

TAX:
COLLECTOR'S COMMISSION:
DRAINAGE TAX:

Collector's commission for collecting delinquent drainage taxes should be paid out of drainage tax funds.

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Mr. Marshall Craig
Attorney at Law
Charleston, Missouri

Dear Mr. Craig:

This is in reply to your letter of recent date, wherein you request an opinion from this department on the following statement of facts:

"We have several County Court Drainage Districts in this County. We recently filed suit for delinquent taxes and obtained judgments for such taxes in a County Court District. The land owner takes the position that the 2% commission due the Collector should be taken from the amount collected as taxes and interest and should not be added or collected from the land owner. It is our position that the 2% is additional penalty that the land owner must pay. We feel that this is in accordance with sections of law requiring the Collector to collect delinquent taxes and we feel that the same rule prevails with reference to County Court Drainage Districts with reference to State and County taxes."

Since the question here involves the imposition of additional tax or penalty on the tax payer, we think the rule which requires the taxing authority to point out the law under which he proposes to collect the tax, or impose the penalty, would be applicable here. In the case of Artophone Corporation vs. Coale, 133 S. W. (2nd) 343, 347, the rule is stated as follows:

" * * * * Generally it may be said that taxing statutes are to be strictly construed in favor of the taxpayer and the fact that a particular subject of taxation, claimed to be taxed, is within the purview

and intendment of the taxing statute must clearly appear from the statute so to be. * * * * *"

Article 30, Chapter 79, R. S. Mo. 1939, pertains to county court drainage district. Section 12417 of this article provides in part as follows:

"All drainage taxes provided for in this article, including maintenance taxes, together with all penalties for default in payment of the same, all costs in collecting the same, including a reasonable attorney's fee to be fixed by the court and taxed as costs in the action brought to enforce payment, shall from date of the levying of the same by the county court as provided herein, until paid, constitute a lien, to which only the lien of the state for state, county, school and road taxes shall be paramount, upon all of the lands assessed, and shall be collected, in the same manner as state, county and school taxes upon real estate are collected. The said tax shall become delinquent if not paid on or before the thirty-first day of December of the year for which said taxes were levied, and when so delinquent shall bear interest at the rate of one per cent per month until paid, each fractional month being counted as a full month. * * * * *"

This section authorizes penalties for default in the payment of drainage taxes to be charged against the land and provides that such charge be a lien against the lands taxed.

Section 12470 provides for a commission to the collector for collecting drainage taxes, both current and delinquent. This section reads as follows:

"The county and township collectors for collecting current taxes for drainage and levee districts shall receive one per cent of all such taxes collected, and for the collection of delinquent taxes for such they shall receive two per cent of all sums collected."

If the tax payer could be charged with the collector's commission for collecting delinquent drainage taxes, under this section, he would also be chargeable with the collector's commission for collecting current taxes.

In your letter it appears that you are under the impression that the same rule as to commissions for delinquent taxes applies to the drainage tax laws as does the general tax law. Section 11182 provides for a commission to the collector for collecting delinquent real and personal taxes. This section reads as follows:

"Fees shall be allowed for services rendered under the provisions of this article, as follows: To the collector, except in *such cities, two per cent on all sums collected; in such cities, two per cent on all sums collected -- such per cent to be taxed as cost and collected from the party redeeming. To the county collector, for recording the list of delinquent land and lots, twenty-five cents per tract, to be taxed as cost and collected from the party redeeming such tract."

*"such cities" refers to cities described in Sec. 11202.

It will be noted that the section particularly authorizes the collector's commission for collecting the delinquent tax to be charged as costs. The drainage tax act does not so provide.

Section 12470, supra, has not been before the court for a construction on your question, however, we find that Section 12513 in the article pertaining to levee districts was considered by the Supreme Court in St. Francois Levee District vs. Dorroh, 289 S. W. 925, 933, wherein the Court said:

"The judgment taxes against defendant, as costs in the case, a commission for the county collector of 4 per cent on the aggregate amount of the judgment. Appellant insists that there is no authority in law therefor. In ruling this contention we must advert to the statute applicable to levee districts organized by circuit courts, under which plaintiff

brings this action. Section 4619, R. S. 1919, provides:

"The said collector shall retain for his services one per centum of the amount he collects on current taxes and two per centum of the amount he collects on delinquent taxes."

