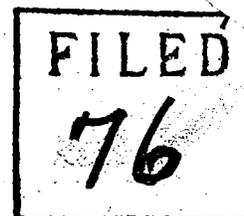


HEALTH CENTER: Public health center tax approved on January
: 11, 1950, should be collected for the year
TAXATION : 1950, based on assessment as of January 1, 1950.

March 22, 1950

Honorable Horace T. Robinson
Prosecuting Attorney
Pulaski County
Waynesville, Missouri



Dear Mr. Robinson:

This is in reply to your request for an opinion which is as follows:

"An election was held in this County on the 11th day of January, 1950, at which the question relating to maintenance of a health center in this County, under Secs. 9854.102 et seq., R.S. No. 1939, was submitted and approved.

"I would appreciate your opinion as to whether the taxing officers of the County can assess the health center tax for the year 1950, and whether that assessment should be as of January 1, 1950, or as of the date of the election. Your consideration and opinion will be appreciated."

In Laws of Missouri, 1945, page 969, the County Courts are given authority to submit to the qualified voters of the counties the question as to whether or not there shall be a bond issue for a public health center. The petition must contain a statement as to the "amount of the tax to be levied upon the assessed property of said county or counties, * * * ."

In Laws of Missouri, 1945, page 970, there is a provision for a form of ballot and following immediately thereafter is found the following language:

"If a two-thirds majority of the votes cast at such election on the proposition so submitted, shall be in favor of a mill tax for such bond

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issue, the county court shall levy the tax so authorized, which shall be collected in the same manner as other taxes are collected and credited to the 'Health Center Fund' and shall only be paid out on the order of the official health organization."

(Underscoring ours.)

You will note that the underlined portion of the statute provides that the tax shall be collected in the same manner as other taxes are collected. A skeleton view of the procedure for the methods of assessment, levying and collection of taxes may be found in a review of the following statutes:

Laws of Missouri, 1945, page 1800:

"Section 4. Property liable for taxes--Every person owning or holding real property or tangible personal property on the first day of January including all such property purchased on that day, shall be liable for taxes thereon during the same calendar year."

Laws of Missouri, 1945, page 1774:

"Section 10970. Assessment of real estate to commence on January 1, 1946, and every year thereafter.--Real estate shall be assessed at the assessment which shall commence on the first day of January, 1946, and shall be required to be assessed every year thereafter."

Laws of Missouri, 1945, page 1785:

"Section 10. * * * * *
After receiving the necessary forms the assessor or his deputy or deputies

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shall, except in the City of St. Louis, between the first day of January and the first day of June, 1946, and each year thereafter, proceed to make a list of all real and tangible personal property in his county, town or district, and assess the same at its true value in money in the manner following, * * *."

Laws of Missouri, 1945, page 1779:

"Section 11040. Taxes to be assessed, levied, and collected. The following named taxes shall hereafter be assessed, levied and collected in the several counties in this state, and only in the manner, and not to exceed the rates prescribed by the Constitution and laws of this state, viz.: The state tax and taxes necessary to pay the funded or bonded debt of the state, county, township, municipality, road district, or school district, the taxes for current expenditures for counties, townships, municipalities road district and school districts, including taxes which may be levied for library, hospitals, public health, recreation grounds and museum purposes, as authorized by law."

Laws of Missouri, 1945, page 1780:

"Section 11044. Rate of taxation to be fixed on objects of taxation.--After the assessor's book of each county, except in the City of St. Louis, shall be corrected and adjusted according to law, but not later than September 1, of each year, the county court shall ascertain the sum necessary to be raised for county purposes, and fix the rate of taxes on the several subjects of taxation so as to raise the required sum, and the same to be entered in proper columns in the tax book."

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Laws of Missouri, 1945, page 1958:

"Section 11048. Shall extend tax book.-- The assessor's book shall be corrected and adjusted not later than September 1 of each year. The clerk of the county court in each county, upon receipt of the certificates of the rates levied by the county court, school districts and other political subdivisions authorized by law to make levies or required by law to certify levies to the county court or clerk of the county court, shall then extend the taxes in the assessor's book, in proper columns prepared for such extensions, according to the rates levied; and shall on or before the 31st day of October of each year deliver the tax book with the rates extended therein to the collector. The assessor's book, with the taxes so extended therein, shall be authenticated by the seal of the Court as the Tax book for the use of the Collector; and when the assessor's book is in two or more volumes, such extension shall be made in all such volumes, and each volume shall be authenticated by the clerk with the seal of the court. And upon a failure to make out such extension of taxes in the assessor's book or books, as the case may be, and deliver same to the collector not later than October 31, the county court shall deduct twenty per centum from the amount of fees which may be due the clerk for making such extension, and such assessor's book, with the taxes so extended therein, shall be called the 'Tax Book.'"

Section 11079, R.S. Mo. 1939:

"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; * * * ."

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From the above it is seen that the assessment is made beginning on January 1, 1950, even though the determination of the tax rate and the levy of the tax is not made until a much later date. The rate, of course, is dependent upon the assessed valuation of the property located in the county. The law providing for the establishment of public health centers, and making provision for the issuance of bonds and taxes to retire said bonds, was in full force and effect as of January 1, 1950. When the voters voiced their approval of the establishment of a health center it then became the duty of the county court to levy the taxes so authorized, and collect them in the same manner as other taxes are collected. There is no provision made for deferring the collection of such taxes and, since there is a positive provision that the taxes shall be collected in the same manner as other taxes are collected, we believe it clear that the taxes should be collected for the year 1950. In this view we are fortified by certain judicial decisions from other jurisdictions. In the case of *People vs. Goldfogle*, 205 N.Y.S. 870, the Court was considering a similar question as to whether or not a statute passed in 1923, authorizing the collection of the tax should be applied to the year 1923. In disposing of the contrary contention the Court said at l.c. 876:

"Relators claim that the statute does not apply to the year 1923. It provided a penalty for failure to file a statement by June 1st. It became a law on June 1st. The requirement that reports be filed on June 1st was for the assistance of the tax commissioners. It was not essential to the preservation of due process of law. The delay in enactment of the law might constitute a defense to an action for the penalty. It cannot postpone operation of the whole act in the face of the enacting clause which provided that it should take effect immediately. The statute is part of the general Tax Law. It provided that assessment rolls were to be made up as of August 1st. The third Tuesday of August was made the grievance day.

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Abundant opportunity was thus afforded to the relators to assert their rights after the statute became effective. That the taxable status was fixed as of a time antedating the date on which the law became effective does not indicate intent to postpone the operation of the law. As Mr. Justice Field said in *Locke v. New Orleans*, 4 Wall. 172, 173 (18 L. Ed. 334):

"In the first place, the act was not subject to the imputation of being retrospective. It did not operate upon the past, or deprive the party of any vested rights. It simply authorized the imposition of a tax according to a previous assessment."

In the case of *Norfolk & W.R. Co. vs. Supervisors of Smyth County*, 12 S.E. 1009, the Supreme Court of Appeals of Virginia considered the application of a taxing statute in the same year that it was passed. At l.c. 1012 the Court said:

"But it is contended that the right to levy this tax was not acquired until the year 1881. There is no solid ground upon which this contention can rest. The act of March 13, 1877, prescribing the manner of assessing railroad property for state purposes, was in no way affected by the subsequent act of February 27, 1880, conferring authority upon the board of supervisors of a county to levy a tax for county and school purposes upon the real estate of any railroad company within such county. We are bound to presume, in the absence of anything to the contrary, that the board of public works regularly made the annual assessments of all railroad property required of it by said act of March 13, 1877, including that for the year 1880. This being so, on the passage of the act of February 27, 1880, it became the duty of the board of supervisors to make the levy in question, and not to have done so would have been a serious dereliction of duty, prejudicial to the rights

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of other tax-payers, who were entitled to a pro rata assessment and levy upon the real estate of the railroad company. The contention that the right to make the levy did not accrue until 1881 is opposed to both the letter and spirit of the constitutional and statutory provisions above referred to. The board of supervisors had the right to make the levy, even though the county levy had previously been made and completed as to other subjects of taxation. See Railroad Co. v. Koontz, 77 Va. 698; Shenandoah Val. R. Co. v. Supervisors of Clark Co., 78 Va. 269; and the very late case of County of Prince George v. Railroad Co., ante, 667. These cases, in every essential particular, rule the case in hand."

In the Case of Samuel Locke vs. The City of New Orleans, 71 U.S. 172, 18 L. Ed. 334, the Supreme Court of the United States considered a similar question of law as the one now before us, and concluded at l.c. 335:

"The legislature of Louisiana in 1850 passed an act authorizing each of the municipalities of the city of New Orleans to levy a tax on capital within its limits on the assessment rolls of 1848 and 1849, not to exceed the amounts imposed by existing ordinances. The present action was instituted to recover, in part, the amount of the tax levied under this act upon capital owned and employed by the defendant in one of the municipalities. As a defense the defendant, among other things, alleged the unconstitutionality of the act of the legislature authorizing the tax. The district court, in which the action was brought, gave judgment for the city, and the supreme court of the state affirmed the judgment.

"The unconstitutionality of the act was asserted from its supposed retroactive operation, upon the notion that the prohibition of the Federal Constitution upon the states, to pass an ex post facto law, extended to all retrospective laws.

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"There was nothing in the position taken which entitled it to consideration. In the first place, the act was not subject to the imputation of being retrospective. It did not operate upon the past, or deprive the party of any vested rights. It simply authorized the imposition of a tax according to a previous assessment. * * *."

You ask further whether the assessment should be as of January 1, 1950 or as of the date of the election. We call your attention to Section 10970 which is set out at page 2 of this opinion which provides that real estate assessments shall commence on the 1st day of January. Since this is the assessment provided by law for taxes in the year 1950, therefore, it must be used in determining the tax due for this year.

CONCLUSION

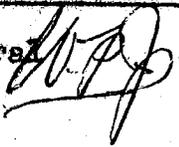
Therefore, it is the opinion of this department that the health center tax approved by the people on the 11th day of January, 1950, should be levied and collected in the same manner as other taxes are collected in the year 1950, and the assessment should be as of the 1st day of January, 1950.

Respectfully submitted,

JOHN R. BATY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General



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