

TAXATION: -
EXTENSION OF TAXES BY
COUNTY CLERK: -

The ninety-day period in which County Clerk shall extend taxes and turn books over to Collector, begins to run when County Board of Appeals has completed its work and the certificate from the State Tax Commission has been received.

August 8, 1941

8-12

Hon. D. Mandville Weems
Clerk of County Court
Newton County
Neosho, Missouri



Dear Sir:

Replying to yours of recent date, wherein you request an opinion from this Department on the question of the date of delivery of tax books to the county collector, we find that Section 11048 R. S. Missouri, 1939, pertains to this question. This Section reads as follows:

"As soon as the Assessor's book shall be corrected and adjusted, the Clerk of the County Court, except in St. Louis City, shall, within ninety days thereafter, extend the taxes therein in proper columns prepared for such extensions, which book, with the taxes so extended therein, shall be authenticated by the seal of the Court as the Tax book for the use of the Collector; and when the Assessor's book is in two or more volumes, such extension shall be made in all such volumes, and each volume shall be authenticated by the Clerk with the seal of the Court. And upon a failure to make out such extension of taxes in the Assessor's book or books, as the case may be, and deliver same to the Collector in the time specified, the County Court shall deduct twenty per centum from the amount of fees which may be due the Clerk for making such extension, and such Assessor's book, with the taxes so extended therein, shall be called the 'Tax Book.'"

August 8, 1941

Under Section 10990 R. S. Missouri, 1939, the assessor must make out and return to the county court a copy of his books, on or before January 20th of each year. Then, the county clerk must, by February 20th of that year, make out an abstract of the assessor's books and forward same to the State Auditor to be laid before the State Board of Equalization.

The State Board of Equalization meets on the last Wednesday in February, (Section 11035 R. S. Mo., 1939), at which time the State Auditor lays before the Board of Equalization the copy of the abstract of the assessor's books, as furnished him by the county clerks, under the provisions of Section 10990, supra.

Under Section 11038 R. S. Missouri, 1939, when the State Board of Equalization completes its work the State Auditor immediately transmits to each county clerk the per cent added to, or deducted from the valuation of the property of his county, specifying the percentage added to, or deducted from the real property and the personal property, respectively, and shows the value of real and personal property of his county, as equalized by said Board, and the said clerk shall furnish one copy thereof to the assessor and one copy to be laid before the annual County Board of Equalization, which meets on the first Monday in April of each year. (Sec. 11001 R. S. Mo., 1939).

The Board of Equalization again meets as a Board of Appeals, on the fourth Monday in April, except in counties of seventy-five thousand to one hundred thousand, where it meets on the fourth Monday in March of each year. (Section 11003 R. S. Mo., 1939).

In your request you suggest that the fourth Monday in April might be the date from which the beginning of the ninety-day period for the county clerk to deliver the books to the collectors starts. The books, under the statute, should not be delivered to the Collector until the report from the State Board of Equalization and the State Tax Commission is received, because, by Section 11007, R. S. Missouri, 1939, it is provided:

"In case the report from the state board of equalization be not received at or during the session of said county board, then it shall be the duty of the county clerk to adjust the tax books according to such report when received."

This Section seems to have been enacted to take care of cases in which the Board of Equalization as a Board, or as a Board of Appeals, might adjourn before receiving this report from the State Auditor. The tax assessment referred to in Section 11048 R. S. Missouri, 1939, cannot be corrected and adjusted until all reports from the taxing boards have come in to the clerk's office.

Section 11028 R. S. Missouri, 1939, 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 or duly authorized agent or representative thereof, * * * ."

The remainder of this Section, provides for a hearing before the State Tax Commission, on the assessment in which property may be omitted, or in cases in which individual assessments have not been made in compliance with the law. It will be noted by the quoted part of this Section, supra, that this procedure can take place before the State Tax Commission, after the several Boards of Equalization have had the assessment before them. Therefore, this procedure could take place after the county Board of Appeals meets in April.

