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TAXES—ASSESSMENTS, PENALTIES AND INTEREST WHERE PAID IN FULL AFTER EXPIRATION DATE OF AMENDED HOUSE BILL 828, 92ND GENERAL ASSEMBLY AND PRIOR TO EFFECTIVE DATE AMENDED SENATE BILL 3, 93RD GENERAL ASSEMBLY—MARCH 22, 1939—NO REFUND TO TAX PAYER—WHITTEMORE ACT.

SYLLABUS:

When taxes, assessments, penalties and interest have been paid in full after the expiration date of Amended House Bill No. 828 of the 92nd General Assembly, and prior to the effective date of Amended Senate Bill No. 3 of the 93rd General Assembly, there can be no refund of any of the penalties or interest to the taxpayer by reason of the provisions of Amended Senate Bill No. 3.

COLUMBUS, OHIO, May 9, 1939.

HON. PAUL D. MICHEL, *Prosecuting Attorney, Marion, Ohio.*

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

“Will you furnish this office with your opinion as to the following:

After the expiration of the Whittemore Act and just a few days prior to the effective date of the present corresponding bill pertaining to the payment of delinquent taxes, a tax payer of Marion County paid \$800.00 for delinquent taxes, assessments, penalties and interest. This office would like to know if this tax payer is entitled to the remission of the penalties and interest in accordance with the provisions of the present act.

It appears to this office that as a matter of fairness, since the payment was made but a few days prior to the effective date of the present act, that he should be reimbursed in the proper amount.”

The Whittemore Act referred to in your letter is one of a series of similar acts, the first being Amended Senate Bill No. 42, passed by the 90th General Assembly on March 30, 1933 (115 O. L. 161), “providing for the collection of delinquent real estate taxes and assessments for years prior to 1932 by installments and for a discount for prompt payment of such taxes.”

The second of such acts, Amended Senate Bill No. 23 (115 O. L. Pt. 2, 228), became effective April 12, 1934 and provided for the payment of

all delinquent taxes as specified therein at any time "prior to the first day of September in the year 1934."

The third of such acts, Amended Senate Bill No. 105 (115 O. L. Pt. 2, 332), became effective December 13, 1934, the first section thereof reading as follows:

"Any person, firm or corporation charged with or legally authorized or required by law or decree of court to pay real property taxes and assessments which have become delinquent at or prior to the August settlement in the year 1934, or any person, firm or corporation holding a lien upon such real property may at any time prior to the first day of September in the year 1935 elect to pay the principal sum of such delinquent taxes and assessments as provided in this act, anything in the permanent statutes of this state relating to the payment of real property taxes, assessments, penalties and interest thereon to the contrary notwithstanding. Provided, however, that no such person shall be entitled to make such election unless all taxes, assessments and penalties for the year 1934 then due and payable have been paid. Provided that in case a penalty and interest has been paid on account of delinquent taxes and/or assessments, for the first or second half of the years 1932 and/or 1933, *such penalty shall be refunded* on order of the county treasurer provided the principal sum of such taxes and assessments is paid prior to the first day of September, 1935." (Italics the writer's.)

It will thus be seen that in Amended Senate Bill No. 105 the Legislature made specific provision for a refund of penalties and interest paid by taxpayers in the interim between the expiration date of Amended Senate Bill No. 23 and the effective date of Amended Senate Bill No. 105. The same provision for a refund of penalties and interest was contained in the next of such acts, i. e., Senate Bill No. 359 (116 O. L. Pt. 2, 14), but provisions for refunds have been omitted from all subsequent enactments.

The present Whittimore Act, Senate Bill No. 3 of the 93rd General Assembly, became effective March 22, 1939. The first section reads as follows:

"Any person, firm or corporation charged with or legally authorized or required by law or decree of court to pay real property taxes and assessments which have become delinquent at or prior to the August or September settlement in any year, or any person, firm or corporation holding a lien upon such real property may at any time elect to pay the principal sum of such delinquent taxes and assessments as provided in this act, anything in the permanent statutes of this state relating to the payment of real property taxes, assessments, penalties and interest thereon to

the contrary notwithstanding. No person shall be entitled to make such election unless all taxes, assessments and penalties for the current year then due and payable have been paid, or elected to be paid in accordance with the provisions of Section 2653 of the General Code. Provided, however, that nothing contained in this act shall be construed to abate or cancel penalties, interest and other charges on real property taxes and assessments for any year subsequent to the year 1936."

The next preceding act was Amended House Bill No. 828 (117 O. L. 832), effective March 14, 1938, the first section thereof reading as follows :

"Any person, firm or corporation charged with or legally authorized or required by law or by decree of the court to pay real property taxes and assessments which have become delinquent at or prior to the August or September settlement in the year 1936, or any person, firm or corporation holding a lien upon such real property may at any time prior to the tenth day of September in the year 1938, elect to pay the principal sum of such delinquent taxes and assessments as provided in this act, anything in the permanent statutes of this state relating to the payment of real property taxes, assessments, penalties and interest thereon to the contrary notwithstanding. Provided, however, that no such person shall be entitled to make such election unless all taxes, assessments and penalties for the year 1937, then due and payable have been paid, or elected to be paid in accordance with the provisions of Sections 2653 of the General Code."

It is therefore apparent that from September 10, 1938 to March 22, 1939, there was no such law in effect permitting the abatement of any penalties or interest on delinquent taxes and assessments. The former provision for refunds upon payments made between prior expiration dates and subsequent effective dates has been omitted from Amended Senate Bill No. 3, indicating that it was no longer the legislative intent that refunds be now made.

The general rule with reference to taxes and assessments which would apply with equal force to penalties and interest thereon is stated in 38 O. Jur. 1231, Section 414, wherein it is said :

"Taxes and assessments, if voluntarily paid without legal duress, and especially if paid without objection or protest, cannot, in the absence of express statutory permission, be recovered back, even though illegally assessed ; but, if such taxes and assessments are both illegally assessed and involuntarily paid, recovery back may be had."

In the case you have outlined, the payment was both legal and voluntary. The fact that the payment was made only a few days before the effective date of the present act is immaterial. Amended Senate Bill No. 3 was an emergency act and went into effect immediately, as provided in Article II, Section 1d of the Constitution of the State of Ohio. As has been pointed out, the Legislature made no provision for refunds of any penalties or interest upon payments of delinquent taxes made before the effective date of the present act and subsequent to the expiration date of the preceding act.

It is therefore my opinion that when taxes, assessments, penalties and interest have been paid in full after the expiration date of Amended House Bill No. 828 of the 92nd General Assembly, and prior to the effective date of Amended Senate Bill No. 3 of the 93rd General Assembly, there can be no refund of any of the penalties or interest to the taxpayer by reason of the provisions of Amended Senate Bill No. 3.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

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BONDS—CITY OF AKRON, SUMMIT COUNTY, \$125,000.00.

COLUMBUS, OHIO, May 9, 1939.

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

GENTLEMEN :

RE: Bonds of the City of Akron, Summit County, Ohio,
\$125,000 (Unlimited).

The above purchase of bonds appears to be part of a \$551,460 issue of refunding bonds of the above city dated October 1, 1935. The transcript relative to this issue was approved by this office in an opinion rendered to your Board under date of September 8, 1937, being Opinion No. 1095.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,
Attorney General.