

TAXATION: SALES TAX LIEN: Lien created by filing of sales tax assessment does not violate the due process clause of the constitution.

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November 13, 1941
11-14

Mr. Arthur U. Goodman, Jr.
Prosecuting Attorney
Kennett, Missouri



Dear Mr. Goodman:

This is in reply to your letter of recent date in which you request an opinion from this department on the question of whether or not the provisions of the sales tax act authorizing the State Auditor to file a notice of lien for the sales tax against persons showing a delinquent sales tax violates provisions of the constitution. You do not state in your letter to what particular provisions you refer and we assume that you have reference to the "due process" provisions of the constitution.

Ordinarily, administrative officers are not authorized to raise the constitutionality of laws which they are directed to administer. For your information I refer you to State ex rel. v. Williams, 232 Mo. 56. In this case the Supreme Court went into this question and cited a number of cases from other states. However, in view of the request and the law which we find on this question, we do not hesitate to submit the views of this department on this question.

The section of the statutes to which you refer provides as follows: (Laws of Mo. 1941, page 709, Section 11435)

"If any case in which any tax, interest or penalty imposed under this Article is not paid when due, the Auditor may file for record in the Recorder's office of the county in which the person owing said tax, interest or penalty resides or has his place of business, a notice of lien specifying the amount of the tax,

interest or penalty due and the name of the person liable for the same. From the time of filing any such notice the amount of the tax specified in such notice shall have the force and effect of the lien of a judgment against the person named in said notice of lien for the amount specified in such notice. Such lien may be released by filing for record in the office of the county recorder a release thereof executed by the Auditor upon payment of the tax, interest and penalties or upon receipt by the Auditor of security sufficient to secure payment thereof, or by final judgment holding such lien to have been erroneously imposed."

As stated above, the only sections of the Constitution which might prohibit such legislation, as we see it, are Amendments 5 and 14 of the Federal Constitution, and Section 30 of Article 2 of the State Constitution. The foregoing section of the Sales Tax Act is similar to Section 11086, R. S. Mo. 1939, authorizing the collector to seize and sell goods and chattels of persons liable for personal taxes. This section was attacked in *DeArman v. Williams*, 93 Mo. 158, on the ground that it deprived the property owner of property without due process. At l. c. 163 the Court in speaking of this assignment said:

"2. The law (Acts of 1883, p. 143) provides that, when any person owing personal tax removes from one county in this state to another, it shall be the duty of the collector of the county from whence such person shall move to send a tax bill to the sheriff of the county into which such person may be found, and, on receipt of the same by said sheriff, it is made his duty to proceed to collect the tax bill in like manner as provided by law for the collection of personal taxes. The point made, that the tax bill issued under this statute is not 'due process of law,' is not well taken.

The mode of levying and collecting taxes is a matter confided to the legislative power, and such laws are 'laws of the land'. Cooley on Taxation (2 Ed.) 48, 49. This statute operates alike upon all persons who, owing a personal tax, move from one county to another, and is not open to the objection made to it. The tax-book, in the hands of the collector, constitutes his warrant and authority for collecting the tax. North Missouri Railroad v. Maguire, 49 Mo. 481. * * * ."

The lawmakers in passing the Sales Tax Act provided a mode of assessing and collecting this tax. As said in the Williams case, supra, this is a matter which is confined to the legislative power. It will be noted that the Court in the Williams case also said that the personal tax bill issued for personal taxes is not in violation of the due process clauses of the constitutions. For the same reason, said Section 11435, supra, is not in violation of the due process clause.

CONCLUSION

It is therefore the opinion of this department that the provisions of the Sales Tax Act which authorized the State Auditor to file notice of lien for sales taxes does not violate the due process clauses of the State and Federal Constitutions.

Respectfully submitted,

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APPROVED:

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