

public inspection except records specifically excepted or made confidential by statute. However, §1681t of Title 15, U.S.C.A. reads:

This subchapter does not annul, alter, affect, or exempt any person subject to the provisions of the subchapter from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

The terms of the Fair Credit Reporting Act apply to state governmental subdivisions and agencies. The Fair Credit Reporting Act places restrictions on the purpose for which a consumer report may be used. Such consumer reports (investigation reports) are prohibited from being released for uses inconsistent with the Fair Credit Reporting Act.

There is, therefore, a conflict between the above-stated section of the Fair Credit Reporting Act and §119.01, *supra*; to wit, according to §119.01, *supra*, the records in question are public; but the Fair Credit Reporting Act places restrictions of disclosure on the records if a consumer reporting agency is utilized to gather the information for the records in question. Therefore, as per §1681t, *supra*, the Fair Credit Reporting Act takes precedence over §119.01, *supra*, but only to the extent of the conflict.

However, the limited disclosure of consumer reports prescribed by §1681t, *supra*, applies only in the instance when the Division of Pari-Mutuel Wagering uses a consumer-reporting agency to investigate the matters contained in the applications for racing permits or licenses. If the division uses its own investigative services and not a consumer-reporting agency, then the investigative reports are public records available for disclosure pursuant to §119.01, *supra*, and are not controlled by the Fair Credit Reporting Act.

073-279—August 14, 1973

TAXATION

DISTRIBUTORS' COLLECTION FEE FOR MOTOR FUEL TAXES

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

Prepared by: J. Kendrick Tucker, Assistant Attorney General

QUESTIONS:

1. Should the distributors' collection fee authorized by §206.43(1), F. S., be computed on the entire eight-cent gas tax imposed by Part I of Ch. 206, F. S., or should the second gas tax be excluded from this computation pursuant to Art. XII, §9(c), State Const. 1968?
2. If the collection fee is to be computed on the entire eight cents, which of the four gas taxes imposed by Part I of Ch. 206, F. S., are to be charged with this collection fee?
3. If the second gas tax is to be excluded in the computation of the collection fee, should the collection fee be prorated against the remaining three gas taxes imposed by Part I of Ch. 206, F. S.?

SUMMARY:

The second gas tax as defined by §206.41(4) (b), F. S., should be excluded from the computation of the distributors' collection fee authorized by §206.43(1), F. S., because the distributors' collection fee is applicable only to the taxes levied by Part I of Ch. 206, F. S., and because Art. IX, §16, State Const., 1885, as amended, and continued by Art. XII,

§9(c), State Const. 1968, levies the second gas tax (not Ch. 206) and specifically and exclusively provides for its allocation and distribution. Pursuant to the terms of §206.43, the distributors' collection fee should be prorated against the remaining three gas taxes imposed by Part I of Ch. 206: *i.e.*, the first gas tax, the additional seventh cent tax, and the additional eighth cent tax.

In answer to your first question, the distributors' collection fee should be computed on only the six-cent gas tax imposed by Part I of Ch. 206, F. S. (§§206.41(4) (a), 206.60, and 206.605). The second gas tax of two cents per gallon, should be excluded from this computation pursuant to Art. XII, §9(c), State Const. Your second question is accordingly disposed of, and your third question is answered in the affirmative.

Section 206.43, F. S., provides in pertinent part as follows:

The taxes levied and assessed as provided in part I of this chapter shall be paid to the department monthly in the following manner:

(1) . . . *The distributor shall deduct from the amount of tax shown by the report to be payable an amount equivalent to 2 percent of the tax on motor fuels. . . and less an amount equivalent to 1 percent of the tax on motor fuels in excess of five hundred thousand gallons but not exceeding one million taxable gallons, which is hereby allowed to the distributor on account of services and expenses in complying with the provisions of the law. . . .* (Emphasis supplied.)

Thus, distributors are allowed a deduction from the motor fuel taxes due as compensation for services and expenses in complying with the motor fuel tax law. As stated in §206.43, *supra*, the deduction is allowed against taxes levied and assessed by Part I of Ch. 206.

The second gas tax is *levied* not by Ch. 206 but by Art. IX, §16, State Const., 1885, as amended, and continued by Art. XII, §9(c)(2), State Const. 1968. The second gas tax is defined in §206.41(4), F. S., as follows:

(b) *Second gas tax.*—A tax of two cents per gallon *as levied by* §16, Art. IX of the Constitution of 1885, as amended, and continued by §9(c), Art. XII of the 1968 Constitution. (Emphasis supplied.)

