

TAXATION: Tender of tax, and no interest or penalty, etc.,
is all that is required if before June 30, 1933.

June 24, 1933



Mr. W. S. Pelts,
Prosecuting Attorney,
Dade County,
Greenfield, Missouri.

Dear Sir:

This office acknowledges receipt of your inquiry
which we construe to be as follows:

If the record owner who in fact also owns real estate in Missouri is delinquent in the payment of his taxes thereon, and it so appears on the collector's books upon the list of delinquent and back taxes of any year or years prior to January 1, 1933, including delinquent taxes for 1932, and suit has been filed and is pending on same on June 30, 1933, at which latter date the owner tenders to the collector a valid tender of the amount of the actual back taxes, but does not tender any greater amount than that, is that a sufficient tender within the meaning of the act below set out in order to pay the said taxes? Stated in another way, is the actual amount of the taxes all that is required in order to pay said delinquent taxes if the tender is made on June 30, 1933, or is the collector entitled to require that the owner, in addition to the back taxes, shall also pay certain interest or penalties or attorney fees or court costs?

In 1933 the Legislature enacted a law with reference to the collection of taxes which became effective on April 13, 1933. See Laws of Missouri 1933, page 423, the first section of which is as follows:

"In payment of the taxes assessed against any person whose name appears upon the personal delinquent lists of any year or years prior to January 1, 1933, and in payment of the taxes assessed against any real estate which appears upon the lists of delinquent and back taxes of any year or years prior to January 1, 1933, including delinquent taxes

June 24, 1935.

for the year 1932, the collectors of revenue of the counties and cities of this state are hereby empowered and directed to accept the original amount of said taxes as charged against any such person or real estate relieved of the penalties, interest and costs accrued upon the same; Provided, however, that such remission of penalties, interest and costs shall be in full if said taxes are paid not later than June 30, 1933; if paid after June 30, 1933, and not later than August 31st, 1933, then such remission shall be 75 per cent of such penalties, interest and costs; if paid after August 31st, 1933, and not later than October 31, 1933, such remission shall be 50 per cent of such penalties, interest and cost; if paid after Oct. 31, 1933, and not later than Dec. 31, 1933, then such remission shall be 25 per cent of such penalties, interest and costs: Provided, further, that after Dec. 31, 1933, all penalties, interest and costs as aforesaid shall be restored and be in full force and effect for the full period of time since their accrual and as if this act had not been passed."

This statute and the interpretation of it has caused some confusion over the state and one of the controversies arising over it has reached the Supreme Court and been decided by that court and is reported in 63 S. W. (2d) 64, being the case of State ex rel. McKittrick, Attorney General v. Bair, Collector of Revenue. We think the construction there placed on this law with reference to the matters you inquire about answers your question. At page 67, Judge Hays, writing the opinion of the court en banc, says:

"It seems advisable, before closing this opinion, to observe briefly the effect of the change in the law upon the back tax suits that have been filed, or may be filed, subsequently to the date, April 13 of the current year, when this new law became effective. Owing to the alternative options granted the taxpayer, with periodically and increasingly reduced advantage to him in the avoidance of penalties, a question of

June 24, 1935.

some difficulty is presented pertinent to the effect upon suits pending during any part or all of the entire period covered by the act. Concerning this matter, it is our view (1) that none can proceed to final judgment before the expiration of the act on January 1 next; (2) a taxpayer exercising the first option may pay the original tax without more, and all penalties are thereby discharged, and his pending tax suit, if any, will be abated; (3) exercising the second option the taxpayer, if suit be pending against him, must, in addition to the original tax, pay one-fourth of all penalties formerly chargeable, in full discharge of the whole, and the suit will likewise abate, and (4) the same process and result will apply in a general way to the remaining options. We think this mode of procedure seems practical and just, and accomplishes the legislative purpose, as we have determined it."

This case was decided on June 23, 1935.

CONCLUSION

We are of the opinion that the tender to the collector on June 30, 1935, of the amount of the actual back taxes was all that the law required in satisfaction of said back taxes, and that on the payment of the said sum to the collector the suit theretofore brought on the same abated and all penalties thereon were thereby discharged.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

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