

TAXATION AND REVENUE:
COLLECTOR:
AUTHORITY TO PROPORTION
TAXES:

The tax collector is not authorized to accept proportion of taxes where lands subject to the tax are sold to the federal government during the year for which the taxes are assessed and levied.

April 2, 1941

Honorable David A. Dyer
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St. Charles County
St. Charles, Missouri



Dear Sir:

This is in reply to yours of recent date wherein you request an opinion from this department on the following statement of facts:

"A land owner owning land located in St. Charles County lost title to the same by virtue of a condemnation proceedings brought by the United States of America on June 15, 1938, that being the date on which the Federal Government paid to the registry of the Federal Court the amount of an award set by commissioners as the value of the land and obtained the court's order of possession. The land owner filed exceptions and only recently has the amount of the final award been determined. Being obligated to present to the Federal Government evidence that all state and county taxes due and payable are paid before he can take down his award, this landowner recently presented himself to Mr. Bruns to pay the taxes on the land for the year 1937 in full and tendered an amount on the total tax for the year 1938 equal to the proportion that the period from January 1, 1938 to June 15, 1938, bears to the full twelve months period. In other words, he tendered 13/24ths of the amount of tax that would have become payable on October 1, 1938 for the year 1938. Mr. Bruns,

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feeling that he had no right to so prorate these real estate taxes, refused this tender. In fact, he said that he had some thought that the man would have to pay the 1939 taxes which, according to commonly accepted thinking, became a lien on June 1, 1938. However, that question does not enter into this problem that I am presenting to you."

Your question involves the authority of the county collector to proportion real estate taxes, in cases where the lands upon which the taxes are imposed have been, during the year for which such taxes are imposed, conveyed to the federal government. The authority of the collector to accept or prorate such taxes will depend upon the provisions of the statutes. We think the case of *State of Missouri v. Federal Lead Co.*, 265 F. 305, is authority on this question. In that case the collector had compromised the taxes due, and in speaking of whether or not this officer had the authority to so compromise the tax, the court said:

"* * I think there can be scant doubt that Croke had no authority to compromise with defendant by accepting a less amount as taxes due from the defendant than the actual sum shown by the tax books in his hands as collector. The duties of Croke as collector are defined and prescribed by the statutes of Missouri, which create the office of collector of revenue of the several counties in the state of Missouri (section 11432, R. S. Mo. 1909; *State v. Herring*, 208 Mo. 708), 106 S. W. 984, and which prescribe the duties of such collectors (sections 11429, 11434, 11440, 11445, 11448, 11450, 11456, 11459, 11460, 11461, 11464, 11465, 11466, 11467, 11468, 11469, 11473, 11474, 11475, 11477, 11478, 11479, and 11480, R. S. of Mo. 1909). Since, therefore, the office is of statutory origin (*State v. Herring*, supra),

neither the common-law rules, nor the decisions of other states, touching the powers, duties, and authority of collectors of state and county revenue in such states, are decisive. Section 11429, R. S. Mo. 1909, cited supra, provides that upon the delivery of the tax books to the collector he is to be charged with the full amount of the taxes shown upon such books. He can be relieved from liability only (a) by collecting such taxes, or (b) by procuring credit from the county court of his county upon a return of a delinquent list pursuant to statute. Section 11464, R. S. Mo. 1909, supra. To the end that the collector may be relieved, upon the performance of either one or the other of the above contingencies, annual settlements with the county court are required. These settlements, to distinguish them, perhaps, from the 'monthly statements' and the monthly payments also required to be made by the collector (section 11473, supra) are called 'final settlements' in the statutes (section 11465, supra).

"The policy of the state of Missouri, as expressed in the decisions of the Supreme Court thereof, is clearly opposed to the view that any officer, such as a collector, can bind the county, save and except by such performance of incumbent duties as is prescribed by statute. *Lamar Township v. City of Lamar*, 261 Mo. 271, 169 S. W. 12, Ann. Cas. 1916D, 740; *Mullins v. Kansas City*, 268 Mo. 444, 188 S. W. 193; *Ex parte Tartar (Mo.)* 213 S. W. 94. There seems to be no Missouri statute conferring power on the collector to take a less sum in payment of the taxes charged to him on the tax books than the amount

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of such taxes as shown by such tax books. At least the diligence of counsel has disclosed none such, and after a diligent search, aided by some prior knowledge of the subject, I have been unable to find any such statute. Neither is there any statute in existence which expressly places authority on a county court of Missouri to compromise taxes as such, and which have been levied and assessed and made up into a tax book, in a case such as is here before me. County courts in Missouri are empowered to compromise back taxes, when the lands against which such taxes have been assessed are not worth the taxes assessed thereon (section 11496, R. S. Mo. 1909); to refund taxes collected on an illegal levy, provided the fact of such illegality has theretofore been judicially determined by the Supreme Court of the state (section 11523, R. S. Mo. 1909); to correct erroneous assessments, for that the lands were not subject to taxation, or were assessed twice for the same years, or assessed to two different persons (section 11522, R. S. Mo. 1909). None of the above statutes, it is obvious, applies to the situation here presented."

In your request you refer to the case of United States v. Certain Lands in the City of St. Louis, 29 Fed. Sup. 92. It appears from this case that the rule as to when the lien for taxes accrues and becomes a fixed encumbrance, is that the tax is determined by the annual assessment and the levy of the tax.

Section 10940, R. S. Missouri 1939, provides as follows:

"Every person owning or holding property on the first day of June, including all such property purchased on that day, shall be liable for taxes thereon for

the ensuing year."

This section would seem to indicate that the person owning the property on the first of June is liable for the taxes for the ensuing year. Section 11086, R. S. Missouri 1939, provides in part as follows:

"The collector shall diligently endeavor and use all lawful means to collect all taxes which they are required to collect in their respective counties, and to that end they shall have the power to seize and sell the goods and chattels of the person liable for taxes, in the same manner as goods and chattels are or may be required to be seized and sold under execution issued on judgments at law, and no property whatever shall be exempt from seizure and sale for taxes due on lands or personal property: * * * * *

While the collector may bring proceedings for the taxes against the lands upon which they are a lien, still under said Section 11086, supra, he may proceed against the owner of the lands by what is termed a "distress warrant." In other words, the collector has two remedies provided by statute for collection of taxes against real estate. In the case of Land & Improvement Co. v. Kansas City, 295 Mo. 674, the court, in speaking of the procedure of the collector in collecting taxes against real estate, said:

"A tax, of the kind involved in this proceeding, is a contribution required of its citizens by the State. And while we speak of property as being subject to taxation, it is the individual who pays the tax, and not his property. The property is resorted to for the purpose of ascertaining the amount of the tax with which the owner must be charged; and when ascertained it is imposed upon the per-

son of the owner on account of his ownership of the property. And this is true even when a personal judgment cannot be rendered against him therefor. (State v. Snyder, 139 Mo. 549, 552; Gitchell v. Kreidler, 84 Mo. 472, 476.) * * * * *

In the Land and Improvement case, supra, the City of Kansas City had condemned certain lands in that city and the question of the payment of the taxes for the year in which the lands were taken over were before the court and the court said:

"When the city elected to take over the real estate and pay the compensation previously ascertained, the tax for the year 1918 was due and owing by respondent, and had by operation of law become a lien on the property in the city's favor. In these circumstances the city had the right to apply so much of the compensation--purchase price--in its hands as was necessary to satisfy the lien, and then pay the remainder to the respondent. * * * * *

We are referring to this case for the reason that even though the city came into possession of the lands during the year for which the tax was due and owing it held back an amount of the award sufficient to pay the tax for the entire year.

In our research through the statutes we fail to find where even the county court would be authorized to permit this tax to be settled by payment of a proportion of it. In the case of United States v. Certain Lands in the City of St. Louis, supra, the court, while proceeding in equity, directed that the tax be proportioned based upon the time during which it was owned privately, still the court in that case did not say that the private owner was released from his personal liability for the payment of the tax which was created by the assessment and levy. Even

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though the lien on the real estate is destroyed when it is taken over by the federal government, the tax bill still has some value because of the owner's personal liability thereon and this is a sufficient reason for the lawmakers to have failed to permit the collector to proportion taxes when the real estate comes into possession of a tax exempt agency during the year for which the tax is assessed and levied.

CONCLUSION.

From the foregoing it is the opinion of this department that the tax collector is not authorized to accept a proportionate part of the taxes on lands which have been sold to the federal government during the year for which such taxes are assessed and levied.

Respectfully submitted

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APPROVED:

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