

OPINION 65-226**Syllabus:**

When a county auditor receives from the Division of Forestry a Certificate of Classification of Forest Lands prior to tax listing day, the land for which the certificate is issued shall be taxed at 50% of the local tax rate for the year in which said certificate is issued.

To: David F. McLain, Trumbull County Pros. Atty., Warren, Ohio
By: William B. Saxbe, Attorney General, December 16, 1965

Your recent request for my opinion presents the following question:

"On March 24, 1965, a Certificate of Classification of Forest Lands was issued to the Trumbull County Auditor by the Chief, Division of Forestry, Ohio Department of Natural Resources, certifying that certain privately owned land had qualified for classification as forest land under the provisions of Sections 5713.22 to 5713.26 of the Revised Code. Section 5713.23 provides that such forest land shall be taxed annually at fifty per cent of the local tax rate.

"Since 1965 taxes became a lien on the land on January 1, 1965, in accordance with Section 5719.01 of the Revised Code, the Auditor has informed the taxpayer that the Certificate of Classification of Forest Lands dated March 24, 1965, was too late to have effect as far as 1965 taxes are concerned, and therefore the full rate will be applied.

"The taxpayer has contended that the tax listing date (October 1, 1965), rather than the tax lien date, is the significant date, and that when the Auditor comes to determine the sum due for 1965 on the tract in question, pursuant to Section 319.30, he should apply the fifty per cent rate rather than the full rate. The property owner has cited Opinion of the Attorney General No. 4653 (1954) in support of his position."

Section 319.28, Revised Code, provides for the compilation by the county auditor of the general tax list and general duplicate of real and public utility property. Said lists include the names of all taxpayers within the county, a description of the property taxed and the value of said property. This section provides further that:

"* * * On or before the first Monday of September in each year, the auditor shall correct such lists in accordance with the additions and deductions ordered by the department

of taxation, and by the county board of revision, and shall certify and on the first day of October deliver one copy thereof to the county treasurer. The copies prepared by the auditor shall constitute the auditor's general tax list and treasurer's general duplicate of real and public utility property for the current year. * * *"

(Emphasis added)

The emphasized portion of the statute represents "tax listing day".

Tax lien day is designated in Section 5719.01, Revised Code. Said section provides in part as follows:

"The lien of the state for taxes levied for all purposes on the real and public utility tax list and duplicate for the year 1954 and each year thereafter shall attach to all real property subject to such taxes on the first day of January, annually, and continue until such taxes and any penalties, interest, or other charges accruing thereon are paid, * * *"

The classification of forest lands for tax purposes is provided for in Section 5713.23, Revised Code, which provides as follows:

"Forest land which the owner thereof declares is devoted exclusively to forestry or timber growing under the rules and regulations prescribed under the authority of Section 5713.24 of the Revised Code, shall be taxed annually at fifty per cent of the local tax rate upon its value as determined under sections 5701.02 and 5713.04 of the Revised Code.

"The method of determining forest lands or land bearing forest growth which is subject to this section, and the manner in which an owner of forest lands may declare that such lands are devoted to timber growing shall be prescribed under such rules and regulations, but in no case shall areas devoted to forestry be considered subject to this section until such declarations of the owners have been approved and certified by the chief of the division of forestry, and copies of the same have been filed by the chief with the county auditor of the county in which such lands are located."

(Emphasis added)

In Opinion No. 71, Opinions of the Attorney General for 1929, page 103, a question similar to yours was answered. The second branch of the syllabus of that opinion states:

"2. If property is not exempt on tax day, it is liable to taxation for the current year, although it afterward becomes exempt; where the State Forester does not file with

the county auditor the certificate provided in Section 5554-2 of the General Code, until after the tax listing day of any year, or the six months limitation after the filing of the application has not expired, the exemption provided in said section does not apply to the current year."

Although tax lien day and tax listing day were the same day when said opinion was issued, it is clear from the following statement of my predecessor at page 107 of the opinion that the day was significant as tax listing day rather than tax lien day:

"* * * Accordingly, unless it be filed at least six months prior to tax listing day, there would exist no authority for exemption for the then current year."

It is my opinion that it may reasonably be implied from Opinion No. 71, supra, that had the application of exemption been received by the county auditor prior to tax listing day, the auditor would have had authority to exempt the property for the entire tax year.

The case of In Re Estate of Harper, 26 N.P. (N.S.) 431 (1927), is also germane to the problem posed by your letter of request. In discussing the meaning of tax lien day the court stated:

"* * * This section does not relate to when taxes accrue. It simply fixes the lien of the state on a day in advance of the date that taxes accrue, and when the taxes are determined they relate back and become a lien on the day preceding the second Monday in April.* * *"

(Emphasis added)

A statement by the Supreme Court of Ohio in the case of State, ex rel. Donahey v. Roose, 90 Ohio St., 345, adds finality to the observation of the court in the Harper case, supra. At page 351 the Supreme Court observed that:

"* * * While Section 5671, General Code, fixes the date in each year that the lien of the state for taxes shall attach, yet it by no means follows that this requires that the tax levy shall be made on or before that date. In fact all the legislation upon that subject is in direct conflict with such construction. On the contrary, it is clear that the amount of taxes is to be determined subsequently, and the assessment then relates back to the date at which the taxes became a lien. * * *"

It is clear from the authority cited herein and the Opinion of the Attorney General to which you refer in your letter of request, that tax lien day has no effect upon the determination of either the tax value of property or the rate of tax to be applied to said value. The tax on realty must be determined for any given year before October 1 of that

year. Until that date the tax is not due and not payable. It follows that any change in the status of said property is determined as of tax listing day rather than tax lien day.

Therefore, it is my opinion and you are hereby advised that land for which a Certificate of Classification of Forest Lands is issued on March 24, 1965, shall be taxed at 50% of the local tax rate for the year 1965.