



MEMORANDUM

TO: Eric Miller, Policy Chief
House Local Government Affairs Subcommittee

FROM: Andrea Hunter, Revenue Program Administrator II
Refunds and Revenue Accounting
General Tax Administration

Isabel Nogues, Assistant General Counsel
Office of the General Counsel

SUBJECT: Proposed Incorporation – Village of Loxahatchee,
Palm Beach County

DATE: December 1, 2021

The Department of Revenue has reviewed the Feasibility Study and Proposed Charter of the Proposed Municipal Incorporation of the Village of Loxahatchee. We offer the following observations and comments regarding revenues from state shared revenues and local option taxes.

TIMELINE

Consideration by 2022 Legislature

Referendum – Per Section 1(3) of the Village of Loxahatchee’s Proposed Charter (hereinafter “Village”), the Palm Beach County Supervisor of Elections will call a referendum to be held November 8, 2022.

Incorporation – December 31, 2022. Section 1(3)(b) of the Proposed Charter provides that for the purpose of compliance with s. 200.066, F.S., relating to assessment and collection of ad valorem taxes, the Village is created and established December 31, 2022.

Fiscal year - October 1st –September 30th.

Election for Village Council Members – Per Section 3(2) (b)1., of the Proposed Charter, the first election of council members shall be held March 14, 2023.

First Meeting of Village Council – Date not specified. Section 10(4)(c) provides that the first council meeting shall be held on April 5, 2023, provided the results of the election of the Village council under the Charter have been certified. In the event the results are not certified by April 5, 2023, the newly elected members shall meet on the following Tuesday, which would be April 11, 2023.

Revenue Sharing Participation – Section 10(9) of the Proposed Charter provides that the Village shall be entitled to participate in all shared revenue programs of the state available to municipalities effective immediately on the date of incorporation.

Local Option Gas Tax Participation – Section 10(11) of the Proposed Charter provides that the Town will be entitled to local option gas tax revenue beginning October 1, 2022. However, the Village would not be entitled to participate before the date of incorporation of December 31, 2022.

Communications Services Tax – Section 10(10) of the Proposed Charter provides that the communications services tax imposed by Palm Beach County will continue within the Village boundaries from the date of incorporation through January 1, 2024. The revenues will be shared with the Village by Palm Beach County proportionally allocated based on the projected Village population estimate compared with the unincorporated population of Palm Beach County before the incorporation before the incorporation of the Village.

REVENUE SHARING

Section 10(9) of the Proposed Charter provides that the Village shall be entitled to participate in all shared revenue programs of the state available to municipalities effective immediately on the date of incorporation. The Proposed Charter further provides that the provisions of Chapter 218.23(1), F.S., shall be waived for the purpose of eligibility to receive revenue sharing funds from the date of incorporation through the fiscal year 2022-2023, which would be through September 30, 2023. The Village date of incorporation is December 31, 2022.

Section 218.21(3), F.S., requires that to be eligible for revenue sharing, a municipality “must have held an election for its legislative body pursuant to law and established such a legislative body, which meets pursuant to law.” The date of the election of the Village Council Members is March 14, 2023 and the date of the first meeting of the Village Council will be held April 5, 2023 or April 11, 2023. The Village will not become a municipality until those two events take place. It is recommended that the initial date for revenue sharing participation be the first day of the month occurring after these two events take place, which would be May 1, 2023, or the first day of any month thereafter. Although revenue sharing can start to

accrue, beginning upon incorporation, the distribution of funds would be withheld until the Village becomes a municipality.

Section 10(9) of the Proposed Charter also provides that the provisions of Section 218.23(1) F.S., are to be waived from the date of incorporation through the fiscal year 2022-2023, which would be September 30, 2023.

Some local governments are eligible for a minimum distribution that allows them to meet certain existing debt obligations. Section 218.23, F.S., states requirements for a unit of local government to participate in revenue sharing beyond a minimum eligibility entitlement. Waiving Section 218.23, F.S., results in the unit of local government only receiving a minimum distribution. In order to waive Section 218.23, F.S., the unit of local government is required to abide by the provisions of Section 218.23(1), F.S., which include to (1) require the unit of local government to report its finances for its most recently completed fiscal year to the Department of Financial Services, pursuant to Section 218.32, F.S.; and (2) require the unit of local government to make provisions for annual post audits of its financial accounts in accordance with provisions of law. The Village would not be able to meet these requirements until after the end of the Village's first local fiscal year, which would be September 30, 2023, and until the events discussed in the previous paragraphs have taken place. However, because new incorporations are not entitled to a minimum distribution, the Village must meet the requirements of Section 218.23(1), F.S., to participate in revenue sharing unless those requirements are waived by the Legislature.

Section 218.23(1)(c), F.S., requires as a condition of revenue sharing eligibility, that a local government impose 3 mills of ad valorem tax or a 3-mill equivalent. Page 23, of the Village's Feasibility Study, within the discussion of ad valorem taxes, there is reference that the proposed millage for the Village would be 3-mills.

HALF-CENT SALES TAX

Half-cent sales tax distribution is based on collection at the retail level, so the first possible distribution would be the month subsequent to the incorporation and distribution would occur two months later. Incorporation for the Village is December 31, 2022. Therefore, the Village's first possible distribution would be March 2023. However, those distributions would be held until the governing body is elected in an election held March 14, 2023 and the Village has its first Council Member meeting, which will take place either on April 5, 2023 or April 11, 2023.

