

COLLECTORS * Compensation of county collectors for collecting income taxes, current and delinquent.

10-21
December 4, 1934.

Hon. Forrest Smith,
State Auditor,
Jefferson City, Mo.



Dear Sir:

A request for an opinion has been received from you under date of November 21, 1934, such request being in the following terms:

"Section 10133, R. S. Missouri 1929, relating to the compensation of Assessors and Collectors in regard to the assessing and collecting of income taxes reads as follows:

'Assessors and Collectors shall be compensated in like manner and in like amounts as for the assessments of other taxes; Provided, that in counties in which the Assessors and Collectors are paid a fixed salary, that in addition to the salary paid, they shall be permitted to charge for work performed in the assessing and collecting of the income tax, as provided by this article, the same fees as are charged by Assessors and Collectors whose salary is not fixed by law, and which fees so charged by said Assessors and Collectors for services rendered in assessing and collecting income tax shall be paid by the State.'

In checking the annual settlements of the various Collectors, we find that some of them have charged a deductible commission of one per cent on current income and two per cent on delinquent income collected, and the question has arisen, should the Collector take as a deductible commission the commissions provided for in Section 9935, R. S. Missouri 1929, in regard to the collection of income taxes or should the Collector be allowed one per cent deductible commission on current taxes and two per cent on delinquent income collected?

We would appreciate an opinion from your office advising us as to the amount of deductible commis-

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sion that should be allowed the Collectors for the collection of income taxes."

I

COMPENSATION OF COLLECTOR FOR INCOME TAXES.

R. S. Missouri, 1929, Section 10133, quoted in your letter, is the only section under the article dealing with income taxes which makes provision for the compensation of collectors for collecting this type of taxes, and the only provision it makes is by way of reference to the statutes governing collectors' compensation for collecting other kinds of taxes. Therefore, the answer to your question will depend on the statutes relating to the compensation of county collectors for collecting property and other taxes.

II

COMPENSATION OF COLLECTOR FOR PROPERTY AND OTHER TAXES.

R. S. Missouri, 1929, Section 9935, as re-enacted in 1933 (Laws of 1933, page 454), relates to the compensation of collectors. Section 9935 is lengthy and it will not be necessary to set it out in full but it may be helpful to note that such section consists of an introductory paragraph and fifteen subdivisions, of which the first fourteen fix the different percentages allowed to collectors in different counties, the fifteenth being like the introduction - a general paragraph applicable to all counties.

The introductory paragraph of Section 9935 is as follows:

"The collector, except in counties where the collector is by law paid a salary in lieu of fees and other compensation, shall receive as full compensation for his services in collecting the revenue, except back taxes, the following commissions and no more:"

Standing alone this paragraph might seem to remove from the application of Section 9935 for all purposes collectors receiving salaries in lieu of fees and other compensation. However, the proviso in Section 10133, above quoted, shows that as far as fees of collectors for income taxes are concerned, collectors on salaries are to receive fees for their income tax collections just as if they were not salaried collectors but collectors working on a fee basis, and, therefore, for the purpose of fixing the compensation to which collectors are entitled for collecting income taxes Section 9935 will govern, whether such collectors are on a salary or a fee basis.

Another phrase in the introductory paragraph of Section 9935 which might cause and has in fact caused some difficulty is the phrase "except back taxes". Fortunately, however, this ambiguity has been removed by the decision in the case of State ex rel Shannon County v. Hawkins, 189 Mo. 615, 70 S. W. 119 (1902). The predecessor of Section 9935 which was in effect at the time the cause of action in that case arose was R. S. Missouri, 1899, Section 9260, at which time the same phrase "except back taxes" was in the introductory paragraph of such section. Likewise at that time there was in effect R. S. Missouri, 1899, Section 9309 (the predecessor of R. S. Missouri, 1929, Section 9969, as re-enacted in 1933 - Laws of 1933, page 429) which fixed the percentage on back taxes to which collectors were entitled as compensation. The question at issue was whether what is now Section 9935 meant by the phrase "except back taxes" to remove from the operation of such Section 9935 all back taxes and to allow the collector for the collection of back taxes only the percentage fixed in what is now Section 9969, or whether Section 9935 allowed the collector a percentage thereunder on all taxes collected by him, whether back or current, and in addition the percentage fixed under Section 9969 on so much of the taxes collected as were back taxes. The language of the court in analyzing this matter is set out below:

"The question is one of construction entirely. Plaintiff construes section 7640, Revised Statutes 1899, or 9260, Revised Statutes 1899, as excluding back taxes altogether from its provisions, whereas defendant gives it the much more natural construction that the commissions therein provided shall be 'full compensation' for his services in collecting the revenues 'except back taxes' for which he is allowed certain other compensation as costs which the delinquent taxpayer must pay to recompense the collector for the various extraordinary steps he is required to take to collect delinquent or back taxes.

Reading the two sections together, as we must to arrive at the intention of the Legislature, it seems to us that section 9260 deals alone with the commissions to be retained by the collector out of revenues collected. Section 9309 deals with the costs allowed him for his extra services in addition to his commissions, and these are to be paid by the delinquent, and the collector is allowed only four per cent. Otherwise we would have the result in Shannon county that the State freely allows the collector five per cent for merely receiving and paying over taxes which the taxpayer tenders, but allowing him nothing by the State or county for collecting delinquent taxes at the end of a lawsuit, and after

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"making out various delinquent lists and performing other duties, in enforcing payment.

Under appellant's construction, collectors whose commissions are fixed at five per cent and over would get less for collecting back taxes, with all the extra labor imposed by the statute, than they would receive for current taxes, a result we can not believe the Legislature ever intended. The general policy of the State, from 1871, at least, to this time, has been to offer collectors extra compensation as an inducement to bring in delinquent taxes.

This is so in any event as to those collectors whose commissions, under section 9260, are less than four per cent, as they get more for back taxes even as costs than they do for current taxes.

Another reason suggested by counsel for defendant is quite persuasive, and it is this: the State and county allow the collector commissions at different rates of per cent in proportion to the amount collected, and this merely for receiving and paying over the taxes, but when we come to these costs and fees, they are at the same rate, whether the amount is one thousand dollars or one million -- which we think demonstrates that this fee is allowed for extra labor not in lieu of that commission which the State has agreed to allow her collectors out of all taxes which they collect, whether current or back taxes.

* * *

We think the circuit court correctly ruled that the commissions allowed by section 9260, Revised Statutes 1899, should be full compensation for collecting all taxes, except back taxes, and as to the latter they should receive the extra fees which their extra labors and duties imposed upon them."

For the purpose of fixing commissions of collectors, "back" taxes and "delinquent" taxes are the same, and the right of the collector to additional percentage under Section 9969 for collecting back taxes begins on the day when such taxes become delinquent.

"it seems clear that the term 'back tax' means the same as 'delinquent tax,' and that the Legislature had no intention to make a distinction between the two terms, and that both terms apply to taxes remaining unpaid on January 1st of the year after which the assessment was made, and at any time thereafter." State ex rel. White v. Fendorf, 317 Mo. 579, 296 S.W. 787, 789 (1927). ✓

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Of course, it must be noted that income taxes become delinquent not on January 1st, but on June 2nd (R. S. Missouri, 1929, Section 10136), but the case just cited would govern the principle to be applied to both.

The principle that a collector is entitled to two commissions on back taxes, i. e. the percentage thereof fixed by Section 9935 and in addition the percentage fixed by Section 9969, which was established in State ex rel. Shannon v. Hawkins, supra, was reasserted in Hethcock v. Crawford County, 200 Mo. 170; 98 S. W. 532 (1906). However, a limitation on this principle was enunciated in the case of State ex rel. Buchanan County v. Fulks, 296 Mo. 614; 247 S. W. 129 (1922) where the court said that under what is now Paragraph XV of Section 9935 no collector to whom any of the first thirteen subdivisions of such section applied could be entitled to over \$9,000 in any one year as the total amount of his compensation, such proviso fixing the \$9,000 maximum being found in the 1929 revision of the statutes in the same form as it had when the cause of action under the case last cited arose. This principle established in the Fulks case was in 1933 expressly put into the statute by an amendment to Paragraph XV of Section 9935 which fixed a graduated scale of total maximum amounts to which various collectors would be entitled instead of the flat \$9,000 maximum, and which also added the following proviso:

"provided, that the limitation on the amount to be retained as herein provided shall apply to fees and commissions on current, back and delinquent taxes, but shall not apply to commissions on the collection of ditch and levee taxes,"

From the foregoing statutes and decisions the following yardstick is disclosed for measuring the compensation to which any given county collector will be entitled for his income tax collections: First, ascertain the total taxes assessed and levied in the county involved, from which can be determined which one of the first fourteen paragraphs of Section 9935 will be applicable to the case, which will show the percentage to which the collector in question is entitled under Section 9935; second, compute such percentage of the total amount collected by such collector under the income tax law whether as current or back taxes; third, ascertain the percentage under Section 9969 which is applicable to the facts involved and compute such percentage of all back income taxes collected. The collector in question will be entitled to the sum of the foregoing computations, provided however, such total is not in excess of the maximum allowed by whichever part of Paragraph XV of Section 9935 is applicable to the facts.

One qualification must be added to the foregoing. Your letter asked for an opinion on the general principles applicable to the collectors throughout this State, and the foregoing has been devoted to the general statutory provisions governing such collectors. However, as you know, there are a number of statutory provisions dealing with collectors which classify them and make different provisions for the

compensation of collectors in counties having certain populations. Thus in counties having populations of between 50,000 and 95,000 inhabitants the foregoing principles would not be applicable because the Legislature has since 1929 passed certain acts fixing the salaries of collectors in such counties and specifically providing that such collectors cannot take any commissions or compensation from any source beyond such salaries. These enactments are as follows: Laws of 1931, page 290, applicable to counties of from 80,000 to 95,000 inhabitants; Laws of 1933, page 375, applicable to counties having from 75,000 to 90,000 population; Laws of 1933, Extra Session, page 104, applicable to counties having from 50,000 to 80,000 population. The language of these enactments is sufficiently explicit to withdraw counties having between 50,000 and 95,000 inhabitants from the principle of Section 10133, and in such counties the collectors cannot receive any fees or compensation beyond the salaries fixed in such acts, for collecting the income taxes.

Of course, there are other statutory provisions fixing salaries for collectors in other counties having certain populations, which appear in the 1929 revision of the statutes, in which the language of the statutes is not to the same effect as the language in the statutes above referred to enacted subsequent to 1929, and to such statutes in the 1929 revision the general principles enunciated in this opinion prior to the preceding paragraph would govern. Among such statutes are the following: R. S. Missouri, 1929, Section 11874, applicable to counties having between 80,000 and 150,000 inhabitants in which Circuit Court is held in two or more places in said county; R. S. Missouri, 1929, Section 11855, applicable to counties containing cities of from 75,000 to 200,000 inhabitants; R. S. Missouri, 1929, Section 10153, applicable to counties containing any cities from 200,000 to 700,000 inhabitants; R. S. Missouri, 1929, Section 11833, applicable to counties containing between 150,000 to 500,000 inhabitants, repealed and re-enacted by Laws of 1931, page 323, applicable to counties containing between 350,000 and 750,000 inhabitants, repealed and re-enacted by Laws of 1933, page 373, applicable to counties containing between 350,000 and 750,000 inhabitants. To all collectors in counties to which the statutes cited in this paragraph apply the general principles set out in this opinion prior to the preceding paragraph hereof would apply, except to the extent that the statutes cited in this paragraph apply to counties containing between 50,000 and 95,000 inhabitants, to which extent the statutes cited in this paragraph have been repealed by the statutes cited in the preceding paragraph.

In conclusion, it is our opinion that except in counties containing between 50,000 and 95,000 inhabitants, each county collector for taxes collected by him under the income tax laws of this State is entitled to the percentage of all money so collected by him (including current and back or delinquent taxes) fixed by whichever one of Paragraphs I to XIV of R. S. Missouri, 1929, Section 9935 (as re-enacted by Laws of 1933, page 454) is applicable to his county, plus the percentage on back taxes applicable to his county under R. S. Missouri, 1929,

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Section 9969 (as re-enacted by Laws of 1933, page 429), the total amount to which he is entitled for any one year, not to exceed, however, the maximum figure fixed by such provision of Paragraph XV of such Section 9935 as is applicable to his county.

Very truly yours,

EDWARD H. MILLER
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General