

**OPINION
71-421**

May 11, 1971 (OPINION)

Mr. Byron L. Dorgan

Tax Commissioner

RE: Taxation - Personal Property Replacement - Appropriation

This is in response to your letter in which you call our attention to the provisions of Chapter 528 of the 1969 Session Laws and Section 20 thereof relating to payback to various political subdivisions and Section 23 which appropriated funds for the payback; House Bill 1331 which appropriates funds and places conditions and limitations on such appropriation; and House Bill 1177, an emergency measure which amends Section 57-58-01. You also provide us with other material and instructions issued by the Tax Department.

You then ask the following questions:

1. Has an appropriation been provided by House Bill No. 1331 or by House Bill No. 1177 or by Section 23, Chapter 528, S.L. 1969, or elsewhere to cover the amount of distribution by the state to the counties that is contemplated by the next to the last paragraph of Section 57-58-01 as amended by House Bill No. 1177?
2. As to question number 1, of an appropriation has been made, is it available now for making the payments to the counties or will it be available only after June 30, 1971?
3. As to question number 1, if there is no appropriation available, should the county auditors nevertheless make the certification to the tax commissioner that is provided for in the next to the last paragraph of Section 57-58-01 as amended by House Bill No. 1177?
4. As I have indicated in the last sentence of the second paragraph on page 2 of this letter, the payments by the state treasurer in 1971 to a county treasurer under Section 57-58-01 prior to its amendment by House Bill No. 1177 would, I believe, be allocated and distributed to each taxing district in the county according to the dollar amount of taxes levied by the taxing district in 1968 on personal property that became exempt in 1970 because of the 1969 repeal. In reference to this the following two questions are asked:
 - a. Is this interpretation of Section 57-58-01 as it read prior to amendment by House Bill No. 1177 correct?
 - b. How should the two equal payments required to be made by the state treasurer to a county on or before May 1, 1971 and on or before June 1, 1971 as provided in Section 57-58-01, as amended by House Bill No. 1177, be

allocated among the taxing districts of the county?

5. How should a taxing district's share of the two equal payments made by the state treasurer to the county on or before May 1, 1971, and June 1, 1971, be distributed under Section 57-58-01 as amended by House Bill No. 1177 among the various funds of the taxing district so that the correct amount is distributed to each fund?"

As to question number 1, Section 23 of Chapter 528 of the 1969 Session Laws (which was amended Section 57-58-01) has been recognized as an appropriation and payments thereunder have, in fact, been made. Chapter 528, 1969 Session Laws, was amended by House Bill 1177 of the Forty-second Legislative Assembly (an emergency measure which became effective March 30, 1971) but such house bill did not amend Section 23. The Forty-second Legislative Assembly also enacted House bill 1331 which provides for an appropriation and restricts the payback within the limits of the appropriation of \$42,100,000 for the biennium beginning July 1, 1971 and ending July 1, 1973. House Bill 1331 is not an emergency measure and as such will not go into effect until July 1, 1971.

House Bill 1177 amended Section 57-58-01, which was previously enacted by Chapter 528 of the 1969 Session Laws, also created the third and fourth paragraphs of said section. The third paragraph begins with the language:

"Any political subdivision which levied taxes on taxable property in the year 1970 for a specific fund or purpose for which a levy was not made by it in the year 1968 shall be entitled to a distribution of revenue from the state in the year 1971 for any such levy. * * * "

It then provides the formula to be employed in determining the amount of payments to be received. Such formula actually adopts the growth formula of \$1 for every \$7 increase on real estate taxes.

The third paragraph referred to above provides for a one-time payment or payments to taxing districts which did not levy a tax in 1968 for any purpose, but did levy a tax in the year 1970. Obviously the taxes levied in the year 1970 would be on real property only. The payment is on the growth factor. This provision went into effect on March 30, 1971.

In direct response to your first question, the appropriation made under Section 23 of Chapter 528 of the 1969 Session Laws is still available for making the payback payments to the county treasurer for distribution to the taxing districts as provided for in House Bill 1177.

On the basis of the discussion to question number 1, and the answer given, in direct response to question number 2, the appropriation made under Section 23 of Chapter 528 of the 1969 Session Laws is available now. Those one-time payments provided for in House Bill 1177 can be made now.

As to question number 3, an appropriation is available now, but even

if the appropriation were not available a certification by the county auditors would still have been required and, of course, are now required.

As to question number 4(a), we have previously stated in an opinion to Representative Don Halcrow dated April 18, 1969, as follows:

"While the Act (Chapter 528, 1969 Session Laws) does not specifically so provide, nevertheless, from the legislative intent, title of the Act, and objectives of the Act, there is a strong implication from which we conclude that the political subdivisions (taxing districts upon receiving replacement money) will be required to allocate such replacement money to the various funds and purposes in the same manner as the personal property revenue would have been distributed, except that in political subdivisions (taxing districts) having outstanding bonded indebtedness, the sinking fund for such outstanding indebtedness would not participate in such replacement money because its revenue was not reduced."

The replacement money received by the taxing districts which had outstanding bonded indebtedness of the effective date of Chapter 528 are to be placed into the general fund.

The duties of the county auditor and county treasurer as to the replacement money are no different than the duties of such officers in distributing tax money derived from levies. The replacement money, except as to bond issues which were in effect and still outstanding on the effective date of Chapter 528, should in all respects be allocated and distributed in the same manner as the revenues from personal property taxes and per capita school tax would have been allocated and distributed prior to the repeal.

It is therefore our conclusion that any interpretation including your instructions to the county officials and officials of the taxing districts which are in harmony with the foregoing discussions and conclusions would be correct.

As to question number 4(b), what has been said earlier and particularly to question number 3, the replacement money should be allocated to the various funds within the districts in the same manner as the personal property tax would have been allocated except in such instances where the taxing districts had sinking funds as the result of outstanding bond issues prior to the effective date of Chapter 528 of the 1969 Session Laws.

As to question number 5, the taxing district's share of the two equal payments made under Section 57-58-01 should be distributed in the manner expressed in the foregoing answers. The county treasurer or the county auditor, or appropriate official of the taxing district, is expected to perform similar functions as such official or officials would have performed in making the distribution in the same manner as if the replacement money were revenues received from the personal property tax. In brief, the replacement money should be considered the same as personal property tax would have been considered except for the taxing districts which have a bond issue as discussed earlier, at which instance the replacement money would go

into the general fund.

However, as to the one-time payment provided for in the third paragraph of House Bill 1177 the proceeds of such payment should go into the fund for which the levy was imposed in the year 1970. The fund for which the levy was imposed would not participate in the two equal replacement payments that the taxing district will receive this year (1971). After 1971 any new taxes levied which were not levied in 1968 would be included in the growth factor and would be distributed as outlined earlier herein.

HELGI JOHANNESON

Attorney General