

INCOME TAX: Under provisions of Sec. 10136, Laws of Mo. 1935, p. 410, it is duty of county collectors and Collector of City of St. Louis to forward all income taxes delinquent for 30 days or more to State Auditor for collection. This applies to 1935 and prior years.

12-8
December 3, 1936.



Honorable W.F. Baumann,
Collector of Revenue,
City of St. Louis,
St. Louis, Missouri.

Dear Sir:

Your inquiry is as follows:

"Should the City Collector of St. Louis retain under his control and direction and file suit, if he sees fit, on the delinquent state income taxes that became delinquent prior to the enactment of the 1935 Act."

Replying thereto, Section 10124, R.S. Mo. 1929 provides for the division of the State into 115 assessment districts, the boundaries of which shall coincide with the 114 counties and the City of St. Louis, and further provides that "assessors and collectors of the several counties and the City of St. Louis shall be the assessors and collectors of the income tax of the districts in which they live."

Section 10133 of said revision provides as follows:

"Assessors and collectors shall be compensated in like manner and in like amounts as for the assessments of other taxes: Provided, that in counties in which the assessors and collectors are paid a fixed salary, that in addition to the salary paid, they shall be permitted to charge for work performed in the assessing and collecting of the income tax, as provided by this article, the same fees as are charged by assessors

and collectors whose salary is not fixed by law, and which fees so charged by said assessors and collectors for services rendered in assessing and collecting income tax shall be paid by the state."

Section 10136 of the same revision is as follows:

"All taxes assessed on account of incomes shall become delinquent on the second day of June, where assessments are required to be made and certified to by the assessor prior to April 30, and subsequent to March 15, in all other cases taxes assessed on account of income, shall become delinquent thirty days after the tax book is required by law to be delivered to the collector; and all taxpayers who become delinquent, shall have the same penalties assessed against them as in the case of personal property taxes and suit shall be brought and the taxes collected in the same manner as delinquent personal taxes."

It will be noted that this latter section contains the provision that the then delinquent income taxes are authorized to be collected by suit, stating "and suit shall be brought and the taxes collected in the same manner as delinquent personal taxes." In the wisdom of the Legislature in shaping the public policy of this State, Section 10136, supra, was, by the Laws of 1935, page 410, repealed, and of course, the repeal of that section did away with the authority theretofore by that section conferred, i.e., to collect such delinquent state income taxes "in the same manner as delinquent personal taxes."

In lieu of that former section 10136 (R.S. Mo. 1929), the Legislature thereupon enacted Section 10136 (Laws 1935, p.410) which contains a portion of the same provisions as were contained in the original section which was repealed; but this later section, enacted in 1935, provided a different method of collecting the delinquent income tax, as follows:

That after delinquency, the collector shall, within thirty (30) days, certify the names of the delinquent taxpayers to the State Auditor, and the State Auditor shall, within sixty (60) days thereafter, certify the names of the delinquent taxpayers to the Attorney General, and suit shall be instituted in any court of competent jurisdiction by the Attorney General or by the prosecuting attorney of the county at the direction of the Attorney General, in the name of the State, to recover such tax and enforce the lien therefor.

It will be observed that Section 10136, Laws of Mo. 1935, provides: "All taxes assessed on account of incomes shall become delinquent * * * " It does not say all taxes that may be hereafter assessed on account of income shall become delinquent on a certain date, but it is all inclusive and it thereafter provides in a different way the method of collection of those taxes than that theretofore prescribed. In other words, it seems the fair meaning of the legislative intent was that the collection of all delinquent state income taxes should be not left in the hands of the county collectors for more than thirty days after they became delinquent, but that thereupon they should be certified on to the State Auditor and to the Attorney General, as prescribed in said act, to the end that the State should have the highest administrative legal officer exert his direct effort or supervisory control over the collection of these taxes.

The fair meaning and we think reasonable implication is that the 1935 Act repealed the provisions of Section 10124, R.S. Mo. 1929 to the extent that the collector of the county or city should be the collector of those delinquent state income taxes not longer than thirty (30) days after the same became delinquent.

CONCLUSION

It is our opinion that if state income taxes have become delinquent and have remained delinquent and unpaid for thirty (30) days, it is the duty of the county collector, or collector of the City of St. Louis, to thereupon and within thirty (30) days of such delinquency, certify all delinquent taxes to the State Auditor under the provisions of the 1935 Law, and that this course should be followed with respect to, not only the taxes that became delinquent in 1935, but also as to all state income taxes that became delinquent prior thereto.

Respectfully submitted,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR