



OFFICES OF THE

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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JOHN C. DANFORTH
ATTORNEY GENERAL

OPINION LETTER NO. 126

Honorable Kenneth J. Rothman
Honorable James P. Mulvaney
Honorable Wayne Goode
Members of the General Assembly
c/o House Post Office
Jefferson City, Missouri 65101

Gentlemen:

This opinion is in response to your question asking:

"Whether under Chapter 135 RSMo. 1973, Supp. the Department of Revenue can require a person to refund part of tax credit allowed plus charge interest and a penalty due to the fact that the property is held in joint names with a person other than the claimant, even though the claimant paid all of the property taxes on the property, and the other person or persons names which appear on record title are only for purposes of estate planning and to avoid probate, and the claimant contributed the entire amount toward the purchase of, or acquisition of the property, while the other person or persons, contributed nothing."

You also state:

"The Department of Revenue, in some instances, allowed a tax credit on the full amount of property taxes paid, but then in a recheck has found that some cases involve property held in some form of joint ownership with the claimant and a person or persons other than the claimant. The Department then demanded a refund to the

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State by the claimant on part of the tax credit allowed and already paid to the claimant. Further the Department has assessed an interest charge and a penalty on these persons who were paid the tax credit, in this type of situation."

It is our understanding that the position taken by the Department of Revenue is that if the property upon which the taxes were paid is owned jointly by the claimant and someone other than a spouse, it is the policy of the Department of Revenue to allow the claimant credit only for that portion of the taxes which reflects his percentage of ownership in the property.

Our review of the provisions of the "circuit breaker" law lead us to the conclusion that the position of the Department of Revenue, as stated, is legally sound.

We have avoided a detailed analysis of our views in view of the urgency of your request and so that the legislature may be promptly advised that amendments to the law might be considered if such conclusion does not reflect the legislative intent.

Yours very truly,



JOHN C. DANFORTH
Attorney General