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DELINQUENT TAXES, ASSESSMENTS, PENALTIES, INTEREST, ETC.—WHEN PERSON ENTERED INTO UNDERTAKING TO PAY SUCH CHARGES, SECTION 2672-3 G.C. OR SIMILAR PROVISIONS, WHITTEMORE ACTS, AND UNDERTAKING CANCELED FOR DEFAULT, INSTALLMENT PAYMENTS, SUCH PERSON ELIGIBLE TO ENTER NEW UNDERTAKING—UNPAID INTEREST DUE, RATE, DATE OF DEFAULT—WHERE NEW UNDERTAKING—HOW CHARGES, INTEREST, ETC., COMPUTED.

Bureau of Inspection and Supervision of Public Offices,
Columbus, Ohio.

SYLLABUS:

1. *A person who has entered into an undertaking for the payment of delinquent taxes, assessments, penalties, interest and other charges under the provisions of Section 2672-3, General Code, or under similar provisions of any of the former Whittemore Acts, which undertaking has*

been canceled by reason of default in installment payments, is eligible to enter into a new undertaking.

2. At any time after default under an undertaking under the provisions of Section 2672-3, General Code, in addition to the taxes, assessments, penalties, interest and other charges remaining on the treasurer's tax list and duplicate, there will be due any unpaid interest which accrued under the undertaking together with interest at the rate prescribed by the permanent law of this state from the date of default.

3. If a taxpayer who has previously defaulted in the payments under such undertaking enters into a new undertaking, the new undertaking shall be for the balance, if any, of the principal sum of the taxes and assessments for the year 1936 and years prior thereto plus all unpaid taxes, assessments, penalties, interest and other charges for 1937 and all years subsequent thereto and shall include interest from the date of default of the previous undertaking upon taxes and assessments for 1937 and years subsequent thereto at the rate prescribed by the permanent law of this state plus any unpaid interest which accrued under the former undertaking.

Columbus, Ohio, January 27, 1941.

Bureau of Inspection and Supervision of Public Offices,
Columbus, Ohio.

Gentlemen:

Your request for my opinion reads as follows:

“May we respectfully request your opinion upon the following questions in relation to the so-called Whittemore Acts, now Sections 2672-1 to 7, General Code:

If a person who has entered into an agreement to pay delinquent taxes under the present or previous acts, defaults such agreement, does he have the right at a subsequent date to again enjoy the benefits of this law, and enter into another agreement covering the same property and taxes?

Sections 2672-6, General Code, pertaining to defaulted contracts, reads in part as follows:

“ * * *, and the interest, if any, chargeable on such tax lists and duplicates at the rate prescribed by the permanent law of this state shall be computed from the date of such default only.”

If a person who has defaulted a previous agreement may now enter into a new agreement, what is to be done with the interest that accumulated between the date of the defaulted contract and the date of the succeeding contract?

We are enclosing herewith a letter received, which presents these questions, as well as others, and outlines some of the difficulties county officials are encountering in the attempted administration of this law.”

The present Whittemore Act was passed as Amended Senate Bill No. 3 by the Ninety-Third General Assembly and, being permanent in its nature, has been given Section Numbers 2672-1 to 2672-16, General Code, inclusive. Section 2672-3, General Code, furnishes authority for owners of real property and holders of liens thereon to enter into written undertakings for the payment of delinquent taxes in installments. Penalties, interest and other charges for the year 1936 and prior thereto are omitted, and interest at the rate of four per cent per annum, payable annually, is charged from the date of the written undertaking. Section 2672-7, General Code, provides that upon full compliance with all provisions of the undertaking “and not prior thereto” all interest, penalties and other charges prior to the year 1937 shall be abated and cancelled. Thus it is apparent that there is no remission until there has been a compliance with the terms of the undertaking by the taxpayer. One of his principal advantages up to that point is a reduction in the interest rate from eight per cent to four per cent per annum.

Should the taxpayer default in his installment payments, Section 2672-6, General Code, requires the county treasurer to make a notation on his duplicate which shall effect a cancellation of the undertaking. A certificate of such cancellation is furnished the county auditor. The taxpayer is credited on the tax list and duplicate with the payments he has made “and the *penalties* on such delinquent taxes and assessments shall be adjusted to the amount of the principal sum thereof remaining unpaid;” that is, there is a proportionate adjustment of penalties only. For such portion of the taxes and assessments for 1936 and prior years as have been paid by the taxpayer while the undertaking was in force, there should be a remission of penalties allowed. No such provision having been made for the remission of interest and other charges, it follows that they must be collected in full after default. The pertinent portions of

Section 2672-6, General Code, are as follows:

“In case of any default in the payments under the undertaking provided for in this act, the county treasurer shall enter on the duplicate the date and the fact of such default. Thereupon such undertaking shall be canceled of record in the office of the treasurer and a certificate of such cancellation shall be given to the county auditor, and such officer and all other officers authorized by permanent law in this state to act in the premises, shall proceed to enforce the payment and collection of such delinquent taxes, assessments, penalties and interest, in the manner prescribed by the permanent law of this state therefor; excepting that in such event there shall be credited on the tax list and duplicate and the delinquent land tax list and duplicate thereof the amounts theretofore paid under such undertaking, and the penalties on such delinquent taxes and assessments shall be adjusted to the amount of the principal sum thereof remaining unpaid; and the interest, if any, chargeable on such tax lists and duplicates at the rate prescribed by the permanent law of this state shall be computed from the date of such default only.”

