

2847.

GRISWOLD ACT—TAXES AND TAXATION—SERIAL BOND ISSUE—
WHEN FIRST BOND CAN FALL DUE UNDER PROVISIONS OF SAID
ACT—SECTION 2295-12 G. C. (109 O. L. 344) CONSTRUED.

Where a serial bond issue, under the Griswold taxation act (H. B. 33) is dated April 1, 1922, the first bond of such issue cannot be made to fall due earlier than the date of the final tax settlement between the county treasurer and the taxing district next following the inclusion of a tax for such serial issue in the annual June budget by the county auditor, which date, falling after August 10, 1923, would be determined by the provisions of section 2689 G. C., and such serial bonds may not be issued so that the first bond shall mature later than eleven months after such final settlement between the county treasurer and the taxing district.

COLUMBUS, OHIO, February 8, 1922.

HON. J. F. HENDERSON, *Prosecuting Attorney, Ashland, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter of January 13th, in which you request information from this department upon this question:

“If we make a bond issue dated April 1, 1922, can we make the first bond fall due October 1, 1922, or if not, then when shall we make it fall due?”

In your letter you indicate you have reference to the provisions appearing in section 2295-12 of the Griswold act, found on page 344 of 109 O. L. Section 2295-12 G. C. reads as follows:

“All bonds hereafter issued by any county, municipality, including charter municipalities, school district, township or other political subdivision, shall be serial bonds maturing in substantially equal annual installments beginning not earlier than the date fixed by law for the final tax settlement between the county treasurer and the political subdivision or taxing district next following the inclusion of a tax for such issue in the annual budget by the county auditor as provided by law and not later than eleven months thereafter.”

It will be noted that this section provides that the bonds in question shall be “serial bonds” and serial bonds are defined in section 2295-6 of the Griswold act as follows:

“‘Serial bonds’ are those which provide for the retirement of the indebtedness by means of installment maturities in lieu of a sinking fund.”

These serial bonds shall begin to mature not earlier than the day fixed by law for the final tax settlement between the county treasurer and the political subdivision or taxing district next following the inclusion of the tax for such issue in the annual budget by the county auditor, as provided by law. The purpose that is at once apparent in the Griswold taxation act is that when these serial bonds mature there should be in the treasury at that time the money to pay them. In your inquiry you desire to know if in a bond issue dated April 1, 1922, the first bond could fall due on October 1, 1922, that is, practically six months after the date of issue.

By reference to various sections of the statutes showing the various steps necessary in matters of this kind, you will find the first bond, under the language of section 2295-12 G. C. could not mature as of October 1, 1922. Thus section 5649-3a provides that the annual budget containing tax levies to be made shall be submitted to the county auditor "on or before the first Monday in June of each year." Section 5649-3a G. C., giving the powers and duties of the county budget commission, says:

"The budget commissioners shall meet at the auditor's office in each county on the first Monday in August annually and shall complete their work on or before the third Monday in that month, unless for good cause the tax commission of Ohio shall extend the time for completing the work."

Section 2595 G. C. then provides that

"On or before the first day of October of each year, the county auditor shall deliver to the county treasurer a true copy or duplicate of the books containing the tax list required to be made by him for the year."

Following this comes the payment of taxes by the public and the time for these payments appears in section 2649 G. C., which says:

"The office of the county treasurer shall be kept open for the collection of taxes from the time of delivery of the duplicate to the treasurer until the twenty-fifth day of January and from the first day of April until the twentieth day of July."

Following each tax collecting period, as set forth in section 2649, there shall be a settlement by the county auditor with the county treasurer, as set forth in section 2596 G. C., which reads as follows:

"On or before the fifteenth day of February and on or before the tenth day of August 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 taxes with which such treasurer is to stand charged. At each August settlement the auditor shall take from the duplicate 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 property on which such delinquent taxes are charged as described on such duplicate and note thereon in a marginal column the several reasons assigned by the treasurer why such taxes could not be collected. 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."

The date of the August tax settlement is also again referred to in section 2683 G. C., which reads in part:

"* * * On or before the tenth day of August in each year, he shall settle with the auditor for all taxes that he has collected at the time of making such settlement, not included in the preceding February settlement.
* * *"

Under the provisions of section 2602 G. C. the county auditor shall open an

account with each taxing district in the county, to which, immediately after his semi-annual settlement with the county treasurer in February and August of each year, he shall credit each such taxing district with the net amount so collected for its use.

Section 2689 G. C. reads :

“Immediately after each semi-annual settlement with the county auditor, on demand, and presentation of the warrant of the county auditor therefor, the county treasurer shall pay to the township treasurer, city treasurer, or other proper officer thereof, all moneys in the county treasury belonging to such township, city, village, or school district.”

