

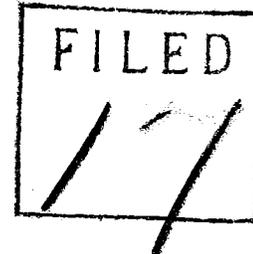
TAXATION:

Certificates of purchase of property in Kansas City are personal property and taxable as such.

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August 13, 1941

Mr. George R. Clark, Assessor  
Jackson County  
Kansas City, Missouri



Dear Sir:

We are in receipt of your request for an opinion dated August 9, 1941, which reads as follows:

"My attention has been called to the fact that numerous so called Investors in our tax service consistently buy large amounts of City delinquent taxes. It is my understanding that city taxes become delinquent on September 30th, of each year and on November 1st, every parcel of land within the limits of Kansas City are advertised for sale in the Daily Record. It is also my understanding that on or about the 10th of November the City sells every piece of property for which there is a bidder, the purchaser receiving a certificate which if not redeemed in five years entitles the purchaser of the tax certificate to receive a deed from the City of Kansas City, Missouri.

"The question which I am submitting to you here on which I respectfully ask an opinion is as follows:

"Take for example, let us say, the Standard Investment Company. They buy a tax certificate on a piece of property on November 1st. The property of course, remains in the hands of the owner for a period of five years during which time the Standard Investment Company is entitled to a deed as above set out. What is the status of the certificate which the

Standard Investment Company hold in the meantime? It is my thought that the certificate is personal property and taxable as such. My reasoning being as follows:

"If the money with which the certificate was purchased was in the bank and known to the Assessor, it would of course be taxable. When the Investment Company take that money and buy the tax certificate the Company is buying a mortgage and a prior lien on the property which lien is superior to any mortgage and liens which were on the property at the time of the tax sale. Under those circumstances I believe I am entitled to and I believe it is my duty to ascertain from the Commissioner of Accounts the amount of these tax certificates outstanding and unredeemed and to make an assessment against them as I would against any other personal property.

"May I have an opinion on this important matter at your earliest convenience as you can readily see what an important item this would be to the City and to the School district."

The question to be decided in this opinion is whether or not a certificate of purchase for the purpose of taxation should be considered personal property or real estate.

Section 11211, R. S. Missouri 1939, defines the words "real estate" as follows:

"The term 'real property,' 'real estate,' 'land' or 'lot' wherever used in this chapter, shall be held to mean and include not only the land itself, whether laid out in town or city lots or otherwise, \* \* \* \* \*

The same section also defines the term "personal property" as

follows:

"\* \* \* The term 'personal property,'  
 wherever used in this chapter, shall  
 be held to mean and include bonds,  
 stocks, moneys, credits, the capital  
 stock, undivided profits, and all  
 other means not forming part of the  
 capital stock of every company,  
 whether incorporated or unincorporated,  
 \* \* \* \* \*  
 and every tangible thing being subject  
 to ownership, whether animate or in-  
 animate, and not forming part or any  
 parcel of real property as herein-  
 before defined. \* \* \* \* \*

In your request you refer to tax certificates given  
 by the City of Kansas City, Missouri, which tax certifi-  
 cates are redeemable by the owner of the property within  
 five years from the date of such purchase. The procedure of  
 the giving of a certificate of purchase, which you call a  
 tax certificate, is governed by the city charter and Revised  
 Ordinances of the City of Kansas City. We are herein set-  
 ting out the form of the certificate of purchase as given  
 by the city treasurer to the purchaser under Section 1011,  
 Chapter 13, Article I of the Revised Ordinances of Kansas  
 City, page 459:

"\* \* \* No.....

"I, \_\_\_\_\_, Treasurer of  
 Kansas City, County of Jackson, State  
 of Missouri, do hereby certify that  
 the following described real property,  
 namely:..... situate in  
 Kansas City, Missouri, which was sub-  
 ject to taxation by said city, and on  
 which taxes were levied and assessed by  
 said city, and which have become de-  
 linquent, and after having given notice  
 of the sale of said real property for  
 delinquent taxes thereon, by publishing  
 daily such notice for at least ten (10)  
 days before the first day of sale in a  
 newspaper of general circulation pub-

lished in Kansas City, Missouri, containing a description of such property, the time, place of such sale and the amount of delinquent taxes, penalty and costs, as provided in the Charter and the ordinances of Kansas City, Missouri, was on ....., between the hours of ten o'clock in the forenoon and five o'clock in the afternoon thereof, duly sold by me at public sale at my office in Kansas City, Missouri, in the manner provided by law for the delinquent city taxes thereon for the year....., amounting to the sum of ..... Dollars, including penalty and costs thereon, to ....., for said sum, which was thereupon paid to me the said purchaser having publicly bid in said real property for ..... per cent per annum, which was the lowest rate of interest per annum offered or obtainable to pay the amount of taxes, penalty and costs due on said property.

"And I further certify, that unless said real property above described is redeemed from said sale within five (5) years from the first day on which the annual tax sale began at which it was sold or at any time before it was sold, or at any time before the execution and delivery of the tax deed to the purchaser at the tax sale, as provided in the Charter and the ordinances of Kansas City, Missouri, the said ..... heirs or assigns, will be entitled to a deed therefor on and after ..... on surrender of this certificate, provided application is made for said deed within two years from and after said .....

"IN WITNESS WHEREOF, I have hereunto set my hand this .....

' .....  
'City Treasurer, Kansas  
City, Missouri.'

In the above certificate of purchase the rate of interest has been left blank but under the Charter the interest is restricted to not more than twelve per cent. The certificate of purchase is personal property and conveys no title to the land itself for the reason that Section 1011 of the Revised Ordinances of Kansas City provides:

"\* \* \* Such certificate of purchase shall be assignable, and an assignment thereof shall vest in the assignee all the right, title and interest of the original purchaser. Every certificate of purchase shall be acknowledged in the same manner that deeds of real property are required to be acknowledged by the laws of this State."

It will be noticed that it does not require the assignment be acknowledged in the same manner that deeds are acknowledged. In case of the death of the owner of a certificate of purchase, this being personal property, does not descend to the heirs but descends to the administrator. In the case of *Brueggeman v. Jurgensen*, 24 Mo. 87, l. c. 89, the court said:

"If we look upon the suit as one to recover damages for a breach of the covenant to convey, it is not free from difficulties. If it is an action to recover damages, the heirs of *Brueggeman* have no right to them. They can not have an action to recover damages for a breach of contract. The right to maintain such actions is in the executor or administrator alone. \* \* \* \* \*"

Also, in the case of *Barnes v. Prewitt*, 28 Mo. App. 163, l. c. 168, the court said:

"\* \* \* For the conversion of the personal property left by the deceased, *David Prewitt*, the latter's heirs did not have a cause

of action. The right to the possession of that property belonged solely to the personal representative of David Prewitt (State ex rel. v. Moore, 18 Mo. App. 410), and the right to maintain an action on account of its conversion said representative alone had."

Also, in the case of Toler v. Judd, 262 Mo. 344, 1. c. 351, the court said:

"It will be observed by reading this bill that it states that E. F. Toler and Ida E. Toler, at the time of the execution of the contract mentioned, were husband and wife; that after its execution the husband, E. F. Toler, died intestate, leaving surviving him his widow, Ida E. Toler; his mother, Mary J. Toler and a brother, W. F. Toler, as his only heirs at law; that Ida E. Toler was the duly appointed and acting administratrix of her deceased husband's estate.

"Upon that state of facts counsel for defendants contend, among other things, that since the object of the suit was to annul the contract and recover back the stock of merchandise, which of course was personal property, it could not be maintained by the plaintiffs, although it being admitted by the demurrer, that they were heirs of the deceased, for the reason that the title to personal property of a deceased person vests in his administrator, and that the heir can acquire no title thereto except through an administration of the estate through the probate court, which has not been done, rather completed, in this case.

