

TAXATION AND REVENUE: Refunds of taxes paid under House Bills 868, 869, 888 and 948 of the 63rd General Assembly.



December 5, 1946

12/17

Mr. M. E. Morris  
Director of Revenue  
State of Missouri  
Jefferson City, Missouri

Dear Sir:

Reference is made to your inquiry of recent date, requesting an official opinion of this office, and reading as follows:

"Please advise this department whether refunds may be made to any tax payers who, endeavoring to comply with House Bills # 868, 869, 888 and 948, inadvertently over pay such tax."

In this opinion we have separately considered the question of refunds under House Bills 868 and 869 and House Bills 888 and 948, for reasons which will appear in the course hereof.

Refunds Under House Bills 868 and 869

It is a general principle applicable to the law of taxation that taxes voluntarily paid may not be recovered by the taxpayer in the absence of statutory authorization to some officer or agency to make such refunds. We direct your attention to 61 C. J., Taxation, page 991, where the rule is declared:

"It is a general rule that taxes voluntarily paid under a mistake of law, with full knowledge of the facts, cannot be recovered back, unless recovery is expressly or impliedly authorized by statute; but the rule does not apply to payment under

protest. Taxes paid under a mistake of fact are recoverable, particularly if made by the revenue officers in the form of a statement to the taxpayer or in taking some official action on the correctness of which the latter has a right to rely, although it is otherwise where the mistake is made by the taxpayer himself, and is the result of his neglect of some legal duty, or where the facts which would have shown the mistake were within his own possession or within his reach."

That the exception to the general rule as stated above, that taxes paid under a mistake of fact are recoverable, has been followed by the Supreme Court of Missouri, appears from *Mathews v. City of Kansas*, 80 Mo. 231, l. c. 236. In this case a taxpayer sought to recover taxes which had been paid upon real property not belonging to him, but which were paid upon certain other real property which the taxpayer had designated as being his. The court therein said:

" \* \* \* It may be conceded that if Harriman had gone to the collector and stated that he had come to pay the tax assessed on plaintiff's land, trusting to the collector to look up the numbers, and this the collector undertook to do, and furnished the wrong numbers, and the agent had thereupon made payment on the belief of the correctness of the lots, this would have been a case of mutual mistake, or at least one in which the plaintiff would have a clear equity of restitution. But the proof here is that without any word or act of the collector inviting thereto, the agent of plaintiff, not depending on the collector for the land assessed against his principal, presented his own prepared list to the collector and told him to make out a receipt for the taxes due upon said list.' In such a case the collector had to look simply to the numbers of the lots thus furnished to ascertain the amount of taxes assessed thereon. \* \* \*"

In that case recovery of the taxes paid was denied.

We take notice that in the administration of the taxation laws contained in House Bills 868, 869, 888 and 948, the infor-

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mation relating to the property, its value, yield, etc., is all within the possession of the taxpayer, and that it is solely upon the basis of the figures and information submitted by the taxpayer that the tax is collected. We, therefore, believe that the exception to the general rule with regard to taxes paid under a mistake of fact would be applied to inadvertent overpayments under these circumstances.

We also direct your attention to State ex rel. v. Lindheimer, 21 N. E. (2d) 318, 124 A. L. R. 1472, 1. c. 1476, wherein the Supreme Court of Illinois said:

" \* \* \* So, also, any right to a refund or a credit of taxes is purely of statutory origin, and in the absence of an authoritative statute, taxes voluntarily, though erroneously, paid, cannot be recovered, nor even voluntarily refunded by a county, although there may be justice in the claim. LeFevre v. County of Lee, 353 Ill 30, 186 NE 536. \* \* \* "

A similar situation was presented in Mahnomen County v. United States, 319 U. S. 474, 87 L. Ed. 1527. This was an action on the part of the United States to recover taxes which had been voluntarily paid by an Indian, upon whose lands taxes could not be validly assessed. The Supreme Court of the United States denied such recovery, saying:

"The allottee paid the 1911-21 taxes voluntarily and settled the balance of her taxes to her advantage in 1936. Neither Minnesota law nor federal law requires that a county refund taxes which an emancipated Indian has voluntarily paid. The County is entitled to judgment in its favor."

