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TAXES AND TAXATION—CORPORATIONS—NO AUTHORITY FOR REMISSION OR COMPROMISE OF CLAIM FOR PERSONAL TAXES NOT ERRONEOUSLY OR NEGLIGENTLY CHARGED—WHERE SUCH TAXES NOT FULLY COLLECTIBLE BECAUSE OF INSOLVENCY OF TAX PAYER AND EXISTENCE OF PRIOR LIENS—HOW COUNTY TREASURER MAY PROCEED TO COLLECT LESS THAN SUM CHARGED.

There is no authority for the remission or compromise of a claim for personal taxes not erroneously or negligently charged; but where such taxes are not fully collectible because of the insolvency of the taxpayer and the existence of prior liens against his property subject to be seized and sold for taxes, and the property is in the hands of a receiver, the county treasurer may rightfully receive less than the sum charged if he is able to show that more is not collectible; and by asking for a rule to show cause under section 2660 of the General Code, he may obtain the direct authority of the court for such a course.

COLUMBUS, OHIO, March 28, 1922.

HON. LAWRENCE H. WEBBER, *Prosecuting Attorney, Elyria, Ohio.*

DEAR SIR:—In your letter of recent date you request the opinion of this department on the following question:

Is a county treasurer authorized to accept from the receiver of an insolvent corporation, the property of which is heavily encumbered by mortgage, an offer to pay the principal sums of taxes without the penalties that have accrued on account of the non-payment of the tax within the time fixed by law?

.No specific statutory authority has been found for such procedure. In fact, no county officer is authorized to compromise a claim for general property taxes. *Peters vs. Parkinson*, 83 O. S. 36, decides that the commissioners may not do this after suit brought by the county treasurer to enforce collection, but there is some reasoning in the case which goes beyond the actual decision therein. For example, it is remarked on page 49 that:

“Another, and perhaps sufficient reason why the county commissioners could not rightfully settle or remit the taxes sued for in this case is that such taxes were not wholly due to, nor were they wholly levied for, the use of Holmes county, but there was included therein as well, state, township, municipal, and other taxes.”

There is no showing in the letter of the treasurer that any part of the taxes was erroneously assessed or that the penalty accrued through the negligence of any officer charged with the duty under the law. That being the case, there is no authority to correct the duplicate in the treasurer's hands, or to remit the penalty as such. The only facts shown by the letter reflect upon the probability of collecting these taxes in due course of law. It is said that the property is so heavily mortgaged that it is possible that the claims thereby secured will nearly exhaust the property. If this is so the claim for such taxes would be postponed, for there is no lien for personal property taxes; and while such taxes are by virtue of section 11138 of the General Code, a preferred claim, they are not preferred in prejudice of liens ob-

tained in good faith and for value. See section 11139. These sections by analogy govern distribution of estates in the hands of receivers.

There being strong likelihood, therefore, that the secured claims would exhaust the estate, the settlement offered by the receiver would seem to be a fair one, if these statements are correct in fact. It remains to be considered whether there is any way in which the settlement can be accepted.

The treasurer can of course accept if he will any sum tendered in payment of taxes of this character. There is some restraint upon the receipt of taxes charged upon real estate imposed by section 2665 of the General Code, but this does not apply to personal taxes.

The only consequence then of a failure on the part of the county treasurer to collect personal taxes with which he is charged is that he must give a reason at the time of the annual settlement between him and the county auditor for his inability to collect the tax for the entire amount. Section 2596 reflects upon this point, and provides in part as follows:

* * * At each August settlement, the auditor shall take from the duplicate 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 property on which such delinquent taxes are charged as described on such duplicate and note thereon in a marginal column the several reasons assigned by the treasurer why such taxes could not be collected. Such last mentioned list shall be signed by the treasurer, who shall testify to the correctness thereof, under oath, to be administered by the auditor."

Section 2597 then authorizes the taxes returned delinquent to be deducted from the amount with which the treasurer is charged on settlement.

There are then made up two delinquent lists, one for real estate (section 2601 G. C.) and one for personal taxes (section 5694 G. C.). The county treasurer has no further immediate responsibility as to the former, but has with respect to the latter. See the section just cited. The delinquent personal duplicate as made up by the auditor on the basis of the return of the duplicate at settlement time is to be delivered to the treasurer, who by section 5695 G. C. is commanded "to forthwith collect the taxes and penalties on the duplicate by any of the means provided by law." The statute goes on to provide different "means" for the collection of delinquent personal taxes in addition to those already provided for, but nowhere is it explicitly provided that the county treasurer who receives the delinquent property tax duplicate is personally charged with the taxes. Such a thing, of course, would be absurd. He is to collect, and collect what he can. In the absence of any restrictive provision then, it seems reasonably clear that after the delinquent duplicate is in the hands of the treasurer, he is clearly entitled to receive any amount that he sees fit in part payment of a charge against a person for taxes of this character. He is not, of course, permitted to release the person from all claims, and the charge remains on the duplicate. It thus appears that before settlement time, if good and sufficient reasons are given for the failure of the treasurer to collect all or any part of the personal tax, he may take what is offered (but not, of course, in full settlement) and the remainder only will go on the delinquent list. After settlement time he is likewise authorized to receive any payment that is offered as part payment. Neither he nor any other officer is authorized to remit the balance of the charge, however. So that if the offer of the receiver in this case is to pay the principal sum of the taxes with the understanding that the charge for the penalty is to be expunged, the strict answer to the question is that the offer cannot be accepted.

However, it seems that a practical way out of the difficulty can be found by the treasurer under such circumstances to avail himself of the special remedy provided by section 2660 of the General Code for his own protection. This section provides as follows:

"If the county treasurer is unable to collect by distress taxes assessed upon a person or corporation or an executor, administrator, guardian, receiver, accounting officer, agent or factor, he shall apply to the clerk of the court of common pleas in his county at any time after his semi-annual settlement with the county auditor, and the clerk shall cause notice to be served upon such corporation, executor, administrator, guardian, receiver, accounting officer, agent or factor, requiring him forthwith to show cause why he should not pay such taxes. If he fails to show sufficient cause, the court at the term to which such notice is returnable shall enter a rule against him for such payment and the costs of the proceedings, which rule shall have the same force and effect as a judgment at law and shall be enforced by attachment or execution or such process as the court directs."

Here is an opportunity for the treasurer to secure an order of court declaring that sufficient cause has been shown for the abatement of the tax itself. Such an order of court would be a protection to the treasurer.

Possibly a direct intervention in the receivership proceedings would accomplish the same purpose, but it would seem best to follow the statute strictly.

It is the opinion of this department, therefore, that a treasurer is authorized to receive less than the amount with which he stands charged on the duplicate if he can show good cause for his failure to collect the remainder, whether the same be principal tax or penalty; that the consequence of his failure to collect is not to ex-punge the charge, but simply to leave it unsatisfied, subject to be credited to him as uncollectible and delinquent at the succeeding final settlement, at which time the treasurer must make a showing of his inability to collect, and the treasurer would be perfectly protected by an order of court under section 2660 of the General Code finding that because of prior liens, etc., only the principal sum of the taxes without the penalty should or could be paid by the receiver.

Respectfully,
JOHN G. PRICE,
Attorney-General.