2221.

TAXES AND TAXATION—MINERAL (OIL) RIGHTS IN LAND CONSIDERED REAL ESTATE FOR TAXATION PURPOSES—SUCH DELINQUENT TAXES MAY BE CERTIFIED TO AUDITOR OF STATE AS DELINQUENT LAND TAX—WHEN LAND OWNER PURCHASES OUTSTANDING MINERAL (OIL) RIGHT IN HIS OWN LAND—DELINQUENT TAXES THEREON FOLLOW MINERAL RIGHT.

Mineral (oil) rights in land required by law to be separately listed and valued for taxation are considered as real estate for taxation purposes. If the taxes on such separate entry become delinquent, such taxes may be certified to the auditor of state as delinquent land tax.

If a land owner purchases an outstanding mineral (oil) right in his own land, the delinquent taxes thereon follow the mineral right to the land.

COLUMBUS, OHIO, July 1, 1921.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The commission recently submitted to this department the following questions:

> "Is an oil lease to be considered as real estate? If so, and if the tax becomes delinquent on a lease, should it be certified to the auditor of state as delinquent land tax?
>
> In case a land owner purchases an outstanding oil lease on his land do the delinquent taxes thereon follow the land, or are they the personal obligations of the former owner?"

The commission does not advise just what kind of an interest is meant by the phrase "oil lease" as used in its letter, nor is any form of indenture or other instrument submitted in order that this department may determine the exact legal qualities of the rights arising thereunder. A complete answer to the commission's questions could not be given without such additional information. This opinion will therefore be limited by making an assumption, namely, that the commission has in mind in using the term "oil lease" a grant having the legal effect of creating in the "lessee" a right to the minerals "in a tract, parcel or lot of land," which is required by section 5560 and succeeding sections of the General Code to be separately valued and listed for taxation. That is to say, it will be assumed that the commission's questions relate to the kinds of mineral rights referred to in the sections mentioned. Those sections provide, in part, as follows:

> "Sec. 5560. * * * where the fee of the soil of a tract, parcel or lot of land, is in any person natural or artificial, and the right to minerals therein in another, it shall be valued and listed agreeably to such ownership in separate entries, specifying the interests listed, and be taxed to the parties owning different interests, respectively."
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> Sec. 5562. (Contains provision for annual revision by the personal property assessors of mineral values, whether separately assessed or not).
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> "Sec. 5563. Where the fee of the soil and the minerals, or part of either, of a lot or parcel of land has been previously assessed for taxation in the name of the same person, but the title to the fee of

the soil is in one or more persons, and the title to such minerals, or any of them, or any right to the minerals therein, or any of them, is in another person, the county auditor shall ascertain from the returns made to him by the assessor as provided in section 5562 of the General Code, or from any other source of information at his command, the aggregate value of such lot or parcel of land and the minerals or rights thereto, and shall equitably divide and apportion such aggregate valuation between the owner or owners of the fee of the soil and the owner or owners of such minerals and rights thereto so held separately from the fee of the soil, according to the relative value of the interests so held by such owners of the fee of the soil and such minerals or rights thereto, respectively"

This department feels justified in making the above assumption because unless the interest in question is of such kind as to be subject to the above sections, it would not be separately taxed at all, but the value of the tract or parcel of real property ascribable to the existence of valuable minerals therein would enter into and become a part of the value of the tract itself, and the questions which the commission submits would not even arise.

Upon the above assumption the first question submitted by the commission, namely, Is an oil lease to be considered as real estate? is to be answered in the affirmative. That is to say, section 5560 and the other sections referred to and quoted plainly provide that a right to minerals in a particular tract or parcel of real estate of such nature as to be separately assessed for taxation purposes is to be so assessed as real estate.

The remaining part of the first question requires consideration of the following sections:

"Sec. 5671. The lien of the state for taxes levied for all purposes, in each year, shall attach to all real property subject to such taxes on the day preceding the second Monday of April, annually, and continue until such taxes, with any penalties accruing thereon, are paid."

"Sec. 5678. If one-half the taxes charged against an entry of real estate is not paid on or before the twentieth day of December, in that year, or collected * * * prior to the February settlement, a penalty of fifteen per cent thereon shall be added to such half of said taxes on the duplicate. If such taxes and penalty, including the remaining half thereof, are not paid on or before the twentieth of June next thereafter, or collected * * * prior to the next August settlement, a like penalty shall be charged on the last half of such taxes. The total of such amounts shall constitute the delinquent taxes on such real estate to be collected in the manner prescribed by law."

"Sec. 5679. If the total amount of delinquent taxes and penalty as provided in the next preceding section, together with one-half of taxes charged against such real estate for the current year, is not paid on or before the twentieth day of December, of the same year, the delinquent taxes and penalty, and the whole of the taxes of the current year, shall be due, *and be collected by the sale of the real estate,* in the manner authorized by law. * * *"

Sections 5704 to 5711, inclusive, provide for the making and publishing of the delinquent tax certification.

