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TAXATION: REVENUE: -- ASSESSOR HAS THE AUTHORITY TO REQUIRE TAXPAYERS TO MAKE AN ITEMIZED LIST OF THE PROPERTY, AS COVERED BY CLASSES 7, 8, and 9 OF SECTION 9756, R. S. MO. 1929; AND ALL PROPERTY MUST BE RETURNED FOR ASSESSMENT AT ITS TRUE VALUE, AND ANY NOTE OR INSTRUMENT IS SOLVENT UP TO ITS TRUE VALUE IN MONEY, WHETHER THAT MEANS FACE VALUE OR NOT.

May 17, 1934. 5-19

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State Tax Commission,
Jefferson City,
Missouri.

Attention: Mr. A. J. Murphy
Commissioner.

Gentlemen:

This department is in receipt of your letter wherein you state in part as follows:

"The wording of the paragraph in question is 'eight, an aggregate statement of all solvent notes secured by mortgage or deed of trust.'

"The literal definition of solvent is, of course, a note payable at its face value, or a note that will be paid at its face value, or worth its face value.

"Mr. Teasdale is evidently leading up to the argument that a note that is only worth 50 or 60% of its face value is not a "solvent" note; therefore, would not have to be returned on the assessment list.

"We can not accept this interpretation. It is our thought that all property must be returned for assessment at its true value and that any note or other instrument is solvent up to its true value in money, whether that would mean face value or not.

"We would, however, like to have an official ruling on this point at your earliest convenience.

"In this connection we would also like to have your opinion on the interpretation of the word 'aggregate' in this same section in regard to the 7th, 8th, and 9th classes of property to be listed. The wording of the section rather implies that the tax payer is only required to report on his assessment list the total combined value of all his property in each class.

"This Commission has been considering the desirability of asking the Assessor, when assessment lists are turned in by the tax payer, to require of the said tax payer an itemized list of property covered by the 7th, 8th and 9th classes mentioned on assessment lists.

" We feel that we have full authority under Section 9854 R. S. 1939 to require the Assessor to ask for this information. We doubt, however, the Assessor's authority to require the tax payers to make this character of return.

"It is almost an absolute necessity that we have this itemized information if we are to arrive at any fair idea of the value of property reported in classes 7, 8 and 9.

"When this Section 9756 was written all such property as notes, stocks and bonds were worth 100 cents on the dollar and there was no other value thought of, but in these times when the values vary from 10 cents on the dollar to 100 cents on the dollar it is almost necessary we have this detailed statement if we are to arrive at a fair value of the property for assessment.

"We also believe that if we can require the tax payer to furnish this itemized statement to the Assessor of their property, with the face value, and market value,

that we would be able to place on the assessment lists vast quantities of this intangible property that is not now assessed at all."*****"

Section 4, Article X, of the Missouri Constitution provides in part as follows:

"All property subject to taxation shall be taxed in proportion to its value: *****"

Section 9752, R. S. Mo. 1929, provides that every assessor shall take an oath that he will faithfully and impartially discharge the duties of his office, and that he will assess all the property in the county in which he assesses at what he believes to be its actual cash value.

Section 9792, R. S. Mo. 1929, dealing with the valuation to be placed on property reads in part as follows:

"The assessor shall value and assess all the property on the assessor's books according to its true value in money at the time of the assessment; and all other personal property shall be valued at the cash price of such property at the time and place of listing the same for taxation. *****"

In the case of State v. Stamm, 65 S. W. 242, 1.c. 243, 185 Mo. 73, the Court said:

"Section 7564 (now Section 9792, R. S. Mo., 1929) provides that 'the assessor shall value and assess all the property on the assessor's book according to its true value in money at the time of the assessment.' This manifestly includes personal as well as real property, notwithstanding the provision requiring that 'all other personal property shall be valued at the cash price of such property at the time and place of listing the same for taxation, *****."

Section 9756, R. S. Mo. 1929, provides what the lists shall contain and reads in part as follows:

"The assessor **** shall **** 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, **** and the person listing the property shall enter a true and correct statement of such property ****. Such lists shall contain, ****

"seventh, an aggregate statement of solvent notes unsecured by mortgage or deed of trust;

"eighth, an aggregate statement of all solvent notes secured by mortgage or deed of trust;

"ninth, an aggregate statement of all solvent bonds, ****."

