

**OPINION NO. 2006-033****Syllabus:**

Taxes on personal property that is the subject of a petition for reassessment become delinquent, for purposes of the five percent deposit into the delinquent tax and assessment collection fund, if they remain unpaid after sixty days following the county auditor's certification to the county treasurer, pursuant to R.C. 5711.32(C) and R.C. 5711.33(A)(1), that a final determination has been rendered on the petition for reassessment, and the amount of the adjusted deficiency.

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**To: Gerald L. Heaton, Logan County Prosecuting Attorney, Bellefontaine, Ohio**

**By: Jim Petro, Attorney General, July 24, 2006**

You have asked at what time personal property taxes, which are the subject of a petition for reassessment, become delinquent for purposes of deposit into the delinquent tax and assessment collection (DETAC) fund. R.C. 321.261 requires that five percent of delinquent property taxes collected by the county treasurer be deposited into the DETAC fund.

We begin with a brief explanation of the statutory process for assessing and collecting taxes on personal property.

**Taxation of Personal Property**

All personal property located and used in business in Ohio is subject to taxation, unless otherwise expressly exempted. R.C. 5709.01(B). Local taxing authorities are authorized to levy taxes on the real and personal property within their respective jurisdictions, subject to statutory and constitutional limitations. R.C. 5705.03(A); R.C. 5705.06. *See* Ohio Const. art. XII, §§ 2, 5; R.C. 5705.03(B); R.C. 5705.07. All taxes on tangible personal property are extended on the general tax list and duplicate of personal property by the county auditor of the county in which the property is located. R.C. 319.29; R.C. 5705.03(C). *See also* R.C. 5719.03; R.C. 5719.031. The county auditor extends against the amount of personal property on the general tax list and duplicate, the same rates that were applied to real and public utility property in the preceding year, and determines the sums to be levied on the amount of the personal property. R.C. 319.31.

Personal property taxes are collected by the county treasurer. R.C. 5705.03(C); R.C. 5719.02; R.C. 5719.021; R.C. 5719.03; R.C. 5719.031. *See also* R.C. 321.08-.10. Payments of personal property taxes are credited to the county's

undivided general tax fund, R.C. 319.14(B); R.C. 321.08(C), and distributed to subdivisions and taxing units as prescribed by statute. *See, e.g.*, R.C. 319.49-.51; R.C. 321.31; R.C. 321.33; R.C. 321.34.

### **Assessment of Personal Property for Taxation and Petitions for Reassessment**

You have asked about taxes paid by a company that owns taxable personal property in more than one county. Such multi-county taxpayers must file a “combined return” with the state tax commissioner, and the tax commissioner is charged with assessing the property that is required to be listed in the taxpayer’s return (whether it is listed or not, and whether a return has been filed or not). R.C. 5711.13; R.C. 5711.24. *See also* R.C. 5719.02 (a taxpayer who makes a combined return to the tax commissioner must pay the entire amount of taxes charged against it on the general personal property duplicate of each county at the time prescribed by law). The tax commissioner’s assessment is evidenced by an assessment certificate, which he must certify to the auditor of each county in which a taxpayer has taxable property. R.C. 5711.13; R.C. 5711.24; R.C. 5711.25. When a county auditor receives from the tax commissioner an assessment certificate that requires a correction to the auditor’s records, and tax lists and duplicates, he must compute the amount of taxes represented by any deficiency and enter all deficiency items on the proper tax lists, together with the amount of taxes computed thereon. R.C. 5711.32(A)(1). The auditor then certifies the amount of the deficiency to the county treasurer, R.C. 5711.32(A), who proceeds to collect the amount of the deficiency plus interest. R.C. 5711.32(A) and (B); R.C. 5711.33(A).

If the tax commissioner assesses any property in excess of the value or amount listed in a taxpayer’s return (or assesses any property not listed in, or omitted from, a return), he must mail notice of the assessment to the taxpayer and transmit a copy of his determination to the county auditors. R.C. 5711.31. The taxpayer may file a written petition for reassessment within sixty days after the tax commissioner mails his notice of assessment. *Id.* Upon receiving a petition for reassessment, the tax commissioner must notify the auditor and treasurer of each county that has any part of the assessment on its tax list and duplicate. *Id.* If a petition for reassessment has been filed or is on appeal, the deficiency at issue is not subject to collection by the county treasurer, “unless the taxpayer desires to pay it.” R.C. 5711.32(B)(1)(b).<sup>1</sup> *See also* R.C. 5719.04(B) (the county auditor shall prepare a separate list and duplicate of personal property taxes “that remain unpaid but are excepted from collection pursuant to [R.C. 5711.32]”).

