

COUNTY COLLECTORS:

Franchise taxes and railroad taxes not included in amount of taxes assessed and levied for purpose of determining commission of collector. Merchant's ad valorem tax is included.

9-17
August 21, 1935.



Mr. Lewis A. Duval
Prosecuting Attorney
Macon County
Macon, Missouri

Dear Sir:

This will acknowledge receipt of your letter requesting an opinion from this office which reads as follows:

"There appears to be a question as to just what taxes are included in the total amounts of taxes under Section 9935 as amended by laws of 1933. The Section recites as follows:

"The Collector --- Shall receive as full compensation for his services in collecting revenue, except back taxes, the following commissions and no more:

"I - In each County in this State, wherein the whole State, County, Bridge, Road, School and all other local taxes including Merchant and Dranshop licenses -----

"This does not specifically set out Railroad, Corporation Franchise or advalorem tax. The point is with out these last mentioned taxes Macon County is classed in section XI but with them will come in class XII with reference to the maximum salary of Collector."

Section 9935, Laws of Missouri, 1933, page 454, reads in part 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:

"I. In each county in this state wherein the whole state, county, bridge, road, school and all other local taxes, including merchants' and dramshop licenses, assessed and levied for any one year amount to _____ dollars or less, a commission of _____ per cent on the amount collected."

The purpose of the above section is to determine the amount of compensation a county collector is to receive for his services in collecting the current revenue. The commission which the collector receives for collecting said revenue is based on the amount of State, county, bridge, road, school and all other local taxes assessed and levied for any one year.

Under the provisions of Section 4643, R. S. Mo. 1929, the corporation franchise tax is payable to the State treasurer and the county collector has nothing to do with the collection of the tax. Since the collector does not collect said tax and consequently receives no commission therefor, it is apparent that the corporation franchise tax should not be included in the amount of the taxes assessed and levied for the purpose of determining the collector's commission.

The commission of the collector for collecting railroad taxes is governed by Section 10044, R. S. Mo. 1929, which reads as follows:

"The county collector shall be allowed for collecting the railroad taxes, payable out of the same, one per centum on all sums paid without seizure of personal property; and

on all collections made by seizure of personal property, he shall be allowed five per centum on the amount, which shall be taxed or charged as costs and paid by the railroad company; and on all collections made by suit against such company or companies two per centum on the amount, to be paid as costs by the defendant."

Since the collector's commission for collecting railroad taxes is fixed by the above section and not by Section 9935, supra, it is evident that the Legislature did not intend that the amount of taxes assessed and levied against a railroad should be included in the amount of taxes assessed and levied for the purpose of determining the collector's commission under Section 9935.

We assume from your letter that the ad valorem tax about which you inquire is the ad valorem tax which is assessed against merchants under the provisions of Section 10077, R. S. Mo. 1929. Under the provisions of Section 10081, Laws of Mo. 1931, page 360, the county collector is required to collect said merchant's tax and there is no special statute fixing his compensation for such services. Furthermore, said section reads in part as follows:

"**** and the sum of the valuation of the statements as equalized by the county board of equalization shall be included in and made a part of the total valuation of property taxable for all purposes: ****"

We are therefore of the opinion that the ad valorem tax assessed against merchants should be included in the amount of taxes assessed and levied for the purpose of determining the commission of the collector under Section 9935, supra.

CONCLUSION.

It is the opinion of this department that corporation franchise tax and the railroad tax assessed under the provisions of Article XIII, Chapter 59, R. S. Mo. 1929, should

not be included in the amount of taxes assessed and levied for the purpose of determining the collector's commission under the provisions of Section 9935, Laws of Mo. 1933, page 454. //

It is our further opinion that the merchants' ad valorem tax assessed under the provisions of Article XVII, Chapter 59, R. S. Mo. 1929, should be included in the amount of taxes assessed and levied for the purpose of determining the commission of the collector.

Yours very truly,

J. E. TAYLOR
Assistant Attorney-General.

APPROVED:

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

JET/afj