

4218.

TAXES—DELINQUENT INTANGIBLE TAXES PAYABLE INTO UNDIVIDED CLASSIFIED PROPERTY TAX FUND DISTRIBUTED UNDER SEC. 5639, G. C.

SYLLABUS:

1. *Delinquent intangible taxes when collected, which have been levied by Section 5638, General Code, should be paid into the undivided classified property tax fund in the county treasury and distributed in accordance with the provisions of Section 5639, General Code.*

2. *There is no authority for distributing such moneys in accordance with the proportionate distribution thereof made during the year when such taxes were due.*

COLUMBUS, OHIO, May 3, 1935.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date is as follows:

“We respectfully request your written opinion upon the following:

In the event that a board of library trustees does not receive, under the provisions of Section 5639, General Code, providing for distribution of the classified property taxes, the amount budgeted for such library under the provisions of Section 5625-24, General Code, in any one year, may such board have a prior claim against delinquent classified property taxes for that year collected in a subsequent year, to apply on the deficiency of a former year?”

Section 5625-24, General Code, prescribing the duties and authority of the county budget commission with respect to the annual budgets laid before that commission by the county auditor, provides inter alia that:

“The budget commission shall also have authority to fix the amount of proceeds of classified property taxes, collected within the county, to be distributed to each board of public library trustees which shall have qualified or be qualified as provided in section 5625-20 of the General Code for participation in the proceeds of such taxes, * * * .”

Section 5638, General Code, after levying annual taxes on certain kinds and classes of intangible property, provides that “the objects of the taxes so levied are those declared in sections 5639 of the General Code to which only such taxes shall be applied”. Section 5639, General Code, provides in so far as pertinent as follows:

“At each settlement of undivided classified property taxes, the county treasurer shall distribute the undivided classified property tax fund in the county treasury as follows:

To the state of Ohio, one-fourth of one per cent thereof, which when paid into the state treasury in the manner provided by law shall constitute a fund in addition to that provided in section 5414-19 herein enacted, for the use of the tax commission of Ohio in administering the system for the assessment of

tangible and intangible personal property and shall not be used or appropriated for any other purpose.

To each board of public library trustees in the county, which shall have qualified or be qualified according to law for participation in such fund, fifty per centum of the amount set forth in the annual budget and allowed by the budget commission as a receipt from this source. The amount or amounts so distributed, together with the fees of the auditor and treasurer, shall be deducted pro rata from the shares of the undivided classified property taxes originating in the several municipal corporations in the county, and in the territory outside of the municipal corporations therein, respectively.

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* * * .”

The time of settlement of undivided classified property taxes when distribution thereof is made under the foregoing section is prescribed in Section 2602, General Code, which section provides in part as follows:

“On or before the tenth day of May and on or before the tenth day of October of each year the county auditor shall attend at his office to make settlement with the treasurer of the county and ascertain the amount of general personal and classified property taxes with which such treasurer is to stand charged. At each October settlement, he shall take from the duplicates previously put into the hands of the treasurer for collection a list of all such taxes as the treasurer has been unable to collect, therein describing the assessments on which such delinquent taxes are charged as described on such duplicates, and note thereon in a marginal column the several reasons assigned by the treasurer why such taxes could not be collected. * * * * .”

The duties of the county auditor with respect to the list of taxes which have not been collected are set forth in Section 5694, General Code. This last mentioned section provides that the county auditor shall make a tax list and duplicate of such unpaid taxes in the following language:

“Immediately after each October settlement, the county auditor shall make a tax list, and duplicates thereof, of all the taxes, other than those upon real estate specifically as such, remaining unpaid, as shown by the treasurer's books and the list of such taxes returned as delinquent by him to the auditor at such settlement and at the preceding August settlement, and also all such taxes, assessed by him under authority of section 5398 of the General Code, or by the tax commission of Ohio 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.
* * * * .”

The following section of the General Code, Section 5695, provides as follows:

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

Although Section 5695, supra, was enacted long before the foregoing provisions of the intangible tax law, it has not been repealed or amended since the intangible tax law was first enacted and it might well be contended that it prescribes the duties of the county treasurer with respect to the collection of delinquent classified property taxes.

Following this construction, delinquent intangible property taxes levied by Section 5638, supra, are, in view of the provisions of Section 5695, supra, to be distributed to the appropriate fund, which in this case is the undivided classified property tax fund. I find no authority for distributing the undivided classified property tax fund except as set forth in Section 5639, supra, at the time of the May and October settlements. The amount which then may be distributed to boards of public library trustees is therein limited to fifty per cent of the amount set forth in the annual budget and allowed by the budget commission. No specific provision is made for further distribution of the proceeds of delinquent intangible taxes as such which are subsequently collected, but, on the contrary, it appears that such proceeds shall be placed in the undivided classified property tax fund in the county treasury. It was apparently contemplated that excess funds representing such delinquent taxes collected may be taken into consideration by the budget commission the following year, after such delinquent taxes are collected, in fixing a somewhat greater amount to be distributed to public library trustees under the provisions of the portion of Section 5625-24, supra.

I am aware of an opinion of my predecessor upon a somewhat analogous question appearing in Opinions of the Attorney General for 1932, Vol. I, page 355, the syllabus of which is as follows:

"If, prior to the year 1931, taxes were assessed for the benefit of a public library which taxes were permitted to become delinquent, when such taxes are collected during any subsequent year by the county treasurer, they must be credited to such public library and paid out in the manner provided by law."

The question here under consideration is easily distinguishable from that under consideration in the foregoing opinion. Section 5625-3 of the General Code, relating to real estate taxes and hence the tax which was then levied for libraries, was cited in the opinion, requiring the proceeds of such a tax to be deposited to the credit of the appropriate fund, obviously the library fund. In the instant case, as has been hereinabove pointed out, delinquent intangible taxes are credited to the undivided classified property tax fund.

In respect to the provisions of Article XII, Section 5 of the Constitution, it must be borne in mind that the intangible tax, although not locally levied, is nevertheless a local tax levied for local purposes (*Friedlander vs. Gorman*, 126 O. S. 163), and is not governed by the requirement of this section of the Constitution that the proceeds of such tax shall be applied only to the object for which the tax was levied. The case of *Cleveland vs. Zangerle, Auditor*, 127 O. S. 91, decided July 12, 1933, was an action seeking to enjoin the county officials from distributing tax moneys obtained under the intangible tax law except in accordance with the provisions of law as the same existed on January 1, 1933, and prior to the enactment of Amended Substitute Senate Bill No. 239, passed March 22, 1933. The court said at pages 92 and 93:

"No governmental subdivision of the state has any vested right, at least until distribution is made, in any taxes levied and in the process of collection. Until such distribution is made the Legislature of Ohio is fully competent to divert the proceeds among those local subdivisions as it deems best to meet the emergencies which it finds to exist. * * *"

We are of the opinion that the provisions of Am. Sub. Senate Bill No. 239 are not violative of Article XII, Section 5 of the state Constitution. In other states having similar constitutional provisions, their courts, with substantial unanimity, have held that such a constitutional provision pertains to the levying and distribution of general taxes for state purposes and not to taxes levied and distributed for local purposes. We have heretofore held in the Friedlander case, *supra*, that the original Intangible Tax law, in respect to its distributive features, did not levy and distribute the proceeds of these taxes for state purposes."

It is, of course, conceivable that delinquent intangible property taxes collected in any year which are placed in the undivided classified property tax fund may not be distributed in the same proportion the following year as they would have been had they been collected during the year when they were due, but in view of the Zangerle case, *supra*, no provision of the Constitution is thereby violated. The legislature has expressly provided in Section 5638, *supra*, that these taxes shall only be applied to the objects declared in Section 5639, which is the only section authorizing their distribution.

It is therefore my opinion that:

1. Delinquent intangible taxes when collected, which have been levied by Section 5638, General Code, should be paid into the undivided classified property tax fund in the county treasury and distributed in accordance with the provisions of Section 5639, General Code.
2. There is no authority for distributing such moneys in accordance with the proportionate distribution thereof made during the year when such taxes were due.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4219.

APPROVAL, CERTAIN LEASES FOR OFFICE ROOMS IN COLUMBUS AND ATHENS, OHIO, FOR USE OF THE TAX COMMISSION, SALES TAX DIVISION AND THE TREASURER OF STATE.

COLUMBUS, OHIO, May 3, 1935.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval certain leases, as hereinafter set forth, granting to you, as Superintendent of Public Works, for the use of the Tax Commission, Sales Tax Division and the Treasurer of State, certain office rooms in Columbus and Athens, Ohio, as follows:

Lease from the Western and Southern Life Insurance Company of Cincinnati, Ohio, for the fifth, sixth and seventh floors and storeroom of the Peters Building at 62-68 East Gay Street, Columbus, Ohio. This lease is for a term of two years, beginning on the first day of January, 1935, and ending on the thirty-first day of December, 1936, by the terms of which the State will be required to pay eight hundred and forty-five dollars and sixty-three cents (\$845.63) as rent for January, 1935, and thirteen hundred