

842.

TAX—WHITTEMORE ACT, AMENDED SENATE BILL 3, 93RD GENERAL ASSEMBLY—COMPLIANCE WITH ITS TERMS ENTITLES TAXPAYER TO ABATEMENT OF ALL INTEREST ON TAXES AND ASSESSMENTS ON TAX LIST AND DUPLICATE FOR 1936 AND PRIOR YEARS—EIGHT PER CENT INTEREST FIGURED ON TAXES FOR 1937 AND SUBSEQUENT YEARS—SECTION 5704, G. C.

SYLLABUS:

When a taxpayer complies with the terms of Amended Senate Bill No. 3 of the 93rd General Assembly, known as the Whittemore Act, he is entitled to an abatement of all interest on the taxes and assessments shown on the tax list and duplicate for 1936 and prior years, and that interest at eight per cent per annum, as provided in section 5704, General Code, is to be figured only on the taxes for 1937 and subsequent years.

COLUMBUS, OHIO, July 5, 1939.

HON. RALPH J. BARTLETT, *Prosecuting Attorney, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion, which reads in part as follows:

“The question here involved is this: Under Senate Bill No. 3, commonly known as the Whittemore Act, we find a provision in said act that interest shall be paid for the year of 1937 and those following said year. This statement in the act raised the question as to what fund the 8 per cent interest charge shall be figured on. Shall it be figured on the total accumulated delinquent tax which shows on the tax duplicate of Franklin County, Ohio, in the tax collection year of 1937, or shall we use the current taxes for the year 1937 as a fund to figure the interest instead of the accumulated delinquent tax shown on the tax duplicate for the year of 1937?”

The Auditor of Franklin County, Ohio, states that the interest and penalties for the tax year of 1936 and previous years are cancelled in the case of payment in full or under the installment contract provided in Senate Bill No. 3 but in figuring the interest on the tax collection year of 1937 and following, the accumulated delinquent tax shall be the amount used in figuring interest from that point forward, therefore, the question results in this: Is the interest to be figured on the accumulated delinquent tax shown due in tax collection year of 1937 or on the current tax shown due in the year 1937?”

Delinquent lands are defined in section 5705, General Code, as follows:

“Delinquent lands as defined in this chapter shall mean all lands upon which the taxes, assessments and penalties, or either remain unpaid at two consecutive semi-annual tax settlement periods.”

Section 5704, General Code, provides that the county auditor shall make a certified list and duplicate thereof of all delinquent lands in his county immediately after each August settlement and that “interest at the rate of eight per cent per annum on the total amount of taxes and assessments due and unpaid with respect to each tract or lot, or part of lot entered upon such delinquent tax list and duplicate, shall be charged thereon from the date of such settlement.”

The first three sections of Amended Senate Bill No. 3 of the 93rd General Assembly, known as the Whittemore Act, are as follows:

Sec. 1. “Any person, firm or corporation charged with or legally authorized or required by law or decree of court to pay real property taxes and assessments which have become delinquent at or prior to the August or September settlement in any year, or any person, firm or corporation holding a lien upon such real property may at any time elect to pay the principal sum of such delinquent taxes and assessments as provided in this act, anything in the permanent statutes of this state relating to the payment of real property taxes, assessments, penalties and interest thereon to the contrary notwithstanding. No person shall be entitled to such election unless all taxes, assessments and penalties for the current year then due and payable have been paid, or elected to be paid in accordance with the provisions of section 2653 of the General Code. Provided, however, that nothing contained in this act shall be construed to abate or cancel penalties, interest and other charges on real property taxes and assessments for any year subsequent to the year 1936.”

Sec. 2. “If such person tenders to the county treasurer a sum equal to one hundred per centum of the principal sum of such taxes and assessments, so delinquent, 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 all years subsequent thereto, the county treasurer shall accept and receive such amount in full payment of all such taxes, assessments, penalties, interest and other charges. Upon receiving such amount the treasurer shall give to the person making such tender a receipt in full for all taxes, assessments, penalties,

interest and other charges for the proper years, and shall give to the auditor a certificate in such form as may be prescribed by the bureau of inspection and supervision of public offices, which shall operate as a remitter of the difference between the sum so received and the aggregate amounts charged on the tax duplicate or on the delinquent land tax list, or both, and shall be so treated in the next succeeding settlement between the auditor and treasurer."

