

TAXATION: ASSESSMENT: Personal property assessable in name of administrator where owner died after first of June and before assessment.

July 17, 1936.

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Hon. Andy Wilcox, Chairman,
State Tax Commission,
Jefferson City, Missouri.



Dear Sir:

This acknowledges your request of July 14, 1936, which is as follows:

"This Department would like an opinion on the following subject:

"A taxpayer of St. Louis was living on the first day of June, 1935 and died on the 17th day of June and the assessment was made by the Assessor of the City of St. Louis, against the Administratrix of his estate - Should this assessment have been made against the owner of this property who was living on the first day of June, or against the Administratrix who was appointed on the 22nd day of June?"

"We would like this opinion on or before July 22nd as we have heard this case and are holding it under advisement until the morning of the 23rd."

From a telephone conversation with you, we are informed that your inquiry is directed toward the assessment of personal property, and not with reference to real estate, and the following is said with reference to the assessment of personal property.

Section 9756, R. S. Mo. 1929, among other things, provides that the assessor 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."

Section 9757, R. S. Mo. 1929, among other things, provides that the assessor shall leave at the residence or office, etc., a notice requiring the person to make out his list, and further states:

"If any such person shall have deceased prior to the time when the assessor calls for such list, the assessor shall deliver such written or printed notice to the executor or administrator of such deceased person, and such executor or administrator shall make out and deliver to the assessor such sworn statement of all the property of such decedent."

Section 9763, R. S. Mo. 1929, among other things, provides that the probate judge shall certify to the county assessor a written list of every administrator, executor and guardian, and of every other person legally in charge and control of any estate in the probate court, and after 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, * * * a list of personal property, * * * ."

In the case of State ex rel. v. Cummings, 151 Mo. 49, l. c. 58, speaking of when jurisdiction is obtained to assess property, the Supreme Court of this state said:

"By this personal call or written or printed notice, the taxpayer is secured the privilege of stating exactly what property he has and its value. When this call is made on the taxpayer, and request made on him for his list, or, if he be absent, the notice is left for him, within the period from June 1st to January 1st succeeding, then jurisdiction is obtained to assess his property."

In the case of State ex rel. v. Burr, 143 Mo. 209, the facts were that property had been assessed against the curator for the taxes on property which he held as curator and which belonged to his ward, Benton Brant. He contested the tax on

the ground that the state did not have the right to assess and levy taxes upon the property of a minor against his curator in possession thereof. The court holds that such a tax so assessed against the curator is a valid one, saying, l. c. 215:

"We have the naked proposition of a curator in charge of his ward's estate. An assessment against the curator for the taxes on that estate. No claim that the ward has ever paid it, or that the property was liable to taxation in any other county. We hold it was the evident intention of the legislature to require the curator to list the property and the assessor to assess it against the curator and the curator's duty to pay it and that the action was properly brought against the curator."

In State ex rel. v. Packard, 250 Mo. 686, l. c. 693, the court approvingly quotes from State ex rel. v. Burr, supra, as follows:

"The substantial point raised on this appeal is the right of the State to assess and levy the taxes upon the property of a minor against his curator in possession thereof. We cannot find that this question has ever been determined by this court though it is not a new one in other States. It is conceded by the learned counsel for defendant that it is competent for the Legislature by proper enactment to require taxes to be assessed against a curator in charge of a minor's estate and make it a personal charge against him, but he insists that our Legislature has not done so. By section 7531 the assessor or his deputies are required between the first days of June and January "to call at the office, place of doing business, or residence of each person required to list property and shall require such person to make a correct statement of all taxable property owned by such person, or under the care, charge or management of such person," and the person listing the property shall enter a true and correct statement of such property in a printed or written blank

prepared for that purpose and sign and swear to it. Elsewhere it is provided that from these lists so made the assessor's book is made up. (Secs. 7553 and 7564.) A curator under our statutes has the possession of the estate of his ward, both real and personal, subject to the superintending control of the probate court. (R. S. 1889, sec. 5297.) It is his duty to represent his ward in all legal proceedings. That "the care and management of the ward's estate" conferred by the statute, is such "care, charge and management" of the estate as is contemplated by the revenue law, we think cannot be disputed and is such as makes it incumbent upon him to list it with the assessor. If listed by and assessed to the curator it is his personal duty to pay the taxes out of the moneys in his hands as curator. The fact that the curator is not the absolute owner of the property is no objection. 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.) No question of domicile or of difference in residence arises upon this record. We have the naked proposition of a curator in charge of his ward's estate. An assessment against the curator for the taxes on that estate. No claim that the ward has ever paid it, or that the property was liable

to taxation in any other county. We hold it was the evident intention of the Legislature to require the curator to list the property and the assessor to assess it against the curator and the curator's duty to pay it and that the action was properly brought against the curator.'

"We can see no substantial difference between the Burr case and the case at bar. There we had a curator, here an executor. The same statute as to assessment of property in their hands applies to both alike. The reason which applies to the one applies with equal force to the other."

In *State ex rel. v. Brown*, 172 Mo. 374, the Supreme Court discusses the rights of contending school districts for the taxes against a minor's estate, wherein it would belong to one district if taxable in the name of the minor and where he resided, and would belong to another school district if taxable in the name of the curator. The tax was assessed against the curator. The court, l. c. 383, says:

"The guardian or curator of a minor may have the personal assets of the minor's estate assessed to him, as indicated in the case of *State ex rel. v. Burr*, 143 Mo. 209; he having the property of the minor under his management and control. If this is done, we think clearly the taxes on this character of assessment would go to the district in which the guardian resides; for, in that assessment, he treats the property as his own and is personally liable for the taxes and has it assessed to him individually. On the other hand, if the personal estate is assessed to the minor or the estate of the minor, the taxes apportioned to the districts would follow the domicile of the minor. The provision of the statute requiring the taxpayer to list not only his own property but also the property 'under his care, management and control' does not necessarily require a guardian of a minor to make out two lists, one of his individual property and one for the property of his ward; but he may, as is frequently done under the broad provisions

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of the statute, list it as his own. In the case of State ex rel. v. Burr, supra, Gantt, J., speaking for the court, says: 'That the "care and management of the ward's estate" conferred by the statute, is such "care, charge and management" of the estate as is contemplated by the revenue law, we think can not be disputed and is such as makes it incumbent upon him to list it to the assessor. If listed by and assessed to the curator it is his personal duty to pay the taxes out of the moneys in his hands as curator.' * * *

"The assessor, as to the personal assets of a minor, may assess it to the minor or to his estate, or he may permit the curator of the ward to list it under the statute heretofore discussed, as his property, it being under his management and control."

The court in the above cases was construing the meaning of the words "or under the care, charge or management of such person" as used in Section 9756, R. S. Mo. 1929. The above decisions hold that the ward's estate is under the control of the curator and may be assessed to the curator, and that the estate of the deceased is under the control of the executor and may be assessed to the executor. The same principle of law applies, we think, to the various classifications, that is to the property under the control of a curator, and to the property under the control of an executor, and to the property under the control of an administrator. On logic and reason, there can be no distinguishing between the three, and the courts having held that the property of the ward is properly assessed in the name of the curator, and that the personal property of the estate of the deceased testate is properly assessed in the name of the executor, it follows as a necessary sequence, and by the same line of reasoning, that the property of the deceased intestate is properly assessed in the name of the administrator.

CONCLUSION

It is our opinion that where a person owned personal property on June 1, 1935, and died on June 17, 1935, and the assessment had not been made on said property at the date of his death, and thereafter an administratrix of his estate was appointed,

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that the assessment thereafter made on said personal property is legally made if assessed against and in the name of the administratrix of his estate.

It is our further opinion that it is the duty of the administratrix to hold out of the assets of said estate the proper amount of money to pay, and it is her duty to pay, all taxes which have accrued and become a lien against the property of the estate, whether they be taxes that became payable prior to the death of the intestate or whether they became payable after the administratrix was appointed. The taxes that became a lien against said property on June 1, 1935, are payable in the fall of the year 1936.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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