TAXATION: Notice not required taxpayer on personal property and penalties accrued are payable by the taxpayer and cannot be abated by the county court.

August 2, 1941

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Mr. Raymond J. Kiley
City Attorney
Portageville, Missouri

Dear Sir:

We are in receipt of your request for an opinion dated July 30, 1941, which reads as follows:

> "Recently hundreds of citizens of this County have received letters from the Prosecuting Attorney advising them that their personal taxes for the years 1936 to 1940 inclusive were delinquent. The letters suggested that in the event the taxes together with accrued penalties were not paid within a period of two weeks, suits might be instituted for collection.
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> "In many of the cases the assessor did not personally, or by deputy, inspect the taxes property; nor, did he call upon the taxpayer for a listing of such property. In other cases the taxpayer was affirmatively advised by the deputy collector that he should not pay personal taxes because they were not collectible under the law. In still other cases taxpayers have asked for a full statement of all taxes due and upon receipt of the statement paid the bill and departed unconscious of the fact that they still owed taxes.
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> "Under these circumstances several questions, which are unclear in law, present themselves, viz:
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> "(a) In the event that the assessor,

> either personally or by deputy, failed to view the property or call upon the taxpayer for a listing of his personal property, would the assessment be valid?
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> "(B) Is the taxpayer liable for penalties, having relied on the advice of the deputy collector that the taxes should not be paid?
>
> "(C) Is the taxpayer liable for taxes after offering the full amount of taxes due and receiving a receipt which admitted personal taxes of the omission was the fault of the collector?
>
> "(D) Has the County Court any authority to remove the penalties? If not can the penalties be abated by any authority?
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> "In nearly every instance the taxpayer is willing to pay any taxes that may be due, but feels that the imposition of penalties is inequitable since the non-payment was not his omission."

This request for an opinion will be answered as of one question and will not be divided into A, B, C, and D. All of the questions are so closely related that it would be a duplication to give authorities on each question separately.

Section 10973, R. S. Missouri 1939, partially reads as follows:

> "In all counties, except the city of St. Louis, the assessor shall be provided with two books, one to be called the 'real estate book,' and the other to be called the 'personal assessment book.' * ."

Section 10990, R. S. Missouri 1939, partially reads as follows:

> "The assessor, except in St. Louis city, shall make out and return to the county court, on or before the twentieth day of January in every

> year, a fair copy to the assessor's book, verified by his affidavit annexed thereto, in the following words, to-wit: * * * * * * * * * * * * * * * * * * * ."

It will be noticed under the two above sections the assessor must make out two books; one to be called "personal assessment book", the other to be called the "real estate book". These books, under Section 10990, supra, must be turned in to the county court on or before the 20th day of January in every year.

Section 11052, R. S. Missouri 1939, reads as follows:

> "As soon as may be after the tax book of each year has been corrected and adjusted, and the amount of county tax stated therein according to law, the county courts shall cause the same to be delivered to the proper collector, who shall give receipts therefor to the clerks of the county courts respectively; and each collector shall be charged by such clerk with the whole amount of the tax books so delivered to him."

Under the above section, each collector is charged, by the clerk of the county court, with the amount of the tax books so delivered to him. When the taxes are not paid to the collector, in accordance with the amounts set out in both the personal and real estate books, then under Section 1110, R. S. Missouri 1939, he shall make lists thereof, one to be called the "personal delinquent list" and the other the "land delinquent list."

Section 11112, R. S. Missouri 1939, partially reads as follows:

> "* * * For the purpose of this chapter, personal tax bills shall become delinquent on the first day of January following the day when said bills are placed in the hands of the collector, and suits thereon may be instituted

> after the expiration of said first day of January, and within five years from said day. * * * * * * * * * * "

Under Section 10973, supra, the assessor having made his levy it becomes the duty of the taxpayer to pay the tax without notice. We only find one section which provides for the notice of the payment of all taxes. This section is 11079, R. S. Missouri 1939, and reads as follows:

> "It shall be the duty of the collectors of revenue of the several counties of the state, immediately after the receipt of the tax books of their respective counties, to give not less than twenty days' notice of the time and place at which they will meet the taxpayers of their respective counties, and collect and receive their taxes; said notice shall be given by posting up at least four written or printed handbills in different parts of each municipal township in said counties, and by publication for two weeks in a newspaper, if one be published in the county, in which he shall notify said inhabitants to meet the collector at such places in their respective townships as may be named therein, and the number of days (not less than three) that he will remain at each of such places for the purposes aforesaid; and it shall be his duty to attend at the time and place thus appointed, either in person or by deputy, to receive and collect such taxes: Provided, the county court may relieve the collector from visiting any municipal township in his county by an order of record to be made before notice under the provisions of this section is given."

Section 11083, R. S. Missouri 1939, makes it the duty of the collector to furnish to all nonresident taxpayers a statement of the amount of taxes assessed against

real estate; but these sections have been declared to be directory and not mandatory.

In the case of St. Francis Levee Dist. v. Dorroh, 289 S. W. 925, l. c. 928, the court said:

> "* * In passing, it might be noted that the date of delinquency of such levee taxes, or annual installments thereof, is precisely and definitely fixed by the statute, and is not dependent whatsoever upon the giving of any notice to the taxpayer or the making of a demand upon him for payment of such taxes. It might also be stated that appellant does not challenge herein the validity of the assessment of special benefits made against his respective lands, nor does he challenge the validity of the levee taxes (based upon such special benefit assessment) or the levy of the annual installments thereof; in fact, he has apparently recognized their validity by making payment of the principal of said annual installments. * * * "

The court further said: (par. 2 same l. c.)

> "* * In State ex rel v. Wilson, 216 Mo. 215, 287, 115 S. W. 549, 571, we said:
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> "'This court has many times held that, when an assessor makes out his assessor's books, jurisdiction attaches and the rest of the proceedings are only directory (citing authorities). The broad principle announced and underlying all of these cases is, that when a valid assessment is shown, its entry upon the tax book and the failure of the property owner to pay it when due, a good cause of action is made out, and that all other requirements and proceedings are mere formalities and intended to assist and facilitate the collection of the taxes, and hindrances thrown in the way of a speedy collection of them.'

"To like effect is State ex rel v. Dungan, 265 Mo. 353, 177 S. W. 604.

"In Noland v. Busby, 28 Ind. 154, a somewhat similar statute was held to be merely directory. Said that court:

"'The statute makes it the duty of the treasurer on receipt of the duplicate, forthwith, to "cause notice to be posted up at the courthouse door, and in three other public places in the county, and to cause the same to be published in some newspaper having general circulation in his county, if any there be, for three weeks successively, stating in such notice the amount of tax charged for state, county, school, road or other purposes, on each one hundred dollars valuation of the taxable property; and also the tax on each poll for state, county and other purposes." *** If a valid assessment and levy had been made of the taxes and a proper duplicate thereof made out and placed in the hands of the treasurer for collection, his failure to give the notice would not invalidate the tax, or prevent its subsequent collection. That, like various other duties enjoined by the statute, can only be regarded as directory to the officer; the neglect to give the notice would not discharge the tax, or present a valid obstacle to the collection thereof.'"

In your request you ask:

"Has the County Court any authority to remove the penalties? If not can the penalties be abated by any authority?"

The county courts have no authority to abate penalties but the Legislature may pass a law authorizing them to abate penalties.

At the present time the county court has no authority, by legislation, to abate penalties. The county courts are not the general agents of the counties or the state. It was so held in Sturgeon v. Hampton, 88 Mo. 203, l. c. 213, where the court said:

> "The county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. These statutes constitute their warrant of attorney. Whenever they step outside of and beyond this statutory authority their acts are void. * * * * * * * * * * * * * * * * * "

In saying the Legislature has the authority to abate penalties, we are not overlooking Article IV, Section 51 of the Constitution of Missouri which reads as follows:

> "The General Assembly shall have no power to release or extinguish, or authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual to this State, or to any county or other municipal corporation therein."

or Article IV, Section 53, paragraph 22 of the Constitution of Missouri which reads as follows:

> "The General Assembly shall not pass any local or special law:
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> *
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> "(22) Remitting fines, penalties and forfeitures, or refunding moneys legally paid into the treasury:
>
> * "

At first reading, the above constitutional sections appear to even prohibit the Legislature from enacting laws abating penalties, but the two sections have been construed in State v. Koeln, 61 S. W. (2d) 750, l. c. 755, paragraphs

11, 12, where the court said:

> "Another clause of our Constitution, subsection 22, section 53, of said article 4, prohibits the enactment of any special or local law remitting 'fines, penalties and forfeitures.' It seems clear that this group of words is totally unrelated in signification to the group first discussed. It is evident that if both said subsection 22 and section 51 relate to the same subject, there would be a duplication, for section 51, if all inclusive, would render the subsection of 53 superfluous and nugatory. But under established rules of construction the courts should resolve seemingly conflicting or overlapping provisions of the Constitution by harmonizing them and rendering every word operative, if possible, so as to give effect to the whole. Applying that rule, and also the rule that the Legislature possesses all legislative powers not prohibited by the Constitution, expressly or by necessary implication, we are of the opinion that from the express limitation contained in said subsection, prohibiting the remission of fines, penalties, and forfeitures by special law, a necessary implication arises that general laws on that subject are not prohibited by the Constitution but are within the fundamental powers just referred to, and of opinion also that said section 51 does not, by express words or by necessary implication, prohibit the remission of fines, penalties, or forfeitures by general laws. * * * * * * * * * * * "

They were also construed in State v. Bair, 63 S. W. (2d) 64, l. c. 66, paragraphs 4 and 5, where the court said:

> "* * In this situation, the legis-

> lative power to remit the penalties involved here is well settled in principle. In Maryland v. B. & O. R. R. Co., 3 How. 534, 11 L. Ed. 714, it is held that the Legislature has a right to remit penalties imposed by law. 'In this aspect of the case,' the court said at page 552 of 3 How., 11 L. Ed. 714, 'and upon this construction of the act of Assembly, we do not understand that the right of the state to release it is disputed. Certainly the power to do so is too well settled to admit of controversy. The repeal of the law imposing the penalty is of itself a remission.
> * * * * * * * * * * * * * * * * * *
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> "* * * The Thirty-Eighth General Assembly passed an act (Laws 1895, p. 243) remitting penalties which seems to have furnished the pattern for No. 80. Unlike the latter, the former conditioned the remission, in instances where suits had been filed, upon the taxpayer's paying the costs together with attorney's fees. In construing the latter provision, this court in State ex rel. Bauer v. Edwards, 162 Mo. 660, 63 S. W. 388, held that the act simply gave the taxpayer an opportunity to avoid the costs and penalties by tendering the amount of the original tax before suit was brought and before the act expired by limitation. So we think that under a proper construction of the statute assailed in the instant case the filing of suits for delinquent taxes and penalties is not prevented, but that penalties are remitted, in the manner provided in No. 80, upon proper tender of payment of the original taxes, without penalties, fees, or costs, before judgment rendered (except as noted later)."

In view of the above two cases the Legislature is prohibited from passing a special law but the courts have construed that it may pass a general law in regard to penalties which has been done in the past few years.

In your request, Section (A) you ask as follows:

> "In the event that the assessor, either personally or by deputy, failed to view the property or call upon the taxpayer for a listing of his personal property, would the assessment be valid?"

The law applicable to this question is set out in Section 10950, R. S. Missouri 1939, which partially reads as follows:

> "The assessor or his deputy or deputies shall between the first days of June and January, and after being furnished with the necessary books and blanks by the county clerk at the expense of the county, proceed to take a list of the taxable personal property and real estate in his county, town or district, and assess the value thereof, in the manner following to wit: He shall call at the office, place of doing business or residence of each person required by this chapter to list property, and shall require such persons to make a correct statement of all taxable property owned by such person, or under the care, charge or management of such person, except merchandise which may be required to pay a license tax, being in any county of this state in accordance with the provisions of this chapter, and the person listing the property shall enter a true and correct statement of such property, in a printed or written blank prepared for that purpose; which statement after being filled out, shall be signed and sworn to, to the extent required by this chapter by the person listing the property and delivered to the assessor. * * * * * * * * * * * "

It will be noticed under the above partial section that all that is required of the assessor, or his deputy, is "* * He shall call at the office, place of doing business or residence of each person required by this chapter to list property, * * " Nothing is said in the section requiring him to view the property.

Under Section 10951, R. S. Missouri 1939, it sets out the duties of the assessor, or his deputy, to the effect that if a person required to list property shall be sick or absent when the assessor calls for a list of his property, the assessor shall leave at the office, the usual place of residence or business of such person, a written or printed notice, requiring such person to make out and leave at the place named by said assessor, on or before some convenient day named therein, not less than ten days nor more than twenty days from the date of such notice. It also provides that if the person so notified shall neglect or refuse to deliver his listing made out, signed and sworn to, the assessor shall make the assessment. This section was construed in the case of State ex rel. v. Cummings, 151 Mo. 49, l. c. 58, where the court said:

> "* * * The assessor is required to call in person at the office, place of doing business or residence of each person subject to taxation, and require such person to make a correct statement of all taxable property owned by such person, or under the care, management, or charge of such person. If the owner is not at home, the statute requires that a written or printed notice be left at the place of business or residence of the taxpayer, notifying such person to make a list, and the assessor is required to specifically note the date of the service of such notice. By this personal call or written or printed notice, the taxpayer is secured the privilege of stating exactly what property he has and its value. When this call is made on the taxpayer, and request made on him for his list, or, if he be

> absent, the notice is left for him, within the period from June 1st to January 1st succeeding, then jurisdiction is obtained to assess his property. We use the word 'jurisdiction,' for want of a more correct expression. Strictly speaking, tax proceedings are only quasi judicial, but, as they have the effect of judgments, the word 'jurisdiction' can readily be made applicable to them. As notice of strictly judicial proceedings is essential, so likewise it is made necessary in all enlightened systems of just and equal taxation. The similitude may well be continued by holding that, when the party is notified within the time and according to law, the subsequent proceedings may be irregular, and entitle a party to redress on appeal, but they are not void."

Section 10980, R. S. Missouri 1939, reads as follows:

> "No assessment of property or charges for taxes thereon shall be considered illegal on account of any informality in making the assessment, or in the tax lists, or on account of the assessments not being made or completed within the time required by law."

This section was construed in the case of State ex rel. v. Wilson, 216 Mo. 215, l. c. 287, where the court said:

> "And in the case of State ex rel. v. Phillips, 137 Mo. 259, this court held that, under Revised Statutes 1889, sections 7563, 7584 and 7702, which are the same as sections 9179, 9209 and 9323, Revised Statutes 1899, mere informalities in making assess-

> ments of property or charges for taxes thereon, or in the tax lists, or on account of the assessments not being made or completed in the time required by law, and that no informality in making the back tax-book, should affect its validity, and were not defenses in an action to collect back taxes.
> * "

It is to be presumed that an assessment was legally made when shown that a tax bill has been issued under such assessment. It was so held in State ex rel. v. Fullerton, 143 Mo. 682, l. c. 686, where the court said:

> "The tax bill is, by statute, made 'prima facie evidence that the amount claimed in said suit is just and correct.' 2 R. S. 1889, sec. 7682; State ex rel. v. Schooley, 84 Mo. 447. No objection is made that said tax bill is not in proper form. It is not necessary then for plaintiff to go further and show that all steps taken by the assessor were regular. The presumption, in the absence of evidence to the contrary, is that the officer did his duty. State ex rel. v. Wayne Co., 98 Mo. 362. It devolved upon defendant to show any omissions in that behalf after plaintiff had presented proof, which, under the statute, made a prima facie case."

CONCLUSION

In view of the above authorities it is the opinion of this department that the assessor need not view the property to make a valid assessment on personal property.

It is further the opinion of this department that the taxpayer is liable for penalties even though he relies on the advice of the deputy collector that the taxes should

not be paid.

It is further the opinion of this department that the taxpayer is liable for taxes after offering the full amount of taxes due and receiving a receipt which omitted personal taxes even though the omission was the fault of the collector.

It is further the opinion of this department that at the present time the county court has no authority to remove penalties on personal taxes and can only receive the authority by way of a legislative act and at the present time there is no legislation allowing the county court to remove the penalty assessed on a delinquent personal tax bill.

Respectfully submitted

W. J. BURKE
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

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