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OFFICIAL OPINION NO. 53

October 22, 1965

Hon. John F. Neff
State Representative
634 Circle Tower Building
Indianapolis, Indiana 46204

Dear Representative Neff:

This is in response to your request dated September 1, 1965, for an Official Opinion from this office in answer to the following two questions:

1. Can the Treasurer of any county issue a certificate of clearance to a taxpayer who has delinquent taxes, which taxes have been delinquent for a period in excess of ten years?

2. Does the County Auditor have the authority, in view of Section 204, Chapter 280, of the 1963 Acts, to remove from the tax rolls, any such delinquent taxes, which by reason of the 1963 Acts, enforcement of the collections of the taxes is specifically prohibited?

Before proceeding to a discussion of your questions and the answers thereto, it should be noted that representatives of the State Board of Accounts have taken the attitude that, although delinquent personal property taxes are on the books for a period of in excess of ten years, yet the county treasurer has no right to issue a clearance certificate for the purpose of acquiring motor vehicle license plates, nor does the county auditor have authority upon which to remove from the tax rolls such taxes as are delinquent for a period in excess of ten years. For the sake of the record, I wish to state the basis upon which that board's said attitude may be explained.

The Acts of 1919, ch. 59, § 315, as amended by the Acts of 1959, ch. 74, § 2, as found in Burns IND. STAT. ANN., (1961), § 64-2130, formerly provided specific authority for the county auditor and county treasurer to review and examine the list of delinquencies and to omit from the current year's duplicate all delinquencies by reason of the taxpayer's removal from the state leaving no property, by reason of the taxpayer dying leaving no property, or when, in the judg-
ment of said auditor and treasurer, there is no reasonable probability of the delinquent tax being collected. The effect of such statute was to authorize the write-off, as bad debts, of delinquent taxes in certain specified cases which, although omitted from the tax duplicate, were, nevertheless, recorded by the auditor in a special record to be known as “The Insolvent Record.” This statute referred to such delinquent taxes as were entered in “The Insolvent Record,” as “dropped taxes.” When the Acts of 1963, ch. 280, was enacted, the same being known as the “Property Tax Collection Act of 1963,” as found in Burns IND. STAT. ANN., (1965 Supp.), §§ 64-2036—64-2338, the said Acts of 1919, ch. 59, § 315, as amended by the Acts of 1959, ch. 74, § 2, as found in Burns IND. STAT. ANN., (1961), § 64-2130, supra, was specifically repealed by § 1002 of said 1963 Act. Because said 1963 Act, which was intended to constitute a recodification of all tax laws concerning the collection of property taxes, does not contain a section providing specifically for substantially the same authority and effect as Burns IND. STAT. ANN., § 64-2130, supra, there is some basis for the State Board of Accounts’ attitude that there may not be authority for a county auditor to write off taxes as previously provided.

Referring to the Acts of 1931, ch. 124, § 1, as amended, as found in Burns IND. STAT. ANN., (1964), § 42-102, it should be noted that said act is not one concerning taxation, and it does not purport to set forth any standards for determining the amount of a taxpayer’s tax liability nor for determining, in any manner, of what the taxpayer’s tax liability consists. By the title of said Acts of 1931, ch. 124, as said title was amended by the Acts of 1941, ch. 61, § 3, said act is:

“AN ACT prohibiting the issuance of certain licenses to persons who do not have receipts or other evidence showing that they have paid their poll and personal property taxes.”

Because the said Acts of 1931, ch. 124, as amended, supra, simply states that as a prerequisite to the issuance of any license, the applicant shall “submit a receipt or other evidence showing that such applicant has paid all his or her poll and personal property taxes in full,” the determination of what constitutes all of such applicant’s poll and personal property
tax liability must, of necessity, be dependent upon acts other than said 1931 Act.


“Any person liable for any taxes pursuant to the provisions of sec. 203 [§ 64-403] of the Property Assessment Act of 1961 (chapter 319, Acts 1961), as amended from time to time, shall be personally liable for such taxes and all penalties and costs resulting therefrom, and such liability may be enforced by any remedy known to law. Any and all such taxes, penalties and costs levied against a person in the same county for one or more years may be included in a single action. No action or proceeding shall be commenced to enforce the collection of taxes after ten (10) years from the first Monday in May in the year in which such taxes first become due and payable, with the exception that any proceeding to collect such taxes begun within such ten (10) year period may be prosecuted to termination and taxes collected pursuant to that proceeding after the expiration of such ten (10) year period.” (Emphasis added.)

Thereafter, in said Acts of 1963, ch. 280, in Article III entitled “ Levy Upon and Sale of Personal Property,” commencing with § 301, as found in Burns IND. STAT. ANN., (1965 Supp.), § 64-2132, are various provisions imposing the duty upon the county treasurer to attempt to collect from “every resident of the county who has not paid the personal property and poll taxes owing by him” by making a demand upon such person “for the amount of such delinquent taxes with penalties and the costs of the demand.”

Among the basic rules of statutory construction is that requiring that all sections of an act be interpreted so that, if
possible, the said act may be construed as one body of law in which each section of the act is in harmony with every other section. In answering your specific questions and following said rule of statutory construction, it is important that § 301 and § 204 of said "Property Tax Collection Act of 1963" be construed so as to result in harmony and so as to give the intended force and effect to each said section.

In short, the question arises as to how the county treasurer, pursuant to § 301, supra, can make a demand upon every resident of his county "who has not paid the personal property and poll taxes owing by him, for the amount of such delinquent taxes with penalties and the costs of the demand," if such demand and such amount were to include taxes, the collection of which is expressly forbidden by § 204, supra, which provides: (Emphasis added.)

"... No action or proceeding shall be commenced to enforce the collection of taxes after ten (10) years from the first Monday in May in the year in which such taxes first become due and payable, . . . ."

Thus, for the officials charged with the collection of taxes to comply with the express prohibition in § 204, supra, requires that taxes includible in the prohibition against enforcement of such must be excluded from "personal property and poll taxes owing by him" as referred to in § 301, supra. Therefore, construing these two sections together requires not only that § 204, supra, be construed as a statute of limitation, but also that such section be construed as a statute of repose—the latter being occasioned by the failure of tax-enforcement officials to institute proceedings for the collection of delinquent taxes within such period of limitation resulting in a forfeiture of such tax liability because of the dereliction of duty by said officials. This conclusion must necessarily follow because § 301, supra, requires the county treasurer to make demand for the total amount of delinquent taxes with penalties and the costs of the demand upon every resident of the county who has not paid the personal property and poll taxes owing by him, yet he cannot disobey the express prohibition in § 204, supra, by attempting to institute proceedings for the collection of a tax liability after the statute of limitation has run. Although the statutes discussed herewith are not as
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precisely drawn as the section of the Indiana Inheritance Tax Law discussed in *In re Batt's Estate*, 220 Ind. 193, 41 N.E.2d 365 (1942), nevertheless, it would seem that the intent of the Acts of 1963, ch. 280, *supra*, is similar to the intent of the statute discussed in *In re Batt's Estate*, *supra*, to the effect that failure of those charged with the duty of collecting taxes must, after the running of the statute of limitation which is applicable in the particular case, result, in effect, either in a conclusive presumption that all tax liability is paid or that there is no tax due.

Therefore, for answers to your specific questions, it is my opinion:

1. The county treasurer has no choice but to issue a clearance certificate to a taxpayer who has no tax liability for the preceding ten years, even though such taxpayer in the past may have had delinquent tax liability, the enforcement of the collection of which has been forfeited on account of the failure of tax collection officials to institute proceedings for the collection of such delinquency within the period of limitation.

2. The county auditor has no authority to include on the current tax duplicates past tax liabilities, the collection of which cannot now be enforced because of the Acts of 1963, ch. 280, § 204, *supra*, so that if such tax liabilities have been included upon current tax duplicates, such was done in error and there is implied authority for the removal of such liability from the tax rolls. In this connection, it would seem advisable that a record of such forfeited tax liabilities be maintained and that the State Board of Accounts, by bulletin, provide for the procedure to be followed by county auditors in removing such forfeited taxes from current tax duplicates and for keeping a record of such forfeited taxes.