

ASSESSMENT LISTS) ) A separate list, including all real and tangible personal property, must be made for each taxpayer. The assessor ) has no authority to make a joint list for husband and wife.

*assessor cannot fill out list unless taxpayer  
~~assessor~~ has been given opportunity to do so.*

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9-12-51

Mr. Elton A. Skinner  
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Fayette, Missouri



Dear Mr. Skinner:

We have given careful consideration to your recent request for an official opinion on each of the questions contained in your letter.

Question No. 1

"If a taxpayer has signed an assessment list for his separate property, can the Assessor thereafter make a joint list for such taxpayer and his wife for their joint property without the signature of either? Would the same be true if a joint personalty list were signed by the taxpayer, could the Assessor thereafter make a joint or several realty list without the signature of either?"

Section 137.115, RSMo 1949, pertaining to the assessment of property, is as follows:

"1. After receiving the necessary forms the assessor or his deputy or deputies shall, except in the city of St. Louis, between the first day of January and the first day of June, 1946, and each year thereafter, proceed to make a list of all real and tangible personal property in his county, town

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or district, and assess the same at its true value in money 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 real and tangible personal property in the county owned by such person, except merchandise which may be required to pay a license tax and except all other property which may be exempted by law from taxation.

"2. The person listing the property shall enter a true or correct statement of such property, in a printed blank prepared for that purpose, which statement after being filled out shall be signed and either affirmed or sworn to as provided in section 137.155. The list shall then be delivered to the assessor."

It is provided herein that the assessment list "shall be signed and either affirmed or sworn to" by the person listing the property. "A statute requiring a taxpayer's list to be verified by oath or affidavit must be complied with." 61 C.J. 625. "Where the law requires the taxpayers' lists to be verified by oath or affidavit, an unverified list is of no effect." 61 C.J. 626.

This statute requires each person "to make a correct statement of all taxable real and tangible personal property" owned by him in the county. The next section, 137.120, provides that each list shall contain all the real estate and various items of tangible personal property of the taxpayer. The oath or affirmation must state "that the foregoing list contains a true and correct statement

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of all the real property and tangible personal property" owned or managed by the taxpayer on the first day of January. It is evident, as herein pointed out, that the law requires all real estate and tangible personal property of a taxpayer to be included in one list.

A separate list must be made out for each taxpayer. If a husband and wife own separate properties, either in real estate or personalty, a list must be made out for each person.

A peculiar situation arises, however, in case of an estate by the entirety, which is created by a conveyance to a husband and wife by a deed in the usual form. It is one estate vested in two individuals who are by law regarded as one person, each being vested with the entire estate. Neither can sell or dispose of his or her interest without the concurrence of the other. In case of the death of either party, the other retains the entire estate by the right of survivorship. The estate remains the same as it was, except that there is only one owner instead of two. An estate by the entirety may exist in the form of personal property as well as real estate. For the purpose of assessment any estate by the entirety should be treated as a distinct ownership, and a separate list should be made out for the estate. In all other cases of joint ownership, such as tenancy in common and joint tenancy, the interest or part of each owner should be listed as any other item of property. (An opinion of this office covering these questions, for W. A. Holloway, 1941, is herewith enclosed.)

#### CONCLUSION

It is the opinion of this office that a separate list, including all real and tangible personal property, must be made for each taxpayer, and this rule applies to a husband or a wife. The assessor has no authority to make a joint list. An estate by the entirety is simply a joint ownership for which a separate list should be made.

#### Question No. 2

"Does the Assessor have the right to make a list if he has not requested the taxpayer to make one?"

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Section 137.130, RSMo 1949, is as follows:

"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."

The Supreme Court of Missouri gave meaning to this law in the case of State ex rel. Hawkin v. Edwards, 286 S.W. 25. In the course of that opinion, on page 26, the court said: "The failure of a property owner to return his property for taxes authorizes an assessor to fix a valuation."

The assessor, however, must call at the office, place of business, or residence of each taxpayer and require him to make a correct statement of all his taxable property, as required by Section 137.115, supra, and there is no law authorizing such officer to make a list until he has performed his duty.

This interpretation of the statute has been sustained by the Supreme Court of Missouri in numerous cases. In State ex rel. Wenneker v. Cummings, 151 Mo. 49, l.c. 59, the court said:

"Tested by these rules, it must be held that when the assessor, Brokate, went in person, on June 9, 1894, to the residence of defendant, and left the printed notice and blank list requiring defendant to list his property, and defendant received that list on that day, the jurisdiction to assess attached. If, after

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receiving this blank list and notice, he failed to make out his own list, or refused peremptorily to do so, as is shown by his evidence, then the law authorized the assessor (section 7535) to make out the list on his own view, or 'on the best information he could obtain.' \* \* \*

In the case of State ex rel. Wyatt v. Hoyt, 123 Mo. 348, 1.c. 354, the court said:

"It would be utterly impossible for an assessor to remember, and be able to testify to the fact, that lists had been left with each property owner, and that they had not been returned as required by law. Hence the statute requires that the fact of leaving the list should be specially noted by the assessor. The right and power of the assessor to make the assessment depends upon the due performance of his duties in respect to these requirements. \* \* \*"

#### CONCLUSION

It is the opinion of this office that the assessor has no right to make a list if he has not made reasonable effort to obtain one from the taxpayer.

#### Question No. 3

"Is an assessment form which bears the taxpayer's name and real estate tract number but no description, valuation or signature a valid list? Does the omission of any of the above from the list invalidate the same?"

The legal description of the land and the valuation thereof are essential in the listing of real estate, and

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the signature of the taxpayer, under oath or affirmation, is necessary when the list is made out by the taxpayer himself. "He must include all his taxable property according to its nature, and the directions of the statute." 61 C.J. 624.

CONCLUSION

It is the opinion of this office that the omission of any of these essentials invalidates the list.

Question No. 4

"Is the Assessor entitled to compensation for lists incomplete in any manner above described?"

CONCLUSION

It is the opinion of this office that the assessor is not entitled to compensation for a list not complete in all respects required by law.

Questions Nos 5, 6 and 7

"When is the County Court required to compensate the Assessor after completion of the County Assessment?"

"May the Presiding Judge and County Clerk reject any list without approval of the full Court?"

"Is the Assessor required to turn over to the County Clerk his assessment lists immediately upon completion of same? If not, when must they be turned over to the Clerk?"

Section 137.245, RSMo 1949, requires the assessor to "make out and return to the county court, on or before the thirty-first day of May in every year, a fair copy of the assessor's book, verified by his affidavit annexed thereto,..."

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Section 50.160, RSMo 1949, provides that "The county court shall have power to audit, adjust and settle all accounts to which the county shall be a party; to order the payment out of the county treasury of any sum of money found due by the county on such accounts;...."

It should be noted here that the statute gives the county court power to audit, adjust and settle accounts. The authority is vested in the court. There is no law authorizing the presiding judge and county clerk to reject an assessment list without approval of the court.

#### CONCLUSIONS

It is the opinion of this office that the assessor is required to make out and return his assessment lists to the county court on or before the thirty-first day of May in every year.

It is also the opinion of this office that the county court is required to compensate the assessor as soon as his lists may be audited and adjusted.

It is also the opinion of this office that the presiding judge and county clerk do not have authority to reject an assessment list unless so ordered by the county court.

Respectfully submitted,

APPROVED:

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