

**OPINION 65-20****Syllabus:**

1. Once an amount of personal property tax has been determined to be uncollectible and stricken from the delinquent personal property tax list and duplicate pursuant to Section 5719.04, Revised Code, there is no authority whereby said amount of tax can be reinstated.

2. County treasurers have no authority to receive or collect money for personal property taxes after the item of taxes has been stricken from the delinquent tax list and duplicate.

3. If a county treasurer receives or collects money for personal property taxes after the item of taxes has been stricken from the delinquent tax list and duplicate, such money so received or collected constitutes "Public money" within the meaning of Section 117.10, Revised Code, which is to be placed in a trust fund and there retained until claimed by the lawful owner.

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**To: Neil M. Laughlin, Licking County Pros. Atty., Newark, Ohio**  
**By: William B. Saxbe, Attorney General, February 5, 1965**

Your request for my opinion reads as follows:

"We are in the process via the County Board per statute of removing uncollectible personal property taxes from the tax schedule. Since this has not been done for 25 years or more, it is a tremendous job.

"The question has arisen how payment could

be accepted after personal property tax has been determined uncollectible, and how it would be charged back.

"I would appreciate your opinion herein."

Section 319.29, Revised Code, provides:

"On or before the first Monday of August, annually, the county auditor shall compile and make up, in tabular form and alphabetical order, separate lists of the names of the several persons, companies, firms, partnerships, associations, and corporations in whose names personal property required to be entered on the general tax list and duplicate has been listed and assessed as shown on the returns and in the preliminary and final assessment certificates in the hands of the auditor pursuant to sections 5711.01 to 5711.36, inclusive, 5727.29, and 5727.30 of the Revised Code, in each township, municipal corporation, special district, or separate school district or part of either in his county. He shall place in an appropriate column opposite each name, the aggregate value of such personal property as listed and assessed in such lists. On or before the third Monday of August in each year the auditor shall correct such lists in accordance with the additions and deductions ordered by the department of taxation, and shall certify and deliver one copy of such corrected lists to the county treasurer. The copies prepared by the auditor shall constitute the auditor's general tax list and treasurer's general duplicate of personal property for the current year."

Section 5719.04, Revised Code, provides in pertinent part:

"Immediately after each October settlement the county auditor shall make a tax list and duplicates thereof of all taxes, except those upon real estate, remaining unpaid, as shown by the county treasurer's books and the list of taxes returned as delinquent by him to the auditor at such settlement and the preceding August settlement, and also all taxes assessed by the tax commissioner pursuant to law which were not charged upon the tax lists and duplicates on which such settlements were made nor previously charged upon a delinquent tax list and duplicates pursuant to this section. Such tax list and duplicates shall contain the name of the person charged and the amount of such taxes, and the penalty, due and unpaid, and shall set forth separately the amount charged or chargeable on the general and on the classified list and duplicate. The auditor shall deliver one such duplicate to the treasurer on the first day of December, annually."

Section 5719.05, Revised Code, provides:

"The county treasurer shall forthwith collect the taxes and penalty on the duplicate by any of the means provided by law, and the funds collected shall be distributed in proper proportions to the appropriate funds."

Section 5719.06, Revised Code, provides:

"The county auditor's delinquent tax list and the county treasurer's delinquent tax duplicate provided for in section 5719.04 of the Revised Code shall be cumulatively kept so that the amount of delinquent taxes and penalties, except those upon real estate, charged against each person may be shown on the latest delinquent list and duplicate. Whenever the treasurer shall, by means of the remedies provided by law or otherwise, determine that any item which has appeared on the cumulative tax list and duplicate of taxes provided for in this section for a period of five years is uncollectible, he shall forthwith certify such determination, together with his reasons therefor, to the county board of revision and the prosecuting attorney. If such board and the prosecuting attorney determine any such item is uncollectible, they shall certify such finding to the auditor who shall cause said item to be stricken from the cumulative tax list and duplicate."

The compilation of the personal tax list and duplicate is an annual process. If personal property taxes appearing on the tax list and duplicate provided for in Section 319.29, supra, remain unpaid, they are not carried over to the next succeeding year's tax list and duplicate. Rather, pursuant to Section 5719.04, supra, delinquent personal property taxes are carried over to the delinquent tax list and duplicate. Delinquent taxes are accumulated yearly on this list and duplicate.

If delinquent taxes are determined to be uncollectible then, pursuant to Section 5719.06, supra, the uncollectible, delinquent items may be stricken from the cumulative tax list and duplicate and there is no longer any record of these delinquent items.

