

3767.

PERSONAL PROPERTY TAX—DELINQUENT LIST—DRAWN UP AFTER
OCTOBER, 1932 SETTLEMENT—FILED WITH COUNTY TREASURER
AND RECORDER, DECEMBER 1, 1932.

SYLLABUS:

The delinquent personal property tax list to be made up by the county auditor under the provisions of Section 5694, General Code, as amended in Amended Senate Bill No. 326, is not to be made up by such officer until after the October, 1932, settlement of general personal property taxes and classified personal property taxes had by the county auditor with the county treasurer. And the duplicates of such delinquent personal property tax list provided for by said section of the General Code, as amended, is to be first filed with the county treasurer and county recorder, respectively, on December 1, of said year.

COLUMBUS, OHIO, November 16, 1931.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge receipt of a communication from you, which communication reads in part as follows:

“You are respectfully requested to render this department your written opinion upon the following questions arising out of the enactment of Amended Senate Bill No. 326, at the recent session of the General Assembly:

Section 5694 reads:

‘Immediately, after each *October* settlement, the county auditor shall make a tax list, and duplicates thereof, of all the taxes, other than those upon real estate specifically as such, remaining unpaid, as shown by the treasurer’s books and *the list of such taxes returned as delinquent by him to the auditor at such settlement.*’

Am. S. B. No. 326 became effective October 14, 1931.

There is no *October* settlement in the year 1931.

Section 5694 provides that the county auditor shall deliver one such delinquent tax duplicate to the county treasurer on the *first day of December*, annually. The other such duplicate * * * shall be filed by the county auditor on the *first day of December* in the office of the county recorder * * * and designated as the Personal Tax Lien Record.

Question 1: Is the county auditor’s delinquent tax list to be prepared in the year 1931 or not until after the October settlement in 1932?

Question 2: Are the duplicates thereof to be filed with the county treasurer and the county recorder on the first day of December in the year 1931 or not until the first day of December, 1932?”

The questions presented in your communication call for a consideration of the provisions of Section 5694, General Code, as amended by the 89th General Assembly in the enactment of Amended Senate Bill No. 326 which was passed June 24, 1931, and which, as you note, went into effect on October 14, 1931. The

questions here presented likewise require a consideration of certain provisions of Amended Senate Bill No. 323 providing for the levy of taxes on intangible property at classified rates and for the assessment of tangible personal property for taxation, enacted by the 89th General Assembly, and of certain previously existing statutory provisions relating to the collection of personal property taxes and to certifications of delinquencies with respect to collection of such taxes.

Prior to the enactment of Amended Senate Bill No. 323, above referred to, personal property taxes, like taxes on real property, were collected at the December and June tax collection periods, provided for by law; and settlements were made by the county auditor with the county treasurer with respect to the collection of such real and personal property taxes on or before the fifteenth day of February and on or before the tenth day of August of each year. Section 2596, General Code.

With respect to delinquencies in payment of personal property taxes, section 5694, General Code, prior to its amendment in the enactment of Amended Senate Bill No. 326, above referred to, provided as follows:

“Immediately after each semi-annual settlement in August, the county auditor shall make a tax-list, and duplicate thereof, of all the taxes on personal property remaining unpaid, as shown by the treasurer’s books, and the delinquent record as returned by him to the auditor. Such tax list and duplicate shall contain the name, valuation, and amount of personal property taxes, with ten per cent penalty thereon, due and unpaid. He shall deliver the duplicate to the treasurer on the fifteenth day of September, annually.”

Section 5695, General Code, provides that the county treasurer shall forthwith collect such delinquent taxes and penalties on the duplicate by any means provided by law, and that the funds so collected shall be distributed in proper proportions to the appropriate funds.

Under the provisions of Amended Senate Bill No. 323, taxes on real property and taxes on the personal property of public utilities are to be collected at the December and June tax collection periods and settlements made by the county auditor with the county treasurer with respect to such taxes are to be made on or before the fifteenth day of February and on or before the tenth day of August of each year as provided in the former law. Other provisions are made with respect to the times when taxes on the general personal property tax list and duplicate and taxes on the intangible or classified tax list and duplicate are to be paid.

