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TREASURER, COUNTY—TAX BILLS—DELIVERY TO TAX-PAYERS—§323.13 R.C.—INSTALLMENT PAYMENTS, §323.43 R.C.—SECOND TAX BILL TO BE SENT.

SYLLABUS:

1. The county treasurer has a mandatory duty, under the provisions of Section 323.13, Revised Code, immediately upon receipt of any tax duplicate from the county auditor, to prepare and mail or deliver a tax bill to each person charged on such duplicate.

2. Where taxes are paid by installments as provided in Section 323.43, Revised Code, it is the duty of the county treasurer annually to prepare and mail to the taxpayer a second tax bill showing the amount of such installment due at the time of the second semi-annual tax collection.

Columbus, Ohio, December 9, 1958

Hon. Geo. Cleveland Smythe, Prosecuting Attorney
Delaware County, Delaware, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Your interpretation of Section 323.13, R.C., as amended 5-24-57, is requested.

“In the past our County Treasurer has only mailed notices as to tax due to nonresidents upon request.

“Has this amendment changed his duty in this respect?

“In the past the tax receipt has been delivered to the person charged with tax upon payment thereof. Is this different from the ‘tax bill’ mentioned in this section?

“When taxes are paid by ‘installments’ does this mean something other than the first and second half payments?

“Does the last sentence of the first paragraph of this section impose a different duty than for the collection of the first half?

“Does the County Treasurer have a mandatory duty to mail tax notices to each person charged on the duplicate? If so does this duty apply to both the first and second halves of each tax year?”

It should first be noted that the “tax bill” referred to in this section is a notice to a taxpayer that he owes a certain amount in taxes. The tax receipt is evidence of the fact that the taxpayer has paid the taxes due as shown on the tax bill.

Section 323.13, Revised Code, reads as follows:

“Immediately upon receipt of *any* tax duplicate from the county auditor, the county treasurer *shall cause to be prepared and mailed or delivered to each person charged on such duplicate with taxes*, the tax bill prescribed by the department of taxation under section 323.11 of the Revised Code. *When taxes are paid by installments*, the county treasurer *shall mail or deliver to each person charged on such duplicate a second tax bill* showing the amount due at the time of the second tax collection. The second half tax bill *shall* be mailed or delivered at least twenty days prior to the close of the second half tax collection period.

“Upon certification by the auditor of the apportionment of taxes and assessments following the transfer of a part of a tract or lot of real estate, and upon request by the owner of any transferred or remaining part of such tract or parcel, the treasurer *shall* cause to be prepared and mailed or delivered to such owner a tax bill for the taxes and special assessments allocated to his part, together with the penalties, interest, and other charges.

“Failure to receive any bill required by this section does not excuse failure or delay to pay any taxes, special assessments, or other charges shown on such bill or avoid any penalty, interest, or charge for such delay.” (Emphasis added)

You will note that the legislature has repeatedly used the word “shall” in this section. Generally “the use of the word ‘shall’ is usually

interpreted to make the provision in which it is contained mandatory, especially if frequently repeated.” 37 Ohio Jurisprudence, 326. However, the language of a statute is not the sole factor in determining whether it is a mandatory statute. In *Drugan v. Flaler*, 74 Ohio Law Abs., 188, the following standards are suggested in the headnotes:

“Whether a statute is mandatory or directory does not depend upon its form, but upon the intention of the legislature, to be ascertained from a consideration of the entire act, its nature, its character, its reason, its object, and its subject matter, as well as the language used therein.”

The Supreme Court of Ohio, in *State, ex rel. Jones, v. Farrar*, 146 Ohio St., 467, in considering this question, held, in the second paragraph of the syllabus:

“As a general rule, statutes which relate to the essence of the act to be performed or to matters of substance are mandatory, and those which do not relate to the essence and compliance with which is merely a matter of convenience rather than substance are directory.”

The entire first paragraph of Section 323.13, Revised Code, is concerned with mailing or delivering tax bills to persons charged on tax duplicates. The sole purpose and object of that paragraph is to require county treasurers to prepare, and to mail or deliver such tax bills. It is the essence of the act to be performed.

Additional insight is garnered from the title of H. B. 445, 102nd General Assembly, whereby this section was enacted. This title reads:

“An Act to amend Section 323.13 of the Revised Code relative to *providing that a second tax bill be sent to persons who pay property taxes twice a year.*” (Emphasis added)

Upon considering all the above factors, I am of the opinion that Section 323.13, Revised Code, imposes on the county treasurer a mandatory duty, immediately upon receipt of *any* tax duplicate from the county auditor, to prepare and mail or deliver a tax bill to each person charged on such tax duplicate. To hold otherwise would permit county treasurers to ignore a specific and clear command of the legislature, and thus to thwart the very purpose of the statute.

