

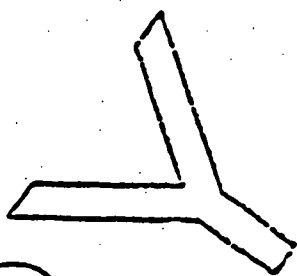


TYRONE C. FAHNER
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

October 15, 1981

FILE NO. 81-030

REVENUE;
Applicability of Truth in
Taxation Act to Debt Service
Levies

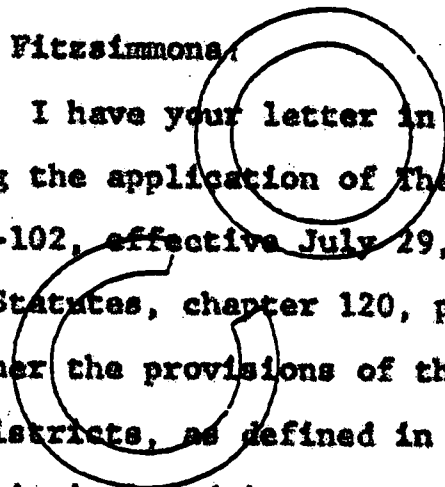


Honorable J. Michael Fitzsimmons
State's Attorney
DuPage County
207 Reber Street
Wheaton, Illinois 60187



Dear Mr. Fitzsimmons:

I have your letter in which you ask certain questions regarding the application of The Truth in Taxation Act (P.A. 82-102, effective July 29, 1981) to be codified at Illinois Revised Statutes, chapter 120, paragraph 861 et seq. You first ask whether the provisions of the Act apply to taxes levied by taxing districts, as defined in the Act, for the purpose of paying principal and interest on bonds, notes and other obligations secured by ad valorem property tax levies or for the purpose of paying amounts due under public building commission



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leases entered into pursuant to section 18 of the Public Building Commission Act (Ill. Rev. Stat. 1979, ch. 85, par. 1048), which tax levies would otherwise be required by law to be unlimited as to rate or amount. For the reasons hereinafter stated, I am of the opinion that the provisions of The Truth in Taxation Act do not apply to the aforesaid tax levies.

You also ask, assuming the Act does not apply to the taxes referred to in your first question, what, if any, other taxes are impliedly excluded from the application of the Act. Since I am not in a position to answer hypothetical questions in the absence of specific facts, I cannot respond to your question.

In your third question, you ask whether, if the tax proposed to be levied for a particular purpose is in an amount more than 105% of the amount extended for that purpose for the preceding year, but the proposed aggregate levy for the taxing district does not exceed 105% of the aggregate levy for the preceding year, the provisions of the Act apply to the levy proposed to be made for that particular purpose. For the reasons hereinafter stated, it is my opinion that the provisions of the Act would not apply to the levy proposed to be made for that particular purpose under such circumstances.

Section 2 of The Truth in Taxation Act defines "taxing district" as "any unit of local government, school district, or community college district, including home rule

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units, authorized to levy ad valorem taxes". Section 3 states that the purpose of the Act is "to require taxing districts to disclose by publication and to hold a public hearing on their intention to adopt an aggregate levy in amounts more than 105% of the amount of property taxes".

The term "aggregate levy" is not defined in the Act. In answering the question of whether taxes levied by taxing districts for the purpose of paying principal and interest on bonds, notes, and other obligations secured by ad valorem property tax levies or for the purpose of paying amounts due under building commission leases are part of a district's aggregate levy for purposes of the Act, it is necessary to determine the intention of the General Assembly. The cardinal rule of statutory construction is that a statute must be construed so as to ascertain and give effect to the intention of the General Assembly as expressed in the statute. (Lincoln National Life Insurance Co. v. McCarthy (1957), 10 Ill. 2d 489, 494.) To ascertain the meaning of a statute, it is necessary to seek, and if possible, find the intention of the General Assembly in the words used in the statute. The New National Coal Company v. The Industrial Commission et al. (1940), 373 Ill. 468, 471.

Although the only express exception set forth in Public Act 82-102 is for election costs, an analysis of the Act leads to the conclusion that the Act must have been intended to

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apply to the annual corporate levy and to those special purpose levies which are also made annually, and not to debt service levies such as levies for the payment of principal and interest on bonds or notes or for the payment of lease rentals to a public building commission.

This conclusion is clear when the language of Public Act 82-102 is read in consideration of statutory provisions pertaining to procedures for making debt service levies. Debt service on bonds or for rental payments to a public building commission, are made by proceedings separate and apart from the annual corporate and special purpose levies. Debt service levies can be made before, during, or after the budget process, and can be filed at any time during the year. For example, section 19-7 of The School Code (Ill. Rev. Stat. 1979, ch. 122, par. 19-7) provides in pertinent part:

" * * * Whenever any school district having a population of less than 500,000 inhabitants is authorized to issue bonds, the recording officer thereof shall file in the office of the county clerk of each county in which any portion of the district is situated a certified copy of the resolution providing for their issuance and levying a tax to pay them. * * * and the county clerk, * * * annually shall extend taxes against all the taxable property situated in the county and contained in the district in amounts sufficient to pay maturing principal and interest, * * * ."

Since bonds may be issued at any time during the year, the statute does not impose a deadline on the filing of such levies.

