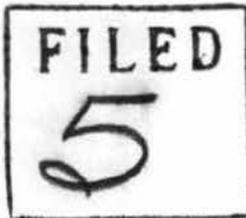


TAXATION:  
REFUND:

The director of revenue is not authorized to make tax refunds on claims filed prior to the effective date of House Bill No. 196.



June 16, 1952

7-3-52

Honorable G. H. Bates  
Director of Revenue  
Department of Revenue  
Capitol Building  
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department. Your request reads in part as follows:

"1. Is this Department authorized to make refund on claims filed prior to the effective date of the Act?

"2. If claimant has written a letter requesting refund, may we consider the date of his letter as the time refund was claimed and permit him to complete said claim by filing one in writing under oath, as required in paragraph 3 of said Act?

House Bill No. 196 as enacted by the 60th General Assembly referred to in your opinion request and under which the proposed refund could be made reads as follows:

"Section 1. 1. The director of revenue from funds appropriated, shall refund any overpayment or erroneous payment of any tax which the state is authorized to collect. The general assembly shall appropriate and set aside funds sufficient for the use of the director or revenue to make refunds authorized by this section or by final judgment of court.

Honorable G. H. Bates

"2. The director of revenue shall refund any overpayment or erroneous payment of any tax on intangible personal property and the amount refunded shall be charged against the next apportionment to the political subdivision which was the residence or situs of the taxpayer at the time the tax was paid.

"3. No refund shall be made by the director of revenue unless a claim for refund has been filed with him within two years from the date of payment. Every claim must be in writing under oath and must state the specific grounds upon which the claim is founded."

You stated in your opinion request that House Bill No. 196 would become effective April 22, 1952, however, we wish to point out that House Bill No. 196 became effective October 9, 1951.

We would here note that House Bill No. 196 refers to the overpayment or erroneous payment of a tax without regard to whether the payment was voluntary or involuntary. It is generally stated by the appellate courts of this state that the refund of taxes illegally collected (by voluntary payment), is a matter of governmental grace and in the absence of statutory provision(s), the taxpayer is not entitled to refund. In the case of State ex rel. S. S. Kresge Co. v. Howard, 208 S.W. (2d) 247, the Supreme Court of Missouri stated the following rule as follows:

"\* \* \*The refund of taxes illegally exacted is ordinarily a matter of governmental grace. On grounds of public policy, the law discourages suits for the refund of taxes illegally levied and collected, and has imposed many restrictions on their recovery. It is generally held that taxes voluntarily paid without compulsion, although levied under an unconstitutional statute, cannot be refunded without the aid of a statutory remedy. 51 Am. Jur. Taxation Sec. 1167."

Under such a holding it is obvious that a taxpayer has no legal claim to refund as contemplated and governed by House Bill No. 196 of a voluntary overpayment or erroneous payment of a tax. Clearly the purpose of such a law is to provide a statutory remedy where none existed in the case of voluntary payments and a simpler

Honorable G. H. Bates

and more expedient remedy in the case of an involuntary payment. Therefore, since said bill would seem to embrace voluntary as well as involuntary payments, and we so conclude, we are of the opinion that the term "claim" as used refers to a claim which is therein created.

It is a familiar rule of statutory construction that statutes should be given a reasonable and logical construction, if such can be done, In re: M- S-., 165 S.W. (2d) 300. It would be unreasonable to assume that the legislature intended the director of revenue to pay legal claims which existed prior to the effective date of House Bill No. 196 and to preclude (by not mentioning) those for which no claim existed when if said "claim" is filed after the effective date he should pay both. We believe that the term claim as used means a claim which the director of revenue would be bound to pay under House Bill No. 196 if filed in the time and form therein prescribed. Consequently, no such claim would exist or accrue to the taxpayer prior to October 9, 1951, and there could be no such claim on file with the director of revenue prior to such date.

Further, we are of the opinion that if the claim is one created by House Bill No. 196 the director of revenue would have no authority to accept for filing any claims prior to the effective date of the law. Therefore, the acceptance of a request for refund submitted by the taxpayer and received by the director of revenue prior to October 9, 1951, would not constitute a claim as created by House Bill No. 196 and would be meaningless and inoperative insofar as this bill is concerned.

Having answered your first question in the negative, it is not now necessary to consider question No. 2.

#### CONCLUSION

Therefore, it is the opinion of this department that a claim for refund of an overpayment or erroneous payment of a tax which could be refunded by the director of revenue under House Bill No. 196 is created and exists under and by virtue of said bill and since no such claim could be filed prior to the effective date of said bill, there could exist no claims prior to such date on which the director of revenue could make refunds.

Respectfully submitted,

D. D. GUFFEY  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney General