TAXATION:
PUBLIC PROPERTY:
TAXATION OF PROPERTY HELD BY CHARITABLE CORPORATION:
LIABILITY OF TENANTS IN COMMON FOR TAXES:

Persons owning realty on January 1 of each year are liable personally for the tax thereon for the following tax year. Land against which taxes are levied and assessed while under private ownership becomes immune from proceedings to enforce the tax lien and collect those taxes when title to said land is transferred to the State of Missouri. A cotenant is liable only for the taxes on his individual undivided interest and not for taxes due on undivided interests of fellow cotenants.

November 20, 1956

FILED
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Honorable Roy W. McGhee, Jr.
Assistant Prosecuting Attorney
Reynolds County
Centerville, Missouri

Dear Mr. McGhee:

This is in answer to your opinion request of September 21, 1956, reading as follows:

> "On December 27, 1954 an undivided one-half interest in certain lands in Reynolds County were conveyed, by warranty deed, by Joseph and Marie Desloge, his wife, to The Desloge Foundation, a Missouri corporation, as shown in Book 113 at page 30 of the land records of Reynolds County.
>
> "On January 5, 1955 the remaining undivided one-half interest in the same lands was conveyed by the said grantor to the said grantee as shown in Book 113 at page 45 of the land records of Reynolds County.
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> "On August 24, 1955 the above lands were deeded by The Desloge Foundation to the State of Missouri for the use and benefit of the Missouri State Park Board, as shown in Book 113 at pages 199 and 200 of the land records of Reynolds County.
>
> "This property is now known as the Johnson Shut-ins and is under the authority and jurisdiction of the State Park Board at the present time.
>
> "As of July 9, 1956, taxes for the year 1955 were due on the above property in the amount of $231.05. Who is liable for payment of these taxes?"

Section 137.075, RSMo 1949, provides that:

> "Every person owning or holding real property or tangible personal property on the first day of January including all such property purchased on that day, shall be liable for taxes thereon during the same calendar year."

Under this section, the realty tax is not dependent upon continued ownership during the tax year but only upon ownership on the assessment date as shown in the statute, which is January 1st. (Collector of Revenue within and for the City of St. Louis, Missouri, v. Ford Motor Company, C.C.A., 158 F. 2d 354). Your letter of September 21st, addressed to this office, states that on January 1, 1955, the land in question was owned in cotenancy in undivided one-half interests by Joseph and Marie Desloge, husband and wife, as tenants by the entirety to one undivided half interest and by the Desloge Foundation, a charitable corporation. There is no doubt that the undivided one-half interest owned by Joseph and Marie Desloge on January 1, 1955, is subject to taxation and for which taxes they are personally liable. In the case of In re Life Ass'n. of America, 12 Mo. App. 40, it was held that taxation was personally against the owner of the property, whether the property be real or personal, and real property taxes are not merely a charge in rem against the land.

As to the undivided one-half interest owned by the Desloge Foundation, the constitutional provision and the legislative enactment, which provides for the exemption from taxation of certain real and personal property owned by a charitable corporation, must be considered to determine their applicability to the property owned by the Desloge Foundation. If the requirements of the Constitution and the statutory provision are met, then that interest held by the Desloge Foundation is exempt from taxation. If the requirements are not met, then the undivided one-half interest owned by the Desloge Foundation is also subject to taxation.

Article X, Section 6 of the 1945 Missouri Constitution provides as follows:

> "All property, real and personal, of the state, counties and other political subdivisions, and nonprofit cemeteries, shall

> be exempt from taxation; and all property, real and personal, not held for private or corporate profit and used exclusively for religious worship, for schools and colleges, for purposes purely charitable, or for agricultural and horticultural societies may be exempted from taxation by general law. All laws exempting from taxation property other than the property enumerated in this article, shall be void."

Section 137.100, RSMo 1949, provides also as follows:

> "The following subjects shall be exempt from taxation for state, county or local purposes:
>
> * * * * * * * * * * *
>
> (6) All property, real and personal actually and regularly used exclusively for religious worship, for schools and colleges, or for purposes purely charitable, and not held for private or corporate profit shall be exempted from taxation for state, city, county, school, and local purposes; provided, however, that the exemption herein granted shall not include real property not actually used or occupied for the purpose of the organization but held or used as investment even though the income or rentals received therefrom be used wholly for religious, educational or charitable purposes."

These provisions, as construed by the Missouri Supreme Court en banc in the case of St. Louis Council of Boy Scouts of America v. Burgess, 240 S.W. 2d 684, 1951, require that there must be a showing of a present, actual, regular, and exclusive user of all the property owned by the charity for purposes purely charitable before the property is exempt from taxation and that mere prospective user for purposes purely charitable is not sufficient to exempt the property from taxation.

In your letter to this office dated October 9, 1956, you state that on January 1, 1955, the property in question was not being used or held for any particular purpose. Since, on this date, there was no present, actual, regular and exclusive user of the property owned by the Desloge Foundation for purposes purely charitable as required by the above cited provisions for the exemption of charitable property from taxation, this office is of the opinion that the undivided one-half interest in the property owned by the Desloge Foundation is not exempt from taxation for the year 1955. Even though there was on January 1, 1955, a possibility that sometime during the tax year the property owned by the Desloge Foundation would be used for purposes purely charitable, this is not sufficient to warrant the exemption of the interest owned by the Desloge Foundation from taxation for the year 1955.

Now that we have concluded that the entire property is subject to taxation for the year 1955 and that the owners thereof on January 1, 1955, Joseph and Marie Desloge and the Desloge Foundation, are personally liable for the taxes thereon, we will now determine by what method the tax can be collected and the extent of the liability of the cotenants for the taxes due on the property for 1955.

There are two methods under Missouri law by which taxes against realty may be collected. The first is by sale of the land and the second, by distraint of the personalty of the taxpayer owing the tax on the realty. (Collector of Revenue within and for the City of St. Louis, Missouri v. Ford Motor Co., supra; State ex rel. McKee v. Clements, 219 S.W. 900, 281 Mo. 195.) In Missouri, there is no authorization for a personal judgment against a person for taxes on real property. (Section 140.640, RSMo 1949.)

Under the first method, the lien, which the state has against the specific piece of property for taxes, is enforced and the land can be sold at a tax sale and the proceeds used to satisfy the taxes due thereon. Under the second method, the collector is given the power to seize and sell personal property, without judgment, for the payment of all taxes. (State ex rel. Hayes v. Snyder, 41 S.W. 216, 139 Mo. 549.)

The provision for enforcing the tax lien on the land is Section 137.085, RSMo 1949:

> "2. Real property shall in all cases be liable for the taxes thereon, and a lien is hereby vested in favor of the state on all real property for all taxes thereon, which lien shall accrue and become a fixed encumbrance as soon as the amount of the taxes is determined by assessment and levy, and said lien shall be enforced as provided by law; said lien shall continue to be enforced until all taxes, forfeitures, back taxes and costs shall be fully paid or the land sold released as provided by law."

It is impossible to proceed against the land for taxes in this case because the title to the land on which the taxes are owed is now vested in the Missouri State Park Board, which means that the property is owned by the State of Missouri. Article X, Section 6 of the 1945 Missouri Constitution, provides in part that:

> "All property, real and personal, of the state, counties and other political subdivisions, and nonprofit cemeteries, shall be exempt from taxation; * * *."

This provision of the Constitution has not only been construed to mean that all property owned by the bodies named therein is exempt from further taxation, but in State ex rel. City of St. Louis v. Baumann, 153 S.W. 2d 31, 1941, the Supreme Court of Missouri, en banc, held that any taxes levied and assessed against the land during the years prior to the acquisition of the title thereto by the exempted body cannot be collected after said land has been acquired by the exempt body by a proceeding against the land. It was also held in the same case that the exempt body which had acquired the land did not have to pay the back taxes in order to obtain a clear and unencumbered title to the property. The court, in so holding, stated at page 34 that:

> "Even though taxes have been levied and assessed against a tract of land while under private ownership, if it be afterwards acquired by a governmental agency such taxes may not be collected. * * * Since the city is seeking to purchase the land in its public governmental capacity and not as a mere fiduciary, the land becomes immune from taxation as soon as the

> City becomes the owner of it and such immunity would extend to taxes previously assessed and levied."

Since the land cannot be proceeded against for the payment of the taxes owed by Joseph and Marie Desloge and the Desloge Foundation on the property for 1955, we must look to the other method for the collection of a real estate tax. This method calls for the distraint of personalty by the collector and as authorized by Section 139.120, RSMo 1949:

> "1. The collector shall diligently endeavor and use all lawful means to collect all taxes which they are required to collect in their respective counties, and to that end they shall have the power to seize and sell the goods and chattels of the person liable for taxes, in the same manner as goods and chattels are or may be required to be seized and sold under execution issued on judgments at law, and no property whatever shall be exempt from seizure and sale for taxes due on lands or personal property; provided, that no such seizure or sale for taxes shall be made until after the first day of October of each year, and the collector shall not receive a credit for delinquent taxes until he shall have made affidavit that he has been unable to find any personal property out of which to make the taxes in each case so returned delinquent; but no such seizure and sale of goods shall be made until the collector has made demand for the payment of the tax, either in person or by deputy, to the party liable to pay the same, or by leaving a written or printed notice at his place of abode for that purpose, with some member of the family over fifteen years of age.
>
> "2. Such seizure may be made at any time after the first day of October, and before said taxes become delinquent, or after they become delinquent; * * *."

