

TAXATION AND REVENUE : Collectors - commission of county and  
COUNTY COLLECTORS: township collectors for collecting drain-  
age taxes and media for payment thereof.

5-22  
May 21, 1935.



Hon. Charles Young,  
Treasurer, Livingston County  
Chillicothe, Missouri

Dear Sir:

A request for an opinion has been received from you under date of January 24, 1935, such request being in the following terms:

"We are anticipating a large collection of drainage taxes in this county the next twelve months and would appreciate your opinion relative to rate of commission allowed collectors for collecting such taxes. Another matter we would like included in your opinion is; In the event we accept drainage bonds and coupons in payment of taxes, are we allowed to add a cash commission of 2% for collection of such taxes paid with bonds and coupons."

I.

FEE OF EX OFFICIO COLLECTORS.

The usual fee of county and township collectors for collecting drainage taxes is fixed by R. S. Missouri, 1929, Section 10880, which provides as follows:

"The county and township collectors for collecting current taxes for drainage and levee districts shall receive one per cent. of all such taxes collected, and for the collection of delinquent taxes for such they shall receive two per cent. of all sums collected."

and by Section 10763, which provides in part as follows:

"The said collector shall retain for his services one per centum of the amount he collects on current taxes and two per centum of the amount he collects on delinquent taxes."

In a county the size of Livingston County which is under township organization and in which the county treasurer is ex officio collector, the township collectors collect and get one per cent commission on current drainage taxes and the county treasurer ex officio collector gets nothing, whereas on delinquent drainage taxes the county treasurer ex officio collector collects the same and gets two per cent commission therefor and the township collectors get nothing. This is covered by R. S. Missouri, 1929, Section 10796, which provides in so far as relevant as follows:

"Drainage taxes\* \* \*shall be collected by such township collectors\* \* \*and each township collector shall\* \* \* receive the same compensation therefor \* \* \*as provided for county collectors under this article,\* \* \*. The delinquent drainage taxes shall be certified by the secretary of the board of supervisors to the county treasurer as ex officio collector of delinquent taxes, who shall collect such delinquent drainage taxes\* \* \*. The said treasurer as ex officio collector of delinquent taxes shall\* \* \*receive the same compensation therefor and pay over the said taxes to the treasurer of the drainage district as is provided for county collectors, under this article, \* \* \* \*"

CONCLUSION.

It is therefore the opinion of this office that the township collectors are entitled to one per cent for the collection of current drainage district taxes and that the county treasurer ex officio collector is entitled to two per cent for the collection of delinquent drainage district taxes.

II.

EX OFFICIO COLLECTOR NOT  
REQUIRED TO ACCEPT BONDS  
OR COUPONS IN PAYMENT OF  
FEES AND COSTS.

Your second inquiry is whether or not the collector is required to accept past due bonds and coupons in payment of his costs and fees which are due him for services rendered in the collection of the delinquent taxes. This issue is presented because of the provisions of Section 9911 R. S. Mo. 1929, which provides in part as follows:

"Except as hereinafter provided, all state, county, township, city, town, village, school district, levee district and drainage district taxes shall be paid in gold or silver coin or legal tender notes of the United States, or in national bank notes. Warrants drawn by the state auditor shall be received in payment of state taxes. Jury certificates of the county shall be received in payment of county taxes. Past due bonds or coupons of any county, city, township, drainage district, levee district or school district shall be received in payment of any tax levied for the payment of bonds or coupons of the same issue, but not in payment of any tax levied for any other purpose.\* \* \* \*"

By reason of the foregoing authorization past due bonds and coupons of any drainage or levee district have been received in payment of taxes levied for the payments of bonds or coupons of the same issue of such district. It is to be noted that the bonds or coupons are to be accepted in payment of "any tax levied". It is not provided that they shall be received in payment of all taxes, debts or dues as did the interest coupons considered in the case of *Ellett vs. Virginia*, 135 U. S. 696. By the terms of this statute the bonds or coupons are to be accepted in payment of "taxes". If the word "taxes" covers the collector's commission then the answer to your question is that you are required to accept the bonds and coupons in full payment of the amount of tax and commission due, if that term is not to be so construed then a contrary result is reached.

Taxes in their ordinary and accepted sense are construed to be the contribution of the citizen to his government. As stated in the case of *Taylor vs. Gehner, et al.* 45 S. W. (2d) 59, 60:

"Taxes are proportional contributions imposed by the State upon individuals for the support of government and for all public needs."

The collector's commission, of course, could not under any circumstances be considered as a uniform contribution for the support of the government. That fee is to go directly to the County Collector for his extra services required in the collection of the delinquent taxes. As was said by the Supreme Court in the case of *State ex rel. Shannon County vs. Hawkins*, 169 Mo. 615, 620, construing the four per cent commission then allowed collectors for the collection of delinquent state and county taxes:

"Reading the two sections together, we must arrive at the intention of the legislature, it seems to us that Section 9260 deals alone with the commissions to be retained by the collectors out of the revenue collected. Section 9309 deals with the costs allowed him for his extra services in addition to his commission, and these are to be paid by the delinquent and the collector is allowed only four per cent."

