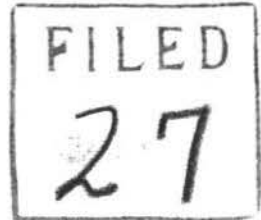


ASSESSOR: All tangible personal property owned by taxpayer to be
TAXATION: assessed in his county of residence.

March 7, 1949



Honorable Clarence Evans
Chairman, State Tax Commission of Missouri
Jefferson City, Missouri

Dear Sir:

Your recent letter requesting an opinion of this department reads as follows:

"We have had some inquiries from assessors regarding property in their counties that has gone unassessed because of their interpretation of the assessment laws. We will appreciate a little clarification of the following laws:

"H.C.S.H.B. 471, Laws of 1945, Section 8, States:

'Personal property to be assessed in county of owner's residence--exceptions.
--All tangible personal of whatever nature and character situate in a county other than the one in which the owner resides shall be assessed in the county where the owner resides, except tangible personal property belonging to estates, which shall be assessed in the county in which the probate court has jurisdiction."

"In refutation of the above we submit Section 4 of H.C.S.H.B. 469, which states that the assessor shall take an oath to assess all of the real and tangible personal property in his county, and Section 10 of the same Bill which states that after receiving the necessary forms the assessor shall proceed to make a list of all real and tangible personal property in his county.

"Also under S.C.S.H.B 943, Section 5, covering counties of the first class, it states, 'It shall be the duty of every person * * * owning or controlling taxable tangible personal property situated in any such county, to file with the

assessor of such county, an itemized return giving all such tangible personal property, etc.'

"We believe the above matter was determined by the courts in volume 301 Mo., Page No. 72, however, this decision was rendered in 1923 and while the law reads the same now as it did then, we do not believe that the new laws governing assessors and assessments, read the same as at that time. It seems that prior to 1909 tangible personal property was assessed at the situs, but Sections 11137 and 11355, R. S. Mo. 1909 changed this requiring personal property to be taxed in the county in which the owner resides.

"We are of the opinion that a considerable amount of personal property is not being assessed for the reason that an owner residing in Jackson County will make his personal return on his property in Jackson County as required under House Bill 943, above mentioned, and although he may own personal property in several other counties, the assessor of these other counties, under the present law, will not assess this property in their counties because of Section 8 of House Bill 471."

Section 8 of H.C.S.H.B. 471, Laws Missouri 1945, page 1799, reads as follows:

"All tangible personal property of whatever nature and character situate in a county other than the one in which the owner resides shall be assessed in the county where the owner resides, except tangible personal property belonging to estates, which shall be assessed in the county in which the probate court has jurisdiction."

This section fixes the residence of the owner as the legal situs for the taxation of all his tangible personal property subject to taxation by the laws of Missouri. The situs is thus fixed for all the purposes of taxation; see State ex rel. White v. Timbrook's Estate, 129 S.W. 1068, 145 Mo. App. 368. It must therefore be concluded that an assessor of a county other than the owner's residence cannot assess the tangible personal property of the non-resident owner physically situated within that assessor's county because that property has no situs for taxation purposes within that county.

H.S.H.B. 469, Laws Missouri, 1945, p. 1782, relating to assessors and assessments of property, must be construed in the light of Section 8 of H.C.S.H.B. 471, supra. When the assessor executes his oath as required by Section 4 of H.S.H.B. 469, "to assess all of the real and tangible personal property in the county in which he assesses," he has sworn or affirmed that he shall assess all tangible personal property having a situs for taxation purposes within that county.

Similarly, when Section 10 of H.S.H.B. 469 makes it the duty of the assessor "to make a list of all real and tangible personal property in his county, town, or district, and assess the same" and to "require such persons to make a correct statement of all taxable real and tangible personal property in the county owned by such person," the tangible personal property to be listed and assessed is that property having its legal situs for taxation purposes in that county.

That this is the proper construction is shown further by the fact that Section 17 of this Act requires the person listing property to "swear that the foregoing list contains a true and correct statement of all the real property and tangible personal property, made taxable by the laws of the State of Missouri which I owned or * * *." Any person residing in a county and owning tangible personal property which has that county for its taxation situs must prepare such a list and deliver it to the assessor of that county, swearing or affirming that such list is a true statement of all tangible personal property made taxable by the State of Missouri.

S.C.S.H.B. 945, Laws Missouri 1945, p. 1930, relates to the taxation of real and tangible personal property in first class counties. Section 5 of this Act reads in part as follows:

"It shall be the duty of every person, corporation, partnership or association, subject to taxation under the laws of this State, owning or controlling taxable tangible personal property situated in any such county, except, * * *to file with the assessor of such county an itemized return listing all such tangible personal property so owned or controlled on January 1st of each year and estimating the true value thereof in money. * * *"

This Act too must be read in conjunction with Section 8 of H.C.S.H.B. 471, supra. The tangible personal property required to be listed is again that tangible personal property which has that county as its situs for taxation purposes.

CONCLUSION

It is therefore the opinion of this department that the county in which the owner resides is the legal situs of all tangible personal property by him owned and is to be assessed in that county. That tangible personal property situated in counties other than the residence of the owner cannot be assessed in those counties because, for taxation purposes, those counties are not the legal situs of such property.

Respectfully submitted,

RICHARD H. VOSS
Assistant Attorney General

APPROVED:

J.E. TAYLOR
Attorney General

RHV:mw