

TAXATION:

Delinquent personal property taxes, except interest and penalties, cannot be compromised.

COMPROMISING TAXES:

May 28, 1952

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Mr. Rex A. Henson  
Prosecuting Attorney  
Butler County  
Poplar Bluff, Missouri

Dear Mr. Henson:

We have given careful consideration to your request for an opinion, which request is as follows:

"The Collector of Revenue of Butler County, Missouri, is instituting suits for collection of delinquent personal property taxes as provided in Section 140.730 of the Revised Statutes of 1949, and it now appears that quite a number of the delinquent tax payers are insolvent; that several of them have left this State and do not have any property subject to execution; and that several of these persons have offered to make a compromise settlement of their delinquent personal property taxes.

"I note that Section 140.120, Revised Statutes of 1949, gives the County Court authority to compromise back taxes on real estate under certain conditions, but I fail to find any authority for a compromise of delinquent personal property taxes.

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"I would appreciate an opinion from you advising me if personal property taxes can be compromised, and the officer or officers who have the power to make a compromise settlement."

There is no statute in Missouri authorizing a compromise of delinquent personal property taxes. Moreover, the organic law of the state prohibits the enactment of any such legislation.

The Constitution of Missouri, in Section 39(5) of Article III, provides that the legislature shall have no power "To release or extinguish or to authorize the releasing or extinguishing, in whole or in part, without consideration, the indebtedness, liability or obligation of any corporation or individual due this state or any county or municipal corporation;...."

This provision in substance is the same as Section 51 of Article IV of the Constitution of 1875, and the courts have held that a tax is an obligation under this section and, therefore, cannot be released or compromised.

In the case of *Graham Paper Company v. Gehner*, 332 Mo. 155, l.c. 162, the Supreme Court of Missouri said:

"\* \* \* The language of this constitutional provision is very broad and comprehensive in protecting the State against legislative acts impairing obligations due to it in that it prohibits the release or extinguishment, in whole or in part, not only of indebtedness to the State, county or municipality, but liabilities or obligations of every kind. It will be noticed that this constitutional provision is couched in the language and uses the same terms as are used with reference to retrospective laws. In determining what transactions or considerations are within the purview of retrospective laws, the courts use the same terms as are used in this

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constitutional provision, to-wit, liabilities or obligations, as well as debts. In contending in the Dirckx and Bell Telephone cases, supra, that income taxes not due or capable of ascertainment till the end of the year could not be the subject of a retrospective law, the same argument was used as is now used to exclude same from the constitutional provision just quoted, to-wit that the income tax for the entire year is a unit and does not come into existence even as an obligation or liability till the end of the year, when for the first time it was capable of ascertainment. That would be true as to being an indebtedness, but, as there pointed out, it is not true as to being an obligation or liability. This argument was rejected as not sound in the Dirckx and Bell Telephone cases, as it must be here. It was there held that an inchoate tax, though not due or yet payable, is such an obligation or liability as to be within the protection of the restriction against retrospective laws, and for the same reason we must hold that such inchoate tax is an obligation or liability within the meaning of the constitutional provision now being considered. In other words, if an unmatured tax has sufficient vitality to be protected in favor of the citizens against retrospective laws, it has sufficient vitality to be protected in favor of the State against being extinguished or released by legislative enactment."

This principle was sustained by the Supreme Court in the more recent case of State v. Smith, 201 S.W. 2d 153. In the course of that opinion, at page 156, the court said:

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"We agree with appellant that respondent did not have authority to compromise a tax that had been lawfully assessed. \* \* \*"

It has been held, however, that the interest and penalties of a delinquent tax bill may be compromised, as they are no part of the tax.

In the case of State ex rel. Crutcher v. Koeln, 332 Mo. 1229, 1.c. 1239, the Supreme Court said:

"Penalties are a mere adjunct, of a nature quite different from taxes as already shown, and are provided merely as an aid in enforcing the collection of the latter. Notwithstanding they may be indicated on the back tax books or tax bills, they are no more than inceptive down to the moment of their infliction by actual exaction and receipt of payment, or by distraint had or judgment obtained. \* \* \*"

This principle was also upheld in State v. Smith, supra. In the course of that opinion, at page 157, the court said:

"There is nothing in the Constitution or statutes that would prohibit respondent from compromising the interest and penalties in a disputed sales tax liability."

The question as to what officer has the power to make a compromise settlement is resolved by application of Section 140.730, RSMo 1949, which authorizes the county collector to institute suits for the collection of delinquent personal property taxes. An officer having such power is also vested with authority to compromise claims in cases where compromise is permitted by law.

The Supreme Court of Missouri sustained this rule in State v. Smith, supra. In the course of that opinion, at page 157, the court said:

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"Respondent contends that since the Sales Tax Act gives him the power to sue for the tax, it necessarily gives him the implied power to settle the tax, except where he is prohibited from doing so by law. He, therefore, contends that he has the power to compromise interest and penalties. We think respondent's contention must be sustained."

CONCLUSION

It is the opinion of this office that delinquent personal property taxes cannot be compromised. It is our further opinion, however, that the interest and penalties of a delinquent personal property tax bill may be compromised by the county collector.

Respectfully submitted,

B. A. TAYLOR  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

BAT/fh