

TAXATION:

(What tax penalties persons in military service are excused from paying;) how collector is to account to court for excused penalties; burden is on taxpayer to claim the right to be excused.

PENALTIES:

April 5, 1943



Miss Hazel Palmer
County Collector
Pettis County
Sedalia, Missouri

Dear Miss Palmer:

This will acknowledge receipt of your letter of March 19, 1943, as follows:

"A few times I have been presented with the fact that a taxpayer is in the armed forces of the United States, and the question as to whether or not he has to pay any penalties on his taxes.

"Section 11085 R. S. 1939, provides for penalty after January 1, with this further provision: 'said interest shall not be chargeable against persons who are absent from their homes, and engaged in the military service of this state or of the United States.'

"Will you please advise me whether or not a collector shall not add any penalties to a soldier's delinquent taxes?

"Does the fact that the taxes may be delinquent for 1939, 1940, 1941 and 1942, before the taxpayer became a soldier, enter into it? If a person comes in now to pay taxes for a soldier and the taxes have not been paid for several years, should the collector not add any penalties to taxes for any year?

"If the receipt is marked paid in full after delinquent date, revealing only the original amount

of the tax collected, how should the matter be handled to account for such penalty, including interest, costs of clerk, and commission, not having been collected? Unless the collector knows of her own knowledge that such taxpayer is in military service, should she just accept the person's word who is paying the taxes that the person who owes them is in military service? (Naturally if one pays taxes for a soldier and does not mention the fact that he is a soldier, the collector will include penalties. Therefore, such collector could not be said to have violated the exception to the provisions of Section 11085. Is that correct?)"

The questions you present seem to be:

(1) What are members of the military forces excused from paying under Section 11085 R. S. Mo., 1939, when their tax is delinquent?

(2) Does the relief granted to such person extend to those penalties accruing before such person entered the military service?

(3) How is the collector to account to the county court for the excused items?

(4) If someone else pays taxes for a person in the military service, and the fact of such service is unknown to the collector and the penalty is collected, has the collector violated Section 11085 R. S. Mo., 1939?

I

In connection with the first question it appears that Section 11085 R. S. Mo., 1939, provides, in part, 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 January then next ensuing, to collect and account for, as other taxes, an additional tax, as penalty, the amount provided for in section 11124. Collectors shall, on the day of their annual settlement with the county court, file with said court a statement, under oath, of the amount so received, and from whom received, and settle with the court therefor: Provided, however, that said interest shall not be chargeable against persons who are absent from their homes, and engaged in the military service of this state or of the United States, or against any taxpayer who shall pay his taxes to the collector at any time before the first day of January in each year: * * * * *

(Underscoring ours,)

The question seems to turn on what was intended by the use of the word "interest" in stating what shall not be charged to persons in military service. In *Seaboard National Bank v. Woesten*, 176 Mo. 49, this very point was under discussion. The Court said (l. c. 62):

"The laws of this State (sec. 9225, R. S. 1899) prescribe that if any one fails to pay his general taxes before the end of the year, 'an additional tax, as penalty, of one per cent per month' shall be added. The section then says that 'said additional tax or penalty' shall apply to a fraction of a month, and then adds: 'Provided, however, that said interest shall not be chargeable against persons who are absent from their homes,' etc.

"It will be observed that the one per cent a month, is first called 'an additional tax as penalty' and then it is called 'said additional tax or penalty,' and finally it is called 'said interest,' thus showing the looseness of expression that may be employed in the same section of the statute when referring to the same matter. But the term employed does not change the character of the imposition. It is not an 'additional tax' at all, for regarded as a tax it would or possibly might be illegal, because the full amount of taxes that the Constitution permitted had already been levied. It is not 'interest' in any proper sense, because it is a penalty imposed for a failure to discharge a duty that can be lawfully demanded."

Since that decision was rendered (1903) there has been some change in the language of the section, but not as to the use of the word "interest" as meaning the penalty imposed for delinquency. The amount of the penalty is now determined by reference to Section 11124 R. S. Mo., 1939, which fixes the penalty at ten per cent of the delinquent tax for the preceding year, and an additional ten per cent for each year prior to the preceding year.

The matter may be better understood, if we briefly review the procedure in taxing property. Between June first in 1941, and the following January first, the assessor makes an assessment of all property by placing a value thereon (Section 10950 R. S. Mo., 1939). Thereafter, the assessor must deliver his books to the county court by January 20, 1942 (Section 10990 R. S. Mo., 1939). Then on the first Monday in April, 1942, the county board of equalization meets to adjust and equalize the assessment and valuation of all property assessed by the assessor (Secs. 11001, 11002, R. S. Mo., 1939). As soon as the assessor's books are adjusted and corrected, and within ninety days thereafter, the clerk of the county court extends the taxes on the tax books (Section 11048 R. S. Mo., 1939). As soon as this is done the tax books are delivered to the collector (Section 11052 R. S. Mo., 1939). Immediately after the collector receives the tax books it is his duty to give the taxpayers twenty days notice of the time and place he will meet the taxpayers and receive their taxes (Section 11079 R. S. Mo., 1939). It is then the duty of the taxpayers to meet the collector at the time and place appointed and pay their taxes (Section 11081 R. S. Mo., 1939).

The collector has power to seize and sell property after October first (Section 11086 R. S. Mo., 1939). If the tax is not paid by January 1, 1943, then between that date and July 1, 1943, it is the duty of the collector to make out the delinquent list into a "back tax book" adding to the delinquent tax a penalty of ten per cent of the tax for the preceding year, and if the tax is one that had previously been returned delinquent the collector is to add an additional ten (10%) per cent penalty for each year prior to the preceding year, said penalty being subject to reduction to one (1%) per cent a month if the tax is paid prior to the sale of the property. The collector is to certify to this list and compare the same with the county clerk. The collector is then charged with the taxes, penalties and interest shown on such delinquent list (Section 11124 R. S. Mo., 1939). Then it is the collector's duty to collect the tax due plus the penal-

Miss Hazel Palmer

-6-

April 5, 1943

ties imposed (Section 11085 R. S. Mo., 1939).

It is the penalty thus imposed that the person in military service is relieved from paying when he pays a tax that has gone delinquent. Since in your letter you mention the penalty as including "interest, costs of clerk, and commission", we desire to emphasize that it is only the penalties accruing under Section 11124, supra, that are excused. Such does not include the items previously quoted.

II

Your second question is answered in our opinion rendered to W. A. Holloway on April 28, 1942, wherein we conclude that Section 11085 R. S. Mo., 1939, did not relieve the man in service from those penalties that accrued prior to the time he entered such military service. A copy of this opinion is enclosed.

III

No rule seems to have been prescribed as to what evidence must be presented to the collector before he is justified in accepting payment of a tax without penalty on the ground that the taxpayer was in the military service at the time the penalty accrued. However, since such excused penalties must be accounted for in the annual settlement with the county court, it is our suggestion that you consult with that body and ascertain just what evidence they will require of you before they will give you credit in

Miss Hazel Palmer

-7-

April 5, 1943

your settlement for such excused penalties.

IV

Your fourth question appears to rest upon whether it is the collector's duty to ascertain whether a person was in the military service at the time a penalty accrued and refrain from collecting the penalty, or whether the burden rests upon the taxpayer to bring himself within the terms of the statute and claim his privilege to be excused. We find no cases on this question; but, since Section 11085, supra, is in effect, a statute relieving one of a burden arising from and connected with taxation of property, we think the rule applied to construction of tax exemptions should be applied here. In *St. Louis Young Men's Christian Ass'n v. Gehner*, (Mo. Sup.) 47 S. W. (2d) 776, the Court, in discussing the right of a taxpayer to claim a tax exemption, said (l. c. 777):

" * * * * * and the burden of establishing it is upon him who claims it. * * * * * "

Again in *National Cemetery Ass'n of Missouri v. Benson*, (Mo. Sup.) 129 S. W. (2d) 842, 845, the same rule was stated:

" * * * * * The burden is on the property owner clearly to establish that his property falls within the exempted class. * * * * * "

Miss Hazel Palmer

-8-

April 5, 1943

Likewise we think the burden is upon the taxpayer to establish that he falls within the class that is excused from paying the penalty. He is the one claiming the right to be relieved of the penalty and the burden of establishing his right to be excused must rest upon him.

Therefore, when someone pays taxes for a man in service who is entitled to be relieved of the penalty and does not supply the collector with the proof he desires in connection with determining whether such person is entitled to be relieved of the penalty, it cannot be said that the collector, in collecting said penalty, has violated Section 11085 R. S. Mo., 1939.

Respectfully submitted,

LAWRENCE L. BRADLEY
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

LLB:FS
enc. 1