

OPINION NO. 83-045**Syllabus:**

1. All payments received in settlement of claims arising from delinquent property tax charges and ordered to be paid by a railroad company under a plan of reorganization as ordered by a federal district court in accordance with provisions of Chapter VIII of the Bankruptcy Act of 1898, former 11 U.S.C. §201-208, are subject to the provisions of R.C. 323.32.
2. Pursuant to R.C. 319.35, auditors in counties which have received payments from a railroad for real property tax claims as part of a railroad reorganization proceeding as ordered by a federal district court under Chapter VIII of the former Bankruptcy Act may remove from the tax lists and duplicates any charge which is satisfied by any such payment and for which any underlying lien securing payment of the charge has been discharged by order of the court or by Am. Sub. H.B. 336, 112th Gen. A. (1977) (eff. Aug. 21, 1977) (uncodified), subject to the limitation that, if the correction is made after a duplicate is delivered to the county treasurer, it shall be made on the margin of such list and duplicate without changing any name, description, or figure in the duplicate, as delivered, or in the original tax list.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, September 6, 1983

I have before me your opinion request concerning the disposition of moneys paid to several counties pursuant to a plan of railroad reorganization as ordered by a federal district court. Your letter states:

The United States District Court for the Northern District of Ohio, Eastern Division pursuant to Order numbers 1187, 1[2] 21 and 1[2] 22 in the Matter of Erie Lackawanna Railway Company, Debtor, Case No. B72-2838, approved a proposed reorganization of the company. The reorganization plan provides that the claims of local taxing authorities will be paid in full in cash with interest at the rate of 6% per annum, but that no allowance will be made for statutory penalties. As a result of the reorganization the local taxing authorities will be receiving a cash payment, in full settlement of their tax claims, on or about November 30, 1982. The settlement will be for claims for all taxes falling due on or after June 26, 1972 and not paid when due and remaining unpaid.

It appears that taxing authorities within approximately twenty three counties in the State of Ohio will be receiving such payments. In order to resolve various outstanding issues regarding the disposition of these monies we respectfully ask your formal opinion regarding the following issues:

- 1) Is the disposition of such payments subject to the requirements of Section 323.32, Revised Code?
- 2) If the answer to the preceding question is in the affirmative, how may the charges appearing on the tax

list and duplicate of real and public utility property be remitted therefrom, in light of the language of Section 323.32(C), Revised Code[?]

3) If the answer to question number 1 is in the negative, how is distribution to be made with respect to:

- a) the dissolution and creation of taxing districts during this period;
- b) the changing territorial boundaries of taxing authorities during this period;
- c) the expiration and levying of varying tax rates during this period; .d
- d) the retirement of debt and termination of an area of activity, service, or operation during this period[?]

Your first question asks whether the disposition of such payments is subject to the requirements of R.C. 323.32. The pertinent portion of R.C. 323.32 states:

Notwithstanding any other provision of law to the contrary, with respect to all payments received in settlement of claims arising from delinquent property tax charges and ordered to be paid by a railroad company under a plan of reorganization as ordered by a federal district court in accordance with provisions of Chapter VIII of the "Federal Bankruptcy Act," 11 U.S.C. 201-208, the following provisions shall apply:

Further, the statute sets forth the procedure for distributing such moneys to the taxing authorities within the various counties.

The provisions of R.C. 323.32 have very limited application. In order for any payment to be subject to R.C. 323.32, it must have been ordered to be paid by a railroad company under a plan of reorganization as ordered by a federal district court in accordance with provisions of "Chapter VIII of the 'Federal Bankruptcy Act,' 11 U.S.C. 201-208," and must be received in settlement of claims arising from delinquent property tax charges.

It is my understanding that in the situation you pose the payments are being made by a railroad company to numerous counties pursuant to a plan of reorganization as ordered by the United States District Court for the Northern District of Ohio in the case of In re Erie Lackawanna Railway Co., No. B72-2838, and that such payments are being made for delinquent property taxes. The petition for reorganization was filed in 1972 as a Chapter VIII proceeding under the Federal Bankruptcy Act of 1898, 11 U.S.C. §205. In November, 1978, the bankruptcy laws were amended, with most provisions taking effect on October 1, 1979. Bankruptcy Act, Pub. L. No. 95-598, Title IV, §402, 92 Stat. 2682 (1978). Under the Bankruptcy Reform Act of 1978, railroad reorganizations are no longer designated as Chapter VIII proceedings. However, Pub. L. No. 95-598, Title IV, §403, 92 Stat. 2683 (1978), states in part:

(a) A case commenced under the Bankruptcy Act, and all matters and proceedings in or relating to any such case, shall be conducted and determined under such Act as if this Act had not been enacted, and the substantive rights of parties in connection with any such bankruptcy case, matter, or proceeding shall continue to be governed by the law applicable to such case, matter, or proceeding as if the Act had not been enacted.

