

insurance less than the minimum risk rate premium promulgated by the department.

In these circumstances, it cannot be said that a company writing title insurance policies is not subject to the regulation of the state; and it must be concluded that the sworn statement disclosing an interest as defined by the statute must be filed pursuant to §112.313(2), *supra*.

073-72—March 22, 1973

TAXATION

DELINQUENT PERSONAL PROPERTY TAXES—INTEREST RATE CHARGED

To: *Stuart Simon, Dade County Attorney, Miami*

Prepared by: *William R. Cave, Assistant Attorney General*

QUESTION:

Is 12 percent the proper rate of interest to be charged on 1972 delinquent personal property taxes?

SUMMARY:

The proper rate of interest on the 1972 delinquent personal property taxes is 12 percent pursuant to §1, Ch. 72-268, Laws of Florida [§197.062(2), F. S. (1972 Supp.)].

Your question is answered in the affirmative.

Section 1, Ch. 72-268, Laws of Florida [§197.016(1), F. S. (1972 Supp.)], provides in pertinent part the following:

All unpaid taxes upon *real and personal property* shall become delinquent on . . . and shall bear interest from the date at the rate of eighteen percent (18%) per year *until a certificate is sold*
(Emphasis supplied.)

Section 1, Ch. 72-268, Laws of Florida [§197.062(2), F. S. (1972 Supp.)], concerning personal property provides the following:

(2) The tax collector shall advertise a list of the names of delinquent tangible personal property taxpayers and the amount of tax due by each, on or before April 25 of each year. The advertisement shall include a notice that *all personal property taxes are now drawing interest at the rate of twelve percent (12%) per year*, and that unless the delinquent taxes are paid before May 1, warrants will be issued thereon directing levy upon and seizure of the tangible personal property of the taxpayer for the unpaid taxes. (Emphasis supplied.)

In an effort to conform §197.062(2), *supra*, with §197.016(1), *supra*, the Statutory Revision Division deleted the words "twelve percent (12%)" in subsection 197.062(2) and replaced them with the words "eighteen percent (18%)" when it compiled and published the laws enacted during the 1972 Legislative Session. This alteration does not appear to be within the scope of the committee's powers pursuant to §11.242(5)(h), F. S. Therefore, the wording as it appears in Ch. 72-268, Laws of Florida, would be controlling until the succeeding session, at which time the legislature may enact such corrections and amendments of Ch. 197, F. S., as it may deem appropriate or necessary. *City of Coral Gables v. Brasher*, 120 So.2d 5 (Fla. 1960).

Even though §197.016(1), *supra*, specifically provides that delinquent real and *personal property taxes* shall draw interest at the rate of 18 percent from date of delinquency it is modified by the provision, “*until a certificate is sold*, from which time the interest rate shall be as bid by the buyer.” (Emphasis supplied.) The law does not provide for a tax certificate to be sold on delinquent personal property taxes which implies that the above section was intended to be limited to delinquent real property taxes. Section 1 [§197.062(3), Ch. 72-268, *supra*, is consistent with and carries out this apparent legislative intent as to real property taxes. This is further evidenced by the fact that the language used in §197.016(1) was derived from §197.081, F. S. 1971, which pertained only to real property and that the language of §197.062(2), *supra*, was derived basically from §197.095(2), F. S. 1971, which provided for interest on delinquent personal property taxes at the rate of one percent per month which is, in essence, 12 percent per year. Therefore, the proper interest rate to charge on the 1972 delinquent personal property taxes is 12 percent as provided for in §197.062(2).

The above conclusion is indicated by the fundamental rules of statutory construction that require a statute to be construed so as to give effect to the plain legislative intent and at the same time not reach an absurd conclusion if any other construction is possible. *Pinellas County v. Wooley*, 189 So.2d 217 (2 D.C.A. Fla., 1966); *State Department of Public Welfare v. Bland*, 66 So.2d 59 (Fla. 1953). Where there is any reasonable basis for consistency, the statutes should be construed so as to be consistent with one another rather than in conflict, and the legislature should not be charged with enacting contradictory provisions in the same act. *State v. Putnam Co. Develop. Auth.*, 249 So.2d 6 (Fla. 1971).

073-73—March 22, 1973

PROBATE

FEE FOR FILING CAVEAT NOT TO BE CREDITED AGAINST UNIFORM FILING FEE

To: *Ernie Lee Magaha, Clerk, Circuit Court, Pensacola*

Prepared by: *Rebecca Bowles Hawkins, Assistant Attorney General*

QUESTION:

Under the provisions of §28.2401, F. S. (1972 Supp.), is the ten dollar fee collected for the filing of a caveat to be credited against the required uniform filing fee of twenty-five, sixty, or seventy-five dollars?

SUMMARY:

Pending legislative or judicial clarification, the ten dollar fee for filing a caveat under §732.29, F. S., should not be credited against the uniform fee payable by the personal representative under §28.2401, *id.*, when a decedent's estate is opened for administration or for the purpose of obtaining an Order of Administration Unnecessary.

As noted in AGO's 072-327 and 072-408, the uniform filing fee in probate and guardianship estates required by §28.2401, *supra*, is intended to cover the cost of filing and recording all routine papers in the estate. And it was ruled in AGO 072-390 that a twenty-five dollar fee paid by the personal representative to open an estate to obtain an Order of Administration Unnecessary should be credited to the sixty dollar fee which must be paid by him when it is discovered that the estate must be administered. In so ruling, it was pointed out that, except