planned municipal schools. *Campbell v. City of Gardendale*, 321 So.3d 635 (Ala. 2020).

### **Permit Fees**

Authority to establish inspection fees for building, fire, plumbing and electrical inspections is granted by Section 11-43-59, Code of Alabama 1975. Similar power is given to establish garbage collection fees by Sections 11-47-135 and 22-27-1, et seq., food inspection fees in Section 11-47-136, slaughterhouse inspection fees in Section 11-47-138, market regulation fees and also agreed upon fees with other municipalities for inspection of dairies, meats, etc. in Section 11-47-139.

### **Parking Meters**

The authority to establish parking meters was derived from the Alabama Supreme Court decision in *Decatur v. Robinson*, 251 Ala. 99, 36 So.2d 673 (1948). The decision was based on the power of municipalities to regulate traffic and parking on their streets.

### **Franchises**

Section 220, Alabama Constitution, 2022, and Section 11-43-62, Code of Alabama 1975, authorize municipalities to require that franchise fees be paid by public utilities as a condition of franchise rights to use city streets. Such contracted franchise fees are separate from the municipal licensing power. For more information on the authority and limitations on the collection of franchise fees, please see the *Selected Reading* titled “Municipal Franchises”.

### **Courts**

Municipal courts should not be used as sources of revenue for municipalities. For information regarding court cost and fines, see the *Selected Reading* titled “The Municipal Court”.

### **Investing Municipal Funds**

Municipalities can raise revenue locally by investing municipal funds. Section 11-81-21, Code of Alabama 1975, provides that municipal funds, when the municipal governing body determines are not presently needed for other purposes, may be invested in any obligations in which sinking funds are authorized to be invested pursuant to Section 11-81-19.

Section 11-81-19, Code of Alabama 1975, authorizes all sinking funds provided for the retirement of bonds shall be invested in bonds of the United States, the State of Alabama, any county in the State of Alabama, any municipal corporation in the State of Alabama, or deposited in a bank on interest. All sinking funds created by resolutions or ordinances must be properly set aside and reported on in accordance with the resolution or ordinance.



In addition, Section 11-81-21, Code of Alabama 1975, provides municipal authority to invest in, among others, direct obligations of the United States Department of Treasury, Farmers Home Administration, General Services Administration, U.S. Maritime Administration, Government National Mortgage Association, U.S. Department of Housing and Urban Development, and Federal Housing Administration. See Section 11-81-21, Code of Alabama 1975, for a complete listing of authorized municipal investments.

### **Other Sources of Locally-Generated Revenue**

In addition to the sources mentioned above, municipalities can raise revenues locally by levying scale fees (Section 11-43-59); selling or leasing municipal property no longer needed for public purposes (Sections 11-47-20 and 11-47-21); and by operating municipally-owned utilities such as water systems, gas distribution systems, electric systems, cable television systems, interactive computer services, Internet access and services and other advanced telecommunications services.

### **Intergovernmental Revenues**

In addition to the revenues generated by measures adopted by the municipal governing body, Alabama cities and towns receive revenues from other levels of government.

Revenues come from the federal government in the form of federal grants and loans. Incorporated municipal utilities make payments to municipalities in lieu of taxes. In some cases, counties and municipalities share in the proceeds from joint ventures such as county-city libraries and similar operations.

Municipalities in Alabama share in the proceeds from several state taxes. For a full discussion, please see the article entitled “State Revenue Shared and State Taxes Paid by Municipalities” in this publication, but these revenue sources include state ABC store profits (Section 28-3-74, Code of Alabama 1975); state motor vehicle license tag tax (Section 40-12-270, Code of Alabama 1975); state seven-cents and five-cents per gallon gasoline tax (Section 40-17-70, et seq., Code of Alabama 1975); state six-cents (formerly “four-cents”) per gallon gasoline tax (Section 40-17-220, Code of Alabama 1975); state annual license tax and registration fees on private passenger automobiles and motorcycles (Section 40-12-242, Code of Alabama 1975); state financial institutions excise tax (Section 40-16-6, Code of Alabama 1975); state privilege tax on oil and gas production (Section 40-20-8, et seq., Code of Alabama 1975 as amended); TVA in lieu of tax payments (Section 40-28-1, et seq., Code of Alabama 1975); coal severance tax (Section 40-13-30, et seq., Code of Alabama 1975); state table wine tax (Section 28-7-16, Code of Alabama 1975); state beer tax (Section 28-3-190, Code of Alabama 1975); state two percent sales tax on sales made by ABC stores (Section 28-3-280, et seq., Code of Alabama 1975); state inspection fee on motor fuels and motor oil (Section 8-17-87, Code of Alabama 1975); and the oil and gas trust fund (Sections 11-66-1 through 11-66-7, Code of Alabama 1975).