

COUNTY ASSESSOR:

Trustee should furnish Assessor a list of property held as trustee. Liability in case of failure to do so.

TAXATION:

September 22, 1943

9/28

Mr. George R. Clark,
Assessor,
Jackson County,
Kansas City, Missouri



Dear Sir:

This will acknowledge receipt of your request for an opinion which reads as follows:

"The major banks of Kansas City are refusing to furnish this office with lists of Personal Property held in trust by the trust departments.

"They have informed this Officer that by furnishing such lists for information would be a betrayal of their trust.

"I respectfully request that you furnish me an opinion as to the liability of these banks and the manner in which this Officer should proceed."

In State ex rel. Compton v. Buder, 308 Mo. 253, l.c. 260, it was held that taxing statutes shall be strictly construed. In so holding the Court said:

"Citation of authority is entirely unnecessary in support of the well recognized rule that taxing statutes must be strictly construed. * * * * *"

In Section 10950, R. S. Missouri 1939, we find that persons having under their care, charge or management property are required to list said property for assessment purposes, and reads:

"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, in a printed or written blank prepared for that purpose; which statement after being filled out, shall be signed and sworn to, to the extent required by this chapter by the person listing the property and delivered to the assessor. Such lists shall contain: first, a list of all the real estate and its value, to be listed and assessed on the first of June, 1937, and every year thereafter, anything in this or any other section to the contrary notwithstanding; second, a list of all the livestock, showing the number of horses, mares, and geldings, and their value; the number of asses and jennets, and their value; and the number of mules and their value; the number of neat cattle, and their value; the number of sheep, and their value; the number of hogs and their value and all other live stock and its value; third, an aggregate statement of all the farm machinery and implements, and their value; fourth, a statement of household property, including the number of pianos and other musical instruments, clocks, watches, chains

and appendages, sewing machines, gold and silver plates, jewelry, household and kitchen furniture, and the value thereof; fifth, money on hand; sixth, money deposited in any bank, or other safe place; 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, whether state, county, town, city, township, incorporated or unincorporated companies; tenth, the number of bee colonies and their value; ten and one-half, all motor vehicles and their value; eleventh, all other property not above enumerated (except merchandise, bills and accounts receivable, and other credits of a merchant or manufacturer, arising out of the sale of goods, wares and merchandise, which have been returned for taxation, under sections 11309 and 11339, R. S. 1939), and its value; under this head shall be included all shares of stock or interest held in steamboats, keelboats, wharfboats, and other vessels; all toll bridges, all printing presses, type and machinery therewith connected, and all portable mills of every description, and all vehicles used in the transportation of persons (except of railway carriages), and all paintings and statutory, and every other species of property not exempt by law from taxation. The word 'list' as used in Section 10996 of this Chapter shall include all the lists required under this section to be taken."

In Volume 61, C. J., Section 765, page 624, we find the general principle as to who shall list property for assessment. Said Section reads as follows:

"The person who should list property for taxation is the owner thereof, or, where it is held by one person for another, and the statutes so provide, the person who

has the custody, possession, control, or management thereof as agent, assignee, trustee, guardian, executor, administrator, receiver, or warehouseman. Some, but not other, statutes requiring listing apply to nonresident owners of taxable property."

There is no doubt but that the Legislature is authorized to require receivers, trustees and assignees to return property in their possession for taxation. In *Interstate Forwarding Co. v. Vineyard*, 3 S. W. (2d) 947, l. c. 952, the Supreme Court of Texas held that under a similar statutory provision as Section 10950, supra, it required a warehouseman to furnish a list of all property stored to the assessor when demanded by said assessor, and the Court, in writing a very comprehensive opinion, held that the Legislature had a right to enact such provision and the Act was valid. In so holding the Court said:

"* * * Said article 7243 not only gives the right, but we think makes it the duty, of a tax assessor, to demand of any person in charge of a warehouse a list of the property stored in such warehouse, together with a list of the names of the owners of such property and their residences. * * *

"* * * There can be no question but that said article 7243 granted to appellee, as tax assessor of Dallas county, the power to demand of appellant that it furnish a list of the property stored in the warehouse conducted by it on the 1st day of January, 1927, together with a list of the names of the owners of such property and their respective residences. This, as an express power, certainly carried with it by necessary implication, in order to keep the act itself from becoming a dead letter, the right to exercise every other power necessary and proper to the execution of the power thus expressly granted. *Lewis' Sutherland, Statutory Construction* (2d Ed.) p. 942."

In *State ex rel. v. Burr*, 143 Mo. 209, l. c. 214, 215, 216, the Supreme Court, in passing upon the law as to the valid-

ity of the statute requiring a curator or trustee to list property in his care, held it was the duty of a curator to so list property in his care, and indicated the same applies to a trustee. In so holding the Court said:

"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 can not 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 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 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.* * "
(Underscoring on page 6 ours.).

Also in State v. Guest, 31 S. W. (2d) 788, l. c. 790, after quoting from Sections 12756, 12766, 12773 and 12932, R.S. 1919, which are practically the same as Sections 10940, 10950, 10957 and 11112, R. S. 1939, the Court held that it is the duty of every person to list with the assessor all taxable property owned by him or under his care and management. In so holding the Court said:

"From the foregoing it appears that every person owning or holding property on the 1st day of June is liable for the taxes thereon for the ensuing year, that it is the duty of every person to list with the assessor all taxable property owned by him, or under his care, charge, or management, and that personal taxes constitute a debt against the person assessed with such taxes, the person named in the tax bill. If the person who holds or has under his care, charge, and management personal property is liable for the taxes thereon, such taxes may be assessed against him or in his name; and, when so assessed, they constitute a personal debt for which a personal judgment against him may be recovered. Whether the care, charge, and management of personal property devolves upon one as trustee, administrator, executor, or curator, or as agent of a nonresi-

dent principal, is of no consequence; he is made liable for the taxes on the property simply because he has charge and control of it, and not because of the capacity in which he holds it. And when the taxes are assessed against one so holding property, the debt is his and not that of the estate or principal for whom he holds. If such a one pays the taxes assessed against him on account of property in his custody and control as administrator, he is of course entitled to reimbursement from the assets of the estate; but that fact does not make the taxes assessed against him the debt of the estate as between it and the state to whom the debt is owing. State ex rel. v. Burr, 143 Mo. 209, 44 S. W. 1045; Kansas City v. Simpson, 90 Mo. App. 50." (Underscoring ours).

Section 11211, R. S. 1939, defines the word "person" as used herein, and reads in part as follows:

"* * * and the word 'person', as used in this chapter, shall be held to mean and include person, firm, company, corporation or otherwise, whenever the case may so require its use or application."

In view of the foregoing provisions and authorities cited, we conclude that it is clearly the duty of such trustees to furnish you, as assessor, a complete list of all property held in trust by them. Section 10954 authorizes the assessor, whenever there shall be any taxable property in the county, and from any cause, no list thereof shall be given the assessor, the assessor shall 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 same. Section 10954, R. S. 1939, reads:

"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."

Section 10955, R. S. Missouri 1939, provides that if any person being notified as aforesaid fails to deliver the required list to the assessor, the property which ought to have been listed shall be assessed at double its value. Said Section reads:

"If any person, being notified as aforesaid, shall fail to deliver the required list to the assessor, the property which ought to have been listed shall be assessed at double its value; and if the assessor shall neglect or refuse so to do, he shall be liable in each case, to a penalty of fifty dollars, to be recovered at the suit of the county, and to be paid into the county school fund."

Under the foregoing provisions the assessor may make an assessment of any property held by a trustee who refuses to submit a list of property held by him, as trustee, for purpose of taxation. In making such assessment the assessor may examine any person under oath as to such property. However, if such person refuses to take an oath and to reveal the necessary information to make a correct assessment, we doubt the authority of the assessor to force such unwilling witness. In case the assessor is unable to obtain the information necessary, then he shall, on his own view or the best information he can obtain, make an assessment, and, further, said assessor shall assess said property at double its value. Furthermore, if said trustee then does not appeal under Section 10992, R. S. Missouri 1939, such assessment, for all purposes, becomes final and valid.

In State ex rel. v. Hoyt, 123 Mo. 348, l. c. 356, the Court said:

"When a tax payer neglects or refuses to furnish a list of his property to the assessor, it becomes the duty of the

assessor to make the assessment 'on his own view, or on the best information he can obtain.' If the owner thinks injustice has been done by the assessor, he has the right to appeal to the board of equalization and have his wrongs remedied. It has been held that the action of the assessor under the revenue law is judicial, and when the jurisdiction to assess the property exists, his valuation, unless appealed from, is conclusive upon the one liable for the taxes. *Ins. Company v. Charles*, 47 Mo. 462, and cases cited; *Railroad v. Maguire*, 49 Mo. 483."

CONCLUSION

Therefore, it is the opinion of this department that it is the duty of every trustee, the same as guardian or curator of an estate, to furnish to the assessor a list of property under his care and management. If he refuses to do so, then the assessor shall assess said property on his own view or from the best information he can obtain, and also shall double the valuation of said property for assessment purposes, and if said trustee fails to appeal from said assessment to the County Board of Equalization, as provided by law, then such assessment becomes binding.

Respectfully submitted,

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APPROVED:

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