

TAXATION: Senate Bill 143 of the 58th General Assembly does not remit Court costs accrued on tax in suit.

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May 20, 1935.



Hon. George Harrington
Collector of Revenue
Jackson County
Court House
Kansas City, Missouri

Dear Mr. Harrington:

This will acknowledge receipt of your recent request for an opinion of this office on the following matter:

"On April 4, 1935, I received an opinion from your office pertaining to House Bill No. 124, in regard to penalties and interest on delinquent taxes which was submitted by Mr. Harry G. Waltner, Jr., Assistant Attorney General, and approved by you.

On April 30, 1935, I received a communication from Mr. Forrest Smith, State Auditor, in relation to Senate Bill No. 143, regarding penalties and interest for the year 1934 and prior years.

If you will kindly notify me as quickly as possible if your Opinion regarding House Bill No. 124 applies to Senate Bill No. 143, I will appreciate it very much."

In the opinion dated April 4, 1935, this office held that House Bill 124, page 166, Laws of Missouri 1933-34, Extra Session, did not remit the court costs which had accrued on taxes upon which suit had been instituted prior to the effective date of Senate Bill 94, page 425, Laws of Missouri 1933, to-wit, July 24, 1933. The conclusion of this opinion reads as follows:

"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 attorneys fees, may be collected from the taxpayer."

That opinion was written construing House Bill 124, adopted by the 57th General Assembly in Extra Session, and reading as follows:

"That all penalties and interest on personal and real estate taxes delinquent from 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."

On the 29th day of April, 1935, Governor Park approved Senate Bill 143, passed by the 58th General Assembly, which bill reads as follows:

"Section 1. That all penalties and interest on personal and real estate taxes, delinquent for the year 1934 and prior years shall be computed after December 31st, 1934 on the same penalty and interest basis as the taxes delinquent for the year 1934 until paid."

Section 2. As the expeditious collections of such taxes is necessary for the maintenance of the State Institutions and for the support of the Public Schools, an emergency exists within the meaning of Section 57, Article 4 of the Constitution of this State, and this act shall be in force and take effect immediately after its passage by the 58th General Assembly and approval by the Governor."

It is to be noted that this act carried no repealing clause and that therefore House Bill 124 of the 57th General Assembly in Extra Session, is not by express terms repealed. However, it is clear from a reading of these two acts that under one the penalties and interest are to be calculated upon one basis, and under the other act the penalties and interests are to be calculated upon a different basis. Although repeals by implication are not favored, *State ex rel. McDowell vs. Smith*, 67 S. W. (2d) 50, yet, when there is a total repugnancy between the two statutes it will be held that the later statute repealed by implication the earlier statute.

In the case of *State ex rel. Wells vs. Walker*, 34 S. W. (2d) 124, 129, it is stated:

"However, repeals by implication occur when there is a total repugnancy between the later and the earlier statutes. Section 1136 was reenacted in 1927 (Acts of 1927, page 131). In order to leave no doubt of the legislative intention at the same session the other act of 1927 (page 129, 130), more comprehensive and more specific, was passed. These two acts, at the same session, without exception or qualification, showed conclusively what was in the legislative minds. The total repugnancy should be conclusive to repeal the objectionable sentences respecting 12426."

Hon. George Harrington

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May 20, 1935.

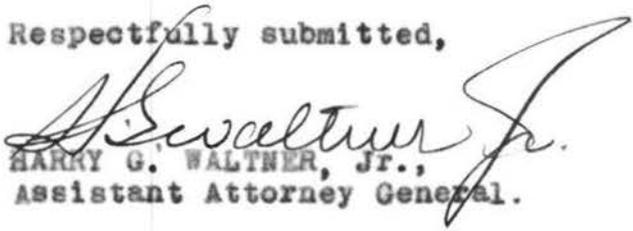
So with the enactment of Senate Bill 143, by the 58th General Assembly it is clear what was in the legislative mind in respect to House Bill 124 of the 57th General Assembly in Extra Session. It must be construed to have been repealed by the later enactment.

It is to be noted that the only changes made in House Bill 124 of the 58th General Assembly, Extra Session, and Senate Bill 143 of the 58th General Assembly is the change in the years 1932 and 1933 to 1934. As this had no effect other than including 1933 taxes within the penalty remission features of the law, there is no basis for changing the rule laid down to you in our opinion of April 4, 1935.

CONCLUSION.

It is therefore the opinion of this office that our opinion to you of April 5, 1935, regarding House Bill 124 of the 57th General Assembly in Extra Session, applies with equal force to Senate Bill 143 passed by the 58th General Assembly, and that therefore, court costs that accrued upon suits filed for delinquent real estate taxes before the operative date of Senate Bill 94, page 425, Laws of Missouri 1933, are not remitted or affected by said Senate Bill 143.

Respectfully submitted,


HARRY G. WALTNER, Jr.,
Assistant Attorney General.

APPROVED:

ROY MCKITTRICK,
Attorney General

HGW:MM