In response to a petition for reassessment, the tax commissioner may correct an assessment as he “finds proper.” R.C. 5711.31. The commissioner’s decision is final, although a taxpayer has the right to appeal the commissioner’s decision to the board of tax appeals and then to the courts. *Id.* *See* R.C. 5717.02-.04 (appeals

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<sup>1</sup> Any part of a deficiency that is *not* part of a petition for reassessment must be paid with interest within sixty days after the county auditor certifies the amount of the deficiency to the county treasurer. R.C. 5711.32(B)(2). *See also* R.C. 5711.32(A); R.C. 5711.33.

of tax commissioner's final determinations to the board of tax appeals, courts of appeals and supreme court). After the tax commissioner makes a final determination on a petition for reassessment or, if his determination is appealed, after the decision of the board of tax appeals or a court becomes final, the tax commissioner must forward a corrected assessment certificate to, or otherwise notify, the county auditor; the auditor must correct his records, and tax lists and duplicates, and compute the adjustment to the amount of the deficiency previously certified to the treasurer. R.C. 5711.31; R.C. 5711.32(C). The auditor must certify to the county treasurer that there has been a final determination and the resulting correction to the amount of the deficiency; the treasurer then must proceed to collect any unpaid balance with interest. R.C. 5711.32(C); R.C. 5711.33(A).

### **Delinquent Taxes**

The date of the county auditor's certification of a final determination to the treasurer is significant, because the taxpayer is required to pay the unpaid balance of any deficiency, including interest, within sixty days after the date of this certification. R.C. 5711.32(C); R.C. 5711.33(A)(1); R.C. 5719.041. If the taxes remain unpaid after the sixtieth day following the date of the auditor's certification, "*such charges shall be deemed to be delinquent taxes,*" R.C. 5711.33(C). They are subject to a ten percent penalty,<sup>2</sup> continue to accrue interest, R.C. 5711.32(C); R.C. 5711.33(A) and (B); R.C. 5719.041, and must, along with the penalty, be added by the county auditor to the delinquent tax duplicate. R.C. 5711.33(C). *See also* R.C. 5719.05 (the county treasurer must collect the taxes and penalty on the delinquent duplicate delivered by the auditor pursuant to R.C. 5719.04, and any interest thereon).<sup>3</sup>

Although an assessment under review may be considered a "deficiency" assessment, the taxes are not deemed *delinquent*—so as to be subject to the ten percent penalty and inclusion on the delinquent tax list—until after the expiration of the sixty-day period following the auditor's certification to the treasurer as provided in R.C. 5711.32(C) and R.C. 5711.33(A)(1).

### **DETAC Fund**

As mentioned above, payments of personal property taxes are credited to

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<sup>2</sup> A taxpayer is required to pay only one-half of the penalty if the taxes are paid within ten days after the sixtieth day. R.C. 5711.33(B). *See also* R.C. 5711.33(D) and (E) (when a penalty on delinquent taxes shall be remitted).

<sup>3</sup> Immediately following the October settlement of personal property taxes between the county auditor and treasurer, *see* R.C. 319.49; R.C. 319.50; R.C. 321.24, the county auditor must make a delinquent tax list and duplicate of all general personal property taxes remaining unpaid, as shown by the treasurer's books and the list of taxes returned as delinquent by the treasurer to the auditor at settlement. R.C. 5719.04(A). The tax list and duplicate must contain the name of the person charged, the amount of the taxes, and the amount of the penalty, due and unpaid. *Id.* The auditor must deliver the duplicate to the treasurer on December 1st annually, and the treasurer must then prepare and mail tax bills to all persons charged with delinquent taxes. *Id.*

