

OPINION NO. 67-035

Syllabus:

1. When the state or any political subdivision acquires a fee simple interest in real property for any purpose, the county auditor shall, upon an application duly made, estimate and apportion the taxes which are a lien but not determined, assessed and levied between the

landowner and the state or political subdivision and, pursuant to the fourth paragraph of Section 319.201 319.20.17, Revised Code, the grantor or property owner shall only be liable for that portion of the estimated taxes for the period of the tax lien year preceding the transfer or conveyance to the state or political subdivision.

2. If the state acquires a fee simple in real estate pursuant to Chapter 5501. or 5519., Revised Code, for highway purposes, the auditor shall, upon an application duly made, estimate and apportion the real estate taxes that are a lien but not determined, assessed and levied for the tax lien year, pursuant to Section 319.201 319.20.17, Revised Code, and said real estate shall, with the consent of the Board of Tax Appeals, be exempted from taxation from the date of acquisition of title or date of possession and the balance of the taxes for the tax lien year shall be remitted as provided in Section 319.20, Revised Code, and Section 5713.08, Revised Code.

3. When the state or political subdivision acquires less than a fee simple interest in real estate, the county auditor shall apportion the tax value of the parcel proportionately between the part acquired by the state or political subdivision and residue remaining with the landowner and shall, pursuant to Section 5713.04, Revised Code, reduce the tax valuation of the parcel to reflect the value of the part used or occupied as a public highway.

4. The county auditor has been granted no authority, under either Section 319.20, Revised Code, or 5713.08, Revised Code, to either exempt real estate from taxation or to order the remission of taxes upon said real estate without the consent of the Board of Tax Appeals when the state acquires real estate in fee simple under Chapter 5501. or 5519., Revised Code, for highway purposes.

To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio
By: William B. Saxbe, Attorney General, April 13, 1967

Your request for my opinion reads in pertinent part as follows:

"The County Auditor of Cuyahoga County has requested my office to submit to you certain questions which arise out of the latest amendments of R. C. Sections 319.20, 5713.04 and 5713.08, the enactment of R. C. 319.201, * * *

"The question is precipitated at this time because the county auditor is being asked, on behalf of the board of county commissioners, to prorate estimated taxes in current appropriation cases for highway purposes, so that out of the proceeds of the appropriation, there will be an amount deducted for estimated taxes to the date of the journal entry confirming the verdict, with the provision that the board of county commissioners will not be charged taxes for any period subsequent to the date of acquisition for public highway purposes. * * *

"The county auditor is in doubt that he has any duty to: 1.) make an estimate of the undetermined taxes for the current year where the board of county commissioners is concerned; 2.) make any proration of such estimated tax; 3.) make any remission, in favor of the county, of the tax for the current year subsequent to the date of acquisition or the date of journal entry confirming the verdict. * * *

"Therefore, it seems some interpretation with state-wide acceptance needs to be made of the provisions of said H. B. No. 199 to determine whether they are limited in scope to (a) the kind of interest acquired, (b) the taxing district acquiring, and (c) the public purpose involved or, on the other hand, whether they apply to any kind of interest acquired by any public agency for any purpose.

"1. Consequently, the first question which is presented for your opinion is whether the county auditor must estimate and prorate the undetermined taxes for the current tax year where the acquisition of a fee simple title is not by the state for highway purposes, but is by the county, municipality, school board, etc. for any public purpose?

"2. If the answer to the first question is negative as to the entire broad scope which it encompasses, must the auditor estimate and prorate when the acquisition is for highway purposes?

"3. Must the auditor, after the actual tax for the current year is determined, later remit the taxes for the portion of the year subsequent to the date of acquisition or the date of the journal entry confirming the verdict, where the acquisition is for public highway purposes?"

For the purpose of real estate taxation, the lien for the taxes attaches on the first day of January, annually. See Section 5719.01, Revised Code. Ordinarily, once the lien for taxes has attached, the real estate is subject to the full year's taxes irrespective of any subsequent change of ownership or conversion to an exempt use during the year in which the lien attached; all matters of exemption being determinable as of the tax lien date. Such was ruled to be the situation by my predecessor in Opinion No. 3068, Opinions of the Attorney General for 1962, page 447. In this opinion, the state commenced appropriation proceedings for highway purposes against the landowner and the then Attorney General held that the condemnee (landowner) had to pay all of the real estate taxes for the year 1962 even though his property was "taken" for highway purposes during the year 1962.

