

TAXATION: Various questions concerning certificate of purchase under Jones-Munger Act.

November 19, 1935. 11-20



Honorable Sam A. Baker
Collector of Revenue
Bollinger County
Marble Hill, Missouri

Dear Mr. Baker:

We acknowledge receipt of your letter of November 8, 1935, wherein you request an opinion of this office on a number of problems. We shall deal with the problems in the order in which they are presented.

I.

"Does the owner have any right to move either fences, timber standing on land, or buildings, from premises, after a certificate of redemption has been issued to another on the premises, or would he have to redeem the land first?"

In reply to the above inquiry we advise that on April 6, 1935, this office issued an opinion to Honorable G. Logan Marr, Prosecuting Attorney Morgan County, wherein the following conclusion was reached:

"It is accordingly the opinion of this Department that the purchaser of a certificate of purchase at a tax sale held under Senate Bill 94, page 425, Laws of Missouri, 1933, receives no title to the land involved until the execution of the deed contemplated by that law, and that under the circumstances described in your request, to-wit, that the timber is being removed by the

owner for the purpose of raising funds to redeem the land from the tax sale, the holder of the certificate of purchase is without remedy at law to prevent the owner from severing and removing the timber from the land involved."

We herewith enclose to you a copy of this opinion for your examination.

Accordingly, it would appear that a certificate holder would have no remedy at law to prevent the owner from removing timber, fences or buildings from the premises between the date of sale and the time in which the purchaser could obtain a deed. In the event the improvements constitute a very substantial part of the value of the premises it is entirely possible that the court of equity might afford the certificate owner some relief. This would depend upon the facts in the exact case involved.

II.

"Who is entitled to collect rent off of premises which are rented by the month, the owner, or the purchaser at the sale? If the latter when does he have the right to begin collection of rent?"

Section 9954a, page 434, Laws of Missouri 1933, provides in part as follows:

"The purchaser of any tract or lot of land at sale for delinquent taxes, homesteads excepted, shall at any time after one year from the date of sale be entitled to the immediate possession of the premises so purchased during the redemption period provided for in this act, unless sooner redeemed: * * * *"

By this provision the purchaser of the certificate is entitled to possession of the premises after one year from the date of the sale, provided it is not the taxpayer's homestead. If a homestead, the purchaser is not entitled to possession until he has obtained title under other provisions of the act. In the event it is not a homestead, as the law allows him possession of the tract after one year, he would logically be entitled to receive the rent therefrom. In respect to this inquiry we direct you to a further provision of this section which reads as follows:

"Provided further, * * *the rights of any occupant of any tract or lot of land not liable to pay taxes thereon nor such occupant's interest in any planted, growing or unharvested crop thereon* * *"

shall be prejudiced.

And also the provisions of Section 9954b, page 435, Laws of Missouri 1933, reading as follows:

"Any purchaser at delinquent tax sale of any tract or lot of land, his heirs or assigns, who takes possession of any tract or lot of land within the redemption period shall be required to pay the taxes subsequently assessed on such tract or lot of land during the period of occupancy and within the redemption period, and upon failure so to do, if he commit waste thereon, such purchaser, his heirs or assigns, shall forfeit all rights acquired by his certificate of purchase, so far as the tract or lot of land taken possession of is concerned."

III.

"Has the holder of a certificate of purchase the right to take out insurance in his favor on the buildings on premises on which his certificate attaches, up to the amount of his interests therein?"

The foregoing problem is one which is not free from doubt and cannot be determined until the courts have actually passed upon it. There is considerable doubt as to the existence of an insurable interest. However, if at the time the insurance is applied for a full revelation of the situation of the parties is made to the insurance company the Courts would undoubtedly hold that the company was estopped to deny an insurable interest. We have not gone into this matter in detail for the reason that it has no bearing upon the duties of your office and we are not authorized under the law to advise you except as to the matters which have a direct bearing upon your own duties.

IV.

"Who is entitled to the rent corn from land occupied by tenant, the owner or the holder of the certificate of purchase? How as to this years' crop now standing in the field? How as to next years' crop?"