It will thus be seen that the time which would obtain in section 2689 G. C. when the county treasurer would pay to the township treasurer, city treasurer and other proper officer, the moneys belonging to his taxing district, would be the first opportunity that the treasurer of the taxing district would have to pay a serial bond, the payment of which was to be provided for by the including of the necessary levy for the payment of such serial bond or bonds. It is clear that the county treasurer does not know what amount he is to pay to the treasurer of the taxing district until the county treasurer has had his settlement with the county auditor on or before August 10th. Then follows section 2689 G. C., providing that the local treasurer shall be paid the amounts which shall be due to his taxing district.

Section 2295-12 G. C. speaks of the “final tax settlement” and it is understood that this refers to the taxing settlement which comes in August rather than the tax settlement which takes place in February, the latter being more in the nature of a distribution of funds to the taxing districts at that time in order that they may take care of their current expenses following the receipt into the county treasury of what is known as the “December taxes” paid by the public. In the consideration of a question such as is raised by you, due consideration should also be given to the provisions of the following sections of the General Code :

“Sec. 5649-1b. The resolution, ordinance, or other measure under which bonds are issued or authorized shall contain a levy of taxes sufficient to pay the interest and principal of the bonds as they mature and every such resolution, ordinance or measure shall be certified by the fiscal officer of the political subdivision to the county auditor of the county in which the subdivision is located. Thereafter, the county auditor, without further action by the tax-levying authority of the subdivision, shall include said annual levies in the appropriate annual budgets submitted by him to the budget commissioners as provided in section 5649-3c of the General Code, including the county budgets; provided, however, that the county commissioners of any county, board of education of any school district, trustees of any township or council or chief legislative body of any municipality or other political subdivision may in any year appropriate for the purpose of paying any part of the annual interest or principal of such bonds of the political subdivision any surplus in the sinking fund or other bond retirement fund of the political subdivision not required for the purpose for which the said sinking or other bond retirement fund was raised and certify such appropriation to the county auditor, and thereupon the tax levy of the subdivision for the current year for the interest and principal of said bonds and the sum submitted by the auditor to the budget commissioners for said purpose shall be reduced by the amount so certified and the sum appropriated as aforesaid shall not be used or expended for any purpose other than the payment

of the interest and principal for which appropriated until and unless said interest and principal be otherwise fully paid or liquidated; provided that no such appropriation shall be made from the sinking fund without the approval of the sinking fund trustees or commissioners. The sum thus included in any budget submitted to the budget commissioners shall not be reduced by said commissioners and shall be given by said auditor and commissioners and other taxing authorities all the precedence and priorities provided by law for interest and sinking fund levies."

"Sec. 5649-3a. On or before the first Monday in June each year, the county commissioners of each county, the council of each municipal corporation, the trustees of each township, each board of education and all other boards or officers authorized by law to levy taxes, within the county, except taxes levied by the state or for state purposes, shall submit or cause to be submitted to the county auditor an annual budget, setting forth in itemized form an estimate stating the amount of money needed for their wants for the incoming year, and for each month thereof. Such annual budgets shall specifically set forth:

"(1) The amount to be raised for each and every purpose allowed by law for which it is desired to raise money for the incoming year.

(2) The balance standing to the credit or debit of the several funds at the end of the last fiscal year.

(3) The monthly expenditures from each fund in the twelve months and the monthly expenditures from all funds in the twelve months of the last fiscal year.

(4) The annual expenditures from each fund for each year of the last five fiscal years.

(5) The monthly average of such expenditures from each of the several funds for the last fiscal year, and also the total monthly average of all of them for the last five fiscal years.

(6) The amount of money received from any other source and available for any purpose in each of the last five fiscal years, together with an estimate of the probable amount that may be received during the incoming year from such source or sources.

(7) The amount of the bonded indebtedness, setting out each issue and the purpose for which issued, the date of issue and the date of maturity, the original amount issued and the amount outstanding, the rate of interest, the sum necessary for interest and sinking fund purposes, and the amount required for all interest and sinking fund purposes for the incoming year.

(8) The amount of all other indebtedness incurred, with a statement of the sections under which such indebtedness was incurred, and the amount of such additional taxes as may have been authorized as provided in section 5649-5 or 5649-4 or any other section of the General Code under which taxes have been levied outside of usual tax limitations or by a vote of the people, setting out in detail each item of indebtedness as provided in the next preceding paragraph and giving the details as to dates of such levies, their rates and the periods for which they run.

(9) Such other facts and information as the tax commission of Ohio or the budget commissioners may require.

