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FORFEITED LAND SALE—PARCEL SOLD BY COUNTY AUDITOR—TITLE CONVEYED—FREE AND CLEAR OF ALL TAXES AND ASSESSMENTS—GENERAL TAX LIST—REAL AND PUBLIC UTILITY PROPERTY—CERTIFIED AND DELIVERED TO COUNTY TREASURER—COLLECTION PRIOR TO SALE OF PARCEL OF LAND.

SYLLABUS:

When a parcel of land is sold by the county auditor at a forfeited land sale title thereto is conveyed by him free and clear of all taxes and assessments shown on the last general tax list of real and public utility property which has been certified and delivered to the county treasurer for collection prior to the sale of such parcel of land.

Columbus, Ohio, July 6, 1948

Hon. Marvin A. Kelly, Prosecuting Attorney
Scioto County, Portsmouth, Ohio

Dear Sir:

I have before me your request for my opinion, which request reads as follows:

"On June 27th and 28th, 1946 and July 1st and 2nd, 1946 pursuant to order of Common Pleas Court the Auditor offered for sale and sold certain parcels of real estate which had been forfeited to the State of Ohio. The first and original publication of the delinquent land list was made on June 20th, 1944 and the following week. The Treasurer opened his books for the payment of taxes for the first half of the year 1945 on the 29th day of March, 1946 and closed same on the 31st day of May, 1946. The Treasurer opened his books for the payment of taxes for the last half of the year 1945 on the 20th day of June, 1946 and closed same August 15th, 1946.

"Section 5752 of the General Code as amended October 11th, 1945 provides 'Such sale shall convey the title to said tract or parcel of land, divested of all liability for any taxes, assessments, penalties, interest and costs due at the time of sale, which remain after applying thereon the amount for which it was sold.'

"QUESTION

"Do the taxes, assessments, penalties, interest and costs or any part thereof for the year of 1945 remain a lien upon the premises sold as above, it appearing that the Treasurer had extended the time for payment of the taxes for the last half of the year of 1945 beyond the date provided for in Section 5678 of the General Code. In other words, what are we guided by as to the date referred to in Section 5752 of the General Code 'due at the time of sale?'

"We contemplate further sales of forfeited lands within the next two months and we would like to be in a position to advise our purchasers as to exactly what taxes, assessments, etc., are to be assumed and paid by the purchaser, and what taxes, assessments, etc., are satisfied at the time of the sale."

When lands have been forfeited to the state for nonpayment of taxes, it becomes the duty of the county auditor to fix and advertise a date for the sale of such lands. The procedure for a forfeited land sale

is found in Sections 5752 and 5762, General Code. The pertinent portions of these sections formerly read (120 O. L. 154) :

Section 5752: * * * "Such sale shall convey the title to the said tract or parcel of land, divested of all liability for any arrearages of taxes, assessments, penalties, interest and costs which remain after applying thereon the amount for which it was sold."

Section 5762: * * * "When a tract of land has been duly forfeited to the state and sold agreeably to the provisions of this chapter, the conveyance of such real estate by the county auditor shall extinguish all previous title thereto and invest the purchaser with a new and perfect title, free from all liens and encumbrances, except such easements and covenants running with the land as were created prior to the time the taxes or assessments, for the nonpayment of which the land was forfeited, became due and payable."

In *State, ex rel. City of South Euclid v. Zangerle*, 145 O. S. 433, the word "arrearages" was said to mean "indebtedness." It was therefore held that title to property sold at forfeited land sale passed to the purchasers free not only from the lien of taxes, assessments, penalties and interest then due, but also free from the lien of installments of assessments and reassessments falling due in the future.

The Court of Appeals of the Ninth Appellate District, following the views of the Supreme Court expressed in *State, ex rel. City of South Euclid v. Zangerle*, supra, in the case of *Smith v. Ayres, Auditor*, 76 O. App. 319, held :

"1. Real property sold pursuant to the forfeited land statutes after the statutory date in April upon which a tax lien attaches (Section 5671, General Code) and before the time fixed for the collection thereof, is divested, in the hands of a purchaser, of the April tax lien under Section 5752, General Code.

"2. The words 'arrearages of taxes' as used in Section 5752, General Code, include a lien for taxes whether due and payable or not."

A few days prior to the release of the decision in the case of *Smith v. Ayres, Auditor*, supra, the Ninety-sixth General Assembly enacted House Bill No. 215 which amended Sections 5752 and 5762, General Code (121 O.L. 391). These sections, so far as herein pertinent, now read :

Section 5752. * * * "Such sale shall convey the title to said tract or parcel of land, divested of all liability for any taxes, assessments, penalties, interest and costs due at the time of sale, which remain after applying thereon the amount for which it was sold."

