



OFFICE of the CITY ATTORNEY

August 3, 2016

Ms. Cynthia Kelly, Secretary
Administration Commission
State of Florida
Room 1801, The Capital
Tallahassee, Florida 32399-001

C/O Office of the Clerk, Barbara Leighty

Dear Ms. Kelly:

Enclosed is an appeal by the City of Pensacola of the Six Cent Local Option Fuel Tax distribution in our jurisdiction for the ten year and four month period of September 1, 2016 through December 21, 2026. Despite our extensive efforts, this matter could not be satisfactorily resolved, thus, pursuant to Florida Statute 336.025(5)(b) an appeal is made to the Governor and Cabinet sitting as the Administration Commission. As directed by your staff, the petition is being electronically filed with your office, and a copy has been served to the executive officer of each affected local government.

The City of Pensacola acknowledges that the original physically signed document will be retained in our office for the duration of the proceeding and of any subsequent appeal or subsequent proceeding in that cause, and that the City of Pensacola shall produce it upon the request of other parties.

Thank you for your consideration of this matter and thank you for the kind assistance that has been provided by your staff.

Respectfully,


Lysia H. Bowling
City Attorney

Letter to Cynthia Kelly, Secretary, Administration Commission of the State of Florida
C/O Barbara Leighty, Clerk
Administrative Appeal – Six Cent Local Option Fuel Tax Distribution
August 3, 2016
Page Two

Enclosures

cc: The Honorable Ashton Hayward, Mayor, City of Pensacola
The Honorable Grover C. Robinson, IV, Chair, Escambia County Board of County
Commissioners
The Honorable Freddie W. McCall, Sr., Mayor of Century
Eric W. Olson, City Administrator, City of Pensacola
Jack Brown, County Administrator, Escambia County
Richard Barker, Jr., Chief Financial Officer, City of Pensacola
Allison Rogers, County Attorney, Escambia County
Thomas A. Cloud, Esquire, Gray-Robinson, Attorneys at Law

BEFORE THE GOVERNOR AND CABINET SITTING AS
THE ADMINISTRATION COMMISSION OF THE STATE OF FLORIDA

In Re:

City of Pensacola's Appeal of Escambia County
Six-Cent Local Option Fuel Tax
Distribution For The Period September 1, 2016
Through December 31, 2026.

CITY OF PENSACOLA'S
APPEAL PURSUANT TO FLA. STAT. 336.025(5)(b)

Respectfully submitted this 3rd day of August, 2016.

CITY OF PENSACOLA,
A Florida municipal corporation



Lysia H. Bowling, Esq., City Attorney
Fla. Bar No. 740721
222 W. Main Street
Pensacola. FL 32502
(850) 435-1619

**BEFORE THE GOVERNOR AND CABINET SITTING AS
THE ADMINISTRATION COMMISSION OF THE STATE OF FLORIDA**

In Re:

**City of Pensacola's Appeal of Escambia County
Six-Cent Local Option Fuel Tax
Distribution For The Period September 1, 2016
Through December 31, 2026.**

APPEAL PURSUANT TO FLA. STAT. 336.025(5)(b)

THE CITY OF PENSACOLA, a Florida municipal corporation located in Escambia County, Florida, hereby files the following appeal pursuant to Fla. Stat. 336.025(5)(b), and states:

I. MATTER BEING APPEALED.

The City of Pensacola (hereafter, "the City" or "Pensacola") appeals the recent determination of the Board of County Commissioners of Escambia County, Florida (hereafter, "the BCC" or "County"), to calculate the City's share of the proceeds from the Additional (Six-Cent) Local Option Fuel Tax for the upcoming 124 months without including all of the City's transportation expenditures as required by statute, with the result that the City will receive approximately Seven Hundred Thousand Dollars (\$700,000) per year less than its statutory entitlement over the next 124 months.

II. JURISDICTION.

Jurisdiction for this appeal lies with the Administration Commission pursuant to the provisions of Fla. Stat. 336.025(5)(b), which states, in part, "Any dispute as to the determination by the county of distribution proportions shall be resolved through an appeal to the Administration Commission in accordance with procedures developed by the commission."

III. APPLICABLE LAW.

For over 20 years, the Florida Legislature has statutorily provided two alternative methods for local governments to use in order to allocate the income from the Six-Cent Local Option Fuel Tax between the county and the municipalities within the county. Fla. Stat. 336.025(3)(a)(1) allows the county and affected municipalities to agree to a distribution formula, and reflect that agreement in an Interlocal Agreement, or, in the alternative, in the absence of an agreement, to utilize a distribution formula pursuant to the provisions of F.S. 336.025(4)(a). When the county elects to utilize a distribution formula, it is required to do so by calculating the “transportation expenses” of the affected municipalities by including all of the categories of expenditures enumerated in F.S. 336.025(7)(a-g), including the city’s expenses for transportation related capital improvements and “roadway and right-of-way drainage.” A courtesy copy of Fla. State. 336.025 is attached hereto and identified as Attachment 1.

IV. SUMMARY OF THE CASE.

With recent efforts by the City and County to agree upon a distribution formula having failed, the Board of County Commissioners has just adopted a resolution imposing a distribution formula which fails to include all of the statutorily mandated municipal transportation costs in calculating the City’s share of the next decade’s anticipated fuel tax proceeds. As a result, the City will be deprived of its normal, customary and statutorily mandated share of this revenue source, and the citizens of Escambia County who reside in the City limits will not receive their fair share of resources to maintain and improve transportation infrastructure unless this Commission intervenes to insure that the County complies with the law as provided by the Legislature.

V. STATEMENT OF THE CASE AND FACTS.

Background

Escambia County, Florida, has within its borders two municipalities –the City of Pensacola and the Town of Century. During the past ten years of extension of the Six-Cent Local Option Fuel Tax, the distribution of the proceeds of the tax between the City, the Town and the County has been governed by a resolution adopted in 2006 by the Board of County Commissioners. See Attachment 2, attached hereto, letter from BCC Chairman to Department of Revenue, June 2, 2006. As Attachment 2 reflects, the City’s annual share of fuel tax receipts was 18.22% and was calculated pursuant to the requirements of Fla. Stat. 336.025(4)(a), by using all of the City’s “transportation expenditures” for the preceding five fiscal years, as that phrase is defined in Chapter 336. That formula has produced an annual revenue for the City of Pensacola of approximately \$1.55 million per

year for the period 2006-2016. See Attachment 3, Affidavit of Laura Picklap, CPA, para. 3.

Recent Events

Although Fla. Stat. 336.025(4)(a) requires that in calculating a municipality's share of future fuel tax revenues, a County must include the city's expenditures for transportation related capital expenditures and "roadway and right-of-way drainage" for the immediately preceding five fiscal years, Escambia County refused to do so for the City of Pensacola In adopting Resolution R2016-93 on July 14, 2016, and as a result, the City's distribution percentage for the next ten years has been reduced to 6.99%. The anticipated drop in revenues annually is approximately Seven Hundred Thousand Dollars (\$700,000) per year for the next 124 months. Attachment 3, Picklap Affidavit, para. 5.¹

ARGUMENT

Despite arising in the context of a seemingly complex statute, the City of Pensacola's appeal is quite simple and straightforward. All that the City is requesting is that this Commission direct Escambia County to give to the City what it is entitled to receive under the Fuel Tax statute, Fla. Stat. 336.025. Escambia County's determination to under-calculate the City's share of the proceeds from the Additional (Six-Cent) Local Option Fuel Tax and subsequent notification to the Department of Revenue of that determination affects the City's substantial interests and violates Section 336.025, Florida Statutes, by under allocating tax revenues to the City. The County's application of the statute is erroneous.

In the absence of an agreed-upon Interlocal Agreement, the County must calculate the City's entitlement according to what the City has spent over the immediately preceding five fiscal years for "transportation expenditures." F.S. 336.025(4)(a). The statute defines "transportation expenditures" to include transportation related capital expenditures as well as "roadway and right-of-way drainage" expenditures among the seven specified categories of expenditures. F.S. 336.025(7)(a-g). In sharply reducing the City's share of the tax, Escambia County has inexplicably and unlawfully refused to include the City's last five years' expenditures for transportation related capital expenditures and roadway drainage. Attachment 3, Picklap Affidavit, para. 4. Had the City's transportation related capital expenditures and roadway drainage expenditures been properly included, the City's share of the Local Option Fuel Tax would be substantially higher. Attachment 3 Picklap Affidavit, para. 4-5.

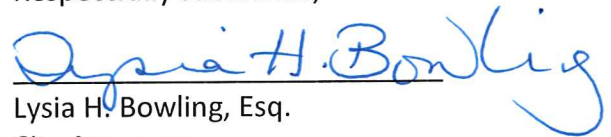
¹ The Town of Century's share has remained unchanged at 0.81% for the past decade and the next decade.

Recent research in the Administration Commission's files for similar appeals arising elsewhere in the State reveals that the circumstance of a County severely shortchanging its municipalities in the sharing of the fuel tax is an extremely rare event. However, the Florida Legislature has conferred jurisdiction over such disputes to the Commission, and the City of Pensacola regrets the inconvenience which this case may cause, but remains grateful for the opportunity to seek redress in this venue.

CONCLUSION AND RELIEF REQUESTED

WHEREFORE, for the reasons stated above, the City of Pensacola respectfully requests that the Administration Commission grant the City's appeal, set aside the percentages contained in Escambia County Ordinance No. 2016-93 and direct that the City of Pensacola's share of the Local Option Fuel Tax be recalculated to include its expenditures for roadway and right-of-way drainage pursuant to statutory requirements, and grant the City such other and further relief as may be deemed appropriate. The City is entitled to this relief by statutes and administrative rules including, but not limited to, Sections 120.569, 120.57, and 336.025, Florida Statutes, and Chapter 28-106, Florida Administrative Code.

Respectfully submitted,



Lysia H. Bowling, Esq.
City Attorney
Fla. Bar No. 740721
222 W. Main Street
Pensacola, FL 32502
(850) 435-1619

CITY OF PENSACOLA

CERTIFICATE OF SERVICE

I, Lysia H. Bowling, Esq., hereby certify that I have served copies of the foregoing appeal upon the following by email or by causing same to be placed into the U.S. Mail, first class, postage prepaid, this 3rd day of August, 2016.

A handwritten signature in blue ink, appearing to read "Lysia H. Bowling", is written over a horizontal line.

Lysia H. Bowling, Esq.
City Attorney
City of Pensacola
222 W. Main Street
Pensacola, FL 32502
Fla. Bar No. 740721
(850) 435-1619

Barbara Leighty, Clerk
Administration Commission
Room 1801, The Capitol
Tallahassee, Florida 32399-001

Cynthia Kelly, Secretary
Administration Commission
Room 1801, The Capitol
Tallahassee, Florida 32399-001

The Honorable Grover C. Robinson, IV
Chairman, Board of County Commissioners
Escambia County, Florida
P.O. Box 1591
Pensacola, Florida 32591-1591

The Honorable Freddie W. McCall, Sr.
Mayor of Century
7995 N. Century Boulevard
Century, Florida 32535

Jack Brown
County Administrator
Escambia County, Florida
P.O. Box 1591
Pensacola, Florida 32591-1591

ATTACHMENT

1

Select Year:

The 2016 Florida Statutes

Title XXVI

PUBLIC TRANSPORTATION

Chapter 336

COUNTY ROAD SYSTEM

[View Entire Chapter](#)

336.025 County transportation system; levy of local option fuel tax on motor fuel and diesel fuel.—

(1)(a) In addition to other taxes allowed by law, there may be levied as provided in ss. 206.41(1)(e) and 206.87(1)(c) a 1-cent, 2-cent, 3-cent, 4-cent, 5-cent, or 6-cent local option fuel tax upon every gallon of motor fuel and diesel fuel sold in a county and taxed under the provisions of part I or part II of chapter 206.

1. All impositions and rate changes of the tax shall be levied before October 1 to be effective January 1 of the following year for a period not to exceed 30 years, and the applicable method of distribution shall be established pursuant to subsection (3) or subsection (4). However, levies of the tax which were in effect on July 1, 2002, and which expire on August 31 of any year may be reimposed at the current authorized rate effective September 1 of the year of expiration. Upon expiration, the tax may be relevied provided that a redetermination of the method of distribution is made as provided in this section.

2. County and municipal governments shall utilize moneys received pursuant to this paragraph only for transportation expenditures.

3. Any tax levied pursuant to this paragraph may be extended on a majority vote of the governing body of the county. A redetermination of the method of distribution shall be established pursuant to subsection (3) or subsection (4), if, after July 1, 1986, the tax is extended or the tax rate changed, for the period of extension or for the additional tax.

(b) In addition to other taxes allowed by law, there may be levied as provided in s. 206.41(1)(e) a 1-cent, 2-cent, 3-cent, 4-cent, or 5-cent local option fuel tax upon every gallon of motor fuel sold in a county and taxed under the provisions of part I of chapter 206. The tax shall be levied by an ordinance adopted by a majority plus one vote of the membership of the governing body of the county or by referendum.

1. All impositions and rate changes of the tax shall be levied before October 1, to be effective January 1 of the following year. However, levies of the tax which were in effect on July 1, 2002, and which expire on August 31 of any year may be reimposed at the current authorized rate effective September 1 of the year of expiration.

2. The county may, prior to levy of the tax, establish by interlocal agreement with one or more municipalities located therein, representing a majority of the population of the incorporated area within the county, a distribution formula for dividing the entire proceeds of the tax among county government and all eligible municipalities within the county. If no interlocal agreement is adopted before the effective date of the tax, tax revenues shall be distributed pursuant to the provisions of subsection (4). If no interlocal agreement exists, a new interlocal agreement may be established prior to June 1 of any year pursuant to this subparagraph. However, any interlocal agreement agreed to under this

subparagraph after the initial levy of the tax or change in the tax rate authorized in this section shall under no circumstances materially or adversely affect the rights of holders of outstanding bonds which are backed by taxes authorized by this paragraph, and the amounts distributed to the county government and each municipality shall not be reduced below the amount necessary for the payment of principal and interest and reserves for principal and interest as required under the covenants of any bond resolution outstanding on the date of establishment of the new interlocal agreement.

3. County and municipal governments shall use moneys received pursuant to this paragraph for transportation expenditures needed to meet the requirements of the capital improvements element of an adopted comprehensive plan or for expenditures needed to meet immediate local transportation problems and for other transportation-related expenditures that are critical for building comprehensive roadway networks by local governments. For purposes of this paragraph, expenditures for the construction of new roads, the reconstruction or resurfacing of existing paved roads, or the paving of existing graded roads shall be deemed to increase capacity and such projects shall be included in the capital improvements element of an adopted comprehensive plan. Expenditures for purposes of this paragraph shall not include routine maintenance of roads.

(c) Local governments may use the services of the Division of Bond Finance of the State Board of Administration pursuant to the State Bond Act to issue any bonds through the provisions of this section and may pledge the revenues from local option fuel taxes to secure the payment of the bonds. Counties and municipalities may join together for the issuance of bonds issued pursuant to this section.

