

AARON D. FORD
Attorney General

KYLE E.N. GEORGE
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701

November 19, 2019

JESSICA L. ADAIR
Chief of Staff

RACHEL J. ANDERSON
General Counsel

HEIDI PARRY STERN
Solicitor General

OPINION NO. 2019-06

STATUTORY INTERPRETATION:
TAXATION; CITY-COUNTY RELIEF
TAX DISTRIBUTION: Once denied a waiver of the requirements of subsection 2 of NRS 377.057, a county identified in paragraph (a) of that subsection has no right to make a second waiver request. By its plain language, the paragraph (b) formula that governs the county's annual distributions from that point forward can never give rise to the factual circumstances described in the waiver provisions of subsection 3 of NRS 377.057.

Director Melanie Young
Nevada Department of Taxation
1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937

Dear Director Young:

On behalf of the Nevada Tax Commission, you have requested a formal opinion from the Office of the Attorney General regarding the standards for distributing the supplemental city-county relief tax when the amount of the tax collected within certain rural counties exceeds by more than 10 percent the amount earmarked for distribution to those counties pursuant to the distribution formula set forth at paragraph (a) of subsection 1 of NRS 377.057.

QUESTION

Having been denied a waiver of the requirements of subsection 2 of NRS 377.057 for a previous fiscal year, may a county identified in paragraph (a) of that subsection make a second request for a waiver in a current fiscal year?¹

BACKGROUND

Imposed at the rate of 1.75 percent, the supplemental city-county relief tax comprises approximately one-fourth of Nevada's minimum statewide sales and use tax rate of 6.85 percent. *See* NRS 377.020; NRS 377.040; Annual Report of the Nevada Department of Taxation at p. 12 (2017-2018).²

Designated for use by Nevada's counties and local governments, the tax is collected in all 16 of Nevada's counties as well as in Carson City. *Id.* Businesses must report and remit the tax directly to the Department of Taxation, *see* NRS 377.050, which then directs the State Controller to distribute the receipts between counties in accordance with a body of tax reporting and accounting standards that are commonly referred to as the "C-Tax" system. *See City of Fernley v. State, Department of Taxation*, 132 Nev. 32, 36, 366 P.3d 699, 702-03 (2016).

Under the C-Tax system, a variety of taxes, including the supplemental city-county relief tax, are allocated between counties according to statutory allocation methodologies that appear in different places throughout Title 32 of the Nevada Revised Statutes. NRS 377.057 governs the distribution of the supplemental city-county relief tax, and subsection 1 of that statute sets forth the formula for allocating the annual receipts from the tax between two groups of counties. The first group consists of the eleven rural counties identified in paragraph (a), while the second group consists of Carson City and the counties of Clark, Churchill, Elko, Humboldt and Washoe. *See* NRS 377.057(1)(a) & (b).³

¹ If granted, the county's second waiver request would enable the county to prospectively reclaim some of the tax receipts that were lost when its original request was denied.

² The most recent annual report of the Department of Taxation is available in a PDF format at:

<https://tax.nv.gov/uploadedFiles/taxnv.gov/Content/TaxLibrary/Annual-Report-FY18.pdf>.

³ Paragraph (b) applies by its terms to all counties not specifically enumerated in paragraph (a). *See* NRS 377.057(1)(b).

With respect to the members of the first group, paragraph (a) allocates a one-twelfth fractional share of annual statewide tax receipts equally between them. The amount of the ensuing distribution to each county is guaranteed to be no less than the minimum authorized for the county in question. See NRS 377.057(5). Under certain circumstances, the distribution may also be supplemented by a calculation that is tied to projected statewide revenue growth. See NRS 377.057(1)(a)(1) & (2).

