

March 30, 2016

The Honorable Anthony E. Kendell
Miami County Prosecuting Attorney
201 W. Main Street
Troy, Ohio 45373

SYLLABUS:

2016-012

If a county auditor lists real property located in annexed territory on the general tax list and duplicate of real and public utility property as part of a city, but not as part of a township in which it also is located, and the county budget commission relies upon the tax list to adjust rates of taxation and fix the amount of taxes to be levied, a county auditor has no authority to reimburse the township for any share of inside millage it might have received had township taxes been levied on the real property.



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The Honorable Anthony E. Kendell
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Dear Prosecutor Kendell:

We have received your request for an opinion regarding the levying and distribution of real property taxes in township territory annexed to a municipal corporation. Over the course of several years, a city annexed portions of land in a contiguous township. No steps were taken to remove the annexed territory from the township. When the county auditor compiled the general tax list and duplicate of real and public utility property, he listed the real property as part of the city, but not the township.¹ As a result, municipal taxes were levied on the real property located in the annexed territory, but no taxes were levied on behalf of the township.

You ask whether R.C. 319.40 authorizes the county auditor to reallocate to the township a portion of the inside millage already collected from the real property within the annexed territory and distributed to the subdivisions to which the real property was assigned on the tax list and duplicate by deducting the reallocated amount from the accounts of those subdivisions at the auditor's next semi-annual tax settlement with the county treasurer. If not, you ask whether any other provision in the Revised Code authorizes the county auditor to reallocate tax revenue to the township.

Before we address the application of R.C. 319.40, it is helpful to summarize the way in which subdivisions and other taxing units levy taxes upon real property. As this summary will demonstrate, assigning real property to the appropriate subdivisions and recording the information accurately on the general tax list and duplicate of real and public utility property are integral parts of this process.

¹ In your letter, you state that the county auditor "treated the annexed territory as having been removed from the [t]ownship." Specifically, the county auditor did not assign the real property to the township on the general tax list and duplicate of real and public utility property.

Taxation of Real Property in Ohio

Real property in Ohio is subject to taxation by the taxing authority of each subdivision or other taxing unit within which the property is located. *See* R.C. 5705.03(A) (authorizing the taxing authority of a subdivision or other taxing unit to levy taxes on real property for a variety of purposes, including the payment of operating expenses and the construction of improvements); 2005 Op. Att’y Gen. No. 2005-043, at 2-449 to 2-450. A “taxing unit” is “any subdivision or other governmental district having authority to levy taxes on the property in the district or issue bonds that constitute a charge against the property of the district.” R.C. 5705.01(H). The term “subdivision” includes a municipal corporation and a township. R.C. 5705.01(A); *see also* R.C. 5705.01(C) (“[t]axing authority’ ... means ... in the case of a municipal corporation, the council or other legislative authority of the municipal corporation; ... in the case of a township, the board of township trustees”); 2011 Op. Att’y Gen. No. 2011-009, at 2-71 (“[a] township is a subdivision for taxation purposes”). Real property located in township territory that has been annexed to a municipal corporation is subject to taxes levied by both the municipal corporation and the township, unless statutory processes are undertaken that exclude the annexed territory from the township’s taxing power.² *See* 2011 Op. Att’y Gen. No. 2011-009 (syllabus, paragraph 1); 2011 Op. Att’y Gen. No. 2011-002 (syllabus, paragraph 1);

² When township territory is annexed to a municipal corporation, the municipal corporation may petition the board of county commissioners, pursuant to R.C. 503.07, to conform the boundaries of the township to the boundaries of the municipal corporation. “If the boundaries of a municipal corporation and a township become identical in whole, the township government ceases to exist and the township becomes ... a ‘paper township.’” 2005 Op. Att’y Gen. No. 2005-024, at 2-240 (citing R.C. 703.22). Alternatively, “a majority of the freehold electors owning land” in the unincorporated portion of the township may petition the board of county commissioners to erect a new township that excludes from its boundaries the territory annexed to the municipal corporation. R.C. 503.09. *But see Bd. of Lucas Cnty. Comm’rs v. Waterville Twp. Bd. of Trs.*, 171 Ohio App. 3d 354, 2007-Ohio-2141, 870 N.E.2d 791, at ¶37 (declaring R.C. 503.09 unconstitutional). “Upon the erection of such new township, the territory lying within the limits of the municipal corporation in the original township shall be considered as not being located in any township.” R.C. 503.09. When annexations occur pursuant to the special procedures provided for in R.C. 709.023 and R.C. 709.024, the annexed territory shall not be excluded from the township under R.C. 503.07 unless otherwise provided for in an annexation or a cooperative economic development agreement entered into pursuant to R.C. 709.192 or R.C. 701.07, respectively. *See* R.C. 709.021(A) (a petition requesting annexation under one of the special procedures available in R.C. 709.023 and R.C. 709.024 “shall be conducted under those sections to the exclusion of any other provisions of [R.C. Chapter 709] unless otherwise provided in this section or the special procedure section chosen”); R.C. 709.023(H) (annexations pursuant to this section “shall not at any time be excluded from the township under [R.C. 503.07]” unless otherwise provided in an annexation or cooperative economic development agreement); R.C. 709.024(H) (same).

