TAXATION:

SITUS OF TRUST PROPERTY FOR TAXATION:

Trust property held by two trustees living in different counties shall be assessed in the county in which the trust funds are located and one of the trustees resides.

August 28, 1940

Hon. Clarence Evans, Chairman
State Tax Commission of Missouri
Jefferson City, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you submit the question of where certain trust funds shall be assessed for taxes.

It appears from the petition which has been submitted by the trustees that a trust estate was created by a will in the County of St. Louis. By this will two trustees were appointed. The beneficiaries under the will reside in different parts of the United States. The trustees who are now acting by virtue of the provisions of the will reside in the State of Missouri, one residing in the City of St. Louis and the other in the County of St. Louis, where the estate was administered. The trust funds are kept in the City of St. Louis and the business of the estate is conducted from an office in the City of St. Louis. From the memoranda which have been submitted by the counselors for the City and County it appears that the County of St. Louis, as of June 1st, 1939, assessed the entire corpus of this trust estate in the County. The City of St. Louis has, apparently, done the same thing.

The counselor of the County of St. Louis advised the taxing authorities of the County that, while the question has not been settled in this State as to where this property should be assessed, yet he was inclined to believe that the courts would hold that since one trustee lived in the County and one lived in the City, that the property should be apportioned for taxing purposes, and, therefore, the County would tax one-half of the corpus of the estate and the City the other half. The trustees

have taken the position that the entire corpus of the estate should be assessed and taxed in the City of St. Louis. Each party in this case have submitted ample authority to support their contention.

In our research on this question we find that the courts of the various states have taken different views on this question.

In Vol. 67 A.L.R., under the annotations at page 400, we find that the text writer, in regard to this question, stated as follows:

> "Generally, it would seem that the location of the trust property, when in the hands of one or more of several trustees, is the factor determining the situs for taxation of such property. But, in the cases in which the trustee is taxed for property located in another state, in the possession of a co-trustee there, it seems that he can be taxed for his aliquot part of the trust estate only."

Section 9745, R. S. Mo. 1929, which pertains to the assessment of personal taxes, provides as follows:

> "All personal property of whatever nature and character, situate in a county other than the one in which the owner resides, shall be assessed in the county where the owner resides, except as otherwise provided by section 9763; and all notes, bonds and other evidences of debt made taxable by the laws of this state, held in any state or territory other than that in which the owner resides, shall be assessed in the county where the owner resides; and the owner, in listing, shall specifically state in what county, state or territory it is situate or held."

Where several trustees are residents in different districts, the rule as to the assessment of the trust property is stated in Vol. 61 C. J., Para. 644, page 531, as follows:

> "If there are several trustees residing in different taxing districts, and the residence or domicile of the trustee fixes the place of taxation, the assessment of the property should be apportioned among them according to their pro rata shares, and this rule has in substance been embodied in statutes in some jurisdictions."

And, in Cooley on Taxation, Vol. 2, 4th Ed., Section 470, at page 1052, the rule is announced as follows:

> "If there are two or more trustees, and part of them reside in one state and part in another state, the general rule is that the assessment of the property should be apportioned among them according to the relative number in the taxing state, in the absence of any statute to the contrary. But when there are several trustees, one of whom is domiciled in the state of origin of the trust, and the corporeal custody of the securities of the trust is with that trustee at his domicile, and the title of the trustees is joint and their powers must be exercised as a unit, there is no such severable ownership in one trustee resident outside the state where the trust was created, as makes him subject to taxation, unless so provided by statute."

The last paragraph of the foregoing rule would seem to support the view taken by the City. In other words, the corpus of the trust estate being at the domicile of the trustee in the City of St. Louis, then the property would be taxed in the City. The properties in this estate are intang-

ibles.

In Bogert's on Trusts and Trustees, Vol. 2, at page 841, he states the case law on the question of the trustee being the owner of trust property as follows:

> "In the absence of contrary statute, the weight of the case authority supports the principle that the executor, administrator, or trustee is to be regarded for the purposes of property taxation as the owner of the trust property. Hence such property may and ordinarily will be assessed for taxation in the state in which the trustee is domiciled, even though the beneficiaries of the trust reside in some other state. The fact that the trustee derives his appointment from a court in another state is immaterial, at least where the property is actually in the possession or control of the trustee at his domicile. * * *"

The case of Pennsylvania In Re Griscom's Will, 3 Atl. (2d) 693, was a case in which there were three trustees. One lived in Florida and two in Pennsylvania. In this case the court held that since the statute made no provision for a division of the properties for taxing purposes that the estate should be taxed in the county of the trustee in which the corpus of the estate was maintained.

As stated at the beginning of this opinion, the courts of our State have not had this question directly before them, but I think that the reasoning used by the court in the case of State ex rel. School District of Plattsburg v. Bowman, 178 Mo. 654, might be applied in this question. In that case, the taxation of a partnership was before the court and the partners who composed this partnership lived in different school districts. It was contended in that case that under Section 9121, R. S. Mo. 1899 (which is the same as Section 9745, R. S. Mo. 1929), that the partnership property should be assessed

against the members in proportion to their interest in the firm and in the county or counties in which such members reside. The court, in that case, in speaking of Section 9121 R. S. Mo. 1899, l. c. 660, said:

> "This section undoubtedly changes the general and original rule, above pointed out, that tangible personal property is assessable and taxable where it is actually located, and makes it assessable where the owner resides. * * *"

Again, in the same case, at l. c. 658, the court announced the general rule on the taxation of property, and that is:

> "* * * Therefore, where the property is actually located is the place where the assessment is made and the tax collected. * * *"

Again, at l. c. 660, the court, in speaking of the rules of law which were applicable where the Legislature had not enacted, in speaking of partnership property, said:

> "It seems reasonably clear, however, that the Legislature did not have in mind partnership property when it enacted section 9121, and that that section is properly referable only to property owned by an individual. And this being true, the statute must be deemed to be silent as to the assessment and taxation of partnership property; and, therefore, the general rules of law pointed out must be held to obtain."

Since our lawmakers have failed to make any provision for the taxation of trust property which is held by two

trustees living in different districts, or counties, then we think the rule announced in the Bowman case, supra, that is, "where the property is actually located is where the assessment should be made and a tax collected," should be applied in a case like the one here in question. The trustees in this estate act jointly and they administer this estate in the City of St. Louis. The corpus of the estate receives the benefits of the governmental protection of the City of St. Louis, and that, together with the fact that one of the trustees lives in the City of St. Louis, leads us to the conclusion that, since there is no statutory authority to split up this estate and apportion it to different taxing districts, that the entire estate should be assessed and taxed in the City of St. Louis.

CONCLUSION.

From the foregoing it is the opinion of this department that a trust estate which is administered by two trustees, one living in one county and one in another, in the State of Missouri, should be assessed and taxed in the county in which the corpus of the trust estate is kept and in which one of the trustees resides.

Respectfully submitted,

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APPROVED:

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