

Depositing sales tax money

Number: AGO 82-41

Date: January 08, 1998

Subject:
Depositing sales tax money

Mr. Randy Miller
Executive Director
Department of Revenue
Carlton Building
Tallahassee, Florida 32301

RE: DEPARTMENT OF REVENUE--Local Government Half-cent Sales Tax Law

Dear Mr. Miller:

This is in response to your request for an opinion on the following questions:

1. May the Department of Revenue deposit the 5 cent sales tax money into a clearing fund for transfer at a later date to the general revenue fund and the Local Government Half-cent Sales Tax Clearing Trust Fund?
2. Does "deposited" within the meaning of this new statute mean that the Department of Revenue is to deposit its funds into two different accounts?
3. Does the Department of Revenue pursuant to subparagraph (3) of the new law and s. 18.102, F.S., still have the duty of depositing all of the moneys into the State Treasury and the State Treasurer is then the officer who is to make the transfer from the State Treasury into the particular funds created by the Local Government Half-cent Sales Tax?
4. Must taxes collected by a sales tax dealer prior to May 1, 1982 and remitted to the Department of Revenue after September 30, 1982 be credited or deposited to the various funds in accordance with s. 212.82, F.S. 1982?
5. May the monthly disbursements to the units of local government pursuant to subsection (3) of the new law be made at the same time as the disbursements to local government under part II of Ch. 218, F.S.?

Question One

During the first 1982 special session the Legislature enacted Ch. 82-154, Laws of Florida, relating to taxation. Section 10 of that law created Part II of Ch. 212, F.S., which is to be entitled the "Local Government Half-cent Sales Tax," of which s. 212.82, F.S., is a part. Section 212.82 creates in the State Treasury the Local Government Half-cent Sales Tax Clearing Trust Fund,

and directs that one-half of the net additional taxes remitted pursuant to Ch. 82-154 be deposited in that Trust Fund and earmarked for distribution to the governing body of designated local governments. Moneys in the Trust Fund are to be distributed monthly to the participating units of local government. Subsection (2) of s. 212.82, F.S. 1982, provides:

"Notwithstanding the provisions of s. 212.20(1), one-half of the net additional taxes remitted pursuant to this act by a sales tax dealer located within the county shall be deposited in the Local Government Half-cent Sales Tax Clearing Trust Fund and earmarked for distribution to the governing body of that county and of each municipality within that county. Such moneys shall be known as the local government half-cent sales tax."

In furtherance of this deposit requirement, subsection (3) of s. 212.82, F.S., specifies: "There is hereby created in the State Treasury the Local Government Half-cent Sales Tax Clearing Trust Fund. Moneys in the fund shall be distributed monthly to participating units of local government."

You state that the Department of Revenue receives all payment of taxes under Ch. 212, F.S., in a lump sum and has been depositing such monies pursuant to ss. 212.20 and 18.102, F.S. As a result of the passage of s. 212.82, F.S. 1982, you question whether the department may deposit the 5 cent sales tax money into a "clearing fund," which I understand to mean, a clearing account established outside the State Treasury, for transfer at a later date to the General Revenue Fund and the Local Government Half-cent Sales Tax Clearing Trust Fund. Prior to the enactment of Ch. 82-154, s. 212.20 required the Department of Revenue to pay over to the State Treasurer all funds received and collected by the department under the provisions of Ch. 212 to be credited to the account of the General Revenue Fund. Under the authority of s. 18.102, F.S., presumably with the written approval of the State Treasurer, the Department of Revenue has been depositing such funds in a local bank or banks to the credit of the State Treasurer, forwarding evidence of such deposits immediately to the Treasurer with sufficient information to credit the proper fund. However, s. 212.82(2), F.S. 1982, requires, notwithstanding the provisions of s. 212.20(1), F.S., the Department of Revenue to deposit one-half of the net additional taxes collected as a result of the new tax law into the Local Government Half-cent Sales Tax Clearing Trust Fund. Therefore, if, pursuant to s. 18.102, F.S., proceeds of the local government half-cent sales tax are deposited in local banks to the credit of the State Treasurer, evidence of such deposit with sufficient information to properly credit the Local Government Half-cent Sales Tax Clearing Trust Fund must be forwarded immediately to the State Treasurer. If any question exists as to whether the terms of the Treasurer's prior written approval for depositing the department's funds in local banks covers the local government half-cent sales tax moneys, additional written approval of the State Treasurer covering the local government half-cent sales tax moneys should be obtained.

