

TAXATION AND REVENUE:

Liability of administrator for taxes
against an estate.

June 18, 1934. 6-28



Hon. Thomas A. Mathews
Prosecuting Attorney
St. Francois County
Farmington, Missouri

Dear Mr. Mathews:

This Department acknowledges receipt of your letter of recent date with request for an opinion; your letter being as follows:

"J. O. Swink, Judge of Probate Court of our County and I are anxious to know from your department, as to what to do under the following circumstances.

There are quite a number of estates in the course of administration in this County, and which sums of money are deposited in closed banks. It is quite evident that in two or three instances they will only pay from 15¢ to 25¢ on the dollar. The taxes resulting from assessments made on the return of the respective administrators, show certain balances and on which assessments the taxes are levied. In some instances there will not be sufficient money to pay the taxes.

Under the circumstances, what would you suggest in the premises?"

Your letter calls more for an expression from us as to what course of action should be taken by you in regard to the collection of taxes mentioned in your letter, rather than the methods of legal procedure to be taken of the collection of same.

Section 9756, R. S. Mo. 1929, provides in part as follows:

"The assessor or his deputy or deputies shall between the first days of June and January, * * * * proceed to take a list of the taxable personal property in his county, town or district, and assess the value thereof, in the manner following to-wit: He shall call at the office, place of doing business or residence of each person required by this chapter to list property, and shall require such persons to make a correct statement of all taxable property owned by such person, or under the care, charge or management of such person etc. * * * *."

Section 9763, R. S. Mo. 1929, provides that:

"It shall be the duty of every judge of the probate court in each county in this state to certify to the county assessor, on the first Monday of June in every year, a written list of every administrator, executor and guardian, and every other person legally in charge and control of any estate in the probate court; and thereafter, and upon such certification, it shall be the duty of the county assessor to take from each administrator, executor, guardian, and every other person legally in charge and control of any estate in such probate court, or from the papers and records of the court

relating to such estates, a list of personal property, and to assess the same according to law--such property hereby being declared to be subject to taxation in said county for all lawful purposes whatsoever, so long as the probate court thereof retains jurisdiction of such estate; * * * * *

In the case of *Kansas City v. Simpson*, 90 Mo. App. 50, it was held by the Kansas City Court of Appeals that if the property was in the hands of the curator the day that the property should be returned for assessment, and that final assessment in the probate court was made the curator became personally liable for payment of the tax.

Also, in the case of *State ex rel. Ziegenhein v. Burr*, 143 Mo. 209, l. c. 215, the Supreme Court had this to say:

"The statute upon its face clearly indicates that a curator or other trustee shall list not only that which he owns in his own right but that over which he has 'the care, charge, or management.' There can be no reason why a minor's estate should not bear its equal portion of taxation. Who so appropriate then to list it and see that it is not exorbitantly assessed, and who so proper to pay the tax when assessed, as his curator! When it is conceded that a minor's estate is liable to taxation, it is apparent that either directly or indirectly the curator must furnish the funds to pay it, as he has charge of all the estate of the minor. This question arose in *Payson v. Tufts*, 13 Mass. 493, in 1816, and it was held that a guardian of minors was liable to

be taxed personally for the property of his wards in his possession and the same remedies existed against him on his default for their taxes as upon his own estate. Baldwin v. Fitchburg, 8 Pick. 494."

And further, in the case of State ex rel. Rice, Collector, v. Packard, 250 Mo. 686, it was held by the Supreme Court that where an executor had given in for taxation an assessment list of the personal property of an estate in his hands, and afterwards made final settlement of the estate without reserving funds with which to pay such taxes as may thereafter be levied upon such assessment list, he is personally liable to the state for the taxes so levied.

So it would seem from the statutes above quoted and the above cited cases that when an assessment has been legally made, the administrator is personally liable for the payment of the taxes if he distributes the money under the order of the probate court upon final settlement and the taxes have not been paid by him that he thereby becomes personally liable for the same. And further, it makes no difference what has happened to the property after the assessment was made if it was in existence and it was returned at its true value on June 1st, the administrator is liable therefor and should retain funds to pay same before making final settlement.

The Supreme Court of New Hampshire in Whitfield v. Dalton, 80 N. H. 93, 112 Atl. 907, said:

"The right to tax is determined by facts as they existed when the taxes laid."

It is therefore our opinion that if the assessment was legally and properly made that the administrator should pay the taxes out of any funds coming into his hands. However, we

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have only given you our views of the law on the subject,
and have left to the tax collecting officials of your County
the time and methods to be used in enforcing collection.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

CRH:EG