

ASSESSOR'S FEES: Assessors are entitled to regular fees for additional assessments of income taxes when made under Sec. 10128, R.S.Mo. 1929.

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Sec 9806
10132 R.S. Mo. 1929-4

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December 29, 1933.

Honorable Forrest Smith,
State Auditor,
Jefferson City, Missouri.

Dear Mr. Smith:

This department acknowledges receipt of your letter of October 20, 1933 relating to fees of assessors for additional assessments of income taxes. We quote your letter, as follows:

"On October 11, 1933 you gave an opinion to Hon. Elliott M. Dampf, Prosecuting Attorney of Cole County, relative to compensation due County Assessor. As the questions asked you in that opinion did not fully cover the point of controversy, I would like to have an opinion from your department on the following questions.

Section 9806, page 359 of the 1931 Laws provides that the Assessor shall receive 35¢ each for assessment list taken by him and is entitled to 3¢ per line for entering the assessment on his Assessor's books. The Assessor in the course of his duties receives the income assessment list from the individual and enters from that list on the income assessment book, for which service he receives 35¢ for taking the list and 3¢ per line for entry. The Assessor's book is turned over to the County Clerk who extends the tax on the amount as shown on the book.

Section 10132 R.S. Mo. 1929 provides that my office shall have the right to examine the books of a corporation and to check all income assessment lists. In the course of my checking the income assessment lists, I find from the information contained on the list, or by comparing this list with the list that they have filed with the Federal Government, that the tax has not been computed correctly. I make the correction on the income tax list (the list on which the Assessor has already received 35¢ for taking) and certify the corrected tax to the Assessor, or in most cases I make the correction on the income tax book myself, of the additional tax the individual

should pay.

Will you please advise my office whether the Assessor is entitled to 35¢ for the corrected income tax list the same as if a new income tax list had been made out?

Your opinion of October 11, states that 'if it becomes necessary for a new assessment to be made, the Assessor is entitled to receive the same fee that he would have been entitled to had the return been an original one.'

The confusion has arisen over the words 'new assessment' as to whether new assessment means the changing of the list that had formerly been taken by the Assessor and for which he had already received 35¢, or whether it means the taking of an entirely new income list."

I.

Assessors are entitled to regular fees for additional assessments of income taxes when made under Section 10128, R.S. Mo. 1929.

This department has heretofore rendered two opinions bearing on this question - one to the Hon. W.A. Bassman, Assessor of Cole County, and the other to Hon. Elliott M. Dampf, Prosecuting Attorney of Cole County - both opinions holding that assessors are entitled to the fees in case of additional assessments, but apparently the opinions were based on different sections of the statutes.

Section 10128, R.S. Mo. 1929 is herewith quoted for convenience, as follows:

*****Whenever the assessor shall make an assessment on income for a calendar year against any taxpayer who has failed to file a return or an additional assessment against any taxpayer whose return is insufficient, and such assessment or additional assessment shall be made after the 15th day of April following such calendar year, or whenever the assessor shall make an assessment on account of income for any fiscal year against any taxpayer who has failed to file a return or an additional assessment against a taxpayer

whose return is insufficient, and such assessment or additional assessment shall be made after the 15th of the month following the filing of such return or the expiration of the time in which the return should have been filed if return was not filed, then in every such case the assessor shall send to the taxpayer, by registered mail, a copy of such assessment or additional assessment, but the failure of the taxpayer to receive such copy shall not in any way invalidate or affect such assessment or additional assessment."

Under this section it is made the duty of the assessor to make an assessment of any person "who has failed to file a return or an additional assessment against a taxpayer whose return is insufficient."

Sec. 9810, R.S. Mo., 1929, the pertinent part of which is as follows:

"In making the said assessment, and in all subsequent proceedings thereon, the assessor, county court, clerk of the county court and collector shall be governed by the same law as is now in force for the assessment and collection of taxes, and shall receive the same compensation as is now provided by law for similar duties"

entitles the assessor to the "same compensation as is now provided by law for similar duties".

Section 10133, R.S. Mo. 1929 relating to the compensation of assessors is as follows:

"Assessors and collectors shall be compensated in like manner and in like amounts as for the assessments of other taxes; *****"

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 In 1931 the Legislature amended the fees of assessors as set forth on page 359, Laws of Mo. 1931, the compensation varying according to the population of the counties. Said section is as follows:

"The compensation of each assessor shall be thirty-five cents per list in counties having a population not exceeding forty thousand, thirty cents per list in counties having a population of more than forty thousand, and not exceeding seventy thousand, and twenty-five cents per list in counties having a population in excess of seventy thousand inhabitants, and shall be allowed

a fee of three cents per entry for making real estate and personal assessment books, all the real estate and personal property assessed to one person to be counted as one name, one-half of which shall be paid out of the county treasury and the other half out of the state treasury: Provided, that nothing contained in this section shall be so construed as to allow any pay per name for the name set opposite each tract of land assessed in the numerical list. *****

In view of the plain wording of the statute making it the duty of the assessor under Sec. 10128 to make additional assessments, and the other statutes herein quoted stating what the compensation shall be, we hold that the assessor is entitled to his fees when he has complied with Sec. 10128, R.S. Mo. 1929.

II.

The Assessor is not entitled to fees for additional assessments made under Sec. 10132, R.S. Mo. 1929.

In the opinion heretofore rendered on this question, the writer held the same as set out in Point I of this opinion, but it appears that Ass't. Attorney General Hayes wrote an opinion on October 11, 1933 in which he incorporated Sec. 10132, R.S. Mo. 1929, same being as follows:

*****At any time within three years after any return shall have been filed the auditor shall have the right to examine, during the usual business hours, the business, records and books of any individual, corporation, joint stock company, joint stock association or partnership, and to issue a credit slip to any taxpayer, if more tax has been paid than legally due, which credit shall be taken as deduction of the succeeding tax or taxes based on incomes to the extent of such credit, and to certify to the assessor any deficiency determined by the auditor and not returned by the taxpayer; and thereupon the assessor shall make any additional assessment in accordance with such certificate of the auditor, including all penalties provided; ***

Knowing that both opinions were brought to your attention, we are apparently confronted with a conflict. However, a closer scrutiny of Ass't. Attorney General Hayes' opinion does not disclose that he based his conclusion that assessors were entitled to additional assessments exclusively on Sec. 10132, supra. We note that he

failed to incorporate in his opinion Sec. 10128, R.S. Mo. 1929. We are therefore reconciling the two opinions in the following manner:

We quote haec verba from the opinion of Ass't. Attorney General Hayes:

"If it becomes necessary for a new assessment to be made on account of a deficiency in the first return made by the taxpayer, we believe that the assessor is entitled to receive the same fees as he would have been entitled to had the return been an original one. In other words, the necessity for making the additional return was not the fault or failure on the part of the assessor."

If the condition arises as pointed out by Ass't. Attorney General Hayes, then there is no conflict in the opinions, as he apparently lays down the conditions in Sec. 10128, supra, even though said section is not quoted.

We will now proceed to analyze Sec. 10132, R.S. Mo. 1929. It deals with the duties of the Auditor and directs him to carry out similar duties with respect to additional assessments as contained in Sec. 10128, supra, respecting the duties of the county assessor in cases of additional assessments. After the additional assessment has been made by the Auditor, he then certifies to the assessor any deficiencies determined and not returned by the taxpayer; "thereupon, the assessor shall make an additional assessment in accordance with such certificate of the Auditor." This is the only reference as to the duties of the county assessor after the Auditor has made the additional assessment. The county assessor himself has made no additional assessment; he has merely noted the changes as certified by the Auditor to him and made a correction of his assessment list. If it were possible for the Assessor to be compensated with additional fees under Sec. 10132, supra, it would be very convenient for him to await the action of the Auditor in certifying to him large numbers of such additional assessments, and thereby claim compensation for huge fees for labor which he had not performed.

CONCLUSION

The statutes, though similar in form, evidently were intended to place a double check on all corporations, companies and individuals evading income taxes by failure to make proper return, and as a result, made it the duty of both the assessor and the Auditor to be diligent in their duties in uncovering income which is not included in the individual or corporation returns. However, we cannot interpret the statutes to mean that when the Auditor performs

the work, the assessor should draw the compensation.

It is therefore the opinion of this department that the assessor is entitled to fees for additional assessments made under Sec. 10128, supra, but is not entitled to fees for additional assessments made by the Auditor under Sec. 10132, supra.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General

APPROVED:

ROY MCKITTRICK,
Attorney General

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