(d) If an interlocal agreement entered into under this section does not provide for automatic adjustments or periodic review by the local governmental entities of the method of distribution of local option fuel tax revenues, the parties to the agreement shall review and hold public hearings on the terms of the agreement at least every 2 years.

(2)(a) The tax levied pursuant to paragraph (1)(a) shall be collected and remitted in the same manner provided by ss. 206.41(1)(e) and 206.87(1)(c). The tax levied pursuant to paragraph (1)(b) shall be collected and remitted in the same manner provided by s. 206.41(1)(e). The taxes remitted pursuant to this section shall be transferred to the Local Option Fuel Tax Trust Fund, which fund is created for distribution to the county and eligible municipal governments within the county in which the tax was collected and which fund is subject to the service charge imposed in chapter 215. The tax shall be distributed monthly by the department in the same manner provided by s. 336.021(1)(c) and (d). The department shall deduct the administrative costs incurred by it in collecting, administering, enforcing, and distributing back to the counties the tax, which administrative costs may not exceed 2 percent of collections authorized by this section. The total administrative costs shall be prorated among those counties levying the tax according to the following formula, which shall be revised on July 1 of each year: Two-thirds of the amount deducted shall be based on the county's proportional share of the number of dealers who are registered for purposes of chapter 212 on June 30 of the preceding state fiscal year, and one-third of the amount deducted shall be based on the county's share of the total amount of the tax collected during the preceding state fiscal year. The department has the authority to prescribe and publish all forms upon which reports shall be made to it and other forms and records deemed to be necessary for proper administration and collection of the taxes levied by any county and shall promulgate such rules as may be necessary for the enforcement of this section, which rules shall have the full force and effect of law. The provisions of ss. 206.026, 206.027, 206.028, 206.051, 206.052, 206.054, 206.055, 206.06, 206.07, 206.075, 206.08, 206.09, 206.095, 206.10, 206.11, 206.12, 206.13, 206.14, 206.15, 206.16, 206.17, 206.175, 206.18, 206.199, 206.20, 206.204, 206.205, 206.21, 206.215, 206.22, 206.24, 206.27, 206.28, 206.41, 206.416, 206.44, 206.45, 206.48, 206.49, 206.56, 206.59,

206.626, 206.87, 206.872, 206.873, 206.8735, 206.874, 206.8741, 206.94, and 206.945 shall, as far as practicable, be applicable to the levy and collection of taxes imposed pursuant to this section as if fully set out in this section.

(b) The provisions of s. 206.43(7) shall apply to the incorrect reporting of the tax levied under this section.

(c) The provisions for refund provided in s. 206.625 are not applicable to the tax levied pursuant to paragraph (1)(a) or paragraph (1)(b) by any county.

(3) The tax authorized pursuant to paragraph (1)(a) shall be levied using either of the following procedures:

(a) The tax may be levied by an ordinance adopted by a majority vote of the governing body or upon approval by referendum. Such ordinance shall be adopted in accordance with the requirements imposed under one of the following circumstances, whichever is applicable:

1. The county may, prior to June 1, establish by interlocal agreement with one or more of the municipalities located therein, representing a majority of the population of the incorporated area within the county, a distribution formula for dividing the entire proceeds of the local option fuel tax among the county government and all eligible municipalities within the county. If no interlocal agreement exists, a new interlocal agreement may be established prior to August 1, 1986, or June 1 of any year thereafter pursuant to this subparagraph. However, any interlocal agreement agreed to under this subparagraph after the initial imposition of the tax, extension of the tax, or change in the tax rate authorized in this section shall under no circumstances materially or adversely affect the rights of holders of outstanding bonds which are backed by taxes authorized by this section, and the amounts distributed to the county government and each municipality shall not be reduced below the amount necessary for the payment of principal and interest and reserves for principal and interest as required under the covenants of any bond resolution outstanding on the date of establishment of the new interlocal agreement.

2. If an interlocal agreement has not been executed pursuant to subparagraph 1., the county may, prior to June 10, adopt a resolution of intent to levy the tax allowed in paragraph (1)(a).

3. Notwithstanding subparagraphs 1. and 2., any inland county with a population greater than 500,000 as of July 1, 1996, with an interlocal agreement with one or more of the incorporated areas within the county established pursuant to subparagraph 1. must utilize the population estimates of local governmental units as of April 1 of each year pursuant to s. 186.901, for dividing the proceeds of the local option fuel tax contained in such interlocal agreement. However, any interlocal agreement agreed to under this subparagraph after the initial imposition of the tax, extension of the tax, or change in the tax rate authorized in this section shall under no circumstances materially or adversely affect the rights of holders of outstanding bonds which are backed by taxes authorized by this section, and the amounts distributed to the county government and each municipality shall not be reduced below the amount necessary for the payment of principal and interest and reserves for principal and interest as required under the covenants of any bond resolution outstanding on the date of establishment of the new interlocal agreement.

