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Changes In West Virginia Real Property Tax Law

LONDO H. BROWN*

In 1961, the West Virginia Legislature amended several of the West Virginia property tax laws. The principal changes, made by the amendments, were the moving of the beginning of the assessment period, and the date on which the lien for property taxes attached, from December thirty-first back to the first day of July. Since that time there has been a continuous controversy between attorneys regarding the consequences of those changes in the property tax laws.

Some attorneys believe that the changes resulted in changing the property tax year from a calendar year to a fiscal year which begins on July first and continues through the following June thirtieth. Of this group, some believe that such fiscal year begins on the date that the assessment period begins, and some believe that the tax year begins on the following July first. Another group of attorneys is of the opinion that there was no change in the tax year, and that it is still on a calendar year basis. They believe that the only reason for the change in the time for the assessment period is to give the assessors additional time to complete their work so that they can turn the assessed values over to the various governmental taxing units at an earlier date than they could under the laws existing in 1961 and prior years.

The tax year may become a very important element in a real estate transaction where the property taxes amount to a considerable sum and it has been agreed that they shall be pro-rated between the parties. For example, the seller's attorney, handling a transaction to be closed in the latter part of June, may take the position that any taxes assessed upon property valuations as of July first of the pre-

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ceding year are taxes for the fiscal year beginning on July first of the current year and so should be paid by the purchaser. On the other hand, the purchaser's attorney may say that they are taxes for the fiscal year just ending and should all be paid by the seller. They may agree, however, that the taxes are for the current calendar year and payment should be made by the parties equally.

An argument can be made that subsequent to the amendments to the real property tax laws in 1961 the tax year was changed from a calendar year to a fiscal year beginning on the first day of July. The argument would be based primarily upon the language of W. Va. Code, ch. 11A, art. 1, § 2 (Michie 1961) after it was amended in 1961. That statute, as amended, reads as follows:

“There shall be a lien on all real property for the taxes assessed thereon, and for the interest and other charges upon such taxes, at the rate and for the period provided by law, which lien shall attach on the first day of July, one thousand nine hundred sixty-one, and each July first thereafter for the taxes payable for the ensuing fiscal year.”

Since the term “fiscal year,” as applied to the state and its political subdivisions, means a year which begins on the first day of July and ends on the thirtieth day of June,1 it can be said that the lien for taxes is for the taxes accruing from one June thirtieth through the next such date.

A review of the recent legislative history of W. Va. Code, ch. 11A, art. 1, § 2 (Michie 1961) presents an interesting problem concerning legislative intent. Prior to 1959, that statute read as follows:

“There shall be a lien on all real property for all taxes assessed thereon, and for the interest and other charges upon such taxes, at the rate and for the period provided by law, which lien shall attach on the first day of January of the year for which such taxes are assessed.”

1 W. Va. Code, ch. 2, art. 2, § 4 (Michie 1961) reads as follows: “In a statute the word 'month' shall mean a calendar month, the word 'year' a calendar year; and the word 'year' alone shall be equivalent to the expression 'year of our Lord.' The fiscal year for the State, all counties, all districts, all municipalities, all school districts, all other political subdivisions, and all bodies or officers, collecting or disbursing public funds, shall begin on the first day of July and end on the thirtieth day of June.”
It would appear that the lien was then on a calendar year basis since property was then assessed on the first day of January of each year.\textsuperscript{2}

In 1959, the statute was amended so as to read as follows:

"There shall be a lien on all real property for all taxes assessed thereon, and for the interest and other charges upon such taxes, at the rate and for the period provided by law, which lien shall attach on the thirty-first day of December, one thousand nine hundred fifty-nine, and each December thirty-first thereafter for the taxes payable in the ensuing fiscal year."

The lien for taxes was probably not then changed from a calendar year basis. If the lien had been for the taxes for the ensuing fiscal year, beginning on July first, there would have been a six month period during which there would have been no lien for taxes. There would have been an assessment on January 1, 1959, and under the then existing statute, there would have been a lien which attached on that date for the taxes for that year. The next assessment date would have been December 31, 1959,\textsuperscript{4} and if the lien under the then existing W. VA. CODE ch. 11A, art. 1, § 1 (Michie 1955) had been for the taxes for the ensuing fiscal year, that year would have been the period extending through July 1, 1960, and June 30, 1961. Thus, there would have been no lien for the taxes levied for the first half of 1960.

But this was not the case because W. VA. CODE ch. 11A, art. 1, § 2, as amended in 1959, provided that the lien was for the "taxes payable in the ensuing fiscal year," (Emphasis added) even though assessed and levied on a calendar year basis; that is, the first installment of a year's taxes has been payable in the last half of the year for which they were levied, and the second installment has been payable in the first half of the following year.\textsuperscript{5}

However, W. VA. CODE ch. 11A, art. 1, § 2 was again amended in 1961 so as to read as quoted near the beginning of this article. The purpose of the 1961 amendment appears to have been to correlate the date that the lien for taxes attached with the date on

\textsuperscript{2} W. VA. CODE, ch. 11, art. 3, § 1 (Michie 1955). See further discussion on this point, infra.

\textsuperscript{3} W. Va. Acts, 1959, ch. 155.


\textsuperscript{5} See W. VA. CODE, ch. 11A, art. 1, § 2 (Michie 1955, 1961).
which the assessment period began. The latter date was changed in the same session of the legislature from the thirty-first day of December to the first day of July.\(^6\) But the preposition “in” was changed to “for” in the amendment. The lien was then to attach on July first “for the taxes payable for the ensuing fiscal year.”\(^7\) (Emphasis added) Since the word “ensuing” means to follow after or be subsequent to,\(^8\) this would mean the fiscal year following the one in which the lien attached. Thus, the lien which attached on July 1, 1961, would be for the taxes payable for the calendar year 1962 or the fiscal year extending through July 1, 1962, and June 30, 1963, depending upon which ensuing fiscal year is meant. The calendar year 1962 would be an ensuing year, and could be an ensuing fiscal year, but if the fiscal year beginning on July first is intended, the ensuing fiscal year could not be the one of which July 1, 1961, is itself a part, and must be the one beginning on July 1, 1962.

Fiscal year is defined as the year by or for which accounts are reckoned, or the year between one annual time of settlement, or balancing of accounts, and another.\(^9\) Thus, W. VA. Code ch. 11A, art. 1, § 2 (Michie 1961) would not necessarily mean a year other than a calendar year. Yet, since W. VA. Code ch. 2, art. 2, § 4 (Michie 1961) provides that the fiscal year for the state and its political subdivisions shall begin on July first and continue through the following June thirtieth it is certainly arguable that the legislature meant such a fiscal year by the language used in W. VA. Code ch. 11A, art. 1, § 2 (Michie 1961). On the other hand, it is arguable that the following calendar year was intended since such a construction would lead to less drastic and unrealistic results.

Since the lien which attached on December 31, 1960, was presumably for 1961 taxes, there would have been no lien for the first half of 1962 if the legislature was referring to other than a calendar year in the statute under discussion. It is plain that the legislature intended no changes in the property tax statutes which affected taxes for 1961 when it made the 1961 amendments. Such changes were expressly negated in the amendments themselves.\(^9\)

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\(^6\) See W. VA. Code ch. 11, art. 3, § 1 (Michie 1961).


\(^8\) Id.

If the word "in" had not been changed in the statute, then July 1, 1961, would have been the beginning of the assessment period for the taxes to be levied for the calendar year 1962, which taxes would have been payable in the 1962-1963 fiscal year. In that case the only changes which would have been made by the amendments of W. Va. Code ch. 11, art. 3, § 1, and ch. 11A, art. 1, § 2 (Michie 1961) would have been to make the beginning of the assessment period and the lien attachment date approximately six months earlier; thus giving the assessor and the tax levying bodies more time to complete their work before the beginning of the next fiscal year for such tax levying bodies, which fiscal year does begin on July first.10 Other amendments of the property laws in 1961 moved some other dates forward, but those changes are not of particular importance to the present discussion.11

It is likely that the only changes intended by the legislature by the 1961 amendments of W. Va. Code ch. 11, art. 3, § 1 and ch. 11A, art. 1, § 2 (Michie 1961) were the moving forward of the beginning of the assessment year and the lien attachment date from the thirty-first day of December to the first day of July. If it had intended to make such drastic changes in the tax laws as omitting a lien for six months taxes, and possibly forgiving six months taxes, it would probably have made such changes by more emphatic language changes than changing an "in" to a "for."

Even though W. Va. Code ch. 11A, art. 1, § 2 (Michie 1961) should be interpreted as making the lien for taxes which attaches on the first day of July a lien for the taxes which are payable for the following fiscal year, the one beginning the next July first, this would not mean that the taxes which are levied as a result of the assessment beginning on the first day of July are necessarily taxes for that ensuing fiscal year. The assessment of property made on the first day of July and thereafter may be for the purpose of taxation for the ensuing calendar year, even though a lien attaches on July first for taxes payable for the fiscal year beginning the next July first.

Thus, there may be a tax year and a lien year. Another term which is used in W. Va. Code ch. 11A, art. 2, § 4 (Michie 1961), is "assessment year." That statute, as enacted in 1941, provided

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11 The significance of these other changes will be discussed in some detail later in this article.
for relief from distraint for delinquent taxes in certain cases where a title had been recorded prior to January first of the assessment year. In 1961, the statute was amended by substituting July first for January first.

The term assessment year is also used in W. VA. CODE ch. 11, art. 3, § 30 (Michie 1961), wherein it was provided that notwithstanding the changes made in that article by the 1961 legislature the provisions of the article as of January 1, 1961, should govern assessment generally for the assessment year 1961. This is some indication that the legislature believed that the assessment year and tax year were the same prior to the 1961 amendments.

In W. VA. CODE ch. 11A, art. 4, § 39 (Michie 1961), enacted in 1947, the legislature made it fairly clear that it considered the assessment year and the tax year to be the same calendar year when it declared fully paid "all taxes, interest and charges that may be due on any real estate in this State for the assessment year one thousand nine hundred thirty-five and for all years prior thereto.” The legislature, in that statute, also indicated that it expected the assessment year and the tax year to remain the same calendar year when it further provided that: “If all the taxes due on any land for the assessment year one thousand nine hundred thirty-six and for all years subsequent thereto have been paid, all title to any such land theretofore acquired by the State shall be and is hereby released.” This statute has never been amended.