This result, in light of the increased emphasis upon the construction of the state's portion of the Interstate Highway System, in part prompted the enactment of House Bill No. 199 (131 Ohio Laws 1722), effective October 30, 1965, the purpose of which is stated as follows:

"To amend sections 319.20, 319.36, 5713.04 and 5713.08 and to enact section 319.201 of the Revised Code to provide for apportionment of taxes and remission of taxes erroneously charged on real property acquired for public use."

Section 319.20, Revised Code, which pertains to the duties of the county auditor upon a transfer of real estate, to wit: transferring property on the tax list, apportioning and allocating the real estate taxes, was amended by House Bill 199, supra, to include the following provision:

"Whenever the state acquires an entire parcel or a part only of a parcel of real property in fee simple under

Chapter 5501. or 5519. of the Revised Code for highway purposes, the county auditor, upon application of the grantor or property owner or the state, which application shall contain a description of the property as it appears on the tax list and the date of transfer of ownership, shall prepare an estimate of the taxes that are a lien on said property but have not been determined, assessed, and levied for the year in which the property was acquired. The county auditor shall thereupon apportion such estimated taxes proportionately between the grantor and the state for the period of the lien year that each had or shall have had ownership of the property."

(Emphasis added)

Likewise, Section 5713.08, Revised Code, which relates to the exempt lists of real estate and the Board of Tax Appeals, was amended by House Bill 199, supra, to include the following language:

"Real property acquired by the state in fee simple under Chapter 5501. or 5519. of the Revised Code for highway purposes is exempt from taxation from the date of acquisition of title or date of possession whichever is the earlier date, provided that all taxes, interest, and penalties as provided in the apportionment provisions of section 319.20 of the Revised Code have been paid to the date of acquisition of title by the state. The proportionate amount of taxes that are a lien but not yet determined, assessed, and levied for the year in which the property is acquired, shall be remitted by the county auditor for the balance of the year from date of acquisition of title. This section shall not be construed to authorize the exemption of such property from taxation or the remission of taxes, penalties, and interest thereon until all private use has terminated."

(Emphasis added)

However, the exemption above referred to is not self-executing because Section 5713.08, supra, specifically provides also that:

"* * * No additions shall be made to such exempt lists (of real and personal property) nor additional items of property exempted under such sections without the consent of the board of tax appeals, * * *

"Taxes, penalties, and interest which have accrued after the property began its use for the exempt purpose, but in no case prior to the date of acquisition of the title to said property by applicant, may be remitted by the auditor, with the consent of the board (of tax appeals)."

(Matter in parenthesis added)

In addition to the exemption amendment contained in House Bill 199, supra, said bill also provided for new Section 319.201 /319.20.1/, Revised Code, which reads in pertinent part as follows:

"Whenever the state or any political subdivision thereof acquires an easement, right, title, or interest in a parcel or part of a parcel of real property, either by deed of purchase or by order of court, upon which parcel of real property the lien for taxes has attached under section 5719.01 of the Revised Code, the state agency or political subdivision acquiring such real property shall file

evidence of title by purchase or by court order with the county auditor of the county in which such property is located. * * *

"All taxes appearing on the current tax duplicate as owing on such transferred parcel or part of parcel of real property shall be due and payable as of the date of transfer or acquisition of easement, right, or interest whichever is later.

"Whenever said easement, right, or interest has been acquired in a parcel or part of a parcel of real property after the lien for taxes has attached under section 5719.01 of the Revised Code, and the taxes for said tax lien year have not been determined, assessed, and levied for that year, the county auditor, upon application of the grantee or the grantor or property owner, shall make an estimate of the taxes that will be assessed and levied against said parcel for the tax lien year.

"If the grantor or property owner has transferred only a part of the parcel by easement, right, or interest in or to such part of the parcel of real property to the state or a political subdivision thereof, the county auditor shall apportion the tax valuation of the parcel of real property proportionately between the part acquired by the state or the political subdivision and the residue remaining with the grantor. If such tax valuation of the residue remaining with the property owner is sufficient to support the taxes that are a lien or that are due and payable, the lien provided in section 5719.01 of the Revised Code shall attach to the residue part of the parcel. If such apportioned assessed valuation of the part of the parcel remaining with the grantor or property owner is not sufficient to support the taxes on the parcel that are due and payable and the proportionate amount of the estimated taxes that are a lien but not determined, assessed, and levied, such taxes shall immediately be due and payable; provided, that the grantor or property owner shall be liable only for that portion of the estimated taxes, for the period of the tax lien year preceding the transfer or conveyance of the property to the state or the political subdivision.

