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1. TAXES, CURRENT — MAY BE PAID WITHOUT PREJUDICE TO COMPLAINT ON AN ASSESSMENT FOR PRIOR YEAR.
2. STATUS, DELINQUENT TAXES, INTEREST AND PENALTIES WHERE PENDING COMPLAINT.
3. SPECIAL ASSESSMENTS MAY NOT BE PAID PENDING LITIGATION IN COURT, WITHOUT PREJUDICE, UNLESS SUCH LITIGATION BE PART OF APPEAL OR COMPLAINT FILED AS TO ANNUAL ASSESSMENT OF REAL ESTATE—SECTIONS 5609-2, 5609-3, 5609, 5610, 5611-4 GENERAL CODE.

SYLLABUS:

1. Under the provisions of Section 5609-2, General Code, current taxes may be paid without prejudice to a complaint regarding an assessment for an earlier year or years.

2. *Section 5609-2, General Code, permits payment of taxes which have become delinquent pending determination of complaint as to prior years without prejudice to such complaint, but Sections 5609-2 and 5609-3, General Code, do not authorize any provisions for the abatement of interest and penalties on taxes withheld pending determination of complaint.*

3. *Section 5609-2, General Code, does not permit the payment of special assessment pending litigation in court, without prejudice to such litigation, unless such litigation be part of an appeal or complaint filed with respect to the annual assessment of real estate as provided in Sections 5609, 5610 and 5611-4, General Code, and related sections.*

Columbus, Ohio, October 10, 1941

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

Dear Sir:

This will acknowledge receipt of your recent request for my opinion, which reads as follows:

"I would appreciate very much your opinion as to certain questions arising under Amended Sections 5609-2 and 5609-3 of the General Code of the State of Ohio. These sections became effective as of August 11th, 1941.

1. Do the provisions of Section 5609-2 and 5609-3 apply to complaints pending at the effective date of the act so as to permit payment of current taxes without prejudice to a complaint as to 1940 assessments?

2. Do the amended sections permit such payment as to taxes which have become delinquent pending determination of complaints as to 1940 or prior years? If so what provisions, if any, may be made for abatement of interest and penalties on taxes withheld pending complaints?

3. Do the amended sections apply so as to permit payment of special assessments pending litigation in court as to the amount or validity thereof without prejudice to such action?"

Section 5609-2, General Code, was enacted as a part of Senate Bill No. 210 of the Ninety-Fourth General Assembly, became effective August 15, 1941, and reads as follows:

“Payment of the whole or any part of any real property tax or assessment for any year with respect to which a complaint or appeal is pending shall not abate the complaint or appeal or in any way affect the hearing and determination thereof.”

Section 5609-3, General Code, which was also enacted as a part of Senate Bill No. 210, reads as follows:

“Notwithstanding any other provision of law, if upon consideration of any complaint against the valuation or assessment of real property, filed under the provisions of section 5609 of the General Code, or any appeal from the determination on such complaint, it shall be found that the amount of taxes or assessments paid for the year to which the complaint relates was in excess of the amount due, then, whether or not the payment of said taxes or assessments was made under protest or duress, the county auditor shall, within thirty days after the certification to him of the final action upon such complaint or appeal, credit the amount of such overpayment upon the amount of any taxes or assessments then due from the person having made such overpayment of taxes or assessments, and at the next or any succeeding settlement the amount of any such credit shall be deducted from the amounts of any taxes or assessments distributable to the county or to any taxing unit therein, which has received the benefit of the taxes or assessments previously overpaid, in proportion to the benefits so previously received. If, after such credit has been made, there shall remain any balance of such overpayment, or in the event there are no taxes or assessments due from such person, upon application of the person overpaying such taxes, the county auditor shall forthwith draw a warrant on the county treasurer in favor of the person who has made such overpayment of taxes or assessments, for the amount of such balance. The county treasurer shall pay such warrant from the general revenue fund of the county. If there are insufficient moneys in said general revenue fund to make such payment, the county treasurer shall pay such warrant out of any undivided tax funds thereafter received by him for distribution to any county or any taxing unit therein, which has received the benefit of the taxes or assessments overpaid, in proportion to the benefits as previously received, and the amount so paid from the undivided tax funds shall be deducted from the moneys otherwise distributable to such county or other taxing unit of the county at the next or any succeeding settlement. At the next or any succeeding settlement after the refunding of such taxes, and assessments, the county treasurer shall reimburse the general revenue fund of the county for any payment made from such fund, by deducting the amount of such payment from the moneys otherwise distributable to the county or other taxing unit in the county which has received the benefit of the taxes or assessments overpaid, in proportion to the benefits so previously received.”

I shall answer the questions raised by your request in the order in which they are stated.

You asked whether, under the provisions of Section 5609-2, General Code, a person who has a complaint or appeal pending with respect to 1940 real estate taxes may pay his 1941 real estate taxes without thereby prejudicing his 1940 appeal.

Section 5609-2, *supra*, does not refer to such a situation. The rule has already been established that the appeal to the Board of Tax Appeals governs the assessment for one year and one year only. The Board of Tax Appeals of Ohio in *Brudno v. Board of Revision*, 18 O.O. 3, 7, said:

“ * * * In any view it is clear that the action of the Board of Tax Appeals in determining the taxable valuation of a particular tract or parcel of real property for the particular year involved in the appeal before it, does not in any manner affect the power and duty of the taxing authorities to assess such property for the following or any other subsequent year at a valuation which, in the judgment of such taxing authorities, will represent the true value in money of the property for such subsequent year—no more than if the decision of the Board of Tax Appeals were one determining the taxability of the property for the particular year in question, rather than its valuation. See *State ex rel. Methodist Book Concern v. Guckenberger, Auditor*, 57 Ohio App., 13, 9 O.O., 130, 133 Ohio St., 27, 9 O.O., 432. And it is equally clear that upon the determination of the valuation of the property for such subsequent year by the county auditor or by the county board of revision acting under its revisory powers, the taxpayer could legally file a complaint as to the assessed valuation of the property for such year and present the same for hearing before the county board of revision even though he had voluntarily paid the full amount of the taxes on the property for the preceding year on the same tax valuation. *Potter v. O'Brien, Treas.*, 27 O.C.A. 577, 584.”

