

TAXES:

House Bill No. 70, providing for the remission of taxes applies to personal and real taxes not reduced to judgment.

June 22, 1937.

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Mr. Donald Gunn
1020 Telephone Building
1010 Pine Street
St. Louis, Missouri



Dear Sir:

This Department is in receipt of your request for an opinion, which reads as follows:

"I am writing you as attorney for William F. Baumann, Collector of the Revenue of the City of St. Louis.

We note that House Bill #70 has been passed by both branches of the legislature and is now awaiting the Governor's signature, to become a law. The bill contains an emergency clause and will become effective immediately. We, therefore, write you at this time so that we may have an opinion on certain questions in our possession immediately the act becomes effective, at which time we will undoubtedly be swamped by taxpayers seeking to take advantage of the bill.

Will you be good enough to advise us your answers to the following questions:

1. Does the act apply to both personal and real estate taxes for the year 1936?

2. Does the act waive court costs accumulated on suits filed prior to the passage thereof, but not reduced to judgment.
3. Does the act waive court costs accumulated on suits filed prior to the passage thereof, and reduced to judgment prior to said passage?
4. Does the act waive attorney's fees in situations such as are outlined in questions 2 and 3.
5. Does the act waive interest and title fees where these items have been heretofore included in a judgment obtained for delinquent taxes?
6. If question 5 is answered in the negative, does the act waive interest of 6% on judgment, which has accumulated since the rendition thereof, as provided by law on all judgments?"

House Bill No. 70, provides as follows:

"Section 1. In payment of the taxes assessed against any person whose name appears upon the personal delinquent lists of any year or years prior to January 1, 1937, and in payment of the taxes assessed against any real estate which appears upon the lists of delinquent and back taxes of any year or years prior to January 1, 1937, including delinquent taxes for the year 1936, the collectors of revenue of the counties and cities of this state are hereby empowered and directed to accept the original amount of said taxes as charged against any such

person or real estate relieved of the penalties, interest and costs accrued upon the same except the commission of said collectors of revenue, as same are now provided by law for the collection of delinquent taxes; provided, however, that such remission of penalties, interest and costs shall be in full if said taxes are paid not later than June 30, 1937; if paid after June 30, 1937; and not later than August 31, 1937, then such remission shall be 75 per cent of such penalties, interest and costs; if paid after August 31, 1937, and not later than October 31, 1937, such remission shall be 50 percent of such penalties, interest and cost; if paid after October 31, 1937, and not later than December 31, 1937, then such remission shall be 25 percent of such penalties, interest and costs, provided further, that after December 31, 1937, all penalties interest and costs as aforesaid shall be restored and be in full force and effect for the full period of time since their accrual and as if this act had not been passed.

Section 2. The provisions of this act shall cease and be of no effect after January 1, 1938.

Section 3. As the expeditious collection of such taxes and lists is necessary for the maintenance of the State Institutions and for the support of Public Schools, an emergency exists within the meaning of Section 57 of Article 4 of the Constitution of this State and also an emergency exists within the meaning of Section 36 of

Article 4 of the Constitution of this State, and this act shall be in force and take effect from and after its passage and approval by the Governor."

We take your questions up in the order they are enumerated in your request.

I.

In your first question you asked whether the act applies to both real and personal taxes for the year 1936. In Section 1 of the act, it specifically states that it shall apply to taxes assessed "against any person whose name appears upon the personal delinquent list", to taxes assessed "against any real estate", and to include "delinquent taxes for the year 1936."

Therefore, both real and personal taxes for the year 1936 are within the provisions of the act.

II.

The second question as to whether the act waives court costs accrued on suits filed prior to passage of the act but not reduced to judgment.

House Bill No. 70 is identical so far as this question is concerned, with a statute passed by the Legislature in 1933, Laws of 1933, page 423. The Supreme Court en banc in *State ex rel Crutcher v. Koeln*, 332 Missouri 1229, had the 1933 Statute before it for interpretation. It held that:

"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."

In State ex rel McKittrick v. Bair, 333 Missouri 1, 63 S.W. (2d) 64, the court again had before it the remission statute in which case the collateral issues arising as to fees and costs were involved and the court en banc through Judge Hayes succinctly stated the rule as follows:

"So we think that under proper construction of the statute assailed in the instant case * * * that penalties are remitted in the manner provided in No. 80 upon proper tender of payment of the original taxes without penalties, fees or costs before judgment rendered."

The court said further:

"A taxpayer exercises the first option, may pay the original tax without more and all penalties are thereby discharged and his pending tax suit, if any, will be abated."

Under the rulings in the above case, we are of the opinion that the remission statute in question discharges all court costs against the delinquent taxpayer if he pays the original tax, plus the collector's commission, and the same has not been reduced to judgment.

III.

The third question relates to court costs when the suit to collect delinquent taxes has been reduced to judgment prior to the passage of the act. 12 C.J. paragraph 584, page 984, states:

"The Legislature may not under the guise of an act affecting remedies, annul, set aside, or impair final judgments obtained before the passage of the act."

This rule is recognized in the Bair Case, supra, wherein the court specifically points out that the rules laid down applied to suits that have not been reduced to judgment. The court said at l.c. 14:

"From the statute itself, it is obvious that the attorney's right to fees accrues as a whole after collection made or judgment rendered."

And further:

"It only fixes the status of the attorney as 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."

And still further at l.c. 16:

"Under a proper construction of the statute * * * the penalties are remitted * * * before judgment rendered."

It is, therefore, our opinion when the delinquent taxes have been reduced to judgment, that the remission statute does not in any way apply.

IV.

The fourth question deals with attorney fees in suits which have or have not been reduced to judgment. The rules cited in answer to questions 2 and 3 apply to this question.

In the Bair Case, supra, concerning fees due tax attorneys, the court held:

"From the statute itself, it is obvious that the attorney's right to fees does not accrue pari passu with the rendering of each act of service in a given case, but accrues as a whole after collection made, or judgment rendered."

* * * *

"The fees of the *** attorney and of the interveners are subordinate to the general legislative power to impose, increase, diminish, or remit penalties for tax delinquencies;"

As the court held that the attorney fees were costs within the purview of the statute in that case, there can be no doubt but that attorney fees are remitted by the instant law in case the suit has not been reduced to judgment.

V.

Question five concerns the status under House Bill No. 70 of interest and title fees which have been included in a tax judgment.

In view of the rules set forth in answer to question three, it is our opinion that the act does not apply in any way to cases where judgment has been obtained prior to the effective date of House Bill No. 70, and so the interest and title fees must be paid by the taxpayer when he satisfies the judgment.

VI.

Question six deals with whether the act waives the interest of six percent upon the judgment as is provided for by statute in relation to judgments. This is similar to question five and comes within the same reasoning of question three. We hold that the remission statute does not waive the interest on judgments against delinquent taxpayers.

While it is not a part of the request, we quote for your information certain rules laid down in *State ex rel McKittrick v. Bair*, supra, which may assist you in this matter.

"Concerning this matter it is our view, (1) that none can proceed to final judgment before the expiration of the act on January 1 next; (2) a taxpayer exercising the first option, may pay the original tax without more and all penalties are thereby discharged and his pending tax suit, if any, will be abated; (3) exercising the second option, the taxpayer, if suit be pending against him, must in addition to the original tax pay one-fourth of all penalties formerly chargeable, in full discharge of the whole and the suit will likewise abate; and (4) the same process and result will apply in a general way to the remaining options. We think this mode of procedure seems practical and just, and accomplishes the legislative purpose, as we have determined it."

However, it should be noted that under House Bill No. 70, the collector's commission must be paid in every case.

CONCLUSION

It is therefore, the opinion of this Department that House Bill No. 70, which deals with the remission of delinquent taxes applies to both real and personal taxes and to taxes for the year 1936 and prior years.

It is further the opinion of this Department, that court costs and attorney fees in suits for delinquent taxes that have not yet been reduced to judgment are remitted by this statute and the taxpayer, exercising the first option, upon the payment of the original amount of taxes together with the collector's commission, is entitled

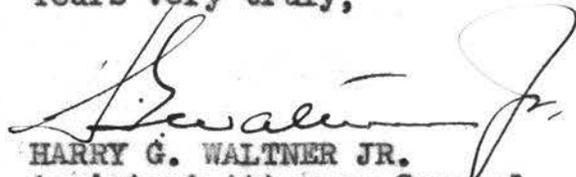
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to a discharge; exercising the second option, he is required to pay the original tax plus the collector's commission and one-fourth of the interest, penalties and costs and so on, depending upon the time at which the taxes are paid. However, all costs and attorney fees which are included in any judgment obtained prior to the effective date of House Bill No. 70, must be paid by the taxpayer redeeming.

Yours very truly,



HARRY G. WALTNER JR.
Assistant Attorney-General

APPROVED:

J. E. TAYLOR (Acting)
Attorney-General.

AO'K MR