

073-464—December 17, 1973

TAXATION

REFUNDS OF TAXES COLLECTED UNDER  
UNCONSTITUTIONAL ORDINANCE

To: Peter M. Dunbar, Pasco County Attorney, Dade City

Prepared by: William R. Cave, Assistant Attorney General

QUESTION:

May the Board of County Commissioners of Pasco County refund to the taxpayer in full those taxes paid pursuant to an unconstitutional statute or ordinance even though a portion of said taxes collected has been paid out for services rendered in connection with the unconstitutional statute or ordinance?

SUMMARY:

Upon application being made by a taxpayer for a refund of taxes paid pursuant to a statute or ordinance subsequently declared to be unconstitutional by the court, the Department of Revenue shall, after due consideration, grant or deny the application for refund. If such application is granted, the department shall order the governing board of the county to make such refunds as it may order. The three-year statute of limitation provision of §95.11(5)(e), F. S., is applicable to tax refund claims under §195.106, F. S.

Your question is answered in the affirmative subject to the discussion below.

As a general rule, money cannot be refunded or recovered once it has been paid to a taxing authority even though levied under the authority of an unconstitutional statute or ordinance, unless there is some statute which authorizes a refund. State *ex rel.* Victor Chemical Works v. Gay, 74 So.2d 560 (Fla. 1954); AGO 064-22.

Upon proper application for refund by the taxpayer, §195.106, F. S., provides that:

(1) The department of revenue shall pass upon and order refunds where payment has been made voluntarily or involuntarily of taxes assessed on the county tax rolls by reason of . . . . .

° ° ° ° °

(b) Payment where no tax was due . . . . .

One of my predecessors in office expressed the opinion that payment of taxes levied pursuant to a statute which was subsequently held unconstitutional and void by the courts was a "payment where no tax was due" within the purview of §195.106, F. S. [then, §193.40, F. S. 1961]. Attorney General Opinion 061-4. Section 195.106(2), F. S., further provides:

(2) The board of county commissioners shall comply with the order of the department in such matters by providing in the county budget for the ensuing year for the payment of such refunds . . . . .

Although §195.106(2), F. S., contemplates payment of refunds from an appropriation to be made in the ensuing fiscal year, AGO 064-22 expressed the opinion that:

. . . . [S]hould funds be available for the making of such a refund from budgets for contingencies of the board of county commissioners . . . payment therefrom would not be illegal. . . .

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