

TAXATION: BD. OF EQUALIZATION:  
ASSESSORS: OMITTED PROPERTY:

County assessor may not add personal property to assessment rolls after he has turned his books over to the county clerk. The county board of equalization may not put on the tax rolls omitted personal property for any year other than the assessment which was made on June 1 next before the session of said board.

April 28, 1943

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Mr. Roger Hibbard  
Prosecuting Attorney  
Marion County  
Hannibal, Missouri

Dear Sir:

This is in reply to your letter of April 23, 1943, requesting an opinion from this department, which letter is as follows:

"A resident of Marion County died February 24th, 1942 leaving among other things certain checking accounts in two local banks and a certificate of shares in two local building and loan associations. On March 5, 1942, prior to the filing of an inventory in the estate, the executor distributed the forementioned property. The inventory of the estate showing the mentioned items was filed May 20, 1942, after the adjournment of the Marion County Board of Equalization which adjourned on the fourth Monday of April. The County Assessor, after the adjournment of the Board of Equalization in 1942, from the records of the Probate Court made an assessment on these assets for personal property tax. It is the contention of the Executor that since these funds have been distributed as of March 5, 1942, that the Board of Equalization has no authority now to add an assessment for 1942 tax.

"The specific question which the County Board of Equalization has asked to have determined is their right during the 1943 session to make this assessment under the facts described for the prior

year, and also the right of the Assessor to go back previous years after the Board of Equalization has adjourned for those years."

Your question resolves itself into, first, the authority of the assessor to make an assessment of personal property after he has turned his books over to the county clerk, second, the authority of the county board of equalization to assess omitted property for any year other than the one which is made as of June 1, next, prior to the meeting of said board, and, third, whether or not an estate which has been distributed prior to the filing of a semi-annual statement is subject to taxation against the executor who may be administering on such an estate on June 1, 1942.

On the first question, under Section 10950, R. S. Missouri 1939, it is the duty of the assessor to make the assessment between the first day of June and the first day of January of each year.

Under Section 10957, R. S. Missouri 1939, it is the duty of the assessor to take from each executor and every other person legally in charge and control of any estate, or from the papers and records of the court relating to such estates, a list of personal property, and to assess the same according to law.

Under Section 10990, R. S. Missouri 1939, the assessor is required to make out and return to the county court a copy of his books. This must be done on or before the twentieth of January each year.

In speaking of the jurisdiction of the assessor to make an assessment after the assessor has performed his duties under this section, the court, in *Wymore et al. v. Markway*, 89 S. W. (2d) 9, 13, said:

"\* \* Also, the assessor is required to make out and return to the county court, by January 2d, a verified copy of his assessor's book (section 9800 (Mo. St. Ann. Section 9800, p. 7903)); and the return of this book to the county clerk's office completes the assessment and terminates his jurisdiction. The principle is firmly established that in making assessment he acts in a judicial capacity."

This statement clearly indicates the assessor cannot add an assessment of personal property to his books after he has turned them over

to the county clerk. However, Section 10977, R. S. Missouri 1939, would seem to indicate otherwise, but from the cases hereinafter referred to it will be seen that this section refers to real estate. In the case of State v. Gomer et al., 101 S. W. (2d) 57, the court held that this section only applied to real estate, and it also held that when the assessor turned his books over to the county clerk his jurisdiction to make an assessment of personal property ended.

In speaking of the authority of an assessor to make an assessment of personal property for back years, the St. Louis Court of Appeals, in the case of City of Hannibal ex rel. v. Bowman, 98 Mo. App. 103, 1. c. 108, said:

"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. \* \* \* \* \*

In the case of Cape Girardeau v. Beuhrmann, 148 Mo. 198, a case with facts similar to your question was before the Supreme Court and it was there held that the assessor could not assess omitted personal property for back years. However, the court, in referring to the general statute, which is now Section 10977, R. S. Missouri 1939, said:

"\* \* \* The general statutes of the State only permit this back assessment of real estate and they govern in the city as well as the county. \* \* \* \* \*

In speaking of these two opinions the Supreme Court, in State ex rel. Ford Motor Co. v. Gehner, 27 S. W. (2d) 1, 325 Mo. 24, 33, said:

"To the same general effect is *Hannibal ex rel. v. Bowman*, supra. If the assessors in the *Buehrmann* and *Bowman* cases were without authority to assess additional personal property where the taxpayer in the previous years had returned an insufficient amount of such property, how can it be possible that respondent assessor may go back two years to make an additional assessment for income actually appearing on the face of relator's return which was not taxed because relator, with the concurrence of the assessor at the time and without subsequent challenge from the board of equalization, was knowingly permitted to omit same from the assessment as a claimed deduction?

"Respondents cite Sections 12819, 12801 and 12969, Revised Statutes 1919, in support of the contention that respondent assessor had jurisdiction to correct the omission in relator's 1926 income-tax assessment. Section 12819 provides a scheme for subsequent assessment and collection of taxes where 'there has been a failure to assess the property in any county for any year or years.' This section covers the situation where the entire assessment for the county has been omitted for any year or the assessment sought to be made had been held void for some reason. The section has no application to the omission of assessable personal property from the return of an individual taxpayer. *State ex rel. Howard v. Timbrook*, 240 Mo. 226, 1. c. 240, 144 S. W. 843, cited by respondents, held this section applicable where the entire assessment for the year was void. See, also, *Hannibal v. Bowman*, supra.