(b) If no interlocal agreement or resolution is adopted pursuant to subparagraph (a)1. or subparagraph (a)2., municipalities representing more than 50 percent of the county population may, prior to June 20, adopt uniform resolutions approving the local option tax, establishing the duration of the levy and the rate authorized in paragraph (1)(a), and setting the date for a countywide referendum on whether to levy the tax. A referendum shall be held in accordance with the provisions of such resolution and applicable state law, provided that the county shall bear the costs thereof. The tax shall be levied and collected countywide on January 1 following 30 days after voter approval.

(4)(a) If the tax authorized pursuant to paragraph (1)(a) is levied under the circumstances of subparagraph (3)(a)2. or paragraph (3)(b), the proceeds of the tax shall be distributed among the county government and eligible municipalities based on the transportation expenditures of each for the immediately preceding 5 fiscal years, as a proportion of the total of such expenditures for the county and all municipalities within the county. After the initial levy of a tax being distributed pursuant to the provisions of this paragraph, the proportions shall be recalculated every 10 years based on the transportation expenditures of the immediately preceding 5 years. However, such recalculation shall under no circumstances materially or adversely affect the rights of holders of bonds outstanding on July 1, 1986, which are backed by taxes authorized in paragraph (1)(a), and the amounts distributed to the county government and each municipality shall not be reduced below the amount necessary for the payment of principal and interest and reserves for principal and interest as required under the covenants of any bond resolution outstanding on the date of the recalculation.

(b) Any newly incorporated municipality which is eligible for participation in the distribution of moneys under parts II and VI of chapter 218 and which is located in a county levying the tax pursuant to paragraph (1)(a) or paragraph (1)(b) is entitled to receive a share of the tax revenues. Distribution of such revenues to a newly incorporated municipality shall begin in the first full fiscal year following incorporation. The distribution to a newly incorporated municipality shall be:

1. Equal to the county's per lane mile expenditure in the previous year times the lane miles within the jurisdiction or responsibility of the municipality, in which case the county's share shall be reduced proportionately; or
2. Determined by the local act incorporating the municipality.

Such distribution shall under no circumstances materially or adversely affect the rights of holders of outstanding bonds which are backed by taxes authorized in this section, and the amounts distributed to the county government and each municipality shall not be reduced below the amount necessary for the payment of principal and interest and reserves for principal and interest as required under the covenants of any bond resolution outstanding on the date of the redistribution.

(5)(a) By October 1 of each year, the county shall notify the Department of Revenue of the rate of the taxes levied pursuant to paragraphs (1)(a) and (b), and of its decision to rescind or change the rate of a tax, if applicable, and shall provide the department with a certified copy of the interlocal agreement established under subparagraph (1)(b)2. or subparagraph (3)(a)1. with distribution proportions established by such agreement or pursuant to subsection (4), if applicable. A decision to rescind a tax may not take effect on any date other than December 31 and requires a minimum of 60 days' notice to the Department of Revenue of such decision.

(b) Any dispute as to the determination by the county of distribution proportions shall be resolved through an appeal to the Administration Commission in accordance with procedures developed by the commission. Pending final disposition of such proceeding, the tax shall be collected pursuant to this section, and such funds shall be held in escrow by the clerk of the circuit court of the county until final disposition.

(6) Only those municipalities and counties eligible for participation in the distribution of moneys under parts II and VI of chapter 218 are eligible to receive moneys under this section. Any funds otherwise undistributed because of ineligibility shall be distributed to eligible governments within the county in proportion to other moneys distributed pursuant to this section.

(7) For the purposes of this section, “transportation expenditures” means expenditures by the local government from local or state shared revenue sources, excluding expenditures of bond proceeds, for the following programs:

- (a) Public transportation operations and maintenance.
- (b) Roadway and right-of-way maintenance and equipment and structures used primarily for the storage and maintenance of such equipment.
- (c) Roadway and right-of-way drainage.
- (d) Street lighting installation, operation, maintenance, and repair.
- (e) Traffic signs, traffic engineering, signalization, and pavement markings, installation, operation, maintenance, and repair.
- (f) Bridge maintenance and operation.
- (g) Debt service and current expenditures for transportation capital projects in the foregoing program areas, including construction or reconstruction of roads and sidewalks.

(8) In addition to the uses specified in subsection (7), the governing body of a county with a population of 50,000 or less on April 1, 1992, or the governing body of a municipality within such a county may use the proceeds of the tax levied pursuant to paragraph (1)(a) in any fiscal year to fund infrastructure projects, if such projects are consistent with the local government’s approved comprehensive plan or, if the approval or denial of the plan has not become final, consistent with the plan last submitted to the state land planning agency. In addition, no more than an amount equal to the proceeds from 4 cents per gallon of the tax imposed pursuant to paragraph (1)(a) may be used by such county for the express and limited purpose of paying for a court-ordered refund of special assessments. Except as provided in subsection (7), such funds shall not be used for the operational expenses of any infrastructure. Such funds may be used for infrastructure projects under this subsection only after the local government, prior to the fiscal year in which the funds are proposed to be used, or if pledged for bonded indebtedness, prior to the fiscal year in which the bonds will be issued, has held a duly noticed public hearing on the proposed use of the funds and has adopted a resolution certifying that the local government has met all of the transportation needs identified in its approved comprehensive plan or, if the approval or denial of the plan has not become final, consistent with the plan last submitted to the state land planning agency. The proceeds shall not be pledged for bonded indebtedness for a period exceeding 10 years, except that, for the express and limited purpose of using such proceeds in any fiscal year to pay a court-ordered refund of special assessments, the proceeds may be pledged for bonded indebtedness not exceeding 15 years. For the purposes of this subsection, “infrastructure” has the same meaning as provided in s. 212.055.

