

TAXATION AND  
EXEMPTION:

Municipal corporation which purchases tax certificates must pay all taxes due to the date of the issuance of the deed before the collector is authorized to execute and deliver the deed. Such city will be exempt from paying taxes assessed on such property but not yet due.

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November 17, 1939

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St. Louis, Missouri

11-22



Dear Sir:

This is in reply to yours of recent date wherein you submit the following request:

"Your opinion is requested upon the question whether the City, before it is entitled to have delivered to it a deed to the properties purchased, must pay the taxes which accrued against the property both prior and subsequent to the taxes for which the property was sold, and this opinion is requested of you because of the fact that the State has some interest in those taxes. \* \* \* \* \*

Section 6 of Article X of the Constitution of Missouri, which is applicable to your proposition, provides as follows:

"The property, real and personal, of the State, counties and other municipal corporations, and cemeteries, shall be exempt from taxation. Lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile of more distant from such cities or towns, to the extent of five acres, with the buildings thereon, may be exempted from taxation, when the same are used exclusively for religious worship, for schools, or for purposes purely charit-

Mr. Edgar H. Wayman

(2)

November 17, 1939

able; also, such property, real or personal, as may be used exclusively for agricultural or horticultural societies; Provided, That such exemptions shall be only by general law."

The rule of law, as it applies to tax exemption statutes, is announced in State ex rel. v. Trustees of William Jewell College, 234 Mo. 299, 308, in the following language:

"It is urged that exemption statutes are to be strictly construed. Generally speaking, such is the rule. But we take it from the cases that there has been a well recognized exception to the rule. Perhaps a better wording would be to say that the courts have never been over anxious to apply the rule so as to impose burdens upon religious, scientific, literary and educational institutions. Strict construction has largely been applied to corporations organized for profit and gain, not to corporations performing a public service. \* \* \* \* "

And in the case of Grand River Drainage District v. Reid, 111 S. W. (2d) 151, the court held:

"A constitutional provision which exempts realty and personalty of municipal corporations from taxation should be reasonably construed, when invoked by governmental agency which performs a public service."

Your request particularly involves the question of just when the exemption privileges apply to property purchased by a tax exempt corporate body. You state that the City of St. Louis acquired certain real estate at a sale of delinquent lands for taxes in 1937 and now holds the certificates which were delivered to it by the Collector of the City of St. Louis. You also state that the

Mr. Edgar H. Wayman

(3)

November 17, 1939

City of St. Louis is now ready to make application for the deeds which are to be issued by virtue of the provisions of Section 9957c, Laws of Missouri, 1933 at page 440, which section provides in part as follows:

"Every holder of a certificate of purchase shall before being entitled to apply for deed to any tract or lot of land described therein pay all taxes that have accrued thereon since the issuance of said certificate, or any prior taxes that may remain due and unpaid on said property, and the lien for which was not foreclosed by sale under which such holder makes demand for deed, and any purchaser that shall suffer a subsequent tax to become delinquent and a subsequent certificate of purchase to issue on the same property included in his certificate, such first purchaser shall forfeit his rights of priority thereunder to the subsequent purchaser, and such subsequent purchaser shall at the time of obtaining his certificate redeem said first certificate of purchase outstanding by depositing with the county collector the amount of said first certificate with interest thereon to the date of said redemption and the amount so paid in redemption shall become a part of said subsequent certificate of purchase and draw interest at the rate specified in said first certificate but not to exceed ten percent per annum from the date of payment. \* \* \* \* "

It will be noted by the foregoing provisions of said section that the holder of tax certificates issued at the tax sale does not take title to the property offered at the sale and purchased by him at the time he bids for the lands. Such purchaser is required to wait before he is entitled to the deed conveying the property

to him and before he becomes the owner. In other words, the owner of the certificate does not become the owner of the lands described in the tax certificate until after the redemption period has expired and until the collector executes and delivers a deed to him for the lands described on his certificates.

Again referring to Section 9957c, it very clearly appears that the collector is not authorized to deliver the deed to the lands which he has sold for taxes and for which he has issued the certificate until all taxes accruing since the issuance of the certificate or any prior unpaid taxes which are due have been paid. This requirement is imposed in addition to requiring the holder of the certificate to wait two years before he can make his demand for the deed. Even though the exemption statutes apply as you have suggested in your letter, we do not think that they could apply before the tax exemption body comes into possession of the property.

The collector must look to the statutes for his authority to execute and deliver the deed and the requirements of the statute must be met before he performs this act. Since said Section 9957c requires certain things to be done before the collector may issue the collector's deed, we think the city, or any other certificate holder, would be compelled to meet those requirements before it would be entitled to the deed which would make it the owner of the property sold for taxes.

We think this statement is substantiated by the rule announced in the case of State v. Minidoka County (Idaho), 298 Pac. 366, 370, wherein the Supreme Court of that state said:

"It will be observed this case was tried before sheriff deed was executed or due. We do not think the taxes are a nullity unless and until the state is the absolute owner. It is stipulated, 'that if said lands were appraised as to value on this date, (October 19th, 1929) it would be appraised at the approximate sum of \$8,500.' This sum is greatly

in excess of the mortgage and interest. If the stipulation is well advised, it seems probable the lands were redeemed before sheriff's deed issued. If they were, the taxes should not be cancelled. If the land was not redeemed, then upon the issuance of the sheriff's deed the taxes and tax liens became a nullity and subject to cancellation. Taxes on farm lands, foreclosed for state loan, are not subject to cancellation until the sheriff's deed on foreclosure issues. Thereupon they are."

We also find where the Missouri Supreme Court has touched on this question in the case of Speed et al. v. St. Louis County Court, 42 Mo. 382, 383, wherein the court, in speaking of property being exempt on account of being government owned, said:

"\* \* \* \* The property, to be exempt from taxation, must belong to the national government--the title and ownership must be vested in it."

After the City of St. Louis becomes the owner of the lands which it has bid in at the tax sale and for which it holds the tax certificates, then you contend that it would not be liable for taxes due and falling due on the same.

In your suggestions you have cited the foregoing provisions of the Constitution and some out-state authorities. We think that the rule, which is applicable to this question, is announced in Volume 61 Corpus Juris, page 418, Section 450, in the following language:

"\* \* \* On the other hand, taxes levied on private property and not paid are not a charge on the property subsequent to its acquisition by the state or city, the public property exemption operating to exempt property acquired by the state from any further liability for taxes assessed prior to the acquisition, although there are decisions to the contrary. The rule exempting property acquired

by the state or city from any further liability for taxes assessed prior to the acquisition applies to lands acquired by condemnation proceedings or by mortgage foreclosure, subject, in the latter case, to the modification that the tax lien is not canceled until the owner's right to redeem is foreclosed. \* \* \* \* \*

Again at page 402, Section 407 of said Volume 61 Corpus Juris, the rule is stated:

"Property acquired by the state at foreclosure sale is exempt from tax charges, either present or past, under a constitutional provision to that effect, but not until the state has become absolute owner through delivery of the sheriff's deed. So long as the right to redeem exists, the tax lien is merely suspended and revives upon redemption."

In State v. Minidoka County (Idaho) 298 Pac. 366, 1. c. 369, the court also said:

"All the decisions recognize that the power of taxation is a sovereign power delegatory to local taxing districts to raise funds for one public purpose or another, but always in behalf of sovereignty for the public good. Only such taxes as distinguished from special assessments are involved herein.

"In the absence of a constitutional provision therefor, the exemption of the state from taxation is generally put upon the ground that the sovereign cannot be so proceeded against by its taxing subdivisions,

but the courts usually justify such condition by a discussion of the futility of taking money out of one pocket to put it into another (People v. Doe G. 1,034, 36 Cal. 220; State v. Locke, supra; Laurel v. Weems, supra), or of collecting taxes with which to pay taxes (Foster v. Duluth, supra; State v. Locke, supra), or by the doctrine of merger of such liens into the title in the state \* \* \*

"However, under a constitutional provision such as ours, such property is exempt from any charge of taxes either present or past. This upon the ground that the property itself is exempt, not merely that its owner, being sovereign, is beyond process."

In our research through the Missouri Reports on your question we do not find where such a question has been before the court, but since the exemption provisions of the Constitution of the State of Idaho are similar to those of the Missouri Constitution, we think the rules announced in the Minidoka County case, supra, are appropriate and applicable here.

We also think that if the property purchased for delinquent taxes by the City of St. Louis is exempt from taxation, it is exempt from the state taxes as well. This rule is announced in Volume 61 Corpus Juris, page 419, Section 453, as follows:

"\* \* \* \* County property is exempt from taxation under a constitutional provision exempting 'property belonging to the State or to municipal corporations,' but it is exempt as 'property belonging to the State,' the county being regarded as a governmental agency of the state, and not as 'property belonging to municipal corporations'; and the exemption includes an exemption from

Mr. Edgar H. Wayman

(8)

November 17, 1939

state taxes."

We think the rule is correct which you have suggested that is stated in 30 A. L. R., page 407, in the case of State of New Mexico v. Seon Locke. This rule is as follows:

"Property which is acquired by the state in its sovereign capacity is thereupon absolved and freed of a further liability for the taxes previously assessed against it, and a subsequent sale thereof for such taxes is void."

According to the cases cited in the annotations in this case, the weight of authority is with this rule. However, it will be noted that the property must be acquired before the exemption privileges apply. As stated above, a condition precedent to the collector executing and delivering the deed is that certain taxes be paid.

The taxes which were assessed in June of this year and which will not be payable until in the fall of 1940 would come within the rule announced first above, that is, a city after becoming possessed of certain property would be exempted from paying taxes on property which had been assessed and not yet due at the time the deed was issued.

#### CONCLUSION.

From the foregoing it is the opinion of this department that the collector would not be authorized to execute and deliver a deed to the City of St. Louis for property which it has purchased at tax sales until all taxes due at that time have been paid.

We are further of the opinion that the city, after the receipt of the deeds, would be exempt from all taxes on the property which were assessed but not yet due.

APPROVED:

Respectfully submitted

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