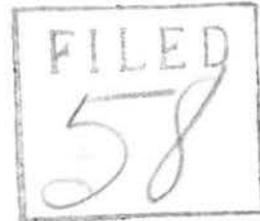


TAXATION:

Property may be summarily seized and sold, by strictly following the statute, in payment of delinquent personal property taxes.

January 27, 1936.

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Mr. E. A. McDonald,  
Prosecuting Attorney,  
Mercer County,  
Princeton, Missouri.

Dear Sir:

This will acknowledge receipt of your inquiry which is as follows:

"Sections 12322, 12333 and 12336 authorizes a township collector to enforce collection of taxes 'by distraint and sale of the goods and chattels' of the person who ought to pay the same; but we understand the township collector has no authority to sue and collect on a personal judgment. Now we don't understand just how the township collector shall proceed by 'distraint and sale' of the personal property of the taxpayer. Shall he alone or with the constable or sheriff drive out to the home of the taxpayer and load up some of the furniture or drive off a cow or other personal property, advertise it and sell it?

"Please advise us just how to proceed."

Section 9915, R. S. Mo. 1929, provides as follows:

"The collector shall diligently endeavor and use all lawful means to collect all taxes which they are required to collect in their respective counties, and to

that end they shall have the power to seize and sell the goods and chattels of the person liable for taxes, in the same manner as goods and chattels are or may be required to be seized and sold under execution issued on judgments at law, and no property whatever shall be exempt from seizure and sale for taxes due on lands or personal property: Provided, that no such seizure or sale for taxes shall be made until after the first day of October of each year, and the collector shall not receive a credit for delinquent taxes until he shall have made affidavit that he has been unable to find any personal property out of which to make the taxes in each case so returned delinquent; but no such seizure and sale of goods shall be made until the collector has made demand for the payment of the tax, either in person or by deputy, to the party liable to pay the same, or by leaving a written or printed notice at his place of abode for that purpose, with some member of the family over fifteen years of age. Such seizure may be made at any time after the first day of October, and before said taxes become delinquent, or after they become delinquent: Provided further, that when any person owing personal tax removes from one county in this state to another, it shall be the duty of the county collector (or township collector as the case may be) of the county from which such person shall move, to send a tax bill to the sheriff of the county into which such person may be found, and on receipt of the same by said sheriff, it shall be his duty to proceed to collect said tax bill in like manner as provided by law for the collection of personal tax, for which he shall be allowed the same compensation as provided by law in the collection of executions. It shall be the duty of the sheriff in such case to make due return

to the collector of the county from whence said tax bill was issued, with the money collected thereon."

Section 1, Laws of Missouri, 1935, page 408, provides:

"That all penalties and interest on personal and real estate taxes, delinquent for the year 1934 and prior years shall be computed after December 31st, 1934 on the same penalty and interest basis as the taxes delinquent for the year 1934 until paid."

In an opinion written by this office dated July 19, 1935, directed to Hon. Henry C. Salveter, Prosecuting Attorney of Pettis County, Sedalia, Missouri, it was held that:

"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."

In the case of State ex rel. v. Snyder, 139 Mo. 549, 1. c. 555, the court said:

"There are therefore two different methods provided by statute for the collection of taxes against real estate, viz., one by suit to enforce the State's lien against the land, the other to distrain personal property for 'all taxes.' In re Life Association of America, 12 Mo. App. 40, it was said: 'The right thus given to distrain personal property for "all taxes," as well before as after they have become delinquent, shows that all taxes are personal charges against the owner of the

property in respect of which they are levied. It is true that a tax is not a mere debt in the sense that a common law action will lie for its recovery. It is an impost levied upon the citizen in invitum; and for coercing its payment the State is limited to the modes pointed out by statute."

The court then approvingly quotes from the case of *City of Carondelet v. Picot*, 38 Mo. 125, as follows:

"The levying of taxes is a matter solely of statutory creation, and no means can be resorted to to coerce their payment, other than those pointed out in the statute."

In the case of *State ex rel. v. Sargent*, 12 Mo. App. 228, l. c. 237, the court said:

"Nor does the law allow the collector to seize personalty for taxes without notice to the party liable, given in person, or by leaving a copy with his family at his residence \* \* \*, which in case of non-residents seems impossible."

In the case of *DeArman v. Williams*, 93 Mo. 158, in speaking of the constitutionality of this law, the court said, l. c. 163:

"The point made, that the tax bill issued under this statute is not 'due process of law,' is not well taken. The mode of levying and collecting taxes is a matter confided to the legislative power, and such laws are 'laws of the land.' \* \* \* This statute operates alike upon all persons who, owing a personal tax, move from one county to another, and is not open to the objection made to it."

While Section 9915, supra, has apparently been held constitutional, and while on the face of it it points out a course of procedure which the collector is authorized to pursue

in selling personal property for the payment of personal taxes, the law requires that it be strictly followed. The assessment must be made within the time set forth by said statute, and demand must be made by the collector for the payment of the tax, either in person or by deputy, to the party liable to pay the same, or by leaving a written or printed notice at his place of abode for that purpose, with some member of the family over fifteen years of age. The courts have held that this method of making demand is not complied with by mailing a letter to the delinquent taxpayer.

There is a scarcity of decisions in Missouri construing this section of the statutes.

In the case of National Lumber & Creosoting Co. v. Burrows, 284 S. W. 153, which was an action in trespass for damages claimed because of summary distraint proceedings by the collector, the plaintiff admitted receiving the notice of levy or seizure, but the court declined to hold that that is sufficient compliance with the statute which requires demand prior to the seizure, and said, l. c. 154:

"But if it be assumed that defendant made demand by mail, and that the written demand was received by plaintiff, is such demand sufficient under the statute?

"The statute provides that no seizure shall be made until the collector has made demand for the payment of the tax, either in person or by deputy or by leaving a written or printed notice at the place of abode of the taxpayer with some member of the family over 15 years of age. May the demand be made by mail? So far as we are able to ascertain section 12907 has not been specifically construed by an appellate court respecting the question before us. In State ex rel. v. Sargent, 12 Mo. App. 228, loc. cit. 237, in the course of the discussion of the question there under consideration the court used this language:

"Nor does the law allow the collector to seize personalty for taxes without notice to the party liable, given in person,

or by leaving a copy with his family at his residence (Rev. Stats. Sec. 6754), which in case of nonresidents seems impossible.'

"In O'Neal v. Woodmen of the World, 130 Ky. 68, 113 S. W. 52, the court construed the phrase 'in person' as used in the constitution of the society. The constitution provided that there would be no liability under a certificate or policy until the insured 'shall have delivered to him "in person" his beneficiary certificate while in good health.' When the insured's certificate came to the clerk, it was discovered that there was an error as to the number of the local camp. Insured was directed to appear for initiation and was regularly initiated and paid all dues and assessments, but the clerk returned the certificate for correction. Before the corrected certificate was returned and delivered to the insured he was killed. The court ruled that the phrase 'in person' as there used did not mean that the certificate must be placed in the manual possession of the insured, and, in considering the proper construction to be given the phrase in person, used this language:

"It has often been held that the placing of insurance policies or deeds in the mail, directed to those for whom intended, was a valid delivery, and therefore the words "in person" were inserted after the word "delivered" to cut off such delivery as that of which we are speaking and confine it to the insured in person.'

"The levying of taxes is a matter solely of statutory creation and no means can be employed to coerce payment other than those pointed out in the statute. City of Carondelet v. Picot, 38 Mo. 125. By section 12932, R. S. 1919, personal taxes constitute a debt, and under that section and the attachment law defendant had ample remedy to enforce collection

of the taxes he sought to collect without resorting to summary seizure; also under section 12932 it is provided that the collector shall in no case be liable for costs.

"The demand required by section 12907 can only be made in the manner prescribed, and the difficulty or impossibility of making the demand cannot justify a reading of something into the statute that would run counter to sound reason. We are constrained to rule that the demand can be made only as the statute prescribes, and, since demand by mail is not prescribed, such a demand is in effect no demand.

"The judgment should be reversed, and the cause remanded, and it is so ordered."

It will be noted that the court in 1926 said:

"So far as we are able to ascertain section 12907 has not been specifically construed by an appellate court respecting the question before us."

Section 12907 of the 1919 Statutes there under consideration was the same as Section 9915, R. S. Mo. 1929.

The court in that case discouraged resort by the collector to the summary method of collecting personal taxes provided by Section 9915, R.S. Mo. 1929, and stated that by Section 12932, R. S. 1919, which is Section 9940 of the 1929 Revision,

"personal taxes constitute a debt, and under that section (12932, R. S. 1919) and the attachment law defendant had ample remedy to enforce collection of the taxes he sought to collect without resorting to summary seizure."

The provisions of Section 9940, R. S. Mo. 1929, are in consonance with the general procedure of a course that should be followed in recovering property from a person, and it appears to us that the course therein set forth is preferable to that set forth in Section 9915.

It will be noted that under the provisions of the law with respect to counties which are under township organization, Section 12312, R. S. Mo. 1929, provides that the county treasurer of such counties shall be ex officio collector and have the same power to collect all delinquent personal property taxes, and prosecute for and make sale thereof, "the same that is now or may hereafter be vested in the county collectors under the general laws of this State."

#### CONCLUSION

It is our opinion that the procedure set forth in Section 9915, R. S. Mo. 1929, is a proper method of summarily selling personal property belonging to a delinquent taxpayer for the payment of delinquent taxes, and that the same has been held constitutional; and further the township collector in counties that have township organization, by literally following the provisions of Sections 12332, 12333 and 12334, R. S. Mo. 1929, is authorized to so summarily seize and sell the delinquent taxpayer's property to satisfy his delinquent taxes. In order to do so, though, such township collector must first "call at least once upon the person taxed at his or her place of residence, if in the township for which such collector has been chosen, and shall demand payment of the taxes charged to him or her, on his or her property," and if not then paid, he is thereupon authorized by Section 12333 to "levy the same by distraint and sale of the goods and chattels", and shall give public notice of the time and place of sale, and of the property to be sold, at least fifteen days previous to the sale, by advertisement to be posted up in at least three public places in the township where such sale is to be made, and the sale shall be by public auction.

It is our further opinion that said sections and the provisions thereof must be literally and strictly followed in order for such sale to stand the test of the courts; that said sections provide a summary method of depriving a person of his property, and the use thereof is discouraged by the court in

Mr. E. A. McDonald

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the recent 1926 decision thereon, and that the more desirable course to follow is defined by Section 9940, R. S. Mo. 1929.

Yours very truly,

DRAKE WATSON,  
Assistant Attorney General.

APPROVED:

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ROY MCKITTRICK,  
Attorney General.

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