

OPINION NO. 72-086**Syllabus:**

Public utility tax delinquencies on railroad property (excluding rolling stock) should be treated as though they are from the real property tax duplicate and certified for foreclosure on the standard real property form; such delinquencies should not be handled as personal property tax delinquencies.

To: John T. Corrigan, Pros. Atty., Cuyahoga County, Cleveland, Ohio
By: William J. Brown, Attorney General, September 29, 1972

I have before me your request for my opinion as to whether railroad property (excluding rolling stock) should be considered as real property, or as personal property, for the purpose of foreclosure for delinquent taxes.

Chapter 5727, Revised Code, deals with the taxation of public utilities. Railroads are classified as a public utility according to Section 5727.01 (E) (18), Revised Code.

The Tax Commissioner is required by Section 5727.10, Revised Code, to "ascertain and assess at its true value in money all the property in this state of each public utility * * *." After the Tax Commissioner has made this determination, he then allocates the assessed valuation among the taxing districts within which a public utility operates under Sections 5727.13 and 5727.14, Revised Code. After this allocation has been made, the Tax Commissioner is required by Section 5727.23, Revised Code, to:

"* * * certify to the county auditor the amount apportioned to his county and to each municipal corporation, township, or other taxing district therein.

"The county auditor shall place the apportioned valuation and assessments on the proper tax lists and duplicates, and taxes shall be levied and collected thereon at the same rates and in the same manner as taxes are levied and collected on real property in the taxing district in question." (Emphasis added.)

Section 319.28, Revised Code, identifies the "proper tax lists" mentioned in Section 5727.23, by providing that:

"On or before the first Monday of August, annually, the county auditor shall compile and make up a general tax list of real and public utility property in the county, * * *." (Emphasis added.)

This Section also provides that the county auditor shall prepare the general tax lists in duplicate. Pursuant to Section 319.43, Revised Code, the county auditor is then required to:

"* * * take from the duplicate previously put into the hands of the treasurer for collection a list of all such taxes and assessments as the treasurer has been unable to collect, describing in such list the property [real and public utility] on which the delinquent taxes and assessments are charged as described on the duplicate, * * *."

Real property and public utility property thus occupy the same tax list and are "collected at the same rates and in the same manner * * *" pursuant to Section 5727.23.

Furthermore, Section 323.12, Revised Code, provides for the same payment schedule for both real property and public utility taxes.

Chapter 5719, Revised Code, which deals with the collection of taxes, provides in Section 5719.01, Revised Code, as follows:

"The lien of the state for taxes levied for all purposes on the real and public utility tax list and duplicate for the year 1954 and each year thereafter shall attach to all real property subject to such taxes on the first day of January, annually, and continue until such taxes and any penalties, interest, or other charges accruing thereon are paid. * * *."

Chapter 5721, Revised Code, which deals with delinquent lands, provides in Section 5721.03, Revised Code, that, "[i]mmediately after each August settlement, the auditor shall make and certify a list and duplicate of all the delinquent lands in his county. * * *" (Emphasis added.) "Delinquent lands" are defined in Section 5721.01 (A) as "* * * all lands upon which the taxes and assessments, or either, together with penalties, remain unpaid at two consecutive semiannual tax settlement periods." (Emphasis added.)

The foregoing analysis therefore indicates that tax delinquencies on railroad property (excluding rolling stock) should be treated in the same manner as real property tax delinquencies. Since none of the above statutes provide for any difference in the treatment of public utility taxes on railroad property (excluding rolling stock) and real property taxes, collection and delinquency procedures for both are the same.

This conclusion does not contravene Section 5719.04, Revised Code, which provides, in part, as follows:

"Immediately after each October settlement the county auditor shall make a tax list and duplicates thereof of all taxes, except those upon real estate, remaining unpaid, as shown by the county treasurer's books and the list of taxes returned as delinquent by him to the auditor at such settlement and the preceding August settlement, and also all taxes assessed by the tax commissioner pursuant to law which were not charged upon the tax lists and duplicates on which such settlements were made nor previously charged upon a delinquent tax list and duplicates pursuant to this section. * * *

"The auditor shall cause a copy of the delinquent personal and classified property tax list and duplicate, provided for in this section, * * *." (Emphasis added.)

This Section of the Revised Code deals specifically with delinquent personal and classified property taxes. Since the previously mentioned Sections of the Revised Code prescribe collection and delinquency procedures regarding real property and public utility taxes, delinquent railroad property (excluding rolling stock) should not be transferred to the delinquent personal property tax list and collected in the manner provided under the personal property Sections of the Revised Code. Section 5719.04 deals only with tangible and intangible personal property.

In specific answer to your question it is my opinion, and you are so advised, that public utility tax delinquencies on railroad property (excluding rolling stock) should be treated as though they are from the real property tax duplicate and certified for foreclosure on the standard real property form; such delinquencies should not be handled as personal property tax delinquencies.