

TAXATION

Costs and attorneys fees and dismissal of suits by collectors, under House Bill No. 124, discussed.

93

August 24, 1934.



Mr. W. N. Doss
Secretary
State Tax Commission
Jefferson City, Missouri

Dear Sir:

This is to acknowledge your letter as follows:

"We are in receipt of the following communication from the Collector of the City of Maplewood:

'In Re: Clinkscales Bill to relieve delinquent taxpayers of heavy penalties and interest, signed January 18, 1934 by Governor Park, in effect April 18, 1934.

'Did this law give to County or City Collectors the right to dismiss suits without costs to property owners, whether judgment has been rendered or not?'

'Also what recourse has the Attorney who filed the suit, to collect the costs of filing the suit?'

'In other words - has anyone a comeback on the Collector, after he dismisses suits without costs - if he had the right to do it?'

"Will appreciate an opinion from you relative to this matter at the earliest possible date."

I.

Your inquiry concerns House Bill No. 124, Laws of Missouri, Extra Session, 1933-34, page 166, approved January 18th, 1934, effective April 12, 1934. Said section provides:

"That all penalties and interest on personal and Real Estate Taxes, delinquent for the year 1932 and prior years shall be computed after December 31, 1933, on the same penalty basis as the taxes delinquent for the year 1933 until paid."

Before going into the questions involved, it may be well to consider the purpose and the history surrounding the enactment of House Bill No. 124.

Prior to July 24, 1933, delinquent taxes were collected by suits. Under the old statute the collector had the power to employ an attorney and bring a suit against the delinquent taxpayer. The statutes permitted the taxing as costs attorney's fee and penalty and interest, which the delinquent taxpayer had to pay. However, in 1933, Senate Bill No. 94 was enacted (Laws of Missouri, 1933, page 425 et seq.) which became effective July 24, 1933, and which provided a new scheme for the collection of delinquent taxes. Said act provided that the collector would sell the property without first placing same in judgment. The Legislature in 1933 also enacted laws remitting the interest, penalty and costs of the delinquent taxes, Senate Bill No. 80, Laws of Missouri, 1933, page 423, which expired and ceased to be in effect after January 1, 1934. This act was repealed by the Legislature in Extra Session, 1933-34 by Committee Substitute Senate Bill No. 40 and three new sections enacted in lieu thereof on the same subject (Laws of Missouri, 1933, Extra Session, page 152-153) which new act expired December 31, 1933. Thus, upon the expiration of Committee Substitute Senate Bill No. 40 on December 31, 1933, the remitting of interest, penalties and costs on delinquent taxes no longer was permitted. And the next law enacted by the Legislature in Extra Session, relating to remitting penalties on delinquent taxes, is the bill here under consideration, namely, House Bill No. 124.

It should be borne in mind that after July 24, 1933, the effective date of Senate Bill 94 (the law requiring the selling of property by the Collector without suit, to-wit, delinquent tax claims), no costs such as attorney's fees or court costs, abstractor's fees or sheriff's costs herein provided for, could be charged

upon taxes thereafter becoming delinquent to be paid by the taxpayer. It should be further considered that this was the law by virtue and under the provisions of which taxes for 1933 became delinquent, so that after July 24, 1933, the Collector had no right to employ an attorney and accordingly no such costs can ever be charged against delinquent 1933 taxes, nor could any such court costs be placed against the property of the delinquent tax payer respecting 1933 taxes. However, if in any suits pending prior to April 13, 1933, the same were reduced to judgment after the expiration of Senate Bill 80, and before the effective date of House Bill 124, to-wit, between the dates of December 31, 1933 and April 12, 1934, then the taxpayer would have to pay the amount of the judgment which would probably include the taxes, penalties and interest and various other fees and charges. To sustain the above conclusions reached by us, we call your attention to the case of State ex rel. Attorney General v. Frank W. Bair, 333 Mo. 1, and State ex rel. Crutcher v. Koeln, 61 S. W. (2d) 750.

Bearing in mind the above premises, we will proceed with a consideration of your questions.

- A. Did this law give the county or city collectors the right to dismiss suits without cost to property owners, whether judgment has been rendered or not?

It is elementary law that if a suit is placed in judgment, after such judgment the city or other collector could not dismiss the suit. It would take an order of the Court to set aside or to vacate the judgment before a dismissal could be entered. This is true regardless as to the date upon which the judgment was rendered. However, by reason of the decision in the Bair case, supra, it is our opinion that no valid judgment for delinquent taxes could be rendered during the pendency of Senate Bill 80, and if any such judgment were rendered during that time, to-wit, between the 13th day of April, 1933 and the 31st day of December, 1933, such judgment would be a nullity. We quote from the Bair case, supra, l. c. 17:

"All questions necessary to be discussed having been determined, it seems advisable, before closing this opinion, to observe briefly the effect of the change

in the law upon the back-tax suits that have been filed, or may be filed, subsequently to the date, April 13 of the current year, when this new law became effective. Owing to the alternative options granted the taxpayer, with periodically and increasingly reduced advantage to him in the avoidance of penalties, a question of some difficulty is presented pertinent to the effect upon suits pending during any part or all of the entire period covered by the act. (8) Concerning this matter it is our view, (1) that none can proceed to final judgment before the expiration of the act on January 1 next; (2) a taxpayer exercising the first option, may pay the original tax without more and all penalties are thereby discharged and his pending tax suit, if any, will be abated; (3) exercising the second option, the taxpayer, if suit be pending against him, must in addition to the original tax pay one-fourth of all penalties formerly chargeable, in full discharge of the whole and the suit will likewise abate; and (4) the same process and result will apply in a general way to the remaining options."

Thus, while Senate Bill 80 was in effect, no final judgment could have been rendered against the taxpayer and if a judgment were rendered within that time it is our opinion that the taxpayer's right to discharge his taxes under the provisions of House Bill 124 should be allowed. However, a different situation is presented in the event a tax suit were reduced to judgment prior to the 13th of April, 1933, or between January 1 and April 12, 1934. In such a case there would be valid and subsequent judgment in favor of the taxing authority and against the taxpayer, which judgment would include the various penalties, interest and costs prescribed by law at the time. As to these cases, the taxpayer would be required to pay the full amount of the judgment and could obtain no relief by means of the provisions of House Bill 124.

In answer to your first question, it is our opinion first, that the city or other collector cannot dismiss any suit which has once been placed in judgment, whether such judgment be valid or a nullity. Second, that no valid final judgment could be taken against the taxpayer between the 13th of April and the 31st of December, 1933, and if judgment were entered during that time the same should be set aside and abated and the taxpayer permitted to pay the tax, relieved of all penalties, interest and costs, except such penalties as could accrue on 1933 taxes. Third, that if judgment were taken in a tax suit prior to the 13th of April, 1933 or between the 1st of January and 12th of April, 1934, the same is a valid judgment which could not be dismissed by the Collector, but which would have to be paid in full by the taxpayer.

B. Also what recourse has the attorney who filed the suit, to collect the costs of filing the suit? - - - - -
In other words - has anyone a come-back on the Collector, after he dismisses suits without costs - if he had the right to do it?

In State ex rel. McKittrick v. Bair, supra, l. c. 15, the Supreme Court of Missouri, en Banc, held:

"The contract entered into between the collector and his attorney, and approved by the county court, imposes no liability upon either the State, county or the collector. It only fixes the status of the attorney as to his right to compensation and the amount thereof when in the tax suit the liability therefore becomes fixed upon the taxpayer's property by the final judgment in the case. * * * The same rule necessarily applies to the other interveners, who as public officers have no contractual right as to their terms of office or their compensation or any vested right in either, the same being subject to legislative control. (Cases cited.) The fees of the collector and his attorney and of the interveners are subordinate to the general legislative

power to impose, increase, diminish or remit penalties for tax delinquencies, and no vested right of any of them is impaired by the remission."

Our answer to your question as to the recourse of the attorney, will be in the negative.

Your remaining question as to the right of the collector to dismiss the suits without costs has been answered hereinbefore.

III.

We now direct our attention to House Bill No. 124. As shown hereinbefore it has been the policy of the last two legislatures to make the collection of delinquent taxes on a different basis and to also relieve penalties. By causing the collector to sell the property without the necessity of judgment relieves the taxpayer of attorney's fee and court costs, and by House Bill No. 124 relieves the taxpayer of excessive penalties already accrued.

House Bill No. 124 says in part as follows:

"* * * and prior years shall be computed after December 31, 1933, on the same penalty basis as the taxes delinquent for the year 1933 until paid."

The word "penalty" has been defined by our Supreme Court, en Banc, in the case of State ex rel. Crutcher v. Koeln, supra, l. c. 753, as follows:

"It follows that as used in the chapter on taxation in the Revised Statutes the expressions, 'commissions', 'interest', 'fees' and 'costs' are included in the generic term 'penalty'."

August 24, 1934.

Thus, in St. Louis County (being a county between 200,000 and 700,000 inhabitants) the only penalty that may be placed against delinquent taxes is that prescribed by Section 10152, Laws of Missouri, Extra Session, 1933-34, page 153, except taxes placed in judgment prior to April 13, 1933, and between the dates of December 31, 1933 and April 12, 1934, and such is our opinion.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

JLH:EG