

TAXATION:
REDEMPTION - PARTIAL
REDEMPTION PRORATED BY
COUNTY COLLECTOR:

County collector proportions the
part of tax that shall be paid in
redeeming part of land sold for taxes.

September 28, 1938



Honorable Henry Cain
Prosecuting Attorney
Stoddard County
Bloomfield, Missouri

Dear Sir:

This is in reply to yours of recent date request-
ing an official opinion from this department based upon
the following statement:

"At the November offering of Tax
Certificates, by the Collector of Stoddard
County a large tract of land belonging to
a party designated as A, was offered for
sale and the Tax Certificate upon the
entire tract was purchased by a party
designated as B. It so happens that only
a small portion of this land is valuable
and at the present time A is seeking to
redeem the small valuable portion of the
tract and refuses to redeem the entire
tract as a whole and A contends that under
the above numbered sections (9955B and
9955C, Session Acts of 1933) he is en-
titled to redeem any portion of the tract,
regardless of however small and pay only
the amount for redemption in direct pro-
portion as the number of acres sought to
be redeemed bears to the entire tract of
land embraced within the tax certificate.
In other words if there was 120 acres em-
braced within the tax certificate A con-
tends that he would have the right to
redeem any 40 acres and pay just one-third
of the total taxes embraced within the tax
certificate regardless of the fact that
nine-tenths of the value of the 120 acres
accrued or is the result of the value of
the 40 acres. The entire tract embraced

within the certificate is worth more than the amount of the tax certificate but the tract of land which A refuses to redeem is worth far less than the proportionate amount or share of the tax certificate. In other words the holder of the tax certificate will lose money if A is permitted to redeem the portion he seeks to redeem and not be compelled to redeem the entire tract.

"Since the beginning of the controversy A has, by deed, conveyed to C the desirable portion of the tract and C now contends that he is entitled to redeem this desirable fractional portion of the tax certificate. The conveyance from A to C was made under an attorneys advice and for the specific purpose of being placed in a better position to compel the partial redemption. C is the son of A. Please advise me what, in your opinion is the right of A and C in the matter, assuming in the first place that A had not conveyed and in the second place what is the right of C after the conveyance, as of course C would have no right before the conveyance to him."

The right of redemption of delinquent lands sold for taxes is purely statutory. In State ex rel. Stogsdell v. Evans, 53 Mo. App. 1. c. 667, the court said:

"The right of redemption from such a sale is purely statutory, and in absence of a statute must rest upon a valid agreement."

Under the Jones-Munger Act, the provisions for the redemption of delinquent lands sold for taxes are set out in Sections 9955a, 9955b, 9955c, and 9955d, Laws of Missouri, 1933, page 436, as follows:

"Sec. 9955a. Any person claiming an undivided part of any land sold for taxes may redeem the same on paying such proportion of the purchase-money, interest, penalty and subsequent taxes as he shall claim of the land sold."

"Sec. 9955b. Any person claiming an undivided share in any land out of which an undivided part shall have been sold for taxes, may redeem his undivided share by paying such portion of the purchase-money, interest, penalty and subsequent taxes as he claims of the land sold."

"Sec. 9955c. Any person claiming a specific part of any lands sold for taxes may redeem his specific part by paying such proportion of the purchase-money, interest, penalty and subsequent taxes as his quantity of ground shall bear to the whole quantity sold."

"Sec. 9955d. Any person claiming a specific part of any lands out of which an undivided part shall have been sold for taxes charged on the whole tract or lot, may redeem his specific part by paying such proportion of purchase-money, interest, penalty and subsequent taxes as his quantity of ground shall bear to the whole quantity taxed."

Where a partial redemption of such lands is desired, then the provisions of Section 9956, Laws of Missouri, 1933, page 437, apply. This section is as follows:

"In every case where a partial redemption is asked for, pursuant to the preceding four sections, the county collector, upon the application of the redemptioner, after notice to the holder of the certificate, shall determine the proportion to be paid by the party applying to redeem, and his decision shall be final thereon. For his services in stating the proportion, the redemptioner shall pay him fifty cents; and in every case of a partial redemption,

pursuant to either of the said sections, the quantity sold shall be reduced in proportion to the amount paid on such partial redemption, and the county collector shall convey accordingly."

Following the rule as stated above that the rights of redemption are purely statutory, in order for the owner of the entire tract to redeem a specific portion of the delinquent lands sold for taxes, he must point out the statute authorizing him to do so.

Section 9955a, supra, authorizes any person claiming an undivided part of the land sold to redeem.

Section 9955b, supra, authorizes any person claiming an undivided share in any land out of which an undivided part has been sold for taxes to redeem.

Section 9955c, supra, authorizes any person claiming a specific part of any land sold for taxes to redeem.

Section 9955d, supra, authorizes any person claiming a specific part of any land out of which an undivided part shall have been sold for taxes charged on the whole tract or lot, to redeem.

The lawmakers have in the plain terms set out above stated who may redeem parts of tracts of land which are sold for taxes, and as they have not included within that class the person who owns the entire tract, then it would follow that such owner would not be authorized under the act to redeem a portion of the land sold for taxes. The maxim, "The expression of one thing is the exclusion of another," is applicable here, especially since the rights of redemption by certain persons are prescribed by the statute.

