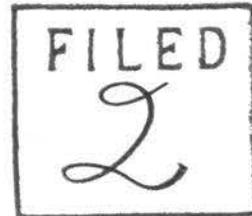


SCHOOL DISTRICT TAXES:

Changes in New Constitution will have no effect on the present school year's income. The assessment now being made on merchants' and manufacturers' will be available for the fiscal school year of 1945-1946.

August 4, 1945



Honorable Morris Anderson
Prosecuting Attorney
Marion County
Hannibal, Missouri

Dear Mr. Anderson:

This will acknowledge your letter of July 16, which is as follows:

"I would appreciate it if your office would advise me, in order that I may have more definite information, in regard to the revenue that the Hannibal School Board derives from the local school tax rates on assessed property of the school district.

"(A). What effect will the changes being brought about in the new Constitution have on the present year's income?

"(B). Will the assessment now being made on merchants and manufacturers be available for the fiscal school year of 1945-1946?"

Section 2 of the Schedule of the New Constitution is as follows:

"Section 2. All laws in force at the time of the adoption of this Constitution and consistent therewith shall remain in full force and effect until amended or repealed by the general assembly. All laws inconsistent with this Constitution, unless sooner repealed or amended to conform with this

Constitution, shall remain in full force and effect until July 1, 1946."

Article 2, Chapter 72, R. S. Mo. 1939, contains the laws of this State applicable to all classes of schools. Section 10347, of said Article and Chapter, directs how and when the estimate for the levying and collection of school taxes shall be made. Said Section is as follows:

"The board of directors of each district shall, on or before the fifteenth day of May of each year, forward to the county superintendent of schools an estimate of the amount of funds necessary to sustain the schools of their district for the time required by law, or, when a longer term has been ordered by the annual meeting, for the time thus decided upon, together with such other amount for purchasing site, erecting buildings or meeting bonded indebtedness, and interest on same, as may have been legally ordered in such estimate, stating clearly the amount deemed necessary for each fund, and the rate required to raise said amount."

It should be observed that said Section 10347, supra, requires the rate to be fixed required to raise said amount. This, we think, has a definite and vital relationship to the valuation of property upon which the rate when fixed applies which will be hereinafter considered.

Section 10395 of said Article 2, Chapter 72, prescribes the duties of the County Clerk upon receiving the estimates required by said Section 10347. Said Section is as follows:

"On receipt of the estimates of the various districts, the county clerk shall proceed to assess the amount so returned on all taxable property, real and personal, in said district, as shown by the last annual assessment for state and county purposes, including all statements of merchants in each district

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of the amount of goods, wares and merchandise owned by them and taxable for state and county purposes: Provided, that the levy thus extended shall not exceed in any one year as follows: For building purposes, one per centum in town school districts, and not more than sixty-five cents on the one hundred dollars in other districts; for sinking fund, forty cents on the one hundred dollars' valuation, and a sufficient amount to pay interest on bonded indebtedness; all of which shall be expended by the county clerk upon the general tax books of the county for said year in separate columns arranged for that purpose; and the county clerks shall list the names of all persons owning any personal property who do not reside in any school district, and the value thereof; also, list all lands and town lots in any territory not organized into a school district, and shall levy a tax of forty cents on the one hundred dollars' valuation on all such taxable property, said taxes to be collected as other taxes and distributed as provided in section 10390; and it shall be the duty of the county assessor in listing property to take the number of the school district in which said taxpayer resides at the time of making his list, to be by him marked on said list, and also on the personal assessment book, in columns provided for that purpose."

It will thus be observed that the estimate must be prepared and given to the County Clerk by May 15, of each year. The County Clerk then assesses the tax on the valuation as shown by the last annual assessment for State and County purposes for taxes for the ensuing school year.

The fiscal year for the assessment of taxes under existing statutes in this State is fixed by Sections 10940 and 10970, R.S. Mo. 1939, which are respectively, as follows:

"Every person owning or holding property on the first day of June, including all such property purchased on that day, shall be liable for taxes thereon for the ensuing year."

Section 10970:

"Real estate shall be assessed at the assessment which shall commence on the first day of June, 1893, and shall be required to be assessed every year thereafter."

