

TAXATION:
ESTATES:

Executors or administrators of estates are liable for taxes against estates if they do not pay same out of the assets of estate and if taxes are assessed against the estate, the executor, administrator and their sureties are liable under the bond of such taxes.

August 3, 1943

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Hon. P. F. Donehue
Collector of Revenue
Linn, Missouri

Dear Sir:

This is in reply to yours of recent date on the question of the liability of executors, administrators and estates for personal taxes assessed against properties of estates while in the process of administration; the procedure for the enforcement for the payment of such tax, and the procedure for the County Collector and County Court to follow in settlements relating to delinquent taxes. On the question of the assessment of personal property taxes on property belonging to estates, we are enclosing copy of opinion dated July 17, 1936 to Mr. Wilcox, Chairman of the State Tax Commission. I think this opinion will answer your inquiry as to the procedure for taxing of such estates and the duty of the representative of the estate in relation to the payment of such taxes. We are also enclosing copy of an opinion dated May 14, 1943 to Mr. Ramey Smith, Clerk of the County Court at Ava, Missouri. I think this opinion will answer your inquiry as to the procedure which the County Court takes in settling with the Collector for delinquents which he reports for credit.

In answering your other questions, we are assuming that the assessments were duly made against either the estate or the executor or administrator of the estate. We note from the letter accompanying your request that a party who has been an executor of the estate has taken the position that the personal tax against the properties of the estate which he was administering would have been paid if the bill for the taxes had been presented and allowed. We call your attention to subsection III of Section 181, R. S. Mo. 1939 which reads as follows:

"All debts, including taxes due the state or any county or incorporated city or town; and it shall be the

duty of the executor or administrator to pay all such taxes without any demand therefor being presented to the court for allowance; Provided, that no executor or administrator shall pay any taxes on the real estate of the deceased that are not a charge against the same at the death of the deceased, except where he is in possession of the realty under an order of the court."

From this statute, you will see that no demand or allowance for personal taxes against the estate is necessary. It is the duty of the representative of the estate to see that all taxes have been paid before he makes a final settlement. In the case of State ex rel. and to the use of Rudder, Revenue Collector, v. Haphe et al, 31 S. W. (2d) 788, 791, Division 1 of the Supreme Court, in discussing this question, held:

"In passing, it may be added that the estate of a decedent is not fully administered, and consequently there can be no valid final settlement of the administrator, unless and until all demands growing out of the assessment of taxes against the estate have been paid, or their payment provided for. See, State ex rel. v. Holtcamp, 266 Mo. 347, 181 S. W. 1007, and Wyatt v. Stillman Institute, 303 Mo. 94, 106, 260 S. W. 73. These cases in effect overrule the earlier case of State ex rel. v. Kenrick, 159 Mo. 631, 60 S. W. 1063 and cases following it."

In Vol. 24 C. J., page 325 at sections 945 and 946, we find the principle with respect to general demands and taxes against estates to be stated as follows:

"It is usually considered that a claim due to a state must be presented, al-

though this has been denied, and it is sometimes expressly required by statute that debts due to the state be paid without presentation to the probate court for allowance. A claim for a debt due to a county must be presented.

"The more general view is that the requirement of presentation does not apply to claims for taxes and assessments, whether assessed before or after the death of decedent, although there is also support for the view that a presentation of such a claim is necessary.

"*****"

Our Supreme Court in the case of State ex rel. Ziegenhein, Collector, v. Tittmann, 103 Mo. 553 held that it was the duty of the administrator to pay taxes without them being presented for allowance. At l.c. 564 the court said;

"* * * * Indeed, the universal opinion has prevailed, that it was their duty to pay these taxes as well as those that accrued prior to administration, and such has been the ruling of this court in Williams, Adm'r, v. Heirs of Petticrew, 62 Mo. 460, loc. cit. 469. In that case taxes paid by the administrator were held to be properly paid, when it appeared that they not only accrued after administration, but were paid after the final settlement was filed. * * * "

Missouri statutes do not require the Collector to make a demand on the taxpayer for his taxes. The taxpayer is charged with notice of the taxes and it is his duty to pay the same without demand. The Collector is not required to

file a demand in the probate court for the taxes. In the case of State ex rel. v. Haphe, supra, 31 S. W. (2d) 788, 790, the court in speaking of the liability of an administrator, executor or their sureties for personal taxes said:

"Turning next to the Administration Act, section 181 (Rev. St. 1919) provides: 'All demands against the estate of any deceased person shall be divided into the following classes: * * *

"FIII. All debts, including taxes due the state or any county or incorporated city or town; and it shall be the duty of the * * * administrator to pay all such taxes without any demand therefor being presented to the court for allowance.'

"The taxes referred to in this section include personal taxes assessed against the estate during its administration as well as those assessed against the decedent in his lifetime. State ex rel. v. Tittmann, 103 Mo. 553, 15 S. W. 936. But it is clear, on the grounds set forth in the preceding paragraph, that taxes accruing after the death of the decedent are not debts or demands against the estate unless they have been assessed against it. Both the person 'owning' and the person 'holding' personal property are liable for taxes thereon, and such taxes may be assessed against either or both. But with respect to each they do not become a debt unless and until they are duly assessed against him in the manner prescribed by law. If such taxes are assessed against an estate while in the course of administration, they immediately become demands against the estate, and it is the duty of the administrator to pay them without

demand or presentation for allowance. And there can be no question but that an administrator who, having in his hands sufficient funds to pay such a demand, distributes the assets of the estate without making payment, fails to 'perform all * * * things touching said administration required by law.' For such a breach of duty the administrator and his surety would be personally liable. See, State ex rel. v. Packard, 250 Mo. 686, 157 S. W. 598."

From this statement it will be seen that if the taxes are assessed against the estate while in the course of administration it is the duty of the administrator to pay such taxes without demand or presentation, and if he fails to pay the same he incurs a liability on his bond. In such case, the County Collector would be authorized and required to bring an action on the Collector's bond for the unpaid taxes, penalty and interest.

CONCLUSION.

From the foregoing, it is the opinion of this Department that executors or administrators are responsible for the payment of taxes against the estates which they are administering upon, and if the taxes are assessed against the estate, they have a liability under their bond for the payment of the bond. If the taxes are assessed against the executor or administrator personally, then they have a personal liability to pay the taxes.

We are further of the opinion that it is not the duty of the collector to file personal tax bills in the probate court for allowance and demand; that it is the duty of the executor or administrator to pay such taxes without a demand or an order of allowance.

We are further of the opinion that if a final settlement has been filed in an estate and there are taxes outstanding

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that it is the duty of the collector, through his personal tax attorney, to institute suit for the collection of the tax against the executor or administrator individually, and if the tax is assessed against the estate, then the suit for collection of such tax should be brought against the executor or administrator and his bondsmen.

We are further of the opinion that the County Court would not be authorized under the law to give the Collector credit for such delinquent taxes until he has followed the foregoing procedure for the collection of such taxes.

Respectfully submitted,

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APPROVED:

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