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TAXATION - DELINQUENCY STATUTE - CONSTITUTIONALITY OF PROVISION REMITTING BACK TAXES

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TAXATION — DELINQUENCY STATUTE — CONSTITUTIONALITY OF PROVISION REMITTING BACK TAXES — Mandamus proceedings were begun to compel a county auditor to accept four-fifths of the taxes as originally assessed on certain land in full payment and discharge of those taxes for the years 1929 and 1930, in accord with the tax remission provision of Minnesota Laws 1933, c. 414, sec. 1. *Held*, that allowing discharge of past taxes during the redemp-

tion period by payment of a fraction of those originally assessed was contrary to the uniformity clause of the state constitution as an unreasonable and arbitrary classification, since it resulted in allowing a lower tax rate to delinquent taxpayers than was applied to those who paid their obligations promptly, without regard to their ability to pay. *State ex rel. Matteson v. Luecke*, (Minn. 1935) 260 N. W. 206.

Delinquency in the payment of taxes has increased with alarming rapidity in the past several years, seriously curtailing state and local revenues.¹ The customary measures of adding interest and penalties to compel prompt payment, and of selling the land after a certain period, have proved ineffective in the face of accruals over a long period of back taxes, coupled with the collapse in the market value of realty.² As a result, the recent legislative tendency has been toward lightening the burden of the delinquent taxpayer, both for the purpose of aiding those who have been unable to pay, and also for the purpose of keeping the land on the tax rolls and productive of revenue, rather than allowing it to revert to the state.³ Laws have been enacted remitting penalties and interest on delinquent taxes, and such laws have been generally held not to violate the state uniformity clauses. These clauses are deemed to require uniformity as to the principal of the taxes only, and to allow legislative discretion as to the remission of penalties. It is said that taxes are not debts, and hence the interest charges themselves are mere penalties.⁴ Some difficulty has been met, however, under state constitutional clauses prohibiting "remitting fines, penalties and forfeitures by special laws,"⁵ or prohibiting legislation which relieves or remits any "indebtedness, liability or obligation to the state."⁶ Other statutes have been adopted which extend the redemption periods for paying off tax liens, after the land has gone to the regular tax sale; these have been widely upheld.⁷ Another device is to permit sale by the state, after the redemption period has expired, for an

¹ For a good general discussion of this situation see Simpson, "Tax Delinquency: Economic Aspects," 28 ILL. L. REV. 147 (1933).

² Simpson, "Tax Delinquency: Economic Aspects," 28 ILL. L. REV. 147 at 152 (1933).

³ See Simpson, "Tax Delinquency: Economic Aspects," 28 ILL. L. REV. 147 at 152 (1933). Still another legislative reaction, found in many of the states where the real estate tax burden has been particularly onerous, has been toward various methods of tax limitation. For a collection of the various viewpoints on this method see PROPERTY TAX LIMITATION LAWS, edited by LEET and PAIGE (1934).

⁴ *State v. Coos County*, 115 Ore. 300, 237 Pac. 678 (1925); *Jones v. Williams*, 121 Texas 94, 45 S. W. (2d) 130 (1931); *State ex rel. Crutcher v. Koeln*, 332 Mo. 1229, 61 S. W. (2d) 750 (1933). *Contra*, *Sanderson v. Bateman*, 78 Mont. 235, 253 Pac. 1100 (1927); *State ex rel. Kain v. Fischl*, 94 Mont. 92, 20 Pac. (2d) 1057 (1933). See also comment, 18 MINN. L. REV. 849 (1934).

⁵ See *Jones v. Williams*, 121 Tex. 94, 45 S. W. (2d) 130 (1931), which upheld the legislation as a general act, hence not under this provision.

⁶ *State ex rel. Crutcher v. Koeln*, 332 Mo. 1229, 61 S. W. (2d) 750 (1933). The court here held that this provision applied only to an obligation which had become fixed, and that a penalty is not such a fixed obligation.

