

sioners of said park board district. I further find, upon examination of the lease and of the conditions and restrictions therein contained, that the same are in conformity with the statutory provisions relating to leases of state lands. I am accordingly approving this lease as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned to you.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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6637.

APPROVAL—BONDS OF WALBRIDGE VILLAGE SCHOOL DISTRICT, WOOD COUNTY, OHIO, \$28,000.00

COLUMBUS, OHIO, January 9, 1937.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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6638.

INHERITANCE TAXES—TAXPAYER NOT ENTITLED TO DISCOUNT UNDER PROVISIONS OF SECTION 5338—INTEREST CHARGEABLE WHEN.

SYLLABUS:

*Under the provisions of section 5338, General Code, relating to the payment of inheritance taxes, the taxpayer is not entitled to the benefit of the discount provided for by this section unless the whole amount of the tax on the succession is paid at least one full month before the expiration of the period of one year from the date of the accrual of the tax, and no discount can be allowed upon partial payments as such. If the whole amount of the tax is not paid before the expiration of the period of one year from the date of the accrual of the tax, interest will be chargeable upon the whole amount of the tax at the rate prescribed by this section of the General Code.*

COLUMBUS, OHIO, January 11, 1937.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN: Sometime ago you addressed a communication to me in which you called my attention to Section 5338, General Code, providing

for the payment of inheritance taxes, and requested my opinion upon certain questions which are stated in your communication as follows:

“QUESTION 1: (a) May a person charged with the payment of inheritance taxes make a partial payment within the year? (b) If so, will such person be entitled to the discount provided for in the above section on the amount of any partial payments so made? (c) If partial payments are made, and the balance of the tax is paid within the one year, will the discount be figured from the dates of the making of such partial payments or only from the date final payment is made within such year?”

QUESTION 2: If a partial payment is made within a year after such taxes accrue, and the remainder is paid after the expiration of the year, will interest be charged on the total amount of the taxes accrued, or only on the portion remaining unpaid after the expiration of the year?”

Section 5338, General Code, referred to in your communication, reads as follows:

“Taxes levied by this subdivision of this chapter shall be paid to the treasurer of the county in which the court having jurisdiction of proceedings under this subdivision of this chapter is held by the person or persons charged with the payment thereof. If such taxes are not paid within one year after the accrual thereof, interest at the rate of eight per centum per annum shall thereafter be charged and collected thereon; unless by reason of claims made upon the estate, necessary litigation, or other unavoidable causes of delay, such taxes cannot be determined and paid as hereinbefore provided, in which case interest at the rate of five per centum per annum shall be charged upon such taxes from the expiration of one year after the accrual thereof until the cause of such delay is removed, after which eight per centum shall be charged. If such taxes are paid before the expiration of one year after the accrual thereof, a discount of one per centum per month for each full month that payment has been made prior to the expiration of the year, shall be allowed on the amount of such taxes.”

Although the questions presented in your communication are to be determined primarily upon the construction and application of Section 5338, General Code, they suggest a consideration of the provisions of Section 5336, General Code, as well.

By Section 5336, General Code, it is provided generally that inheritance taxes shall be due and payable at the time of the succession upon which the inheritance tax accrues. This section further provides that such taxes shall be and remain a lien upon the property passing until paid, and that the successor and the executors or administrators of the general estate of the decedent, and the trustees of such property, shall be personally liable for such taxes until they have been paid as directed by law. Although by the provisions of this section the executor or administrator of the estate of the decedent from whom the succession comes, is made personally liable for the payment of inheritance taxes on successions to the estate in his hands, the view has been advanced that the primary, as well as ultimate liability to pay such taxes, is upon the successor or successors of the estate as beneficiaries and that the liability of the executor or administrator for the payment of such taxes is secondary to that of the successor or successors who must ultimately pay the tax. *Wellman v. Cleveland Trust Company*, 107 O. S. 267, 275; Opinions of Attorney General for 1921, Vol. I, page 99, 101. However this may be, it is certain that the incidence of inheritance tax is upon each individual succession without regard to the question whether there are one or more successions of and with respect to the particular estate. And in their application to the questions presented in your communication, the provisions of Section 5338, General Code, should be construed and applied in the light of the fact that each individual succession gives rise to the inheritance tax provided for by the law, the payment of which is provided for by this section.

In the consideration of the questions submitted, it is noted that although under section 5336, General Code, above noted, the inheritance tax on a particular succession is due at the time of such succession (*Wellman v. Cleveland Trust Company*, supra), section 5338, General Code, in order to afford time for the determination of the amount of the tax and the certification thereof, provides that such tax may be paid within one year after the accrual thereof without any charge for interest on the amount due. This action does not make any provision for partial payments of the inheritance tax but does contemplate that the whole amount of the tax, whether the same is paid in partial payments or otherwise, is to be paid within one year from the accrual thereof, if the taxpayer desires to avoid the payment of interest on the tax at the rate prescribed in this section; and to encourage the prompt payment of the tax, it is provided that if the same is paid before such one year date after the accrual thereof, a discount of one per centum per month for each full month that payment has been made prior to the expiration of the year, shall be allowed on the amount of such tax.

It follows from what has been said in the construction and application of these taxes that in order to be entitled to the benefit of the discount

provided for by this statute the whole amount of the tax must be paid at least one full month before the expiration of the period of one year from the date of the accrual of the tax and that no discount can be allowed upon partial payments as such. It follows therefore that if partial payments are made and the balance of the tax is paid within the year, the discount will be figured only from the date of the final payment of the tax.

With respect to your second question which is as to the amount upon which interest is to be charged where a partial payment is made within a year after the tax accrues, and the remainder of the tax is paid after the expiration of such year, it is to be observed that no provision is made for a partial payment of the tax; and whether such tax is as a matter of fact paid in installments or otherwise the whole amount of the tax must be paid within the year; otherwise, the taxpayer is subject to the interest charge provided for by this section, which is eight per cent upon the whole amount of the tax.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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6639.

APPROVAL—GRANT OF EASEMENT TO LAND IN LINTON  
TOWNSHIP, COSHOCTON COUNTY, OHIO—BOY SCOUT  
TROOP.

COLUMBUS, OHIO, January 11, 1937.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certain grant of easement, No. 130, executed to the State of Ohio by The Boy Scout Troop of Linton Township, Coshocton County, Ohio, conveying to the State of Ohio, for the purposes therein stated, a certain tract of land in said township and county.

By the above grant there is conveyed to the State of Ohio, certain lands described therein, for the sole purpose of using said lands for public fishing grounds, and to that end to improve the waters and water courses passing through and over said lands.

Upon examination of the above instrument, I find that the same has been executed and acknowledged by the grantor in the manner provided by law and am accordingly approving the same as to legality and form, as is evidenced by my approval endorsed thereon, all of which are herewith returned.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*