TAXATION: House Bill 124 Extra Session, applies to penalty on "taxes", does not apply to drainage district assessments.

11-24

November 12, 1934.

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Hon. Charles Young
Treasurer
Livingston County
Chillicothe, Missouri

Dear Mr. Young:

Acknowledgment is made of a request for an opinion of this office bearing upon the following subject:

> "Please advise me whether or not House Bill 124 applies to drainage taxes. This bill provides that all penalties and interest on personal and real estate taxes shall be computed after April 12, 1934, on the same penalty basis as the taxes delinquent for the year 1933, and I was wondering if this act applies to drainage taxes."

House Bill 124, introduced by Representative Clinkscales of Boone County, is found at page 166 Laws of Missouri Extra Session, 1933-34, and reads as follows:

> "Section 1. Penalties and interest--how computed.--That all penalties and interest on personal and Real Estate Taxes, delinquent for the year 1932 and prior years shall be computed after December 31, 1933, on the same penalty basis as the taxes delinquent for the year 1933 until paid."

By virtue of the foregoing section specific relief is given delinquent taxpayers as to penalties and interest on "personal and real estate taxes." The gist of your inquiry is to be determined by the interpretation that is to be put upon the word "taxes" as used in the foregoing statute. If we can arrive at a proper determination of the purport of this term as used in the phrase "personal and real estate taxes" we will have determined whether or not drainage assessments are included within that term and the penalties and interest thereon are to be computed upon the same penalty basis as assessments for the year 1933.

I.

GENERALLY SPEAKING "TAXES" DO NOT INCLUDE SPECIAL BENEFIT ASSESSMENT.

Turning to 25 R. C. L. page 83, we find the following:

> "There are, however, well recognized distinctions between special assessments and taxes levied for general revenue purposes, and the terms "assessments" and "tax" or "taxation," as used in constitutions and statutes, are not synonymous, but have been given entirely distinct meanings by the courts." * * *"

And again on page 90 we find:

> "It is the well settled general rule that special assessments for local improvements are not taxes within the meaning of the constitutional provision that taxation shall be equal and uniform throughout the state, county, or municipality laying the tax." * * *"

This latter general statement of law is recognized in 70 A. L. R. page 1292.

In other states, we find these general rules have been adopted by the great majority. We refer to but a few of them. One of the earliest cases is that of In Re The Mayor of New York, 11 John 77. Several churches owning property on Nassau Street had been specially taxed for the improvement of that thoroughfare. The churches claimed that they were exempt from the operation of the tax because of the provisions of the New York state law which provided:

> "No real estate belonging to any church shall be taxed by any law of this state."

The Court determined that "taxed" referred to general taxes to be assessed for the benefit of the town, county and state at large, and not to special benefit assessments.

By virtue of a special constitutional provision of the constitution of the State of Texas, the general statute of limitation does not operate upon "taxes" and is no defense to a suit for "taxes." In the case of City of Cisco vs. Varner, 8 S. W. (2d) 311, Varner had sued to cancel the lien of special tax bills representing local improvements, and asserted the statute of limitation against the City's cross action to enforce the tax bills. The Court held that a local benefit assessment was not a tax and therefore Varner was privileged to interpose the statute of limitation, l. c. 312:

> "The assessment for the local improvements in question is not a tax, within the meaning of the Constitution and laws of this state, such as would prevent the running of the statute of limitation against a municipal corporation, suing to enforce, as against an abutting landowner, a claim and an alleged lien securing the same." * * *"

From the foregoing it is clear that in the general and accepted sense the term "tax" does not include a special benefit assessment. Let us now turn to our own cases to see the construction that has been placed upon these terms by our own Courts in analogous situations.

II.

MISSOURI DECISIONS CONSTRUE "TAXES" TO EXCLUDE SPECIAL BENEFIT ASSESSMENT.

