

TAXATION: **Property** person in military service not exempt.
Effect and application Soldiers and Sailors Relief Act on proceeding to enforce collection.

December 18, 1941

Honorable Phil H. Cook
Prosecuting Attorney
Lafayette County
Lexington, Missouri

12-22



Dear Sir:

This will acknowledge receipt of your letter of December 10, 1941, which is as follows:

"Is a person in the armed forces of the United States, either Army, Navy, or Marine Corps, who owns either real estate or personal property exempt from taxation under Section 10937, Revised Statutes of Missouri, 1939?"

"If they are exempt from taxation, after taxes have become delinquent, are the taxes automatically cancelled on said delinquent taxes if the person becomes a member of the armed forces of the United States?"

"In other words, does belonging to the armed forces of the United States relieve a person from paying current real or personal taxes, and also does it relieve a person from paying any delinquent taxes that he may owe at the time of his entering the armed forces of the United States?"

In answer to the first question, we enclose copies of three opinions heretofore rendered to Hon. John P. Shreves, dated May 18, 1934; Honorable William H. Sapp, dated September 17, 1936 and Honorable Andy Wilcox, dated January 4, 1937, in which we held that the property, real or personal,

of a person in the armed forces of the United States was not exempt from taxation, if otherwise taxable under the laws of this state.

The answer to the balance of your opinion request lies in the terms of the Soldiers' and Sailors' Civil Relief Act of 1940, 50 USCA (App.) 501, et seq., June 1941 quarterly supplement.

Section 510 of said Act states the general purpose thereof, and is as follows:

"In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is hereby made to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the period herein specified over which this Act remains in force."

Section 511 defines the various terms used, and is as follows:

"(1) The term 'persons in military service' and the term 'persons in the military service of the United States', as used in this Act, shall include the following persons and no others: All members of the

Army of the United States, the United States Navy, the Marine Corps, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy. The term 'military service', as used in this Act, shall signify Federal service on active duty with any branch of service heretofore referred to or mentioned as well as training or education under the supervision of the United States preliminary to induction into the military service. The terms 'active service' or 'active duty' shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

"(2) The term 'period of military service', as used in this Act, shall include the time between the following dates: For persons in active service at the date of the approval of this Act it shall begin with the date of approval of this Act; for persons entering active service after the date of this Act, with the date of entering active service. It shall terminate with the date of discharge from active service or death while in active service, but in no case later than the date when this Act ceases to be in force.

"(3) The term 'person', when used in this Act with reference to the holder of any right alleged to exist against a person in military service or against a person secondarily liable under such right, shall include individuals, partnerships, corporations, and any other forms of business association.

"(4) The term 'court', as used in this Act, shall include any court of competent jurisdiction of the United States or of any State, whether or not a court of record."

Section 520 provides:

"If any action or proceeding commenced in any court, if there shall be a default of any appearance by the defendant, the plaintiff, before entering judgment shall file in the court an affidavit setting forth facts showing that the defendant is not in military service. If unable to file such affidavit plaintiff shall in lieu thereof file an affidavit setting forth either that the defendant is in the military service or that plaintiff is not able to determine whether or not defendant is in such service. If an affidavit is not filed showing that the defendant is not in the military service, no judgment shall be entered without first securing an order of court directing such entry, and no such order shall be made if the defendant is in such service until after the court shall have appointed an attorney to represent defendant and protect his interest, and the court shall on application make such appointment. Unless it appears that the defendant is not in such service the court may require, as a condition before judgment is entered, that the plaintiff file a bond approved by the court conditioned to indemnify the defendant, if in military service, against any loss or damage that he may suffer by reason of any judgment should the judgment be thereafter set aside in whole or in part. And the court may make such other and further order or enter such judgment as in its opinion may be necessary to protect the rights of the defendant under this Act.

"Any person who shall make or use an affidavit required under this section, knowing it to be false, shall be guilty of a misdemeanor and shall be punishable by imprisonment not

to exceed one year or by fine not to exceed \$1,000, or both.

"In any action or proceeding in which a person in military service is a party if such party does not personally appear therein or is not represented by an authorized attorney, the court may appoint an attorney to represent him; and in such case a like bond may be required and an order made to protect the rights of such person. But no attorney appointed under this Act to protect a person in military service shall have power to waive any right of the person for whom he is appointed or bind him by his acts.

"If any judgment shall be rendered in any action or proceeding governed by this section against any person in military service during the period of such service or within thirty days thereafter, and it appears that such person was prejudiced by reason of his military service in making his defense thereto, such judgment may, upon application, made by such person or his legal representative, not later than ninety days after the termination of such service, be opened by the court rendering the same and such defendant or his legal representative let in to defend; provided it is made to appear that the defendant has a meritorious or legal defense to the action or some part thereof. Vacating, setting aside, or reversing any judgment because of any of the provisions of this Act shall not impair any right or title acquired by any bona fide purchaser for value under such judgment."

