

TAXATION: Definition of Taxpayer.

May 5, 1938.



Honorable Charles D. Brandon  
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Dear Sir:

This department has received your letter of May 2nd, which letter reads as follows:

"I wish you would please render me an opinion on what constitutes a 'tax-paying citizen' with reference to the qualifications of an applicant for a liquor license under Section 27 of the Liquor Laws of this state.

"Would a person who has just been assessed for taxes on which assessment taxes will not be paid until 1939 be a tax-paying citizen?

"Would a person who has formerly paid taxes, but has not paid taxes within the last year, or who is delinquent one or more years in paying taxes of a respective county or city, be a tax-paying citizen?"

Section 27 of the Liquor Act found in the Laws of Missouri, 1937, page 533, states that:

"No person shall be granted a license hereunder unless such person is \* \* \* a tax-paying citizen of the county, town, city or village, \* \* \* ."

The first and principal question to be determined therefore is, who is a taxpayer and under what circumstances. We find the following definition of a taxpayer in 61 C. J. 1748:

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"The generally accepted definitions of a taxpayer are : a person chargeable with a tax, or who owning property in the state, or within the territory, is subject to taxation; one from whom government demands a pecuniary contribution toward its support; one who is liable for the payment of taxes; one who is required to pay taxes; one who is subject to and liable for a tax; one who owns property, within a town or municipality, subject to taxation;  
\* \* \* "

Cooley in his work on taxation in Volume 1, 4th Ed. Section 17, defines a taxpayer as follows:

"A taxpayer, as the term is generally used, is one who owns property within a state or taxing district and who pays a tax or is subject to and liable for a tax."

In the case of State on Inf. Bellamy vs. Menengali, 270 S. W. 101, the Supreme Court of Missouri, said:

"In Webster's New International Dictionary, a taxpayer is defined as: 'One who pays a tax.' In Funk & Wagnall's New Standard Dictionary, a taxpayer is defined as: 'One who pays any tax, or who is liable for the payment of any tax.' The evidence is clear and undisputed that respondent, on June 1, 1920, was the legal owner of the property heretofore described, and that it was not exempt from taxation."

In the case of State ex rel. Sutton vs. Fasse, 71 S. W. 745, the St. Louis Court of Appeals defined a taxpayer as:

"A person owning property in the state subject to taxation, and on which he regularly pays taxes."

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It is to be noted in the Fasse case, that the definition of a taxpayer is enlarged to require that a person must own property subject to taxation and also pay taxes on the same regularly before he can so qualify. This court, however, was construing a statute which provided that a school director, in order to qualify as such, must be a resident taxpayer and must also have paid a state and county tax within one year next preceding his election. Since the statute definitely required that school directors must have actually paid taxes within a year next preceding the election, the definition of a taxpayer as announced by that court was necessarily influenced thereby. The court announced this definition of the term only after fully considering the statute to be construed.

A quite complete discussion of the term, which includes an accumulation of authorities on the question, is found in the case of Leventhal vs. Gillmore, 206 N. Y. S. 121. In this case the court said:

"In general, a 'taxpayer' is defined as 'one who pays any tax, or is liable to pay any tax' (Standard Dictionary); also as 'one who pays a tax' (Webster's Dictionary); and as 'a person chargeable with a tax; one from whom government demands a pecuniary contribution towards its support' (Black's Law Dictionary). An examination of the authorities discloses no material variance from the foregoing and generally accepted definition. In matter of Kersburg, 101 Misc. Rep. 241, 243, 166 N. Y. Supp. 900, 902, affirmed 179 App. Div. 969, 166 N. Y. Supp. 1100, a 'taxpayer' is defined as follows.

"One owning property within the territory subject to taxation. To constitute a taxpayer in the meaning of the statute, it is not necessary that the taxes due on his property should have been assessed. Hillsman v. Faison, 57 S. W. Rep. 920, 922; 23 Tex. Civ. App. 398."

"In Winters v. Independent School District (Tex. Civ. App.) 208 S. W. 574, it was held:

"One otherwise qualified to vote at an election in an independent school district to determine whether or not the district should levy an additional school tax is a 'taxpaying voter,' if liable for taxes on property, whether or not his property has been assessed for taxes."

"The qualification required in the last-mentioned case was that a voter should be a 'taxpaying voter.'"

