

TAXATION:
STATUTES:
CONSTRUCTION OF STATUTES:
CONSTITUTIONAL LAW.

Senate Substitute No. 2 for Senate Bill No. 78, effective October 13, 1961, has no retrospective effect and does not operate to forgive taxes which were assessed under the law in effect prior to said date.

August 11, 1961



Honorable James P. Landis,
Representative, Newton County,
605 West Hickory,
Neosho, Missouri

Dear Mr. Landis:

You have requested an opinion from this office with respect to the following:

"As you know the 71st General Assembly enacted legislation which would exempt goods in transit or in warehouse storage from property taxes. I do not know whether it was Senate Bill 78 or a House Committee substitute for a House Bill 309 which ultimately received approval by both Houses and which was signed by the Governor.

"I would appreciate your advising whether, under the terms and provisions of the statute, property taxes which may have been assessed against personalty in transit or in warehouse storage are forgiven for the current year since such taxes are not due and payable until approximately November 1, which date is subsequent to the effective date of the statute, or whether taxes levied against such personalty for the current year must nevertheless be paid."

The bill referred to in your letter which was enacted by the General Assembly and approved by the Governor is Senate Substitute No. 2 for Senate Bill No. 78, effective October 13, 1961. This bill enacts a new section known as Section 137.093, as follows:

"Tangible personal property moving through the state or consigned to a warehouse in this state from a point outside the state, in transit to a final destination outside the state shall, for purposes of taxation,

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acquire no situs in the state. The owner shall if required, in order to obtain a determination that any property has not acquired a situs in the state, submit to the appropriate assessing officer documentary proof of the in transit character and the final destination of the property."

Section 137.075, RSMo 1959, provides that every person holding or owning tangible personal property on the first day of January shall be liable for taxes thereon during the same calendar year. Section 137.080, RSMo 1959, provides for the assessment of tangible personal property annually as of the first day of January.

Section 137.115, RSMo 1959, provides that the assessor shall between the first day of January and the first day of June annually, make a list of all tangible personal property taxable in his county, town or district. Section 137.245, RSMo 1959, provides that the assessor shall make out and return to the County Court on or before the 31st day of May the assessor's book, which among other things, contains the assessed valuation of tangible personal property assessed to each individual. Other provisions of Chapter 137 provide for subsequent procedure with respect to the assessment of taxes.

It clearly appears from our statutes that the taxable situs of tangible personal property is to be determined as of January 1 of each year, and that the assessment of taxes is based upon such situs as of January 1st. Hence, if under the law in effect on January 1 of a particular year tangible personal property has a situs in this state for the purpose of taxation, it follows that the owner of said property is liable for taxes with respect thereto for the year in question.

It appears from your letter that the assessment procedures have already been completed with respect to the property in question, so that the question on which you request an opinion is whether the taxes which will become payable with respect to such assessments must be paid or whether said taxes will be forgiven as of October 13, 1961 by the newly enacted legislation.

The language of the bill makes it clear that it refers only to the initial assessment of personal property. It is to be noted that under the terms thereof, if the owner of such property desires to obtain a determination that his property has not acquired a situs in this state, he shall, if required, submit the necessary proof to the appropriate assessing officer. In the situation presented by your question, the assessing officer

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has no further duty to perform, since he has already completed the assessment as required by the statute now in effect. The title to the bill emphasizes the fact that it pertains only to the assessment of property rather than to the payment or forgiveness of taxes which have already been assessed. We quote the title:

"An Act to amend Chapter 137, RSMo 1959, relating to the assessment of property taxes by inserting between sections 137.090 and 137.095 thereof a new section relating to the same subject to be known as Section 137.093." (Emphasis supplied)

There is no language, either in the title to the Act or in the bill itself which evidences a legislative intent to forgive taxes which have already been assessed and which will become payable in due course during the calendar year.

Moreover, even if the Act were broad enough to relate to the payment of taxes, instead of being limited to the assessment thereof, our conclusion would be unchanged. There is no language in the statute which may be read as being retrospective. It relates solely to conditions in the future, subsequent to the effective date of the law, so that the taxable situs of the property is fixed as of January 1 of the following year and each January 1st thereafter (or any other date which the law may specify as the date for determining liability for taxes).

The law is well settled that in the construction of statutes "they must be held to operate prospectively only, unless the intent is clearly expressed that they shall act retrospectively, or the language of the statute admits of no other construction." To this effect are *Lucas v. Murphy*, 348 Mo. 1078, 156 S.W. 2d 686, l. c. 690 (just quoted) and *Clark Estate Co. v. Gentry*, 240 S. W. 2d 124, l. c. 129. In the latter case the court held as follows:

"The rule is that, in the absence of clear legislative intent to the contrary, the effect of statutes is prospective only."

In *State ex rel Bauer v. Edwards*, 136 Mo. 360, 38 S. W. 73, involving a statute requiring an owner to list his property as of June 1st of the year of assessment and that the value be placed upon it as of that day, the Court held that property was required to be assessed under the law then in effect rather than under a revised law which did not take effect until November 1 of such year, even though the assessor had not completed his work of assessment as of the latter date.

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Even if it were possible to construe the statute to operate retrospectively, such construction should not be given, for the reason that a statute attempting to forgive a taxpayer's liability would be violative of Section 39(5) of Article III of the Constitution of 1945 which provides that the General Assembly shall have no power

"To release or extinguish or to authorize the releasing or extinguishing, in whole or in part, without consideration, the indebtedness, liability or obligation of any corporation or individual due this state or any county or municipal corporation; * * *"

In *Graham Paper Company v. Gehner*, 332 Mo. 155, 59 S. W. 2d 49, the Supreme Court en banc construed a very similar provision of the Constitution of 1875 (Section 51, Article IV) and held that a liability for a tax (income in that case) though not due or payable, was an obligation or liability which the legislature could not validly release or extinguish.

We therefore are of the opinion that any statutory change with respect to the taxable situs of the property involved in your question has no retrospective effect, and that this bill does not operate to void taxes which were validly assessed under the law presently in effect.

CONCLUSION

It is the opinion of this office that Senate Substitute No. 2 for Senate Bill No. 78, effective October 13, 1961, has no retrospective effect, that it does not operate to forgive taxes assessed with respect to tangible personal property in transit or in warehouse storage for the year 1961, and that such taxes must be paid.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Joseph Nessenfeld.

Yours very truly,

THOMAS F. EAGLETON
ATTORNEY GENERAL