TAXATION: (1) Amount of taxes if sold under Jones-Munger Law.
(2) Amount of taxes if judgment taken.
(3) Operation of 1935 act.

7-24

July 19, 1935

Hon. Henry C. Salveter,
Prosecuting Attorney,
Pettis County,
Sedalia, Missouri.

Dear Mr. Salveter:

We acknowledge receipt of your inquiry which is as follows:

> "We understand that Senate Bill Number 143 places the 1933 and prior real estate and personal taxes on the same basis as if they were a 1934 tax, with the exception of fees due the County Clerk and the County Collector, and except the Collector's additional commission on back tax collections.
>
> "What is the status of interest upon taxes where property was advertised for sale last fall under the Jones-Munger law?
>
> "What is the status of interest upon taxes where suit was brought in 1931 but where <u>no</u> judgment was taken?
>
> "What is the status of interest upon taxes where suit was brought and where judgment <u>was</u> taken?
>
> "Would the old rate of 10% per year apply on taxes placed in suit in 1931 or has that been completely abolished and the interest computed on the basis of the 1933 tax? Or does the remission on the interest penalty as provided for in Senate Bill Number 143 apply upon

> ALL tax collections made upon back taxes, whether not in suit; whether placed in suit; and whether placed in suit and judgment taken?
>
> "Do those items placed in suit in 1931 wherein the collector's commission was computed upon a basis of 4% still apply, or should the same be computed upon a basis of 2% the same as at the present time?
>
> "We have numerous instances of properties that were offered for sale last fall under the Jones-Munger bill; some of which were previously sued upon in the Circuit Court in 1931; and some taxpayers expecting to take advantage of the penalty remission bill on back taxes wish and expect to pay such taxes and penalties on the same basis as the 1934 back tax.
>
> "We would appreciate a letter from your office giving us an opinion on these matters so that we may govern ourselves accordingly."

We shall attempt to answer your several questions seriatim:

First, what is the status of interest upon taxes where the property located in Pettis County was advertised and sold last fall under the Jones-Munger law, in view of Senate Bill No. 143, 58th General Assembly?

We assume you mean that the property was sold in the fall of 1934, for instance, on December 10, for taxes that became delinquent, for illustration, on January 1, 1932.

Section 9914, R. S. Missouri 1929, provided a penalty for failure to pay taxes when due. This was repealed by the law found in Session Acts 1933, page 449, and a new section was then enacted which provides that if a taxpayer fails or neglects to pay his taxes at the time and place required by certain notices, then it becomes the collector's duty after January 1, next thereafter, to collect and account for as other taxes an additional tax as penalty in the amount provided for in Section 9952, provided that said interest shall not be charged a person if he

pays his taxes to the collector "before the first day of January in each year." It further provides that if the collector fails to collect the penalty provided for in the section on state and county taxes, it shall be the duty of the State Auditor and of the County Clerk to charge the collector with the amount of interest due thereon as shown by the returns.

Section 9952, R. S. Missouri 1929, prior to its repeal in 1933, said that if on January 1 of any year, lands in the back tax book are not redeemed, the collector must sue to enforce the lien for taxes and may, with the consent of the county court, employ attorneys at certain fees, the amount of which is "not to exceed 10% of the amount of taxes actually collected and paid into the treasury", which fees and costs shall be taxed as costs and so collected.

Section 9949, R. S. Missouri 1929, at that time, provided the method of redeeming and paying back taxes by paying the tax as there charged and "interest on the same from the day upon which said tax first became delinquent at the rate of 10% per annum, and the costs." And further, that if suit has been filed he shall pay in addition "all necessary costs therein, and * * * such attorney fees as the court may allow."

The last above section was repealed, 1933 Session Acts, page 427, and a new section enacted which provides that a party may redeem lands which have a back tax against them by paying the collector the "amount of the original taxes * * * together with interest on the same from the day upon which said tax first became delinquent at the rate specified in Section 9952."

Section 9956-a of the Jones-Munger Law, Session Acts 1933, page 437, provides the method of redeeming lands that are sold under its provisions, the same being as follows:

> "By paying to the county collector, for the use of the purchaser * * * the full sum of the purchase money named in his certificate of purchase and all the costs of the sale together with interest at the rate specified in such certificate, not to exceed ten percentum annually, with all subsequent taxes which have been paid thereon by the purchaser * * * with interest at the rate of eight per centum per annum on such taxes subsequently paid, and in addition

> thereto the person redeeming any land shall pay the costs incident to entry of recital of such redemption."

Section 9962-b of the Jones-Munger Law, 1933 Session Acts, page 444, provides that the taxes on all lands which were levied or assessed prior to the passage of this law and which are unpaid and have not been reduced to judgment prior to the effective date of this act

> " * * * shall be deemed to be delinquent under the provisions of this act, and the same proceedings shall be had to enforce the payment of such unpaid taxes, with interest, penalty and costs, and payment enforced and liens foreclosed under and by virtue of the provisions of this act and the same rights of redemption shall attach. For the purposes of foreclosure under this act, the date of delinquency shall be construed to mean the date when the taxes first became delinquent; provided however, that nothing herein contained shall be construed to affect the right of the county collector to proceed to final judgment and foreclosure for taxes upon which suit had been instituted prior to the effective date of this act, but not in final judgment, nor to prejudice the rights of collection of any costs or commissions attaching in such cases which were valid under the tax law existing at the time of institution of such suits. As to taxes merged in judgment at the effective date of this act the foreclosure of the tax lien and proceedings relative thereto shall be had under the provisions of the law as such law existed prior to the passage of this act, and 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."

House Bill No. 124, Extra Session Acts 1933-34, page 166, approved January 18, 1934, provides that all penalties on delinquent taxes 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."

This act was construed by this office in an opinion dated April 4, 1934, to provide and mean that "personal and real estate taxes for the year 1932 and prior years are to be treated as though they were taxes for the year 1933 insofar as the assessment of interest and penalties are concerned, and that no greater interest or penalty is to be collected upon such taxes than would be collected upon 1933 taxes of the same amount." That construction was followed generally over the state by the officers having to do with the collection of such taxes, etc.

That act was by necessary implication repealed by Senate Bill No. 143 passed by the 58th General Assembly, and a similar law passed then, the difference being not in the principle, but in the application to the 1934 taxes and the collection thereof. The construction, therefore, placed on House Bill No. 124 by the Attorney General and other officials was adopted and applies to the construction of Senate Bill No. 143. 23 C. J., p. 102; 25 R. C. L., p. 903; State v. Adams, 19 S. W. (2d) l. c. 673; State ex rel. v. Baker, 316 Mo. 853, l. c. 863, 293 S. W. 399, l. c. 404.

We therefore hold that under Senate Bill No. 143, taxes for 1933 and prior years which are now delinquent and unpaid are calculated and paid as though they were taxes that were first due in the year 1934. If the property was sold under the Jones-Munger Act, the holder of the collector's tax certificate of purchase is not affected by the passage of the 1935 act, but is entitled to receive the rate of interest specified in his certificate of purchase.

II.

Your second inquiry is: What is the status of interest or what rate of interest should be collected where suit was filed in 1931 for delinquent real estate taxes in Pettis County, and such suit is pending and has not been reduced to judgment? We reply to it as follows:

Section 9962-b, page 444, Laws of Missouri 1933, providing that nothing in the Jones-Munger Law contained shall be construed to affect the rights of the collector to proceed to final judgment and foreclosure for taxes upon which suit had been brought prior to the effective date of the Jones-Munger Law, nor to prejudice the right of collection of any costs and commissions attaching in such cases which were valid under the tax law existing at the time the suit was filed, means that the collector may proceed to final judgment under the old law as though the Jones-Munger Law had never been enacted.

Our opinion is that absent the dismissal of said suit (as the collector has the right to use his discretion under the Jones-Munger Law), the compensation therefor is determined under the old law and the interest is computed at 10% per annum up to the time the same is reduced to judgment. The interest and penalty are both eliminated by the 1935 act as to such as accrued prior to December 31, 1934, on taxes that were delinquent for the year 1934, i. e., on January 1, 1935, and regardless of whether the taxes became delinquent on January 1, 1935, or any year prior thereto. The tax is paid in full by payment of the original tax and such penalties as would and do accrue on taxes that became delinquent on January 1, 1935, if paid after the 1935 act became operative on April 29, 1935.

This 1935 act, being the last act passed and being general in its nature and effective operation, is construed to supersede the Jones-Munger and other prior acts insofar as they are inconsistent.

III.

Your third inquiry is: What interest is chargeable on the delinquent taxes where suit has been filed and judgment obtained?

In the case of State ex rel. McKittrick v. Bair, 63 S. W. (2d) 64, the Supreme Court held that there was no vested

right in the penalties, interest, fees or attorney's fees, and that the legislature had the right to relieve the taxpayer of payment of them prior to the rendition of judgment. From the court's opinion therein it appears that the determinative step is whether judgment has been rendered and that, if so, then the rights have become vested and can not be altered by legislation.

It is therefore our opinion that such fees, interest and penalties as are included in the judgment are not affected by Senate Bill No. 143.

As to interest accruing after judgment is rendered, generally in Missouri it is held that the rate fixed by the contract, provided it is lawful, shall be allowed on the judgment rendered thereon. Gilsonite Roofing & Paving Company v. St. Louis Fair Ass'n., 231 Mo. 589, 132 S. W. 657; Catron v. Lafayette County, 125 Mo. 67, 28 S. W. 331; Corley v. McKeag, 57 Mo. App. 415; Section 2841 R. S. Missouri 1929.

In the case of St. Francis Levee District v. Dorrah, 289 S. W. 925, regarding matters raised by your inquiry, the Supreme Court of Missouri said, l. c. 933:

> "The judgment, as entered below, is made to draw 10 per cent. interest from the date of its rendition, and appellant claims the judgment is erroneous in that respect. It is said that penalties, as a general rule, do not bear interest, and there are some judicial authorities to that effect. However, the statute under review provides for the entry of a judgment for the amount of the delinquent levee taxes and penalty. In other words, the statute contemplates a money judgment. Our statute regulating interest on all money judgments (section 6493, R. S. 1919) provides:
>
> 'Interest shall be allowed on all money due upon any judgment or order of any court, from the day of rendering the same until satisfaction be made by payment, accord or sale of property; all such judgments and orders for money upon contracts bearing more than six per cent. interest shall bear the same interest

> borne by such contracts, and all other judgments and orders for money shall bear six per cent. per annum until satisfaction made, as aforesaid.'
>
> "The aforesaid statute has been held to be applicable to money judgments for recovery of penalties, but it is also held that such judgments should only bear 6 per cent. interest. City of St. Louis to Use of Seibert v. Allen, 53 Mo. 44; City of St. Joseph v. Forsee, 110 Mo. App. 237, 84 S. W. 1138; Paving Co. v. Realty Co., 168 Mo. App. 468, 151 S. W. 479. The judgment is erroneous in that it purports to bear 10 instead of 6 per cent. interest per annum from the date of its rendition."

Senate Bill No. 143 passed by the 58th General Assembly and approved April 29, 1935, with an emergency clause, provides as follows:

> "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."

Section 9969 of the Jones-Munger Law, Laws 1933, page 429, provides that the collector's fee, with certain exceptions, not relevant here, shall be "two per cent on all sums collected."

We are of the opinion that interest is chargeable at the rate of six per cent per annum from the date of rendition of the judgment.

IV.

Your fourth inquiry is: What commission may the collector receive for collecting delinquent 1931 taxes, if collected at this time?

Prior to 1933 the law allowed the collector four per cent of all sums collected. This law was changed to allow two per cent for such collections. Section 9969, Laws of Missouri 1933, page 429.

In the foregoing observations it is pointed out that the right to receive penalties, interest, commissions or fees is not a vested right and that it may be changed, reduced or eliminated at the will of the legislature, and by the 1933 act the legislature has reduced the commission allowable to the collector to two per cent. This reduction applied to all taxes that were delinquent at the time this law became effective, and applies to all taxes that thereafter became delinquent.

We therefore conclude that the collector is not entitled to more than two per cent commission on delinquent taxes which were not reduced to judgment prior to July 24, 1933, the effective date of Senate Bill No. 94 of the 57th General Assembly, page 425, Laws of Missouri 1933.

If judgment had been obtained prior to July 24, 1933, including a collector's commission of four per cent, such judgment was not affected by the 1933 act reducing the collector's commission for the reasons hereinbefore set forth.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

DW:HR