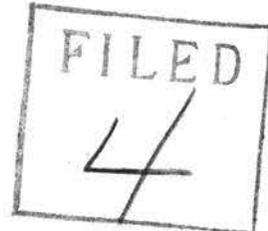


TAXATION: Collector may receive taxes on part of a tract. Division of taxes based on area.

December 14, 1935.

12-14



Honorable Sam A. Baker  
Collector of Revenue  
Bollinger County  
Marble Hill, Missouri

Dear Mr. Baker:

We acknowledge receipt of your request for an opinion of this office on the following matter:

"During the November tax sales I offered a number of tracts of land for sale and was unable to get a bid on part of them. Since that time there has been parts of some of the tracts sold and the purchaser wants to pay up the back taxes on the part that he bought and let the rest of the tract remain delinquent.

1. Does the purchaser have the right to buy a small parcel of a tract which will generally be the best part and pay the back taxes on that particular part?

2. If so, how would you arrive at the value of this parcel?"

The only authority that you as County Collector has to sell a portion of a tract of land for taxes is found in Section 9952d, page 432, Laws of Missouri 1933. This Section provides as follows:

"When more than one tract or lot belonging to the same person shall be for sale at the same time, in the same municipal corporation or township, a part of one of said tracts or lots shall be offered, first for the payment of the whole sum due from such owner on all such delinquent lands or lots, or otherwise; and if no person shall bid off a part of such tract or lot the sum required, the said tract or lot shall then be offered to the highest bidder for cash, and if any amount shall remain due, or if no person bid for a part or all of one tract or lot, each of the other tracts or lots shall be offered in like manner until the required sum is realized; and if no one bids upon a part or all of said tracts or lots separately, enough to pay the amount due, then the whole of said tracts and lots shall be offered together and sold to pay the taxes, penalty, interest and costs thereon; provided, however, this section shall be construed directory in character and a failure to comply therewith shall not of itself invalidate any sale."

This Section authorizes the offering of a part of a tract of land for sale but before a part of the tract can be sold "the sum required" must be offered for the tract. In other words, in no case shall a sale of a part of a tract be made unless the bid received for that part is sufficient to pay for the taxes which are due or delinquent on the whole tract. In the event the bid for the tract is insufficient to pay the taxes against the whole tract there is no authority to sell the portion of the tract but the whole tract must be offered for sale and sold if possible for all the taxes that are against the property. There is no authority in the Jones-Munger Law for selling a tract for 1934 taxes and accept from the purchaser the amount of such taxes when taxes for prior years against the tract are delinquent and unpaid. If the tract is sold for 1934 taxes it must be sold for all taxes

that have accrued for the years prior thereto. Therefore, it is difficult to ascertain how an occasion would arise wherein a person would buy a parcel of a tract and offer to pay the back taxes on that particular tract. The amount of his purchase bid at the sale should be sufficient to cover all prior accrued taxes.

It is therefore the opinion of this office that a purchaser at a sale under the Jones-Munger Law has no right to buy at such sale a small parcel of a tract and pay the taxes on that particular part.

In the event your situation is not as above described, to-wit, that the sales of a part of a tract of land were not sales made under the Jones-Munger Act, but were sales subsequently made by the owners to purchasers who have taken title to a part of a tract of land, the situation is controlled by the provisions of Section 9913 R. S. Missouri 1929, which section reads as follows:

"Whenever any person shall pay taxes charged on the tax book, the collector shall enter such payment in his list, and give the person paying the same a receipt, specifying the name of the person whom paid, the amount paid, what year paid for, and the property and value thereof on which the same was paid, according to its description on the collector's list, in whole or in part, as the case may be, and the collector shall enter 'paid' against each tract or lot of land when he collects the tax thereon. The collector shall receive taxes on part of any lot, piece or parcel of land charged with taxes: Provided, the persons paying such tax shall furnish a particular specification of the part, and if the tax on the remainder of such lot and parcel of land shall remain unpaid, the collector shall enter such specification in his return, to the end that the part on which the tax remains unpaid may be clearly known. If payment is made on an undivided share of real estate, the collector shall enter on his record the name of the owner of such share, so as to designate upon whose undivided share the tax has been paid."

By this section specific authority is given to pay the taxes which may be charged on the tax books against a part of a tract, but it is required that the party paying the taxes furnish a specific description in detail of the tract of land upon which he desires to pay taxes. This section does not provide the manner in which the County Collector shall determine what proportion of the taxes assessed against the whole tract shall be distributed to the portion of the tract which has come into the hands of a new owner and who desires to pay the taxes upon his portion of the tract. However, this issue has been before the Supreme Court of the State of Missouri in the case of State ex rel. Realty Company et al. vs. Koeln, 255 Missouri 301. In this instance the taxpayer proposed to pay the taxes on a portion of a tract which it had purchased and offered to pay that portion of the total tax bill as was represented by the area of the portion upon which the taxes were sought to be paid. The Court in this case stated, l. c. 303:

"On April 28, 1910, the relators tendered to the defendant five hundred and ten dollars, the full amount of all taxes, interest, penalties and costs for the taxes for the year 1909 on that part of the land not condemned for the street, computing the amount due by taking such proportion of the whole tax, interest, penalties and costs as the uncondemned land bore to the whole tract prior to such condemnation, according to area.\* \* \* \* \*

It is contended that the various parts of such tract may not have a value in proportion to the area, and that the collector has no such powers as the assessor, and cannot apportion the value of the different parts of a tract which has been assessed in solido. There is no showing in this case that a payment in proportion to the area is not equitable and fair. Whether such proportion should be used in all cases we will not now decide."

From the foregoing ruling of the Supreme Court it is apparent a division of the tax based upon area will be approved if such division operates fairly and equitably. On the other hand the words of the Court throw a doubt upon a division based upon area if such division would be unfair and inequitable and therefore

Honorable Sam A. Baker

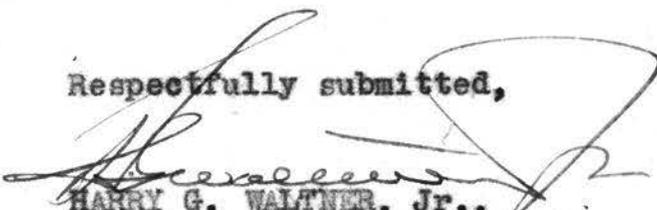
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it would appear that in the event a person sought to pay taxes on the basis of area when such basis did not afford a fair and equitable proportion of the taxes, such a division might not be upheld by the Courts. It should be kept in mind that we are referring to those cases which properly fall within the provisions of Section 9913 and not those cases which fall within the provisions of Section 9955d, page 436, Laws of Missouri 1933.

It would therefore be the opinion of this office that the County Collector is required to use judgment and discretion in proportioning the amount of taxes due against a part of a tract, that such division should be upon the basis of area, unless such a division would result in an unfair and inequitable division of taxes, in which latter event, the collector should make the division on some equitable and fair basis.

Respectfully submitted,

  
HARRY G. WALTNER, Jr.,  
Assistant Attorney General

APPROVED:

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JOHN W. HOFFMAN, Jr.,  
(Acting) Attorney General

HGW:MM