

additional assessment and penalties after expiration of three years from the due date of filing (April 1, 1970) because of property listed on the return being undervalued?

**SUMMARY:**

Additional assessments issued subsequent to December 31, 1971, by reason of undervaluation of property on an intangible tax return may be issued only by the Department of Revenue and not the county tax assessor's office.

The question must be answered in the negative due to the lack of statutory authority empowering the county tax assessor's office to issue any intangible tax assessments subsequent to December 31, 1971.

In the 1971 Session of the Florida Legislature, the Florida Intangible Tax Act was completely revised and reenacted. *See* Ch. 71-134, Laws of Florida. With the passage of Ch. 71-134, the former Intangible Tax Act, under which the county tax assessors and collectors were given primary responsibility for the assessment and collection of intangible taxes, was repealed. The new act placed all responsibility for the assessment and collection of intangible taxes, subsequent to December 31, 1971, with the Department of Revenue, including the responsibility for additional assessment of undervalued intangible property. *See* §§199.025, 199.202 (2) and 199.232, F. S. Consequently, the county tax assessor's office would be without statutory authority to issue any additional assessments subsequent to December 31, 1971, against prior intangible tax returns, even though such returns were filed pursuant to the former act under which the county tax assessor's office had full assessment authority over the property listed on the return.

073-380—October 9, 1973

**TAXATION**

**DEFINITION OF "THESE TAX LAWS"; INVESTIGATIONS  
BY DEPARTMENT OF REVENUE**

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

*Prepared by: William R. Cave, Assistant Attorney General, and James D. Beasley,  
Legal Intern*

**QUESTIONS:**

1. Do the references in §195.085, F. S., to "these tax laws" encompass Ch. 199, F. S.?
2. Do such references encompass Ch. 201, F. S.?
3. To what extent does §195.085, F. S., require that the department investigate and conduct independent audits of the officials designated therein?

**SUMMARY:**

The references to "these tax laws" which appear in §195.085, F. S., encompass Ch. 199, F. S., but not Ch. 201, F. S. The Department of Revenue has no authority to delegate to other governmental agencies, officers, or private individuals the power to conduct investigations which the department is required to perform pursuant to §195.085.

Question 1 is answered in the affirmative and question 2 in the negative. Your third question is answered in the following discussion.

Section 195.085, F. S., provides the following:

**195.085 Removal of officers.**—The department of revenue shall investigate the conduct and performance of duties by tax assessors, tax collectors, clerks of the circuit court, sheriffs, and members of the boards of tax adjustment and recommend to the governor the removal of any such official for his willful failure to perform properly the duties imposed upon him by the constitution, *these tax laws, and the rules and regulations prescribed pursuant to these tax laws.* The department shall furnish the evidence to the governor upon which such removal may be warranted. (Emphasis supplied.)

The legislative history of §195.085, F. S., can be traced to the enactment of Chs. 20722 and 20723, 1941, Laws of Florida. Chapter 20722 related to the assessment and collection of real and personal property taxes; *i.e.*, ad valorem taxes. Section 56 of the act provided in part for the investigation and removal of an officer “for his willful failure to properly perform the duties imposed upon him by the constitution, *this Act*, and the rules and regulations prescribed pursuant to *this Act*.” (Emphasis supplied.) This provision was later designated subsection (4) of §193.02, F. S., with the references therein to “this Act” changed to read “these tax laws,” so as to reflect the relationship of said provision to laws pertaining to ad valorem taxation. Said §193.02 was renumbered §195.011, F. S., by Ch. 69-55, Laws of Florida. It is pertinent that the title to Ch. 69-55 indicated that said enactment was “An Act correcting, reorganizing and renumbering certain sections of the Florida Statutes *relating to ad valorem taxation* . . . .” (Emphasis supplied.)