Prior to 1961, it was provided in W. VA. CODE ch. 11, art. 3, § 12 (Michie 1955) that certain things were to be done annually between the first day of the assessment year and the first day of May. In W. VA. CODE ch. 11, art. 3, § 19 (Michie 1955), it was provided that other things were to be done not later than July fifth of the assessment year, and in W. VA. CODE ch. 11, art. 3, § 24a (Michie 1955), it was provided that another thing was to be done not later than August first of the assessment year. These statutes indicated that the assessment year was regarded to be the calendar year. The dates in these statutes were changed by amendments in 1961 and the statutes now indicate that the assessment year is now a fiscal year beginning on the first day of July.

It appears that the assessment year would now be the fiscal year in which the assessment is made, and begins on the first day of July. The tax year may be, and probably is, the calendar year
which begins in the middle of the assessment year. The lien year
may be the fiscal year following the assessment year, and would
coincide with the next assessment year. This is also the collection
year as the collection of taxes based on the assessment and levies
made in the preceding fiscal year begins on the fifteenth day of
July of the following fiscal year.\(^\text{12}\)

In spite of the fact that the state and its subdivisions operate on
a fiscal year beginning on July first, many state taxes are on a
calendar year basis. Property taxes were presumably on such a
basis in 1961 and prior years. The state income tax is on a calendar
year basis.\(^\text{13}\) The same is true of the business and occupations tax,\(^\text{14}\)
and the privilege tax on certain carriers.\(^\text{15}\) Most licenses are for
fiscal years beginning on July first.\(^\text{16}\)

If the tax year was changed from a calendar year basis to another
fiscal year basis by the 1961 property tax amendments, it was
either moved back six months or forward six months. This is
assuming, of course, that it was on a calendar year basis in 1961
and prior years. The 1961 amendments themselves made it fairly
clear that no change was contemplated for 1961.\(^\text{17}\) If the legislature
intended to make the beginning of the tax year coincide with the
beginning of the assessment period as had been the case for many
years, except in 1960 and 1961,\(^\text{18}\) then the new tax year would have
begun on July 1, 1961, and continued through June 30, 1962.

This would have meant that the taxes levied on the property
values assessed as of December 31, 1960, the taxes for 1961, and
the taxes levied on the property values as of July 1, 1961, the taxes
for the fiscal year July 1, 1961, through June 30, 1962, would have
overlapped. There would have been double taxation for the last
half of 1961, and a strong likelihood that the amendments of 1961
would have been unconstitutional.

\(^{12}\)This topic will be further developed in a later discussion of the various
dates for assessments, levies and collection.

\(^{13}\)W. Va. Code ch. 11, art. 21, § 6 (Michie 1961).


\(^{16}\)Business license, W. Va. Code ch. 11, art. 12, § 20 (Michie 1961);
beer license, W. Va. Code ch. 11, art. 16, § 4 (Michie 1961); automobile

\(^{17}\)See W. Va. Code ch. 11, art. 3, § 30 (Michie 1961); W. Va. Code
ch. 11A, art. 1, § 18 (Michie 1961).

\(^{18}\)In 1950 the beginning of the assessment period was moved back one
day, from January first to December thirty-first. The tax year presumably
still began on January first.
The West Virginia Tax Limitation Amendment of 1932 provides that taxes on various types of property shall not exceed certain amounts in any one year.\(^\text{19}\) The legislature, by statute, has authorized the various tax levying bodies to levy taxes which, in their aggregate, equal the amount authorized by the Tax Limitation Amendment.\(^\text{20}\) Thus, if the levying bodies were authorized to levy twice the amount of taxes permitted by the amendment in the one and a half years between January 1, 1961, and July 1, 1962, this would have been more than that amount in one year. The authorization of the double levy for the last half of 1961 would, when added to the levy for the first half of that year, exceed the amount permitted by the Tax Limitation Amendment.

The only other logical fiscal year beginning on July first would have been the one beginning on July 1, 1962, and extending through June 30, 1963, the one which would apparently coincide with the fiscal year for which the lien for taxes attached on July 1, 1961. If this were the year intended, then there would have been no taxes on property for the first half of 1962. The taxes levied on the property values as of December 31, 1960, would have been for the calendar year 1961, and the taxes levied on the property values as of July 1, 1961, would have been for the fiscal year beginning on July 1, 1962.

It is hard to believe that the legislature intended either of the drastic consequences discussed above by changing an “in” to a “for” in a tax lien statute. In construing statutes the courts will not impute to the legislature any intention to obstruct or impede the operation of the constitutional provisions.\(^\text{21}\) The letter of a statute will not be followed when it materially conflicts with, or tends to defeat, its general purpose and innovate upon the manifest policy of the law.\(^\text{22}\) Therefore, it is unlikely that the legislature intended double taxation in the last half of 1961 in violation of the Tax Limitation Amendment. It is equally unlikely that the legislature intended to forgive property taxes for the first half of 1962. When the legislature did release unpaid taxes in 1947 and 1955, it did so in express language and gave its reasons for doing so in the releasing statute.\(^\text{23}\)

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\(^{19}\) W. Va. Const. art. X, § 1.

