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1. TRAILER—HOUSE—APPLICATION FOR REGISTRATION — DELINQUENT TAX — COUNTY AUDITOR — DUTY TO MAKE DEMAND ON APPLICANT FOR PAYMENT OF DELINQUENT TAX — STATUS WHERE DISPUTE OF LIABILITY—SECTION 4503.06 RC.
2. TRAILER—HOUSE—LIABILITY FOR DELINQUENT TAX — TAX AND PENALTY ACCRUED DURING TIME TRAILER IN FOREIGN COUNTY—STATUS AS TO COUNTY AUDITORS — VOLUNTARY PAYMENT — CIVIL ACTION — DISTRIBUTION OF FUNDS.

## SYLLABUS:

1. Where an application for registration of a house trailer under the provisions of Section 4503.06, Revised Code, discloses liability for an amount of delinquent tax imposed under the provisions of this section, it is the duty of the county auditor receiving such application to make demand on the applicant for payment of such tax and any penalties which have accrued; but if the applicant disputes liability for such delinquency, the county auditor must accept payment of the current year's tax imposed by this section and issue a certificate of registration therefor. Paragraph 1 of the Syllabus of Opinion No. 1383, Opinions of the Attorney General for 1952, page 312, approved and followed.

2. Where an application for registration of a house trailer under the provisions of Section 4503.06, Revised Code, discloses liability for delinquent tax imposed as provided in such section, and where such delinquent tax, and the penalty imposed by virtue of such delinquency, have accrued during a time when such trailer was located in another county, either the county auditor receiving such application, or the auditor

of such other county, may enforce collection of such delinquent tax and penalty in a civil action as provided in Section 4503.06, Revised Code. Where such collection is made by the county auditor receiving such application, either by voluntary payment of the applicant or in a civil action therefor, such amount should be paid to the auditor of such other county for distribution as provided in this section.

Columbus, Ohio, August 3, 1955

Hon. John Rossetti, Prosecuting Attorney  
Stark County, Canton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Mr. F. B. H., State Examiner, has submitted to us the following proposition in regard to the House Trailer Tax, and he has requested that we secure either an informal or formal opinion from your office in regard to the same. I have checked all available cases and annotations which might be pertinent, but find that the law is comparatively new and could locate nothing which indicated an answer. For that reason, I am submitting the same to you, and in order to give you the question exactly as Mr. H. asked it, I quote the following directly from his letter:

" 'A question has arisen in connection with the House Trailer Tax for which the section, 4503.06 R. C. does not seem to contain any definite instructions. It has to do with the assessment and collection of the tax and penalties of an occupant whose application admittedly indicates delinquent tax and/or penalties in another county. An example:

" 'A. A man purchases and occupies a house trailer in October of 1954 in another county. He paid no tax on same.

" 'B. He also occupied the trailer on April 1, 1955 and paid no tax during the month for the tax year 1955.

" 'C. He moves the trailer to Stark County May 20, 1955 and appeared at the office of the County Auditor on June 1, 1955 to pay the tax.

" 'Question #1 is, Should the Stark County Auditor assess him a penalty of \$50.00 since he admitted occupancy over thirty days previously or should the tax only for 1955 of \$18.00 be assessed since he did not occupy same *in* Stark County for over thirty days?

" 'Question #2 is, Should the Stark County Auditor assess the Penalty for 1955 and retain same or forward same to the other county?

“Question #3 is, Should the Stark County Auditor attempt to collect old delinquencies which are obvious and admitted by data on the application (in the example, \$59.00 for 1954) but which occurred in another county? If he should collect same would Stark County retain same or forward to the other county for distribution to the subdivision in which the trailer was located?

“If you rule that, in answer to question #1, tax only of \$18.00 should be collected by the Stark County Auditor since the trailer was not occupied over thirty days in Stark County the possibilities are unlimited for a lot of border jumping by occupants who became delinquent in one county and sought to avoid paying the \$50.00 penalty by taking up or merely claiming residence in a nearby county and *after* getting the tax paid certificate in same *returning* to the original county.’

“In my examinations of the house trailer tax in Stark County I have noted numerous applications indicating occupancy in other counties of the state during years previous to the current year for which a tax paid certificate is sought. I am sure that the county auditors of many other counties have been wondering what to do about these old delinquencies.”

The *purpose* of the tax here in question is stated in the initial sentence of Section 4503.06, Revised Code, as follows:

“A tax shall be 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 this section. \* \* \*” (Emphasis added.)

This section further provides:

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

In the case you describe it is clear that the tax for the year 1954 became due in October of that year. Because the trailer was then located in another county, it follows that the tax for such year was levied to supplement “the general revenue funds of the local subdivisions” *in such other county*. Accordingly, by whatever means or agency such delinquent tax is collected, it is clear that the proceeds must be paid to such subdivisions in such other county.

As to the *collection* of the tax, Section 4503.06, *supra*, provides :

“\* \* \* The tax shall be collected by and paid to the county auditor of the county in which the house trailer is located at the time the owner makes application for registration as provided in this section. The tax shall be as follows :

“(1) If the application is made on or after the first day of April and prior to the first day of July, the tax is eighteen dollars. \* \* \*”

The term “application for registration” apparently refers to the filing with the auditor by trailer owners of forms prescribed by the tax commissioner, and the issuance of a certificate by the auditor evidencing payment of the tax. In this connection, Section 4503.06, *supra*, provides :

“The tax commissioner shall prescribe forms for use in the collection and payment of the tax which shall show the name of the applicant, his agent, each taxing district in the county in which 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 commissioner requires.

“\* \* \* Upon the collection of the tax the auditor shall issue a certificate, the form, character, and lettering of which shall be prescribed by the tax commissioner. Such certificate shall be valid in any county during the year for which it is issued.”

Here it will be seen that the statute does not *expressly* make it the duty of a trailer owner to apply for registration but the duty to do so is clearly implied as an incident of the duty to pay the tax. In this connection it is clear also that the owner, in the case you have described, was under the duty to apply for registration, and to pay the tax then due, in October 1954 *in the county in which the trailer was then located*.

The mere fact that he failed to discharge this duty cannot be supposed to defeat a present effort by the auditor of such other county to collect such tax on the theory that the duty to collect is imposed on “the county auditor of the county in which the house trailer is located *at the time the owner makes application for registration*.”

In this connection Section 4503.06, *supra*, provides :

“If the owner of a house trailer fails to pay the tax within the prescribed time, the county auditor, in addition to any other remedy provided by law for the collection of taxes, shall enforce collection by a civil action in the name of such auditor against the owner for the recovery of the unpaid taxes.”

Here the words "county auditor" may be regarded as sufficient to include any such officer who is under a duty to collect the tax; and since we have concluded that the auditor of the "other county" was under such a duty in October, 1954, and because a statutory duty to collect taxes is a continuing one, such term must be deemed to include such officer.

Under the plain language of the statute, however, it is likewise the duty of the auditor of the county where "application for registration" is made to collect "the tax" imposed by this section; and the term "the tax," as employed in the third sentence of Section 4503.06, supra, has reference to the tax levied, as provided in the second preceding sentence, for the benefit of the "subdivisions in which the house trailer is located at the time the tax becomes due," which subdivisions may or may not be located in another county. I conclude, therefore, that upon an application for registration being made which discloses liability for delinquent taxes and penalties under this section, the auditor receiving such application has the duty to collect the same.

This does not mean, however, that such officer could withhold registration where payment of the current year's tax is tendered. On this point your attention is invited to Opinion No. 1383, Opinions of the Attorney General for 1952, page 312, the first paragraph of the syllabus in which reads:

"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."

In this connection it was pointed out in this opinion, pages 315, 316:

"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.”

In harmony with this ruling, therefore, as to the case here in question, it would appear proper for the auditor upon receipt of an application for registration which discloses delinquent tax and penalties, to make demand for payment thereof; but where liability for such payment is disputed the auditor should issue the certificate of registration upon payment of the current year’s tax. Thereafter, either such auditor, or the auditor of the county in which the trailer was located when such delinquent tax and penalty accrued, may proceed to enforce payment by a civil action as provided by statute.

The penalty involved in the case here under consideration accrued at the time the trailer was located in another county and the amount thereof must, therefore, be regarded as a part of the delinquency liability and not as a part of the tax due for the current year. Such amount, if locally collected, would be considered as part of the amount due the subdivision concerned in the “other county.”

Although the statute makes no express provision for the payment of delinquent amounts by the auditor who collects them to the authorities of another county, such authority must be implied in (1) the duty to collect such amounts and (2) the purpose for which the tax is levied. Although

the statute provides that the auditor making the collection shall distribute the proceeds to the subdivisions concerned, I perceive no reason why this should not be done indirectly by payment to the auditor of the "other county," especially as it is his duty also to make such collections, and he is in a better position to determine the ratio of distribution which the statute requires to be employed.

Accordingly, in specific answer to your inquiry, it is my opinion that :

1. Where an application for registration of a house trailer under the provisions of Section 4503.06, Revised Code, discloses liability for an amount of delinquent tax imposed under the provisions of this section, it is the duty of the county auditor receiving such application to make demand on the applicant for payment of such tax and any penalties which have accrued; but if the applicant disputes liability for such delinquency, the county auditor must accept payment of the current year's tax imposed by this section and issue a certificate of registration therefor. Paragraph 1 of the Syllabus of Opinion No. 1383, Opinions of the Attorney General for 1952, page 312, approved and followed.

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Respectfully,

C. WILLIAM O'NEILL

Attorney General