⁷ See comment, 18 MINN. L. REV. 849 at 850 (1934); *State ex rel. Bd. of Ed'n v. Erickson*, 190 Minn. 216, 251 N. W. 519 (1933); *State ex rel. Dowling v. Butts*, 111 Fla. 630, 149 So. 746 (1933). For example, see Mich. Pub. Acts 1933, Act No. 126, p. 179, as amended by Act 11, Extra Session 1934.

amount smaller than the sum of accrued taxes; this also has been held valid, at least where there is a reasonable minimum set,⁸ although some states do not permit the original landowner or his agent to bid it in in such event.⁹ Minnesota has added to this somewhat by allowing discharge of taxes for years subsequent to those for which the land was being sold at the same percentage as the price paid is of the taxes for which the sale was had.¹⁰ But the statute in the principal case endeavored to go still further, and allow actual discharge of delinquent taxes for certain years, after the lien was taken by the state at the regular annual tax sale but before the following redemption period had expired, by a payment of a certain percentage of the accrued taxes; 60 per cent for 1927 and 1928, if the taxes for all previous years had been paid, and 80 per cent for 1929 and 1930, if the taxes for 1928 and previous years had been paid on schedule.¹¹ This statute, the court held, would have the effect of encouraging delinquency, by favoring those who had neglected to pay in expectation of just such legislation, as against those who had paid their taxes promptly.¹² Such a classification appears unreasonable and arbitrary under the usual interpretations of the state tax uniformity clauses, and perhaps even under the equal protection clause of the federal Constitution; it would scarcely be advocated except for the pressing need to relieve real property from the burden of delinquent taxes.¹³ The principal case contains the suggestion, however, that this purpose might be accomplished without such unreasonable classification if the scaling down of delinquent taxes, though during the redemption period, was based upon such considerations as the owner's ability to pay and the value of the land.¹⁴ It is submitted that such a method, based on what can actually be realized out of the land after such has been sent to tax sale and failed to bring enough to cover the taxes, after due consideration of the ability of the owner to pay and the fair market value of the land at the time, is fairer to those who have paid their taxes promptly, as not giving a windfall to those who have held off merely to secure tax remission. At the same time, such a plan should accomplish the purpose of gathering in as much of the back taxes as can be collected, and getting the property back on the tax rolls.¹⁵

J. E. G.

⁸ *State v. Butler*, 89 Minn. 220, 94 N. W. 688 (1903); *Woodrough v. Douglas County*, 71 Neb. 354, 98 N. W. 1092 (1904); *State rel. Dowling v. Butts*, 111 Fla. 630, 149 So. 746 (1933). Holding that there must be some minimum set, to prevent sale for a merely nominal price, *City of Beatrice v. Wright*, 72 Neb. 689, 101 N. W. 1039 (1904).

⁹ *Ranger Realty Co. v. Miller*, 102 Fla. 378 at 384, 136 So. 546 (1931). See also comment, 18 MINN. L. REV. 849 at 853 (1934).

¹⁰ Minn. Laws 1933, c. 414, sec. 1.

¹¹ Minn. Laws 1933, c. 414, sec. 1; *State ex rel. Matteson v. Luecke*, (Minn. 1935) 260 N. W. 206 at 207.

¹² *State ex rel. Matteson v. Luecke*, (Minn. 1935) 260 N. W. 206 at 208. But *cf.* the dissenting opinion, 260 N. W. 206 at 209.

¹³ This is the main ground urged in the dissent to the principal case, *State ex rel. Matteson v. Luecke*, (Minn. 1935) 260 N. W. 206 at 209. See Simpson, "Tax Delinquency: Economic Aspects," 28 ILL. L. REV. 147 (1933).

¹⁴ *State ex rel. Matteson v. Luecke*, (Minn. 1935) 260 N. W. 206 at 209.

¹⁵ A measure of this sort was introduced in the last session of the Michigan Legislature but failed of enactment. See House Bill 498, 1935 session Michigan Legislature.