2005 Op. Att’y Gen. No. 2005-024 (syllabus, paragraph 2). As explained in 2005 Op. Att’y Gen. No. 2005-043, at 2-449:

If part of a township is annexed to a municipal corporation by means of an annexation other than a merger, and if no action is taken to change the township boundary lines, the annexed territory remains part of the township, inhabitants residing in the annexed territory are residents of both the municipal corporation and the township, and, unless a statute provides a specific exclusion, those residents are entitled to vote on both municipal and township officers, issues, and tax levies and are obligated to pay both taxes levied by the municipal corporation and taxes levied by the township.

The total amount of state and local taxes levied on real property may not exceed ten mills on each dollar of the property’s true value in money, except for those taxes that have been specifically authorized to be levied in excess thereof.³ Ohio Const. art. XII, § 2; R.C. 5705.02; *see also* 2005 Op. Att’y Gen. No. 2005-043, at 2-449 (“[t]axes levied by various taxing units may include both taxes within the 10-mill limitation (unvoted taxes) and taxes outside the 10-mill limitation (taxes authorized by the voters)”). This rule is known as the “ten-mill limitation.” *See* R.C. 5705.02. The taxing authority of a subdivision or other taxing unit is authorized to impose various levies within the ten-mill limitation, including a general levy for debt charges, a general levy for current expenses, and certain special levies. *See* R.C. 5705.04; *see also* 2005 Op. Att’y Gen. No. 2005-002, at 2-12. Revenue derived from taxes levied within the ten-mill limitation is commonly referred to as inside millage. *See generally* 2005 Op. Att’y Gen. No. 2005-024, at 2-246 (“up to 10 mills of property taxes may be levied without the approval of the voters, and this inside millage is allocated among various taxing authorities”).

The county auditor is responsible for assessing real property for purposes of taxation. R.C. 5713.01(A). As assessor, the county auditor appraises real property at its true value in money and determines each property’s taxable value therefrom.⁴ *See* R.C. 5713.01(B) (“[t]he auditor shall view and appraise or cause to be viewed and appraised at its true value in money, each lot or parcel of real estate ... at least once in each six-year period”); R.C. 5713.03 (“[t]he county auditor, from the best sources of information available, shall determine ... the true value

³ A mill is a tenth part of one cent. *Black’s Law Dictionary* 1008 (7th ed. 1999).

⁴ R.C. 5715.01(B) provides, in pertinent part, that “[t]he taxable value shall be that per cent of true value in money ... the commissioner by rule establishes, but it shall not exceed thirty-five per cent.” Pursuant to the authority conferred upon him under R.C. 5715.01(B), the Tax Commissioner has established the taxable value of real property as “thirty-five per cent of the ‘true value in money’ of said parcel.” 16B Ohio Admin. Code 5703-25-05(B); *see also* R.C. 5713.03 (“[t]he auditor shall determine the taxable value of all real property by reducing its true ... value by the percentage ordered by the commissioner”).

of the fee simple estate ... of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon ... in every district”).

On or before the first Monday of August each year,⁵ the county auditor compiles a general tax list and duplicate of real and public utility property in the county on which he enters the taxable values of the real property and denotes each taxing unit in which the property is located.⁶ See R.C. 319.28(A) (requiring a county auditor to compile a general tax list and duplicate of real and public utility property); R.C. 5713.01(B) (“the taxable values ... shall be placed on the auditor’s tax list and the county treasurer’s duplicate for the tax year ordered by the commissioner pursuant to [R.C. 5715.34]”); 16B Ohio Admin. Code 5703-25-16(C)(4) (“[o]n the general tax list and duplicate of real and public utility property compiled and prepared under the pertinent provisions of [R.C. 319.28], only the taxable value of the land, building and total of the real property shall be listed”); *State ex rel. Rolling Hills Local Sch. Dist. Bd. of Educ. v. Brown*, 63 Ohio St. 3d 520, 521, 589 N.E.2d 1265 (1992) (“assessing real property for taxation includes assigning parcels to taxing districts and recording them accordingly on the tax list”); 2005 Op. Att’y Gen. No. 2005-043, at 2-457 (“it is the responsibility of the county auditor to place real property ... on the tax list and duplicate and to denote each taxing unit in which the property is located”). When annexed territory is part of both a municipal corporation and a township, the real property in that territory is “included ... on the tax list and duplicate in the manner in which other property is included, with information reflecting that the property is located in both the township and the municipality.” 2005 Op. Att’y Gen. No. 2005-043 (syllabus, paragraph 1).

