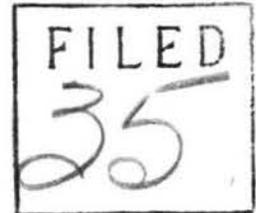


TAXATION:

Persons living within a city are subject to a city tax on the personal property on his farm which is outside of the city limits. Persons living outside of the city limits are not subject to a city tax on the personal property portion of his business such as ice boxes, etc.

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Mr. J. A. Gregory,
City Attorney,
Aurora, Missouri.

Dear Sir:

This will acknowledge receipt of your request dated May 17, 1938 for an official opinion from this department which request is as follows:

"We would like to know if a person living outside the city limits and conducting a business within the city limits is subject to a city tax on the personal property portion of his business, ice boxes, scales, cash register, etc., also if a person living within the city limits and owning a farm outside is subject to a city tax on the personal property on his farm, cattle, hogs, sheep, horses, implements, etc.

Aurora is a city of the third class.

We are unable to find any information on the above proposition and will greatly appreciate an opinion from you at your early convenience."

I.

Answering the first part of your request for an official opinion, wherein you ask if an individual lives outside of the city limits in the county and owns personal

property used in his business, such as ice boxes, scales, cash registers, etc., will say that Section 9745, R.S. Mo. 1929 reads as follows:

"All personal property of whatever nature and character, situate in a county other than the one in which the owner resides, shall be assessed in the county where the owner resides, except as otherwise provided by section 9763; and all notes, bonds and other evidences of debt made taxable by the laws of this state, held in any state or territory other than that in which the owner resides, shall be assessed in the county where the owner resides; and the owner, in listing, shall specifically state in what county, state or territory it is situate or held."

The exception noted in Section 9745 is Section 9763, R.S. Mo. 1929, applies only in the case of personal property held by an administrator, executor, guardian or other person legally in charge and control of an estate in the probate court.

Section 9745, supra, does not mention cities but does mention different counties and states the owner shall be assessed in the county wherein he lives even if the property is located in another county. In the case of State ex rel. Kelly, Collector, v. George A. Shepherd, 218 Mo. 656, the court held:

"Defendant was an unmarried man and owned a farm in the country, on which was a farm house in which he kept a room, and intended and considered the farm house his home, where he occasionally took a meal with his tenant. His aged parents lived in town, and at the time of the assessment of the taxes sued for and for a number of years prior thereto he

lodged at night in their home, going every morning to his farm to look after it and to care for his stock, and his sole reason for lodging with his parents at night was that they were old, sickly and helpless and needed his care and assistance. Held, that his personal property was not taxable in the school district of which the town was a part, but in the school district in which his farm was situate, and that holding is in consonance with the Revenue Statute, and that being a clear statute it is not necessary to resort to the 'Construction' Statute providing that 'the place where any person having no family shall generally lodge shall be deemed the place of residence of such person.' This last statute should not be allowed to determine the place of the defendant's residence or domicile."

Also the court further said:

"It is conceded by counsel for both appellant and respondent that personal property is taxable at the domicile of the owner and in the school district in which he resides."

In Section 9261, R.S. Mo. 1929, this section applies to the assessment of personal property for school for school purposes. It states among other things the law as follows:

"* * * * * and it shall be the duty of the county assessor in listing property to take the number of the school district in which said taxpayer resides at the time of making his list, to be by him marked on said list, and also on the personal assessment book, in columns provided for that purpose."

Under this Section 9261, supra, it is the duty of the county

assessor to list the property in the district where the owner resides. The personal property described in your request should be assessed at the residence or domicile of the owner.

Section 9745, supra, should not be confused with Section 10077, R.S. Mo. 1929, which is the state ad valorem tax and which tax is also considered a personal property tax. This section 9745, supra, also should not be confused with city occupation taxes.

Section 9756, Session Laws of 1937, page 570, provides:

"The assessor or his deputy or deputies shall between the first days of June and January, and after being furnished with the necessary books and blanks by the county clerk at the expense of the county, proceed to take a list of the taxable personal property and real estate 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, except merchandise which may be required to pay a license tax, being in any county of this state in accordance with the provisions of this chapter, and the person listing the property shall enter a true and correct statement of such property, * * * * * and every other species of property not exempt by law from taxation. The word 'list' as used in Section 9806 of this Chapter shall include

all the lists required under this section to be taken."

Under this Section 9756, Session Laws of Missouri, 1937, page 570, merchandise has been excepted where the city or state may be required to assess a license tax. This section in no way repeals Section 9745, supra, and the personal property should be assessed and listed in the district where the owner resides.

II.

Answering the second part of your request wherein you ask if a person living within the city limits and owning a farm outside is subject to a city tax on the personal property on his farm, cattle, hogs, sheep, horses, implements, etc., will say that Section 6994, R.S. Mo. 1929 which applies to cities of the fourth class reads as follows:

"In assessing property, both real and personal, in cities of the fourth class, the city assessor shall jointly, with the county assessor, assess all property in such cities, and such assessment, as made by the city assessor and county assessor jointly and after the same has been passed upon by the board of equalization, shall be taken as a basis from which the board of aldermen shall make the levy for city purposes. The assessment of the city property, as made by the city and county assessor, shall conform to each other, and after such board of equalization has passed upon such assessment and equalized the same, the city assessor's books shall be corrected in red ink in accordance with the changes made by the board of equalization, and so certified by said board, and then returned to the board of aldermen: Provided, that in cities which do not elect an assessor the mayor shall procure from the county

clerk of the county in which such city is located, and it shall be the duty of such county clerk to deliver to the mayor on or before the first day of July of each year a certified abstract from his assessment books of all property within such city made taxable by law for state purposes, and the assessed value thereof as agreed upon by the board of equalization, which abstract shall be immediately transmitted to the council, and it shall be the duty of said council to establish by ordinance the rate of taxes for the year. A lien is hereby created in favor of such city against any lot or lots or tract of land for any such tract assessed by such city against the same, which said lien shall be superior to all other liens or encumbrances except the lien of the state for state, county or school taxes."

