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TAX LEVY—FOR INTEREST AND SINKING FUND AND BOND RETIREMENT OUTSIDE TEN-MILL LIMITATION NOT SUBJECT TO LIMITATION OF SECTION 2 OF ARTICLE XII OF CONSTITUTION WHEN.

SYLLABUS:

Levies for interest and sinking fund and retirement of bonds which were issued during the period in which former Section 5649-2, General Code, was in effect, and which levies were outside of the statutory ten mill limitation and subject to the statutory limitation of fifteen mills, are now subject to the one per cent limitation of Section 2 of Article XII of the Constitution.

COLUMBUS, OHIO, May 26, 1934.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I acknowledge receipt of your communication, which reads as follows:

“You are respectfully requested to furnish this department your written opinion upon the following:

Section 5649-2 of the General Code, as enacted in 103 Ohio Laws, 552, was effective until repealed in 112 Ohio Laws, 409, in 1927. This section provided that taxes levied for bonds issued prior to its effective date, and bonds issued after that date by a vote of the people, should be outside the limitation of 10 mills and inside the limitation of 15 mills, in effect at that time.

QUESTION: If bonds were issued by a vote of the people during the period in which this section was in effect, and before its repeal in 112 Ohio Laws, 409, the levies for which were clearly outside the 10 mill limitation then provided by law, are such levies now outside the 10 mill limitation provided for in Section 2 of Article XII of the Constitution, effective January 1st, 1934?”

Former Section 5649-2, General Code, to which you refer provided for a ten mill limitation, and further provided that taxes may be levied in addition thereto “for sinking fund and interest purposes as may be necessary to provide for any indebtedness heretofore incurred or an indebtedness that may hereafter be incurred by a vote of the people.” Under this section, levies for bonds issued during the time said statute was in effect were outside of said 10 mill limitation, but by virtue of former Section 5649-5b, General Code, were subject to the then statutory fifteen mill limitation, unless the sinking fund levies were voted outside of all limitations under the procedure provided by Sections 5649-5, et seq., General Code, or unless said voted bonds were issued under Sections 1259 and 1259-1, General Code, as said sections were then worded to comply with the order of the state board of health. *Cleveland vs. Davis*, 95 O. S. 52.

When Sections 5649, et seq., General Code, were repealed, Section 5625-2, General Code, was enacted, which then read as follows:

"The aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit of the state shall not in any one year exceed fifteen mills on each dollar of tax valuation of such subdivision or other taxing unit, except taxes specifically authorized to be levied in excess thereof. The limitation provided by this section shall be known as the 'fifteen mill limitation.'"

This section was amended in 1931, the only change therein being the additional provision that wherever the term fifteen mill limitation is used in the budget act "it shall be construed to refer to, and include both the limitation imposed by this section and the limitation imposed by Section 2 of Article XII of the Constitution." The only exception in this statute to the fifteen mill limitation is "taxes specifically authorized in excess thereof." Since levies of taxes to meet the principal and interest on bonds issued during the time that said Section 5649-2, General Code, was in effect were not specifically authorized to be levied in excess of fifteen mills, except as above noted, such levies would be within the statutory fifteen mill limitation.

Section 2 of Article XII of the Constitution was amended by a vote of the electors November 5, 1929, providing for the fifteen mill limitation. The schedule to this amendment provides in part that "all levies for interest and sinking fund or retirement of bonds issued, or authorized prior to said date which are not subject to the statutory limitation of fifteen mills on the aggregate rate of taxation then in force, * * * and all tax levies for other purposes authorized by the General Assembly prior to said date or by a vote of the electors of any political subdivision of the state, pursuant to laws in force on said date, to be made outside said statutory limitation for and during a period of years extending beyond said date, or provided for by the charter of a municipal corporation pursuant to laws in force on said date, shall not be subject to the limitation of fifteen mills established by said amendments." Since levies for the bonds to which you refer were subject to the statutory fifteen mill limitation and were not authorized by a vote of the electors to be made outside of said statutory limitation, they do not fall within the exception to said limitation. This section of the Constitution was again amended by vote of the electors November 7, 1933, reducing the amount which property, taxed according to value, can be taxed without vote of electors to one per cent of its true value in money, which amendment became effective January 1, 1934. The schedule to this amendment provides that certain levies shall not be subject to the one per cent limitation, among which are "levies for interest for sinking fund or retirement of bonds issued or authorized prior to said date which are not subject to the present limitation of one and one-half per cent imposed by Section 2 of Article XII of the schedule thereto as approved by the electors of the state on November 5, 1929, * * * all tax levies authorized prior to said date by a vote of the electors of any political subdivision of the state pursuant to laws in force at the time of such vote to be made for or during a period of years extending beyond January 1, 1934, which levies are outside of the present limitation of one and one-half per cent imposed by Section 2 of Article XII and the schedule thereto as approved on November 5, 1929."

Since the levies for the bonds to which you refer were subject to the former constitutional limitation of fifteen mills, such levies are not excepted from the operation of this section by the schedule and are therefore subject to the ten mill limitation, even though they were not subject to the former statutory limitation of one per cent. What is not clearly excluded by these exceptions to this amend-

ment from its operation, must be considered as included in its operation. In construing constitutional provisions, courts apply the same general rules governing the construction of statutes. *Shyrock vs. Zanesville*, 92 O. S. 375. Exceptions to laws are strictly construed and should be applied only to cases that are clearly within the terms of such exceptions. In the case of *Bruner vs. Briggs*, 39 O. S. 478, the court said on page 484:

“This proviso is a limitation or exception to a right conferred by the general provision of the section. Its effect is to be limited to cases clearly falling within its term.”

In the case of *Coal Company vs. Donnelly*, 73 O. S. 298, the following is held in the first branch of the syllabus:

“An exception to the provisions of the statute not suggested by any of its terms should not be introduced by construction from considerations of mere convenience.”

And in the case of *State, ex rel., vs. Forney*, 108 O. S. 463, the court says on page 467:

“The rule is well and wisely settled that exceptions to a general law must be strictly construed. They are not favored in law, and the presumption is that what is not clearly excluded from the operation of the law is clearly included in the operation of the law.”

In this case the court applied this rule in construing Sections 1c and 1d of Article II of the Constitution. Furthermore, laws relating to taxation are construed in favor of the taxpayer and against the state. *Cassidy vs. Ellerhorst, et al.*, 110 O. S. 535; *Caldwell, et al., vs. State*, 115 O. S. 458.

In the event that sufficient money could not be realized from a levy within the ten mill limitation to meet in the aggregate the requirements as to principal and interest of all outstanding bonds, including such bonds as are here under consideration, a constitutional question might be raised. However, no opinion is expressed herein upon such a contingency.

I am of the opinion, therefore, that levies for interest and sinking fund and retirement of bonds which were issued during the period in which former Section 5649-2, General Code, was in effect, and which levies were outside of the statutory ten mill limitation and subject to the statutory limitation of fifteen mills, are now subject to the one per cent limitation of Section 2 of Article XII of the Constitution.

Respectfully,
JOHN W. BRICKER,
Attorney General.