During the time in which real property is being assessed for taxation, the taxing authority of each taxing unit compiles and adopts a tax budget in accordance with R.C. 5705.01 through R.C. 5705.47. See generally R.C. 5705.28 (the taxing authority of each taxing unit shall adopt a tax budget for the next fiscal year, unless the taxing unit does not levy a tax); R.C. 5705.281 (a county budget commission, by majority vote, may waive the requirement that a taxing unit adopt

⁵ A county auditor may not compile the tax list until the county board of revision has reviewed the returns of the county auditor’s assessment of real property and made any necessary corrections thereto. R.C. 5715.16.

⁶ The county board of revision hears complaints pertaining to the valuation or assessment of real property as it “appears upon the tax duplicate of the then current year.” R.C. 5715.11; see also R.C. 5715.19(A)(1)(d) (authorizing a board of township trustees to file a complaint with regards to the valuation or assessment of any parcel that appears on the tax list); *State ex rel. Rolling Hills Local Sch. Dist. Bd. of Educ. v. Brown*, 63 Ohio St. 3d 520, 521, 589 N.E.2d 1265 (1992) (“a school board may appeal the incorrect recording of a property on the tax list since the recording is a part of the assessment, and the board of revision has the power to correct this”); 2005 Op. Att’y Gen. No. 2005-043, at 2-452, n.6 (“[t]he county board of revision is authorized to consider appeals regarding the placement of particular parcels in particular taxing units”).

a tax budget). The tax budgets estimate each subdivision's anticipated expenditures and receipts for the ensuing fiscal year, including the amount of money each subdivision will require from the general property tax. *See* R.C. 5705.29 (listing the information each taxing unit shall include in its tax budget); *see also* R.C. 5705.09 (requiring each subdivision to establish certain funds into which tax revenues may be deposited and from which expenditures may be made). The taxing authorities submit their tax budgets to the county auditor on or before the twentieth day of July,⁷ at which time the budgets are presented to the county budget commission for examination. R.C. 5705.30; R.C. 5705.31; *see also* R.C. 5705.27 (creating county budget commissions).

The county budget commission reviews the tax budgets "and ascertain[s] the total amount proposed to be raised in the county for the purposes of each subdivision and other taxing units." R.C. 5705.31. The county budget commission is required to ascertain that the levies identified in divisions (A) through (E) of R.C. 5705.31 "have been properly authorized and, if so authorized, shall approve them without modification."⁸ R.C. 5705.31 ("[d]ivisions (A) to (E) of this section are mandatory, and commissions shall be without discretion to reduce such minimum levies except as provided in such divisions"). R.C. 5705.31(D), for example, requires a county budget commission to approve a minimum levy within the ten-mill limitation for the current expense and debt service of each subdivision or other taxing unit that existed during the last five years the fifteen-mill limitation was in effect (the period of 1929 through 1933).⁹ *See Newton Twp. v.*

⁷ School districts and the city of Cincinnati submit their tax budgets to the county auditor by the twentieth day of January. R.C. 5705.30.

⁸ The levies identified in R.C. 5705.31(A)-(E) are as follows:

- (A) All levies in excess of the ten-mill limitation;
- (B) All levies for debt charges not provided for by levies in excess of the ten-mill limitation, including levies necessary to pay notes issued for emergency purposes;
- (C) The levies prescribed by [R.C. 742.33(B)] and [R.C. 742.34(B)];
- (D) [A] minimum levy within the ten-mill limitation for the current expense and debt service of each subdivision or taxing unit, which shall equal two-thirds of the average levy for current expenses and debt service allotted within the fifteen-mill limitation to such subdivision or taxing unit during the last five years the fifteen-mill limitation was in effect unless such subdivision or taxing unit requests an amount requiring a lower rate. ...
- ...
- (E) The levies prescribed by [R.C. 3709.29].

⁹ The minimum levy "shall equal two-thirds of the average levy for current expenses and debt service allotted within the fifteen-mill limitation to such subdivision or taxing unit during the last five years the fifteen-mill limitation was in effect unless such subdivision or taxing unit

Trumbull Cnty. Budget Comm'n, Ohio Tax Case No. 92-M-1313, 1994 WL 596442, at *3 (BTA Oct. 28, 1994). When territory annexed to a municipal corporation remains part of a township, the minimum levy of the municipal corporation or township is adjusted pursuant to R.C. 5705.315(A)-(B).¹⁰

“[T]he phrase, ‘properly authorized,’ as employed in R.C. 5705.31, requires the [county] budget commission to determine that” the taxing authority of the subdivision or other taxing unit has the power to impose the tax, “either by its own action or by vote of the people, and that the enactment of the measure imposing the tax was in compliance with statutory requirements.” *Vill. of S. Russell v. Budget Comm’n of Geauga Cnty.*, 12 Ohio St. 3d 126, 132, 465 N.E.2d 876 (1984). The county budget commission shall also “determine whether [the] rate of taxation is clearly required by the budget of the taxing district or the political subdivision,” or, in other words, “whether the funds to be derived from a levy approved for a specific purpose are indeed budgeted for that purpose.” *Id.*