* * *

* * *

* * *

"Upon presentation of the executed instrument of conveyance of an easement or the order of court conveying or granting such an easement for highway purposes together with evidence or proof showing that the proportionate amount of taxes, penalties, and interest accrued and charged against the part of the whole parcel over which the easement attaches and the proportionate amount of estimated taxes to be levied and assessed against the part of the parcel acquired for highway purposes have been paid or provision made for the payment thereof, the county auditor shall reduce the tax valuation of the parcel to reflect the value of the part or portion used or occupied as a public highway in accordance with section 5713.04 of the Revised Code.

"The lien for taxes shall thereupon be extinguished

as to that part or portion acquired and used for public highway purposes."

The first quoted paragraph of this section clearly applies to all acquisitions of real estate or interests therein by the state or any of its political subdivisions for any purpose whatsoever and requires the state or political subdivision to file with the county auditor its evidence of title. The second quoted paragraph thereof provides that, upon the filing of evidence of the transferee's title, all of the taxes upon said transferred property as shown by the tax duplicate as owing shall be due and payable. If the state is the transferee, the interest acquired is a fee simple under Chapters 5501. and 5519., Revised Code, and the purpose is highway purposes, then Sections 319.20 and 5713.08, supra, as amended are applicable.

The third quoted paragraph of Section 319.201, supra, which by its terms is only applicable when the state or any of its political subdivisions acquire less than a fee simple interest, provides that the county auditor, upon application duly made, shall, if the taxes for the tax lien year have not been determined, assessed and levied for that year, make an estimate of the taxes that will be levied and assessed for the tax lien year. If the taxes for the tax lien year have been determined, assessed and levied, they become due and payable pursuant to the second quoted paragraph.

The fourth quoted paragraph of Section 319.201, supra, by its terms is only applicable when the grantor or owner has transferred a part of a parcel by easement, right or interest and requires the county auditor to apportion the tax valuation of the part of the parcel transferred between the part transferred to the state or political subdivision and the residue remaining with the transferor. If the tax valuation of the residue is adequate to support all of the taxes that are a lien or that are due and payable, the lien for all of the year's taxes upon all of the parcel shall attach to the residue of the parcel remaining with the landowner. If, however, the tax valuation of the remainder is not adequate to support the taxes that are due and payable as shown by the current tax duplicate and also the auditor's estimate of the taxes that are a lien but not yet determined, assessed and levied, all of said taxes become due and payable.

The latter part of the fourth quoted paragraph, which reads:

"* * * provided, that the grantor or property owner shall be liable only for that portion of the estimated taxes, for the period of the tax lien year preceding the transfer or conveyance of the property to the state or the political subdivision."

when read in light of the last two paragraphs of said section, reveals that the proviso is applicable whenever the state or political subdivision has acquired a fee simple interest and the last two paragraphs relating to reductions in value are applicable whenever the state or political subdivision acquires less than a fee simple interest.

If the auditor's estimate of the taxes which are a lien but not determined, assessed and levied and which become due and payable under the fourth paragraph of Section 319.201, supra, is excessive, then Section 319.36, Revised Code, also amended by House Bill 199, supra, becomes applicable.

Therefore, it is my opinion and you are hereby advised that:

1. When the state or any political subdivision acquires a fee

simple interest in real property for any purpose, the county auditor shall, upon an application duly made, estimate and apportion the taxes which are a lien but not determined, assessed and levied between the landowner and the state or political subdivision and, pursuant to the fourth paragraph of Section 319.201 ~~319.20.17~~, Revised Code, the grantor or property owner shall only be liable for that portion of the estimated taxes for the period of the tax lien year preceding the transfer or conveyance to the state or political subdivision.

2. If the state acquires a fee simple in real estate pursuant to Chapter 5501. or 5519., Revised Code, for highway purposes, the auditor shall, upon an application duly made, estimate and apportion the real estate taxes that are a lien but not determined, assessed and levied for the tax lien year, pursuant to Section 319.201 ~~319.20.17~~, Revised Code, and said real estate shall, with the consent of the Board of Tax Appeals, be exempted from taxation from the date of acquisition of title or date of possession and the balance of the taxes for the tax lien year shall be remitted as provided in Section 319.20, Revised Code, and Section 5713.08, Revised Code.

3. When the state or political subdivision acquires less than a fee simple interest in real estate, the county auditor shall apportion the tax value of the parcel proportionately between the part acquired by the state or political subdivision and residue remaining with the landowner and shall, pursuant to Section 5713.04, Revised Code, reduce the tax valuation of the parcel to reflect the value of the part used or occupied as a public highway.

4. The county auditor has been granted no authority, under either Section 319.20, Revised Code, or 5713.08, Revised Code, to either exempt real estate from taxation or to order the remission of taxes upon said real estate without the consent of the Board of Tax Appeals when the state acquires real estate in fee simple under Chapter 5501. or 5519., Revised Code, for highway purposes.