(9) Notwithstanding any other provision of this section, the tax on diesel fuel authorized in this section shall be levied in every county at the rate of 6 cents per net gallon.

History.—s. 55, ch. 83-3; s. 6, ch. 83-138; s. 8, ch. 83-339; s. 1, ch. 84-369; s. 17, ch. 85-81; s. 33, ch. 85-180; s. 123, ch. 85-342; s. 43, ch. 86-152; s. 29, ch. 86-243; s. 71, ch. 87-99; s. 2, ch. 90-351; s. 9, ch. 92-184; s. 280, ch. 92-279; s. 4, ch. 92-309; s. 55, ch. 92-326; s. 33, ch. 93-164; s. 40, ch. 93-206; s. 8, ch. 94-146; s. 53, ch. 94-237; s. 960, ch. 95-148; s. 40, ch. 95-257; s. 1, ch. 95-343; ss. 118, 119, ch. 95-417; ss. 25, 68, ch. 96-323; ss. 18, 19, ch. 96-397; ss. 17, 18, ch. 97-54; s. 9, ch. 2000-266; s. 35, ch. 2001-201; s. 48, ch. 2002-218; s. 3, ch. 2003-86; s. 24, ch. 2003-254; s. 28, ch. 2007-196; s. 28, ch. 2012-174.

ATTACHMENT

2

**BOARD OF COUNTY COMMISSIONERS
ESCAMBIA COUNTY, FLORIDA**

Mike Whitehead
District One

Bill Dickson
District Two

Marie Young
District Three

Tom Benjamin
District Four

Kevin W. White
District Five

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June 2, 2006

Mr. Bruce H. Williams
Finance & Accounting Director III
Revenue Accounting Section
State of Florida Department of Revenue
Carlton Building
Tallahassee, Florida 32399-0100

Dear Sir:

Per your letter dated April 11, 2006, the following information is provided for Escambia County.

- The County will continue to levy \$.06 of the Local Option Fuel Tax allowed under Florida Statutes 336.025 (1)(a). The County does not currently levy any portion of the tax allowed under 336.025 (1)(b).
- In lieu of using an interlocal agreement the distribution formula for dividing the proceeds of this tax will default to the last five (5) year's of transportation expenditures as allowed under Florida Statutes 336.025 (4)(a). The estimated distribution formula using this method is as follows:
 - Escambia County – 81.15%
 - City of Pensacola – 18.22%
 - Town of Century - .63%

Thank you for your time and attention to this matter. Should have any questions, please do not hesitate to contact the Escambia County administrator, George Touart at (850) 595-4900.

Sincerely,

A handwritten signature in black ink, appearing to be "Mike Whitehead", with a long horizontal line extending to the right.

D.M. "Mike" Whitehead
Chairman, Board of County Commissioners
Escambia County, Florida

cc: ✓ Tom Bonfield, City Manager, City of Pensacola
The Honorable Evelyn Hammond, Mayor, Town of Century

