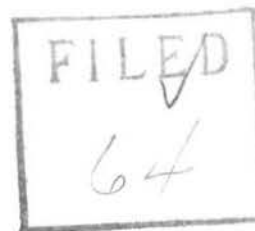


RE: Suit for taxes delinquent Jan. 1, 1933  
Cannot be joined in suit begun in 1933 for taxes delinquent Jan. 1, 1932

March 17, 1933.



Hon. Morgan M. Moulder,  
Prosecuting Attorney,  
Camden County,  
Camdenton, Missouri.

Dear Sir:

Your letter reads as follows:

"Section 9936 provides that all real estate upon which taxes remain unpaid on January first annually shall be delinquent. Section 9945 provides that the collector shall not bring suit for taxes, for one year after such taxes become delinquent "but thereafter he shall proceed with such delinquent taxes in all matters the same as provided in this chapter in reference to taxes now delinquent."

Section 9953 R.S. of Missouri, 1929, provides that the petition in a suit for delinquent taxes shall in one count " for the taxes for all such years as taxes may be due thereon. I have read case of State ex rel v. Carr 178 Mo. 229 and State ex rel v. Wilson, 216 Mo. 215 and I thought that the true construction of all the statutes would allow suit for delinquent taxes be brought for all years due or delinquent when the taxes became delinquent twice, and that suit could be brought for both years even tho a year does not pass after the year for last year of tax. That is that taxes delinquent Jan. 1, 1932 and taxes delinquent Jan. 1, 1933, for both years, can be included in the suit for the taxes for both years, even tho a year as not passed since the tax became delinquent on the year of Jan. 1, 1933. However Sec. 9945 created some doubt in my mind as to whether or not I, as tax attorney, can file suit for the taxes due and delinquent Jan. 1, 1933, together with the taxes delinquent Jan. 1, 1932, because the year had not passed.

There is a large estate in Camden County upon which taxes were not paid Jan. 1, 1932, and thereby became delinquent, now the year has gone by and suit can be brought, but there is now another year of taxes delinquent Jan. 1, 1933; can I bring the suit for both years?

I brought suit for taxes for years of 1928 and 1929 for the collector. The property sold and brought \$50 more at the sale than the taxes and costs, for the years of 1928 and 1929, can such surplus be applied to the taxes yet due for years of 1930, 1931 and

1932? Or will the purchaser be compelled to pay the taxes yet due, and the balance turned over to the treasury to await the owner or go to school fund as provided by statute?"

All parts of the General Revenue Statute must be considered as a related Code of Laws on the same subject, to-wit, taxation, and must be construed so as to give effect to each part thereof if practicable so to do.

Section 9936 says:

"All real estate upon which the taxes remain unpaid on the first day of January, annually, shall be deemed delinquent \*\*"

This section fixes date of delinquency clearly. Under this section real estate taxes payable in 1932 are delinquent January 1, 1933 if same are unpaid on said January 1, 1933.

Section 9945, referring to collection of delinquent taxes by suit, reads as follows:

"\*\*\* The collector shall proceed to collect taxes due thereon but shall not bring suit thereon for one year after such taxes become delinquent.\*\*\*"

Under these two sections, 9936 and 9945, real estate taxes payable in 1932, if not paid on or before January 1, 1933, become delinquent on January 1, 1933 and after January 1, 1934; if not paid on or before January 1, 1934, suit can be begun to collect same.

Section 9953 provides for filing petition and among other matters, says:

"And all lands owned by the same person or persons may be included in one petition and in one count thereof, for the taxes for all such years as taxes may be due thereon, and said petition shall show the different years for which taxes are due."

The statute of 1879, now Section 6845, contains practically the same provisions as Section 9945 R.S. of Mo. of 1929, and Section 6837 R.S. of Mo. 1879 providing for actions to collect delinquent taxes, among other things, provides as follows:

"And all lands owned by the same person or persons may be included in one petition and in one count thereof for the taxes for all such years as may be due thereon and said petition shall show the different years for which taxes are due with the respective amount due to each fund \*\*\*"

You will observe Section 6837 of Statute of 1879 carries the same provision as Section 9953 R. S. of Mo. 1929. Construing this Section 6837 R.S. Mo.1879 in the case of

State to use of Begeman v. Robyn, 93 Mo., l.c. 399

the court said:

"This suit was brought to enforce the collection of taxes for the year 1884, and was commenced on the twenty-second of September, 1885. Now, Section 6848, Revised Statutes, is the same as section 8 of the act of 1879, before mentioned. If this section be examined in connection with that entire law, it will become clear that, as to all taxes accruing after 1880, no suit can be brought thereon until one year after the tax becomes delinquent. This prohibition applies alike to state and county taxes, and to delinquent taxes of towns and cities having less than five thousand inhabitants, all of which taxes, in contemplation of the law, are to be extended in the county 'back tax book'. The prohibition applies also to the delinquent taxes of cities of five thousand or more inhabitants, and which taxes are to be extended on the city 'back tax book'."