As to the members of the second group, paragraph (b) distributes the balance of the statewide receipts between them according to a pro rata allocation that adopts local sales and use tax collection data as its only reference point. The overall methodology effectively shifts some of the benefits of statewide revenue growth from the members of the second group of counties to the members of the first group of counties. Enacted in 1991, the distribution provisions of paragraphs (a) and (b) were intended to divide revenue fairly between counties that had historically experienced stable, incremental growth in sales and use tax revenues, and those that had not experienced comparable growth. See Act of June 28, 1991, ch. 490, § 7, 1991 Nev. Stat. 1423; *Hearing on A.B. 104 Before the Assembly Subcommittee on Taxation*, 1991 Leg., 66th Sess. (March 26, 1991).⁴

Subsection 2 of NRS 377.057 requires a county in the first group to receive its distribution in the same manner as the members of the second group when that county's actual tax receipts exceed by more than 10 percent the amount that would otherwise be allocable to the county pursuant to paragraph (a). This results in an annual pro rata allocation to the county pursuant to paragraph (b). When this occurs, the county no longer benefits from the guaranteed minimum distribution or the potential supplement that is tied to statewide revenue growth. See NRS 377.057(1)(a)(1) & (2); NRS 377.057(5).

A county may, however, avoid these consequences by applying for a waiver of the requirements of subsection 2 and demonstrating that "nonrecurring taxable sales" were the source of the amount by which the county's actual tax receipts exceeded its statutory allocation as calculated pursuant to paragraph (a). The question here concerns a county's second request for a waiver of the requirements of subsection 2 after that county's first

⁴ Available at:

<https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1991/AB104,1991pt1.pdf>.

request was denied by the Commission some years ago. That denial resulted in a recurring distribution to the county that must be calculated annually in accordance with paragraph (b) as opposed to paragraph (a) of subsection 2. The county in question wishes to once again receive its annual distributions in accordance with paragraph (a).

SHORT ANSWER

Having once been denied a waiver of the requirements of subsection 2 of NRS 377.057, a county identified in paragraph (a) of that subsection has no right to make a second waiver request. According to subsection 3 of NRS 377.057, a waiver must be requested for the fiscal year in which there is a qualifying discrepancy between actual tax collections and the paragraph (a) distribution. Once such a request is denied, the grounds for requesting a waiver under subsection 2 are rendered inapplicable in future years because the county's distributions must thereafter be calculated in accordance with paragraph (b) of subsection 2. Under paragraph (b) of subsection 2, there is no event that can trigger the county's right to request a waiver of the requirements of subsection 2.

ANALYSIS

NRS 377.057 consists of several interrelated subsections and paragraphs that are technical in nature, thus making interpretation a challenge, but the statute itself contains no ambiguities as it pertains to the waiver provisions of subsections 2 and 3. An unambiguous statute is interpreted "based on its plain meaning by reading it as a whole"; each word and phrase must be given effect. *JED Prop. v. Coastline RE Holdings NV Corp.*, 131 Nev. 91, 94, 343 P.3d 1239, 1240-41 (2015). Here, a methodical reading of NRS 377.057 leaves no room for concluding that a county may submit successive requests for a waiver of the requirements of subsection 2.

The central principle of the statute is straightforward. When actual tax collections within a county exceed by more than 10 percent the amount that is distributed to that county pursuant to paragraph (a), the county's annual distribution must in that year, *and in all future years*, be calculated in the manner described by paragraph (b). NRS 377.057(2). Subsection 2 states:

If the amount of supplemental city-county relief tax collected in a county listed in paragraph (a) of subsection 1 for the 12 most recent months for which information concerning the actual amount collected is available on February 15 of any year exceeds

by more than 10 percent the amount distributed pursuant to paragraph (a) to that county for the same period, the State Controller shall distribute that county's portion of the proceeds from the supplemental city-county relief tax pursuant to paragraph (b) of subsection 1 *in all subsequent fiscal years*, unless a waiver is granted pursuant to subsection 3.

NRS 377.057(2) (emphasis added).

According to the language in italics above, subsection 2 operates prospectively, thus requiring that all of the county's future distributions be calculated according to paragraph (b). A county may avoid this outcome by demonstrating that excess collections were attributable to "[n]onrecurring taxable sales" in the fiscal year in which actual collections exceed by more than 10 percent "the amount distributed pursuant to paragraph (a) to that county for the same period." NRS 377.057(2) & (3). In fact, subsection 3 makes it clear that the waiver is specific to the fiscal year in which the qualifying discrepancy between actual collections and the paragraph (a) distribution first occurs:

A county . . . may file a request with the Nevada Tax Commission for a waiver of the requirements of subsection 2. The request must be filed on or before February 20 next preceding the fiscal year for which the *county will first receive* its portion of the proceeds from the supplemental city-county relief tax pursuant to paragraph (b) of subsection 1 and must be accompanied by evidence which supports the granting of the waiver. The Commission shall grant or deny a request for a waiver on or before March 10 next following the timely filing of the request. . . .

NRS 377.057(3) (emphasis added).

More specifically, a county's right to request a waiver arises in the first fiscal year in which actual collections exceed the amount of the county's paragraph (a) distribution for that year. NRS 377.057(2). If granted, the waiver operates prospectively until the county's actual receipts once again exceed the allocation threshold described in paragraph (a). NRS 377.057(3). When this occurs, the affected county may submit a new waiver request, and if the request is granted, the county's annual distributions will continue to be calculated according to paragraph (a). *Id.*

Conversely, if the waiver is denied when first requested, annual distributions to the county are thereafter governed by paragraph (b) and not paragraph (a). NRS 377.057(2). Given this scenario, there is no qualifying event that can trigger the county's right to request a waiver pursuant to subsection 3. In other words, there can be no discrepancy between actual tax collections and the allocation described in paragraph (a) because paragraph (a) is rendered inapplicable in future years by operation of subsection 2. Under these circumstances, the only discrepancy that can occur in a future year is a discrepancy between actual tax collections and the distribution described in paragraph (b). Such a discrepancy does not trigger any consequences from which a county may request a waiver. Therefore, the legal consequences of a denial of the county's initial waiver request are permanent and unconditional.⁵ There is no other way to construe NRS 377.057 without importing a waiver provision that does not appear in the actual text of the statute.

It is axiomatic that nothing should be added to what the text of the law states or reasonably implies. *Douglas v. State*, 130 Nev. 285, 293, 327 P.3d 492, 498 (2014). Here, nothing in NRS 377.057 states or reasonably implies that a county may obtain a waiver of the requirements of subsection 2 when the county was previously denied a waiver for the fiscal year in which the county's actual collections exceeded the amount of the county's paragraph (a) distribution for that year.

CONCLUSION

Once a county's waiver request is denied for a previous fiscal year, its annual distribution for any current fiscal year must be calculated in accordance with the formula set forth at paragraph (b). The county's actual tax collections for the current fiscal year will never exceed "the amount distributed pursuant to paragraph (a) to that county for the same period" because the county will have received no distribution pursuant to paragraph (a). NRS 377.057(2). Accordingly, there can be no basis for a waiver of the requirements of

⁵ Since a waiver is temporary, the circumstances that prompted that waiver may be reevaluated on an annual basis as the county's fiscal situation changes. A legislative amendment would be needed to provide the Commission with the same flexibility after denying a county's waiver request. In short, the decision to grant a waiver is reversible while the decision to deny a waiver is irreversible absent legislative action. Given this dichotomy, doubts about the applicability of the waiver provision of NRS 377.057(3) should ordinarily be resolved in favor of the county requesting the waiver.

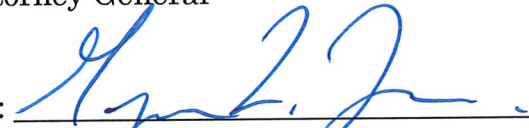
Melanie Young, Executive Director
Nevada Department of Taxation
Page 7
November 19, 2019

subsection 2 in the current fiscal year. Under these circumstances, the waiver provision of subsection 3 is rendered inapplicable by operation of subsection 2.

Sincerely,

AARON D. FORD
Attorney General

By:



Gregory L. Zunino
Deputy Solicitor General

GLZ/klr