

For the reasons stated, it must be concluded that insofar as the provision of §6 of Ch. 73-172, *supra*, here in question [§195.087(2), *supra*] can be interpreted as requiring the tax collectors of this state to operate their offices on a calendar-year basis, it has been impliedly repealed and superseded by Ch. 73-349, *supra*.

Accordingly, your question is answered in the affirmative.

073-282—August 14, 1973

TAXATION

DOCUMENTARY STAMP TAX—STOCK ISSUED ON MERGER OR CONSOLIDATION OF CORPORATIONS

To: J. Ed Straughn, Executive Director, Department of Revenue, Tallahassee

Prepared by: Sydney H. McKenzie III, Assistant Attorney General

QUESTION:

Is corporate stock issued in connection with a merger or consolidation of two or more corporations into a single corporation subject to taxation under either §201.04 or §201.05, F. S.?

SUMMARY:

In general, original issue and transfer tax stamps are required on all phases of mergers or consolidations. The one exception would be that no transfer taxes are due in a merger on the surrender of stock by stockholders of the surviving corporation to that corporation in exchange for new stock in that corporation. Original issue stamps in that phase of the transaction are required only if, and to the extent that, the aggregate par value of the new stock exceeds that of the surviving corporation for which it is exchanged. However, both original issue and transfer stamp taxes are required upon the exchange of new stock of the surviving corporation for the old stock of the constituent corporations which do not survive.

The question should in my opinion be answered in the affirmative, both as to §201.04, F. S., and as to §201.05, F. S.

The above question was previously answered by AGO 061-57, which concluded that:

... where two or more corporations are merged into a single corporation, being one of the merging corporations usually referred to as the continuing corporation, without the dedication of newly committed capital, no taxes are payable under either §201.04 or 201.05, F. S. Where a new and additional corporation is formed, stock issued by it in lieu of stock in the merged or consolidated corporations would seem to be an original issue of stock. Any additional capital, not previously dedicated, brought in through or in connection with a merger or consolidation, would seem to be an additional issuance of capital stock so that the portion of the stock representing such additional capital would be subject to taxation.

This opinion is in the nature of a reconsideration of that previous opinion in the light of developed case law in this area. The conclusion of this opinion is in accordance with new administrative rules adopted by the Department of Revenue for the documentary stamp tax which were filed June 21, 1973, and become effective August 18, 1973.

Section 201.01, F. S., provides in relevant portion:

There shall be levied, collected and paid the taxes specified in this chapter, for and in respect to . . . certificates of stock. . . .

Section 201.04, F. S., provides in relevant portion:

(1) On all sales, agreements to sell or memoranda of sales or deliveries of, transfers of legal title to shares, or certificates of stock or profits or interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock interest rights or not

And, §201.05, F. S., provides in relevant portion:

On each original issue, whether organization or reorganization, of certificates of stock or shares however designated issued in the state, or certificates of profits, or of interest in property or accumulations, by any corporation or by any joint stock company or other association as set forth in §201.04

While it is generally true that the Florida Documentary Stamp Act, being similar to the now repealed Federal Revenue Act of 1924, as amended, 26 U.S.C.A. §4301, *et seq.* (repealed January 1, 1966, P. L. 89-44, 1965), has been given the same construction in the Florida courts as given to the federal act in the federal courts, with regard to the imposition of the documentary stamp tax [*Choctawhatchee Electric Cooperative, Inc. v. Green*, 132 So.2d 556 (Fla. 1961), *reh. den.* September 20, 1961; *Gay v. Inter-County Tel. and Tel. Co.*, 60 So.2d 22 (Fla. 1952), *reh. den.* August 18, 1952] such construction is possible only insofar as it is not contrary to the spirit and policy of the Florida Statutes. *State v. Cook*, 146 So.223 (Fla. 1933).

