

TAXATION AND REVENUE: Liability of improvements on real estate omitted from assessment in previous year or years to assessment and taxation.

11-13
No 9788-89-12519 RSN
November 2, 1933.



Honorable William H. Bray,
County Counselor,
Clayton, Missouri.

Dear Sir:

Your letter of September 18, 1933 has been received which letter enclosed a request for an opinion from Honorable Martin L. Neaf, Assessor of St. Louis County as follows:

"A building is on a certain tract of land; the land has been assessed for taxation and taxes paid, including the year 1932. However, the building upon said land has not been assessed although the building was erected 10 or more years ago. Can this building be assessed for the years omitted? How would assessment be made, for what years and what notice if any given to the owner?"

I.

TAXABILITY

The collection of taxes for back years during which any real property has been omitted from assessment and taxation is provided for by Revised Statutes of Missouri of 1929, Sections 9788 and 9789, which are as follows:

"Sec. 9788. Assessment of property omitted.--If the assessor discovers any real property, presumed to be subject to taxation, which has not been returned to him by the clerk, he shall assess such property and enter the same on the assessment list. And if, upon the return of such list to the clerk, it shall appear that any such real property has not been returned by the auditor, it shall be the duty of the clerk to advise the auditor of the facts, describing the property so returned by the assessor, and the auditor shall ascertain the true condition of such real property, and advise the said clerk thereof, who shall correct the records of his office in accordance with the facts in the case."

"Sec. 9789. Lands or lots not previously assessed.--If by any means any tract of land or town lot shall be omitted in the assessment of any year or series of years, and not put upon the assessor's book, the same, when discovered, shall be assessed by the assessor for the time being, and placed upon his book before the same is returned to the court,

with all arrearages of tax which ought to have been assessed and paid in former years charged thereon."

In speaking of such statutes the Supreme Court of Missouri in the case of State ex rel Hudson v. Carr, 178 Mo. 229, 77 S. W. 543 (1903), said:

"If the assessor discovers other property of the taxpayer which he failed to list, or which was omitted from taxation, it is his duty to assess it, even if it is discovered years afterwards." (178 Mo. 233, 234.)

This statement of the court was repeated with approval in State ex rel Teare v. Dungan, 265 Mo. 352, 367, 177 S. W. 604 (1915) and in the case of Cape Girardeau v. Buehrmann, 148 Mo. 198, 49 S. W. 985 (1899) the court remarked "No doubt if specific real property is overlooked or omitted it can be subsequently assessed for the previous omitted years * * *" (148 Mo. 203).

While Revised Statutes of Missouri Section 9810 might seem to apply to the situation under discussion it was held in the case of State ex rel Ford Motor Co. v. Gehner, 325 Mo. 24, 27 S. W. 2d 1 (1930) that such section only applies to a failure to assess the entire property in the county and does not apply to individual omissions of property from assessment.

"Section 12819 provides a scheme for subsequent assessment and collection of taxes where 'there has been a failure to assess the property in any county for any year or years.' This section covers the situation where the entire assessment for the county has been omitted for any year or the assessment sought to be made has been held void for some reason. The section has no application to the omission of assessable personal property from the return of an individual taxpayer." (27 S. W. 2d, 4). (Sec. 12819 of 1919 is Sec. 9810 of 1929.)

There is little doubt that the term "real property" in Section 9788 above and the terms "tract of land" and "town lot" in Section 9789 above would include a building, assuming such building to be of a permanent nature. By Revised Statutes of 1929, Section 655 which fixes certain rules of construction for statutes it is provided that "the terms 'real property' or 'premises' or 'real estate' or 'lands' shall be deemed to be coextensive with lands, tenements and hereditaments and the latter three terms are defined in the case of Orchard v. Wright-Dalton-Bell Anchor Store Co., 225 Mo. 414, 125 S. W. 486 by a quotation from Chancellor Kent as follows:

"Things real consist of lands, tenements and hereditaments. The last word is almost as comprehensive as property, for it means anything capable of being inherited, be it corporeal, incorporeal, real, personal or mixed. The term real estate means an estate in fee or for life in land, and does not comprehend terms for years or any interest short of a freehold. A tenement comprises everything which may be holden, so as to create a tenancy, in the feudal sense of the word, and no doubt it includes things incorporate, though they do not lie

in tenure." (225 Mo. 440).

Likewise, in Revised Statutes of Missouri of 1929, Section 9977, which is a part of Chapter 59 entitled "Taxation and Revenue" it is provided as follows:

"The term 'real property', 'real estate', 'land' or 'lot', whenever used in this chapter, shall be held to mean and include not only the land itself, whether laid out in town or city lots or otherwise, with all things contained therein, but also all buildings, structures and improvements and other permanent fixtures, of whatsoever kind thereon * * *."

Furthermore, the fact that taxes have been assessed against and collected from the persons whose property will now be charged with the taxes in question for the years for which such charges are about to be made would be no defense to the assessment and collection of the taxes in question. This question was presented in the case of State ex rel Steel v. Phillips, 137 Mo. 259, 38 S. W. 931 (1897) wherein defendant in a suit for such taxes raised the point as follows:

"And for further answer herein defendant says that he is not indebted to the plaintiff in any sum whatever, for the reason that he called upon the collector for the several years he is supposed to be charged with the delinquencies and paid all taxes that were charged against him, and took receipts therefor, and now pleads these facts as well as said payments in bar of any further tax, and again prays for judgment." (137 Mo. 263)

but the court decided against this contention and held that the taxes must be paid.

II.

LIMITATIONS

The statute of limitations on taxes against property previously omitted from assessment does not begin until the assessment is made and the tax based on such assessment becomes delinquent which would be computed just as if the assessment were being made for the current year instead of for a back year.

"The suit is not barred by the statute of limitations. No right of action accrued until the taxes were assessed and had become delinquent. The assessment was made in 1896, the taxes were therefore not delinquent until January, 1897. The five years' limitation expired January 1, 1902. The suit was brought December 16, 1901.

The case of State ex rel. v. Fullerton, above referred to, was a suit under this statute to collect taxes on land that

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had been omitted from the assessor's books in former years, just as was the defendant's land in this case, and the court in that case held that the statute of limitations did not begin to run during the years the land was omitted from the assessor's books and not until after the discovery of the omission and the assessment of the taxes as required by section 7562, Revised Statutes 1889, and until they became delinquent after that assessment. And so we now hold." (State ex rel Hammer v. Vogelsang, 183 Mo. 17, 24, 81 S. W. 1087 (1904).

To the same effect see State ex rel Lehner v. Fullerton, 143 Mo. 682, 44 S. W. 741 (1898).

It is provided in Revised Statutes of Missouri Section 9791 that "no assessment of property or charges for taxes thereon shall be considered illegal * * * on account of the assessments not being made or completed within the time required by law."

For the reasons above in the absence of exceptional circumstances an assessment could be made on property previously omitted from taxation for any past year or series of years, absent strong circumstances which might work an estoppel.

III.

The procedure to be followed would as appears from the foregoing authorities be the same as if the tax were being assessed for the current year. Notice should be given as if the person against whose property the tax is to be charged had failed to return such property for the current year and if notice had already been served on a taxpayer for him to make out his tax statement and he had failed to make any statement the assessor could make the assessment in accordance with Revised Statutes of Missouri Section 9760, or if a return had been made which failed to include this property the assessor should likewise make out the assessment list and book.

In conclusion, it is our opinion that real property which has not been assessed and taxed for any previous year or years is subject to taxation and that the method of assessing and collecting taxes on such property is provided for by Chapter 59 of the Revised Statutes of Missouri Article 2, and especially by Sections 9788 and 9789.

Yours very truly,
EDWARD H. MILLER,

APPROVED:

ASSISTANT ATTORNEY GENERAL.

ATTORNEY GENERAL.