In the situation involved here, the personal property of Joseph and Marie Desloge, husband and wife, and of the Desloge Foundation are subject to being proceeded against pursuant to

Section 139.120, as set out above, and their personalty can be distrained and sold up to the amount necessary to pay the taxes due on the property for 1955 (Stein V. Bostran, C.C.A., 133 F. 2d 586; State ex rel. Hibbs v. McGee, 44 S.W. 2d 36, 328 Mo. 176). In proceeding against the personalty of the owners of the property, it must be remembered that the said personalty cannot be seized without a demand for payment being first made upon the persons liable. The demand must be made as prescribed by the above statute and a demand by mail is in effect no demand. (National Lumber and Creosoting Co. v. Burrows, 284 S.W. 153.) If a demand is not made as prescribed by statute, then the personalty cannot be seized until a written notice of demand for payment has been given in person to the parties liable, or a copy left with their families or agents at their places of residence (State ex rel. Rosenblatt v. Sargent, 12 Mo. App. 228).

As to the amount of the taxes that each of the cotenants are liable for and the amount of personalty of each that can be seized and sold for payment thereof, Section 139.090, RSMo 1949, provides in part as follows:

> "2. The collector shall receive taxes on part of any lot, piece or parcel of land charged with taxes; * * *
>
> "3. If payment is made on an undivided share of real estate, the collector shall enter on his record the name of the owner of such share, so as to designate upon whose undivided share the tax has been paid."

In Horstmeyer v. Connor, 56 Mo. App. 115, this statute was construed as allowing a person to pay the taxes due on his undivided interest in the property and his undivided interest would thereafter be exempt from sale for taxes due on the whole of the property. If the owners of the other undivided interests should thereafter fail to pay the taxes due on their interests, the undivided interest on which the taxes had been paid and the person owning that interest would not be liable for the taxes due on the other undivided shares.

For determining how much tax the owner of an undivided interest owes, Section 139.080, RSMo 1949, provides in part as follows:

> "3. Any person desiring to pay on an undivided interest in any real property

> may do so by paying to the county collector a sum equal to such proportion of the entire taxes charged on the entire tract as interest paid on bears to the whole."

Since Joseph and Marie Desloge owned an undivided one-half of the whole property on January 1, 1955, they would be liable for one-half the total tax. The Desloge Foundation or the owner of the other undivided one-half would be liable for the other one-half of the total tax. The personal property of each could be seized and sold in an amount up to one-half of the total tax should either party refuse upon demand to pay their share of the taxes due.

CONCLUSION

It is the opinion of this office that on January 1, 1955, Joseph and Marie Desloge, husband and wife, and the Desloge Foundation, a charitable corporation, owned the property in question in undivided one-half shares as tenants in common. As the owners thereof on that date, they are held personally liable for the tax on that property for the tax year 1955. The undivided one-half interest owned by the Desloge Foundation is not exempt from taxation because the land was not being used for charitable purposes on January 1, 1955, and mere prospective user for charitable purposes during the tax year, 1955, is not enough to exempt the property from taxation during 1955.

It is also the opinion of this office that the land cannot be proceeded against since the title thereto is now vested in the State of Missouri and the land is thereby immune from both past, present and future taxation. However, the personalty of the tenants in common who owned the property on January 1, 1955 can be seized and sold by the collector to pay the 1955 taxes on the land, after demand or notice for payment has been made, pursuant to authority vested in the collector by Section 139.120, RSMo 1949.

The cotenants, Joseph and Marie Desloge and the Desloge Foundation, are liable only for the taxes on their undivided one-half interests in the property and their individual personalty can be seized and sold, after notice and demand for

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payment, up to an amount equal to one-half the total tax due. As cotenants, they are not liable for the taxes due on the other undivided interests but only for taxes due on their own undivided interest.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Richard W. Dahms.

Very truly yours,

John M. Dalton
Attorney General

RWD:bl:hw