

TAXATION-
ABANDONED RAILROAD
RIGHT-OF-WAY:

)
) Mode of collecting tax on same.
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July 27, 1937

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Honorable Andy W. Wilcox
Chairman, State Tax Commission
Jefferson City, Missouri

Dear Sir:

This office acknowledges receipt from your Department of the following letter:

"This department is desirous of an opinion relative to the collecting of delinquent taxes on abandoned railroad right-of-way called to our attention by the County Collector of Polk County, whose letter we are enclosing herewith".

Accompanying this letter was a request from the County Collector of Polk County, Missouri, as follows:

"Please let me have information as to how to handle the tax on the abandoned Kansas City Clinton and Springfield Railroad. They have taken up the track and have not paid 1936 tax. Also they have said they do not intend to pay them.

"The tax is charged on the Railroad tax book with no description of the land. Will this have to be cut up into description by the quarter and advertised as other land, or will it have to be transferred to the land book?

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"There are a number of parties who would like to pay on the right-of-way through or by their place but I do not know what or how to handle it. I'll appreciate an early instruction."

It appears from the request of the Collector that he is treating this property as having been abandoned by the railroad company. In such case the right-of-way- that is, that portion of the right-of-way as has been obtained by condemnation, reverts to the owner and his heirs and assigns. Section 21, Article II, Constitution of Missouri.

That portion of the right-of-way which was conveyed to the railroad with reverter clause in the deed providing that such land should revert to the grantor, his heirs or assigns when such railroad discontinued the use of the right-of-way for right-of-way purposes, reverts to such grantors and their heirs and assigns upon the abandonment of the right-of-way by the railroad. *Hatton v. K.C. C. & S. R.R. Co.*, 162 S. W., 1.c.234.

If the railroad obtained land by purchase and without a reverter clause then upon termination of its use as a right-of-way it continues to hold such lands in fee.

The procedure for collection of delinquent railroad taxes is set out in Sections 10035, 10037, 10038, 10039 and 10040 of the R. S. Mo. 1929, and if this property referred to as abandoned right-of-way has been properly assessed upon the railroad tax book, then the procedure would be as suggested by the foregoing Sections.

Section 9788, R. S. Mo. 1929 provides as follows:

"If the assessor discovers any real property, presumed to be subject to taxation, which has not been returned to him by the clerk, he shall assess such property and enter the same on the assessment list. And if, upon the return of such list to the clerk, it shall appear that any such real property has not been returned by the Auditor, it shall be the duty of the clerk to advise the auditor of the facts, describing the property so returned by the assessor, and the auditor shall ascertain the true condition of such real property, and advise the said clerk thereof, who shall correct the records of his office in accordance with the facts in the case."

Section 9789, R. S. Mo. 1929 provides as follows:

"If by any means any tract of land or town lot shall be omitted in the assessment of any year or series of years, and not put upon the assessor's book, the same, when discovered, shall be assessed by the assessor for the time being, and placed upon his book before the same is returned to the court, with all arrearages of tax which ought to have been assessed and paid in former years charged thereon".

Section 9810, R. S. Mo. 1929 provides as follows:

"Whenever, for any cause except when exemptions have been granted by law, there has been a failure to assess the property in any county for any year or years, the assessor of said county for the time being shall assess the property for the year or years in which said failure shall have occurred. Such assessment shall be made at the same time as is now provided by law for the assessment of property, the assessment for each year to be in a separate book, In making the said assessment, and in all subsequent proceedings thereon, the assessor, county court, clerk of the county court and collector shall be governed by the same law as is now in force for the assessment and collection of taxes, and shall receive the same compensation as is now provided by law for similar duties".

If the tax upon this property has not been properly assessed and charged on the railroad tax book, and if it does not appear upon the land book, then the mode for assessment and collection of the tax is set out in the first three sections of the statute cited above.

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CONCLUSION

It is therefore the opinion of this Department that such taxes as appear on the railroad tax book in the Collector's office that have been properly assessed, if delinquent, should be collected in the manner and form as set out in Sections 10035, 10037, 10038, 10039 and 10040, R. S. Mo. 1929.

If such property has been abandoned, and if for any year or years this property does not appear upon the tax books, then it is the duty of the County Assessor to treat such property as omitted property, and to place it upon the tax books as is set out in the foregoing Sections 9788, 9789 and 9810, R. S. Mo. 1929, assessing such property to the proper owners thereof, and that the question of who is the owner will depend upon facts which this Department is not in a position to pass upon with the information it has.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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