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HOUSE TRAILER TAX, ASSESSING, REIMBURSEMENT FOR MISCALCULATION, IMPROVEMENTS, DISTRIBUTION, PENALTIES—§§4503.06, 319.36, R.C., OPIN. 2909, OAG, 1962, §§4501.01, 4503.06, 4503.061, R.C.

SYLLABUS:

1. In determining the number of years that a house trailer is owned by the current owner in order to determine the percentage to be used in calculating the house trailer tax due in any given year pursuant to the provisions of division (E) of Section 4503.06, Revised Code, the second year of ownership begins on January 1 of the year immediately subsequent to the year in which the current owner became the owner of such house trailer.

2. The board of county commissioners may, pursuant to Section 319.36, Revised Code, refund to a house trailer owner any tax which is paid as a result of an erroneous computation of the assessment made by the county auditor pursuant to Section 4503.06, Revised Code, when such erroneous assessment results from the application by the county auditor of a newer present owner house trailer age than is required by division (E) of Section 4503.06, Revised Code.

3. In determining the value of a house trailer for tax purposes pursuant to Section 4503.06, Revised Code, the "cost to the owner including improvements" includes any improvements to the house trailer itself, such as furniture and appliances, which are made by the owner or which are included in the initial cost of the house trailer.

4. The determination of whether an improvement made by the owner of a house trailer is an improvement to the house trailer itself so as to be included in the value of the house trailer in determining the tax imposed by Section 4503.06, Revised Code, or is the personal property of the owner of the house trailer and not subject to such tax, is a fact question resting on whether such improvement adds to the nature of the vehicle as defined by Section 4501.01 (I), Revised Code.

5. The county treasurer may not refuse to accept payment of the taxes assessed by the county auditor and certified to the county treasurer for collection pursuant to Section 4503.06, Revised Code, even though, in the opinion of the county treasurer, such taxes have been erroneously assessed as a result of a misstatement to the auditor on the part of the taxpayer. (Under such circumstances, the county treasurer should, however, notify the county auditor and the prosecuting attorney of any facts known to him with respect to such erroneous assessment.)

6. The county auditor may require the owner of a house trailer to present to him the certificate of title or other lawful evidence of ownership prior to permitting such owner to register such house trailer pursuant to Section 4503.063, Revised Code.

7. In determining the house trailer tax pursuant to division (E) of Section 4503.06, Revised Code, the county auditor should use as the "tax rate of the taxing district" the tax rate which is applied to real property taxes for the year preceding the year in which the house trailer tax is computed and payable, and such real property tax rate should be used throughout such house trailer tax year regardless of the fact that the "new" tax rate will be determinable on or after October 1 of said taxing year.

8. The distribution of the house trailer tax pursuant to division (J) of Section 4503.06, Revised Code, should be made semiannually in accordance with the ratio of real estate and public utility taxes which are at the same time being distributed, and such ratio should apply to all such house trailer taxes then being distributed regardless of the ratio of tax distribution which was in effect at the time that such house trailer taxes were assessed and payable.

9. The county auditor, the county treasurer, or any other citizen, may request the prosecuting attorney to institute criminal proceedings against any person violating Section 4503.06, Revised Code.

10. The county auditor and the county treasurer have no authority to cause the elimination of delinquent house trailer tax accounts from the records and tax lists of such offices, and until such time as such authority is granted to said officers by the general assembly, no such tax accounts may be eliminated.

Columbus, Ohio, November 3, 1962

Hon. John T. Corrigan, Prosecuting Attorney
Cuyahoga County, Criminal Courts Bldg., Cleveland, Ohio

Dear Sir:

Your request for my opinion asks that I consider several questions posed to you by the county auditor, and reading as follows:

"(1) If a house trailer was purchased for $5,000 in November, 1961, and had a taxable situs in this state on January 1, 1962, what would be the proper computation of value—40% of 80% of $5,000, equaling $1,600, or 40% of 70% of $5,000, equaling $1,400? In other words, does the first year formula prescribed in Sec. 4503.06 apply, or the formula for the second

year, even though the trailer was less than two months old on January 1, 1962?

"If the first computation is correct, how would the value of a $5,000 trailer acquiring a taxable situs in January, 1962 be computed?

"A letter from Donald S. Swepston of the Legal Division of the State Tax Commissioner's office states that his *unofficial* interpretation of the term 'first calendar year' used in said section means 'the first year during any part of which a person owned a trailer,' and that the latter computation would be the correct one. Also we have been informed that the first 20% deduction was intended to counterbalance the value of the furniture and appliances usually included in the purchase price of a house trailer which normally would be untaxed personal property in a dwelling, and that such percentage does not include a depreciation allowance similar to the 10% allowed in subsequent years. In any event, the wording of the statute does not appear as clear-cut as it should be, and needs some *official* interpretation.

"(2) If the ruling should be that, in the above example, $1,400 is the proper taxable value, may a refund be made of the tax on the difference in value if the taxpayer has already paid the tax for the entire year on the basis of the $1,600 value?

"(3) What is the process for making such refund, or of allowing a credit upon, or abatement or remission of, the unpaid half of the total tax charge if only the first half of the tax has been paid?

"(4) If the trailer owner, in filling out a trailer registration form later filed with the Auditor, had shown in the space provided for Cost or Market Value the following: '$5,000, less furniture and appliances, $1,500, total $3,500,' should the Auditor compute the value on the basis of the $5,000 cost price, disregarding the deduction, or on the basis of the $3,500 cost figure? In other words, is the high initial allowance of 20% intended to take care of the cost of any furniture and appliances that might have been, and usually are, sold along with the trailer shell so that no deduction from the total purchase price need be allowed because household furnishings are normally exempt from taxation?

"(5) Would the taxpayer be entitled to a refund or tax remission if he had reported $5,000 on the registration application as the cost price without indicating any deduction for furniture and appliances, but later stated, or proved from other evidence, that $1,500 of the total purchase price of $5,000 was really for furniture and appliances?

"(6) Should delivery or installation costs of the trailer, and costs of patios, shrubbery, etc. (*not* improvements to the trailer)

be excluded from the valuation base if such costs are itemized separately by the taxpayer?

"(7) If the Certificate of Title later presented to the County Treasurer before his issuance of an Advance Certificate of Payment shows a higher purchase price than the one appearing on the Registration Certificate issued by the Auditor, indicating that the tax obviously has been computed by using a tax value based on such lower cost figure, has the Treasurer the authority or duty to refuse to accept the tax as computed and to issue such Certificate of Payment?

"(8) To avoid the discovery later of errors in the computation of the taxable value of a trailer, can the Auditor insist upon the Certificate of Title, or copy thereof, being presented to him at the time of registration? In other words, if an application for registration is mailed in (as most of them are in this county) should the Auditor refuse to accept it and compute the tax until and unless such Certificate of Title is presented even though the statute specifically requires that it be presented to the Treasurer later, prior to payment?

"(9) Section 4503.06 (E) prescribes that the tax shall be computed 'by multiplying the assessable value of the house trailer by the tax rate of the taxing district' etc. As new real estate tax rates are officially determined and approved in the fall of 1962 for the current, 1962 tax year, shall such new rates be used thereafter in calculating the tax on trailers acquired or coming into the state between such time and January 1, 1963, or should the Auditor continue to use the tax rates of the previous, 1961 tax year until January 1, 1963?

"(10) Inasmuch as the last day for paying the last half real estate tax is June 20th, unless the time is extended, with a settlement with the Treasurer required in August, whereas the last half of the trailer tax does not have to be paid until the first day of October or until 30 days after the date situs was acquired, there undoubtedly will be some payments for the current year made after the second and last distribution that year of the proceeds of the trailer tax has been made (the distribution must be made at the same time as the real estate tax distribution).

"Such payments, necessarily, will be mingled with the trailer tax receipts for the following year and be subject to distribution at the time of making the first half settlement and distribution of real estate taxes for the following year. Also, as the years go on, there will be payments of delinquent taxes of previous years that have been transferred, as of December 31st, we assume, to the Delinquent Duplicate.

"Thus, having in the undivided trailer tax account for any given municipality, taxes representing at least two, and probably

three or more, different tax years, calculated at criterion used at such following February Settlement. and Distribution for prorating the tax money between the state, county, municipality, township and school district?

"(11) Is the County Auditor solely responsible for requesting the County Prosecutor to start criminal proceedings against a non-registrant (pursuant to Paragraph 8 of the syllabus in 1961 Attorney General's Opinion No. 2693) or does the County Treasurer have a similar, concurrent duty?

"(12) Unpaid real estate taxes may either be collected or cancelled as a result of tax foreclosure or forfeiture proceedings, uncollectible personal property taxes may be expunged pursuant to R.C. Sec. 5719.06, but what happens to delinquent trailer taxes on the Delinquent Duplicate when they become uncollectible because, for example the owner has moved himself and his trailer out of the county, or because the trailer has been destroyed by fire o rsold and the owner cannot be found or, if found, forced to pay, or because a delinquent tax judgment remains unsatisfied? Must such delinquent taxes be carried on the books forever?"

Section 4503.06, Revised Code, which became effective on January 1, 1962, provides for an annual tax on house trailers. Division (E) of that section deals with the assessment of the tax, and reads as follows:

"The tax shall be computed and assessed by the county auditor of the county containing the taxing district wherein the house trailer has its situs by multiplying the assessable value of the house trailer by the tax rate of the taxing district in which the house trailer has its situs, and shall be not less than eighteen dollars in any case.

"The assessable value of the house trailer shall be forty per cent of the amount arrived at by the following computation:

"The cost to the owner, or market value at time of purchase, whichever is greater, of the house trailer, including improvements, shall be multiplied for the first calendar year in which the trailer is owned by the current owner, by eighty per cent; for the second year by seventy per cent, for the third year by sixty per cent, for the fourth year by fifty per cent, for the fifth year by forty per cent, for the sixth year and each year thereafter by thirty per cent; provided, when a house trailer, which is not located in this state on the first day of January, is acquired or first enters this state, the assessable value for that year is determined by multiplying the assessable value as computed under the provisions of this section by a fraction whose numerator is the number of full months remaining to the following thirty-first day of December, commencing with the date of acquisition or entrance

into this state, and whose denominator is twelve. If the minimum tax of eighteen dollars is applicable to a house trailer not located in this state on the first day of January, the tax is determined by multiplying one dollar and fifty cents by the number of full months remaining to the following thirty-first of December commencing with the date of acquisition or entrance into this state."

Under the above provision, the assessable value of a house trailer is forty per cent of either the cost to the owner, including improvements, or market value at the time of purchase, including improvements, *whichever is greater,* multiplied by:

Eighty per cent *for the first calendar year in which the trailer is owned by the current owner;*

Seventy per cent for the second year;

Sixty per cent for the third year;

Fifty per cent for the fourth year;

Forty per cent for the fifth year;

Thirty per cent for the sixth and later years.

Considering the first question, if the trailer was purchased in 1961, then 1961 was the first calendar year in which the trailer was owned by the current owner and 1962 is the second calendar year. If the cost to the owner, $5,000, is greater than market value at the time of purchase, then the assessable value of the trailer in question on January 1, 1962, was forty per cent of seventy per cent of $5,000, or $1,400.

The second and third questions are concerned with the possibility of a refund to a taxpayer where, through error, he has paid more than was actually due.

The voluntary refund of taxes is provided for by Section 319.36, Revised Code, which reads as follows:

"After having delivered a duplicate to the county treasurer for collection, if the county auditor is satisfied that any tax or assessment or any part thereof has been erroneously charged, he may give the person so charged a certificate to that effect to be presented to the treasurer, who shall deduct the amount from such tax or assessment. If, at any time, the auditor discovers that erroneous taxes or assessments have been charged and collected in previous years, he shall call the attention of the board of county commissioners to such charge or collection at a regular or special session of the board. If the board finds that taxes or

> assessments have been erroneously charged and collected, it shall order the auditor to draw his warrant on the treasurer in favor of the person paying them for the full amount of the taxes or assessments so charged and collected. The treasurer shall pay such warrant from the general revenue fund of the county."

The foregoing language is general in nature, and I know of no reason which would exclude its proper application to the instant case.

Under Section 319.37, Revised Code, the right to refund taxes is limited to taxes paid within five years; however, such limitation would have no effect upon the instant question. The courts have, however, limited the right to refund taxes to those situations where the taxes were assessed and paid as a result of a clerical error as opposed to a fundamental error. 51 Ohio Jurisprudence 2d, 706, Taxation, Sections 548 and 549; *Chatfield & Woods* v. *Hamilton Co.,* 10 O.D. 513; Opinion No. 4276, Opinions of the Attorney General for 1941, page 828.

While the rule as to the right to make a voluntary refund of taxes is simply stated, no such easy task is the attempt to determine what is a clerical error as opposed to a fundamental error. In this regard, attention is directed to the following excerpt from 51 Ohio Jurisprudence 2d, 434, Taxation, Section 347:

> "With respect to the test which should be used in determining what constitutes a 'clerical' error, it has been said: 'If the direct object of the inquiry be to determine the existence, kind, and value of certain property, any error therein would be fundamental; if the direct and principal object be to ascertain whether there be a report or minute of the results of such inquiry to serve the purpose of a copyist, or accountant, or the like, any error therein would be clerical.'
>
> "It also has been declared that a 'clerical' error is one which appears on the face of the auditor's official books and papers, and is discoverable by inspection."

In the case of *Insurance Co.* v. *Cappellar,* 38 Ohio St. 560, the court said, at page 574:

> "True, it was held in *State* v. *Com. of Montgomery County,* 31 Ohio St. 271, that the corrections which the auditor may make under this section are merely clerical. The error to be corrected in relation to the plaintiff's taxes was the deduction of the reinsurance item from its credits. No fact is to be inquired into. Every necessary fact appears on the face of the return. Charge the proper rate of taxes upon the amount of credits returned

> without any deduction on account of the re-insurance item, and the error in the amount of plaintiff's taxes will be corrected—clerical work merely. Corrections authorized by this section are limited, however, to the current tax list and duplicate."

In the case of *Heuck, County Aud. et al.* v. *The Cincinnati Model Homes Co.,* 130 Ohio St., 378, the court referred to statutory provisions now found in Section 319.36, *supra,* as well as other statutes, and said at page 381:

> "These laws do not relate to the imposition and creation of tax obligations but wholly to the mechanics of tax valuation and enforcement. They are therefore remedial in their nature and require a liberal construction to the end that taxable real estate shall not escape just taxation. *State, ex rel. Poe,* v. *Prout,* 48 Ohio St., 89, 108, 26 N.E., 1013."

The court went on to say at page 383:

> "The error involved in the instant case was the omission of a cipher on the right of the number of square feet in the building at its base in the process of calculation so that the valuation arrived at was reduced accordingly in applying the formula. The result was that nine-tenths of the building escaped taxation through omission from the tax list and duplicate. It thus appears that the error was not fundamental, involving judgment and discretion, but was merely clerical in character. If the kindred statutory provisions are construed liberally to ascertain the intent of the legislature the logical conclusion is that it is the duty of the auditor to add to the list of real property a part of a building omitted through a clerical error of the kind involved here."

Coming now to the instant question, it is noted that the tax imposed would be excessive as a result of an error committed by the auditor in computing the tax. All of the essential information necessary to the proper computation should have been, and I presume was, before the auditor. I also assume that most of such information would be found upon the forms prescribed by the tax commissioner pursuant to Section 4503.063, Revised Code. The "assessable value" of the trailer would have been properly computed but for the auditor's error in determining the taxable age of the house trailer. The information necessary for such determination would undoubtedly be found in his records. Construing Section 319.36, Revised Code, liberally, I conclude that such an error would be clerical in nature and that the board of county commissioners could, in accordance therewith, allow a refund of the taxes paid as a result of such error.

Your fourth, fifth, and sixth questions deal with assessable value of a house trailer and will be considered together. I had occasion to consider the provisions of paragraph (E) of Section 4503.06, *supra,* in Opinion No. 2999, Opinions of the Attorney General for 1962, issued May 17, 1962, wherein the second, third and fourth paragraphs of the syllabus read as follows:

"2. Under division (E) of Section 4503.06, Revised Code, in determining the cost to the owner, including improvements, all improvements added to such house trailer should be included whether or not they were a part of the trailer at the time of purchase; but in determining the market value of the trailer at the time of purchase, only the existing improvements at the time of purchase should be included in assessing the value.

"3. Under Section 4503.06, Revised Code, the tax shall be computed and assessed once each year. Where a trailer is listed and the assessable value is based on 'the cost to the owner, including improvements,' the fact the improvements are added in the same year *after* the assessment is made does not require the owner to re-list the new or additional value in that year.

"4. Under the formula of division (E) of Section 4503.06, Revised Code, the assessable value of a house trailer is forty per cent of either the cost to the owner, including improvements, or market value at the time of purchase, including improvements, whichever is greater, multiplied by the designated percentage applying to the house trailer based on the number of years the current owner of the trailer has had such ownership."

A house trailer is defined in Section 4501.01 Revised Code as follows:

"* * *   * * *   * * *

"(I) 'House trailer' means any self-propelled and nonself-propelled vehicle so designed, constructed, reconstructed, or added to by means of accessories in such manner as will permit the use and occupancy thereof for human habitation whether resting on wheels, jacks, or other foundation and used or so constructed as to permit its being used as a conveyance upon the public streets or highways.

"* * *   * * *   * * *"

A house trailer is a vehicle fit for human habitation, by means of the addition of accessories or otherwise. Section 4501.01 (I), *supra.* Certainly, under such definition, the furniture and appliances added to such vehicle would become a part of it by definition. With this thought in mind, I believe that there can be absolutely no doubt that the legislature intended that the cost or value of furniture and appliances added to the vehicle were

to be included in the "cost to the owner, or market value at the time of purchase, * * *, including improvements" as such language is used in Section 4503.06, *supra.* The improvements therein mentioned were obviously those things which, added to the vehicle, permit it to be used for human habitation. The extent to which an owner goes with improvements is within his judgment, but all those things which are added to the basic vehicle which add to its comfort, should be considered "improvements".

Thus, to answer your third question, the value of the trailer should be $5,000.00; and in answer to question four, no refund is necessary. As to question number five, no tax is assessable under Section 4503.06, Revised Code, for property owned by the taxpayer which is not an improvement to the house trailer upon which the tax is assessed. In this regard, it should be noted that the determination of what amounts to an improvement to the house trailer as opposed to an improvement to the trailer lot is often a close question which can be determined only by a consideration of all of the circumstances in a given situation. The definition of the phrase, "house trailer" found in Section 4501.01 (I), *supra,* should be useful in making such determination.

Your seventh question deals with the authority of the county treasurer to refuse to accept payment of the tax when, upon being presented with a certificate of title to the house trailer, it appears that the tax has been erroneously computed. Paragraphs (D), (E) and (K) of Section 4503.06, Revised Code, read in pertinent part as follows:

> "(D) The tax is collected by and paid to the county treasurer of the county containing the taxing district wherein the house trailer has its situs.
>
> "(E) The tax shall be computed and assessed by the county auditor of the county containing the taxing district wherein the house trailer has its situs * * *.
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> "* * *   * * *   * * *
>
> "(K) Upon the collection of the tax as required by this section and upon the presentation of an Ohio certificate of title, certified copy of certificate of title, or memorandum certificate of title as such are required by law, the county treasurer shall issue a certificate to the owner of the house trailer evidencing payment of the tax required by this section."

It can be seen from the above quoted statutory language that the duty of the county treasurer is to collect the tax as assessed and at the time of or

subsequent to such collection, to issue a certificate of payment to the house trailer owner upon the presentation of proper title. It is a general rule that county treasurers are not taxing officers but are tax collectors. 14 Ohio Jurisprudence 2d, 329, Counties, Section 168. I see nothing in the above quoted statutory language which would justify the alteration of such rule in the instant case. The court's statement, in *Hull* v. *Alexander, Treasurer,* 69 Ohio St. 75, at page 90, appears to be here pertinent and reads:

> "Again, the county treasurer is strictly a collector of taxes, and not a tax inquisitor or taxing officer. He performs his whole duty when he collects the money charged upon the tax duplicate and delinquent list delivered to him by the auditor for collection, or charged upon a warrant or draft delivered to him by the auditor authorizing him to receive money; and he is not authorized by statute to hunt up and collect old state claims not placed on the duplicate or delinquent list of the current year by the auditor. The auditor is the taxing officer, and the treasurer the collecting officer."

Accordingly, I am of the opinion that the county treasurer is required to collect the tax required by Section 4503.06, Revised Code, in the amount determined by the county auditor. On this point, however, the county treasurer may, of course, advise the county auditor and any other officer of the disparity between the tax and the cost of the trailer to the owner as shown by the title paper, for whatever lawful action such officer may deem appropriate.

As to the authority of the county auditor to require the presentation of evidence of title prior to the computation of the tax for a tax year, the eighth question, your attention is directed to Section 4503.061, Revised Code, which reads, in part, as follows:

> "All owners of house trailers having a situs in this state and subject to the tax as provided in section 4503.06 of the Revised Code must register such trailer with the county auditor of the county containing the taxing district wherein the house trailer has its situs on or prior to the date the tax is due and payable.
>
> "* * * * * * * * *"

Since the owner is required to register a house trailer each year to comply with Section 4503.061, Revised Code, there can be no doubt that such owner can be required by the county auditor to prove the fact that he is the owner by producing his certificate of title or other lawful evidence of ownership. The fact that such proof may not be required by the forms

prescribed by the tax commissioner pursuant to Section 4503.063, Revised Code, would in no way affect the authority of the auditor to demand such proof, since he is charged with the responsibility of receiving registrations from "owners." However, the tax commissioner could require such a showing as part of the forms so prescribed.

In your ninth question, you ask whether, pursuant to division (E) of Section 4503.06, *supra,* the "tax rate of the taxing district" which is to be applied to the assessable value of the house trailer in order to determine the amount of taxes due is the tax rate applied to real property during the year prior to the year in which the trailer tax is payable, or if in some cases the tax rate which has been determined to apply to real property for the year in which the trailer tax is due should be used. It should be noted that division (B) of Section 4503.06, Revised Code, provides that the year for which the tax is levied is the calendar year. As your question indicates, the taxing authorities are required by Section 5705.34, Revised Code, to authorize the necessary tax levies on or before the first day of October of each year unless such time is extended or other contingencies provided for in such statute arise.

Division (G) of Section 4503.06, Revised Code, reads as follows:

> "(G) The tax is due and payable as follows:
>
> "(1) When a house trailer acquires a situs in this state, as provided in this section, on or after the first day of January and on or prior to the thirtieth day of June, a minimum of one-half of the tax is due and payable immediately upon the expiration of a thirty day period commencing with the date the situs is acquired and one-half on or prior to the first day of October;
>
> "(2) When a house trailer acquires a situs in this state, as provided in this section, on or after the first day of July and on or prior to the thirty-first day of December the entire tax is due and payable immediately upon the expiration of a thirty day period commencing with the date the situs is acquired."

It seems clear from a reading of Section 4503.06 (G) (1), *supra,* in light of the fact that for all practical purposes the tax rate for real property for the year in which the trailer tax is due and payable will not be determined until after such trailer tax is due and payable, that the General Assembly intended the words "tax rate of the taxing district" as used in Section 4503.06 (E), *supra,* to mean the tax rate which is de-

terminable on January 1 of each year. Such tax rate would be the rate applied to real estate for the previous tax year.

Once having determined that such rate is the rate to be applied, I find nothing in the language of Section 4503.06, Revised Code, which would require that a different rate should be used for computing the tax on a trailer acquiring situs after the tax rate on real estate for the current tax year is determined. Furthermore, such a construction would effect a double standard and cause inequitable results. Accordingly, such construction should be avoided, if possible, 50 Ohio Jurisprudence 2d, 214, Statutes, Section 233, and since, as stated above, there is no language requiring such construction, I am of the opinion that the tax rate applied to real property in the taxing district for the tax year immediately prior to the year in which the house trailer tax is due and payable under Section 4503.06, Revised Code, should be applied in determining the house trailer tax throughout the house trailer taxing year.