Section 9813, R. S. Mo. 1929, fixes definite rules for the county boards of equalization to observe and provides in part as follows:

"The following rules should be observed by county boards of equalization:

"First, they shall raise the valuation of all such tracts or parcels of land and any personal property such as in their opinion have been returned below their real value, according to the rule prescribed by this chapter for such valuation; *****.

"Second, they shall reduce the valuation of such tract or parcels of land or any personal property which, in

their opinion, has been returned above its true value ****."

It is to be noted that the true value basis for assessment runs all through the Missouri revenue laws as set out in the above sections of the Revised Statutes of Missouri, 1929.

It would not be amiss at this point to define a few of the words with which we will deal in our discussion of the problem.

In the case of Samosa v. Lopez, 143 Pac. 927, 19 New Mexico, 312, the Court said:

*****'True value' as used in laws providing that property shall be assessed for taxation according to its true value, has been defined to mean the value which it has in exchange for money. ****

"'Actual cash value' of real or personal property has been defined to be the price it would sell for in the ordinary course of business free from incumbrance and not at forced sale ****. It thus appears that the terms are practically synonymous. *****"

Bouvier's Law Dictionary defines the term "aggregate" in the following manner: "Consisting of particular persons or items formed into one body, a combined whole."

Cooley on "Taxation", Vol. II, paragraph 575, page 1240, in discussing the term "credits" in general, states as follows: "'Property' as the term is used in a statute authorizing the imposition of taxes will be held without further specification to include solvent credits and generally credits are embraced within the scope of the property made taxable by statute. They are 'personal property' within a statute authorizing taxation of such

property ****. Credits within the meaning of this rule include promissory notes, bonds issued for the payment of money, mortgages, etc. *****.

In the case of Kingsley v. The City of Merrill, 99 N. W. 1044, l.c. 1045, 122 Wisc. 185, the Court said:

"Undoubtedly as stated by the Tax Commission and urged by counsel, that which gives a credit 'value' and which the present assessment laws recognize **** consists not in the written instruments or other evidences of the creditors' rights or security, but in the right itself -- the creditor's right to receive and enforce payment of his demand."

On page 1046 of the same opinion, the Court said:

***** In the case of such intangible species of property, the thing that is valuable is the right of the creditor to receive property or money, and to enforce such right by action in court *****."

In the case of Kennedy v. Burr, 101 Washington 61, 171 Pac. 1022, l.c. 1024, the Court said:

"Solvency has a well defined meaning in law; it means an excess of assets over liabilities; the power to pay debts in due course *****."

In the case of Flowers v. American Agricultural Chemical Company, et al., 154 S. E. 736, l.c. 737, the Court held that an instruction defining the terms "solvent" and "insolvent" as meaning able or unable to pay debts correct. The Court said:

"Solvency or insolvency depends upon whether the entire assets of a person equal the value of his total indebtedness. If the entire assets of a person equals or exceeds his entire debts, he is solvent. If his entire assets are less than his entire indebtedness, he is insolvent."

Again, in the case of Stillman v. Lynch, 56 Utah, 540; 196 Pac. 272, the Court said:

"Defendant's argument that only solvent credits must be placed on tax books is unassailable. The word 'solvent' as applied to 'credits' must be taken in its ordinary meaning. Those credits in order to be assessable must be worth their fixed value and be collectible, not by suit or on execution, but in ordinary course of business and by usual business methods. In other words, they are what are called 'good accounts'. In one of the briefs submitted to us, it is said that conditional sales agreements are not solvent credits per se. That is true. A title-retaining note or a conditional sale agreement or a contract for sale of real estate may or may not be a solvent credit but those are problems for the Assessor and must be left to his good judgment and sound discretion."

The assessor is obligated by law to employ every power at his disposal to uncover and list property. Section 9760, R. S. Mo. 1929, authorizes the assessor to make any examination or search upon the property and examine any person upon oath touching the same. Section 9760, supra, states as follows:

"Whenever there shall be any taxable property in any county, and from any cause no list thereof shall be given to the assessor in proper time and manner, the assessor shall himself make out the list, on his own view, or on the best information he can obtain; and for that purpose he shall have lawful right to enter into any lands and make any examination and search which may be necessary, and may examine any person upon oath touching the same."

