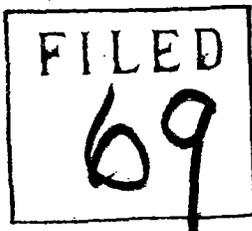


TAXATION:

A taxpayer may pay any years taxes without tendering payment of taxes due for other years.



April 29, 1952

Honorable James L. Paul  
Prosecuting Attorney of  
McDonald County  
Pineville, Missouri

Dear Sir:

Reference is made to your recent request for an official opinion of this department, which request reads as follows:

"Where a person is delinquent on real and/or personal taxes for a period of years within the five year statute of limitations, may a delinquent tax payer pay any of the year's taxes he desires, without tendering payment for the years delinquent prior to the year he is tendering payment?"

We have been unable to find any statutory or case authority dealing with the question as to whether or not a person delinquent on real and/or personal taxes for a period of years may pay any of the year's taxes without tendering payment for the years prior or subsequent to the years taxes which he wishes to pay. However, we find authority from other jurisdictions dealing with this question, which although not binding upon the courts of this state, is at least persuasive.

The general rule in regard to paying taxes due for any one year without tendering payment for taxes due in other years is found in 51 Am. Jur., Taxation, Section 958, page 841, as follows:

"Although a taxpayer ordinarily has no right, in the absence of a statute giving him such right, to make partial payment of any entire tax upon a single piece of property, the general rule is that where

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separate and independent taxes have been levied against the property of a taxpayer, he has a right to pay the full amount of any one tax without paying the others; that is, he may pay the amount of any one tax listed against him or the tax on any one item or piece of property which has been separately assessed, without offering to pay taxes on other parts. Such right is not restricted to cases in which the taxpayer contends that the taxes not proffered are invalid and unenforceable. The right to make such payment may be enforced by mandamus. \* \* \*

(Underscoring ours.)

See also 61 C. J., Taxation, Section 1244, page 965, wherein the rule is stated as follows:

"But where the taxes are separable the rule against part payment does not apply, and the citizen always has the right to pay the amount of any one tax listed against him, while refusing or omitting to pay others, or to pay the taxes for one year, and contest those assessed for other years, \* \* \*."

(Underscoring ours.)

Dealing first with delinquent taxes on realty, we refer you to the cases of *Olmstead County v. Barber*, 31 Minn. 256, 17 N. W. 473, and *Duvall v. Perkins*, 77 Md. 582, 26 Atl. 1085. In the *Barber* case the Supreme Court of Minnesota, in its opinion said:

"On the argument there was some discussion as to the right of defendants to pay the tax of 1881, without at the same time paying the other. There can be no doubt of that right. An owner of property may always pay the taxes for any year, and contest those claimed to be against it for other years."

In the *Perkins* case the court held that the refusal of a taxpayer to pay interest accruing on taxes against his land for

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certain years does not justify the tax collector in refusing to accept a tender of the amount due for taxes in other years.

Turning now to your question in regard to delinquent personal property taxes. In the case of *Baltimore v. Fine*, 148 Md. 324, 129 Atl. 356, the court held that each yearly tax is an independent demand and therefore claims for two or more years are separate and severable, the court in its opinion said:

"Because a tax is a charge imposed upon the taxpayer as an act of sovereignty, without his consent, and for the public use, it is not a debt or of the nature of a debt (*Bonaparte v. State*, 63 Md. 470, 471), yet, it is sufficiently similar to afford an analogy in support of the better rule with respect to the payment or tender of taxes. This rule is that, unless otherwise permitted by statute, the whole amount due for any single tax must be paid or tendered; but if there are separate and distinct taxes due, the taxpayer is not compelled to pay their aggregate amount but may pay one or more of such separate and distinct taxes, at his election. 3 *Cooley on Taxation* (4th ed.), secs. 1251-1253; *Tracey v. Irvin*, 18 Wall. (U. S.) 549.

\* \* \* \* \*

"It is a necessary consequence of the nature of the obligation of the taxpayer and of these statutory provisions that the yearly taxes due under the single and distinct municipal and state levies, at the ordained and enacted respective rates, upon the same total assessment against the appellee, may constitute but one entire annual demand. But inasmuch as every yearly tax is an independent demand, the claims for two or more years are separate and severable. *Duvall v. Perkins*, 77 Md. 582, 589."

(Underscoring ours.)

We are of the opinion that the holding of the *Fine* case, in regard to personal property taxes, that each yearly tax is an independent demand and therefore separate and severable, would be applicable to real property taxes. (*Duvall v. Perkins*, supra.)

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CONCLUSION

Therefore, it is the opinion of this department that real and/or personal property taxes are separate and severable from the taxes due for other years and a taxpayer may pay any year's taxes without tendering payment of taxes due for other years whether subsequent or prior thereto.

Respectfully submitted,

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APPROVED:

  
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Attorney General

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