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TAX DUPLICATE—RATE OF ADDITIONAL LEVY TO BE REDUCED—SECTION 5713.11 RC—FOLLOWING REASSESSMENT—RATE SHOULD BE REDUCED ONLY IN PROPORTION IN WHICH TOTAL VALUATION OF PROPERTY IN SUBDIVISION HAS BEEN INCREASED—REASSESSMENT OF PROPERTY OVER TOTAL VALUATION OF YEAR PRECEDING REASSESSMENT—NO REDUCTION SHOULD BE MADE IN RATE BECAUSE OF ADDITIONS TO TOTAL VALUATION OF PROPERTY WITHIN SUBDIVISION—RESULTED FROM IMPROVEMENTS ADDED TO TAX DUPLICATE SINCE YEAR PRECEDING REASSESSMENT.

SYLLABUS:

When the rate of an additional levy is to be reduced pursuant to the provisions of Section 5713.11, Revised Code, following a reassessment, such rate should be reduced only in the proportion in which the total valuation of property within the subdivision has been increased by the reassessment of such property over its total valuation of the year preceding the reassessment; and no reduction should be made in such rate because of additions to the total valuation of property within the subdivision which have resulted from improvements which have been added to the tax duplicate since the year preceding the reassessment.

Columbus, Ohio, February 2, 1956

Hon. Frank T. Cullitan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

I have before me your request for my opinion which has been presented as follows:

On January 14, 1956 Mr. F.A.D., Clerk-Treasurer of the Shaker Heights Board of Education addressed a letter to the Auditor of Cuyahoga County in the following language:

"This is a memorandum of our conversation of yesterday afternoon.

"The voters of the Shaker Heights City School District at the general election held November 2, 1954 approved a levy for school operating purposes outside the ten-mill limitation in the amount of twelve mills. The levy was voted to appear first on the 1955 duplicate and to continue for four years. The last previous voted operating levy appeared last on the 1954 duplicate.

"Reassessment by the County Auditor of all real estate in Cuyahoga County has been completed and is shown first on the 1955 duplicate. The valuations for the Shaker Heights City School District used by you in calculating the reduction of the voted mills from 12 mills to 11.6 mills are as follows:

1954 Land and Buildings.....	\$147,561,670.00
Public Utilities	7,517,770.00
Tangible Personalty	4,843,527.00
	\$159,922,967.00
1955 Land and Buildings.....	\$153,646,650.00*
Public Utilities (estimated)	7,517,770.00
Tangible personalty (estimated)	4,843,527.00
	\$166,007,947.00

"*This item includes a valuation of at least \$5,000,000.00 of new buildings commenced subsequent to lien date January 1, 1954 and completed or in process of construction on January 1, 1955, which we believe should be excluded in making the calculation of millage reduction under Section 5713.11 RC.

"You have furnished us with a form of resolution accepting the amounts and rates as determined by the Budget Commission and authorizing the appropriate tax levy. The item of taxes levied for the general fund outside of limitations has been reduced from 12 mills to 11.6 mills. This we understand was done for the purpose of complying with the requirements of Section 5713.11 of the Revised Code of Ohio, which provides as follows:

"5713.11. Reduction of additional levy if valuation of property increased; limitation.

"If the people of any taxing subdivision have voted additional levies for specific purposes in the year of reassessment or any year prior thereto, and said additional levies are effective in the year of reassessment or thereafter and are to be calculated on a total valuation of property higher than

that of the year before reassessment, the rate of said additional levy shall be reduced in the same proportion in which the total valuation of property in said taxing subdivision is increased by the reassessment over the total valuation of the year preceding the reassessment.

“‘In the case of a school district, the rate of any additional levy for current expenses shall not be reduced below a rate which when added to the rate allowed within the ten-mill limitation for current expenses, results in the total millage rate for current expenses required by chapter 3317 of the Revised Code.’

“It was agreed in our conversation yesterday afternoon that little or none of this increase in the valuation of land and buildings was due to revaluation of such properties as they existed on January 1, 1954. New construction of buildings within the school district commenced after January 1, 1954 and completed or in process of construction on January 1, 1955 represented an addition to the tax duplicate of at least \$5,000,000.00. The exact figures are not presently available.