Section 5762: "* * * When a tract of land has been duly forfeited to the state and sold agreeably to the provisions of this chapter, the conveyance of such real estate by the county auditor shall extinguish all previous title thereto and invest the purchaser with a new and perfect title, free from all liens and encumbrances, except taxes and installments of special assessments and reassessments not due at the time of such sale, and except such easements and covenants running with the land as were created prior to the time the taxes or assessments, for the non-payment of which the land was forfeited, became due and payable."

The word "due" ordinarily means owed or owing; payable; having reached the date at which payment should be made.

In *Yocum, Admr., v. Allen*, 58 O. S. 280, at page 288, Spear, C. J., said:

"The latter word (due) implies a debt matured, and therefore a breach in its nonpayment, while an indebtedness may exist without present liability to pay."

A much broader definition is found in *Davis v. Eyler*, 37 O. App. 210, wherein it is said:

"Webster thus defines the word 'due': 'That which is due or owed; debt; that which one contracts to pay, or do, to or for another; that which belongs or may be claimed as a right.'"

In *Kouns v. Reiniger*, 14 O. C. D. 116, it is said on page 118:

"In *United States v. Bank*, 31 U. S. (6 Pet.) 29, 36, Mr. Justice Story says the word 'due' is used in different senses:

" 'It is sometimes used to express the mere state of indebtedment, and then is equivalent to owed, or owing; and it is sometimes used to express the fact that the debt has become payable. Thus, in the latter sense, a bill or note is often said to be due, when the time for payment of it has arrived. In the former sense, a debt is often said to be due from a person when he is the party owing it, or primarily bound to pay, whether the time of payment has or has not arrived.'"

“See also *Scudder v. Coryell*, 10 N. J. L. 340, 345.

“The word ‘due’ is used in the statute in the sense of payable. * * *”

That the word “arrearages,” which theretofore had been held to include all taxes and assessments which were liens on the property, whether presently due and payable or not, was deleted from the sections in 1945 and the word “due” inserted therein in lieu thereof, makes it apparent that the latter word was used in the sense of being presently payable. That this distinction was intended by the General Assembly is further evidenced by the title to the bill, which reads:

“An act to provide that sales of forfeited land shall convey title free and clear except for the lien of taxes and assessments not due at the time of sale, and for that purpose to amend sections 5752 and 5762 of the General Code.”

I must therefore conclude that the present statutes free forfeited lands from such taxes and assessments only as have already become due and payable at the time of the auditor’s sale.

The date on which taxes first became payable is determined by reference to Sections 2583 and 2649, General Code. Section 2583, General Code, directs the auditor to “certify and on the first day of October deliver” to the county treasurer the treasurer’s general duplicate of real and public utility property for the current year.” Upon receipt of the duplicate the treasurer is required to open his office for the collection of taxes, Section 2649, General Code, providing:

“The office of the county treasurer shall be kept open for the collection of real property taxes and assessments and public utility property taxes from the time of delivery of the duplicate to the treasurer until the twentieth day of June, excepting during such time for which it may be necessary to close such office for the purpose of the February settlement of such taxes.”

Thus, it must be concluded that taxes are payable and therefore “due” for the current year on the date the treasurer receives the general duplicate and opens his office for the collection of real property taxes and assessments.

Special assessments may be made payable in installments and certified to the county auditor to be placed upon the tax list in accordance

with the plan of payment adopted. When special assessments are shown on the treasurer's general duplicate, it is the treasurer's duty to collect such installments as are shown on his duplicate in the same manner and at the same time as other taxes are collected.

In State, ex rel. Brown, *Treas. v. Cooper*, *Treas.*, 123 O. S. 23, it was held :

"1. The duty enjoined upon county treasurers by Section 3892, General Code, to collect installments of special assessments upon real estate in the same manner and at the same time as other taxes are collected, is mandatory.

"2. Special assessments upon real estate for public improvements are taxes within the meaning of Sections 2655 and 3892, General Code.

"3. By virtue of Section 2655, General Code, county treasurers are not permitted to receive payments of general taxes without at the same time receiving payment of installments of special assessments for public improvements certified to the county treasurer for collection."

It therefore seems evident that each annual installment of special assessments becomes "due" at the same time as the annual tax upon the real estate.

Summarizing and in specific answer to your inquiry, it is my opinion that when a parcel of land is sold by the county auditor at a forfeited land sale title thereto is conveyed by him free and clear of all taxes and assessments shown on the last general tax list of real and public utility property which has been certified and delivered to the county treasurer for collection prior to the sale of such parcel of land.

Respectfully,

HUGH S. JENKINS,
Attorney General.