

TAXATION: -County Court has no right to accept taxes in escrow from taxpayer to avoid penalties, where taxpayer, by suit seeks to avoid the taxes.

January 17, 1934.

FILED 20

Mr. Elliott M. Dampf,  
Prosecuting Attorney,  
Jefferson City, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"A Cole County taxpayer, claiming exemption under a statute of this State, sought to enjoin the county collector from collecting the tax. The Circuit Court sustained the collector, and the case is now pending on appeal, in the Supreme Court.

On December 28 last, the same taxpayer, claiming the same exemption, offered to deposit the amount of the 1933 tax in escrow, the amount to be retained by the county in the event the Supreme Court decides the former case against the taxpayer; otherwise the amount to be returned to the taxpayer. The object of this offer and tender is to avoid the penalty of one per cent per month in the event the contention of the taxpayer should be sustained by the Supreme Court in the case now pending there.

How the County Court the right to accept this fund in escrow under the conditions above stated?

I am at a loss as to how to advise the County Court in this matter, and will be greatly obliged to you for your opinion."

You inquire whether a taxpayer who desires to litigate the validity of some taxes may pay the amount of the taxes in question in escrow and thereby avoid the payment of the penalty of interest. Section 9914, R. S. Mo. 1929, provides as follows:

"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. Collectors shall, on the day of their annual settlement with the county court, file with said court a statement, under oath, of the amount so received, and from whom received, and settle with the court therefor: Provided, however, that said interest shall not be chargeable against persons who are absent from their homes, and engaged in the military service of this state or of the United States, or against any taxpayer who shall pay his taxes to the collector at any time before the first day of January in each year; provided, that the provisions of this section shall apply to the city of St. Louis, so far as the same relates to addition of said interest, which, in said city, shall be collected and accounted for by the collector as other taxes, for which he shall receive no compensation. Whenever any collector of the revenue in the state fails or refuses to collect the penalty provided for in this section on state and county taxes, it shall be the duty of the state auditor and county clerk to charge such collectors with the amount of interest due thereon, as shown by the returns of the county clerk, and such collector shall be liable to the penalties as provided for in section 9928."

Section 9962, R. S. Mo. 1929, provides as follows:

"Any party interested in any tract of land or town lot may pay the taxes, interest and costs thereon, after the commencement of suit, and before sale, by paying to the collector the amount of such taxes and interest, and by payment to the circuit clerk of all costs thereon; and if execution has been issued, the same may be paid to the sheriff, who shall forthwith pay such taxes and interest to the proper collector, and the costs to whom the same are due."

Under Section 9914 above, a penalty of one per cent per month is added to all taxes not paid on the first day of

January, except those persons who are absent from their home or engaged in military service. The section provides that whenever the collector refuses to collect the penalty, the collector himself shall be responsible for the penalties. Section 9962 provides that where a suit has been commenced to foreclose a tax lien on land, that before sale the interested party may stop the suit by paying the amount of the taxes and interest, plus costs. It is apparent from the two above sections that it is the intention of the Legislature that the interest must be paid, unless the taxes are paid on or before the first day of January, unless, as in very recent times, the interest and penalties have been waived by the Legislature. To hold, therefore, that a litigant may contest the right of the State of County to collect a tax and avoid the paying of the penalties, there must be some provision in the statute which authorizes such procedure. We not only do not find any provision which gives such a right to the litigant, but the policies expressed in the above section indicate that the only way the penalties may be escaped is by paying the taxes by the first day of January.

If the taxpayer desires to litigate the State's or County's right to collect taxes, then he must take the burden of having to pay the penalties along with every other taxpayer who neglects or refuses to pay his taxes when due. However, such litigants usually pay taxes under protest and sue to recover them back, but that is a matter about which the individual should consult his private attorney. There is certainly no provision that entitles him to pay the money in escrow, thereby avoiding the penalties.

It is therefore the opinion of this Department that the County Court has no right to accept taxes in escrow in order that persons seeking to invalidate the tax by suit may be relieved from paying the penalties.

Very truly yours,

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Assistant Attorney General

APPROVED:

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Attorney General.