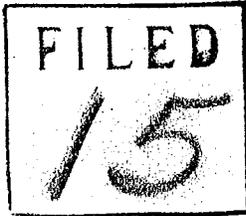


ASSESSMENT OF PERSONAL  
PROPERTY IN TOWNSHIP  
ORGANIZATION COUNTIES:

In township organization counties personal property should be assessed and taxed in the township where the owner resides, even though the property is physically located in another township; if the property is partnership property it should be assessed against the partnership at the place where located.



July 28, 1954

Honorable John R. Caslavka  
Prosecuting Attorney  
Dade County  
Greenfield, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"The Honorable County Court of Dade County, Missouri, has asked you to write this office relative to the assessing and payment of personal property taxes in Dade County, Missouri. The problem is as follows:

"A certain individual owns certain personal property in North township, Dade County, Missouri. He lives in Center Township, Dade County, Missouri, and has refused to allow this personal property to be assessed in Center Township, alleging that the situs of the property is in North Township and they should be assessed in North Township and paid to that township collector instead of in the township where he actually resides. This man also states that this personal property is owned by him and another man in partnership, but his alleged partner was until the 1st day of June, 1954, living in the State of New Mexico and prior to that time had resided in Center Township also. Dade County is under township organization.

"This office would appreciate your opinion as to where the property should be assessed, where the taxes should be paid, and the proper division of the taxes.

"Also assuming for the sake of argument that the property is partnership property and that one of the partners did reside in North Township and the other partner in Center Township, should there be a division of the partnership property so that a part of the taxes

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would be payable in North Township and the balance in Center Township?"

On March 10, 1950, this department rendered an opinion ( a copy of which is enclosed) to Honorable W. V. Mayse, Prosecuting Attorney of Harrison County, in which we held that personal property, in a county under township organization, should be assessed in the township in which the owner of such property resides, even though the property itself be located in another township. Thus, if a man lives in Center Township in Dade County and his personal property is located in North Township in Dade County, the property should be assessed in Center Township, and the tax on it should be paid there.

You state that the man living in Center Township claims that the personal property located in North Township is partnership property, and that the other partner lives outside the state of Missouri. You inquire regarding the assessment of this property in the above situation. As we stated above, we believe the law to be that personal property is to be taxed at the domicile of the owner in the situation first stated by you. However, we believe the law to be different in a situation where the personal property is partnership property, in which situation it appears that the property is to be taxed against the partnership in the place where it is located. In this regard we direct attention to the case of School District v. Bowman, 178 Mo. 654. The court there stated, at l.c. 657-658 of its opinion:

"This is an action by the School District of Plattsburg, Clinton county, a body politic under article 2 of chapter 154, Revised Statutes 1899, against the defendant Bowman, on his bond as assessor of taxes for Clinton county, and against the other defendants as the sureties on his bond, to collect, as damages, certain taxes for the year 1900, which it is alleged were lost to the plaintiff, by the act of the assessor in assessing certain tangible personal property, consisting principally of cattle, which was owned by several different partnerships, to the partnerships and in the school districts in the county in which the partnerships respectively did business, and in which the cattle actually were when assessed, instead of assessing to each of the partners his proportionate interest in the partnership property, in the school districts in which each of said partners resided.\*

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"All of the property has been assessed to the respective partnerships. The only question is, which school district is entitled to the tax; that in which the partnership does business and in which the property is actually located, or that in which the partners reside; and if the partners reside in different school districts, whether the proportionate interest of each partner in the partnership property should be assessed to each partner in the school district in which each resides?"

"The circuit court entered judgment for the defendants and the plaintiff appealed."

In affirming the holding of the trial court, the Missouri Supreme Court said in part, at l.c. 660-661 of its opinion:

"The proposition as to the assessment of partnership property is one of first impression in this court. The plaintiff contends that section 9121, Revised Statutes 1899, requires partnership property to be assessed against the members in proportion to their interest in the firm, and in the county or counties in which such members reside. That section provides: 'All personal property, of whatsoever nature and character, situate in a county other than the one in which the owner resides, shall be assessed in the county where the owner resides; . . . and the owner, in listing, shall specifically state in what county, State or Territory it is situate or held.'

