

2088

TAXATION — REAL ESTATE — PENALTIES FOR NON-PAYMENT—MAILING OF PAYMENT, NON-RECEIPT BY COUNTY TREASURER—NO REMISSION OF PENALTY IN SUCH CASE — §§5719.17, 5719.18 R.C.

SYLLABUS:

Sections 5719.17 and 5719.18, Revised Code, provide for a penalty for nonpayment of taxes within stated periods of time, and the circumstance that timely payment of such taxes was attempted by mailing a check to the county treasurer, which attempted remittance was not in fact received by that officer, does not operate to prevent the accrual of such penalty, nor is the county auditor given any statutory authority in such case to remit such penalty.

Columbus, Ohio, May 7, 1958

Hon. G. William Brokaw, Prosecuting Attorney
Columbiana County, Lisbon, Ohio

Dear Sir:

Your recent request for opinion reads as follows:

“The County Treasurer of Columbiana County has recently requested the County Auditor to issue remitting orders to remove penalty charges from the real estate taxes on certain parcels of real estate within Columbiana County for the following reasons:

- “1. ‘Evidence having been submitted to this office (Treasurer’s Office) that Check No. 1717 dated July 31, 1957, in the amount of \$47.16, was issued in payment of the second half 1956 real estate tax, but the check and the tax bills were not processed in this office, having apparently been lost in the mail.’
- “2. ‘As the original check which was issued in payment of this tax was not cancelled by the bank upon which it was drawn and duplicate payment was made on September 18, 1957.’
- “3. ‘Evidence having been submitted to this office that Check No. 118 drawn on the Potters Bank and Trust Company of East Liverpool, Ohio, was issued in payment of the original amount of this tax, but was not processed in this office, having apparently been lost in the mail.’

“The penalties referred to in the preceding paragraph, and which the County Treasurer has requested the County Auditor to remit, are penalties which were imposed on the tax payer in

each case under the provisions of Section 5719.18 of the Revised Code. There is no question here involved of a complaint as to the valuation or assessment of the real property concerned.

“I am familiar with Section 5715.14, wherein the action of the Board of Revision is certified to the County Auditor, who in turn is ordered to correct the tax duplicate in accordance with the action of the Board of Revision. I have also read the 1932 opinion of the Attorney General No. 4524, in which it is stated that the County Auditor has no legal authority to remit a penalty which has been added to real estate taxes for non-payment within the time allowed.

“There being no specific authority contained in the statutes, and there being no opinion of the Attorney General later than the 1932 opinion mentioned prior, my specific question, therefore, is: ‘Does the County Auditor have any legal authority to issue a remitting order to remove penalty charges from real estate taxes, for any of the specific reasons mentioned prior, when said penalty charges have been placed against the said parcels of real estate under the provisions of Sections 5719.17 and 5719.18 of the Revised Code of Ohio?’ ”

It is of course elemental that the county auditor has only that authority which is expressly conferred or necessarily implied by statute. I have searched the statutes and have been unable to find any authority given to the auditor to issue a remitting order to remove penalty charges from real estate taxes under the conditions you have described.

My opinion that the auditor has no such authority is further strengthened after considering Section 5715.39, Revised Code, which provides that the Board of Tax Appeals and the Tax Commissioner :

“* * * may remit taxes and penalties thereon found by them to have been illegally assessed and penalties that have accrued because of the negligence or error of an officer required to perform a duty relating to the assessment of property for taxation or the levy or collection of taxes. * * *”

The facts presented in Opinion No. 708, Opinions of the Attorney General for 1933, p. 604, bear a striking resemblance to the question at hand. In that opinion the taxpayers had paid their real estate taxes to a local bank which publicly offered, on its own initiative, to transmit these payments to the county treasurer. Before the bank could transmit these payments to the treasurer, it closed and did not reopen. The question presented was whether the auditor was required to charge the penalty

provided by law for the failure to pay these taxes on time. My predecessor in office, in ruling that the auditor had no authority to refrain from assessing the penalty, approved and followed Opinion No. 4524, Opinions of the Attorney General for 1932, p. 890, which states at the first paragraph of the syllabus:

“1. When a county auditor has legally assessed and placed upon the tax duplicate a penalty against an entry of real estate for the reason that the taxes for the preceding half year were not paid at the time of the semi-annual settlement between the county auditor and the county treasurer, the county auditor has no legal authority to remit such penalty so added.”

I have examined the above cited opinions and concur in the conclusions reached therein.

It is therefore my opinion and you are so advised that Sections 5719.17 and 5719.18, Revised Code, provide for a penalty for nonpayment of taxes within stated periods of time, and the circumstance that timely payment of such taxes was attempted by mailing a check to the county treasurer, which attempted remittance was not in fact received by that officer, does not operate to prevent the accrual of such penalty, nor is the county auditor given any statutory authority in such case to remit such penalty.

Respectfully,
WILLIAM SAXBE
Attorney General