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## Florida Taxation

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# FLORIDA TAXATION

KURT WELLISCH\*

## INTRODUCTION

Two years have elapsed since the last survey was printed, reflecting judicial and legislative events of importance, as far as taxation and its effects were concerned. That article<sup>1</sup> dealt with the years 1953 to 1955; a like article of the same title had been written previously for the years 1951 to 1953.; The author's intention in this article is to continue — in an analytical and sometimes critical manner — this biennial survey.<sup>2</sup>

Listed below is the organization of this article:

### I Property Taxes:

- (a) Real Property
- (b) Tangible Personal Property
- (c) Intangible Personal Property
- (d) Homestead Exemption

### II Sales and Use Taxes

### III Occupational Licenses, Taxes

### IV Unemployment Compensation Tax

### V. Documentary Stamp Tax

### VI Estate Tax

### VII General and Miscellaneous Tax Matters

## I. PROPERTY TAXES

(a) *Real Property*.—Certain cases dealt with the problems of *exemption*: that is, exemption in general and homestead tax exemption. The latter is treated in sub-section (d).

In 1956 the supreme court said, in dealing with section 192.06(3) Florida Statutes (1955), that a charitable corporation may be exempt from

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1. Schiller, *Florida Taxation*, 10 MIAMI L.Q. 247 (1956).

2. Shugerman, *Florida Taxation*, 8 MIAMI L.Q. 151 (1954).

3. Considered in this survey are decisions of the Supreme Court of Florida reported in 80 So.2d through 96 So.2d, including advance sheets through September, 1957. The article also embraces tax legislation enacted during the 1957 session of the Florida Legislature.

The author gives notice that certain aspects of taxation are excluded. Questions of constitutionality have not been considered, these being left to the survey article dealing with Florida constitutional law. Problems of tax titles, tax deeds, tax sales certificates, tax liens and related matters are dealt with in the survey article on Florida property.

Finally, it ought to be noted that not all decisions of the Florida Supreme Court or all of the acts of legislation have been found to be significant enough for comment.

property taxes even though it is not "one hundred per cent - charitable." That not more than seventy-five per cent of the floor space of the property owned by the corporation was rented was in issue. The case was remanded for further proceedings to determine the percentage of floor space rented: also the court stated that the fact that the testimony of the plaintiff-corporation's officer was vague was not sufficient to grant a summary judgment for the defendant-taxing authority.<sup>4</sup>

In the same connection a "Turnpike" case was decided which reiterated the tax exempt status of the property of the State Turnpike Authority.<sup>5</sup>

A deficiency in the description of property did not help the taxpayer invalidate an assessment in Monroe County.<sup>6</sup> Section 192.21 Florida Statutes (1957) charges property owners with notice that properties are liable for taxes, including municipal taxes. Although it is true that the pertinent parts of Section 192.21 are only procedural directory provisions, it is rather strange to have the court state that "illegalities in assessments do not effect the duty to pay a lawful tax." On the other hand where one sees equitable relief from taxes, one must offer to do equity. Where as in this instance, the taxpayer-property owner did not sue within the prescribed time, show that the specific property was exempt from the tax (the wrong description alone does not suffice), show that the tax was paid prior to sale of the property or redeemed prior to execution, was not able to show that he had any way of ascertaining the assessment, and could not have known of the assessment affecting his land (irrespective of the uncertainty of the lands as described in the city's tax roll), no rightful claim for remedy was possible.

Legislatively subsection (12) was added to section 192.06 Florida Statutes (1957)<sup>7</sup>; it exempts from real property tax real estate held and used for production of income by a testamentary trust, where the income is used exclusively for the construction and operation of a charitable non-profit hospital. There are other circumstances necessary to qualify for this exemption.

Section 193.11 Florida Statutes was amended by the 1957 legislature.<sup>8</sup> The amendment provides that lands used for agricultural purposes be valued per acre regardless of the fact that any or all of the lands are in a plat or subdivision or other real estate development.

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4. *Fellowship Foundation v. Paul*, 86 So.2d 808 (Fla. 1956) (injunction suit involving a school).

5. *Gibbs v. Florida State Turnpike Authority*, 91 So.2d 813 (Fla. 1957). See also *State v. Florida State Turnpike Authority*, 80 So.2d 337 (Fla. 1955) and *State v. Florida State Turnpike Authority*, 89 So.2d 653 (Fla. 1956).

