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TAX APPEALS, BOARD OF — AND TRIAL EXAMINER — EXPENSES — HEARINGS, TAX EXEMPTIONS, REAL PROPERTY — CHARGEABLE AGAINST COUNTY WHERE PROPERTY LOCATED.

SYLLABUS:

Expenses incurred by the Board of Tax Appeals and its trial examiner with respect to hearings on applications for exemptions of real property from taxation are properly chargeable against the county in which the property involved is located.

Columbus Ohio, October 17, 1941

Honorable Frank T. Cullitan, Prosecuting Attorney,
Cleveland, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion as follows:

“The Board of Tax Appeals has designated a person to act as examiner, and under the direction of said Board the said examiner proposes to hold public hearings on the applications of certain parties for exemption of their property from taxation.

Under Section 5624-7 G.C., any expense incurred by the Tax Commission of Ohio with respect to the annual assessment of real property in any district shall be paid out of the treasury of the county in which such district may be located.

Does the expense incurred by the Board of Tax Appeals and the examiner in such exemption hearings come within the purview of Section 5624-7 G.C.?

The question is, shall such expenses incurred by the holding of hearings on exemption applications be paid out of the county treasury?”

Section 5624-7, General Code, referred to in your letter, reads as follows:

“Any expense incurred by the tax commission of Ohio, with respect to the annual assessment of real property in any district, shall be paid out of the treasury of the county in which such district may be located, upon presentation of the order of the tax commission of Ohio certifying the amount thereof to the county auditor, who shall thereupon issue his warrant therefor upon the general fund of the county, directed to the county treasurer, who shall pay the same. All moneys paid out of the county treasury under authority of this section and section 1465-24 of the General Code shall be charged against the proper district, and amounts so paid by the county shall be retained by the county auditor from funds due such district at the time of making the semi-annual distribution of taxes.”

We must then consider whether the expenses of the Board of Tax Appeals in connection with hearings before a trial examiner of the Board on applications for exemption of real estate from taxation are expenses

incurred by the Board in connection with the annual assessment of real property in Cuyahoga County.

Under the terms of Section 5548, General Code, the county auditor is made the assessor of real estate in the county for tax purposes.

By the terms of Section 5605, General Code, the county auditor is required, on the second Monday of June of each year, to lay before the county board of revision returns of his assessment on any real property for the current year. He is also required by the provisions of Sections 5570 and 5570-1 of the General Code, to file at the same time a list of all of the exempted property in the county, together with the value, description, name of owner and the reason for exemption thereof. Any property formerly exempted, which the auditor believes has lost its right to exemption, is required to be included by him in the list of taxable property so filed.

When the board of revision has completed its work, the county auditor, under the provisions of Section 5606, General Code, is required to give notice by newspaper advertisement that the tax returns are open for public inspection, and that complaints against any valuation or assessment, except those fixed by the department of taxation, will be heard by the county board of revision.

Section 5616, General Code, provides that any taxpayer, with respect to the valuation or assessment of his own or another's real property, or the county commissioners, the prosecuting attorney, county treasurer, any board of township trustees, any board of education, mayor or council of any municipal corporation in the county, may complain to the board of tax appeals at any time prior to December 31st of any year of the "determination of a county auditor respecting the liability of any property to taxation in that year or its exemption therefrom". In this manner the board of tax appeals acquires jurisdiction by direct appeal from the action of a county auditor with respect to the right to exemption of any real property from taxation.

As stated in the case of *State ex rel Methodist Book Concern v. Guckenberger*, 133 O.S. 27, 30, the county auditor in revising the annual list has the power to strike from the exemption list or duplicate items

which have lost their right of exemption and to place them on the taxable list.

The hearings before the trial examiner mentioned in your letter being appeals from the action of the county auditor are obviously one step in the procedure for the annual assessment of taxes in Cuyahoga County. The appeal is a direct result of the action of the county auditor with respect to the annual assessment of real property, and comes within the scope of Section 5624-7, General Code.

I must therefore hold, in specific answer to your question that the expenses incurred by the Board of Tax Appeals and its trial examiner, in connection with the hearing in your county with respect to applications for exemption from taxation of real estate located therein, must be paid by the county as provided in Section 5624-7 of the General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.