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TAXATION: The County Board of Equalization has authority to assess property omitted from assessor's books for current year only; and any attempted assessment for previous years is void.

October 27, 1933.

10-28



Hon. Orin J. Adams,
Prosecuting Attorney,
Caldwell County,
Kingston, Missouri.

Dear Sir:

This department is in receipt of your request for an opinion dated October 14, 1933 upon the following state of facts:

"Your opinion is respectfully requested on the following statement of facts:

One Amos Clark, a resident of Hamilton, Missouri died in January, 1933, seized and possessed of a town lot in Hamilton, and \$3500.00 in money, which had been on time deposit in a bank, for more than five years prior to his death. The personal property had never been assessed, and the fact that the decedent had this amount of money was unknown to the assessor, with the result that no assessment list was made covering the personal property at any time. The County Board of Equalization, at its meeting in April, 1933 ordered the said amount of \$3500.00 assessed for the years 1928, 1929, 1930, 1931 and 1932, as 'omitted property'.

The question has been raised by the Administrator of the estate challenging the authority of the Board to assess the property, save and except for the year 1932, and I would respectfully request your opinion on the question."

I.

The County Board of Equalization has authority to assess property omitted from assessor's books for current year only; and any attempted assessment for previous years is void.

Section 9816, R.S. Mo. 1929 provides in part as follows:

"The county board of equalization, at its annual meeting in each year, in addition to the powers now conferred by law, shall have authority to assess and equalize the value of any property that may have been omitted from the assessor's books then under examination by said board, and in case said board shall add any property, real or personal, to said assessor's books, it shall cause notice in writing to be served upon the owner of such property, stating the kind and class of property and the value fixed thereon by said board, and naming the time and place, not less than five days thereafter, when and where such owner may appear before said board and show cause why said assessment should not be made."

61 Corpus Juris, p. 803 states the general rule applicable here:

"Authority to assess property because of its omission from taxation in previous years must be derived from some statute, and, in the absence of a statutory provision conferring it, such an extension of the general power to add omitted property is not recognized. The provisions of some of the statutes empowering officers or boards to add omitted property to the assessment list have been held not to be restricted in operation to the taxes of the current year but to authorize the assessment of back taxes for former years on such property, in like manner and to the same extent as additions for the current year are authorized, subject, however, to such further regulations and limitations as may be specifically declared and made applicable to such addition of back assessments. Under other statutes, however, it has been held that the power of addition of any, or of particular property by the designated officer or board is limited to property omitted for the current year, without any power to add for omissions prior thereto; ****"

Oct. 27, 1933.

In the case of State ex rel. Western Tie & Timber Co. v. Pulliam, et al, (Sup. Ct. Mo. 1911), 135 S.W. 443, respondents, composing the County Board of Equalization, met in September 1905, and took an oath that they would "fairly and impartially adjust the merchants' and manufacturers' statement book of all the merchants and manufacturers within Ripley County, Missouri as assessed by the County Assessor June 1, 1905? Among other proceedings was the following: "Added by the board of equalization: Western Tie & Timber Co. for 1904, tram R.R. \$12,000.00; Western Tie & Timber Co. for 1905, tram R.R. \$25,000.00." The Court held:

"The attempted addition of property for 1904 was invalid for the reason that neither in the act of 1903, nor elsewhere, is there power given to the board of equalization to add for assessment property omitted for any year prior to the then current year. The act of 1903 provides that the board shall have power to 'assess and equalize the value of any property that may have been omitted from the assessor's books then under examination by said board.' This plainly refers to the books for the current year only, as they are the only ones 'under examination by said board.'"

Therefore, it is the opinion of this department that the County Board of Equalization had no authority to assess as omitted property, the personal property of Amos Clark for the years 1928, 1929, 1930 and 1931; however, the assessment of this property for the year 1932 was within the jurisdiction of the Board, and the assessment for that year was properly made.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General

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