

61.

REAPPRAISEMENT—"EXTENSION OF TIME" GRANTED—SECTION 5548
G. C. AUTOMATICALLY EXTENDS TIME—TIME LIMIT FOR TAX
PAYMENT—FILING COMPLAINT WITH BOARD OF REVISION.

SYLLABUS:

1. *Where an extension of time has been granted within which to complete the 1925 reappraisal required under Section 5548, General Code, such extension automatically extends the time within which the duties required of the Board of Revision under Section 5606 are to be performed.*

2. *Where such extension has been granted, the time limited for payment of taxes for the first half year is not necessarily December 20th or January 20th, but may be extended by the county commissioners to the February settlement. The time for filing complaints with the Board of Revision would then automatically be extended likewise.*

COLUMBUS, OHIO, February 10, 1927.

HON. OTTO J. BOESEL, *Prosecuting Attorney, Wapakoneta, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication in which you state that the real estate in Auglaize County was reappraised under Section 5548, General Code, but that the county auditor has just completed his tax lists. You then state that under Section 5609, General Code, complaints against such valuations or assessments may be filed on or before the time limited for the payment of taxes for the first half year.

- You inquire within what time the complaints can now be filed on the valuations or assessments as shown by the reappraisals.

Section 5609, General Code, provides:

"Complaint against any valuation or assessment as the same appears upon the tax duplicate of the then current year, may be filed on or before the time limited for payment of taxes for the first half year. Any taxpayer may file such complaint as to the valuation or assessment of his own or another's property. * * * The county auditor shall lay before the county board of revision all complaints filed with him."

Section 5609 provides that complaint against any valuation or assessment as the same appears upon the tax duplicate of the then current year may be filed on or before the time limited for payment of taxes for the first half year.

Section 2653 provides that:

"Each person charged with taxes on a tax duplicate in the hands of a county treasurer may pay the full amount thereof on or before the twentieth day of December, or one-half thereof before such date and the remaining half thereof on or before the twentieth day of June next ensuing, but all road taxes shall be paid prior to the twentieth day of December."

Section 2656 provides that:

"When one-half of the taxes charged against any entry on a tax duplicate in the hands of a county treasurer is not paid on or before the twentieth day of December next after being so charged, or when the remainder of such tax is not paid on or before the twentieth of June next thereafter, the county

treasurer shall proceed to collect it by distress or otherwise, together with a penalty of five per cent on the tax so delinquent, which penalty shall be paid into the treasurer's fee fund."

It will be noted that these two sections relate to the payment of taxes which are charged on a tax duplicate in the hands of a county treasurer. In the case of *Schott vs. Burckhardt*, 2 O. N. P. 90, in construing Section 2653, it was held that :

"This section applies to the time for paying taxes, which are charged upon a duplicate in the hands of a county treasurer and it does not include taxes which have been omitted, and which subsequently have been added."

It is evident that the limitations of time as to payment of taxes provided in the preceding sections cannot apply to taxes which have not been charged upon the duplicate in the hands of the county treasurer.

Section 5548 of the General Code, as amended in 111 O. L., 418, reads in part as follows :

"In the year 1925, and in every sixth year thereafter, it shall be the duty of the county auditor to assess all the real estate situate in the county * * *. The tax commission of Ohio may, upon application of the auditor of any county and for good cause shown, extend the time in which the re-assessment required to be made in the year 1925 shall be completed in said county."

In an opinion of this department to the Tax Commission of Ohio, dated March 30, 1926, Opinion No. 3229, in construing Section 5548, it was held that :

"It is apparent that; as the act did not take effect until the 20th day of July, 1925, the legislature realized that in many of the counties it would be impossible to complete the reassessment in 1925 in time to collect taxes on the reassessed valuations for the then current year. It therefore authorized the Tax Commission, for cause shown to 'extend the time in which the assessment required to be made in the year 1925 shall be completed in said county.' There is no limitation in the act upon the length of time which the Commission might grant, but it is specifically provided that the extension may be made only as to the reassessment required to be made 'in the year 1925.' It excluded any power to grant an extension for the reassessment which is required to be made in the year 1931.

A reassessment is not complete until and unless the values have been laid before the Board of Revision as required by Sections 5605 et seq., and until the abstract thereof is filed with the Tax Commission as provided in Sections 5612 and 5613, General Code. It is therefore quite apparent that the appraisements required by Section 5548, as amended, are appraisements for the year 1925, and the extensions provided for, even though carried over into the year 1926, do not make the appraisalment as one for the year 1926. It must therefore have been the intention of the General Assembly to have provided that the revision by the board of revision was of the board that convened on the 2nd Monday of June, 1925, and that the session of that board was necessarily prolonged for such time as was necessary to complete the 1925 reappraisalment.

Answering your question specifically, it is my opinion that in the event an extension of time has been granted within which to complete the 1925 reappraisalment required under Section 5548, such extension automatically extends the time within which the duties required of the Board of Revision

under Section 5605, and those of the Tax Commission under Section 5613, were required to be performed, and such reappraisal must necessarily be submitted to the Board of Revision which convened in 1925 and not the Board of Revision to be convened in 1926."

It is evident that the time for filing complaints with the board of revision may be made within a reasonable time after the tax valuations have been equalized.

In Opinions of Attorney General, 1920, volume 2, page 1269, at page 1272, it was held as follows:

"So also with the first half of the taxes; the date mentioned in Section 2649 is the twenty-fifth day of January, whereas the last date to which the county commissioners even may extend the time of payment for the first half of taxes is the twentieth of January. * * * That the treasurer's authority to collect does not terminate with the date of closing his office for collection is clear from other sections which have been referred to, especially Section 5678 of the General Code, which seems at least to infer that the authority to collect may continue until the February settlement. * * *

In the opinion of this department, the dates now directly under consideration should be regarded as directory in so far as the imposition of the penalty is concerned. The taxpayers can not be in default for payment of their taxes until they have had an opportunity to pay them. They are not entitled to the exact period of time represented by the difference in days between the first day of October and the twentieth of December, or of January, but they and the treasurer are entitled to a reasonable time after the delivery of the duplicate for the transaction of the necessary mechanical process of paying taxes.

It is the opinion of this department, therefore, that such dates prescribed in these statutes, as the twentieth of December, the twentieth of January and the twenty-fifth of January, are merely directory."

The time "limited for payment of taxes for the first half year" is therefore not necessarily December 20th or January 20th, but may be extended to a much later date, even to the February settlement. The time for filing complaints would then automatically be extended likewise.

You are therefore advised that in the opinion of this department, where an extension of time has been granted within which to complete the 1925 reappraisal required under Section 5548, General Code, such extension automatically extends the time within which the duties required of the board of revision under Section 5606 are to be performed.

Where such extension has been granted, the time limited for payment of taxes for the first half year is not necessarily December 20th or January 20th, but may be extended by the county commissioners to the February settlement. The time for filing complaints with the board of revision would then automatically be extended likewise.

Respectfully,

EDWARD C. TURNER.

Attorney General.