

ASSESSORS: Assessor need not call upon taxpayer to take his list
TAXATION: and view property. Duty of taxpayer to deliver completed list to assessor.

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March 2, 1949

Honorable Clarence Evans
Chairman, State Tax Commission
Jefferson City, Missouri

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Dear Sir:

We have received your letter of recent date requesting an official opinion of this department, which letter reads as follows:

"It has been called to our attention that a number of assessors throughout the state have been putting ads in their local newspapers advising taxpayers that they will be in their office on certain dates to receive their assessment lists. It has been our opinion that it was the duty of the assessor to call on the taxpayer, take his list, and at the same time view the property being assessed.

"Under H.C.S.H.B. 469, Section 14, it states that where a list has not been given to the assessor, the assessor shall himself make out the list on his own view or on the best information he can obtain. This verifies our opinion on the above, but only where no list has been given.

"Under Section 10 of the same House Bill, it provides:

'He shall call at the office, place of doing business, or residence of every 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, etc.'

"You will note that it does not state that he must view the property.

"Also under S.C.S.H.B. 943, (covering counties of

the first class) Section 5, it says in part* * *

'Said returns shall be delivered to the office of the assessor of said county between the first day of January and the first day of March of each year, etc. * * *'

"At the end of the same section it states:

'For the convenience of taxpayers the assessor shall mail to or leave at the residence or place of business of such taxpayers a list for making such return.'

"It is true this last Bill covers counties of the first class, but nevertheless, it does not require the assessor to view the property."

In counties other than those in the first class, the method and procedure required in the assessment of real and tangible personal property is provided for in H.C.S.H.B. 469, Laws Missouri 1945, page 1782. Section 10 of this Act reads, in part, as follows:

"The State Tax Commission shall design the necessary assessment blanks and they, together with the assessment books, shall be furnished by the county clerk at the expense of the county, and shall be turned over to the assessor at least sixty days prior to January 1st of each year. 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, or under the care, charge or management of 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. 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 this chapter. The list shall then be delivered to the assessor. Such lists shall contain: * * *

This section provides for the procedure to be employed by the assessor or his deputies in ordinary situations; that is, all cases other than those in which the persons required to list property, when called upon, are absent, sick or have died, or where no list has been returned to the assessor.

Section 10, supra, requires that the assessor, his deputy or deputies "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 * * *." The first question presented is when has the assessor, his deputy or deputies, required a person to make such correct statement.

It was held in the case of United States v. Armour & Co. 142 Fed. 808, l.c. 822, that "require means to ask of right and by authority. Anything is a requirement by a public official which brings home to the person called upon that the official is there officially and desires compliance." Therefore, after an assessor or deputy assessor has called upon a person required to list property and officially demanded he make a correct statement and comply with the statutory provisions, the assessor or deputy assessor has discharged the duties set out for him in Section 10.

Section 10 of this act also states those duties with which the taxpayer must comply when officially informed and required by the assessor or deputy assessor to make a correct statement. It is provided that "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 this chapter. The list shall then be delivered to the assessor. Such list shall contain: * * *." It is not required that the list be made out in the presence of the assessor or deputy assessor. The oath need not be administered by the assessor or deputy assessor, who may administer it, but it may also be administered by any of those public officials enumerated in Section 16 of the act. It is further provided and made the duty of the person preparing the list to deliver it to the assessor after it has been made, signed, and either sworn to or affirmed.

The only wording in this section which could possibly be construed as demanding the assessor or deputy assessor to call upon the taxpayer and take his list and at the same time view the property assessed is that wording which states that the assessor or deputy assessor "shall require such persons to make a correct statement of all taxable real and tangible personal property * * *." But the courts have declared the meaning of the word "require" to be to officially demand and insist upon compliance. In this case the compliance of which the assessor or deputy assessor must officially inform the taxpayer and insist upon, is making out the list, signing and affirming and swearing thereto, and returning it to the assessor.

If it had been the intent of the General Assembly to have all this done in the presence of the assessor or deputy assessor at the time he calls upon the taxpayer there would have been no need to provide that the necessary oath could be administered by certain public officers other than the assessor or deputy assessor. Nor would it have been necessary to provide that the person making out the list deliver the same to the assessor.

Section 11 of H.C.S.H.B. 469, supra, reads, 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, 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. * * *"

Here it is plainly stated that the assessor or deputy assessor need not be present when the list is made nor view the property assessed if the taxpayer is sick or absent when called upon. In these cases the person making the list is even allowed to mail same in place of delivering it to the assessor. There is no requirement of any sort that he notify the assessor that he has completed his list in order that the assessor may call upon him to receive same and view the property assessed.

The only mention in the act as to a viewing of the property by the assessor is in Section 14 which provides that "the assessor shall himself make out the list, on his own view, or on the best information he can obtain," which applies only when no list has been given to the assessor in proper time and manner.

Since the assessor is not bound to call upon the taxpayer, take his list and view the property assessed and since it is the duty of the taxpayer to deliver the completed list to the assessor, there can be no complaint if the local assessor sees fit to advertise in the local newspaper that he shall be in his office on certain dates to receive assessment lists.

CONCLUSION

It is the opinion of this department that the assessor, after having called at the office, place of doing business or residence of the taxpayer and having officially required that an assessment list be made, need not again call upon the taxpayer to take his list and view the property assessed. It is the duty of the taxpayer to deliver the completed list to the assessor and there should be no complaint if the assessor advertises that he shall be in his office on certain dates to receive these assessment lists.

Respectfully submitted,

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APPROVED:

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