Transportation Expenditures						
Escambia County, City of Pensacola, Town of Century						
FY 2001 through FY 2005						
Statutory Reference	Expenditures	5-Year Average	FY 2005	FY 2004	FY 2003	FY 2002
						FY 2001
7b and 7c	Ivan - Road Systems	788,501	1,487,408	79,694		
7g	9th Cent Gas Tax	1,348,885	584,764	1,846,307	1,977,184	864,454
7f	Bob Sikes Toll Bridge	2,837,721	3,455,062	3,385,670	3,425,321	2,164,559
7g	Transportation LOST II	7,047,639	4,611,058	4,668,757	8,559,174	6,433,493
7g	Debt Service on \$30m GBLP	5,214,779	5,386,518	5,396,600	5,039,618	5,036,380
7g	Transportation LOST I	1,162,388	775,691	899,113	1,113,249	1,249,848
7a	Mass Transit	7,380,787	7,831,626	7,610,433	7,494,043	7,285,879
7a	FTA-Capital Projects	587,177	139,043	873,365	533,926	1,142,257
7d	CRA - Street Lighting	103,566		42,605	182,170	131,824
7d	MSBU Streetlighting	196,241	258,520	228,234	195,848	162,785
7b and 7c	Streetsweeping	328,935	21,281	268,166	1,011,277	343,952
7b and 7c	Road Maintenance	7,736,516	6,640,856	8,478,341	8,719,836	6,844,553
7b and 7c	Garage/Road Department	2,243,277	2,068,179	1,955,795	1,862,155	2,449,193
7b and 7c	Vehicle Rehabilitation/Road Department	18,063	21,600	29,069	30,728	8,918
7b and 7c	Small Equipment Repair/Road Department	38,341	52,379	55,728	32,698	50,899
7e	Sign Maintenance	271,274	336,094	334,321	356,955	329,001
7b and 7c	Road Paving	508,931	8,800	161,786	41,344	223,912
7b and 7c	Transportation portion of Engineering Admin	327,435	315,972	283,942	340,616	309,451
7b and 7c	Sidewalks	1,691			0	0
7e	Traffic Control	227,638	296,820		0	0
7e	Traffic Calming	42,588			0	0
7b and 7c	Resurfacing	31,373			0	0
7b and 7c	Dirt Road Paving	72,242			0	0
7b and 7c	Transportation	948,464	921,286	1,149,874	1,243,755	1,242,211
7b	Rds. & Bridges Debt Service	362,867	893,168	893,168	28,000	0
7e	Survey	66,813			0	0
7e	Vacations	8,720			0	0
7e	Drafting	19,208			0	0
7g	Transfers for Debt Service on 1993B Road Improvement Bonds	807,864	0	811,708	1,170,372	892,600
7b and 7c	Engineering Technical Support	263,882	403,636	118,455	396,844	400,473
	Total Escambia County	39,314,453	36,519,769	40,570,931	43,755,115	37,566,841
	Town of Century Expenditures	304,738	252,707	411,139	326,176	344,066
	City of Pensacola Expenditures	8,855,603	9,533,888	10,281,521	9,548,436	8,348,868
	TOTAL:	\$48,474,794	\$46,306,164	\$51,263,591	\$53,629,725	\$46,259,765
	Escambia County as a Percentage	81.15%	78.87%	79.14%	81.59%	81.21%
	City of Pensacola as a Percentage	18.22%	20.59%	20.06%	17.80%	18.05%
	Town of Century as a Percentage	0.62%	0.55%	0.80%	0.61%	0.74%

ATTACHMENT

3

**BEFORE THE GOVERNOR AND CABINET SITTING AS
THE ADMINISTRATION COMMISSION OF THE STATE OF FLORIDA**

In Re:

**City of Pensacola's Appeal of Escambia County Six-Cent Local
Option Fuel Tax Distribution For The Period September 1,
2016, Through December 31, 2026.**

AFFIDAVIT OF LAURA PICKLAP, CPA

STATE OF FLORIDA

COUNTY OF ESCAMBIA

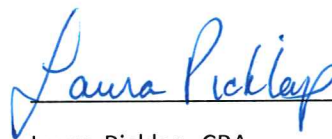
LAURA PICKLAP, being duly sworn, hereby deposes and says that:

1. I am employed as a Certified Public Accountant by the Financial Services Department of the City of Pensacola as the Accounting Services Manager. I work under the direct supervision of the City's Chief Financial Officer, Richard Barker, Jr. I am executing this Affidavit based upon my own personal knowledge in support of the City of Pensacola's appeal to the Administration Commission of Escambia County's proposed distribution of the Six-Cent Local Option Fuel Tax for the period September 1, 2016, through December 31, 2026.
2. My responsibilities as the Accounting Services Manager have required me to have possession of and be familiar with all of the City's records pertaining to the Escambia County methodology used for the distribution of the Six-Cent Local Option Fuel Tax provided by Chapter 336, Florida Statutes. I have also conferred with my financial management counterparts employed by Escambia County regarding the County's intended recalculation of the City's share of the fuel tax.
3. For the period September 1, 2006, through August 31, 2016, Escambia County utilized all of the "transportation expenditure" categories of the City of Pensacola as mandated by F.S. 336.025(7), including the City's expenditures for "roadway and right-of-way drainage." Using

those categories, for the past 10 years, the City has annually received 18.22% of the fuel tax distribution, which has produced a revenue stream for the City of approximately \$1.55 million per year in recent years.

4. Escambia County adopted the attached Resolution 2016-93 on July 14, 2016 (attached hereto), establishing the lower percentage of 6.99%. The County's calculation has utilized some of the City's transportation expenditures for the past five fiscal years as reflected in the City's Comprehensive Annual Financial Report ("CAFR"), but has not utilized the transportation expenses for transportation related capital expenditures and roadway drainage as defined in F.S.336.025(7). In determining the distribution percentage, the City has been credited with non-capital and non-drainage expenditures of \$2,806,410, but has not been credited with the additional \$6,640,044, which the City has expended for transportation related capital expenditures and "roadway and right-of-way drainage." Using all of the factors required by F.S. 336(7) would result in the City being credited with a total transportation expenditure of \$9,446,454, rather than the amount of \$2,806,410 which the County has adopted in the Resolution.
5. If the County is allowed to continue to ignore the City's roadway drainage expenditures, the City's anticipated revenue stream from the tax collected over the next 124 months is estimated to decrease from approximately \$1.3 million per year to approximately \$591,000 per year, for a total loss of over \$7.3 million.

FURTHER, AFFIANT SAYETH NAUGHT.



Laura Picklap, CPA

Sworn to and subscribed before me this 3rd day of August, 2016, by Laura Picklap, who is personally known to me.