\(^{20}\) W. Va. Code ch. 11, art. 8, §§ 6, 6a, 6b, 6c, 6d (Michie 1961).

\(^{21}\) Webb v. Ritter, 60 W. Va. 193, 54 S.E. 484 (1906).

\(^{22}\) Id.

There are many reasons for believing that the tax year has been the calendar year prior to the 1961 amendments of the real property tax statutes. Attorneys and laymen generally considered taxes to be on a calendar year basis. Attorneys representing clients in land transactions pro-rated the payment of the taxes on the property involved between the parties upon such bases, and the clients accepted such proration without question as a rule.

Many of the property tax statutes themselves lead to the conclusion that real property taxes were assessed and levied for calendar years prior to the 1961 amendments. For example, W. Va. Code ch. 11A, art. 2, § 10a (Michie 1955) provided that on or after June first of each year the sheriff could publish a notice stating that taxes assessed for the previous year had become delinquent and that unless paid by June thirtieth would be included in the forthcoming delinquent lists. This statute apparently referred to the previous calendar year. Otherwise, such a notice published in June, 1960, would pertain to taxes levied on property values assessed as of January 1, 1958, for the fiscal year extending through July 1, 1958, and June 30, 1959. It is not likely that the legislature intended to stay the collection of delinquent property taxes for so long a period. The next section of the code provided that the sheriff, after ascertaining which taxes were delinquent, should, on or before July first next succeeding the year for which the taxes were assessed, prepare delinquent lists showing the amount of taxes remaining delinquent at the end of the fiscal year on June thirtieth. [Note that June thirtieth is the end of a collection year.] These two statutes referred to the same delinquent taxes, yet June first and July first are in different fiscal years if those years begin on July first. Therefore, the previous year referred to in both could only be a calendar year. If other fiscal years were meant, then they would have to be different fiscal years. Furthermore, the latter of these two statutes provided that the delinquent lists were to be made up on or before July first. This meant that the lists could be made up in June or July first next succeeding the year for which the taxes were assessed. Since June and July must be in different years if

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24 That statute was amended in 1961 so as to make the notice publishable on or after April first of each year.
26 W. Va. Code ch. 11A, art. 2 § 11 was amended in 1961 so as to make the sheriff prepare such delinquent lists on or before the first day of May in each year.
fiscal years beginning on July first were meant, that statute must have referred to taxes assessed for a calendar year.

The word "year" when used in a statute means calendar year. The Supreme Court of Appeals of West Virginia, in a case involving the interpretation of a statute empowering boards of education to appoint teachers on or before the first Monday in July in each year, held that teachers could be appointed prior to July first under the statute because a calendar year is meant when the word "year" is used in a statute. The court refused to follow the contention that the words "in each year" meant "in each school year" so that appointments of teachers could be made only on or after July first. The court stated: "In a statute the word 'month' shall mean a calendar month, and the word 'year' a calendar year. This is sufficient answer to this contention."

The word "year" was used in many other real property taxing statutes prior to 1961. It is still used in most of those statutes.

Some other property tax statutes which lead to the conclusion that real property taxes were assessed and levied on a calendar year basis prior to 1961 were:

W. Va. Code ch. 11, art. 3, § 10a (Michie 1955), which provided that:

"No forfeiture imposed by the provisions of the preceding section for failure to make a return of property for taxation for any year and during which the veteran hereinafter mentioned was in active service, from the year one thousand nine hundred forty-one to one thousand nine hundred forty-six, inclusive, shall be collected from the estate of any deceased veteran who died during any such year while he was in active service or within one year after his discharge therefrom."

W. Va. Code ch. 11, art. 4, § 9 (Michie 1955), which provided in part as follows:

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29 Id. at 410, 118 S.E. at 878.
31 This statute was enacted in 1947 and has never been amended.
"... When for any year or years after one thousand nine hundred twenty-five, the undivided interest of any person shall not have been entered and taxed on the land books, or where such interest may have been assessed, and taxes thereon for any one or more, or all, of said years shall not have been paid to the State, such person, or his successor in title, or a co-owner of same, shall be entitled to redeem his and/or any or all of his co-owners' interest from the state, . . . ."

W. VA. CODE ch. 11A, art. 4, § 39 (Michie 1961), enacted in 1947, which reads in part as follows:

"... Wherefore, it is the purpose and intent of the legislature to release all taxes, interest and charges that may be due on any real estate in this State for the assessment year one thousand nine hundred thirty-five and for all years prior thereto, and all such taxes, interest and charges are hereby declared to be fully paid. If all taxes on any land for the assessment year one thousand nine hundred thirty-six and for all years subsequent thereto have been paid, all title to such land theretofore acquired by the State shall be and is hereby released."

W. VA. CODE ch. 11, art. 3, § 24 (Michie 1955). Prior to 1961 the sections preceding this section provided that the assessor was to start his assessment of property on January first, or December thirty-first, and continue his work until the assessment was complete. This section provided that the Board of Equalization and Review was to meet annually not later than July fifth, and that the assessor was to submit to the board the completed property books for the current year at its first meeting. Since the board could hold its first meeting after July first or before July first, it would appear that current year as used in this section must have contemplated a calendar year.

