

REVENUE LAWS:
MAGISTRATE COURTS:

Suits to collect taxes, which suits are based upon revenue laws of this state, may be heard and determined in magistrate court if the meaning, validity and application of such law or laws is not an issue in the case, so long as the total amount sued for does not exceed the jurisdiction of the magistrate court.

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Honorable Milton B. Kirby
Prosecuting Attorney
Greene County
Springfield, Missouri

Dear Sir:

This department is in receipt of your recent request for an official opinion. You thus state your opinion request:

"A question has arisen as to the jurisdiction of the Magistrate Court to hear and determine suits to collect taxes such as Merchants, Sales, Income and General Personal taxes, and the Magistrate Judges of Greene County have requested that I obtain an opinion from you.

"Your attention is called to Section 482.100, paragraph 1, R. S. Mo. 1949, which states that

"'No Magistrate shall have jurisdiction to hear or try any action involving *** the construction of revenue laws of this State, ***'

"In view of this statute, the Magistrate Judges of this county are of the opinion that the Magistrate Court has no jurisdiction to hear and determine any suit for the collection of any of the aforementioned taxes."

Your inquiry to us is whether suits to collect taxes "such as" merchants, sales, income, and "general personal" taxes may be heard and determined in a magistrate court in view of Section 482.100, RSMo 1949, paragraph 1, which states:

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"No magistrate shall have jurisdiction to hear or try any action involving the construction of the constitution of the United States or of this state, the validity of any treaty or statute of the United States or any authority exercised under the laws of the United States, the construction of revenue laws of this state, the title to any office under this state, or the title to real estate."

In the case of Long v. City of Independence, 229 S.W. 2d 686, the court said, 687:

"* * * As the city taxes in issue were general taxes for public governmental purposes, construction of the revenue laws is involved and the appeal is properly here. Art. V. Sec. 3, 1945 Const. Mo. R.S.A.; Pearson Drainage Dist. v. Erhardt, Mo. Sup., 196 S.W. 2d 855; State ex rel. Lane v. Corneli, 347 Mo. 932, 149 S.W. 2d 815; State ex rel. Divine v. Collier, 301 Mo. 72, 256 S.W. 455; Kansas City Exposition Driving Park v. Kansas City 174 Mo. 425, 74 S.W. 979; and City of Stanberry v. Jordan, 145 Mo. 371, 46 S.W. 1093. * * *"

(Underlining, ours.)

From the above case, we obtain a definition of "revenue laws of this state," which definition is that "revenue laws of this state" are laws providing revenue "for public governmental purposes."

Numerous other cases directly and inferentially affirm this definition, and none dispute it.

Let us now address ourselves to the question of whether every suit filed to collect taxes, which suit is based upon laws which are "revenue laws of this state," involves, ipso facto, a construction of the "revenue laws of this state," and, if we find that not every suit filed to collect taxes, which suit is based upon the revenue laws of this state, involves, ipso facto, a construction of the revenue laws of this state, then which suits do, and which suits do not, involve a construction of the revenue laws of this state.

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In order to obtain much needed light upon this matter, we direct your attention to the case of State ex rel. v. Adkins, 221 Mo. 112. This case directly involves county depositaries and as such does not bear upon our particular point of inquiry. The case is of value to us insofar as in it there are discussed some eleven other cases in which the courts variously held that a construction of the revenue laws of this state was, or was not, involved. We deem it unnecessary here to discuss each of these cases, or to quote the court's discussion of them. We do, however, give the general conclusion of the court after its consideration of these cases, which conclusion is, l.c. 118:

"From a review of the cases we conclude: (1) That when our jurisdiction is put upon the ground that the construction of the revenue laws of the State is involved, the law up for construction must be a State law as contradistinguished from the provisions of a special city charter; (2) that it makes no difference where the law is to be found, whether under the title of 'revenue' or any other title, so long as it relates to the subject-matter of revenue; (3) that the revenue must be directly and primarily concerned, not merely indirectly or as an incident; (4) that the term 'revenue law' covers and includes laws relating to the disbursement of the revenue and its preservation as well as provisions relating to the assessment, levy and collection of it; and (5) finally, that where the question in the case is merely one relating to the general practice in circuit courts or before justices of the peace, although the case may pertain to the collection of taxes, yet the revenue laws are not involved in a constitutional sense."

We will now proceed to a consideration of other cases bearing upon our problem.

The case of State v. Hemmerberger-Harrison Lumber Company, 25 S.W. 2d 489, was one in which defendant was sued by the Collector of New Madrid County to collect taxes assessed against defendant's property. Defendant contended that the assessment

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was illegal. The Supreme Court of Missouri, 58 S.W. 2d 750, took jurisdiction on the ground that a construction of the revenue laws of this state was involved.

