

TAXATION AND REVENUE - Assessments - False Return - statutory method of altering so as to include omitted property.

11-23
November 20, 1933.



Honorable Arch King, County Assessor,
Poplar Bluff, Missouri.

Dear Sir:

A letter has been received from you under date of November 9, 1933, such letter being a request for an opinion in the following terms:

"Please give me a written opinion as to the legality of adding additional property to an assessment list where the person makes a false return."

Revised Statutes of Missouri 1929, Section 9762 provides a procedure where a false return has been made by a taxpayer of his property.

"Sec. 9762. Treble assessment for making fraudulent list.-- If any person shall, with intent to defraud, deliver to any assessor a false list of his property, it shall be the duty of the assessor to give notice in writing thereof to the county board of equalization; and the said board shall, on receiving such notice, give notice thereof to the person who shall have furnished such false list, which notice shall specify the particulars in which said list is alleged to be false, and shall fix a time for a hearing of the matter, on which day the person aforesaid shall have the right to appear and defend against such charge; and if it appear that such person is not guilty as charged, the said board shall dismiss the matter; but if it appear that such person is guilty as charged, it shall be the duty of said board of equalization to ascertain the true amount and value of all property of such person subject to taxation, and to tax the same as similar property of other persons is taxed, and in addition shall, by way of penalty for furnishing such false list, treble the amount of taxes thus ascertained against such person; and such person shall be required to pay such treble amount, and shall in addition thereto be liable to be punished for perjury."

The Supreme Court of Missouri referring to that section, and defining the power of the Board of Equalization under such statute in the case of State ex rel Dalton v. Baker, 170 Mo. 383, 70 S. W. 872 (1902) said:

"That such authority is conferred upon the board by that section under certain conditions, is, we think, clear, that is, where any person with intent to defraud, shall deliver to any assessor a false list of his property and shall be proceeded against in

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accordance with the provisions of that section for so doing, and if upon investigation by the board he be found guilty of intent to defraud in failing to deliver to the assessor a correct list of his property, then it becomes the duty of the board to ascertain the true amount and value of all property of such person subject to taxation, and to tax the same as similar property of other persons is taxed, and, in addition, to add by way of penalty for furnishing such false list, treble the amount of taxes thus ascertained against such person, etc. Now, it appears from the record that the assessor did give notice in writing to the board calling their attention to the fact that plaintiffs had failed to list all of their property, but had omitted therefrom deeds of trust and mortgages compiled from the records in the office of the recorder of Butler county, covering a period of from January 1, 1896 to June 1, 1898, as relates to deeds of trust, and from January 1, 1897, to June 1, 1898, as relates to chattel mortgages; that upon the receipt by the board of said writing it caused to be made out a notice in writing to plaintiff, in which it is recited that, 'On the 19th day of April, 1899, the assessor of said county filed with the board a duly certified list of credits as shown by the record in the office of the recorder of Butler county, in which it appeared that you failed to list certain credits amounting to \$11,682, and you are hereby notified to appear before said board on Wednesday, April 26, 1899, and show cause why the sum of \$11,682, should not be added to your assessment for the year 1899, as provided in section 7537, Revised Statutes 1889'. (170 Mo. 391).

It is our opinion that the above statute and quotation will be self-explanatory and provide a complete scheme of procedure where a false return has been filed by a taxpayer with intent to defraud the state.

Yours very truly,

EDWARD H. MILLER

APPROVED:

ASSISTANT ATTORNEY GENERAL.

ATTORNEY GENERAL.