

5190

TAXATION—PROPERTY USED FOR PURPOSE TO ENTITLE IT TO EXEMPTION—NO AUTHORITY IN LAW TO REFUND TAXES REGULARLY LEVIED AND PAID PRIOR TO ORDER OF BOARD OF TAX APPEALS WHICH PLACED PROPERTY ON EXEMPTED LIST—SECTIONS 319.36, 5713.08 RC.

SYLLABUS:

Where property is used for a purpose which would entitle it to be exempted from taxation, neither Section 5713.08 nor Section 319.36 of the Revised Code, nor any other provision of the law authorizes the refund of taxes regularly levied thereon and paid prior to an order of the board of tax appeals placing such property on the exempted list.

Columbus, Ohio, May 13, 1955

Hon. Harry Friberg, Prosecuting Attorney  
Lucas County, Toledo, Ohio

Dear Sir:

I have before me your letter requesting my opinion and reading as follows:

“We would appreciate your advice regarding a matter that has recently been presented to us. It is a claim for refund of taxes

paid by the District Board of Presbyters of the East Central District of the Pentecostal Church, Inc. for property that was later exempted by the Board of Tax Appeals in accord with Sec. 5713.08. We have been requested to approve the refund of the taxes that were paid while the property was being used for exempt purposes.

“It is our opinion that Sec. 5713.08 provides that the auditor may remit taxes, penalty and interest which have accrued after the property began its use for exempt purposes, but in no case prior to the date of acquisition of the title to said property. Said remitter by the auditor, however, is subject to the consent of the Board of Tax Appeals. When this matter was called to the attention of the Board of Tax Appeals they insisted that the remitter should be made under authority of Sec. 319.36 of the Revised Code.

“We have at hand the opinion of the Attorney General issued in 1939, No. 1634, which states that the county auditor is not authorized by this section to remit taxes previously collected. As there was no error in the payment of these taxes, they having been paid on the advice of the county treasurer who, in turn, was following Sec. 5713.08, we cannot agree that these taxes were erroneously paid. Therefore, we are writing you for an opinion as to how this church may receive the refund of the taxes which we believe the statute authorizes.”

Section 5713.08, Revised Code, requires the auditor to make a list of all property exempted under certain sections of the Code, including Section 5709.07, hereinafter referred to. Section 5713.08 requires the revision of the list annually, and further provides:

“No additions shall be made to such exempt lists nor additional items of property exempted under such sections without the consent of the board of tax appeals, \* \* \*”

The section then concludes with the following:

“The board shall not consider an application for exemption of property under such sections unless the application has attached thereto a certificate or affidavit executed by the county treasurer certifying that taxes, assessments, penalties, and interest levied and assessed against the property sought to be exempted have been paid in full to the date upon which the application for exemption is filed.

“Taxes, penalties, and interest which have *accrued* after the property began its use for the exempt purpose, but in no case prior to the date of acquisition of the title to said property by applicant, may be remitted by the auditor, *with the consent of the board.*”  
(Emphasis added.)

Section 5709.07, Revised Code, mentioned in the above section, provides among other things, that "houses used exclusively for public worship" are to be exempted from taxation.

It would appear from your letter that the property in question, has been duly placed on the exempted list. I am informed by the office of the board of tax appeals that the application for exemption was filed on October 14, 1953, and the exemption was granted by the board on April 7, 1954. Thereby, in accordance with the provision of Section 5315.27, Revised Code, 5616, G. C., which requires the application for exemption to be filed on or before the 31st day of December in the year for which the exemption is claimed, the property was exempted from taxation for the year 1953, the taxes prior thereto, including those for the year 1952 having been paid. I am further informed that the property in question was purchased in June, 1945, and that its use for church purposes began at that time. There was no reason, so far as I can learn, why the owner of this property should not have applied for and obtained the benefit of exemption at an earlier date.

It will be observed that the only authority that is given by Section 5713.08 *supra*, is to "remit" the taxes which have "accrued" after the property began its use for the exempt purpose. Nothing is said about a refund of taxes paid. The word "remit" does not, by any definition, so far as I can find, carry with it the idea of a *refund*. According to Webster's New International Dictionary, it is synonymous with "excuse, cancel, abrogate, suspend." Furthermore, "accrue" does not convey any idea of "payment"; rather, it means "become due." Accordingly, I must conclude that Section 5713.08 *supra*, authorizes no procedure whereby the county auditor or treasurer may refund taxes which have been paid prior to the time the property is placed on the exempted list; it only authorizes the cancellation of those that may have become due and payable, but remain unpaid.

As to the refunds provided for by Section 319.36, Revised Code, 2589, G.C., it is to be noted that that section relates only to taxes which have been "erroneously charged," or "erroneously charged and collected." It was held in *Christ v. Commissioners*, 13 N.P. (N.S.), 457, that the error or mistake to which this statute refers is a mere clerical error and not a fundamental error. It can not be said that the taxes which have been regularly assessed against property prior to its exemption were erroneously

charged. It was held by my predecessor in Opinion No. 1634, Opinions of the Attorney General for 1939, page 2463 :

“2. The provisions of section 2588, General Code, refer to the correction of clerical errors only, consequently, the county auditor is without authority thereunder to declare real property to be exempt from taxation because of its use and ownership, he being directly precluded from making such determination by section 5570-1, General Code.

“3. Where property which is entitled to be exempted from taxation has not yet been declared exempt, the county auditor, commissioners and treasurer are not authorized by section 2589, General Code, to remit taxes previously collected.”

I concur in his conclusion. It was suggested in that opinion that a person might obtain relief by way of refund of such taxes by resort to Section 12075, General Code, now Section 2723.01, Revised Code. That section reads as follows :

“Courts of common pleas may enjoin the illegal levy or collection of taxes and assessments and entertain actions to recover them when collected, without regard to the amount thereof, but no recovery shall be had unless the action is brought within one year after the taxes or assessments are collected.”

It will be noted that courts are given jurisdiction to enjoin the *illegal levy or collection* of taxes and to “entertain actions to recover them.” Unquestionably those taxes which can be recovered must also have been illegally levied or collected. In my opinion, the taxes which were paid on property which was afterwards placed on the exempted list, were not illegal merely because the property was entitled to exemption, and could not be recovered by action filed under Section 2723.01 *supra*. I have found no other provision in the law authorizing a refund of taxes paid prior to its formal exemption.

In specific answer to your question it is my opinion that where property is used for a purpose which would entitle it to be exempted from taxation, neither Section 5713.08 nor Section 319.36 of the Revised Code, nor any other provision of the law authorizes the refund of taxes regularly levied thereon and paid prior to an order of the board of tax appeals placing such property on the exempted list.

Respectfully,  
C. WILLIAM O'NEILL  
Attorney General