After approving the mandated levies in R.C. 5705.31(A)-(E), the county budget commission adjusts the amounts that the tax budgets estimate will be required from the general property tax so as to bring the tax levies required therefor within the ten-mill limitation and other limitations specified in R.C. 5705.01 to R.C. 5705.47. *See* R.C. 5705.32(A). In making these adjustments, the county budget commission is “governed by the amount of ... taxable property shown on the auditor’s tax list for the current year.” R.C. 5705.27; *see also Zupancic v. Carter Lumber Co.*, Franklin App. No. 01AP-1248, 2002-Ohio-3246, at ¶43 (recognizing in the context of personal property taxes that the county budget commission, in making adjustments, is “governed by the amount of the taxable property shown on the auditor’s tax list for the current year”). Therefore, when the tax list reflects that real property is part of a city, but not a township, the county budget commission makes adjustments and approves levies upon the understanding that the real property located in the annexed territory is not subject to taxation by the township. This means that the county budget commission does not consider the taxable value of the real property located in the annexed territory in adjusting the amounts estimated in the

requests an amount requiring a lower rate.” R.C. 5705.31(D). The minimum levy of a subdivision may be reduced or increased as provided for in R.C. 5705.31(D), R.C. 5705.311-.312, and R.C. 5705.315. The minimum levy mandated by R.C. 5705.31(D) represents the minimum proportion of inside millage that each subdivision will receive from real property located within its boundaries. If any inside millage is left unallocated after the county budget commission approves the mandated levies in R.C. 5705.31(A)-(E), the county budget commission has broad discretion to allocate the non-mandated, or “free” millage among the subdivisions. *See Newton Twp. v. Trumbull Cnty. Budget Comm’n*, Ohio Tax Case No. 92-M-1313, 1994 WL 596442, at *4 (BTA Oct. 28, 1994).

¹⁰ The calculation of the minimum levy for a municipal corporation and township under R.C. 5705.315 only applies “to annexations granted on or after [October 26, 2001].”

township's tax budget so as to bring the levies of the township within the limitations in R.C. 5705.01-.47.¹¹

When the county budget commission completes its work with respect to the tax budgets, the commission certifies its action to the taxing authority of each taxing unit. R.C. 5705.34. The county auditor relies upon the adjustments made by the county budget commission to estimate at what rate the taxing authority of each taxing unit needs to levy each tax to produce the amount of tax revenue reflected in the taxing unit's revised budget. *Id.* A taxing authority may appeal to the Board of Tax Appeals if dissatisfied with the action of the county budget commission. R.C. 5705.37. Otherwise, each taxing authority is required to authorize the necessary tax levies and certify the levies to the county auditor before the first day of October. R.C. 5705.34.

After the taxing authorities certify "statements of the rates ... to be levied for the current year," the county auditor calculates "the sums to be levied upon each tract and lot of real property, adding," among other things, omitted or delinquent taxes from previous years. R.C. 319.30(A). The sums calculated by the county auditor are placed upon the tax duplicate for collection and represent the taxes to be levied, charged, and payable. *See* R.C. 5705.03(C) ("[a]ll taxes levied on property shall be extended on the tax duplicate by the county auditor of the county in which the property is located, and shall be collected by the county treasurer of such county in the same manner and under the same laws and rules as are prescribed for the assessment and collection of county taxes"); *see also* R.C. 319.30(B) (permitting a county auditor, so as not to delay the preparation of the tax list and duplicate, to estimate his calculation of taxes when a taxing unit does not certify its levies to the county auditor in the prescribed time or when an appeal has been initiated under R.C. 5705.341 or R.C. 5705.37).

The county auditor certifies a copy of the general tax list and duplicate to the county treasurer on the first day of October. R.C. 319.28(A). The county treasurer collects the taxes listed thereon and settles with the county auditor twice a year for the amount collected. *See* R.C. 321.24(A) (requiring the county treasurer to settle with the auditor on or before the fifteenth of February); R.C. 321.24(C) (mandating that the county treasurer settle with the auditor on or before the tenth day of August for all taxes and assessments "not included in the preceding February settlement"). "[U]pon completion of each semiannual settlement, the treasurer is to pay the moneys which he holds to the appropriate officers of the various boards and subdivisions which are entitled to share in the distribution of the tax." 1985 Op. Att'y Gen. No. 85-067, at 2-261; *see also* R.C. 321.31 (requiring a county treasurer to pay to the appropriate fiscal officers of subdivisions or other taxing units the proceeds derived from special tax levies).

¹¹ The amount of taxable property located in a subdivision or other taxing unit dictates the rates at which the subdivision or taxing unit needs to levy each tax to produce the amount of revenue that its tax budget estimates will be required from the general property tax. The more taxable property located in a subdivision, the lower the rate of taxation required to produce a particular amount of tax revenue.

