

ASSESSMENTS:

TANGIBLE PERSONAL PROPERTY:

ASSESSOR'S DUTIES:

FIRST CLASS COUNTIES:

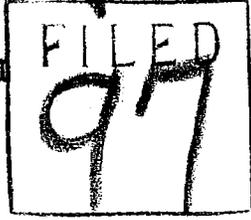
1. Upon failure of taxpayer to file assessment list of all tangible taxable personal property within time and manner required by applicable statutes, Sec. 137.345, RSMo 1959, requires assessor of first class county to assess property which should have been listed at double value. He may rely solely upon next or last preceding list filed by taxpayer as to property and its value if it is best information obtainable. 2. For each subsequent year assessor determines a penalty is due he shall list property at double value shown on next or last preceding list of taxpayer, but is unauthorized to redouble value of property for each subsequent year he prepares a list. In no case may be assess property at more than double its value.

November 3, 1961

Honorable John A. Williams, Chairman  
State Tax Commission  
Jefferson City, Missouri

Dear Mr. Williams:

This office is in receipt of your request for a legal opinion, which reads as follows:



"May the assessor of a first class county currently employ as his sole source of information the itemized personal property statement rendered by the taxpayer during and for the next preceding year to determine the property which should have been listed and double same as provided by Section 137.145, R. S. Mo. 1959?

"Provided the answer is yes may this same information be used and redoubled each subsequent year the taxpayer fails to file his personal property return?"

Section 137.145, RSMo 1959, is referred to in the first inquiry of your opinion request. Evidently this is not the section intended as Section 137.345, RSMo 1959, is the one authorizing an assessor of a first class county to make an assessment when the taxpayer fails or refuses to file a list or statement of all taxable tangible personal property owned or controlled by him during the year, and permits the assessor to double the value of the property which should have been listed by such taxpayer. For the purpose of our discussion herein, we shall treat the first inquiry as referring to Section 137.345 and not to Section 137.145, RSMo 1959.

Section 137.340, RSMo 1959, is applicable to counties of the first class and in effect provides every person, corporation, partnership or association subject to taxation under the laws of this state, owning or controlling taxable tangible personal property, except merchants, manufacturers, railroads, public utility and pipeline companies or any other person or corporation subject

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to special tax requirements, shall file an itemized tax return listing all tangible personal property owned or controlled by the taxpayer on the first day of January each year, which property shall be estimated at its value in money. The list shall be delivered to the assessor between the first day of January and the first day of March each year, and shall be signed and certified as to the truth of the contents by the taxpayer.

It will be assumed the taxpayer referred to in the opinion request is an individual and is not one coming within any of the exceptions, or one subject to taxation under special statutory provisions, consequently the taxpayer referred to in said opinion request has the duty of filing an itemized list, with the estimated value of each article listed, properly certified by him and filed with the assessor within the time provided by Section 137.340, each year.

Section 137.345, RSMo 1959, requires the assessor of a first class county to prepare an assessment list when none is filed by the taxpayer and reads as follows:

"1. If any person, corporation, partnership or association neglects or refuses to deliver an itemized statement or list of all the taxable tangible personal property signed and certified by the taxpayer, the assessor shall assess the property which should have been listed at double its value. The assessor may omit assessing the penalty in any case where he is satisfied that the failure to file the list was due to illness or was unavoidable and not willful.

"2. The assessor, in the absence of the owner failing to deliver a required list of property is not required to furnish to the owner a duplicate of the assessment as made."

The above quoted section does not specify any procedure to be followed by the assessor in obtaining information as to what property is to be listed and the estimated value in money of each piece of property. In the absence of any such statutory provisions, it is believed this matter has been left to the sound discretion of the assessor, who is authorized to use any or all lawful means available to him in obtaining the best, or most reliable information possible under the circumstances.

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Section 137.130, RSMo 1959, requires the assessor to make a list of a taxpayer's property when the latter fails to return a list. This is a general statute applicable to all counties in the state, and since it is on the same general subject as Section 137.345, supra, both are in pari materia and must be harmonized, with a view to giving effect to both.

Section 137.130, RSMo 1959, reads 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."

Said section refers to any taxable property in any county where no list has been given to the assessor in the proper time and manner and is applicable to counties of the first class.

While the making of an assessment list upon the assessor's own view would undoubtedly be the best and most reliable way in which he could obtain the necessary information, it is not always possible to do this. In a first class county where the assessor may be required to fill out assessment lists for numerous taxpayers who do not file any, it would be very difficult, if not impossible, and certainly impractical, for the assessor to attempt to personally view the property of each individual taxpayer, or to attempt to examine all such taxpayers under oath before completing the assessment lists.

In this or similar instances when a personal view cannot be had, the assessor is authorized by Section 137.130, supra, to make out the list upon the best information he can obtain. The section does not indicate what information shall be the best obtainable within the meaning of the section, or what methods or sources of information the assessor is to make use of in his investigation. In the absence of any such statutory provisions, it appears that the determination of the best information obtainable, the sources of same, as well as the methods to be used,

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have been left to the sound discretion of the assessor.

One reliable source of information available to the assessor would be the assessment lists filed by the taxpayers for the next preceding year, or for the last year they did file lists.

Ordinarily such prior years' list will afford reliable, if not the only source of information available to the assessor. The reasons for the reliability of same are quite obvious, when it is remembered that the taxpayer is surely in a better position than anyone else to know what property he owned or controlled during the current tax year, and to make a fair estimate of its value. The property shown on the list must be certified to by him as being a true and correct statement of his property.

Although the next preceding or last prior year's assessment lists may have correctly listed the taxpayer's property when filed, such lists may no longer contain accurate statements as to the property and its value owned or controlled during the current year, and from which the assessor makes lists upon the taxpayers failure or refusal to do so. Such property may have long since increased or decreased in value and the taxpayer might own or control only a portion, or none of the property last reported by him, and the list prepared by the assessor may not actually reflect the status of the taxpayer's property at that time. However, since the assessment list last filed by the taxpayer was certified by him as containing a correct statement at that time, of each article of tangible personal property owned or controlled by him, such facts will be presumed to continue to exist indefinitely, in the absence of any evidence to the contrary. This is true for the reason it is based upon a long-settled and well-established legal principle prevailing in Missouri. Such legal principle was referred to by the court in the case of Kreisman v. Kornfeld, 208 SW 2d 79, and in which the court said at l. c. 84, 85:

"The presumption that a condition or state of things once shown to exist, in matters of a continuing nature, is presumed to continue until the contrary is shown, is long-settled and established law in this state, and we think it is applicable to the situation before us in this case. King v. Missouri Pacific Ry. Co., Mo. Sup., 263 S. W. 828, 833; Dean v. Kansas City, St. Louis & Chicago R. Co., 199 Mo. 386, 97 S. W. 910; Ruckels et al. v. Pryor, 351 Mo. 819, 846, 174 S. W. 2d 185, 198."

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Regardless of what the status of such property is, the listing of same by the assessor from the last prior list of the taxpayer may still be the best information obtainable, and any incorrectness in the listing of such property are mere irregularities, in no way affecting the legality of the assessment.

Therefore, upon the failure of a taxpayer of a first class county to file a tangible personal property assessment list within the time and manner provided by the applicable statutes, Section 137.345, RSMo 1959, requires the assessor of such county to assess the property which should have been listed at double its value. In performance of such duties the assessor may rely solely upon the next preceding, or the last preceding, year's assessment list filed by the taxpayer for information as to what property is to be listed and its estimated value, if said information is the best obtainable.

The second inquiry of the opinion requests reads as follows:

"Provided the answer is yes may this same information be used and redoubled each subsequent year the taxpayer fails to file his personal property return?"

We understand the second inquiry to ask that if the first one is answered in the affirmative, may the information as to the property and its estimated value shown on the assessment list last filed, be used, and such estimated value re-doubled for each subsequent year the taxpayer fails to file a list. In other words, may the assessor use the same information year after year, when no assessment list is filed by the taxpayer, and may he then "double" or "redouble" the assessment made by him for the next preceding year, for each subsequent year he makes such assessment.

No Missouri statutes or appellate court decisions limit the assessor but once to the use of information obtained by him from the next preceding or last preceding assessment list filed by the taxpayer, in assessing the property which should have been listed by the taxpayer. In the absence of any such authority it is believed the assessor may continue to use said information in making the assessment for each subsequent year the taxpayer fails to file a list, providing such information is the best obtainable by the assessor under the circumstances.

In preparing an assessment list for each subsequent year in such situations, the assessor cannot rely upon the next preceding year's list as prepared by him, for information as to the

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property and its value to be listed. It is not the best information. The applicable statutes require the assessor to perform his duties each year, and the performance of said duties is an independent proceeding from the performance of the same duties the year before. This principle was held to be the law of Missouri in the case of Cupples-Hesse Corporation v. Bannister, 322 SW 2d 817, in which the court said l. c. 823, as follows:

"We think it important to note that defendant Assessor has the duty of assessing property each year (Section 137.080, RSMo 1949, V.A.M.S.), and that each year's assessment constitutes an independent proceeding and judgment. Boonville Nat. Bank v. Scholtzhauer, supra. In taxation matters it has been observed that the doctrine of res judicata is of but limited application, inasmuch as the assessment for each year is an independent determination for that year. Each year's tax is a separate transaction and each action relating to each year's tax is a new cause of action. In re Breuer's Income Tax, 354 Mo. 578, 190 S. W. 2d 248; Young Men's Christian Ass'n of St. Louis and St. Louis County v. Sestric, 362 Mo. 551, 242 S. W. 2d 497. It is not clearly seen that the issues of law and fact in the assessment of the 1956 tax were or are to be all the same in assessing the taxes for 1957 and for the stated subsequent years, even though, as alleged, the 'formulas and methodology' utilized by the Assessor in 1956 were or are to be utilized by the Assessor in the assessments for 1957 and subsequent years. It has been said that the weight of authority supports the proposition that the determination of value of property for taxation on a particular date is not conclusive as to value on a subsequent date. Annotation 150 A.L.R. 5, at page 79."

While the subsequent year's list may involve the same property owned or controlled by the taxpayer, and as expressed by the court in the above cited case, the same "formulas and methodology" may be utilized, as were previously employed, the value of the property shown on the preceding year's list as prepared by the assessor, cannot be used by him for a subsequent year's assessment because said assessment is not the true value of the property. On the contrary, said assessment is double the value.

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If the property with its doubled value were taken by the assessor as a basis upon which to prepare a subsequent year's list, and such value were redoubled from that of the preceding year's list, this would have the effect of assessing the property at four times the true value shown on the last assessment list filed by the taxpayer. Such a procedure is not authorized by Section 137.345, supra. He is not authorized to assess the property at more than double its value.

Therefore, in answer to the second inquiry of the opinion request it is our opinion the assessor may rely solely upon information from the next, or last preceding assessment list filed by the taxpayer in making assessment for subsequent years, if said information is the best obtainable. For each subsequent year he determines a penalty is due, the assessor shall list the same property with a value double that shown on the next or last preceding list so filed by the taxpayer, but he is unauthorized to redouble the value of such property for each subsequent year he prepares the list.

#### CONCLUSION

Therefore, it is the opinion of this office, that:

1. Upon the failure of a taxpayer to file an assessment list of all tangible taxable personal property owned or controlled by him during the current year, within the time and manner provided by the applicable statutes, Section 137.345, RSMo 1959, requires the assessor of a first class county to assess the property which should have been listed at double its value. In the performance of said duties, he may rely solely upon information as to the property and its estimated value obtained from the next preceding or last preceding year's list filed by the taxpayer if it is the best information obtainable.

2. It is further the opinion of this office the assessor may rely solely upon information from the next or last preceding assessment list filed by the taxpayer in making assessments for subsequent years if said information is the best obtainable. In such cases, for each subsequent year the assessor determines a penalty is due, he shall assess the property at double the value shown on said list so filed by the taxpayer, but he is unauthorized to redouble the value of such property for each subsequent year he prepares a list. In no case may he assess the property at more than double its value.

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The foregoing opinion which I hereby approve, was prepared by my Assistant, Paul N. Chitwood.

Very truly yours,

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THOMAS F. EAGLETON  
Attorney General

PHC:HW