

TAXATION: County Court cannot increase a year's tax levy to produce an amount in excess of 10% of the previous year's levy; how illegally paid tax can be recovered.

January 20, 1944.



Mr. Lieu. Cunningham, Jr.,  
Prosecuting Attorney  
Camden County,  
Camdenton, Missouri.

Dear Sir:

This will acknowledge receipt of your letter of January 3, 1944, as follows:

"The Camden County Court and Collector of Camden County have requested me to obtain an opinion from you upon the following matter:

"Camden County being one of the Counties referred to in Amendment No. 2 passed by the voters of this State last year permitting certain counties to increase their levy to an amount not exceeding fifty cents on the one hundred dollar valuation. The County did increase its levy to forty-nine cents plus one cent road and bridge levy which said increase of levy was approved by the State Auditors Office and a large per cent of the taxpayers of the County have paid their taxes based upon that levy.

"The Union Electric Land & Development Company, however, on December 30 forwarded to the Collector of Camden County a check for their taxes which was some \$1894.00 short of the amount stated upon their tax statement. They had reduced the County tax levy to 43.2 cents and based their reduction upon Section 11046, Page 1008, 1943, Laws of Missouri, which Section carried a provision that the County Court cannot order a rate of tax levy that will produce mathematically more than ten per cent in excess of the taxes levied for the previous year.

"The County revenue for 1942 amounted to \$33,681.15. The assessed valuation of that year was \$8,420,288.00. The assessed valuation for the year 1943 is \$8,580,549.00. Their contention was that the maximum increase in the taxes was \$3,368.11 or a total possible County revenue for 1943 of \$37,049.26 which upon the 1943 assessed valuation would provide a levy of approximately .43178 cents and of course is some .068 cents less than the levy made and approved.

"We would appreciate your opinion as to whether they are correct in their contention and also as to whether the statute referred to is or is not repugnant to the Constitutional Amendment. They would also appreciate your opinion as to what can be done in connection with the taxpayers who have already paid their taxes if they are correct in their contention and the levy was erroneously made."

Section 11, Article 10 of the Missouri Constitution, prior to its re-enactment on November 3, 1942 (Laws 1943, p. 1082), fixed maximum county tax levies on the following assessed valuations:

"For county purposes the annual rate on property, in counties having six million dollars or less, shall not, in the aggregate, exceed fifty cents on the hundred dollars valuation; in counties having six million dollars and under ten million dollars, said rate shall not exceed forty cents on the hundred dollars valuation; in counties having ten million dollars and under thirty million dollars, said rate shall not exceed fifty cents on the hundred dollars valuation; and in counties having thirty million dollars or more said rate shall not exceed thirty-five cents on the hundred dollars valuation."

Section 11046 R. S. Mo. 1939, prior to its repeal and re-enactment in 1943 (Laws 1943, p. 1008) provided, in part, as follows:

"\* \* \* the county court shall not have power to order a rate of tax levy on real or personal property for the year 1921 which produce more than ten per cent in excess of the amount produced mathematically, by the rate of levy ordered in 1920, and in no subsequent year may any county court or any officer or officers acting therefor, order a rate of tax levy that will produce mathematically more than ten per cent in excess of the taxes levied for the previous year;# #"

In State ex rel. and to Use of Covington v. Wabash Ry. Co. 3 S.W. (2d) 378 (Mo. Sup.) the court held this limitation to be constitutional, saying (l.c.381):

"It is clearly within the right and authority of the General Assembly to pass laws authorizing counties to exercise the taxing power subject to limitations more confining than those set by the Constitution itself, except in instances where the Constitution gives the taxing authorities in uncontrolled discretion, as was done by section 22 of article 10."

Clearly the maximum levies fixed in Section 11 of Article 10, supra, do not give the county court any such discretion of the character granted in Section 22, Article 10, and the court so ruled.

Now to move on to the present state of the law, Section 11, Article 10 of the Constitution, as re-enacted on November 3, 1942, appears in Laws 1943, p. 1082, and is in part as follows:

"For county purposes the annual rate on property, in counties having thirty million dollars or less, shall not exceed fifty cents on the hundred dollars valuation; and in counties having thirty million dollars or more said rate shall not exceed thirty-five cents on the hundred dollars valuation."

Comparing this language with that which it replaced, it appears that the only change is to alter the brackets from four in number to two and thereby increase the maximum theretofore permitted in counties of less than thirty million assessed valuation.

Section 11046, as re-enacted in Laws 1943, page 1008, provides, in part, as follows:

"\* \* that (no) county court shall order a rate of tax levy that will produce mathematically more than ten per cent in excess of the taxes levied for the previous year."

(Note: The word "no" in parenthesis has been inserted in this bill by us even though it does not appear in the printed session acts. The enrolled and signed bill on file with the Secretary of State reflects that "no", but it was erroneously omitted from the act as it appears in the 1943 Session Acts.)

If such restriction was valid as it formerly existed, we see no reason why it is not also now valid. There has been no change in the substantive law, other than to alter the brackets above mentioned, and to re-enact the ten per cent limitation applicable to the new constitutional provision.

In this situation then, if the levy made for 1943 produces more than ten per cent of the 1942 levy, it is contrary to the statute, and invalid. However, we are not undertaking to say that the computation of the excess, made in your letter, is correct or incorrect. Just what the excess amount may be, or whether in fact the 1943 levy will produce an amount in excess of ten per cent of the 1942 levy, we leave to be determined by those concerned.

However, assuming that an excessive levy was made, then the method in which those who paid the same can recover such payment is set out under Section 11215 R.S.Mo. 1939.

Respectfully submitted,

LAWRENCE L. BRADLEY  
Assistant Attorney-General

APPROVED:

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ROY MCKITTRICK  
Attorney-General