

2. The provisions of section 6346-8, General Code, do not extend to any violations of section 6346-13, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1641.

TAXES AND ASSESSMENTS—DELINQUENT—WHITTEMORE ACT—WHERE UNDER SECTION 2672-3 G. C. ELECTION MADE TO PAY SAME—AT TIME ENTRANCE INTO WRITTEN UNDERTAKING, FIRST OF TEN ANNUAL INSTALLMENTS DUE AND PAYABLE—SECOND INSTALLMENT DUE AND PAYABLE DURING NEXT FOLLOWING COLLECTION PERIOD, SECOND HALF CURRENT REAL ESTATE TAXES—REMAINING INSTALLMENTS DUE AND PAYABLE ANNUALLY THEREAFTER.

SYLLABUS:

When an election is made to pay delinquent taxes and assessments as provided in section 2672-3, General Code, the first of the ten annual installments is due and payable at the time of entering into the written undertaking. The second installment is due and payable during the next following collection period of the second half of current real estate taxes. The remaining installments are due and payable annually thereafter.

COLUMBUS, OHIO, December 30, 1939.

HON. RALPH J. BARTLETT, *Prosecuting Attorney, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of a communication from your office which reads as follows:

“I am again calling upon you to render an opinion on a tax bill recently passed by the Legislature of the State of Ohio. This bill has caused many difficult questions of law to arise. The bill I refer to is Senate Bill No. 3 commonly called the Whittemore Act. From reading the various provisions of this act we have come to a serious question involving the payments under the installment payment plan provided in the said act.

Our question is this—‘When a contract is entered into during the December collection and one-tenth of the delinquent tax along with the current tax is paid at that time, should the second annual installment of one-tenth be paid the following June

collection, or should it be paid at the June collection in the following year?"

Amended Senate Bill No. 3, frequently referred to as the Whittemore Act, was enacted by the 93rd General Assembly in 1939. Its purpose, as stated in section 17 thereof, is "to provide an inducement for prompt payment of such taxes and assessments and a means whereby taxpayers can more conveniently discharge their public obligations with respect to the payment of such taxes and assessments, to the end that the amount of such delinquency may be quickly reduced." The inducement offered in respect to real property taxes is the abatement of penalties, interest and other charges for the year 1936 and prior thereto. The abatement is authorized by section 2672-2, General Code, upon payment in full by the taxpayer of all taxes, assessments, penalties, interest and charges "less penalties, interest and other charges for the year 1936 and prior thereto", or payment may be made in installments as authorized by sections 2672-3 and 2673-4, General Code, as follows:

Section 2672-3.

"Any such person being the owner of such real property or the holder of a lien thereon may at such times, in lieu of making a tender as authorized by section 2 of this act, enter into a written undertaking in such form as shall be prescribed by the bureau of inspection and supervision of public offices, to pay the full principal amount of such taxes and assessments, so delinquent, less penalties, interest and other charges for the year 1936 and prior thereto, and plus penalties, interest and other charges for the year 1937 and years subsequent thereto, in ten annual installments payable at the time prescribed by law for the payment of the second half of current real property taxes and assessments, with interest at the rate of four per centum per annum, payable annually, from the date of the written undertaking. *The first installment shall be due and payable upon entering into such undertaking*, and shall be collected by the treasurer, who shall give a certificate therefor to the county auditor. Upon receipt of such certificate the county auditor shall note on the tax list and duplicate, and on the delinquent tax list, in such manner as the bureau may prescribe, the fact that such undertaking has been entered into; and thereafter, so long as such undertaking shall continue to be performed, the lands against which said delinquent taxes or assessments, penalties, interest and other charges are charged, shall not be entered on the foreclosure list, and shall not be published as provided in section 5704 of the General Code as part of the list of delinquent lands, anything in the statutes

of this state to the contrary notwithstanding." (Italics the writer's.)

Section 2673-4.

"A person electing to pay delinquent taxes by installments, as provided in section 3 of this act, shall thereby undertake in his own behalf and on behalf of all subsequent grantees and transferees of such real estate, that the real estate taxes and assessments currently payable during the period covered thereby will be paid when due and that *the remaining installments* of such delinquent taxes *will be paid in nine annual installments* at and during the period of collection of the second half of current real estate taxes and assessments, *beginning in the year in which the written undertaking was made*, with interest as hereinbefore prescribed but without penalty or other charge, except penalties, interest and other charges for the year 1937 and years subsequent thereto." (Italics the writer's.)

That these sections must be construed as being in pari materia is so apparent that further discussion seems unnecessary. The several sections of the Act should be construed together and in so far as possible free from any conflict. Not only must the several sections of the Act be construed free from conflict, but, when possible, every part of each section should be harmoniously construed. In *State of Ohio v. Blake*, 2 O. S. 147, it was said at page 152 of the opinion by Ranney, J.:

"It is a settled rule of construction that the intention of the lawmaker is to be deduced from a view of the whole, and every part of the enactment, taken and compared together. He must be presumed to have intended to be consistent with himself throughout, and at the same time to have intended effect to be given to each and every part of the law. And from this it results that general language found in one part, is to be modified and restricted in its application, when it would otherwise conflict with specific provisions found in another; and this from the reasonable and almost irresistible conclusion, that when the mind is directed to any particular subject, the language used is more likely to express it, but from which it does not appear that the particular case was intended to be provided for."

While section 2672-3 makes provision for payment of the delinquencies "in ten annual installments", this is a general provision literally true only if the undertaking is entered during the time the county treasurer is in the process of collecting the second half of current real estate taxes. In the same section the Legislature has said, "The first installment shall

be due and payable upon entering into such undertaking". There is nothing indefinite or ambiguous about such provisions.

In 37 O. Jur. 514, section 278, it is said:

"The right of the courts to interpret a duly enacted statute is based upon some apparent uncertainty of meaning, some apparent ambiguity of terms, or some apparent conflict of provisions. Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation. To interpret what is already plain is not interpretation, but legislation, which is not the function of the courts, but of the general assembly. Some statutes, it has been declared, are so clear that an attempt to make them clearer is a vain labor and tends only to obscurity. An unambiguous statute is to be applied, not interpreted. * * *"

When the taxpayer enters into an agreement, as provided in section 2672-3, General Code, he then pays the first of ten annual installments. Section 2672-4 says "the remaining installments of such delinquent taxes will be paid in nine annual installments at and during the period of collection of the second half of current real estate taxes and assessments, beginning in the year in which the written undertaking was made". The phrase "in the year" must be regarded as referring to the tax year, rather than the calendar year. Otherwise an inconsistency would arise for section 2672-1 provides that a taxpayer may elect "at any time" to pay delinquent taxes under the plans of the Whittemore Act. Therefore, the second installment becomes due and payable during the next June collection after the signing of the undertaking.

In view of the foregoing, it is my opinion that when an election is made to pay delinquent taxes and assessments as provided in section 2672-3, General Code, the first of the ten annual installments is due and payable at the time of entering into the written undertaking. The second installment is due and payable during the next following collection period of the second half of current real estate taxes. The remaining installments are due and payable annually thereafter.

Respectfully,

THOMAS J. HERBERT,
Attorney General.