

This position is also taken in AGO 069-60 which concludes that if funds are available from budgets for contingencies then it would be permissible to pay the refunds from such fund. The opinion also stated that "[t]he statute effectively classifies expenditures for such refunds as a county purpose without regard to the original distribution of the funds erroneously collected."

Although the Department of Revenue has no written procedure to follow in filing an application and making a refund for taxes paid voluntarily or involuntarily under the circumstances set out in §195.106(1)(a),(b), and (c), F. S., it is currently authorizing refunds where the application for refund is approved by the tax assessor or tax collector and the board of county commissioners. In reviewing the application for refund, the Department of Revenue should obtain complete information from the local authorities and consider such information. However, it is within the discretion of the department to grant or deny a refund based upon the merits of the application. *Reynolds Fasteners, Inc. v. Wright*, 197 So.2d 295 (Fla. 1967). It has also been the policy of the Department of Revenue to order refunds to each taxpayer who has paid the tax pursuant to a statute or ordinance subsequently declared unconstitutional by the courts where only one of the affected taxpayers has filed an application. It is then the duty of the governing body of the affected county to issue refunds pursuant to the order. Attorney General Opinion 061-4.

The court in *Reynolds Fasteners, Inc. v. Wright*, *supra*, at p. 298, held "that a taxpayer seeking refund of tangible personal property taxes illegally or improperly collected must proceed within the three-year limitation period prescribed in §95.11(5)(e). . . ." In AGO 072-150, I concluded that the decision rendered in the *Reynolds* case adequately governed the actions of the Department of Revenue pursuant to §195.106, F. S. Therefore, the conclusion reached in AGO 072-150 supersedes that portion of AGO 061-4 dealing with the statute of limitations on tax refunds pursuant to §195.106.

073-465—December 17, 1973

TAXATION

EXTENSION OF TIME IN COMPUTING MONTHLY DISCOUNT WHEN LAST DAY OF MONTH FALLS ON SATURDAY, SUNDAY, OR LEGAL HOLIDAY

To: *Charlie Hagerman, Sarasota County Tax Collector, Sarasota*

Prepared by: *William R. Cave, Assistant Attorney General, and Daniel C. Brown,
Legal Intern*

QUESTION:

Is an extension of time to be granted to the taxpayer until the next day which is neither a Saturday, a Sunday, nor a legal holiday when, in computing the monthly discount due a taxpayer under §197.012, F. S. (1972 Supp.), as amended by §1 of Ch. 73-332, Laws of Florida, the date relevant to that determination falls on a Saturday, a Sunday, or on a legal holiday?

SUMMARY:

Regulations of the Department of Revenue, Ch. 12B-1.300, F.A.C., provide that a taxpayer may mail his tax payment and that the postmarked date shall control in determining the discount rate to which he is entitled under §197.012, F. S. (1972 Supp.), as amended by §1 of Ch. 73-332, Laws of Florida. Since this alternative mode of compliance exists, it is not impossible for the taxpayer to comply with the prescribed deadlines when they happen to fall on a Saturday, a Sunday, or on a legal

holiday. Therefore, no extension of time is available to the taxpayer in such circumstances.

Your question is answered in the negative as discussed below.

In AGO 073-254, recently issued, it was my opinion that an extension of time to file homestead exemption applications under §196.131, F. S., must be afforded to taxpayers when the deadline for filing such applications falls on a Saturday, a Sunday, or on a legal holiday. That conclusion was reached upon the basis of the decision by the Florida Supreme Court in *Daly Aluminum Products, Inc. v. Stockslager*, 246 So.2d 97 (Fla. 1971). However, analysis of the *Stockslager* case indicates that, while it is applicable to the filing deadline prescribed by §196.131, it is inapposite with respect to the statutes here involved.

In *Stockslager*, the court had before it a section of the Mechanic's Lien Law relating to the methods available for perfecting a notice of lien. Section 713.18, F. S., provides:

(1) Service of notices . . . shall be made by one of the following methods:

(a) By serving in the manner provided by law for the service of process.

(b) By *actual delivery* to the person to be served; . . .

(c) By mailing the same, postage prepaid, by registered or certified mail to the person to be served at his last known address and *evidence of delivery*. (Emphasis supplied.)

