

DRAINAGE DISTRICTS: The making up of the tax books of a drainage district organized in the county court of any county in Missouri, under Chapter 243, RSMo 1949, and the entries COUNTY: to be made in such tax books by the county clerk should TAX BOOKS: be in conformity to the directions in subsection 2 of Section 243.350, Laws of Missouri 1953, pages 538, 539.



April 30, 1956

Honorable Leon McAnally
Prosecuting Attorney
Dunklin County
Kennett, Missouri

Dear Mr. McAnally:

Your request for an opinion from this office reads as follows:

"It will be noted that in Section 2 of the old law, which sets out how the drainage tax books shall be made up, it is stated: 'There shall be set out in properly ruled columns of said book the following: (1) The names of the owners of said land and other property as they appeared in the viewers' report as confirmed; (2) Description of the land and other property'.

"By the laws of 1953, effective 90 days after May 31, 1953, the new law (Section 2) states: 'There shall be set out in properly ruled columns of said book the following: (1) The names of the present owners of said land and other property so far as now known; (2) Description of the land and other property'.

"The first question that we would like to ask is this: Does this mean that the County Clerk in preparing this drainage tax book shall set out: (1) The name of the present owner of the land assessed, and (2) the legal description of his property? Or assuming that the benefits in the drainage district are assessed against 40-acre tracts, does this mean that the Clerk merely sets out the description of the 40 acres and sets out the names of all

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persons who own land in that 40 acres without specifying what portion of the 40 acres they own?

"If it is your interpretation that the County Clerk should set out opposite the name of the present owners the legal description of the land that he now owns and the acreage that he now owns, how should his benefits be assessed?

"Should all land in the 40 acres be assessed at the same rate of benefits? For example, suppose A owns the North half of a particular 40 acres and B owns the South half. Will half of the benefits assessed against that 40 acres be assessed against A and the other half against B? Or assuming that the North half is high, sandy land, and the South half is low and wet and is receiving more actual benefits, should a greater portion of the assessment be assessed against the land belonging to B?

"In the event that the Clerk assessed the benefits on the basis of the percentage of land that the owner owns out of the 40 acres, does this amount to a change of the benefits, by the County Clerk?

"In the event that you find that the legal description and the amount of land each owns should be set out opposite his name in the drainage tax books, is it necessary for the County Court as Commissioners of County Court Drainage Districts to make an Order breaking down the benefits to the respective present owners in each individual case or should it be the duty of the Clerk to make this breakdown as per Section 243.350 VAMS as amended by the laws of 1953?

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"Under Section 242.490 applying to Circuit Court Drainage Districts, Section 2, the following provision is made: '--- provided, that after all annual installments of said total tax have become due, and thereafter it is only desired and necessary to levy and collect such maintenance tax, the board of supervisors of such drainage district may, by resolution, provide that in the tax books containing the maintenance tax, it shall be sufficient if the several governmental lots, forty-acre tracts, or other subdivisions of land as they appear in the decree of the circuit court organizing said district, be conveniently combined and described together, if contiguous, according to each ownership, and the names of the owners thereof as they may appear in the deed records---'.

"We wonder if it would be possible to apply this provision to the making up of the County Court drainage district tax books, and if so, should the County Court as board of supervisors of the County Court Drainage District pass such a resolution, as a condition precedent to the Clerk's being required to combine said contiguous tracts belonging to the said owners?

"A group of the Township Collectors and County Treasurer and Ex-Officio Collector have requested our County Clerk to make the County Court Drainage District tax books up in the following manner: (1) Name of present owner of land; (2) Legal description of and amount of acreage he owns; (3) Combine all contiguous tracts owned by this owner; (4) Show benefits assessed in proportion to amount the land bears to the 40-acre tract against which original viewers assessed benefits. For example, Mr. A owns 20 acres out of 40;

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then one-half of benefits assessed against 40 acres will be assessed against A's 20 acres.

"Little River Drainage District, a Circuit Court organization, is already making its books up in the above form, and while it places a greater burden on the person making up the books, it enables the Collector to give a much better and more efficient service.

"Our County Court and County Clerk feel that we should have your official interpretation of this law before changing the method of making up the books in County Court Drainage Districts."

Section 243.350, RSMo 1949, was not amended by the act of the legislature, Laws of Missouri 1953, page 538. Said section was repealed by Senate Bill 44, and a new section relating to the same subject matter, to be known as Section 243.350, was enacted in lieu thereof. The new section, as enacted, now appears under the same number in 1955 Cumulative Supplement, at pages 507, 8.

The subject matter of said new section, as did the repealed section, relates to the apportionment of the maintenance tax and the annual installment tax of drainage districts organized in county courts in this state in proportion to the benefits assessed. Said new Section 243.350, as it likewise reads at the page citation in said Cumulative Supplement, reads as follows:

"Section 243.350. Apportionment of annual installments - drainage tax book, form - taxes due, when. - 1. Each year the county clerk shall apportion the amount of the annual installment, or the aggregate of the installments which the court has provided shall become due and payable in that year and the maintenance taxes, if any, against the land and other property in the drainage district in proportion to the benefits assessed.

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"2. The said annual installment and maintenance taxes when so apportioned shall be extended by the clerk in a well-bound book which shall be designated and endorsed 'Drainage Tax Book of Drainage District Number of County, or Township of County, Missouri, for the year 19. . .', which endorsement shall also be written or printed at the top of each page. There shall be set out in properly ruled columns of said book the following:

"(1) The names of the present owners of said land and other property so far as now known;

"(2) Description of the land and other property;

"(3) Amount of said installment or installments of tax levied on the corresponding tract of land or other property;

"(4) Amount of maintenance tax, if any, levied against said tract of land or other property;

"(5) A blank column in which the collector shall record the several amounts as collected by him;

"(6) A blank column in which the collector shall record the date of payment of the different sums;

"(7) A blank column in which the collector shall record the names of the person or persons paying the several amounts, if other than the person whose name appears in column one (1) hereof;

"3. The county clerk shall prepare and deliver the said drainage tax book to the collector of the revenue of the county, or

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township, not later than October 31 of each year in which the installment and maintenance taxes, if any, are due and payable, and the said taxes shall become due and be collected during said year at the same time that state and county taxes are due and collected."

Attention is directed in the request to the provisions of subsection 2 in both the old section and the new one, respecting the entries to be made in the drainage tax books when such taxes are extended therein by the clerk, in regard to the form of such entries.

The old statute provided that there should be set out in the tax books the names of the owners of the land assessed with benefits and other property as they appeared in the viewers' report as confirmed. Subsection 2 of said 243.350, the new section, Laws of Missouri 1953, page 538, and in the Cumulative Supplement 1955, pages 507, 508, states that the names of the present owners of said land and other property so far as now known shall be included in such tax books. That change in the method identifying the names of owners of land and other property, as provided in subsection 1 of the new section, 243.350, marks the principal difference between the old and the new sections. There is also noted a minor change in the terms of subsection (7) in the new section in regard to the record entry of the name or names of the person or persons paying the several amounts of taxes, if other than the person whose name appears in column (1). Otherwise, the sections are identical.

We believe the terms of subsection 2 of Section 243.350, Laws of Missouri 1953, pages 538, 539, must be followed in making up the tax books of a county court drainage district in all respects and especially in regard to:

" * * *

"(1) The names of the present owners of said land and other property so far as now known;

"(2) Description of the land and other property;

"(3) Amount of said installment or in-

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stallments of tax levied on the corresponding tract of land or other property;

"(4) Amount of maintenance tax, if any, levied against said tract of land or other property; * * *."

That section, in providing the method and manner in which tax books of such a drainage district shall be made up and the entries as set out in subsection 2 thereof be made therein does so in order that it may be readily determined by the collector of revenue of the county who are the present owners of the land or other property, so far as now known, describing the land and other property so that not only will it be known what land and how much land or other property any person owns out of the described tract but also the amount of such installment or installments of tax that is levied on the corresponding tract of land or other property (that he owns). The section provides, also, that the amount of maintenance tax, if any, levied against said tract of land or other property be entered in the tax books so that any person who owns all or a part of a described tract of land or other property will know definitely what is required by the levy and the entries as extended in the drainage district tax books to be paid by such owner, and so that the collector of revenue may ascertain from the said district tax books when such tax books are delivered to him by the county clerk on or before October 31 of each year, the amount of taxes, the land owned by him, whether the whole amount levied against all of a described tract owned by him as a tract of forty acres or less, or government subdivisions of sections or other surveys. The land owned by any person who is the present owner should be separately described and separately charged with drainage taxes. For example, if a person is named in the tax books of a county court drainage district as the owner of twenty-five acres out of a forty acre tract he would be required to pay only his share of the installments of the drainage tax and his share of the maintenance tax, if any, percentage-wise, on the amount of acreage he presently owns out of the forty acres or any other amount of described land or other property; and he should be so named in the said drainage district tax books and the land he owns should be so definitely described and charged to show how much taxes he is required to pay.

