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FUNDS; EXAMINATION COSTS—BUREAU OF SUPERVISION AND INSPECTION OF PUBLIC OFFICES, CHAPTER 117. R.C.—UNDISTRIBUTED INHERITANCE FUND; NOT TO BE CHARGED TO PORTION GOING TO MUNICIPAL CORPORATIONS AND TOWNSHIPS—§§5731.01, 5731.53 R.C.

## SYLLABUS:

The compensation and expenses of state examiners of the bureau of inspection and supervision of public offices, in connection with the inspection of the proceeds of the inheritance tax levied pursuant to Section 5731.01 *et seq.*, Revised Code, are to be paid by the state, and may not be charged to the portion of the proceeds of such tax distributable to municipal corporations and townships under the provisions of Section 5731.53, Revised Code.

Columbus, Ohio, October 1, 1958

Hon. Edward R. Ostrander, Prosecuting Attorney  
Lake County, Painesville, Ohio

Dear Sir:

I have before me your communication requesting my opinion and reading as follows:

“The Auditor of Lake County has recently requested this office to advise him of the proper procedure to be followed by him under Section 117.15 of the Revised Code of Ohio.

“This County, was examined by the Bureau of Inspections and Supervision from September 13, 1952, to May 10, 1956, and pursuant to the above Section, the County Auditor has paid the sum of \$8,974.17 from the County General Fund. Further, in pursuance to said Section, the Bureau of Inspection and Supervision furnished the Auditor a statement showing the total costs of the examination and the percentage chargeable to the various funds. Among these, a charge was made against the Undivided Inheritance Tax Fund.

“The County Auditor is preparing for his Semi-Annual settlement and he hesitates to make any deductions from the Undivided Inheritance Tax Fund as such action would appear to be in conflict with Section 5731.53 of the Revised Code of Ohio in that it would reduce the amount paid to the various Tax Districts below the fifty percent (50%) to which they are entitled. It would also appear to be a violation of article 12, Section 9, of the Constitution of Ohio.

“Further, the Auditor is concerned whether he is entitled to deduct from said Inheritance Tax Fund and from the Undivided General and Undivided Tangible Fund. Prior to forwarding to the State its proportionate share of such funds, that is, does the State, as a participant from said Fund, constitute a “Taxing District” such as is contemplated in Section 117.15, or is the expense properly pro-rated only among the County and local political subdivisions? I would, therefore, appreciate your advice as to whether the State of Ohio as a participant in Tax Funds raised within a County can properly be charged a pro-rated share in connection with the examination by the Bureau of Inspections and Supervision, and also, whether the Auditor of the County, in view of the provisions of the Ohio Constitution and Section 5731.53 of the Revised Code, may deduct from the Undivided Inheritance Tax Fund prior to distribution the pro-rated cost of an examination conducted by the Bureau of Inspection and Supervision of Public Offices?”

Chapter 117., Revised Code, deals with the creation, powers and duties, of the Bureau of Inspection and Supervision of Public Offices. Section 117.01, Revised Code, reads in part as follows:

“This section creates the bureau of inspection and supervision of public offices, in the office of the auditor of state, which bureau shall *inspect and supervise the accounts and reports of all state offices* as provided in section 117.01 to 117.19, inclusive, of the Revised Code, including every state educational, benevolent, penal, and reformatory institution, public institution, *and the offices of each taxing district* or public institution in the state. The bureau may examine the accounts of every private institution, association, board, or corporation *receiving public money* for its use, and may require of them annual reports in such form as it prescribes. The expense of such examination shall be borne *by the taxing district providing such public money*. By virtue of his office the auditor of state shall be chief inspector and supervisor of public offices, and may appoint not more than three deputy inspectors and supervisors and a clerk. Not more than two deputy inspectors and supervisors shall belong to the same political party. \* \* \*” (Emphasis added)

It will be noted that it is the function of the Bureau to “inspect and supervise the accounts and reports of all state offices.” It is further the duty of the Bureau to extend this inspection to every state educational, benevolent, penal, and reformatory institution.

