

OPINION NO. 73-008

Syllabus:

1. The 10 per cent reduction authorized by R.C. 319.301, is effective as to taxes charged and payable in the years following 1972, and is not forfeited because of delinquency.
2. The 10 per cent penalty, imposed by R.C. 5719.17 on delinquent taxes, is computed on the amount of taxes charged and payable after the 10 per cent reduction has been applied under R.C. 319.301.
3. In computing the amount to be certified by the county treasurer pursuant to R.C. 321.24 (F), those taxes which have actually been collected may be considered. Delinquent taxes which remain uncollected, as well as taxes charged on the duplicate, but uncollected because of clerical error, and taxes charged but withheld pursuant to R.C. 5715.19, may not be included in such certification.
4. The state's obligation to reimburse a county under R.C.

321.24 (F), is limited to an amount which reflects only taxes which have been collected at the time of settlement.

To: David W. Dowd, Jr., Stark County Pros. Atty., Canton, Ohio
By: William J. Brown, Attorney General, February 7, 1973

Your request for my opinion poses the following questions:

1. With regard to the ten percent (10%) reduction in taxes required by R.C. 319.301, should the County Auditor treat this reduction as though it were permanent, i.e. will the taxes, as reduced by ten percent (10%), be carried as the amount charged on the duplicate until paid, regardless of whether such taxes become delinquent?

2. In the light of newly enacted R.C. 319.301, will the ten percent (10%) penalty imposed by R.C. 5719.17 and R.C. 5719.18 on delinquent taxes be applied to the amount of taxes charged against an entry of real estate prior to the ten percent (10%) reduction or to the amount of such taxes after the ten percent (10%) reduction?

3. With regard to newly enacted R.C. 321.24 (F), if the amount certified by the county treasurer to the auditor of state includes delinquent taxes to which R.C. 319.301 had application when such taxes were levied, will the state be obligated to include such delinquent taxes in the auditor of state's voucher and warrant upon the general revenue fund payable to the county treasury to the credit of the county's undivided income tax fund?

4. With regard to R.C. 321.24 (F), what, if any, discretion does the county treasurer have in certifying to the auditor of state 'the amount of taxes which would have been settled had section 319.301 of the Revised Code not been in effect at the time such taxes were charged for collection . . .'? For instance, if the amount of taxes for which the county treasurer has settled with the county auditor includes a tax collection which, for some reason, was less than the amount billed to the tax payer, does the treasurer have discretion to certify to the auditor of state that had Section 319.301 of the Revised Code not been in effect at the time such taxes were charged for collection that the tax payer would have paid the same percentage of his tax bill as the percentage which he actually paid with R.C. 319.301 in effect?

5. With regard to R.C. 321.24 (F), in the event that the amount certified by the county treasurer to the auditor of state does include tax collections in which the amount collected has, for some reason, been less than the amount owed by the tax payer after the reduction, to what extent is the state responsible for reimbursement to the county as to such collections from the tax payer of less the amount due?

The Section, with which your first two questions are primarily concerned, is R.C. 319.301 which became effective on December 20, 1971. It reads as follows:

In December, 1972, and each year thereafter, each county auditor shall reduce the amount of taxes certified to be levied against all real property listed on the general tax list and duplicate of real and public utility property of each county for that calendar year by ten per cent of such amount. The amount of the taxes following such reduction shall be the real and public utility property taxes charged and payable against such real property for the succeeding calendar year. Such reduction shall not directly or indirectly affect the determination of the principal amount of notes that may be issued in anticipation of any tax levies or the amount of bonds or notes for any planned improvements. If after application of sections 5705.31 and 5705.32 of the Revised Code and other applicable provisions of law, including division (F) of section 321.24 of the Revised Code, there would be insufficient funds for payment of debt charges on bonds or notes payable from taxes reduced by this section, the reduction of taxes provided for in this section shall be adjusted to the extent necessary to provide funds from such taxes.

(Emphasis added.)

You first ask whether the amount of taxes, as determined by the county auditor to be due on all real property after application of the 10 per cent reduction, is to remain in effect even though such taxes become delinquent. I think it clear from the language of R.C. 319.301 that the amount remains unchanged regardless of the delinquency. The Section begins by providing that, in December of 1972, and of each year thereafter, the county auditor shall reduce, by 10 per cent, the amount of taxes certified to be levied on all real property on the general tax list and the tax duplicate for that calendar year. Then follows the language which I have emphasized in quoting the Section, *supra*, to the effect that the amount determined by the 10 per cent reduction of the taxes for the current calendar year "shall be" the taxes charged and payable for the succeeding calendar year. There is nothing in the Section to indicate that the amount determined by the 10 per cent reduction is contingent on the timely payment of the taxes due for the current calendar year. On the contrary, the Section says quite clearly that the amount so determined shall be the taxes charged and payable for the next calendar year. I see no escape from this plain and unambiguous statutory language.