Sec. 3. "Any such person being the owner of such real property or the holder of a lien thereon may at such times, in lieu of making a tender as authorized by section 2 of this act, enter into a written undertaking in such form as shall be prescribed by the bureau of inspection and supervision of public offices, to pay the full principal amount of such taxes and assessments, so delinquent, 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 law for the payment of the second half of current real property taxes and assessments, with interest at the rate of four per centum per annum, payable annually, from the date of the written undertaking. The first installment shall be due and payable upon entering into such undertaking and shall be collected by the treasurer, who shall give a certificate therefor to the county auditor. Upon receipt of such certificate the county auditor shall note on the tax list and duplicate, and on the delinquent tax list, in such manner as the bureau may prescribe, the fact that such undertaking has been entered into; and thereafter, so long as such undertaking shall continue to be performed, the lands against which said delinquent taxes or assessments, penalties, interest and other charges are charged, shall not be entered on the foreclosure list, and shall not be published as provided in section 5704 of the General Code as part of the list of delinquent lands, anything in the statutes of this state to the contrary notwithstanding."

Since your inquiry relates solely to interest, I shall omit all reference to penalties and other charges. In the second section of the Act it should be noted that the last sentence provides that there shall be no abatement of interest on real property taxes and assessments *for any year* subsequent to the year 1936. This must be construed as an implication that interest may be abated for the year 1936 and prior years. The ordinary construction of "for any year" is for any tax year. This interpretation is supported by the provisions of sections 2 and 3 of the Act, wherein provisions are made for taxpayers to tender cash or a written under-

taking for installment payments equal to the full amount of all taxes, penalties, interest and other charges "less penalties, interest and other charges for the year 1936 and prior thereto", which I believe should be construed to mean less all penalties, all interest, and all other charges for the year 1936 and prior thereto.

Further reference to the abatements to be allowed is made in section 7 of the Act, which is as follows:

"When an undertaking to pay delinquent real property taxes and assessments in installments, made pursuant to this chapter, has been fully performed, and not prior thereto (unless such delinquent taxes have been paid in full pursuant to section 2 of this act), the county treasurer shall give to the person so performing such undertaking a receipt in full for the principal sum of the taxes and assessments paid thereby and any penalties, interest and other charges paid thereon and the interest paid, as herein specified, which shall include a certificate to the effect that penalties, interest and other charges on the tax list and duplicates in respect of the year or years covered thereby prior to the year 1937 have been canceled and annulled. The form of such receipt and certificate shall be prescribed by the bureau of inspection and supervision of public offices. Such receipt shall operate as a remitter in the manner and to the extent provided in section two hereof and shall be so used in the next succeeding settlement between the auditor and treasurer.

Upon the satisfaction of all taxes and assessments for the years prior to the current year in accordance with the provisions of this act, all penalties and interest on taxes and penalties for said years prior to the year 1937 shall be abated and canceled; but penalties, interest and other charges for the year 1937 and years subsequent thereto shall not be abated and cancelled and in the event any such taxes and assessments for any year prior to 1937 have heretofore been paid, but the penalties and interest thereon have not been paid, then such penalties and interest shall be so abated and canceled."

Again, it should be noted that the receipt shall include a certificate showing the cancellation and annulment of interest on the tax lists and duplicates in respect of the year or years covered thereby prior to the year 1937.

Again, in the last paragraph, we find similar language indicating that penalties and interest for any year prior to 1937 shall be abated and cancelled. In each of these instances I think the penalties and interest referred to mean all penalties and interest and the years 1936 and 1937 refer to the tax lists and duplicates for these years.

This construction seems to be in accord with the intention of the Act which is set forth in the last paragraph as follows:

“That general economic conditions have made it impossible for many taxpayers to accumulate sufficient money to pay taxes and assessments charged on the real estate duplicate in semi-annual installments, as heretofore provided by law, whereby the amount and proportion of delinquent taxes and assessments have greatly increased in substantially all the counties in this state, and the taxing district entitled to share in the proceeds of such taxes and assessments have thereby suffered substantial failure in revenue, and have been curtailed and impaired in the performance of their necessary functions of government; so that it is immediately necessary to provide an inducement for the prompt payment of such taxes and assessments and a means whereby taxpayers can more conveniently discharge their public obligations with respect to the payment of such taxes and assessments, to the end that the amount of such delinquency may be quickly reduced. Therefore this act shall go into effect immediately.”

In conclusion, therefore, it is my opinion that when a taxpayer complies with the terms of Amended Senate Bill No. 3, known as the Whittemore Act, he is entitled to an abatement of all interest on the taxes and assessments shown on the tax list and duplicate for 1936 and prior years, and that interest at eight percent per annum, as provided in section 5704, General Code, is to be figured only on the taxes for 1937 and subsequent years.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

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BONDS — CALLABLE — WHERE ISSUED AND DELINQUENT SPECIAL ASSESSMENTS REASSESSED BY CITY — NO AUTHORITY TO ACCEPT OFFER FROM PROPERTY OWNERS TO PAY IN CASH WITHOUT INTEREST.

SYLLABUS:

Where callable bonds have been issued and delinquent special assessments have been reassessed by a city, the city officials are without