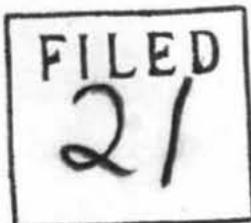


MOTOR VEHICLES:
COLLECTOR:

Under House Bill 211 a person who owns personal property which is not assessed is entitled to a certificate that no taxes are due.



June 30, 1952

Honorable Dick B. Dale, Jr.,
Prosecuting Attorney of
Ray County
Richmond, Missouri

Dear Sir:

Reference is made to your recent request for an official opinion of this department which request reads in part as follows:

"I hereby respectfully request an official opinion from your Office concerning House Bill 211, which became effective April 22, 1952, and reads in part as follows:

"Section 1. No state registration license to operate any motor vehicle in this State shall be issued unless the application for license is accompanied by a tax receipt or a statement certified by the county or township collector of the county or township in which the applicant's property was assessed showing that the state and county tangible personal property taxes for the preceding year have been paid by the applicant or that no such taxes are due."

"Section 2. Every County and Township Collector shall give each person a tax receipt or a certified statement of tangible personal property taxes paid. Where no such taxes are due each such

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collector shall, upon request, certify such fact and transmit such statement to the person making the request. The director of revenue shall make necessary rules and regulations for the enforcement of this act, and shall design all necessary forms.'

* * * * *

"The question for which I am requesting an opinion is, Which of the above three designated forms is the County Collector to give the applicant when the applicant was a resident of the County and an owner of an automobile on January 1, 1951, but where the assessor's office did not assess the automobile?"

* * * * *

In a case such as you have mentioned, where a person owned personal property on January 1, 1951, but was not assessed, nor taxes paid, the county collector under Section 2, House Bill 211, could not issue a tax receipt or a certified statement of personal property taxes paid. The question then is whether a collector should issue a certificate that no taxes are due to a person who wishes to make application for a motor vehicle registration license.

We are of the opinion that a collector, under the provisions of House Bill 211, Section 2, should issue upon request a certified statement that no taxes are due since the basis of any tax is a valid assessment.

The General Rule in this regard is stated in 51 Am. Jur., Taxation, Section 647, page 614, as follows:

"It seems hardly necessary to cite authorities to support the proposition that in order to have a valid tax there must be a levy of taxes and an assessment.

* * * * *

"While strictly speaking, the 'assessment' of a tax is an official estimate of the sums which are to constitute the basis of an apportionment of a tax between the individual subjects of taxation within the district, the word as commonly employed refers to the processes of

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listing the persons, property, etc., to be taxed, and the valuation of the property. A valid assessment is undoubtedly indispensable to the levy of a tax."

This rule has been followed by the Supreme Court of Missouri in the case of State ex rel. Kansas City Power and Light Company v. Smith, 342 Mo. 75, wherein the court said at l.c. 78:

"Under our system of taxation there can be no lawful collection of a tax until there is a lawful assessment and there can be no lawful assessment except in the manner prescribed by law and of property designated by law for that purpose." (Italics ours.) (State ex rel. Koeln v. Lesser, 237 Mo. 310, l.c. 318, 141 S.W. 888.)"

See also State ex rel. v. Lesser, 237 Mo. 310, l. c., 318. State ex rel. Haferty v. Kansas City Power and Light Company, 346 Mo. 1069, l.c. 1077.

Since the applicant for a certificate from the collector was not assessed, his name will not be carried in the collector's books and therefore, no tax is due. The only duty of the collector is to collect such taxes as are listed in the tax books as delivered to him and he has no authority to make an entry in the tax book and demand such tax prior to issuing a certificate.

We would like here to point out that House Bill No. 211 applies to all personal taxes and not merely taxes upon an automobile.

CONCLUSION

Therefore, it is the opinion of this department that where a person owns personal property on January 1, 1951, which is not assessed and carried on the tax books delivered to the collector such person is entitled, under the provisions of House Bill No. 211, 66th General Assembly, upon request, to a certified statement from the collector that no taxes are due, since the liability for such taxes is based upon a valid assessment.

Respectfully submitted,

D. D. GUFFEY
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General