The aggregate of all taxes that may be levied by a county, for county purposes, on the taxable property in the county on the tax list, shall not exceed in any one year three mills. The aggregate of all taxes that may be levied by a municipal corporation on the taxable property in the corporation, for

corporation purposes, on the tax list, shall not exceed in any one year five mills. The aggregate of all taxes that may be levied by a township, for township purposes, on the taxable property in the township on the tax list, shall not exceed in any one year one and five-tenths mills. The local tax levy for school purposes shall not exceed in any one year three mills on the dollar of valuation of taxable property in any school district. Such limits for county, township, municipal and school levies shall be exclusive of any special levy provided for by a vote of the electors, any levy excepted from the limitation provided for in section 5649-2 of the General Code or authorized by said section or by any other provision of law to be made in addition to the limitation provided for in said section nor shall such limits include special assessments, levies for road taxes that may be worked out by the taxpayers, and levies and assessments in special districts created for road or ditch improvements, over which the budget commissioners shall have no control.

Such budget shall be made up annually at the time or times now fixed by law when such boards or officers are required to determine the amount in money to be raised or the rate of taxes to be levied in their respective taxing districts.

The county auditor shall provide and furnish such boards and officers blank forms and instructions for making up such budgets."

Having traced through the sections of the Code the various steps necessary for the "inclusion of a tax for such issue in the annual budget" (2295-12), it is clear that in an issue of bonds dated April 1, 1922, the first bond to mature in a serial issue could not mature as early as October 1, 1922, because the settlement between the county auditor and the county treasurer next following the inclusion of a tax for such issue in the annual budget would be on or before August 10, 1923.

Section 2295-12 G. C. says that these serial bonds shall not begin to mature earlier than the day of the final tax settlement between the county treasurer and the local political subdivision or taxing district, the purpose being that the money necessary for the taking up of the bond must be in the hands of the treasurer of the local taxing district and this could not obtain until after the county treasurer had settled with the county auditor, as set forth in section 2596 and section 2683 G. C., supra. The date of the maturity of the first bond, however, is not specific because while the law provides that it shall not mature earlier than the date of the final tax settlement between the treasurer and the taxing district, the first bond could be made to mature some time after such settlement, because the section reads "not later than eleven months thereafter," that is, eleven months are allowed as the time, after the final tax settlement, during which the first bond can be made to mature.

The answer therefore to your specific question is, that if bonds were issued on April 1, 1922, or prior to the making up of the budget of June, 1922, the earliest date at which the first bond would mature would be a date following the tax settlement in August, 1923, and after the treasurer of the taxing district had received his funds from the county treasurer in the manner set forth in section 2689 G. C.

In your second inquiry you ask "what is the nature of the certificate that the fiscal officer must certify to the bond issuing authority under section 2295-10, as appearing on page 338, 109 O. L." This section is rather clear in what is required in this certificate, but the fiscal officer in each case is not the same. Again, in some instances the certificate is addressed to the council of a city or the board of education of a school district, or county commissioners, as the case may be; in one instance it might be an ordinance, in another it might be a bond issuing resolution; the time which such bonds could run would be governed by the classes set forth alphabetically in section 2295-9, and for whatever the bonds were issued, careful ex-

amination of section 2295-9 G. C. would have to follow in order to see what class would include such bonds. Again, under section 2295-7 General Code there is to be an estimate of the life of the property to be acquired and thus the entry as to years of life would be different in one case from another, and if land was to be acquired, the life of the property might be said to be "perpetual" rather than a definite number of years. The certificate is then signed by the fiscal officer, who is defined as regards the taxing subdivision in paragraph c of section 2295-6 G. C.

A suggestion as to the skeleton form of this certificate is herewith given, to-wit:

CERTIFICATE OF FISCAL OFFICER.

December 27th, 19—,
10 o'clock A. M.

TO THE -----

Pursuant to sections 2295-9 and 2295-10 of the General Code of Ohio, I hereby certify that the maximum maturity of the bonds authorized in the above----- is ----- years from the date of said bonds and that the same has been calculated in accordance with the provisions of said section 2295-9 of the General Code. Pursuant to section 2295-7 G. C., I hereby estimate the life of the property to be acquired, being -----, to be ----- years.

Fiscal Officer.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2848.

INHERITANCE TAX LAW—SUCCESSIONS TO GRANDNIECES AND GRANDNEPHEWS ARE TAXED AT RATE OF SEVEN PER CENT WITHOUT ANY EXEMPTION.

Successions to grandnieces and grandnephews are taxed at the basic rate of seven per cent under the inheritance tax law of Ohio, without exemption.

COLUMBUS, OHIO, February 8, 1922.

HON. CLYDE L. CANFIELD, *Prosecuting Attorney, Wauseon, Ohio.*

DEAR SIR:—You request the advice of this department upon the following question:

"Mr. G. D. G. of this village on January the 9th, 1922, died testate giving two thousand dollars to each of five grandnieces.

In computing the inheritance tax on these bequests we would like your opinion as to whether they fall within paragraph 3, section 5334 G. C. or paragraph 3, section 5335 G. C."

In the opinion of this department grandnieces are not within paragraph 3 of section 5334 of the General Code, and legacies and devices to persons sustaining such relation to the testator are taxable in the seven per cent class, without exemption.