Also, the filing of the certified copy of the resolution for issuance of the bonds and the levying of the tax

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to pay principal and interest on the bonds, occurs only once. No other levy is necessary. Thereafter, the county clerk is directed to extend taxes annually in amounts sufficient to pay maturing principal and interest. The county clerk is required to automatically extend taxes each year in these instances.

The procedures are different in the case of a taxing district's annual levy. For example, in the case of a school district, a tentative budget is adopted and notice of a hearing on the budget is given pursuant to section 17-1 of The School Code (Ill. Rev. Stat. 1979, ch. 122, par. 17-1). A tax levy resolution is adopted directing the filing of its annual tax levy certificate with the county clerk. This tax levy certificate is the document in which all the district's annual corporate and special purpose levies (other than debt service levies) are combined or "aggregated" on one piece of paper. This aggregation occurs, for example, when a school district, for transportation purposes, educational purposes, operations, building and maintenance purposes, levies and files its tax levy certificate with the county clerk.

Section 17-11 of The School Code (Ill. Rev. Stat. 1979, ch. 122, par. 17-11) requires this tax certificate to be filed with the county clerk annually on or before the last Tuesday in December, in school districts with a population of less than 500,000, located in counties with a population of less than 1,000,000. It seems clear, therefore, that the provisions of

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Public Act 82-102 are intended to apply to corporate and special purpose levies, which are made annually. It is not logical to refer to a debt service levy as an "aggregate levy" since only one amount is levied for only one purpose for any given year.

Throughout Public Act 82-102 the requirements imposed upon a taxing district are directed to one particular time at which the corporate body adopts a single tax levy ordinance. Sections 3 and 4 of the Act refer to "its aggregate levy". Section 7 refers to "the final tax levy resolution or ordinance". Section 8 refers to "the tax levy resolution or ordinance approved in the manner provided for in the Act". These references to the singular proceeding only make sense if they apply to that proceeding in which the corporate body annually levies its corporate and special purpose taxes. If meant to apply to debt service levies, the references would be plural, since debt service levies are made separate and apart from a district's annual levy.

Section 5 of Public Act 82-102 provides:

"Until it has complied with the notice and hearing provisions of this Act, no taxing district shall levy an amount of ad valorem tax which is more than 105% of the amount, exclusive of election costs, which has been extended or is estimated will be extended upon the levy of the preceding year." (Emphasis added.)

The plain words used in section 5, particularly those underscored above, demonstrate that the Act applies only to a single levy, which occurs once each year, which covers a number of taxes

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for various purposes, and which can be fairly and rationally compared with a similar levy made in the preceding year.

In addition, section 8 of the Act states that "The tax levy resolution or ordinance approved in the manner provided for in this Act shall be filed with the county clerk in the manner and at the time otherwise provided by law". Debt service levies may be filed at any time during the year. There is no time provided by law for the filing of debt service levies.

I have previously indicated that I am of the opinion that Public Act 82-102 applies to the corporate levy and to special purpose levies (other than debt service levies) which are levied annually. This is apparent from the provisions of the Act. Section 4 of the Act states:

" * * * [T]he corporate authority of each taxing district shall determine the amounts of money, exclusive of any portion of that levy attributable to the cost of conducting an election required by the general election law, hereafter referred to as 'election costs', estimated to be necessary to be raised by taxation for that year upon the taxable property in its district."

The aforesaid provision excludes from the "aggregate levy" amounts levied to cover the cost of conducting an election required by the general election law. An example of a provision which authorizes a tax levy for election costs is found in section 25.05-1a of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1979, ch. 34, par. 408). This is a special purpose levy which may be levied and collected annually. If the General Assembly did not intend to

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include such special purpose levies, there would have been no reason for it to have specifically excluded the levy for election costs, a special purpose levy.

You also ask whether, if the tax proposed to be levied for a particular purpose is in an amount more than 105% of the amount extended for that purpose for the preceding year, but the proposed aggregate levy for the taxing district does not exceed 105% of the aggregate levy for the preceding year, the provisions of this Act apply to the levy proposed to be made for that particular purpose.

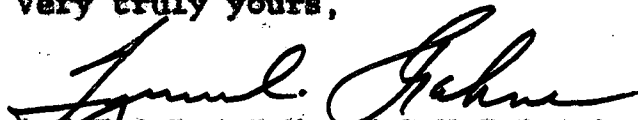
I have previously mentioned that The Truth in Taxation Act requires notice and hearing if the proposed aggregate or total amount levied is more than 105% of the amount, exclusive of election costs, of property taxes extended or estimated to be extended upon the levy of the preceding year. There is nothing in the Act which requires such notice and hearing if only one levy exceeds 105% of the amount extended for that purpose for the preceding year. The plain and obvious meaning of the language used by the legislature is the safest guide to follow in construing any Act and words should not be read into a statute that are not found therein, either by express inclusion or by fair implication. Landry v. Shinner & Co. (1931), 344 Ill. 579, 584.

I am therefore of the opinion that The Truth in Taxation Act would not apply, even though a proposed levy for

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a particular purpose exceeds 105% of the amount extended for that purpose, if the proposed aggregate or total amount to be levied does not exceed 105% of the aggregate levy for the preceding year.

Very truly yours,


ATTORNEY GENERAL