

4946.

TAX AND TAXATION — INSTALLMENT PAYMENT OF  
TAXES UNDER S. B. NO. 221, DISCUSSED.

*SYLLABUS:*

1. *Section 3 of Amended Senate Bill No. 221, 91st General Assembly, 116 O. L. 199, limits the payment of taxes in ten equal installments as provided for by the act, to those charged on the tax list and duplicate made up in the year 1935 and the last half of those charged on the 1934 duplicate, if the same have not been paid prior to the September settlement in 1935, provided the first half of said taxes were paid prior to the February settlement in 1935.*

2. *The provisions of section 2657, General Code, relative to the extension of time for payment of taxes, are not repealed by implication by Amended Senate Bill No. 221 of the 91st General Assembly, 116 O. L. 199.*

COLUMBUS, OHIO, November 29, 1935.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication, which reads as follows:

“We respectfully request your written opinion upon the following:

Amended Senate Bill No. 221, passed May 1st, 1935, and filed in the office of the Secretary of State on May 20th, 1935, provides for the payment of real property taxes and assessments in ten equal installments.

Section 3 of this Act provides that it shall take effect upon and with respect to the taxes charged on the tax list and duplicate made up in the year 1935. It further provides that in cases where the first half of the taxes and assessments charged upon any real estate on the duplicate made in 1934 have been collected prior to the February settlement in the year 1935, but the remaining half thereof is not collected prior to September 1st, 1935, such taxes and assessments and the penalty required by law to be added thereto and collected with the taxes and assessments of the next current year shall be subject to the provisions of this Act, and may be paid in installments as provided.

QUESTION: Does this provision limit payment of delinquent taxes in installments to only those which are delinquent at the August settlement in 1935, the first half of which were paid prior to the February settlement in 1935; or may the delinquency at the

February settlement in 1935 and former years, together with the current taxes be paid in installments? In other words, does this act provide for the payment of all delinquent taxes together with the current taxes, in installments?

This act provides that the first installment must be paid prior to December 20th.

Section 2657, General Code, authorizes the county commissioners of any county, by resolution, to extend the time of the payment of taxes for not more than thirty days after the time fixed by law. It further provides that the Tax Commission of Ohio may further extend the time for payment of taxes in any county in case of emergency.

QUESTION: Are the provisions of Section 2657 relative to the extension of time for payment of taxes repealed by implication by Senate Bill No. 221?"

Amended Senate Bill No. 221 of the 91st General Assembly, 116 O. L., page 199, provides for the payment of real property taxes and assessments and public utility property taxes, in ten equal installments. Section 2653, General Code, as amended by said act, reads as follows:

"Each person charged with real property taxes and assessments or public utility property taxes on a tax duplicate in the hands of a county treasurer may pay the full amount thereof on or before the twentieth day of December, or one-half therefore before such date, and the remaining half thereof on or before the twentieth day of June next ensuing; \* \* \* or, any person so charged may, prior to such twentieth day of December, elect to pay the full amount thereof in ten equal installments, payable on or before the twentieth day of December and on or before the tenth day of each succeeding month to and including the tenth day of September next hereafter, as provided by law."

The provisions of said act relative to the collection of taxes and assessments to be affected by it are contained in section 3 thereof, which reads as follows:

"This act shall take effect upon and with respect to taxes charged on the tax list and duplicate made up in the year 1935. The amendments herein made of existing sections shall not affect the collection of taxes and assessments charged on any prior duplicate. In cases in which the first half of the taxes and assessments charged upon any real estate on the duplicate made up in the year 1934 have been collected prior to the February settlement in the year 1935 but

the remaining half thereof is not collected prior to the September settlement in the year 1935, such taxes and assessments and the penalty required by law to be added thereto and collected with the taxes and assessments of the next current year, shall be subject to the provisions of this act, and may be paid in installments as herein provided."

The above section, in the first sentence thereof, expressly specifies that the act shall take effect with respect to taxes charged on the tax list and duplicate made up in the year 1935. A duplicate of the tax list made up by the county auditor in the year 1935 is delivered to the county treasurer on the first day of October of said year. It is therefore apparent that taxes charged upon the duplicate in the hands of the treasurer, after October 1935, may be paid in installments in the manner provided by the act.

It is also provided in said section that if the first half of the taxes and assessments charged on the 1934 duplicate have been collected prior to the February settlement in 1935 and the remaining half thereof is not collected prior to the September settlement in the year 1935, such taxes and assessments and the penalty required by law to be added thereto, may be paid in installments.

In other words, the last half of the taxes and assessments charged upon the 1934 duplicate, if the same are unpaid prior to the September settlement of 1935, may be paid, together with penalties thereon, in installments as provided in the act, if the first half of the taxes and assessments charged upon the 1934 duplicate were paid prior to the February settlement in the year 1935.

I shall now consider your second question.

Section 2649, General Code, in its form prior to the enactment of Amended Senate Bill No. 221, supra, read as follows:

"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 twenty-first day of December and from the first day of April until the twenty-first day of June."

In its present form as amended by Amended Senate Bill No. 221, the same reads:

"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 \* \* \* eleventh day of \* \* \* September, ex-

cepting during such time for which it may be necessary to close such office for the purpose of the February settlement of such taxes.”

Section 2657 of the General Code, reads in part as follows:

“The county commissioners of any county by resolution spread upon their journal may extend the time of payment of taxes for not more than thirty days after the time fixed by law. The tax commission of Ohio may further extend the time of payment of taxes in any county in case of an emergency unavoidably delaying the delivery of duplicates for the collection of taxes. Such extension shall be for such time as the commission may fix in its order.”

Repeals by implication are not favored and will not be indulged if there is any other reasonable construction. *Ludlow vs. Johnston*, 3 Ohio, 553; *Hirn vs. State*, 1 O. S. 15; *Radebaugh vs. Shelley*, 6 O. S. 307; *State, ex rel. Attorney General vs. Davis*, 23 O. S. 434; *Martin vs. State*, 70 O. S. 219; *State, ex rel. Forchheimer, vs. Le Blond*, 108 O. S. 41; *B. and O. Railroad Company vs. Baillee*, 112 O. S. 567.

In the case of *State vs. Hollenbacher*, 101 O. S. 478, it was declared:

“A statute which revises the whole subject-matter of a former enactment, and which is evidently intended as a substitute for it, operates to repeal the former although it contains no express words to that effect. But repeals by implication are not favored, and where two affirmative statutes exist, one will not be construed to repeal the other by implication, if they can be fairly reconciled. The fact that a later act is different from a former one is not sufficient to effect a repeal. It must further appear that the later act is contrary to, or inconsistent with, the former.”

Under the provisions of section 2649, supra, the county treasurer's office is, for the collection of real property taxes and public utility taxes, open for the entire year with the exception of the last nineteen days in September, and for that reason it might be difficult to understand why a further extension of time for the payment of such taxes would be required. However, if occasion should arise which might require an extension beyond the time set out in said section, section 2657, supra, would still be operative. Furthermore, it must be noted that section 2649, supra, deals only with real property taxes and public utility taxes. It can readily be seen that an extension of time for the payment of taxes other than the above might be necessary. If such an occasion should arise, the county commissioners or the Tax Commission would be without power to grant such an extension if section 2657, supra, were not in force and effect.

In view of the foregoing, it would therefore appear that the enactment

of Amended Senate Bill No. 221, *supra*, did not render section 2657, General Code, inoperative, and consequently said section is not repealed by implication.

Summarizing, it is therefore my opinion that:

1. Section 3 of Amended Senate Bill No. 221, 91st General Assembly, 116 O. L. 199, limits the payment of taxes in ten equal installments as provided for by the act, to those charged on the tax list and duplicate made up in the year 1935 and the last half of those charged on the 1934 duplicate, if the same have not been paid prior to the September settlement in 1935, provided the first half of said taxes were paid prior to the February settlement in 1935.

2. The provisions of section 2657, General Code, relative to the extension of time for payment of taxes, are not repealed by implication by Amended Senate Bill No. 221 of the 91st General Assembly, 116 O. L. 199.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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4947.

SCHOOL BUS—MOTORISTS REQUIRED TO STOP FOR  
SCHOOL BUS WHEN—"NEAREST ADJACENT SIDE OF  
SUCH ROAD" CONSTRUED.

*SYLLABUS:*

1. *Sections 12604, 12604-1, 12604-2 and 12604-3, General Code, are penal statutes, and as such, are subject to that rule of strict construction which is applicable in the construction of all such statutes.*

2. *The clause "nearest adjacent side of such road or highway" as contained in Section 12604-1, General Code, refers to the side of the road or highway which is to the right when facing in the direction the school bus in question had been traveling prior to being stopped for the purpose of loading or discharging passengers, or the direction it is headed at the time.*

COLUMBUS, OHIO, November 29, 1935.

HON. W. W. BADGER, *Prosecuting Attorney, Millersburg, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion respecting the proper construction of the clause: "Such children having entered said bus or having alighted and reached the nearest adjacent side of said road or