DELINQUENT TAXES:
LAND SALE:
INNOCENT PURCHASER:
RECOVERY OF PURCHASE PRICE AND TAXES:

An innocent purchaser of land at a tax sale for delinquent taxes, which sale is held by mistake of the collector, can recover the purchase price of the land and the total sum of any taxes which he may have paid upon the land.

FILED
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January 11, 1956

Mr. Robert Hoelscher
Prosecuting Attorney
Warren County
Warrenton, Missouri

Dear Sir:

On November 18, 1955, you wrote to us as follows:

> "In November 1942 a tract of land in Warren County, Missouri was sold by the collector of revenue for delinquent taxes. The purchaser at that sale obtained his deed in due course and has since that time paid the taxes assessed thereon.
>
> "Our present collector has now discovered that the land was doubly assessed. In other words, the true owners of the land were not delinquent in their taxes when the land was sold in 1942. The sale was held for the taxes under the erroneous assessment.
>
> "Our collector has requested that I secure your opinion as to who is liable for this mistake and whether or not the purchaser at the tax sale can recover the purchase money and the money paid out for taxes."

On December 13, 1955, you wrote, in response to a request by us for a clarification of your first letter, as follows:

> "In reply to your letter of December 9, 1955. The land in question was assessed to two different people. The party who had no interest in the land naturally did not pay taxes on it and the sale was made under the assessment against him. The original owner has since reclaimed his land and is now in possession."

On the basis of the above two letters, it would appear that the situation is as follows: "A" was the owner of a tract of land upon which taxes were duly assessed each year to him, which taxes were each year duly paid by "A"; then upon a certain year, by error, the same land was also assessed to "B", who was rendered a tax bill, to which he paid no attention; this situation continued for the statutory period, after which the land was sold for delinquent taxes, based upon the failure of "B" to pay the taxes, which taxes, as we noted above, were being regularly paid each year by "A", the true owner; at the tax sale "C" purchased the land, and in subsequent years paid taxes upon it, after which "A" reclaimed the land. "C" is out the purchase price of the land and the taxes he has paid, and has nothing to show for his outlay.

Your question is whether "C" can obtain relief and, if so, how? In this regard we refer to Section 139.280, which reads:

> "Any collector of the public revenue for the state, or for any county or town therein situate, who shall fail to make a true return of all lands or other real estate to the proper officer, according to law, on which the taxes have been duly paid, so that the same shall, by the cause of his negligence, delinquency or misconduct, be advertised and sold as delinquent lands, shall forfeit to the innocent purchaser in good faith of such lands, at the time and place appointed for the public sale of the same, one hundred per cent damages in the sum so paid by the innocent purchaser to such collector, and ten per cent per annum interest thereon until the same is paid to such purchaser, recoverable in any court having competent jurisdiction, and in case the owner of the land is compelled to bring suit to remove a cloud upon his title, erroneously sold by the collector for alleged nonpayment of taxes which have been paid to said collector, and not truly returned paid by him, the said owner may sue for and recover of said collector on his bond, as damages, all costs of said suit, and a reasonable attorney's fee, to be taxed by the court as costs in the case, and shall also pay to the owner of said lands so erroneously sold, all such damages, including attorney's fees for recovering the same, or removing cloud from the title thereof, as such owner may sustain by reason of such wrongful or erroneous sale, such penalty and damages to be recovered in any court having competent jurisdiction in ordinary civil actions."

Section 140.530 RSMo 1949, reads:

> "No sale or conveyance of land for taxes shall be valid if at the time of being listed such land shall not have been liable to taxation, or, if liable, the taxes thereon shall have been paid before sale, or if the description is so imperfect as to fail to describe the land or lot with reasonable certainty and for the first two enumerated causes, the money paid by the purchaser at such void sale shall be refunded, with interest, out of the county treasury, on order of the county court."

We believe the two above statutes are the applicable ones in the situation which you presented, and that under them a recovery of purchase price and taxes paid by the tax sale purchaser on the property purchased may normally be had.

Since this tax sale took place in 1942, the matter of the applicability of the statute of limitations must be considered, but regarding it we make no ruling here.

CONCLUSION

It is the opinion of this department that a person who purchases land at a tax sale, which land was sold for delinquent taxes wrongfully assessed, which land subsequently was recovered from the purchaser by the true owner, the purchaser may recover the amount of the purchase price and the amount of taxes which he has paid upon such land. No ruling is made herein concerning the applicability of the statute of limitations.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton
Attorney General

HPW/ld