

TAXATION: Unassessed personal property may not be added to tax books after October 31 by assessor, collector or county court, and therefore person whose property was not assessed is entitled to a statement that no taxes were owed by him. County of residence on January 1 is county from which statement regarding personal property tax liability must be obtained for use under Section 301.025, MoRS, 1951 Supp.

(C O P Y)

July 31, 1953

Filed: No. 5

Honorable Harold W. Barrick
Prosecuting Attorney
Pettis County
Sedalia, Missouri



Dear Sir:

We have received your request for an opinion of this office, which request reads as follows:

"At the request of Miss Hazel Palmer, County Collector of Pettis County, I hereby request an official opinion from your office on the following questions:

1. Where a county assessor has failed to assess a resident's personal property, including an automobile, located in his county on January 1, and the person comes to pay his or her taxes and discovers such failure to be assessed, can the assessor or the collector or the county court make an addition on the tax book of an assessment due so the person could pay the tax thereon for the current year then due?

2. If a resident of one county in Missouri on January 1 moves to another county (whether one day or six months after assessment date) and comes to the collector's office where he last moved to pay his taxes due November 1 and his name is not on the personal property tax

Honorable Harold W. Barrick

book, can he be put on as an addition if he says he was not assessed in the other county and had not paid any current taxes where he resided on January 1?

3. When a person is put on as an addition to the current tax book after January 1, can the penalty which begins January 1 be waived by the county collector, or must the penalty also be added?

4. Would being a resident of another county in Missouri on assessment date, January 1, and not being assessed there, force the county collector to tell the person to go back to that county and obtain his statement or clearance so he can secure an automobile license in the county where he moved to and where he now resides?

5. Under House Bill 211, effective January 1, 1952, providing that personal property taxes be paid before license is issued, can any county collector refuse to give any person who might come to the tax window and request it, a statement that no taxes for the preceding year are due in that office, even though the person says he did not live in that collector's county on assessment date and even though from questioning the person, the collector may believe the person does owe such tax in another county in Missouri and is just trying to circumvent the law?"

Your inquiries all concern the application of Section 301.025, MoRS, 1951 Supp., which reads as follows:

"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 were due. 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 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 section, and shall design all necessary forms."

Answer to your inquiries requires consideration of the general scheme for the assessment and collection of personal property taxes. Section 137.075, RSMo 1949, fixes January 1 as the assessment date for taxation of tangible personal property. Section 137.090, RSMo 1949, makes tangible personal property taxable at the residence of the owner thereof.

Section 137.115, RSMo 1949, provides:

"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 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."

Section 137.125, RSMo 1949, provides, in part:

"1. If any person required by this chapter to list property shall be sick or absent

when the assessor calls for a list of his property, the assessor shall leave at the office, or the usual place of residence or business of such person, a printed assessment blank and a printed notice, requiring such person to make out and mail or take to the office of said assessor, not more than twenty days from the date of such notice, a sworn statement of the property which he is required to list."

Section 137.130, RSMo 1949, provides:

"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."

Section 137.215, RSMo 1949, provides for the assessor's making the personal property tax book. Under Section 137.245, RSMo 1949, the assessor's books are required to be completed on or before May 31 of each year.

Section 137.265, RSMo 1949, provides:

"An assessment of property or charges for taxes thereon shall not be considered illegal on account of any informality in making the assessment, or in the tax lists, or on account of the assessment not being made or completed within the time required by law."

Section 137.280, RSMo 1949, provides:

"If any person, being notified as aforesaid, shall fail to deliver the required list to the assessor, the property which ought to have been listed shall be assessed at double its value; and if the assessor shall neglect or refuse so to do, he shall be liable in each case, to a penalty of fifty dollars, to be recovered at the suit of the county, and to be paid into the county school fund; provided, that the assessor may omit assessing the penalty in any case where he is satisfied the neglect is unavoidable and not willful."

Honorable Harold W. Barrick

Section 138.010, RSMo 1949, provides that the county board of equalization, in regular session, may add any property omitted from the assessor's books.

Section 138.380, RSMo 1949, authorizes the State Tax Commission "To cause to be placed upon the assessment rolls at any time during the year omitted property which may be discovered to have, for any reason, escaped assessment and taxation, * * *"

Under Section 137.290, RSMo 1949, the tax books are required to be delivered to the county collector before October 31 of each year and he thereupon proceeds to collect the taxes listed in said books.

A fundamental rule of our taxing system is that "there must be a valid assessment to support a levy for taxes." State ex rel. Jackson County Library Dist. v. Evans, 360 Mo. 1052, 232 S.W. (2d) 386, l.c. 388.

The above outlined statutory scheme for the assessment of personal property for taxation shows quite clearly that the assessment machinery must be put in operation by the assessor's calling on all persons residing in his county and requiring them to make a list of their personal property. Section 137.115, supra. If the owner of such property to whom the list has been delivered fails or refuses to return such list to the assessor, the assessor may make the list for him, but delivery of such list to the taxpayer is a condition precedent to the right of the assessor to do so. State ex rel. Wenneker v. Cummings, 151 Mo. 49, 52 S.W. 29; State ex rel. Ziegenhein v. Spencer, 114 Mo. 574, 21 S.W. 837.

Said statutes also contemplate that the assessor's duties should be performed prior to May 31 of each year. Thereafter, the assessments may be adjusted by the county board of equalization or the State Tax Commission and omitted property added by those agencies in accordance with the statutes. Sections 138.010 and 138.380, supra. No authority is conferred upon the assessor or collector to add omitted personal property to the assessment books after the completion of the assessor's books and their delivery to the county collector.

In view of the above statutory scheme of assessment of personal property, under which the duty of seeing that all property is assessed is placed primarily upon the assessor, we find no authority vested in either the assessor, the collector or the county court to place on the tax books personal property

Honorable Harold W. Barrick

of a person who, after delivery of the tax books to the collector, comes to pay personal property taxes and finds that his name is not on the tax books. Therefore, our answer to your first inquiry is that, under the circumstances set forth therein, neither the assessor or the collector, nor the county court, is authorized to make an addition on the tax book of the personal property of such person. Under such circumstances, there having been no valid assessment of personal property of such person, such as to render him liable for taxes for the year in question, the collector would be required under Section 301.025, supra, to furnish such person a statement that no personal property tax is owed by him.

We do not feel that Section 137.265, above quoted, would permit the placing of additional personal property on the tax books at such time. To do so would preclude the taxpayer's rights to the review of his assessment as provided by statute, and it is our opinion that Section 137.265, supra, cannot be so construed as to authorize the addition of personal property to the tax books after they have been delivered to the collector.

As for your second inquiry, our answer is the same as to your first, particularly in view of the fact that, inasmuch as January 1 is the assessment date (Sec. 137.075, supra), such person's property is not properly taxable for the year in question in the county to which he has moved.

As for your third inquiry, we find no authority for adding a taxpayer's name to the personal property books after January 1 for the preceding taxable year, and therefore the question of penalty could not properly arise.

As for your fourth inquiry, we are of the opinion that liability for personal property taxes being determined as of January 1, the statement regarding tax liability required by Section 301.025 must be obtained from the collector of the county in which the person resided on said date, and that therefore he should be required to obtain a statement of no tax due, if such is the case, from the collector of the county in which he resided on January 1.

As for your fifth inquiry, as we pointed out in answer to your fourth question, responsibility for making such statement must be placed upon the collector of the county in which the person resided on the assessment date of January 1. Consequently, we are of the opinion that whenever a collector is advised by a person requesting a statement that no taxes are due from such

Honorable Harold W. Barrick

person that he did not reside in the collector's county on the assessment date, such collector would be under no obligation to furnish such statement.

CONCLUSION

Therefore, it is the opinion of this office that:

1. Where a person's personal property has not been assessed and such omission is discovered after the tax books have been placed in the hands of the county collector, neither the assessor nor the collector nor the county court may add the personal property of such person to the tax books for such year and that, no assessment of the property of such person having been made, he would be entitled to receive from the collector a statement, under Section 301.025, MoRS, 1951 Supp., that he owed no personal property taxes for such year;

2. When a person moves from one county to another after the assessment date, the county to which he moves cannot place his name on the personal property tax books of said county for such year, and therefore could not do so after the books have been delivered to the collector;

3. Personal property for the preceding taxable year may not properly be added to the tax books after January 1 of the following year, and therefore no question of payment of penalty on such personal property taxes can properly arise;

4. Under Section 301.025, MoRS, 1951 Supp., a statement regarding personal property tax liability must be obtained from the collector of the county in which the property owner resided on the assessment date of January 1; and

5. When a county collector is requested to render a statement to a person that such person owes no personal property taxes and the county collector is advised by such person that he did not reside in such county on the assessment date, the county collector is under no obligation to furnish such person with a statement that no personal property taxes are owed by him.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Robert R. Welborn.

Yours very truly,

JOHN M. DALTON
Attorney General

RRW:ml