Under federal law, prior to 1958, it was held that stock issue and transfer taxes were payable with respect to the issuance and transfer of stock with respect to virtually all phases of a corporate reorganization by merger or consolidation, even though the reorganization involved nothing more than reincorporation in another state with no changes in the rights or interests of stockholders other than might result from differences in the corporate laws of the two states. *United States v. Vortex Cup Co.*, 84 F.2d 925 (7th Cir. 1936); *American Gas Machine Co. v. Willcuts*, 87 F.2d 924 (8th Cir. 1937); *Jefferson Lake Sulphur Co. v. United States*, 195 F.2d 1012 (5th Cir. 1952); *American Mail Line, Limited v. United States*, 101 F. Supp. 364 (Ct. Claims 1951), 121 Ct. Cl. 63 (1951); *and see Raybestos-Manhattan, Inc. v. United States*, 296 U.S. 60 (1935). *See review in Cabot Corporation v. United States*, 220 F. Supp. 261, 264 (Mass., 1963), *affirmed* 326 F.2d 753 (1st Cir. 1964). This law is well summarized in *Fidelity-Baltimore National Bank v. United States*, 328 F. 2d 953 (4th Cir. 1964) at p. 955:

Nevertheless, from the language of the statute and its history of administration and interpretation, it is now beyond question that original issue and transfer tax stamps are required as a result of such mergers or consolidations. What phases of the transaction are taxable, however, will vary with the form in which it is cast. Handled as a traditional consolidation, a newly formed corporation succeeding to the rights, assets and obligations of the constituents, original issue stamps must be affixed to the stub of each new stock certificate and transfer stamps to each old certificate surrendered in exchange for the new. On the other hand, if, as in the traditional merger, one of the constituent corporations becomes the surviving one, a technical variant of a consolidation without

economic significance, the surviving corporation has not, in a technical sense, transferred to its stockholders any right to receive new stock. Thus no transfer taxes are due when the old stock of that constituent is surrendered for new, and original issue stamps are required on that phase of the transaction only if, and to the extent that, the aggregate par value of the new stock exceeds that of the surviving constituent for which it is exchanged. In a merger, however, both original issue and transfer stamps are due upon the exchange of new stock for the old stock of those constituent corporations which do not survive.

The reasoning and conclusions of this line of cases were followed by the Florida Supreme Court in *North American Company v. Green*, 120 So.2d 603 (Fla. 1959), Reh. 1960, on the question of taxation of a transfer of stock between a parent corporation and the stockholders of a subsidiary corporation, where the court determined, based on such cases as *Raybestos-Manhattan* and *Jefferson Lake Sulphur Co.*, that such a transfer of stock between the parent and the subsidiary's stockholders was a taxable transfer.

While the federal law was amended in 1958 to exempt certain merger and consolidation transactions from both federal stock issue and transfer taxes where a mere change in identity, form, and place of organization is effected [26 U.S.C.A. (I.R.C. 1954), §§4301, 4321, and 4382 (b) (1) (D), and see *Cabot Corporation v. United States*, *supra*; *Columbia Gas of Pennsylvania, Inc. v. United States*, 446 F.2d 320 (3rd Cir. 1971)], no such amendment for merely formal issues and transfers involving no change in ownership and no new dedication of capital was incorporated into the Florida Statutes. Therefore, the law of Florida would require that the issuance and transfer of stock in a merger or consolidation is subject to documentary transfer stamp taxes as summarized above in the *Fidelity-Baltimore* case.

073-283—August 14, 1973

PAROLE AND PROBATION COMMISSION
HANDLING FUNDS FOR PROBATIONERS

To: *Armond R. Cross, Chairman, Florida Parole and Probation Commission, Tallahassee*

Prepared by: *Donald K. Rudser, Assistant Attorney General*

QUESTION:

Is the Parole and Probation Commission authorized to collect and disburse moneys, including maintaining bank accounts for such purposes, for court ordered restitution, child support, court costs, cost of probation, etc. imposed upon a probationer as conditions of probation?

SUMMARY:

The Parole and Probation Commission may assist the court in the collection of moneys ordered as a condition of probation but does not have the authority to maintain a bank account to facilitate the collection and disbursement of said funds. Therefore, all funds should be deposited with the clerk of the appropriate court and disbursed through the clerk's office.

Obviously, §948.03, F. S., as liberally interpreted by the Florida courts, see *State v. Williams*, 237 So.2d 69 (3 D.C.A. Fla., 1970), is sufficiently broad to permit the court to order, as conditions of probation, restitution, child support, court costs, and costs of probation. Similarly, the duties imposed by law on the Parole and