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1. TAX—HOUSE TRAILERS—COUNTY AUDITOR MUST ACCEPT CURRENT YEAR'S TAX IMPOSED—ISSUE CERTIFICATE OF REGISTRATION—PRECEDING YEAR'S TAX UNPAID—DELINQUENT TAX—COLLECTED UNDER SECTION 6292-2 G.C.
2. COUNTY AUDITOR—OBLIGATION TO COLLECT ACCRUED TAXES AS IN PERFORMANCE OF OTHER DUTIES.
3. FORMS PREPARED BY TAX COMMISSIONER—USED IN COLLECTION OF TAXES LEVIED—COUNTY AUDITOR MAY NOT EXPAND FORMULA AND HAVE ADDITIONAL QUESTIONS ADDED.

## SYLLABUS:

1. The county auditor must accept the current year's tax imposed by Section 6292-2, General Code, on house trailers and issue a certificate of registration therefor even though the preceding year's tax is unpaid. Such delinquent and outstanding tax shall be collected in accordance with the provisions of Section 6292-2, General Code.

2. The county auditor has the obligation to exercise the same ordinary prudence and diligence in ascertaining that all accrued taxes due under Section 6292-2, General Code, are collected as he must use in performing his other duties.

3. The forms prepared by the Tax Commissioner in compliance with the provisions of Section 6292-2, General Code, to be used in the collection of the tax therein levied, may not be expanded and have additional questions added thereto by the county auditor.

Columbus, Ohio, April 29, 1952

Hon. Ernest E. Erb, Prosecuting Attorney  
Washington County, Marietta, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows.

“Fred B. Goddard, Auditor of Washington County, Ohio, with various other auditors following a conference with the Deputy Supervisor of Inspections requests me to ask you for an Opinion, on the following questions as they apply to the House Trailer laws:

"1. In the event a person comes into the county auditor's office and makes application for 1952 Tax Certificate and acknowledges that he occupied the trailer in 1951, without having obtained a House Trailer Tax Payment Certificate as required by law,

"(a) Is the county auditor required to collect both the tax due and unpaid for 1951, also the fifty dollar penalty provided for under Section 6292, G.C. before issuing a 1952 certificate or (b) shall the county auditor issue the 1952 certificate and 'enforce collection thereof by civil action' as provided for by Section 6292-2 G.C. or (c) does this requirement to purchase 1951 Registration lapse on April 1, 1952, as in the case of Dog Licenses, Section 5652 et seq. G. C.?

"2. In the event a person makes application for a 1952 Tax Registration, and denies that he occupied the trailer in 1951, is there any obligation upon the county auditor to attempt to prove that the applicant did occupy the trailer and did not secure a 1951 Tax Registration?

"3. Since the form of the 'APPLICATION FOR REGISTRATION OF HOUSE TRAILER' (Form 881) is by statute, prepared by the Department of Taxation of Ohio, is the county auditor permitted to ask additional questions and note the answers thereto on Form 881 before it is signed by the applicant, or should the answers be limited to the questions on the State Form No. 881?

"4. In the event that the Opinion in answer to question 1-A above should be in the affirmative, should the State Examiner make a finding against the county auditor, personally, for his failure to collect such delinquent tax and penalty?"

Section 6292-2, General Code, by its terms became effective on April 1, 1951. In considering your first question, reference is made to specific portions of this statute as follows:

"A tax is hereby levied upon house trailers for the purpose of supplementing the general revenue funds of the local subdivisions in which the house trailer is located at the time the tax becomes due in accordance with the provisions of this section. The year for which said tax is levied shall commence on April 1 and end on March 31 following. Such tax shall be collected by and paid to the county auditor of the county in which house trailer is located at the time the owner thereof makes application for registration as herein provided. The tax shall be as follows:

"(1) If such application be made on or after April 1 and prior to July 1 the tax shall be eighteen dollars.

“(2) If such application be made on or after July 1 and prior to October 1 the tax shall be thirteen dollars and fifty cents.

“(3) If such application be made on or after October 1 and prior to January 1 the tax shall be nine dollars.

“(4) If such application be made on or after January 1 and prior to April 1 the tax shall be four dollars and fifty cents.

“The tax so levied shall become due and payable immediately upon the occupancy for human habitation of the house trailer except as hereinafter provided. If the tax is unpaid after a period of thirty days a penalty of fifty dollars shall be imposed which shall be collected in addition to the tax.