Your tenth question deals with the distribution to the subdivisions of the counties of the taxes paid pursuant to Section 4503.06, Revised Code, when such payments are received after the time that statutory distribution of real estate taxes is made for the tax year for which such house trailer taxes are collected. You point out that the ratio of distribution for the ensuing statutory distribution period may be different than the ratio for the distribution period which covered tax receipts for the year during which the house trailer tax payments were assessed and payable.

Distribution of trailer tax receipts is provided for in division (J) of Section 4503.06, Revised Code, which reads as follows:

> "(J) The total amount of taxes collected shall be distributed semiannually at the same time distribution is made of real estate and public utility taxes in the following manner: four per cent shall be allowed as compensation to the county auditor for his service in assessing the taxes; two per cent shall be allowed as compensation to the county treasurer for the service he renders as a result of the tax levied by this section. Such amounts shall be paid into the county treasury, to the credit of a general county fund, on the warrant of the county auditor. The balance of the taxes collected shall be distributed among the taxing subdivisions of the county in which the taxes are collected and paid in the same ratio as real estate and public utility taxes are distributed for the benefit of the taxing subdivision. The taxes levied and revenues collected under this section shall be in lieu of any general property tax and any tax levied with respect to the privilege of using

or occupying a house trailer in Ohio except as provided in sections 4503.04 and 5741.02 of the Revised Code."

As to the authority of the General Assembly in connection with the distribution of taxes, attention is directed to 51 Ohio Jurisprudence 2d, 597, Taxation, Section 465, in which it is said:

"The legislature has full authority to regulate the distribution of taxes; the constitutional requirement of uniformity in taxation applies only to the levy and assessment of taxes, and not to the expenditure and distribution of money raised thereby. Since distribution of taxes is separate from, and independent of, the levy of the tax, the validity or invalidity of statutory provisions relating to distribution does not affect the levy."
(See also *City of Cleveland* v. *Zangerle,* 127 Ohio St. 91.)

An examination of Section 4503.06 (J), *supra,* shows that the General Assembly therein speaks of the distribution to the "taxing subdivisions of the county in which the taxes are collected and paid." Certainly, the legislature was aware of the fact that some taxes levied under Section 4503.06, Revised Code, would not be payable until after the time at which distribution of other taxes levied thereunder and collected during the same tax year should have been made. Considering this fact, and the use of the language "collected and paid" in Section 4503.06 (J), *supra,* I am led to the conclusion that, in said statute, the legislature was considering only those amounts which were currently collected as being subject to the ratio in existence at the time of distribution. As shown earlier, the distribution of taxes is, in most cases, completely within the power of the General Assembly, and I am of the opinion that Section 4503.06 (J), *supra,* requires that at each semi-annual distribution of taxes levied under Section 4503.06, Revised Code, all such taxes which have been actually collected and paid at the time of such distribution be distributed in accordance with the then existing distribution ratio of real estate and public utility taxes.

In your eleventh question you refer to the institution of criminal proceedings against a house trailer owner who has failed to register as required by Section 4503.06, Revised Code. This subject was treated in Opinion No. 2693, Opinions of the Attorney General for 1961, issued December 19, 1961, wherein the seventh paragraph of the syllabus reads as follows:

"7. The last paragraph of Section 4503.061, Revised Code, providing a fine for failure to register a house trailer, is a criminal penalty which should be enforced by the filing of a criminal pro-

> ceeding in a court of proper jurisdiction; and any fines collected in such proceedings should be distributed according to the statutes regulating the distribution of fines in the court where the prosecution is brought."

While I have pointed out earlier in this opinion that the county treasurer is a tax collector, and is not charged with the responsibility or duty of assessing taxes, the instant question dealing with the duty of either the county auditor or county treasurer to request the prosecuting attorney to institute criminal proceedings for a violation of Section 4503.061, Revised Code, is neither a duty directly connected with the assessment or collection of taxes. Since the prosecution of crimes is the function of the prosecuting attorney and it is a general responsibility of any citizen to report the commission of a crime, I see no reason which would cause the responsibility to request the prosecuting attorney to institute criminal proceedings against a person violating Section 4503.061, Revised Code, to be limited to the county auditor, the county treasurer or any other public official.