R.C. 319.40 Does Not Authorize a County Auditor to Reallocate Inside Millage that Has Been Collected from Real Property Listed on the Tax List and Duplicate

You state that the county auditor, in compiling the general tax list and duplicate of real and public utility property pursuant to R.C. 319.28(A), listed the real property in the annexed territory as part of the city, but not the township. As a result, city taxes were levied upon the real property located in the annexed territory, but township taxes were not levied. You ask whether R.C. 319.40 authorizes the county auditor to reallocate to the township a portion of the inside millage already collected from the real property and distributed to the subdivisions to which the real property was assigned on the tax list and duplicate by deducting that amount from the accounts of those subdivisions at the auditor's next semi-annual tax settlement with the county treasurer. If R.C. 319.40 does not provide the county auditor with such authority, you ask whether any other provision in the Revised Code authorizes the county auditor to reallocate tax revenue to the township.

R.C. 319.40 requires a county auditor to charge real property with county, township, municipal, or school district taxes when the county auditor is satisfied that lots or lands on the tax list and duplicate have not been charged with such taxes for the preceding five years (or less). The statute states:

When the county auditor is satisfied that lots or lands on the tax list or duplicate have not been charged with either the county, township, municipal corporation, or school district tax, he shall charge against it all such omitted tax for the preceding years, not exceeding five years, unless in the meantime such lands or lots have changed ownership, in which case only the taxes chargeable since the last change of ownership shall be so charged.

R.C. 319.40. The county auditor's duty under R.C. 319.40 to charge omitted taxes is mandatory. *See generally Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St. 2d 102, 108, 271 N.E.2d 834 (1971) (“[o]rdinarily, the word ‘shall’ is a mandatory one, whereas ‘may’ denotes the granting of discretion” (quoting *Dennison v. Dennison*, 165 Ohio St. 146, 149, 134 N.E.2d 574 (1956))).

Generally, a county auditor calculates the taxes to be charged against real property by taking the rates of each subdivision's tax levies and applying those rates to the value of the real property listed on the tax list and duplicate.¹² *See generally* R.C. 319.30(A), (B) (division (B) permits a county auditor, so as not to delay the preparation of the tax list and duplicate, to estimate his calculation of taxes when a taxing unit does not certify its levies to the county auditor in the prescribed time or when an appeal has been initiated under R.C. 5705.341 or R.C. 5705.37). Tribunals have construed R.C. 319.40 to apply when the value of real property is mistakenly understated on the tax list, causing the amount of taxes charged against the property

¹² In calculating the taxes to be charged against real property for the current year, the county auditor adds any delinquent or omitted taxes from past years. *See* R.C. 319.30(A).

to be less than what should have been charged. *See, e.g., Liberty West, LLC v. Butler Cnty. Bd. of Revision*, Ohio Tax Case No. 2007-M-1361, 2009 WL 1448310 (BTA May 19, 2009); *see also McCormack v. Limbach*, App. No. 54133, 1988 WL 11054, at *1 (Cuyahoga County Feb. 4, 1988) (R.C. 319.40 required the county auditor to charge taxes against real property “[w]hen the auditor mistakenly overstated the statutory tax reduction factor”). Once the value of the property is corrected,¹³ a county auditor is able to calculate the amount of taxes that were omitted by applying the rates of each subdivision’s tax levies to the corrected value of the real property and subtracting any taxes already paid. The county auditor exercises no discretion in performing this calculation.

R.C. 319.40 does not apply as seamlessly to the situation you describe. When a county auditor mistakenly assigns real property located within annexed territory to the city, but not to the township in which it also is located, and records this mistake on the tax list and duplicate, the county budget commission makes adjustments to the tax budgets and approves tax levies as if the real property located in the annexed territory is not subject to taxation by the township. *See* R.C. 5705.27 (“[i]n adjusting the rates of taxation and fixing the amount of taxes to be levied each year, the commissioners shall be governed by the amount of the taxable property shown on the auditor’s tax list for the current year”); 2005 Op. Att’y Gen. No. 2005-043, at 2-464 (the rates at which each taxing unit is entitled to levy taxes within the ten-mill limitation depends, in part, “upon the number and type of taxing units that are entitled to share in the inside millage”). As a result, the tax levies authorized by the subdivisions to which the real property is assigned on the tax list and duplicate are levied at rates that comply with the limitations in R.C. 5705.01-.47. *See* R.C. 5705.32(A). If a county auditor were to subsequently charge taxes against the real property on behalf of a subdivision to which the real property had not been assigned, charging those taxes would undermine the work of the county budget commission and potentially violate the limitations in R.C. 5705.01-.47.

