

TAX

et of judgment on House Bill 124.

9-12

September 4, 1934.



Honorable George B. Padget,
Prosecuting Attorney,
Daviess County,
Gallatin, Missouri.

My dear Mr. Padget:

I acknowledge receipt of your communication of recent date requesting an opinion on the following matter:

"Referring you to page 166 Laws of Mo. Extra Session 1933, where there was a law enacted regarding penalties on delinquent taxes. I desire your opinion.

We have a judgment of our Circuit Court for delinquent taxes against the Farmers Exchange Bank of Gallatin, Mo. which bank failed several years ago, though not yet finally liquidated nor fully settled up; and to date the judgment is not paid. Now does this law have any effect or in any manner interfere with the collecting of the penalties, which penalties are a part and portion of the sum for which the said judgment was obtained before the passing of this law."

House Bill No. 124, found at page 166, Laws of Missouri, Extra Session, 1933-34, reads as follows:

"That all penalties and interest on personal and real estate taxes delinquent for the year 1932 and prior years shall be computed after December 31, 1933, on the same penalty basis as the taxes delinquent for the year 1933 until paid."

The title to this act as introduced by Representative Clink-scales indicates that this law was for the relief of the taxpayers of the state, and the Attorney General, in a former opinion, has held that full benefit of this remedial law is to be given the taxpayer. Although this law was approved January 18, 1934, it did not become effective until April 12, 1934. Under the provisions of this law taxes for the year 1932 and prior years are to be computed upon the same penalty basis as taxes for the year 1933.

From your letter I take it that the judgment for these taxes was rendered between the 1st of January and the 12th of April, 1934, or prior to the 13th day of April, 1933. If rendered between April 13 and December 31, 1933, such a decision would be a nullity. In State ex rel. McKittrick v. Bair, 63 S.W. (2d) 64, Judge Hays considered the effect of Senate Bill No. 80, a penalty remission law, upon the collection of back taxes by suit and held that no judgment could be rendered during the effective dates of such enactment (l.c. 67):

"All questions necessary to be discussed having been determined, it seems advisable, before closing this opinion, to observe briefly the effect of the change in the law upon the back tax suits that have been filed, or may be filed, subsequently to the date, April 13 of the current year, when this new law became effective. Owing to the alternative opinions granted the taxpayer, with periodically and increasingly reduced advantage to him in the avoidance of penalties, a question of some difficulty is presented pertinent to the effect upon suits pending during any part or all of the entire period covered by the act. Concerning this matter, it is our view (1) that none can proceed to final judgment before the expiration of the act on January 1 next; ****"

Providing the judgment referred to in your communication was rendered as aforesaid, to-wit, between January 1 and April 12, 1934, or prior to April 13, 1933, the interests of all the parties thereto thereby became finally settled. Judgment having been rendered, the Legislature would have been without power to remit any portion of the penalties adjudicated to be due in that proceeding. The judgment having vested the right to the various additional charges, the right of the Legislature to remit them is barred by Section 51, Article IV of the Constitution of the State of Missouri. This section reads as follows:

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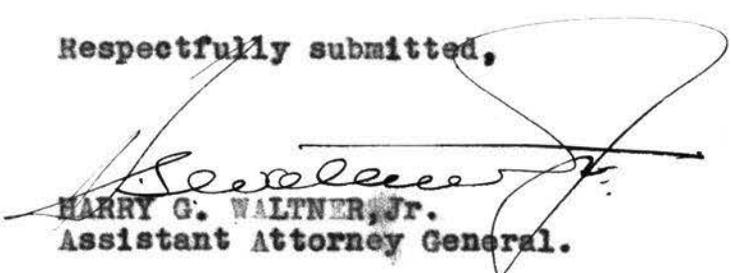
"The General Assembly shall have no power to release or extinguish, or authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual to this State, or to any county or other municipal corporation therein."

However, again returning to House Bill No. 124, there is nothing on the face thereof that indicates that it is to apply to taxes which have been reduced to judgment, and as this act is to be construed so as to remove any constitutional objections thereto, we conclude that there was no intention for this act to apply to valid judgments.

CONCLUSION

It is therefore the opinion of this office that all suits for delinquent taxes which were reduced to judgment prior to the 13th day of April, 1933, or between January 1 and April 12, 1934, have fixed the liability of the taxpayer to pay the penalties, interest and costs legally accruing, and that the payment of such judgments cannot be made under the provisions of House Bill No. 124.

Respectfully submitted,



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Assistant Attorney General.

APPROVED:

ROY MCKITTRICK
Attorney General.

HGW:AH