Your twelfth question deals with the authority of the county auditor and county treasurer to eliminate from their trailer tax "duplicates" those delinquent tax accounts which, upon investigation, are shown to be uncollectable. You note that similar personal property tax accounts may be eliminated pursuant to Section 5719.06, Revised Code. In Opinion No. 3028, Opinions of the Attorney General for 1962, issued May 28, 1962, I stated that the house trailer tax imposed by Section 4503.06, Revised Code, was a tax "in the nature of a personal property tax"; but an examination of Sections 5719.04 and 5719.06, Revised Code, leads me to the conclusion that such statutes, by their express terms, deal with personal property taxes other than those imposed by Section 4503.06, Revised Code.

No citation of authority is necessary for the proposition that the powers of the county auditor and county treasurer are limited to those imposed by statute or implied therefrom. I find no statutory provision which would permit the elimination of delinquent house trailer tax accounts from the records of such officers when it is determined that such accounts are uncollectable. I thus conclude that until such authority is granted by statute, said accounts may not be eliminated from such records.

In conclusion and in specific answer to your questions, I am of the opinion and you are advised:

1. In determining the number of years that a house trailer is owned by the current owner in order to determine the percentage to be used in calculating the house trailer tax due in any given year pursuant to the provisions of division (E) of Section 4503.06, Revised Code, the second year of ownership begins on January 1 of the year immediately subsequent to the year in which the current owner became the owner of such house trailer.

2. The board of county commissioners may, pursuant to Section 319.36, Revised Code, refund to a house trailer owner any tax which is paid as a result of an erroneous computation of the assessment made by the county auditor pursuant to Section 4503.06, Revised Code, when such erroneous assessment results from the application by the county auditor of a newer present owner house trailer age than is required by division (E) of Section 4503.06, Revised Code.

3. In determining the value of a house trailer for tax purposes pursuant to Section 4503.06, Revised Code, the "cost to the owner including improvements" includes any improvements to the house trailer itself, such as furniture and appliances, which are made by the owner or which are included in the initial cost of the house trailer.

4. The determination of whether an improvement made by the owner of a house trailer is an improvement to the house trailer itself so as to be included in the value of the house trailer in determining the tax imposed by Section 4503.06, Revised Code, or is the personal property of the owner of the house trailer and not subject to such tax, is a fact question on whether such improvement adds to the nature of the vehicle as defined by Section 4501.01 (I), Revised Code.

5. The county treasurer may not refuse to accept payment of the taxes assessed by the county auditor and certified to the county treasurer for collection pursuant to Section 4503.06, Revised Code, even though, in the opinion of the county treasurer, such taxes have been erroneously assessed as a result of a misstatement to the auditor on the part of the taxpayer. (Under such circumstances, the county treasurer should, however, notify the county auditor and the prosecuting attorney of any facts known to him with respect to such erroneous assessment.)

6. The county auditor may require the owner of a house trailer to present to him the certificate of title or other lawful evidence of owner-

ship prior to permitting such owner to register such house trailer pursuant to Section 4503.063, Revised Code.

7. In determining the house trailer tax pursuant to division (E) of Section 4503.06, Revised Code, the county auditor should use as the "tax rate of the taxing district" the tax rate which is applied to real property taxes for the year preceding the year in which the house trailer tax is computed and payable, and such real property tax rate should be used throughout such house trailer tax year regardless of the fact that the "new" tax rate will be determinable on or after October 1 of said taxing year.

8. The distribution of the house trailer tax pursuant to division (J) of Section 4503.06, Revised Code, should be made semiannually in accordance with the ratio of real estate and public utility taxes which are at the same time being distributed, and such ratio should apply to all such house trailer taxes then being distributed regardless of the ratio of tax distribution which was in effect at the time that such house trailer taxes were assessed and payable.

9. The county auditor, the county treasurer, or any other citizen, may request the prosecuting attorney to institute criminal proceedings against any person violating Section 4503.06, Revised Code.

10. The county auditor and the county treasurer have no authority to cause the elimination of delinquent house trailer tax accounts from the records and tax lists of such offices, and until such time as such authority is granted to said officers by the general assembly, no such tax accounts may be eliminated.

Respectfully,
MARK MCELROY
Attorney General