

TAXATION:--Operative dates of Sections 9969 and 9952 as contained in Senate Bill 94, respecting penalties.

8-25

August 24, 1933



Honorable Nat. B. Rieger  
Prosecuting Attorney  
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Dear Sir:

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

"Does Senate Bill No. 80, which appears at page 423 S. A. No. 1933, and which provides that during the months of July and August 1933, Collectors shall collect  $\frac{1}{4}$  of the penalties due, etc, apply to new Section 9969 S. A. No. 1933, or does it apply only to the old Section 9969 (R. S. Mo. 1929) only, in other words is the collectors commission on delinquent taxes paid during the month of August bases on  $\frac{1}{4}$  of 4% or  $\frac{1}{4}$  of 3%.

Does Section 9952 S. A. No. 1933, which provides a limit of 10% on taxes more than a year in delinquency, take effect on July 25th 1933 and apply during the remainder of this year, or does it become operative on January 1, 1934."

In considering your first inquiry, we refer to Section 9969 as contained in the 1929 Revision, which provides for additional compensation to collectors for the collection of back taxes, portions of which read as follows:

"Sec. 9969. FEES AND COMPENSATION.--Fees shall be allowed for services rendered under the provisions of this article as follows: To the collector, \* \* \* four per cent. on all sums collected; \* \* \* ."

The change with which we are here concerned which was made in the foregoing section when re-enacted as a part of Senate Bill 94 was the change of "four per cent" to "two per cent.". Senate Bill 94 contained no emergency clause, and accordingly

was not effective until July 24, 1933.

Without question, Senate Bill 80 is operative as to "penalties, interest and costs" accruing under Senate Bill 94,, as well as under the law prior thereto. Senate Bill 80 was passed by the General Assembly and approved by the Governor subsequent to Senate Bill 94, and by all rules of construction, would take precedence over the latter. This is conclusive in view of the statement of Judge Hays in the case of State ex rel. v. Koehn 61 S. W. (2) 750 l. c. 756, which reads as follows:

"No. 80 is a valid and presently effective and operative temporary law and effectually, during the limited period of its operation, suspends the effectiveness and operation of Nos. 110 and 115, and also suspends, during the same period and by necessary implication, such statutory provisions contained in said chapter on taxation as are in conflict with No. 80, and particularly the provisions relating to the compensation of the respondent for any and all his services rendered and to be rendered during said period incident to back or delinquent taxes or the collection thereof.

Having concluded that both laws are subject to Senate Bill 80, we are left to determine under which Section 9969 the collector is entitled to be compensated.

Respecting the status of the 4% commission after the repeal of the sections providing therefor, we turn to article 3 of chapter 4, here we find a number of sections as to the effect to be given laws after their repeal. We quote portions of Section 661, referring to fines, penalties, and forfeitures;

"Sec. 661. REPEAL OF LAW NOT TO AFFECT PUNISHMENT FOR OFFENSE COMMITTED WHILE IN FORCE.—\* \* \* \*no fine, penalty or forfeiture incurred previous to the time when any statutory provision shall be repealed, shall be affected by such repeal; but the\* \* \* \*recovery of such fines, penalties and forfeitures, shall be had, in all respects, as if the provisions had remained in force."

Therefore, any penalty incurred under the old Section 9969 previous to July 24th, would be unaffected by such repeal. If the additional commission due the collector for the collection of back taxes is a penalty, and was incurred prior to July 24th, it is unaffected by the repeal of Section 9969. Under the unanimous authority in this state, the collector's commission for back tax collections has been determined to be a penalty. We quote from the opinion of Judge Hays in the case of State ex rel. v. Koeln supra, l. c. 753.

"\* \* \* by statutory classification the respondent's 'commission' of 2 per cent. on delinquent taxes collected is 'penalty' as against the relator, required to be added to the tax bill and collected from the party paying such tax 'as a penalty in the same manner as other penalties are collected and enforced.' Thus the penalty exacted of the relator is by the statute (section 8835) required to be accounted for by the respondent along with the interest penalty of 1 per cent. per month imposed by section 9914, supra.\* \* \* . It follows that as used in the chapter on taxation in the Revised Statutes the expression 'commissions,' 'interest,' 'fees,' and 'costs' are included in the generic term 'penalty.'."

If the commission was incurred prior to July 24, 1933, it attaches as of the date it was "incurred" within the meaning of Section 661, and accordingly is not affected by the repeal. This precise question has been decided by our Supreme Court in the case of State ex rel. v. Fendorf, 296 S. W. 787 l. c. 788 et seq. We quote from the opinion as follows:

"there is but one question for decision in this case and that is: At what time does the collector of revenue become entitled to the fee of 4 per centum under the provisions of section 12959."

Section 12959 of the 1919 Revision is Section 9969 of the 1929 Revision. The issue, as above set out, arose when a collector demanded payment of the 4% penalty commission on delinquent taxes paid in February. As the Back Tax book had not been made

up, the taxpayer took the position that the collector was not entitled to the added compensation for the collection of the delinquent tax. We quote further from the above opinion on page 789.

"Beginning with January 1st, the collector has the duty of collecting this penalty, which is in the nature of an additional tax, and of computing, apportioning, and accounting for the same. This section (12906) fixing this penalty of 1 per centum per month is a part of article 8, but it specifically postpones the duty of computing, collecting, and accounting of it until after January 1st, and sections 12928 and 12932 (both in article 9) fix January 1st as the date of delinquency when this penalty accrues, and places the duty on the collector to enforce the lien thereof."

"It seems clear that the collection of the penalty provided for by section 12906, after January 1st, is the enforcement of the lien of the state made the duty of the collector by sections 12928 and 12932, and that this duty begins on January 1st and entails labor on the part of the collector prior to the first Monday in March, which would be a service within the meaning of section 12959."

"The collector was entitled to his fee of 4 per centum in this case, as we construe the statute, which accrued to him on January 1, 1924."

Under the above ruling, there can be no doubt but that the 4% collector's commission attaches as a penalty on the date of the delinquency of the tax, to-wit: January 1st.

As the penalty commission of 4% due the collector was incurred under chapter 59 within the meaning of Section 661 prior to the 24th day of July, 1933, it is the opinion of this office, that in computing the collector's commission due upon collection made during August, Section 9969 as contained in the 1929 Revision should be used, giving due effect to Senate Bill 80.

We shall now consider your second inquiry, to-wit,

"Does Section 9952 S. A. Mo. 1933, which provided a limit of 10% on taxes more than a year in delinquency, take effect on July 25th 1933, and apply during the remainder of this year, or does it become operative on January 1, 1934."

It has been the custom of County Collectors to charge and collect 1% per month on delinquent taxes under the provisions of Section 9914, portions of which read as follows:

"Sec. 9914. PENALTY FOR FAILURE TO PAY TAXES.—If any taxpayer shall fail or neglect to pay such collector his taxes at the time and place required by such notices, then it shall be the duty of the collector, after the first day of January then next ensuing, to collect and account for, as other taxes, an additional tax, as penalty, of one per cent. per month upon all taxes collected by him after the first day of January, as aforesaid; and in computing said additional tax or penalty, a fractional part of a month shall be counted as a whole month."

This 1% per month penalty is due monthly and charged monthly. It is not assessed at so much per annum, but liability attaches monthly for the 1% delinquency penalty that accrues monthly, and no more. On July 24, 1933, the total penalty incurred or accrued was seven months at 1% per month. No liability attached for the payment of any additional sum whatsoever. No obligation (on July 24, 1933) rested upon the taxpayer to pay any additional per cent. No penalty, other than the 1% above referred to, having been incurred, Section 661 hereinbefore referred to is inapplicable. Penalties not incurred by July 24, 1933 can no longer be collected under the prior law except as is consistent with Senate Bill 94. It is evident that Senate Bill 94 modified and changed the interest penalty due on delinquent taxes. Section 9949 as contained in Senate Bill 94, Laws of Missouri 1933, page 425, et seq. reads in part.

"Sec. 9949. SHALL COLLECT BACK TAXES.—The collectors of the respective counties and the collectors of such cities, \* \* \* shall proceed to collect the taxes con-



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tained in such 'back tax book' \* \* \* ,  
and any person interested in or the  
owner of any tract of land \* \* \* may  
redeem such tract of land \* \* \* by  
paying to the proper collector the  
amount of the original taxes, \* \* \*  
together with interest on the same from  
the day upon which said tax first became  
delinquent at the rate specified in  
section 9952."

This requires collectors to proceed to collect the delinquent taxes plus interest penalty "at the rate specified in Section 9952". The pertinent parts of Section 9952 reads as follows:

\* \* \* , if taxes are paid on land or  
lots delinquent for the preceding year  
at any time prior to sale thereof as in  
this act provided, the per centum of pen-  
alty added shall not exceed one per centum  
per month or fractional part thereof or  
ten per centum annually. \* \* \* "

This section definitely limits the amount of penalty for any one year to 10%, and to that extent modified the laws as existed before the effective date of Senate Bill 94.

In view of the foregoing, it is the opinion of this office that the limitation contained in the above sections upon the maximum amount of penalty interest which may be collected for anyone year's delinquency is operative on the effective date of Senate Bill 94, and that the maximum amount of interest that may be charged during 1933 on 1932 delinquent taxes is 10%, the collection of such penalty being subject to Senate Bill 80.

Respectfully submitted

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Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General.