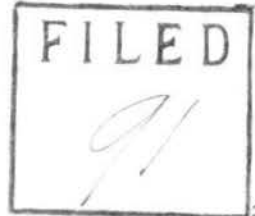


TAXATION AND REVENUE:

County Courts may compromise
"back taxes" under the require-
ments of Section 9950 R. S.
Mo. 1929.

June 17, 1933. 6-20



Mr. J. W. Thurman,
Prosecuting Attorney,
Centerville, Missouri.

Dear Sir:

We are acknowledging receipt of your letter of June 5, 1933, in which you inquire as follows:

"Will you please advise me as to whether or not County Courts are empowered to compromise taxes under Section 9950 R. S. Mo. 1929, which have been reduced to judgment?"

Also if they are empowered to compromise the taxes after suit has been filed but before judgment?

Thanking you in advance for this favor and for your prompt reply, I am."

You inquire whether under Section 9950 R. S. Mo. 1929, the County Court has authority to compromise taxes after suit and before judgment, and after judgment. This Section applies to back taxes and reads as follows:

"Whenever it shall appear to any county court, or if in such cities the register, city clerk or other proper officer, that any tract of land or town lot contained in said "back tax book" is not worth the amount of taxes, interest and cost due thereon, as charged in said "back tax book," or that the same would not sell for the amount of such taxes, interest and cost, it shall be lawful for the said court, or if in such cities the register, city clerk or other proper officer, to compromise said taxes with the owner of said tract or lot, and upon payment to the collector of the amount agreed upon, a certificate of redemption shall be issued under the seal of the court or other proper officer, which shall have the effect to release said lands from the lien of the state and all taxes due thereon, as charged on said "back tax book;" and in case said court or other proper officer shall compromise and accept a less amount than shall appear to be due on any tract of land or town lot, as charged on said "back tax book," it shall be the duty of said court or other proper

officer to order the amount so paid to be distributed to the various funds to which said taxes are due, in proportion as the amount received bears to the whole amount charged against such tract or lot: Provided, the county court or other proper tribunal may order that no suit be brought on any specified tract, if in the judgment of said court or other proper tribunal such tract is not worth or will not bring the taxes, interest and costs; nor shall suit be brought for taxes accrued on property used exclusively for religious worship, or for educational or charitable purposes, for the years previous to 1875, during which it was so used; and provided further, that the county court of any county may direct that any tax or fund, the validity of which is being contested in the courts, may be omitted from any suit or suits brought under this chapter, but the judgment rendered in any action where such tax is omitted shall not bar or affect any subsequent action for such tax so omitted, whenever the county court may direct an action to be brought for such omitted tax."

Under the foregoing Section, the county court has power to compromise the taxes against any tract of land or town lot contained in the "back tax book" when the land is not worth the amount of the taxes, interest and cost due thereon, as charged in said "back tax book," or when the same would not sell for the amount of such taxes, interest and cost. It appears, therefore, that the county court in the two instances specified in the Statute may compromise taxes on lands or lots which appear in the "back tax book." The Section further provides that the county court "may order that no suit be brought on any specified tract, if, in the judgment of said court or the proper tribunal, such tract is not worth or will not bring the taxes, interest and cost."

The foregoing Section, therefore, authorizes, under certain circumstances, the compromising of back taxes, and empowers the court to withhold the bringing of suit under such conditions. The tax is the obligation. The court may compromise the tax before suit. It is not required to bring suit if, in the judgment of the court, the property is not worth or will not bring the taxes, interest and cost. If, after suit is brought, or after judgment is rendered, it should appear to the county court that the property against which suit is brought is not worth or will not bring the taxes, interest or cost, we believe that the court, under the above Section, may compromise the judgment.

The court has the power to compromise before suit and has the authority to refrain from bringing suit under the circumstances. If, after it brings suit and before it obtains

judgment or after it obtains judgment, the court believes that the property is not worth or will not bring the taxes, interest and cost, no reason appears why they may not at that time compromise the taxes. The liability is created by reason of the tax. The judgment simply affords the means by which the liability, which has already been created, may be enforced against the will of the property owner. Since the court has the right to compromise and partly discharge the liability, we do not believe that it loses such right by reason of the fact that it has started suit.

In St. Louis, *Iron Mountain v. Anthony*, 73 Mo. 431, a suit was instituted to enjoin the collection of certain taxes. The plaintiff recovered judgment, which was reversed and remanded by the Supreme Court and later the disputed claim for taxes was compromised. The court said at page 434:

"It would be a most extraordinary doctrine to hold that because a county had become involved in a litigation, it must necessarily go through with it to the bitter end, and has no power to extricate itself by withdrawal or by agreement with its adversary."

The court in the above case announced that doctrine as being a power existing in the county which had the right to sue and to be sued. While the facts in that case did not involve the compromising of back taxes, yet the reasoning therein, as quoted above, should and does apply. Section 9950 gives the county court the right to compromise taxes or to refrain from suit, as specified in the section, and with those specific powers given to the county court, it would be not consistent with the spirit of said section if the county court could not compromise the judgment into which the taxes were merged. To hold that they could compromise said taxes if said information came to them before suit was brought and could not compromise said taxes where the taxes were merged into a judgment and the information came after the obtaining of the judgment would violate the spirit of the Section.

We believe that the rule as announced in *Haggler v. Kelly*, 103 N. W. 629, where the court says at page 631, is the proper one:

"It must be conceded that the board had power to abate or compromise the tax which became merged in this judgment if, in the fair exercise of its discretion, such action was advisable. It is clear that this same power continued after the judgment was obtained. The duty of the county commissioners, with respect to the collection of the taxes merged in this judgment, was the same after as before the

June 17, 1933.

entry of judgment."

In *Cakman v. City of Eveleth*, 303 N. W. 515, it was held that the city involved had a right to compromise taxes after as well as before judgment.

From the foregoing it is, therefore, the opinion of this Department that the county court may compromise back taxes under Section 9950 R. S. No. 1929, either after suit and before judgment or after judgment.

We call your attention to the fact that the Legislature in 1933 amended Section 9950. In as much as said amended Section has not yet become a law, we do not deem it covered by your inquiry.

Very truly yours,



Assistant Attorney General.

APPROVED:

Attorney General.

FWH:S