THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

October 26, 1951

Hon. Robert S. Calvert
Comptroller of Public Accounts
Austin, Texas

Opinion No. V-1332.

Re: Ad valorem personal property tax suits.

Dear Mr. Calvert:

You submit for the opinion of this office the questions contained in the letter addressed to you by Hon. Ralph W. Kinsey, delinquent tax attorney of Dawson County. These questions are as follows:

> 1. In a personal property suit filed in the Justice of Peace Court would the appearance date be the first Monday after 10 days or the first Monday after 20 days from date of service?
>
> 2. Since in most personal property suits it is difficult or impossible to determine what type of property has been taxed, unless the rendition or assessment sheets are available because the tax rolls show the property under the caption personal or miscellaneous without other description, is it correct and permissible to list the entire list as shown in Article 7328.1 Section 2 in the citation and petition?
>
> 3. Do the provisions of Section 2, Article 7345b, V.C.S., requiring the impleading or notification of other taxing units having delinquent ad valorem tax claims against the property involved in the suit, apply to personal property tax suits?

Your second question has heretofore been answered in part by this office in Opinion V-1120 (1950), a copy of which is enclosed for your information. In that opinion it was held that personal property tax suits need only describe the property in general terms, but this does not mean that the list set out in Article 7328.1, V.C.S., may be used, as suggested in your letter, in each citation, without regard to the kind of personal property upon which the tax is delinquent in a particular case. The description in the citation should be sufficiently definite to enable the defendant to determine whether the assessment is against property owned by him.

We shall answer your first and third questions in their order.

The provisions of Rule 117a promulgated by the Supreme Court applicable to delinquent tax suits apply with equal force to suits to collect delinquent taxes on personal property as they do to the collection of delinquent taxes on real property.

Subdivision 6 of Rule 117a provides, in part, as follows:

> "The form of citation for personal service shall be sufficient if it is in substantially the following form, with proper changes to make the same applicable to personal property, where necessary, and if the suit includes or is for the recovery of taxes assessed on personal property, a general description of such personal property shall be sufficient; . . ." (Emphasis added.)

The rule then proceeds to prescribe a form of citation, and while this form is referable to the district court, we perceive no valid reason why it could not appropriately be adapted for use in the justice court. Substitution of the justice court for the district court is one of the "proper changes to make the same applicable to personal property," where the suit for collection of delinquent personal property taxes is brought in the justice court.

The citation requires the defendant to appear and answer at or before 10:00 o'clock a.m. of the Monday next after the expiration of 20 days from the date of service of citation. This conflicts with Rule 534 governing citation generally in suits in the justice court in that Rule 534 requires the defendant to appear and answer the plaintiff's suit on the Monday next after the expiration of 10 days from the date of service. We are of the opinion, however, that the effect of Rule 117a, which is applicable specifically to all delinquent tax suits, constitutes an exception to Rule 534 governing citations generally in suits filed in the justice court. Subdivision 1 of Rule 117a provides that process by personal service in tax suits shall be "served and returned and otherwise regulated by the provisions of Rules 99 to 107, inclusive." Rule 101 requires that the defendant be commanded to appear and answer the plaintiff's petition "at or before 10 o'clock a.m. of the Monday next after the expiration of 20 days from the date of service." It is our opinion, therefore, that Subdivision 6 of Rule 117a is applicable to suits filed for delinquent taxes on personal property in the justice court and that the defendant should be cited to appear and answer as therein provided, namely, at or before 10:00 o'clock a.m. of the Monday next after the expiration of 20 days from the date of service of the citation.

In answer to your third question, we think it is apparent from the provisions of Article 7345b, V.C.S., that it was the intention of the Legislature that this article apply exclusively to suits for the collection of delinquent taxes against real property and not to suits for the collection of delinquent taxes on personal property. We do not mean to say that taxes owing by a delinquent taxpayer on personal property may not be included in the same suit for delinquent taxes owing by him on his real property, but the provisions of Article 7345b relating to the impleading or notification of other taxing units apply only to suits for delinquent taxes on real property. Therefore, in answer to your third question, you are advised that the county attorney or other attorney employed by the county under contract for the collection of delinquent taxes should disregard the provisions of Article 7345b in filing suits for delinquent taxes on personal property, regardless of whether the suit is filed in district court, county court, or justice court.

SUMMARY

Citations in personal property tax suits need only describe the property in general terms. The description in the citation should be sufficiently definite to enable the defendant to determine whether the assessment is against property owned by him. Rule 117a, Tex. Rules Civ. Proc.; Att'y Gen. Op. V-1120 (1950).

Rule 117a of the Rules of Civil Procedure governs as to citations in delinquent tax suits on personal property filed in justice court, requiring the defendant to appear and answer at or before 10:00 o'clock a.m. of the Monday next after the expiration of 20 days from the date of service, and not as provided by Rule 534 governing citations generally in suits in justice court.

Article 7345b, V.C.S., does not apply to suits for the collection of delinquent taxes on personal property, but applies only to suits for the collection of taxes on real property.

APPROVED:

W. V. Geppert
Taxation Division

Everett Hutchinson
Executive Assistant

Charles D. Mathews
First Assistant

Yours very truly,

PRICE DANIEL

By L. P. Lollar
L. P. Lollar
Assistant

LPL/mwb
Encl.