

TAXATION: Taxpayer who pays a tax for the
purpose of getting benefits of
PAYMENT: reduction on account of early
payment, waives his right to appeal
APPEAL AFTER PAYMENT: to the State Tax Commission for
relief, even though he pays such
tax under protest.

October 3, 1941

Honorable Jesse A. Mitchell
Chairman
State Tax Commission
Jefferson City, Missouri

10-6



Dear Sir:

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 find on various pieces of property for which petition for review of assessment was filed that the taxes for the assessment in question have been paid. They were paid under protest in order to receive the benefit of the 4% reduction on city taxes.

"Does the payment of taxes conclude their appeal?"

Under Section 11028, R. S. Mo. 1939, taxpayers may apply to the Tax Commission for relief in cases where they think their property is not legally and properly assessed. This section provides in part as follows:

"After the various assessment rolls required to be made by law shall have been passed upon by the several boards of equalization and prior to the making and delivery of the tax rolls to the proper officers for collection of the taxes, the several assessment rolls shall be subject to inspection by the

commission, or by any member of duly authorized agent or representative thereof, and in case it shall appear to the commission after such investigation, or be made to appear to said commission by written complaint of any taxpayer that property subject to taxation has been omitted from said roll, or individual assessments have not been made in compliance with law, the said commission may issue an order directing the assessing officer whose assessments are to be reviewed to appear with his assessment roll and the sworn statements of the person or persons whose property or whose assessments are to be considered, at a time and place to be stated in said order, said time to be not less than five days from the date of the issuance of said order, and the place to be at the office of the county court at the county seat, or at such other place in said county in which said roll was made as the commission shall deem most convenient for the hearing herein provided. * * * "

From our conversation with you, and from your correspondence, we understand that complaints have been filed in proper time, as is provided by Section 11028, supra, but the only question here is whether the complaint should be entertained by the Commission since the tax has been paid under protest and in order to receive the benefit of the four per cent reduction in city taxes.

We think the question of whether or not such a payment is voluntary would have some effect on this matter. In other words, if a person voluntarily pays a contested tax, then he waives any irregularity in the assessment, levy and collection of same, and cannot even maintain an action to refund taxes so paid.

In the case of State ex rel. v. Chicago & Alton Railway Company, 165 Mo. 597, the court, in considering a suit which had been brought for refund of taxes, said, l. c. 611:

"In its petition to the county court in 1893 to refund the tax so paid, the defendant based its claim solely on the ground that the tax had not been levied in accordance with the requirements of section 7654, above referred to. There was no claim made that the tax was not levied to pay a just obligation of the townships, for which all the taxable property in the township was liable, but only that the procedure prescribed by law had not been followed.

"Whilst that would have been a perfectly valid defense to a suit to collect the tax, it is not a foundation for a suit to recover the money voluntarily paid in conformity to the assessment. Taxes paid voluntarily, under those circumstances, can not be recovered. (Walker v. City of St. Louis, 15 Mo. 563; State ex rel. v. Powell, 44 Mo. 436; Couch v. Kansas City, 127 Mo. 436; Robins v. Latham, 134 Mo. 469.)"

By the same reasoning, the taxpayer could not maintain his action before the Commission if he has voluntarily paid the tax.

On the question of whether or not these taxes have been voluntarily paid, even though it is claimed they were paid under protest, we find the rule to be that this is determined by the facts and circumstances connected with such payment.

In Dillon on Municipal Corporations, Volume 4, Fifth Edition, Section 1620, the following principle is clearly stated:

"The coercion or duress which will render a payment of taxes involuntary must in general consist of some actual or threatened exercise of power possessed, or assumed to be possessed by the party exact-

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ing or receiving the payment over the person or property of another, from which the latter has no other means or reasonable means of immediate relief except by making payment."

Where taxes were paid in order to obtain a rebate or discount, they were held to have been voluntarily paid in the cases of Atchison T. & S. F. R. Co. v. Atchison County, 47 Kan. 722, and Lee v. Templeton, 13 Gray (Mass.) 476, and in a number of other cases cited in 64 A. L. R., page 47.

In order to show that the tax was not voluntarily paid, the taxpayer in Missouri must show that he paid the tax to avoid arrest or seizure of his property. This rule is stated in Robins v. Latham, 134 Mo. 466.

Since it appears that these complainants have paid their taxes in order to receive the benefits of reduction for the early payment, under the cases hereinbefore referred to, they have voluntarily paid same, and since the payments are voluntary, the complainants have waived their rights to appeal to the Tax Commission for a hearing on the tax which they have so paid.

CONCLUSION

From the foregoing, it is the opinion of this department that parties who have paid taxes under protest for the purpose of receiving the benefits of a reduction on account of early payment of same, have waived their rights for a review of the assessments made for such taxes so paid.

Respectfully submitted,

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APPROVED:

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TWB:VC