It is further provided that the Bureau shall inspect the offices of each taxing district or public institution in the state and may examine the ac-

counts of every private institution, board or corporation, receiving public money for its use. This provision is followed by the following: "The expense of such examination shall be borne by the taxing district providing such public money." I think we must conclude that this expense item refers to the expense of examining the private institutions which receive public money from a taxing district, and that each taxing district is chargeable with the expense growing out of that examination.

These provisions appear to draw a clear line of distinction between the state and its departments and institutions on the one hand, and taxing districts and their beneficiaries on the other.

Section 117.02, Revised Code, authorizes the appointment of such assistants as are necessary, who shall be known as "state examiners."

Section 117.15, Revised Code, contains the following:

*The necessary expenses of the maintenance and operation of the administrative office of the bureau of inspection and supervision of public offices shall be financed from the general revenue fund of the state through biennial appropriations by the general assembly. The total amount of compensation paid state examiners, their expenses, and the cost of typing reports shall be borne by the taxing districts to which such state examiners are so assigned by the chief inspector and supervisor or deputy inspectors and supervisors of public offices, \* \* \** (Emphasis added)

Here it would be noted that the expenses of the *maintenance and operation of the offices of the Bureau* are to be paid from the general revenue fund of the state, through appropriation by the general assembly. On the other hand, the *total amount of compensation paid state examiners* and their expenses shall be borne by the taxing districts to which such state examiners are assigned.

The same Section provides that the auditor of state shall certify the amount of such compensation and expenses to the county auditor of the county in which the taxing district is situated, and the county auditor shall forthwith issue his warrant in favor of the auditor of state, on the county treasurer, who shall pay it from the general fund of the county. It is then made the duty of the county auditor to charge the amount so paid to the taxing district at the next semi-annual settlement period. This section contains the further provision reading as follows:

*"To distribute the cost of examination of each taxing district audited, the fiscal officer of such taxing district may charge each*

*fund examined with the pro rata share of such examination costs as each fund relates in part to the total examination expense. \* \* \**

In effect, this means that each fund which has been examined will suffer a deduction in the amount of the portion allocated to it by the fiscal officer of the taxing subdivision.

Chapter 117., Revised Code, does not contain any definition of "taxing district," but I think we are justified in drawing on the laws relating directly to the levy of taxes, for a definition. In Section 5705.01, Revised Code, it is provided that as used in Sections 5705.01 to 5705.47, Revised Code,

"'Taxing unit' means any subdivi<sup>s</sup>ion or other governmental district having authority to levy taxes on the property in such district, or issue bonds which constitute a charge against the property of such district, including conservancy districts, metropolitan park districts, sanitary districts, road districts, and other districts."

We come then to a consideration of Section 5731.53, Revised Code, relating to the distribution of the inheritance tax. That section reads in part:

*"Fifty per cent of the gross amount of taxes levied and paid under sections 5731.01 to 5731.56, inclusive, of the Revised Code, shall be for the use of the municipal corporation or township in which the tax originates, and shall be credited as follows:*

"(A) To the general revenue fund in the case of a city;

"(B) To the general revenue fund of a village or to the board of education of a village, for school purposes, as the village council by resolution may approve;

"(C) To the *general revenue fund* or to the board of education of the school district of which the township is a part, for school purposes, *as the board of township trustees by resolution may approve*, in the case of a township.

"The remainder of such taxes, after deducting the fees and costs charged against the proceeds thereof under Sections 5731.01 to 5731.56, inclusive, of the Revised Code, shall be for the use of the state, and shall be paid into the state treasury to the credit of the general revenue fund." (Emphasis added)

Since inheritance taxes are, under the provision of Section 5731.19, Revised Code, payable originally to the county treasurer, it is evident that this account, in the hands of such treasurer, will be subject to examination, along with all other accounts, by the state examiner assigned to that county.