Section 6994, R.S. Mo. 1929, was Section 8445, in the Revised Statutes of 1919. In the case of State ex rel. Divine, Revenue Collector, v. Collier, 256 S.W. 455, 301 Mo. 72, was a case where the city collector of Greenfield, which was a city of the fourth class located in Dade County, Missouri, filed an action against the appellant, Collier, under a statement of facts by which reads as follows:

"For the purpose of the trial of this cause, both in the justice's court and upon appeal to the circuit court, the following statement of facts is stipulated to be true:

'That the city of Greenfield is a city of fourth class, duly organized under and by virtue of the laws of the state of Missouri, and is located in Dade county, Mo., and that R.C. Divine, the relator herein, is the

duly elected, qualified, and acting collector of the revenue of said city. That the defendant herein is an actual resident of said city, residing within the corporate limits thereof, in which place he has resided continuously for more than 10 years. That the tax bill filed herein as the basis of this suit is regular in every way, and the amount stated therein is the amount the plaintiff ought to recover, providing it is entitled to recover at all, under the statement of facts as herein agreed to, there being no contention as to the legality of said tax bill, nor of the manner of making the assessment, levy, or other procedure leading up to the issuing of said tax bill, nor of the amount of said levy, there being but one, and only one, question of law at issue between the parties hereto, as follows, to wit:

'The property forming the basis of the assessment upon which the levy for these taxes was made consisted of horses, cattle, mules, sheep, hogs, implements, and machinery owned by the defendant, and kept and used upon a farm owned by him located outside the corporate limits of the city of Greenfield, but within the boundaries of Dade county, Mo., and not used in any way in connection with his home in Greenfield. Plaintiff contends: That under the laws of the state of Missouri the city has a right to assess, levy and collect city taxes against every resident of the city, upon all personal property which he owns or has under his control, irrespective of where said property is actually kept--whether within or without the corporate limits of the city. If this is true, the finding shall be for the plaintiff. Defendant con-

tends: That the city has the right only to assess, levy, and collect city taxes against residents of the city, and where it consists of live stock, implements, farm machinery, and crops kept and used exclusively on a farm owned by the resident, but outside the corporate limits of the city, the assessment of such property for city taxes is unlawful, even though the owner resides within the corporate limits of the city. If this is true, the finding shall be for the defendant."

A jury was waived and the court gave judgment against the defendant in the amount of forty four dollars and ninety four cents (\$44.94). In the appellate court it was affirmed by the following opinion:

"The stipulation heretofore set out contains the following:

'The property forming the basis of the assessment upon which the levy for these taxes was made consisted of horses, cattle, mules, sheep, hogs, implements and machinery owned by the defendant, and kept and used upon a farm owned by him located outside the corporate limits of the city of Greenfield, but within the boundaries of Dade county, Missouri, and not used in any way in connection with his home in Greenfield.'

We are of the opinion that the trial court reached a correct conclusion in its disposition of this case, and that its ruling is sustained by the following authorities: 26 R.C.L. Section 241, pp. 273, 274; State ex rel. v. Pearson, 273 Mo. loc. cit. 78, 199 S.W. loc. cit. 943, 944; State ex rel. v. Shepherd, 218 Mo. 656, 657, 117 S.W. 1169, 131

Am. St. Rep. 568. It is conceded in the foregoing stipulation that:

'Defendant herein is an actual resident of said city (Greenfield), residing within the corporate limits thereof, in which place he has resided for more than ten years.'

The judgment below is accordingly affirmed."

As stated in your request, Aurora is a city of the third class and Section 6779, R.S. Mo. 1929 which applies to cities of the third class is almost identical with the mood of assessment as described in Section 6994, R.S. Mo. 1929 which was upheld in the case of State ex rel. Divine, Revenue Collector, v. Collier, supra, which section applies to cities of the fourth class. Section 6779, R.S. Mo. 1929 reads as follows:

"In assessing property, both real and personal, in cities of the third class, the city assessor shall, jointly with the county assessor, assess all property in such city, and such assessment, as made by the city assessor and county assessor jointly, and after the same has been passed upon by the board of equalization, as hereinafter provided for, shall be taken as the basis from which the city council shall make the levy for city purposes; and for the purpose of giving cities of the third class representation on the county board of equalization, when said board is sitting for the purpose of equalizing the assessment on such city property, the mayor and city assessor shall sit with the county board of equalization when the said board is passing upon the assessment of such city property, and shall each have a vote in said board, and

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they shall be paid for such service the same amount per day and out of the same fund as other members of such board of equalization. The assessment of city property as made by the city and county assessor shall conform to each other, and after such board of equalization has passed upon such assessment and equalized the same, the city assessor's book shall be corrected in red ink in accordance with the changes made by the board of equalization, and so certified by said board, and then returned to the city council."

CONCLUSION

In conclusion, will state that it is the opinion of this department that a person living outside of the city limits and conducting a business within the city limits is not subject to a city tax on the personal property portion of his business, such as ice boxes, scales, cash registers, etc.

It is further the opinion of this department that if a person lives within the city limits of a city of the third class, such as Aurora, and owns a farm outside of the city limits, he is subject to a city tax on the personal property on his farm, cattle, hogs, sheep, hogs, implements, etc.

Respectfully submitted

W. J. BURKE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

WJB:DA