

COUNTY COLLECTORS: What constitutes delinquent personal property tax list and duties of county court in connection with settlement.

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May 12, 1939

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Hon. G. Logan Marr  
Prosecuting Attorney  
Morgan County  
Versailles, Missouri

Dear Sir:

This will acknowledge receipt of your letter of April 12, 1939. The question presented is whether or not the enclosed "list" of delinquent personal property taxes returned by the collector (hereafter set out) can be approved by the county court and the court's duty in connection therewith.

We think this necessitates a review of the steps on assessing and **collecting** taxes and duties of the county collector with respect to returning delinquent tax lists on personal property. In order to preserve continuity, we begin with the initial steps which sets into motion the taxing machinery on personal property. All references to statutes are R.S. Missouri, 1929, unless otherwise indicated.

The assessor first takes a list of all personal property in his county from the owner thereof (Sec. 9756, Laws of 1937, p. 570), or makes such a list on his own view (Sec. 9760). From these lists, the assessor then makes what is called the "assessor's book" (Sec. 9778). This book is divided into two parts. The second is the part designated as "personal property". This part is to contain the names of the owners of personal property, their property and the value thereof, alphabetically arranged according to names (Sec. 9780). This book is then delivered to the county court by the assessor (Sec. 9800). As soon as

the assessor's books are adjusted and corrected, the county clerk makes a copy thereof and extends the taxes on the "tax books" which he makes (Sec. 9876, Laws of 1933, p. 421). Then this book is delivered to the collector (Sec. 9880). The collector then must proceed to collect the taxes extended on the tax book (Sec. 9903). He is authorized to seize and sell goods and chattels to enforce payment of personal taxes (Sec. 9915). Having used all lawful means and diligent efforts to collect said taxes and being unable to do so, the collector, from the tax books, "shall make lists thereof (the unpaid taxes), one to be called the 'personal delinquent list', in which shall be stated the names of all persons owing taxes on personal property, where taxes cannot be collected, alphabetically arranged, with the amount due from each". (Sec. 9938). This list is to be returned by the collector, under oath, at the term of county court to be held on the first Monday in March, to be approved or disapproved by the court (Sec. 9918). The county clerk, after approval of this list, makes the same into a "back tax book" and delivers the same to the collector whose duty it is to collect said taxes (Sec. 9943). If then unable to collect the same, during his term, this delinquent list allowed to the collector is delivered to his successor and so on to the next successor until collected, provided before delivery to these successors of the collector, the county court is to examine and cancel all listed which are delinquent more than five years. On this being done, the collector is no longer charged with said delinquent back taxes (Sec. 9925).

It appears in this instance that the collector has returned a "list" with his affidavit to the effect that he had "diligently endeavored to use all means to collect from persons listed the amount shown opposite their name; that I have been unable to find any personal property of any tax payer listed out of which to make the taxes; that I have fully complied with secs. 9915, 9918 and 9938, R.S. 1929". Preceding this affidavit, the collector listed the following: "State Tax \$458.79; County Revenue Tax \$1531.34; Special Road and Bridge \$640.03; Interest and Redemption Tax \$463.50; School Tax \$1859.43; Total Tax \$4953.09".

## Section 9938, R.S. Missouri, 1929, provides:

"Whenever any collector shall be unable to collect any taxes specified on the tax book, having diligently endeavored and used all lawful means to collect the same, he shall make lists thereof, one to be called the 'personal delinquent list,' in which shall be stated the names of all persons owing taxes on personal property, where taxes cannot be collected, alphabetically arranged, with the amount due from each, \* \*."

It is evident, without comment, that the purported list returned by the collector does not comply with the above section. It does not list the names, alphabetically arranged, and the amount due from each person owing taxes on personal property.

It also appears that the collector filed along with the above purported list, what he terms an "application" to approve the purported delinquent list, in which he states, "I want these delinquent personal taxes approved so that I can show them in my annual settlement, as being taxes that I am charged up with and which I have not as yet collected. I state that in my opinion most of these taxes that are delinquent as stated aforesaid will be collected in full. It is not my purpose in requesting the court to approve these lists as being correct and in approving this certificate that I be discharged in any way for the collection of these delinquent personal taxes for 1938. I state that these taxes are not outlawed, but are due and many can be collected".

While the affidavit and application seemingly are inconsistent, they may not be if viewed from the point that the collector in the application may have meant that the taxpayers, represented in the amounts listed, would voluntarily, or upon suit being filed or upon distress warrant, pay these taxes even though at the present they have no property out of which the tax can be made.

However, we are not concerned with this since the collector has filed no delinquent list which the court can act upon, but when the proper list is returned by the collector, it appears that the terms of Section 9918, R.S. Missouri, 1929, set forth the power and duty of the county court. This section provides:

"At the term of the county court to be held on the first Monday in March, the collector shall return the delinquent lists and back tax books, \* \* \* \* under oath or affirmation, to such court, and settle his accounts of all moneys received by him on account of taxes and other sources of revenue, and the amount of such delinquent lists, or so much thereof as the court shall find properly returned delinquent, shall be allowed and credited to him on his settlement. Before allowing the collector such credit for any delinquent lists, the county court shall make special inquiry and be fully satisfied that he has used due diligence to collect the same, and that he could not find any personal property of the taxpayer out of which to make the taxes. If the court is satisfied that there are any names on the lists of persons who have personal property out of which the taxes could have been made, it shall, in passing upon such lists, strike such names therefrom."

In State ex rel. v. Sanderson, 77 S.W. (2nd) 94 (Mo. Sup.), the court said of this section and the four following at l.c. 96:

"In brief, these sections provide that the collector shall make an annual settlement with the county court. The county court is required, before approving a settlement, to make special inquiry and be fully satisfied that the collector has used due diligence in making collections. It is also required to fully examine the settlement offered by the collector before approving same."

May 12, 1939

Thus, the county court has a discretion in approving said settlement and if they do not believe the collector has diligently endeavored to collect the personal taxes, notwithstanding his affidavit, they may strike those names where he did not, out of the list, and he remains charged therewith. This is as it should be because to permit the collector to return as delinquent and uncollectible, taxes which are not so, would be to permit the collector, by this subterfuge, to increase his compensation at the taxpayers' expense. The compensation of the collector for collecting delinquent taxes (Sec. 9969, Laws of 1933, p. 429) is greater than that allowed for collecting current taxes (Sec. 9935, Laws of 1937, p. 547).

CONCLUSION

Therefore, it is our opinion that the county court cannot approve the purported delinquent list returned by the collector because it is not the list required by statute. When the collector does return a proper list, the court should inquire into the delinquent taxpayers and taxes contained therein and if they find the collector has not used due diligence and exerted every lawful effort to collect those taxes, he should not be allowed to return them as delinquent.

Respectfully submitted,

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APPROVED By:

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