

1411.

ASSESSED VALUATION, REAL ESTATE—OWNER MAY FILE COMPLAINT — WHERE COUNTY AUDITOR FINDS ANY PARCEL REAL ESTATE ON TAX LIST AND DUPLICATE NOT AT TRUE VALUE IN MONEY—DUTY TO REVALUE PROPERTY — SECTION 5548-1, G. C. — STATUS, TIME TAXES PAID, PAST TAX LISTS, WHETHER ERROR RESULT BAD FAITH OR JUDGMENT ON PART OF APPRAISER.

SYLLABUS:

1. *An owner of real estate may file a complaint against the assessed valuation of his real estate at any time during which taxes are received by the county treasurer without penalty for the first half year, and it is immaterial whether or not he has paid his taxes for the first half of the year.*

2. *Under section 5548-1, General Code, in any year after the year in which a general appraisal has been made, if the county auditor finds that any parcel of real estate is not on the tax list and duplicate at its true value in money, it is his duty to revalue such parcel. Such a correction cannot relate back to past tax lists and duplicates which the auditor has delivered to the county treasurers for collections.*

3. *The auditor's authority and duties in making such a revaluation are the same regardless of whether such error resulted from bad faith or bad judgment on the part of an appraiser.*

COLUMBUS, OHIO, November 10, 1939.

HON. NICHOLAS F. NOLAN, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication, which reads as follows:

"Our County Auditor has requested us to submit to you the following four questions, upon which he desires your formal opinion:

No. 1. Can an owner of real estate file a complaint against his assessed valuation after he has paid his tax for the first half year but before the books close for the first half collection?

No. 2. What authority has a County Auditor, in any year after a general reappraisal of all of the real estate in the county, to correct or readjust the appraised valuations of individual parcels if he deems it necessary and proper in order that they may be assessed at their true value in money? The writer has in mind incorrect values resulting, not from clerical errors, but from bad

judgment or bad faith on the part of one employed as an appraiser during such general reappraisal.

No. 3. If the Auditor should discover that some parcels were not correctly appraised during a general reappraisal, has he the authority to make his corrections of the valuations effective from the time of the general reappraisal so that it would apply to the years between the reappraisal year and the year in which it is discovered?

No. 4. Is the authority of the Auditor to correct valuations resulting from bad faith on the part of one employed in a general reappraisal any greater than his authority to correct valuations resulting from an appraiser's bad judgment?"

Complaints by taxpayers against assessments on real estate are made to and heard by a county board of revision. Authority for the board to hear such complaints is found in section 5597, General Code, which is as follows:

"It shall be the duty of the board of revision to hear complaints relating to the valuation or assessment of real property as the same appears upon the tax duplicate of the then current year, and it shall investigate all such complaints and may increase or decrease any such valuation or correct any assessment complained of, or it may order a reassessment by the original assessing officer."

The procedure to be followed by the complaining taxpayers and the county boards of revision is found in section 5609, General Code, which now reads:

"Complaint against any valuation or assessment as the same appears upon the tax duplicate of the then current year, may be filed on or before the time limited for payment of taxes for the first half year, or at any time during which taxes are received by a county treasurer, without penalty for the first half year. Any taxpayer may file such complaint as to the valuation of assessment of his own or another's real property, and the county commissioners, the prosecuting attorney, county treasurer, or any board of township trustees, any board of education, mayor or council of any municipal corporation, in the county shall have the right to file such complaint. The county auditor shall lay before the county board of revision all complaints filed with him, and the county board of revision shall notify any such complainant, and also the property owner (if his address be known), in the event the complaint is filed by one other than the property

owner, by registered mail not less than ten days prior to such hearing of the time and place the same will be heard, and shall hear and render its decision on such complaint within ninety days after the filing thereof, with the said board of revision.

The determination of any such complaint shall relate back to the date when the lien for taxes for the current year attached, or as of which liability for such year was determined, and liability for taxes, and for any penalty for non-payment thereof within the time required by law, shall be based upon the valuation or assessment as finally determined. Each complaint shall state the amount of over-valuation, under-valuation, or illegal valuation complained of; and the treasurer may accept any amount tendered as taxes upon property concerning which a complaint is then pending, and computed upon the claimed valuation as set forth in complaint, and if such tender is not accepted no penalty shall be assessed because of the nonpayment thereof. The acceptance of such tender, however, shall be without prejudice to the claim for taxes upon the balance of the valuation or assessment. A like tender may be made, with like effect, in case of the pendency of any proceeding in court based upon an allegedly excessive or illegal valuation."

Section 2653, General Code, provides that taxes on real estate may be paid in full for the year at the December collection period or one-half at that time and the remaining half at the following June collection or in ten equal installments beginning in December and ending on or before September 10, following.

In section 5609, *supra*, you will note that the treasurer is authorized to accept any amount tendered as taxes upon the property concerned and acceptance of such tender shall be without prejudice to the claim for taxes upon the balance of the valuation of assessment.

Touching on the question of partial payment of taxes during the pendency of complaint proceedings thereon is an opinion of the Attorney General found in the Opinions of the Attorney General for 1929, Volume II, page 1400, the syllabus of which is as follows:

"Where, during the pendency of successive proceedings filed by a taxpayer before the county board of revision and the tax commission and in the Common Pleas Court to secure a reduction in the assessed valuation of his property, such taxpayer tenders and pays to the county treasurer taxes on what the taxpayer contends is the correct valuation of such property, and thereafter the Common Pleas Court fixes and determines the valuation of such property at an amount of money in excess of that upon which taxes were tendered and paid, the county treasurer is

authorized to collect the unpaid taxes upon such property based upon the difference between the determined valuation of the property and the valuation upon which taxes have been tendered and paid, and he is likewise authorized to collect from said taxpayer the penalty provided by law for the non-payment of taxes at the time required by law upon the difference between the determined valuation of the property and the valuation upon which taxes were tendered and paid.”

It seems apparent that the Legislature did not want to preclude complaining taxpayers from paying such taxes as could be conceded due and payable. If the taxpayer's estimate is too low, he must pay a penalty on the difference. If too high, a credit may be given on the second half of the taxes. In the case you have proposed, the taxpayer, having paid the first half, would be entitled to a credit on the second half if a deduction in valuation should be allowed. If his complaint is rejected, his first half of the taxes being paid, he incurs no penalty. That the complaint has been filed in time is apparent from the provisions of section 5609, *supra*, wherein it is said that the complaint may be filed “at any time during which taxes are received by a county treasurer without penalty for the first half year.” No provision is contained in the act which would bar complaints by taxpayers who have already paid part of their taxes but to the contrary “any taxpayer may file such complaint as to the valuation or assessment of his own or another's real property.”

Therefore, in specific answer to your first question, it is my opinion that an owner of real estate may file a complaint against the assessed valuation of his real estate at any time during which taxes are received by the county treasurer without penalty for the first half year, and it is immaterial whether or not at the time of filing such complaint he has paid his taxes for the first half of the year.

Coming now to a consideration of your second question, it appears that errors on the tax lists and duplicates are divided into two classes, known as clerical errors and fundamental errors. Sections 2588 and 5871, General Code, give the county auditor authority to correct clerical errors, but your inquiry definitely excludes clerical errors. As I have noted in discussing your first question, section 5597, *supra*, gives the county boards of revision jurisdiction to hear and determine complaints of taxpayers as to the valuation of real estate, the procedure therefor being set forth in section 5609, *supra*. Section 5602, General Code, provides for the correction of the tax list and duplicate by the county auditor upon receipt of a certification of the action of the county board of revision. Your question, however, is not concerned with the powers and duties of boards of revision but with the authority of the county auditor to correct the valuations of individual parcels as shown on the tax list and duplicate. In section 5548-1, General Code, the county auditor is given

authority in any year after the year in which the general assessment has been made to revalue and assess any real estate which he finds is not shown on the tax list and duplicate at its true value in money, this section being as follows:

“In any year after the year in which an assessment has been made by the county auditor of all the real estate in any subdivision as herein provided, it shall be the duty of such county auditor at any time to revalue and assess any part of the real estate contained in such subdivision where he finds that the same has changed in value, or is not on the duplicate at its true value in money, and in such case he shall determine the true value thereof in money, as herein provided for assessing the entire property in any such subdivision. In such case the county auditor shall notify the owner of such real estate, or the person in whose name the same stands charged on the duplicate of his intention to reassess such real estate and of the change in valuation thereof in such reassessment, and in case the owner of such real estate is not satisfied with such reassessment, the same shall be heard at the next ensuing session of the county board of revision, and such owner shall have the right to appeal therefrom to the tax commission of Ohio as provided in other cases.”

This section seems to be the only authority given to the county auditor to correct fundamental errors. While no provision is made for the matter being brought to his attention by a taxpayer's complaint, yet under the powers granted it seems to be immaterial as to how the auditor learns that lands incorrectly valued appear on the tax list and duplicate. Once his attention is directed to the error, it is his duty to make the correction as provided.

Your inquiry does not suggest the time of year in which the correction is sought to be made, but I assume it is unnecessary to devote further space to a discussion of the effect of a correction made after a county board of revision has met on the second Monday of June, as provided in section 5605, General Code, and completed its work under that section.

