

TAXATION: COLLECTION: PARTIAL PAYMENT OF TAXES: Partial payments of taxes are held by the collector as a trustee and such taxes belong to the tax payer until the full amount of the taxes are paid.

✓ 112
January 8, 1942



Hon. Phil H. Cook
Prosecuting Attorney
Lexington, Missouri

Dear Mr. Cook:

This is in reply to your letter of recent date, wherein you request an opinion based upon the following statement of facts:

"Mr. Sam Smith, during his incumbency in office as county collector, had a practice of permitting people to make installment payments upon their taxes, for instance, a man who had one item of taxes on only one piece of property against which the tax amounted to \$150 would pay \$10 to the collector as an installment on his taxes. This money was accepted by the collector and not deposited but placed in a separate envelope marked in the name of the man who had made the deposit and kept in the safe until the full amount of the tax upon such item had been paid at which time he would deposit the money in the regular collector's account and give a receipt for the taxes to the person so paid. At the time Mr. Smith went out of office there was a fund amounting to approximately \$1300 representing these paid deposits and all of which were earmarked in the name of the depositors and the amount deposited by each. A contention has arisen as to the proper disposition of this fund. It is the contention of the attorneys for Mr. Smith that there is no provision in the statutes for the payment of installments in taxes unless a person pays the entire tax on some one particular item of property or unless he pays upon an undivided interest in the property under the provision of Section 11084, and it is their further contention that this money

is held in the nature of a trust and should be by him returned to the individuals who had so deposited the same with him. On the other hand, it is the contention of counsel for the bondsmen that under the provision of Section 11084, the county collector had a right to receive installment payments on taxes and that this money should either be turned over to the incoming collector or should be accounted for in a settlement to the county court. Of course no tax receipt has or could be given these depositors at this time for the reason that only installments on the same have been made, and no particular item of the tax has been designated."

Section 11052, R. S. Mo. 1939, provides as follows:

"As soon as may be after the tax book of each year has been corrected and adjusted, and the amount of county tax stated therein according to law, the county courts shall cause the same to be delivered to the proper collector, who shall give receipts therefor to the clerks of the county courts respectively; and each collector shall be charged by such clerk with the whole amount of the tax books so delivered to him."

After the collector has received the tax books, as provided in the foregoing section, his duties are to collect the taxes as certified, and with which he is charged. In the case of *State v. Young*, 38 S. W. (2d) 1021, 1023, the court, in speaking of the duties of officers with respect to collecting taxes, said:

"* * * The power to levy and collect taxes is purely statutory, and has been confided to the legislature and not the courts. *De Arman v. Williams*, 93 Mo. 158, 163, 5 S. W. 904; *State ex rel. v. Ry. Co.*, 87 Mo. 236; *City of Carondelet v. Picot*, 38 Mo. 125, 130; 25 R. C. L. pages 27 to 29. Collection of taxes can only be made in accordance with the tax books as actually made and furnished to the collector. * * * "

Also, in State ex rel. Hamilton v. Brown, 122 Mo. 374, the court in discussing this same question, said: (l.c. 381)

"* * * After the tax books were adjusted and turned over to the collector, he had but one duty to perform; that was to collect the taxes and apply them as indicated by the tax book. The collector has no power over the tax books, he is not authorized by any statute that has been brought to the attention of this court, to alter or change the tax books at pleasure. He is responsible for the taxes as they appear upon his books, and if they are changed in any manner, except in pursuance of the statute, however just the change might be, it would afford him no protection."

From these opinions it can not be successfully contended that the collector is authorized to collect taxes in any manner other than as certified to him under Section 11052, unless the exception is provided for by Section 11084, R. S. Mo. 1039, which is as follows:

"Whenever any person shall pay taxes charged on the tax book, the collector shall enter such payment in his list, and give the person paying the same a receipt, specifying the name of the person for whom paid, the amount paid, what year paid for, and the property and value thereof on which the same was paid, according to its description on the collector's list, in whole or in part, as the case may be, and the collector shall enter 'paid' against each tract or lot of land when he collects the tax thereon. The collector shall receive taxes on part of any lot, piece or parcel of land charged with taxes: Provided, the persons paying such tax shall furnish a particular specification of the part, and if the tax on the remainder of such lot and parcel of land shall remain unpaid, the collector shall enter such specification in his return, to the end that the part on which the tax remains unpaid may be clearly known. If payment is made on an undivided share of real estate, the collector shall enter on his record the name of the owner of such share, so as to designate upon whose undivided share the tax has been paid."

From an examination of this section, we think it was the intention of the Missouri lawmakers to permit a person to pay taxes on the portion of the property on which he desires to pay. But, we do not think that this section authorizes a partial payment on any particular tract or tracts. In other words, this statute does not authorize payment of taxes on the installment plan.

The facts which you have submitted reveal that the moneys which the collector holds, and which have been paid to him as partial payments on taxes, have never been paid into the treasury, but have been kept separate and apart from the public funds and earmarked in envelopes.

The collector is not authorized to issue a tax receipt for partial payment of a tax, and if he does so, that would be in excess of his statutory authority. If, under such circumstance, the collector becomes possessed of moneys paid to him as a partial payment of taxes, that would be contrary to the provisions of the statute, we then think the collector would hold such funds in a capacity of a trustee ex maleficio. A similar case was before the court in the case of Cantley v. Beard, 98 S. W. (2d) 730, wherein a bank was holding county funds which had been deposited in it as a county depository. The county court and the bank had not complied with the statute in selecting this bank as the depository. In speaking of the capacity in which this bank held this county money, the court said (l. c. 735):

"* * * * That the Bank of Barnett was not a legal depository of the county at the time of the \$12,000 deposit is conceded; therefore the bank held these public funds as trustee ex maleficio * * * *."

Also, in the case of In Re Cameron Trust Co., 51 S. W. 1025, a school district, which under the statute was required to select a depository every two years, had failed to comply with the law with respect to selecting a depository and continued to deposit its funds with the trust company after the expiration of the depository bond contract. In speaking of the relationship of the school district and the trust company, the court said (l. c. 1027):

" * * * * * Respondent in making this argument has overlooked the fact that the bank in such a case, when it received the deposits and used the funds of the school district, knew the funds were trust property, and also knew that it had no right whatever to appropriate the money or legally receive the title thereto. The bank, as well as the officers of the school district, was a party to the wrong. Huntsville Trust Co. v. Noel, supra. Under such circumstances the law does create the relation of trustee and cestui que trust.

Harrison Township et al. v. People's State Bank et al. (Mo. Sup.) 46 S. W. (2d) 165; State ex rel. v. Page Bank, 322 Mo. 29, 14 S. W. (2d) 597, loc. cit. 599 (1,2), and cases cited. The bank is a trustee ex maleficio of the funds. * * * * *

The trustee ex maleficio, in this case the Cameron Trust Company, never obtained legal title to the funds of the school district, and therefore the general creditors are not, as a matter of law, entitled thereto. * * * * * "

So, in this case your collector, Smith, never obtained legal title as county collector to these partial payments of taxes. Therefore, as a matter of law, the public treasury is not entitled to the funds, but they belong to the parties for whom they were being held by the collector as trustee aforesaid.

CONCLUSION

From the foregoing, it is the opinion of this department that a collector who receives partial payments on taxes holds such partial payments as a trustee ex maleficio for the tax-payers and such moneys do not belong in the public treasury.

Respectfully submitted,

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APPROVED:

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