

COUNTY COLLECTOR:
TAXATION:

When County Collector entitled to credit for delinquent taxes.

March 29, 1943

*Missouri
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Honorable Gordon J. Massey
Prosecuting Attorney
Christian County
Osark, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion, under date of March 6, 1943, which reads:

"Trouble has arisen between the county court and county collector. The county collector wants credit for delinquent merchants license where he has failed to get a sufficient bond. Can the county legally relieve the collector of these items.

"Please advise me what effort the county collector must make before he is entitled to credit for the uncollected personal and real taxes which remain uncollected for the year 1942. I have read the statutes and think I know but the court insists that I get an opinion from you. The settlement is due this month and I would appreciate an early reply."

We shall take up your inquiries in the order in which they appear. You first inquire if the county court can allow a credit in the county collector's settlement for a delinquent merchant's license when said merchant failed to give a good and sufficient bond as provided by statute. We are attaching a copy of an opinion rendered by this Department under date of February 10, 1942, to Honorable Leo J. Harned, Prosecuting Attorney of Pettis County, Sedalia, Missouri, which holds that before a county collector can receive credit by the county court for a delinquent merchant's tax, that the collector shall exercise due diligence toward collecting said merchant's license, and defines "due diligence"

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as showing, " * * * that he has filed suit for the forfeiture of such merchant's bond, obtained judgment thereon, requested execution be issued thereon and that execution has been returned nulla bona."

If said collector failed to require of the merchant a good and sufficient bond as required in Section 11306, R. S. Missouri 1939 (see copy of attached opinion) then no doubt the county court could grant no leniency at all but require the said merchant's license be paid in full. Under Section 11307, R. S. Missouri 1939, it makes it a misdemeanor for failure of a collector to require such bond before issuing said merchant's license. Of course, it is a question of fact to determine if a bond is good and sufficient. We shall not go into that at this time since you have apparently determined that said bond if given was not a good and sufficient bond.

Therefore, we are of the opinion that if said collector fails to require a bond prior to issuing a merchant's license or fails to obtain a good and sufficient bond as required by law that he is entitled to no credit on his settlement until fully paid and furthermore makes himself liable for misdemeanor under Section 11307, R. S. Missouri 1939, for failure to require any bond.

You further inquire as to what effort the county collector must make before he is entitled to credit for uncollected personal and real estate taxes for the year 1942. Section 11086, R. S. Missouri 1939, requires the collector to diligently endeavor to collect all taxes within his means. He may seize and sell chattels of persons liable for taxes and no property whatsoever is exempt from seizure and sale for taxes due on either lands or personal property. Also, said collector shall not receive credit for delinquent taxes until he shall have made an affidavit that he has been unable to find any personal property out of which to make the taxes in each case so returned delinquent.

"The collector shall diligently endeavor and use all lawful means to collect all taxes which they are required to collect in their respective counties, and to that end they shall have the power to seize and sell the goods and chattels of the person, liable for taxes, in the same manner as goods and chattels are or may be required to be seized and sold under execution issued on judgments at law, and no property whatever shall be exempt from seizure and sale for taxes due on lands or personal property:

Provided, that no such seizure or sale for taxes shall be made until after the first day of October of each year, and the collector shall not receive a credit for delinquent taxes until he shall have made affidavit that he has been unable to find any personal property out of which to make the taxes in each case so returned delinquent; but no such seizure and sale of goods shall be made until the collector has made demand for the payment of the tax, either in person or by deputy, to the party liable to pay the same, or by leaving a written or printed notice at his place of abode for that purpose, with some member of the family over fifteen years of age. Such seizure may be made at any time after the first day of October, and before said taxes become delinquent, or after they become delinquent: Provided further, that when any person owing personal tax removes from one county in this state to another, it shall be the duty of the county collector (or township collector as the case may be) of the county from which 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 shall be his duty to proceed to collect said tax bill in like manner as provided by law for the collection of personal tax, for which he shall be allowed the same compensation as provided by law in the collection of executions. It shall be the duty of the sheriff in such case to make due return to the collector of the county from whence said tax bill was issued, with the money collected thereon."

Section 11089, R. S. Missouri 1939, provides that before allowing the county collector any credit for any delinquent lists the county court shall make special inquiry and be fully satisfied that he has used due diligence to collect same and that he could not find any personal property of the taxpayer out of which to make the taxes.

"At the term of the county court to be held on the first Monday in March, the collector shall return the delinquent lists and back

tax books, and in the city of St. Louis the uncollected tax bills and back tax books, under oath or affirmation, to such court, and settle his accounts of all moneys received by him on account of taxes and other sources of revenue, and the amount of such delinquent lists, or so much thereof as the court shall find properly returned delinquent, shall be allowed and credited to him on his settlement. Before allowing the collector such credit for any delinquent lists, the county court shall make special inquiry and be fully satisfied that he has used due diligence to collect the same, and that he could not find any personal property of the taxpayer out of which to make the taxes. If the court is satisfied that there are any names on the lists of persons who have personal property out of which the taxes could have been made, it shall, in passing upon such lists, strike such names therefrom."