Section 2672-1, General Code, is in part as follows:

“Any person, firm or corporation charged with or legally authorized or required by law or decree of court to pay real property taxes and assessments which have become delinquent at or prior to the August or September settlement in any year, or any person, firm or corporation holding a lien upon such real property may at any time elect to pay the principal sum of such delinquent taxes and assessments as provided in this act, anything in the permanent statutes of this state relating to the payment of real property taxes, assessments, penalties and interest thereon to the contrary notwithstanding. * * *”

If a taxpayer has entered into an undertaking under authority of Section 2672-3, General Code, and has thereafter defaulted, under the provisions of Section 2672-6, General Code, he is clearly “charged with or legally authorized or required by law or decree of court to pay” the unpaid portion of such taxes, assessments, penalties, interest and other charges to the same extent as he was obligated prior to entering into the undertaking. He is a “person * * * charged with * * * or required by law * * * to pay real property taxes and assessments which have become delinquent.” He may therefore “at any time elect to pay the principal sum of such delinquent taxes and assessments as provided in this act.”

Section 2672-3, General Code, referring to the persons designated in Section 2672-1, General Code, permits any such persons to enter into an understanding to pay delinquent taxes and assessments in ten annual installments, such section being as follows:

“Any such person being the owner of such real property or the holder of a lien thereon may at such times, in lieu of making a tender as authorized by section 2 of this act, enter into a written undertaking in such form as shall be prescribed by the bureau of inspection and supervision of public offices, to pay the full principal amount of such taxes and assessments, so delinquent, less penalties, interest and other charges for the year 1936 and prior thereto, and plus penalties, interest and other charges for the year 1937 and years subsequent thereto, in ten annual installments payable at the time prescribed by law for the payment of the second half of current real property taxes and assessments, with interest at the rate of four per centum per annum, payable annually, from the date of the written undertaking. The first installment shall be due and payable upon entering into such undertaking and shall be collected by the treasurer, who shall give a certificate therefor to the county auditor. Upon receipt of such certificate the county auditor shall note on the tax list and duplicate, and on the delinquent tax list, in such manner as the bureau may prescribe, the fact that such undertaking has been entered into; and thereafter, so long as such undertaking shall continue to be performed, the lands against which said delinquent taxes or assessments, penalties, interest and other charges are charged, shall not be entered on the foreclosure list, and shall not be published as provided in section 5704 of the General Code as part of the list of delinquent lands, anything in the statutes of this state to the contrary notwithstanding.”

From a consideration of Sections 2672-1 and 2672-3, General Code, it seems evident that no distinction has been made between persons who have defaulted on previous undertakings and those who have never entered into any such undertaking. Both appear to be equally eligible.

It will be noted that Section 2672-3, General Code, provides for an interest charge at the rate of four per cent per annum from the date of the written undertaking. As installments are paid a separate credit for interest is required by Section 2672-5, General Code. In the event of a default the tax collecting authorities are required by Section 2672-6, General Code, to “proceed to enforce the payment and collection of such delinquent taxes, assessments, penalties and interest.” Since the Act makes no provision for its remission, interest referred to therein includes all unpaid interest charged under the undertaking at four per cent per annum. It is further provided in Section 2672-6, General Code, that interest from the date of default shall be computed at the rate prescribed by the permanent laws of the state. Section 5704, General Code, provides that interest shall be charged upon the delinquent tax list and duplicate at the rate of eight per cent per annum. Should the taxpayer enter into a subsequent undertaking, it should include any unpaid interest

charged at four per cent per annum during the time the prior undertaking was in force, and interest at eight per cent per annum from the date of default to the date of the new undertaking. Such items of interest having accrued after the year 1936, there is no authority for their remission.

In specific answer to your questions, it is my opinion that:

1. A person who has entered into an undertaking for the payment of delinquent taxes, assessments, penalties, interest and other charges under the provisions of Section 2672-3, General Code, or under similar provisions of any of the former Whittlemore Acts, which undertaking has been canceled by reason of default in installment payments, is eligible to enter into a new undertaking.

2. At any time after default under an undertaking under the provisions of Section 2672-3, General Code, in addition to the taxes, assessments, penalties, interest and other charges remaining on the treasurer's tax list and duplicate, there will be due any unpaid interest which accrued under the undertaking together with interest at the rate prescribed by the permanent law of this state from the date of default.

3. If a taxpayer who has previously defaulted in the payments under such undertaking enters into a new undertaking, the new undertaking shall be for the balance, if any, of the principal sum of the taxes and assessments for the year 1936 and years prior thereto plus all unpaid taxes, assessments, penalties, interest and other charges for 1937 and all years subsequent thereto and shall include interest from the date of default of the previous undertaking upon taxes and assessments for 1937 and years subsequent thereto at the rate prescribed by the permanent law of this state plus any unpaid interest which accrued under the former undertaking.

Respectfully,

THOMAS J. HERBERT,
Attorney General.