the undivided general tax fund of the county, and apportioned to the county's various subdivisions and taxing units. Payments of delinquent personal property taxes, interest, and penalties are likewise credited and apportioned, R.C. 319.45; R.C. 319.50(C); R.C. 5711.33(B); R.C. 5719.041, except that five percent of all delinquent personal property taxes collected by the county treasurer must be deposited into the DETAC fund. R.C. 321.261. The board of county commissioners must appropriate one-half of the moneys in the DETAC fund to the county treasurer and one-half to the county prosecuting attorney. *Id.* The treasurer and prosecutor must use the moneys solely in connection with the collection of delinquent taxes and assessments. *Id.* See generally 1999 Op. Att'y Gen. No. 99-054 at 2-332 (the county is not authorized to "remove money that has been properly paid into the DETAC fund and return it to the undivided general tax fund to be distributed as if it had not been paid into the DETAC fund"); 1993 Op. Att'y Gen. No. 93-046 (the board of county commissioners may not appropriate money from the DETAC fund to the clerk of courts, even though the clerk would use the money solely for expenses incurred in connection with delinquent tax collections).

Incorporating our previous discussion of when taxes become delinquent, we conclude that, taxes on personal property that is the subject of a petition for reassessment become delinquent for purposes of the five percent deposit into the DETAC fund after the expiration of the sixty-day period following the date that the county auditor certifies to the county treasurer, pursuant to R.C. 5711.32(C) and R.C. 5711.33(A)(1), that a final determination on the petition has been rendered, and the amount of the adjusted deficiency.

#### **In This Instance**

In this instance, the tax commissioner issued an assessment certificate for taxable personal property for several tax years, and the taxpayer filed a petition for reassessment. The taxpayer then appealed the tax commissioner's final determination to the board of tax appeals. During the period of the appeal, the taxes at issue were carried on the delinquent tax list. Ultimately, the tax commissioner, taxpayer, and county auditors entered into a settlement agreement to request the board of tax appeals to remand the pending appeal to the tax commissioner for the purpose of modifying his previous assessments and issuing new final assessment certificates establishing agreed-upon values for the personal property. The board of tax appeals approved the request, and remanded the matter to the tax commissioner, who issued final assessment certificates in accordance with the agreement. The county auditor received them on October 15, 2004, and on October 27, 2004, certified to the treasurer a deficiency amount owed by the taxpayer, including interest but no penalty. The treasurer issued a bill for the deficiency and interest on October 28, 2004. You have stated that the deficiency amount and interest were carried on the delinquent tax list and duplicate after the county's receipt of the tax commissioner's final assessment certificates, the auditor's certification of the final determination and deficiency to the treasurer, and the treasurer's issuance of the tax bill. The taxpayer paid the bill thirteen days later, on November 9, 2004—less than sixty days after the auditor certified the deficiency to the treasurer.

Upon receipt of the taxpayer's payment, the auditor deducted five percent as

a DETAC fee and distributed the balance to the appropriate subdivisions. The board of county commissioners appropriated the DETAC fee evenly between the prosecutor and treasurer.

You ask whether the taxes paid by the taxpayer on November 9, 2004 were delinquent, such that five percent of the taxes should have been deposited into the DETAC fund, or whether the entire amount of the taxes should have been deposited into the undivided local government fund for distribution to the subdivisions within the county.

As can be concluded from the foregoing discussion, the payments made by the taxpayer on November 9, 2004 were for deficient but not delinquent taxes. Where a taxpayer has filed a petition for reassessment, the taxpayer has sixty days after the county auditor certifies to the county treasurer that a final determination on the petition has been made, and the adjusted amount of the deficiency, before the amount determined to be owing becomes delinquent. Although interest continues to accrue, the taxes are not delinquent and no penalty attaches until the sixty-day period expires.

In this instance, the date of certification was October 27, 2004, and thus, the sixty-day period expired on December 26, 2004. The taxes were paid thirteen days after the date of certification, on November 9. Therefore, the taxes were not delinquent, and no penalty was assessed (although the taxes were erroneously entered on the delinquent tax list). The tax payments should be deposited into the undivided general tax fund rather than paid into the DETAC fund.

In conclusion, it is my opinion, and you are advised that, taxes on personal property that is the subject of a petition for reassessment become delinquent, for purposes of the five percent deposit into the delinquent tax and assessment collection fund, if they remain unpaid after sixty days following the county auditor's certification to the county treasurer, pursuant to R.C. 5711.32(C) and R.C. 5711.33(A)(1), that a final determination has been rendered on the petition for reassessment, and the amount of the adjusted deficiency.