The question then arises, how can the compensation and expenses of the examiner be paid without charging the fund distributable to the municipalities and townships with a share of such cost, and deducting it from the fifty percent of the tax to which they are entitled under the provision of the statute last above quoted? But Section 5731.53, *supra*, plainly requires payment of "fifty per cent of the *gross amount* of taxes levied and paid." "Gross amount" according to Webster, means "the entire earnings, receipts, or the like, *without any deduction.*"

Our Supreme Court, in the case of *Light Company v. Evatt*, 140 Ohio St., 85, had occasion to consider the meaning of the words "gross receipts," in a statute relating to an excise tax on receipts of public utilities. It was held as shown by the second branch of the syllabus:

"2. The term 'gross receipts' as employed in Section 5475, General Code, embraces all receipts of a public utility regardless of the form of ownership and without exclusion or deduction of payments by those owning an interest in such utility for service furnished them."

There is an apparent conflict between said Section 5731.53 and Section 117.15, *supra*. We might undertake to resolve that conflict by resorting to the usual rules of construction of statutes, but we are confronted by a constitutional provision which cannot give way to any act of the legislature. Article XII, Section 7, Ohio Constitution, reads as follows:

"Laws may be passed providing for the taxation of the right to receive, or to succeed to, estates, and such taxation may be uniform or it may be so graduated as to tax at a higher rate the right to receive, or to succeed to, estates of larger value than to estates of smaller value. Such tax may also be levied at different rates upon collateral and direct inheritances, and a portion of each estate not exceeding twenty thousand dollars may be exempt from such taxation."

Article XII, Section 8, *supra*, authorizes the levy of an income tax. Section 9 reads as follows:

"*Not less than fifty per centum* of the income and inheritance taxes that may be collected by the state shall be returned to the county, school district, city, village, or township in which said income or inheritance tax originates, or to any of the same, as may be provided by law." (Emphasis added)

These provisions give the general assembly discretion as to the subdivisions to which the proceeds of income and inheritance taxes may be

allocated, but do not authorize any deduction of the costs of levy, collection, distribution, or any other expense. It is worthy of note, also, that the language of said Section 9 indicates that the inheritance tax is to be "collected by the state."

That the general assembly recognized the sacredness of the share of the inheritance tax which was allotted to the municipalities and townships, is further emphasized by the provision of Sections 5731.42 and 5731.43, Revised Code, which authorizes the appointment of agents to assist in certain phases of the enforcement of the inheritance tax, and stipulates that the compensation of such agents "shall be paid on equal monthly installments from the state's share of the undivided inheritance tax in the county treasury."

It is obvious that when the general assembly provided in Section 117.15, *supra*, that the "necessary expenses of the *maintenance and operation* of the bureau" should be borne by the state, it did not intend to limit such expense merely to the maintenance of the office; otherwise there would be no way of paying the compensation of the examiners who inspect the accounts of the various state offices and institutions. Furthermore, we may note the provision of Section 117.04, Revised Code, whereby the bureau is required to inspect and supervise the accounts of the Ohio National Guard. It is specifically provided in that section that:

"This section does not require the expenses of such inspections or supervisions to be charged to or paid out of the funds of the national guard or the units thereof."

Obviously, such expenses would be payable out of the appropriation by the state for the general maintenance and operation of the bureau.

In the light of the foregoing, I am forced to the conclusion that the expense of the bureau in the inspection of the funds arising from the inheritance tax, while in the hands of the county treasurer, are to be borne by the state, and not charged to the portions of such tax which are distributable to municipalities and townships.

It is therefore my opinion and you are advised that the compensation and expenses of state examiners of the bureau of inspection and supervision of public offices, in connection with the inspection of the proceeds of the inheritance tax levied pursuant to Section 5731.01 *et seq.*, Revised Code,

are to be paid by the state, and may not be charged to the portion of the proceeds of such tax distributable to municipal corporations and townships under the provisions of Section 5731.53, Revised Code.

Respectfully,  
WILLIAM SAXBE  
Attorney General