This question is in general terms answered in our answer to your question number two. The holder of the certificate is not entitled to possession of the land until one year from the date of sale, therefore, he has no interest whatsoever in the rent accruing to the owner during that first year. Unless the certificate holder elects to take possession of the property under Section 9954a, he has no interest in the crop standing on the field or to be planted, or if it is a cash rental in the cash rental therefrom. His only rights are as set up by Section 9954a, which reads in part as follows:

"* * * any owner or occupant of any tract or lot of land purchased may retain possession of said premises by making a written assignment of, or agreement to pay, rent certain or estimated to accrue during such redemption period or so much thereof as shall be sufficient to discharge the bid of the purchaser with interest thereon as provided in the certificate of purchase* * * * *
Any rent collected by the purchaser, his heirs or assigns, shall operate as a payment upon the amount due the holder of such certificate of purchase, and such amount or amounts, together with the date paid and by whom shall be endorsed as a credit upon said certificate, and which said sums shall be taken into consideration in the redemption of such land, as provided for in this act.* * *

In the event the certificate holder elects to demand possession of a premises and the owner elects to assign to the certificate holder the rent which may become due, such certificate holder must credit the rent received upon the certificate of purchase. It should be remembered that this has no application in the event the premises is a homestead, and in no event applies during the first year after date of sale.

V.

"Who would have the right to rent premises not now occupied but to be rented for next year, the owner or the certificate holder?"

The question is answered by what has been said under questions two and four of this communication. During the first year after the date of sale the certificate holder has no right whatever in the possession or rental of the premises whether occupied or unoccupied. During the second year, in the event the premises is not a homestead, the certificate holder has the right to possession unless the owner enters into the agreement in writing hereinbefore referred to. The right of possession contemplates also the right of renting the premises and receiving the proceeds therefrom, which of course must be credited as hereinbefore stated.

VI.

"Has the county court the right to compromise taxes on land after it has been offered for sale the first time, where there was no sale?"

The power of the County Court in the compromise of taxes is set forth in Section 9950, page 427, Laws of Missouri 1933. This section reads as follows:

"Whenever it shall appear to any county court, or if in such cities the register, city clerk or other proper officer, that any tract of land or town lot contained in said 'back tax book' or recorded list of delinquent land and lots in the collector's office is not worth the amount of taxes, interest and cost due thereon, as charged in said 'back tax book' or recorded list of delinquent land and lots in the collector's office, or that the same would not sell for the amount of such taxes, interest and cost, it shall be lawful for the said court, or if in such cities the register, city clerk or other proper officer, to compromise said taxes with the owner of said tract or lot, and upon payment to the collector

of the amount agreed upon, a certificate of redemption shall be issued under the seal of the court or other proper officer, which shall have the effect to release said lands from the lien of the state and all taxes due thereon, as charged on said 'back tax book' or recorded list of delinquent land and lots in the collector's office; and in case said court or other proper officer shall compromise and accept a less amount than shall appear to be due on any tract of land or town lot, as charged on said 'back tax book' or recorded list of delinquent land and lots in the collector's office, it shall be the duty of said court or other proper officer to order the amount so paid to be distributed to the various funds to which said taxes are due, in proportion as to the amount received bears to the whole amount charged against such tract or lot."

By virtue of the foregoing statute it appears that the exercise by the County Court of their power of compromise of taxes depends upon a showing or at least a belief that the land will not sell for the amount of the taxes, interest and costs. The fact that the land had once been offered and had not brought the amount of taxes, penalties and costs could be considered by the Court in determining whether or not the land would at the next sale bring a sufficient amount to pay the taxes, penalties and costs which would then be due. There is nothing in this section restricting the power of the County Court to cases involving land not yet offered for sale. In the absence of such a limitation, we must construe this section to effect the purpose for which it was enacted, to-wit, the obtaining of the greatest amount of revenue possible at the least possible expense.

It is therefore our opinion that the County Court has the right to compromise taxes on land after the tract has once been offered for sale but no bid sufficient to pay the amount of taxes, penalties and costs received.

VII.

"If the owner of land wants to pay the taxes on land after it has once been offered for sale, does he pay the costs which would have attached in case of sale?"

in part: Section 9952a, page 430, Laws of Missouri 1933, provides

"* * * provided, however, delinquent taxes, with penalty, interest and costs, may be paid to the county collector at any time before the property is sold therefor.* * *"

This provision is specific authority for the County Collector to receipt for taxes, penalties and interest on any tract up until the certificate for the same is actually sold, so that in the event a tract is once offered for sale and not sold, the owner may pay the taxes by paying the amount due at the date of sale, which includes advertising fees and all other costs plus penalty interest of one per cent per month beginning in January of the following year.

VIII.