Section 40, Ch. 20723, 1941, Laws of Florida, included language identical to the provision relating to the investigation and recommended removal of officers, which was included in §56 of Ch. 20722, *supra*. Chapter 20723, however, was an act relating to the assessment and collection of tangible personal property taxes, which, by definition, constitute a form of ad valorem taxes. When the provisions of §40 of Ch. 20723 were later designated §200.42, F. S., the references to “this Act” were changed to read “this chapter,” inasmuch as Ch. 200, F. S., at that time related exclusively to tangible personal property taxation. Section 200.42 was renumbered §195.031, F. S., by Ch. 69-55, *supra*. Moreover, all of the provisions of Ch. 200 relating to tangible personal property taxation were transferred by Ch. 69-55 to other chapters relating to ad valorem taxation generally.

A later enactment, §43, Ch. 70-243, Laws of Florida, renumbered §195.031, F. S., as §195.082, F. S. [now §195.085, F. S.], and amended the language of that section, as well as §195.011 (4), F. S., so as to reflect the creation of the county boards of tax adjustment. Such amendments, however, are not material to the issues here treated.

Subsequent to the enactment of Ch. 69-55, *supra*, Ch. 195, F. S., contained two provisions regarding the investigation and removal of officers. One, §195.011 (4), continued to refer to “these tax laws,” while the other, §195.031 (later renumbered §195.085), referred to “this chapter.” Except for these differences, the two provisions were identical. It is important to note that after the laws pertaining to tangible personal property taxation were transferred from Ch. 200, F. S., to other ad valorem tax chapters by Ch. 69-55, the references to “this chapter” contained in §195.031, properly construed, referred to all ad valorem tax laws pertaining to tangible personal property taxation.

Any investigation required to be conducted by former §195.082, F. S., would also have been required by §195.011 (4), F. S. Observing this duplication, the Statutory Revision Service, in compiling the 1970 Supplement to the Florida Statutes, apparently chose to combine and renumber the two provisions into what is now §195.085, F. S. Such action appears to have been authorized by the following pertinent provisions of §11.242, F. S. 1969 [now (5) (d), (f) and (g)]:

11.242 Powers, duties and functions as to legislative drafting and statutory revision service.—

\* \* \* \* \*

(6) In carrying on the work of the statutory revision service and in preparing the Florida Statutes for publication:

\* \* \* \* \*

(e) Any two or more sections, chapters or laws, *or parts thereof*, may be consolidated;

\* \* \* \* \*

(g) The form or arrangement of any *section*, chapter or law, *or part thereof*, may be altered or changed by transferring, *combining* or dividing the same;

(h) Subsections [and] sections . . . may be *renumbered* . . . (Emphasis supplied.)

The combination and renumbering of the two subject provisions in Ch. 195, F. S., operated to eliminate a redundancy or unnecessary repetition from the statutes, which, according to §11.242 (1), F. S., is one of the duties and functions of the Statutory Revision Service. Section 195.085, representing the product of the changes described above, has recently been adopted and enacted as official statute law by the recent amendment of §11.2421, F. S., effected by Ch. 73-70, Laws of Florida. *See* *Foley v. State*, 50 So.2d 179 (Fla. 1951).

The ambiguity of the phrase, "these tax laws," contained in §195.085, F. S., can be resolved by reference to the title to Ch. 195, F. S. The following guide to statutory construction is set forth in 30 Fla. Jur. *Statutes* §102:

. . . where headings of *chapters*, articles, or sections are mere arbitrary designations inserted for convenience of reference by persons without legislative authority, they are held not to be proper matters for consideration in the interpretation of a statute. [*Cf. Askew v. MGIC Development Corporation of Florida*, 262 So.2d at 228 (4 D.C.A. Fla., 1972).] But where the heading or title of a section is inserted by the legislature itself due weight must be given to it in construing the section. (Emphasis supplied.)

Chapter 195, F. S., is entitled, "State Regulation of *Ad Valorem Taxation*." (Emphasis supplied.) Such title was expressly inserted in Ch. 195 by legislative enactment (§1, Ch. 69-55, Laws of Florida), rather than merely assigned by the Statutory Revision Service for convenience of reference. It is therefore proper to infer that the legislature intended for the provisions of Ch. 195, including the ambiguous references to "these tax laws" contained in §195.085, to pertain only to ad valorem taxation.

Section 192.001 (1), F. S., defines the term "Ad Valorem Tax" as "[a] tax based upon the assessed value of property. . . ."

In §192.001 (11), F. S., it is further provided that "[f]or the purposes of ad valorem taxation, 'personal property' shall be divided into four categories . . . ." One of the categories so created is that of intangible personal property, the taxation of which is governed by Ch. 199, F. S., as amended by Ch. 72-277, Laws of Florida.

Inasmuch as Ch. 199, F. S., is by statutory definition a chapter which pertains to ad valorem taxation, it appears that the legislature intended for that chapter to be included within the scope of the regulatory provisions of Ch. 195, F. S. I conclude

with reference to question 1 that Ch. 199 is encompassed by the term "these tax laws" contained in §195.085.

Conversely it may be said that the regulatory provisions of Ch. 195, F. S., are not directed at duties and functions performed by various taxing officials pursuant to Ch. 201, F. S., inasmuch as that chapter governs the imposition of excise taxes on documents rather than an area of ad valorem taxation. Ad valorem taxes are generally said to be direct taxes, while excise taxes—such as those imposed by Ch. 201—are said to be indirect taxes, thus constituting an entirely separate category of taxation. [See] 30 Fla. Jur. *Taxation* §13. Question 2 is answered accordingly.

Question 3 calls for an evaluation of the duties imposed upon the department by §195.085, F. S., and a determination of the extent to which the department may or may not delegate such duties to other agencies or individuals. Section 195.085 is clearly indicative of the legislative intent to charge the department with the ultimate responsibility for investigating certain enumerated officers and, when necessary, providing the governor with evidence supporting the recommended removal of such officers. Note in particular the following mandatory language of §195.085: "The department of revenue shall *investigate* . . . and recommend . . . [and] shall furnish the evidence . . . ." (Emphasis supplied.)

It is generally held that "[i]n the absence of statutory authority, a public officer cannot delegate his powers." [See] 26 Fla. Jur. *Public Officers* §105; *State v. Inter-American Center Authority*, 84 So.2d 9 (Fla. 1955); *see also*, 67 C.J.S. *Officers* §114, at p. 404. No such statutory authority exists with respect to the duties imposed upon the department by §195.085, F. S. It follows that such duties may not be delegated by the department to any other governmental agency, officer, or private individual.

The foregoing construction of §195.085, F. S., does not preclude the department's examination of relevant findings resulting from investigations conducted by other governmental agencies. It would, however, be improper for the department to rely upon such other findings in the execution of its duties under §195.085, without first corroborating such findings by means of an independent investigation.

073-381—October 9, 1973

## TAXATION

### CONFLICT BETWEEN CH. 73-172, LAWS OF FLORIDA, AND CITY CHARTER

To: T. Edward Austin, General Counsel, Jacksonville

Prepared by: Winifred L. Wentworth, Assistant Attorney General

#### QUESTIONS:

1. Does Ch. 73-172, Laws of Florida, affect the power of the personnel department of the City of Jacksonville under §7.1001(5) of its charter, Ch. 67-1320, Laws of Florida, to fix salaries of employees in the office of the county tax assessor?

2. Are employees in the office of the county tax assessor removed from their status as "employees of the consolidated government" under Art. 19 of the city's charter and the implementing civil service law by Ch. 73-172?

3. Does Ch. 73-172 relieve the county tax assessor of all duty to use the central services of the city under §7.303 of the charter?

#### SUMMARY:

Chapter 73-172, Laws of Florida, supersedes provisions of Ch.