Our Supreme Court in construing Section 10970, which must be read along with Section 10940, as fixing a taxable or fiscal year beginning on the first day of June each year, and in holding that a valuation fixed in a prior fiscal year cannot be changed, in the case of the St. Joseph Lead Co. vs. Simms, et al., 108 Mo. 222, (at the time said case was decided, real estate was assessed every two years), l.c. 225, 226, said:

"As section 7517 makes it the duty of the county board of equalization to meet on the first Monday of each year, it is, therefore, claimed that the board has the right and power to equalize the values of real estate at any annual meeting, especially so in view of the general words of the succeeding section. This is an entire misconception of the meaning of the statute. The assessment of real estate takes place but once every two years. The assessment thus made becomes the basis of taxation for the next two years. In the case in hand the assessment of real estate beginning on June 1, 1889, became the basis of taxation for the following two years. This is the assessment which was to be equalized at the annual meeting of the board held in April, 1890. The members of the board having taken the prescribed oath, it became their duty to hear complaints and appeals and to equalize the assessment. These duties were to be performed immediately, not a year thereafter; for such is the plain letter of the law.

* * * * *

"Having met and performed their duties, their power over that assessment ceased. It became the fixed and established basis of taxation for two years as to the real property, and one year as to the personal property. No doubt the legislature might have provided for a readjustment of values on real estate every year, but it has not done so."

It will be observed that the fiscal year fixing the liability for taxes under Section 10940, supra, states that the taxes thereon shall be for the "ensuing" year. "Ensuing" is defined as an intransitive verb in Webster's New International Dictionary, definition 2, page 852, as:

"To follow as a consequence or in chronological succession; to result; as, an ensuing conclusion or effect; the year ensuing."

It will be noted that Section 3, supra, of Article X of the New Constitution states, in part, as follows:

* * * "All taxes shall be levied and collected by general laws and shall be payable during the fiscal or calendar year in which the property is assessed."

Said Section 3, further states that:

"Except as otherwise provided in this Constitution, the methods of determining the value of property for taxation shall be fixed by law."

This brings us to the consideration of the conflict between the present laws, Sections 10940 and 10970, fixing the beginning of a fiscal or taxable year, and to the consideration of the valuation of property already fixed by present statutes under the estimate for school taxes provided in Section 10347, supra, and the new fiscal year as fixed by said Section 3, Article X of the New Constitution. It is believed that said Section 3 itself requires new general laws to be enacted by the Legislature for valuation of property for taxation, to change the fiscal year, and to

require that taxes be paid during the fiscal or calendar year in which the property is assessed for tax.

"Fiscal" is defined as an adjective in Webster's New International Dictionary, definition 3, page 955, as:

"Of or pertaining to the public treasury or revenue; hence, of or pertaining to financial matters generally."

Referring again to Section 2 of the Schedule of the New Constitution concerning the continuance in force of present laws, it is believed that the present laws and statutes above quoted, fixing the estimate, the assessment and valuation of property for school taxes, and fixing the fiscal year, and providing for the payment of taxes assessed in one year to be paid the ensuing year, must be held in full force and effect until July 1, 1946, unless sooner repealed or amended to conform with the New Constitution, and that such statutes and provisions herein referred to and quoted as are not in conflict with the New Constitution will remain in full force and effect until amended or repealed by the General Assembly. It appears that Sections 10940 and 10970, supra, are in conflict with said Section 3, Article X of the New Constitution which fixes the fiscal year in which property is assessed, as the calendar year for tax purposes, but in our view, both of said Sections 10940 and 10970 will remain in force until July 1, 1946, unless sooner amended or repealed by legislative action.

Section 5 of the Schedule of the New Constitution reads as follows:

"All rights, claims, causes of action and obligations existing and all contracts, prosecutions, recognizances and other instruments executed or entered into and all indictments which shall have been found and informations which shall have been filed and all actions which shall have been instituted and all fines, taxes, penalties and forfeitures assessed, levied, due or owing prior to the adoption of this Constitution shall continue to be as valid as if this Constitution had not been adopted."

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It will be observed that Section 5 and Section 2, supra, of the Schedule of the New Constitution should be read together in determining the effect such constitutional provisions have upon taxes already estimated and assessed for school purposes. Section 5 supplements the terms of said Section 2 as to taxes assessed under statutes in force at the time of the taking effect of the New Constitution. Section 2 providing that all laws in conflict with the New Constitution shall remain in force and effect until July 1, 1946, and Section 5 providing that all taxes assessed or levied under such statutes prescribed, which still remain in force under Section 2, shall be as valid as if the New Constitution had not been adopted, means that there will be no change, at least until July 1, 1946, unless statutes be sooner amended or repealed, in the income and taxes of school districts for the present year, and that the taxes under present assessment and levy thereof, will not be available for the fiscal school year of 1945-1946.

