MEMORANDUM

To: Marshall Wright, Building and Codes Director
Josh Suddath, Planning and Engineering Director
David Lawing, Finance Director
Eric Sitler, Law Director

From: Steven Weiner, Staff Attorney

Date: February 13, 2024

Re: Adequate Facilities Tax classifications

QUESTION: Does Chapter 57, Private Acts of 1999 require collection of adequate facilities tax for new commercial development?

ANSWER: The Sumner County Adequate Facilities Tax requires payment of a tax of seventy cents per square foot for new residential development and forty cents per square foot of industrial development, payable at the time of the issuance of a building permit. *Sections 3 and 7, Chapter 57, Private Acts of 1999*. The purpose of this tax is to pay for needed additional public facilities required by the new development. *Id. at Preamble*. The term "Industrial" is defined as "the development of any property for use by any person in a business classified as industrial under the United States Government Standard Industrial Classification Manual. *Id. at Section 2(k)*.

The United States Government Standard Industrial Classification Manual provides for ten categories of industrial classification. *Standard Industrial Classification (SIC) Manual*. These are (A) Agriculture, Forestry, and Fishing; (B) Mining; (C) Construction; (D) Manufacturing; (E) Transportation, Communications, Electric, Gas, and Sanitary Services; (F) Wholesale Trade; (G) Retail Trade; (H) Finance, Insurance, and Real Estate; (I) Services; (J) Public Administration. *Id.* Any category of development that would fall within any of those categories would fall within the definition of "Industrial" as defined in the Act because of their listing in the SIC manual per Section 2(k) of the Act.

There are exceptions to the collection of adequate facilities tax that are specifically laid out in the Act. These exceptions are for public buildings, places of worship, barns or outbuildings used for agricultural purposes, replacement structures for previously existing structures destroyed by fire or other disaster, a structure owned by a non-profit corporation which is a qualified 501(c)(3) corporation under the Internal Revenue Code, or additions to an existing single-family dwelling. *Section 6, Chapter 57, Private Acts of 1999*.

To the extent development meets the classifications set forth in the SIC manual and is not excluded from taxation by Section 6 of the Act, such activity is considered by the Act as industrial development and is accordingly subject to adequate facility taxes as such.

SOURCES FOR THIS MEMO:

Chapter 57, Private Acts of 1999

United States Government Standard Industrial Classification Manual

County Technical Assistance Service
INSTITUTE *for* PUBLIC SERVICE

February 13, 2024

Private Acts of 1999 Chapter 57

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

The University of Tennessee
County Technical Assistance Service
226 Anne Dallas Dudley Boulevard, Suite 400
Nashville, Tennessee 37219
615.532.3555 phone
615.532.3699 fax
www.ctas.tennessee.edu

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Private Acts of 1999 Chapter 57

WHEREAS, Sumner County, Tennessee, has been one of the fastest growing counties in the State for the past ten years, having been impacted by the rapid growth in the standard metropolitan area of Nashville; and WHEREAS, anticipated continued growth from the expansion of Nashville is expected to accelerate; and WHEREAS, this growth is anticipated to stimulate commercial, office, industrial and warehouse development in Sumner County as well as the incorporated cities of Gallatin, Hendersonville, Millersville, Mitchellville, Portland, Westmoreland and White House, all lying within Sumner County; and WHEREAS, the projected non-residential development and the availability of jobs is anticipated to stimulate a significant demand for new dwelling units in Sumner County; and WHEREAS, current projections show that:

(1) County population will be 147,700 persons in the year 2010, an increase of more than forty-three percent (43%) from 1990 to 2010; there will be a demand for approximately 15,000 additional dwelling units between 1990 and 2010; and new residential and non-residential development will consume additional acreage in Sumner County;
(2) Projected growth and land use development will cause a demand for countyprovided capital facilities (schools) in an amount well in excess of $20 million over the next four (4) years alone; and
(3) The county's present revenue-raising authority is limited and relies heavily on intergovernmental transfers which are not subject to county control and on property taxes, which would impose the costs of new growth on existing residents rather than on new residents and businesses creating the demand for the additional expenditures; and