"This section undoubtedly changes the general and original rule, above pointed out, that tangible personal property is assessable and taxable where it is actually located, and makes it assessable where the owner resides. The courts have nothing to do with the wisdom of this change in the rule. The Legislature had power to so prescribe, and the courts must enforce the law.

"But this section does not attempt to change the other rule of law, that the firm, and not its members, is considered the owner of the property, for the purposes of taxation. In fact the Legislature of this State does not appear to have ever considered the question of the assessment and taxation of

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partnership property, and the statute being silent, the general rules of law must be enforced.

"The firm must, therefore, be regarded as the owner of tangible personal property, for the purposes of taxation. The firm being the owner, it follows, even under section 9121, Revised Statutes 1899, that the property must be assessed to the firm where it resides. But it is said that a firm can have no domicile. This is true except for the purpose of taxation, and for such purposes, its place of business is its domicile.

"It seems reasonably clear, however, that the Legislature did not have in mind partnership property when it enacted section 9121, and that that section is properly referable only to property owned by an individual. And this being true, the statute must be deemed to be silent as to the assessment and taxation of partnership property; and, therefore, the general rules of law pointed out must be held to obtain."

We are aware that in the above case the county unit involved is a school district, and that in the instant case it is a township in a township organization county. We believe, however, that the legal principles which we have stated above would be equally applicable in either situation.

In the Kentucky case of *Walter G. Hougland and Sons v. McCracken County Board of Supervisors*, 206 S.W.(2d) 961, the court at l.c. 953, stated:

"Section 132.220, sub.1, KRS, provides that taxable property shall be listed by the owner in the 'county where it is located.' Since the property of appellants does not remain physically in the state, it would ordinarily be taxable where the owner was domiciled. Appellants argue that the same rule with respect to individuals should apply to partnerships, and that the 'home' of the partnerships is where the partners intended and intend that it shall be. It is, of course, the general rule that in the case of an individual, where a legal domicile is established, it continues at that place until an intention to abandon it is shown. *Helm's Trustee v. Commonwealth*, 135 Ky. 392, 122 S.W. 196.

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"It is generally recognized, however, that the taxable situs of a partnership's personal property is at the place where it conducts its business. As stated in Cooley on Taxation, (2d) Sec. 473, page 1060:

"Partnership property is taxable as an entity at the domicile of the firm rather than at the residence of the several owners; and the domicile of a partnership, for the purpose of taxation, is at its place of business."

"The same rule is thus expressed in 51 Am. Jur., Taxation, Section 486:

"The interest of a partner in a partnership may be regarded as separate from his person for the purposes of taxation, and as a general rule, in the absence of a controlling statute to the contrary, it seems that such interest is regarded as having its situs at the place where the business of the partnership is carried on."

"It has been decided in this state that partnership property should be assessed as a whole against the partnership at the place where it conducts its business rather than at the places where the partners reside. City of Louisville v. Tatum, Embry & Co., 111 Ky. 747, 64 S.W. 836.

"More recently this principle was recognized in Commonwealth v. Madden's Ex'r, 265 Ky. 684, 97 S.W. 2d. 561, 107 A.L.R. 1379, where we held that the assets of a partnership 'localized' in New York were not taxable in Kentucky where one of the partners resided."

We would also direct attention to Section 110, page 221, of Vol. 84, C.J.S., which reads:

"It is perfectly competent for the state to lay a tax on personal property found within its borders, notwithstanding the owner, a nonresident, is also liable to taxation on the same property in the state of his domicile, and the fact that the property may have escaped taxation in the foreign state of domicile has no bearing on its taxability in the state of the forum."

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In view of the above, we believe that in the situation stated by you, to-wit, personal property located in North Township of Dade County, owned in partnership by a partner living in Center Township in the same county, and by another person living outside of the state, the personal property should be assessed and taxes paid in North Township, and that the assessment should be against the partnership.

Finally, you suggest a situation where instead of living out of the state, the second partner lives in North Township. For the reasons stated above, we believe that the assessment should be in North Township against the partnership and that the taxes should be paid in North Township.

#### CONCLUSION

It is the opinion of this department that personal property located in North Township of Dade County, which property is owned by a person living in Center Township of Dade County, should be assessed and taxes thereon paid in Center Township; that if this property is partnership property it should be assessed against the partnership in North Township and taxes thereon paid in North Township, regardless of where the partners or any of them may live.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Very truly yours,

JOHN M. DALTON  
Attorney General

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