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TAXATION: Jurisdiction of Tax Commission over  
TAX COMMISSION: assessment rolls after the same have  
been delivered to proper officers for  
collection of the taxes.

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11/26  
October 8, 1941

Hon. Jesse W. Mitchell, Chairman  
State Tax Commission  
Jefferson City, Missouri

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**FILE**  
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Dear Sir:

This is in reply to your request, which is as follows:

"Does the State Tax Commission and the State Board of Equalization have authority to add omitted personal property to the tax rolls after they have been turned over to the collecting officials?"

Section 11028, R. S. Mo. 1939, provides in part as follows:

"After the various assessment rolls required to be made by law shall have been passed upon by the several boards of equalization and prior to the making and delivery of the tax rolls to the proper officers for collection of the taxes, the several assessment rolls shall be subject to inspection by the commission, or by any member or duly authorized agent or representative thereof, and in case it shall appear to the commission after such investigation, or be made to appear to said commission by written complaint of any taxpayer that property subject to taxation has been omitted from said roll, or individual assessments have not been made in compliance with law, the said commission may issue an

order directing the assessing officer whose assessments are to be reviewed to appear with his assessment roll and the sworn statements of the person or persons whose property or whose assessments are to be considered, at a time and place to be stated in said order, said time to be not less than five days from the date of the issuance of said order, and the place to be at the office of the county court at the county seat, or at such other place in said county in which said roll was made as the commission shall deem most convenient for the hearing herein provided. \* \* \* \* \*

As a basis for the foregoing request a personal property owner returned his list to the assessor for property which he owned as of June 1, 1940. This person died and his estate is now in the process of administration. It has been definitely ascertained that the person owned other personal property and the question now submitted is whether or not the State Tax Commission, with the approval of the State Board of Equalization, may add this property to the assessment rolls.

A rule for the construction of tax statutes is stated in State ex rel. Ford Motor Co. v. Gehner, 325 Mo. 24, 1. c. 29, 27 S. W. (2d) 1:

"It is well established that the right of the taxing authority to levy a particular tax must be clearly authorized by the statute and that all such laws are to be construed strictly against such taxing authority. (Hannibal ex rel. Bassen v. Bowman, 98 Mo. App. 103, 71 S. W. 1122; In re Estate of Clark, 270 Mo. 351, 1. c. 362, 194 S. W. 54; State ex rel. Insurance Company v. Hyde, 292 Mo. 342, 1. c. 352, 241 S. W. 396.)"

In the discussion before the State Board it was suggested that as a matter of equity the State Tax Commission and the State Board of Equalization should be permitted to make this assessment. We think this suggestion is met by the statement

made by the St. Louis Court of Appeals in the case of City of Hannibal ex rel. Bowman, 98 Mo. App. 103, l. c. 108, as follows:

"There is, therefore, no such thing as an equity in a county or in a city that will authorize an assessor, after he has completed his assessment and turned over his books to the proper officer and after his assessment has passed the boards of equalization and of appeals, to repossess himself of the assessor's books and enter therein personal property, which by accident or intention was omitted from the list furnished by the taxpayer and which escaped the notice of the assessor. He can only proceed at the time and in the manner pointed out by statute and to justify his assessment he must be able to put his finger on the statute that gives him the authority to make it. \* \* \* \* \* "

From these two statements announced it will be seen that the taxing authorities must be able to put their fingers on the statute authorizing the assessment of a tax and that equity cannot enter into the question.

Referring back to said Section 11028, supra, it will be seen that this section plainly provides that any action which the State Tax Commission and the State Board take on an assessment of omitted property must be done before the delivery of the tax rolls to the proper officers for the collection of the taxes, unless the clause "or be made to appear to said commission by written complaint of any taxpayer that property subject to taxation has been omitted from said roll" would not be included in the provision that the addition of the omitted property must be made before the tax rolls are turned over to the proper officers for collection of taxes. In our research we fail to find where this question has been raised and passed upon by the courts. Referring again to this section it seems that the proper construction to be placed on it would be that the Tax Commission may add omitted property on two occasions; first, if the Tax Commission or its agent, upon inspection of

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the tax rolls finds that property has been omitted, or, second, if it be made to appear to the Commission by a written complaint of a taxpayer that property has been omitted or individual assessments have not been made in compliance with the law, then the Tax Commission may take jurisdiction of the assessment. However, with this construction in either of the events above stated, the plain language of the first part of the section would require such acts to be done prior to the making and delivery of the tax rolls to the proper officers for collection of the taxes. The latter part of said section 11028 provides: "The action of the commission, or member or agent thereof, when done as provided in this section, shall be final, when approved by the state board of equalization." This language would indicate that the State Board of Equalization would not have jurisdiction of any such assessment except to approve the action of the State Tax Commission.

CONCLUSION.

We are, therefore, of the opinion that the State Tax Commission would not have jurisdiction over assessment rolls for the purpose of adding omitted property in cases where such tax rolls have been delivered to the proper officers for collection of taxes. We are further of the opinion that this rule would apply even though it be made to appear to the Commission by a written complaint that property subject to taxation has been omitted from said roll or individual assessments have not been made in compliance with the law.

Respectfully submitted,

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Assistant Attorney-General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney-General

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