(b) Notwithstanding subsection (a) of this section, sections 1165 [protection of the public interest], 1167 [collective bargaining agreements], 1168 [rolling stock equipment], 1169 [rejection of lease

of railroad line], and 1171 [priority of certain claims] of title 11 of the United States Code, as enacted by section 101 of this Act, apply to cases pending under section 77 of the Bankruptcy Act (11 U.S.C. 205) on the date of enactment of this Act [November 6, 1978] in which the trustee has not filed a plan of reorganization.

It is my understanding that the original plan of reorganization in Erie Lackawanna was filed in December, 1978, and, therefore, certain matters in the proceeding were governed by those sections set forth above in division (b). Since the payments about which you ask are for delinquent property taxes they do not fall within any of the categories referred to in division (b) and are, therefore, made in accordance with provisions of the former "Chapter VIII of the 'Federal Bankruptcy Act,' 11 U.S.C. 201-208."

In order for a payment to be subject to R.C. 323.32, it must also be received as a "settlement of claims arising from delinquent property tax charges and ordered to be paid by a railroad company under a plan of reorganization as ordered by a federal district court." The word "claim" is not defined as used in R.C. 323.32. Pursuant to the approved plan of reorganization, however, "State and Local Tax Claims" are defined, in part, as:

the Claims of state and local taxing authorities for (a) taxes falling due on or after June 26, 1972 and not paid when due and remaining unpaid, including simple interest thereon at applicable statutory rates, or, if no interest is provided by statute, at the rate of 6% per annum (but excluding penalties and default charges of any nature which will be extinguished), for real estate, franchise, excise and other taxes (including real estate taxes on property held of record by a subsidiary of the Debtor but carried on the books of the Debtor). . . .

In re Erie Lackawanna Co., Plan of Reorganization at 8. Further, in the consummation order, the United States District Court for the Northern District of Ohio ordered that such "State and Local Tax Claims" be paid in accordance with the plan.

Since you state that the payments by the railroad to the various counties are for taxes assessed on the railroad's property, and "falling due on or after June 26, 1972 and not paid when due and remaining unpaid," the amounts for which such payments were made appear to fall within the category of "State and Local Tax Claims" as specified in the reorganization plan. Such payments, therefore, having been ordered to be paid by the United States District Court for the Northern District of Ohio, are payments made on account of claims arising from property tax charges and ordered to be paid by a railroad company under a plan of reorganization as ordered by a federal district court for purposes of R.C. 323.32.

In order for such payments to be subject to R.C. 323.32 they must, in addition, be received in settlement of the claims. The term "settlement," as used in R.C. 323.32, is not defined. It is, therefore, necessary to examine the common meaning of that word. R.C. 1.42. Black's Law Dictionary 1231 (5th ed. 1979) defines a settlement, in part, as:

an agreement by which parties having disputed matters between them reach or ascertain what is coming from one to the other; . . . determination by agreement; and liquidation. . . . Payment or satisfaction. . . . To fix or resolve conclusively; to make or arrange for final disposition. . . .

In the situation about which you ask, the court has ordered, in part:

Effective as of the Consummation Date all right, title and interest of the Debtor's Trustees in and to the property and estate of the Debtor, of every name and nature, shall, the laws of any state or the decision or order of any state authority to the contrary notwithstanding, be

transferred to, vest in and become the absolute property of the Reorganized Company. . .and shall, except as satisfied or expressly assumed as provided. . .below, be free and clear of all claims, rights, demands, interests, liens and encumbrances of every kind and character. . .of the Debtor, its creditors, claimants and stockholder(s). . . .

. . .In view of the provisions [of the Order] relating to the payment, assumption or satisfaction by the Reorganized Company of certain claims, the Debtor and the Debtor's Trustees shall, as of [November 30, 1982], be discharged and released forever from

(a) all obligations, debts, liabilities and claims against the Debtor, whether or not filed or presented, whether or not approved, acknowledged or allowed in these proceedings and whether or not provable in bankruptcy, including without limitation all claims assumed or guaranteed by the Debtor or enforceable against the property of the Debtor;

(b) all obligations, debts, liabilities and claims arising from costs and expenses of administration, whether or not filed or presented and whether or not approved, acknowledged or allowed in these proceedings, including without limitation all taxes, assessments, claims and other charges of governmental units or agencies, whenever assessed, accruing prior to [November 30, 1982]. . . .

. . .All mortgages, indentures, collateral trust indentures and other instruments entered into by the Debtor, or its predecessors, that now constitute or heretofore constituted a lien on any of the property of the Debtor, [and] other liens of record on such property. . .shall, as of the Consummation Date, become, and thereafter forever remain, satisfied, discharged, released, cancelled, null and void and of no effect whatever.

In re Erie Lackawanna Co., No. B72-2838, Consummation Order, 6-10.

Further, the court stated in the final decree, In re Erie Lackawanna Railway Co., No. B72-2838 at 2-3:

3. All persons, firms, governmental entities and corporations, wherever situated, located or domiciled, are hereby permanently restrained and enjoined from instituting, prosecuting or pursuing, or attempting to institute, prosecute or pursue, any suits or proceedings, at law or in equity or otherwise, against the Reorganized Company, its successors or assigns or against any of the assets or property of the Reorganized Company, its successors or assigns, directly or indirectly, on account of or based upon any right, claim or interest of any kind or nature whatsoever which any such person, firm, governmental entity or corporation may have in, to or against the Debtor, or the Debtor's Trustees or any of their assets or properties, and from interfering with, attaching, garnishing, levying upon, enforcing liens [sic] against or upon, or in any manner whatsoever disturbing any portion of the property, real, personal or mixed, of any kind or character, on or at any time after the Consummation Date in the possession of the Reorganized Company and from interfering with or taking steps to interfere with the Reorganized Company, its officers and agents, or the operation of the properties or the conduct of the business of the Reorganized Company, by reason of or on account of any obligation or obligations incurred by the Debtor or the Debtor's Trustees in these proceedings, except the obligations imposed on the Reorganized Company by the Plan and this Order or reserved for resolution or adjudication by the Plan or this Order.

Thus, the payments made to the counties under the plan of reorganization operate, as of November 30, 1982, to discharge and release the claims of the counties against the railroad for unpaid real property taxes, as stated in the Consummation Order.

Furthermore, in 1977 the General Assembly enacted Am. Sub. H.B. 336, 112th Gen. A. (1977) (eff. Aug. 21, 1977) (uncodified), which authorized the county treasurers, upon proper authorization, "to accept [payment for the total amount of taxes, assessments, penalties, and interest due or for an amount less than the total amount due] as full satisfaction for all taxes, assessments, penalties, and interest due and payable by [a] railroad to all taxing authorities within the county" pursuant to a plan or order authorized or adopted by a court having jurisdiction over the bankruptcy proceedings of such railroad. Division (E) of Section 1 of Am. Sub. H.B. 336 states:

Any payment accepted pursuant to division (A) or (B) of this section shall reduce the tax lien or tax claim in bankruptcy by the amount of said payment and shall discharge the tax lien to such extent, but the lien or claim shall not be fully discharged or satisfied until the county budget commission and all nonrepresented taxing units have accepted payment pursuant to said divisions.

Assuming that the county treasurers have been duly authorized to accept such payments, once the payments by the railroad have been accepted by the county budget commissions and all nonrepresented taxing units, the tax liens and claims for which such payments were made are fully discharged and satisfied by the provisions of Am. Sub. H.B. 336, even though the amount of each claim representing statutory penalties was not paid. Pursuant to the reorganization proceedings and Am. Sub. H.B. 336, the payments to the counties by the railroad are settled for purposes of R.C. 323.32. It is clear, therefore, that the payments about which you ask are subject to the provisions of R.C. 323.32.

Because R.C. 323.32 governs the disposition of the payments with which you are concerned, you ask how the charges appearing on the tax list and duplicate of real and public utility property may be remitted therefrom, in light of the language of R.C. 323.32(C), which states:

When the total claim for each county has been satisfied by the receipt of cash or notes, or both, the county auditor shall remit from the tax list and duplicate of real and public utility property in each county, all charges appearing thereon in the name of the railroad company for which such payment has been made, which are delinquent and unpaid from any year previous to the tax year 1977. (Emphasis added.)

The term "remit," as used in R.C. 323.32(C), is not defined by statute. According to Black's Law Dictionary 1163 (5th ed. 1979), "remit" means "[t]o give

¹For purposes of settling delinquent tax claims due and payable by a railroad pursuant to a plan or order authorized or adopted by a court having jurisdiction over the bankruptcy proceedings of such railroad pursuant to Section 1, Division (A) of Am. Sub. H.B. 336, the county budget commission, after public hearing on the proposed settlement of tax claims under Section 1, may, as the representative of each taxing authority within the county except nonrepresented taxing units, authorize the county treasurer to accept payment in an amount less than the full amount due and payable, such payment being accepted as full satisfaction for all taxes, assessments, penalties, and interest due and payable by the railroad. Division (B) contains a similar provision whereby the governing body of a nonrepresented taxing unit may authorize the county treasurer to act on its behalf in the same manner as set forth in Division (A). Division (C) provides that: "[t]he county treasurer shall accept payment made pursuant to a decision by the county budget commission or a nonrepresented taxing unit. . ." (emphasis added).

up; to pardon or forgive; . . .to relinquish; as to remit a fine, sentence, or punishment." It is my understanding, however, that your concern is not specifically whether the charges may be forgiven, but simply whether the charges may be deleted or removed from the tax list and duplicate.

Your question arises because the payments to the counties for unpaid taxes as charged on the tax list and duplicate of real and public utility property are for the amount of taxes owing, plus interest, but excluding penalties. As such, these payments do not fall within the general statutory framework for the collection of such taxes, which contemplates payment in full of all charges appearing on the tax list and duplicate, including penalties, R.C. 323.12, and the creation of a lien in favor of the state when such charges remain unpaid, R.C. 323.11 and R.C. 5727.06 (taxes on property of public utility). Pursuant to R.C. 323.11 such liens "continue until such taxes, including any penalties, interest, or other charges accruing thereon, are paid."

The auditor's duty under R.C. 323.32(C) to remit certain charges appearing on the tax list and duplicate arises when the total claim for each county has been satisfied. As set forth above in answer to your first question, the court in Erie Lackawanna has, pursuant to the reorganization plan, discharged the counties' claims for the unpaid real property taxes as described in your request, and to the extent the state held a lien of record on the property of the railroad for the payment of such taxes, the consummation order has discharged, released and cancelled such lien. Furthermore, pursuant to Am. Sub. H.B. 336, once the appropriate authorities in each county, acting in accordance with that act, have accepted payments from the railroad, although the amount of each claim representing statutory penalties was not paid, the provisions of Am. Sub. H.B. 336 discharge and satisfy the tax liens and claims for which such payments were made. Therefore, although the total amount of each county's tax claim is not paid in full, it is satisfied for purposes of R.C. 323.32(C).

R.C. 323.32(C) directs the county auditor, upon receipt of cash payment in satisfaction of the charges appearing on the tax list and duplicate of real and public utility property under the circumstances set forth in your request, to remit from the tax list and duplicate "all charges appearing thereon in the name of the railroad company for which such payment has been made, which are delinquent and unpaid from any year previous to the tax year 1977" (emphasis added). This section expressly authorizes the remission of all such charges, but only for the tax years prior to 1977.

As stated in your letter, however, the payments to the counties are for taxes which were unpaid for the period of June 26, 1972 through November 30, 1982, the consummation date of the reorganization plan. The question remains as to the disposition of charges for which payments were received for the tax year 1977 and subsequent tax years. Pursuant to the railroad reorganization proceedings and Am. Sub. H.B. 336 the counties no longer have any real property tax claims against the railroad and the liens securing such claims have been discharged. Thus, whether or not R.C. 323.32(C) expressly provides for the remission of charges for the tax year 1977 and subsequent years, it appears that the railroad reorganization proceedings and Am. Sub. H.B. 336 have rendered such charges uncollectable.

In light of the foregoing, you ask whether all charges for which payment has been received may be removed from the auditor's tax list and duplicate. It is well settled that the county auditor, as a creature of statute, may exercise only such powers as are expressly conferred upon him by statute and only such implied powers as are necessary to carry into effect the powers expressly delegated. State ex rel. Kuntz v. Zangerle, 130 Ohio St. 84, 197 N.E. 112 (1935). It is, therefore, necessary to examine the statutory duties and powers of the county auditor to determine whether the county auditor has authority to remove such charges.