"We have issued our certificates to bear interest at 10% per year. In the event of redemption, as we have now some applicants to redeem, does the owner only pay 10% for the time only during which the certificate of purchase was outstanding, or would he have to pay the whole 10% for any part of a year?"

We refer you to Section 9953d, page 433, Laws of Missouri 1933, which provides in part as follows:

"* * * Such certificate of purchase shall also recite the name and address of the owner or reputed owner if known, and if unknown then the party or parties to whom each tract or lot of land was assessed, together with the address of such party, if known, and shall also have incorporated therein the name and address of the purchaser. Such certificate of purchase shall also contain the true date of

the sale and the time when the purchaser will be entitled to a deed for said land, if not redeemed as in this act provided, and the rate of interest that such certificate of purchase shall bear, which rate of interest shall not exceed the sum of ten percent per annum. * * * "

Also, Section 9956a, page 437, Laws of Missouri 1933, which provides in part as follows:

" * * "By paying to the county collector, for the use of the purchaser, his heirs or assigns, the full sum of the purchase money named in his certificate of purchase and all the costs of the sale together with interest at the rate specified in such certificate, not to exceed ten percentum annually, with all subsequent taxes which have been paid thereon by the purchaser, his heirs or assigns, with interest at the rate of eight per centum per annum on such taxes subsequently paid, and in addition thereto the person redeeming any land shall pay the costs incident to entry of recital of such redemption. * * * "

By virtue of these sections it is apparent that the tax certificate issued shall bear "interest" which shall "not exceed the sum of ten percent per annum" and that the redeemer may pay the amount of the certificate with the interest it bears which shall be "not to exceed ten percent annually." There is no other provision indicating any intention to assess this penalty of ten per centum for any period of less than a full year. In the absence of any such specific provision the interest should be calculated as would any other obligation bearing "ten percentum per annum". It should be calculated exactly from the date of the sale to the date of redemption at the rate of "ten per cent per annum." Until the certificate is exactly one year old there would be no justification for charging the full ten percent.

IX.

"A question as to the merchants tax; if they don't pay their tax by November 1st, do they then have to pay one per cent per month or do I call on their bond? Am I personally liable for their tax if their bond proved to be insolvent?"

Taxation of merchants is provided for in Article XVII Chapter 59, Revised Statutes of Missouri 1929. Under the provisions of Section 10078 it is required that a bond be given conditioned upon the payment on or before November first, of the year following the amount of tax due. Section 10079 provides a penalty for any collector who shall fail to require such bond to be filed and assesses a fine of not less than one hundred nor more than five hundred dollars, or imprisonment of not less than six months in the county jail for each failure. Section 10080 provides the form of such bond. It is the duty of the County Collector under the provisions of Section 10078 to approve such bond. Section 10081, page 360, Laws of Missouri 1931, provides for the form of return upon which the amount of tax is based, and for the filing of such return. Section 10087 R. S. Missouri 1929, provides as follows:

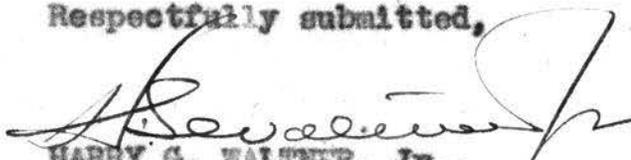
"Every person, corporation or copartnership of persons, to whom a license shall have been granted to vend goods, wares and merchandise, who has filed a correct statement as herein required, and failed to pay the amount of revenue so owing to the collector of the proper county, shall be deemed to have forfeited the bond given by him or them in virtue hereof, and judgment shall be rendered for the plaintiff in damages, for double the amount of such revenue and costs."

No section in this Article provides for the assessment of any penalty other than that set out above. There is no provision attaching the one per cent per month penalty to delinquent merchants tax as penalties will only be assessed when plainly and certainly provided for. We must hold that the one per cent per month penalty interest provided for under the general statutes on delinquent taxes is not applicable to merchants taxes provided for in Article 17. The penalty there set out is a sum equal to the amount of taxes due.

November 19, 1935.

Insofar as your personal liability is concerned it is our view that unless you are negligent in the approval of the bond you could not be liable because of the insolvency of the sureties. There are certain duties placed upon you, as for instance, the duty to promptly institute suit without delay upon the forfeited bond against the principal and the sureties. Section 10090. If you perform your duties conscientiously, honestly and with reasonable care and diligence you will not be personally liable because of your failure to collect merchants taxes.

Respectfully submitted,



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Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General

HW:MM

Enclosure.