

OPINION NO. 73-022

Syllabus:

1. Neither the five per cent tax rollback provided in Section 6 of Amended Substitute House Bill No. 475, effective December 20, 1971, nor a reduction in taxes pursuant to R.C. 323.151 et seq. (homestead exemption), is forfeited because of delinquency in tax payments.

2. The ten per cent penalty, imposed by R.C. 5719.17 on delinquent taxes, is computed after application of the five per cent tax rollback (or ten per cent rollback under R.C. 319.301, as the case may be) and the homestead exemption (Opinion No. 73-008, Opinions of the Attorney General for 1973, approved and followed).

To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio
By: William J. Brown, Attorney General, March 20, 1973

Your request for my opinion concerns the five per cent and the ten per cent tax rollbacks provided in Am. Sub. H.B. No. 475, effective December 20, 1971, and the homestead exemption which was enacted by the same Bill. Your questions are as follows:

1. Does a taxpayer who fails to pay the taxes when due and payable for 1971 forfeit the entire five percent reduction which is provided in H.B. 475?

2. Does a taxpayer who fails to pay the taxes when due and payable for 1972 and for any year thereafter forfeit the entire ten percent reduction provided in Section 319.301 of the Revised Code of Ohio?

If the answer to both questions is "yes" then should the penalty provided by R.C. 5719.17 be charged against the full amount of the taxes due before the tax rollback? If the answer is "no", should the penalty be charged only against the reduced amount of the taxes remaining after the tax rollback?

Regarding the homestead exemption you ask:

1. Does a taxpayer who is entitled to the homestead exemption under Section 323.151 et seq., forfeit the entire homestead reduc-

tion of taxes for failure to pay the taxes when due?

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If the answer is "no", should the penalty be charged only against the amount of taxes remaining after the homestead reduction is calculated?

With respect to the ten per cent tax rollback under R.C. 319.301, your specific questions were answered in Opinion No. 73,008, Opinions of the Attorney General for 1973. In that Opinion I held that the ten per cent reduction authorized by R.C. 319.301 is not forfeited because of delinquency. I further held that the ten per cent penalty imposed by R.C. 5719.17 on delinquent taxes is computed on the amount of taxes charged and payable after the ten per cent reduction has been applied. On these questions, I therefore refer you to that Opinion.

The five per cent rollback provided in Section 6 of Amended Substitute House Bill No. 475 was of essentially the same nature as the ten per cent reduction, and was an attempt to provide a reduction of real property taxes for 1971, which taxes were not covered by R.C. 319.301. I find nothing to suggest that the same construction should not be given the five per cent rollback as was given the ten per cent rollback. Accordingly, you are advised that the five per cent tax provided by Section 6 of Amended Substitute House Bill No. 475 is permanent as to the real property taxes for 1971. Computation of the ten per cent penalty under R.C. 5719.17 should be based on the net amount due after application of the rollback.

In regard to the homestead exemption, R.C. 323.152 states in pertinent part that:

The real property taxes on a homestead owned and occupied by a person sixty-five years of age or older shall be reduced for any calendar year for which the owner obtains a certificate of reduction from the county auditor under section 323.154 of the Revised Code. * * *

R.C. 323.155 provides:

Upon receipt of a copy of a certificate of reduction in taxes from the county auditor, the county treasurer shall deduct from the amount of real property taxes due on the homestead of the person to whom the certificate was issued an amount equal to the reduction in taxable value shown on the certificate times the tax rate in effect for the calendar year for which the certificate was issued. The treasurer shall record the amount of reduction in taxes in the appropriate column on the tax duplicate. The treasurer shall certify on the certificate the total amount of taxes due on the homestead, the amount of reduction of such taxes as a result of the homestead exemption, and the net amount

of any taxes due. The treasurer shall retain the original of the certificate and forward to the recipient a copy of the certificate, with the tax bill submitted pursuant to section 323.13 of the Revised Code. Such tax bill shall indicate only the net amount of taxes due, if any, following the reduction in taxes resulting from the homestead exemption
(Emphasis added.)

It is clear from a reading of the above that the net amount of taxes due, as computed under R.C. 323.155, is the amount to be charged and payable. Further, I find no language restricting the benefit of this reduction to those, who not only qualify under R.C. 323.151 et seq., but also make timely payment of their taxes. By way of comparison I would refer you to a recent Opinion, No. 73-008, cited above, and my discussion of this question in connection with R.C. 319.301. In addition, I reject any suggestion that the reduction pursuant to the homestead exemption should be forfeited in the event of delinquency in order to provide an incentive for prompt payment, since there is no evidence of a legislative intent to expand the incentives already incorporated into the state's system of taxation. I conclude, therefore, that the reduction of a homestead owner's real property taxes pursuant to R.C. 323.151 et seq. is permanent as to the taxes levied for the calendar year for which a certificate of reduction is issued by the county auditor, and such reduction of taxes is not lost by delinquency in tax payments.

Your follow-up question asks how the penalty provided in R.C. 5719.17 should be computed in light of my answer to your first question. R.C. 5719.17 reads as follows:

If one half the taxes and assessments charged against an entry of real estate is not paid on or before the twentieth day of December in that year, a penalty of ten per cent shall be added to such half of said taxes and assessments on the duplicate. If the total amount of such taxes, assessments, and penalty is not paid on or before the twentieth day of June, next thereafter, a like penalty shall be charged on the balance of the amount of such unpaid taxes and assessments. The total of such amounts shall constitute the delinquent taxes and assessments on such real estate, to be collected in the manner prescribed by law.

A reading of this Section makes it clear that the ten per cent penalty is based on the taxes and assessments which have been "charged" against the real estate. Opinion No. 73-008, Opinions of the Attorney General for 1973. As I indicated in my answer to your first question, the net amount of taxes due, as computed under R.C. 323.155, is the amount to be charged and payable. Therefore, since the reduction in taxes pursuant to R.C. 323.151, et seq., is not lost in the event of delinquency, it follows that computation of the ten per cent penalty under R.C. 5719.17 must be based on the net amount of taxes due after application of the homestead exemption.

In specific answer to your questions it is my opinion, and you are so advised, that:

1. Neither the five per cent tax rollback provided in Section 6 of Amended Substitute House Bill No. 475, effective December 20, 1971, nor a reduction in taxes pursuant to R.C. 323.151 et seq. (homestead exemption), is forfeited because of delinquency in tax payments.

2. The ten per cent penalty, imposed by R.C. 5719.17 on delinquent taxes, is computed after application of the five per cent tax rollback (or ten per cent rollback under R.C. 319.301, as the case may be) and the homestead exemption. Opinion No. 73-008, Opinions of the Attorney General for 1973 approved and followed.