August 8, 1941

Under Section 11029 R. S. Missouri, 1939, it is provided, in part, as follows:

"When the work of assessment and equalization shall have been completed, the secretary of the state tax commission shall immediately certify to each county clerk a statement giving the per centum added to or deducted from the valuation of the property of his county, specifying the percentage added to or deducted from the real property and the personal property respectively, and also the value of the real and personal property of his county as equalized; and the said clerk shall furnish one copy thereof to the assessor and one copy to be laid before the annual county board of equalization. * * * "

This Section would indicate that the certificate from the secretary of the Tax Commission would be received by the county clerk in time to be laid before the annual County Board of Equalization; but the first part of Section 11028 provides that the work of the Tax Commission may be done at any time before the making and delivery of the tax rolls to the proper officer for the collection of the taxes. In such a contingency, the provisions of Section 11009 R. S. Missouri, 1939, would be applicable, and it would then be the duty of the county clerk to adjust the books according to the report.

The procedure for the taxing officials, in regard to an assessment, is well stated in the case of *State ex rel Thompson v. Bethards*, 9 S. W. (2d) 603, l. c. 605, wherein the Court said:

"The regular course is as follows:
After fixing the valuation under sec-

tion 12802, the assessor makes an abstract of his footings and forwards the same to the state auditor. Section 12810, R. S. 1919. (Section 10990 R. S. Mo., 1939). The clerk is liable to a penalty if he fails to do that. And when erroneous assessments are corrected by the county court for persons who make complaints (section 12817), (Sec. 10998 R. S. Mo., 1939) the clerk shall correct the tracts on the books under orders made by the county court (section 12818). (Section 10999 R. S. Mo., 1939).

"The state auditor, under section 12855, (Section 11036 R. S. Mo., 1939) must lay before the state board of equalization the abstracts of all the taxable property of the state returned to him by the respective county clerks. The state board then equalizes the valuations of property between the several counties. Under section 12857, (Section 11038 R. S. Mo., 1939) when the state board of equalization shall have completed its labors, it must transmit to each county clerk the per cent. added to or deducted from the valuation of the property of his county. Then the clerk shall furnish one copy thereof to the assessor, and one copy shall be laid before the annual county board of equalization. In this case the copy laid before the county board of equalization was the one upon which that board acted without authority, as noted above.

"In this emergency it is contended by respondent that the clerk of the county court had no duty to perform unless ordered by the county board. He cites section 12826, R. S. 1919, (11007 R. S. Mo., 1939) which provides that:

"In case the report from the state board of equalization be not received at or during the session of said county board, then it shall be the duty of the county clerk to adjust the tax books according to such report when received."

"Thus it was argued that the duty of the county clerk with respect to the report of the state board and the carrying out of the purpose of that report is limited to the single instance in which the report is not received during the session of the county board. The record here shows that the county board was in session at the time.

"That section, by that provision, does not negative any duty of the county clerk. Whatever its purpose, by its terms it is not exclusive. If there are other sections which require the clerk to perform the duty required here, then such performance may be compelled.

"The county board of equalization, under article 3, c. 119, sec. 12821, is authorized to hear complaints and equalize valuations made by the assessor. It is nowhere authorized to increase or reduce the aggregate valuation fixed by the state board of equalization. It has no power to assess. State ex rel. v. Baker, 170 Mo. loc. cit. 391, 70 S. W. 872. Its duty is to equalize among the separate tracts the valuations fixed by the assessor. * * * " (The reference to the 1939 statutes are interposed by us.)

August 8, 1941

We have made inquiry at the office of the State Tax Commission and we find that the certificate required under said Section 11029 R. S. Missouri, 1939, was forwarded to your county clerk on April 4, 1941. So, since this certificate was received before the duties of the county Board of Appeals were finished, then the date when the county Board of Appeals adjourned will be considered the date when the assessor's books in your county were corrected and adjusted, and the date from which the ninety-days, within which you should extend the taxes would begin.

In your letter you indicate that it would be impossible to complete your books within the period that is provided by the statutes. We have diligently searched through the laws pertaining to assessments, levies and collection of taxes, and we fail to find any other provisions which are applicable. If a condition exists wherein it is impossible for officers to perform a duty within the time prescribed, then that is a matter which should be directed to the legislature.

CONCLUSION

From the foregoing, it is the opinion of this Department that the ninety-day period, referred to in Section 11048 R. S. Missouri, 1939, in which the county clerk shall extend taxes and turn the tax books over to the collector, begins to run when the county Board of Appeals has finished its work and the certificate from the State Tax Commission has been received, and in case the certificate from the State Tax Commission is not received until after the county Board of Appeals completes its work, then the period begins to run at the date when the county clerk has adjusted the books, in accordance with the certificate from the State Tax Commission.

Respectfully submitted

APPROVED:

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