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SYLLABUS:

County auditors and county treasurers have no discretion in administering the penalty provisions of Section 4503.06, Revised Code, and the statutory penalty provided for under this section must be imposed and collected on late payments of the house trailer tax even though the owners of the house trailers, having a tax situs in the state, are temporarily outside the state

when the taxes become due and owing. (Second branch of syllabus in Opinion No. 2693, Opinions of the Attorney General for 1961, approved and followed).

Columbus, Ohio, December 27, 1963

Hon. Robert Webb
Prosecuting Attorney
Ashtabula County
Jefferson, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“There are a number of residents of Ashtabula County who own house trailers in which they reside. Many of these people go either to the South or the West during the winter months, so that these trailers are not actually occupied from the 1st of January up to the time of the owners return to this County. Many of these owners fail to pay the trailer tax within the time that it is due but do pay it shortly after returning to their residence in Ashtabula County.

“We would like to be advised whether or not a penalty should be imposed for those months during which the trailers were unoccupied because of their owners absence from the County.”

The applicable statutory provision is Section 4503.06, Revised Code, as amended by 130 Ohio Laws, H 228, effective September 30, 1963, which provides in part:

“(A) All house trailers in this state on the first day of January, except as otherwise provided, are subject to an annual tax, payable by the owner, for the privilege of using or occupying a house trailer in this state. The tax as levied in this section is for the purpose of supplementing the general revenue funds of the local subdivision in which the house trailer has its situs pursuant to this section.

“(D) The tax is collected by and paid to the county treasurer of the county containing the taxing district wherein the house trailer has its situs.

“(E) The tax shall be computed and assessed by the county auditor of the county containing the taxing district wherein the house trailer has its situs. * * *.

“(G) The tax is due and payable as follows:

1. When a house trailer acquires a situs in this state, as provided in this section, on or after the first day of January and on or prior to the thirtieth day of June, a minimum of one-half of the tax is due and payable immediately upon the expiration of a thirty day period commencing with the date the situs is acquired and one-half on or prior to the first day of October;

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“(H) If the payments of the tax are not made as provided in division (G) 1 or (G) 2 of this section, a penalty of five dollars or ten per cent of the taxes due, whichever is greater, shall be imposed and collected in addition to the tax due and owing.”

My predecessor in office in Opinion No. 2693, Opinions of the Attorney General for 1961, held that the owner of a house trailer need not actually inhabit the house trailer, which has a tax situs in Ohio on the first day of January, in order for the taxes to become due and owing. Rather, it is the use *or* the occupancy which gives rise to the tax liability. The second branch of the syllabus in that opinion states:

“2. The tax on house trailers, levied by Section 4503.06, Revised Code, applies to all such trailers used or occupied in this state, and not specifically exempted by that section; and there is no requirement that the house trailer be used for human habitation before the tax will apply.”

The house trailer tax shall be computed and assessed by the county auditor (Section 4503.06 (E), Revised Code). In computing and assessing the trailer tax, the county auditor has the obligation to exercise the same ordinary prudence and diligence in ascertaining that all accrued taxes due under this section are collected as he must use in performing his other duties. Opinion No. 1383, Opinions of the Attorney General for 1952.

Once the taxes are computed and assessed, the duty of collection is imposed on the county treasurer (Section 4503.06 (D), Revised Code), and, if any payments of taxes are not made when due, a penalty shall be imposed and collected in addition to the taxes due (Section 4503.06 (H), Revised Code). This language is not permissive; rather, it is mandatory and leaves no area for the discretion of the county auditor or county treasurer in determining

the time of assessing and collecting the house trailer tax. Nor does this section leave any area for discretion in imposing and collecting the penalty for late payment of the taxes due and owing.

Since these county officials are creatures of statute, they have only such powers and authority as are expressly conferred by the statutes of which are necessarily implied from these powers expressly granted. 14 Ohio Jurisprudence 2d, Pages 278 and 327, Sections 104 and 167.

I can find no express grant or delegation of authority to the county auditor or the county treasurer in the house trailer tax law not to assess, impose, or collect the penalty for late payments of the tax. Furthermore, I find no reasonable justification for implying such a power. See Opinion No. 2693, *supra*.

The only provision in the house trailer tax law for the forgiveness of delinquent taxes and penalties is found in Section 4503.06 (L), Revised Code, which provides:

“(L) Taxes charged on the delinquent lists of the county auditor and county treasurer for five consecutive years may be removed by the county board of revision in the manner provided in section 5710.06 of the Revised Code if said board deems such taxes uncollectible.”

However, this power is expressly limited to the county board of revision upon the determination of the board of revision that the taxes are uncollectible.

Therefore, it is my opinion and you are hereby advised that county auditors and county treasurers have no discretion in administering the penalty provision of Section 4503.06, Revised Code, and the statutory penalty provided for under this section must be imposed and collected on late payments of the house trailer tax even though the owners of the house trailers, having a tax situs in the state, are temporarily outside the state when the taxes become due and owing. (Second branch of syllabus in Opinion No. 2693, Opinions of the Attorney General for 1961, approved and followed).

Respectfully,
WILLIAM B. SAXBE
Attorney General