

In the event that said application is not made on or before the 20th day of January, the penalty of \$1.00 shall attach, and there seem to be no exceptions to this rule provided in the statute.

In view of the foregoing, you are specifically advised that where the owner, keeper or harbinger of a dog required to be registered under Section 5652 of the General Code fails to make application and pay the registration fee prior to January 21st, he is required to pay the penalty of \$1.00, which must be paid with the registration fee. The fact that the 20th of January falls on Sunday will not excuse the payment of the penalty.

Respectfully,
GILBERT BETTMAN,
Attorney General.

71.

TAXING OF FOREST LANDS AT FRACTION OF LOCAL RATE CONSTITUTIONAL—PROPERTY TAXABLE WHEN NOT EXEMPT ON TAX LISTING DAY—WHEN EXEMPTION UNDER SECTION 5554-2, GENERAL CODE, UNAUTHORIZED.

SYLLABUS:

(1) *The provisions of Section 5554-2 of the General Code, which permit forest lands to be taxed annually at fifty percent of the local rate, are authorized under Section 36, Article 2 of the Constitution of Ohio, which is authority for exemptions in addition to those found in Section 2 of Article 12 of the Constitution of Ohio.*

(2) *If property is not exempt on tax day, it is liable to taxation for the current year, although it afterward becomes exempt; where the State Forester does not file with the county auditor the certificate provided in Section 5554-2 of the General Code, until after the tax listing day in any year, or the six months limitation after the filing of the application has not expired, the exemption provided in said section does not apply to the current year.*

COLUMBUS, OHIO, February 6, 1929.

HON. G. H. BIRRELL, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads as follows:

"I have received a request for advise, from the county auditor, of Trumbull County, a copy of which letter is enclosed. Since this raises a question which must be of interest to every county auditor in the State of Ohio, I am referring this matter to you for an opinion.

The question is: Whether the provisions of Sec. 5554-2 of the General Code, which would permit forest land to be 'taxed annually at fifty per cent of the local rate', are not in conflict with Article 12, Section 2 of the Constitution of the State of Ohio, known as the Uniform Tax Rule.

If this section is not in conflict with the Constitution, can the county auditor apply its provisions to the June settlement of taxes when the certificate from the State Forester does not reach the county auditor until after the tax listing day in April of any year?"

The copy of the letter from the county auditor to which you refer reads as follows:

"Section 5554-2 of the General Code provides that land which has been certified as forest land 'shall hereafter be taxed annually at 50 percentum of the local rate'. Two parcels of land have been certified to me by the State Forester as having qualified for classification as forest land .

If in view of the fact that Article 12-2 of the Constitution provides for 'taxation by uniform rule', kindly advise me if I can legally refund to the owners of the land which has been classified as forest land 50% of the taxes paid, or remit 50% of the taxes assessed or assess 50% of the taxes levied on other property of the same value.

The State Forester wrote me under date of July 14, 1927, in reference to land previously classified as forest land, "The first collection of taxes under the classification will not become operative until next June.

In view of the fact that the first collection of taxes in any year is December and the second half is collected in June, and that Section 5554-2 provides that such land 'should hereafter be taxed annually at 50 percentum of the local rate', kindly advise me if this tax payer, who was entitled to the reduction permitted by this section in December, is entitled to the reduction rate at the June collection."

You first inquire as to whether the provisions of Section 5554-2 of the General Code, which permits forest lands to be taxed annually at fifty percent of the local rate, "are not in conflict with Article 12, Section 2 of the Constitution of the State of Ohio, known as the Uniform Tax Rule".

Your difficulty arises from the fact that you have probably overlooked the provisions of Section 36 of Article 2 of the Constitution of the State of Ohio, which provides as follows:

"Laws may be passed to encourage forestry, and to that end areas devoted exclusively to forestry may be exempt, in whole or in part from taxation. Laws may also be passed to provide for converting into forest reserves such lands or parts of lands as have been or may be forfeited to the state, and to authorize the acquiring of other lands for that purpose; also, to provide for the conservation of the natural resources of the state, including streams, lakes, submerged and swamp lands and the development and regulation of water power and the formation of drainage and conservation districts; and to provide for the regulation of methods of mining, weighing, measuring and marketing coal, oil, gas and other minerals."

This section expressly authorizes the Legislature to exempt said forest lands, in whole or in part, from taxation and said exemption is, therefore, not in conflict with the provisions of Section 2, of Article 12, of the Constitution of the State of Ohio.

Under the provisions of said Section 36, laws may be passed to the end that areas devoted exclusively to forestry may be exempt, in whole or in part, from taxation. This section of the Constitution was adopted September 3, 1912, and under the authority of its provisions, the Legislature in 1925, enacted Amended Senate Bill, number 186, entitled:

AN ACT

"To provide for the taxation of forest lands, to promote the production of timber, provide for utilization of idle and low-grade agricultural lands,

and to encourage the general practice of forestry among private owners." (111 Ohio Laws, page 260).

Section 1 of said act, Section 5554-1 of the General Code defines forest lands.

Section 2 of said act, Section 5554-2 of the General Code, provides for taxation of forest lands devoted exclusively to forestry or timber growing, and the rate thereon; also the method of determining forest lands.

Said section as amended, 112 Ohio Laws, page 181, reads as follows:

"Forest land, which the owner thereof declares to be devoted exclusively to forestry or timber growing under the rules and regulations hereinafter prescribed, shall hereafter be taxed annually at fifty per centum of the local rate upon the true and actual agricultural value of the land as determined by the proper taxing authorities. In fixing the valuation of such lands, the assessments shall be the same as that for similar land in the vicinity, and the value of any immature or mature timber shall not be considered in assessing such valuation; but all improvements, and all values other than agricultural, shall be valued as prescribed by law, and shall bear the full rate of local taxation.

The method of determining forest lands or land bearing forest growth, which shall be subject to the provisions of this section, and the manner in which an owner of forest lands may declare such lands are devoted to timber growing, shall be as prescribed under the rules and regulations hereinafter referred to, but in no case shall areas devoted to forestry be considered as subject to the provisions of this section until such declarations of the owners have been approved and certified by the state forester, and copies of same filed by the state forester with the auditor of the county in which such lands are located. No application for classification of forest lands under this act shall become operative within six months from date of filing of same, but shall be acted upon by the state forester within that period."

It is noted that under the provisions of this section, areas devoted to forestry, shall in no case be considered as subject to said provisions until the declarations of the owners of said forest lands have been approved and certified by the State Forester, and copies of same filed by said State Forester with the auditor of the county in which such lands are located. It is also noted that while the State Forester shall act upon said application within six months, no application for said classification shall become operative within six months from the date of filing the same.

Your second question is as to whether the county auditor may apply the provisions of Section 554-2 of the General Code, to the June collection of taxes when the certificate from the State Forester does not reach the county auditor until after the tax listing day in April of any year.

There are no statutes definitely fixing a date as of which the taxable status of real property must, or can be determined.

In the case of *The German Evangelical Protestant Cemetery vs. Brooks, Treas.*, 8 O. C. C., 439, the headnotes read as follows:

"Where lands were purchased by a cemetery association, as an addition to a tract already owned and used by it as a grave yard, or grounds for burying the dead, and some work was done thereon to prepare it for cemetery purposes, but the same was not platted, or lots therein sold, or any interments made therein until after the day preceding the second Monday of April, 1891,

such lands are not exempted from taxation for the year 1891, and under the provisions of Sections 2732 or 3581, Revised Statutes."

At page 440 of the opinion it was said that :

"We are of the opinion that on the day on which the lien of the state for taxes levied for all purposes for the year 1891, attached to all real property subject to such taxes, viz., the day preceding the second Monday in April of that year, this tract of twenty-eight acres was not being used exclusively as a grave yard or grounds for burying the dead. At that time, although the title to the same was in the cemetery, it had not, in fact, been appropriated to that purpose. Though some preliminary work had been done on the grounds, the platting was not completed, * * * and certainly no interment had been made therein, and before this the lien of the state, for the taxes, had attached to the land, and could not be avoided for that year by the subsequent use of the land for burial purposes."

In Cooley on Taxation, 4th Edition, Section 712, it is stated that :

"If property is not exempt on the tax day, it is liable to taxation for the fiscal year although it afterward becomes exempt."

In the case of *Myers vs. Aikins*, 8 O. C. C., 228, the fourth paragraph of the headnotes reads as follows :

"Where real property has been exempt from taxation for a number of years, and the causes that make it exempt cease to exist longer, on July 1, 1893, there is no authority in law for placing such property on the tax lists for taxation before the year 1894."

On page 234 of the opinion it was said as follows :

"It is claimed that the general intent of the constitution is that each parcel of property shall bear its just proportion of the burden of taxation ; that this general rule was suspended by the laws of the State only while this property was used, or owned and used for purely charitable purposes. As soon as it was divorced from its charitable purposes, it at once came under the general rule again. That although it was improperly put on the tax lists, for the reason it was then exempt, yet if it was not thus exempt when this action was brought then the court should leave it to bear its burden of taxation from July 1, 1893. This line of argument would lead to the conclusion, that if property becomes exempt after an assessment has become a lien upon it, then such taxes and lien should be removed from the same, without payment. It seems to us much more logical to say that if land becomes exempt from taxation after a tax becomes a lien on the same, that such taxes must be thereafter paid, for the reason that the State has fixed a time for the return of assessors, which is to be a guide to the auditor in making up the tax lists, a time when the auditor shall prepare the lists, and when the taxes shall become a lien. And these and other provisions of the law point clearly to a time when the status of real property is to be determined as to whether it is exempt or not. At this designated time this property was exempt. There is no provision of law for putting it on the tax lists until the next lists are made up."

In consideration of the foregoing, it seems reasonable to conclude that the status of property whether taxable or exempt, is fixed as taxable or exempt property for the current year as of the day preceding the second Monday in April. As before stated, the application cannot, under the provisions of Section 5554-2, supra, become effective until the expiration of six months after its filing. Accordingly, unless it be filed at least six months prior to tax listing day, there would exist no authority for exemption for the then current year.

Specifically answering your questions, it is my opinion:

(1) The provisions of Section 5554-2 of the General Code, which permit forest lands to be taxed annually at fifty percent of the local rate, are authorized under Section 36, Article 2 of the Constitution of Ohio, which is authority for exemption in addition to those found in Section 2 of Article 12 of the Constitution of Ohio.

(2) If property is not exempt on tax day, it is liable to taxation for the current year, although it afterwards becomes exempt; where the State Forester does not file with the county auditor the certificate provided in Section 5554-2 of the General Code, until after the tax listing day in any year, or the six months limitation after the filing of the application has not expired, the exemption provided in said section does not apply to the current year.

Respectfully,
GILBERT BETTMAN,
Attorney General.

72.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS
DUTIES AS PROHIBITION COMMISSIONER—RUPERT BEETHAM.

COLUMBUS, OHIO, February 6, 1929.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a bond upon which Rupert Beetham appears as principal and the United States Fidelity and Guaranty Company as surety, for the penal sum of ten thousand dollars (\$10,000.00), conditioned for the faithful performance of the duties of the said Rupert Beetham as Prohibition Commissioner.

Finding said bond in proper legal form and duly executed, the same is hereby approved as to form and returned herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.