In spite of the above indications that the legislature intended that property tax year should be the calendar year, there is one reason for believing that the property tax year has been a fiscal year beginning on July first for many years. In Johnson v. City of Huntington, the Supreme Court of Appeals of West Virginia held that while the assessor was required by statute to assess property as of January 1.

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32 This statute has not been amended since 1935.
33 71 W. Va. 106, 76 S.E. 142 (1912).
first, the city of Huntington could levy taxes upon property coming into the city limits after January first. The contested levy in that case was made by the city in August, 1909. The court stated that since, by statute, the fiscal year for counties, school districts and municipalities was from July first through the following June thirtieth, the levy for taxes necessarily covered the fiscal year beginning on July 1, 1909, and ending on June 30, 1910. The Johnson case has not been cited on this point since it was decided over fifty years ago.

In spite of the Johnson case, it seems to have been generally understood by the members of the legal profession, and by the taxing authorities, of this state that the property taxes were assessed and levied upon a calendar year basis when the beginning of the assessment year was January first and December thirty-first. It appears that it was only after the time that the beginning of the assessment year was moved back to July first in 1961 that a disagreement arose in regard to the property tax year.

The levy in the Johnson case was made when the beginning of the assessment year was on January first. In 1911 the assessment date was moved to April first, and property continued to be assessed as of that date until 1921, when the date was moved back to January first, where it remained until changed to December thirty-first by the amendment in 1959.

The legislature, in making the change in assessment dates in 1911, apparently did not intend to change the tax year from a calendar year basis since it amended another tax statute, relating to the rate of taxation, at the same time so as to provide in part as follows:

"On real and personal property not exempt from taxation, for the year one thousand nine hundred and eleven, and thereafter, not to exceed three cents on the hundred dollars valuation, for state and state school taxes shall be imposed upon real and personal property; . . ." (Emphasis added.)

During that same session, the legislature amended another property tax statute, relating to the authority of the county court to correct

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34 The court was referring to a statute which is now W. Va. Code ch. 2, art. 2, § 4 ((Michie 1961)).
mistakes made by the assessor in the land books. The last sentence of the amended statute provided that the provisions of the statute should apply to taxes levied for the year of 1910.40 When this statute was again amended in 1919, the last sentence thereof provided that the provisions of the statute should apply to taxes levied for the year of 1918.41

The Supreme Court of Appeals of West Virginia, at least inferentially, has taken the position in many cases that property taxes were levied on a calendar year basis. In deciding cases involving sales of land for delinquent taxes, the court has used the following language:

"The sale was upon an assessment for the year 1902."42

"Hardman not having recorded his deed from the commissioner, the land remained on the land books assessed with taxes in the name of Marcellus Stump, the former owner, and present owner of the equitable title. It was sold in March, 1903 in the name of Marcellus Stump, for the delinquent taxes of 1900, as a tract of 59 acres, and was purchased by the defendant for $13.60."43

"Two lots in Terra Alta, owned by V. Mae Fitchner, were assessed and charged with taxes in her name for the year 1907."44

"These lands were assessed for taxation for the year 1927 in the name of Roman Pickens."45

"We are therefore of the opinion to award a preemptory writ in mandamus, requiring the assessor of Taylor County, to enter upon the land books of said county for the year 1945, the real estate in question, and place a valuation thereon, and extend taxes for said year; but to decline the prayer of the petition by which relators seek to have said lands back-tax for the years 1942, 1943, and 1944."46

43 Hardman v. Brannon, 70 W. Va. 728, 728, 75 S.E. 74, 75 (1912).
44 Hamil v. Glover, 74 W. Va. 152, 81 S.E. 970 (1914).
“The assessment of lot ‘182’ in the name of James A. Caufield for the years 1918 to 1944, both inclusive, and the regular payment of taxes by James A. Caufield and his devisee from 1918 to and including 1940, is fully proved in this record.”

The court has used similar language in several other cases.

Perhaps the problem in this area stems from the fact that both calendar and fiscal years beginning on July first are involved in property tax statutes. As shown above, it seems to be certain that property is now assessed on a July first through June thirtieth basis, and taxes are certainly collected on such a basis. The problem may also stem from the fact that the term “assess” is used somewhat loosely both in statutes and decided cases. It appears that property is assessed in order to ascertain its value so that taxes can be levied upon such assessed valuation. So, when the statutes and cases speak in terms of “the taxes assessed” or “the year for which the taxes were assessed” or “the assessment of the taxes by the levying authorities,” they are using the words “assessed” and “assessment” in a somewhat loose manner. There seems to be nothing that can now be done about this particular matter short of an exhaustive revision of the property tax laws. But perhaps a look at the assessing, levying and collection dates may be of some benefit in attempting to ascertain what pertains to calendar years and what pertains to fiscal years which begin on July first.

All property is to be assessed as of July first at its true and actual

49 See W. VA. CODE ch. 11A, art. 2, § 10 and ch. 11A, art. 2, § 11 (Michie 1961). In Johnson v. City of Huntington, 71 W.Va. 106, 115, 76 S.E. 142, 145 (1912) the court seemed to use the words “assess” and “assessment” interchangeably when it made the following statements: “While our statute requires the assessor to assess or value property as of the first day of January, the levy and the assessment of the taxes against such property is not made until the fourth Tuesday in August. So that, while the assessment of the property made by the assessor is made as of January 1st, the assessment of the taxes by the levying authorities is not made until August, and the case cited, therefore, would not, as we interpret it, deny the right to assess the tax, if the property was subject to the tax at the time the levy was made.”
50 See W. VA. CODE ch. 11, art 3, §§ 1, 6 (Michie 1961); W. VA. CODE ch. 11, art. 8, §§ 9-23 (Michie 1961).
51 W. VA. CODE ch. 11A, art. 2, § 10 (Michie 1961).
value.\textsuperscript{54} The assessor shall begin the work of assessment on July first and finish the work not later than January thirtieth.\textsuperscript{55} The assessor shall furnish statements to the municipalities and board of education in his county showing the value of all property, and the clerk of the county court shall furnish such municipalities and board the value of all property assessed by the board of public works, in such municipalities and districts, for the current year, not later than March seventh.\textsuperscript{56}

The assessor shall complete his assessment and make up the land and personal property books in time to submit the same to the board of equalization and review not later than February first of the assessment year.\textsuperscript{57} He shall extend the levies and deliver a copy of the land and personal property books, with levies extended, to the sheriff not later than June seventh, and copies to the clerk of the county court and the state auditor not later than July first.\textsuperscript{58}

The various levying bodies are to meet between March seventh and March twenty-eighth, and again on the third Tuesday in April to make their levies.\textsuperscript{59}

The sheriff shall commence collection of current taxes on July fifteenth.\textsuperscript{60} All current taxes on property may be paid in two installments. The first installment \textit{shall be payable on September first of the year for which the assessment is made} and shall become delinquent on October first; the second installment shall be payable on the following March first and shall become delinquent on April first.\textsuperscript{61} The sheriff shall be charged each year with all the taxes levied in his county and on or before August first \textit{of the following year}, he shall make a final settlement with each taxing unit and account for all taxes assessed \textit{for the preceding year}.\textsuperscript{62} On or before April first the sheriff may prepare and publish notices stating that

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\item \textsuperscript{54} W. VA. CODE ch. 11, art. 3, § 1 (Michie 1961).
\item \textsuperscript{55} W. VA. CODE ch. 11, art. 3, § 2 (Michie 1961).
\item \textsuperscript{56} W. VA. CODE ch. 11, art. 3, § 6 (Michie 1961).
\item \textsuperscript{57} W. VA. CODE ch. 11, art. 3, § 19 (Michie 1961).
\item \textsuperscript{58} Ibid.
\item \textsuperscript{59} W. VA. CODE ch. 11, art. 8, §§ 9-23 (Michie 1961).
\item \textsuperscript{60} W. VA. CODE ch. 11A, art. 1, § 6 (Michie 1961). Prior to 1961, the sheriff did not begin his collections until September 15. W. VA. CODE ch. 11A, art. 1, § 6 (Michie 1955).
\item \textsuperscript{61} W. VA. CODE ch. 11A, art. 1, § 3 (Michie 1961).
\item \textsuperscript{62} W. VA. CODE ch. 11A, art. 1, § 16 (Michie 1961). The language of this statute has not been changed since 1941. It apparently referred to calendar years prior to 1961, and probably still does so.
\end{itemize}
the taxes assessed for the preceding year have become delinquent. 63 On or before the first day of May next succeeding the year for which the taxes were assessed the sheriff shall prepare delinquent lists. 64 He shall prepare a second list of delinquent lands on or before September tenth showing lands which remain delinquent as of September first. 65 The sheriff is to sell unredeemed delinquent land on the third Monday in October. 66

Thus, it appears that the whole assessing, levying and collection of a year's taxes takes place over a span of twenty-one months. The assessing of property values starts on July first of one year and continues into the following year. The levies by the taxing units are made following the assessment and covers a period of approximately two months. Both the assessing and levying are done in one fiscal year. The assessor must start assessing property on one July first, and must submit the property books with the assessed values, and the levies extended, to the sheriff by the following June seventh and to the clerk of the county court and the state auditor not later than the following July first. The collection starts on July fifteenth, slightly over one year from the time the assessment started, and in a different fiscal year. The collection continues until the following April, after which time the taxes become delinquent. The collection period could be said to continue until the third Monday in October, fifteen months after the period starts, since delinquent land can be redeemed by the owner by his paying to the sheriff before that time the delinquent taxes, interest and charges due. 67

It seems logical that the legislature intended by the changes it made in the property tax statutes in 1961 that the assessment and levy year should start on July first and continue through the first

63 W. VA. CODE ch. 11A, art. 2, § 10a (Michie 1961). This statute seems to refer to a calendar year. The previous fiscal year beginning on July first would have ended on the previous June thirtieth. If that is the year meant, then the taxes which became delinquent on April 1, 1964, were the taxes levied for the fiscal year which began on July 1, 1962, and ended on June 30, 1963. The assessment of property values on which those taxes were based would have begun on July 1, 1961. Following through the statutory procedure for the assessment, levy and collection of taxes, it can be seen that taxes levied on property values assessed on and after July 1, 1961, would have become delinquent on April 1, 1963.