Consider, for example, that the real property is assigned on the tax list to a city, a county, and a school district. Under these circumstances, the county budget commission adjusts the amounts that the city, county, and school district will require from the general property tax to ensure that the levies authorized by each of those subdivisions comply with the limitations specified in R.C. 5705.01 to R.C. 5705.47. The ten-mill limitation in R.C. 5705.02 and Article XII, Section 2 of the Ohio Constitution, for instance, prohibits the total amount of state and local taxes levied on real property from exceeding ten mills on each dollar of the property’s true value

¹³ Pursuant to R.C. 319.35, “the county auditor shall correct all clerical errors the auditor discovers in the tax lists and duplicates in the ... valuation or assessment of property.” *See also* R.C. 5713.19 (“[a] county auditor shall correct any clerical errors ... that the auditor discovers concerning the ... valuation ... of any tract or lot contained in the list of real property in the county”). An error in the valuation of real property “other than a clerical error constitutes a fundamental error and is subject to correction only by the county board of revision as provided by law.” R.C. 319.35.

in money, unless specifically authorized by voters to be levied in excess thereof. Therefore, the county budget commission, taking into account the mandatory levies in R.C. 5705.31(A)-(E), adjusts the amounts that the city, county, and school district will require from the general property tax to ensure that the levies authorized by each subdivision within the ten-mill limitation are levied at millage rates that, when added together, do not produce an amount of inside millage that exceeds ten mills on each dollar of the true value of real property. *See* R.C. 5705.31; R.C. 5705.32(A). The county budget commission does not consider the township's tax levies in making its adjustments. *See* R.C. 5705.27 (“[i]n adjusting the rates of taxation and fixing the amount of taxes to be levied each year, the commissioners shall be governed by the amount of the taxable property shown on the auditor's tax list for the current year”). Therefore, if the county auditor were to charge township taxes against the real property after the county budget commission has completed its work, it is possible that, when added to the inside millage derived from the tax levies authorized by the city, county, and school district, the inside millage derived from the township's tax levies would violate the ten-mill limitation.

To avoid exceeding the ten-mill limitation, the county auditor would have to adjust the amount of taxes levied upon the real property by the city, county, and school district. R.C. 319.40 requires a county auditor to charge omitted county, township, municipal, or school district taxes. The statute does not confer authority upon a county auditor to adjust the amount of taxes that were charged against the real property on behalf of the subdivisions whose taxes were not omitted. *See generally Campbell v. City of Carlisle*, 127 Ohio St. 3d 275, 2010-Ohio-5707, 939 N.E.2d 153, at ¶8 (“[w]hen statutory language is plain and unambiguous and conveys a clear and definite meaning, [there is no need to] invoke rules of statutory interpretation”). No other statute in the Revised Code authorizes a county auditor to make these adjustments.¹⁴ Therefore,

¹⁴ Under R.C. 319.36, a county auditor, in conjunction with the county board of revision, shall provide refunds to a taxpayer if taxes have been “erroneously charged or collected” against the taxpayer's property “as a result of a clerical error as defined in [R.C. 319.35].” R.C. 319.35 states that “a clerical error is an error that can be corrected by the county auditor from the inspection or examination of documents in the county auditor's office or from the inspection or examination of documents that have been presented to the county auditor and have been recorded by the county recorder.” A clerical error is “a mistake which naturally excludes any idea that its insertion was made in the exercise of any judgment or discretion.” 1960 Op. Att'y Gen. No. 1876, p. 718, at 720; *see also Ryan v. Tracy*, 6 Ohio St. 3d 363, 366 n.4, 453 N.E.2d 661 (1983) (“[g]enerally, clerical errors are those of the bookkeeping or copying genre while fundamental errors are those committed in the exercise of the subject administrative officer's judgment and discretion”).

In this instance, taxes were not charged or collected against the real property as a result of a clerical error. The amount of taxes charged against real property on behalf of the subdivisions or other taxing units in which the real property is located is determined by an intricate, multi-step statutory process in which public officials other than the county auditor exercise discretion. In

the practical difficulties in applying R.C. 319.40 in this situation belie its application. *See generally* R.C. 1.47(C)-(D) (“[i]n enacting a statute, it is presumed that ... (C) [a] just and reasonable result is intended; [and] (D) [a] result feasible of execution is intended”); *Mishr v. Bd. of Zoning Appeals of Vill. of Poland*, 76 Ohio St. 3d 238, 240, 667 N.E.2d 365 (1996) (“[i]t is a cardinal rule of statutory construction that a statute should not be interpreted to yield an absurd result”).

Accordingly, we conclude that if real property located in annexed territory is recorded on the general tax list and duplicate of real and public utility property as being part of a city, but not part of a township in which it also is located, and the information recorded on the tax list is relied

this process, real property is assessed by the county auditor, *see* R.C. 5713.01, R.C. 5713.03, the returns of the county auditor’s assessment are reviewed by the county board of revision, *see* R.C. 5715.16, tax rates and budgets are adjusted by the county budget commission, *see* R.C. 5705.31-.312, R.C. 5705.315-.32, R.C. 5705.33-.34, and the necessary tax levies are authorized by the taxing authority of each subdivision or other taxing unit, *see* R.C. 5705.34. It is only after the completion of all of these steps that the amount of taxes charged against real property is calculated.

