

TAXATION: Distribution of proceeds from sale under Senate Bill No. 94, 1933 Session Acts, where the amount received is less than the total amount of tax, penalties, interest and costs.

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Gentlemen:

We wish to acknowledge your request for an opinion which is as follows:

"I am writing you as attorney for Collector William F. Baumann of the City of St. Louis, Missouri. Under date of August 16th, 1936, your office ruled, in an opinion to the Honorable J. B. Greer, County Collector of Pettis County, that the proceeds of a sale under the Jones-Munger Act which were not sufficient to cover the full amount of the taxes should be distributed after deduction of costs and collector's commissions, to the various taxing authorities or agencies in the same proportion as the amount received bears to the total amount of the tax.

"Inas much as under a ruling of your office dated August 31st, 1937, land is sold under the Jones-Munger Law for as many as seven years' taxes at one time, a question arises as to which tax rate should be used in distributing the proceeds of such a sale where the amount received is insufficient to cover not only the seven years but any one of the seven years. As you undoubtedly know, in St. Louis the tax rate varies from year to year, and in order to keep the records of the collector in good order, it is necessary to show a distribution of all funds received in accordance with some specified rate.

"In order that there may be no misunderstanding about the question propounded, may I say that, for example, we are advertising property for taxes from 1930 to 1936, inclusive, each year of which amounts to \$100.00 plus penalties, interest and costs. This is the third call of the property, and if a bid of \$5.00 is received, a sale is made. In distributing the \$5.00, or the balance of it, to the various tax units, is the tax rate for 1930 used, or is the money pro rated over the seven years and distributed in accordance with each one of the tax rates during that period?

"Naturally, you understand that if a bid of \$1.00 is received for seven years' taxes, and it must be broken down into seven parts and then distributed among three agencies, and then in turn broken down under each one of these agencies into three to five parts, a mechanical problem presents itself which is well nigh insoluble.

"I will be more than pleased to have your views in regard to this matter, and inasmuch as it will not be necessary to make a distribution of this money until after the remission bill for 1937 goes out of effect on January 1st, 1938, there is no need for immediate action in this regard."

In your letter you quote a part of the first paragraph of Section II in an opinion rendered by this department to the Honorable J. B. Greer, County Collector Pettis County, Sedalia, Missouri, on October 16, 1936, entitled "Proceeds to be applied to costs and balance distributed to fund.", which said paragraph is as follows:

"It is somewhat difficult to determine the question you had in mind in paragraph two of your letter. However, in general terms, the proceeds of the sale, when such proceeds are insufficient to cover the entire amount of taxes, penalties and costs, should be applied as follows: (a) To the payment of costs, other than collector's commission. (b) Collector's commission, calculated upon the amount received less amount of costs referred to in "a". (c) The balance of the proceeds should be paid to the various taxing authorities or agencies, such as the State, the County, School District, etc., in the same proportion as the amount received bears to the total amount of tax."

When the proceeds of the sale under Senate Bill 94, 1933 Session Acts, are insufficient to cover the entire amount of taxes, penalties, interest and costs for any given number of years for delinquent taxes, such proceeds should be applied as follows:

- (1st) Costs other than collector's commission;
- (2nd) Collector's commission calculated upon the amount received - after deducting costs;
- (3rd) To the various taxing authorities or agencies, such as the State, County, School District, etc., in the same proportion as the amount received bears to the total amount of taxes.

The method of distribution of that part of the proceeds of a sale, under the above subsection III, where the proceeds are insufficient to cover the entire amount of all taxes for all years, interest, penalties and costs, as shown in *Jaicks v. Oppenheimer* by the court en banc in 264 No. 693, in the following language:

"With regard to all ordinary liens arising out of private contract and not imposed solely by governmental power, priority in time creates priority in force and effect, the first in order of time being, prima facie, superior to

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those of a later date. But the priority of the liens of general taxes is in the reverse of this order, the last is first and the first last. (Cooley on Taxation (3 Ed.), 875; Anderson v. Rider, 46 Cal. 134; Sayles v. Davis, 22 Wis. 225; Wass v. Smith, 34 Minn. 304.) This rule is well settled and is not disputed."

This rule was restated and the above decision quoted in Little River v. Sheppard, 320 Mo. l.c. 346.

CONCLUSION.

Therefore, it is the opinion of this department that the general rule is that the priority of general tax liens is in the reverse order of their accrual, that is - the latest tax lien is paramount to a prior tax lien, and that the above rule, applied to your individual case, would require you to distribute the proceeds (after first deducting items in subsections 1 and 2, supra) for taxes, interest, penalties and costs, first, for the year of 1936, and then to each year prior thereto until the proceeds of such sale may be exhausted.

Respectfully submitted,

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APPROVED:

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