R.C. 319.28 imposes upon the county auditor the duty to prepare each year a general tax list of real and public utility property in the county. R.C. 5727.23 directs the county auditor to place on the tax list and duplicate of real and public utility property the apportioned valuation and assessments of the real property

owned by a railroad, and states that "taxes shall be levied and collected thereon at the same rates and in the same manner as taxes are levied and collected on real property in the taxing district in question." See generally 1972 Op. Att'y Gen. No. 72-086 (collection and delinquency procedures for railroad property (excluding rolling stock) and real property taxes are the same).

The auditor's authority to make changes in the tax list and duplicate is, as a general rule, very limited. See, e.g., R.C. 5715.14 (county auditor's correction of tax list and duplicate upon certification of action by county board of revision); R.C. 5715.27 (county auditor's correction of tax list and duplicate upon certification of findings by commissioner); R.C. 5721.22 (county auditor's correction of duplicate and issuance of abatement for penalties and interest when taxes and assessments are regularly paid in full).

Pursuant to R.C. 319.35, the county auditor has authority to correct clerical errors in the tax lists and duplicates. The term "clerical error" is not susceptible of precise definition, but has been characterized generally as a bookkeeping matter, rather than an error in the auditor's judgment or discretion involving a question of law. 1966 Op. Att'y Gen. No. 66-090; 1960 Op. Att'y Gen. No. 1876, p. 718. For example, the case of Brooks v. Lander, 14 Ohio C.C. (n.s.) 481 (Cuyahoga County 1905), aff'd sub nom. Brooks v. Spencer, 74 Ohio St. 428, 78 N.E. 1119 (1906), originated as a suit in which several taxpayers sought to enjoin the collection of taxes. In that case a board of tax equalization and assessment ordered deductions in the taxable value of certain real estate. The Supreme Court then found that the board had taken such action pursuant to an unconstitutional law. Based upon the Supreme Court's decision, the auditor expunged from the duplicate the deductions which had been ordered by the board. On appeal the taxpayers sought to have the deductions restored to the duplicate. The court concluded that R.S. 1038, analogous to R.C. 319.35, authorized the auditor, after the finding by the Supreme Court ousting the boards which had ordered the deductions, "thenceforward to treat as clerical errors the changes which had been made in the tax duplicate pursuant to the board's orders, and to correct them accordingly in the current duplicate." 14 Ohio C.C. at 483. Similarly, in Lewis v. State ex rel. Mullikan, 59 Ohio St. 37, 51 N.E. 440 (1898), the court considered the county auditor's power to correct an error made in listing the valuation of a taxpayer's real property. Due to the erroneous listing of an increase in valuation, the taxpayer's property was charged with increased taxes. The court stated that since the error was not due to a mistake of law but merely due to the auditor's inadvertance in compiling the tax list, the auditor could, by virtue of his authority to correct clerical errors in the tax list and duplicate, make the necessary correction. See also State ex rel. Poe v. Raine, 47 Ohio St. 447, 25 N.E. 54 (1890) (where county auditor makes entries on tax duplicate based upon action by board, which action was outside board's authority, auditor has duty to correct such clerical errors).

It is, thus, apparent that where the correction of an erroneous entry appearing on the auditor's tax list and duplicate involves no discretion on the part of the auditor as to whether such tax is, as a matter of law, correct, R.C. 319.35 authorizes the auditor to correct the tax list and duplicate as a mere correction of a clerical error.

Applying this general principle to the situation about which you ask, I believe that the duty imposed upon the auditor by R.C. 323.32(C) to remit all charges appearing on the tax list and duplicate for tax years prior to 1977 necessarily implies the authority to reflect on the tax list and duplicate the satisfaction of such claims, since doing so would merely reflect the action taken by the legislature in discharging the tax claims and liens. Similarly, as set forth above, the General Assembly has provided in Am. Sub. H.B. 336 a scheme by which the acceptance of payments by the appropriate county authorities for tax years subsequent to 1976 operates to satisfy the tax claims and discharges the tax liens for such years. Since both the order of the bankruptcy court and Am. Sub. H.B. 336 operate to discharge the county's tax claim and any lien securing payments of such charges, the county auditor has authority to reflect that, by order of the court or the action of the legislature, such taxes are no longer owing. Thus, where charges appearing on the tax list and duplicate of real and public utility property have been satisfied and any

underlying liens securing payment of such charges have been discharged by the court in a railroad reorganization proceeding under Chapter VIII of the former Bankruptcy Act or by Am. Sub. H.B. 336, the county auditor may, pursuant to R.C. 319.35, remove such charges, subject to the limitation of R.C. 319.35 that, "[i]f the correction is made after a duplicate is delivered to the county treasurer, it shall be made on the margin of such list and duplicate without changing any name, description, or figure in the duplicate, as delivered, or in the original tax list, which shall always correspond exactly with each other."

In 1961 Op. Att'y Gen. No. 2410, p. 399 and 1959 Op. Att'y Gen. No. 693, p. 402, one of my predecessors considered similar questions concerning the removal of charges appearing on the county tax list and duplicate. One question presented in 1961 Op. No. 2410 was whether the county treasurer could collect delinquent taxes which were a lien upon certain property over which the state had acquired a perpetual easement subsequent to the attaching of the lien. My predecessor concluded that the treasurer could neither collect the delinquent taxes from the State of Ohio nor obtain a personal judgment against the holder of the fee, but that the lien continued and, in the event that the state abandoned its easement, the treasurer could then resort to foreclosure. The opinion concluded in paragraph three of the syllabus that:

The procedure of Section 5719.01, Revised Code, for the attaching of lien for taxes constitutes the sole method of collection of delinquent real estate taxes; and there is no statutory authority for the removal of delinquent taxes from the tax duplicate even though foreclosure of the lien would be of no avail.

Distinguishing that opinion from the facts you present, I note that, in 1961 Op. No. 2410, the tax claim had not been satisfied and the underlying lien had not been discharged; the claim was merely uncollectable for the duration of the state's easement. In the situation about which you ask, the lien has been extinguished by acts of the General Assembly, Am. Sub. H.B. 336 and R.C. 323.32(C), and by the reorganization proceedings. Thus the action of the auditor in removing such charges from the tax list and duplicate serves only to reflect the order of the court and the General Assembly's determination as to the discharge of the lien and the satisfaction of the tax claim.

In the situation considered in 1959 Op. No. 693, a group of taxpayers refused to pay a certain assessment levied within the county, and as a result, penalties were added to the original assessment. The tax was subsequently held invalid by the Supreme Court. The question presented was whether the auditor could remove the delinquencies from the tax duplicate. The opinion reasoned that since neither the county nor its auditor was a party to the case in which the court declared the tax invalid, neither the county nor the auditor could adopt the decision of the court as authority for the removal of the taxes and penalties from the tax list and duplicate. My predecessor did not, however, consider the possible application of R.C. 319.35 to the circumstances presented in that opinion. As stated above, I believe that the provisions of R.C. 319.35 which authorize the auditor to correct clerical errors in the tax list and duplicate allow the auditor to make such changes once either a court or the legislature has determined that such charges are not due.

In answer to your second question, I conclude that, pursuant to R.C. 319.35, which authorizes the county auditor to correct clerical errors in the tax list and duplicate, auditors in counties which have received payments from a railroad for real property tax claims as part of a railroad reorganization proceeding as ordered by a federal district court under Chapter VIII of the former Bankruptcy Act may remove from the tax lists and duplicates any charge which is satisfied by such payments and for which any underlying lien securing payment of the charge has been discharged by order of the court or by Am. Sub. H.B. 336, subject to the limitation that, if the correction is made after a duplicate is delivered to the county treasurer, it shall be made on the margin of such list and duplicate without changing any name, description, or figure in the duplicate, as delivered, or in the original tax list.

Because the answer to your first question is in the affirmative, it is unnecessary to answer your third question.

Based on the foregoing, it is my opinion, and you are advised, that:

1. All payments received in settlement of claims arising from delinquent property tax charges and ordered to be paid by a railroad company under a plan of reorganization as ordered by a federal district court in accordance with provisions of Chapter VIII of the Bankruptcy Act of 1898, former 11 U.S.C. §201-208, are subject to the provisions of R.C. 323.32.
2. Pursuant to R.C. 319.35, auditors in counties which have received payments from a railroad for real property tax claims as part of a railroad reorganization proceeding as ordered by a federal district court under Chapter VIII of the former Bankruptcy Act may remove from the tax lists and duplicates any charge which is satisfied by any such payment and for which any underlying lien securing payment of the charge has been discharged by order of the court or by Am. Sub. H.B. 336, 112th Gen. A. (1977) (eff. Aug. 21, 1977) (uncodified), subject to the limitation that, if the correction is made after a duplicate is delivered to the county treasurer, it shall be made on the margin of such list and duplicate without changing any name, description, or figure in the duplicate, as delivered, or in the original tax list.