

TAXATION: An endorsement written on the back of a check presented in payment of tangible property taxes expressly stating that payment is being made under protest and citing an appropriate statute which clearly sets forth the grounds for protest, is a sufficient payment under protest to require impounding of the taxes so protested under Senate Bill No. 39, 75th General Assembly.

January 12, 1970

OPINION NO. 90

Honorable Robert S. Drake, Jr.
Prosecuting Attorney
Benton County Court House
Warsaw, Missouri 65355



Dear Mr. Drake:

This official opinion is rendered in response to the request contained in your recent letter relative to payment of tangible property taxes under protest as provided for in Senate Bill No. 39, 75th General Assembly.

The question raised by your letter is as follows:

"Whether or not the words:

'The endorsee, indorses this instrument with full knowledge that payment is being made under protest. Regard; Section 137.073, RSMo.'

"or

'Endorsee, endorse this instrument with full knowledge that payment is being made under protest Regard, Section 137.073 RSMo.'

"written on the back of a bank check and presented to the collector of Revenue for Benton County, Missouri, for payment of State and

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County taxes for the year 1969 is sufficient to constitute a 'written statement' setting forth the grounds on which a 'protest is based,' and the citing of a 'law, statute, or facts' on which the payor relies so as to require the Collector to impound, under RSMo 139.031 (1969), in a separate fund all or a portion of the money so paid."

Senate Bill No. 39 adds to Chapter 139, Missouri Revised Statutes entitled "payment and Collection of Current Taxes", a new section to be known as Section 139.031, authorizing the payment of taxes except taxes collected by the Director of Revenue, under protest and providing procedures for the recovery of taxes erroneously or illegally collected. Pertinent language of this bill is as follows:

"Section 1. Any taxpayer may protest all or any part of any taxes assessed against him, except taxes collected by the Director of Revenue of Missouri. Any such taxpayer desiring to pay any taxes under protest shall, at the time of paying such taxes, file with the collector a written statement setting forth the grounds on which his protest is based, and shall further cite any law, statute, or facts on which he relies in protesting the whole or any part of such taxes.

"Section 2. The collector shall disburse to the proper official all portions of taxes not so protested and he shall impound in a separate fund all portions of such taxes which are so protested. Every taxpayer protesting the payment of taxes, within ninety days after filing his protest, shall commence an action against the collector by filing a petition for the recovery of the amount protested in the Circuit Court of the county in which the collector maintains his office. If any taxpayer so protesting his taxes shall fail to commence an action in the Circuit Court for the recovery of the taxes protested within the time herein prescribed, such protest shall become null and void and of no effect, and the collector shall then disburse to the proper official the taxes impounded, as hereinabove provided."

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Prior to enactment of this statute there was no statutory provision for payment of tangible property taxes under protest in Missouri and there is nothing in the statute furnishing a guide to the form and content of a protest other than the language quoted above. The general rule is that where there are statutory provisions authorizing payment of taxes under protest, a taxpayer must bring himself within and substantially comply with the terms of the statute. 84 C.J.S., Taxation, Section 638(b).

In the case of *District of Columbia v. McFall*, 188 F.2d 991, the court discussed the legal theory of paying taxes under protest. In the opinion it is said:

" * * * Aside from its bearing upon the question of involuntary payment, the protest has two purposes, to serve notice upon the Government of the discontent of the taxpayer and to define the grounds upon which the taxpayer stands."

In order to comply with Senate Bill No. 39 the taxpayer " * * * shall, at the time of paying such taxes, file with the collector a written statement setting forth the grounds on which his protest is based, and shall further cite any law, statute, or facts on which he relies in protesting the whole or any part of such taxes."

The statute is not clear as to whether the statement is to be in the form of a paper separate from the instrument of payment or whether it may be included on a check. Likewise there is no guide as to how extensively the grounds must be set forth.

There is authority for the proposition that a protest is sufficient which points out the objection to the tax with enough clearness to notify the collector of its true nature and character. 51 Am.Jur., Taxation, Section 1189, and cases cited therein. In *Albro v. Kettelle*, 42 R.I.270, 107 A.198, the Supreme Court of Rhode Island held that a collector's receipt on which was inscribed "paid under protest" constituted a protest in writing.

An endorsement is a writing and in the present case, although somewhat lacking in grammatical composition, it expressly states that "payment is being made under protest." Furthermore, the endorsement contains the language, "Regard, Section 137.073 RSMo." The word, "regard", according to its ordinary meaning, is one of caution. It suggests the collector take heed. Webster defines the word as "4: a ground of action or opinion: Motive 5: an aspect to be taken into consideration:"

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While it would be desirable to have protests under this statute furnished in more detailed form on a paper separate from the instrument of payment, we cannot conclude that a writing which places the collector on notice as to payment under protest, citing a statute which under appropriate circumstances requires adjustment of taxes, is not a protest within the meaning of Senate Bill No. 39, 75th General Assembly. Accordingly it is our view that under the particular facts of the matter presented to us, a legal payment under protest is indicated.

Section 2 of the Bill provides that the collector " * * * shall impound in a separate fund all portions of such taxes which are so protested. * * * " Other provisions are made for releasing the impounded funds.

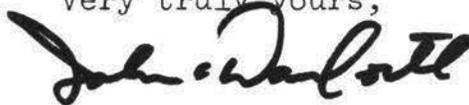
Inasmuch as it has been concluded that the taxes have been paid under protest within the meaning of Section 1 of this Bill, it follows that Section 2 of the Bill requires that such taxes be impounded.

CONCLUSION

Therefore, it is the opinion of this office that an endorsement written on the back of a check presented in payment of tangible property taxes expressly stating that payment is being made under protest and citing an appropriate statute which clearly sets forth the grounds for protest, is a sufficient payment under protest to require impounding of the taxes so protested under Senate Bill No. 39, 75th General Assembly.

The foregoing opinion, which I hereby approve, was prepared by my assistant John E. Park.

Very truly yours,



JOHN C. DANFORTH
Attorney General