

TAXATION: Errors on the tax book for current or previous years taxes may not be corrected by Collector.

November 9, 1949



Mr. Ted A. Bollinger
Prosecuting Attorney
Shelby County
Shelbyville, Missouri

Dear Mr. Bollinger:

This is to acknowledge receipt of your letter requesting a legal opinion of this department, and which reads as follows:

"An opinion is requested from your office for a ruling on the following state of facts:

"Lots one and two, Block three, Shelbyville, Missouri have been owned for many years by one Alice Christine. Lot three, Block three, has been owned by one Omar Smoot. The County Collector's tax records show the ownership to be that Christine owns two and three and Smoot, one. This has existed for some twenty-nine years, to date. Smoot sold his lot (#3) in 1948 with the taxes not paid for 1947 to J. M. Forman; Christine sells Lot one to Matticks the deed reciting that all taxes are paid. The 1947 taxes are charged on the collectors books against Lot one giving Christine credit for having paid up to date on #3. Smoot refuses to pay the 1947 taxes on the ground that he never owned the land listed to him on the collector's books because the lot actually owned by him shows all taxes paid. Christine refuses to pay on the ground that she will not stand a double charge.

"The issue, therefore, is whether the collector can correct his tax books back to the date of the original error and properly charge Smoot with the unpaid taxes."

If the erroneous assessment appearing on the tax book is to be corrected by the collector it must be done by authority of some specific section of the statutes or of some appellate court decision upholding the legality of such procedure.

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After diligent search we are unable to find any statutory provision by which the collector may correct the tax book in the manner indicated in your letter, and we therefore, turn to the decisions of the courts on this state to ascertain whether or not the collector has this power.

We believe that the case of State ex rel. vs. Brown, 172 Mo., is in point and is applicable to the facts before us in l. c. 381, the court said:

"* * *The facts as disclosed in this case show that the county clerk extended the taxes to the respective school districts; whether his action was in pursuance of the provisions of the statute, whether legal or illegal, the collector was not answerable for the acts of the clerk. After the tax books were adjusted and turned over to the collector, he had but one duty to perform; that was to collect the taxes and apply them as indicated by the tax book. The collector has no power over the tax books, he is not authorized by any statute that has been brought to the attention of this court, to alter or change the tax books at pleasure. He is responsible for the taxes as they appear upon his books, and if they are changed in any manner, except in pursuance of the statute, however just the change might be, it would afford him no protection."

In this case the plaintiff sought to force the collector to accept as payment in full a less rate of taxes than his book showed to be due, and prayed the court to issue a writ of mandamus compelling the collector to accept the payment of taxes as tendered, and that he be required to let his record show the payment of the taxes in full. The trial court refused to grant the writ, and in discussing the court's failure to do so, the Supreme Court further said:

"* * *To issue the writ in this case would be compelling the collector to do something not only not provided by the statute, but to do an act which the law prohibits him from doing--the altering and changing of the tax books. The action of the trial court was right and will not be disturbed by this court."

Each tract or lot of land shall be assessed in the manner provided by Section 22, page 1789, Laws of Missouri, for 1945. Errors appearing on the tax book do not effect the validity of the assessment.

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Said section reads as follows:

"Each tract of land or lot shall be chargeable with its own taxes, no matter who is the owner, nor in whose name it is or was assessed. The assessment of land or lots in numerical order, or by plats and a 'land list' in alphabetical order, as provided in this chapter, shall be deemed and taken in all courts and places to impart notice to the owner or owners thereof, whoever or whatever they may be that it is assessed and liable to be sold for taxes, interest and costs chargeable thereon; and no error or omission in regard to the name of any person, with reference to any tract of land or lot, shall in anywise impair the validity of the assessment thereof for taxes."

It was immaterial that the tax book showed the land here in question was assessed to the wrong person, as the assessment was valid and it was the collector's duty to collect the taxes shown to be due on the record.

In passing upon the collector's duty in the collection of taxes, the court said, in the case of Mathews vs. The City of Kansas, 80 Mo. 1. c. 236.

"* * *The assessment was made on the land itself by its numbers regardless of who was its owner. It was not the duty of the collector to look up the owner or apply to him for the taxes. The tax by law became due and payable at certain prescribed periods, and it was the duty of the owner to go to the collector, or send some one and pay this tax assessed on the land as such. So the collector in his testimony but stated a legal truth in saying that he had no concern as to who was the owner of a given lot or tract of land. He was receiving the tax imposed on the given lot as such.* * *"

In view of the foregoing statute and court decision, it appears that the collector does not have the legal authority to correct errors appearing on the tax book, no matter how just or proper the corrections might be. It further appears that such errors do not effect the validity of the assessment, since the assessment of the real estate tax is against each tract or lot of land, and not the

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owner. The collector has but one duty, and that is to collect the taxes due on each peice of property as shown by his tax book.

It, therefore, follows that the collector of Shelby County may not correct the tax book to show Lot 3, assessed to Smoot for the current or any previous years' taxes. He is also without power to make the further correction showing Lots 1 and 2 assessed to Christine and her payment of the taxes on these lots, for the current or any previous years' taxes. The inability of the collector to make the correction may result in hardship to Christine, although such an occurrence may be unavoidable.

It appears that the unfortunate situation in which Christine now finds herself is due largely to her lack of proper care in the payment of taxes. At any time before the taxes have been paid, upon her proper application and proof to the County Court, Christine might have been successful in getting the County Court to order the County Clerk to make the corrections on the tax book according to her request. Such a procedure is authorized by Sections 24 and 25, pages 1789 and 1790, Laws of Missouri for 1945, but the taxes have been paid and this remedy is not now available to her.

The taxes paid by Christine were paid voluntarily and without any compulsion being exerted over her. At no time previous to the payment did she make inquiry as to what lands were assessed to her on the tax book, and it does not appear that she has made any attempt to ascertain whether the lands assessed to her were Lots 1 and 2, which she owned and desired to pay taxes on. It appears that the erroneous assessment on the tax book had been continued for the past 29-years, and that at no time during that period had she ever made any attempt to have the error rectified.

It has long been the law in Missouri that one who voluntarily pays taxes, while laboring under a mistake of fact at the time of payment, may not recover the amount paid to the collector.

In passing upon this matter the court said in the case of Mathews v. Kansas City, supra, l. c. 240:

"* * *The mistake of the tax-payer himself ought not to imperil this fund. Such property is our growing communities is constantly changing ownership. The collector's books are the sources of information, not only to the public dealing with the property, but to municipal authorities themselves charged with the duty of the prompt collection of the revenues.

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A party who, like this plaintiff, lies by for four years after making the mistake before he demands a rectification, should at least come with clearest equity and persuasive proof."

This same general rule of law was also upheld in the cases of *Inhabitants of Schell City vs. Rumsey Mfg. Co.*, 39 Mo. App. 264, and *Walker vs. The City of St. Louis*, 15 Mo. 376.

In view of the foregoing cases, Christine may not recover the voluntary payment of taxes from the collector of Shelby County, as her unhappy situation is a result of her own negligence and mistake of fact, and the collector has in no way contributed to that situation.

CONCLUSION

It is therefore, the opinion of this department that a county collector does not have the power to correct errors appearing upon the tax book whether for the current or any previous year's taxes. That it is the duty of the collector to collect all taxes charged against each tract or lot of land on said record, and without regard to whether or not such entries are correct or incorrect.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
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