Article IX, §16, State Const., 1885, as amended, provides:

(a) That beginning January 1st, 1943, and for fifty (50) years thereafter, the proceeds of two (2¢) cents per gallon of the total tax levied by state law upon gasoline and other like products of petroleum, now known as the Second Gas Tax, . . . shall as collected be placed monthly in the 'State Roads Distribution Fund' in the State Treasury and divided into three (3) equal parts which shall be distributed monthly among the several counties

(d) . . . *The Legislature shall continue the levies of said taxes during the life of this Amendment, and shall not enact any law having the effect of withdrawing the proceeds of said two (2¢) cents of said taxes from the operation of this amendment.* The board shall pay refunding expenses and other expenses for services rendered specifically for, or which are properly chargeable to, the account of any county from funds distributed to such county; but general expenses of the board for services rendered all the counties alike shall be prorated among them and paid out of said funds on the same basis said tax proceeds are distributed among the several counties; (Emphasis supplied.)

Thus, pursuant to the aforesaid provision of the Constitution of 1885, as amended, the proceeds of the second gas tax are allocated for a specific use, the legislature is proscribed from changing the allocation, only certain expenses of the board for the counties may be deducted, and no provision is made for any other deductions.

Article XII, §9, State Const. 1968, continues the imposition of the second gas tax and provides in pertinent part as follows:

(c) MOTOR VEHICLE FUEL TAXES.

(1) A state tax, designated "second gas tax," of two cents per gallon upon gasoline . . . as levied by Article IX, Section 16, of the Constitution of 1885, as amended, is hereby continued for a period of forty consecutive years. The proceeds of said tax shall be placed monthly in the state roads distribution fund in the state treasury. (Emphasis supplied.)

(2) Article IX, Section 16, of the Constitution of 1885, as amended, is adopted by this reference as a part of this revision as completely as though incorporated herein verbatim for the purpose of providing that . . . the proceeds of the "second gas tax" as referred to therein shall be allocated among the several counties in accordance with the formula stated therein to the extent necessary to comply with all obligations to or for the benefit of holders of bonds, . . . secured by any portion of the "second gas tax."

* * * * *

(4) Subject to the requirements of paragraph (2) of this subsection and after payment of administrative expenses, the "second gas tax" shall be allocated to the account of each of the several counties in the amounts to be determined as follows: . . .

(5) Funds allocated under paragraphs (2) and (4) of this subsection shall be administered by the state board of administration . . .

The Constitution of 1968, together with the Constitution of 1885, provides for the levying of the second gas tax and provides for the specific distribution of the tax moneys. The court, in commenting on Art. IX, §16, *supra*, stated:

This constitutional amendment fixed a levy of the "Second Gas Tax" of two (2¢) cents on sales; appropriated it for county purposes among the several counties; fixed the ratios of distribution and directed the manner of application. [State v. State Board of Administration, 30 So.2d 356, 358 (Fla. 1947).]

Since §206.43(1), *supra*, allows a deduction by its terms *only* from taxes levied by Ch. 206, F. S., it would not apply to grant a deduction from taxes levied by Art. XII, §9, *supra*. Furthermore, Art. XII, §9, *supra*, and Art. IX, §16, *supra*, specifically provide for the distribution of the second gas tax funds to the counties and make no provisions for deductions by distributors. The aforesaid provisions of the Constitution of 1885, as amended, and the Constitution of 1968 expressly direct the second gas tax to be administered by the State Board of Administration and authorize the board to pay its expenses from the proceeds of the tax only for services rendered to the counties and as agent of the counties. No other deduction for any purpose is mentioned or authorized to be made by anyone from the proceeds of the second gas tax as levied by the Constitution. Distributors are not authorized to be agents of the state and no authority is granted for them to deduct any collection fee or commission from the second gas tax. The express mention of one or more things is the exclusion of all others and when a constitutional provision enumerates things on which it is to operate, it must be construed as excluding from its operation all things not expressly mentioned. *Ideal Farms Drainage Dist. v. Certain Lands*, 19

So.2d 234 (Fla. 1944); *Dobbs v. Sea Isle Hotel*, 56 So.2d 341 (Fla. 1952); *Graham v. Azar*, 204 So.2d 193 (Fla. 1967). Any statute that attempted to contravene the distribution of the second gas tax as provided in the Constitution of 1885 and the Constitution of 1968 could not, of course, stand. It is my opinion that §206.43, *supra*, does not contravene the above-cited constitutional provisions because it does not apply, pursuant to its terms, to the second gas tax. Statutes will be construed to be constitutional where possible and the courts are required to look for a reason to uphold statutes as constitutional. *Tyson v. Lanier*, 156 So.2d 833 (Fla. 1963), and *Seaboard Air Line Ry. Co. v. Watson*, 137 So. 719 (Fla. 1931).

