

TAXATION:--Tax suit may proceed to judgment after December 31, 1933  
if filed before July 25, 1933.

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Law 33

November 17, 1933

FILED  
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Hon. Steve Hailey  
Collector of Revenue  
Barry County  
Cassville, Missouri

My Dear Mr. Hailey:

We acknowledge receipt of your letter of November 15, 1933, requesting an opinion of this office as follows:

"I see from the newspaper that there is a recent opinion from your office in regard to the new tax law being inoperative on Personal Back Taxes and as there are a few tax suits pending in Barry County, Missouri, that were filed in the Circuit Court during the year 1932 for delinquent taxes on Real Estate I write to ask the opinion of your office in regard to them. Will it be legal to pursue them on the Judgment? There are no personal tax suits among them.

I see by House Bill No. 44 passed by the General Assembly April 1st, 1933, "If, on the First Day of January of any year, any of said lands or town lots contained in said 'Back Tax Book' remain unredeemed, it shall be the duty of the Collector to proceed to enforce the payment of the payment of the taxes charged against such tract or lot, by suit in a court of competent jurisdiction of the County where the real estate is situated etc." As our term of court is in session I will be pleased if you will send me your opinion at an early date."

In dealing with your inquiry we shall divide it into the two following subdivisions:

I.

HOUSE BILL NO. 44, PASSED BY THE 57th  
GENERAL ASSEMBLY INEFFECTIVE AFTER JULY  
24, 1933.

This office has heretofore held in an opinion dated August 8, 1933, to the State Tax Commission, that House Bill 44 which was a reenactment of Section 9952 R. S. Mo. 1-29, with a proviso added thereto, was intended to transfer the duties of the delinquent tax attorney to the Prosecuting Attorney from the time it was effective until Senate Bill 94 became effective on July 25, 1933. In this opinion we stated as follows:

"Having concluded that the sole intent of House Bill 44 was to provide that the Prosecuting Attorney of Greene County also act as Delinquent Tax Attorney, we are of the opinion that House Bill 44 is only operative as enacted (subject to Senate Bill 80) up to July 24, 1933."

Having concluded that you are not authorized to proceed at this time under House Bill 44, we shall turn to Senate Bill 94 and determine what course you are permitted to pursue under that Act.

II.

SUITS FOR DELINQUENT TAXES FILED IN 1932  
MAY BE LEGALLY REDUCED TO JUDGMENT UNDER  
SENATE BILL 94 AFTER DECEMBER 31, 1933.

We direct your attention to portions of Section 9962b found on page 444 of the Missouri Laws of 1933, reading as follows:

"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 the 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 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 clear that it was the intent of the legislature to permit the Collectors of Revenue to proceed with the collection of taxes through suit if such suits were instituted prior to the effective date of Senate Bill 94, to-wit July 25, 1933.

However, by reason of the passage of Senate Bill 80, found at page 423 Laws 1933, you are not permitted to proceed to judgment in these suits until after the expiration of Senate Bill 80, to-wit, December 31, 1933. This has been expressly held in the case of State ex rel. McKittrick vs. Baer, 63 N. W. (2d) 84. Judge Hays in considering the effect of Senate Bill 80 stated as follows, l.c. 67:

"\* \* \* All questions necessary to be discussed having been determined, it seems advisable, before closing this opinion, to observe briefly the effect of the change in the law upon the back tax suits that have been filed, or may be filed, subsequently to the date, April 13 of the current year, when this new law became effective. Owing to the alternative options granted the taxpayer, with periodically and increasingly reduced advantage to him in the avoidance of penalties, a question of some difficulty

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is presented pertinent to the effect upon suits pending during any part or all of the entire period covered by the act. Concerning this matter, it is our view (1) that none can proceed to final judgment before the expiration of the act on January 1 next; (2) a taxpayer exercising the first option may pay the original tax without more, and all penalties are thereby discharged, and his pending tax suit, if any, will be abated;  
\* \* \*

We trust the foregoing may be of assistance to you in the solving of your problem.

Respectfully submitted,

HARRY G. WALTER, JR.  
Assistant Attorney General.

APPROVED:

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Attorney General

HGS :MM