

TAXATION: House Bill No. 70 is applicable to taxes levied for drainage or levee purposes.

June 22, 1937.

Mr. Roy W. Harper,
Attorney for County Collector,
Caruthersville, Missouri.

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Dear Mr. Harper:

We wish to acknowledge your request for an opinion under date of June 16th, wherein you state as follows:

"Will you please advise us if the act recently passed by the Legislature and signed by the Governor knocking off penalties on delinquent taxes, subject to certain conditions and for certain times, applies to drainage and levee taxes."

This department, under date of April 11, 1933, in an opinion rendered to Hon. Forrest Smith, State Auditor, a copy of which is enclosed, in answer to an inquiry whether Senate Bill No. 80 dealing with the remission of penalties, interest and costs on delinquent and back taxes which became delinquent on or before January 1, 1933, was applicable to taxes levied for drainage or levee purposes, held:

"In answer to your sixth inquiry, to-wit, is this Senate Bill applicable to taxes levied for drainage or levee purposes, be advised that it is the opinion of this office that this bill applies to such taxes."

You make inquiry whether House Bill No. 70 passed by the 59th General Assembly and signed by the Governor on June 8, 1937, remitting penalties, interest and costs on

delinquent and back taxes which became delinquent on or before January 1, 1937, is applicable to taxes levied for drainage or levee purposes.

House Bill No. 70 is substantially the same as Senate Bill No. 80 with the exception of the years to which they are applicable, and the former bill saving to the collectors their commissions on delinquent taxes.

The Springfield Court of Appeals in the case of Pate v. Ross, 84 S. W. (2d) 961, has had occasion to pass on the question of whether Senate Bill No. 80, referred to in the aforementioned opinion to Hon. Forrest Smith, applied to drainage districts.

The Court in holding that it did include taxes assessed for drainage district purposes, said:

"In applying the foregoing rules of construction to this case, we find the title to the act called Senate Bill No. 80, found on page 423, Laws 1933, reads as follows: 'An Act in relation to delinquent and back taxes and to personal and land delinquent tax lists, and for the relief of persons whose names or property appear on said delinquent lists or either or any of them or whose personal or real estate taxes became delinquent on or before January 1, 1933, with an emergency clause.'

"The title clearly indicates the primary legislative intent to be for the relief of all persons whose personal or real estate taxes had become delinquent on or before January 1, 1933. What were the conditions at the time the act was enacted? It is well known that many tax-

payers were in financial distress (and for that matter they still are). On all sides were cries for relief from the situation in which our people found themselves. The Legislature apparently heeded those cries and enacted the law under consideration as well as other relief legislation. The fact that the emergency clause refers to the necessity of expeditious collection of taxes for the maintenance of schools and state institutions as constituting an emergency, does not, in our opinion, change one iota the object declared in the title of the act which was fundamentally to relieve the taxpayers from the burdens of penalties and cost accrued on their delinquent taxes. There is nothing in the act to indicate the Legislature intended to limit that relief to taxes for the support of state institutions and public schools. No mention is made in the emergency clause of taxes due counties or other political subdivisions. Surely it would not be contended that penalties due on county taxes were not intended to be included in the remission of costs. The act simply refers to taxes assessed against any real estate. Certainly the tax levied to pay the costs of drainage improvements is a tax assessed against land and is payable at the same time and collected in the same manner as are other taxes. Section 10823, R. S. Mo. 1929 (Mo. St. Ann. Sec. 10823, p. 3546); Chilton et al. v. Drainage District (Mo. App.) 63 S. W. (2d) 421.

"We perceive no more reason to relieve the taxpayer from the penalties and costs in the one case than in the other. If the avowed object of the law in question was for the relief of the taxpayer, then to hold the owner of land against which the drainage tax has been assessed, liable for the penalties that had accrued, would partially, at least, defeat the very object of the law itself.

"It is suggested that Senate Bill 94, passed at the same session of the Legislature, Laws 1933, p. 425 (Mo. St. Ann. Secs. 9945, 9949, et seq., pp. 7984-7988 et seq.), by which the whole system of collecting general taxes was changed, but which provided that nothing therein should change the method of collecting drainage assessments, indicates a legislative intent to differentiate between drainage taxes and other taxes. We can perceive reasons why the Legislature placed that proviso in the law above referred to, but no good reason appears for considering that question. Senate Bill 94 has nothing to do with the remission of penalties provided for in Senate Bill No. 80. The latter stands alone as a relief and remedial measure. It is said that, 'Under the general rule, statutes providing for the remission of penalties being remedial, should be liberally construed; and should be extended to all cases coming within the reason of the rule of the statutes.' 61 C. J. 1493. The only case called to our attention in which the particular question here involved was passed upon held that drainage taxes as well as state, county, and school taxes were included in a general statute relieving the taxpayer from penalties. *Livesay v. DeArmond et al.*, 131 Or. 563, 284 P. 166, 68 A. L. R. 422.

"We think a fair construction of the statute requires us to hold that it includes taxes assessed for drainage improvements."

The same reasoning would also clearly be applicable to the remission of penalties, interest and costs on taxes levied for levee purposes.

June 22, 1937

In view of our former opinion to Hon. Forrest Smith, State Auditor, on April 11, 1933, and the opinion of the Springfield Court of Appeals, it is the opinion of this department that House Bill No. 70, passed by the 59th General Assembly and signed by the Governor on June 8, 1937, remitting penalties, interest and costs on delinquent and back taxes which became delinquent on or before January 1, 1937, is applicable to taxes levied for drainage or levee purposes.

Respectfully submitted,

MAX WASSERMAN,
Assistant Attorney General .

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General .

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