"Section 12801 is as follows:

"No assessment of property or charges for taxes thereon shall be considered illegal on account of any informality in making the assessment, or in the tax lists, or on

account of the assessments not being made or completed within the time required by law.'

"This section does not give the assessor authority to make a given assessment but, where he has such authority, mere subsequent informalities will not invalidate the assessment. \* \*"

Referring again to your letter, we find that the assessor attempted to assess the estate after the board of equalization had adjourned in 1942. The 1942 tax would have been paid on the assessment made as of June 1, 1941. The assessor, under the authorities hereinbefore cited, lost jurisdiction to assess this property when he turned his books over to the county clerk in January, 1942.

If after the assessor turns his books over to the county clerk he finds personal property which has not been assessed, then he could follow the procedure prescribed in Section 10956, R. S. Missouri 1939. Under this section the assessor should give a notice in writing to the board of equalization and then the board of equalization gives notice to the taxpayer and the matter is heard and determined by that board. Also under Section 11006, R. S. Missouri 1939 the board of equalization could have added this omitted property in 1942 by following the procedure prescribed in that section. However, from your letter it appears that the property was not discovered until after the board of equalization had adjourned. Therefore, the assessor could not resort to the means prescribed in the foregoing section to get this property placed upon the tax rolls nor could the board of equalization add this property.

As to the authority of the assessor and the board of equalization to make assessments of omitted property we particularly refer you to the case of State ex rel. v. Walden, 60 S. W. (2d) 24. In that case the court discussed the various stages of an assessment at which the assessor or the board of equalization might act. The court in this case also discussed the powers and duties of the State Tax Commission with reference to the assessment of omitted property.

Since the property in question was discovered after the board of equalization had adjourned but before the tax rolls were turned over to the collecting officials the proper procedure to have placed this property on the books for 1942 tax is prescribed by Section 11028, R. S. Missouri 1939. This section provides in part as follows:

"After the various assessment rolls re-

quired 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. \* "

Your letter also indicates that the executor takes the view that since he did not have or hold this property on June 1, 1942, it is not taxable to him as executor even though the inventory showed the property. The assessment for 1942 would be for the taxes payable in 1943. Your letter also indicates that the executor distributed this property soon after his appointment and before six months after the appointment had expired. Under Section 10957, as stated above, it is the duty of the assessor to obtain from the executor, or the papers of the estate, a list of the property which is subject to taxation. Under Section 10940, R. S. Missouri 1939, every person owning or holding property on June first is liable for taxes for the ensuing year. Then if the executor was, under the law, holding this property on June 1, 1942, it was subject to taxation and could yet be placed on the tax rolls by following the procedure prescribed in Section 11006, supra, which authorized the county board of equalization to assess omitted property, or it could be placed on the tax rolls by the

State Tax Commission by following the procedure prescribed in Section 11028, supra.

As stated in your letter, the executor distributed the personal property before the inventory was filed and also before the first settlement was made. We may assume that the executor showed this distribution to the probate court at the time he made his first settlement. Mr. Limbaugh, in Volume Two on "Missouri Practice and Forms" at Section 927 makes this statement on the question:

"Since settlements cannot be made until after the estate has been in the process of administration for six months, no partial distribution can be made until six months after the date of the letters."

This statement may be correct. However, it does not say that a distribution that is made prematurely would be void, and that the title or ownership of the property distribution would not pass to the distributee. In Volume 24 C. J., page 473, Section 1281, we find the rule as to the making distributions of estates as follows:

"\* \* \* Nevertheless it is the duty of the representative to make distribution as soon as is consistent with the rights of creditors and his own safety; and where it is made apparent that there are more assets on hand than will be necessary for the payment of debts and expenses of administration, the court may direct distribution before the time ordinarily allowed for settlement of estates has elapsed, or, under such circumstances, the representative may pay over legacies or distributive shares in advance of such time, taking a refunding bond from those who are thus paid. \* \*"

Under Section 235, R. S. Missouri 1939, it is provided that the executor shall not be compelled to make distribution until six months after the date of the letters. It will be noted this section does not prohibit the executor from making a distribution sooner than six months after the date of the letters if he is willing to assume the responsibility that he may incur on account of making the early distribution.

We think the executor, in making this early distribution,

did not violate the statute, and since no appeal or objection was made or taken to this distribution that his acts became valid upon approval by the court and that the ownership and possession of the property distributed passed from the executor to the distributee so that he did not own or hold the property on June 1, 1942 subjecting him to taxes thereon.

CONCLUSION

(1) From the foregoing it is the opinion of this department that an assessor is not authorized to make an assessment of personal property after he has turned his books over to the county clerk.

(2) That the county board of equalization is not authorized to assess omitted personal property for any year other than the assessment which is made as of June 1, next, prior to the meeting of said board.

(3) That personal property which has been distributed by an executor prior to the time of filing a semi-annual settlement and passes from the possession and ownership of such executor so that he is not liable for taxes on such property which is shown in the inventory of the estate.

Respectfully submitted

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APPROVED:

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ROY McKITTRICK  
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