

TAXATION: *Taxpayer, through his mistake, paying taxes on land which he does not own, may not recover back such taxes paid voluntarily.

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March 3, 1934.



Mr. Will H. Hargus,
Prosecuting Attorney,
Harrisonville, Missouri.

Dear Sir:

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

"I would appreciate a ruling on the following facts.

A has paid drainage district tax on three acres of land for a period of fifteen years without protest. He now learns that the land prior to the drainage district tax was condemned for road purposes and he has never been the owner of same. The tax money which has been collected was deposited in a fund to be used entirely and exclusively for principal and interest on the bonds of the district and it has all been expended for such payments.

Will you please advise as to whether or not A can set off this overpayment of taxes against his current taxes and future taxes?"

In 37 Cyc. page 1178, the rule regarding the recovery of taxes paid voluntarily is stated as follows:

"Whatever may be the ground upon which objection to a tax or to the assessment of it may be made, it is a well settled general rule that if the tax is paid by the person assessed voluntarily and without compulsion it cannot be recovered back in an action at law, unless there is some constitutional or statutory provision expressly or impliedly giving him such right although the tax is paid without compulsion.

A payment is voluntary, in the sense

that no action lies to recover back the amount, not only where it is made willingly and without objection; but in all cases where there is no compulsion or duress nor any necessity of making the payment as a means of freeing the person or property from legal restraint or the grasp of legal process. Hence a payment made in pursuance of a bargain or compromise between the taxpayer and the state or municipality is voluntary, and so is a payment of taxes levied under a void statute, since the citizen should know that its invalidity is a complete defense and that he could not be coerced into making payment. So also where there has been no demand for the taxes, no steps taken to enforce them, and no pressure exerted to compel their payment. A payment made merely to save the property from being returned delinquent is voluntary, and so is one made to prevent the sale of land for an illegal tax. On the other hand, money illegally exacted as a condition of redeeming lands from tax-sale is not paid voluntarily, and a payment by a bank of illegal taxes upon the shares of its stock, without consent of the owners, is not voluntary.

Taxes voluntarily paid under a mistake of law cannot be recovered back, whether the mistake be as to the validity of the statute under which they are levied, the legality of the assessment, or the legal liability of the person or property. But it is sometimes held that there may be a recovery if the mistake is one of fact, particularly if made by the revenue officers in the form of a statement to the taxpayer or in taking some official action on the correctness of which the latter has a right to rely, although it is otherwise where the mistake is made by the taxpayer himself, and is the result of his neglect of some legal duty, or where the facts which would have shown the mistake were within his own possession or within his reach."

In *Mathews v. The City of Kansas*, 80 No. 236, our Supreme Court has the following to say about the recovery of taxes paid by the mistake of the taxpayer:

"Under the statute then in force the assess-

ment of taxes on real property was not a personal tax against the owner. The assessment was made on the land itself by its numbers, regardless of who was its owner. It was not the duty of the collector to look up the owner or apply to him for the taxes. The tax by law became due and payable at certain prescribed periods, and it was the duty of the owner to go to the collector, or send some one, and pay this tax assessed on the land as such. So the collector in his testimony but stated a legal truth in saying that he had no concern as to who was the owner of a given lot or tract of land. He was receiving the tax imposed on the given lot as such. It may be conceded that if Harriman had gone to the collector and stated that he had come to pay the tax assessed on plaintiff's land, trusting to the collector to look up the numbers, and this the collector undertook to do, and furnished the wrong numbers, and the agent had thereupon made payment on the belief of the correctness of the lots, this would have been a case of mutual mistake, or at least one in which the plaintiff would have a clear equity of restitution. But the proof here is that without any word or act of the collector inviting thereto, the agent of plaintiff, not depending on the collector for the land assessed against his principal, presented his own prepared list to the collector and told him to make out a receipt for the taxes due upon said list.' In such a case the collector had to look simply to the numbers of the lots thus furnished to ascertain the amount of taxes assessed thereon. This he did as invited by the plaintiff, and received the money without question, as it was due the city. Where is the evidence in all this to give color even to any mistake or misrepresentation as to any material fact on the part of the collector? He was pursuing the statute receiving the tax due on the lots as such, regardless of who the owner was. The money received was justly owing to the city, was a charge on the lots, and, therefore, it cannot be affirmed that it is unconscionable for the city to hold it."

Nothing appears in your letter which indicates that the collector in any way contributed to the mistake. It

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apparently was the mistake of the taxpayer and the payment must be deemed voluntary. Under the foregoing authorities, taxes paid voluntary by a taxpayer may not be recovered. Since the taxpayer could not bring an action to recover this money from the county, he, of course, would have no right to offset the amount paid against taxes which he now owes. In order for him to offset he must have a valid claim, which he does not have on the facts in your letter.

It is therefore the opinion of this Department that where the taxpayer, through his sole mistake, voluntarily pays taxes upon land which he does not own, he may not recover the amount paid, nor may he offset the amount paid against present or future taxes owed by him.

Very truly yours,

FRANK W. HAYES,
Assistant Attorney General.

APPROVED:

Attorney General.

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