

TAXATION:
COUNTY COLLECTOR:

Acceptance of tender of undisputed taxes on Railway property will in no way affect right to enforce collection of taxes, the validity or constitutionality of which is denied by the Railway. Nonacceptance of tender of part of taxes on Railway's property will result in penalties attaching to entire amount of taxes due if any one or more of disputed levies are held valid, but penalties will not attach to the entire amount of taxes if all of disputed tax levies are held invalid.

January 15, 1947

Honorable William K. Journey
Prosecuting Attorney
Henry County
Clinton, Missouri



Dear Sir:

This is in reply to a letter from Honorable Ray R. Pryer, formerly Prosecuting Attorney of Henry County, Missouri, requesting an official opinion of this department, and reading as follows:

"The Frisco Railway Co. has sent a check to the County Collector for the sum of \$7,877.14 for the current years taxes. However, they refused to pay the sum of \$606.36, which was on a County Library District Levy; the sum of \$79.83, which was a levy in a Special Road District in Henry County; and the sum of \$21.19 to the City of Deepwater, Mo. on city taxes.

"As to the Library Tax levy they claim that no law exists on which to make the levy.

"On the Special Road District Tax they claim it exceeds the constitutional limit.

"The Deepwater city tax they claim, also, is unconstitutional.

"On the voucher that is attached to the check the Company specifies that no prejudice shall inure against the enforcement of collection of said taxes by the proper units involved. However, the collector refuses to accept the check until he has an opinion as to whether acceptance of the check, as is, will work against attempted collection of the contested tax amounts."

In a telephone call to this office you further informed us that several taxpayers in your county have refused to pay the special road district tax and have not included the payment of such tax in their tender for taxes, and that other taxpayers have tendered payment of taxes due, including that part of the special road district tax which such taxpayers claim does not exceed the constitutional limit, but have refused to pay the amount of the special road district tax which such taxpayers claim exceeds the constitutional limit, and you requested an opinion on the effect of the acceptance or nonacceptance of these tenders by the collector.

It is stated in the letter that we received from Mr. Pryer that the Frisco Railway specifies in the voucher attached to the check for \$7,877.14 that no prejudice shall inure against the collection of taxes for which the Railway did not tender payment. Even though this provision had not been included in the voucher that the Railway attached to its check, the collection of the taxes assessed against the Railway and not paid could proceed, as the taxpayer is liable for such taxes, and it is the duty of the collector to enforce the collection of all unpaid taxes.

In the case of State ex rel. Buck v. St. Louis-San Francisco Ry. Co., 174 S. W. 64, the railroad claimed that a tax rate of 65¢ per \$100 valuation for school taxes was the maximum that could legally be levied, and in that case paid only that part of the school tax which would have been payable if the school tax had been levied at the rate of 65¢ per \$100 valuation. The collector accepted such tender and sued for the amount of taxes due on the railroad's property from that part of the tax rate for school purposes over and above the rate of 65¢ per \$100 valuation. Although the collector did not have to accept the tender of that part of the school tax that was admitted to be valid in that case (as was held in the case of State ex rel. v. Kansas City, Ft. S. & M. Ry. Co., 178 S. W. 444), he did accept such payment, and his right to collect the disputed portion of the tax was not challenged in the court.

In the case of State ex rel. v. Kansas City, Ft. S. & M. Ry. Co., cited above, the collector for the year 1912 accepted tender of all that amount of taxes levied for the year 1912 except \$23.56, which amount the railroad claimed was not due because it represented that part of the tax which was invalid as exceeding the constitutional limit that could be validly levied, as well as for the entire amount of taxes levied for the year 1913. The court held that the tax levied did not

exceed the constitutional limit and allowed recovery of the disputed amount which the railroad had refused to pay.

In the case of State ex rel. v. Southwestern Bell Tel. Co., 352 Mo. 715, 179 S. W. (2d) 77, a suit was brought for all taxes due to Audrain County for 1942 and for special road district taxes due to said county for 1941. It appears from the facts, as stated in the report of that case, that the county had accepted the tender of all taxes due the county for 1941 except the special road district tax. There was no contention made in the case that the collector could not enforce the collection of a valid special road district tax after accepting tender of all other taxes due the county for 1941.

