

TAXATION: In counties duties and fees of township collectors and assessors with respect to income tax returns filed during the term of office but on which no assessment was made prior to the expiration of their term.

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April 21, 1943

Mr. Bert E. Morgan  
Clerk of the County Court  
Daviness County  
Gallatin, Missouri



Dear Mr. Morgan:

This will acknowledge receipt of your letter of April 1, 1943, as follows:

"Our county has Township organization.

"Since the State extended the time for filing state incomes, which assessor should list and file the State Income Assessments? Should it be the assessor in office before the election of township officers on March 30, 1943, or the assessor elected on that date?

"Which collector should do the collecting, the one elected on March 30?

"In case the assessors do not list or have any part in the work, are they entitled to a fee?"

Under Section 11354 R. S. Mo., 1939, state income tax returns are required to be filed with the assessor on or before the fifteenth day of March of each year. Under Section 11369 R. S. Mo., 1939, the assessor in certain cases is authorized to extend this period of

time not to exceed thirty days. We have been informed that the State Auditor has extended the time for filing income tax returns until April 15, 1943. Such extensions in cases of counties under township organization cause a return filed after March thirtieth to be filed with the new assessor elected on March thirtieth, in the year, 1943.

Under Section 11357 R. S. Mo., 1939, on tax returns filed March fifteenth, it is the duty of the assessor to certify the amount of taxable income involved to the county clerk not later than April fifteenth. Thereafter, it is the duty of the county clerk to compute the tax due and enter said amount on a tax book and deliver said book to the collector not later than May first.

Within thirty days after the books are delivered to the collector it is that officer's duty to affect collection. Where, under the extension of time granted, the taxpayer does not file his return until after April fifteenth, the assessor makes the assessment on or before the fifteenth day of the month following the filing of the return and certifies that fact to the county clerk, who, in turn, computes the tax, enters the same in a tax book and delivers said book to the collector.

From the above resumé it appears that the township assessor in office prior to March thirtieth will have performed certain duties relative to the tax returns filed on or before March fifteenth. He also, if he acted with reasonable promptness, will have performed certain duties with respect to tax returns filed after March fifteenth and before March thirtieth under the extension of time granted.

Your first question seems to contemplate that the assessor in office prior to March thirtieth has not performed any function with respect to the tax returns filed to him prior to March thirtieth. If this is true, he now being out of office, there is no function which he can perform and all acts yet required in connection with tax returns filed on or before the expiration of his term must be performed by the newly elected assessor.

The same rule would apply to your question relative to which collector should collect the tax. From the resumé above outlined it is possible that by prompt action on the part of the assessor and the county clerk the tax books might be in the hands of the township collector before March thirtieth, and in that event the incumbent in office prior to that date would have the duty of collecting the tax assessed up until the time his term of office expired and his successor qualified. After the last mentioned date, a newly elected collector would be the one to affect the collection of income taxes still shown to be due and unpaid in the taxbooks.

Your last question concerns the compensation of the assessor who does not list or have any part in the work connected with assessing income tax. Section 11364 R. S. Mo., 1939, is as follows:

"Assessors and collectors shall be compensated in like manner and in like amounts as for the assessments of other taxes: Provided, that in counties in which the assessors and collectors are paid a fixed salary, that in addition to the salary paid, they shall be permitted to charge for work performed in the assessing

and collecting of the income tax, as provided by this article, the same fees as are charged by assessors and collectors whose salary is not fixed by law, and which fees so charged by said assessors and collectors for services rendered in assessing and collecting income tax shall be paid by the state." (underscoring ours)

In *Westberg v. the City of Kansas*, 64 Mo. 493, 502, it is said in connection with officers that "salary and perquisites are the reward of express or implied services". Such rule is applicable here, especially in view of the fact that Section 11364, supra, speaks of the assessor's compensation in connection with "work performed".

Further, in *Throop's Public Officers*, Section 473, it is stated:

"As a general rule, an officer is entitled to his official compensation, only for the time during which he was the incumbent of the office.  
\* \* \* \* \*

and in Section 474, it is stated:

"An officer's compensation ends, when his term of office ends, whether that event occurs by the expiration of time, or by death, removal, or resignation. \* \* \* \* \*

Mr. Bert E. Morgan

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In view of the foregoing, we are of the opinion that the assessor who does not list or perform any of the functions required of him in connection with the income tax return filed with him during the term of his office is not entitled to any fees granted to compensate him for the performance of those duties.

Respectfully submitted,

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APPROVED:

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