

Note from the Attorney General's Office:

1957 Op. Att'y Gen. No. 57-1005 was overruled in part
by 1974 Op. Att'y Gen. No. 74-068.

1005

TAXATION, REAL PROPERTY—TIME FOR PAYMENT—TIME EXTENDED, §323.17 RC—IMPOSITION OF PENALTY, §5719.17 RC, IS EXTENDED—INTEREST CHARGE, §5719.18, RC, OPERATIVE ONE YEAR FROM DATE SUBSEQUENT TO DECEMBER 20 AND JUNE 20: IMPOSITION OF PENALTY, §5719.17 RC.

SYLLABUS:

1. When the time for the payment of real property taxes has been extended, pursuant to Section 323.17, Revised Code, the imposition of the penalty for failure to pay real property taxes when due, as provided for in Section 5719.17, Revised Code, is correspondingly extended.

2. When the penalty provided for in Section 5719.17, Revised Code, is imposed subsequent to December 20 and June 20, the interest charge as required by Section 5719.18, Revised Code, does not become operative until one year from such subsequent dates.

Columbus, Ohio, September 6, 1957

Hon. Everett Burton, Jr., Prosecuting Attorney
Scioto County, Portsmouth, Ohio

Dear Sir:

I have your request for my opinion which reads as follows:

“The County Auditor of this county has requested an opinion from this office as to the proper method of computing interest on delinquent real property taxes. An examination of the pertinent statutes has raised some questions, and since this as a matter involving the interpretation of State laws applicable to all counties within the State, we would appreciate your opinion with respect thereto.

“From the provisions of Ohio Revised Code section 5719.17 and 5719.18, it is clear that if the Treasurer’s books were closed on December 20th for the collection of the first half of the current year’s taxes, and on the subsequent June 20th for the collection of the 2nd half of the year’s taxes, a penalty in the amount of 10% is to be imposed as to the unpaid taxes for the first half after December 20th, and as to the unpaid taxes for the second half after the following June 20th. It is also quite evident that interest is to be charged on the first half commencing one year from December 20th and on the second half commencing one year from June 20th.

“Revised Code section 323.17, however, provides as follows:

“The board of county commissioners, by resolution spread upon its journal, may extend the time of payment of taxes for not more than thirty days after the time fixed by sections 323.10, 323.16 of the Revised Code. The department of taxation 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 department fixes in its order. In all cases where an installment of taxes, other than taxes and assessments charged on real estates, has not been paid on the last day prescribed by such sections or within the time so prescribed as extended pursuant to this section, a penalty of ten per cent of the amount due and unpaid shall be added by the county auditor and the taxes and penalty collected by the county treasurer.

“The practice in this county has been to close the books in April and August, rather than December and June, under the sanction of Section 323.17. This poses several questions:

“First, when the time for payment has been extended is the penalty to be imposed also extended? You will note that Section 327.17, by its express terms in the last sentence, excludes taxes and assessments charged on real estate from its operation. Does this section, by implication, include an extension of the time at which the penalty is to be imposed, or does Section 5719.17 still apply even though the time for payment has been extended?

“Second, if the time for payment has been extended under Section 323.17, does interest commence one year after the expiration of the extended period, or does it commence after the expiration of one year from December 20th as to the first half taxes, and one year after June 20th as to the second half taxes, as provided by Section 5719.18. In this connection it is to be observed that Section 323.17 makes no mention of extending the interest computation period.”

It should be noted initially that your reference to “Section 327.17,” in the fifth paragraph of your letter, is apparently an error and should be “Section 323.17.”

Section 5719.17, Revised Code, provides the penalty for failure to pay taxes on real property when due and reads:

“If one half the taxes and assessments charged against an entry of real estate is not paid on or before the twentieth day of December in that year, a penalty of ten per cent shall be added to such half of said taxes and assessments on the duplicate. If the total amount of such taxes, assessments, and penalty is not paid on or before the twentieth day of June, next thereafter, a like penalty shall be charged on the balance of the amount of such unpaid taxes and assessments. The total of such amounts shall constitute the delinquent taxes and assessments on such real estate, to be collected in the manner prescribed by law.”

Your first question was considered and answered by one of my predecessors in Opinion No. 4333, Opinions of the Attorney General for 1935, page 685. As the writer of that opinion noted, the question is one of some difficulty. The statutes considered in the 1935 opinion have since been amended, but such amendments would not produce a conclusion different from that stated in part of the syllabus which reads:

“Where a county treasurer keeps his books open for the receipt of real property taxes after the expiration date of the extended time affixed by the Tax Commission of Ohio for the payment of such taxes for the first half of the current year, and before the county treasurer has made his settlement with the

county auditor with respect to taxes paid and collected during such tax period, such county treasurer may not legally require of a person who tenders to him the taxes then due and payable on real property owned by the taxpayer the payment of a penalty on such taxes * * * ”

Therefore, in answer to your first question, you are advised that when the time for payment of real property taxes has been extended, the date for the imposition of the penalty provided for by Section 5719.17, Revised Code, is correspondingly extended. A different conclusion would not only be in conflict with the 1935 opinion, *supra*, but would also produce the absurd result that a penalty would be imposed in many cases before the amount of the tax could be ascertained, before the taxpayer could be billed, and even before the treasurer could accept payment of the tax. Nor could a different conclusion be reconciled with the language in the first sentence of Section 5719.07, *supra*, because in many cases taxes are not “charged against an entry of real estate * * * on or before the twentieth day of December * * *.”

Your second question is predicted on that part of Section 5719.18, Revised Code, which reads :

“* * * The penalties provided in section 5719.17 of the Revised Code and in this section shall be in lieu of one year’s interest on the principal amount of such unpaid taxes and assessments, but if any semiannual installments of taxes and assessments payable on or before the twentieth day of December, or any such installment payable on or before the twentieth day of June, remains unpaid for more than a year after such date, interest at the rate of eight per cent per annum on the amount thereof remaining unpaid shall be charged upon the duplicate from the expiration of such year until such taxes, assessments, penalties, and interest are paid, or until the date of the August settlement next preceding the entry of such real estate upon the delinquent land list. * * *”

Sections 5719.17 and 5719.18, Revised Code, must be considered together. The reasons advanced in the 1935 opinion, quoted from above, for the extension of time for the imposition of the 10% penalty as provided in Section 5719.17, *supra*, when the time for the payment of the tax is extended, require a corresponding extension of time before the interest period, provided for in Section 5719.18, *supra*, can begin to run. This result conforms with the unambiguous expression of legislative intent that the 10% penalty “* * * shall be in lieu of one year’s interest * * *,” Section

5719.18, *supra*. Any imposition of interest on the unpaid taxes prior to one year subsequent to the time fixed for adding the 10% penalty, would clearly be contrary to the intent expressed in the statute.

Therefore, in specific answer to your questions, you are advised that :

1. When the time for the payment of real property taxes has been extended, pursuant to Section 323.17, Revised Code, the imposition of the penalty for failure to pay real property taxes when due, as provided for in Section 5719.17, Revised Code, is correspondingly extended.

2. When the penalty provided for in Section 5719.17, Revised Code, is imposed subsequent to December 20 and June 20, the interest charge as required by Section 5719.18, Revised Code, does not become operative until one year from such subsequent dates.

Respectfully,

WILLIAM SAXBE

Attorney General