

TAXATION: Procedure to be followed in sale of land for delinquent taxes under Jones-Munger Law in view of remission statutes.

September 17, 1937



Honorable Andy W. Wilcox  
State Tax Commission  
Jefferson City, Missouri

Dear Mr. Wilcox:

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

"Pursuant to Section 9960d, page 443, Laws of Missouri 1933, the Tax Commission is herewith requesting your advice and opinion as to the correct, true construction and interpretation of the Jones-Munger Law as amended in 1935 in view of the enactment by the 59th General Assembly of House Bill 70.

The Commission desires your opinion as to the manner in which the list of delinquent lands and lots should be made up and published under the provisions of Section 9953, page 429, Laws of Missouri 1933, in respect to the amount of penalties, interest and costs which shall be stated in the publication as due on tracts or parcels of land. It is to be noted that House Bill 70 provides that from September 1st to October 31st 1937, the taxpayer shall be entitled to a remission of 50% of the penalties, interest and costs, exclusive of the Collector's commission in the event the taxes are paid in full during that period of time. In the event the taxes are paid in full between November 1st and December 31st 1937, the taxpayer is entitled to a remission of 25% of such penalties, interest and costs exclusive of the Collector's commission. Under the Jones-Munger Law, the advertisements will be made during the period prior to November 1st, but the sale will not be held until the period subsequent to November 1st.

The foregoing request is based on the assumption that House Bill 70, supra, does not prevent or postpone proceedings under the Jones-Munger Law for the enforcement of the payment of taxes. We also request your opinion as to whether or not House Bill 70 either prohibits or postpones the proceedings for the enforcement of the payment of delinquent taxes. In this connection, by prohibit we mean that no advertisement and sale can be held until November 1938; and by postpone we mean that no sale can be held until House Bill 70 has expired by its own provisions. In the latter event kindly advise when the first publication is to be made. In this connection, we direct your attention to the fact that if no proceedings are initiated before January 1, 1938, some taxes will thereupon become outlawed by virtue of Section 9961, page 405, Laws of Missouri 1935.

In view of these difficulties, it seems wise that this Commission should with your advice make a ruling in respect to these matters and we shall therefore be pleased to receive your opinion."

The Jones-Munger Law provides for the collection of delinquent taxes on real property and is found in Laws of 1933, pages 425, 449, amended Laws of 1935, pages 403, 404.

Section 9952b, Laws of Missouri 1935, page 403, provides that the county collector shall cause a copy of such lists of delinquent lands to be printed in some newspaper of general circulation and published in the county for three consecutive weeks, one insertion weekly, before such sale, the last insertion to be at least fifteen days prior to the first Monday in November. The list is to state the aggregate of the taxes, penalty, interest and cost due thereon. To such list shall be attached a notice that so much of said lands as may be necessary to discharge the taxes, interest and charges will be sold at public auction at the courthouse on the first Monday in November at ten o'clock, and the sale is to continue from day to day until all are offered.

Section 9952c, Laws of Missouri 1933, page 431, provides that on the first day mentioned in the notice, to-wit, the first Monday in November, the County Collector shall commence the sale of such land and continue the same from day to day.

Section 9953d, Laws of Missouri 1933, page 443, provides that after payment shall be made the county collector shall give the purchaser a certificate in writing to be designated as the certificate of purchase, which will describe the land purchased and the amount paid.

Section 9956a, Laws of Missouri 1933, page 437, provides that the owner of any land sold for taxes may redeem the same at any time during the two years next ensuing by paying to the county collector, to the use of the purchaser, the full sum of the purchase money named in the certificate and all costs of sale, together with interest at the rate specified in such certificate not to exceed ten per cent annually, with all subsequent taxes which have been paid thereon by the purchaser with interest at the rate of eight per cent per annum, and in addition thereto pay the costs incident to the entry of recital of such redemption.

Laws of 1937, page 572, to which we will refer as the remission statute, provides as follows:

"Section 1. Remission of penalties, interest and costs.-- 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 1st, 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 per cent 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 per cent 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."

The act contained an emergency clause and also provided it would be of no affect after January 1, 1938.

The question here presented is what effect the remission statute has on the sale of land for delinquent taxes under the Jones-Munger Law?

In 1933 the Legislature passed a statute practically identical with the present remission statute. The effect of that statute in regard to the other statutory provisions is stated in State ex rel. McKittrick vs. Bair, 63 S. W. (2d) 64:

"The legislature intended that the act (remission statute) should suspend all provisions of law repugnant to the same or out of harmony therewith."

