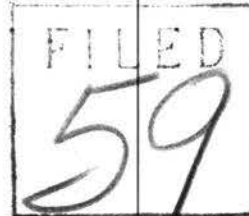


TAXATION: Husband and wife must make separate return for property owned by entirety and as individually owned.

May 15, 1940

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Mr. S. T. McIntyre  
County Assessor  
Marion County  
Hannibal, Missouri



Dear Sir:

We are in receipt of your request for an opinion, under date of May 11, 1940, which reads as follows:

"I wish you would give me an opinion on the following assessment list; i. e. John Doe and his wife, Anna Doe own one or more pieces of real estate together, that is - a joint title; then John Doe himself owns separate real estate, the title just in his name. Or the said John Doe might own personal property such as household furniture, live stock, and especially automobile or truck with title in his name only.

"It is my contention that I would be entitled to make two assessment lists, one for the real estate which is a joint title and one for the personal property known to belong to John Doe personally."

On January 18, 1940, this department rendered an opinion to the Honorable Emory C. Medlin, Prosecuting Attorney of Barry County, in which it held that the county assessor receives payment on one list on each owner of property which contains both personal property and real estate of each person in the county. A copy of this opinion is herein enclosed.

Section 9756, Laws of Missouri, 1937, P. 570,  
partially reads as follows:

"The assessor or his deputy or deputies shall between the first days of June and January, and after being furnished with the necessary books and blanks by the county clerk at the expense of the county, proceed to take a list of the taxable personal property and real estate in his county, town or district, and assess the value thereof, 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 property owned by such person, or under the care, charge or management of such person, except merchandise which may be required to pay a license tax, being in any county of this state in accordance with the provisions of this chapter, and the person listing the property shall enter a true and correct statement of such property, in a printed or written blank prepared for that purpose; which statement after being filled out, shall be signed and sworn to, to the extent required by this chapter by the person listing the property and delivered to the assessor. \* \* \* "

Under the above section it will be noticed the following appears, "to make a correct statement of all taxable property owned by such person, \* \* \* ." In construing the statutes the word "person" shall also be considered singular and plural. All statutes concerning taxes must be strictly construed. Statutes authorizing collector of taxes must be strictly construed, as was held in the case of State ex rel Western Union v. Markway, 110 S. W. 2d 1118, 341 Mo. 976.

Collection of taxes can only be made in accordance

with tax books as actually made and furnished to collector. State ex rel, and to the use of Parrish v. Young, 38 S. W. 2d 1021, 327 Mo. 909.

Sections 9915 and 9916 R. S. Mo., 1929, provide for the method of collection of personal taxes. If suits are filed for personal taxes they should be filed against the proper parties who are owing the taxes. If the personal property is owned jointly by entirety it would be impossible for the two owners of the property individually and singularly to return an assessment list to the county assessor for his, or her, interests in the jointly owned property. If it were possible to so return an assessment list by stating that they are the owners of the undivided half it would not be the proper procedure for the assessment on account of the fact that owners of property by entirety are not the owners of an undivided one-half interest in the property. Owners of property by entirety are by a fiction of law treated as one person. In the case of Greene v. Spitzer, 123 S. W. 2d 57, par. 2,3, the court said:

"An estate by the entirety is created by a conveyance to the husband and wife by a deed in the usual form. It is one estate vested in two individuals who are by a fiction of law treated as one person, each being vested with entire estate. Neither can dispose of it or any part of it without the concurrence of the other, and in case of the death of either the other retains the estate. It differs from a joint tenancy where the survivor succeeds to the whole estate by right of the survivorship; in an estate by entirety the whole estate continues in the survivor. The estate remains the same as it was in the first place, except that there is only one tenant of the whole estate whereas before the death there were two." Ashbaugh v. Ashbaugh et al., 273 Mo. 353, 201 S. W. 72, loc. cit. 73."

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The above case applies to real estate, The same laws apply to personal property, and, in the case of Ambruster v. Ambruster, 31 S. W. 2d 28, par. 6 the court said:

"That a husband and wife can own a bank account as tenants by the entirety may be conceded, Craig v. Bradley, 153 Mo. App. 586, 134 S. W. 1081; and that they or two or more other persons may hold such an account as joint tenants has been declared by statute as well as the decisions of our courts of last resort. Sections 11779, 11840, Rev. St. Mo. 1919; Mississippi Valley Trust Co. v. Smith, 320 Mo. 939, 9 S. W. (2d) 58 and cases cited. \*

\* \* \* \* \*

Under the holding in the above cases the owners by entirety are considered the same as one person, and where property is jointly owned by husband and wife it would necessarily mean that a separate return be made upon an assessment of property owned by entirety. Also, if either one of them owned either real estate or personal property in their own right a separate return must be made by each of them singularly as well as the return made by them by entirety.

#### CONCLUSION

In view of the above authorities, it is the opinion of this department that as set out in your request if John Doe and his wife, Anna Doe, owned one or more pieces of real estate or personal property together they should make a joint return as to the real estate and personal

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property, and if either John Doe or his wife owned a piece of real estate or personal property in their own right they should make another separate return for the property owned individually.

Respectfully submitted,

W. J. BURKE  
Assistant Attorney General

APPROVED:

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