What appears to be the first case in which this question is raised, in respect to the drainage or levee district law of this state, is the case of the Egyptian Levee Company vs. Hardin, 27 Mo. 495. In this case a corporation had been authorized to construct levees and dig canals for the purpose of reclaiming from overflow a district of country between the Des Moines, Fox and Mississippi rivers in Clark County. It also authorized the fund necessary for such improvements to be raised by tax not to exceed fifty cents per acre, on the landholders of the district. Suit was brought to recover some of the assessments and the defense made by the landowners was that the act was unconstitutional because the land was taxed by the acre and not in proportion to its value. Passing upon this objection the Court stated, l. c. 496:

"* * *That provision of our state constitution, which requires taxation to be proportioned to the value of the property on which it is laid, is only applicable to taxation in its usual, ordinary and received sense, and is, therefore, limited to taxation for general purposes alone, where the money raised by the tax goes into the state treasury, or the county treasury, or the general fund of some city or town, and is applicable to any person to which the legislative body of such state, county or town may choose to apply it; and is not intended to apply to local assessments, where the money raised is to be expended on the property taxed. These local assessments are not necessarily, under our constitution, apportioned by reference to the value of the property assessed, but may be regulated by the value of the benefit which the improvement, to which the money is devoted, is expected to confer on the proprietor. Legislative sanction of such assessments is usually brought about by the action of the parties interested, and it is for the legislature to determine in what rationthe burden shall be distributed. It ought to be according to the value of the benefit to be derived; but, if the plan adopted should not, in the opinion of the judiciary, attain the object, it is still not their province to interfere." * * *"

This distinction is also made in the case of Morrison vs. Morey, 146 Mo. 543-564:

"But while it is a public subdivision of the State and not a private corporation, it does not follow that the money to be raised from the landowners to carry out the objects intended, is a tax. It is an assessment which is justified by the benefit, public and private, conferred. The cost of the abatement of nuisances, for the construction of sewers or for the improvement of a street, may be assessed against the property benefited, notwithstanding the public and the owner are both interested. As a tax it would be un-

> constitutional, because not uniform (Constitution, Sec. 3, art 10) and because not in proportion to the value of the property (Const. sec, 4, art. 10) and because it is prohibited by the limitations of section 12 of article X of our Constitution, but being an assessment of benefits and in no sense a tax it is a constitutional exercise of the power of the State.* * * *"

That "taxation" as used in the constitution does not embrace drainage and levee district assessments and assessments for similar projects is established without a question of a doubt. Of the more recent cases so holding, we refer to State ex rel. Drainage District vs. Thompson, 41 S. W. (2d) 941-945, wherein it is stated:

> "The uniform tax clause of our Constitution invoked by respondent has no application to this case for the reason that special assessments levied in a drainage district to pay for local improvements made in the district are not taxes within the meaning of this clause of the Constitution.* * * *"

And in the more recent case of State vs. Sewer District, 58 S. W. (2d) 988-995, it is said:

> "* * *but a more sweeping and conclusive answer is that the constitutional provisions invoked do not apply to such taxes, because they are special taxes in the nature of benefit assessments. State ex inf. Atty. Gen. v. Curtis, supra, 319 Mo. loc. cit. 334, 4 S. W. (2d) loc. cit. 473.* * * *"

While it is certain from the foregoing that "taxation" as used in the Constitution does not include special benefit assessment, still our problem is to determine whether or not the word "taxes" as used in this statutory enactment is to be construed to include drainage assessments. It is of course a cardinal rule of construction that words in any statute are to be used in their usual and ordinary sense. Betz vs. Kansas City Southern Railway Company, 314 Mo. 390-411:

> "* * *'The great fundamental rule in construing statutes is to ascertain and give effect to the intention of the Legislature. This intention, however, must be the intention as expressed in the statute, and where the meaning of the language used is plain, it must be given effect by the courts, or they would be assuming legislative authority.' And in 36 Cyc. 1114, it is furthermore said: 'In the interpretation of statutes, words in common use are to be construed in their natural, plain, and ordinary signification. It is a very well-settled rule that so long as the language used is unambiguous, a departure from its natural meaning is not justified by any consideration of its consequences, or of public policy, and it is the plain duty of the court to give it force and effect.'* * **