The first step in this process requires a county auditor to assess real property for taxation and assign the real property to the subdivisions or other taxing units in which the real property is located. *See* R.C. 319.28(A); *Rolling Hills*, 63 Ohio St. 3d at 521, 589 N.E.2d 1265 (1992) (“assessing real property for taxation includes assigning parcels to taxing districts and recording them accordingly on the tax list”). If a county auditor lists real property on the tax list and duplicate as part of some, but not all of the subdivisions within which the real property is located, the error in the *listing* of the property is a clerical error within the meaning of R.C. 319.35. *See* 1960 Op. Att’y Gen. No. 1876, p. 718 (syllabus) (“[w]here the county auditor by a clerical error describes certain land in the tax duplicate as being in one school district when in fact it is located in another, then under the provisions of [R.C. 319.35] and [R.C. 5713.19], he has a duty to correct such error when he discovers it, notwithstanding that considerable time may have elapsed from the time the error was committed until it was discovered”). If the clerical error in the listing of the real property is not corrected before the county budget commission relies upon the tax list in making its adjustments, it is beyond the authority of a county auditor to make changes to the amount of taxes charged against the real property as a result of the county budget commission’s work. The county budget commission exercises discretion in adjusting rates of taxation and fixing the amount of taxes to be levied. *See, e.g., Newton Twp.*, 1994 WL 596442, at *4 (recognizing that a county budget commission has broad discretion to allocate “free” millage). Accordingly, the actions taken by the county budget commission and the taxes charged as a result of these actions cannot “be corrected by the county auditor from the inspection or examination of documents in the county auditor’s office or from the inspection or examination of documents that have been presented to the county auditor and have been recorded by the county recorder.” R.C. 319.35.

upon by the county budget commission in adjusting the rates of taxation and fixing the amount of taxes to be levied, a county auditor does not have authority under R.C. 319.40 to reallocate to the township a portion of the inside millage already collected from the real property and distributed to the subdivisions to which the property was assigned by charging township taxes against the real property located in the annexed territory and, at the county auditor's next semi-annual tax settlement with the county treasurer, deducting the amount charged from the accounts of the other subdivisions.

No Other Provision in the Revised Code Authorizes a County Auditor to Reallocate Tax Revenues to a Township

Your second question asks whether any other provision in the Revised Code authorizes a county auditor to reallocate tax revenue to the township. No statute authorizes a county auditor to reallocate tax revenue to a township in the situation you describe. *See* 2011 Op. Att'y Gen. No. 2011-009, at 2-74 to 2-75 ("there does not appear to be any statutory mechanism for correcting an error involving a tax levy that has already been assessed by the county auditor, collected by the county treasurer, and improperly or erroneously distributed to a subdivision"); 1933 Op. Att'y Gen. No. 1856, vol. III, p. 1728, at 1730 ("I do not find any express authority for a county auditor when making settlements with the county treasurer and when determining the proper amount of tax revenues with which the several taxing districts in the county are to be credited, to correct errors in previous apportionments of real estate taxes"). *Cf. Zupancic*, 2002-Ohio-3246, at ¶36 (recognizing that the General Assembly did not provide a way for a taxing unit to recover personal property taxes when a county auditor assigns the personal property to the wrong taxing unit on the general tax list and duplicate, and, as a result, the taxes of the taxing unit identified in the tax list are levied upon the property).

Several statutes require a county auditor to correct clerical errors in the general tax list and duplicate of real and public utility property, to charge real property with omitted taxes, or to provide refunds to landowners for the overpayment of real property taxes.¹⁵ *See, e.g.,* R.C. 319.35 (requiring a county auditor to correct clerical errors in the general tax list and duplicate of real and public utility property); R.C. 319.36 (if taxes have been erroneously charged or collected as a result of a clerical error, the county auditor may rectify the error by following the

¹⁵ R.C. 5713.20, for example, requires a county auditor to add real property to the general tax list and duplicate if the property was erroneously omitted therefrom and to charge against it the simple taxes for the preceding five years. In the situation you present, the real property in the annexed territory was not omitted from the tax list and duplicate within the meaning of R.C. 5713.20. *See* R.C. 1.42 ("[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage"); *Webster's New World College Dictionary* 1021 (5th ed. 2014) (defining "omit" to mean "to fail to include; leave out ... to fail to do; neglect"). Rather, the real property was included on the tax list and duplicate, but not assigned to one of the subdivisions within which it was located.