"The following authorities cited by counsel for defendants fully sustain

this contention, viz.: \* \* \* \* \*

In the above case personal property was exchanged for real estate. After the death of the owner of the personal property a suit was filed to annul the contract and recover back the stock of merchandise. It was denied for the reason that an administrator must bring the suit and not the heirs. That a certificate of purchase does not pass title to the real estate was held in the case of *Kohle v. Hobson*, 215 Mo. 213, 1. c. 219, where the court said:

\* \* \* The transaction was nothing more than a redemption of the land, but as the defendant paid the purchase money and took an assignment of the certificate of purchase, he is entitled to a lien upon the land to compel contribution. (Black on Tax Titles (2 Ed.), sec. 284; *Lomax v. Gindele*, 117 Ill. 527.) In the case last cited it is held that, where one of the tenants in common of a tract of land which had been sold for taxes, instead of redeeming directly from the sale, made an agreement with the holder of the certificate of purchase that the latter should take out a tax deed thereon and then convey the premises to the former, which was done, the transaction amounted to but a redemption for the benefit of both tenants in common, and that a court of equity would compel the one taking a conveyance of the tax title to convey to the other one undivided half of the tax title upon payment of half the cost thereof.

"The certificate of purchase did not, of course, pass the title, but only entitled the purchaser, or the defendant as his assignee, to a deed passing the title at the expiration of two years from the time of the tax sale, during which time any of the co-

tenants had the right to redeem the land; and defendant's purchase of the certificate of purchase, as before stated, amounted to nothing more than a redemption from that sale, and inured to the benefit of his wife and her cotenants."

In passing upon the rule whether a certificate of purchase passes title, it was held in 61 Corpus Juris, Section 1651, page 1220, as follows:

"A tax sale certificate has been characterized as a written certification by the official making the sale of the facts regarding the sale of real estate for taxes. It is intended for the benefit and protection of the purchaser, but is not essential to the validity of the sale. Such certificate does not create or pass title, nor does it entitle the holder to possession of the land, but is evidence of the purchaser's equitable title, and of the purchaser's lien until the time for redemption has expired, and entitles the holder to a deed passing title after the time for redemption has passed. When genuine and valid on its face, it imparts constructive notice of the sale to a subsequent purchaser of the property. Issuance of the certificate of sale does not extinguish the lien of prior certificates of sale concerning other delinquent taxes. Prior payment of the tax, or failure to comply with the law in the issuance of the certificate renders it void and ineffectual, and a void certificate to the state as purchaser confers no rights."

That a certificate of purchase does not pass title is proven by the fact that the City Charter of Kansas City, under its Revised Ordinances, Section 1024, stated as follows:

"Unless the holders or owners of certificates of purchase for real estate purchased at any tax sale under this article, take out deed or deeds, as permitted or contemplated by this article, within two years from and after the time for redemption expires, the said certificates or deeds and the sales on which they are based shall, from and after the expiration of such two years, be absolutely null, and shall constitute no basis of title, and shall cease to be a cloud on the title to the real estate to which such certificates refer."

Under the above section if the owner of a certificate of purchase does not demand a deed within two years after the time for redemption expires the certificate of purchase is absolutely void and would not be a cloud on the title to the real estate.

To pass a title so that the certificate of purchase would be considered real estate the following rule was set out in 61 Corpus Juris, Section 1864, page 1331, as follows:

"Under some statutes it is the rule that the purchaser at a tax sale, by his performance of all that is necessary to entitle him to a deed, becomes invested with title at the expiration of the period of redemption, although the deed has not, in fact, yet issued to him; however, it seems to be more generally held that the execution and delivery of a tax deed is necessary to vest title in the purchaser. \* \* \*"

Since certificates of purchase are personal property, their actual valuation is taxable under Section 10950, R. S. Missouri 1939. The pertinent parts of said section read as follows:

"The assessor or his deputy or deputies shall between the first days of June

and January, and after being furnished with the necessary books and blanks by the county clerk at the expense of the county, proceed to take a list of the taxable personal property and real estate in his county, town or district, and assess the value thereof, in the manner following to wit: \* \* \* \* \* all other property not above enumerated \* \* \* and its value; \* \* \* \* \* and every other species of property not exempt by law from taxation. \* \* "

That certificates of purchase do not convey title under the state law was held in *Hilton v. Smith*, 134 Mo. 499, 1. c. 509, as follows:

"What title to, interest in, or lien upon land a certificate of purchase secures to the holder is a question upon which there is a difference of opinion. It may be said generally that the right is no larger than the statute gives. The law of 1872 only gives the right to the redemption money in case the land is redeemed, and to a deed when the time of redemption has expired.

"In the absence of provisions of law defining the rights of the holder of a certificate of purchase the generally accepted rule is that, until the delivery of a deed, he takes no title to the land, either legal or equitable. Black on Tax Titles, sec. 322; Burroughs on Taxation, p. 321.

"The rule is announced by this court in *Donohoe v. Veal*, 19 Mo. 335, 336, as follows: 'If the law did not propose to give the purchaser the title to the land until two years should elapse from the time of the purchase, then it did mean that the title should remain in the owner for that period, and the

right of the purchaser was to receive his money, with a high penal interest, during the delay of redemption. It appears very clearly to be the design of these two acts, that the title of property sold for taxes shall remain undisturbed, until the deed is actually executed by the register; and that, until that act is performed, the title is in the former owner.'

"It was further held in that case that the doctrine of relation did not apply to such sales, and the title acquired under the deed did not relate back to any prior act or proceeding.

"The law of 1857 made the certificate prima facie evidence of title, yet the court held that it never intended to confer title; but was mere evidence of title authorizing the purchaser to take possession of the premises for a limited period. Clarkson v. Creely, 40 Mo. 114.

"In Parsons v. Viets, 96 Mo. 413, this court, in considering the rights of one holding a certificate acquired under a sale made pursuant to the laws of 1872, held that he acquired thereunder no right to the possession of the premises, and in taking possession he was a trespasser and disseizor.

"After the period allowed for redemption has expired, as was the case here, the holder of the certificate has a mere naked right to demand and receive a deed from the collector. The law thereafter gives him no lien upon the land for any sum, except that, in case his title fails, he may secure a lien under section 219, 2 Wagner's Statute, page 1206. Pitkin v. Reibel, 104 Mo. 511."

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As to decisions in other states we refer you to the case of State ex rel. Goodman, Prosecuting Attorney, v. Halter, 47 N. E. 665, (Ind.), which was an action by the state to recover a penalty for making a fraudulent or false tax return. It was held, l. c. 667, where appellee fraudulently omitted a Two Hundred Dollar tax certificate for certain years that although the older tax statute did not specifically mention tax certificates while later on a statute did mention tax certificates, yet a tax certificate was assessable and taxable under both for the reason that they were not exempt from taxation. It held that tax certificates were personal property and subject to taxation.

In the case of Wedgbury, Township Collector, v. Cassell (Ill.), 45 N. E. 978, a certificate of purchase given by a master on a sale under a decree of foreclosure of a mortgage, subject to the usual right of redemption, is taxable.

In the case of Miller v. Vollmer, 53 N. E. 949, the court held that the statute taxed all moneys invested in certificates of purchase given at a sheriff's sale and that a tax certificate was taxable although holder of tax certificate later secured a deed.

#### CONCLUSION

In view of the above authorities it is the opinion of this department that certificates of purchase on pieces of property located in the City of Kansas City, Missouri, are subject to taxation on its actual value as of June 1, of each year.

It is further the opinion of this department that a certificate of purchase is personal property and taxable as such.

Respectfully submitted

APPROVED:

W. J. BURKE  
Assistant Attorney General

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VANE C. THURLO  
(Acting) Attorney General

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