“Whoever, being the owner of such house trailer fails or refuses to pay such tax so levied against a person or persons, and are not paid within the time prescribed by law for the payment of such taxes, the auditor of such county in addition to any other remedy provided by law for the collection of taxes, shall enforce the collection thereof by a civil action in the name of such auditor against such person or persons for the recovery of such unpaid taxes. \* \* \*”

According to the provisions of this section, the tax is levied and becomes due immediately upon the occupancy of the house trailer for human habitation with an exception being allowed for house trailers bearing out-of-state licenses. See Opinions of the Attorney General, No. 446, June 29, 1951, and *Rapa v. Haines*, 101 N.E.(2d), 733. Under the facts presented in your first question, the house trailer was admittedly occupied during the year 1951 so that the liability for payment arose at that time and the amount due for that year is dependent upon the date on which human habitation began. There is thus presented a situation in which the trailer owner is willing to pay the tax imposed by Section 6292-2, General Code, for 1952, but is presumably questioning his obligation to satisfy his 1951 tax.

In *Peter v. Parkinson*, Treasurer, 83 Ohio St., 36, a “tax” is defined as follows:

“A tax, in its essential characteristics, is not a debt, nor in the nature of a debt. A tax is an impost levied by authority of government, upon its citizens or subjects, for the support of the state. It is not founded on contract or agreement. It operates *in invitum*. \* \* \*”

This tax constitutes a burden which is imposed as an obligation for the protection and benefits given to the owner in his enjoyment of the

use of his property during each year. An involuntary obligation has been created through the imposition of this tax which is a claim that can be enforced and collected if not satisfied. In the absence of provision to the contrary, an unpaid tax accrues and remains as a subsisting claim which the political subdivision imposing the tax has against the taxpayer and does not expire at the termination of the tax year. To hold otherwise would be to penalize unjustly those taxpayers who met their obligations and to encourage tax evasion.

Nowhere in Section 6292-2, General Code, is there provision by which the liability for payment of the tax lapses at the end of the tax year which is on March 31. Instead, the above quoted provisions present a positive enforcement procedure by which the tax plus a penalty are to be collected from the owner of a house trailer who "fails or refuses" to pay the tax within a period of thirty days after becoming due. No limitation is placed upon such collection procedure. The statute clearly states that "The tax so levied shall become due and payable immediately upon the occupancy for human habitation of the house trailer \* \* \*." Until paid, this tax would necessarily remain a continuing obligation outstanding against the owner.

Combined with the above interpretation of the tax liability imposed by this section is the fact that the policy of the law concerning tax collection as set forth in *Nassau County v. Lincer*, 254 App. Div. (N.Y.), 746, 4 N.Y.S.(2d), 77, has been to insure the collection of all taxes and whenever possible to construe the statutes to accomplish that result. The general rule is that a statute setting forth the procedure for the collection of taxes is to be given a liberal construction in favor of collectibility. 3 Sutherland, 302. It is thus my opinion that the owner of the house trailer is liable for the current year's tax as well as the tax for the preceding year.

It is a necessary consequence of the nature of the obligation of the taxpayer and of the provisions of Section 6292-2, General Code, that the yearly tax due constitutes one entire annual demand. Inasmuch as every yearly tax is an independent demand, the claims for two or more years are separate and severable. *City of Baltimore v. Fine*, 129 A., 356, 148 Md., 324. In 61 Corpus Juris, 966, Section 1244, it is stated that a "citizen always has the right \* \* \* to pay the taxes for one year, and contest those assessed for other years \* \* \*." It would thus seem clear that the county auditor could accept payment for the current year, issue

the proper certificate and proceed to enforce collection of the preceding year's delinquent tax by civil action as provided in Section 6292-2, General Code.

Nowhere in Section 6292-2, General Code, is there provision restricting the auditor from accepting the current year's tax at the time when application for registration is made even though it is known that a delinquent tax for the preceding year is outstanding. However, an examination of Section 6294, General Code, which considers the registration of motor vehicles and the collection of license fees thereon, reveals that all registration and transfer fees of the preceding year and preceding quarters must have been paid before the license fee for the current year can be accepted and a license be issued. The legislature in enacting Section 6294, General Code, has thus required in positive language that delinquent license fees on motor vehicles be paid before the current year's obligation can be satisfied. It should be noted that both Sections 6292-2 and 6294, General Code, are found in the chapter of the General Code on motor vehicles but that the incidence of the tax involved in each section is different. Inasmuch as the legislature has specifically provided in Section 6294, General Code, for collection of delinquent fees before current license fees can be accepted, I must conclude that in the absence of a similar provision in Section 6292-2, General Code, it was the intent of the legislature to allow the auditor to collect the current year's tax on a house trailer although the previous year's tax is unpaid.