The Supreme Court has held that Section 9760, supra, is binding even when the assessor makes the assessment in

a lump sum on the best information he can obtain, and if no appeal is taken therefrom the taxpayer cannot be heard to complain even if the tax payer has refused to give a list of his property as shown in the case of State ex rel. v. Cummings, 151 Mo. 49, l.c. 59, wherein the Court said:

"**** If after receiving the blank list and notice, he failed to make out his own list, or refused peremptorily to do so, as is shown by his evidence, then the law authorized the assessor **** to make out the list on his own view, or 'on the best information he could obtain.' **** His contention that, because the district collector did not itemize the various pieces and kinds of personal property, he had no jurisdiction to assess him on any sum whatever, is not sound. **** By a simple compliance with a just and reasonable law, he could have avoided the very thing of which he complains ****."

Section 655, R. S. Mo. 1929, provides additional rules for construing statutes, and reads in part as follows:

"The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute: First, words and phrases shall be taken in their plain or ordinary and usual sense, ****."

In the case of State v. Carr, 77 S. W. 543, l.c. 544, 178 Mo. 229, the Court said:

"It is one of the cardinal rules for the construction of statutes, that the spirit and purpose of the enactment is an invaluable guide to the meaning thereof, for the letter of the law, often killeth, while its spirit maketh alive. The sole pur-

pose of the law in requiring the tax payer to make out and return to the assessor a list of his property is to aid the assessor in discovering all of the taxable property, to the end that it may be assessed and made to bear its proper proportion of the expenses of government. *****

On page 546, in the same opinion this Court quotes with approval the following statement which appears in the case of the Supreme Court of Maine in the case of Rockland v. Ulmer, 84 Me. 503, 24 Atl. 949, wherein it was said:

***** All taxation is a burden, yet it is the duty of every citizen to bear his portion of the burden, and no tax payer should be permitted to escape doing so upon a mere technicality which in no way materially affects his rights. *****

In the case of In Re: Ryan's Estate, 156 S. W. 759, 1. c. 760, 174 Mo. App. 303, the Court said:

*****It is the duty of the court in construing statutes to interpret particular words by reference to the context so as to effectuate the intention of the law-makers as reflected by the entire enactment, if such may be fairly ascertained, rather than to declare the precise meaning of the word standing alone. *****

CONCLUSION.

It is our opinion the assessor has the authority to require tax payers to make an itemized list of the property covered by the seventh, eighth and ninth classes mentioned on assessment list as set out in Section 9756, R. S. Mo. 1929, supra.

We are of the further opinion that the term "aggregate" as used in Section 9756, supra, means the same as the term "whole". The former term is defined in Bouvier's Law Dictionary as "consisting of particular persons or

items formed into one body, a combined whole." Thus Section 9756, supra, may be read in part as follows:

"**** seventh, an aggregate (or whole - made up of particular items) statement of solvent notes unsecured by mortgage or deed of trust;

"eight, an aggregate (or whole - made up of particular items) statement of all solvent notes secured by mortgage or deed of trust;

"ninth, an aggregate (or whole - made up of particular items) statement of all solvent bonds, ****."

Since the term "aggregate" consists of "particular items", we are of the opinion that in order to carry out the intentions of the Legislature, it is necessary and within the meaning and scope of the statutes that the assessment lists as turned in by the tax payer contain an itemized or detailed account of the property covered by the seventh, eighth and ninth classes mentioned on the assessment lists.

We are cognizant of the fact that Section 655, R. S. Mo. 1929, commands that in the construction of all statutes, words - other than those of technical import - should be taken in their plain or ordinary and usual sense. And the wording of Section 9756, supra, upon a cursory examination rather implies that the tax payer is only required to report on his assessment list the total combined value of all his property in each class, and that might be the interpretation of the term "aggregate" if it should be taken in its plain, ordinary and usual sense. It is true that the section of the statute referred to so reads, but its command is conditioned as follows in express words: "Unless such construction be plainly repugnant to the intent of the Legislature, or of the context of the same statute."

