

TAXATION: Poll taxes for 1937 to be collected;

Section 8181 relating to poll tax in Special Road Districts not repealed.

November 12, 1937



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Dear Sir:

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

"There has been considerable differences in opinion on the effect of the law passed by the recent legislature in regard to the repealing of the poll taxes. I would like to have an opinion on the following two questions:

Should the poll tax for this year be collected although the law took effect in September?

Also, I notice that the legislature did not repeal the section on the poll tax in Special Road Districts. Should the tax be collected in the Special Road Districts, though not collectible in the Townships?

As to the first question, I believe it necessary to determine when the poll tax is due. If due before the law went into effect, then it should be collected this year and if it was not due until after the law passed, it should not be collected."

Laws of 1937, page 440, provides as follows:

"That Sections 7879, 7880, 7881, 7882, 7883, 7884, 7885, 7886, 7887, and 7888

of Article Three (3), Chapter Forty-two (42) of the Revised Statutes of the State of Missouri for the year 1929 and Sections 8157, 8158, 8159, and 8160 of Article Fifteen (15), Chapter Forty-two (42) of the Revised Statutes of the State of Missouri for the year 1929, be and the same are hereby repealed."

This act was passed without an emergency clause and went into effect September 6, 1937. Sections 7879, 7888, inclusive, supra, relate to poll taxes in those counties not under township organizations. Sections 8157, 8160, inclusive, supra, relate to the levying and collection of poll taxes in those counties having township organizations. The tax in both instances is collected the same way because Section 8158 provides that poll taxes in counties under township organizations shall be levied and collected in the same manner as in those counties not under township organizations.

The time and way in which the poll tax was to have been levied and collected is as follows: Section 7880, R.S. Missouri 1929, provides that the poll tax shall be levied by the County Court at the regular February term in each year. Section 7881, R.S. Missouri 1929, provides that if a poll tax is not paid thirty days after June 1, the amount may be recovered by a suit before any Justice of the Peace. Section 7786, R.S. Missouri 1929, provides that it shall be the duty of the road overseer to file suit before some Justice of the Peace not later than September 1 of each year, but that the failure of the road overseer to file suit before that time shall constitute no defense to same. Therefore, the poll taxes for 1937 were levied in February, 1937, and were due at that time. The taxpayer had until thirty days after June 1, that is, until July 1, 1937, in which to pay. After that time, the tax could be collected by a suit. The poll tax laws were repealed September 6, 1937.

61 Corpus Juris 1012 states: "the amendment or repeal of a statute providing for the levy and collection of taxes will not operate retrospectively as to affect unpaid taxes already due or pending proceedings for their collection."

To the same effect is Cooley on Taxation, Volume 2, page 1181:

"where taxes are levied under a law which is repealed by a subsequent act, unless it appears clearly that the legislature intended the repeal to work retrospectively, it will be assumed that it intended the taxes to be collected according to the law in force when they were levied."

The case of U.P. Railroad Company v. Board of Commissioners, 217 Fed. 540, is similar to the instant case. The Circuit Court of Appeals through Judge Amidon said:

"Under these statutes the tax for 1912 was complete on the 1st day of January, 1913. The rights and duties of the public and of taxpayers were fixed at that time. This being the case, the remedies which the law then afforded ought to follow the tax until it is collected. The statute of which Section 5 above quoted is a part was not approved until May 1, 1913, five months after the tax of 1912 became complete. It should be given a prospective operation only. That is the cardinal rule of construction, which cannot be departed from except in obedience to the express language of the statute. Union Pacific R.R. Co. v. Laramie Stock Co., 231 U.S. 190, 34 Sup. Ct. 101, 58 L. Ed. 179. The statute here involved contains no language of that import. As a rule, statutes relating to taxation are thus construed. Lewis' Sutherland on Statutory Construction, para. 645; Matter of Miller, 110 N.Y. 216; American Investment Co. v. Thayer, 7 S.D. 72, 63 N.W. 233; Hall v. Perry, 72 Mich. 202, 40 N.W. 324. Statutes in force at the time a tax is levied continue in force for its collection, notwithstanding their amendment or repeal. City of Indianapolis v. Morris, 25 Ind. App. 409, 58 N.E. 510; Leonard v. Indianapolis, 9 Ind. App. 262, 36 N.E. 725; Oakland v. Whipple, 44 Cal. 303; Smith v. Kelly, 24 Or. 464, 33 Pac. 642;

Smith v. Humphrey, 20 Mich. 398;
Blakemore v. Cooper, 15 N.D. 5,
106 N.W. 566, 4 L.R.A. (N.S.) 1074,
125 Am. St. Rep. 574; Cooley on
Taxation, (3d Ed.) p. 499."

In answer to your second question, Section 8181, R.S. Missouri 1929, relates to special road districts in counties under township organization provides for a poll tax. Such section was not repealed by Laws of 1937, page 440, and therefore is still in effect.

CONCLUSION

It is, therefore, the opinion of this department that Laws of Missouri 1937, page 440, repealing certain sections relating to poll taxes which went into effect September 6, 1937, does not affect those taxes levied for the year 1937 under authority of the statutes that were repealed. It is further the opinion of this department that Section 8181, R.S. Missouri 1929, providing for a poll tax in special road districts under township organization was not repealed by Laws of 1937, page 440, and is still in effect.

Respectfully submitted,

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