6. *Thompson v. Key West*, 82 So.2d 749 (Fla. 1955) (the decision was not altered on a rehearing).

7. Laws of Fla., c. 57-816 (1957).

8. Laws of Fla., c. 57-195 (1957).

(b) *Tangible Personal Property*.—Questions of exemptions as well as of form and procedure were raised in *Bariani v. Schuleman*.<sup>9</sup> Similar to that situation is *Thompson v. City of Key West*<sup>10</sup> wherein the taxpayer missed procedural steps such as filing a return and raising objections before the Board of Equalization. Even though there was an error in the name, the statute authorizes corrections of such errors, under which the taxrolls are validated *ab initio*. The problem as to whether tangible personal property owned by a Port Authority was exempt could not be dealt with because it had not been raised at the trial.<sup>11</sup> It would have been interesting to learn what the supreme court would have said concerning the tax exempt status of storage tanks attached to land owned by a Port Authority. Would it have become part of the real estate which is exempt or would it have remained tangible personal property for purposes of property taxation?

(c) *Intangible Personal Property*.—A recent decision<sup>12</sup> interpreted section 199.08 Florida Statutes to be applicable to foreign corporations doing business in Florida by stating that a corporation owning intangibles in several counties is required to file an intangible personal property tax return only in the county where its principal office or place of business is located. The legislative intent was not clearly expressed but this appears to be a very sensible solution.

Of much more practical import is the legislative change affecting "Intangibles." Increases in rates were liberally authorized.<sup>13</sup>

Also an important legislative change — a very practical one in its effect on titles and title search — was the one setting up a 7 year statute of limitations on liens unless they are recorded.<sup>14</sup>

(d) *Homestead Exemption* — The usual number of cases involving homesteaders was decided during the last two years. Two cases appear to be of significance. In *L'Engle v. Forbes*,<sup>15</sup> the court granted relief to the claimant, rather liberally interpreting the relevant provisions; this writer cannot agree with this interpretation. It appears to the author to be a rather forced interpretation. Chapter 21880 of the Laws of Florida, Act

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9. 94 So.2d 829 (Fla. 1957).

10. See note 6 *supra*.

11. See *Jaynes v. Wellington Corp.* 134 Fla. 211, 183 So. 718 (1938); *Southern Liquor Distributors, Inc. v. Kaiser*, 150 Fla. 52, 7 So.2d 600 (1942).

12. *Green v. Forbes*, 96 So.2d 902 (Fla. 1957).

13. Laws of Fla., c. 57-399 (1957) and amending FLA. STAT. § 199.11(1)(2) (1955). Effective July 1, 1955 the tax on Class "A" intangibles (primarily "Cash on Deposit") was raised to 10 cents per \$1,000. (i.e., from 1/20th of 1 mill to 1/10th of 1 mill); on Class "B" intangibles (primarily "Stocks and Bonds") from \$1.00 per \$1,000. value to \$2.00 per \$1,000. (i.e., from 1 mill to 2 mills). The second increase is rather heavy in its practical impact.

14. Laws of Fla., c. 57-106 (1957) amending FLA. STAT. § 199.22 (1955). Effective date of the amendment was May 15, 1957.

15. 81 So.2d 214 (Fla. 1955).

of 1943,<sup>16</sup> (a so-called saving provision) excuses the non-filing or late filing for homestead exemption of one who is in the armed services (plus one year after the service discharge); it further states that this act ceases to function one year after the present hostilities cease. "Present" hostilities in 1943 clearly meant the Second World War, so this act should not have been utilized in 1953.

The taxpayer-homesteader failed to apply on or before April 1, 1953, for the year 1953; he filed late for homestead exemption, in October, 1953. The statute<sup>17</sup> required timely filing; otherwise a waiver of the homestead exemption claim was to be presumed. The court stretched a point by explaining that a temporary absence did not deprive the homeowner of his tax exemption unless there was a permanent intent to abandon it as a homestead.<sup>18</sup> The court's reasoning as to a demonstration of the home owner's good faith intention to recognize this as his home to the exclusion of other places, and the characterization of his recall to active duty, as a rather "forced activity," do not appear adequate, because the very definite requirement of filing was not observed.

