

charge impartially the functions of the offices. It is not merely a matter of voluntary non-exercise of a function of one office when it conflicts with the duty of the other office."

O.A.G. 1952-54, No. 1636, p. 127, is no longer to be followed in so far as it passed on the same question.

FRANK J. KELLEY,  
*Attorney General.*

650920.4

**TAXATION:** Personal property taxes, compromise of.  
**TOWNSHIPS:** Taxation — personal property.

Personal property taxes duly assessed and levied, cannot be compromised or settled by a township or any township officer.

No. 4471

September 20, 1965.

Mr. Walter T. Dartland  
Prosecuting Attorney  
416 Shelden Avenue  
Houghton, Michigan

You have requested an opinion from this office as to whether or not a township may compromise the amount of personal property taxes due in full settlement where there is a judgment and where there is no judgment.<sup>1</sup>

You indicate that you have researched this matter and can find no case or statutory law in point. However, you express your opinion by reference to

51 Am. Jur., Taxation §§ 999 and 1190  
Callaghan's Mich. Digest, Taxes, § 227  
28 A.L.R. 2d, pp. 1425-1434

that neither a political subdivision nor an officer thereof has the power to compromise or release a tax claim in the absence of statutory authorization and since there is no such authorization in Michigan, a township may not compromise personal property taxes.

While we have found no direct authority on this question, the entire detailed framework for the collection and return of property taxes dispels the idea that a township can enter into a settlement agreement. This conclusion is reinforced by the case of

*School District of City of Lansing v. City of Lansing*, 264 Mich. 272, and § 56a of the General Property Tax Law.<sup>2</sup>

Once personal property taxes have been spread on the tax rolls with a duly executed warrant attached, the treasurer is required to proceed with-

<sup>1</sup> You also request an opinion regarding the allocation of moneys received from a compromise settlement in the event a township has the power to compromise, which question requires no answer in view of the answer to your first question.

<sup>2</sup> Sec. 56a of Act No. 206, P.A. 1893, as amended [C.L. 1948, § 211.56a; M.S.A. § 7.100(1)].

out delay to collect these taxes.<sup>3</sup> He is liable for taxes which he might have collected by due diligence.

*Curtiss v. Witt*, 110 Mich. 131

*School District of City of Lansing v. City of Lansing, supra*, 264 Mich. 272

A compromise, to the extent that it involves forgiveness in whole or in part, of the total taxes due is a cancellation of the taxes. The only provision in the General Property Tax Law pertaining to the cancellation of personal property taxes by compromise, or otherwise, is contained in § 56a of the General Property Tax Law. This section provides for a petition in the circuit court for the removal from the tax rolls of personal property taxes which have remained unpaid for more than five years after they are returned to the county treasurer as delinquent. This section provides that

“\* \* \* Such petition shall pray that a date, not less than 30 nor more than 45 days after the date of filing such petition, shall be set for a hearing thereon and that said court shall, after said hearing, enter a decree in favor of such township or city providing in all cases where the court shall determine that the township or city treasurer and his predecessors in office have exercised due diligence in an effort to collect the taxes upon the personal property listed in said statement provided for in this section, that such taxes shall be stricken from the tax rolls of the county and township or city and shall cease to constitute an asset of such township or city, of the county in which the same is located, and of any school district in which such personal property was located at the time it was assessed for taxes. \* \* \*”

The necessity of the procedure provided by § 56a clearly indicates the lack of authority in a township to compromise the amount of personal property taxes, irrespective of whether or not these taxes have been reduced to judgment.

In *School District of City of Lansing v. City of Lansing, supra*, 264 Mich. 272, the Court held that the City Treasurer of Lansing was liable to the School District of Lansing for school taxes which could have been collected if he had not permitted the taxpayers to pay the taxes in installments, the Court stating (pp. 275-276):

“As to some of the large taxpayers, taxes of 1924, 1925, and 1926, \* \* \* had become delinquent. The treasurer made an arrangement with them to make instalment payments. In one case the city agreed to forgive the city taxes if the other taxes were paid within a designated time. Large sums were collected under these arrangements, which were credited to the oldest taxes. Before payment in full, however, some concerns became insolvent, and the treasurer filed claims in their estates. Forbearance to levy on promise of instalment payments may have been good business, to enable the concerns to attempt to continue in operation and thus benefit both them and the city,

<sup>3</sup> Sec. 44 of Act No. 206, P.A. 1893, as amended [C.L.S. § 211.44; M.S.A. Cur. Mat. § 7.87].

but it was not good tax law. The tax law has no humanity or community spirit in its collection features. It demands its pound of flesh.

“\* \* \*

“In the instances as to which the collector unqualifiedly testified that the taxpayer had property upon which levy could have been made, the liability of the city is established.”<sup>4</sup>

Therefore, please be advised that this office agrees with your opinion that neither a political subdivision nor any officer thereof has the power to compromise or release personal property from a tax claim. As to property tax matters, there is no authorization except that provided by § 56a of the General Property Tax Law.

FRANK J. KELLEY,  
Attorney General.

650921.1

CITIES: Income tax ordinances.  
STATUTES: Applicability to State.  
TAXATION: City income tax.

The State of Michigan is not included within the definition of “employer” as provided in Section 6, Chapter 2 of Act 284, P.A. 1964.

No. 4395

September 21, 1965.

Mr. Glenn S. Allen, Jr.  
Controller  
Lewis Cass Building  
Lansing, Michigan

In your recent letter you note that this office on June 13, 1962, advised the then Controller that the withholding provisions of the Detroit income tax ordinance were inoperative as to the State. We held that the State as an employer would not have to withhold from its employees amounts for the Detroit income tax from the bi-weekly compensation it paid to State employees who worked or resided in the city of Detroit. The essence of our advice was that a city, which is a creature of the State, could not by its own ordinance compel the State to do anything. Subsequently the Michigan legislature, with the approval of the Governor, enacted Act 284, P.A. 1964. Therefore, you ask whether Act 284, P.A. 1964, changes the status of the State to coincide with other employers and require fulfillment by the State of the duties and responsibilities defined therein for employers.

Act 284, P.A. 1964,<sup>1</sup> is known as the city income tax act. Chapter 2 of

<sup>4</sup> To the same effect see *The People on the Relation of Charles W. Jones v. Wright*, 34 Mich. 370. See also *Cooley on Taxation*, Vol. 3, 4th Ed., § 1254, pp. 2493-2494: “Generally tax officers, or boards of county commissioners, or the like, have no power to compromise a tax, or to release it wholly or in part, unless specially authorized by statute.”

<sup>1</sup> M.S.A. Cur. Mat. § 5.3194(1) et seq.