

TAXATION: No authority in Senate Bill 80 for refund of penalties, interest or costs paid prior to April 13, 1933

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Cross index under 'Delinquent Taxes.'

August 29, 1933

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Hon. E. W. Allison
Prosecuting Attorney
Phelps County
Rolla, Missouri

Dear Mr. Allison:

We herewith acknowledge receipt of your request for an opinion of this office, your request reading as follows:

"* * * In cases where taxpayers paid delinquent and back taxes between January 1st, 1933 and April 13th, 1933, the dates respectively on which 1932 taxes became delinquent and the 'remission' law became effective, and included in their payment all penalties, interest and costs, should such taxpayers be entitled to recover the amount of such penalties, interest and costs, in view of the fact that other taxpayers who waited till after Senate Bill No. 80 became effective were relieved of all their penalties, interest and costs for taxes delinquent over the same years." * * *

Senate Bill 80, providing for the remission of penalties, interest and costs, under certain circumstances, is found on page 423 of the Laws of 1933. Section 1 of said Bill is as follows:

"In payment of the taxes assessed against any person whose name appears upon the personal delinquent lists of any year or years prior to January 1, 1933, and in payment of the taxes assessed against any real estate which appears upon the lists of delinquent and back taxes of any year or years prior to January 1, 1933, including delinquent taxes for the year 1932,

the collectors of revenue of the counties and cities of the state are hereby empowered and directed to accept the original amount of said taxes as charged against any such person or real estate relieved of the penalties, interest and costs accrued upon the same; Provided, however, that such remission of penalties, interest and costs shall be in full if said taxes are paid not later than June 30, 1933; if paid after June 30, 1933, and not later than August 31st, 1933, then such remission shall be 75 per cent of such penalties, interest and costs; if paid after August 31st, 1933, and not later than October 31, 1933, such remission shall be 50 per cent of such penalties, interest and cost; if paid after Oct. 31, 1933, and not later than Dec. 31, 1933, then such remission shall be 25 per cent of such penalties, interest and costs: Provided, further, that after Dec. 31, 1933, all penalties, interest and costs as aforesaid shall be restored and be in full force and effect for the full period of time since their accrual and as if this act had not been passed."

It is to be noted that this act only applies to taxes which remain unpaid, which are "on the delinquent personal lists" and are "upon the lists of delinquent and back taxes." No mention is made at any place in the bill of any refund to be allowed to those who had paid penalties, interest and/or costs prior to the passage of the Act. Accordingly no relief is granted to them. The Act was one primarily designed to accelerate the payment of taxes so as to relieve the state and county governments from the financial distress resulting from four year of economic depression. To permit a refund of penalties, interest and costs would defeat the purposes of the Act.

The failure of the legislature to permit the refund or legislate on the matter of penalties, interest and costs already paid into the public treasuries was recognized and considered by our Supreme Court in the case of State ex rel. v. Koeln, 61 S. W. (2d) 750. The defendant in that case, the collector of revenue of St. Louis, attacked Senate Bill No. 80 on the ground

(among others), that the Bill was unconstitutional as it discriminated between taxpayers in not permitting or authorizing a refund of penalties paid prior to the passage of the Act. Judge Hays, in considering the point, stated as follows on pages 753,754:

"* * *In support of his contention the respondent argues in substance that the act would destroy the uniformity of 'burden of taxes' to which it relates, that no provision is made to restore uniformity by refunds to those who have already paid delinquent taxes together with the penalties, and no provision made for differentiating between delinquent taxpayers who are needy and those merely shiftless. Evidently the argument proceeds upon a misconception as to what constitutes taxes in the proper sense. We have already pointed out that the penalties affected are not part of the tax. The tax is presumed to have been uniformly and properly imposed. Both the tax and the 'burden' thereof remain without change. The state is under no obligation to refund taxes or penalties, or both, once they have been paid. * * *"

It is therefore the opinion of this office that there is no authority under Senate Bill 80 for the refunding of penalties, interest and costs paid into the public treasuries prior to April 13, 1933.

Respectfully submitted,

HARRY G. WALTNER, JR.,
Assistant Attorney General.

APPROVED:

Attorney General.

HGW:MM