64 W. VA. CODE ch. 11A, art. 2, § 11 (Michie 1961).

65 W. VA. CODE ch. 11A, art. 3, § 2 (Michie 1961). The form of the notice of sale specified in this statute indicates the delinquency is for taxes for a calendar year by the use of the following language: "... (W)hich are delinquent for the nonpayment of taxes for the year (or years) ...." 66 W. VA. CODE ch. 11A, art. 3, § 4 (Michie 1961).

half of the next year, which is the first half of the tax year; that the tax year should start on January first and run through the first half of the assessment and levy year and the first half of the collection year; and that the collection year should start on July fifteenth and generally coincide with the next assessment year.

Prior to the 1961 amendments to the property tax statutes the assessment began on December thirty-first, 68 and prior to the 1959 amendment on January first. 69 The assessed values were not delivered to the levying bodies until July twentieth. 70 The levying bodies did not meet to fix their levies until the first and third Tuesdays in August. 71

Since the fiscal years of the counties, municipalities and school districts ran from July first through the following June thirtieth, 72 it can easily be seen why it was deemed necessary to begin the assessment process earlier so as to give the assessor more time for the assessment and still get the assessed values to those tax levying units earlier. They can now make their levies prior to the beginning of their fiscal years rather than after they begin as was the case prior to 1961.

While it appears that the taxes are levied for the calendar year in which they are levied, it is certainly true that the tax levying units receive the proceeds of such taxes during the fiscal year which begins in the middle of such calendar year. It should be of great advantage to such taxing units in making up their budgets to know in advance of the fiscal years for which they are budgeting just how much revenue they can expect from property taxes. Prior to the 1961 amendments, they must have had to estimate the probable assessed value of the property subject to their levies in order to arrive at an estimate of such revenue, make up a tentative budget based upon their estimates, and go into their fiscal years "with their fingers crossed," hoping that the assessed values, when received, would be as large as their estimates. If the assessed valuations they received after the beginning of their fiscal years were lower than their estimates, their expenditure plans under their budgets

would probably have had to be revised downward. They were, and are, limited as to the rate of levy by the West Virginia Tax Limitation Amendment.\(^{73}\)

There are additional reasons for believing that real property taxes are on a calendar basis. One of the greatest of these reasons is that the officials charged with the enforcement of the tax laws appear to believe this to be the case and administer the property tax laws as if the tax were for a calendar year rather than for another fiscal year. When a statute is of a doubtful meaning, the contemporary construction placed thereon by the officers of government charged with its execution is entitled to great weight and will not be disregarded by the courts unless it is clearly erroneous.\(^{74}\)

It is the duty of the State Tax Commissioner of West Virginia to see that the laws concerning the assessment and collection of all taxes and levies, whether of the state, county, municipality or school district, are faithfully enforced.\(^{75}\) He must prepare printed forms for the land and personal property books.\(^{76}\) He must prescribe the form of the land books and the information and itemization to be entered thereon.\(^{77}\)

A public officer is presumed to have performed his duty.\(^{77}\) So, assuming that the tax commissioner has performed his statutory duty, and has prescribed and prepared the printed forms and the information entered thereon for the land books used in the various counties, a look at the information contained in the land books for Monongalia County, West Virginia, may be helpful. The pages of those land books are headed by the following form:

"TABLE OF TRACTS OF LAND IN .................. DISTRICT, .................. COUNTY, WEST VIRGINIA,

For the Assessment Year beginning July 1, 19........, for the Taxable Year 19........, Together with the Assessed Value and the Total Amount of Taxes Assessed Thereon."\(^{79}\)

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\(^{76}\) W. Va. Code ch. 11, art. 1, §§ 2, 6 (Michie 1961).

\(^{77}\) W. Va. Code ch. 11, art. 4, §§ 1, 2 (Michie 1961).


\(^{79}\) This information was obtained from the land books in the office of the
The sheriff has the duty to collect all taxes levied in his county.\(^6\) When the sheriff of Monongalia County, West Virginia, sent out the tax statements in his county for 1961, he included a statement explaining the changes made in the property tax laws by the West Virginia Legislature in its 1961 session. That statement read as follows:

"EXPLANATION OF TAX TICKET PAYMENT DATES FOR NEXT YEAR (TAXABLE YEAR 1962)"

Dear Taxpayer:——

The enclosed tax receipt pertains to the TAXABLE YEAR 1961.

Senate Bill No. 121, passed by the 1961 legislature, provides that for the TAXABLE YEAR 1962 the date of the assessment be advanced six months and the tax payment dates be advanced two months. This change will give the tax-levying bodies an opportunity to know the tax potential for the next year BEFORE the annual budget estimates are made, instead of guessing at those figures as in the past.

While it means that your tax payments will be moved up two months it does not mean that you will be paying overlapping taxes. After the TAXABLE YEAR 1962 your tax payments will, as usual, be spaced a year apart.

