

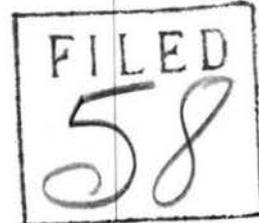
**ASSESSORS:
BUILDING AND LOAN ASSOCIATIONS:**

County assessor has right
to inspect list of share-
holders in building and
loan association.

September 24, 1940

9-26

Hon. J. W. McCammon, Supervisor
Bureau of Building and Loan Supervision
Jefferson City, Missouri



Dear Sir:

This department is in receipt of your request for an official opinion upon a question submitted to you in a letter from Mr. Walter H. Miller, Assessor of Jackson County. The letter reads as follows:

"In checking over personal property returns given to the Assessor by individuals within this county, I do not find any record of building and loan stock or shares listed, and on the other hand, in the past when I have assessed building and loan companies a personal tax against the furnishings of buildings they own and operate, I have been told that they are not required to pay a tax on this class of personal property because of the fact the shareholders pay a personal tax on their shares.

"As I have stated above, it has been impossible to receive a listing of building and loan shares from individual taxpayers. The result is that an apartment building which is owned and operated by a building and loan company pays no personal property tax on furnishings. Likewise, an individually owned apartment the same size and with the same furnishings must pay a personal property tax. There have been numerous

complaints of the fact that an unfair condition exists.

"Attempting to clarify the matter at this assessment time, I addressed a communication to each and every building and loan company or association operating within the boundaries of this county. The communication was dated April 30, 1940, and was sent by registered mail, return receipt requested. As of to date, the only response I have received is a communication from the Kansas City League of Building and Loan Associations dated May 11th, acknowledging receipt of my letter and stating it would be taken under consideration.

"It would seem to me, in view of the fact that the building and loan companies do not pay a personal property tax on any household furnishings that they own within the boundaries of this county, that in fairness they should be willing to furnish a list of their shareholders within the boundaries of this county so that they might be taxed, and if such were the case, it would be ample proof then that the building and loan companies would be justified in not paying a tax themselves."

The question involved in the request is: Has an assessor the authority to require a building and loan association to allow him to examine the list of shareholders?

The taxation of building and loan associations is provided for in Section 9768 R. S. Mo. 1929 (Mo. Stat. Ann. Section 9768, page 7885) and reads as follows:

"All parties holding stock or shares as owners or in trust in any building and loan association in this state, on which

no loan has been obtained from such association, shall be required to give a just and true list of the same to the assessor, with the actual cash value of each share on the first day of June in each year, and the tax shall be levied upon said shares, and collected from such holder or depositor of the same, as taxes on other personal property; and any failure on the part of such owner, holder or depositor of such shares shall subject such holder to the same penalties now provided for failure to give to the assessor a true list of all taxable property, verified by affidavit."

In the case of *Kansas City v. Building and Loan Assn.*, 145 Mo. 50, the court construed the above statute as follows:

"The property of building and loan associations is excepted from assessment and taxation by the state law; that law providing for the assessment and taxation of such corporations by assessing the shareholders on their shares and from them collecting the tax."

The reason for this procedure is, as pointed out in *State ex rel. v. Lesser*, 237 Mo. 326, "the difficulty in reaching the tangible property in those concerns; the stock is treated as representing the property and taxed in lieu of taxing the property."

Under Section 9756, Laws of Missouri, 1937, page 570, every person owning taxable personal property must make a list for the assessor.

Section 9760, R. S. Mo. 1929 (Mo. Stat. Ann. Section 9760, page 7877) provides 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."

Under the above statute a list must be made by the assessor "to include other taxable personal property not given in by the owner." State v. Gomer, 101 S. W. (2d) 57, 340 Mo. 107. In making up this list the assessor may make any examination or search which may be necessary and may examine any person upon oath in order to obtain the necessary information.

The general rule is stated in 61 C. J. 667 as follows:

"Under the statutes existing in some states the officer or board charged with the duty of assessing the property * * * for the purpose of taxation may have compulsory process to compel the corporation to disclose the information necessary for the making of an assessment or may examine persons under oath and inspect the books of the corporation for the purpose of obtaining it."

The reason for granting this right of examination to the assessor is "but an aid to the assessor to enable

him to perform the duty enjoined upon him." *People v. Mills National Bank*, 55 Pac. 685, 123 Cal. 53.

In *Youngstown 1st National Bank v. Hughes*, 6 Fed. 737 (appeal dismissed 106 U. S. 523; 27 L. Ed. 268), a national bank refused to give a list of its depositors to an assessor who wanted such list so that he could assess for taxation said depositors. The assessor relied upon an Ohio statute which authorized him "to issue compulsory process to require attendance of witnesses and examine them on oath." The court said:

"Their purpose is to ascertain in a legal way and by legitimate testimony, whether any person had, at the time mentioned, on deposit with complainant any money subject to taxation in said county which had not been returned by the owner thereof for that purpose. Hence the subpoena commanding the production of the complainant's books, in the manner and for the purpose stated, is not an exercise of 'visitorial powers'; and it follows that the witness is not protected by said section from amenability to the probate court, for his contempt in disobeying its mandate."

Similar statutes as to the right of an assessor to inspect the books of a building and loan association have been upheld in *Co-op. Building and Loan Assn. v. Daniels*, 60 N. E. 146, 156 Ind. 463; *State ex rel. Morgan v. Workingmen's Building and Loan Assn.*, 53 N. E. 168, 152 Ind. 278. See also *Wallace v. Hughes Electric Co.*, 171 N. W. 840, 41 N. D. 418.

In view of the above authorities it appears that the county assessor, under authority of Section 9760, has a right to inspect the list of shareholders of a building and loan association when such shareholders have omitted from their property list the shares in such association.

CONCLUSION.

It is, therefore, the opinion of this department that an assessor may require a building and loan association to permit him to inspect the list of shareholders of such association in order to obtain information so that he may assess omitted personal property.

Respectfully submitted,

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APPROVED:

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A'OK:CP