

DELINQUENT TAXES: The date for determining penalty on delinquent
PENALTIES: taxes, as provided in Section 11085, House Bill
No. 765, applies to the City of Liberty.

January 8, 1947

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Mrs. Temple M. Payne
City Treasurer
Liberty, Missouri

Dear Mrs. Payne:

This department is in receipt of a letter from you, in which you request an opinion in regard to the date when the penalties shall be added to delinquent taxes. Your letter is as follows:

"Re: House Bill 765, Section 11085.

"Will you please advise me whether or not the above mentioned law applies to the City of Liberty regarding the date when the penalties shall be added to delinquent taxes?"

Section 11085, House Bill No. 765, provides:

"If any taxpayer shall fail or neglect to pay such collector his taxes at the time and place required by such notices, then it shall be the duty of the collector after the first day of February then next ensuing, to collect and account for, as other taxes, an additional tax, as penalty, the amount provided for in Section 11124.
* * * * *

It is to be noted that the date fixed for the collector to collect an additional tax as penalty is changed from first day of January to first day of February.

In the case of City of Westport ex rel. v. McGee, 128 No. 152, the Supreme Court of Missouri said, l.c. 158:

"Appellant's point as to the rate of interest charged is not well taken. Section 7605, Revised Statutes of Missouri, 1889, provides

that, as to state and county taxes, any taxpayer who fails to pay his taxes on a fixed date is chargeable by the collector with a 'penalty' (sometimes also called 'interest') of one per cent. per month. The statute calls this an 'additional tax,' or 'penalty.' Section 1604, Revised Statutes of Missouri, 1889, provides that the payment of all taxes in such cities shall be enforced by the collection in the same manner and under the same rules and regulations, as may be provided by law, for collecting and enforcing the payment of state and county taxes. The imposition of a penalty is a regulation for the collection of the tax and ordinarily the most effective."

The city dealt with in the McGee case, supra, was a fourth class city. Section 1604 referred to in that case was a provision of the statutes of 1889, which is substantially the same as Section 7145, Revised Statutes of Missouri, 1939, which is the analogous provision applicable today as to fourth class cities. Said Section 7145 provides:

"Upon the first day of January of each year all unpaid city taxes shall become delinquent, and the taxes upon real property are hereby made a lien thereon. The enforcement of all taxes authorized by this article shall be made in the same manner and under the same rules and regulations as are or may be provided by law for the collection and enforcement of the payment of state and county taxes, including the seizure and sale of goods and chattels, both before and after said taxes shall become delinquent: * * * * *

Section 7605, Revised Statutes of Missouri of 1889, referred to in the McGee case, supra, is substantially the same provision as Section 11085, House Bill No. 765, supra, except that in said bill the date fixed for the collector to collect an additional tax as penalty is changed from first day of January to first day of February.

Liberty, Missouri, is a city operating under a special charter. The analogous provision to Section 7145, Revised Statutes of Missouri, 1939, as relates to cities operating under special charter, is Section 7477, Revised Statutes of Missouri, 1939, which provides as follows:

"Cities under special charters now or hereafter having a population not exceeding 6,000, are hereby invested with and given all the powers, rights and remedies in the matter of the collection of delinquent taxes by suit and the establishment and enforcement of liens on real estate in connection therewith as are now authorized and provided by existing statutes for the collection of delinquent state and county taxes by suit and the establishment and enforcement of liens on real estate in connection therewith; and to that end the provisions of article 9 of chapter 74, in so far as they are applicable, are hereby declared to be in force and to govern the proceedings in suits for delinquent taxes due such cities and in the establishment and enforcement of liens on real estate in connection therewith. * * *"
(Emphasis ours).

It is to be observed that Sections 7145 and 7477, Revised Statutes of Missouri, 1939, and Section 1604, Revised Statutes of Missouri, 1889, to which the court referred in the McGee case, are substantially the same as regards the provision that the enforcement of such taxes shall be made in the same manner and under the same rules and regulations as are or may be provided by law for the collection and enforcement of the payment of state and county taxes. The McGee case, supra, said that appellant's point, as to there being no law authorizing cities of the fourth class to charge interest on taxes, was not well taken. We must, therefore, come to the conclusion from that case that Section 1604, R.S. Mo. 1889, brought that fourth-class city within the provision for adding a penalty to delinquent taxes as set out in Section 7605, R.S. Mo. 1889. Therefore, it is only reasonable to assume that Section 7477, R. S. Mo. 1939, should bring cities operating under a special charter within the provisions of Section 11085 of House Bill 765, which is the analogous provision today to Section 7605 of the 1889 statutes.

We feel that the case of Siemens v. Shreeve, 296 S. W. 415 will further uphold our view that a city, in the collection of its taxes, is subject to the rules and regulations governing county and state collections. In that case the Supreme Court of Missouri said at l. c. 416:

"* * * A city has no inherent power to tax. This power rests primarily in the state and may be delegated by constitutional provision or by statutory enactment. The authority to tax must be expressly granted or necessarily incident to the powers conferred, and in case of doubt the power is denied. * * * * *"

CONCLUSION

It is, therefore, the opinion of this department that Section 11085 of House Bill No. 765 does apply to the City of Liberty, and that the date when the penalty shall be added to delinquent taxes is governed by the provisions of that section.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General