In referring to “installments,” Section 323.13, Revised Code, provides:

“* * * *When taxes are paid by installments, the county treasurer shall mail or deliver to each person charged on such duplicate a second tax bill showing the amount due at the time of the second tax collection. The second half tax bill shall be mailed or delivered at least twenty days prior to the close of the second half tax collection period.*” (Emphasis added)

Several sections of the Revised Code provide for the payment of taxes by installments. Section 323.12, Revised Code, authorizes installment payments of current real property and public utility property taxes. It reads as follows:

“Each person charged with real property taxes and assessments or public utility property taxes on a tax duplicate in the hands of a county treasurer may pay the full amount of such taxes on or before the twentieth day of December, *or one-half of such taxes before such date, and the remaining half on or before the twentieth day of June next ensuing.*

“*When such taxes are paid by installments, each payment shall be apportioned among the several funds for which taxes have been assessed in such manner as the department of taxation prescribes.*” (Emphasis added)

Section 323.31, Revised Code, provides in pertinent part:

“Delinquent taxes, assessments, and penalties charged on the tax duplicate against any entry of real estate may be paid in installments at and during five consecutive semiannual tax paying periods, whether or not such real estate has been certified as delinquent. Such installment payments may be made at the times provided by sections 323.12 and 323.17 of the Revised Code for the payment of current taxes, and shall be received with the full amount of current taxes then payable and not otherwise.

* * *

This section not only provides for the payment of certain taxes in installments but indicates that the payments may be made at the times provided by Sections 323.12 and 323.17, Revised Code, and *that current taxes due cannot be accepted unless at least one-fifth of any outstanding delinquency is paid at the same time.* See Opinion No. 4723, Opinions of the Attorney General for 1932, p. 1235.

Section 323.43, Revised Code, also provides that certain taxes may be paid in installments as follows:

“Any person mentioned in section 323.41 of the Revised Code, who is the owner of real property or the holder of a lien on such property, may at such times, in lieu of making a tender as author-

ized by section 323.42 of the Revised Code, enter into a written undertaking, in such form as prescribed by the bureau of inspection and supervision of public offices, to pay the full principal amount of such delinquent taxes and assessments, less penalties, interest, and other charges for the year 1936 and prior thereto, and plus penalties, interest, and other charges for the year 1937 and years subsequent thereto, *in ten annual installments, payable at the time prescribed by sections 323.12 and 323.17 of the Revised Code for the payment of the second half of current real property taxes and assessments*, with interest at the rate of four per cent per annum, payable annually, from the date of the written undertaking. * * *” (Emphasis added)

Section 323.44, Revised Code, requires that a person electing to proceed under Section 323.43, Revised Code, must agree to pay all *current* taxes due.

Section 323.50, Revised Code, permits installment payments of delinquent personal and classified property taxes as follows:

“Any person mentioned in section 323.48 of the Revised Code may, in lieu of making a tender as authorized by section 323.49 of the Revised Code, enter into a written undertaking, in the form prescribed by the bureau of inspection and supervision of public offices, to pay the full principal amount of such delinquent taxes, less penalties, for and prior to the year 1937, plus penalties for 1938 and any subsequent year, *in ten annual installments payable at the time prescribed by sections 323.12 and 323.17 of the Revised Code, with interest at the rate of four per cent per annum, payable annually, from the date of the written undertaking.* * * *” (Emphasis added)

Section 323.51, Revised Code, requires that a person electing to proceed under Section 323.50, Revised Code, must agree to pay all *current* taxes due.

Section 323.13, Revised Code, requires that:

“* * * *When taxes are paid by installments*, the county treasurer shall mail or deliver to each person charged on such duplicate a second tax bill showing the amount due at the time of the second tax collection. * * *” (Emphasis added)

Taxes may be paid by installments not only under the provisions of Section 323.12, Revised Code, but also under the provisions of Sections 323.31, 323.43, and 323.50, Revised Code. Therefore a tax bill must be mailed or delivered by the county treasurer to not only persons paying

current real property taxes by installments but also to persons paying delinquent taxes, assessments, and penalties by installments.

Specifically answering your questions, it is my opinion, and you are accordingly advised that:

1. The county treasurer has a mandatory duty, under the provisions of Section 323.13, Revised Code, immediately upon receipt of any tax duplicate from the county auditor, to prepare and mail or deliver a tax bill to each person charged on such duplicate.

2. Where taxes are paid by installments as provided in Section 323.43, Revised Code, it is the duty of the county treasurer annually to prepare and mail to the taxpayer a second tax bill showing the amount of such installment due at the time of the second semi-annual tax collection.

Respectfully,

WILLIAM SAXBE

Attorney General