The absence in R.C. 319.301 of specific language restricting the 10 per cent reduction to taxpayers who are not delinquent stands in sharp contrast to the language of R.C. 5733.04 (I) (9), which authorizes an exemption in determining the base on which an excise tax is levied pursuant to R.C. 5733.05 and 5733.06. In computing "net income" for purposes of R.C. Chapter 5733, that Section provides for a deduction of income,

* * * to the extent it is included in the corporation's taxable income before op-

erating loss deduction and special deductions, upon which the corporation paid non-delinquent intangible property tax pursuant to division (A) of section 5707.03 or 5707.04 of the Revised Code, during the taxable year.
(Emphasis added.)

In that Section the General Assembly expressly limited the exemption to cases where the payment of the intangible property tax had not been delinquent. There is no such language to be found in R.C. 319.301. It is clear that, had the General Assembly intended to limit the benefit of the 10 per cent tax rollback to nondelinquent taxpayers, it would have so specified in explicit language.

It has been suggested that an interpretation of the 10 per cent rollback as contingent on the prompt payment of taxes would provide an incentive for such prompt payment. However, there is no language in the statute which would indicate such an intent on the part of the legislature. Furthermore, it should be noted that a penalty of 10 per cent is already provided by R.C. 5719.17 and 5719.18 in the event that the taxes become delinquent. Under the incentive argument, the loss of the rollback would have very much the appearance of a further penalty, even though, technically, it may not be such. See *State, ex rel. Outcalt v. Guckenberger*, 134 Ohio St. 457 (1938); also *Evatt v. Semonin*, 143 Ohio St. 480, 486 (1944); and *In re Estate of Tange*, 164 Ohio St. 500, 505 (1956). To hold that, in addition to the penalty directed by R.C. 5719.17, delinquent taxpayers also lose the benefit of the 10 per cent rollback as a result of such delinquency, would, in effect, almost double the amount of penalty imposed in such situations. I find nothing to warrant the view that the General Assembly intended to make such an expansion of the incentives incorporated into the state's system of taxation. I must therefore conclude that nothing in R.C. 319.301 operates to limit the 10 per cent reduction to those taxpayers who pay their taxes at the appropriate time. The 10 per cent reduction, authorized under R.C. 319.301, is permanent as to taxes levied in the years following 1972, and it is not forfeited by delinquency in tax payments.

Your second question asks whether the 10 per cent delinquency penalty imposed by R.C. 5719.17 and 5719.18 should be applied after the 10 per cent reduction under R.C. 319.301. The delinquency penalty provisions read as follows

Section 5719.17

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. (Emphasis added.)

Section 5719.18

If the total amount of delinquent taxes, assessments, and penalty, as provided in section 5719.17 of the Revised Code, together with one half of the taxes and assessments charged against such real estate for the current year is not paid on or before the twentieth day of December of the same year, the delinquent taxes, assessments, and penalty, and the whole of the taxes and assessments of the current year shall be due and be collected in the manner authorized by law. If the first half of the taxes and assessments charged upon any real estate is paid on or before the twentieth day of December, but the remaining half thereof is not paid on or before the twentieth day of June next thereafter, a like penalty shall be added to such unpaid taxes and assessments, and they shall be treated as delinquent taxes and assessments, and be collected in the manner provided by law together with the taxes and assessments of the current year.

A reading of R.C. 5719.17 makes it clear that the 10 per cent penalty is based on the taxes and assessments which have been "charged" against the real estate. In R.C. 319.301 the amount of taxes, after the 10 per cent reduction is applied, are referred to as the taxes "charged and payable." Since it has already been determined that the 10 per cent reduction authorized by R.C. 319.301 is not lost in the event of delinquency, it follows that computation of the 10 per cent penalty under R.C. 5719.17 must be based on the amount of taxes charged after application of the 10 per cent rollback.

My answer to your third question relies in large part on my response to your fourth and fifth questions. I will, therefore, consider the latter first. Since all these three questions concern the duties of a county treasurer under R.C. 321.24, a discussion of that provision is basic to any answer. That section, to which subsection (F) was added by an amendment effective December 20, 1971, reads in pertinent part as follows:

(A) On or before the fifteenth day of February, in each year, the county treasurer shall settle with the county auditor for all taxes and assessments that he has collected on the general duplicate of real and public utility property at the time of making the settlement.

* * * * *

(C) On or before the tenth day of August, in each year, the treasurer shall settle with the auditor for all taxes and assessments that he has collected on the general duplicates of real and public utility property at the time of making such settlement, not included in the preceding February settlement.

* * * * *

(E) In the event the time for the payment of taxes is extended, pursuant to the provisions of section 323.17 of the Revised Code, the date on or before which settlement for the taxes so extended must be made, as herein prescribed, shall be deemed to be extended for a like period of time. At each such settlement, the auditor shall allow to the treasurer, on the moneys received or collected and accounted for by him, his fees, at the rate or percentage allowed by law, at a full settlement of the treasurer.

(F) Beginning in 1973, thirty days after the day of each settlement of taxes required under divisions (A) and (C) of this section, the treasurer shall certify to the auditor of state the amount of taxes which would have been settled had section 319.301 of the Revised Code not been in effect at the time such taxes were charged for collection. Upon receipt of such certification, the auditor of state shall draw a voucher and warrant upon the general revenue fund payable to the county treasury to the credit of the county's undivided income tax fund, upon receipt of such warrant, the county auditor and treasurer shall deduct from the amount thereof the total amount of all fees and charges which they would have been authorized to receive had section 319.301 of the Revised Code not been in effect and that amount had been levied and collected as taxes. The county treasurer shall pay the amount remaining in accordance with section 321.31 of the Revised Code as if it had been levied, collected, and settled as real property taxes.

Your attention is directed to the fact that the settlements provided for in subsections (A) and (C) pertain to the taxes and assessments which have been collected up to that time. It follows then that the "would have been" settlement contemplated in subsection (F) must also be computed with reference to the taxes that have actually been collected at the time of the settlement.

With respect to your fourth question, R.C. 323.15, provides in part that:

No person shall be permitted to pay less than the full amount of taxes charged and payable for all purposes on real estate, except when the collection of a particular tax is legally enjoined. * * *

The clear import of this language is that the treasurer may not accept partial payment of the taxes charged against real estate. Therefore, with respect to the question of delinquencies, adherence to this Section will prevent a situation in which only part of the taxes charged on certain real estate are delinquent. Either the total amount of the taxes after the 10 per cent reduction on the property, or none of it (where the bill isn't paid), will be certified to the auditor of state.

R.C. 323.15, however, recognizes that there may be exceptions to this rule, i.e., where payment of taxes is legally enjoined. In discussions with your office it appears that you are particularly concerned with situations (1) where a partial payment is tendered and accepted pursuant to R.C. 5715.19, and (2) where a clerical error made in sending out the bill has resulted in an amount being paid and accepted which is smaller than that charged and payable on the tax duplicate.

My interpretation of R.C. 321.24, as discussed above, should be sufficient to deal with the situations in question. Since the settlement contemplated is based on taxes which have been collected, only those taxes actually received may be considered notwithstanding the fact that a larger amount is charged and payable on the duplicate. There is no provision in R.C. 321.24 which would permit variance from this rule in the case of either clerical error or partial payment pursuant to R.C. 5715.19.

In answer to your fourth question I must conclude that where the taxes collected are for some reason less than the amount billed, the county treasurer in implementing R.C. 321.24 (F), must certify a proportionately smaller amount which reflects only those taxes which were actually collected.

Your fifth question concerns the state's responsibility for reimbursement to the county under R.C. 321.24. I have already indicated that the computation of the amount to be certified to the auditor of state must be based only on the taxes actually collected. Where, therefore, this certification includes taxes which are still owed, it is incorrect. Since there is no requirement that the state pay an amount specified in a clearly erroneous certification, it is my opinion that the state's obligation to reimburse the county is limited to an amount which reflects only the taxes actually collected.

I turn back now to your third question. You have asked whether, under R.C. 321.24, the state is obligated to include in the auditor of state's voucher amounts based on delinquent taxes to which R.C. 319.301 applied when they were levied. The above discussion of your fourth and fifth questions is in point here. Since the certification made by the county treasurer to the auditor of state must reflect only those taxes which have been collected, it is clear that delinquent taxes may not be included in the computation of the amount to be certified. It is equally clear that the requirement in R.C. 321.24 (F), that the auditor of state draw a voucher and warrant upon the general revenue fund payable to the county treasury, is based on the assumption that the treasurer's certification will be correct. As I indicated in my answer to the fifth question, the state's obligation to reimburse the county is limited to an amount which reflects only the taxes which have actually been collected. This necessarily precludes any reimbursement based on delinquent taxes which remain uncollected. It should be remembered, however, that when actually collected, such delinquent taxes are, in light of my answer to your first and fourth questions, a proper subject for settlement and reimbursement pursuant to R.C. 321.24.

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

1. The 10 per cent reduction authorized by R.C. 319.301, is effective as to taxes charged and payable in the years following

1972, and is not forfeited because of delinquency.

2. The 10 per cent penalty, imposed by R.C. 5719.17 on delinquent taxes, is computed on the amount of taxes charged and payable after the 10 per cent reduction has been applied under R.C. 319.301.

3. In computing the amount to be certified by the county treasurer pursuant to R.C. 321.24 (F), those taxes which have actually been collected may be considered. Delinquent taxes which remain uncollected, as well as taxes charged on the duplicate, but uncollected because of clerical error, and taxes charged but withheld pursuant to R.C. 5715.19, may not be included in such certification.

4. The state's obligation to reimburse a county under R.C. 321.24 (F), is limited to an amount which reflects only taxes which have been collected at the time of settlement.