

TAXATION:
GOVERNMENT OWNED LANDS:
LEVY AND ASSESSMENT:

Lands which come into possession of the United States Government after assessment but before levy of taxes are not subject to taxes for the year for which such assessment is made.

January 16, 1942



Mark Morris
Prosecuting Attorney
Bowling Green, Missouri

Dear Mr. Morris:

This is in reply to your letter of recent date wherein you request an opinion from this department based upon the following statement of facts:

"Would like an opinion on the following question:

"Can the State and County levy taxes for the year 1941 against the private owners of land which has been taken over by the Federal Government in 1941?"

"Naturally this land has been assessed against these owners for the year 1942 but in this particular case they will not receive any interest on the principal due them."

Section 10970, R. S. Mo. 1939, provides as follows:

"Real estate shall be assessed at the assessment which shall commence on the first day of June, 1893, and shall be required to be assessed every year thereafter."

In the case of DeGiverville v. Legg, 48 Mo. App. 573, the court held that the foregoing section establishes the taxable year as beginning on the first day of June of each year.

Section 10940 provides as follows:

"Every person owning or holding property on the first day of June, including all such property purchased on that day, shall be liable for taxes thereon for the ensuing year."

This section might be understood to mean that all property owned by a person on June 1st is taxable to such person for taxes for the ensuing year. However, the lien for the taxes is not created until the levy is made under Section 11044, which is as follows:

"As soon as may be after the assessor's book of each county shall be corrected and adjusted according to law, the county court shall ascertain the sum necessary to be raised for county purposes, and fix the rate of taxes on the several subjects of taxation so as to raise the required sum, and the same to be entered in proper columns in the tax book."

In speaking of when the lien for taxes is established, the court in the case of *McAnally v. Little River Drainage District*, 28 S. W. 2d 650, 651 said: (1-3)

"The lien of the state for taxes is established by an assessment of all land for that purpose. Section 12757. However, said lien does not accrue and become a fixed encumbrance until the amount of the tax is determined by an annual assessment of the land and annual levy of the tax. * * * * *"

By this, it is held that the tax is not a fixed encumbrance until the assessment and levy, both have been made.

In your letter you refer to the assessment as of June 1, 1941. The levy for the taxes under this assessment will not be made until May of 1942. Under the rule announced in the *Little River Drainage District* case, *supra*, the encumbrance for the taxes assessed as of June 1, 1941, does

not become a fixed lien until after the levy in May, 1942.

In treating a similar question, where lands were taken by the Government, Judge Collett in the case of *United States v. Certain Lands in the City of St. Louis, Mo.*, 29 Fed. Supp. 92, 96 said:

"(4) Since the lien of the taxes attaches at the time of the levy it is necessary to determine when the levy occurs. The City authorities assess and levy all taxes on real estate within the City, including State taxes -- Sec. 14706 et seq., R. S. Mo. 1929, Mo. St. Ann. Sec. 14706 et seq., p. 6091 et seq. The St. Louis Charter provides that the Board of Estimate and Apportionment shall submit and recommend to the Board of Aldermen a bill establishing the city tax rate for the fiscal year and further provides that if the Board of Aldermen should not establish the tax rate by ordinance on or before the fourth Monday in May, the rate last previously established shall be the rate for the current year. (St. Louis Charter, Art. 16, Sec. 3). It thus appears that the levy by the city authorities must occur prior to or on the fourth Monday of May. The Government took the title to the property involved on June 16, 1939. The levy of the 1939 taxes, had, therefore, theretofore been made and a fortiori the lien of those taxes had attached.

"Since by Sec. 14706, supra, the assessment is begun on June 1st and the report thereof made not later than January 1st following, and thereafter the levy is made, it is obvious that the levy of the taxes for 1940 has not been made. It follows from what has been heretofore said that the lien of the 1940 taxes had not attached on June 16, 1939, and the city is, therefore, not entitled to have distribution to it of any part of the funds in the registry of this Court on account of those taxes."

CONCLUSION

From the foregoing, it is the opinion of this department that the State and county may not levy and collect taxes for the year 1941 against the private owners of land which has been taken over by the Federal Government prior to the levy in 1942 on the 1941 assessment for taxes payable in 1942.

Respectfully submitted,

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APPROVED:

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