A similar situation was presented in Opinion No. 4785, Opinions of the Attorney General for 1932. Although the facts in that opinion were not identical, that opinion involved an overpayment or double payment of a tax that was correct upon the tax list and duplicate. In regard to the "second" payment of the amount of tax, the then Attorney General stated, beginning at page 1327:

"Your query is directed at the case where the county treasurer has collected from a taxpayer more than appears on the duplicate which you refer to as an 'overpayment' and in other cases has collected an item of tax which appears on the duplicate after it has already

been paid, and therefore no longer appears thereon.

"It is the duty of the county treasurer when an item of tax is paid, to enter such fact of payment upon the duplicate; such payment necessarily extinguishes that item of tax. It is therefore evident that when the second payment of the item of tax was received by the county treasurer he had no authority to receive such amount of money for the purpose for which the payment was made. The county treasurer is an officer whose duties are prescribed by statute, and who has no authority except such as is given him by statute. It has been held that the county treasurer has no authority to receive any sums of money except such as are charged upon the tax duplicate and the delinquent list delivered to him by the auditor for collection or charged upon a warrant delivered to him by the auditor. See Hull vs. Alexander, Treasurer, . 69 O.S., 75; Board of County Commissioners vs. Arnold, 65 O.S., 479; State ex rel. vs. Smith, County Auditor, 71 O.S. 13; State ex rel. Alcorn vs. Mittendorf, 102 O.S. 229; Insurance Company vs. Ginder, 114 O.S. 52.

"To use the language of Burket, C. J. in the case of Hull vs. Alexander, supra,

"\* \* the county treasurer is strictly a collector of taxes, and not a tax inquisitor or taxing officer. He performs his whole duty when he collects the money charged upon the tax duplicate and delinquent list delivered to him by the auditor for collection, or charged upon a warrant or draft delivered to him by the auditor authorizing him to receive money; \* \* \*

"It is therefore evident that the county treasurer has no authority in law, as county treasurer, to receive an amount on an item of taxes in excess of the amount placed upon the tax list and duplicate by the auditor and he has no authority to receive a payment of such item of taxes after such item has already been paid. Such over payment or double payment being illegally received, or in other words, received without authority of law, would constitute such person who, as treasurer, received such excess moneys either by way of over payment or double payment, a resulting or constructive trustee for the benefit of the person from whom it was received without authority."

The reasoning in the 1932 opinion, supra, is directly applicable to your question because in both instances there is no item appearing on the tax list and duplicate or the delinquent tax list and duplicate which authorizes the county treasurer to receive the money. Furthermore, an examination of the applicable statute reveals that there is no authority

to charge back or re-enter delinquent taxes on the duplicate after they have been stricken pursuant to Section 5719.06, supra.

In the event that a delinquent taxpayer attempts to pay the amount of taxes that has previously been stricken from the delinquent tax list and duplicate, and the treasurer has reason to believe that said taxes have been stricken, though he cannot conveniently ascertain the fact at the time, the treasurer should receive the offer to pay as a tender only and not make a collection until he has determined his authority to do so. See Opinion No. 1360, Opinions of the Attorney General for 1918.

In the event that a delinquent taxpayer attempts to pay the amount of taxes that has previously been stricken from the delinquent tax list and duplicate pursuant to Section 5719.06, supra, and the county treasurer receives or collects same without authority, the money so collected would be "public" as that term is defined in Section 117.10, Revised Code, and should be placed in a trust fund for a period of five years. Section 117.10, supra, provides in pertinent part:

"'Public money' as used in this section includes all money received or collected under color of office, whether in accordance with or under authority of any law, ordinance, order or otherwise, and all public officials are liable therefor. All money received under color of office and not otherwise paid out according to law is due to the political subdivision or taxing district with which the officer is connected and shall be paid into the treasury thereof to the credit of a trust fund, and there retained until claimed by the lawful owner. If not claimed within a period of five years, such money shall revert to the general fund of the political subdivision where collected."

Therefore, it is my opinion and you are hereby advised that:

1. Once an amount of personal property tax has been determined to be uncollectible and stricken from the delinquent personal property tax list and duplicate pursuant to Section 5719.04, Revised Code, there is no authority whereby said amount of tax can be reinstated.
2. County treasurers have no authority to receive or collect money for personal property taxes after the item of taxes has been stricken from the delinquent tax list and duplicate.
3. If a county treasurer receives or collects money for personal property taxes after the item of taxes has been stricken from the delinquent tax list and duplicate, such money so received or collected constitutes "Public money" within the meaning of Section 117.10, Revised Code, which is to be placed in a trust fund and there retained until claimed by the lawful owner.