

TAXATION: Procedure to collect delinquent taxes in suit
but not in judgment prior to effective date of
Senate Bill 94.

See 9962B Laws 33

June 24th, 1933 7-4

FILED

Hon. D. B. Bibb, Collector
Bowling Green, Missouri.

Dear Mr. Bibb:

Acknowledgement is herewith made of your letter of June 8th, 1933 wherein you request an opinion of this Office in regard to Senate Bill 94, portions of your request reading as follows:

"I would appreciate it very much to have an authoritative opinion from you as to the interpretation of Section 9962b of Senate Bill 94, in respect to suits for delinquent taxes which may be instituted prior to the effective date of the new law, which, as I understand takes effect on July 25th, 1933."

Section 9962b of Senate Bill 94 provides that all taxes levied and assessed prior to the taking effect of the Act, which are delinquent on the effective date of the Act shall be deemed to be delinquent under the provisions of the Act and payment shall be enforced for such delinquent taxes as provided for in Senate Bill 94, all of which is subject to the following provision:

"Provided however, that nothing herein contained shall be construed to affect the right of the county collector to proceed to final judgment and foreclosure for taxes upon which suit had been instituted prior to the effective date of this act, but not in final judgment, nor to prejudice the rights of collection of any costs or commissions attaching in such cases which were valid under the tax law existing at the time of institution of such suits. As to taxes merged in judgment at the effective date of this act the foreclosure of the tax lien and proceedings relative thereto shall be had under the provisions of the law as such law existed prior to the passage of this act, and as to suits for delinquent taxes instituted, but not merged in judgment, at the effective date of this act the collector shall have the right to proceed to final judgment and foreclosure of the tax lien under the provisions

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of the law as it existed prior to the passage of this act, or such collector may, in his discretion, dismiss such suits and proceed to foreclosure of the tax lien under the provisions of this act, subject to the preservation of rights to all valid costs and commissions that may have already attached in such character of suits under the law as it existed prior to the passage of this act."

It is therefore seen that the county collector is privileged to follow either of two courses in the collection of these delinquent taxes, upon which suit is filed prior to the effective date of the act which is July 24th, 1933. The collector may either proceed to final judgment of the tax suit and foreclose by means of a special execution or he may dismiss his suit retaining all rights to valid costs accrued up to that time and proceed to enforce the State's lien for taxes by sale as provided in Senate Bill 94.

It is the opinion of this Office that if you desire to dismiss your delinquent tax suits upon the taking effect of Senate Bill 94 and to proceed in the collection of these delinquent taxes under the provisions of Senate Bill 94, that by doing so you will not prejudice your rights to these valid costs and commissions that had already attached under the law as it existed prior to the passage of Senate Bill 94, keeping in mind however, that your right to these valid costs and commissions is subject to the operation of Senate Bill 80.

Respectfully submitted,

HARRY G. WELTNER, Jr.,
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

HGW/mh