Next, your question is, has the person who has purchased from the owner a portion of the delinquent lands, and after they have been sold for taxes, a right to redeem, and if so, how is the amount arrived at which he shall pay to redeem the portion he purchases?

If such owner of the entire tract, by a bona fide conveyance, has conveyed a specific part of the delinquent

lands, then the purchaser of such specific part of such lands may redeem by following the provisions of Sections 9955d and 9956, supra. However, if the conveyance is not a bona fide conveyance and made for the purpose of avoiding payment of taxes, then the collector is not bound by such conveyance and he would not be required to recognize an application for redemption of the part of the lands so conveyed.

A question of prorating taxes analogous to yours is raised when a person pays taxes on a part of a tract of land before they become delinquent. When a party pays taxes on a part of a tract of land, the collector shall enter on his books a record of that part of the lands upon which the tax is not paid, and if necessary prorate the taxes on such part. Such payments are authorized by Section 9913, R. S. Mo. 1929, which is as follows:

"Whenever any person shall pay taxes charged on the tax book, the collector shall enter such payment in his list, and give the person paying the same a receipt, specifying the name of the person for whom paid, the amount paid, what year paid for, and the property and value thereof on which the same was paid, according to its description on the collector's list, in whole or in part, as the case may be, and the collector shall enter 'paid' against each tract or lot of land when he collects the tax thereon. The collector shall receive taxes on part of any lot, piece or parcel of land charged with taxes: Provided, the persons paying such tax shall furnish a particular specification of the part, and if the tax on the remainder of such lot and parcel of land shall remain unpaid, the collector shall enter such specification in his return, to the end that the part on which the tax remains unpaid may be clearly known. If payment is made on an undivided share of real estate, the collector shall enter on his record the name of the owner of such share, so as to designate upon whose undivided share the tax has been paid."

By an opinion from this department to Hon. Sam A. Baker, Collector of Bollinger County, under date of December 14, 1935, written by Mr. Harry G. Waltner, Assistant Attorney General, I find that the provisions of the foregoing section have been discussed in the following language:

"By this section specific authority is given to pay the taxes which may be charged on the tax books against a part of a tract, but it is required that the party paying the taxes furnish a specific description in detail of the tract of land upon which he desires to pay taxes. This section does not provide the manner in which the County Collector shall determine what proportion of the taxes assessed against the whole tract shall be distributed to the portion of the tract which has come into the hands of a new owner and who desires to pay the taxes upon his portion of the tract. However, this issue has been before the Supreme Court of the State of Missouri in the case of State ex rel. Realty Company et al. vs. Koeln, 255 Missouri 301. In this instance the taxpayer proposed to pay the taxes on a portion of a tract which it had purchased and offered to pay that portion of the total tax bill as was represented by the area of the portion upon which the taxes were sought to be paid. The Court in this case stated, l. c. 303:

"On April 28, 1910, the relators tendered to the defendant five hundred and ten dollars, the full amount of all taxes, interest, penalties and costs for the taxes for the year 1909 on that part of the land not condemned for the street, computing the amount due by taking such proportion of the whole tax, interest, penalties and costs as the uncondemned land bore to the whole tract prior to such condemnation, according to area. * * * *

"It is contended that the various parts of such tract may not have a value in proportion to the area, and that the collector has no such powers as the assessor, and cannot apportion the value of the different parts of a tract which has been assessed in solido. There is no showing in this case that a payment in proportion to the area is not equitable and fair. Whether such proportion should be used in all cases we will not now decide."

"From the foregoing ruling of the Supreme Court it is apparent a division of the tax based upon area will be approved if such division operates fairly and equitably. On the other hand the words of the Court throw a doubt upon a division based upon area if such division would be unfair and inequitable and therefore it would appear that in the event a person sought to pay taxes on the basis of area when such basis did not afford a fair and equitable proportion of the taxes, such a division might not be upheld by the Courts. It should be kept in mind that we are referring to those cases which properly fall within the provisions of Section 9913 and not those cases which fall within the provisions of Section 9955d, page 436, Laws of Missouri 1933.

"It would therefore be the opinion of this office that the County Collector is required to use judgment and discretion in proportioning the amount of taxes due against a part of a tract, that such division should be upon the basis of area, unless such a division would result in an unfair and inequitable division of taxes, in which latter event, the collector should make the division on some equitable and fair basis."

CONCLUSION

We are, therefore, of the opinion that the owner of the entire tract of delinquent lands sold for taxes is not authorized under the statute to redeem a specific part of such lands, but he may redeem the entire tract.

We are further of the opinion that a bona fide purchaser of a specific part of delinquent lands, purchased after said lands have been sold for taxes, may redeem same, and that the collector, following the provisions of Section 9956, supra, is required to proportion the taxes to be paid on said part of the lands purchased, and his apportionment shall be based upon area, unless such division would result in an unfair and inequitable division of the taxes either to the taxing authorities or to the owner of the original tract or to the person paying the taxes on the portion he has purchased, in which latter event the collector should make a division on some equitable and fair basis as is provided in Section 9956, supra, and his findings thereon are final unless he has acted arbitrarily and unfairly in performing this duty.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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