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DELINQUENT TAXES—NO AUTHORITY FOR STATE OR COUNTY OFFICIALS TO RELEASE OR REMIT—DUTY OF COUNTY AUDITOR TO PREPARE DELINQUENT LAND TAX CERTIFICATE—COAL LANDS—MINERAL RIGHTS—FORECLOSURE, ASSESSMENTS, PENALTIES, TAX LIEN—PROCEDURE.

SYLLABUS:

1. *There is no authority on the part of any officials, either state or county, for releasing or remitting delinquent taxes charged upon the tax duplicate of a county against coal rights or other mineral rights, even though they may be abandoned and the owners defunct or dead.*

2. *It is the duty of the county auditor at the expiration of three years after certification, to prepare a delinquent land tax certificate for each delinquent tract of land, mineral right or coal right in his said county, and to submit such delinquent land tax certificates to the board provided in Section 5718-1, General Code, which shall omit any of said delinquent lands, mineral rights or coal rights from foreclosure proceedings when it is determined that such lands, mineral rights or coal rights will not sell for a sufficient amount to pay the taxes, assessments and penalties in arrears thereon, together with costs of foreclosure proceedings, and such lands so ordered to be omitted shall be published by the county auditor for foreclosure to the state. It then becomes the duty of the county auditor and the prosecuting attorney to see that such forfeiture proceedings are carried through to completion and the delinquent lands, mineral rights or coal rights are sold or disposed of so that such taxes may be collected or the tax lien satisfied according to law.*

COLUMBUS, OHIO, January 22, 1938.

HON. R. W. HORTON, *Prosecuting Attorney, Caldwell, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion, which reads as follows:

“By far the most of the delinquent tax in Noble County is on coal, where the title to the coal and the surface is in different parties. The coal land has been tested and the coal abandoned, and the taxes running delinquent for years, and on foreclosure would have no value. I understand that if proceedings were had to foreclose, and the property did not sell for enough to pay cost the treasurer would be liable therefor.

QUESTION: Is there any way of getting this coal dropped from the duplicate without foreclosure other than forfeiture to the state under Section 5718-1 and Section 5718-2?

This is important in this county, for apart from the above delinquencies, there is not a great deal of delinquent tax. If this coal was forfeited to the state it would probably require an act of the Legislature to get rid of it."

I am also in receipt of your subsequent communication which reads as follows:

"Will say that the coal under these lands was bought up by individuals and corporations many years ago. No effort was ever made to operate for coal, and by far the most of this delinquent coal land is in the name of defunct corporations and individuals long ago dead, and their estates settled, and no account taken of these coal titles."

Section 3560, General Code, provides:

"Each separate parcel of real property shall be valued at its true value in money, excluding the value of the crops, deciduous and evergreen trees, plants and shrubs growing thereon. The price for which such real property would sell at auction, or at forced sale, shall not be taken as the criterion of the true value, and where the fee of the soil of a tract, parcel or lot of land, is in any person natural or artificial, and the right to minerals therein in another, it shall be valued and listed agreeably to such ownership in separate entries, specifying the interests listed, and be taxed to the parties owning different interests, respectively."

Section 5562, General Code, reads as follows:

"On or before the thirty-first day of March annually, the county auditor shall make a list of petroleum, oil, and natural gas wells, coal and ore mines, limestone quarries, fireclay pits, or works of any kind designed for the production of minerals of any kind, which have been begun or constructed since the last preceding appraisalment.

If, by reason of the discovery of such minerals, the construction of such works, the commencement of such operations or the development of such minerals, or otherwise, within the

year, the value of the lands containing or producing such minerals, or any of them or the value of any right to such minerals, listed and taxed separately from such lands, shall increase in value to the amount of one hundred dollars or more, the auditor shall increase the assessment of such land or right to the minerals therein to its true value in money in the name of the owner thereof. If the auditor finds that rights to minerals contained or produced in or upon any lot or parcel of land has been previously created and not separately assessed for taxation, he shall apportion the aggregate valuation of the lot or parcel and the right or rights to minerals therein as provided in Section 5563 of the General Code.