Section 521, provides:

"At any stage thereof any action or proceeding

in any court in which a person in military service is involved, either as plaintiff or defendant, during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall, on application to it by such person or some person on his behalf, be stayed as provided in this Act, unless, in the opinion of the court, the ability of plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service."

Section 523 provides:

"In any action or proceeding commenced in any court against a person in military service, before or during the period of such service, or within sixty days thereafter, the court may, in its discretion, on its own motion, or on application to it by such person or some person on his behalf shall, unless in the opinion of the court the ability of the defendant to comply with the judgment or order entered or sought is not materially affected by reason of his military service--

"(a) Stay the execution of any judgment or order entered against such person, as provided in this Act; * * * * *"

Section 560 provides:

"(1) The provisions of this section shall apply when any taxes or assessments, whether general or special, falling due during the period of military service in respect of

real property owned and occupied for dwelling, agricultural, or business purposes by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his dependents or employees are not paid.

"When any person in military service, or any person in his behalf, shall file with the collector of taxes, or other officer whose duty it is to enforce the collection of taxes or assessments an affidavit showing (a) that a tax or assessment has been assessed upon property which is the subject of this section, (b) that such tax or assessment is unpaid, and (c) that by reason of such military service the ability of such person to pay such tax or assessment is materially affected, no sale of such property shall be made to enforce the collection of such tax or assessment, or any proceeding or action for such purpose commenced, except upon leave of court granted upon an application made therefor by such collector or other officer. The court thereupon may stay such proceedings or such sale, as provided in this Act, for a period extending not more than six months after the termination of the period of military service of such person.

"When by law such property may be sold or forfeited to enforce the collection of such tax or assessment, such person in military service shall have the right to redeem or commence an action to redeem such property, at any time not later than six months after the termination of such service, but in no case later than six months after the date when this Act ceases to be in force; but this shall not be taken

to shorten any period, now or hereafter provided by the laws of any State or Territory for such redemption.

"Whenever any tax or assessment shall not be paid when due, such tax or assessment due and unpaid shall bear interest until paid at the rate of 6 per centum per annum, and no other penalty or interest shall be incurred by reason of such nonpayment. Any lien for such unpaid taxes or assessment shall also include such interest thereon."

Under Sections 520 and 521, no action in any court to enforce payment of personal property taxes could be prosecuted to a final conclusion, absent compliance with the requirements laid down. In any such action, if the required affidavit could not be filed, then no judgment could be entered unless bond was given. Even then such judgment would be subject to being set aside, vacated or reversed upon application of the person in military service after termination of said service, if it appears he has a legal defense.

While Sections 520 and 521 would apply to suits in court (Section 11112, R. S. Mo. 1939) to enforce payment of personal property taxes, nothing in the act appears to suspend or bar the power to enforce payment by use of a distress warrant (Sections 11086 and 11087, R. S. Mo. 1939). However, such summary method has generally fallen into disuse in this state, and resort to it would certainly be contrary to the general spirit of the Relief Act as expressed in Section 510. We do not think any collector will or should resort to the same, especially since the taxing units are protected by the Relief Act. The Collector could file suit for personal property taxes, let it be shown that the defendant was in military service; have judgment entered subject to the terms of Section 520, and let the execution be stayed under Section 523. The Collector might also file suit and let the action be stayed under Section 521. Either of these methods, while preventing the taxing units from making immediate collection, would insure that such taxes

would be collected (if the defendant or his property were good therefor) when the period of military service ends.

Also, Section 525 provides:

"The period of military service shall not be included in computing any period now or hereafter to be limited by any law for the bringing of any action by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action shall have accrued prior to or during the period of such service."

Under this provision the Collector could refrain from filing any suit, until the person liable is released from military service, and not endanger any right of the taxing unit from the standpoint of limitations running on the claim.

The first method, however, seems the more preferable, since it would clearly enable the Collector to account for these taxes in the delinquent list and in his annual settlement.

Section 560 deals completely with real estate taxes, and only with those that fall due during the period of military service. Therefore, any tax that fell due before the owner of the real estate entered military service may properly be collected, or collection enforced by the summary method provided by the "Jones-Hunger Act." (This would not be so in those parts of the state where real estate taxes are enforced by suit, since Sections 520 and 521 would govern).

However, it appears from Section 560 that upon the filing with the Collector of an affidavit setting forth certain facts, he cannot sell real property for taxes falling due during the period of military service of the owner. This seems to place the burden upon the property owner, who is in military service, to take an affirmative step to stop the sale of his land for taxes. Absent such affirmative action

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on his part, there does not appear to be any bar interposed by said section, and even then, by leave of a court upon the collector's application, the property may be sold. The person in military service, in either event, is protected because he is given the right to redeem the property at any time within six months after his service in the armed forces is terminated. The taxing units are protected, since, during the period when the right to enforce its tax lien is suspended, the tax bill bears interest at six per cent per annum until paid, and in the event not paid, the property could then be sold, and limitation would be no bar.

Respectfully submitted,

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APPROVED:

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Encs.