The case of White et al. v. Boyne et al., 23 S.W. 2d 107, was one of a bill by taxpayers to have a school tax levy made by a consolidated school district declared void. The Supreme Court of Missouri refused to take jurisdiction on the ground that a construction of the revenue laws of this state was not involved. In its opinion, the court said, l.c. 108:

"No revenue law of this state is to be construed, nor is any such law mentioned in the briefs. In order to give this court jurisdiction of the case on the ground that it involves the construction of the revenue laws of the state, the revenue law must be directly and primarily concerned, and not merely indirectly or as an incident. State ex rel. Hadley v. Adkins, 221 Mo. 112, loc. cit. 118, 119 S.W. 1091. In that case Judge Lamm cited many cases and elaborated the doctrine at length. Likewise, as said in that case, where the question is merely one relating to the general practice in the courts, although the case may pertain to the collection of taxes, yet the revenue laws are not involved in a constitutional sense. The conclusions there have been approved in later cases. State ex rel. v. Reynolds, 243 Mo. 715, loc. cit. 722, 148 S.W. 623; Moss Tie Co. v. Allen, 318 Mo. 440, 300 S.W. 486."

The case of State v. Atchison, Topeka and Santa Fe Railway Company, 275 S.W. 932, was an action by the Collector of Clark County to recover a sum alleged to be due in taxes. Defendant refused to pay on the ground that under the law of 1921, the levy for 1921 for county purposes in Clark County exceeded the levy for like purposes in 1920 by more than ten per cent. The Supreme Court of Missouri took jurisdiction on the ground that a construction of the revenue laws of Missouri was involved.

The case of In re First National Safe Deposit Company, 173 S.W. 2d 403, was a proceeding to abate the assessment of an income tax. The Supreme Court of Missouri took jurisdiction

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on the ground that the construction of the revenue laws of this state was involved.

The case of T. J. Moss Tie Co. v. Allen, 318 Mo. 440, was an equity suit in which appellant sought to enjoin the tax collector of Oregon County, Missouri, from collecting taxes on certain land owned by the appellant. In the course of that opinion, the court said, l.c. 443:

"* * * Furthermore, we find nothing in the entire record of the case indicating that defendant has anywhere joined issue with plaintiff as to the construction or meaning of these constitutional provisions or any revenue law or statute. Plaintiff frankly concedes, and at every stage of the case has conceded the construction and meaning given them by plaintiff, to-wit, that there can be no classification of property for the purpose of taxation, and that all property subject to taxation must be taxed in proportion to its value. The sole issue between the parties is one of fact, namely, whether the things admitted to be violative of these provisions were actually done in this case. As this court said in Kircher v. Evers, 238 S.W. 1086, speaking through James T. Blair, J., 'the controversy did not arise on this phase of the case, out of a difference of opinion as to what the section mentioned means, but did arise rather upon the question of fact whether the things said to be violative of that section had been done.' What was further said in the same opinion, l.c. 1087, is also true of this case, to-wit: 'It is clear that this record, in view of what has been said, does not show that a constitutional question was "inexorably involved" (Lohmeyer v. Cordage Co. 214 Mo. 685, 113 S.W. 1108) in the sense in which those words are used in connection with the question of appellate jurisdiction."

"Being satisfied that there is no issue in this case which calls for the construction of a revenue statute or law, and that we are without jurisdiction to entertain this appeal, it is ordered that the cause be transferred to the Springfield Court of Appeals for its determination. All concur."

(Underlining, ours.)

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In addition to the above cases which we have cited, there are numerous other cases relating to the matter in question, which cases we have carefully considered. To review all of them here is not practicable, and would not, we believe, further serve our purpose inasmuch as the opinions not cited fall into the same pattern as those which are cited. From a consideration of all of these cases, certain facts appear to us to clearly emerge. One of these is that every case, in which the courts held that a construction of the revenue laws of this state was involved, was a case in which either the meaning, the validity, or the applicability to the subject of the suit, of a tax law, was involved. In some of these cases the necessity of determining the meaning of a tax law and/or its applicability or validity was evident from the petition, and in others, the issue was raised in the answer of the defendant. We observe that in none of the cases cited, and in none of those other cases considered by us and not cited, did the courts hold that a construction of the revenue laws of this state was involved where the suit was for a tax judgment, and where the meaning, validity, or applicability of the tax laws was not raised by either party or was not evidently present from the petition or answer.

We, therefore, conclude that not every suit to collect taxes involves, ipso facto, a construction of the revenue laws of this state, and that a construction of the revenue laws of this state is involved only where the meaning, validity and/or the applicability of such laws is or becomes an issue in the case.

CONCLUSION

It is the opinion of this department that suits to collect taxes, which suits are based upon revenue laws of this state, may be heard and determined in magistrate court if the meaning, validity, and application of such law or laws is not an issue in the case, so long as the total amount sued for does not exceed the jurisdiction of the magistrate court.

Respectfully submitted,

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APPROVED:

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