If such be the case, there can be little doubt but that "taxes" when used in its ordinary and usual sense does not include special benefit, and therefore, in the instant act does not include special benefit assessments. Did not the Court in the Egyptian Levee case supra, place the interpretation upon the word "taxation" in its "usual, ordinary and received sense," and therefore held that it was "limited to taxation for general purposes alone?" We think then as a matter of construction this is clear, but refer to a few additional cases to fortify our position. We refer to the following quotation from Schwab vs. City of St.Louis, 274 S. W. 1058-1062:

> "* * *In approaching a discussion of the question in hand, it may be conceded as well settled and established in this state that, while assessments for special benefits and for local improvements in a broad sense are referable to the taxing power, yet they are not taxes in the general acceptation and use of that term, which usually applies to imposts levied for revenue or governmental purposes only. Such has been the uniform holding of this court.* * * **

We also refer to the case of Commerce Trust Company vs. Syndicate Lot Company, 232 S. W. 1055. In this case the Court had for construction certain terms of the charter of the City of Kansas City. The following statement of Judge Bland of the Kansas City Court of Appeals affirms this position, l. c. 1056:

> "A decision of this question rests upon the construction of the words 'special taxes or assessments' as used in this section and article of the charter. Ordinarily, the words, 'tax or taxes,' do not include local assessments, unless there be something in the language where the word is found to indicate such an intention.* * ** * * * *
>
> "By the use of the word 'assessments' in connection with the words 'special taxes,' the framers of the charter must have meant something more than 'taxes,' as that word is usually construed to mean. In fact, it is clearly indicated in the charter that the words 'special taxes or assessments' refer to tax bills.* * * *"

The law under discussion is short and therefore there is little ground to cover in our inquiry as to whether or not the other words of the statute indicate a different meaning. The terms "personal and real estate" clearly indicate an intention only to include ad valorem taxes. If any benefit is to be derived from the use of these various terms by the legislature in the construction of this act, it must be observed that the use of the terms "personal and real estate" indicate an intention to cover that field of taxation which may be commonly brought within the term as "ad valorem taxes." Certainly the term "real estate taxes" by itself does not indicate an intention to cover drainage assessment for throughout the statute these assessments are referred to as "drainage taxes" and are at no place designated as "real estate taxes." Therefore, if common nomenclature is to be considered, drainage assessments are not to be included in the term "personal and real estate taxes."

In concluding we wish to direct final attention to the case of Ranney vs. City of Cape Girardeau, 255 Mo. 514. In this case the court was considering the validity of benefit assessments for street improvements. Judge Lamm stated, l. c. 518:

> "The accepted doctrine is that special assessments for local improvements, while, in a broad sense, referable to the taxing power, are not taxes for public purposes or taxes at all within the purview and the sense of the constitutional provision invoked or within the sense and purview of other sections of the article on revenue and taxation." * * * *"

It therefore appears that the foregoing case is direct authority for holding that "taxes" as used in the chapter on revenue and taxation, are not intended to and do not include benefit assessments for special or local improvements. It cannot be seriously argued that the bill under consideration is not a portion of the chapter of taxation and revenue as it will unquestionably take its place therein at the time of the next revision. Persuasive of this position is the heading as found on page 166, which reads as follows:

> "Taxation And Revenue: Relating to Delinquent Taxes for the Year 1932 and Prior Years."

This definitely indicates its place as a part of the law on taxation and revenue of our state, and without question it would be entirely out of place in any other Chapter of our Revised Statutes.

CONCLUSION.

In view of the foregoing it is the opinion of this office that House Bill 124 of the Extra Session of the 57th General Assembly, as enacted, does not yet apply to or include what is commonly but erroneously termed as "drainage taxes."

Respectfully submitted,

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APPROVED:

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