

TAXATION:  
COUNTY COURT:  
ASSESSOR:

Authority of county court to  
adjust assessment on real estate.

November 13, 1950

~~12/5/50~~ 12/5/50  
FILED  
57

Honorable G. Logan Marr  
Prosecuting Attorney  
Morgan County  
Versailles, Missouri

Dear Sir:

This will acknowledge receipt of your request for an official opinion. For sake of brevity, we will restate your request:

"The Assembly of God church organization owns a lake site in Morgan County, Missouri. On said site are the following buildings: tabernacle, chapel, church, well and residence for caretaker. Also there are many private dwellings or residences located on said site. The Attorney General ruled the whole project taxable as no plat had been filed showing a division of property. The county assessor and county court just recently learned that said property had been subdivided and that the property under private ownership is now separated from that owned by the church organization by legal descriptions as shown by a plat recorded on the 28th day of February, 1950, in Morgan County, Missouri. The assessor has made up his books and same are nearly completed by the county clerk and practically ready to turn over to the collector for the collection of 1950 taxes. Can this be considered as an erroneous assessment that the county court would be required to adjust under Section 12214-1939."

Following your original request for an opinion, we requested additional facts and made inquiry as to what opinions you were referring to in your original request. You informed us that one was rendered to Honorable William S. Thompson, Prosecuting Attorney of Mercer County, Missouri, under date of October 17, 1946, which opinion holds that real property owned by a religious organization is not exempt from taxation when said property is not used exclusively for religious purposes. The other opinion was rendered to you under date of June 4, 1947, which held that in assessing real property, the

Honorable G. Logan Marr

assessor must base the assessment on the true value of said property. So, apparently this department has never specifically ruled on the ownership of all the property referred to in your request. That is a question of fact and since you do not inquire about that, we need not pass upon that question at this time.

Section 12214, R. S. Mo. 1939, referred to in your request, relates to registered voters under the election laws of this state and has nothing whatsoever to do with taxation. Apparently you meant to refer to Section 11214, R. S. Mo. 1939, which was repealed by the 65th General Assembly during a revision session and did not as of the date of making this request have said revision bills.

Section 11000.9, Mo. R.S.A., provides that books for assessment purposes shall be turned over to the county assessor at least 60 days prior to January 1 of each year and between January 1 and June 1 of each year, county assessor shall make a list of all real property in the county. For the sake of this opinion, we shall assume that the county assessor complied with the foregoing provision in assessing said real property since there seems to be no such question raised by your request.

Section 11000.35, Mo. R.S.A., further provides that the assessor shall be furnished a real estate book and a personal assessment book. That he shall describe in said real estate book the record owner of said land in the county and describe same. Furthermore, the assessor is required to consolidate all lands owned by one person in a square or block into one tract, lot or call and said provision provides for a penalty if he fails to do so. Said statute further places the burden on the assessor, in compiling said real estate book, to procure the descriptions of land and names of owners from the land list book kept by the recorder of deeds and to carefully note and enter in proper places all changes and names of owners or descriptions of land since compiling the last real estate book.

Section 11000.43, Mo. R.S.A., provides that every person who thinks himself aggrieved by the assessment of his property may appeal to the board of equalization. Section 11001, Mo. R.S.A., requires the county board of equalization to meet on the second Monday of July of each year in such counties as Morgan County, which is a third class county, at which time said board shall have power and duty to hear complaints and to equalize the valuation of assessments upon all taxable real property. Section 11004, Mo. R.S.A., requires that the county board of equalization shall in a summary way determine the appeals from the valuation of property made by the assessor and shall correct and adjust assessments accordingly. Under Section

Honorable G. Logan Marr

11033.14, subsection 5, Mo. R.S.A., the Legislature has provided for an appeal from the county board of equalization to the State Tax Commission by any owner of real property, which provision authorizes said Commission to investigate all such appeals and correct any assessments which are shown to be unlawful, unfair, improper, arbitrary or capricious. We understand that by rule of said Commission that it has fixed September 30 of the taxing year as a final date for appealing to said Commission.

This department, on September 5, 1947, rendered an opinion to Honorable Roy A. Jones, Prosecuting Attorney of Johnson County, Missouri. In that opinion reference was made to Section 10940, R. S. Mo. 1939, which has been repealed. However, the 63rd General Assembly enacted in lieu thereof Section 4, page 1800, Laws of Missouri, 1945, which provision contains practically the same language as Section 10940, supra, prior to its repeal and requires that every person owning or holding real property on the first day of January, including all such property purchased on that day, shall be liable for taxes thereon for the same calendar year. Said opinion held that any person owning property on that date who subsequently transfers same is not relieved from liability for taxes thereon even though said tax is not yet due and payable at the time of the transfer of said property.

In United States v. Certain Land Situate in City of St. Louis, Mo., et al., 86 F. Supp. 297, l.c. 302,303, the United States District Court of Missouri held that a lien for taxes on land attaches as of January 1, and furthermore that after said lien attached on January 1, there can be no proration of the tax; furthermore, in this case, the Court held that the United State of America in condemning said land in this state upon which a tax lien existed fixes a lien upon the award in the registry of the Court for such taxes. In so holding, the Court said:

"Prior to the new statutes some of the Missouri courts have described the tax lien which was in existence from the assessment date until the amount of the tax was definitely determinable by assessment and levy as being an inchoate lien. It is believed the legislature used 'fixed' prior to 'encumbrance' in the new statute, as in the Helvering case above, meaning the opposite of 'inchoate', and as indicating that an inchoate lien or encumbrance existed prior to the time that the amount of the taxes was definitely determinable by assessment and levy. When we consider the Missouri decisions dealing with tax liens; the definitions of the words 'accrue'

Honorable G. Logan Marr

and 'fixed'; together with Secs. 4 and 7, pp. 1800-1801, and 7, p. 1861, of the Missouri Laws of 1945, emphasis is added to the belief that the legislature meant by the new sections that an inchoate lien for taxes commenced on January 1, 1946, for 1946 taxes, and that said lien was a present enforceable demand which, under the new clause, became a fixed or settled lien in amount when the assessment and levies were determined."

\* \* \* \* \*

"With respect to the second problem, when the lien for the tax attached on January 1, 1946, the courts have held there could not thereafter be any proration of the taxes. *St. Louis Provident Association v. Gruner*, supra, and *Collector of Revenue within and for the City of St. Louis, Missouri v. Ford Motor Company*, supra."

In *Long v. City of Independence*, 229 S.W. (2d) 686, 1.c. 690, the court, in holding that a lien for state and county taxes becomes fixed as of January 1, said:

"Sec. 10942.3 provides: 'Every person owning or holding real property or tangible personal property on the first day of January \* \* \* shall be liable for taxes thereon during the same calendar year.' Here the date is used, not as an assessment date, but as a date for fixing 'liability for taxes,' in amounts thereafter to be determined. Appellants here seek (and some courts have been so inclined) to endow the lien-attaching date with powers which it does not possess. The lien for state and county taxes is inchoate and becomes 'fixed in amount by relation back to that date after the assessment and levy was completed.' (Cases cited.)"

A primary rule of construction of statutes is to ascertain and give effect to the lawmaker's intent. See *Donnelly v. Keitel*, 193 S.W. (2d) 577, 354 Mo. 1138. Appellate courts in this state have repeatedly announced the following principle of law: That taxation is the rule and exemptions therefrom the exception, so that the burden is upon the one claiming exemption to bring himself clearly within the provisions of the statute providing for exemption and that such taxing

Honorable G. Logan Marr

statutes must be strictly construed. See State ex rel. St. Louis Young Men's Christian Association v. Gehner, 11 S.W. (2d) 30; also Adelpia Lodge No. 38, K.P., v. Crawford, 57 S.W. 1020, 157 Mo. 356.

In the instant case no plat showing a division of property was on file in the county as of January 1, 1950, the date under the law when the county assessor shall commence assessing property in the county, and on such date, such tax became a lien against said property even though the actual amount has not been determined as of that date. Therefore, the assessment for this year, 1950, is valid and the county court is unauthorized under the law to consider this assessment an erroneous assessment and adjust same.

#### CONCLUSION

It is the opinion of this department that the assessment made by the county assessor against said property for 1950 is valid and cannot be considered at this late date by the county court as an erroneous assessment and adjust same.

Respectfully submitted,

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

APPROVED:

  
\_\_\_\_\_  
J. E. TAYLOR  
Attorney General

ARR:VLM