“We submit that it is proper to reduce the voted levy of 12 mills only to the extent that the increase in valuation of land and buildings upon the 1955 duplicate represents the reassessment of land and buildings existing on January 1, 1954. If this principle were applied the resultant rate would be at least 11.9 mills and perhaps the full 12 mills as voted.

“We are sure you will realize the importance of this matter to the Shaker Heights School District. The difference of 3/10 mill between your tentative estimate and what we believe to be proper represents an income of approximately \$49,800.00 per year for four years. It would undoubtedly be necessary for our Board of Education to submit an additional operating tax levy to the voters in order to make up this deficit.

“We understand that there are several other school districts within the county whose population is expanding more rapidly than in our district and who would be hurt even worse than ourselves if you followed the rule you have indicated in our case.

“For this reason we respectfully request that you submit this question to the Prosecuting Attorney for advice, with the suggestion that in view of the probably state-wide interest in the subject, he request the opinion of the Attorney General.”

On January 16, 1956 that letter was forwarded to you by the Auditor with a request that you rule on the question there presented. The Auditor's letter to you provided as follows:

“Attached you will find a request from the Shaker Heights Board of Education taking exception to our method of reducing additional tax levies authorized by vote of the people, as required in a year of reassessment by RC. Section 5713.11.

“In a year of reassessment all property is supposed to be appraised anew, as it existed on listing day in that year. Because of this fact the County Auditor cannot possibly determine exactly how much of an increase from the total for the previous tax year is due to a reappraisal of property existing on the lien date for the previous tax year and how much is due to the valuing, for the first time, of new construction. Many improvements are completed or partially completed between the statutory lien dates. On the other hand, about one third of the building permits taken out in a given year represent buildings that are only partially completed on the next lien date. If the following year is a year of reappraisal, the value added upon completion represents not only a reappraisal of the partial construction assessed the year previously but also a new value on the part of the construction completed since the last previous tax lien date.

“Because we, like former County Auditors, have not been able to determine the exact figure attributable to new construction as differentiated from that due to a reassessment, as the term might be construed in a narrow sense, we have based our adjustment of rates on the *total* increase in value in the absence of any clear instruction how to do otherwise. We are unable to find any court decision or opinion of the Attorney General on the subject. Furthermore, inquiring of other Auditors and State officials has brought to light no cited authority that would allow us to guess at the tax value of new construction in order to reduce the amount of decrease required to be made in the extra levies of a particular taxing district.

“This very same question arose at the time of our last reappraisal in 1946, but was not presented formally by any taxing district for answer. It is far more important today for two reasons: first, the construction to be added to the 1955 tax duplicate for the first time is one of the greatest amounts in the history of the county—an estimated 107 million dollars compared to an estimated 21 million for the last reappraisal year—1946; second, the amount of the extra levies affected this year are much greater than that for 1946 since total tax rates are all much higher, due entirely to more and larger voted levies.

“Taking the Shaker Heights School District situation for example, we find that the real estate tax value increased from \$80,427,880 in 1945 to \$86,608,310 for 1946—the year of reappraisal. We estimate, today, that about \$2,200,000 of the increase was due to a reappraisal. The 1945 operating levy to be reduced for 1946 was only 5.9 mills.

“On the other hand, the 1954 total real estate valuation has increased from \$147,560,770 to \$153,646,650, but we estimate the value of the new construction to be \$5,300,000—a figure almost equal to the amount of increase in the total value. The ‘outside’ rate to be reduced for 1955 amounts to 12 mills. This demonstrates that the importance of the problem has increased five fold from what it was in 1946 as far as this particular district is concerned. Similarly, the importance also has been multiplied as to other suburban taxing districts which are rapidly developing.