Other sections of Part I, Ch. 206, F. S., appear to recognize the conclusion that the second gas tax is not subject to the distributors' collection fee; rather it is to be exclusively allocated pursuant to the terms of Art. IX, §16, *supra*, and Art. XII, §9, *supra*. Section 206.45, F. S., provides:

(1) The first gas tax shall, after withholding and transferring such funds as are required under the provisions of §213.11, and after withholding fifty thousand dollars to be used as a revolving cash balance in the "gas tax collection trust fund," and except as provided in §206.625, be transferred into the "state transportation trust fund,"

(2) *The second gas tax shall be remitted to the "state board of administration" for distribution as provided in the constitution.*

(3) The additional seventh cent gas tax collected pursuant to §206.60, as such may be amended by the 1971 Legislature, shall be distributed as therein provided.

(4) The additional eighth cent gas tax collected pursuant to §206.605 shall be distributed as therein provided. (Emphasis supplied.)

Section 206.47, F. S., provides:

(2) The department of revenue will transmit the second gas tax as collected monthly to the state board of administration allocated and distributed to the credit of the several counties of the state based on the formula of distribution contained in §16, Art. IX of the constitution of 1885, as amended.

(3) The state board of administration will calculate a distribution of the second gas tax received from the department of revenue under subsection (2), based on the formula contained in §9(c)(4), Art. XII of the revised state constitution of 1968.

It is therefore my opinion that the distributors' collection fee as authorized by §206.43, *supra*, on taxes levied by Part I of Ch. 206, F. S., may not be computed on the second gas tax. It is accordingly not necessary to answer your second question.

Your third inquiry addresses the question of whether the collection fee may be prorated against the remaining three gas taxes imposed by Part I of Ch. 206, F. S., since I have concluded that the second gas tax is to be excluded from the collection fee.

As cited above, §206.43(1), *supra*, allows a distributor to deduct a collection fee from "taxes levied and assessed as provided in part I of this chapter" (Ch. 206, F. S.). The remaining three gas taxes (§206.41(4)(a), first gas tax; §206.60, additional seventh cent tax; and §206.605, additional eighth cent tax) are levied by Part I of Ch. 206 and thus are liable for proration of the collection fee. As stated by the court with regard to the seventh cent motor fuel tax under former §208.44, F. S. (the predecessor to §206.60, F. S.):

. . . This tax is purely statutory. At its will, the legislature may abolish the tax or alter the manner of distribution. There is nothing irrevocable about either its levy or distribution. [*Palm Beach County v. Green*, 179 So.2d 356, 362 (Fla. 1965).]

The legislature has so allowed a collection fee for distributors and provided that it is to be deducted from the remaining three gas taxes (§§206.41(4)(a), 206.60, and 206.605, F. S.) imposed by Part I of Ch. 206, F. S., pursuant to §206.43, *supra*.

Your third question is therefore answered in the affirmative.

073-280—August 14, 1973

LEGISLATION

EFFECTIVE DATE OF ENACTMENTS DEALING WITH SAME SUBJECT MATTER

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

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

Does the new salary schedule for tax assessors take effect on July 1, 1973, as provided by Ch. 73-172, Laws of Florida, or on October 1, 1973, as provided by Ch. 73-173, Laws of Florida?

SUMMARY:

The salary schedule for tax assessors takes effect on October 1, 1973, as provided by Ch. 73-173, Laws of Florida.

These two acts became laws upon the same date, June 13, 1973. They contain identical provisions fixing the salaries of the tax assessors of this state and the population brackets upon which such salaries are based, and substantially similar provisions for salary adjustments based on the county's population as shown by the Department of Administration's local government census (*see* §23.019, F. S., requiring the department to "produce up-dated population estimates" each fiscal year), and on the cost-of-living index. Each limits the compensation of the tax assessor to the salary provided therein and prescribes a 20 percent limitation on salary increases in any one fiscal year. Insofar as the tax assessor's salary schedule is concerned, the only possible difference between the two acts is the date upon which the new salary schedule becomes effective.

Some of the tax assessors of this state were receiving compensation in addition to their statutory salaries under the provisions of §145.121(2)(c), F. S. (1972 Supp.), entitling them to compensation "under the terms and conditions which prevailed immediately prior to July 1, 1969." Thus, even though the two acts are substantially identical in all respects except the effective date, the answer to your question will be of considerable importance not only to those tax assessors whose salaries will be increased as a result of the new salary schedule but also to those who will have to take a decrease in their total annual compensation.

Chapter 73-173, *supra*, revises Ch. 145, F. S., which is the uniform county officials' salary act (Ch. 69-346, Law of Florida) establishing uniform population brackets and salary schedules for all constitutional county officers, including tax assessors. Its effective-date clause reads as follows:

This act shall take effect October 1, 1973 provided, however, nothing herein contained shall be construed to prohibit the continuation of compensation received by county officers at a rate not less than that existing for the month of June, 1973, until the effective date of this act.

Chapter 73-172, *supra*, is a revision of the laws relating to tax assessment and collection and the administration of our tax laws. As it deals with many different facets of this entire subject, it provides different effective dates for its several