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LANDS, DELINQUENT — COUNTY AUDITOR REQUIRED TO PREPARE AND CERTIFY LIST OF ALL SUCH IN HIS COUNTY — DATE, SEPTEMBER SETTLEMENT, INTEREST 8% SHOULD BE CHARGED UPON TOTAL TAXES AND ASSESSMENTS AGAINST EACH PARCEL ENTERED ON SUCH LIST — CHARGES — ARREARS — DEFAULT — LIST PUBLISHED — SECTION 5704 G.C.

SYLLABUS:

Immediately after each September settlement it is the duty of the county auditor to prepare and certify a list of all delinquent lands in his county. Interest at the rate of eight per cent per annum should be charged upon the total taxes and assessments against each parcel entered on such list, commencing with the date of the September settlement, upon all taxes and assessments which have been in arrears for at least one year, and upon the remaining portion of such taxes and assessments, commencing one year after default. Such charges of interest should be made after certification of the list regardless of whether or not the list has been published as required by Section 5704, General Code.

Columbus, Ohio, April 17, 1942.

Hon. Lester W. Donaldson, Prosecuting Attorney,
Painesville, Ohio.

Dear Sir:

Your request for my opinion reads as follows:

“We respectfully request your opinion in regard to the following:

The first paragraph of Section 5704 of the General Code provides as follows:

‘Immediately after each August settlement, the county auditor shall make and certify a list and duplicate thereof of all the delinquent lands in his county. The first of such delinquent land lists so to be made by the county auditor shall also contain all lands theretofore certified as delinquent to the auditor of state and not redeemed, or with respect to which an action to foreclose the tax lien thereon has not been filed. Such delinquent land list and duplicate shall contain the description of the property as it appears on the tax list, the name of the person in whose name it is listed and the amount of taxes, assessments, and penalty thereon due and unpaid, together with the amount of interest, if any, accrued thereon to the date of such August settlement. The original land list shall be kept

in the office of the county auditor and the duplicate shall be delivered to the county treasurer. Interest at the rate of eight per cent per annum on the total amount of taxes and assessments due and unpaid with respect to each tract or lot, or part of lot entered upon such delinquent tax list and duplicate, shall be charged thereon from the date of such settlement.'

The second paragraph of this section begins as follows:

'It shall be mandatory upon the county auditor to cause a list of the lands on such delinquent land list and duplicate to be published twice, within sixty days after the delivery of the duplicate to the county treasurer, in two newspapers of opposite politics in the English language published in the county and of general circulation therein; * * *'

The last sentence of the first part of this section provides that interest shall be charged thereon from the date of such settlement, referring to the annual August settlement.

In the event that the county auditor does not cause a list of the lands on such delinquent land list and duplicate to be published twice within sixty days after the delivery of the duplicate to the county treasurer as provided in this section, does he have the right to charge interest at the rate of eight per cent (8) per annum on the total amount of the taxes and assessments due and unpaid from the date of the August settlement as provided in the first paragraph of this section or is his right to charge interest as in this section provided contingent upon the publication of the delinquent land list."

Section 5704, General Code, should not be construed as though it stands alone, for it is but a part of the system of taxation. The rule to be followed in the construction of tax statutes is the same as that expressed in *City of Cincinnati v. Guckenberger*, 60 O.S., 353, wherein it was held:

"A code of statutes relating to one subject, is presumed to be governed by one spirit and policy, and intended to be consistent and harmonious, and all of the several sections are to be considered in order to arrive at the meaning of any part, unless a contrary intent is clearly manifest."

See also 37 O. Jur., 594, section 331. Applying the above rule, we find that in Section 5705, General Code, delinquent lands are defined as meaning "all lands upon which the taxes, assessments and penalties, or either, remain unpaid at two consecutive semi-annual tax settlement periods." Section 5704, General Code, first requires the auditor annually to certify a list and duplicate of such delinquent lands. The Section says that such

certification shall be made immediately after each August settlement. The history of Section 5704, General Code, discloses that the first paragraph thereof was enacted in its present form in 1931. (114 O.L., 831). While the Section was amended in 1936 (116 O.L., Part II, 263), the first paragraph was unchanged and should therefore be construed in the same manner as it was construed prior to the 1936 amendment. In the case of *In re Allen*, 91 O.S., 315, it was held that:

“Where there is reenacted in an amendatory act provisions of the original statute in the same or substantially the same language and the original statute is repealed in compliance with Section 16, Article II of the Constitution, such provisions will not be considered as repealed and again reenacted, but will be regarded as having been continuous and undisturbed by the amendatory act.”

The reference in Section 5704, General Code, to the August settlement refers to the settlement required to be made by the county auditor with the county treasurer as provided in Section 2596, General Code. This section in 1931 (114 O.L., 726) provided for such settlements to be made on or before the fifteenth day of February and on or before the tenth day of August of each year. In 1935 Section 2596, General Code, was amended (116 O.L., 199) so as to require such settlements to be made on or before the fifteenth day of February and September of each year. No corresponding amendment was made in Section 5704, General Code, at that time but the reference therein to the August settlement clearly applies to the settlement to be made after the last half or final collection of taxes, and it follows that the county auditor should certify the list of delinquent lands immediately after the September settlement.

The last sentence of the first paragraph of Section 5704, General Code, requires interest at the rate of eight per cent per annum to be charged upon the total amount of unpaid taxes and assessments of all lands entered upon such delinquent land list from the date of the September settlement. The provision requiring the computation of interest appears before and is apparently independent of the mandatory provisions for publication of the delinquent list. There being no proviso or other conditional clause making the charge of interest dependent upon the publication of the list, it appears that the charging of eight per cent interest from the date of the September settlement depends only upon the auditor's certification of the delinquent list.

In construing the provisions of Section 5704, General Code, the provisions of Section 5679, General Code, must be considered at the same time. The two sections relating to the same subject should be regarded as being in para materia, even though they are found in different chapters of the Code and were enacted at different times. 37 O.Jur., 599, section 332. Section 5679, General Code, reads in part as follows:

“ * * * The penalties provided for in section 5678 of the General 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 semi-annual installment 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, or any monthly installment of taxes and assessments payable on or before the date of the February settlement or any such installment payable on or before the date of the September settlement remains unpaid for more than a year after such date, interest at the rate of six per centum per annum on the amount thereof so 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 September settlement next preceding the entry of such real estate upon the delinquent land list.”

It might be contended that the provisions of Section 5679, General Code, in providing that penalties to be added upon failure to pay installments shall be in lieu of a year's interest and in providing for interest at the rate of six per cent per annum, have each been repealed by implication or superseded by the provisions of the subsequently enacted Section 5704, General Code. The rules to be applied in determining under what conditions a statute is superseded by another statute of subsequent enactment are summarized in 37 O.Jur., 397, section 136, wherein it is said:

“It is not sufficient, in order to effect a repeal by implication, that a later act is different from a former one, or that the subsequent statute covers some of the cases provided for by the former. It must further appear that the later act is contrary to, or inconsistent with, the former in order to justify the conclusion that the first is so repealed. Moreover, difficulty in reconciliation does not necessarily call for a repeal by implication. Except when an act covers the entire subject matter of earlier legislation, is complete in itself, and is evidently intended to supersede the prior legislation on the subject, it does not by implication repeal an earlier act on the same subject, unless the two are so clearly inconsistent and repugnant that they cannot, by a fair and reasonable construction, be reconciled and effect

be given to both. If they can stand together or if both can be enforced concurrently, there is no implication of a repeal. * * *

If we regard the penalties assessed in each instance to be in lieu of a year's interest and the eight per cent interest specified in Section 5704, General Code, to commence at the September settlement following which the list of delinquent lands is certified, but only upon such assessments as have been in arrears for at least one year and as to any other assessments against such delinquent lands, interest at eight per cent to commence at the expiration of the year of arrearage, the first apparent conflict is eliminated. The remaining possible conflict between the provisions for six per cent and eight per cent interest may be harmonized by computing interest at six per cent after a year of arrearage up to the time of the September settlement, following which the certification of the list is made. Thereafter the provision for eight per cent interest, found in the subsequently enacted Section 5704, General Code, should control.

In specific answer to your inquiry it is my opinion that immediately after each September settlement it is the duty of the county auditor to prepare and certify a list of all delinquent lands in his county. Interest at the rate of eight per cent per annum should be charged upon the total taxes and assessments against each parcel entered on such list, commencing with the date of the September settlement, upon all taxes and assessments which have been in arrears for at least one year, and upon the remaining portion of such taxes and assessments, commencing one year after default. Such charges of interest should be made after certification of the list regardless of whether or not the list has been published as required by Section 5704, General Code.

Respectfully,

THOMAS J. HERBERT
Attorney General.