

COUNTY COLLECTORS: County Collector can not continue to collect income taxes or receive a commission for collecting the same after the income tax has become delinquent and certified to the State Auditor under Section 10136, Laws of Missouri, 1935, page 410.

July 23, 1936.

7-23



Eagleton, Waechter, Yost, Elam & Clark,
Attorneys at Law,
1020 Telephone Building,
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St. Louis, Missouri.

Attention: Mr. Donald Gunn

Gentlemen:

This department is in receipt of your letter of June 22nd regarding William F. Baumann, Collector of the Revenue of the City of St. Louis. Your letter is as follows:

"I am writing you as attorney for William F. Baumann, Collector of the Revenue of the City of St. Louis, and to request an opinion from your office on the following matter:

"In 1935 the State Legislature repealed Section 10136 of the Revised Statutes of Missouri for 1929 and enacted in lieu thereof Section 10136 of the Laws of Missouri for 1935, page 410, which provides in substance that after delinquency of income taxes collectors of the various counties shall certify to the State Auditor the names of the persons or corporations so delinquent. This section further provides that within sixty days thereafter the State Auditor shall certify such names to the Attorney General's office and by this office suits shall be filed for the collection of such delinquent income taxes. At the discretion of the Attorney General, the Prosecuting Attorneys of the various counties may be requested to file such suits. Nowhere in this section does there appear any limitation or reduction of the powers of the collectors of the various counties, as such powers existed at the time of the passage of this act.

"Under Section 10124 of the Revised Statutes of Missouri for 1929, the collectors of the several counties and the City of St. Louis shall be the collectors of the income tax of the districts in which they live. Likewise, under Section 10133 of the Revised Statutes of Missouri for 1929, the compensation of the Collectors is designated as the same for income taxes as for other taxes.

"I take it from reading the two latter sections, neither of which were repealed or amended by Section 10136 of the Laws of 1935, that the Collector of the City of St. Louis is still empowered to collect income taxes even after the names of the delinquent taxpayers have been certified to the State Auditor and by him to the Attorney General. In other words, I understand the law to be that all money collected in the City of St. Louis in the way of income taxes, whether before or after delinquency, should pass through the hands of the Collector of the City of St. Louis.

"Since the passage of Section 10136 referred to above, however, the Collector of the City of St. Louis has received no taxes paid by any persons delinquent to the extent that their names were certified to the State Auditor as provided therein.

"Will you be good enough, therefore, to let me have the benefit of your opinion with reference to this matter, and at your earliest convenience."

The new section referred to in your letter, Section 10136, Laws of Missouri, 1935, page 410, 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; within thirty (30) days after such delinquency the collector shall 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 any individuals, associations, joint stock companies, syndicates, co-partnerships, corporations, receivers, trustees, conservators, or other officers appointed by any state or federal court, from whom such tax is due, 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, and service may be had on both residents and non-residents in the same manner as provided by law in civil actions. The same penalties shall be assessed against such delinquent taxpayers as in the case of personal property taxes, except where different penalties are provided for by an act of the 56th General Assembly, and shown in the Laws of Missouri, 1931, at pages 365 to 375, both inclusive."

The repealed Section 10136, R. S. Mo. 1929, directed the collector to bring actions in the case of delinquent income taxes in the same manner as actions on personal property taxes are maintained. The new section, quoted supra, appears to have changed the mode of procedure in that the names of the delinquent taxpayers are to be certified to the State Auditor, and then in turn certified to the Attorney General. It would appear that it was the intention of the Legislature to permit the collector to attempt to collect all income taxes sixty days after the second day of June.

There are no decisions by our courts regarding this question, nor do we know of any pending at the present time.

We do not think there is any conflict in the present statute and the section regarding the compensation of collectors, that is Section 10133, R. S. Mo. 1929, which is 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."

We think the general rule in regard to decreasing the compensation of the collector is well stated by Judge Hays in the case of *State ex rel. McKittrick v. Bair*, 333 Mo. 1. c. 15:

"The contract entered into between the collector and his attorney, and approved by the county court, imposes no liability upon either the State, county or the collector. It only fixes the status of the attorney as to his right to compensation and the amount thereof when in the tax suit the liability therefor becomes fixed upon the taxpayer's property by the final judgment in the case. (*Butler v. Sullivan County*, 108 Mo. 1. c. 638, 18 S. W. 1142.) And, as stated in *State ex rel. Kemper v. Smith*, 13 Mo. App. 1. c. 423, 'It is clear, then, that unless the proceeding result in collecting a sum of money belonging to the public revenue, neither the collector nor his attorney can claim any costs in the cause.' The same rule necessarily applies to the other interveners, who as public officers have no contractual right as to their terms of office or their compensation or any vested right in either, the same being subject to legislative control. (*State ex rel. Attorney-General v. Davis*, 44 Mo. 129; *Givens v. Daviess County*, 107 Mo. 1. c. 608, 17 S. W. 998; *State ex inf. Crow, Attorney-General, v. Evans*, 166 Mo. 347, 66 S. W. 355; *Gregory v. Kansas City*, 244 Mo. 523, 149 S. W. 466.) The fees of the collector and his attorney and of the interveners are subordinate to the general legislative power to impose, increase,

diminish or remit penalties for tax delinquencies; and no vested right of any of them is impaired by the remission. (Jones v. Williams (Tex. Sup. Ct.), 45 S. W. (2d) 1. c. 139, 140, and cases there cited.)"

The principle that a collector can not be held liable for failure to collect delinquent taxes under certain circumstances is discussed in the case of Carl v. Thiel, 277 S. W. 1. c. 488:

"Disposing of the other contention that the sheriff and his surety would be responsible for all taxes for which he receipted to the county clerk, except that which was delinquent and could not be collected, and for all of which he is required to make settlement at the expiration of his term, it may be said that such requirements were necessarily modified by implication by the provisions of the 1924 act involved in this case. Therefore, at the expiration of defendant's term, he may make his settlement, showing, among other things, the amount of uncollected delinquent taxes, although yet collectable by distraint or levy, and thereby obtain his acquittance the same as he could do before the enactment of the 1924 act, since neither the state nor the county could exact any more from him after he was deprived by the provisions of the 1924 act of the right to enforce collections by levy or distraint."

Applying the above decision to the question at hand, we think that the collector can not be held liable for any uncollected income taxes when the same are certified to the State Auditor as provided in Section 10136, Laws of Missouri, 1935. Therefore, he could not maintain that he is entitled to collect income taxes and claim his fees therefor after the delinquency has been certified to the State Auditor. In other words, it would appear that it was the intention of the Legislature for the collector to make his best efforts to collect sixty days after June 2nd, and if unable to collect the same, he should, as the statute states, certify the same to the State Auditor, who in turn certifies the same to the Attorney General. While it is true the collector still has the delinquent tax-

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payer's name and the original assessment on file, yet we think he has lost jurisdiction of the collection of the tax and is no longer entitled to any compensation, nor to make any further effort in the collection of the tax, and that such was the intention of the Legislature.

Yours very truly,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

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

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