

TAXATION:
AND REVENUE

RE: Duties of County Collector with respect to
acceptance of tender of payment upon appraisal
items of property.

January 12, 1946

FILED
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Honorable L. Madison Bywaters
Prosecuting Attorney
Liberty, Missouri

Dear Mr. Bywaters:

This will acknowledge receipt of your letter of recent date
requesting an official opinion of this department which letter
reads as follows:

"Enclosed herewith you will please find copy
of petition in case no. 16955 in the Circuit
Court of Clay County, Missouri; copy of peti-
tion in case no. 17199 filed in Circuit Court
of Clay County, Missouri; letter of December
26, 1945 from the Kansas City Power and Light
Co. to Clifford T. Halferty, County Collector
of Clay County, Missouri, and letter of Dec-
ember 28, 1945 of Clifford Halferty, County
Collector of Clay County, Missouri, to Mr.
Alan F. Wherritt, attorney for Kansas City
Power and Light Co.

"In the cases above mentioned, namely case
no. 16955 and no. 17199 the Circuit Court of
Clay County found for the relator and in each
case issued its peremptory writ of mandamus.
In case no. 16955 the peremptory was issued
on February, 19, 1944. In case no. 17199 the
peremptory writ was issued on January 8, 1945.

"The same situation is now confronting the
County Collector as was presented and decided
in the two cases heretofore mentioned. The
County Collector, as you will readily see from
his letter, has refused to accept the tender of
check of the Kansas City Power and Light Co. just
as he did in the two previous cases. It is now
the position of the Kansas City Power and Light
Co. that they are not going to petition the
Circuit Court for another writ of mandamus. In
other words they take the position that they have
made tender by check of all taxes that they feel
they are required to pay and rely on the previous

judgments rendered by the Circuit Court of Clay County to sustain them in their position.

"The County Collector would like to have your opinion as to whether or not he should accept the tender that has been made and he should also like to know that if he accepts such tender he is protected under the decisions in the prior cases decided by our Circuit Court. He is anxious to have your opinion in this regard as soon as possible for the reason that he is required to make distribution of taxes by January 15, 1946."

From your letter and the other documents attached thereto and referred to in your letter we understand your questions to relate to the validity of a tax levied by your county court for the benefit of two public water supply districts located in Clay County.

We have considered the two questions which you have propounded and we have decided that they can best be determined by the consideration of the legality of the taxes sought to be collected.

We have noted the case of State ex rel. Halferty vs. Kansas City Power and Light Company (decided September 10, 1940) 145 S. W. (2d) 145. This is a case involving a similar tax upon the same corporation under the statutes then existing relative to the authority to levy and collect taxes for the benefit of the Public Water Supply Districts. It was held that the State Board of Equalization did not have authority to apportion any part of the "distributable" property of such corporation to a public water supply district for the reason that such public water supply districts were not included within the statute authorizing political subdivisions to which such apportionment might be made.

At the time the decision was rendered in the Halferty case the questions relating to the assessment and apportionment of the "distributable" property of electric power and light companies had been considered in the State Tax Commission under subparagraph (6) of Section 10022, R. S. Mo. 1929, and under the further provisions of Section 10023, R. S. Mo. 1929, as amended, Laws of 1933, page 422, it was provided that "taxes levied thereon shall be levied and collected in the manner as is now and hereafter provided by law for the taxation of real property in this state".

The then existing statute relating to the apportionment of such "distributable" property was Section 10022, R. S. Mo. 1929, reading, as follows:

"Said board shall apportion the aggregate value

of all property hereinbefore specified belonging to or under the control of each railroad company, to each county, municipal township, city or incorporated town in which such road is located, according to the ratio which the number of miles of such road completed in such county, municipal township, city or incorporated town shall bear to the whole length of such road in this state: * * * (underscoring ours)

Under the statutes quoted, supra, the Supreme Court held in the Halferty case, in part, as follows at l.c. 122:

"(6-10) From the foregoing it appears the county court is not authorized to levy taxes upon the distributable property of railroads until the valuation thereof, as equalized and adjusted by the State Board of Equalization has been certified to it, and may then levy for municipal townships, cities and other local subdivisions only as by the statutes provided. This brings us to consideration of an insistence strongly urged by appellant, viz, that the water district should be regarded as a 'municipal township' within the meaning of these taxing statutes. It, of course, is not a county nor an incorporated city, town or village. It is denominated a 'political corporation' by the act under which it was organized. It might be termed a 'municipal corporation' in the broad sense sometimes attributed to that term. See State ex rel. Kinder v. Little River Drainage District, 291 Mo. 267, 236 S. W. 848, wherein it was held that a drainage district was a 'municipal corporation' within the meaning of Sec. 6, Art. X of the State Constitution, Mo. St. Ann., exempting from taxation the property of the 'State Counties and other municipal corporations.' In the broad sense defined (and cogently reasoned) in the Kinder case, supra, defendant might be said to be a municipal corporation. But does that mean that it is a municipal township as that term is used in the taxing statutes? A municipal township may be, for some purposes and in a broad sense, a 'municipal corporation'-- (we suggest this thought without deciding the question)--but, even if so, is a 'municipal

corporation' necessarily a 'municipal township?' It is to be borne in mind that taxing statutes are construed strictly in favor of the taxpayer bearing in mind that they should be applied with due regard to the apparent intention of the Legislature as expressed in the statute, with a view to promoting the apparent object of the legislative enactment. It will be noted that in all of the taxing provisions we have noted the words 'municipal townships' have been used. Nowhere are the words 'municipal corporations' used. Appellant says 'municipal township' is not defined by our statutes. We think its meaning, as used in the statutes we have quoted, is well understood and is clearly enough indicated as a subdivision of a county. Illustrative, we refer to Chap. 86, R. S. 1929, Mo. St. Ann. Sec. 12251 et seq., p. 8119 et seq., relating to 'Township Organization.' Sec. 12251, the first section of that chapter, provides for the holding of an election in any county for or against township organization. Subsequent sections provide for the organization, government and powers of the townships if township organization is voted. By Sec. 12259 provision is made for 'the county court of each county' to alter the boundaries of townships and to increase or diminish their number, in the manner there provided. From these and other references in the statutes that might be made we think it too clear to admit of argument that when the Legislature used the term 'municipal townships' in the statutes above referred to it meant subdivisions of a county as that term is generally understood.

"It is suggested by appellant that when Sec. 10022, providing the method of taxing railroad properties, was first enacted such 'public corporations' as defendant water district did not exist and could not be specifically referred to, and if we understand his argument, that the meaning of 'municipal township' should be extended or enlarged so as now to include such public corporations, since created. The term 'municipal townships' has been retained in the statutes. We must assume that it was purposely retained and intended to mean what it clearly does mean."

tion 10022 of the Revised Statutes of Missouri 1929, was

carried into the revision of 1939 as Section 11253. Following the decision in Halferty vs. Kansas City Power and Light Company, supra, the General Assembly in 1941 amended such statute by an act found in Laws of Missouri 1941, page 696 so that said statute thereafter read, in part, as follows:

"Said board shall apportion the aggregate value of all property hereinbefore specified belonging to or under the control of each railroad company to each county, municipal township, city or incorporated town, special road districts, public water supply and sewer districts or subdivisions except school districts in which such road is located, according to the ratio which the number of miles of such road completed in such county, municipal township, city or incorporated town, special road districts, public water supply and sewer districts or subdivision except school districts in which such road is located shall bear to the whole length of such road in this state:* * *" (underscoring ours)

You will note that the statute, as it reads since such amendment, now specifically authorizes the apportionment of "distributable" property of electric light and power transmission companies to public water supply districts. Also, that such property may be subjected to taxation for local purposes appears from the provisions of Section 11295 R. S. Mo. 1939, which reads, in part, as follows:

"* * *all property, real, and personal, including the franchises owned by telegraph, telephone, electric power and light companies, electric transmission lines, oil pipe lines, gas pipe lines, gasoline pipe lines, interstate bus and truck lines, and express companies, shall be subject to taxation for state, county, municipal and other local purposes to the same extent as the property of private persons.
* * *"

The authority for the incorporation of public water supply districts appears from an act found in Laws of Missouri, 1935, page 327, now appearing as Chapter 79, Article XII of the Revised Statutes of 1939. The scheme for the determination of the amount of revenue necessary for the operation of such public water supply districts and for the making of the levy upon property subject thereto in an amount sufficient to produce such revenue, appears in Section 12631, R. S. Mo. 1939.

"For the period and subject to the limitations contained in this article, the board of directors of any district organized hereunder shall, on or before the tenth day of May of each year, make estimates of the amount of taxes required to be levied to provide for the purposes of the district

as specified in Section 12624. Such estimates shall thereupon be certified by the clerk of the board and filed with the clerk of the county court or the respective clerks of the county courts of the counties in which the district is situate. Upon the basis of such estimates the county court or respective county courts shall proceed to levy a tax upon all taxable property within the district, sufficient to provide the funds required by such estimates. The clerk of the county court or respective clerks of the county courts shall enter such levies on the tax books of the county in the same manner as school district taxes are entered, for the use of the county collector. The taxes thus levied and extended upon the tax books shall be collected and the payment thereof enforced at the same time and in the same manner as is provided for the collection and payment of taxes levied for state and county purposes and such taxes, when collected, shall be remitted by the collector or collectors of the revenue, to the treasurer of the district."
(underscoring ours)

We assume that all statutory steps relative to the imposition of the taxes have been timely taken as no contention contrary thereto appears either in your letter of inquiry or the copies of the correspondence attached thereto.

Upon the basis of the information submitted, and assuming but not determining, the validity of the taxes imposed for the use and benefit of Public Water Supply Districts Nos. 1 and 2, we believe that your attention should be directed to that portion of Section 11086, R. S. Mo. 1939, reading 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:* * * *"

Your first question, relating to your duty to accept the tender, we believe may well be answered by reference to appellate court opinions declaring the general principles respecting your duties when such tenders are made. It is a general rule of law that a taxpayer has the right to tender payment of taxes upon certain items of property upon which taxes have been separately assessed and levied. We quote from State ex rel. Sedalia Water Co. v. Harnsberger, 14 S. W. (2d) 554, l. c. 555:

"First it is claimed by the appellant that relator could not pay part of the taxes assessed against it and leave the rest unpaid.

"The general rule, as laid down in 37 Cyc. (pages 1164 and 1165), is as follows: 'But a citizen always has the right to pay the amount of any one tax listed against him while refusing to pay others or to pay taxes for a current year and contest those assessed for previous years; or to pay taxes on one piece or item of his property which is separately assessed without offering to pay the taxes on other parts.'

"The 14 items in relator's tax bill were separately assessed, item X standing by itself. The rule quoted from Cyc., according to the common practice, would apply here."

If the items for which tender of payment has been made by the Kansas City Power and Light Company are those which have been separately assessed and upon which taxes have been separately levied, then under the ruling in the Harnsberger case, cited supra, it does become your duty to accept such tender and issue receipts showing the payment thereof.

Of course, payment of taxes upon these items will discharge the liability of the taxpayer with respect to them, but such tender cannot affect a discharge of the lien for the taxes upon the other items which tender of payment has not been made. As mentioned above, the duty still rests upon the collector to enforce the collection of unpaid taxes. We might further say that the question of tender payment of certain items is unaffected by the question of the validity or invalidity of the tax imposed by other items of the tax bill. In the Harnsberger case, supra, the validity of the tax was adjudicated, but, as the court said, this was unnecessary to the adjudication of the problem of tender of payment of separate items and was decided solely at the instance of the parties

to the action.

Your second question relates to the finality of the determination made by the decisions rendered in two prior mandamus actions between the same parties in the Circuit Court of Clay County, Missouri. It is a general rule of law that such judgments are binding only upon the immediate parties thereto and their privies; and they are final adjudications of only such issues as appear from the record therein determined and such issues as might have been determined.

It might be thought that such adjudication in the present instance would have the effect of perpetually barring the collection of taxes for the use and benefit of Public Water Supply Districts Nos. 1 and 2. In this connection we direct your attention to *In re Bruer's Income Tax*, 190 S. W. (2d) 248, where, under similar circumstances and with respect to similar contention, the Supreme Court of Missouri said:

"* * *The tax for each year is a separate and distinct transaction and each action for collection is a different cause of action from those of prior years. It would give one taxpayer an unfair advantage over others, and be unjustly discriminatory, if through inefficiency or neglect of the collecting officers, to appeal an erroneous decision on a question of law, it should be held that he would be relieved for all time from paying taxes all others must pay. * * *"

Further, such decisions as are rendered by Circuit Courts are in no circumstance binding upon the appellate courts. If in a subsequent suit it be determined that the taxes were lawfully due, you, as collector, would not be relieved from accounting for such taxes as should have been collected.

CONCLUSION

In the premises, we are of the opinion that you should accept tender of payment upon all items of property of the Kansas City Power and Light Company which have been separately assessed and upon which separate levies have been made and issue your receipt therefor. It is our further opinion that, under the statutes relating to your duties as collector, you are required to collect such other taxes together with penalties as have not been paid and which may be lawfully due.

It is our further opinion that the judgments rendered in the prior mandamus actions in the Circuit Court of Clay County between the Kansas City Power and Light Company and the collector of Clay County, Missouri, would not be finally determinative of the question of the validity of the taxes purportedly levied for the use and benefit of Public Water Supply Districts Nos. 1 and 2 of Clay County, Missouri, unless such question was adjudicated or might have been adjudicated in these actions; and that such judgments will not serve to relieve the collector of such county from his duties of enforcing the collection of such taxes if ultimately they are found to be lawfully due.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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