In a declaratory judgment case, *Gautier v. Lapof*,<sup>19</sup> the question of a beneficial ownership entitlement to homestead exemption was under scrutiny. A 99 year lease was assigned to the taxpayer on Sept. 1, 1953; the lease contained an option to purchase which was not exercised until July 1, 1954. Even though Florida Statutes, section 192.04<sup>20</sup> grant the exemption to legal as well as to beneficial owners, the plaintiffs did not even possess an equitable estate on January 1, 1954 (the determining date). They had a leasehold estate and the homestead tax exemption does not apply to lessees.<sup>21</sup> The court said that an equitable estate does not relate back, meaning, in this case, a relation back to the date of the lease or date of option. Only at the time the option to purchase is exercised does the title become vested (in this instance July 1, 1954 and not January 1, 1954). The result reached was certainly correct in the light of the existing provisions of the Florida Constitution and Statutes.

As to the legislation, a new section<sup>22</sup> provides a tax exemption for parapegees and provides a method for claiming the exemption.

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16. Carried forward into Acts of 1949 and 1951 respectively, as FLA. STAT. § 192.55.

17. FLA. STAT. § 192.16 (1957).

18. This had nothing to do with the filing requirement, which could have shown that there was no intent to abandon permanently.

19. 91 So.2d 324 (Fla. 1956).

20. This section of FLA. STAT. is based on art. X, § 7 of the FLA. CONS'T.

21. One should not confuse Homestead Exemption with Homestead Tax Exemption; the former is granted to freeholders or even holders of lesser estates. See *Menendez v. Rodriguez*, 106 Fla. 214, 143 So.223 (1932).

22. FLA. STAT. § 192.111 (1957).

## II. SALES AND USE TAX

This tax, having such a tremendous impact on the revenue of the state, had a liberal judicial construction, and as was to be expected, the Comptroller's position was generally upheld.

The cases of *Harvey v. Green*<sup>23</sup> and *Green v. Reed Construction Corp.*<sup>24</sup> are quite analogous. Both were decided in favor of the state and both dealt with items made or manufactured, which were then used to improve real property. In one instance there were concrete pilings for use in foundations, invoiced at a cost basis plus installation cost (lump-sum);<sup>25</sup> in the other, there were products (grill work) of iron works, furnished for the purpose of installation on a cost plus basis. The court held both to be tangible personal properties with the sales of these items subject to sales tax charges. The articles were finished products prior to being attached to realty and were therefore sold as such. Since the statute<sup>26</sup> describes as a retail sale any sale which is made for any other purpose than for resale, sales of pilings or grill works were retail sales, consequently taxable. Items or articles made for the customer, but not generally for sale at the place where they are made, represent the essentials which make the customer the ultimate consumer, in further consequence whereof the tax incidence occurs. One might have some doubts as to the correctness of the decisions mentioned, on reading the lower court's reasoning, favoring the taxpayer. In *Green v. Reed Construction Corp.*,<sup>27</sup> the court stated that a construction contract is closely linked with improvements to realty, pilings are really unseverable from such a construction contract, like the building itself, and taxing statutes should be interpreted in favor of taxpayers. The court would not consider the items as tangible personal property. The writer thinks there is some justification for that interpretation, except that Rule 51 of the Rules and Regulations of the Florida Sales and Use Tax Law cannot be overlooked;<sup>28</sup> this rule deals in great detail and clearness with "sales to or by contractors who repair, alter, improve and construct real property."

In *L. B. Smith Aircraft Corp. v. Green*,<sup>29</sup> aircraft parts were purchased to convert old cargo aircraft into push executive aircraft for resale. The rule is that, normally, sales of second hand or used tangible personal property are taxable sales; therefore parts and supplies used in remaking such second hand or used items are tax exempt.<sup>30</sup> Since, however, second hand or used motor

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23. 85 So.2d 829 (Fla. 1956).

24. 91 So.2d 634 (Fla. 1956).

25. *Id.*

26. FLA. STAT. § 212.02(3) (1957).

27. See note 24 *supra*.

28. In *Harvey v. Green*, 85 So.2d 829 (Fla. 1956), the court stated: "Administrative rulings are of considerable persuasive force in the interpretation of a statute;" see also: *State ex rel. Fronton Exhibit Co. v. Stein*, 198 So. 82 (1940).

