

4594.

TAX AND TAXATION—REFUNDER ON DELINQUENT TAXES FOR 1932 AND 1933 MAY BE MADE ONLY WHEN TAXES AND ASSESSMENTS FOR 1934 HAVE BEEN PAID.

*SYLLABUS:*

*Where a taxpayer or other person legally authorized or required to pay taxes on real property, pays to the county treasurer taxes, interest and penalties for the years 1932 and 1933, which payment is made on December 20, 1934, after the effective date of Amended Senate Bill No. 105, enacted by the 90th General Assembly in Second Special Session, such taxpayer or other person making such payment is not entitled to a refunder of penalties and interest on delinquent taxes for the years 1932 and 1933 paid by him unless and until the taxes and assessments on the property for the year 1934 are paid, which payment must be made prior to the first day of September, 1935.*

COLUMBUS, OHIO, August 29, 1935.

HON. KARL H. WEANER, JR., *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication which reads as follows:

“I hereby request you to furnish me your written opinion upon the following:

On the 20th day of December, 1934, the M. Life Insurance Company paid to the County Treasurer taxes, interest and penalties for the years 1932 and 1933 charged against certain of their lands located in this county. The Insurance Company has now applied to the Treasurer for a refund of the penalties, claiming Amended Senate Bill No. 105 of the Second Special Session of the 90th General Assembly, as authority therefor.

Question 1: Does Amended Senate Bill No. 105 authorize a refund of penalties when the payment was made prior to January 1, 1935, and no part of the 1934 taxes was included in said payment?

Question 2: In the event the Insurance Company pays a part or all of the 1934 taxes before September 1, 1935, would the Treasurer then be required to refund the penalties already paid by said company on December 20, 1934?”

The questions presented in your communication require a consideration of the provisions of Sections 1 and 2 of Amended Senate Bill No. 42, passed

by the 90th General Assembly in Regular Session as amended in Amended Senate Bill No. 23, passed by this General Assembly, at its Second Special Session, and later amended at the same session, in and by Amended Senate Bill No. 105, which was passed December 7, 1934, and which as an emergency act went into effect upon its approval by the Governor, under date of December 13, 1934. These sections, as they are found in the act last above mentioned, read as follows:

Sec. 1. "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 settlement in the year 1934, or any person, firm or corporation holding a lien upon such real property may at any time prior to the first day of September in the year 1935 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. Provided, however, that no such person shall be entitled to make such election unless all taxes, assessments and penalties for the year 1934 then due and payable have been paid. Provided that in case a penalty and interest has been paid on account of delinquent taxes and/or assessments, for the first or second half of the year 1932 and/or 1933, such penalty shall be refunded on order of the county auditor directed to the county treasurer provided the principal sum of such taxes and assessments is paid prior to the first day of September, 1935."

Sec. 2. "If, within the time mentioned in section one of this act, such person tenders to the county treasurer a sum equal to one hundred per centum of the principal sum of such taxes and assessments, so delinquent, less penalties, interest and other charges, (including interest charges under a prior undertaking entered into pursuant to this act,) the county treasurer shall accept and receive such amount in full payment of all such taxes, assessments, penalties, interest and other charges. Upon receiving such amount the treasurer shall give to the person making such tender a receipt in full for all taxes, assessments, penalties, interest and other charges for the year 1933 and any year prior thereto, and shall give to the auditor a certificate in such form as may be prescribed by the bureau of inspection and supervision of public officers, which shall operate as a remitter of the difference between the sum so received and the aggregate amounts charged on the tax duplicate or on the de-

linquent land tax list, or both, and shall be so treated in the next succeeding settlement between the auditor and treasurer.”

Coming to the consideration of the questions presented in your communication, in the light of the statutory provisions it will be noted that although the refunder provisions set out in Section 1, above quoted, are not, standing alone, entirely clear in their application to your first question, a consideration of the provisions of these sections as a whole, in the light of the general situation with respect to the payment of taxes, which was before the Legislature at the time of the enactment of this act leads to the conclusion that the Legislature in the enactment of this law did not intend to give a taxpayer who had paid the penalty and interest on delinquent taxes and assessments for the years 1932 and 1933, any greater right or privilege with respect to the refunder of such penalties and interest, so far as the requirement of the payment of the taxes, assessments and penalties for the year 1934 are concerned, than that given to the taxpayer with respect to his right under this law to the remission of penalties which were imposed at the time of the August, 1934 settlement and prior thereto. It is clear from the provisions of these sections that the right of a taxpayer or of any other person, firm or corporation authorized or required by law or by court decree to pay real property taxes, to a remission of the penalties, interest and other charges on delinquent taxes for the year 1933 and prior thereto, is conditioned upon the payment by such taxpayer or other person, of the 1934 taxes and assessments on the property before September 1, 1935. In this connection it may be said that at the time of the enactment of Amended Senate Bill No. 105, under date of December 7, 1934, the legislature in the enactment of this law might well have contemplated that the taxes for the year 1933, and prior thereto, had been paid, and that the Legislature in conditioning the right of the taxpayer to a refunder of the penalties paid on delinquent taxes for the years 1932 and 1933 upon the payment by such taxpayer of “the principal sum of such taxes and assessments” prior to the first day of September, 1935, must have intended thereby, the payment by the taxpayer of such taxes and assessments for the year 1934 prior to said date, to wit, September 1, 1935. In line with this thought that the Legislature in the enactment of this act intended to condition the right of the taxpayer to a refunder of penalties on delinquent taxes for the years 1932 and 1933, paid by him, on the payment of the 1934 taxes and assessments on the property, it is to be observed that at the time of the enactment of this law the tax duplicate for the payment of taxes for the year 1934 was, as a matter of law, assumed to be in the hands of the treasurer, and open for the collection of taxes for the first half of said year. As to this, it will be observed that by the provisions of Section 2583, the county auditor was directed to turn over the tax duplicate for the year 1934, to the county treasurer, on the first day of October of that year, and

by Section 2649, General Code, it is provided that the office of the county treasurer shall be kept open for the collection of real property taxes and assessments from the time of the delivery of the duplicate to the treasurer until the 21st day of December, and from the first day of April until the 21st of June. It is recognized that the provisions of these sections are largely directory and that in many if not most of the counties of the state the tax duplicate in recent years has not been turned over to the county treasurer until long after October 1st and that payments of taxes by favor of extensions granted by the board of county commissioners or by the Tax Commission of Ohio have been received by the county treasurers months after the dates fixed for this purpose by the provisions of Section 2649, General Code. However, these statutory provisions are pertinent in arriving at the intention of the Legislature in enacting the refunding provisions of Section 1, above quoted, as the same is found in Amended Senate Bill No. 105. Looking to all the statutory provisions relating to this question, I am of the opinion, by way of specific answer to your first question, that the life insurance company referred to in your communication, was not entitled to the refund of penalties and interest on delinquent taxes for the years 1932 and 1933, paid by it under date of December 20, 1934, and this for the reason that it appears that the taxes and assessments for the year 1934 were not paid by the company at that time.

With respect to your second question, it follows from what has been said above that, assuming the constitutionality of the refunder provisions of this law—as to which, perhaps, some question may exist by reason of the decision of the Supreme Court of this state in the case of *Commissioners of Hamilton County vs. Rosche, Brothers*, 30 O. S., 103—if the Insurance Company pays or has paid all of the 1934 taxes on the property in question before September 1, 1935, it will be entitled to a refund of the penalties and interest paid by it on the delinquent taxes for the years 1932 and 1933.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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4595.

COUNTY HUMANE SOCIETY—AUTHORITY OF COUNTY  
AUDITOR TO ISSUE WARRANTS FOR SALARY OF AGENT  
AND ATTORNEY UNTIL SOCIETY DISSOLVED OR  
AGENT AND ATTORNEY DISCHARGED.

SYLLABUS:

1. *Where a county humane agent was legally appointed by a county*