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ASSESSMENTS, SPECIAL—TERM “TOTAL TAX RECEIPTS OF EACH SUBDIVISION OF THE COUNTY FROM THE REAL * * * PROPERTY TAX DUPLICATE,” AMENDED SENATE BILL 362, SECTION 2, 96 GENERAL ASSEMBLY, DOES NOT INCLUDE MONEYS DERIVED FROM COLLECTION OF SPECIAL ASSESSMENTS—REAL PROPERTY TAX DUPLICATE—SUCH MONEYS SHOULD NOT BE INCLUDED IN COMPUTATION—“LOCAL GOVERNMENT BILL.”

SYLLABUS:

The term “total tax receipts of each subdivision of the county from the real * * * property tax duplicate” as the same appears in section 2 of Amended S. B. 362 of the 96th General Assembly does not include moneys derived from the collection of special assessments that appear on said real property tax duplicate and such moneys should not be included in the computation required to be made pursuant to said section.

Columbus, Ohio, August 10, 1946

Hon. William G. Wickens, Prosecuting Attorney
Elyria, Ohio

Dear Sir:

Receipt is acknowledged of your request for my opinion. You have referred therein to the recently enacted “Local Government Bill”. It is manifest that you have in mind Amended S. B. No. 362 of the 96th General Assembly which was signed by the Governor and filed in the office of the Secretary of State on July 15, 1946. Hence said act will become effective as a law on October 14, 1946. In respect thereto your request for my opinion reads in part as follows:

“In consideration of the ratio that is provided for in the new law, I would appreciate knowing what definition you place upon ‘total tax receipts from the real property tax duplicate’, in this respect, to-wit: Does the same embrace receipts from special assessments collected? It is apparent that the ratios will be materially affected by such determination.

I might point out that ordinarily assessments are not considered as taxes, in that they do not represent contributions to the cost of government, but are rather installments for special

benefits derived, and yet the Supreme Court in the case of *Miami Co. v. Dayton*, 92 O. S. 215, has held that the word 'tax' is broad enough to include assessments on the basis of benefits."

That portion of aforementioned Amended S. B. 362 to which your inquiry is addressed is contained in Section 2 thereof. The matter therein to which specific attention is directed is as follows:

"The county auditor shall lay before the budget commission, when so convened, the certificate of the board of tax appeals, and the budget commission shall thereupon apportion the estimated amount of the undivided local government fund of the county to and among the several subdivisions, as defined in section 5546-18 of the General Code, in the ratio *which the total tax receipts of each subdivision of the county from the real, public utility and tangible property tax duplicate during the previous five years bears to the aggregate tax receipts of all such subdivisions from the real, public utility and tangible property tax duplicates during the previous five years.*" (Emphasis added.)

In 51 Am. Jur., Taxation, Section 3, the word "tax" is defined and it is said:

"A tax is a forced burden, charge, exaction, imposition, or contribution assessed in accordance with some reasonable rule of apportionment by authority of a sovereign state upon the persons or property within its jurisdiction, to provide public revenue for the support of the government, the administration of the law, or the payment of public expenses. Any payment exacted by the state or its municipal subdivisions as a contribution toward the cost of maintaining governmental functions, where the special benefits derived from their performance is merged in the general benefit, is a tax."

From the foregoing definition, which is most comprehensive in terms, it could possibly be asserted that a special assessment such as a charge for street paving, sewer installation, etc., when levied against real estate may be considered as a "tax". However, there are well recognized distinctions between special assessments and taxes levied for general revenue purposes. In 48 Am. Jur., Special or Local Assessments, Section 3, it is stated:

"A special assessment is taxation in the sense that it is a distribution of that which is originally a public burden. *Clearly, however, a special or local assessment is not a tax in the sense*

of a tax to raise revenue for general governmental purposes. Taxes for revenue or 'general taxes' as they are sometimes called by distinction, are the exactions placed upon the citizen for the support of the government, paid to the state as a state, the consideration of which is protection or public service by the state, whereas special or local assessments, sometimes called 'special taxes' are imposed upon property within a limited area for the payment for a local improvement supposed to enhance the value of all property within that area." (Emphasis added.)

