

TAXATION-) County Court may compromise taxes
(and include penalties and interest
COMPROMISE OF) in the compromise.
TAXES. (

September 10, 1943

Honorable J. Ben Searcy
Prosecuting Attorney
Shannon County
Eminence, Missouri



Dear Sir:

This is in reply to yours of recent date on the question of whether or not the compromises and settlements of back taxes by the County Court include penalties and interest on such taxes, and whether or not such interest is considered as penalty.

The answer to your request is based upon a construction of the statute.

Section 11122 R. S. 1939, which provides for compromise settlements of back taxes reads as follows:

"Whenever it shall appear to any county court, or if in such cities the register, city clerk or other proper officer, that any tract of land or town lot contained in said "back tax book" or recorded list of delinquent land and lots in the collector's office is not worth the amount of taxes, interest and cost due thereon, as charged in said "back taxbook" or recorded list of delinquent land and lots in the collector's office, or that the same would not sell for the amount of such taxes, interest and cost, it shall be lawful for the said court, or if in such cities the register, city clerk or other proper officer, to compromise said taxes with the owner of said tract or lot, and upon payment to the collector of the amount agreed upon, a certificate of redemption shall be issued under the seal of the court or other proper officer, which shall have the effect to release said lands from the lien of the state and all taxes due thereon, as charged on said "back tax book" or recorded list of delinquent land and lots in the collector's office; and in case said court or other proper officer shall

compromise and accept a less amount than shall appear to be due on any tract of land or town lot, as charged on said 'back tax book' or recorded list of delinquent land and lots in the collector's office, it shall be the duty of said court or other proper officer to order the amount so paid to be distributed to the various funds to which said taxes are due, in proportion as the amount received bears to the whole amount charged against such tract or lot."

This section does not specifically mention penalties and interest as a part of the settlement, but it does state that the compromise "shall have the effect to release said lands from the lien of the state and all taxes due thereon." If the lien for the taxes is extinguished by the compromise settlement, then if the compromise settlement did not include the penalties and interest on such taxes, they would be of no value because the state's lien is extinguished by the compromise settlement.

Referring to the clause in said Section 11122, which reads as follows:

"*** and in case said court or other proper officer shall compromise and accept a less amount than shall appear to be due on any tract of land or town lot, as charged on said 'back tax book' or recorded list of delinquent land and lots in the collector's office, it shall be the duty of said court or other proper officer to order the amount so paid to be distributed to the various funds to which said taxes are due, in proportion as the amount received bears to the whole amount charged against such tract or lot."

it would appear that the court in making the compromise settlement that it takes into consideration the "Amount" due against the land, which, of course, would include the penalties and interest.

On the question of whether interest on back taxes is considered penalties we find that Sec. 11085 R. S. Mo. 1939, which relates to interest and penalties on delinquent taxes provides in part as follows:

"If any taxpayer shall fail or neglect to pay such collector his taxes at the time and place required by such notices, then it shall be the duty of the collector after the first day of January, then next ensuing, to collect and account for, as other taxes, an additional tax, as penalty, the amount provided for in section 11124.***"

The lawmakers in this section called the additional tax a penalty.

Section 11124 R. S. 1939 fixes the rate of penalty for delinquent taxes.

In the case of State v. Kolin, 61 S. W.2d. 750, 1.c. 753, the court held that all of the charges added on account of failing to pay taxes when due are essentially penal in nature.

So, reading the foregoing provisions of Sec. 11085, which provides for the additional tax for delinquents, and calls it a penalty, and referring to Sec. 11122 which provides for a compromise of taxes, we think the lawmakers in referring to "taxes" in said Sec. 11122 intended to include in that term the "additional taxes" as penalties imposed under Sec. 11085 supra.

C O N C L U S I O N .

From the foregoing it is the opinion of this department that the interest which the law requires on back taxes is considered as penalty and that the County Court in compromising taxes under Sec. 11122 R. S. 1939, may compromise such additional tax, or penalty or interest, whichever it may be called, along

Hon. J. Ben Searcy

-4-

Sept. 16, 1943

with the other delinquent tax which is being com-
promised.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

TWB:LeC

APPROVED

ROY McKITTRICK
Attor