To the same effect is State ex rel. Crutcher vs. Koeln, 61 S. W. (2d) 756, wherein the Court said:

"No. 80 is a valid and presently effective and operative temporary law and effectually, during the limited period of its operation, suspends the effectiveness and operation of Nos. 110 and 115, and also suspends, during the same period and by necessary implication, such statutory provisions contained in said chapter on taxation as are in conflict with No. 80,\* \* \*."

We must, therefore, ascertain whether the procedure as provided for in the Jones-Munger Law is repugnant or out of harmony with the remission statute and if so, what parts are suspended by said act.

It must be kept in mind that the sale is conducted under the Jones-Munger Law and is governed entirely by the procedure laid down therein and the remission statute only suspends the operation of such statute when a repugnancy occurs.

It is a rule of statutory construction that repeal or suspension by implication is not favored and if by a fair interpretation both statutes may stand, then that interpretation should be followed. State ex rel. Karbe vs. Bader, 78 S. W. (2d) 835, 336 Mo. 259.

The Jones-Munger Act provides that notice of the sale shall be printed in some newspaper for three consecutive weeks, the last insertion to be at least fifteen days prior to the first Monday in November, and that on the first Monday in November the sale shall be commenced and continued from day to day.

In Schlafly vs. Baumann (not yet officially reported) the Supreme Court of Missouri held that the requirements of Sections 9952b and 9952c, as to the notice and date of sale, were mandatory upon the collector. It will be seen that the collector must advertise such sale in strict compliance with the Jones-Munger Law and commence such sale on the first Monday in November.

Reviewing the procedure described above, the printing of the notice, the sale on the first Monday of November and the giving of the certificate of purchase are not forbidden by the remission statute in that the same may be done and not be out of harmony with such statute. However, it will be noted that the remission statute gives the owner until December 31st to come in and pay his taxes, plus three-fourths of the penalties, interest and costs. However, under the Jones-Munger Act, the sale is held on the first Monday in November and a certificate of purchase is given which states that the owner may redeem only upon the paying of the purchase price plus taxes paid by purchaser and interest thereon, plus the cost of sale and redemption and interest not to exceed ten per cent.

Therefore, rights acquired by the purchaser under the Jones-Munger law are subject to be defeated upon the happening of certain conditions, that is, if the owner redeems within two years. The remission statute

imposes another condition upon the sale. That is, if the owner comes in by the 31st of December and pays the tax, plus the three-fourths of the penalties, interest and costs, then he is entitled to his land free from any tax lien that attaches thereto. This is an added condition imposed by the remission statute and is in addition to those placed on the sale by the Jones-Munger Act. When the purchaser at the sale, takes the purchase certificate, he takes it subject to the conditions imposed not only by the Jones-Munger Act itself, but by those imposed by the remission statute.

In other words, the rights acquired by the purchaser will be defeated if the owner before January 1, 1938, pays the taxes plus three-fourths of the penalties, interest and costs. Also, the rights of the purchaser of the certificate will be defeated if the owner within two years pays the purchase price plus cost of sale with interest specified in the certificate not to exceed ten per cent annually, and all subsequent taxes paid by purchaser with interest at eight per cent per annum, and costs incident to entry of recital of redemption.

At the sale all parties are presumed to know the conditions of such sale including those imposed by the remission statute. As stated above the sale is subject to be defeated if the owner pays before January first. Therefore, the amount paid by the purchaser should be held in trust for the purchaser or the county until such time. If the owner pays under the remission statute, then the money held in trust should be returned to the purchaser. If the owner does not pay then the money should go into the treasury.

#### CONCLUSION

It is therefore the opinion of this Department:

(1) Notice should be published for three consecutive weeks, one insertion weekly, the last insertion to be at least fifteen days prior to the first Monday in November. The notice shall include the amount of taxes plus the entire amount of the penalties, interest and cost.

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(2) The sale should be held on the first Monday in November and a certificate given to the purchaser. However, to such sale is added the condition that the owner has until January 1, 1938, in which to pay his taxes plus three-fourths of the penalty, interest and costs.

(3) The collector should hold the purchase price in trust. If the owner pays his taxes and three-fourths of the penalties, interest and costs before January 1, 1938, then such purchase price is given back to the purchaser. If the owner does not pay, then such amount is deposited in the treasury.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

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(Acting) Attorney General

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