From this it appears that we are not required to accord the word "aggregate" its usual meaning if such meaning be plainly repugnant to the intent of the Legislature or of the context of the same statute, and we are of the opinion that it is. Bearing in mind that the court

so well stated in the case of State v. Carr, supra, "the sole purpose of the law in requiring the tax payer to make out and return to the assessor a list of his property is to aid the assessor in discovering all of the taxable property, to the end that it may be assessed and made to bear its proper proportion of the expense of government. *****".

It is almost an absolute necessity that the assessor have this itemized information if he is to arrive at any fair idea of the value of the property reported in classes seven, eight, and nine, and as the Court stated in the above mentioned case, "All taxation is a burden, yet it is the duty of every citizen to bear his portion of the burden, and no tax payer should be permitted to escape doing so upon a mere technicality which in no way materially affects his rights.*****"

The assessor is obligated by law (Section 9760, supra) to employ every power at his disposal to uncover and list property, and we are of the opinion that in the light of the foregoing sections, it is clearly within the power and duty of the assessor to require the tax payers to make this character of return, and that whenever a tax payer refuses to set out the particular items that go to make up the whole or aggregate statement of his property as provided for in classes seven, eight and nine of Section 9756, supra, then it shall be the same as if no list had been given and shall come within the provisions and penalties of Sections 9760 and 9761, supra. To hold otherwise, in our opinion, the tax payer and not the assessor would be the sole judge of the true value in money of property as set out in classes seven, eight and nine of Section 9756, supra.

II.

All property must be returned for assessment at its true value, and any note or other instrument is solvent up to its true value in money whether that means face value or not.

We are of the opinion that the assessor must value and assess all property, both real and personal, on the assessor's books according to its true value in money, and as stated in the case of State v. Stams, supra, this is true notwithstanding the provision in Section 9793, R. S. No. 1929, supra, which provides that "*****all other personal

property shall be valued at the cash price of such property at the time and place of listing the same for taxation. ****" Again, in the case of Samosa v. Lopez, supra, the Court held that the terms as used in Section 9792, supra, "true value" and "actual value" were practically synonymous.

It has been inferred that a note that is only worth 50 or 60% of its face value is not a "solvent" note or bond, as the case may be, and therefore such would not have to be returned on the assessment list for taxation. We are of the opinion that such a conclusion is incorrect, and that a note or bond that is worth only a portion of its face value is solvent up to that amount, and that the tax payer must list the face value and market value thereof.

As the court stated in the case of Kingsley v. City of Merrill ****, in the case of such intangible species of property, the thing that is valuable is the right of the creditor to receive property or money, and to enforce such action in court." The creditor has such a right even though the property may be worth 50 or 60% on the dollar and should therefore return it for its face and/or market value.

It might be argued that in light of such cases as Kennedy v. Burr, and Flowers v. American Agricultural Chemical Co., et al., supra, which defined the term "solvency" or "solvent" as meaning an excess of assets over liabilities; and the case of Stillman v. Lynch, supra, to the effect that "defendants' argument that "only solvent credits must be placed on the tax books **** and that the word "solvent" as applied to credits must be taken in its ordinary meaning, ****" and, in order to be assessable, must be worth their face value; that a note or instrument for example only worth 40 or 45% on the dollar was insolvent according to the meaning of Section 9756, supra, and therefore that the taxpayer would not have to return them on the assessment list.

We cannot accept such an interpretation. True as we stated in our first conclusion, "words and phrases must be taken in their plain or ordinary and usual sense", but such statement is conditioned upon the following ex-

press words: "Unless such construction be plainly repugnant to the intent of the Legislature, or of the context of the same statute."

We are of the opinion that we are not required to accord the word "solvent" its usual meaning since such meaning is plainly repugnant to the Constitution, the intent of the Legislature, and the context of the statutes; and that all property must be returned for assessment at its true value and that any instrument is solvent up to its true value in money whether that would mean par value or not.

In summing up, we again cite the case of State v. Carr, supra, wherein the Court said: "All taxation is a burden, yet it is the duty of every citizen to bear his portion of the burden, and no tax payer should be permitted to escape doing so upon a mere technicality which in no way materially affects his rights.

Respectfully submitted,

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APPROVED:

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