TAXATION: Notice of assessment by Assessor.
ASSESSMENT:

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November 25, 1942

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Mr. Hubert T. Perry,
Treasurer and Ex-Officio Collector
Carrollton, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you request an opinion as follows:

> "1. I would like to have your opinion as to whether or not a personal tax is valid and collectible, if the Assessor did not, in fact, call upon the tax payer or leave an assessment blank with such tax payer.
>
> "2. What evidence must the alleged tax payer present to show conclusively that the Assessor did not discharge his duty as to assessing the property?"

Since your questions pertain to assessors in counties under township organization we refer to Section 14005, R. S. Mo. 1939, which relates to assessment of taxes by assessors in such counties. By such section it may be seen that the assessment for taxes is made in accordance with the provisions of the general laws in relation to assessment of real and personal property taxes.

Referring to the general law in relation to assessment of such taxes we find that Sections 10950 and 10951, R. S. Mo. 1939, prescribe the procedure which the assessors should follow in making assessments.

Section 10950, in so far as it applies to your question, is 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. * * * * * * * * *"

By the provisions of this section it will be noted that it is the duty of the assessor to call at the office, place of doing business or residence of the person required to list his property.

Section 10951, R. S. Mo. 1939, also pertaining to the procedure for assessment, provides in part as follows:

> "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, the usual place of residence or business of such person, a written or printed notice, requiring such person to make out and leave at the place

> named by said assessor, on or before some convenient day named therein, not less than ten days nor more than twenty days from the date of such notice, a sworn statement of the property which he is required to list, and shall leave with such notice a printed or written blank for the statement required of such person. If any such person shall have deceased prior to the time when the assessor calls for such list, the assessor shall deliver such written or printed notice to the executor or administrator of such deceased person, and such executor or administrator shall make out and deliver to the assessor such sworn statement of all the property of such decedent. The date of leaving such notice and the name of the person required to list the property shall be carefully noted by the assessor; and if any such person shall neglect or refuse to deliver the statement, properly made out, signed and sworn to as required, the assessor shall make the assessment, as required by this chapter: * * * * * * * * * * * * * * * * * * *"

Section 10954, R. S. Mo. 1939, provides as follows:

> "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."

From this section it might be concluded that the assessor could make assessments under the conditions therein

specified without complying with the provisions of Section 10951, supra. However, we think this is clarified by the court in the case of State ex rel. v. Cummings, 151 Mo. 49, l. c. 58, wherein the court, in construing these tax sections, said:

> "* * * By section 7531, Revised Statutes, 1889, the time within which all assessments must be made is fixed to be 'between the first days of June and January' succeeding. The assessor is required to call in person at the office, place of doing business or residence of each person subject to taxation, and require such person to make a correct statement of all taxable property owned by such person, or under the care, management, or charge of such person. If the owner is not at home, the statute requires that a written or printed notice be left at the place of business or residence of the taxpayer, notifying such person to make a list, and the assessor is required to specifically note the date of the service of such notice. By this personal call or written or printed notice, the taxpayer is secured the privilege of stating exactly what property he has and its value. When this call is made on the taxpayer, and request made on him for his list, or, if he be absent, the notice is left for him, within the period from June 1st to January 1st succeeding, then jurisdiction is obtained to assess his property. We use the word 'jurisdiction,' for want of a more correct expression. Strictly speaking, tax proceedings are only quasi judicial, but, as they have the effect of judgments, the word 'jurisdiction' can readily be made applicable to them. As notice of strictly judicial proceedings is essential, so likewise it is made necessary in all enlightened systems of just and equal taxation. * * *"

By this statement the court held that jurisdiction to make the assessment does not exist until the assessor has complied with the provisions of Sections 10950 and 10951, supra. Then, after having done this, if the taxpayer does not make out a list, the assessor may proceed as authorized under said Section 10954, supra.

The court, in the Cummings case, supra, in outlining the procedure for the assessor to follow under such circumstances, said at l. c. 59:

> "Tested by these rules, it must be held that when the assessor, Brokate, went in person, on June 9, 1894, to the residence of defendant, and left the printed notice and blank list requiring defendant to list his property, and defendant received that list on that day, the jurisdiction to assess attached. If, after receiving this blank list and notice, he failed to make out his own list, or refused peremptorily to do so, as is shown by his evidence, then the law authorized the assessor (section 7535) to make out the list on his own view, or 'on the best information he could obtain.' * * * * * * *"

And the court further said in the Cummings case, supra, at l. c. 60, in reference to the time when the assessor has jurisdiction to make the assessment:

> "* * * The action of the assessor is quasi judicial, and when, as in this case, his jurisdiction attached by the due service of the notice and blanks, his valuation and assessment, unless appealed from, become conclusive upon the taxpayer. * * * * * * * * * * * * * * * * * * * * *"

From this statement it will be seen that the court has held that jurisdiction to make the assessment attaches upon due

service of the notice and blanks.

In speaking of the procedure to be followed by the assessor in making an assessment the court, in the case of State ex rel. v. Hoyt, 123 Mo. 348, at l. c. 354, said:

> "It would be utterly impossible for an assessor to remember, and be able to testify to the fact, that lists had been left with each property owner, and that they had not been returned as required by law. Hence the statute requires that the fact of leaving the list should be specially noted by the assessor. The right and power of the assessor to make the assessment depends upon the due performance of his duties in respect to these requirements. The duplicate lists and notations thereon, which were retained in the office, and the subsequent assessment made by the assessor on the strength of these duplicates, all done by a public officer, in the regular discharge of his official duties, should be taken and held as having somewhat the characteristics of the return of an executive officer, and, in the absence of fraud, or actual misfeasance, should be taken, in a proceeding to enforce the collection of the taxes levied, as, at least, prima facie evidence of the existence of the facts upon which the power of the assessor to make the assessment was conditioned."

In this case the court held that the tax bill is prima facie evidence that the amount of taxes therein set out is just and correct. However, it will be noted that it also held that the right and power of the assessor to make the assessment depends upon the due performance of his duties in respect to the statutory requirements.

In speaking of the provisions which may be used by the taxing authorities to controvert an allegation that the assessor did not perform his duties under the statute, the court held that the duplicate lists and notations thereon,

which are retained in the assessor's office, and the subsequent assessment made by the assessor on the strength of such duplicates, should be taken and held as having somewhat the characteristics of the return of an executive officer.

Section 10987, R. S. Mo. 1939, provides as follows:

> "Whenever an assessment of property is made in the absence of the head of the family, a duplicate list of such assessment shall be left with some member of the family of not less than fifteen years of age, and shall deliver a copy of the assessment to the owner at the time of making said assessment, if demanded by such owner."

The assessment authorized to be made under this statute may be made in the absence of the head of the family. However, it will be noted from this section that a duplicate list of such assessment must be left with some member of the family over fifteen years of age, and a copy of the assessment delivered to the owner at the time of making the assessment if demanded by such owner. All of these taxing sections contemplate that the taxpayer must have some sort of a notice before jurisdiction can attach for the assessor to make an assessment.

In the case of State ex rel. v. Seahorn, 139 Mo. 582, at l. c. 609, the court, in speaking of the presumption which would be indulged in favor of the taxing authorities, said:

> "* * * This being an action for the recovery of taxes and it appearing that Scruggs was liable to taxation, and that the assessor had authority and jurisdiction, the presumption will be indulged that the assessor and his deputies discharged their duty, and that the notices and blank assessment lists were left at his place of residence within the time prescribed by statute."

Under Section 11112, R. S. Mo. 1939, the back tax bills when properly certified are prima facie evidence that the amount claimed in the tax suit is just and correct.

CONCLUSION

From the foregoing it is the opinion of this department that a personal tax is not valid and collectible in cases where the assessor does not comply with the provisions of Sections 10950 and 10951, R. S. Mo. 1939, by calling upon the taxpayer or by leaving an assessment blank with such taxpayer or with some member of his family over fifteen years of age, as is provided by Section 10987, R. S. Mo. 1939.

As to the sufficiency of proof to conclusively show that the assessor did not discharge his duty in regard to assessing property as stated above, it is the opinion of this department that the tax bill is prima facie evidence of a valid assessment and levy and that the amount claimed is just and correct. The evidence which must be alleged by the taxpayer to controvert such presumption will depend upon the facts in each particular case.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

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