In answer to your second question, it is my opinion that in any year after the year in which a general assessment has been made, the county auditor by virtue of the provisions of section 5548-1, General Code, may revalue and assess any parcels of real estate which he finds are not on the tax list and duplicate at their true value in money.

Your third question relates to the authority of the county auditor to make corrections relating back to the time of the general reappraisal. In the correction of clerical errors relating to omissions from the tax lists and duplicates, county auditors are specifically authorized by section 5573, General Code, to make corrections for a period “not exceeding, however, five

years, unless in the meantime the property has changed ownership, in which case only the taxes chargeable since the last change of ownership shall be added."

As I have stated, there is no authority given county auditors to correct fundamental errors other than the right to revalue real estate under section 5548-1, supra. If the auditor proceeds under this section, it must be in some year after the general assessment has been made. He must find that the real estate has either changed in value, or, as in your case, is not on the duplicate at its true value in money, whereupon he shall proceed to determine its true value. This determination is then to be entered upon the next tax list and duplicate, there being no authority for making corrections on any tax list and duplicate which has already been made up and delivered to the county treasurer. Under section 5548-1, supra, the auditor's authority to increase the valuation is the same as his authority to decrease. It seems clear enough that in the absence of specific authority, such as is contained in section 5573, General Code, for the correction of omissions, the county auditor could not obtain an increased valuation under section 5548-1, supra, and make the increase retroactive. By the same reasoning a decrease must be as to future duplicates. This same conclusion was reached by a former Attorney General in 1934, Opinions of the Attorney General, 1934, Volume II, page 1187, wherein the second paragraph of the syllabus reads:

"The county auditor is not authorized to make and enter an increase in the taxable value of a tract of land in the county under the provisions of section 5562, General Code, or of section 5548-1, General Code, after he has made up the tax list and duplicate of the taxable real property in the county and in the taxing district in which such tract of land is located, and after he has delivered such duplicate to the county treasurer and the owner of the land has paid taxes thereon for the first half of the current year on the original tax valuation of such land."

In specific answer to your third question, it is my opinion that section 5548-1, supra, requires county auditors, in any year after the year in which a general appraisal has been made, to revalue lands which are discovered to be on the tax list and duplicate at a valuation other than their value in money. Such a correction cannot relate back to past tax lists and duplicates which the auditor has delivered to the county treasurers for collection.

Your last question relates to the authority of the auditor to make corrections of valuations where the errors are the result of bad faith on the part of appraisers, as distinguished from errors resulting from bad judgment. Both are fundamental errors and are ordinarily corrected upon hearing of the complaint by the board of revision as provided in section 5609, supra. None of the taxation sections make any distinction between

errors of bad faith and those of bad judgment. If, then, any advantage is to be gained in the correction of an error resulting from bad faith, it must be because of the impression made upon the correcting authority. Under authority of section 5579, General Code, county auditors are made the chief assessing officers of their respective counties and are required to list and value real property for taxation under the direction and supervision of the Department of Taxation. The means and methods of fixing real estate values have been provided by rules of the Department of Taxation. The duty imposed upon county auditors to revalue lands under section 5548-1, supra, is not discretionary. It is the auditor's duty to have all properties on the tax list and duplicate appraised at their true value in money. He is given no latitude as to the manner of the performance of his duty other than to use his discretion in fixing the actual value. Should he find any property to be changed in value, or not on the duplicate at its true value, under section 5548-1, it becomes his duty to determine its true value. He has no discretion or alternative. He must follow the steps set out in this section. He cannot be swayed by sentiment. Bad faith or bad judgment on the part of the appraiser is not material. His duty is to correct the duplicate.

In answer to your last question, it is therefore my opinion that under section 5548-1, supra, in any year after the year in which an appraisal has been made, if the county auditor finds that any parcel of real estate is not on the tax list and duplicate at its true value in money, and proceeds to revalue such parcel, his authority and duties in making such a revaluation are the same regardless of whether such error resulted from bad faith or bad judgment on the part of an appraiser.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1412.

LEASE—OFFICE SPACE, STATE WITH WILL P. STEPHENSON, 3 ROOMS, BUILDING, NORTHWEST CORNER INLOT 52, WEST UNION, ADAMS COUNTY, USE, DIVISION OF AID FOR THE AGED.

COLUMBUS, OHIO, November 13, 1939.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certain lease executed by Will P. Stephenson of West Union, Ohio, and the State of Ohio, acting by and through you as Director of the Department of Public Works, for the Division of Aid for the Aged in