

DELINQUENT TAX LAND SALES:

Purchase price paid at invalid sale
may be refunded to purchaser.

July 30, 1945

FILED

JJ

Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Mr. Smith:

This will acknowledge the letter of Honorable Carl L. Dickson, County Clerk of Vernon County, Missouri, dated July 14, 1945, in which he advised that he had previously requested from you a ruling on the matter involved, and that he had been directed by you to this Department for reply. The letter states:

"Recently we wrote the State Auditor and asked the following question and he suggested it be referred to you.

"Mr. L. J. Sechler of Stanley, Kansas purchased eighty acres of land in Vernon County at the November tax sale. Mr. Sechler has now been advised by an attorney that under the Missouri laws, that he being a resident of Kansas could not be a bidder at a tax sale without first appointing a resident of Missouri as his agent. Sechler has now appeared before the county court asking for a refund of his money he had paid at the tax sale.

"Is he entitled to a refund as he has returned the tax sale certificates to Mr. Geo. Lyons the county treasurer. And if so, how would we show the property on the tax books in order to be sold again this November?"

July 30, 1945

"On the Treasurer's annual settlement this was shown as charged off to tax sale and therefore is no longer on the delinquent tax book, Would this be charged back as an added assessment for these five years? The purchase price was \$165.00, which was a surplus of \$122.45. The total tax, penalty and interest cost was \$42.56.

"We would appreciate hearing from you as to the proper procedure to take in this matter."

There are a number of sections in our delinquent and back tax sales statutes that must be read and considered together in answering your inquiry.

Section 11127, R.S. Mo. 1939, provides for the date of sale of lands for delinquent taxes, and the manner of making bids, and in that particular need not be quoted here for the purposes of this opinion. The first proviso, however, of said Section 11127, has much to do with the questions here being considered, and reads in part, as follows:

"* * * Provided, no bid shall be received from any person not a resident of the State of Missouri, until such person shall file with said collector an agreement in writing consenting to the jurisdiction of the circuit court of the county in which such sale shall be made, and also filing with such collector an appointment of some citizen of said county as agent of said purchaser, and consenting that service of process on such agent shall give such court jurisdiction to try and determine any suit growing out of or connected with such sale for taxes. * * * "

Section 11129, provides for the re-offering of delinquent lands for sale, and reads as follows:

"If at the first offering of sale of any tract of land or lot under the provisions of this law no person shall bid therefor a sum equal to the delinquent taxes thereon with interest, penalty and costs, then the clerk of the sale shall note such fact in his record of sale and the county collector shall note a recital thereof in his record containing the list of delinquent lands and lots, and said tracts of land or lots shall be again offered for sale, at the next sale of delinquent lands and lots as in this law provided, if such lands or lots be at such time delinquent. If at the second offering for sale no person shall bid therefor a sum equal to the then delinquent taxes thereon with interest, penalty and costs, then the clerk of the sale shall note such fact upon his record of the sale, and the county collector shall enter a recital of such fact in his record book containing the list of delinquent lands and lots."

Section 11155 provides for the refunding of purchase money to any person who was the intended purchaser at an invalid sale, and among other things, provides that the Statute of Limitations should not run against the collection of delinquent taxes during the period of the invalid sale and the discovery of its invalidity. Said Section 11155 reads as follows:

"Whenever the county collector shall discover, prior to the conveyance of any lands sold for taxes, that the sale was for any cause whatever, invalid, he shall not convey such lands; but the purchase money and the interest thereon shall be refunded out of the county treasury to the purchaser, his representatives or assigns, on the order of the county court. Such invalid sale shall suspend for the period intervening between the date of the sale and the discovery of its invalidity the running of the statute

July 30, 1945

of limitations. In such cases the county collector shall make an entry opposite to such tracts or lots in the record of certificates of purchase issued or redemption record that the same was erroneously sold, and the cause of invalidity, and such entry shall be prima facie evidence of fact therein stated. He shall notify the county clerk of such action whose duty it shall be to make a like entry upon his sale record."

These sections mentioned and quoted, each in some measure, and all when taken together, provide, we think, the plan for the solution of this question.

The first proviso of Section 11127, supra, prohibits any bid from being received for lands sold for delinquent taxes on the date of sale fixed by law, from any person not a resident of the State of Missouri, until he files with the collector, the written instrument said proviso requires. The facts in this case indicate that the bidder was a non-resident of this State, and had not filed the document required by law with the collector previous to making his bid. This, we think, would amount to no bid at all.

Section 11129, supra, states that if at the first offering of sale no person shall bid therefor a sum equal to the delinquent taxes, the clerk shall then make a note of such fact in his record of sale, and the collector shall note a recital thereof in his record, and such lands shall again be offered for sale at the next sale of delinquent lands.

This attempted sale, it is said, took place at the November sale, 1944, of lands for delinquent taxes in Vernon County, Missouri. It is evident that the discovery of the invalidity of the sale, because of the non-compliance with the terms of the proviso of said Section 11127, was made long before the collector would have the right under the terms of Section 11149 to convey by deed the lands sold to the purchaser which gives the former owner two years to redeem such property. Therefore, the invalidity of the sale in question, being discovered prior to the conveyance of such lands, comes strictly within the terms of Section 11155, supra. Said Section 11155 provides that the purchase money paid upon an invalid sale shall be refunded to the purchaser, his representatives or assigns, out of the county treasury. Such provisions for refunding the purchase money to the in-

July 30, 1945

tended purchaser are so plain and forthright that there is no ground or necessity for rules of statutory construction to be applied thereto. The intended purchaser has the right to his money, and the statute says it shall be paid to him.

Said Section 11155 also provides that during the period between the date of the invalid sale and its discovery, the Statute of Limitations shall not run in favor of the delinquent taxpayer. That is not the exact words of the statute, but that is its meaning. So the delinquent taxpayer would be back right where he was on the date of the invalid sale with respect to the Statute of Limitations.

Said Section 11155 further provides that in such cases the County Collector shall make an entry opposite to the description of such tracts or lots in the record of certificates of purchase issued or redemption record, and record that the same was erroneously sold, and the cause of the invalidity. The statute says he shall then notify the County Clerk of such action whose duty it shall be to make a like entry on his sale record. This, we think, points out that upon the discovery of the invalidity of a sale, the statute intends that the Collector shall so make his record, notify the County Clerk thereof, and the County Clerk shall make his record for the purpose of placing, and that there shall be placed back on the delinquent list the lands sold at the invalid sale, for the next sale of delinquent lands in the county. This view, we believe, is in harmony with the provisions of Section 11129, supra, which provides if there is no bid, and surely it must be said under the circumstances of this case that there was no bid, because the Collector was prohibited from receiving a bid, under such circumstances, the Collector shall note a recital thereof in his record containing a list of delinquent lands, and said lands shall be again offered for sale at the next sale of delinquent lands. We believe the Collector and the County Clerk have continuing duties in this regard, and are empowered to perform them, with respect to reassigning such lands for the next sale, upon the discovery of an invalid sale, the same as they would under the terms of Section 11129, supra.

By harmonizing these several statutes and their provisions, we think the answer to the question you present is found.

CONCLUSION.

It is, therefore, the opinion of this Department

July 30, 1945

that a non-resident of the State of Missouri, who has bid on the offer of sale for taxes of land in Missouri, without having filed the instrument required by Section 11127, R.S. Mo. 1939, but having paid the amount of his bid to the County Collector as and for the purchase price of said land is, under the terms of Section 11155, R.S. Mo. 1939, entitled to have the money refunded to him out of the county treasury.

That said land should be again listed, under the terms of the statutes above set forth, for sale at the next sale of delinquent land.

That under the terms of Section 11155, supra, the Statute of Limitations would be suspended, and the tax due on this land would be charged back as it originally was for the five years previous to the date of the attempted sale.

That said land may then lawfully be offered at the next November sale for delinquent lands in Missouri.

Respectfully submitted,

GEORGE W. CROWLEY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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