Your second inquiry relates to the duty incumbent upon the county auditor to investigate and determine the liability of a registrant for a preceding year's tax even though such person denies at the time that he occupied the house trailer during the preceding year. In 11 Ohio Jurisprudence, 364, Section 114, it is stated that "it is his (county auditor's) duty to use his judgment concerning the official acts which he is called upon to perform, to a degree commensurate with the responsibility, and to act in good faith and with the prudence and integrity which an honest man of ordinary prudence would exercise under like circumstances." By the terms of Section 6292-2, General Code, the auditor is the only county official charged with the responsibility of enforcing and collecting this tax. Inasmuch as each registrant must complete an application form containing pertinent information as to ownership and use of the house trailer, it would seem obvious that the exercise of ordinary prudence and diligence would require the auditor to examine such application for patent inconsistencies which would indicate that the time of occupancy was improperly stated.

It should be also noted that Section 6292-2, General Code, requires that a register of all house trailers, reflecting occupancy and ownership data, shall be kept by every operator of a trailer court or trailer park or every owner of property used for such purposes when there is no operator. In relation to such register, the statute then provides as follows :

“The register shall be open to inspection to the county auditor and all law enforcement agencies at all times.”

The terms of this provision contemplate that the auditor will avail himself of the opportunity to examine these registers, presumably with the objective in mind of determining that all house trailers are properly registered. Inasmuch as this specific investigatory process is made available to him, it would seem that any other information, from whatever source, should be utilized in assaying the correctness of the registrant's application and in determining whether an accrued tax was outstanding. The county auditor thus has the obligation to exercise the same ordinary prudence and diligence in ascertaining that tax liability exists and that all taxes are collected as he must use in performing his other duties.

Your third inquiry is concerned with the right of the county auditor to ask questions in addition to those set forth on the application form prepared by the Tax Commissioner and to make notation of the answers on that form. The pertinent portion of Section 6292-2, General Code, providing that the Tax Commissioner shall prescribe the necessary forms, reads as follows :

“\* \* \* The tax commissioner shall prescribe forms for use in the collection and payment of the tax herein levied which shall show the name of the applicant, his agent, if any, each taxing district in the county where such trailer is located, the trade name of the trailer, the manufacturer's number or other distinctive designation to render such trailer readily distinguishable from other trailers of similar type, and such other information as the tax commissioner may require. \* \* \*”

Under this statute, authority is lodged only in the Tax Commissioner to prepare the forms necessary for the collection and payment of the tax. Certain information is specifically required to be included while a discretion is given the Commissioner in determining what other information should be added. No other official is authorized by statute to add to or alter the prepared forms. The obvious intent of the legislature was thus to provide procedural uniformity throughout the state in the collection of the tax.

A well established rule of statutory construction provides that where the manner or procedure of performing a particular operation is affirmatively designated to be accomplished by a certain person, there is an inference that all omissions were intended by the legislature. Inasmuch as the statute specifically delegates to one official the authority and responsibility for the preparation of such forms, it would appear to be clear that his determination of the information to appear thereon is final. It is therefore my opinion that the answers placed on the form mentioned in your request should be limited to the questions prepared by the Tax Commissioner.

As to your fourth query, no comment is necessary in view of the fact that my answer to question 1-A is in the negative.

In conclusion and in specific reply to your questions, it is my opinion that:

1. The county auditor must accept the current year's tax imposed by Section 6292-2, General Code, on house trailers and issue a certificate of registration therefor even though the preceding year's tax is unpaid. Such delinquent and outstanding tax shall be collected in accordance with the provisions of Section 6292-2, General Code.

2. The county auditor has the obligation to exercise the same ordinary prudence and diligence in ascertaining that all accrued taxes due under Section 6292-2, General Code, are collected as he must use in performing his other duties.

3. The forms prepared by the Tax Commissioner in compliance with the provisions of Section 6292-2, General Code, to be used in the collection of the tax therein levied, may not be expanded and have additional questions added thereto by the county auditor.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General