The rule in this state regarding the effect of the non-acceptance by a collector of a tender of a part of the taxes assessed against any specific property is that if the disputed taxes are held to be valid levies, the penalties provided by law will attach to the entire amount of taxes due on such property. State ex rel. v. Kansas City, Ft. S. & M. Ry. Co., 178 S. W. 444.

In the case cited, the facts, as stated in the report, were:

"This is a suit against said railroad company and its receivers for taxes. There was a judgment for plaintiff for full amount sued for, and defendants have appealed.

"The total taxes against defendants' property in Bates county for the year 1912 were \$2,349.01 and for the year 1913 they were \$2,257.44. The defendants paid all the taxes for the year 1912, except \$23.56, and in December, 1913, tendered to the collector \$2,228.48 in full payment of the taxes for 1913. The tender was refused.

"The real controversy at the trial was in regard to the unpaid balance for the year 1912 and the difference of \$28.96 between the total tax for the year 1913 and the amount tendered. Those two disputed amounts represented that portion of the school taxes which defendants contended were illegal, in this: That various school districts in the county, which were formed of cities and adjoining territory, had increased their rate of levy beyond 65 cents on the \$100 assessed valuation, and that such

excess had resulted in the increase of defendants' taxes by the amounts so in dispute."

The Supreme Court of Missouri, in its opinion, said:

"The defendants in apparent good faith contended at the trial of the cause that such disputed portion of the taxes was void by reason of the provisions of section 11 of article 10 of our state Constitution. That contention was decided in favor of the validity of the taxes in an opinion by Faris, J., in State ex rel. v. St. Louis & S. F. R. Co., 174 S. W. 64, decided since this appeal was taken. Appellants do not now insist on reopening that question, but protest that they should not be adjudged to pay the penalty of 1 per cent. a month. They contend that, if they are to be adjudged to pay such penalty, it should be estimated only on the amount the legality of which was disputed, and not on the amount which was tendered and not accepted. They say, that section 11459, Rev. Stat. 1909, requires the collector to receive and receipt for the taxes which may be tendered on any part of a tract of land. That section does not apply to any taxes, except taxes on land. It contemplates the payment of all taxes on a specified part or on an undivided part of the whole tract; but it does not contemplate the payment of a part of the taxes on the whole property. That section has no application to the facts in this case. We know of no law requiring the collector to accept a part of the taxes under the circumstances of this case. The collector's refusal to accept the amount tendered did not result in relieving defendant of the payment of the penalty on the amount tendered.

"We have no power to relieve the defendants of the penalty, nor to diminish it. * * *"
(Emphasis ours.)

It will be noted that the decision of the court in this case did not rest on the fact that the tender of \$2,228.43 for the taxes for 1913 was "in full payment" of such taxes, but the decision did rest on the fact that the taxpayer has no right to force the collector to accept payment for part of the taxes on the whole property.

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If the disputed tax is held to be invalid or unconstitutional, no penalties will attach to the undisputed valid taxes, tender of which has been made to the collector. The Supreme Court of Missouri said in the case of State ex rel. v. Southwestern Bell Tel. Co., 352 Mo. 715, l. c. 724-725:

"In view of the conclusion reached on the constitutional validity of Sec. 8716, it will not be necessary to rule the question on the refusal of the tender made in No. 38,801, since the refusal was on the sole ground that defendant did not include the special road district taxes in the tender.

"The judgment in No. 38,800 should be reversed, and the judgment in No. 38,801 should be reversed and the cause remanded with direction to the trial court to permit defendant to pay, without penalty and court costs, and without attorney's fee, the taxes there involved, except the special road district taxes. * * *

CONCLUSION

It is the opinion of this department that the acceptance of the check for \$7,877.14 from the Frisco Railway Company will in no way affect the right to enforce collection of the taxes, the validity or constitutionality of which is denied by the Railway.

It is further the opinion of this department that if the collector refuses the tender made by the Railway Company, and any one or more of the disputed taxes are held to be valid levies, the penalties provided by law will attach to the entire amount of taxes on the Railway property, but if all of the disputed taxes are held invalid, no penalties will attach to the amount of the undisputed taxes tendered to the collector by the Railway.

Respectfully submitted,

APPROVED:

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