

TAXATION: Taxpayer liable for valid court costs when paying taxes in suits regardless of Senate Bill 143.

11-30

November 30, 1935.



Mr. Lee Barham  
Clerk Circuit Court  
Stoddard County  
Bloomfield, Missouri

Dear Sir:

Acknowledgment is herewith made of your letter of November 23 requesting an opinion of this office on the following matter:

"I would appreciate very much getting your opinion on the following matter, at your earliest convenience.

'A tax suit on General Delinquent Taxes, is filed in this office in February, 1933. Service is obtained on the defendant or defendants, forthwith, then the suit lays dormant, until October, 1935, and the defendant or defendants come along and pay the taxes, to the Collector, the costs accrued in this Court, being exempted or not collected, by the County Collector, for the reason that judgment had not been rendered on said tax suit.

Whether or not the Court costs accrued on said tax suit or suits, when judgment has not been rendered against said defendant or defendants, is collectible, I would like to know."

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On the 4th day of April 1935, this office rendered an opinion to the Honorable George Harrington, Collector of Revenue of Jackson County, Missouri, wherein the following conclusion was reached:

"It is therefore the opinion of this office that suits instituted prior to the effective date of Senate Bill 94, Laws of Missouri 1933, page 425, may be prosecuted to final judgment and taxes collected by execution if necessary, and that the necessary court costs incident to such procedure, including statutory attorney fees, may be collected from the taxpayer."

From your communication it is evident that the tax suit filed in February of 1933, was instituted prior to the effective date of Senate Bill 94. Section 9962b, page 445, Laws of Missouri 1933, provides as follows:

\* \* \*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."

By virtue of this provision it is within the discretion of the County Collector as to which method he will pursue in the collection of the taxes. However, it is plainly stated that in the event the suit is dismissed such is subject to the preservation of rights to all valid costs and commissions. Your County Collector is probably proceeding upon the theory that Senate Bill 143, found at page 408, Laws of Missouri 1935, prevents his collection of the court costs which have accrued. This section reads as follows:

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"That all penalties and interest on personal and real estate taxes delinquent for the year 1934 and prior years shall be computed after December 31, 1934, on the same penalty and interest basis as the taxes delinquent for the year 1934 until paid."

In the opinion of April 4, 1935, heretofore referred to, we have held that the foregoing section does not prevent the collection of valid court costs which have accrued prior to the time the taxes are paid, as it is our view that the legislature did not contemplate the remission of these costs. Your particular question deals with the proposition of a person redeeming the property before sale, and in this connection I direct attention to Section 9952a, page 430, Laws of Missouri 1933, which provides in part as follows:

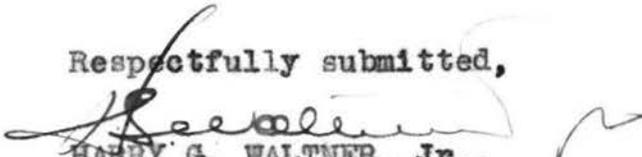
"Delinquent taxes with penalty, interest and costs, may be paid to the County Collector at any time before the property is sold therefor."

It is clear from this provision that all valid penalties, interests and costs should be paid at the time the taxes are paid, and while Senate Bill 143 supra, remits a portion of the penalty interest due it is not to be construed as remitting valid court costs which have accrued on suits brought before the effective date of Senate Bill 94, Laws of Missouri 1933, page 425.

CONCLUSION.

It is therefore the opinion of this office that in the event the taxes are paid to the Collector after a suit has been instituted therefor in February of 1933, that the taxpayer is liable for valid court costs which accrued on such tax suits although judgment has not been rendered thereon, and should be calculated as a part of the costs and collected from the defendant.

Respectfully submitted,

  
HARRY G. WALTNER, Jr.,  
Assistant Attorney General

APPROVED:

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

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