If the value of any lot or parcel of land containing or producing petroleum, oil, natural gas, coal, ore, limestone, fire-clay, or other minerals, or of any right to the minerals therein, shall decrease within one year, by reason of the exhaustion of any such minerals or by the failure to find or develop such minerals, the auditor shall determine, as nearly as may be practicable, how much less valuable such lot or parcel is in consequence of such exhaustion or failure to find or develop, in case the fee of the soil and the right to the minerals is owned and assessed for taxation against the same person, where the title to the fee of the soil is in one or more persons, and the right to the minerals therein, or any of them, is in another person, the auditor shall determine, as nearly as practicable, how much less valuable such right to the minerals therein is by reason of such exhaustion or failure to find or develop. If the county auditor finds that the value of any such lot or parcel of land or any such right to the minerals therein has decreased to the amount of one hundred dollars or more, by reason of such exhaustion or of such failure to find or develop, he may reduce the valuation of such lands or of such rights to the minerals therein, as the case may be, so as to place such valuation at its true value in money."

Section 5563, General Code, reads as follows:

"Where the fee of the soil and the minerals, or part of either, of a lot or parcel of land has been previously assessed for taxation in the name of the same person, but the title to the fee of the soil is in one or more persons, and the title to such minerals, or any of them, or any right to the minerals therein, or any of them, is in another person, the county auditor

shall ascertain the aggregate value of such lot or parcel of land and the minerals or rights thereto, and shall equitably divide and apportion such aggregate valuation between the owner or owners of the fee of the soil and the owner or owners of such minerals and rights thereto so held separately from the fee of the soil, according to the relative value of the interests so held by such owners of the fee of the soil and such minerals or rights thereto, respectively.”

It should be noted in making a review of the above sections of the General Code, that coal rights under lands are to be listed separately from the valuation placed on the surface rights of the land. The separate interests of the various parties are to be taxed at their true value in money, excluding the value of crops, deciduous and evergreen trees and plants and shrubs growing thereon. It should also be noted that in Section 5562, supra, if the value of any lot or parcel of land containing or producing coal or any other minerals, or any right to the minerals therein shall decrease within any year by reason of the exhaustion of such minerals or the failure of the owner of the mineral rights to mine or develop such minerals the county auditor is authorized to determine as nearly as possible how much less valuable such lot or parcel of land is in consequence of such exhaustion or failure to find or develop, and where the fee of the soil and the right to the minerals is owned and assessed for taxation against the same person, or where the title to the fee of the soil is in one or more persons, and the right to the minerals therein, or any of them is in another person, the county auditor is required to determine as nearly as practicable how much less valuable such right to the minerals therein is, by reason of such exhaustion or failure to find or develop.

It should also be noted that when the county auditor finds that the valuation of either the lots or parcels of land or of the mineral rights has decreased in an amount of \$100.00 or more, by reason of such exhaustion or of such failure to find or develop mineral rights, then in such event the county auditor is authorized to reduce the valuation of such property rights to their true value in money.

The question with which you are primarily concerned, is how to proceed toward the collection of the delinquent taxes standing against these coal rights which have been abandoned in your county. You ask:

“Is there any way of getting this coal dropped from the duplicate without foreclosure other than forfeiture to the state under Section 5718-1 and Section 5718-2?”

Section 5718, General Code, provides:

“At the expiration of three years after certification, the county auditor shall make, in quadruplicate, a certificate, to be known as a delinquent land tax certificate of each delinquent tract of land, city or town lot, or part of lot contained in the delinquent land list, upon which the taxes, assessments, penalties and interest have not been paid, describing each tract of land, city or town lot the same as it is described on the tax list and the amount of taxes, assessments, penalty and interest thereon due and unpaid, and stating therein, that the same has been certified to the prosecuting attorney of the county as delinquent. Such certificate shall be signed by the county auditor, or his deputy, and the original filed with the prosecuting attorney, one copy with the county treasurer, and one copy sent to the auditor of state.”

Section 5718-1, General Code, reads as follows:

“Before making the certificates provided for in Section 5718 of the General Code, the county auditor shall submit the list of lands on the delinquent list and subject to foreclosure, to a board composed of the president of the board of county commissioners, the county auditor and the county treasurer, and if, after investigation, in their judgment and discretion, such board is of the opinion that such list contains property or properties so certified which will not bring upon a sale a sufficient amount of money to pay all taxes, assessments and penalties thereon in arrears, together with costs of foreclosure, such board may order the same to be omitted from the foreclosure proceedings as herein provided; and as to such land so ordered to be omitted, no delinquent land tax certificate shall be made.”

Section 5718-2, General Code, provides:

In the event that the board so orders omitted from the foreclosure proceedings any of the property in the manner set forth in the preceding section, the county auditor shall cause a list of the lands, lots, or parts of lots, so omitted to be published as herein provided; and upon completion of such publication the lands, lots and parts of lots included in the list so published shall be forfeited to the state and disposed of as provided by chapter fifteen of this title, unless the taxes, assessments, penalties, interest and charges shall have been

paid. Such publication shall be made once a week for two consecutive weeks in two newspapers of opposite politics in the English language published in the county and of general circulation therein."

Section 5744, General Code, reads as follows:

"Every tract of land and town lot offered for sale in foreclosure proceedings, as provided in the next preceding chapter, and not sold for want of bidders, and every tract of land and town lot omitted from foreclosure proceedings and duly advertised as provided in this chapter shall be forfeited to the state. Thenceforth all the right, title, claim and interest of the former owner or owners thereof, shall be considered as transferred to, and vested in, the state, to be disposed of as the General Assembly may direct."

Sections 5748, 5749, 5750, 5751, 5752, 5754, 5755, 5757, 5758 and 5762, General Code, provide the means and method for the sale of forfeited land by a county auditor. All these steps are statutory and must be followed strictly in order that the purchaser will secure good title. I do not deem it necessary to quote these sections since they can be easily referred to.

I come now to a consideration of your question as to whether or not these delinquent taxes charged against coal rights can be dropped from the tax duplicate without foreclosure of the tax lien or forfeiture to the state.

In Opinions of the Attorney General for 1915, Volume 3, page 2396, the then Attorney General had under consideration the question of whether or not the county commissioners of Gallia County had the right or authority to remit or release any taxes charged upon the tax duplicate of said county against the mineral rights of the defunct Indian Guyan Coal Company for which a receiver had been appointed. In considering said question the then Attorney General cited the case of *Pcter vs. Parkinson, Treasurer*, 83 O. S., 36, in which it was held:

"Some reliance seems to be placed by counsel for plaintiff in error upon Section 1038 Revised Statutes, which authorizes the correction of errors on tax list and duplicate by the county auditor, and empowers the board of county commissioners, under certain circumstances, to order refunded taxes that have been erroneously charged and collected. But neither by this statute nor by any other, is the board of county commissioners

empowered to settle, remit, or release, either in whole, or in part, taxes that stand charged upon the duplicate and are unpaid. While in a sense the board of commissioners is the representative and financial agent of the county, its authority is limited to the exercise of such powers only as are conferred upon it by law. * *

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."

The final conclusion of the then Attorney General is stated in the syllabus, as follows:

"The board of county commissioners and the prosecuting attorney of any county are without authority to remit or release any taxes charged upon the tax duplicate of said county against real estate therein upon the ground and for the reason that said real estate is assessed for taxation at an excessive value."