Section 5715, to be considered in connection with the commission's second question, provides as follows:

"The auditor shall transfer the entry 'Certified Delinquent,' from the tax duplicate of one year to the tax duplicate of the next year, and if such land has been transferred, this entry 'Certified Delinquent' shall follow the land in the new owner's name, unless the taxes, assessments and penalty, together with the interest due, have been paid."

Section 5716 relates directly to the first question submitted by the commission, and is as follows:

"Within five days after the second Tuesday of February each year, the county auditor shall deliver to the auditor of state, a list showing the certification so made by him, and the names in which the lands described in the certification stood upon the tax duplicate. Two copies of such list shall be kept posted for a period of two years, for public inspection, in a prominent place in the office of the county auditor."

Section 5718 G. C. provides, in part, as follows:

"It shall be the duty of the county auditor to file with the auditor of state, a certificate of each delinquent tract of land, city or town lot, at the expiration of four years, upon which the taxes, assessments, penalties and interest have not been paid for four consecutive years, * * * and it shall be the duty of the auditor of state to cause foreclosure proceedings to be brought in the name of the county treasurer, upon each unredeemed delinquent land tax certificate, * * *."

The remaining sections in the same context provide for form of pleadings and for the judgment and sale in such cases.

The only question which is encountered is as to whether the words "tract of land, city or town lot," as used occasionally in the sections relating to delinquent lands, are broad enough to include a mineral right. This question is not free from difficulty, especially since the result of the proceedings under the statute for the collection of delinquent land taxes involves a forfeiture, so that the statutes, generally speaking, are subject to a strict consruction. However, while some of these sections use the phrase above stated, omitting, of course, the phrase "or right to the minerals therein" as used in section 5560; others, such as section 5704, use the broader phrase "delinquent lands," which is specifically defined in section 5705 of the General Code as follows:

"Delinquent lands as defined in this act shall mean all lands upon which the taxes, assessments and penalties have not been paid for two consecutive semi-annual tax paying periods."

It is clear that the reference here is to section 5678, where the phrase "an entry of real estate" is used. In other words, it seems reasonably clear that the word "lands" means such things as are entered on the duplicate as lands, and that phrase, as has been pointed out, necessarily includes separately assessed mineral rights. So, therefore, when we find the phrase "tract of land, city or town lot" used in sections like section 5712, for example, it follows that the first term "tract of land" includes any land and interest that

is separately assessed. This phrase cannot be too strictly construed, for the term "city or town lot" as used occasionally in the sections clearly includes parts of lots which are sometimes specifically mentioned. For example, in section 5712 we find the following:

> "The county auditor * * * shall * * * make a certificate to be known as a delinquent land tax certificate, for each tract of land, city or town lot or part of lot contained in such advertisement, * * * describing each tract of land, city or town lot the same as it is described on the tax duplicate. * * *"

It is clear that the second time the phrase occurs the words "or parts of lots" are to be read into it. So also where the term "tract of land" occurs the definition of "delinquent lands" set forth in section 5705 is applicable to it.

For the reasons above stated, then, the answer to the second part of the commission's first question is in the affirmative.

The commission's second question is to be answered just as if the so-called "oil lease" was a separate tract of land which had changed ownership. In other words, the delinquent taxes charged on the oil lease as an entry follow the oil lease, and the right to the minerals in the tract is liable to sale for delinquent taxes just as if it were a part of the surface described by metes and bounds. As between the purchaser and the former owner of the oil lease the obligation to pay the taxes may be made the subject of the contract of purchase; but as between the state and the parties the liability attaches to the land *in rem*, with the qualification above hinted at, namely, the whole tract cannot be sold but only so much thereof as is represented by the delinquent entry, viz., the right to the oil therein.

Respectfully,
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OHIO BOARD OF ADMINISTRATION—WITHOUT AUTHORITY TO ADMIT NON-RESIDENT INSANE PERSONS INTO STATE HOSPITALS—EXCEPTION.

A non-resident insane person whose insanity did not occur during the time of his or her residence in Ohio, is not entitled to admission into the state hospitals for the insane. Sections 1817-1820 *and* 1920 *G. C.*

COLUMBUS, OHIO, July 1, 1921.

HON. E. C. SHAW, *President, Ohio Board of Administration, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date relative to the authority of the Ohio Board of Administration to admit a certain non-resident insane person to one of the state hospitals for the insane, was duly received.

The facts, as I understand them, are as follows: The patient formerly lived at Bellefontaine, Ohio, but several years ago she moved to British Columbia where she became insane and was committed to a hospital for the insane in that jurisdiction. She has continuously resided in British Columbia since going there until her recent return to Ohio on a trial visit, as hereafter stated.