With respect to paragraph (a), *supra*, the Florida Rules of Civil Procedure require service of process to be personally served upon the individual by a duly authorized agent. Rule 1.070, R.C.P. (1973). Paragraph (c), *supra*, requires evidence of delivery by use of certified or registered mail. Thus the court in *Stockslager* was construing a statute which essentially required *actual delivery* of a document as the singular means of compliance with its terms. Compliance by actual delivery would be practically impossible in circumstances when the deadline for the act falls on a Saturday, a Sunday, or a legal holiday. The court took the position that, where compliance upon the deadline date would be impossible, a construction of the statute implying an extension of time is favored.

Section 196.011, F. S., considered in AGO 073-254, is closely analogous to the statute construed in *Stockslager*. It provides:

(1) Every person or organization who has the legal title to real or personal property which is entitled by law to exemption from taxation as a result of its ownership and use shall, before April 1 of each year, *file* an application for exemption with the county tax assessor (Emphasis supplied.)

The act of filing has been defined as actual delivery of the document to the appropriate official. *Pan American Airways, Inc. v. Gregory*, 96 So.2d 669 (3 D.C.A. Fla., 1957). Thus the *Stockslager* decision is directly applicable to §196.131, *supra*, inasmuch as the same considerations of impossibility of performance obtain when the deadline for application falls on a nonbusiness day. Attorney General Opinion 073-254.

However, the statutes herein considered do not present the problem of impossibility of performance under such circumstances. Concerning computations of discounts, Department of Revenue Regulation, Ch. 12B-1.300, F.A.C., provides:

If the tax collector receives payment of taxes by mail he shall use the postmark to determine the applicable discount authorized.

Thus a method of compliance alternative to actual delivery is provided.

When the deadlines prescribed in §197.012, F. S. (1972 Supp.), as amended by

§1 of Ch. 73-332, Laws of Florida, fall on a Saturday, a Sunday, or on a legal holiday, the taxpayer may still comply with the deadline by mailing his payment. The postmarked date will control in computing the discount rate. While this procedure may slightly burden the taxpayer's compliance, it by no means renders it impossible. Therefore, in my opinion, the *Stockslager* rationale is inapposite with regard to Ch. 73-332 (§197.012), *supra*. No extensions of time should be afforded to taxpayers who fail to take advantage of the opportunity to comply by mail when the deadline happens to fall on a Saturday, a Sunday, or a legal holiday.

073-466—December 17, 1973

COURTS

FEES FOR SERVICES; LAW LIBRARY AND LEGAL AID

To: *Curtis R. Barnes, Clerk, Circuit Court, Titusville*

Prepared by: *Halley B. Lewis, Assistant Attorney General*

QUESTIONS:

1. What is meant by the term "per item" in §28.24(25), F. S., providing a fee for receiving and disbursing domestic support payments?
2. Are the fees for law library and legal aid added to the filing fees in the county court, including summary claims, when a special law provides a fee for a law library and legal aid to be added to filing fees in the circuit court?
3. Is a special law required before authority exists for the adding of additional fees for library and legal aid in the county court?

SUMMARY:

The term "per item" in §28.24(25), F. S., providing a service charge for receiving and disbursing domestic support payments, has reference to each particular payment received of the entire number of payments handled, whether paid separately or at the same time with another.

Section 34.041, F. S., authorizes the imposing of service charges for the maintenance of county facilities, including a law library, for the use of the courts in the county by the Board of County Commissioners of Brevard County on filing fees in county court.

In the absence of an ordinance as aforesaid, there exists no authority for the imposing of an additional service charge or fee on actions filed in county court for the maintenance of the law library.

There is no authority under existing law for the imposition of a service fee or service charge on actions filed in county court for legal aid.

The first question essentially is whether "per item" means for each payment, *i.e.*, if there are three weekly payments received simultaneously are there three one dollar fees or three dollars for handling or one fee of only one dollar. In answer to the first question you are advised that the words per item cited in §28.24(25), F. S., have reference to each item or payment received and distributed of the entire number of items or payments handled.

The term per item, while not defined by the statute, is used in connection with the receipt and disbursement of "payments" and the term "item" is used in singular form. This means, in effect, "per particular payment" or for each payment due or accrued whenever paid, whether paid separately or at the same time with another. *See* 48 C.J.S. *Item* p. 787.

In *Green v. Rawls*, 122 So.2d 10 (Fla. 1960), the court cited *People ex rel. State Board of Agriculture v. Brady*, 115 N.E. 204, 207, (Ill., 1917) as follows: