

4101.

TAX AND TAXATION—SETTLEMENT OF AUGUST 1931 REAL AND
PERSONAL PROPERTY TAXES GOVERNED BY SECTION 2596 G. C.
—SECTION 5694 CONSTRUED.

SYLLABUS:

Section 2596, General Code, as said section read prior to its amendment in Amended Senate Bill No. 323, approved by the Governor under date of June 29, 1931, was in force and effect for the purposes of the settlement as to real and personal property taxes had by the county auditor with the county treasurer in August, 1931.

The reference in Section 5694, General Code, as amended in Amended Senate Bill No. 326 to "the list of such taxes returned as delinquent" by the county treasurer to the county auditor "at such settlement", is to the list of general, personal and classified property taxes which the county treasurer has been unable to collect and which he certifies as delinquent at the time of his settlement with the county auditor in October, 1932, and annually thereafter, as provided for in Section 2602, General Code, enacted in, and as part of said Amended Senate Bill No. 323.

COLUMBUS, OHIO, February 27, 1932.

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

GENTLEMEN:—This is to acknowledge the receipt of a communication from you in which you quote the provisions of section 2596, General Code, as this section read prior to its amendment in Amended Senate Bill No. 323, enacted by the 89th General Assembly.

This section provided as follows:

"On or before the fifteenth day of February and on or before the tenth day of August of each year, the county auditor shall attend at his office to make settlement with the treasurer of the county and ascertain the amount of taxes with which such treasurer is to stand charged. At each August settlement, the auditor shall take from the duplicate previously put into the hands of the treasurer for collection a list of all such taxes as the treasurer has been unable to collect, therein describing the property on which such delinquent taxes are charged as described on such duplicate and note thereon in a marginal column the several reasons assigned by the treasurer why such taxes could not be collected. Such last mentioned list shall be signed by the treasurer, who shall testify to the correctness thereof, under oath, to be administered by the auditor."

The action of the county auditor in taking from the duplicate previously put into the hands of the treasurer a list of all such taxes as the treasurer was unable to collect, as provided for in the section of the General Code above quoted, was the basis of the delinquent land tax list which the county auditor was required to make out under the provisions of section 2601, General Code, and of the delinquent personal property tax list required by section 5694, General Code.

In your communication you inquire whether the provisions of section 2596, as above quoted, were in force for the purposes of the settlement had by the county auditor with the county treasurer in August, 1931. And, in view of the amendment of section 2596, General Code, in and by the act above referred to,

you further inquire as to the meaning of the words "the list of such taxes returned as delinquent" occurring in the first sentence of section 5694, General Code, as said section is amended in Amended Senate Bill No. 326, enacted by the 89th General Assembly.

As above noted, section 2596, General Code, was amended in and by Amended Senate Bill No. 323, which, upon passage, was approved by the Governor June 29, 1931. A number of the sections of this act, commonly known as the intangible and classified personal property tax law, provide for tax levies, and went into effect upon the approval of said act by the Governor except in those cases where a later effective date was prescribed in said act. In this connection, it is noted that section 5 of said act provides that, except as otherwise provided therein, said act shall take effect at the earliest period allowed by the constitution. Although section 2596, General Code, as amended in said act, is a law relating to the levy and collection of taxes, it is not a law providing for tax levies within the meaning of section 1d of article II of the state constitution; and, inasmuch as said section was for this reason subject to referendum, the same went into effect on the 4th day of October, 1931, at the expiration of the period of ninety days from the 6th day of July, 1931, when said act was filed in the office of the Secretary of State. *State, ex rel., vs. Roose*, 90 O. S. 345, 349; *State, ex rel. Keller, vs. Forney, et al.*, 108 O. S. 463.

It follows therefore, by way of specific answer to your first question, that section 2596, General Code, as said section read prior to its amendment in the act above referred to, was in force and effect for the purposes of the settlement had by the county auditor with the county treasurer in August, 1931.

With respect to your second question, it is noted that section 5694, General Code, as amended in Amended Senate Bill No. 326, above referred to, provides in part as follows:

"Immediately after each October settlement, the county auditor shall make a tax list, and duplicates thereof, of all the taxes, other than those upon real estate specifically as such, remaining unpaid, as shown by the treasurer's books and the list of such taxes returned as delinquent by him to the auditor at such settlement."

Section 2596, General Code, above quoted, was amended in Amended Senate Bill No. 323 so as to apply only to the settlement for taxes on real property and public utility personal property, had by the county auditor with the county treasurer as provided for in said section, as amended. Obviously, the list of taxes that the treasurer has been unable to collect which the auditor, under the provisions of this section as amended, is required to take from the duplicate previously put into the hands of the treasurer for collection is no longer the basis for the delinquent personal property tax list which the county auditor is required to make under the provisions of section 5694, General Code, as amended.

It is noted, however, that in and by Amended Senate Bill No. 323, the legislature enacted section 2602, General Code, providing for settlements between the county auditor and the county treasurer as to general personal and intangible property taxes. This section reads as follows:

"On or before the tenth day of May and on or before the tenth day of October of each year the county auditor shall attend at his office to make settlement with the treasurer of the county and ascertain the amount of general personal and classified property taxes with which

such treasurer is to stand charged. At each October settlement, he shall take from the duplicates previously put into the hands of the treasurer for collection a list of all such taxes as the treasurer has been unable to collect, therein describing the assessments on which such delinquent taxes are charged as described on such duplicates. Such last mentioned list shall be signed by the treasurer, who shall testify to the correctness thereof, under oath, to be administered by the auditor. After deducting the amount of such taxes as returned delinquent and the collection fees allowed the treasurer from the several taxes charged on the duplicates in a just and ratable proportion, the treasurer shall be held liable for the balance of such taxes. After first correcting any error which may have occurred in the apportionment of taxes at any previous settlement, the auditor shall certify the balance due the state, the balance due the county, and the balance due each other taxing district, and forthwith shall record such list of delinquencies in his office."

This section, it is observed, provides that at each October settlement, the county auditor shall take from the duplicates previously put into the hands of the treasurer for collection a list of all such taxes as the treasurer has been unable to collect, therein describing the assessments on which such delinquent taxes are charged as described on such duplicates. It is quite clear that this is the list which is to serve as the basis of the delinquent personal property tax list to be made by the county auditor under the provisions of section 5694, General Code, as amended, and is "the list of such taxes returned as delinquent" referred to in said section.

As noted in Opinion No. 3767, directed to you under date of November 16, 1931, the delinquent personal tax list which the county auditor is required to make under the provisions of section 5694, General Code, as amended, is not to be made up by him until the October, 1932, settlement had by him with the county treasurer under the provisions of section 2602, General Code, above quoted.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4102.

SCHOOL—PUPIL MUST ATTEND SCHOOL TO WHICH ASSIGNED—
FACT A CLOSER SCHOOL EXISTS IMMATERIAL WHERE BOARD
OF EDUCATION FURNISHES TRANSPORTATION.

SYLLABUS:

No authority exists for a child to attend an elementary school, other than the one to which it is assigned, at the expense of the district of its residence, providing the board of education of the school district where the child resides will furnish transportation for it to the school to which it is assigned, regardless of the distance it may live from the school to which it is assigned.