I cannot find where this case has been overruled.

My construction of language used in Section 9945, R.S. 1929 saying in suit for taxes all taxes may be included in one count for all such years as taxes may be due, is that it means suit may be begun and joined in one count; therein may be included taxes which on real estate have been delinquent for more than one year, and this construction gives full effect to the provision in Section 9945 barring suit before lapse of one year from time same becomes delinquent, which means one year from the January 1 following the year in which the taxes are payable.

As to the cases you refer to in 178 Mo., l.c. pp. 239-240, and 216 Mo. 215, I see nothing in either case that tends to a different construction than that of the Supreme Court in the above cited case in 93 Mo., 305.

In the case in 178 Mo., l.c. pp. 239-240, the court was deciding whether or not the five-year statute barred the action to collect the taxes and held none of the taxes barred. The court ordered judgment rendered below for years 1894, '95, '96 and '97 and suit was filed December 14, 1899. Now the last taxes due were in '97 and not being paid, they became delinquent January 1, 1898, and suit could not be begun for one year from that date, which would be January 1, 1899, and suit was actually begun eleven months and fourteen days after January 1, 1899.

In the 216 Mo. case, l.c. pp. 290-91-92, the petition was filed December 28, 1900 and the court said:

"According to these statutes, the taxes mentioned in the first two counts became due January 1, 1895, but did not become delinquent until January 1, 1896, and the second assessment not being due until July 1, 1895, would not become delinquent until January 1, 1896."

It will be observed the date on which the last taxes became delinquent in last mentioned case was January 1, 1896 and one year from that date would be January 1, 1897, and suit was filed December 28, 1900.

For reasons above set forth, it is my opinion you can commence the suit for the taxes on the real estate delinquent January 1, 1932, but you cannot at this date commence the suit for the taxes for the year 1932 now delinquent since January 1, 1933.

Section 9959 R.S. of Mo. 1929 says:

"When real estate has been sold for taxes or other debt by the sheriff of any county within the State of Missouri, and the same sells for a greater amount than the debt or taxes and all costs in the case, and the owner or owners, agent or agents cannot be found, it shall be the duty of the sheriff of the county, when such sale has been or may hereafter be made, to make a written statement describing each parcel or tract of land sold by him for a greater amount than the debt or taxes and all costs in the case, \*\*\*and then presented to the county court of the county \*\*\* and on approval of the statement by the court, the sheriff making the same shall pay the said surplus money into the county treasury. \*\*\* And said treasurer shall place such moneys to the credit of the school fund of the county, to be held in trust for the term of twenty years for the owner or owners or their legal representatives. And at the end of twenty years, if such fund shall not be called for, then it shall become a permanent school fund of the county. \*\*\*"

The history of this legislation discloses the reason for its enactment. It was enacted first in 1881, (Session Laws of Missouri, 1881, p. 192) and in the emergency clause it was stated many sheriffs had sums of money coming into their hands as surplus from tax sales and were holding same because no provision for paying it to any one was by statute provided, and therefore this enactment should be effective at once. The Act was amended in 1883 (Session Laws of Mo. of 1883, p. 147) and in form then amended has been carried forward in each R. S. of Mo. since that date.

You will notice phraseology is such that it applies equally to sheriff then or thereafter having possession of such money. The law would be without the statute the surplus money belonged to the owner and the statute expressly recognizes that right by other provisions thereof not herein quoted which provide on proof of his ownership of land sold when sold the money should be paid to him. This statute is remedial and directs a specific manner in which owner may have the remedy enforced for his benefit and excludes any other disposition of the money, in my opinion.

The language of the section confines the payment into the county treasury to the amount beyond the taxes then due and the costs

in the case. If some one purchased at the sale and claims title and his claim is valid, therefor taxes subsequently accruing and in default , the purchaser should pay the taxes or the land should be sold again for taxes.

In my opinion the surplus money cannot be used to pay taxes accruing subsequent to the sale producing the surplus.

Yours very truly,

EDWARD C. CROW

APPROVED:

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ATTORNEY GENERAL

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