Consequently the matter for determination is whether, when the General Assembly used the words "the total *tax* receipts from each subdivision of the county, etc." in said Amended S. B. No. 362, it was the legislative intent to adopt the comprehensive definition of the word "tax". In *Des Moines Union Ry. Co. v. Chicago Great Western Ry. Co.* (1920) 188 Iowa, 1019, 177 N. W. 90, 9 A. L. R. 1557, the court said:

"'Taxes,' 'taxation,' and 'assessments' are words in very common and familiar use, the meaning and effect of which are not ordinarily open to serious question, but, like most other words in our language, *their scope and application vary according to the nature of the subject under discussion and the circumstances under which they are used.* Taxation, in its broadest and most general sense, includes every charge or burden imposed by the sovereign power upon persons, property, or property rights, for the use and support of the government and to enable it to discharge its appropriate functions, and in that broad definition there is included a proportionate levy upon persons or property and all the various other methods and devices by which revenue is exacted from persons and property for public purposes. *It is only occasionally, however, that the word 'tax' or 'taxation' is used in this all-embracing and sweeping sense,* and legislatures, courts, and the people have come to differentiate between 'general' taxes, 'ordinary' taxes, 'property' taxes, 'excise' taxes, 'inheritance' taxes, 'occupation' taxes, 'special' taxes or assessments, 'franchise' taxes, 'poll' taxes, 'license' taxes, 'income' taxes, 'excess profits' taxes, and various other methods by which contributions to the public revenues are enforced."

(Emphasis added.)

I might also direct your attention to the case of *Lima v. Cemetery Association*, 42 O. S. 128, the first paragraph of the syllabus thereof reading:

"In a general sense, a tax is an assessment, and an assessment is a tax, but there is a well-recognized distinction between

them, an assessment being confined to local impositions upon property for the payment of the cost of public improvements in its immediate vicinity, and levied with reference to special benefits to the property assessed."

It appears from an examination of the facts in that case that the city of Lima had made an assessment against certain real estate which was being used exclusively as a grave yard. Said assessment had been made for grading and paving an alley on which the aforementioned real estate abutted and the cemetery association was seeking relief therefrom. At page 130 of its opinion the court said:

"* * * But applying the well settled rule for the construction of provisions exempting property from such burdens, that is, that they are to be strictly construed * * * we are required by the clear weight of authority to hold, that the exemption in our statutes of burying grounds from taxation * * * has relation to *taxation for revenue purposes*, and does not extend to *an assessment for a local improvement* like that in question here."

(Emphasis added.)

It is recognized, of course, that the legislation here under consideration does not involve the question of the exemption of property from taxation. The point I desire to make is that as noted in *Lima v. Cemetery Association*, *supra*, the word "tax" was held not to include an assessment except in a general sense and that a distinction is to be borne in mind between a tax and an assessment when interpreting or construing legislation.

You have directed my attention to the case of *County of Miami, et al., v. City of Dayton*, 92 O. S. 215. The court was therein concerned with an act providing for the establishment of conservancy districts. It was pointed out that the act under consideration contemplated assessments according to benefits.

At page 229 of its opinion the court said:

"Now the language of the act uses the word 'tax', but the word 'tax' is a general term and is used frequently as a general tax, or as a local and special tax, in which latter instance it is more frequently spoken of as an 'assessment.' Indeed, it has been repeatedly held that the word 'tax' is sufficiently general and comprehensive to include the word 'assessment.' * * *

Courts will not limit themselves to the form and name of things. It is their duty to probe deep enough to get at the substance and the essence of the thing by whatever name or brand it may be known. The whole spirit of the law and its provisions in connection with its practical operation unmistakably indicate that the legislature used this word 'tax' in its local and special sense. In short, as an *assessment*."

It is clear that Amended S. B. 362 is legislation of an entirely different nature than that under consideration in County of Miami, et al., v. City of Dayton, *supra*. Manifestly that case should not be interpreted as meaning that under any and all circumstances the word 'tax' and 'assessment' can be employed synonymously.

It must reasonably be assumed that the General Assembly was fully cognizant of the fact that, as has been pointed out, the word "tax" is seldom used in its all-embracing sense. Furthermore, there is no apparent reason why, in determining the "tax receipt" of each subdivision of the county, the amount derived from special assessments should be included therein.

In specific answer to your inquiry it is my opinion that:

The term "total tax receipts of each subdivision of the county from the real * * * property tax duplicate" as the same appears in section 2 of Amended S. B. 362 of the 96th General Assembly does not include moneys derived from the collection of special assessments that appear on said real property tax duplicate and such moneys should not be included in the computation required to be made pursuant to said section.

Respectfully,

HUGH S. JENKINS,
Attorney General.