Prior to the adoption of Section 5609-2, *supra*, it would have been impossible to pay the 1941 taxes without prejudicing a 1940 appeal because of the provisions of Section 2655, General Code, which reads in part as follows:

“No person shall be permitted to pay less than the full amount of taxes charged and payable for all purposes on real estate, except only when the collection of a particular tax is legally enjoined. * * * ”

The balance of this section provides that less than the full amount of taxes against a given parcel of realty may be paid by the owner of an individual interest upon furnishing to the treasurer the recorded evidence of the existence and fractional extent of such interest. Since it is now possible to pay the taxes for a year with respect to which an appeal has been filed without prejudicing his appeal a taxpayer may pay all the taxes on the books against his property and the fact that taxes for a subsequent year are paid will not prejudice his appeal for a prior year. If the appeal be decided in favor of the taxpayer he will be credited or refunded the taxes found to have been erroneously assessed as provided in Section 5609-3, *supra*.

I come now to the second question which you raise. You inquire whether taxes which have become delinquent pending the determination of appeals for 1940 and prior years may be paid under the protection of Section 5609-2, *supra*. The authority for imposing penalties in the event real property taxes are not paid when due is contained in Section 5678, General Code, which provides, *inter alia*, that the total of the amounts of taxes, assessments and penalties shall constitute the delinquent taxes and assessments on such real estate. In the light of this section, it would seem that the penalty becomes a part of the tax and that for the purpose here in question it must be treated as such. Such a result was arrived at by one of my predecessors in office in his opinion, Opinion No. 4723, Opinions of the Attorney General for 1932, page 1235. In that opinion it was held that delinquent taxes, assessments and penalties were all included within the meaning of the phrase "full amount of taxes charged and payable" as used in Section 2655, General Code. That opinion was approved and followed in Opinion No. 2622, Opinions of the Attorney General for 1934, page 591, and I concur in the rule therein stated.

You inquire further whether provision may be made for the abatement of interest and penalties on taxes withheld pending complaints in the light of Sections 5609-2 and 5609-3, General Code. These sections are silent on this matter and it would be highly improper to read into the statute something not placed there by the Legislature. Furthermore, the statute, being in derogation of a principle existing at common law as demonstrated by the *Brudno* case, *supra*, and cases therein cited, must be strictly construed. I am, therefore, of the opinion that the only provisions which may be made regarding penalties and interest are those

provided in Section 5679-1, General Code, by which a portion of the penalty only may be abated.

The third question raised by your letter deals with the question of the effect of Sections 5609-2 and 5609-3, supra, upon special assessments which are the subject of court procedure as to their amount or validity.

Section 5609-2, supra, as enacted by Senate Bill No. 210, was adopted, as shown in the engrossed bill, for the purpose of supplementing Section 5609, General Code, which provides for a complaint against a valuation or assessment as the same appears on the tax duplicate. Section 5610, General Code, which is also a part of Part Second, Title I, Chapter II of the General Code of Ohio, which chapter provides for the county boards of revision, provides for an appeal from the decision of the county board of revision to the Board of Tax Appeals and to the Supreme Court. In Section 5611-4, General Code, an alternative appeal from the decision of the county board to the Common Pleas Court is provided. Appeals from the Court of Common Pleas may be taken as in other cases.

It is a fundamental rule of statutory interpretation that a word or phrase will be given the same meaning throughout an act when used several times therein. This was well set out by the Supreme Court of Ohio in the case of *Raymond v. Cleveland*, 42 O.S. 522, wherein the court said at page 529:

“ * * * Where the meaning of a word or phrase in a statute is doubtful, but the meaning of the same word or phrase is clear where it is used elsewhere in the same act or an act to which the provision containing the doubtful word or phrase has reference, the word or phrase in the obscure clause will be held to mean the same thing as in the instances where the meaning is clear.”

See also 37 O.Jur. 572, Statutes, §308 and cases cited therein.

In the light of the foregoing rule, I am of the opinion that in its use of the words “complaint or appeal” the Legislature meant only those complaints and appeals provided by Sections 5609, 5610 and 5611-4, General Code. If further support were needed for this result it might be found in the rule of strict construction of statutes in derogation of the principles of common law.

In specific answer to the questions raised by your letter I am of the opinion that:

1. Under the provisions of Section 5609-2, General Code, current taxes may be paid without prejudice to a complaint regarding an assessment for an earlier year or years.

2. Section 5609-2, General Code, permits payment of taxes which have become delinquent pending determination of complaint as to prior years without prejudice to such complaint, but Sections 5609-2 and 5609-3, General Code, do not authorize any provisions for the abatement of interest and penalties on taxes withheld pending determination of complaint.

3. Section 5609-2, General Code, does not permit the payment of special assessment pending litigation in court, without prejudice to such litigation, unless such litigation be part of an appeal or complaint filed with respect to the annual assessment of real estate as provided in Sections 5609, 5610 and 5611-4, General Code, and related sections.

Respectfully,

THOMAS J. HERBERT,

Attorney General.