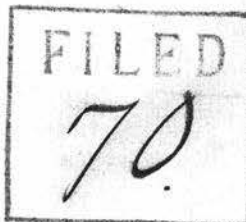


) Production of receipt of taxpayer for letter notifying him of suit essential for personal judgment for personal property taxes.

11/22/49

November 14, 1949

Honorable Elmer Peal
Prosecuting Attorney
Pemiscot County
Caruthersville, Missouri



Dear Sir:

We have received your request for an opinion of this Department, which request is as follows:

"Our County Collector mailed out notice to a delinquent personal Tax payer as is required by section 11113, to wit, a registered letter with a return receipt requested. The letter or notice with the return receipt attached were returned unclaimed.

"Now said section states that it is necessary to produce the receipt of the defendant for said notice. We have no receipt but can get service and in such a case what do you advise."

Section 11112, R. S. Missouri, 1939, as amended Laws of Missouri, 1945, page 1847, provides:

"Tangible personal property taxes assessed on and after January 1, 1946, and all personal taxes delinquent at that date, shall constitute a debt, as of the date on which such taxes were levied for which a personal judgment may be recovered against the party assessed with such taxes before any court of this State having jurisdiction. All actions commenced under this law shall be prosecuted in the name of the State of Missouri, at the relation and to the use of the collector and against the person or persons named in the tax bill, and in

one petition and in one count thereof may be included the said taxes for all such years as may be delinquent and unpaid, and said taxes shall be set forth in a tax bill or bills of said personal back taxes duly authenticated by the certificate of the collector and filed with the petition; and said tax bill or tax bills so certified shall be prima facie evidence that the amount claimed in said suit is just and correct, and all notices and process in suits under this law shall be sued and served in the same manner as in civil actions, and the general laws of this state as to practice and proceedings and appeals and writs of error in civil cases shall apply, as far as applicable, to the above actions. Provided, however, that in no case shall the state, county, city or collector be liable for any costs nor shall any be taxed against them or any of them. For the purpose of this chapter, personal tax bills shall become delinquent on the first day of January following the day when said bills are placed in the hands of the collector, and suits thereon may be instituted on and after the first day of February following, and within five years from said day. Said personal tax shall be presented and allowed against the estates of deceased, or insolvent debtors, in the same manner and with like effect, as other indebtedness of said debtors. The remedy hereby provided for the collection of personal tax bills is cumulative, and shall not in any manner impair other methods existing or hereafter provided for the collection of the same."

Section 11113, R. S. Missouri, 1939, as amended Laws of Missouri, 1945, page 1847, provides:

"Before any suit shall be brought to recover delinquent personal taxes the tax collector shall notify the delinquent taxpayer by registered letter that there are taxes assessed against him, stating the amount of taxes due

and the year for which they are due, that if the same are not paid within thirty days suit will be brought to recover said taxes, for which notice a fee of twenty-five cents may be charged and collected by the collector. And in any suit to recover personal delinquent taxes, it shall be necessary to produce the receipt of the defendant of letter containing notice herein required."

" * * * The levying of taxes is a matter solely of statutory creation, and no means can be resorted to, to coerce their payment, other than those pointed out in the statute. * * *" City of Carondelet v. Picot, 38 Mo. 125, l.c. 130.

"Where the statute authorizes suit only under certain circumstances, such circumstances must exist in order that the suit may be maintained. All conditions precedent imposed by the statute must, of course, be observed or the suit will fail." 61 C. J., Taxation, Section 1385, page 1055.

"If the statute requires a demand upon the taxpayer and his refusal to pay to precede the institution of an action against him, it is mandatory; * * *. * * * Where the statute requires written notice of delinquency, it must be given or the action cannot be maintained." Ibid, Section 1386, page 1056.

The statute here in question authorizes suit for personal judgment for delinquent personal property taxes only after thirty day notice to the taxpayer by registered letter. Production of the receipt is essential to obtain judgment. If the receipt cannot be produced, under the rules above referred to, judgment cannot be obtained, and the fact that personal services might be had does not obviate the necessity of compliance with the statutory requirement.

If personal service may be had, the obtaining of a receipt for the letter notifying the taxpayer of the intended suit would not appear to be impossible. If, however, no receipt can be obtained, the only other procedure would be by distraint under Section 11086, R. S. Missouri, 1939. " * * * As far as we are advised, distraint and sale, personal judgment, and allowance against the estate of deceased or insolvent debtors are the only methods provided by statute to enforce collection of personal taxes. * * *" State ex rel. Hibbs v. McGee, 329 Mo. 1176, 44 S.W. (2d) 36, l. c. 38.

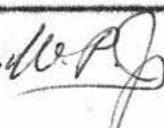
CONCLUSION

Therefore, it is the opinion of this Department that under Section 11113, R. S. Missouri, 1939, as amended, Laws of 1945, page 1847, the production of the receipt of the taxpayer for the letter notifying him of the proposed suit is a condition precedent to the obtaining of a personal judgment for delinquent personal property taxes, and that, if such receipt cannot be obtained, the only other procedure, other than against the estate of a decedent or insolvent, is by distraint under Section 11086, R. S. Missouri, 1939.

Respectfully submitted,

ROBERT R. WELBORN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General 

RRW/feh