Section 218.63(1), F.S., requires that a municipality meet the requirements for revenue sharing pursuant to Section 218.23, F.S., in order to participate in the local government half-cent sales tax. In addition, the City would need to meet all criteria for incorporation

pursuant to Section 165.061, F.S. It is unclear from the Proposed Charter whether the Village meets the requirements of Section 165.061, F.S.

GAS TAX REVENUES

Section 10(11) of the Proposed Charter provides that the Village, despite the provision of Section 336.025, F.S., is entitled to receive distributions of option fuel taxes beginning October 1, 2022. However, the earliest that the Village can participate in the distribution of local option fuel taxes would be October 2023, as explained below.

Section 336.025(4), F.S., provides that newly incorporated municipalities shall not receive fuel tax distributions until the beginning of the first full local fiscal year following incorporation. Per the Proposed Charter the Village will be incorporated as of December 31, 2022. Therefore, the first month that the Department could include the Village in the local option fuel distribution computation would be October 2023 with a November 2023 distribution.

Section 336.025(4)(b), F.S., requires that gas tax distributions to newly incorporated municipalities be in accord with the lane-mile formula unless otherwise provided by the special act providing for the incorporation. Section 10(11) of the Proposed Charter refers to the Village entering into an interlocal agreement with Palm Beach County Board of County Commissioners.

Interlocal agreements cannot be entered into prior to an election of the governing body and prior to the first Council Member meeting. Pursuant to Section 336.025(3)(a)1., F.S., the interlocal agreement must be executed prior to June 1 of a year and Section 336.025(5)(a), F.S., requires that a certified copy of that interlocal agreement must be provided to the Department of Revenue by October 1 of that year, to become effective at the beginning of the Village's next local fiscal year on October 1 of that year. If the Village's incorporation and the election of the governing body, first Council Member meeting and interlocal agreement are all executed prior to June 1, 2023 and a certified copy of the interlocal agreement is provided to the Department of Revenue by October 1, 2023, then the interlocal agreement will become effective October 1, 2023. Until an Interlocal agreement can become effective, the distribution would be made according to the lane-mile formula.

LOCAL COMMUNICATIONS SERVICES TAX

Pages 24-26 of the Feasibility Study refer to the public service tax, authorized pursuant to section 166.231, F.S., and to franchise fees. The public service tax on telecommunications that was formally authorized by Section 166.231(9), F.S., was repealed, effective October 1, 2001. See section 38, Chapter 2000-260, L.O.F. The authority of a local government to require taxes, charges, fees, or other impositions on dealers of communications services for occupying its roads and rights-of-way

has been preempted by state law. See Section 202.24, F.S. A local government may, by ordinance, impose a local communications services tax on the retail sale of communications services that are subject to tax, pursuant to Section 202.12, F.S. See Section 202.19, F.S. Local governments may elect to impose permit fees on dealers of communications services that use or occupy public roads or rights-of-way, pursuant to Section 337.401(3)(c), F.S. See Sections 202.19 and 202.24(2)(c)7., F.S.

The language in Section 10(10) of the Proposed Charter indicates that the local communications services tax imposed in Palm Beach County under Section 202.19, F.S., shall continue within the Village boundaries at the same rate from the date of incorporation through January 1, 2024. The revenues will be shared with the Village by Palm Beach County proportionally allocated based on the projected Village population estimate compared with the unincorporated population of Palm Beach County before the incorporation before the incorporation of the Village.

Pursuant to Section 202.21, F.S., local communications services taxes imposed under Section 202.19, F.S., are effective with respect to taxable services dated on or after January 1 of a year. A municipality adopting, changing, or repealing this tax must notify the Department of Revenue by September 1, prior to the January 1 effective date. The Department of Revenue, as a part of its administration of the communications services tax, maintains an address database for use by communications services providers. Each local taxing jurisdiction is required to furnish service addresses and any changes in jurisdictional boundaries to the Department of Revenue at least 120 days prior to a January 1st or July 1st effective date, pursuant to Section 202.22(2)(b)1., F.S.

The Village will not be able to enter into an inter-local agreement with Palm Beach County or impose a local communications services tax until the incorporation of the Village is approved, until the Village has had an election of the governing body and it has held its first Village Council Meeting, which would be in April 2023.

The current local communications services tax rate imposed in the unincorporated area that is to be incorporated will remain the same rate as unincorporated Palm Beach County. The Village will need to adopt an inter-local agreement with Palm Beach County to share this revenue until the Village adopts its own municipal rate. The earliest the Village can adopt a local communications services tax will be effective January 1, 2024. For such effective date, the Village will need to adopt the communications services tax rate before September 1, 2023 and notify the Department of the rate adoption no later than September 1, 2023.

REVENUE ESTIMATES

The Department has prepared the attached municipal and county revenue sharing estimates for Palm Beach County for the 2021-2022 state fiscal year and the Local

Government Half Cent revenue sharing estimates for the 2021-2022 local fiscal year. These analyses have been conducted as if the proposed city was eligible to receive revenue sharing in the 2021-2022 state or local fiscal year and used the population and taxable value amounts provided in the study.

Please contact the Department's Office of Legislative & Cabinet Services, Alec Yarger at (850) 717-6153 if you have any questions or if we may provide additional assistance.

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Attachments

cc: Tom Yeatman
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