

TAXATION:

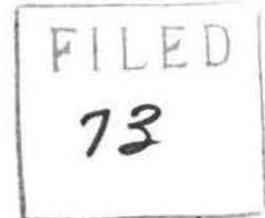
COUNTY COLLECTOR:

1. A county collector is required to issue a receipt for taxes paid under protest as provided for in Section 139.031, Senate Bill 39, 75th General Assembly, which receipt shall state that the tax is paid under protest; 2. When a tax is paid under protest as provided in Section 139.031, on or before the due date thereof, no penalties can be assessed or collected even though the time for filing suit for recovery of the protested tax does not expire until after the end of the calendar year in which the tax was paid.

January 9, 1970

OPINION NO. 73

Honorable Joe D. Holt
State Representative
District 102
829 Center Avenue
Fulton, Missouri 65251



Dear Mr. Holt:

This official opinion is rendered in response to the request contained in your recent letter relative to Senate Bill No. 39, 75th General Assembly.

In particular, your letter raises the following questions:

"1. When tax money is presented to the collector under the provisions of this law and with the proper document showing that the money is presented in protest, does the county tax collector give the person so presenting the money a tax receipt stamped and marked paid as if he had paid the taxes in full in the normal fashion?

"2. If after the 90-day period has expired following payment of the taxes under protest and during that period of time January 1, 1970, or January 1 or any ensuing year has arrived and passed, what effect does this section have upon the effect of collection of penalties normally assessed when taxes are not paid by January 1?"

Senate Bill No. 39 adds to Chapter 139, Missouri Revised Statutes entitled "Payment and Collection of Current Taxes", a new section to be known as Section 139.031, authorizing the payment of taxes under

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protest and providing procedures for the recovery of taxes erroneously or illegally collected.

Literally, the bill is drafted in five sections. Section 1 authorizes payment of taxes under protest and sets forth certain requirements for making such protest. Section 2 relates to the handling of tax money by the collectors and authorizes the filing of lawsuits in the circuit courts for recovery of taxes paid under protest. Section 3 relates to the type of court proceedings and the relief to be granted by the court. Section 4 makes provision for the refund of taxes "mistakenly or erroneously" paid, and Section 5 states that no interest shall be paid on refunds.

The language of the statute is as follows:

"Section 1. Any taxpayer may protest all or any part of any taxes assessed against him, except taxes collected by the Director of Revenue of Missouri. Any such taxpayer desiring to pay any taxes under protest shall, at the time of paying such taxes, file with the collector a written statement setting forth the grounds on which his protest is based, and shall further cite any law, statute, or facts on which he relies in protesting the whole or any part of such taxes.

"Section 2. The collector shall disburse to the proper official all portions of taxes not so protested, and he shall impound in a separate fund all portions of such taxes which are so **protes**ted. Every taxpayer protesting the payment of taxes, within ninety days after filing his protest, shall commence an action against the collector by filing a petition for the recovery of the amount protested in the Circuit Court of the county in which the collector maintains his office. If any taxpayer so protesting his taxes shall fail to commence an action in the Circuit Court for the recovery of the taxes protested within the time herein prescribed, such protest shall become null and void and of no effect, and the collector shall then disburse to the proper official the taxes impounded, as hereinabove provided.

"Section 3. Trial of the action in the Circuit Court shall be in the manner prescribed for non-jury civil proceedings, and, after determination of the issues, the court shall make such orders as may be just and equitable to refund to the taxpayer all or any part of the taxes paid under protest or to authorize the collector to release and disburse all or any part

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of the impounded taxes. Either party to the proceedings may appeal the determination of the Circuit Court.

"Section 4. All county collectors of taxes, and the collector of taxes in any city not within a county, shall, upon written application of a taxpayer, refund any real or tangible personal property tax mistakenly or erroneously paid in whole or in part to the collector. Such application shall be filed within one year after the tax is mistakenly or erroneously paid. The County Court, or other appropriate body or official, shall make available to the collector funds necessary to make refunds under this subsection by issuing warrants upon the fund to which the mistaken or erroneous payment has been credited, or otherwise.

"Section 5. No taxpayer shall receive any interest on any money paid in by him either erroneously or under protest."

There is nothing new or unique about statutes authorizing payment of taxes under protest and suits for refund of taxes so paid. A number of states have such statutes and it has been held that the effect is to make the payment of an illegal tax under protest involuntary, irrespective of any question of compulsion or duress within the rules of the common law. Also such payment has the effect of impressing with a trust the unlawfully collected taxes. Furthermore, a tax is paid when it is properly paid under protest. 84 C.J.S., Taxation, Section 638.

There is nothing in Section 139.031 (Senate Bill No. 39) indicating what type of receipt, if any, shall be issued by collectors receiving payment under protest. However, Section 139.090, RSMo 1959, states in part:

"1. Whenever any person shall pay taxes charged on the tax book, the collector shall enter such payment in his list, and give the person paying the same a receipt, specifying the name of the person for whom paid, the amount paid, what year paid for, and the property and value thereof on which the same was paid, according to its description on the collector's list, in whole or in part, as the case may be, and the collector shall enter 'paid' against each tract or lot of land when he collects the tax thereon."

Thus, it is clear that a receipt must be given whenever taxes are paid. It is our view that this requirement applies to payment under protest as well. The collector's receipt should contain the information expressly mentioned in the statute and should state that the tax has been paid under protest.

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The second question presented by your letter presupposes that a tax is paid under protest prior to the end of the calendar year although the ninety day period within which a suit for recovery may be filed does not expire until after December 31. As indicated above, it is our view that the tax is paid when it is paid under protest. Inasmuch as this occurs before the end of the year, there is no delinquency and no basis for imposing or collecting penalties.

CONCLUSION

Therefore, it is the opinion of this office that: 1. A county collector is required to issue a receipt for taxes paid under protest as provided for in Section 139.031, Senate Bill No. 39, 75th General Assembly, which receipt shall state that the tax is paid under protest; 2. When a tax is paid under protest as provided in Section 139.031, on or before the due date thereof, no penalties can be assessed or collected even though the time for filing suit for recovery of the protested tax does not expire until after the end of the calendar year in which the tax was paid.

The foregoing opinion, which I hereby approve, was prepared by my assistant John E. Park.

Very truly yours,



JOHN C. DANFORTH
Attorney General