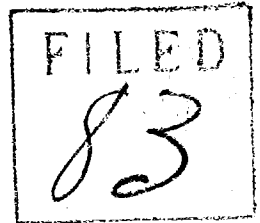


COUNTY COLLECTOR:
TAXATION:

Two per cent fee allowed collector under provisions of Sec. 11182, Laws of 1945, page 1851, such fee to be collected from taxpayer, is not collectable from taxpayer who pays taxes in month of January after such taxes have become delinquent.

September 24, 1947



Honorable Forrest Smith
Auditor, State of Missouri
Jefferson City, Missouri

Dear Mr. Smith:

This is in reply to your letter of recent date, requesting an official opinion of this department, and reading as follows:

"Please advise this department with an official opinion as to whether or not the 2% compensation allowed to County Collectors for collecting delinquent taxes under Section 11182 Laws of Missouri 1945 is to be charged against tax payers who pay their taxes during the month of January after they fall due and upon which no interest is chargeable under Section 11085 Laws of Missouri 1945."

The determination of whether the two per cent fee allowed to the county collector under the provisions of Section 11182, Laws of Missouri, 1945, page 1851, such two per cent to be taxed as costs and collected from the taxpayer, is to be collected from a taxpayer who pays his taxes in January of the year when such taxes become delinquent, depends upon whether, in such month of January, the collector renders "services" under Article 9, Chapter 74, Mo. R. S. A.

Section 11182, Laws of Missouri, 1945, page 1851, provides as follows:

"In all counties having a population of less than 100,000, fees shall be allowed for services rendered under the provisions of this article, as follows: To the collector, except in such cities, two per cent

on all sums collected, in such cities, two per cent on all sums collected--such per cent to be taxed as cost and collected from the party redeeming. To the county collector, for recording the list of delinquent land and lots, twenty-five cents per tract, to be taxed as cost and collected from the party redeeming such tract."

Section 11085, Laws of Missouri, 1945, page 1908, 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 February 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; * * *"

Section 11108, Mo. R. S. A., provides as follows:

"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; and any failure to properly return the delinquent list, as required by this chapter, shall in no way effect the validity of the assessment and levy of taxes, nor of the judgment and sale by which the collection of the same may be enforced, nor in any manner to affect the lien of the state on such delinquent real estate for the taxes unpaid thereon."

Section 11112, Laws of Missouri, 1945, page 1848, provides, in part, as follows:

"Tangible personal property taxes assessed on and after January 1, 1946 and all personal taxes delinquent at that date, shall constitute a debt, as of the date on which such taxes

were levied for which a personal judgment may be recovered against the party assessed with such taxes before any court of this State having jurisdiction. * * * 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 days from said day. * * *"

Section 11124, Laws of Missouri, 1945, page 1912, provides, in part, 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, * * *"

From these quoted statutes it appears that both real and personal property taxes become delinquent on January first following the date that the tax bills are placed in the hands of the collector, but that the penalty of one per cent per month does not attach, and the collector does not collect such penalty, unless the taxes are paid on or after February first following the date such taxes become delinquent.

It is to be noted also that by the provisions of Section 11112, supra, suits for delinquent personal property taxes cannot be brought before February first following the date when taxes become delinquent, and by the provisions of Section 11124, supra, the collector is to record lands and lots for which the taxes are delinquent, between February first and July first.

In the case of State ex rel. v. Fendorf, 317 Mo. 579, the Supreme Court of this state had before it for determination the question as to the time when the four per cent (now two per cent) allowed the collector by what is now Section 11182, Laws of Missouri, 1945, page 1851, and which was to be collected from the taxpayer, had to be paid by the taxpayer, and the court held that such four per cent (now two per cent) had to be paid by the taxpayer when taxes were paid on or after January first following the date when the tax bills were placed in the hands of the collector.

At the time the Fendorf case was decided, Section 12906, R. S. No. 1919 (reenacted as Section 11085, Laws of Missouri, 1945, page 1908), provided that the penalty of one per cent per month on delinquent taxes was to be collected on all taxes paid on or after January first, on which date such taxes became delinquent, and the court held that the computing, apportioning and accounting for such penalty of one per cent per month constituted a "service", as such term is used in Section 11182, Laws of Missouri, 1945, page 1851. The court said, l. c. 584-585:

"Section 12959, the last section of Article 9, provides that fees shall be allowed for services rendered under the provisions of this article, and sets out the per centum to be allowed on all sums collected.

"There is no distinction in this last section for fees allowed for the collection of 'back taxes' or 'delinquent taxes.' It merely says for services rendered under the article, and it seems clear that the Legislature meant any service performed under the article. We have held in construing Section 12932 that the tax became delinquent on January 1st of each year. (State ex rel. v. Renshaw, 166 Mo. 682, l. c. 691.) This same construction necessarily applies to Section 12928. Therefore with both real and personal taxes becoming delinquent on January 1st the penalty of one per centum per month accrues under the provisions of Section 12906. Beginning with January 1st, the collector has the duty of collecting this penalty, which is in the nature of an additional tax, and of computing, apportioning and accounting for the same. This section (12906) fixing this penalty of one per centum per month is a part of Article 8, but it specifically postpones the duty of computing, collecting and accounting of it until after January 1st, and Sections 12928 and 12932 (both in Article 9) fix January 1st as the date of delinquency when this penalty accrues, and places the duty on the collector to enforce the lien thereof. Section 12906 from its context seems to treat this penalty as something different from the ordinary undelinquent taxes for which the fees allowed by Section 12927 are applicable. Also

Section 12906 sets up the method of effecting a settlement for the penalty between the county court and the collector. It seems clear that the collection of the penalty provided for by Section 12906, after January 1st, is the enforcement of the lien of the State made the duty of the collector by Sections 12928 and 12932, and that this duty begins on January 1st and entails labor on the part of the collector prior to the first Monday in March which would be a service within the meaning of Section 12959. In reading Article 8 it seems to relate to the duties of the collector and the collection of taxes before the delinquency date of January first, and that January 1st is the line of demarcation between Article 8 and Article 9, and that Article 9 deals with the duties of the collector and the collection of taxes after January 1st." (Emphasis in 2nd paragraph ours.)

Under the provisions of Section 11085, Laws of Missouri, 1945, page 1908, the collector does not compute, apportion or account for the penalty on delinquent taxes paid during the month of January following the date the tax bills are placed in the hands of the collector. Neither are any other services enjoined upon the county collector during the month of January following the date when the tax bills are placed in the hands of the collector.

Therefore, the reasoning found in the Wendorf case leads us to the conclusion that, under the present laws, the collector does not perform "services," as such term is used in Section 11182, Laws of Missouri, 1945, page 1851, when he accepts payment of delinquent taxes during the month of January following the date when the tax bills are placed in his hands.

CONCLUSION

It is the opinion of this department that the two per cent fee to be collected by the county collector as provided for in Section 11182, Laws of Missouri, 1945, page 1851, such fee to be paid by the taxpayer, is not to be collected from a taxpayer

Honorable Forrest Smith

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who pays delinquent taxes during the month of January following the date the tax bills are placed in the hands of the collector.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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