

TAXATION: Delinquent personal taxes collected by suit, Section 9940 R. S. Mo. 1929. No sale under Senate Bill 94 until November 1934.

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January 18, 1934.



Hon. William S. Gabriel
Attorney At Law
Independence, Missouri

Dear Mr. Gabriel:

Your letter of December 21, 1933 to General McKittrick requesting an opinion of this office respecting Senate Bill 94 has been referred to the writer. Your questions are as follows:

"1. Does this law affect personal delinquent taxes, other than some provision for the Collector charging them against certain real estate?

2. Does the law include delinquent real estate taxes for 1932, now a year delinquent, but upon which suits have not as yet been filed?

3. Does the law permit sale of real estate for 1933 delinquent taxes before November 1, 1934?"

We shall answer your inquiries in the order above named.

I.

SENATE BILL 94 DOES NOT EFFECT
RIGHT TO BRING SUIT FOR DELIN-
QUENT PERSONAL TAXES.

One of the methods provided by the statutes for the enforcement of the payment of personal taxes is found in Section 9940 R. S. Mo. 1929. This section reads as follows:

"Personal taxes assessed on and after June 1st 1887, shall constitute a debt for which a personal judgment may be recovered before a justice of the peace or in the circuit courts of this state against the party assessed with said taxes. All actions commenced under this law shall be prosecuted in the name of the state of Missouri, at the relation and to the use of the collector and against the person or persons named in the tax bill, and in one petition and in one count thereof may be included the said taxes for all such years as may be delinquent and unpaid, and said taxes shall be set forth in a tax bill or bills of said personal back taxes duly authenticated by the certificate of the collector and filed with the petition; and said tax bill or tax bills so certified shall be prima facie evidence that the amount claimed in said suit is just and correct, and all notices and process in suits under this law shall be sued and served in the same manner as in civil actions before justices of the peace and in circuit courts, and the general laws of this state as to practice and proceedings and appeals and writs of error in civil cases shall apply, as far as applicable, to the above actions. Said actions shall be prosecuted by attorneys employed as provided in article 9 of this chapter of the general statutes, and the fees and compensation allowed in said article shall apply to the above actions: Provided, however, that in no case shall the state, county, city or collector be liable for any costs nor shall any be taxed against them or any of them. For the purpose of this chapter, personal tax bills shall become delinquent on the first day of January following the day when said bills are placed in the hands of the collector, and suits thereon may be instituted after the expiration of said first day of January, and within five years from said day. Said personal tax shall be presented and allowed against the estates of deceased or insolvent debtors, in the same manner and with like effect, as other indebtedness of said debtors. The remedy hereby provided for the collection of personal tax bills is cumulative, and shall not in any manner impair other methods existing or hereafter provided for the collection of the same: Provided, further, that in counties which now have or which may hereafter have a population of more than 200,000 and less than 500,000 no suit shall be entered on a delinquent personal tax before the first day of

March following the day when said bills are placed in the hands of the collector, and in each case the attorney shall be allowed 10 per centum on the amount of money actually collected and paid into the county treasury: Provided, however, that in each case a fee of 40 cents may be charged; and provided, in counties having a population of over 200,000 and less than 500,000 such fee shall be collected on all delinquent personal taxes, and such fees shall be taxed and collected as other costs and penalties and shall not be deducted from the tax. This section shall not apply to counties having a population of more than eighty thousand and less than one hundred and fifty thousand in which circuit court is held in more than one place."

By an examination of the foregoing section it is apparent that this sets up a complete system and procedure by which payment of personal taxes may be enforced by suit. Senate Bill 94 as found at page 425 Laws of Missouri 1933, does not repeal or amend this section. While it may be said that Section 9962 of said bill permits the collector to charge personal property tax against the real estate it is clear that real estate may not be sold for the payment of delinquent personal tax. We direct your attention to the last clause of this Section which reads as follows:

"Nor shall such personal property tax so charged be entered on the delinquent list of land and lots and included in any delinquent land tax sale."

Accordingly, it is clear that it was not the intention of the Legislature that delinquent personal taxes could be enforced by a sale of real property under the provisions of Senate Bill 94.

It is the opinion of this office that the bringing of a suit for the enforcement of the payment of delinquent personal taxes is at this time an appropriate remedy by means of which the collector can obtain payment of such delinquent taxes.

II.

THE PAYMENT OF DELINQUENT LAND
TAXES MUST BE ENFORCED UNDER THE
PROVISIONS OF SENATE BILL 94.

Prior to the enactment of Senate Bill 94 delinquent land taxes were collected by means of suit. The statutes carefully set up the manner and method of procedure. Section 9952 R. S. Mo. 1929, provided for the enforcement of the payment of such taxes by suit. Section 9953 provided how the action should be prosecuted, the form of the petition and the weight to be given the tax bill. Section 9954 provided for the employment of an abstractor by the county collector. Section 9955 provided for the abstractor's compensation. Section 9956 provided for the form of the judgment if against the defendant. Section 9957 provided what term the suits were to be tried. Section 9958 provided for the execution of a deed by the Sheriff in case of a sale. All of these sections and several others were repealed by Senate Bill 94 and an entirely new method of procedure was established by that law. Senate Bill 94 became effective on the 25th day of July, 1933. After that date these statutes provided for the enforcement of the payment of land taxes by suit were extinguished except for the purposes set forth in Section 9962b of said bill. A part of this section reads 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 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 to be noted that there is no authority for the institution of any new suits, the only provision is that suits already instituted might be prosecuted to judgment and the tax lien foreclosed as provided by those sections.

Accordingly it is the opinion of this office that no suit for delinquent land taxes can be instituted at this time but that 1932 land taxes upon which suit was not entered prior to the 24th of July 1933, must be enforced under the provisions of Senate Bill 94.

III.

SENATE BILL 94 DOES NOT PERMIT SALE OF PROPERTY FOR DELINQUENT TAXES BEFORE THE FIRST MONDAY OF NOVEMBER OF 1934.

It has heretofore been the opinion of this office that by reason of Senate Bill 80 no sale of land for the payment of delinquent taxes could be held in November of 1933, although Senate Bill 94 was in all respects operative at that time. The provision for the sale of lands for delinquent taxes is found in Section 9952a of Senate Bill 94, page 430 Laws of Missouri 1933. Portions of this Section read as follows:

"* * * All lands and lots upon which taxes are delinquent and unpaid shall be subject to sale to discharge the lien of said delinquent unpaid taxes is provided for in this act on the first Monday of November of each year,* * *"

The provisions of the above section definitely set the date of sale as being the first Monday of November of each year. There is no authority for the sale being held any sooner. This law has established a uniform rule for the sale of property for delinquent taxes. It is our belief that the time requirement is mandatory at least insofar as would make a sale held prior to the first Monday of November of each year void. It would be very confusing, unfair and unequitable to subject land to sale at any time during the year that might suit the fancy of the Collector.

Hon. William S. Gabriel.

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From the foregoing it is apparent that our opinion can only be that no sale under Senate Bill 94 can be held prior to the first Monday of November 1934, and that such sales are to be held annually on the first Monday of each succeeding year.

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

Respectfully submitted,

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Assistant Attorney General.

APPROVED:

ROY McKITTRICK
Attorney General.

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