OPINION NO. 72-102

Syllabus:

    Parents are liable for the payment of the personal property taxes of their minor children pursuant to Section 5711.05, Revised Code.

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To: Claire M. Ball, Jr., Athens County Pros. Atty., Athens, Ohio
By: William J. Brown, Attorney General, November 8, 1972

Your request for my opinion asks the following question:

"Under Section 5711.05 (B) of the Ohio Revised Code, a parent is responsible for returning the personal property tax on behalf of the minor child. My question is this: Is the parent also liable for the payment of personal property tax pursuant to the provisions of section 5711.05 (B)? If not, what is the procedure to be used in collecting the personal property tax from the minor child?"

Section 5711.05, Revised Code, reads in pertinent part:

"Each person shall return all the taxable property of which he is the owner, except property required by this section or the regulations of the tax commissioner to be returned for him by a fiduciary: * * *

"All taxable property belonging to the persons named or indicated shall be returned by the fiduciaries named, as follows:

"(A) That of a ward, by his guardian;

"(B) That of a minor, an idiot, or an insane person having no guardian, by his father, if living, if not, by his mother, if living, and if neither father nor mother is living, by the person having such property in charge;

"* * *   * * *   * * *."

Under this Section a guardian is vested with control of his ward's personal property for the purpose of taxation. A wife and husband are made the joint natural guardians of a minor child under Section 2111.08, Revised Code, and, as such guardians, they are equally charged with the care, nurture and welfare of the child, and the management of its estate.

Since parents are the natural guardians of their children and since, under Ohio's system of taxation, guardians of minors, whether natural parents or not, must return all taxable personal property of their wards, parents are responsible to the state for all taxes imposed upon their wards' property. Cf. Campbell v. Park, 32 Ohio St. 544, 561 (1877). The taxing statutes are not intended to impose any responsibility on minors, nor to clothe them with any authority over their own property in relation to taxation. Schwab v. Traction Co., 130 Ohio Dec. 118 (1902). The intention of Section 5711.05 was clearly to invest the parent, as natural guardian of the minor, with the control of the minor's personal property for the purpose of taxation, and to make the parent liable for the payment of the personal property tax.

In Chertoff v. Commissioner of Internal Revenue, 160 F. 2d 691, 697 (1947), the Court of Appeals for the Sixth Circuit interpreted Ohio law to mean that a husband-guardian has the duty to support his wife and minor children out of his own property and labors; that if he is unable to do so, the wife-guardian must assist him; and that no part of the ward's estate shall be used for the support, education, or maintenance of the ward, unless so ordered by a court. The duty is placed upon the parent-guardian to pay, out of his own estate, the taxes owing on property belonging to the ward, but he may be reimbursed, by court order, from the estate of the ward.

The duty of a guardian to pay his ward's taxes has been held to be mandatory. See Raub v. Appleby, 10 Ohio App. 110, 113 (1918). Section 5711.27, Revised Code, levies a penalty for violation of Section 5711.05, or for failure to file a return, and holds the guardian personally liable for his failure to file a return. In the case of fraud or the intent to evade taxes, the guardian may not be reimbursed from the property of the ward. Otherwise, the guardian who advances his own money for the payment of his minor's personal property taxes, shall be reimbursed for any such payment made. Section 5719.20, Revised Code.

In specific answer to your question it is my opinion, and you are so advised, that parents are liable for the payment of the personal property taxes of their minor children pursuant to Section 5711.05, Revised Code.