With respect to the settlements to be made by and between the county auditor and the county treasurer with respect to the collection of general personal and classified property taxes, Section 2602, General Code, as amended in Amended Senate Bill No. 323, above referred to, provides:

“On or before the tenth day of May and on or before the tenth day of October of each year the county auditor shall attend at his office to make settlement with the treasurer of the county and ascertain the amount of general personal and classified property taxes with which such treasurer is to stand charged. At each October settlement, he shall take from the duplicates previously put into the hands of the treasurer for collection a list of all such taxes as the treasurer has

been, unable to collect, therein describing the assessments on which such delinquent taxes are charged as described on such duplicates. Such last mentioned list shall be signed by the treasurer, who shall testify to the correctness thereof, under oath, to be administered by the auditor. After deducting the amount of such taxes as returned delinquent and the collection fees allowed the treasurer from the several taxes charged on the duplicates in a just and ratable proportion, the treasurer shall be held liable for the balance of such taxes. After first correcting any error which may have occurred in the apportionment of taxes at any previous settlement, the auditor shall certify the balance due the state, the balance due the county, and the balance due each other taxing district, and forthwith shall record such list of delinquencies in his office."

With respect to the delinquencies in the payment of taxes on general personal and classified property tax lists and duplicates appearing in the October settlement provided for by Section 2602, General Code, above quoted, Section 5694, General Code, as amended in Amended Senate Bill No. 326, provides as follows:

"Immediately after each October settlement, the county auditor shall make a tax list, and duplicates thereof, of all the taxes, other than those upon real estate specifically as such, remaining unpaid, as shown by the treasurer's books and the list of such taxes returned as delinquent by him to the auditor at such settlement. Such tax list and duplicates shall contain the name of the person charged and the amount of such taxes, and penalty thereon, due and unpaid. He shall deliver one such duplicate to the treasurer on the first day of December, annually. The other duplicate from which shall first be eliminated the names of all persons whose total liability for taxes and penalty is less than one hundred dollars shall be filed by the county auditor on the first day of December in the office of the county recorder of his county and the same shall constitute a notice of lien and operate, as of the date of delivery thereof, as a lien on the lands and tenements, vested legal interest therein, and permanent leasehold estates of each person named therein, having such real estate in such county; but such notice of lien and such lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor whose rights have attached prior to the date of such delivery. Such duplicate shall be kept by the county recorder and designated as the personal tax lien record, and indexed under the name of the person charged with such tax. No fee shall be charged by the recorder for the services required under this section."

In a consideration of the provisions of Section 5694, General Code, with respect to their application to the questions presented in your communication, it may be well to note some of the provisions of Section 5695-1, General Code, which section was enacted as a part of said Amended Senate Bill No. 326. This section provides in part as follows:

"The county auditor's delinquent tax list and the county treasurer's delinquent tax duplicate provided for in Section 5694 of the General Code shall be cumulatively kept so that the amount of delinquent taxes and penalty other than those upon real estate specifically as such charged against

each person, may be shown on the latest delinquent list and duplicate. Such cumulative tax list and duplicate shall include the amount of delinquent taxes charged on the delinquent personal tax lists and duplicates for the year 1931 and any year or years prior thereto and shall be carried forward from any delinquent duplicates for former years to the delinquent list and duplicate made up in 1931 by the county auditor and said former delinquencies shall contain the name of the person charged and the amount of such taxes, and penalty thereon, due and unpaid for each year so carried forward on the latest delinquent list and duplicate; * * *

In the consideration of the questions whether the delinquent tax list provided for by Section 5694, General Code, as said section is amended in Amended Senate Bill No. 326, is to be prepared by the county auditor of each county in the state in the year 1931, and whether duplicates thereof are to be filed with the county treasurer and the county recorder on the first day of December in the year 1931, it is to be noted that there is nothing in the provisions of either Amended Senate Bill No. 323 or Amended Senate Bill No. 326 which in the year 1931 in anywise exempts the county auditor from the duty of preparing a delinquent personal property tax list immediately after the semi-annual settlement in August of said year, or from his duty to deliver a duplicate of such tax list to the treasurer on or before the fifteenth day of September of said year, as provided for by Section 5694, General Code, prior to its amendment in said act, above referred to. Touching this point, it is observed that although said Amended Senate Bill No. 323 in Section 5 thereof provides that excepting as to public utility property the assessments of all personal property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise made in the year 1931, are cancelled and annulled, it is further provided by said Section 5 of this act that "this provision shall not be so construed as to require or authorize any county auditor in the year 1931, * * * to omit from the proper tax lists and duplicates any delinquent taxes." It follows from this provision, as well as independently thereof, that the county auditors of the several counties of the state were required to make up delinquent personal tax lists immediately after their August settlements with the county treasurers of their several counties, and it is presumed that this duty has been performed by the county auditor in each of the counties of the state, and that a duplicate of said delinquent personal property tax list has been filed with the county treasurer as required by the prior provisions of Section 5694, General Code.

Inasmuch as it is to be presumed that the legislature in the amendment of Section 5694, General Code, and in the enactment of Amended Senate Bill No. 326, did not intend that the county auditor should prepare two delinquent personal property tax lists during the year 1931, the fact that it was clearly intended and contemplated that the county auditor should prepare a delinquent personal property tax list immediately after his August, 1931, settlement with the county treasurer, as required by the former provisions of Section 5694, General Code, is to my mind a cogent consideration in support of the view that the legislature in the amendment of Section 5694, General Code, did not contemplate that the county auditor should be required to make in said year 1931 the list of delinquent taxes on the general property and classified property tax duplicates provided for by said Section 5694, General Code, as amended.

Moreover, the fact that under the provisions of Section 5695-1, General Code,

above quoted, the delinquent tax list and duplicate which the county auditor is required to prepare under the provisions of Section 5694, General Code, as amended, is to include the amount of delinquent taxes charged on the delinquent personal tax list and duplicate for the year 1931, indicates quite conclusively that the delinquent tax list provided for by Section 5694, General Code, as amended, is to be prepared and filed by the county auditor subsequent to the year 1931.

Furthermore, the very language of Section 5694, General Code, as amended, indicates that the provisions of this section were enacted in furtherance of the peculiar scheme of personal property taxation provided for by Amended Senate Bill No. 323, which act in Section 5 thereof provides "The first assessment of taxable property of the kinds and classes mentioned in this act shall take place in the year 1932 at the times and in the manner provided in this act." Without attempting any detailed discussion of the scheme of personal property taxation comprehensively provided for by said Amended Senate Bill No. 323, it is sufficient to note that under the provisions of this act some classes of personal property are required to be listed for taxation which were not taxable under the prior law; while, on the other hand, other classes of personal property which have heretofore been required to be listed for taxation are not taxable under the new law. It follows from this that the delinquent personal property tax list which the auditor is required to prepare under the provisions of Section 5694, General Code, as amended, will necessarily be different from that prepared by him under the former provisions of said section.

On the considerations above noted, as well as for the obvious reason that no October settlement with respect to the collection of any class of personal property is provided for in the year 1931, I am quite clearly of the opinion that the county auditor is not required or authorized to prepare in the year 1931 the delinquent tax lists provided for by Section 5694, General Code, as amended in Amended Senate Bill No. 326, and that he is not required to file a duplicate of this or any other tax list with the county recorder on the first day of December in said year 1931. Or, answering your questions more specifically, I am of the opinion that the delinquent tax list to be prepared by the county auditor under the provisions of said section, as amended, is not to be prepared by him until after the October settlement in 1932, and that the duplicates of such delinquent tax list are, under the provisions of said section, to be first filed with the county treasurer and the county recorder, respectively, on the first day of December, 1932.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3768.

APPROVAL, BONDS OF VILLAGE OF UNIVERSITY HEIGHTS, CUYA-
HOGA COUNTY, OHIO—\$6,000.00.

COLUMBUS, OHIO, November 17, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.