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STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD
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File No. S-383

TAXATION:

Payment under protest - Refunds

Honorable Robert A. Downs
State's Attorney
Fulton County
Lewistown, Illinois 61542

Dear Mr. Downs:

I have your letter of July 16, 1971 wherein you
state:

"I would appreciate your opinion with regard to
a question that has arisen under Chapter 120,
and which concerns what appears to be a conflict
between Sections 592 and 676.

Section 592.4 provides that should the Property
Tax Appeal Board change any assessment as origi-
nally made by the Board of Review, that if the
tax has already been paid, it shall be refunded.
Section 676, however, provides that only the
part of the payment which is made under protest,
or 1% of the total taxes collected, whichever
is less, may be withheld from distribution and
the balance thereof shall be promptly distributed
to the taxing bodies entitled thereto.

Thus, our County Treasurer, it seems to me is being confined by two conflicting provisions in that a substantial amount of taxes has been paid by various coal companies in our County who protest the payment of the taxes for the reason that they feel there is an excessive assessment, and the matter is presently under appeal to the Property Tax Board of Appeals.

On the other hand, the various taxing bodies involved are requesting that the Treasurer distribute all of the monies collected except for 1% as required by Section 676.

My question is, how does the Treasurer provide for the making of a refund under Section 592.4 should the assessment be changed, when he is required to make distribution of all but 1% of monies collected."

Section 195 of the Revenue Act of 1939 provides

in part:

"Any person desiring to contest personal property taxes because of illegal tax rates shall be required to pay the same under protest. Any payment of personal property taxes under protest shall be accompanied by 2 copies of a written protest * * * Only the part of the payment which is made under protest or 1% of the total taxes collected, whichever is less, may be withheld from distribution and the balance thereof shall be promptly distributed to the taxing bodies entitled thereto." (Ill. Rev. Stats. 1969, ch. 120, par. 676.)

Section 111.4 of the Revenue Act of 1939 provides

in part:

"The extension of taxes on any such assessment so appealed shall not be delayed by any proceeding

before the Board, and, in case the assessment is altered by the Board, any taxes extended upon such unauthorized assessment or part thereof shall be abated, or, if already paid, shall be refunded." (Ill. Rev. Stats. 1969, ch. 120, par. 592.4.)

Under Section 195 before a taxpayer may sue for a refund in circuit court, he must first pay the taxes and file a protest at the time of payment. The collector must promptly pay all the taxes to the taxing bodies, except the amount paid under protest or 1% of the total taxes collected, whichever is smaller. The 1% fund is held to provide for refunds ordered by the circuit court. The statutes do not provide what to do if the 1% fund is insufficient to pay court ordered refunds. Since the collector has no statutory authority to require reimbursement from the taxing bodies for refunds, he should refund any amount which exceeds the 1% fund out of taxes subsequently collected for the same year or out of the next tax collection.

On appeal to the Property Tax Appeal Board under Section 111.4, taxes need not be paid under protest. No specific fund is provided by statute for refunds made pursuant to a change in assessment by the Property Tax Appeal Board. The statute only provides that there shall be an abatement, if not previously paid, or a refund. The collector, therefore,

Honorable Robert A. Downs -4

should make the refund, if any, out of funds presently held and not yet paid to the taxing bodies under Section 280 of the Revenue Act of 1939. (Ill. Rev. Stats. 1969, ch. 120, par. 761.) If no funds are presently held or such funds are insufficient, the collector should make the refund out of taxes subsequently collected for the same year or out of the next tax collection.

Very truly yours,

A T T O R N E Y G E N E R A L