"In *Kempen v. Bruns* (Tex. Civ. App.) 195 S. W. 643, the constitutional requirement to vote on the proposition of the expenditure of money, or assumption of debt, was that an elector pay taxes in the towns or cities of the state, and the same was defined as follows:

"One who pays taxes has been construed to mean a taxpayer, and it has been determined that a taxpayer, in the meaning of the constitutional provision mentioned, is one who owns property in the town or city subject to taxes. *Hillsman v. Faison*, 23 Tex. Civ. App. 398, 57 S. W. 920. There is no law making the tax records the exclusive evidence that the voter is a taxpayer. Neither is it necessary that the property tax be actually paid."

With the above general principles in mind, we will consider your first question, that is, whether a person who has just been assessed for taxes, but which taxes will not be paid until 1939, can be considered a taxpaying citizen. Apparently you have in mind a person who has recently acquired property and has not been actually paying taxes in the "county, town, city or village." If any such person has acquired title to property and the same has been assessed, it is our opinion that the holder of such property is qualified as a taxpayer, under the terms of Section 27 of the Act. We do not believe that the court, in construing the statute in the *Fasse* case, intended to place any different construction on the word "Taxpayer" where the word is used alone and no

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further statutory requirements are made as to payment of taxes as is required in the School Statute.

The case of *In re Kersburg*, 166 N. Y. S. 900, is directly in point. Here an attempt was made to oust a liquor commissioner for the reason that he was not a taxpayer at the time of his appointment, as required by the statute. The law required that, within twenty days after its effective date, the mayor of each of the cities, "shall appoint a commission to consist of three members, who shall be residents and taxpayers of the city or town \* \* \* ."

The court said, on page 902, of the case:

"It appears without dispute that Charles L. O'Connor, the commissioner who it is claimed is disqualified because he was not a taxpayer, became the owner of a piece of real property in the city of Lackawanna on the 2d day of May, 1917, and that the law in question became effective on the 22d day of May, 1917. The Standard Dictionary defines a taxpayer as:

"One who pays any tax or is liable to pay any tax."

"Taxpayer," as used in Rev. St. Tex. 1895, art. 3942, providing that all persons who are legally qualified voters of the state and of the county of their residence, and who are resident taxpayers in said district, as shown in the last-assessment rolls of the county, shall be entitled to vote in any such school district, does not mean only those whose names appear on the last assessment rolls of the county, but means one owning property within the territory subject to taxation. To constitute a taxpayer in the meaning of the statute, it is not necessary that the taxes due on his property should have been assessed. *Hillsman v. Faison*, 23 Tex. Civ. App. 398, 57 S. W. 920, 922.

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"I am therefore of the opinion that Mr. O'Connor possessed the legal qualifications of a commissioner at the time of his appointment by the mayor and the approval of his appointment by the commissioner of excise."

Undoubtedly the true definition of a taxpayer is one who pays a tax, or who is liable for the payment of a tax. It is not necessary for one to have actually paid a tax, or to have paid taxes regularly. The legal liability for the tax is sufficient.

As we stated above, it follows that anyone owning property within the prescribed limits which is subject to taxation, although no taxes might have been in the past paid on such property, that the owner thereof is to be considered a taxpayer because such property is subject to taxation. Such a person would, therefore, be qualified as a taxpaying citizen as meant and intended in said Section 27.

Your next question reads as follows: "Would a person who has formerly paid taxes but has not paid taxes within the last year" be considered a taxpaying citizen. We assume that you refer to persons who have formerly owned property and formerly paid taxes on same but who do not now own any property, whatsoever, or are they now paying taxes. Such persons in our opinion, are not now eligible for a license. Section 27 is written in the present and not past tense in this respect. The statute states that:

"No person shall be granted a license hereunder unless such person is \* \* \* a taxpaying citizen \* \* \*."

The fact that a person may have owned property and became liable or paid taxes in the past could not qualify such person, as a present taxpayer, for a present license. All the cases cited herein required that the taxpayer must be a present taxpayer to be so considered.

Your next and last question is whether a person "who is delinquent one or more years in paying taxes of a respective county or city" may be considered a taxpaying citizen. It will be noted in the cases cited above, that

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the actual payment of taxes is not a necessary prerequisite in determining who is a taxpayer. The principal point appears to be that, if a one is "chargeable with a tax" or "is liable for the payment of any tax" through the ownership of property, that such person is considered a taxpayer. Therefore, if a person owes taxes on property which he owns but the same has been allowed to become delinquent, this delinquency in itself, does not prevent such person from being classified as a taxpayer.

CONCLUSION

It is the opinion of this department that a taxpayer is a one who pays a tax or is liable for the payment of a tax; that actual payment of taxes is not necessary if the liability therefor exists, in order to qualify a person as a "tax-paying citizen" within the meaning of Section 27 of the Liquor Act.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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