“As a consequence, several questions need answering. One question is whether the word ‘reassessment’ in the status is used in the narrow sense as applying only to a reappraisal and subsequent levying of a tax on land and buildings existing the year before and, thus, unchanged in character, or is it used in the broad sense to apply not only to the foregoing class of real property but also to such property that had changed its characteristics—property consisting only of land on the previous tax lien day, but consisting of both land and some improvements to the land on the lien date of the reappraisal year and property somewhat improved on the previous lien date but having a greater improvement on the subsequent lien date of a year of reassessment?

“If it is decided that the word ‘reassessment’ is used in the statute in the narrow or strict sense, then a requirement is imposed by the statute that cannot be fulfilled by any Auditor. The question then arises whether the Auditor on one hand must guess at the exact tax value of the new construction that would have been added if there had not been a reappraisal yet appraised in relation to the cost factors and methods actually used in the reappraisal or, on the other hand, use only that portion of the total tax value that might be arrived at by comparing the new list of reappraisal values with the list of values for the previous year and finding the total of those improvement values charged on those parcels showing no improvement value for the previous year? This would allow the Auditor to subtract the tax value of a substantial determinable part of the total value attributable to new construction—about 80%, on the average—and thus keep the reduction in the ‘outside’ tax rates to a smaller figure, or, possibly in some cases, to nothing at all. If the Auditor must guess as to the entire value of new construction on what does he base his guess? Suppose the taxing district officials dispute the Auditor’s guess as being too low?

Since the tax rate of practically every municipality in the county is affected by this matter the urgency of a ruling is apparent.”

You have forwarded the two letters set out above to me with your request for my opinion.

As was pointed out in the letter from the Board of Education, the legal question presented here involves the proper interpretation of Section 5713.11, Revised Code. For convenience the first paragraph of that section is set out here:

“If the people of any taxing subdivision have voted additional levies for specific purposes in the year of reassessment or any year prior thereto, and said additional levies are effective in the year of reassessment or thereafter and are to be calculated on a total valuation of property higher than that of the year before reassessment, the rate of said additional levy shall be reduced in the same proportion in which the total valuation of property in said taxing subdivision is increased *by the reassessment* over the total valuation of the year preceding the reassessment.” (Emphasis supplied.)

In my opinion the key to the question which you have presented is found in the words emphasized above. Using the figures set out in the Clerk-Treasurer’s letter as an example, we can see that there has been a substantial increase in the total valuation of property within the subdivision, but that only a small fraction of this amount has been added “*by the reassessment.*” The balance of the increased valuation came about through new construction which would have been added to the tax duplicate without a reassessment under the provisions of Section 5713.17, Revised Code. That section provides in part as follows:

“To enable the county auditor to determine the value and location of buildings and other improvements every individual * * * who erects or constructs any building or other improvement * * * shall within sixty days * * * notify the county auditor * * *. Said notice shall * * * contain an estimate of the cost of said building or improvement and a description of the * * * land * * *.”

“Upon failure to give notice * * * and to return such improvement for taxation * * * the county auditor * * * shall appraise it at its true value in money and place it upon the duplicate * * *.”

Applying what seems to me to have been the obvious purpose of Section 5713.11, supra, and giving to its language its logical construction, it is my opinion that the rate of the additional levy should be reduced in the proportion that the total valuation is increased by the revaluation of lands and buildings assessed in 1954.

It appears from the letter of the Auditor that his chief concern is not with the legal rule involved, but with the question of how he will distinguish between that valuation which has been added by a reassessment and that which has come about as a result of new construction. Without discounting the seriousness of that question nor the complications which it imposes upon the Auditor, I can only say that it is not the province of this office to instruct the Auditor in the methods which he must use in valuing property. The questions that might arise must be dealt with in their proper context as they are presented.

In view of the above, it is therefore my opinion that when the rate of an additional levy is to be reduced pursuant to the provisions of Section 5713.11, Revised Code, following a reassessment, such rate should be reduced only in the proportion in which the total valuation of property within the subdivision has been increased by the reassessment of such property over its total valuation of the year preceding the reassessment; and no reduction should be made in such rate because of additions to the total valuation of property within the subdivision which have resulted from improvements which have been added to the tax duplicate since the year preceding the reassessment.

Respectfully,

C. WILLIAM O'NEILL

Attorney General