The Department of Revenue may utilize a clearing account outside the State Treasury when the volume and complexity of the collections so justify upon the written approval of the State Treasurer. Section 18.101, F.S. See *also*, s. 216.275, F.S. Subsection (3) of s. 18.101, F.S., requires the department to furnish the Treasurer with quarterly statements showing the cash balance in each clearing account that will eventually be deposited in the State Treasury as provided by law. No money may be maintained in such clearing account for a period longer than approved by the Treasurer or 40 days, whichever is shorter, prior to being transmitted to the Treasurer. Section 18.101(1), F.S. Further, s. 215.32, F.S., requires all moneys received to be

deposited in the State Treasury unless specifically provided otherwise by law and accounted for by the Treasurer and the Department of Banking and Finance in funds including, relevant to this inquiry, the "General Revenue Fund" and "Trust Funds," created and established by law, such as the Local Government Half-cent Sales Tax Clearing Trust Fund. The Department of Revenue, upon making such deposits in the State Treasury, should furnish the Treasurer with sufficient information concerning the amount and the source of such moneys in order to credit the proper fund and to allow the Treasurer and the Department of Banking and Finance to properly account for the moneys so deposited. Absent establishment of a clearing account outside the State Treasury pursuant to s. 18.101(1), F.S., the 5 cent sales tax revenues must be promptly deposited in the State Treasury and credited to the General Revenue Fund as provided in s. 212.20, F.S., and in the Local Government Half-cent Sales Tax Clearing Trust Fund based on the formula provided in s. 212.82(2), F.S. 1982.

Question Two

Your second question is answered in the affirmative.

Subsection (2) of s. 212.82, F.S. 1982, contained in Ch. 82-154, Laws of Florida, sets forth a specific formula for the calculation of the moneys to be deposited in the Local Government Half-cent Sales Tax Clearing Trust Fund. This subsection provides that "one-half of the net additional taxes remitted pursuant to this act by a sales tax dealer located within the county shall be deposited in the Local Government Half-cent Sales Tax Clearing Trust Fund . . ." The remainder of the tax revenues collected pursuant to Ch. 212, as amended, should be deposited in the General Revenue Fund in the State Treasury as required by ss. 212.20, 215.31, 215.32 and 18.101, F.S. This is a mandatory, legislative direction which requires two separate funds in order to comply with the formula that "one-half of the net additional taxes" are to be deposited in the Local Government Half-cent Sales Tax Clearing Trust Fund. However, no moneys remitted to the department under Ch. 212, as amended, prior to October 1, 1982, shall be deposited in the Local Government Half-cent Sales Tax Clearing Trust Fund. See, s. 29, Ch. 82-154, Laws of Florida.

Question Three

As stated in Question One, if, pursuant to s. 18.102, F.S., proceeds of the local government half-cent sales tax are deposited in local banks, evidence of such deposits must be forwarded immediately to the State Treasurer *with sufficient information to credit* the Local Government Half-cent Sales Tax Clearing Trust Fund. The State Treasurer credits this trust fund with such deposits but the statute imposes no duty on the Treasurer to transfer such moneys into any other fund established by law. Section 215.31, F.S., requires such deposits to be immediately credited to the appropriate fund by the Treasurer and properly accounted for by the Department of Banking and Finance as to source. Section 215.32(1), F.S., read with s. 212.82, F.S. 1982, requires these moneys to be "deposited in and accounted for by the Treasurer and the Department of Banking and Finance within" the Local Government Half-cent Sales Tax Clearing Trust Fund. The Department of Revenue, upon making any deposits in the State Treasury, should furnish the Treasurer with sufficient information concerning the amount and the source of such moneys in order to credit the proper fund and enable the Treasurer and the Department of Banking and Finance to properly account for the moneys so deposited. The Department of

Revenue has the duty and responsibility of administering the state revenue laws, including the provisions of newly created Part II of Ch. 212, F.S. 1982. See, s. 213.05, F.S., which provides that "[t]he Department of Revenue shall have the responsibility of regulating, controlling, and administering all revenue laws and performing all other duties provided in: . . . chapter 212, tax on sales, use and other transactions . . ." This administrative duty includes the responsibility for properly depositing the funds initially as well as distributing them monthly to the participating units of local government based on the distribution formula set forth in s. 212.84, F.S. 1982. See *also*, s. 215.32(2)(b)1. and 3., F.S.

Question Four

You state in your letter that in many instances taxes collected by dealers prior to May 1, 1982 may not be remitted to the department until after September 30, 1982. In such instances you question whether such remittances must be credited to or deposited in "the various funds" in accordance with s. 212.82, F.S. 1982.

Section 29 of Ch. 82-154, Laws of Florida, provides that the increased sales tax shall not apply to any transaction occurring prior to May 1, 1982, except for utility services regularly billed on a monthly cycle basis which shall have the increased sales tax applied to any cycle ending on or after May 1, 1982. This section goes on to provide that no moneys remitted to the Department of Revenue prior to October 1, 1982, shall be deposited in the Local Government Half-cent Sales Tax Clearing Trust Fund. Therefore, Ch. 82-154, Laws of Florida, does not apply to any taxable transaction prior to May 1, 1982; all sales tax revenues collected by a sales tax dealer on transactions prior to May 1, 1982, even though remitted to the department after September 30, 1982, must be deposited in the General Revenue Fund. All other revenues, including the increased tax revenues collected pursuant to Ch. 82-154, remitted to the Department of Revenue prior to October 1, 1982, must be deposited in and credited to the General Revenue Fund in accordance with the procedures provided in ss. 18.102 and 212.20, F.S. The local government half-cent sales tax moneys (one-half of the net additional taxes collected pursuant to Ch. 82-154) remitted to the Department on and after October 1, 1982, are to be deposited in the Local Government Half-cent Sales Tax Clearing Trust Fund as provided in s. 212.82, F.S. 1982.

Question Five

Question Five poses a query which may be administratively determined by the Department of Revenue in the exercise of its discretionary authority to administer the distribution of the local government half-cent sales tax to participating counties and municipalities. Subsection (3) of s. 212.82 created by 82-154 states: "Moneys in the fund [Local Government Half-cent Sales Tax Clearing Trust Fund] shall be distributed monthly to participating units of local government." No day certain is assigned by the new law for the monthly distribution. Thus, the department may, in the exercise of sound discretion, coordinate the monthly disbursements to participating units of local government with those made under Part II of Ch. 218, F.S., and make such disbursements on the 25th of each month.

In summary, I conclude:

(1) The Department of Revenue may utilize a clearing account outside the State Treasury when

the volume and complexity of the collections so justify upon the written approval of the State Treasurer as provided in s. 18.101, F.S.

(2) The Department of Revenue must deposit the tax revenues collected pursuant to Ch. 212, F.S., as amended, into two funds, the General Revenue Fund as provided in s. 212.20, F.S., and the Local Government Half-cent Sales Tax Clearing Trust Fund, based on the formula provided in s. 212.82, F.S. 1982.

(3) The Department of Revenue has the duty and responsibility of administering the state revenue laws and upon making any deposits in the State Treasury, should furnish the Treasurer with sufficient information concerning the amount and the source of such moneys in order to credit the proper fund and enable the Treasurer and the Department of Banking and Finance to properly account for the moneys so deposited.

(4) The local government half-cent sales tax moneys remitted to the Department of Revenue on and after October 1, 1982, collected on transactions after May 1, 1982, are to be deposited in the Local Government Half-cent Sales Tax Clearing Trust Fund. All sales tax revenues collected on transactions prior to May 1, 1982, even though remitted to the department after September 30, 1982, must be deposited in the General Revenue Fund.

(5) The Department of Revenue may, in the exercise of sound administrative discretion, coordinate the monthly disbursements of the local government half-cent sales tax to participating units of local government with those made under Part II of Ch. 218, F.S.

Sincerely,

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Attorney General

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