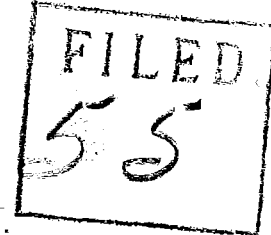


TAXATION AND REVENUE:

A penalty of 10% per annum or 1% a month or fraction thereof, attaches to delinquent taxes as of January 1, when such delinquent taxes remain delinquent as of February 1, when the collector starts making his delinquent tax book.

*Delinquent date changed to Jan 1
by Laws 1947 vol 2 p 425.*
January 24, 1947

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Mr. Chester R. Lyle
County Clerk
Nodaway County
Maryville, Missouri

Dear Sir:

This will acknowledge your recent request for an opinion, based on the following facts:

"Please give us your opinion on the following questions:

"What changes have been made in counties with township organization in regard to penalty on taxes?

"Does the penalty go on January 1st or February 1st and what is the penalty?"

The township collector, in making his return of delinquent or unpaid taxes, follows the general law as to the taxing or adding of penalties, there being no special provision as to such in counties having township organization. Section 14000, Mo. R. S. A., provides:

"The township collector of each township shall, at the term of the county court to be held on the first Monday in March of each year, make a final settlement of his accounts with the county court for state, county, school and township taxes and produce receipts from the proper officers for all school and township taxes collected by him, less his commission on same, at which time he shall pay over to the county treasurer and ex officio collector all moneys remaining in his hands,

collected by him on state and county taxes, and shall at the same time make his return of all delinquent or unpaid taxes, as required by law, * * * *"

Under the general law both personal and land taxes become delinquent on January 1, annually. Section 11108, Mo. R.S.A., provides:

"All real estate upon which the taxes remain unpaid on the first day of January, annually, shall be deemed delinquent, and the said county collector shall proceed to enforce the lien of the state thereon, as required by this chapter, * * * *"

Section 11112, Mo. R. S. A., as amended by House Committee Substitute for House Bill No. 537, provides:

"* * * * *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 on and after the first day of February following, and within five years from said day. * * * * *"

The collector is required to make lists of delinquent personal and real estate taxes under Section 11110, Mo. R.S.A., as amended by House Bill No. 537. Said section provides:

"Whenever any collector shall be unable to collect any taxes specified on the tax book, having diligently endeavored and used all lawful means to collect the same, he shall make lists thereof, one to be called the 'tangible personal property delinquent list', in which shall be stated the names of all persons owing taxes on tangible personal property, where taxes cannot be collected, alphabetically arranged, with the amount due from each, and the other to be called the 'land delinquent list', in which shall be stated

the taxes on lands and town lots where taxes have not been collected, with a full description of said lands and lots, and the amount of taxes due thereon, set opposite each tract of land or town lot;
* * *"

The question then arises as to when the penalty on delinquent taxes attaches. Under Section 11085, Mo. R.S.A., before it was amended by the 63rd General Assembly, the penalty was added January 1, and taxes paid any time thereafter were subject thereto. Said Section 11085 was amended by House Bill No. 765, and the pertinent part thereof is as follows:

"If any taxpayer shall fail or neglect to pay such collector his taxes at the time and place required by such notices, then it shall be the duty of the collector after the first day of February then next ensuing, to collect and account for, as other taxes, an additional tax, as penalty, the amount provided for in Section 11124.
* * *"

(Note: The notice mentioned in Section 11085 is provided for in Section 11097, Mo. R.S.A.)

Section 11124, Mo. R.S.A., referred to in Section 11085, House Bill No. 765, supra, was amended by House Bill No. 766, and, as amended, reads as follows:

"Between the first of February and the first of July in the year 1947 and annually thereafter, the county collector shall make out and record, in a book to be provided for that purpose, a list of lands and lots, returned and remaining delinquent for taxes, including therein the delinquent taxes of all cities and incorporated towns having authority to levy and collect taxes under their respective charters or under any law of this state returned delinquent to the county collector, separately stated, describing such lands or lots as the same are described in the tax books and said delinquent returns, as corrected under sections

11110 and 11114, and charging them with the amount of delinquent tax and naming the years delinquent, separately stated, and in addition thereto a penalty of ten per centum on such tax delinquent for the preceding year and an additional annual ten per centum on taxes for each year prior to the preceding year, and shall certify to the correctness thereof, with the date when the same was recorded, and sign the same by himself, or deputy, officially: Provided, however, if taxes are paid on land or lots delinquent for the preceding year at any time prior to sale thereof as in this law provided, the per centum of penalty added shall not exceed one per centum per month or fractional part thereof or ten per centum annually. It shall be the duty of the county clerk and county collector to compare the collector's record of such list of delinquent lands and lots as corrected with the corrected 'delinquent land list' made pursuant to sections 11110 and 11114, and the county clerk shall certify in the 'delinquent land list' on file in his office that same has been properly recorded in the collector's office and shall attach a certificate at the end of the record of such list of delinquent lands and lots in the collector's office that such record contains a true copy of the 'delinquent land list' on file in his office. And where the words 'back tax book' are now used in laws pertaining to the collection of taxes on delinquent lands, real estate and lots, the record of the list of delinquent lands and lots in the collector's office under the provisions of this law shall be held to be (where applicable and except as to city or town 'back tax book') such 'back tax book', and the recording of same by the collector and certification by the county clerk as herein provided, shall be construed as a making of such 'back tax book' of delinquent real estate, lands and lots. Said collector shall be charged with the taxes, penalty and interest shown on such record of the list of delinquent lands and lots." (Emphasis ours)

It is our conclusion that the penalty, even though not added to the tax until February 1, is effective as of January 1, and must be added as of that date to the delinquent taxes if such delinquent taxes have not been paid before February 1, when the collector starts making his delinquent tax book. This conclusion is based upon the fact that taxes are delinquent as of January 1, and that Section 11124, supra, provides that after February 1 the collector shall make a book of taxes remaining delinquent and that in addition to charging the delinquent taxes he shall add a penalty to such delinquent taxes. We think this act merely creates a thirty day grace period, during which period the taxpayer can save the penalty by paying his delinquent tax before the collector starts making his book on February 1, but if his tax remains delinquent as of that date he must pay a penalty from the time they became delinquent, which would be January 1.

This reasoning is also supported by a constitutional provision and a statute and both require taxes to be levied and collected during the calendar year. Section 3 of Article X of the 1945 Constitution provides:

"* * * * All taxes shall be levied and collected by general laws and shall be payable during the fiscal or calendar year in which the property is assessed.
* * * *"

Section 4 of House Committee Substitute for House Bill no. 471, which also requires the taxes to be levied and collected during the calendar year, is as follows:

"Every person owning or holding real property or tangible personal property on the first day of January including all such property purchased on that day, shall be liable for taxes thereon during the same calendar year."

If it were held that the penalty was to be charged or added from February 1 to the next February 1, this would, in effect, be holding the tax year to be from February 1 to February 1, in violation of both the constitutional and statutory provisions quoted hereinbefore.

The amount of the penalty on delinquent taxes provided for in Section 11124, as amended by House Bill No. 766, supra, is ten per cent per annum or one per cent per month or fraction thereof.

Mr. Chester R. Lyle

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You ask what changes have been made in the law in regard to the penalty. The only change is that the penalty does not attach immediately as of January 1, as it did before, but attaches as of January 1 on February 1, if the tax remains delinquent at that time.

Conclusion.

It is the opinion of this department that taxes due for any calendar year become delinquent on the first day of January of the next ensuing year; that the penalty is added as of January 1, if such delinquent taxes remain delinquent as of February 1, when the collector starts making his delinquent tax book; and that the amount of the penalty is ten per cent per annum or one per cent per month or fraction thereof.

Respectfully submitted,

W. BRADY DUNCAN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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