

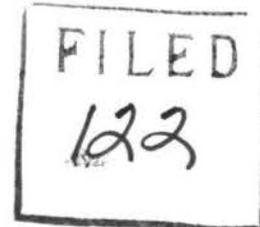
COUNTY TREASURER:
TAXATION (INTANGIBLE):

As to the amounts returned by the State Director of Revenue, collected as intangible taxes, these amounts are to be set apart and credited to the specific levy, in pro rata amounts, which provides the political subdivision's taxable basis. It is not incumbent upon the county treasurer of DeKalb County to set apart and credit to the specific levy providing the taxable basis the pro rata amount to be returned to each political subdivision within DeKalb County.

OPINION NO. 122

April 19, 1971

Honorable Robert B. Paden
Prosecuting Attorney
DeKalb County Court House
Maysville, Missouri 64469



Dear Mr. Paden:

This is in reply to your request for an opinion of this office in which you sought an interpretation of Section 146.110, RSMo 1969. Specifically, you request an opinion as to whether the amounts, from intangible taxes returned by the State Director of Revenue, are to be set apart and credited to the specific levy providing the taxable basis in pro rata amounts; and if so, is it incumbent upon the county treasurer to determine the pro rata distribution.

Section 146.110, reads as follows:

"The director of revenue shall annually, on or before the fifteenth day of December, return all intangible taxes collected, less two percent thereof which shall be retained by the state for collection, to the county treasury of the county in which the particular taxpayers are domiciled or in which the intangible personal property which was the subject of the tax had its business situs. A statement of the exact amount due each political subdivision as determined by applying the local rates of levy to the proceeds of the tax shall accompany each payment. The several county treasurers and the treasurer of St. Louis city are hereby directed to distribute all amounts so received from the director of revenue according to the allocations contained in the statements made by the director of revenue." (Emphasis added)

Honorable Robert B. Paden

The Supreme Court of Missouri, en banc, has interpreted the foregoing section in State ex rel. Board of Directors v. Dwyer (Mo. Sup. en banc 1950) 234 S.W.2d 604. That case involved an original proceeding in mandamus before the Supreme Court of Missouri en banc, against the treasurer of the City of St. Louis, to require said treasurer to set apart for the Library Fund of the city free public library, a percentage of the amounts received from the State Director of Revenue for taxes collected pursuant to now Section 146.110. The court, in discussing the purposes to which the money collected as intangible taxes is to be put, stated as follows:

" . . . However, the people voted this part of the City levy for the Library Fund; and, since the City had the right to have it considered in fixing its proportion of the taxes collected by the State at 175/266 in 1946, we see no reason why it should not have the right, and duty, to use the 4/266 (4/175 of its part), thus added and received, for the purpose for which the people voted it. . . ." (loc. cit. 607, emphasis added)

Additionally, on motion for rehearing in discussing the purposes to which the City of St. Louis was to put the amounts returned to it from the State Director of Revenue, the court stated:

" . . . The Constitution, Sec. 4(c), art. X, Mo.R.S.A., requires the return of the intangible tax 'to the counties and other political subdivisions of their origin, in proportion to the respective local rates of levy.' The other 1945 Acts, cited in our opinion, provide how this shall be done. Harmonizing all of these provisions, we think it is clear that the rate of taxation on the assessed valuation of property, subject to ad valorem taxation, is intended to provide the basis for determining the amount and use of intangible tax revenue returned to each political subdivision; and we so rule." (loc. cit. 607, emphasis the Court's)

From the foregoing, it is the conclusion of this office that as to the amounts returned by the State Director of Revenue, collected as intangible taxes, these amounts are to be set apart and credited to the specific levy, in pro rata amounts, which provides the political subdivision's taxable basis.

Honorable Robert B. Paden

In light of our foregoing conclusion, you ask who is the proper official to specifically set aside the pro rata amount for distribution. In discussing this question, in State ex rel. Board of Directors v. Dwyer, supra, the Supreme Court stated as follows:

" . . . Sec. 4, art. X, only provides that the Director of Revenue shall return the taxes he collects 'to the counties and other political subdivisions of their origin, in proportion to the respective local rates of levy.' It does not say for what purposes the taxes should thereafter be used by the political subdivision to which they are allocated; and it does not authorize the Director to decide that matter. . . ." (loc. cit. 606)

Thus, it is apparent, that it is not incumbent upon the State Director of Revenue to determine the pro rata distributions which is to be set aside and credited to the specific levy providing the taxable basis. The same reasoning would apply to the county treasurer, and thus, it is our conclusion that it is not incumbent upon the county treasurer of DeKalb County to set apart and credit to the specific levy providing the taxable basis the pro rata amount to be returned to each political subdivision within DeKalb County.

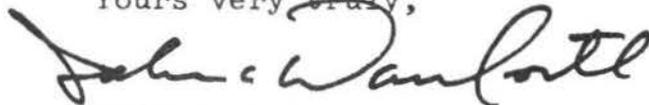
CONCLUSION

From the foregoing, it is the conclusion of this office that as to the amounts returned by the State Director of Revenue, collected as intangible taxes, these amounts are to be set apart and credited to the specific levy, in pro rata amounts, which provides the political subdivision's taxable basis.

It is not incumbent upon the county treasurer of DeKalb County to set apart and credit to the specific levy providing the taxable basis the pro rata amount to be returned to each political subdivision within DeKalb County.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Kenneth M. Romines.

Yours very truly,



JOHN C. DANFORTH
Attorney General