procedures set forth in the statute); R.C. 319.40 (authorizing a county auditor to charge taxes against real property upon discovering that taxes for up to five previous years were never charged); R.C. 5713.19 (requiring a county auditor to correct any clerical errors concerning the name of the owner, valuation, description, or quantity of any tract or lot contained in the list of real property in the county); R.C. 5713.20 (when real property has been erroneously omitted from the general tax list and duplicate, the county auditor shall add the property to the list and charge against it the simple taxes for the preceding five years). These statutes are remedial in nature and impose ministerial obligations upon the county auditor to correct errors made in the performance of his statutory duties. *See Sidman v. Tracy*, Ohio Tax Case No. 94-T-790, 1995 WL 581543, at **5-6 (BTA Sept. 29, 1995). “These [statutes] do not relate to the imposition and creation of tax obligations, but wholly to the mechanics of tax valuation and enforcement.” *Heuck v. Cincinnati Model Homes Co.*, 130 Ohio St. 378, 381, 199 N.E. 698 (1936). Fashioning a remedy in the circumstances you present exceeds the ministerial duties conferred upon a county auditor under these statutes.

Local officials are provided several opportunities throughout the budgeting and taxing processes to discover an error in the placement of real property on the general tax list and duplicate of real and public utility property and to correct the error before taxes are collected.¹⁶ *See, e.g.*, R.C. 319.35 (directing a county auditor to correct clerical errors on the tax list and duplicate); R.C. 5705.37 (the taxing authority of a subdivision may appeal to the Board of Tax Appeals if dissatisfied with the action of the county budget commission); R.C. 5715.11 (directing the county board of revision to hear complaints relating to the valuation or assessment of real property); R.C. 5715.19(A)(1)(d) (authorizing a board of township trustees to file a complaint with regards to the valuation or assessment of any parcel that appears on the tax list); *see also Zupancic*, 2002-Ohio-3246, at ¶47 (the statutory scheme under which taxing units construct budgets and levy and receive taxes and by which taxes are assessed and distributed “does seem to provide adequate controls under which [such a] situation ... could have been prevented or corrected in a timely manner”). Once taxes are levied and collected, however, no statute authorizes a county auditor, upon discovering that real property was not assigned to the correct taxing units, to reallocate tax revenues already collected and distributed on behalf of the subdivisions or other taxing units to which the real property was assigned. *Cf. Zupancic*, 2002-Ohio-3246, at ¶36 (“the General Assembly could have specifically addressed the issue involved

¹⁶ Public officials in Ohio are required to take an oath of office prior to discharging the duties of their public offices. *See* Ohio Const. art. XV, § 7 (“[e]very person chosen or appointed to any office under this state, before entering upon the discharge of its duties, shall take an oath or affirmation, to support the constitution of the United States, and of this state, and also an oath of office”); R.C. 3.22 (“[e]ach person chosen or appointed to an office under the constitution or laws of this state ... shall take an oath of office before entering upon the discharge of his duties”); R.C. 3.23 (setting forth the contents of oath of office). Public officials assume important responsibilities upon taking public office and are expected to discharge their duties in good faith.

here had it so desired. It did not”); 2005 Op. Att’y Gen. No. 2005-043 (syllabus, paragraph 5) (“[i]f township territory has been annexed into a municipal corporation and township boundaries have not been conformed to those of the municipality, but taxes are calculated and levied as if the boundaries had been conformed, the actions of public officials taken to calculate and levy the taxes are presumed to be valid and of legal effect, and may be modified or corrected only in accordance with provisions of statute or through proper administrative or judicial procedures”).

Accordingly, we conclude that if a county auditor lists real property located in annexed territory on the general tax list and duplicate of real and public utility property as part of a city, but not as part of a township in which it also is located, and the county budget commission relies upon the tax list to adjust rates of taxation and fix the amount of taxes to be levied, a county auditor has no authority to reimburse the township for any share of inside millage it might have received had township taxes been levied on the real property.¹⁷

Conclusion

In sum, it is our opinion, and you are hereby advised that if a county auditor lists real property located in annexed territory on the general tax list and duplicate of real and public utility property as part of a city, but not as part of a township in which it also is located, and the county budget commission relies upon the tax list to adjust rates of taxation and fix the amount of taxes to be levied, a county auditor has no authority to reimburse the township for any share of inside millage it might have received had township taxes been levied on the real property.

Very respectfully yours,



MICHAEL DEWINE
Ohio Attorney General

¹⁷ In this opinion, we conclude that the Revised Code does not grant a county auditor the power to provide a remedy to the township in these circumstances. We make no determination about remedies that may be sought from the courts or administrative tribunals. *See, e.g.*, R.C. 5715.19(A)(1)(d) (authorizing a board of township trustees to file a complaint with regards to the valuation or assessment of any parcel that appears on the tax list “for the current tax year”); *Weathersfield Twp. v. Trumbull Cnty. Budget Comm’n*, 69 Ohio St. 3d 394, 395, 632 N.E.2d 1281 (1994) (holding that the proper avenue to challenge assessments of property when annexed territory is incorrectly treated as having been removed from the township is to file a complaint with the county board of revision); *see also* R.C. 323.01(F) (“[c]urrent tax year’ means, with respect to particular taxes, the calendar year in which the first installment of taxes is due”).