

TAXATION AND REVENUE: County Court can not abate penalty on the mistake made by the collector as to the amount of taxes owed by the taxpayer.

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September 24, 1941

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Honorable Russell S. Noblet
Prosecuting Attorney
Nodaway County
Maryville, Missouri



Dear Sir:

This Department is in receipt of your letter of September 18, 1941, wherein you make the following request:

"A few years ago when one taxpayer paid his taxes to the township collector an error was made by the collector and he did not charge the taxpayer for all of his taxes. He supposed that he had, so did the taxpayer. The rest of the taxes were paid; a receipt was given.

"Now, after five years, the ex officio county collector started to advertise the place for sale for back taxes. The man is willing to pay the back taxes. He hates however to pay the additional penalty, because the error was not his, other than not paying attention to his receipts of the years during which the tax was delinquent. They have been paid every year prior to that and since that.

"The ex officio collector wants an order from the county court to the effect that it is alright to disregard the penalty. I told them to give such order but am not sure that I am right. I can find no authority for them to do so, unless it would

come under the section number 11122 or section number 11197 regarding compromises. Technically, I do not think that they can find their authority under these sections."

We have examined the statutes numbered Sections 11122, 11197, R. S. Missouri, 1939, which you mention in your letter as having some bearing on the question. It does not appear that these sections would be direct authority for abating the penalty in question. Section 11122 contemplates a compromise when the land would not sell for the amount of taxes, and is not worth the amount of delinquent taxes, interest and costs. Section 11197, R. S. Missouri, 1939, also applies to certain counties only to compromise judgments under certain conditions. We have other statutes which might be pertinent and point the same out to you.

Section 11214, R. S. Missouri, 1939, refers to erroneous assessments, but is not broad enough in its terms to correct the error which was made in the instant case. Section 10990, R. S. Missouri, 1939, is a broader section and the facts which have caused the mistake would largely determine whether or not it would be applicable. The most pertinent section that we have found in our research is Section 11119, R. S. Missouri, 1939, which is as follows:

"The collector shall make diligent endeavor to collect all taxes upon said 'back tax book,' and whenever he finds that any taxes therein have been paid, he shall report that fact to the county court, or other proper officer, giving the name of the officer or person to whom such taxes were paid; and he shall also report to the court, or other proper officer, all cases of double assessment or other errors, and thereupon the court, or other proper officer, shall cause the necessary action to be taken and entries to be made."

You will note that the above section contains the provision "all cases of double assessment or other errors."

Hon. Russell S. Noblet

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The expression "other errors" when considered along with the other terms of the statute, evidently refers to errors or mistakes about an assessment. The mistake or error mentioned in your letter appears to be an error through the mistake or inadvertence of the collector. It does not appear to be of such nature that the county court has jurisdiction to make any correction. It is a matter to be adjusted by and between the taxpayer and the collector. Therefore, we agree with you that there is no special authority for the county court to absolve the taxpayer from the payment of the penalty.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

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