29. 94 So.2d 832 (Fla. 1957).

30. RULES & REGULATIONS OF THE FLORIDA SALES AND USE TAX LAW, Rule 6(7) first sentence.

vehicles or airplanes are exempt from the sales tax, parts and supplies used for remaking these specific "articles" are subject to tax; the ultimate consumer, taxwise is the one incorporating the parts and supplies.<sup>31</sup> This is based on the statute<sup>32</sup> or specific exemptions from the sales and use tax.

In the same case, the supreme court interpreted the statute exempting "vehicles and vessels and parts thereof used to transport passengers or property in interstate and foreign commerce."<sup>33</sup> In this case parts for aircraft were sold to those regularly engaged in such exempt commerce for incorporation into vehicles used to transport the company's own executive or employees over state lines, but the company was not a common carrier. While the statute<sup>34</sup> does not mention common carriers and the court admitted that there was an interpretation possible under which the exemption would apply, the court based its narrower interpretation on "common understanding" (meaning restricted to "common carriers" only). Furthermore it relied on Florida Statutes section 212.21 (3), which section advocates an all embracing tax program, except for exemptions dictated by federal and state constitutions and specific exemptions within the law itself or its regulation.<sup>35</sup> This author cannot agree with this interpretation because section 212.08 (3) specifically exempts such "vehicles, vessels or parts thereof," indicating no restriction of the exemption to "common carriers." The court apparently read too much into the law.

Based on an interpretation of Florida Statutes, sections 212.06 (7) and 212.06 (8), as well as Rule 91 (3), the court in *Green v. Railway Express Agency*<sup>36</sup> decided that that the Railway Express Agency had to pay the use tax. The use tax is utilized to police the sales tax on goods bought out of state, and subject to a sales tax there, but brought into the state for use here. Goods were bought and stored in New York City and subjected to that city's sales tax. Subsequently the same property was brought to Florida. No tax would be imposed, based on sections 212.06 (7) and (8), since both tax rates are the same (3%) unless a refund is allowed or allowable in New York City. The Florida Sales or Use Tax would then be properly imposed.

In 1956 the supreme court determined in *Green v. Home News Publishing Co.*<sup>37</sup> that the Hialeah-Miami Springs Shopper Advertiser was not an exempt newspaper within the meaning of the statute.<sup>38</sup> The lower court had held it to be a newspaper, even though only one out of twelve pages

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31. See *Id.* second sentence.

32. FLA. STAT. § 212.08 (1957).

33. *Ibid.*

34. FLA. STAT. § 218.08 (3) (1957), last sentence.

35. The court stated that Rule 64 did not change its reasonable opinion because there was no unreasonable burden on interstate commerce in the fact situation presented.

36. 96 So.2d 790 (1957).

37. 90 So.2d 295 (1956).

38. FLA. STAT. § 212.08 (4) (1957). SEE RULES & REGULATIONS OF THE FLORIDA

contained news, the rest being advertisements. The paper itself was a "give away."

The case of *Starr v. Karst, Inc.*,<sup>39</sup> concerned the exemption of "machines and equipment used in plowing, planting, cultivating and harvesting crops."<sup>40</sup> The sheriff tried to make a distinction between such equipment acquired for personal use (conceding tax exempt status) and for use on others' land (denying tax exemption); Rule 87(1) seemed to give some support to his position.<sup>41</sup> This rule relates an exemption of farm machines and equipment, when used exclusively on one's own farm or grove. The court held that the Comptroller did not have statutory power to restrict the exemptions.<sup>42</sup>

The 1957 legislature broadly revised the Sales and Use Tax Law, broadening and widening the "embrace" of that tax. It is not possible in this article to go into all facets of the law, important as they may be. However, a few important points may be restated here.

Chapter 57-398 (S.B. 1416) re-arranges the specific exemptions as to sales, rental, storage and use tax into more understandable categories. For instance, the exemption of "general groceries" became an exemption of "foods for human consumption;" also candies sold for 25 cents or less are tax exempt items. These items of food are not exempt if served or sold in places licensed by the Hotel and Restaurant Commission or "from vehicles."<sup>43</sup>

The exemptions of "medicals," which include patent medicines is dealt with by a list to be approved by the State Board of Health and certified by the Comptroller; this list must be included in the rules promulgated by him. This exemption remained the same except that items like crutches, artificial limbs, eye-glasses, hearing aides, dentures, etc., were limited to \$500.00. The exemption for funeral expenses is appended to this subsection and the old limitation of \$500.00 per funeral was retained.<sup>44</sup>

A partial exemption for motor vehicles applies from July 1, 1957; previously these were totally tax exempt items. A 1% tax is imposed, but in cases of trade-ins no tax is to be computed on trade-in values. The Motor Vehicle Commissioner is not to issue title certificates unless a receipt showing payment of the tax is submitted with the application for title

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SALES & USE TAX LAW RULES 8(1)(2) (3), 34.

39. 92 So.2d 519 (1957).

40. FLA. STAT. § 212.08(6) (1957).

41. RULES & REGULATIONS OF THE FLORIDA SALES & USE TAX LAW.

42. Why did the supreme court then interpret 212.08 (3) in *L. Smith Aircraft Corp.* case, *supra* where the law is just as clear or unclear as here in 212.08 (6)? Section 212.08 (3) does not speak of common carriers directly nor indicate this special application in any way; Section 212.08 (6) does not speak of machines and equipment specifically for one's own use only.

43. FLA. STAT. § 212.08(1) (1957).

44. FLA. STAT. § 212.08(2) (1957).

certificate. This 1% tax applies to the sale, renting, use or storage for use in this state of the motor vehicle.<sup>45</sup>

Industrial machinery previously taxed up to \$300.00 for a single transaction is now taxed up to \$1,000.00 for a single transaction. "Single transaction" means an order placed and accepted for delivery within 6 months by one supplier, and the use in a particular location. Also the term "machines, equipment, parts and accessories therefor" is explained. Other interpretations are left to the Comptroller's rule making power.<sup>46</sup>

The 1957 Florida Legislature eliminated the total exemption of alcoholic beverages by limiting the exemption to sales in packaged form for consumption off the premises;<sup>47</sup> likewise the exemption on various fuels, electric energy and cigarettes was eliminated.<sup>48</sup>

Florida Statutes section 212.08(9) declares the legislative intent. The legislators "intended" to raise additional revenue to meet appropriations; the act states that all other exemptions allowed by the statute,<sup>49</sup> which were not specifically mentioned in the act, were eliminated.<sup>50</sup>

Also important as to legislative intent is the declaration that the 1% tax on motor vehicles<sup>51</sup> is not a property tax, an ad valorem tax, nor a substitute for the license tax; it is a tax on the privilege to sell, rent, use or store.<sup>52</sup>

Finally the lawmakers declared that there shall be no pyramiding of excise taxes by the state and no municipality is to levy any excise tax on admission, lease, rental, sale, use or storage for use (except already validly existing municipal levies).<sup>53</sup>

The amended section 212.11 Florida Statutes deals with tax returns and regulations. It allows for filing of consolidated returns where the same dealer operates two or more places of business. Separate returns for each and every establishment had been required previously.

The amended section 212.12(10) lowered the bracket on which the tax is to be computed by exempting single sales of less than 10 cents from taxability (formerly sales of less than 11 cents). The other brackets did not change.

Chapter 57-109 (H.B. 153) also dealt with the Sales and Use Tax Statute. It amended section 212.14 by way of addition of a subparagraph and it

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45. FLA. STAT. § 212.08(3) (1957).

46. FLA. STAT. § 212.08(4) (1957).

47. FLA. STAT. § 212.08(5) (1957).

48. Other subsections have been rearranged. Section 212.08(7) and (8) now contain what was previously contained in 212.08 (3) (6) and (9).

49. FLA. STAT. § 212.08 (1957).

50. FLA. STAT. § 212.08(9) (a) (1957).

51. See note 5 *supra*.

52. FLA. STAT. § 212.08(9) (c) (1957).

53. *Ibid.*

extended the statute of limitations to 3 years (previously 2 years) during which the comptroller can make assessments. Related thereto was an amendment of the sections dealing with record keeping requirements, extending these to 3 years.<sup>54</sup>

### III OCCUPATIONAL LICENSE TAXES

A peddler and an "employment agency" were involved in cases requiring supreme court action. Even though the court upheld a criminal conviction in the case of *Bozeman v Brooksville*,<sup>55</sup> as to the license problem the court held<sup>56</sup> that an ordinance setting license fees (for peddlers) on a per day, per week, per month, or per year basis, then allowing the mayor to adjust such a fee whenever he believes the fee to be an undue burden on interstate commerce, and finally permitting the mayor to base the fee on a gross sales percentage, was invalid. The theory of the court was that the fee bore no relation to the costs of issuing of such an ordinance or the expenses to be expected in its enforcement. Such regulatory fees are to be determined or set by such cost, or expense criteria in order to be valid. In addition, the ordinance attempted to levy a tax on an occupation performed in some other municipality; therefore it was extra-territorial in operation and also invalid for this reason.<sup>57</sup>

Manpower, Inc. operates in many cities in the United States (the home office is in Milwaukee); it provides full or part time services of office help, factory workers, drivers and helpers, etc., with the services to be performed either at the customer's place of business or at the company's office. The company hires and fires these employees who are under its control. It contracts with the applying customers for these varied services, such contracts containing a clause stating that Manpower, Inc. will not employ the customer's personnel or vice versa. The Florida Industrial Commission wanted to apply the Florida Employment Agency Statute to Manpower, Inc.,<sup>58</sup> trying to force the company to get a license or to cease and desist operations; this was a suit for both an injunction and declaratory decree.<sup>59</sup> In 1956, the supreme court affirmed the lower court in upholding Manpower's position. This was not a brokerage for labor, therefore not an employment agency.<sup>60</sup> A literal interpretation, attempted by the Florida

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54. FLA. STAT. §§ 212.04, 212.12(4)(7), 212.13(2) (1957).

55. 82 So.2d 729 (Fla. 1955).

56. Upheld conviction due to severability of requirement to obtain permits from provisions requiring payment of a license fee; conviction was based on non-compliance with requirements for obtaining a peddler's or hawker's permit, thereby violating an ordinance.

57. Mr. Bozeman sold strictly from samples in Brooksville and delivered later. The place of business of his firm, and therefore his occupation was located in Bartow.

58. FLA. STAT. § 449.01 (1957).

59. Florida Industrial Comm'n v. Manpower, Inc. of Miami, 97 So.2d 197 (Fla. 1956).

60. Compare with *McMillan v. City of Knoxville*, 139 Tenn. 319, 202 S.W. 65 (1918).

Industrial Commission, did not work. Highly regulatory penal laws are not to be extended by construction.

#### IV UNEMPLOYMENT COMPENSATION TAX

The case of *Pleus v. Vocelle*,<sup>61</sup> struggled with Florida Statutes, section 443.03. The Florida Industrial Commission tried to invoke the Unemployment Compensation Contribution-Tax by treating a corporation and a partnership composed of the same individuals as stockholders and partners respectively as a single unit by virtue of which "operation" the unit would have come within the prerequisites necessary for taxation. That would have been proper under the pre-1947 statute,<sup>62</sup> which stated that "any employing unit which . . . directly or indirectly by the same interests or . . . which owns or controls one or more other employing units . . . (may be) . . . treated as a single unit . . ." <sup>63</sup> This statute was repealed in 1947. Since there were two separate entities, different businesses, with separate books and records, etc., the Commission's claim had to be disallowed.<sup>64</sup>

#### V DOCUMENTARY STAMP TAXES

In an original mandamus proceeding a stamp tax which had been paid was ordered to be refunded. In *State v. Green*,<sup>65</sup> the supreme court stated that the applicable statute<sup>66</sup> had been derived from an opinion by the Attorney General of the state in 1936<sup>67</sup> and that real property conveyed to stockholders in exchange for corporate stock in proportion to their stockholdings, all in connection with a corporate dissolution and liquidation (a partial liquidation) did not require a stamp tax affixed on the deed or deeds conveying the property; there was a simple exchange; no consideration passed; no sale or purchase took place.

Another mandamus proceeding to recover stamp taxes, was involved in *State v. Gay*.<sup>68</sup> A Florida corporation supplying telephone and wire service issued bonds, secured by Florida real estate. The bonds were executed and delivered in New York; the mortgages in the form of trust indentures were also executed in New York. Meetings of the board of directors took place in New York; no activities connected with the bond issue, directly or indirectly, took place in Florida. The State Comptroller contended the tax was a tax for the privilege of borrowing money and a Florida corporation borrowing money is subject to the tax; the trial judge agreed and denied recovery. The supreme court granted relief, properly

61. 92 So.2d 604 (1957).