The old and new schedules of assessment and tax payment dates, including your discount and interest penalty periods, are given below for your information. Please file with your tax paid tickets for 1961 TAXABLE YEAR so that when your 1962 statement arrives two months earlier next year you will know why:

<table>
<thead>
<tr>
<th></th>
<th>For Taxable Year 1961 Old Schedule</th>
<th>For Taxable Year 1962 New Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property assessed as</td>
<td>Dec. 31, 1960</td>
<td>July 1, 1961</td>
</tr>
<tr>
<td>Tax collection may start</td>
<td>2½% if paid on or before Nov. 1, 1961</td>
<td>Oct. 1, 1962</td>
</tr>
<tr>
<td>1st Half (or both</td>
<td>9% per year on and after Dec. 1, 1961</td>
<td>Oct. 1, 1962</td>
</tr>
<tr>
<td>halves) less</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| Clerk of the County Court of Monongalia County, West Virginia. These books contained the taxes levied on the property values as of July 1, 1962, and were delivered to the clerk by the Assessor of Monongalia County pursuant to the provisions of W. VA. Code ch. 11, art. 3, § 19 (Michie 1961). \(^6\) W. VA. Code ch. 11A, art. 1, § 4 (Michie 1961).

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Disseminated by The Research Repository @ WVU, 1964
2nd Half less 2½% if paid on
or before _________________ May 1, 1962 March 1, 1963
Interest on 2nd half at 9% per
year on and after ___________ June 1, 1962 April 1, 1963
Delinquent taxes — newspaper
publication ___________________ July 1, 1962 May 1, 1963

YOUR SHERIFF”

The Attorney General of West Virginia apparently takes the view that the taxes levied on the property values assessed during the assessment year beginning on July 1, 1961, were for the calendar year of 1962. In an opinion written on June 15, 1962, the Attorney General made the following statements:

“The lien for taxes assessed against real estate, by statute, formerly attached as of the first day of January. This provision was changed by Chapter 155, Acts of the Legislature, 1959, to the thirty-first day of December of each year; and again changed by Chapter 142, Acts of the Legislature of 1961, to the first day of July, 1961, and each July first thereafter for taxes payable for the ensuing fiscal year.

In view of the foregoing, a lien exists on the lands purchased by the United States Government in Nicholas County, between July 1, 1961, and January 1, 1962, for the taxes assessed by the levying bodies of Nicholas County for the year 1962. In the case of United States v. Alabama, 313 U.S. 274, 85 L. Ed. 1327, the Supreme Court of the United States held that a lien imposed by state statute as of the tax day for taxes was a valid lien against the United States where it acquired the property after the tax day, even though the lien was not fully perfected until final assessment was made of the taxation, but such a lien cannot be enforced against the United States. The court further held that a tax sale is a proceeding against the United States which cannot be proceeded against without its consent; that the sale of the land for nonpayment of delinquent taxes, after the land was acquired by the United States, was void.

We are of the opinion that the United States government now holds the property purchased in Nicholas County after July 1, 1961, but prior to January 1, 1962, free of any right to enforce such tax lien against the property. The lien for said taxes is
transferred to the fund represented by the purchase price paid for the land, provided all the fund has not yet been paid over to the seller. If any funds are withheld from the purchase price, the same should be applied in discharge of taxes assessed for the year 1962. The grantor of such land remains personally liable for the payment of the taxes assessed for the year 1962.  

CONCLUSION

It seems fairly safe to conclude that taxes were levied on a calendar year basis prior to the 1961 amendments of the West Virginia property tax laws.

If there was a change in the tax year resulting from the 1961 amendments, it was to change the tax year to a fiscal year beginning on the first day of July. The result would have come about because the assessment of property values was to begin on July first, and the liens for the property taxes were to attach on that date and on each first day of July thereafter for the taxes payable for the ensuing fiscal years.

The change to an earlier time for the beginning of the assessment period should not, in itself, result in a different tax year. The apparent reason for that change was to allow the assessor additional time to make his assessments and to get the assessed values to the governmental taxing units in time for them to make their levies before the beginnings of their fiscal years, which do begin on July first.

To change the property tax year from a calendar year to a fiscal year beginning on the first day of July would have meant either a double taxation for a six months period, or a six months period without property taxes. It is extremely unlikely that the legislature intended either of these results by moving the property tax lien attachment date from December thirty-first to July first, and by changing the language in the tax lien statute from "which lien shall attach on the thirty-first day of December, one thousand nine hundred fifty-nine, and each December thirty-first thereafter for the taxes payable in the ensuing fiscal year" to "which lien shall attach on the first day of July, one thousand nine hundred sixty-one, and each July first thereafter for the taxes payable for the ensuing fiscal

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year." A calendar year can be a fiscal year, and is such for many purposes.

While there is no outright expression in the property tax laws that property taxes are now levied on a calendar year basis, there is no statement other than the language in the above discussed tax lien statute, that they are now levied on any other yearly basis. There are, however, several indications in the tax statutes that property taxes are now levied on a calendar year basis.

The officials charged with the duty of enforcing the property tax laws appear to believe that property taxes are now levied on a calendar year basis.

Since there are more indications that property taxes are still levied on a calendar year basis than otherwise; and since the changing of the property tax year to a year beginning on the first day of July would constitute a drastic change in the property tax laws, something not likely to be done in an indirect manner, it would seem that property taxes are still levied on a calendar year basis.