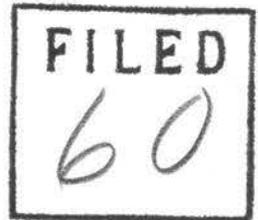


TAX SALE OF LAND FOR
DELINQUENT TAXES:

Right to redeem--limitations.

July 19, 1943



Honorable W. L. Meng
County Collector
Callaway County
Fulton, Missouri

Dear Sir:

We are in receipt of your letter of July 9, 1943, requesting an opinion, which letter is as follows:

"Would you please send us your opinion on this matter. We have four pieces of property in this County that was sold in the 1938 November land sale. This property was sold under the Trustees of the Missouri Methodist foundation & was bought by Henry M. Lampkin. After about four years the Trustees came to this office to redeem said property, at this time H. M. Lampkin had not demanded a deed. I told the trustees the redemption period was two years and that they could not redeem after that period was up. they in turn told me that after four years the property would revert back to them. The next day H. M. Lampkin came in and demanded a deed, saying he had entered the armed service before the four years were up and that his Business ceased on the day he entered the service.

"Do we give Mr. Lampkin a deed or,

"Do we let the trustees redeem said land. & if they redeem it, must they pay Mr. Lampkin the amount he paid at the sale plus interest. Would you please give us this opinion on this matter at your earliest convenience, Thanking you in advance, I remain."

Section 11149, R. S. Missouri 1939, providing for a period of redemption, is as follows:

"If no person shall redeem the lands sold for taxes within two years from the sale, at the expiration thereof, and on production of certificate of purchase, and in case the certificate covers only a part of a tract or lot of land, then accompanied with a survey or description of such part, made by the county surveyor, the collector of the county in which the sale of such lands took place shall execute to the purchaser, his heirs or assigns, in the name of the state, a conveyance of the real estate so sold, which shall vest in the grantee an absolute estate in fee simple, subject, however to all claims thereon for unpaid taxes except such unpaid taxes existing at time of the purchase of said lands and the lien for which taxes was inferior to the lien for taxes for which said tract or lot of land was sold. In making such conveyance, when two or more parcels, tracts, or lots of land are sold for the non-payment of taxes to the same purchaser or purchasers, or the same person or persons shall in anywise become the owner of the certificates thereof, all of such parcels shall be included in one deed."

The manner of redemption is set out in Section 11145, R. S. Missouri 1939, which is as follows:

"The owner or occupant of any land or lot sold for taxes, or any other persons having an interest therein, may redeem the same at any time during the two years next ensuing, in the following manner: By paying to the county collector, for the use of the purchaser, his heirs or assigns, the full sum of the purchase money named in his certificate of purchase and all the costs of the sale together with interest at the rate specified in such certificate, not to exceed ten per centum annually, with all subsequent taxes which have been paid thereon by the purchaser, his heirs or assigns, with interest at the rate of

eight per centum per annum on such taxes subsequently paid, and in addition thereto the person redeeming any land shall pay the costs incident to entry of recital of such redemption. Upon deposit with the county collector of the amount necessary to redeem as herein provided, it shall be the duty of the county collector to mail to the purchaser, his heirs or assigns, at the last postoffice address if known, and if not known, then to the address of the purchaser as shown in the record of the certificate of purchase, notice of such deposit for redemption. Such notice, given as herein provided, shall stop payment to the purchaser, his heirs or assigns, of any further interest or penalty. In case the party purchasing said land, his heirs or assigns, fails to take a tax deed for the land so purchased within six months after the expiration of the two years next following the date of sale, no interest shall be charged or collected from the redemptioner after that time."

Section 11147, R. S. Missouri 1939, contemplates that the owner may redeem the land sold after more than two years has expired since the date of the sale, which is evidenced by the concluding sentence of said section, which is as follows: "* * No compensation shall be allowed for improvements made before the expiration of two years from the date of sale for taxes."

An extensive discussion of these sections of the law is found in the very recent case of *Hobson v. Elmer, et al.*, (Mo. Sup., 1942), 163 S. W. (2d) 1020. The discussion is so comprehensive that we quote at length from said case:

"The first question presented is whether or not the owner of property which has been sold for taxes may redeem the same at a time more than two years subsequent to the sale date. It will be noted that in the present case no effort at all to redeem was made within the two-year period nor indeed until practically the end of the fourth year. In fact the plaintiff's guardian had not obtained legal title to the premises until about

a month prior to the attempted redemption. The answer to the question thus raised will depend upon a construction of certain sections of the Jones-Munger Act. It will be recalled that under that act lands upon which the taxes have become delinquent are advertised for sale by the collector. The purchaser at such sale is not given a deed directly but receives instead a certificate of purchase which he may not present to the collector until two years have elapsed since the sale. At the end of this two-year period he is required to present the certificate, to pay subsequently accrued taxes and certain fees and is then given a fee-simple deed to the property. We have held that after the sale and until the execution of the collector's deed legal title remains vested in the record owner of the lands, subject to a power in the certificate holder to obtain a deed by following the procedure provided for in Sections 11149 and 11150, R. S. Mo. 1939 (Mo. R.S.A. Sections 11149, 11150). Cf. *Donohoe v. Veal*, 19 Mo. 331; *Kohle v. Hobson*, 215 Mo. 213, 114 S. W. 952; *Hilton v. Smith*, 134 Mo. 499, 33 S.W. 464, 35 S. W. 1137 (all decided under former statutes). We have also said that the right of the certificate holder is in the nature of an equitable title similar to that of a vendee under a contract of sale. *State ex rel. City of St. Louis v. Baumann*, 348 Mo. 164, 153 S. W. 2d 31, loc. cit. 34. Obviously the title of the original owner may be transferred subject to the equities of the certificate holder. The right of the original owner to redeem the property and thereby destroy the power of the certificate holder to obtain a fee-simple title is granted by Section 11145, R. S. Mo. 1939 (Mo. R. S. A. Section 11145), and to determine when that right expires we must construe the provisions of that section. The opening sentence of the section last cited reads as follows: 'The owner or occupant of any land or lot sold for taxes, or any other per-

