

2480.

TAXES AND TAXATION—REFUNDING OF EXCESSIVE TAXES PAID  
ON SECURITIES—SECTIONS 288 ET. SEQ., G. C., CONSTRUED.

SYLLABUS:

*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.*

COLUMBUS, OHIO, May 13, 1925.

HON. G. C. SHEFFLER, *Prosecuting Attorney, Fremont, Ohio.*

DEAR SIR:—I am in receipt of your communication as follows:

“The state banking department of Ohio has charged the X Banking Company, of Fremont, Ohio, with having paid an excessive amount of taxes for the past five years, viz: the years 1919, 1920, 1921, 1922, and 1923, amounting to \$5526.30 on worthless securities.

“Has the county auditor any right to make a remitter or a refunder of the above amount for such years as above indicated to the X Bank?”

You have further advised as follows:

“The X Bank here paid \$5526.30 for the years 1919, 1920, 1921, 1922 and 1923 on stock that the bank owned, more than what they should have paid as per value on its holdings. For example: They had purchased Y company stock at par value, and when they made out to the auditor their personal tax return this company was listed at par, 100%, when in truth and in fact, the stock was only worth 10% of par.”

From some statements in your communication it is apparent that in the instant case the X Banking Company has paid taxes for a period of years upon the par value of securities held by them and that the securities, instead of being of the par value, were of considerable less value than the amount for which they were listed. Your question is whether the county auditor may call the attention of the county commissioners to such over payments and if the commissioners find that such over payments have been made, order the auditor to draw his warrant upon the county treasurer for the full amount of such erroneous taxes.

Section 2589 G. C., as far as applicable provides:

“After having delivered the duplicate to the county treasurer for collection, if the auditor is satisfied that any tax or assessment thereon or any part thereof has been erroneously charged, he may give the person so charged a certificate to that effect to be presented to the treasurer, who shall deduct the amount from such tax or assessment. If at any time the auditor discovers that erroneous taxes or assessments have been charged and collected in previous years, he shall call the attention of the county commissioners thereto at a regular or special session of the board. If the commissioners find that taxes or assessments have been so erroneously charged and collected, they shall order the auditor to draw his warrant on the county treasurer in favor of the person paying them for the full amount of the taxes or assessments so erroneously charged and collected. The county

treasurer shall pay such warrant from any surplus or unexpended funds in the county treasury."

This section is for the correction of error in payment of taxes and provides a method of refunding taxes erroneously paid.

The case of *Christ vs. Eirich*, 13 O. N. P. (N. S.) page 457, was a case involving the refunding of excessive taxes under sections 2588, 2589 and 2590 G. C., the court held:

"Where an error in apportioning taxes is due to the neglect of a legal duty, it is deprived of the character of a mistake in the legal sense, and does not fall into the class which are characterized as clerical errors."

In the case of *state of Ohio ex rel. vs. commissioners*, 31 O. S., page 231, the court held:

"The errors named in the statute are clerical merely, but the error complained of by the relator is fundamental. The question, whether specific property is or is not subject to taxation, was not, by this section of the statute, submitted to the judgment of either the auditor of the county or the board of county commissioners."

In this case the auditor placed upon the tax duplicate for taxation property which, under the law, was exempt from taxation; it was held that this was not one of the errors named in the statute but that it was a fundamental error. In other words, a mistake occurring in an original or primary act is not clerical but fundamental. (22 W. L. B., 294). That is, the statute was intended to empower the auditor to correct mere clerical errors, but did not give him power to correct a mistake made as an original or primary act.

In the case of *Ohio vs. Brewster*, 11 W. L. B., 38-41, it was held that:

"Where facts do not appear upon the face of the return, but must be determined by the auditor by investigation, this section of the statute does not apply."

Again, on page 462 of the case of *Christ vs. Eirich*, supra, the court says:

"There are many other decisions to the same effect, and it seems that the principle to be deduced from these decisions is, that if the direct object of the inquiry before the commissioners is to determine the existence, kind and value of certain property, any error therein would be fundamental."

*Mitchell vs. county commissioners*, 22 W. L. B., 293:

"It seems to be well settled by the adjudicated cases that the errors which the auditor may correct by virtue of section 2588 are errors of book-keeping or of copying, and that the statute does not afford a remedy or permit a refunder in cases where the errors are fundamental in character."

It is believed from a consideration of the above cases that the error, if any, of the county auditor in listing the securities of the X bank at par value instead of the actual value of such securities is a fundamental error and one which the county auditor is not authorized to correct under section 2588 et seq.

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: