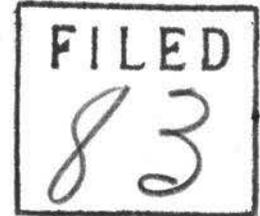


TAXATION
COLLECTOR'S SETTLEMENT
COUNTY COURT:

County Court's procedure in making
settlement with collector on delinquent
lists.

May 14, 1943



Mr. Ramey Smith
Clerk of the County Court
Ava, Missouri

Dear Mr. Smith:

This is in reply to your letter of recent date where-
in you submit the following questions:

"1. What lists should Collector file with
County Court? Such as Out Laved, Erroneous.
Please enumerate.

"2. What action should Court take in case
where Collector has not required Merchant
to fill Mercants Bond, Merchant has not
paid his tax, and the Collector asks Court
to accept or give credit for the amount as
erroneous assessment?

"3. What action should Court take where
Collector asks Court to give credit as Out
Laved Personal the Personal Tax of Numerous
tax payers whom the Court know of their own
personal knowledge would have to pay if
proper action to collect said tax by Collec-
tor had been taken but where no suits to
collect same have been instituted by Collec-
tor?"

We find that in the first instance, the collector is
charged with certain taxes which are extended on the books by
the county clerk. Under Sec. 11048, R. S. Mo., 1939, the
county clerk extends the taxes which have been levied on the
assessments shown on the assessor's books. Then under Sec.
11049, R. S. Mo., 1939, the clerk makes a complete statement
of the assessment and taxes which have been charged on the
books. This statement, after having been recorded, is for-
warded to the State Auditor.

Under Sec. 11052, R. S. Mo., 1939, the collector gives
his receipt for these books with the amount of taxes stated

therein and the collector is then charged with the whole amount of taxes on such books.

Under Sec. 11053, R. S. Mo., 1939, the collector also subscribes to a receipt for the tax books endorsed on the aggregate abstract thereof. This abstract with the collector's receipt endorsed thereon and properly certified is forwarded to the State Auditor.

Under Sec. 11056, R. S. Mo., 1939, the collector is required to give a bond for the faithful performance of his duties as required by law, and that he will faithfully and punctually collect and pay over all state, county and other revenue for the four years next ensuing the first day of March thereafter.

In State ex rel. Rice, et al. v. Powell, 44 Mo. 436, it was held that an action on the bond of the collector was the proper procedure against the officer for wrongful acts of such officer. Following this authority, if the officer fails to punctually and faithfully collect the taxes charged on the books, then an action on the bond of the official is in order.

In Vol. 61, C. J., P. 1028, Sec. 1325, the rule applicable here is stated as follows:

"A tax collector may be held liable not only for his actual collections but also for taxes which he might have collected by due diligence and by the employment of such legal remedies as are within his authority, including the penalties charged against delinquent taxpayers for their delay and interest on the amount chargeable to the collector from the time of a demand on him. This is true notwithstanding difficulty in collecting within the time prescribed by law or an alleged irregularity in prior proceedings which presented no actual or legal obstacle to collection. * * * * *

Vol. 61, C. J., p. 1034, Sec. 1339, also states the rule as to the liability of bondsmen as follows:

"Failure of a tax collector to collect the legal taxes within the time required by law is a breach of the condition of

his bond for which his sureties are liable, at least to the extent of such taxes as were lost through his remissness or neglect, and where no reason, valid in law, for failure to collect is shown; * * * * *

Section 11086, R. S. Mo., 1939, provides in part as follows:

"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: * * * * *"

It will be noted from this section that the collector is required to diligently endeavor to collect the taxes charged on his books.

In your first question, you refer to "outlawed" and erroneous lists. So far as the collector being charged and credited with taxes, we find no statute allowing any credit for an outlawed list. When he receives the tax books, then under his bond he is charged with the collection of all taxes therein, except such taxes as may have been found erroneous by the court under Sections 10998, 11122, 11214, or the State Tax Commission, under Section 11028.

The personal and land delinquent lists are made up by the collector under Section 11110, R. S. Mo., 1939, which provides in part as follows:

"Whenever any collector shall be unable to collect any taxes specified on the tax book, having diligently endeavored and used all lawful means to collect the same, he shall make lists thereof, one to be called the 'personal delinquent list,' in which shall be stated the names of all persons owing taxes on personal property, where taxes cannot be collected, alphabetically arranged, with the amount due from each, * * * * *

Section 11166, R. S. Mo., 1939, provides as follows:

"All back taxes, of whatever kind, whether state, county or school, or of any city or incorporated town, appearing due upon delinquent real estate, shall be extended in the 'back tax book' made under this article, and in case the collector of any city or town shall have omitted or neglected to return to the county collector a list of delinquent lands and lots, as required by section 11202, the present authorities of such city or town may cause such delinquent list or lists to be certified, as by said section contemplated, and such delinquent taxes shall be by the county clerk put upon the 'back tax book,' and collected by the collector under authority of this chapter; and all the provisions of sections 11202, 11203, 11204, 11205 and 11206, not inconsistent with this chapter, shall be and remain in full force and unaffected by this law: Provided, that in all cases where the

auditor or other proper officer is required by provision of charter of any city of five thousand or more inhabitants to make the list for city delinquent taxes in this section, provided, and to deliver the same to the collector or other proper officer of such city, such collector or other proper officer shall proceed to collect such delinquent list in such 'back tax book,' so made out and delivered to him by the auditor or other proper officer of such city, in the manner and under authority prescribed by this law, and the chapter to which this is amendatory."

This is another step provided by the lawmakers to collect personal taxes.

The collector under Section 11089, R. S. Mo., 1939, makes his settlement with the county court. This section provides as follows:

"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 list 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."

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It will be noted that this section specifically provides that the collector shall not be allowed credit on a delinquent list, until he shows the court that he has exercised due diligence to collect the tax, and if he has not, then the court should strike such lists from the delinquent list, which would have the effect of leaving the collector charged with the tax.

In determining whether or not the collector has used due diligence in trying to collect taxes which he has returned, the county court would be authorized to consider whether or not he had used the procedure prescribed in Section 11086 and Section 11166, supra, to enforce the payment of such taxes. If he has not, then he should not be allowed credit by the delinquent list.

On your second question, we are enclosing copy of an opinion to Mr. Leo J. Harned, Prosecuting Attorney of Pettis County, dated February 10, 1942, which we think answers this question.

CONCLUSION

It is therefore the opinion of this department that the county court is not authorized to give the collector credit on his settlement for delinquent taxes until such court is satisfied that the collector has used due diligence in attempting to collect such tax, and that if the collector has permitted such taxes to be outlawed without having used due diligence, in attempting to collect same, an action on his bond is the proper procedure.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

ROY MCKITTRICK
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