62. FLA. STAT. § 443.03(7)(d) (1941) repealed by Florida Laws c. 24085 (1947).

63. Laws of Fla. c. 18402, act of 1937, as amended by c. 19637 act of 1939.

64. Could not FLA. STAT. § 443.03(6)(b) apply?

65. 88 So.2d 493 (Fla. 1956).

66. FLA. STAT. § 201 (1957).

67. 28 OPS. ATT'Y GEN. Biennial Reports 1935-36.

68. 90 So.2d 132 (Fla. 1956).

stating that this was a transfer tax, a tax on the transaction, not a tax for a privilege of doing business. Since Florida Statutes, section 201.01 imposes a stamp tax on documents signed, executed and delivered in the state and section 201.07 refers to imposition of the tax on all bonds issued in the state, the refund of the tax paid under protest was held to be in order.

As to Legislation, c. 57-107 repealed section 201.03 of Fla. Statutes (10 cent tax on powers of attorney) and section 201.06 (10 cent tax on proxies of stockholders). It added section 201.131 allowing payment of tax imposed by Section 201 by using metering machines. C. 57-397 increased the stamp tax on deeds or other instruments from 10 cents per \$100.00 consideration to 20 cents for \$100.00 all concerning purchase of land (a 100% increase).

#### VI ESTATE TAXES

The legislature enacted a few provisions of some importance. For instance, Chapters 57-87 (S.B. 401), amending section 734.01 Florida Statutes, demanded that this tax be paid first out of the residuary estate, if sufficient; if insufficient this tax is to be paid out of property passing under the will in the order or appropriation of assets of the estate, as is prescribed by section 734.05.

Also Chapter 57-108 (H.B. 151) amended sections 198.22 and 198.33. Liens for unpaid state taxes attach now to the proceeds of sale of the property to a bona fide purchaser; the estate tax lien is limited to 20 years from the date of the death of the decedent (resident or non-resident), after which period it is discharged.

#### VII GENERAL AND MISCELLANEOUS TAX MATTERS

In the course of proceedings to validate revenue bonds the tax exempt status of the Inter-American Center Authority was decided.<sup>69</sup> The criterion for tax exempt status is the use to which the property is put rather than the ownership of such property. This "authority" is educational and scientific in nature. Therefore the constitutional tax exemption<sup>70</sup> can be granted. Sections 554.01 and 554.16 Act of 1955, chapter 29830, granted the Inter-American Center Authority exempt status under the Florida Constitution<sup>71</sup> thereby exempting it from taxes on bonds, admissions and other excises. This having been expressly stated by the legislature, it was not for the court to state whether the legislature exceeded or abused its constitutional prerogative.

A 24-hour, or even less, delay saved the International Company, operating a restaurant in Miami, from having a license revoked or suspended

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69. *State v. Inter American Center Authority*, 84 So.2d 9 (Fla. 1955).

70. FLA. CONS'T. art IX, § 1, FLA. STAT. § 192.06(1)(2) (1957).

71. *Ibid.*

for permitting gambling activities on the premises.<sup>72</sup> The proceedings were instituted by petition for a writ of prohibition. the applicable Florida Statutes<sup>73</sup> prescribe for suspension or revocation in cases where gambling is allowed and further requires that proceedings are to commence within 60 days after the cause arises.<sup>74</sup> The statute further states that "proceedings . . . shall be by serving a copy of written notice as provided in section 511.29;" while section 511.29 requires all notices in writing to be delivered personally or by Deputy Hotel Commissioner or by registered letter . . ." What actually happened? The registered letter was sent on the 59th day but was not delivered until the 61st day. Since proceedings commence with serving a copy of a notice under section 511.29, the delivery and commencing of the suit should have been within 60 days. Here this did not take place until after 60 days and the Hotel and Restaurant Commissioner was barred from entertaining the proceeding.

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72. *Edgerton v. International Co.*, 89 So.2d 488 (Fla. 1956).

73. FLA. STAT. § 511.051 (1957).

74. FLA. STAT. § 511.05(5) (1957).