This view of the statutes cited and quoted respecting the fiscal year, and our conclusions thereon, is supported, we believe, by the case of Mary V. K. DeGiverville vs. Legg, 48 Mo. App. 573, l.c. 575, 576 and 577, where the St. Louis Court of Appeals in rendering said decision, said:

"The plaintiff contends that the words, 'taxable year 1890,' ought to have been construed by the circuit court to mean the calendar year of 1890, thereby making the defendant liable for fifteen-twenty-fourths of the taxes: whereas the defendant's contention is that the words mean a fiscal or taxable year, and that, as the taxable year of 1890 ended on the first day of June, 1890, and his lease began on May 15, he was only liable for one-twenty-fourth of the taxes. * * * "

* * * * *

"But, in our opinion, the writing is without ambiguity. There is such a thing in this state as a taxable year, about which there can be no controversy, when the statutes concerning the assessment and collection of the public revenue are considered. Section 7569, Revised Statutes of 1889, reads: 'Every person owning or holding property on the first day

of June, including all such property purchased on that day, shall be liable for taxes thereon for the ensuing year.' Sec. 7552. * * * "

Section 11305, Article 18, Chapter 74, R. S. Mo. 1939, provides that merchants shall pay ad valorem tax equal to that which is levied upon real estate on the highest amount of merchandise on hand between the first Monday in March, and the first Monday in June of each year.

Section 11309, provides that a merchant's tax shall be assessed upon a statement filed by such merchant on the first day of June of each year as is provided in Section 11305. It is the duty, under this Section, of the County Assessor to enter such statements in a book prepared for that purpose, with columns for the name of the merchants, amount of their merchandise, the valuation for State, County, and school taxes. Said book must then be returned by the Assessor to the Board of Equalization which is required to meet on the first Monday in September of each year to equalize the valuation of merchants' statements, and after the work of the Board of Equalization has been completed, the County Clerk shall extend the taxes on such book, and on or before October 1, thereafter, make out and deliver to the Collector of the County, a copy of such book, properly certified, and take the receipt of the Collector therefor. This Section does not in terms require the County Collector to collect merchants' taxes during the same year. That part of Section 11309 applicable here, is as follows:

"* * * After the county board of equalization shall have completed the equalization of such statements, the clerk of the county court shall extend on such book all proper taxes at the same rate as assessed for the time on real estate, and he shall, on or before the first day of October thereafter, make out and deliver to the collector a copy of such book, properly certified, and take the receipt of the collector therefor, which receipt shall specify the aggregate amount of each kind of taxes due thereon, and the clerk shall charge the collector with the amount of such taxes; * * * "

But Section 11079, Article 8, Chapter 74, R. S. Mo. 1939, requires the County Collector in each County in this

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State immediately after the receipt of the tax books of their respective counties, to proceed at once to collect such taxes. That part of said Section 11079, so providing, is as follows:

"It shall be the duty of the collectors of revenue of the several counties of the state, immediately after the receipt of the tax books of their respective counties, to give not less than twenty days' notice of the time and place at which they will meet the taxpayers of their respective counties, and collect and receive their taxes; * * * "

Section 10942, provides that merchants' and manufacturers' taxes which constitute a class separate and distinct by itself, reads as follows:

"For the purpose of state, county and municipal taxes, merchandise held by merchants, and the raw material, merchandise, finished products, tools, machinery and appliances used or kept on hand by manufacturers shall constitute a class separate and distinct."

That the intention of the Legislature to require - merchants' and manufacturers' taxes to be collected in the same year that they are assessed as distinguished from general taxes which have always been assessed in this State as of June 1, and collected the following or ensuing year, was mentioned in the case of State ex rel. School District vs. Hackmann, 294 Mo. 190, where the Supreme Court was considering the question of the assessment and collection of merchants' and manufacturers' taxes was to be carried out before the completion of the assessment on the other property. The Court in said case, l.c. 195, in holding that merchants' and manufacturers' taxes are collectable during the year when assessed, said:

"* * * The merchants' and manufacturers' assessments made in 1920 as completed, so far as they are concerned, were completed in September, but the remainder of the 1920 assessment was not completed until 1921. The same thing is true of the assessment of 1921. The fact that the merchants' and manufacturers' taxes

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were collected more promptly than the rest does not affect the question. It remains true that, whether these taxes are collected or not, the assessments on which they are based do not become a part of a completed assessment until the whole assessment is completed. * * * "

These statutes respecting the collection of merchants' and manufacturers' taxes as they now stand in our Revised Statutes come within the terms of said Sections 2 and 5, supra, of our New Constitution, and will remain in force and effect unless sooner amended or repealed, until July 1, 1946.

CONCLUSION.

It is, therefore, the opinion of this Department that the changes brought about in the New Constitution will have no effect on the present year's income of Hannibal School District as to its school tax rates on assessed property of the school district.

That the assessment now being made on merchants' and manufacturers' property will be available for the tax to be paid for the fiscal school year of 1945-1946.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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