We must presume that the Legislature used the word "taxes" here in its ordinary and usual sense, for there is nothing to indicate a contrary intention. However, there is additional authority for our holding that this word does not include the collector's commission. That is the case of State ex rel. Crutcher vs. Koeln, 61 S. W. (2d) 750. In this case the Court considered the effect to be given Senate Bill 80, page 423, Laws of Missouri 1933, the purport of which was to remit all taxes, penalties and interests which had accrued on taxes providing that the fact amount of the tax bill was paid before certain dates. The Court in passing upon whether or not the penalties, costs and interests were a part of the tax stated, L. C. 753:

"\* \* \*the compensation (collector's commission) now under consideration is included in the phrase, 'penalties, interests and costs' as is also the compensation of all other persons whose services are as already stated incidental to delinquent taxes and their collection.

\* \* \* \* \*

Also, by statutory classification the respondent's 'commission' of two per cent on delinquent taxes collected is 'penalty' as against the relator, required to be added to the tax bill and collected from the party paying such tax as a 'penalty' in the same manner as other penalties are collected and enforced.

\* \* \* \* \*

It follows as used in the chapter on taxation in the Revised Statutes, the expressions 'commissions,' 'interest,' 'fees,' and 'costs' are included in the generic term 'penalty.' "

And on page 754:

"Penalties are a mere adjunct, of a nature quite different from taxes as already shown, and are provided merely as an aid in enforcing the collection of the latter."

It should be recalled that Section 9911 is a part and parcel of Chapter 59 of the Revised Statutes of Missouri 1929, that chapter which deals with the subject of taxation.

Not only does the collector's commission allowed on delinquent drainage district taxes fail to meet the recognized requirements for a "tax", but it should be noted that the word is used in this section in connection with the word "levied", and the use of the phrase "taxes levied" indicates a definite intention to limit the subject matter of the law. The term "levied" as used in the above phrase has very recently been before the Supreme Court for construction. In the case of State vs. Davis, Collector, 73 S. W. (2d) 406, this case turned entirely upon the construction of this word in Section 9935 R. S. Missouri 1929. In this case the Court stated, l. c. 407:

"The word 'levy' as applied to taxes has a well defined and understood meaning. It means the formal order, by the proper authority, declaring property at its assessed valuation, subject to taxation at a fixed rate. State ex rel. Hamilton v. Hannibal & St. J. Ry. Co., 113 Mo. 297, loc. cit. 307, 21 S. W. 14. The clause under consideration is not ambiguous, and the Legislature must have used the word 'levied' advisedly." \* \* \*

Most certainly the additional collector's commission allowed for collection of delinquent drainage taxes does not depend upon any formal order by the proper authority declaring property at its assessed valuation subject to taxation at a fixed rate. This additional commission is allowed by reason of the delinquent condition of the taxes. It is definitely fixed by the statutes applicable and is due regardless of the acts of any "proper authority". The ruling in the Davis case supra seems equally applicable to the instant situation.

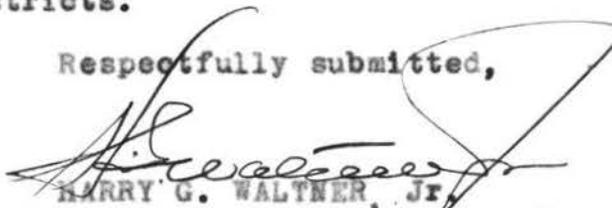
While it may be said that these authorities are not conclusive as to the interpretation of the term as used in Section 9911, the application of such construction to the instant statute is logical in view of the purpose sought to be obtained by that enactment. It is apparent that the Legislature was attempting to enumerate those things which were legal tender in the payment of taxes due the state and the various governmental subdivisions. By this law it was sought to lay down the rule to govern the County Collectors in the collection of the taxes due these various agencies. The legislature undoubtedly realized that the county collector was in a good position to determine for himself in what manner he would accept payment for his own services. However, when the rights of the state were involved and of the various governmental subdivisions, it was logical and necessary that some guide be provided for the collector to follow in receiving payment of taxes assessed and levied.

Requiring of County Collectors to accept past due bonds and coupons in payment of taxes can only be applied to "taxes" in its proper sense. It can only be justified on the theory that by the acceptance of such past due bonds and coupons the districts are in truth and fact paying the bonds and coupons. Contractual relationship exists between the holders of the bonds and coupons and the district. However, that relationship does not attach to the collecting officer. He is under no obligation whatsoever to pay the bonds or coupons, and was never intended to be required to accept them in payment of his compensation for additional services rendered in the collection of delinquent levee or drainage district taxes.

CONCLUSION.

It is therefore the opinion of this office that the county collector is not required to accept past due bonds or coupons of any drainage or levee district in payment of the two per cent commission allowed him under the law for the collection of delinquent taxes of such districts.

Respectfully submitted,

  
HARRY G. WALTNER, JR.  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK,  
Attorney General.

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