



**ROLAND W. BURRIS**

ATTORNEY GENERAL  
STATE OF ILLINOIS



September 25, 1991

FILE NO. 91-036

**REVENUE:**

Withholding for Tax Protest  
Fund For Refunds Ordered by  
Property Tax Appeal Board

Honorable W. Charles Grace  
State's Attorney, Jackson County  
Jackson County Courthouse  
Murphysboro, Illinois 62966

Dear Mr. Grace:

I have your letter wherein you inquire whether the county collector should withhold from distribution, and deposit into the Protest Fund created under section 192a of the Revenue Act of 1939 (Ill. Rev. Stat. 1989, ch. 120, par. 673a), any amounts of taxes which are the subject of appeals of assessments made to the Property Tax Appeal Board pursuant to section 111.1 of the Revenue Act of 1939. (Ill. Rev. Stat. 1989, ch. 120, par. 592.1.) For the reasons hereinafter stated, it is my

opinion that the collector is not authorized to withhold from distribution any amount of collected taxes in excess of those amounts specified in section 194 of the Act.

Section 194 of the Revenue Act of 1939 (Ill. Rev. Stat. 1989, ch. 120, par. 675) requires a person who desires to challenge the validity of his taxes judicially to pay the taxes and file a written protest giving taxing bodies and the collector notice of his intent to pursue a refund. Section 192a of that Act establishes the Protest Fund and provides for investment of the moneys held therein. Section 194 of the Revenue Act of 1939 further provides, in pertinent part:

" \* \* \*

\* \* \* Refunds, with interest as provided herein, shall be made by the collector in accordance with the final orders of the Property Tax Appeal Board or the court, and the amount of such refunds shall be paid out of the Protest Fund created by Section [192a]. \* \* \*

\* \* \*

No protest shall prevent or be a cause of delay in the distribution of tax collections among the taxing bodies of any taxes collected which were not paid under protest. The collector shall withhold from distribution the lesser of: (a) the total amount of taxes paid under protest; or (b) an amount equal to the average annual tax objections sustained over the preceding 5 year period; or (c) 1/2% of the total taxes collected. Such amounts paid under protest or withheld from distribution shall be deposited by the collector in interest bearing accounts as provided in Section [192a]. If the final order of the Property Tax Appeal Board or of a court results in a refund to the taxpayer, interest from the date of payment under protest

or from the date payment is due, whichever is later, to the date of refund shall also be paid to the taxpayer at the rate of 5% per annum. If the final order of the Property Tax Appeal Board or of a court results in a payment to the taxing districts of all or a part of the taxes paid under protest or withheld, any excess interest earned on such funds withheld from distribution shall be paid into the county treasury. In the event refunds ordered by the Property Tax Appeal Board or a court exceed the funds available in the Protest Fund provided in Section [192a], the refunds of principal and interest shall be paid out of the first funds collected for such taxing district in the following taxable year.

\* \* \*

"

The Property Tax Appeal Board is created by section 111.1 of the Revenue Act of 1939 for the purpose of hearing appeals from the decisions of county boards of review. Section 111.1 provides, in part:

"

\* \* \*

\* \* \* If a petition is filed by a taxpayer, the taxpayer is precluded from filing objections based upon valuation, as may otherwise be permitted by Sections 194, 195 and 235 of this Act. \* \* \*

Therefore, a taxpayer who appeals a decision of a board of review to the Property Tax Appeal Board cannot file a protest with his tax payment pursuant to section 194 of the Act. Further, although the collector receives notice of any certificate of error issued by a board of review (Ill. Rev. Stat. 1989, ch. 120, par. 108(7)), there is no provision for the collector to be notified when an appeal is taken to the Property Tax Appeal Board.

Section 194 of the Revenue Act of 1939 directs the collector to withhold the lesser of three alternative sums for deposit into the Protest Fund. The collector is directed to withhold the lesser of: (a) the total amount of taxes paid under protest; (b) the average annual tax objections sustained over the preceding five year period; or (c) 1/2% of the total taxes collected. The collector has no authority to withhold any amount greater than the lesser of these three sums. Indeed, the collector may be subject to penalties for failure to pay all amounts in excess of the statutory formulae to the authorities which are entitled to receive them. (See Ill. Rev. Stat. 1989, ch. 120, par. 761.)

The purpose of this provision, in my opinion, is to provide a reasonable, convenient source of funds from which refunds may be paid, not to create an escrow fund for all payments made under protest or challenged before the Property Tax Appeal Board. Since only the lesser of the three alternative amounts set forth in section 194 is to be withheld, the actual amount withheld may be less than the full amount challenged. Thus, specific provision is made in section 194 for cases in which the protest fund does not contain sufficient sums to pay refunds ordered by the Property Tax Appeal Board, an event which would not occur if the collector was required to withhold from payment all amounts of taxes which have been challenged before the Board.

Honorable W. Charles Grace - 5.

Therefore, it is my opinion that the county collector is not authorized to withhold from distribution real estate tax payments made by taxpayers who are pursuing appeals before the Property Tax Appeal Board. The collector may deposit taxes collected into the Protest Fund only to the extent permitted by section 194 of the Revenue Act of 1939.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Roland W. Burris".

ROLAND W. BURRIS  
ATTORNEY GENERAL