

SCHOOLS: Taxpayers who pay school taxes voluntarily is not entitled to a refund even though tax is illegal.

February 28, 1949

Mr. Samuel E. Semple
Prosecuting Attorney
Moberly, Missouri



Dear Sir:

This will acknowledge receipt of your letter of January 12, 1949, in which you request an opinion of this department. This opinion request, omitting caption and signatures is as follows:

"I would like to obtain an Opinion from your office concerning a refund on school taxes. We have two cases of tax-payers who have paid school taxes in one school district when they live and their property is actually in another school district. I would like to know whether the tax-payer can get a refund on these taxes, and if he is entitled to such a refund, what body would make an order authorizing their refund."

For the purposes of this opinion we must assume that the payment of the school taxes aforesaid was a voluntary payment by the tax payer. Such being the case it would appear to be a general rule in this state that any money voluntarily paid to the district as a tax cannot be recovered back by the taxpayer because the tax is void and irregular. In State ex rel Kresge vs. Howard, 208 SW(2) 247, (Mo. Sup.) 1 c 250, the court said:

"It is generally held that taxes voluntarily paid without compulsion although levied under an unconstitutional statute, cannot be refunded without the aid of a statutory remedy. 51 Am. Jur. Taxation Sec. 1167."

Any school taxes assessed against the taxpayer, as in your case, by the wrong school district would be, of course, a void and irregular tax, but if the payments of such taxes were voluntarily made the courts of this state seem to hold that such payment cannot be recovered. See Christys Adm'r vs. City of St. Louis, 24 Mo. 443 61 AM. DEC 498; St. ex rel Rice vs. Powell, 44 Mo. 436; Kansas City ex rel Elliott vs. Holmes 106 SW 559, 127 Mo. App. 620.

Again in 56 C.J. 714 Section 823, we find the following statement:

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"In accordance with general rules elsewhere considered in this work and as statutes in some jurisdiction provide, an action at law may be maintained to recover illegal taxes paid involuntarily or where the district does not legally exist when paid under protest; but where a tax has been paid voluntarily and not under duress or coercion it cannot be recovered, even though paid under protest, although the tax was illegal, * * *."

In the case of State ex rel SS Kresge vs. Howard, supra, (Mo.) the Supreme Court of this state discussed this matter with reference to whether a payment of taxes, even though made without protest, is voluntary or involuntary. In that case, the Court held that since the relator (taxpayer) was faced with the forfeiture of his right to continue business in the State of Missouri and with out penalties unless the tax was paid, such payment was then involuntarily made and thus relator could recover back the tax paid. However, in that case the State of Missouri through the Legislature, had already appropriated enough money to pay the tax, thus acknowledging its liability.

We feel that the Kresge case, cited above is distinguishable from the instant cases. In that case they were faced with the proposition that unless they paid the domestication tax, they could no longer do business in this state, and the court held that a payment of the tax in such emergency constituted an involuntary payment. If the facts in this case were that the school tax payments in question were made under the same compulsion that existed in the Kresge case, then the payments in the instant case would probably be deemed involuntary and a refund then would be governed by the ruling in the Kresge case. However, in the instant case apparently no such emergency existed and no doubt the tax payments were made in the usual course of events. Under such circumstances we feel that such payment was a voluntary payment.

Therefore, following the general rule as set out above, in view of the fact that this was a voluntary payment, this department does not feel that the persons making the school tax payments mentioned in your letter would be entitled to a refund for such payments.

CONCLUSION

Therefore, it is the opinion of this department that persons who pay school taxes in a district other than the district in which

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their land lies and where they live, cannot recover and are not entitled to a refund for such taxes voluntarily paid.

Respectfully submitted,

John S. Phillips
Assistant Attorney General

APPROVED:

Attorney General