Notary Public

My Commission expires:



**BOARD OF COUNTY COMMISSIONERS
ESCAMBIA COUNTY, FLORIDA**



Wilson B. Robertson
District One

Douglas B. Underhill
District Two

Lumon May
District Three

Grover C. Robinson, IV
District Four

Steven Barry
District Five

221 Palafox Place, Suite 400
P. O. Box 1591
Pensacola, Florida 32591-1591

Telephone (850) 595-4902
Toll Free (866) 730-9152
Telefax (850) 595-4908
(Suncom) 695-4902

July 14, 2016

Ms. Amy A. Barrow
Senior Management Analyst
Department of Revenue Accounting
Florida Department of Revenue
P.O. Box 6609
Tallahassee, FL 32314-6609

Dear Ms. Barrow:

I received your letter dated April 8, 2016, concerning the County's 6-cent local option fuel tax on motor fuel and diesel fuel. Please be advised, effective September 1, 2016, the County shall continue to levy the \$0.06 Local Option Gas Tax for a period of ten years and four months expiring on December 31, 2026. The proceeds of the tax shall be distributed based upon the *transportation expenditures* of the County and each eligible municipality for the preceding five (5) fiscal years as provided in §336.025(4)(a), Florida Statutes.

Based on this formula, the proceeds shall be distributed as follows:

<u>Entity</u>	<u>Distribution</u>
Escambia County	92.20 %
City of Pensacola	6.99 %
Town of Century	0.81 %

Thank you for your attention to this matter. Should you have any questions or concerns, please feel free to contact the Escambia County Administrator, Jack R. Brown at (850) 595-4947.

Sincerely,

A handwritten signature in dark ink, appearing to read "Grover C. Robinson, IV".

Grover C. Robinson, IV
Chairman, Board of County Commissioners
Escambia County, Florida

cc: Eric Olsen, City Administrator, City of Pensacola
Honorable Freddie McCall, Mayor, Town of Century
Gary A. Moreland, Assistant General Counsel, Florida Department of Revenue
Richard "Dick" Barker, Jr., Chief Financial Officer, City of Pensacola

Escambia County
Clerk's Original

7/14/2016 #3

RESOLUTION R2016- 93

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA; PROVIDING FOR A DISTRIBUTION FORMULA FOR THE LOCAL OPTION FUEL TAX; PROVIDING FOR TRANSMITTAL; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on June 2, 2006, the Florida Department of Revenue was provided with the distribution formula for the Local Option Fuel Tax pursuant to the ordinance in effect from September 1, 2006 through August 31, 2016 (copy attached); and

WHEREAS, pursuant to that notification, the default formula was used and the previous five (5) years' transportation expenditures were used for the distribution formula; and

WHEREAS, on July 23, 2015 the Board of County Commissioners reenacted a local option fuel tax ordinance to continue the six (6)-cent fuel tax collections effective September 1, 2016 through December 31, 2026 (copy attached); and

WHEREAS, the Board of County Commissioners again desires to use the statutory default formula as set forth pursuant to §336.025, Fla. Stat. and use the last five (5) years' transportation expenditures; and

WHEREAS, current CAFR numbers reflect an adjustment in the default formula is necessary and equate into a distribution formula of 92.20 % for Escambia County, 6.99 % for the City of Pensacola and .81 % for the Town of Century; and

WHEREAS, by means of this resolution and accompanying letter, the Florida Department of Revenue is informed of the distribution formula to be effective September 1, 2016.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA:

SECTION 1. That the above stated recitals are true and correct and incorporated herein by reference.

SECTION 2. The Board of County Commissioners has determined the new distribution formula effective September 1, 2016 shall be:

92.20 % Escambia County
6.99 % City of Pensacola
.81 % Town of Century

Not Agenda Backup

7/14/2016 *[Signature]*

SECTION 3. That the Clerk shall forward a certified copy of this Resolution to the Department of Revenue, c/o Amy A. Barrow, Senior Management Analyst, Revenue Accounting Sub-process, Post Office Box 6609, Tallahassee, Florida 32314-6609.

SECTION 4. That this Resolution shall take effect immediately upon adoption by the Board of County Commissioners.

ADOPTED this 14th day of July 2016.

BOARD OF COUNTY COMMISSIONERS
ESCAMBIA COUNTY, FLORIDA

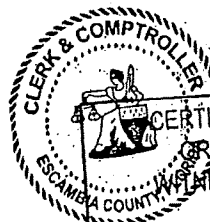
By: [Signature]
Grover C. Robinson, IV, Chairman

ATTEST: Pam Childers
Clerk of the Circuit Court



By: Kimberly McLeod
Deputy Clerk

Approved as to form and legal
sufficiency.
By/Title: [Signature]
Date: 7/14/16



CERTIFIED TO BE A TRUE COPY OF THE
ORIGINAL ON FILE IN THIS OFFICE
I HAVE MY HAND AND OFFICIAL SEAL
PAM CHILDERS
CLERK OF THE CIRCUIT COURT & COMPTROLLER
ESCAMBIA COUNTY, FLORIDA
BY: [Signature] D.C.
DATE: July 14, 2016