

substitution of the designation "Tax Collector" for the designation "County Judge" in the applicable statutes. The 1973 Reviser's Bill, Ch. 73-333, Laws of Florida, has made the appropriate substitutions in §§372.57(17) (a), 372.574, 372.61, and 372.69, F. S.

Accordingly, the county tax collectors of this state or their subagents issue hunting and fishing licenses, collect the fees therefor, and report to the Game and Fresh Water Fish Commission the license sales made by them on forms provided for that purpose by the commission. The license forms supplied to tax collectors by the commission contain on the back thereof a "synopsis" of the game trapping or freshwater fishing laws of this state.

073-312—September 4, 1973

### TAXATION

#### PURCHASER OF STOCK ON MARGIN LIABLE FOR INTANGIBLE TAX

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

*Prepared by: E. Wilson Crump II, Assistant Attorney General*

#### QUESTION:

Who is liable, when a Florida resident buys a share or shares of stock from a Florida security broker on margin, for the Florida intangible tax on stock prior to full payment of the marginal account and delivery of the share of stock?

#### SUMMARY:

In Florida, when a customer buys stock on margin from a broker, the customer is the owner of the stock and the broker is pledgee for purposes of securing the unpaid balance of the purchase price. It follows that the customer is primarily liable for the payment of the intangible personal property tax on such stock.

It is my opinion, subject to the following comments, that the customer is primarily liable to pay the intangible tax on the full value of such stock.

A margin transaction such as is contemplated by the question is one in which a customer orders a share or shares of stock from a stockbroker; only a portion of the purchase price thereof is paid originally by the customer; the broker retains possession of the stock until the purchase price is paid in full by the customer, at which time the stock is delivered to him. A more detailed description of such a transaction may be found in the case of *Smith v. Lummus*, 14 So.2d 897 (Fla. 1943). One of my predecessors in an early opinion, AGO 0-517, Aug. 8, 1939, Biennial Report of the Attorney General, 1939-1940, p. 471, held that the broker was taxable on stock purchased on margin. His primary authority for this conclusion was the Massachusetts case of *Chase v. Boston*, 62 N.E. 1059 (Mass. 1902), which had held that, under the facts of a margin transaction, the broker was the owner of the stock prior to delivery to the customer and that it was taxable to him as his property. This conclusion that the broker is the owner is in accord with the Massachusetts view and the English view. [See] 51 Am. Jur. *Taxation* §434, 41 A.L.R. 1258. On the other hand, the majority rule in this country appears to be that the broker is only the pledgee of the property with title vesting immediately in the customer. [See] 12 Am. Jur.2d *Brokers* §131; 41 A.L.R. 1258.

It is my opinion that AGO 0-517 was mistaken as to the line of authority followed in Florida and that the courts of this state have consistently tended to follow the majority view where the question has arisen. In the case of *Henderson v.*

Usher, 170 So. 846 (Fla. 1936), the Florida Supreme Court analyzed in depth the relationship between a broker and a customer buying on margin for purposes of defining the dower rights of the widow of the customer. The court ruled that the broker held the shares of stock in question as pledgee. In the intangible tax case of Smith v. Lummus, 14 So.2d 897 (Fla. 1943), the court described a margin transaction in some detail for the purpose of determining the taxing situs of the receivable generated thereby. In the process of describing a typical transaction, the court said, "[t]he 100 shares of stock [purchased on margin] is the *property of the Florida customer pledged* by him for payment of the money loaned." [See] 14 So.2d at 899 (Emphasis supplied.). Thus, it is my conclusion that in Florida the customer is the owner of a share of stock purchased on margin, even prior to delivery. It would seem to follow that the customer would be primarily taxable on that share of stock on its full value on the assessment date. Putnam v. Ford, 155 S.E. 823, (Va. 1930); 71 A.L.R. 1225. To the extent that AGO 0-517, *supra*, and AGO 058-165 are inconsistent with the views expressed above, they are hereby superseded. It should be made clear that this opinion applies only to stock purchased on margin. The case law in Florida is clear that the account receivable generated by a margin transaction is taxable to the broker, at least where it has a business situs within this state. Smith v. Lummus, 6 So.2d 625 (Fla. 1942), same case, 14 So.2d 897 (Fla. 1943).

073-313—September 5, 1973

#### TAXATION

#### DISPOSITION OF MONEYS IN MUNICIPAL FINANCIAL ASSISTANCE TRUST FUND

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

Prepared by: Stephen E. Mitchell, Assistant Attorney General and James D. Beasley, Legal Intern

#### QUESTION:

What disposition should be made of the balance in the Municipal Financial Assistance Trust Fund which has accumulated for those counties which do not have a qualifying municipality under §200.132, F. S. 1971?

#### SUMMARY:

Cigarette tax revenues which are credited or transferred to the Municipal Financial Assistance Trust Fund pursuant to §210.20, F. S., but which have accumulated for lack of a qualifying municipality prescribed in §200.132(1), F. S. 1971, must remain in the trust fund, subject to future appropriation, disposition, or transfer by the legislature. Any disbursement to other than a qualifying municipality is unauthorized as the fund may not be disbursed for any purpose not specified in the statute.

The enactment of Ch. 71-364, Laws of Florida, added §210.026, F. S., which section created the Municipal Financial Assistance Trust Fund (hereinafter referred to as the trust fund). Section 210.026 also provided for an additional cigarette tax of two cents per package, and directed that the proceeds of such tax be paid to the state treasurer to the credit of the trust fund commencing October 1, 1971.

A formula for distributing the tax revenues appropriated to the trust fund was also included in Ch. 71-364, *supra*, and now appears in §200.132, F. S. 1971. The following provisions of that section are pertinent to this discussion: