TAXATION AND REVENUE) Proper officer of City of St. Louis may not reinstate a delinquent tax bill which has been voluntarily paid, where such payment was shown to have been made by the record.

(2) Such officer should not accept payment of delinquent taxes on lot on which such taxes have been duly paid. But when another payment for taxes on the same lot was voluntarily made said officer cannot make a refund therefor.

April 30, 1938

5-17

FILED
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Mr. Donald Gunn
Attorney at Law
1010 Pine Street
St. Louis, Missouri

Dear Mr. Gunn:

We wish to acknowledge receipt of your request for an opinion on April 18, 1938, on behalf of the collector of the revenue of the City of St. Louis which is as follows:

"On behalf of the Collector of the Revenue of the City of St. Louis, I am requesting the following information and your opinion with reference to the legal aspects of this situation.

"There are located within the City of St. Louis two pieces of adjoining property, having approximately the same dimensions. Parcel #1 is owned, let us say, by A. Parcel #2 is owned by B. About six months ago, through some error, A. called at the Collector's office and paid the general real estate taxes for the year 1934 which had been assessed against Parcel #2. Several months thereafter, he discovered his mistake, and being anxious to finance Parcel #1, he called at the Collector's office and likewise paid the general real estate taxes for 1934 on Parcel #1. Up to date, therefore, A has paid these taxes on both pieces of property.

"Now, subsequent to the time that A paid the taxes on Parcel #2, B became in arrears and in default on a deed of trust against Parcel #2. The holders of the deed of trust, being anxious to determine whether or not they should buy in the property at foreclosure, called at the Collector's office and determined that the general real estate taxes for 1934 had been paid on Parcel #2. They did not, in this connection, have the title actually run by a title company. Subsequently, they foreclosed on Parcel #2 and acquired the same at the foreclosure sale. They state that one of the reasons for acquiring same was the fact that these particular taxes had been paid. Demand has now been made upon these purchasers to pay the taxes on Parcel #2 so that a refund may be made to A of the amount he paid erroneously.

"The questions, therefore, presented by this situation are:

1. Has the Collector of the City of St. Louis, or the Comptroller of the City of St. Louis, or any other officers within this city, the right to reinstate a tax bill which has been paid through error, and the records pertaining to which have been erroneously marked paid?

2. Upon payment to the Collector by any party of the taxes previously collected by him from some other party, has he the right to refund to the party who paid in error the amount so paid by him?

3. Would the person who paid the wrong piece of property (A) have the right to maintain a suit against the person holding the legal title to the property which he

> paid erroneously and recover back the amount so paid, either at law or in equity?
>
> "In connection with the last question, I understand the cases to hold that the person who pays in error cannot be subrogated to the rights of the state, and cannot claim the state's lien as having been transferred to him. However, I am not clear on whether or not a suit could be successfully maintained on the theory of unjust enrichment, or some similar theory.
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> "The foregoing request is made of you in view of the fact that the taxes involved consist partially of state funds and, further, for the reason that the office of the Comptroller of the City of St. Louis is in a large measure involved, and I do not feel that I should advise that office, as I do not represent it, but that, on the other hand, the advice given them should come from the Attorney General."

The third question in your letter relates to a purely private controversy and therefore under and by virtue of the provision of Section 11274 of the 1929 Statutes of Missouri, we are not at liberty to render an opinion on that point. Therefore we shall render an opinion including only your first and second inquiries.

In your letter dated April 18, 1938 you stated that the general taxes in question were due for the year 1934, and that some six months prior to the date of said letter a hypothetical person paid the taxes due for said year upon a lot, owned at the time by another person. The taxes on the lot

were therefore delinquent and the collection of such taxes by the proper officer must be made under and by virtue of the procedure of Senate Bill 94 of the 1933 Session Acts of Missouri.

I

Section 9949 of Senate Bill 94 of the 1933 Session Acts at page 427 is as follows:

> "The collectors of the respective counties and the collectors of such cities, respectively, shall proceed to collect the taxes contained in such 'back tax book' or recorded list of the delinquent land and lots in the collector's office as herein required, and any person interested in or the owner of any tract of land or lot contained in said 'back tax book' or in the recorded list of delinquent lands and lots in the collector's office may redeem such tract of land or town lot, or any part thereof, from the state's or such city's lien thereon, by paying to the proper collector the amount of the original taxes, as charged against such tract of land or town lot described in said 'back tax book' or recorded list of delinquent lands and lots in the collector's office, together with interest on the same from the day upon which said tax first became delinquent at the rate specified in Section 9952."

Section 9952a of said Act at page 430 is as follows:

> "All lands and lots on which taxes are

> delinquent and unpaid shall be subject to sale to discharge the lien for said delinquent and unpaid taxes as provided for in this act on the first Monday of November of each year, and it shall not be necessary to include the name of the owner, mortgagee, occupant or any other person or corporation owning or claiming an interest in or to any of said lands or lots in the notice of such sale; provided, however, delinquent taxes, with penalty, interest and costs, may be paid to the county collector at any time before the property is sold therefor. The entry of record by the county collector listing the delinquent lands and lots as provided for in this act shall be and become a levy upon such delinquent lands and lots for the purpose of enforcing the lien of delinquent and unpaid taxes, together with penalty, interest and costs."

Senate Bill 93 of the 1933 Session Acts of Missouri at page 424 is as follows:

> "Sec. 9946. In all cases where any assessor or assessors, the county court, or assessment board, or any city council or assessment board, shall have assessed and levied taxes, general or special, on any real estate, according to law, whether the same be delinquent or otherwise, and until the same are paid and collected, with all costs, interests and penalties thereon, the city council of any city and the county court of any county shall have the full power to correct any errors which may appear in connection therewith, whether of valuation, subject

> to the provisions of the Constitution of this state, or of description, or ownership, double assessment, omission from the assessment list or books, or otherwise, and to make such valuations, assessment and levy confrom in all respects to the facts and requirements of the law * * * * *."

An opinion in answer to an inquiry similar to the within inquiry was rendered by this department to Mr. Will H. Hargus, Prosecuting Attorney of Harrisonville, Missouri, on March 3, 1934, holding that "Tax payer through his mistake, paying taxes on land which he does not own, may not recover back such taxes paid voluntarily." The above opinion was based upon a payment made to extinguish the tax lien of a drainage district but the same law is applicable as to the collection of general taxes. The decision quoted in that opinion is Matthews v. City of Kansas 80 Mo. 236 which laid down the rule as to the voluntary payment of taxes and is in part as follows:

> "Under the statute then in force the assessment of taxes on real property was not a personal tax against the owner. The assessment was made on the land itself by its members, regardless of who was its owner. It was not the duty of the collector to look up the owner or apply to him for the taxes. The tax by law became due and payable at certain prescribed periods, and it was the duty of the owner to go to the collector, or send some one, and pay this tax assessed on the land as such. So the collector in his testimony but stated a legal truth in saying that he had no concern as to who was the owner of a given lot or tract of land. He was receiving the tax imposed on the given lot as such. It may be conceded that if Harriman had gone to the collector and stated

> that he had come to pay the tax assessed on plaintiff's land, trusting to the collector to look up the numbers, and this the collector undertook to do, and furnished the wrong numbers, and the agent had thereupon made payment on the belief of the correctness of the lots, this would have been a case of mutual mistake, or at least one in which the plaintiff would have a clear equity of restitution. But the proof here is that without any word or act of the collector inviting thereto, the agent of plaintiff, not depending on the collector for the land assessed, against his principal, presented his own prepared list to the collector 'and told him to make out a receipt for the taxes due upon said list.' In such a case the collector had to look simply to the numbers of the lots thus furnished to ascertain the amount of taxes assessed thereon. This he did as invited by the plaintiff, and received the money without question, as it was due the city. Where is the evidence in all this to give color even to any mistake or misrepresentation as to any material fact on the part of the collector? He was pursuing the statute receiving the tax due on the lots as such, regardless of who the owner was. The money received was justly owing to the city, was a charge on the lots, and, therefore, it cannot be affirmed that it is unconscionable for the city to hold it."

Nothing appears in your letter which indicates that the collector in any way contributed to the mistake. Therefore said decision is the law of your case.

Under Section 9949 supra "any person interested in or the owner of" a lot may pay the taxes and redeem the property from the tax lien.

Under Section 9952a supra an interested party may pay the taxes and redeem the property from the tax lien "at any time before the property is sold therefor."

Under Section 9946 supra the proper officers were given the power to correct errors of taxes on real estate "whether the same be delinquent or otherwise and until the same are paid and collected."

The above statute is the only one we are able to find giving to any officer or group of officers the right of correcting errors in tax matters, and such right is given only until the taxes are paid and collected and not after such time.

Conclusion

Therefore, it is the conclusion of this department that when the proper officer of the City of St. Louis receives the amount due for delinquent taxes, penalty, interest and costs, from any interested person, voluntarily paying the same on a given lot in said city, to extinguish the tax lien thereon and gives receipt therefor and marks the same paid, he has no legal right thereafter to reinstate the tax bill.

II

When delinquent taxes are once collected, receipt given therefor and the record shows it to have been paid, the collector or proper officer should not accept further payment.

In passing on the right of the collector to enforce payment of delinquent taxes after he has collected the same and has given receipt therefor, the court in Huber v. Pickler 94 Mo. l.c. 386, says:

> "If, in the suit brought by Snyder against plaintiff to enforce the payment

> of the tax for 1876, he had appeared and produced the said Snyder's receipt for the taxes of that year, no judgment could or would have been rendered against him. And it is equally clear, under the authority of the cases above cited, that if, after the rendition of the judgment and before any sale took place under it, the said Snyder's receipt was shown to him for the taxes of the year on which the judgment was rendered, and the said collector accepted the same as payment and satisfaction, and entered the payment on the back-tax book, a public record, and as such imparting notice, agreeing in effect at the same time to satisfy the judgment by directing the attorney who brought the suit to proceed no further with it, that a purchaser at an execution sale thereafter made under the judgment took no title in virtue thereof.
>
> The taxpayer in this case did all that he was required to do, so far as the payment of the taxes for the year 1876, was concerned. These he paid; there was no delinquency on his part. The delinquency was on the part of the collector in not complying with section 6758, Revised Statutes, 1879, and in not entering on the tax book opposite and against the tract of land the tax paid when he collected it, and in falsely or mistakenly returning the land delinquent, when in truth and fact it was not delinquent, and in then instituting a suit to recover a tax which had been paid him more than two years before the suit was brought."

In regard to the collector making collection for taxes which he had already collected and given receipt therefor the

court quoted a Legislative Act which it said seemed to contemplate just such a contingency as the case in hand presents and provided to meet it. Said Section being Section 6791 of the Revised Statutes of 1879 which is Section 9939 of the 1929 Revised Statutes and which is quoted in said decision as follows:

> "'Any collector of the public revenue for the state, * * * who shall fail to make return of all lands, tenements, or other real estate to the proper officer, according to law, on which the taxes have been duly paid, so that the same shall, by the cause of his negligence, delinquency, or misconduct, be advertised and sold as delinquent lands, shall forfeit to the innocent purchaser in good faith of such lands, at the time and place appointed for the public sale of the same, one hundred per cent damages on the sum so paid by the innocent purchaser to such collector, and ten per cent per annum interest thereon until the same is paid to such purchaser, recoverable in any court having competent jurisdiction.'"

But, while a party, sued for taxes, which had been paid, would have a valid defense of payment to the suit, it is not a foundation for a suit to recover the money voluntarily paid for such taxes.

In passing on this question in State ex rel v. Chicago & Alton Railway Company 165 Mo. 597, l. c. 611 the court said:

> "In its petition to the county court in 1893 to refund the tax so paid, the defendant based its claim solely on the ground that the tax had not been levied

> in accordance with the requirements of section 7654, above referred to. There was no claim made that the tax was not levied to pay a just obligation of the townships, for which all the taxable property in the township was liable, but only that the procedure prescribed by law had not been followed.
>
> "Whilst that would have been a perfectly valid defense to a suit to collect the tax, it is not a foundation for a suit to recover the money voluntarily paid in conformity to the assessment. Taxes paid voluntarily, under those circumstances, can not be recovered. (Walker v. City of St. Louis, 15 Mo. 563; State ex rel v. Powell, 44 Mo. 436; Couch v. Kansas City, 127 Mo. 436; Robins v. Latham, 134 Mo. 469.) * * * *"

Said decision further held that general taxes collected would be placed in the county treasury under the control of the court subject to legal restrictions, in the following language:

> "If this had been money collected for general county purposes, its place would be in the county treasury, and it would be under the control of the county court, subject of course to the restrictions that the law imposes on that control."

We are unable to find any statute or decision where the county court, collector or other proper officer is given the right to refund taxes voluntarily paid.

On the other hand the rule which has been uniformly followed in Missouri is stated in Brewing Co. v. St. Louis 187 Mo. 367, l. c. 376 in the following language:

"The rule stated has been uniformly followed in this State in reference to all kinds of payments, including taxes, licenses, and claims, and the doctrine is firmly established that payments made with a full knowledge of all the facts constitute voluntary payments and can not be recovered, and that mistake or ignorance of law gives no right to recover. (Walker v. St. Louis, 15 Mo. l. c. 575; Christy's Admr. v. St. Louis, 20 Mo. 143; Claflin v. McDonough, 33 Mo. 412; Couch v. Kansas City, 127 Mo. 436; Teasdale V. Stoller, 133 Mo. 645; Douglas v. Kansas City, 147 Mo. l.c. 437; see, also, 22 Am. and Eng. Ency. Law (2 Ed.) pp. 609 and 613.)"

Conclusion

Therefore, it is the opinion of this department that an officer of the City of St. Louis who has the legal duty of collecting delinquent taxes should not accept payment of taxes, delinquent or otherwise, on a lot on which the taxes have been duly paid. But when another payment for taxes on the same lot was voluntarily made said officer cannot make a refund therefor.

Respectfully submitted

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

SVM/w