It is clear that in a proceeding to collect county court drainage district assessment taxes, either annual installment taxes or maintenance taxes, levied against described land or

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other property in the district, the collector of revenue could proceed against the owner for only the amount of taxes levied against his land or other property which he actually owned in such sum as he actually owes. The facts constituting the levy and assessment of the correct amount of taxes against his property and accurately described land he owns should, in detail, be set out in the said tax books. This is necessary in order for the collector to determine who is actually responsible for paying the taxes on any tract of land described as a forty acre tract or other description, and who has paid such taxes on any forty acre tract if several persons each own a portion of said land and the facts were shown how the taxes were apportioned, which could not be determined except as set out according to the described ownership of each person owning a portion of any described tract. It appears clear that in county court drainage districts the statutes of this state provide that the benefits and damages to land or other property in the district must be assessed on the basis of tracts, and if a forty acre tract is owned, as such, all land in each forty acre tract and described as the property of any person, such person must bear his proportionate share of the tax levied against such tract, that is, if there are forty persons owning each an acre in said forty acre tract each would be liable for a one-fortieth of the tax assessed against the whole tract, and the various portions of land in such tract would be liable to pay that portion of the tax according to the amount or portion of land such person owns.

The provisions of the sections in Chapter 242, RSMo 1949, relating to drainage districts organized in the circuit court, and in Chapter 243, RSMo 1949, relating to such districts organized in the county court, are distinct and separate plans. The provisions in the various sections of said Chapter 242 relating to circuit court districts appear to be more complete and comprehensive in procedure in regard to the maintenance of such districts than the sections of the statute in Chapter 243 relating to county court drainage districts appear to be. In circuit court drainage districts Section 242.490 is applicable only to maintenance tax levied after the original assessment thereof has been paid and discharged, and that thereafter it is only desired and necessary to levy and collect such maintenance tax, the board of supervisors of such circuit court drainage district may, by resolution, provide that in the tax books containing the maintenance tax it shall be sufficient if the several governmental lots, forty acre tracts, or other subdivisions of land as they appear in the decree of the circuit

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court organizing such districts, be accurately described, and described together, if contiguous, according to each ownership, and the name of the owners thereof as they may appear in the deed records may be used in such tax books of a circuit court drainage district.

In county court drainage districts organized and maintained under the terms of the section amended in Chapter 243, Section 243.350, Laws of Missouri 1953, supra, applies to both the annual installment and the maintenance taxes, if any, levied for each year. Such Section 243.350, as so amended, provides the exclusive procedure to be followed and entries to be made in making up the tax books of a county court drainage district as hereinabove set out in detail. Neither does that section nor any other section of said Chapter 243 have any provision or requirement permitting the consolidation together of separate tracts of land, even if contiguous, to permit such tracts to be described together. Said Section 243.350, as amended, provides that all lands in such county court drainage districts, in levying and assessment of installment taxes and maintenance taxes, if any, thereon must be described according to the separate ownership therein of each individual owning any portion, and what portion he owns, in such tract, whether it be a forty acre tract or other description of land. The section also provides that in making up the tax books of such county court drainage district the entries in the tax books shall show the amount of tax owing by any person on the land described as being owned by him. The statutes of this state would have to provide the authority to permit drainage districts organized by county courts to exercise the authority to proceed under the terms of said Section 242.490 with respect to describing tracts of land, together, if contiguous, or in any other respect, before it could be done, under the terms of said Section 242.490. No such authority has been prescribed by the General Assembly for drainage districts organized under county courts to so proceed.

CONCLUSION

Considering the premises, it is the opinion of this office that in making up the tax books of a drainage district organized in the county court of a county in Missouri, the entries in such tax books should be made therein by the county clerk

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of such county as are directed in subsection 2 of Section 243.350, Laws of Missouri 1953, pages 538, 539, and as also set out in this opinion.

The foregoing opinion, which I hereby approve, was prepared by my assistant, George W. Crowley.

Very truly yours

John M. Dalton
Attorney General

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