WHEREAS, Sumner County is committed to both present and future county residents to maintaining a level of public facilities and services commensurate with those presently provided and WHEREAS, Sumner County is prepared to impose a fair, equitable and reasonable share of the costs of providing the necessary public facilities and services on existing residents of the county; and WHEREAS, the county's present population employment base, tax base and budget cannot alone support the additional revenues needed to supply facilities to serve new growth without a substantial increase in the property tax rate on existing development; and WHEREAS, the continued expansion of the Nashville metropolitan area represents both an extraordinary economic opportunity for the State of Tennessee as well as a potential economic burden on the existing residents of Sumner County; and WHEREAS, due to these unique circumstances, it is necessary and appropriate that Sumner County be given authorization to extend its taxing power to enable the county to impose a fair and reasonable share of the costs of public facilities necessitated by new development on that development so as not to create an unfair and inequitable burden on existing county residents; and WHEREAS, there is precedent in the State of Tennessee for such additional tax measures to impose costs on those who benefit from improvements and where the result would otherwise be to impose an unfair burden on existing residents; and WHEREAS, the most logical and effective mechanism to accomplish the intended result would be the imposition of a new privilege tax on new development in Sumner County and to use the revenues from such tax to provide the needed public facilities in those areas of Sumner County that would generally be required due to the growth in that area; now, therefore, BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and cited as the "Sumner County Adequate Facilities Tax".

SECTION 2. As used in this act, unless a different meaning appears from the context:

(a) "Board of Construction Appeals" means the board established in Sumner County pursuant to the requirements of the Southern Standard Building Code Congress.
(b) "Building" means any structure built for the support, shelter, or enclosure of persons, chattels, or movable property of any kind; the term includes a mobile home. This will not pertain to buildings used for agriculture purposes.
(c) "Building Permit" means a permit for development issued in Sumner County, whether by the county or by any city therein.
(d) "Capital Improvement Program" means a proposed schedule of future projects, listed in order of construction priority, together with cost estimates and the anticipated means of financing each project. All major projects requiring expenditure of public funds, over and above the annual local government operating expenses, for the purchase, construction, or replacement of the physical assets of the community are included.
(e) "Certificate of Occupancy" means a license issued for occupancy of a building or structure in Sumner County, whether by the county or by any city therein.
(f) "Development" means the construction, building, reconstruction, erection, extension, betterment, or improvement of land providing a building or structure or the addition to any building

or structure, or any part thereof, which provides, adds to or increases the floor area of a residential use or industrial use.
(g) "Dwelling Unit" means a room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease on a daily, weekly, monthly or longer basis; physically separated from any other room(s) or dwelling units which may be in the same structure; and containing independent cooking and sleeping facilities.
(h) "Floor Area" for residential developments means the total of the gross horizontal area of all floors, including basements, cellars, or attics which is heated and/or air-conditioned living space, or designed to be finished into heated and/or air-conditioned living space at a future date.
(i) "General Plan" means the official statement of the planning commission which sets forth major policies concerning future development of the jurisdictional area and meeting the provisions set forth in Tennessee Code Annotated, Sections 13-3-301, 13-3- 302, and 13-4-102. For purposes of this act only, a general plan may consist solely of the land development plan element which sets out a plan or scheme of future land usage.
(j) "Governing Body" means the Board of County Commissioners of Sumner County, Tennessee.
(k) "Industrial" means the development of any property for use by any person in a business classified as industrial under the United States Government Standard Industrial Classification Manual.
(l) "Major Street or Road Plan" means the plan adopted by the planning commission, pursuant to Tennessee Code Annotated, Sections 13-3-402 and 13-4-302, showing, among other things, "the general location, character, and extent of public ways (and) the removal, relocation, extension, Widening, narrowing, vacating, abandonment or change of use of existing public ways...".
(m) "Person" means any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit, and the plural as well as the singular number.
(n) "Place of Worship" means that portion of a building, owned by a religious institution which has tax-exempt status, which is used for worship services and related functions; provided, however, that a place of worship does not include buildings or portions of buildings which are used for purposes other than for worship and related functions or which are intended to be leased, rented or used by persons who do not have tax-exempt status.
(o) "Public Buildings" means a building owned by the State of Tennessee or any agency thereof, a political subdivision of the State of Tennessee, including, but not necessarily limited to counties, cities, school districts and special districts, or the federal government or any agency thereof.
(p) "Public Facility or Facilities" means a physical improvement undertaken by the county or city, including, but not limited to, the following: roads and bridges, parks and recreational facilities, jails and law enforcement facilities, schools, libraries, government buildings, fire stations, sanitary landfills, water, wastewater and drainage projects, airport facilities and other governmental capital improvements benefiting the citizens of the county and/or city(ies).
(q) "Residential" means the development of any property for a dwelling unit or units.
(r) "Subdivision Regulations" means the regulations adopted by the Sumner County Regional Planning Commission on August 2, 1989, as amended, pursuant to State Statutory authorization, by which the county regulates the subdivision of land.
(s) "Zoning Resolution" means the resolution adopted by the governing body pursuant to State Statutory authorization on July 9, 1973, as amended, by which the county regulates the zoning, use and development of property.

SECTION 3. It is the intent and purpose of this act to impose a tax on new development in Sumner County payable at the time of issuance of a building permit so as to ensure and require that the persons responsible for the new development share in the burdens of growth by paying their fair share for the cost of new and expanded public facilities made necessary by such development.

SECTION 4. Engaging in the act of development within Sumner County, except as provided in Section 6 herein, is declared to be a privilege upon which Sumner County may levy a tax at a rate set forth in Section 7.

SECTION 5. The governing body may, by resolution, adopt administrative guidelines, procedures, regulations and forms necessary to properly implement, administer and enforce the provisions of this act.

SECTION 6. This act shall not apply to development of:

(a) Public buildings;
(b) Places of worship;
(c) Barns or outbuildings used for agricultural purposes;
(d) Replacement structures for previously existing structures destroyed by fire orother disaster;
(e) A structure owned by a nonprofit corporation which is a qualified 501(c)(3) corporation under

the Internal Revenue Code; or
(f) Additions to an existing single-family dwelling.

SECTION 7.

(a) There is hereby imposed a tax on new development equal in an amount of seventy cents ($.70) per gross square foot of floor area of new residential development. The amount of such tax shall be approved by not less than a two-thirds (2/3) vote of the Legislative Body of Sumner County.
(b) There is hereby imposed a tax on new development equal in an amount of forty cents ($.40) per gross square foot of floor area of new industrial development. The amount of such tax shall be approved by not less than a two-thirds (2/3) vote of the Legislative Body of Sumner County.

SECTION 8. Proceeds from the tax levied herein shall be applied to capital projects and/or the related debt service for new school construction for projects situated generally in the areas of growth due to the construction of dwelling units in such areas.

SECTION 9. The tax established in this act shall be collected at the time of application for a building permit for development as herein defined by a county official duly authorized only by the county executive. If the building permit is issued by the county, the county building official or other responsible official shall receive payment in full in cash or other negotiable instrument as specified by resolution of the county and as approved by the county attorney. If the building permit is issued by one of the incorporated cities of Sumner County, the city shall, before issuance of the building permit, require evidence by a valid certificate executed by the county building inspector that the full amount of the tax due the county has been paid. The
issuance of a building permit by any city official, without certificate from the county that the tax has been paid, shall render the city liable to the county for the sum or sums that would have been collected by the county had the certificate of tax paid been required by the city.

SECTION 10. The authority to impose this privilege tax on new development in Sumner County is in addition to all other authority to impose taxes, fees, assessment, or other revenueraising or land development regulatory measures granted either by the private or public acts of the State of Tennessee and the imposition of such tax, in addition to any other authorized tax, fee assessment or charge, shall not be deemed to constitute double taxation.

SECTION 11. Any person aggrieved by the decision of the county building official or other responsible official concerning any aspect of this act may obtain review of the official's decision in the following manner:

(a) By payment of the disputed amount to Sumner County and by notifying the official that the payment is made under protest.
(b) By requesting an appeal of the decision of the official in written form within ten (10) days of the protest and payment. Appeals shall be heard by the Sumner County Board of Construction Appeals. Hearing shall be scheduled within forty-five (45) days of the written request for appeal. The Board of Construction Appeals shall act as a quasi-judicial body whose purpose is to determine the intent of this act, its applicability to the appellant, and to rule upon the interpretation of the official. The board will not be bound by formal rules of evidence applicable to the various courts of the State. Hearings before the board shall proceed as follows:

(1) The county building official shall explain his ruling and the reason for his ruling.
(2) The appellant shall explain his reasons for protesting the ruling.
(3) The board may request further information from any county official, including, but not limited to, the county executive, county commissioners, or the committee members, the county attorney, or the county planning staff. The board
will not have the power of subpoena.
(4) The board will deliberate and render a decision by a majority vote. Decisions will be reduced to writing and copies shall be sent to all parties and shall become a part of the minutes of the board. Decisions of the Board of Construction Appeals shall be final, except that either the county building official or the person aggrieved may seek review of the board's action by certiorari and supersedeas to the Chancery Court of Sumner County, Tennessee, provided that an application to the court is made within sixty (60) days of the written decision of the board.

SECTION 12. The provisions of this act shall in no manner repeal, modify, or interfere with the authority granted by any other public or private law applicable to Sumner County. This act shall be deemed to create an additional and alternative method for Sumner County to impose and collect taxes for the purpose of providing public facilities.

SECTION 13. If any provision of this act or the application thereof to any person or circumstance is held

invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 14. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the County Legislative Body of Sumner County. Its approval or non-approval shall be proclaimed by the Presiding Officer of the County Legislative Body and certified by such officer to the Secretary of State.

SECTION 15. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective as provided in Section 14.
Passed: May 24, 1999.

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