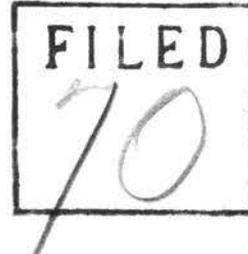


TAXATION: Collector can refund penalties paid by  
taxpayers under House Bill No. 70  
after effective date of said Bill

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July 17, 1937

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Mr. W. S. Pelts  
Prosecuting Attorney  
Dade County  
Greenfield, Missouri

Dear Sir:

This Department is in receipt of your recent letter wherein the substance of the question propounded, in essence, is as follows:

"House Bill No. 70 being approved by the Governor on June 8, 1937, remitting certain penalties on delinquent taxes, the collector received notice from the State that the Bill was approved, and as the same carried an emergency clause, went immediately into effect:

"Can penalties be refunded to taxpayers who paid said penalties after June 8 (June 9) and before receipt of the notice by the Collector on June 10."

Section 1 of House Bill No. 70 is as follows:

"In payment of the taxes assessed against any person whose name appears upon the personal delinquent lists of any year or years prior to January 1, 1937, and in payment of the taxes assessed against any real estate which

appears upon the lists of delinquent and back taxes of any year or years prior to January 1st, 1937, including delinquent taxes for the year 1936, the collectors of revenue of the counties and cities of this state are hereby empowered and directed to accept the original amount of said taxes as charged against any such person or real estate relieved of the penalties, interest and costs accrued upon the same except the ~~commission of~~ said collectors of revenue, as same are now provided by law for the collection of delinquent taxes; PROVIDED, however, that such remission of penalties, interest and costs shall be in full if said taxes are paid not later than June 30, 1937; if paid after June 30, 1937 and not later than August 31, 1937, then such remission shall be 75 per cent of such penalties, interest and costs; if paid after August 31, 1937, and not later than October 31, 1937, such remission shall be 50 per cent of such penalties, interest and cost; if paid after October 31, 1937 and not later than December 31, 1937, then such remission shall be 25 per cent of such penalties, interest and costs, PROVIDED, further, that after December 31, 1937, all penalties, interest and costs as aforesaid shall be restored and be in full force and effect for the full period of time since their accrual and as if this act had not been passed."

The digest of House and Senate Bills shows that House Bill No. 70 was signed by the Governor on June 8, 1937; Section 3 of House Bill No. 70 is an emergency section and the last sentence reads:

"And this act shall be in force and take effect from and after its passage and approval by the Governor."

Under our Constitution, laws which are passed by the Legislature without an emergency clause become effective ninety days after the adjournment of the Legislature. The emergency clause in a legislative enactment makes it become effective immediately upon the approval by the Governor. Therefore, the law remitting penalties, as set forth above, was effective on June 9 at the time the taxpayers in question paid their taxes and included the penalties. In other words, the taxpayer was entitled to the remission of the penalties, but, having voluntarily paid the same, can the collector refund the penalties.

The general rule with reference to paying taxes and the recovery of same is contained in *Kansas City ex rel. v. Holmes*, 127 Mo. App. 1. c. 624:

"We think the principle of that case should govern this also. And furthermore the taxes were just. When plaintiff paid the money to redeem his land he was paying that for which his land was liable. We assert the proposition that, whereas a taxpayer cannot be compelled to pay taxes irregularly assessed against him property, yet if he does pay them under such a condition and the sum paid represents the amount for which his property is justly liable he cannot recover it. It has even been

held that where a taxpayer pays taxes that are illegal he cannot recover them back unless he paid them under duress. (Robins v. Latham, 134 Mo. 466; Wolfe v. Marshall, 52 Mo. 167; State ex rel. v. Railroad, 165 Mo. 597.)"

But we think that although the rule differs in the several states that in Missouri interest and penalties on delinquent taxes are not a part of the tax. Section 2220, 61 Corpus Juris, page 1516, is as follows:

"When interest is charged on a delinquent tax by statute, it is not regarded as interest in the sense that it is a consideration for the forbearance of money, but is deemed to be a penalty; and the statutes imposing interest do not make interest a part of the tax but pertain to the remedy employed to compel payment of the tax."

Most of the states contain statutory provisions relating to the refunding of taxes illegally paid, or the refund of taxes under certain conditions. Missouri apparently has no such statute as a guide. The only decision which has been before our Supreme Court relating to the remission of penalties is that of State ex rel. McKittrick v. Bair, 63 S. W. (2d) 64. This decision mainly dealt with the constitutionality of such an enactment by the Legislature. Speaking of the remission of penalties, Judge Hays, page 66 said:

"It having been determined that the respondent and the interveners have no vested interest or property right in the penalties remitted by Senate

Bill No. 80, the act does not offend against the due process clauses of the Fourteenth Amendment nor section 10 of Article 1 of the Constitution of the United States nor our Section 30 of Article 2."

And again states:

"In this situation, the legislative power to remit the penalties involved here is well settled in principle. In *Maryland v. B. & O. R. R. Co.*, 3 How. 534, 11 L. Ed. 714, it is held that the Legislature has a right to remit penalties imposed by law. 'In this aspect of the case,' the court said at page 552 of 3 How. ,11. L.Ed.714, 'and upon this construction of the act of Assembly, we do not understand that the right of the state to release it is disputed. Certainly the power to do so is too well settled to admit of controversy. The repeal of the law imposing the penalty, is of itself a remission, (U. S. v. The Peggy) 1 Cranch, 104, (2 L.Ed.49); (*Yeaton v. United States*), 5 Cranch 281, 3 L.Ed. 101); (U. S. v. *Ship Helen*), 6 Cranch, 203 (3 L. Ed. 199); (*The Rachel v. U. S.* 6 Cranch) 329 ( 3 L.Ed. 239). And in the case of the *United States v. Morris*, 10 Wheat. 287 (6 L.Ed. 314), this court held that Congress had clearly the power to authorize the secretary of the Treasury to remit any penalty or forfeiture incurred by the breach of the revenue laws, either before or after the judgment; and if remitted before the money was actually paid, it embraced the shares given by law in such cases to the officers of the customs, as well as the share of the United States.'

See, also, 23 Am. & Eng. Ency.  
of Law, pp.506-508 and 510  
(1st Ed.) and cases cited."

And again, in discussing the effect of suits pending and the remission of penalties thereon, at l. c. 67 said:

"All questions necessary to be discussed having been determined, it seems advisable, before closing this opinion, to observe briefly the effect of the change in the law upon the back tax suits that have been filed, or may be filed, subsequently to the date, April 13 of the current year, when this new law became effective. Owing to the alternative options granted the taxpayer, with periodically and increasingly reduced advantage to him in the avoidance of penalties, a question of some difficulty is presented pertinent to the effect upon suits pending during any part or all of the entire period covered by the act. Concerning this matter, it is our view (1) that none can proceed to final judgment before the expiration of the act on January 1 next; (2) a taxpayer exercising the first option may pay the original tax without more, and all penalties are thereby discharged, and his pending tax suit, if any, will be abated; (3) exercising the second option, the taxpayer, if suit be pending against him, must, in addition to the original tax, pay one-fourth of all penalties formerly chargeable, in full discharge of the whole, and the suit will likewise abate; (4) the same process and result will apply

July 17, 1937

in a general way to the remaining options. We think this mode of procedure seems practical and just, and accomplishes the legislative purpose, as we have determined it."

None of the above quoted decisions have a direct bearing on our question at hand. However, having concluded that in Missouri penalties and interest are not a part of the tax, it would appear in equity and in justice that both the collector and the taxpayer, not being informed of the effective time of House Bill No. 70, a refund of penalties in the amount that the taxpayers would have been entitled to forego under House Bill No. 70 should be returned to them. If the amount of the penalties have not been turned into the county treasury we think the same can be held aside and returned to the taxpayers by the collector. If the penalties have been turned into the county treasury then the redress of the taxpayers should be in the county court and the collector should be privileged to take credit for same.

Respectfully submitted,

OLLIVER W. NOLEN  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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