

While this would seem to be a harsh rule that a tax payer cannot secure a refunder for a fundamental error made by the county auditor, provision has been made by statute to protect the tax payer. Sections 5609 and 5610 G. C., provide a method whereby valuation may be revised or corrected, and if, on appeal to the tax commission, and if the tax commission denies relief under section 5611-2, a proceedings in error may be filed in the court of common pleas to obtain a reversal, vacation, or modification of the tax commission's order.

It is, therefore, my opinion that proceedings under section 2588 et seq., General Code of Ohio, may not be resorted to to obtain a refunder of taxes paid on securities which are listed at par value when the actual value is much less than the par value.

Respectfully,
C. C. CRABBE,
Attorney General.

2481.

COUNTY AUDITOR CANNOT DISCHARGE FROM COUNTY JAIL PRISONER CONFINED FOR NON-PAYMENT OF CRABBE ACT FINE—SECTION 3576 G. C. CONSTRUED.

SYLLABUS:

Section 2576, General Code, does not apply to Crabbe Act fines and a county auditor cannot discharge from the county jail a prisoner who is confined therein for non-payment of such fines.

COLUMBUS, OHIO, May 13, 1925.

HON. G. WALTER BOOTH, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of May 1, 1925, in which you ask the following question:

“In case of a commitment to the county jail by the common pleas court for a non-payment of fine and costs imposed under the Crabbe act, for violation of the liquor laws, may the county auditor discharge such person from the county jail under the provisions of section 2576, General Code of Ohio?”

Section 6212-19, General Code, reads:

“Money arising from fines and forfeited bonds shall be paid one-half into the state treasury credited to the general revenue fund, one-half to the treasury of the township, municipality or county where the prosecution is held, according as to whether the officer hearing the case is a township, municipal, or county officer.”

This section says that “money arising from fines * * * shall be paid one-half into the state treasury * * * one-half to the treasury of the * * * county.”

Section 2576, General Code, reads:

"The county auditor may discharge from imprisonment any person confined in the county jail for the non-payment of a fine or amercement due the county, except fines for contempt of court or an officer of the law, when it is made clearly to appear to him that the fine or amercement cannot be collected by such imprisonment."

While this section gives the county auditor authority to discharge prisoners from the county jail for fines *due the county*, it gives no authority to discharge prisoners for fines due the state and this is the only authority granted the auditor in such matters. The fine under the Crabbe act is not divisible, so that a court, when half of such fine is paid, cannot say whether it is the state's half or the county's half, nor does the defendant have the right to say which half he is paying.

When money is received on a fine, section 6212-19, General Code, specifically orders one-half of it paid to the county and one-half to the state, and leaves no discretion to a court or any one else in the matter, and therefore a condition would never arise where section 2576, General Code, would be operative in Crabbe act cases.

In answer to your question, therefore, it is my opinion that an auditor cannot discharge a prisoner confined in the county jail for non-payment of a Crabbe act fine.

Respectfully,
C. C. CRABBE,
Attorney General.

2482.

TAXES AND TAXATION—AUTHORITY OF TAX COMMISSION TO REQUIRE REPORTS AND PAYMENT OF FEES FROM CORPORATIONS—“DEMPSEY ACT” (HOUSE BILL 338) CONSTRUED.

SYLLABUS:

1. *Section 6 of House Bill 338, enacted by the 86th general assembly, known as the Dempsey act, confers upon the tax commission of Ohio the authority to require the report and payment of fees and taxes due from foreign and domestic corporations within the five year period next preceding the determination of the amounts due from such corporations by the tax commission.*

2. *In the event such corporations have filed the reports required by law prior to the enactment of said act, but have not paid the fees and taxes due, and desired to pay said fees and taxes, and receive the certificate provided by section 5511, General Code, as amended, 109 O. L., 94, section 26, General Code of Ohio, applies since the filing of the report is sufficient to constitute the matter a proceeding within the meaning of said section.*

COLUMBUS, OHIO, May 13, 1925.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date received, as follows:

"Assuming that the Dempsey act, rewriting the corporation franchise tax law, became effective at midnight on Friday, April 18, the question now presents itself as to the powers of the commission to receive reports from