Section 11112, R. S. Missouri 1939, provides that the county collector shall sue for delinquent personal taxes. Section 11093, R. S. Missouri 1939, requires the county court to examine carefully and fully into collections made by the collector of delinquent and forfeited taxes, etc., from all sources. The latter section reads:

"The county court shall cause such settlement to be entered of record, so as to show the amount due the state and county, respectively. The record shall show the amount of state revenue and state interest fund taxes collected on the current tax books, and the amount of such returned delinquent thereon; also, the amounts of each collected on delinquent lists, amount of interest or penalty collected on delinquent lists, amounts collected on forfeited land lists, amounts of interest or penalty and costs collected on forfeited land lists, amounts collected on dramshop licenses, peddlers' licenses, billiard and other licenses; and the clerk shall report immediately the same to the state auditor, on blanks furnished to him by the auditor for that purpose. In making said settlement, the court shall carefully and fully

examine into all collections made by the collector of delinquent and forfeited taxes, penalties and costs thereon, and licenses from all sources whatsoever."

Likewise, Section 11091, R. S. Missouri 1939, also requires, the county court to examine carefully the county collector's settlement.

"The county courts, at the term for returning the delinquent lists, as provided in section 11089, shall carefully examine the settlements made by the collectors for all dramshop licenses, peddlers' licenses, billiard and other licenses, delinquent taxes and forfeited land taxes received by him since his last settlement."

Section 11109, R. S. Missouri 1939, makes unpaid taxes upon real estate a lien on such real estate. Section 11108, R. S. Missouri 1939, requires the county collector to enforce State's lien for delinquent taxes upon real estate.

"All real estate upon which the taxes remain unpaid on the first day of January, annually, shall be deemed delinquent, and the said county collector shall proceed to enforce the lien of the state thereon, as required by this chapter; and any failure to properly return the delinquent list, as required by this chapter, shall in no way effect the validity of the assessment and levy of taxes, nor of the judgment and sale by which the collection of the same may be enforced, nor in any manner to affect the lien of the state on such delinquent real estate for the taxes unpaid thereon."

Section 11110, R. S. Missouri 1939, requires the county collector to make a list of all taxes, both personal and real, that are delinquent and which he is unable to collect and which are shown on the tax books.

Section 11120, R. S. Missouri 1939, provides that within thirty days after the collector makes his settlement the county

clerk shall prepare a back-tax book showing all delinquent real estate taxes and charge the collector with same.

"Within thirty days after the settlement of the collector, in the odd numbered years, the several county clerks in each county in this state, and in such cities, the register, city clerk or other proper officer, shall make, in a book to be called the 'back tax book,' a correct list, in numerical order, of all tracts of land and town lots on which back taxes shall be due in such county or city, setting forth opposite each tract of land or town lot the name of the owner, if known, and if the owner thereof be not known, then to whom the same was last assessed, the description thereof, the year or years for which such tract of land or town lot is delinquent or forfeited, and the amount of the original tax due each fund on said real estate (and the interest due on the whole of said tax at the time of making said back tax book, together with the clerk's fees then due), in appropriate columns arranged therefor, and the aggregate amount of taxes, interest and clerk's fees charged against each tract of land or town lot for all the years for which the same is delinquent or forfeited; said back tax book, when completed, shall be delivered by said clerk or other proper officer to the proper collector of the county or such city, for which he shall take duplicate receipts, one of which he shall file in his office and the other with the state auditor, and the clerk or other proper officer shall charge such collector with the aggregate amount of taxes, interest and clerk's fees contained in said 'back tax book'. In all cities the said 'back tax book' shall be made out, in alphabetical order, in the name of the owner, if known; and if the owner be not known, then in the name of the person to whom such tract or lot was last assessed. All taxes, interest and clerk's fees hereafter contained in the 'back tax book' herein described shall bear interest from the time of the making out of said 'back tax book' at the rate of ten per cent per annum until paid. In computing interest under this article, a fraction of a month shall be counted as a whole month."

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"Due diligence" has been defined in the attached copy of the opinion previously rendered by this Department. In this instance we are of the opinion such term means that the county collector shall exert all effort possible under the above statutory procedure to collect said delinquent taxes and until this is done he can expect no credit by the county court. You will also notice that such seizure and sale of personalty under the above procedure is applicable also for the payment of delinquent real estate taxes. With respect to real estate, if the county collector has diligently endeavored to collect said taxes and has made his affidavit that he has been unable to do so, then the county court will credit him for such delinquent taxes. However, under Section 11120, supra, when the back-tax book for delinquent taxes is completed said taxes are again charged to the collector for collection. The procedure is well established for sale of real estate for delinquent taxes thereon so the writer will not include same in this opinion.

CONCLUSION

The answer to your first inquiry is that no credit can be allowed by the county court for a delinquent merchant's license if the county collector failed to obtain a good and sufficient bond as provided by law before issuing a merchant's license. Furthermore, he may be convicted of misdemeanor for failing to secure said bond.

In answering your second inquiry, it is our opinion that the collector must exercise due diligence in collecting such delinquent personal and real estate taxes, for instance, such diligence as to seize and sell any personalty for the payment of said delinquent personal or real taxes; if none are available, then to institute suit against the taxpayer for delinquent personal taxes. Then the collector shall make his affidavit stating that he has exercised due diligence and the result. If no personalty can be found which may be sold for payment of delinquent real estate taxes then the affidavit to this effect should permit the county court to allow credit of such delinquent taxes. However, under Section 11120, supra, they will then be charged back to the county collector for collection under the well established statutory procedure for collection of delinquent real estate taxes.

Respectfully submitted

APPROVED:

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