

TAXATION: County collector is not compelled to notify a tax payer as to his personal taxes until after they become delinquent.

December 21, 1939

Hon. Henry C. M. Lamkin
Prosecuting Attorney
Callaway County
Fulton, Missouri



Dear Sir:

We are in receipt of your request for an opinion, dated December 13, 1939, which reads as follows:

"I would like to have an opinion from your office in regard to the following matter:

"FACTS: 1934 personal property taxes will become outlawed on January 1, 1941. There are a number of these tax assessments unpaid in Callaway County. This situation is also true for 1935, 1936 and 1937. In a great many of these cases the tax-payer against whom the personal taxes have been assessed was unaware of the tax, and paid his real estate tax assuming that he was paying the total amount of tax due. He received no notice of any sort on these taxes being assessed and unpaid until the county collector who went into office the first of January of this year sent notices that unless the taxes were paid by the latter part of this month suit would be filed to collect the same.

"QUESTION: Is the former collector guilty of any dereliction of duty? Can these taxes be recovered by suit, and, if so, is the penalty against a

taxpayer who paid his real property taxes in good faith and in the belief that he was paying his whole tax bill provided for delinquent taxes?"

Section 9782 R. S. Missouri, 1929, partially reads as follows:

"In all counties, except the city of St. Louis, the assessor shall be provided with two books, one to be called the 'real estate book,' and the other to be called the 'personal assessment book.' * * * ."

Section 9800 R. S. Missouri, 1929, partially reads as follows:

"The assessor, except in St. Louis city, shall make out and return to the county court, on or before the twentieth day of January in every year, a fair copy to the assessor's book, verified by his affidavit annexed thereto, in the following words, to-wit: * * * ."

It will be noticed that under the two above sections the assessor must make out two books; one to be called "personal assessment book", the other to be called the "real estate book". These books under Section 9800 must be turned in to the county court on or before the 20th day of January in every year.

Section 9880 reads as follows:

"As soon as may be after the tax book of each year has been corrected and adjusted, and the amount of county tax stated therein according to law, the county courts shall cause the same to be delivered to the proper collector, who shall give receipts therefor to the clerks of the

county courts respectively; and each collector shall be charged by such clerk with the whole amount of the tax books so delivered to him."

Under the above section each collector is charged by the clerk of the county court with the amount of the tax books so delivered to him. When the taxes are not paid to the collector, in accordance with the amounts set out in both the personal and real estate books, then under section 9938 R. S. Missouri, 1929, he shall make lists thereof, one to be called the "personal delinquent list" and the other the "land delinquent list."

Section 9940, R. S. Missouri, 1929, partially reads as follows:

" * * * For the purpose of this chapter, personal tax bills shall become delinquent on the first day of January following the day when said bills are placed in the hands of the collector, and suits thereon may be instituted after the expiration of said first day of January, and within five years from said day. * * * * "

Under section 9782, supra, the assessor having made his levy it becomes the duty of the taxpayer to pay the tax without notice. We only find one section which provides for the notice of the payment of all taxes. This section is 9908 R. S. Missouri, 1929, and reads as follows:

"It shall be the duty of the collectors of revenue of the several counties of the state, immediately after the receipt of the tax books of their respective counties, to give not less than twenty days' notice of the time and place at which they will meet the taxpayers of their respective counties, and collect and receive their taxes; said notice shall be given by posting up at least four

written or printed handbills in different parts of each municipal township in said counties, and by publication for two weeks in a newspaper, if one be published in the county, in which he shall notify said inhabitants to meet the collector at such places in their respective townships as may be named therein, and the number of days (not less than three) that he will remain at each of such places for the purposes aforesaid; and it shall be his duty to attend at the time and place thus appointed, either in person or by deputy, to receive and collect such taxes: Provided, the county court may relieve the collector from visiting any municipal township in his county by an order of record to be made before notice under the provisions of this section is given."

Section 9912 R. S. Missouri, 1929, makes it the duty of the collector to furnish to all non-resident taxpayers a statement of the amount of taxes assessed against real estate; but these sections have been declared to be directory and not mandatory.

In the case of *St. Francis Levee Dist. v. Dorroh*, 289 S. W. 925, 1. c. 928, the court said:

"* * In passing, it might be noted that the date of delinquency of such levee taxes, or annual installments thereof, is precisely and definitely fixed by the statute, and is not dependent whatsoever upon the giving of any notice to the taxpayer or the making of a demand upon him for payment of such taxes. It might also be stated that appellant does not challenge herein the validity of the assessment of special benefits made against his respective lands, nor does he challenge the validity of the levee taxes (based upon such special benefit assessment) or the levy of the annual installments thereof; in

fact, he has apparently recognized their validity by making payment of the principal of said annual installments. * * "

The court further said: (par. 2 same l.c.)

"* * In State ex rel v. Wilson, 216 Mo. 215, 287, 115 S. W. 549, 571, we said:

'This court has many times held that, when an assessor makes out his assessor's books, jurisdiction attaches and the rest of the proceedings are only directory (citing authorities). The broad principle announced and underlying all of these cases is, that when a valid assessment is shown, its entry upon the tax book and the failure of the property owner to pay it when due, a good cause of action is made out, and that all other requirements and proceedings are mere formalities and intended to assist and facilitate the collection of the taxes, and are not intended to be stumbling blocks and hindrances thrown in the way of a speedy collection of them.'

"To like effect is State ex rel v. Dungan, 265 Mo. 353, 177 S. W. 604.

"In Noland v. Busby, 28 Ind. 154, a somewhat similar statute was held to be merely directory. Said that court:

"The statute makes it the duty of the treasurer on receipt of the duplicate, forthwith, to "cause notice to be posted up at the courthouse door, and in three other public places in the county, and to cause the same to be published in some newspaper having general circulation in his county, if any there be, for three weeks successively, stating in such notice the amount of tax charged for state, county, school, road or other purposes, on each

one hundred dollars valuation of the taxable property; and also the tax on each poll for state, county and other purposes." * * * If a valid assessment and levy had been made of the taxes and a proper duplicate thereof made out and placed in the hands of the treasurer for collection, his failure to give the notice would not invalidate the tax, or prevent its subsequent collection. That, like various other duties enjoined by the statute, can only be regarded as directory to the officer; the neglect to give the notice would not discharge the tax, or present a valid obstacle to the collection thereof."

CONCLUSION

In view of the above authorities, it is the opinion of this department that the former collector is not guilty of any dereliction of duty. It is the further opinion of this department that personal taxes can be recovered by suit when properly instituted and a taxpayer who has paid his real property taxes in good faith and in the belief that he was paying his whole tax bill, including his personal taxes, is subject to the penalties accrued on the personal taxes.

Respectfully submitted,

APPROVED:

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