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OPINION NO. 2011-10

BONDS; REDEVELOPMENT AGENCY;
TAX ALLOCATION: The property tax revenue increment due to a redevelopment agency is the amount remaining after the tax base is paid and carve-outs subtracted; and redevelopment agencies created prior to July 1, 1987 are also entitled to a set amount of revenue obligated for the repayment of debt not otherwise tied to assessed value or tax rate.

Christopher G. Nielsen, Interim Executive Director
Nevada Department of Taxation
1550 College Parkway, Suite 115
Carson City, Nevada 89706

Dear Mr. Nielsen:

You have requested an opinion from the Office of the Attorney General regarding the proper methodology for calculating the amount of property taxes due to a redevelopment agency.

QUESTION ONE

What is the appropriate method for calculation of the total amount of taxes due to a redevelopment agency generally and specifically a redevelopment agency formed prior to July 1, 1987?

ANALYSIS

The methodology for the calculation of taxes due to a redevelopment agency is set out in NRS 279.676. NRS 279.676(1)(a) provides the means for calculating the amount of taxes that will continue to be paid to taxing agencies located in the same

area after the creation of the redevelopment agency. The portion of the taxes allocated to the taxing agencies is commonly referred to as the "tax base".

NRS 279.676(1)(b) provides for the calculation of the amount of taxes that are allocated to the redevelopment agency after the base has been subtracted from the total amount of the taxes collected. This portion of the taxes allocated to the redevelopment agency is commonly referred to as the "tax increment". NRS 279.676(1)(c)–(d) then refers to additional amounts of tax collected for a dedicated purpose that is subtracted from the increment. The amounts subtracted from the increment are commonly referred to as "carve-outs."

NRS 279.676(3) provides for an additional amount that must be paid to redevelopment agencies in existence and receiving payments prior to July 1, 1987. If the redevelopment agency, in reliance on payments being made to it by taxing agencies prior to July 1, 1987 became obligated prior to July 1, 1987, for the repayment of any bond, loan, money advanced or any other indebtedness, whether funded, refunded, assumed or otherwise incurred, the redevelopment agency is entitled to receive from the taxing agencies an amount of money in addition to the tax increment. *Id.*

In order to answer the question regarding the proper methodology for calculating the total amount due to a redevelopment agency, we must analyze how the tax base, the tax increment, the carve-outs, and the amount due the redevelopment agency formed prior to July 1, 1987, pursuant to NRS 279.676(3), interact.

NRS 279.676(1)(a) provides that the tax base is calculated by taking "the total sum of the assessed value of the taxable property in the redevelopment area" prior to the effective date of the ordinance creating the redevelopment agency and applying the tax rate of the taxing agencies each year. This is referred to as the tax base because the assessed value is fixed prior to the creation of the redevelopment agency. The portion of the tax paid to the taxing agencies as the tax base can vary from year to year depending on the tax rate applied to the fixed assessed value.

The tax base impacts the portion of the taxes paid to the redevelopment agency. The tax increment is calculated pursuant to NRS 279.676(1)(b). The tax increment is any portion of "the levied taxes each year in excess of the amount" paid to the taxing agencies pursuant to NRS 279.676(1)(a) as the tax base. Once the assessed value for the redevelopment area is determined and the tax rate for that tax year is applied, the increment is any amount that remains after the tax base is paid to the taxing agencies and the carve-outs are subtracted. The tax increment varies from year to year. In some years there may not be any excess taxes after the tax base is paid and the carve-outs subtracted, therefore, no portion of the taxes collected would go to the redevelopment agency.

Redevelopment agencies created prior to July 1, 1987, that in anticipation of receiving any sums became obligated for the repayment of debt, are also entitled to receive money pursuant to NRS 279.676(3). Unlike the methodology for the calculation of the tax base and the tax increment, the amount to be paid to the redevelopment agency pursuant to NRS 279.676(3) is not tied to the application of a tax rate to the assessed value. NRS 279.676(3) states: "The taxing agencies shall continue to pay to a redevelopment agency *any amount* which was being paid before July 1, 1987, . . ." NRS 279.676(3) (emphasis added).

The plain language of the statute refers to a set amount that was being paid to a redevelopment agency prior to July 1, 1987. There is no language to suggest that this amount changes from year to year based on assessed value or tax rates. When the language of the statute is clear on its face, there is no need to look further than the plain language of the statute. *Washoe Med. Ctr. v. The Second Jud. Dist. Ct.*, 122 Nev. 1298, 1302, 148 P.3d 790, 792-93 (2006) ("When a statute is clear on its face, we will not look beyond the statute's plain language") (footnote omitted).

The specific language in NRS 279.676(1)(a) referencing the assessed value in the redevelopment area and the application of the tax rate in the calculation of the tax base, and the absence of such language in NRS 279.676(3), indicate an intent by the Legislature that the amount to be paid under subsection (3) was a set amount based on the amount paid prior to July 1, 1987, that would not be tied to the assessed value or a tax rate. A rule of statutory construction is that "when the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended." *Sosa v. Alvarez-Machain*, 542 U.S. 692, 711 n.9 (2004).

CONCLUSION TO QUESTION ONE

The appropriate method for calculation of the total amount of taxes due to a redevelopment agency is to first apply the current tax rate to the fixed assessed value determined prior to the ordinance creating the redevelopment agency to determine the amount of the tax base.

If, after subtracting the tax base and the carve-outs from the amount of taxes collected based on the assessed value of the property in the redevelopment area and applying the current tax rate, there is additional tax money collected, that portion of the taxes should be paid to the redevelopment agency as the tax increment.

Independent of the calculation of the assessed value and application of the tax rate, a redevelopment agency created prior to July 1, 1987 is entitled to an amount equal to the amount which was being paid prior to July 1, 1987 to the redevelopment agency and relied upon by the redevelopment agency for the repayment of debt.

QUESTION TWO

If application of the method identified in the answer to Question One results in actual tax dollars paid before July 1, 1987, does "amount paid" pursuant to NRS 279.676(3) mean property taxes paid into separate redevelopment agency funds, e.g. the Debt Service Fund, the Capital Projects Fund and the Special Revenue Fund?

ANALYSIS

NRS 279.676(3) states:

The taxing agencies shall continue to pay to a redevelopment agency any amount which was being paid before July 1, 1987, and in anticipation of which the agency became obligated before July 1, 1987, to repay any bond, loan, money advanced or any other indebtedness, whether funded, refunded, assumed or otherwise incurred.

NRS 279.676(3). The language in NRS 279.676(3) is broad and does not make reference to any specific funds. It only specifies that it must be money relied upon for the repayment of debt.

This is distinguishable, for example, from money received by a redevelopment agency for administrative expenses. NRS 279.614 directs that money received for administrative expenses of the agency be kept "in a special fund to be known as the community redevelopment agency administrative fund, . . ." Money received by the redevelopment agency for administrative expenses would not be included in the calculation of the money due pursuant to NRS 279.676(3), since it is not money received for repayment of debt. A redevelopment agency that was receiving money from taxing agencies prior to July 1, 1987, is entitled to continue to receive the actual amount of money the agency relied upon to repay any type of indebtedness, regardless of the fund into which the money was paid.

CONCLUSION TO QUESTION TWO

Pursuant to NRS 279.676(3), a redevelopment agency that received payments from taxing agencies prior to July 1, 1987 is entitled to continue to receive any amount "in anticipation of which the agency became obligated . . . to repay any bond, loan, money advanced or any other indebtedness, whether funded, refunded, assumed or otherwise incurred." It does not matter what fund the money was paid into, as long as the redevelopment agency relied upon the money for the repayment of debt.

QUESTION THREE

Does NRS 279.676(3) apply to a bond that is originally issued prior to July 1, 1987, but is subsequently refinanced one or more times in future years?

ANALYSIS

NRS 279.676(3) sets the amount of money a redevelopment agency is entitled to receive in addition to the tax increment at the amount it was being paid prior to July 1, 1987 that the agency relied upon for the repayment of debt. There is no language in NRS 279.676(3) indicating that this amount will vary or be reduced based upon future events. The refinancing of a bond subsequent to July 1, 1987 has no bearing on the amount due to a redevelopment agency pursuant to NRS 279.676(3).

CONCLUSION TO QUESTION THREE

NRS 279.676(3) sets the amount due to a redevelopment agency in addition to the tax increment by reference to payments relied upon by the agency for the repayment of debt prior to July 1, 1987. The amount due to a redevelopment agency pursuant to NRS 279.676(3) is not changed based on subsequent refinancing of a bond that was originally issued prior to July 1, 1987.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By: 
GINA C. SESSION
Chief Deputy Attorney General