Section 4620 provides:

"All levee taxes provided for in this article, together with all penalties for default in payment of the same, all costs in collecting the same, including a reasonable attorney's fee, to be fixed by the court and taxed as costs in the action brought to enforce payment, shall, from date of filing the certificate hereinafter described in the office of the recorder of deeds for the county wherein the lands and properties are situate, until paid, constitute a lien, to which only the lien of the state for general state, county, school and road taxes shall be paramount, upon all the lands and other property against which such taxes shall be levied as is provided in this article."

Section 4621 provides:

"In all suits for the collection of delinquent taxes, the judgment for said delinquent taxes and penalty shall also include all costs of suit and a reasonable attorney's fee to be fixed by the court, recoverable the same as the delinquent tax and in the same suit."

"As we read the statute, there is no authority given therein for the taxing of the collector's commission as costs in the case. Section 4619 allows the collector to retain for his services 'two per centum of the amount he collects on delinquent taxes.' Section 4617 of the statute makes it the duty of the collector of revenue of each county

in which lands of any levee district organized under the statute are situate to receive the levee tax book each year and to collect the tax therein set out, and said collector is required to --

"**make due return of all 'levee tax books' each year to the secretary of the board of supervisors of the aforesaid levee district, and shall pay over and account for all moneys collected thereon each year to the treasurer of said district at the same time when he pays over state and county taxes."

It is further provided that:

"Said collector shall proceed to collect such delinquent levee taxes and demand payment therefore in the same manner as herein provided for the collection of current levee taxes."

"Section 4619 provides for a penalty of 10 per cent. on the amount of his delinquency for failure of the collector to pay over to the treasurer of the levee district the tax, or any part thereof, collected by him, for which the collector's bondsmen shall be liable upon his official bond. Obviously, in view of the language of Section 4619 that the collector shall retain for his services 'two per centum of the amount he collects on delinquent taxes,' taken in connection with the language of the other sections of the statute above quoted, it is the intention and purpose of the Legislature that the levee district, rather than the landowner and taxpayer, shall compensate the collector for his services in collecting the tax and penalties thereon. The judgment is therefore erroneous in taxing the defendant with the collectors commission."

The sections quoted, supra, in the St. Francois Levee District case contain language very similar to the tax collection commission sections in Article 3 of Chapter 79, R. S. 1939, relating to drainage districts formed by the county courts.

Comparing Section 12417 R. S. Mo. 1939, with Section 12516, R. S. Mo. 1939, which is the same as Section 4620 R. S. St. Francois Levee District case, supra, it would be seen that these sections contain quite similar language.

Section 12470, supra, contains the same language as did Section 4575, R. S. 1919, after it was amended. Before this section was amended, it read as follows:

"The county and township collectors for collecting current taxes for drainage and levee districts shall receive one per cent. of all such taxes collected, and for the collection of delinquent taxes for such districts they shall receive two per cent. of all sums collected: Provided, that when it shall appear to the county court that, because of excessive additional expense incurred in collecting drainage or levee taxes, the collector should receive more than one per cent. of current taxes collected, the county court shall allow such increase as to the court shall seem just, not to exceed an additional one per cent. of the amount collected."

The proviso clause was taken off this section by the amendment. In considering this section, the court in the said Little River Drainage District, l. c. 718, said:

"It is our conclusion that sections 4398, 4426, and 4575 can be read together and completely harmonized, and that the proper construction of the three sections, when so read together, is that township collectors are entitled to the same compensation for collecting drainage district taxes as county collectors, and that county collectors ordinarily are entitled to retain only one per cent. for collecting current drainage

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district taxes, but that county courts may increase such compensation to an amount not exceeding an additional 1 per cent. of the taxes collected, where such collectors incur excessive additional expenses in collecting such taxes."

Before this section was amended, it could not be successfully maintained that the collector's commission was to be charged against the land owner, because if it had been, there would have been no need for the county court to allow, or disallow, the charge as provided in the proviso clause. By the amendment the discretion of the county court in making the allowance was taken away and the first part of the statute remained as it is now, with no provision to collect the collector's commission as cost.

CONCLUSION

From the foregoing, it is the opinion of this department that the additional penalty chargeable as a commission by the collector for collecting delinquent drainage taxes in districts formed on the order of the county court should not be charged against the land owner, but should be charged against the funds collected and claimed by the collector in his settlement with the county court.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

ROBERT L. HYDER
(Acting) Attorney General

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