sons having an interest therein, may redeem the same at any time during the two years next ensuing, in the following manner.' The statute then sets out the requirements that the redemptioner must meet. He shall pay the collector for the use of the purchaser the amount of the original bid, the costs of sale and interest at a rate specified in the certificate of sale which shall not exceed ten per cent. Upon such redemption the collector is required to notify the purchaser thereof and the mailing of this notice stops the running of interest. Then follows this provision: 'In case the party purchasing said land, his heirs or assigns, fails to take a tax deed for the land so purchased within six months after the expiration of the two years next following the date of sale, no interest shall be charged or collected from the redemptioner after that time.'

"Section 11147, R. S. Mo. 1939 (Mo. R.S. A. Section 11147), must also be read in connection with the above-quoted provisions: This section requires the redemptioner to pay to the certificate holder the value of any lasting and valuable improvements placed on the land by him, but it concludes with the following provision: 'No compensation shall be allowed for improvements made before the expiration of two years from the date of sale for taxes.' While the first sentence of Section 11145, supra, apparently limits the right of redemption to a period of two years following the sale, such a construction is negatived by the last-quoted words of the section and by the proviso contained in Section 11147, supra. If the right of redemption absolutely ceases at the end of two years there would be no purpose in a provision that the redemptioner could not be charged interest after the end of the two years and it would be unnecessary to state that the redemptioner

was not required to make compensation for improvements placed on the land before the expiration of two years and impliedly that he was required to make such compensation after the end of the two years, if he could not redeem at all after the end of the two years.

"We must, however, also take into consideration the language of Section 11149, R.S. Mo. 1939 (Mo. R.S.A. Section 11149); 'If no person shall redeem the lands sold for taxes within two years from the sale, at the expiration thereof, * * * the collector of the county in which the sale of such lands took place shall execute to the purchaser * * * a conveyance of the real estate so sold, which shall vest in the grantee an absolute estate in fee simple.'

"There is one manner and, in our opinion, only one manner in which these seemingly conflicting provisions may be harmonized. We construe them to mean that the owner of the lands has an absolute power of redemption which cannot be defeated by the purchaser during and up to the end of the two-year period. Thereafter the purchaser has a right to obtain a collector's deed at any time within the next two years by complying with the various statutory provisions, to-wit: by producing to the collector his certificate of purchase, paying the subsequently accrued taxes and legal fees and demanding his deed. If, after the end of the two-year period and before the purchaser has complied with these conditions precedent to obtaining his deed, the owner or transferee applies for a redemption and makes the required payments he thereby destroys the power of the purchaser to obtain a deed."

Section 205 of the Federal Soldiers and Sailors Relief Act, as amended, is as follows:

"The period of military service shall not be included in computing any period now

or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment."

This section probably relieves a person in the armed forces from the limitation contained in Section 11137, R. S. Missouri 1939, which is as follows:

"In all cases where lands have been or may hereafter be sold for delinquent taxes, penalty, interest and costs and a certificate of purchase has been or may hereafter be issued it is hereby made the duty of such purchaser, his heirs or assigns, to cause a deed to be executed and placed on record in the proper county within four years from the date of said sale: Provided, that on failure of said purchaser, his heirs or assigns so to do, then and in that case the amount due such purchaser shall cease to be a lien on said lands so purchased as herein provided."

We believe also that Section 301 of the Soldiers and Sailors Relief Act might also be applicable because contracts are specifically mentioned therein, and in the case of *Hobson v. Elmer*, supra, the Court held that the right of a certificate holder "is in the nature of an equitable title similar to that of a vendee under a contract of sale."

July 19, 1943

The rule of construction of legislation for relief of soldiers and sailors is well stated in volume 130 A.L.R. page 776 as follows:

"It has been held that it was not the legislative intent that the remedial purpose of the Soldiers' and Sailors' Civil Relief Act should be defeated by a narrow or technical construction of the language used. Thus, in *Clark v. Mechanics' American Nat. Bank* (1922; CCA 8th) 282 F. 589, it was held that a statute of this nature should be liberally construed in favor of the rights of the man engaged in military service, absorbed by the exacting duties required of him, and unable to give attention to matters of private business. * * * * *

We are obliged to make our conclusion conditional because the facts set out in your letter are incomplete and indefinite, especially as to dates.

CONCLUSIONS.

It is the opinion of this department that the owners were entitled to redeem the property after the two-year period had expired and before the certificate holder had complied with the requirements of the law and demanded the deed, and the collector was in error in advising them that they could not redeem after two years had elapsed. Whether or not the owners were ready and willing to comply with the law concerning a refund to the certificate holder of the purchase money and interest is a question of fact not stated in your letter.

If the owners' tender of redemption was sufficient, no question of the limitations contained in Section 11137, supra, will be involved.

If the owners had been allowed to redeem on the date it was first demanded by them it appears from your letter that it would have been made within the four-year period and, therefore, Mr. Lampkin would have the right to his lien for refund and interest.

If the owners had made no proper attempt to redeem within four years after the sale and the certificate holder entered the armed services of this country before the four years had expired the certificate

Hon. W. L. Meng

-9-

July 19, 1945

holder's lien would be kept alive by the Soldiers' and Sailors' Relief Act. In such a case, the owners would still be entitled to redeem if they tendered the taxes and interest before the certificate holder made proper demand for a deed.

Respectfully submitted

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Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

LAP:DA