You will note that throughout these cases reference is made to "statutory authority" to recover such taxes. We have examined the statutes of the State of Missouri generally referring to refunds of taxes paid and find only Section 11215, R. S. Mo. 1939, which conceivably might be applicable. This section reads as follows:

"Wherever, in any county in this state, money has been collected under an illegal levy, the county court of such county or counties is hereby authorized to refund the same by issuing warrants upon the fund to which said money

had been credited, in favor of the person or persons who paid the same as shown by the collector's books: Provided, that should the person in favor of whom any warrant or warrants are issued be dead or unable to appear in person, then the same shall be paid to his heirs or legal representatives: Provided further, that said county court or courts may, in their discretion, refund, in addition to the money collected, interest which may have accrued upon the same, not to exceed six per cent: Provided further, that before any levy shall be considered illegal, it shall have been so declared by the supreme court of the state of Missouri: Provided further, that the provisions of this section shall only apply to those counties in which the money collected under said illegal levy is either in the county treasury or within the control of the county court: Provided further, that the county court so refunding said money shall specify the time in which said money shall be refunded, and all warrants left on hand after the expiration of such time shall be by said county court canceled, and the money and interest turned into the school fund of the county."

You will note that the above section provides for refunds only under certain special and particular circumstances, and then only when based upon an illegal levy, determined to be such by the Supreme Court of the State of Missouri. We, therefore, think it inapplicable.

There being no statutory authority for refunds, we think the following rule declared in 61 C. J., Taxation, page 974, to be pertinent:

"A state has power to authorize the refund of taxes paid, but the authority to refund must be conferred by a valid and constitutional statute; and the legislature has no power to compel the refund of taxes legally collected. \* \* \* In the absence of a valid statute, no executive or administrative officer has power to refund taxes; and if the power is given to them by law it must be strictly followed. \* \* \*" (Emphasis ours.)

Not finding statutory authority for such refunds either in the taxing statutes themselves, namely, House Bills 868 and 869, nor in the general statutes relating to refunds of taxes, we conclude that the Director of Revenue has no authority to make refunds of taxes voluntarily, inadvertently overpaid thereunder.

Refunds Under House Bills 888 and 948

With respect to overpayments made under these two acts, a different situation presents itself. Your attention is directed to Section 7 of House Bill 888, reading, in part, as follows:

" \* \* \* Upon the filing of such return the full amount of any tax as computed by the taxpayer shall be paid to the Director, who as soon as is practicable thereafter shall examine it and determine the correct amount of the tax. If the Director determines that the taxpayer has paid a tax in excess of the amount lawfully due, the Director shall permit a credit. \* \* \* (Emphasis ours.)

Also, to the following portion of Section 7 of House Bill 948, reading, in part, as follows:

" \* \* \* Upon the filing of such return the full amount of any tax as computed by the taxpayer shall be paid to the Director, who as soon as is practicable thereafter shall examine it and determine the correct amount of the tax. If the Director determines that the taxpayer has paid a tax in excess of the amount lawfully due, the Director shall per-  
mit a credit. \* \* \* (Emphasis ours.)

Here, then, exists statutory authority for the Director to make the necessary adjustment so that the taxpayer will be required to only pay the amount properly due.

The mechanics by which such "credit" may be made available to the taxpayer have not been set forth in the bills. However, we do note that under both House Bills 888 and 948 the tax is due when the return is filed, and then a determination of the correctness of the total tax computed by the taxpayer is to be made thereafter by the Director of Revenue within such time as is practicable. Therefore, it does not

seem that the "credit" could be directly refunded to the taxpayer. The word credit is defined and explained in 21 C.J.S. 1043 as follows:

"'Credit' has another and more restricted meaning which would narrow it down to a signification nearly synonymous with payment; and, in its narrow or bookkeeping sense, as opposed to 'debits,' may be said to be a payment on account as shown by the creditor's books. In this use, the word has been defined as meaning a payment, an acknowledgment or entry of payment, or of indebtedness reduced; and, as applied specifically to bookkeeping entries, a balance of book accounts in favor of the credit side; anything valuable standing on the creditor side of an account; a sum credited on the books of a company to a person who appears to be entitled to it; that which is entered in an account as an offset to a debt, or for which the party in whose favor the entry is made becomes the creditor of another; \* \* \* \* \*

This interpretation that the word credit as used in House Bill 888 refers to a bookkeeping entry rather than a cash return is strengthened by the fact that the Legislature did not appropriate any money for the payment of such a "credit."

CONCLUSION

In the premises, we are of the opinion that an overpayment of taxes voluntarily made, under the provisions of House Bills 868, 869, 888 and 948 of the 63rd General Assembly, may not be refunded by the Director of Revenue, but that upon determination by the Director of Revenue that such overpayment has in fact occurred, under House Bills 888 and 948, such excess may form the basis of a valid claim against the State of Missouri, which may be applied against tax liability for subsequent years.

Respectfully submitted,

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APPROVED:

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J. E. TAYLOR  
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