In Opinions of the Attorney General for 1930, Volume I, page 560, the then Attorney General had under consideration the question of whether or not a board of county commissioners of Meigs County would have the right to release or remit taxes and penalties charged against the defunct Brocalsa Chemical Company, who owned certain coal acreage in said county, which coal acreage had been assessed as covering 691 acres of coal land, whereas the attorneys for the bankrupt firm claimed the correct acreage taxable to be about 75 acres. The facts in the case developed that the company did pay taxes on the larger amount of acreage more or less for the reason that the larger acreage was used for the stimulation of stock sales by salesmen in the company which later became defunct. In this opinion the question was raised as to whether or not the board of county commissioners could correct the tax duplicate and release or remit any of the delinquent taxes charged against the coal rights under this land. In rendering his opinion the then Attorney General entered into a rather lengthy discussion of the rights of the parties thereunder. In reaching his conclusion, it should be noted again that the case of *Peter vs. Pakinson*, *supra*, was cited with the following notation:

"It was there held that inasmuch as a tax is not a debt within the meaning of the term as used in this section of the General Code, the county commissioners of a county are without authority to compromise or to remit or release in whole or in part a claim for taxes."

The final conclusion of the then Attorney General relative to this matter is expressed in the syllabus of the opinion which reads as follows:

"The board of county commissioners of a county has no authority to release or remit taxes charged upon the tax duplicate of the county against separately owned coal lands or other real property therein upon the ground that said property is assessed for taxation at an excessive valuation." In your communication you state:

"I understand that if proceedings were had to foreclose and the property did not sell for enough to pay costs the treasurer would be liable therefor."

I presume you raise this question because of the provisions contained in the third branch of the syllabus of my opinion No. 310, addressed to the Bureau of Inspection and Supervision of Public Offices, under date of March 22, 1937, which reads as follows:

"Costs incurred in suits to foreclose delinquent tax liens under Section 5718, General Code, do not follow the lands through to the forfeited land sale for the reason that there is no legislative provision therefor. The county treasurer is the party plaintiff in such a suit and in his official capacity is primarily liable for the costs by him made, and although he may obtain a decree of foreclosure and judgment for costs, if he fails to realize on his judgment he must pay the costs by him made from the county general fund."

It would seem to me that the sale of all of these coal rights in settlement of these delinquent taxes could be handled under forfeiture proceedings rather than foreclosure proceedings. The cost of handling the sales under forfeiture proceedings rather than foreclosure proceedings would no doubt be much less in so far as the county treasurer is concerned. In fact, the only way I can see open for the clearing of these delinquent taxes is by sale under forfeiture proceedings.

There is no personal liability on the part of the county treasurer for any costs involved in the disposition of these delinquent lands or

mineral rights. It is a county obligation, and outside of the required newspaper advertising, I do not see where there would be very much expense in connection with same.

In view of the foregoing, it is my opinion that:

1. There is no authority on the part of any officials, either state or county, for releasing or remitting delinquent taxes charged upon the tax duplicate of a county against coal rights or other mineral rights, even though they may be abandoned and the owners defunct or dead.

2. It is the duty of the county auditor at the expiration of three years after certification to prepare a delinquent land tax certificate for each delinquent tract of land, mineral right or coal right in his said county, and to submit such delinquent land tax certificates to the board provided in Section 5718-1, General Code, which shall omit any of said delinquent lands, mineral rights or coal rights from foreclosure proceedings when it is determined that such lands, mineral rights or coal rights will not sell for a sufficient amount to pay the taxes, assessments and penalties in arrears thereon, together with costs of foreclosure proceedings, and such lands so ordered to be omitted shall be published by the county auditor for forfeiture to the state. It then becomes the duty of the county auditor and the prosecuting attorney to see that such forfeiture proceedings are carried through to completion and the delinquent lands, mineral rights or coal rights are sold or disposed of so that such taxes may be collected or the tax lien satisfied according to law.

Respectfully,

HERBERT S. DUFFY,

Attorney General.