

TAXATION AND REVENUE:

House Bill 124, page 166 Laws of Missouri
Extra Session, 1933-34, applicable to general
personal real estate of cities of fourth
class, but not to special benefits.

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January 9, 1935.



Hon. Elbert L. Ford
Prosecuting Attorney
Dunklin County
Kennett, Missouri

Dear Mr. Ford:

In reply to your request for an opinion of this office
we are rendering the following opinion. Your request reads
in part as follows:

"The Treasurer and Ex-Officio Collector of
this County has asked me to get an opinion
from you in regard to House Bill No. 124,
* * * * *

The question is will the penalties and in-
terest on drainage, levee and other benefit
taxes apply under this bill; also, city
taxes, both real and personal and special
benefit assessment taxes, such as water
works and sewerage taxes."

House Bill 124 of the 87 General Assembly in Extra Session,
is found at page 166 Laws of Missouri 1933-34, Extra Session,
and 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."

We shall deal with your questions separately as follows:

Hon. Elbert L. Ford.

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January 9, 1935.

I.

HOUSE BILL 124 DOES NOT
APPLY TO DRAINAGE AND LEVEE
DISTRICT ASSESSMENTS.

On November 12, 1934, this office issued an opinion to the Honorable Charles Young, Treasurer of Livingston County, Missouri, wherein the following conclusion was stated:

"* * *It is the opinion of this office that House Bill 124 of the Extra Session of the 57th General Assembly as enacted, does not yet apply to or include what is commonly but erroneously termed as 'drainage taxes.'"

We are herewith enclosing to you a copy of this opinion so that you may know the foundation for this conclusion.

II.

HOUSE BILL 124 APPLIES TO CITIES
OF THE FOURTH CLASS OPERATING
UNDER ARTICLE VIII OF CHAPTER
38 R. S. MISSOURI, 1929; RESPECT-
ING GENERAL, PERSONAL AND REAL
ESTATE TAXES.

House Bill 124 as hereinbefore quoted is a general law being couched in broad and general terms. It applies to "all" penalties and interest on "personal and real estate taxes." There is nothing in the act to indicate any intention to limit its operation. The title of the act reads as follows:

"AN ACT for relieving delinquent taxpayers whose taxes, personal or real estate, were delinquent for the year 1932, and prior years, and providing for penalties thereon after December 31, 1933."

The title indicates the relief sought to be affected. There is nothing from the terms of the act from which we are to gather that any class of delinquent taxpayers are to be deprived of the benefit of the provisions of the law. The remarks of Judge Hays in the case of State ex rel. vs. Koeln, 61 S. W.750, 1. c. 751, are apropos:

"Before going into the constitutional questions involved, it may be well to consider the purpose of No. 80 and how and upon what it would operate if valid. Its declared purpose is to be accepted as true, and should be effectuated if that can be done without offending against the organic law. This purpose is immediate relief from delinquent taxes of all persons on whose property taxes remained delinquent on January 1, 1933, as shown on the official tax books or tax bills. Such relief was declared to consist in the remission of 'penalties, interest and costs' and to be conditioned upon the payment of the original (the assessed and levied) amount of said taxes as charged."

House Bill 124 is a remedial law designed to afford relief to delinquent taxpayers, as such it should receive liberal interpretation and should be applied where it will affect the avowed intent and purpose of the law. The terms "personal" and "real estate" taxes have no peculiar application to state and county taxes and are applicable to city taxes as well.

An examination of the Senate and House Journal of the 57th General Assembly in Extra Session does not indicate that this law was to have a peculiar or limited operation. It appears from the words and expressions of the Legislature that this law was intended to be for the relief of all delinquent taxpayers and that the terms "personal" and "real estate" taxes should not be limited in their operation to state and county taxes.

We are not required in this case however to rely solely upon an interpretation of House Bill 124. The enforcement of delinquent taxes in cities of the fourth class is provided for in Section 6995 R. S. Mo. 1929. This section reads in part as follows:

"Upon the first day of January of each year all unpaid city taxes shall become delinquent, and the taxes upon real property are hereby made a lien thereon. The enforcement of all taxes authorized by this article shall be made in the same manner and under the same rules and regulations as are or may be provided by law for the collection and enforcement of the payment of state and county taxes,* * * *"

Under this section delinquent city taxes are to be enforced in the same manner and under the same rules and regulations as may be provided by law for the collection of state and county taxes. This section has heretofore been held to adopt the law respecting state and county taxes, imposing a penalty of 12% per annum or 1% per month upon all taxes paid after date of delinquencies.

In the case of City of Westport ex rel. v. McGee, 128 Mo. 152, the plaintiff obtained interest on a tax bill issued by a city of the fourth class bearing interest at 12% per annum as provided under the general law for delinquent state and county taxes. The defendant apparently took the position that there was no authority for the collection of this penalty on the city tax bill. Upon this contention the Court stated, l. c. 158:

"Appellant's point as to the rate of interest charged is not well taken. Section 7605, Revised Statutes of Missouri, 1889, provides that, as to state and county taxes, any taxpayer who fails to pay his taxes on a fixed date is chargeable by the collector with a 'penalty' (sometimes also called 'interest') of one per cent. per month. The statute calls this an 'additional tax,' or 'penalty'. Section 1604, Revised Statutes of Missouri, 1889, provides that the payment of all taxes in such cities shall be enforced by the collection in the same manner and under the same rules and regulations, as may be provided by law, for collecting and enforcing the payment of state and county taxes. The imposition of a penalty is a regulation for the collection of the tax and ordinarily the most effective."

As in the foregoing case it is held that the general laws applying to penalties on delinquent state and county taxes are applicable to delinquent city taxes in cities of the fourth class, it necessarily follows that House Bill 124 being a part of the general laws respecting delinquent taxes must be considered as governing the collection of delinquent city, personal and real estate taxes.

CONCLUSION.

It is therefore the opinion of this office that House Bill 124 of the 57th General Assembly in Extra Session, applies to and governs the calculation of penalties and interest on delinquent personal and real estate taxes assessed and levied by cities of the fourth class.

January 9, 1935.

III.

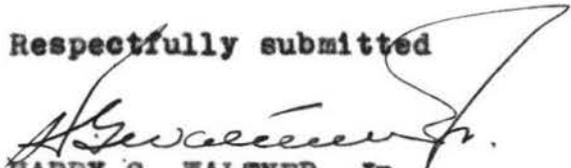
HOUSE BILL 124 DOES NOT APPLY
TO SPECIAL BENEFIT ASSESSMENTS
LEVIED BY CITIES OF THE FOURTH
CLASS.

We believe that the rule laid down in the opinion referred to under point one of this opinion is to govern the conclusion under this heading. The question as to whether or not House Bill 124 is applicable to any given tax is to be determined by an issue of fact, to-wit, whether the tax considered is in truth a general tax or whether it is a special benefit assessment. If it is an assessment in the nature of a drainage or levee district assessment, to-wit, if it is assessed against the specific property benefited by the improvement in direct proportion to the amount of benefits received, it is to be considered as a benefit assessment and not as a tax. On the other hand, if it is a uniform contribution required of all property in proportion to its valuation it is to be considered as within the term "personal and real estate" taxes and hence any tax so classified would be affected by House Bill 124.

CONCLUSION.

It is therefore the opinion of this office that special benefit assessments levied by a city of the fourth class are not to be governed by the provisions of House Bill 124 enacted by the 57th General Assembly in Extra Session.

Respectfully submitted


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APPROVED:

ROY MCKITTRICK
Attorney General

HGW:MM

Enc.