TAXATION AND REVENUE: House Bill 124, page 166, Laws of Missouri, 1933-34, Extra Session, does not remit Court costs accrued on taxes and suit.

April 4, 1935.

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Hon. Geo. Harrington
Collector of Revenue
Jackson County
Court House
Kansas City, Missouri

Dear Mr. Harrington:

Your predecessor in office the Honorable John W. Ransom, requested an opinion of this office on the following matter:

> "I am writing you in regard to the collection of delinquent real estate taxes.
>
> We have a different situation in Jackson County in regard to delinquent real estate taxes than the rest of the state. Suit has been filed here on all delinquent taxes on real estate up to and including the year 1931.
>
> Since House Bill #124 has been in effect our attorneys have made no effort to enforce collection on these suits on account of receiving no fees. The result has been that we are making very light collections on these taxes.
>
> In view of Senate Bill #80 remitting interest, penalties and costs, and House Bill #124 remitting only interest and penalties, leaving out the word "costs", can you give me an opinion from your office which would allow me to proceed under the suits now filed to collect these taxes for the year 1931 and prior years and charge the taxpayer with attorneys' fees, to be assessed as costs."

As this matter is one of considerable interest we will presume that you will be desirous of having the opinion.

The 57th General Assembly passed several laws abating penalties on taxes, the first of these laws was known as Senate Bill 80 and is found at page 423 Laws of Missouri 1933. Under the provisions of this act

> "the collectors of revenue of the counties and cities of this state are hereby empowered and directed to accept the original amount of said taxes as charged against any such person or real estate relieved of the penalties, interest and costs accrued upon the same;" * * *

The phrase "penalties, interest and costs" is used no less than five times in this short act. In passing upon this particular act the Supreme Court In Banc in the case of State ex rel. Crutcher vs. Koeln, 61 S. W. (750), stated, l. c. 753:

> "It is said in 15 Corpus Juris at page 19, right column: 'In their origin costs were known as a punishment of the defeated person* * *rather than as a recompense to the successful party.* * *The latter theory obtains* * *in the legislation in regard to it.' In Volume 7 of Ruling Case Law, page 780, it is stated that 'the terms 'fees' and 'costs' are sometimes used interchangeably as having the same application.' 'Strictly speaking the two terms are not synonymous. The term 'costs' includes fees and reimbursements consisting of fixed and unalterable amounts previously specified by laws, regulations or tariffs,' etc. 15 C.J. p. 21, top 1 col. 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.' "

In this decision the Court specifically held that the term "penalty" covered interest, attorneys fees, commissions, clerks fees and all charges in addition to the amount of the tax. The 57th General Assembly in Extra Session, adopted Committee Substitute for Senate Bill No. 40, page 152, Laws of Missouri Extra Session, 1933-34, which was virtually a reenactment of Senate Bill 80 of the Regular Session but provided additional time within which the taxpayer could take advantage of the privileges extended. The same session of the Legislature enacted House Bill 124 found at page 166, Laws of Missouri Extra Session, 1933-34. This section reads as follows:

> "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."

It is to be noted that the Legislature in passing this act did not use the term "penalties, interest and costs" which it had used so fluently in Senate Bill 80 and Committee Substitute for Senate Bill 40. Instead, the act is confined to the phrase "penalties and interest". The Legislature is of course presumed to have known the conditions of the law at the time it passed this enactment and is presumed to know of the construction placed by the Court upon the terms used. Therefore, if it meant to use the term "penalties" in its all inclusive sense, it would not have used the word "interest" in connection therewith, for under the recent decision heretofore cited the term "penalty" by and in itself would have included and covered "interest". We therefore must conclude that the term "penalties" as used in House Bill 124 is not used in its board and all inclusive term but in a special sense. The term "interest" of course speaks for itself and plainly indicates the charge of ten per cent per annum due upon all delinquent taxes. Such laws were enacted by the same Legislature at the same Session. It is generally recognized that a variation in the terms of a revenue law indicates an intent to vary the application of that law. As stated in 69 C. J. Section 570, page 1135:

> "Words must be given their commonly accepted meaning and variations in the phraseology of different statutes must be assumed to be intentional. * * *"

The Supreme Court of Errors of Connecticut in the case of Blodgett vs. Union & New Haven Trust Company, 116 Atl. 908, had before it a tax act which as originally enacted contained the phrase "in possession or enjoyment." Later that phrase was dropped from the statute and subsequnnt thereto was replaced by an amendment. The Court in passing upon this stated, l. c. 910:

> "* * *our first collateral inheritance tax act of 1889 (Act 1889, c. 180) recognized the difference by imposing a tax on gifts 'intended to take effect in possession or enjoyment after the death of the grantor.' In 1897 (Acts 1897, c. 201, Sec. 11) the four words 'in possession or enjoyment' were dropped out of the statute and the tax limited to gifts 'to take effect upon the death of the grantor or donor'; and it was not until 1915 that the scope of the act was again enlarged by reinserting the word 'In possession or enjoyment.' Since the taxing power of the General Assembly, within its constitutional limitations, is plenary, we must assume that these variations in phraseology were intentional and adapted to the changing financial necessities of the state."

We know as a matter of contemporaneous history that one of the principal subjects of legislation considered by the 57th General Assembly was that of tax relief and the acceleration of the collection of the revenue of the state and governmental subdivisions. We must presume that the Legislature knew the status of the law prior to the enactment of House Bill 124, and knew that judicial construction had been placed upon the terms therein used. We can only conclude that the Legislature chose with care the terms used in this Act and that by the change of phraseology in these two tax laws it was intended that House Bill 124 would operate differently in that "costs" were not to be remitted. It should also be noted that House Bill 124 is an act of a permanent nature, and it is not an emergency measure as were Senate Bill 80 and Committee Substitute for Senate Bill 40.

The rule that "the expression of one thing is the exclusion of another" is applicable here. In the drafting of House Bill 124, "penalties and interest" are specifically mentioned but "costs" were omitted.

In the case of State ex inf. Conkling vs. Sweaney, 270 Mo. 685, the Court had before it the construction of Section 10881 R. S. Mo. 1929, which provided in part:

> "All the provisions of Section 10837 relating to the changes of boundary lines of common school districts* * * shall apply to town, city and consolidated districts."

The Court, in holding that the other provision of Section 10837 relating to dividing one district into two districts was not applicable, stated l1 c. 691:

> "But instead of the Legislature saying that all the provisions of section 10837 should apply to town districts, it merely said that 'all the provisions of section 10837 relating to the changes of boundary lines of common school districts' should apply. Referring then to Section 10837 we find that the only express provision therein for changing boundary lines is the provision for changing 'the boundary lines of two or more districts.' Other express provisionsis made for dividing one district into two new districts. It, we think, becomes at once apparent, that the provision for changing the boundary lines of two or more districts could not, by any process of construction, be held to provide a way for dividing one district into two new districts. Section 10881, in its present form, was enacted in 1909 (Laws 1909, p. 819, sec. 130). Prior to that time it had been expressly held by this court that the law providing for division of common school districts did not apply to village school districts. (State ex rel. v. Fry, 186 Mo. 198.) Such being the case the Legislature, when it enacted Section 10881, knew that the provisions of Section 10837, relating to the division of one common school district

> into two new districts, would not apply to town or consolidated districts unless it so provided in the act, and knowing this to be true and failing to so provide it would be but to do violence to the plain language used to hold that it expressed an intention to apply provisions other than those expressly mentioned. To so hold would be to violate the well known canon of statutory construction, viz: That the expression of one thing is the exclusion of another."

So in the instant case the specific mention of penalties and interest with a concurrent failure to specify costs indicates an intention not to remit such costs.

"Costs" as used in these sections evidently mean Court costs such as attorneys fees, sheriffs costs and circuit clerks costs, and other charges incident to a judicial proceeding. "Costs" in its usual and ordinary sense are to be so applied. 15 C. J. page 19, Section 1:

> "Costs are certain allowances authorized by statute to reimburse the successful party for expenses incurred in prosecuting or defending an action or special proceeding. They are in the nature of incidental damages allowed to indemnify a party against the expense of successfully asserting his rights <u>in court.</u>"

Before concluding we desire to point out one additional feature of this problem. Senate Bill 94, Laws of Missouri, 1933, page 425, establishes a new mode for procedure of collection of delinquent real estate taxes in this state. A portion of Section 9862b thereof provides:

> "* * *as to suits for delinquent taxes instituted, ut not merged in judgment, at the effective date of this act the collector shall have the right to proceed to final judgment and foreclosure of the tax lien under the provisions of the law as it existed prior to the passage of this act, or such collector may, in his discretion, dismiss such

> suits and proceed to foreclosure of the tax lien under the provisions of this act, subject to the preservation of rights to all valid costs and commissions that may have already attached in such character of suits under the law as it existed prior to the passage of this act."

Without a doubt House Bill 124 is in pari materia with this section andboth sections should be construed and read together. By Section 9962b an evident intent is distinguishable to save the valid costs and commissions which have accrued or which may be justly due on taxes upon which suit has been instituted prior to the enactmentof Senate Bill 94. This provision definitely indicates an intention on the part of the Legislature to save the costs for those to whom they may be entitled. It appears that by the wording of House Bill 124, we find evidence of the continuation of this intent. That these sections should be construed together so that one consistent policy is established is an elementary rule of construction.

CONCLUSION.

It is therefore the opinion of this office that suits instituted prior to the effective date of Senate Bill 94, Laws of Missouri 1933, page 425, may be prosecuted to final judgment and taxes collected by execution if necessary, and that the necessary court costs incident to such procedure, including statutory attorney fees, may be collected from the taxpayer.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK,
Attorney General

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